

## **DEREGISTRATION AND REINSTATEMENT OF COMPANIES AND CLOSE CORPORATIONS**

A company or close corporation (for ease of reading we only refer to a company hereafter as the deregistration and reinstatement is the same, other than costs of filing and reinstatement which differ as set out below) may be deregistered voluntarily, or by any other third party, provided that the company has ceased to carry on business and has no assets or, because of the inadequacy of its assets, there is no reasonable probability of the company or close corporation being liquidated.

Deregistration will also be triggered by the Companies and Intellectual Property Commission (“CIPC”) when two or more successive annual returns (required to be filed and paid in terms of section 33 of the Companies Act 71 of 2008 (the “Act”)) are outstanding, and the company has failed to give satisfactory reasons for the failure to file the required annual returns, or to show satisfactory cause for the company to remain registered. CIPC may also trigger deregistration if the company appears to have been inactive for at least seven years and no person has demonstrated a reasonable interest in or reason for its continued existence. For the remainder of this Newsflash we will deal with the consequences of deregistration by CIPC and how to pursue reinstatement of a company which is in the process of or has been deregistered by CIPC as a result of non-compliance of annual returns.

The effect of deregistration of a corporation is that its existence as a legal person ceases and that upon such deregistration all its property, movable and immovable, corporeal and incorporeal, passes automatically (without any necessity for delivery or any order of court) into the ownership of the State. *“Deregistration puts an end to the existence of the company. Its corporate personality ends in the same way that a natural person ceases to exist on death.” (Miller and Others v Nafcoc Investment Holdings Co Ltd and Others 2010 (6) SA 390 (SCA) at para 11).*

The abovementioned consequences are obviously very serious for creditors and interested persons particularly if a company still has any assets (particularly immovable property, which is important from a conveyancing perspective). However, in addition to being able to approach a court, in terms of section 82(4) of the Act interested persons may apply to CIPC in the prescribed manner and form to reinstate the registration of a deregistered company (Practice Note 6 of 2012) which includes:

- completing, signing and submitting a CoR 40.5 together with supporting documentation and lodgement fees;

- satisfying CIPC with sufficient documentary proof that the company was holding property or was active at the time of deregistration;
- placing an advertisement in a local newspaper giving 21 days notice of the proposed application for re-instatement;
- obtaining letters from the National Treasury and the Department of Public Works indicating that they have no objection to the re-instatement if it has immovable property. However, presently it is not necessary to submit the "no objection" letter from National Treasury where the company is the registered owner of immovable property. The letter of "no objection" from the Department of Public Works will still be a requirement where the company is the owner of immovable property registered in Deeds Registries;
- submitting an affidavit indicating the reason for the non-filing of annual returns, if deregistration was as a result of non-compliance in relation to annual returns; and
- upon the successful processing of the re-instatement application all outstanding annual returns must be filed in order to complete the process.


Once the entity has been restored the status at CIPC will be changed from "final deregistered" to "in deregistration". The status will only be changed to "in business" once all the outstanding annual returns and amount owing to CIPC have been paid and brought up to date after restoration. The current turnaround time for the restoration of final deregistered companies due to non-compliance up to "in deregistration" status is approximately 8 - 12 weeks. Please feel free to contact our offices should you require assistance with the same, please note that our professional fees for attending to the same are charged in addition to the amounts as set out below.

The below tables are indicative of the annual fees charged for annual returns of companies and close corporations. Your exact liability to CIPC for reinstatement will depend on the number of years your company or CC annual returns have been outstanding, the company's or CC's annual turnover, the penalties imposed and the status of deregistration (final/pending):

Annual Turnover	Filing within 30 business days after anniversary date	Filing more than 30 business days after anniversary date
Less than R1 million	R 100.00	R 150.00
R1 million but less than R10 million	R 450.00	R 600.00
R10 million but less than R25 million	R 2000.00	R 2500.00
R25 million or more	R 3000.00	
Re-instatement Application (Form CoR40.5)	R 200.00	

**Close Corporations Act, 1984 fee table:**


Annual Turnover	Filing within 2 months from beginning of anniversary month	Penalty for each late lodgement
Between 0 to R50 million	R 100.00	R 150.00
R50 million and above	R 4000.00	R 150.00
Re-instatement Application	R 200.00	



*Going Beyond*

The DVH group is a national group of attorney practices with offices situated in the Western Cape, Gauteng, and Kwa Zulu Natal.

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