

Companies Act, 71 of 2008

Shareholder Agreements

Part B of Chapter 2 of the Companies Act of 2008 (the "Act") regulates the incorporation and legal status of companies.

In terms of section 15(7) of the Act, any provision in a shareholder agreement that is inconsistent with the provisions of the Act and Memorandum of Incorporation of the company will be void. That having been said, in terms of the transitional arrangements provided for in Schedule 5 to the Act, the terms of a shareholder agreement entered into **prior** to 1 May 2011 which are in conflict with the Act will override the provisions of the Act, except in respect of the items listed below, until 30 April 2013 or until the shareholder agreement is amended, whichever comes first.

What you should do:

Shareholder agreements should be amended in order to be aligned with the Act and the Memorandum of Incorporation.

What you should know:

Shareholder agreements may not be inconsistent with the provisions of the Act or the Memorandum of Incorporation.

What you should know:

A number of issues normally addressed in a shareholder agreement will in future be dealt with in the Memorandum of Incorporation. Notwithstanding the transitional period of 2 years as indicated above, the following items addressed by the Act came into effect on 1 May 2011 and thus need to be immediately adhered to, despite the content of any shareholder agreement:

- *Directors' standard of conduct and liabilities;*
- *Notices to be provided in terms of the Act and access to information;*
- *Meetings of shareholders, directors and resolutions;*
- *Fundamental transactions.*

It is furthermore important to note that directors' authority to manage the affairs of the company can only be limited by the Act and the Memorandum of Incorporation. Should shareholders wish to reserve specific matters for shareholder approval that are not covered by the Act, such items would

have to be incorporated into the Memorandum of Incorporation at the time that this document is registered in order to be enforceable against directors.

A proper assessment of the existing documents should be undertaken and all companies should attend to amendment of any shareholder agreements to remove or amend conflicting provisions. It therefore makes sense to immediately familiarise yourself with the significant issues to be dealt with in a shareholder agreement to ensure full compliance with the Act.

NEED ASSISTANCE WITH THE IMPLICATIONS OF THIS ACT?

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