



IBN INFORMS

South African Form of Company: Close Corporation

by

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The company type Close Corporation (hereinafter referred to as CC) is from an international perspective a rare type of a simplified limited liability company. It was introduced in 1984 and is still today the most popular legal form to conduct business within South Africa as well as over the borders.¹ It represents a cheap alternative to the established limited liability companies with share capital, being the Private Company and the Public Company under the Companies Act.² Though it will probably be phased out under the Companies Act, it will still be valid for the next 10 years.

1. Incorporation

A CC has minimum one but maximum 10 members, being the owners of the company, due to the fact that this company type should be used for small scale entrepreneurs and business starters. Only natural persons can be members of a CC, a legal entity, no matter where incorporated, cannot be member of a CC. The Incorporation of a CC is initiated with the *founding statement* of the members.³ It contains the basic layout for the CC and can be amended later amongst the members by concluding an *association agreement* that is not accessible for any non-member.

2. Name

A few weeks before the founding statement is lodged with the registrar of companies, an application for name reservation has to be made.⁴ Once the name is approved this reservation is valid for two months during which the founding statement has to reach the registrar. The name has to end on the letters 'CC' or 'BK', being the Afrikaans translation⁵, while it is possible to check six name alternatives at the same time on the same form. For selecting a proper name the standard rules for naming a company apply. Besides the names of all members the name of the company has to feature on all business correspondence, s41 *Close Corporations Act*.

¹ with the *Close Corporations Act*, Act No.69 of 1984

² see fort he purpose of introducing this company type: *S J Naudé* in 1982 *De Rebus* 332, S.333

³ on form CK-1 to the *Registrar of Companies* in Pretoria

⁴ form CK-7

⁵ *Beslote Korporasie*

3. Representation

The rules of representation usually are fixed in the association agreement. The main difference between the CC and other types of company is, that it has no registered director, only a registered accounting office, who is not usually acting to represent the CC but rather to receive all relevant and official correspondence. In daily business the CC is usually⁶ represented by its members as long as they are not legally hindered to do so.⁷ Restrictions in representation amongst members are only valid if made known to the third party in question.

4. Liability

Due to the fact that the CC has got its own legal persona, the company is responsible for all its statutory as well as contractual and delictual liabilities. Under exceptional circumstances certain members may attract liability if behaving in contradiction to the law.

5. Liquidation and winding up

A CC may be resolved out of various reasons and by different parties. Beside the voluntary liquidation of a solvent CC based on an unanimous resolution⁸, 50% of the members may lodge an application to the court to liquidate the CC. Other reasons are in the framework of the common law, such as insolvency, long-term dormancy or loss of all business. Finally a CC ceases to exist if converted into a Private or Public Company.

6. Financials and Audit

Other than for the Private Company the CC does not need to prepare audited year end balance sheets. A simple Overview of income and expenditures is sufficient to be submitted to the Receiver of Revenue (Taxman).

⁶ ss47(1)(b) and (c) *Close Corporations Act*

⁷ as long as not convicted of certain offences or crimes

⁸ on form CK-6

In essence the CC is a cheap and efficient company for business start-ups, small businesses and property holdings as long as this corporate form exists.⁹

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If you have any questions, please do not hesitate to contact the author under:
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⁹ The *Companies Bill 2007* intends to abolish the CC after 2010

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