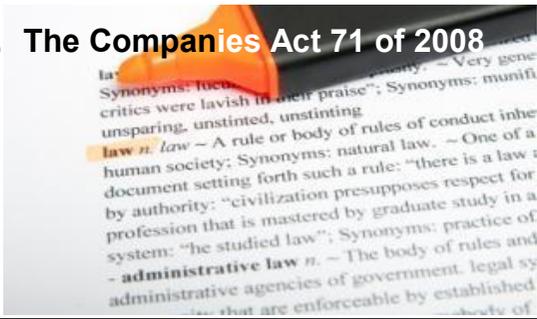
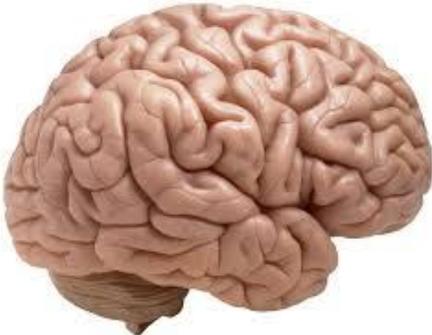


## THE NEW COMPANIES ACT (Revision)

Businesses that want to supply goods or services to the government or access government support (funding) as well as transact with other formal businesses, will have to register a company. The new Companies Act 71 of 2008 regulates all formal business registrations. Incorporation = Merging, Fusion, Combination, Inclusion.

<p><b>1. The Companies Act 71 of 2008</b></p> 	<p>The new Companies Act 71 of 2008 has been <b>effective from the 1<sup>st</sup> of May 2011</b>. The new Act encourages entrepreneurship by regulating the:</p> <ol style="list-style-type: none"><li>1.1 Formation</li><li>1.2 Conduct of Affairs and</li><li>1.3 Liquidation (In law, liquidation is the process by which a company (or part of a company) is brought to an end, and the assets and property of the company are redistributed.</li></ol> <p>The Act prohibits trading in a reckless, negligent and fraudulent manner.</p>
<p><b>2. The Companies and Intellectual Property Commission (CIPC)</b></p>  <p>Companies and Intellectual Property Commission a member of the dti group</p> 	<ol style="list-style-type: none"><li>2.1 In order for anyone to register a company, they first have to register as a customer with the <b>Companies and Intellectual Property Commission (CIPC)</b>. This process is all done online via their website <a href="http://www.cpic.co.za">www.cpic.co.za</a>. All the necessary documents and support are provided by the commission.</li><li>2.2 The commission is based in Cape Town and the main functions of the CIPC are:<ul style="list-style-type: none"><li>▪ Registration of <b>Companies</b> and <b>Co-operatives</b> as well as</li><li>▪ Registrations of <b>Intellectual Property Rights</b> i.e. trade marks, patents, designs and copyright</li></ul></li></ol> <p>The copyright on workbooks and textbooks helps protect the intellectual property (Application of the mind) of the Authors. Copyright ensures the competitive advantage of one product over the other. Copyright is enforceable for 50 years after the death of the author. 80% of South Africa's publishing industry relies on the education sector. When textbooks and workbooks are copied, this leads to unemployment. Parts of a book may only be reproduced with the permission of the author. If the publication carries the ©symbol, then it is copyrighted and protected by law i.e. the Author/Publisher may claim proven loss of income from the offender.</p> <p>TM Registered Trade Mark</p>  

3. How to register a company with the CIPC

# HOW?

- 3.1 All Companies must be registered with the CIPC. (The Companies and Intellectual Property Commission)
- 3.2 To register a Company will cost R 125 for a private company and up to R425 for a NPO (as @ the 01/10/2014)
- 3.3 An annual fee (payable to the CIPC) will ensure that the Business stays registered whether it is trading or not.
- 3.4 A company may be registered with or without a name.
- 3.5 The company's registration number automatically becomes the company name. This is the quickest way to register a company, 5 – 10 days.

4. Memorandum Of Incorporation



# MOI

- 4.1 The **Memorandum Of Incorporation (MOI)** sets out the rules agreed to by the shareholders for the management and maintenance of the business.
- 4.2 A **standard Memorandum Of Incorporation (MOI)** can be downloaded from the CIPC's website [www.cipc.co.za](http://www.cipc.co.za).  
The MOI together with a Notice Of Incorporation must be submitted to the CIPC. The two documents will be reviewed and approved by the CIPC and a unique registration number and registration certificate will be issued.
- 4.3 A **customised** MOI can be drawn up by the shareholders and include adaption to the following:
  - 4.3.1 The personal liability of the directors
  - 4.3.2 Specific Audit requirements
  - 4.3.3 Frequency of Board meetings
  - 4.3.4 Rights of Shareholders including voting rights etc.
  - 4.3.5 What happens to the Assets if the company is dissolved
  - 4.3.6 The Election and removal of directors
  - 4.3.7 Powers of Directors and Powers of Shareholders
  - 4.3.8 Restrictions on powers of Directors and Shareholders
  - 4.3.9 Shareholder's meetings and procedures involved
  - 4.3.10 Amendment/s of the MOI

A customised MOI is flexible but must be drawn up within the context of the law

5.

