VAN HUYSSTEENS
COMMERCIAL ATTORNEYS

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"A man must be big enough to admit his mistakes, smart enough to profit from them, and strong enough to correct them." - John C. Maxwell

DEREGISTERED COMPANIES: WHY PREVENTION IS BETTER THAN CURE

Failing to timeously lodge a company's annual returns inevitably triggers that company's deregistration. Although a fairly straight forward process, many directors remain oblivious to the importance of this requirement and neglect to ensure proper compliance therewith.

On 2 May 2012 the High Court handed down a judgment, pointing to one of the disturbing effects deregistration could have on a company's activities. The preliminary court application came about due to a plaintiff's inability to enforce a court order, which inability was caused by the fact that the plaintiff had been deregistered at the time of the award.

Although a deregistered company remains capable of resurrection under the new Companies Act, the provisions of the old Act which ensured that, upon restoration of its registration, a company would be treated as if it had remained in existence during the period of deregistration, has been repealed. As a result of the Old Act being repealed and the New Act not having similar provisions, the restoration of a company in terms of the 2008 Act does not necessarily mean that all its activities during the period when it was deregistered are automatically made valid.

The court essentially concluded that the current position as to whether such activities can be validated retrospectively after restoration remains open, inadvertently sending out a warning to all companies and their directors to ensure that they adhere to the timeous filing of its annual returns in order to avoid expensive and unnecessary litigation trying to cure the invalidity of acts which can so easily have been prevented.

Law & Laughter

ATTORNEY: The youngest son, the 20-year-old, how old is he?
WITNESS: He's 20, much like your IQ.

BINDING EFFECT OF ORAL LEASE AGREEMENTS

South African courts have held that oral lease agreements are valid and binding once parties have agreed on the fundamental points. It can be inferred from the conduct of the parties that there is a lease agreement, should the intention of the parties be clear and unambiguous as to the nature of the agreement.

An oral lease is therefore binding between a landlord and tenant and the parties may agree to have it reduced to writing. Should no mention of a written lease agreement have been made at the time the parties entered into the agreement, the tenant can, during his or her occupancy, request that the terms and conditions be reduces to writing and signed by both parties.

Although it is not compulsory it is always advisable that, when entering into a lease agreement, such agreement be reduced to writing and be signed. This formality lessens the possibility of disputes. Common law regulates the relationship between lessor and lessee if a written contract doesn't exist.

The Consumer Protection Act, Act No 68 of 2008 has introduced some changes to lease agreements for immovable property. The changes effect the maximum duration and grants the parties certain rights of cancellation.

The maximum duration of a Lease Agreement is 24 months.The Lesseemay now terminate the lease at any time after giving 20 business days' notice. The Lessor must now give 20 businessdays' notice to cancel for a "material failure to comply with the agreement" and must give 40-80 days' notice that the agreement is coming to an end.

It must be noted, that the above provisions of the Consumer Protection Act do not apply to juristic persons such as Companies, Close Corporations, Trusts. It merely regulates private persons and their agreements.

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