

June 2013

“Try not to become a man of success, but a man of value.”

## **EXPIRY OF COMPANIES ACT MOI COVERSION DEADLINE: WHAT HAPPENS NOW?**

In terms of the new Companies Act (which came into effect on 1 April 2011) existing companies were granted a 2 year “transitional” period to have their constitutional documents converted from a two-fold Memorandum and Articles of Association to a single Memorandum of Incorporation. This 2 year period expired on 1 May 2013 with many companies having become complacent during the previous 2 years and not realising that there are important reasons for attending to the necessary conversion.

One of the main impacts the expiry of the deadline has on a companies' existing constitutional documents is that any provision contained therein which is in conflict with any provision of the new Act, automatically becomes void and of no consequence. An example hereof is that as of 1 May 2013, the common provision in a Shareholders Agreement that the provisions of same will prevail if in conflict with those of the Articles of Association of the company, is no longer valid. The ability therefore of the Shareholders to regulate conflicts contractually has in effect been curtailed. This in turn will effect several similar provisions of the Shareholders Agreement resulting in a company's Shareholders having only a partially enforceable agreement in place between them.

It is accordingly strongly advisable that those companies, no matter how large or small in scale and operation, which have not yet converted their constitutional documents to a single tailor made Memorandum of Incorporation do so as a matter of good corporate governance. Consulting an industry professional to this effect will also benefit a company immensely and enable it to ensure that any newly proposed documents suits its specific industry and corporate profile.

*Law & Laughter*

Q: Why won't sharks attack lawyers?  
A: Professional courtesy.

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# LAND REFORM: SA COURT SLAMS ZIMBABWE “RACIST” POLICY

During the first part of October 2007, a widely viewed and controversial application against the Republic of Zimbabwe was launched by two determined farmers and businessmen, Mike and William Campbell (the “Campbells”).

The Campbell's launched an application with the Southern African Development Community Tribunal (“SADCT”) challenging the procurement by the Zimbabwean Government of certain farming lands. The SADCT granted the Campbell's interim relief, until such time as the matter could reach finality, by prohibiting the Zimbabwe Government from confiscating their farm.

The Zimbabwean Government however refused to abide by the SADCT's order and the Campbell's immediately reported the Government's failure to the tribunal. In turn the tribunal reported the situation to the Southern African Development Community (“SADC”) who, upon conclusion of an investigation, found that Zimbabwe's land reform processes were racist and that farmers ought to have been compensated for their farms. Subsequent to the SADC's findings, the SACDT followed up its ruling with a contempt ruling and a costs order, which the Zimbabwe Government refused to pay alleging that the tribunal's ruling was not final or binding on them. This resulted in another application being launched in the North Gauteng High Court in which the Campbell's requested that the ruling and costs order be recognised in South Africa. The judge ruled in their favour.

The Zimbabwean Government appealed the Court's finding that the ruling and costs order would be recognised in South Africa, but again, the Supreme Court of Appeal dismissed the Government's appeal with costs. A week later the Zimbabwe Government announced that it was preparing to file an appeal against the Supreme Court's decision with the Constitutional Court of South Africa.

The appeal was heard on Thursday 27 June 2013. After hearing argument on behalf of the Campbell's and the Zimbabwe Government, the Constitutional Court dismissed the Governments appeal against the Supreme Court's decision and held that “the Constitution enjoins South African Courts to develop the Common Law to facilitate the enjoyment of the rights provided for in The Bill of Rights.”

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