Companies and Intellectual Property Commission  
Republic of South Africa

Form CoR 14.1  
Notice of Incorporation

Customer Code: \_\_\_\_\_

**From:**  
*(Name, address and identity or registration number of incorporator)*  
*(If there are multiple incorporators, each must be listed. Use a separate sheet.)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Identity/Reg No.: \_\_\_\_\_

- The incorporators have incorporated a juristic person to be registered as a:
  - State Owned Company
  - Public Company
  - Personal Liability Company
  - Private Company
  - Non Profit Company
- The incorporation of the company is to take effect on \_\_\_\_\_  
The date of the registration certificate is issued \_\_\_\_\_, if later than the registration date.
- The company's first financial year will end on \_\_\_\_\_
- The company's registered office address is \_\_\_\_\_
- There are \_\_\_\_\_ initial directors of the company, as listed in Annexure A.
- The company name is to be:
  - The company's registration number, followed by the elements required by section 11 (3).
  - The name currently reserved or registered under # \_\_\_\_\_ for use by \_\_\_\_\_
  - The first of the names set out on an annexure B that proves to be eligible, in terms of Regulation 14 (1) (b)(ii).
- The company's Memorandum of Incorporation, attached in Form CoR \_\_\_\_\_ (indicate form number) or unique \_\_\_\_\_ (tick if appropriate)
  - has no provision of the type contemplated in section 15 (2) (b) or (c).
  - has provisions of the type contemplated in section 15 (2) (b) or (c), as listed in Annexure C.

I declare that the information in this application is true. If I am not the applicant, I declare that the Applicant has authorised me to make this application.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

For Commission Use only: \_\_\_\_\_ Commission file number: \_\_\_\_\_ Date filed: \_\_\_\_\_

Contacting the Commission  
Companies and Intellectual Property Commission of South Africa  
Postal Address: PO Box 429, Pretoria 0001, Republic of South Africa, Tel: 085 100 2472, www.cipc.co.za

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).

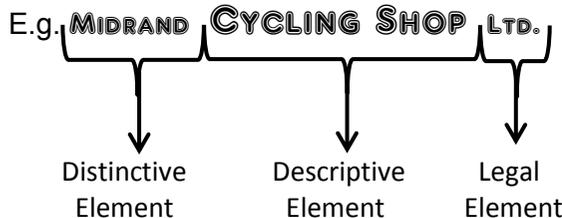
5. The **Notice of Incorporation** is an **application form** that can be downloaded from the CIPC website. The Notice of Incorporation is attached to the MOI and must include the following:

- Certified copy of the IDs' of the applicant, the founders and the members.
- The incorporation date and the financial year end
- The registered address of company
- The number of directors and
- The Approved company name



Certified as a true copy of the original

6. Reserving a Company Name with the CIPC:



6.1 It takes between 3 and 5 days to Reserve a business name.

6.2 Four names must be submitted in order of preference as one or more of the names may have already been reserved by someone else.

6.3 Once the name has been approved you can register a Company.



you named me  
**WHAT!?**



<p>7. <b>Companies registered prior to the new Companies Act</b></p> 	<p>7.1 These companies have to adhere to all the requirements of the new Companies Act.</p> <p>7.1 All companies registered prior to the new Companies Act had to submit a MOI and the Notice of Incorporation to the CIPC by the <b>1<sup>st</sup> May 2013</b>.</p>
<p>8. <b>Annual Returns with the CIPC</b></p> 	<p>7.1 All companies must file <b>Annual Returns with the CIPC</b> every year during the <b>Anniversary month</b> of the business to prevent it from being deregistered.</p> <p>7.2 An annual return is a sort of “renewal” and has the purpose to confirm whether:</p> <ul style="list-style-type: none"> <li>• the CIPC is in possession of the <b>most up to date information</b> of a company or close corporation and</li> <li>• that the company or close corporation is <b>still conducting business</b>.</li> </ul>

### Auditor



In accordance with the new Companies Act, **Public** and **State Owned Companies** have to appoint a registered auditor every year at the Annual General Meeting (AGM)

The auditor's role is to express their expert opinion on whether a company's **financial statements** accurately represent the **financial position of the company, results of its operations** and **cash flow**. The auditor has the right to access all the **accounting books, records and documents** of the company. The auditor presents his/her **report** to **evaluate** and **improve** the effectiveness of **risk management, control, and governance processes**.

Even though audits are not required by all companies, a customised MOI may require them.