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RE-INSTATEMENT OF DEREGISTERED COMPANIES AND CLOSE CORPORATIONS

If the company or close corporation was deregistered, can the company or close corporation still be re-instated?

Yes but only if proofed that the entity was holding property or was active at the time of deregistration.

Once a company or close corporation has been “final deregistered”, the company or close corporation or any other person may apply for re-instatement upon filing of a form CoR40.5 and supporting documents.

Upon the processing of the re-instatement application, the status will be changed to “re-instatement process”

What is the fee for a re-instatement application (Form CoR40.5)

R200.00

What is the requirement for re-instating (restoring) a company or close corporation if it was deregistered due to noncompliance with annual return?

The same requirement as per a normal deregistration is applicable. (Practice Note 6 of 2012)

The normal re-instatement process incorporates legal principles similar to the requirements for the High Court to grant a re-instatement order, e.g. audi alterim partem (notice to possible interested parties of the intention to re-instate) and bona vacantia (the state takes custodianship of property not owned by any person or entity)

1. Any person may apply for the re-instatement of a company or close corporation.

The original normal re-instatement application process must be followed and must consist of a duly completed form CoR40.5 and the following supporting documents:-

2. certified ID copy of owner of the customer code used to affect the transaction,
3. certified ID copy of all active directors/members,
4. multiple deed search (of all 10 Regions), to confirm whether entity has immovable property or not, (compulsory)
5. letter from Treasury if immovable property, (only required if there is immovable property registered in the name of the company or close corporation)
6. letter from Public Works if immovable property, (only required if there is immovable property registered in the name of the company or close corporation)
7. copy of notice in local newspaper giving 21 days clear notice of intention to restore (Full page reflecting date and name of the newspaper)
8. affidavit indicating the reasons for the non-filing of annual returns, if deregistration was due to non-compliance in relation to annual returns,
9. affidavit indicating the reason for de-registration, if the company or close corporation itself applied for deregistration, and sufficient documentary proof indicating that the company or close corporation was in business or that it had any outstanding assets or liabilities (e.g. property, intellectual property rights or other examples that may be filed or example :-
 - o Bank Statements showing activity during the deregistered period. A letter from the Bank confirming active Bank account, (date stamped with the stamp of the Bank).

- A signed rental agreement that existed during the period of deregistration,
- A duly completed and valid invoice issued by a supplier to the entity with a date stamp that proof it falls in the deregistered period.
- Any document that proves that the entity had liabilities or contractual obligations that existed at the time of deregistration or during the period of deregistration

at the time of deregistration.

After the re-instatement application has been processed the status of the company or close corporation will be changed to “re-instatement process” where after all outstanding annual returns must be filed by the company or close corporation in order to change the status to “in business”. The legal personality would have been re-instated upon the processing of the re-instatement application.

What is the reason for all the requirements on a CoR40.5?

The reasons for the requirements for a re-instatement are explained below:-

1. Certified ID copies of the applicant (directors / members): to confirm who the applicant is and that such applicant has consented to the re-instatement, particularly in instances where it is indicated that the entity itself is applying for re-instatement,
2. Certified ID copy of the customer (owner of the customer code): to confirm that the owner of the customer code is submitting the application since there is a financial impact on the customer for submitting such application,
3. Notice in a local newspaper: the intention is to give notice to any possible interested party of the intention to re-instate, in order to allow them an opportunity to object to the process,
4. Multiple deed search: to confirm whether there are any immovable property in the name of the entity in order to determine whether consent for the re-instatement must be provided by National Treasury and the Department of Public Works, these must be done for all 10 Regions.
5. Letters from National Treasury and the Department of Public Works: the intention is to confirm that such national departments, who take custodianship of property not owned by any person or entity in terms of the common law doctrine of bona vacantia, do not have an objection to the re-instatement,
6. Affidavit confirming the reason for deregistration, in instances where the entity itself applied for re-instatement: the purpose is to align the original request from the entity to deregister, with the application for re-instatement since the entity itself initially indicated that it was inactive and did not have any assets, or due to the inadequacy of its assets , there is no foreseeable possibility of it being liquidated,
7. Affidavit confirming why the annual returns were not filed: the purpose is to confirm the reasons why there was no compliance in respect of filing of annual returns, which had resulted in the entity being deregistered,
8. Documentary proof that the entity was in business at the time of deregistration: the purpose is to ensure that proper grounds exist for the re-instatement since deregistration creates the assumption that the entity was inactive, and to ensure that only entities that were active at the time before or during deregistration are re-instated.

What should the company or close corporation do if it cannot proof that it had property or that it was active at the time of deregistration?

If the company or close corporation cannot proof that it had property or was active at the time of deregistration, then CIPC will not process the CoR40.5.

