

Talking Companies

Types of Companies

There are two broad categories of companies under the Companies Act 2008 – Non-profit Companies (NPC) and Profit Companies.

Non-profit Companies (“NPC”) -

are companies incorporated for a public benefit, or an objective relating to one or more cultural or social activities, or communal or group interests. NPC’s must apply all of their assets and income however derived to advance their stated objectives.

Non-profit Companies:

- carry on any business, trade or undertaking consistent with their objectives;
- **may** pay, at their sole discretion, a reasonable remuneration for goods delivered or services rendered, including a salary to their directors and staff;
- **may not** transfer any portion of their income or assets to any incorporator, member or director of the company;
- **must**, on winding-up or dissolution, distribute their entire net assets to one or more entities having similar objectives.

Classification as a NPC for purposes of the Companies Act does not necessarily qualify the company for any particular exemption in terms of the Income Tax Act.

When the Companies Act comes into effect, all existing Companies Incorporated Not for Gain under Section 21 of the Companies Act, 1973 will be deemed to be Non-profit Companies.

Profit Companies

There are four sub-categories of Profit Companies –

State-owned Companies (“SOC”) – such as ESKOM, Denel, SAB or SAA

Personal Liability Companies (“Incorporated” / “Inc”) – private companies, typically incorporated professional practices such as attorneys, accountants, and doctors, whose Memorandum of

Incorporation states that all directors past and present, are jointly and severally liable, together with the company, for any debts or liabilities incurred by the company during their term as directors. Companies incorporated under section 53(b) of the Companies Act, 1973 will be deemed to be Personal Liability Companies.



Private Companies (“(Proprietary) Limited” / “(Pty) Ltd”) – a company which is not state-owned and whose Memorandum of Incorporation prohibits it from offering any of its securities to the public and which also restricts the transfer of its shares. The restriction of transfer of shares is frequently achieved by including a pre-emptive right in favour of existing shareholders, or limiting the class of persons to whom the shares of the company may be offered, such as the members of a particular family or other group of individuals. Existing “(Pty) Ltd” companies incorporated under the Companies Act, 1973 will be deemed to be Private Companies.

Public Companies (“Limited”) – if a company is not a State-owned Company, a Personal Liability Company, or a Private Company, then “in any other case, it is a public company” – this is an important distinction because there are a number of provisions in the Act which public companies must comply with, such as having an auditor, an audit committee,

a social and ethics committee and a company secretary.

In addition to the assigned designations (“NPC”, “SOC” etc), if the company’s Memorandum of Incorporation contains any special conditions and any special procedure other than a special resolution

to amend that provision, or contains any provision which cannot be amended, the company’s name must give notice to this by ending with “RF”. Persons dealing with such companies should request to see the provisions.

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