IMPACT OF THE NEW COMPANIES ACT ON THE CLOSE CORPORATIONS ACT

Part 1 of our new series

Contrary to what many people believe, the new Companies Act has not repealed the Close Corporations Act. The new Companies Act has, however, repealed certain provisions of the Close Corporations Act and amended certain others. Subject to these amendments, the Close Corporations Act continues to exist and will now be administered by the Commissioner of the CIPC. What are the important changes members of close corporations must know of?

1. What are the major changes?

1.1. No new close corporations can be registered. Corporations registered prior to 1 May 2011 will continue to exist and may be converted to companies.

1.2. A close corporation is not required to file a Memorandum of Incorporation (MoI) with the CIPC, unless it of course subsequently converts to a company.

1.3. Section 26 of the Close Corporations Act, dealing with de-registration of close corporations, is repealed and the provisions of the Companies Act now govern de-registration of close corporations. A consequence of this amendment is that the members of a de-registered close corporation are no longer jointly and severally liable for the de-registered close corporation’s debts that exist at the date of de-registration. If you are therefore dealing with a close corporation, it is more important than ever to obtain suretyships from the members because, as a result of this amendment, they will, in the absence of such suretyships, not be liable for the debts of the close corporation should that close corporation be de-registered.

1.4. Section 47 of the Close Corporations Act has been substantially amended and the provisions of the Companies Act regarding the disqualification of directors will now largely determine who is disqualified from managing a close corporation.

1.5. The provisions of the Companies Act in respect of Business Rescue now also apply to close corporations.

1.6. The regulations promulgated in terms of the Companies Act describing the categories of companies that require an audit now also apply to close
corporations. The immediate consequence of this is that **corporations that in the past did not require an independent audit, may now be obliged to have their financial statements audited.**

We will look in more detail at some of the consequences of these amendments in future notes. In the meanwhile, if you require assistance to ensure your close corporation is compliant with the new Companies Act, speak to Jacques Blignaut at [JacquesB@stbb.co.za](mailto:JacquesB@stbb.co.za).