

**GUIDE TO
THE CLOSE CORPORATIONS ACT AND REGULATIONS
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Companies Act 71 of 2008 (as amended)

The Companies Act 61 of 1973 has been replaced by the Companies Act 71 of 2008 (as amended) with effect from 1 May 2011.

The 2008 Companies Act contains some sections that are similar to those of the Close Corporations Act. In particular the concept of capital maintenance is abandoned in both Acts, and the solvency and liquidity test has to be applied before certain transactions can take place, such as the declaration of a dividend (distribution to members in the case of a close corporation) and share buybacks (corporation acquiring its own interests).

The Companies Act, 2008 also contains specific provisions affecting close corporations and these have been summarised as part of the Commentary section in this Revision Service (see page 2 onwards of this Service). Some of the more significant amendments affecting close corporations are the following:

1. All close corporations that existed when the Companies Act, 2008 became effective can continue indefinitely, and do not have to be converted into companies. The Close Corporations Act will continue to govern existing close corporations. However, no new close corporations can be formed and no companies can be converted into close corporations.
2. Schedule 2 of the Companies Act, 2008 provides for the steps to be taken when close corporations are converted to companies. These requirements are different from the procedures in terms of the 1973 Companies Act (these procedures are summarised in the Commentary section of this Revision Service); and
3. Schedule 3 of the Companies Act, 2008 makes certain amendments to the Close Corporations Act, including the following:
 - annual financial statements of a close corporation must comply with International Financial Reporting Standards (IFRS) and must be audited in certain circumstances, for example if the close corporation holds assets in a fiduciary capacity;
 - the members of a close corporation can voluntarily decide that the corporation must comply with the extended accountability provisions of the 2008 Act and to appoint an auditor;
 - Section 26 of the Close Corporations Act is repealed (this dealt with the deregistration of close corporations) and certain sections of the 2008 Companies act will now apply; and

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- the business rescue provisions of the 2008 Act will also apply to close corporations. The business rescue provisions may well have far-reaching consequences for a close corporation and its members.

Although no new close corporations can be formed under the 2008 Act and companies cannot be converted into close corporations, any close corporation can be converted into a company at any time.

Whilst the new Act has been *inter alia* designed to facilitate the formation and maintenance of small companies, it nevertheless confirms that close corporations that are in existence at the time that the new Companies Act becomes law will be allowed to continue indefinitely. The new Act allows, but does not compel, members to elect to convert to a company, and thus provides for the indefinite continued existence of existing close corporations. However no new close corporations will be able to be formed from the effective date of the new Act.

This Revision Service (19 of 2011) summarises the key provisions of the new Act.

Amendment Acts

Prior to the 2008 Companies Act, the last Act that amended the Close Corporations Act was the Corporate Laws Amendment Act 24 of 2006 which became effective on 14 December 2007. The changes brought about to the Close Corporations Act by this amending Act were incorporated into this book by Revision Service 17 of 2008.

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