If entities were inactive for the period before and after deregistration, it is advised that a new company must be registered. The benefits of registering a new company are:-

1. Cost benefit since re-instatement requires the payment for the filing of the re-instatement application (R200.00) and filing of all overdue annual returns (based on entity category and payment scale) while a new company registration requires only a payment of R175.00,
2. After the filing of the overdue annual returns, the records of the entity must be updated by the filing of the required statutory amendment forms (e.g. CoR39, CoR 21.1, CK2) and even possible amendments to a company’s Mol,

3. CIPC no longer administratively protect names of entities that were deregistered during the bulk deregistration's of July 2010 and February 2011 and therefore, if the name has not been reserved by another customer, it will be available for reservation.

How do I conduct a deed search?

Approach a conveyancing attorney who will have the software to conduct a search of the deeds office records on your behalf, alternatively one can approach the applicable deeds office directly for the information

What are the contact details of National Treasury and the Department of Public Works?

The National Treasury

Web Address for Information on Registration or Restoration of Deregistered Companies
www.treasury.gov.za

Look for: Registration or Restoration of Deregistered Companies

E-mail: restorations@treasury.gov.za

Tel number: (012) 315-5015

Fax: (012) 315-5522

Department of Public Works

Tel number: (012) 337-2147

Fax: (012) 328-3776

What should be the wording of the advertisement in the local newspaper?

The below wording is suggested although any wording of similar meaning and content may be provided.

"It should be noted that (name of member or person applying for re-instatement) intends making application to the Commissioner of CIPC, for the re-instatement of (name and registration number of company or close corporation).

It should further be noted that any objection to the application must be filed with the Commissioner of CIPC within twenty one (21) days of the date of publication hereof."

What is meant by "local newspaper"?

The advertisement should be placed in any newspaper in circulation in the area that the company or close corporation was doing business or where the immovable property is situated.

What will happen if the company or close corporation fails to file the annual returns after filing of the CoR40.5?

If the company or close corporation fails to file annual returns within 30 business days from date of the re-instatement, the company or close corporation will be finally deregistered, without any further notification.

Can a creditor or the company or close corporation approach the High Court for an order to re-instate?

CIPC will process court orders as and when they are received based on the content of such. It is recommended that the Notice of Motion is either served on CIPC (if CIPC is cited as a party to the application), or a copy of the duly served Notice of Motion is filed with CIPC before the court date.

Once the High Court has issued an order, an original or certified copy of the court order and copy of the Notice of Motion, if not provided before, must be submitted to CIPC for processing. With the court order, the person lodging the court order for processing, must indicate the customer code under which such document must be processed.

If the application was made by the company or close corporation, or any of its directors or share holders (if a company), or members (if a close corporation) itself, the court order as well as other statutory forms (except annual returns) as stated in the court order must be submitted with the court order. If the order requires that annual returns must be lodged, it may only be lodged electronically after the court order and other statutory documents have been processed by CIPC. If the court order did not require the lodging of any other statutory documents, CIPC will require the company or close corporation to provide CIPC with

updated information on its latest directors, registered address and auditors' information after the processing of the court order.

Failure in respect of the above would result in a Compliance Notice being issued.

In instances where a creditor of the company or close corporation applied to the High Court for the re-instatement, the original or certified copy of such court order must be submitted. It is recommended that the creditor advise CIPC of all contact details of the company or close corporations and its directors or members, in order for CIPC to issue a Compliance Notice to the company or close corporation.

Why is the status changed to “re-instatement process” after the processing of the application and not to “in business”?

In terms of Companies Regulation 40(6), - CIPC may only re-instate (or fully effect the re-instatement process) after all the outstanding annual returns have been filed.

Therefore, upon the processing of the re-instatement application, the status is changed to “re-instatement process” and only after all annual returns have been filed, to “in business”.

Who qualifies as the applicant in terms of the re-instatement application form?

The applicant may either be,

- The Directors/members of the company or close corporation,
- A third person who has an interest in the re-instatement of the company or close corporation,
- The duly authorised representative of the directors/member/third person.

The person, whose customer code is used to file and affect payment, may not necessarily be the director / member / third person/representative.

How would I know whether the re-instatement application has been processed?

A confirmation letter and certificate will be forwarded to the details of the person whose customer code was used.

Agreements Entered Into By De-Registered Entities

The recent reported case of Anva Properties CC v End Street Entertainment Enterprises CC [2016] JoL35186 (WCC) it was again reiterated that the de-registration of a Close Corporation puts an end to the corporate entity and dealings by such entity is not valid.

Where a lease agreement is entered into by a de-registered Close Corporation such lease is ab initio void. If the Close Corporation takes steps to restore it to the register of Close Corporations, it does not validate the activities entered into during the de-registration, but such activities remain void. Thus a lease agreement entered into at the time when the Close Corporation was de-registered cannot revive upon restoration

Conclusion

Before concluding any contract of sale or lease in terms of which a Company or Close Corporation is a party, ensure that the Company or Close Corporation has not been de-registered with CIPC.

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