

MOI

MEMORANDUM OF INCORPORATION



THE NEW MOI: STAY AS YOU ARE OR CHANGE?

Why should companies replace their existing Memorandum and Articles of Association with the Memorandum of Incorporation stipulated by the Companies Act 71 of 2008 (the new act)? Is this a cost that companies can safely ignore?

Avoid contravention of the new act

A company's Memorandum and Articles of Association are deemed to be the Memorandum of Incorporation (MOI) required in terms of the new act. Companies have until 30 April 2013 to bring their existing Memorandum and Articles of Association in line with the new act. Thereafter those Memorandum and Articles of Association will be void to the extent that they contravene or are inconsistent with the new act. Shareholders and directors of companies who do not do this will be in contravention of the new act.

Section 218(2) of the new act makes any person who contravenes the new act liable to any person who suffers a loss as a result of that contravention. The lawfulness of this section is open to question but while it is on the statute books it is a powerful reason why shareholders and directors should do everything they can to ensure that their company's MOI complies with the new act.

Avoid costs of an audit at the 2012/2013 financial year end

By adopting the new MOI, many companies will avoid the need to prepare audited financial statements. Private companies whose shareholders are also directors and who score less than 100 public benefit points do not need to subject their accounts to any form of audit at all. Private companies who score less than 350 public benefit points are only subject to the lesser requirement of an independent review. Private Companies who do not bring their MOI's into line with the new act remain subject to a full audit. This is because the old Articles of Association require that the company's financial statements be audited annually.

What does CIPC say?

The Companies and Intellectual Property Commission (CIPC) has issued a practice note saying that it is not compulsory for an existing company to change its memorandum and articles of association to bring them into line with the new act. This is not strictly true. CIPC is duty bound to monitor and enforce compliance with the new act. This includes ensuring that a company's MOI does not contravene the new act.

The good news is that the process of compliance has been made easier and cost effective through two solutions which can be found on www.moicompliance.co.za.

