

TOPIC 9

SCHEDULES TO THE COMPANIES ACT AND OTHER LEGISLATION APPLICABLE TO COMPANIES

TOPIC OVERVIEW

There are five Schedules to the Companies Act, of which you are required to study Schedules 2, 3 and 5.

We do not expect you to study the Close Corporations Act, even though it is discussed in a learning unit below. However, you must be aware that this form of business is still very much in use and will probably be phased out over time. It is also important to know that certain sections of the Companies Act and/or the Companies Regulations are also applicable to close corporations.

Moreover, you must be aware other legislation also applies to companies. You will not be examined on the content of that legislation in this module, however.

Topic 9 is divided into the following learning units:

Learning unit	Title
9.1	Schedules to the Companies Act
9.1.1	Schedule 2: Conversion of close corporations to companies, clauses 1 and 2
9.1.2	Schedule 3: Amendments of laws, specifically relating to the Close Corporations Act
9.1.3	Schedule 5: Transitional arrangements
9.2	Close Corporations Act
9.2.1	Close Corporations Act
9.3	Other legislation
9.3.1	Other legislation

TEXTUAL AMENDMENTS AND ADDITIONS

Before proceeding with the study of this topic, please refer to Tutorial Letter 102 for this module to acquaint yourself with any textual amendments and additions that may have been indicated.

LEARNING OUTCOMES

Learning unit	In this topic, we will focus on the following learning outcomes:	Level
9.1 Schedules to the Companies Act (Schedules 2, 3 & 5)	<ul style="list-style-type: none"> Give advice and apply the requirements included in certain Schedules to the Companies Act. 	2
9.2 Close Corporations Act	<ul style="list-style-type: none"> Gain a basic awareness of the Close Corporations Act. 	1
9.3 Other legislation	<ul style="list-style-type: none"> Gain a basic awareness of other legislation of relevance to an accountant. 	1

LEARNING UNIT 9.1

SCHEDULES TO THE COMPANIES ACT (SCHEDULES 2, 3 & 5)

9.1.1 SCHEDULE 2: CONVERSION OF CLOSE CORPORATIONS TO COMPANIES, CLAUSES 1 AND 2

Close corporations could be registered up until section 13 of the Companies Act came into operation on 1 May 2011. Since that date, no company could either be converted into a close corporation. Close corporations continue to exist until they are deregistered or dissolved in terms of the Close Corporations Act, or if they have been converted to a company in terms of the Companies Act.

Section 1 provides for the conversion of close corporations to companies. When a notice of conversion is lodged, it must be accompanied by a written statement approving the conversion, signed by members of the close corporation holding in aggregate at least 75% of the members' interest in the corporation; an MOI; and the prescribed filing fee. In this section, the responsibility of the Commission upon conversion is also dealt with.

Section 2 stipulates that every member of a close corporation, which is converted into a company, be entitled to become a shareholder of the company. However, the shares to be held in the company by the shareholders individually need not necessarily be in proportion to the members' interests previously held. The effect of conversion on the juristic person that existed as a close corporation before conversion; in whom the assets, liabilities, rights and obligations will vest after conversion; and so forth, are also dealt with in section 2.



STUDY

Study sections 1 and 2 in Schedule 2 to the Companies Act.

9.1.2 SCHEDULE 3: AMENDMENTS OF LAWS, SPECIFICALLY RELATING TO THE CLOSE CORPORATIONS ACT

When reading the points below, you will become aware of provisions in the Companies Act and in the Companies Regulations, which also apply to a close corporation. The following references are made to sections in the Close Corporations Act.

Some of the changes/additions/repeals are as follows:

- The Minister may make regulations prescribing **financial reporting standards, or the form and content requirements** for financial statements [sec 10(3)] – refer to point 5 in Schedule 3.
- Certain categories of companies are required to have their **annual financial statements audited**. This also applies to close corporations [section 58(2A)] – refer to point 5 in Schedule 3.
- **No more conversions from a company to a close corporation** will be allowed because section 27 of the Close Corporations Act has been repealed – refer to point 2 in Schedule 3.
- The **provisions regarding persons being removed from an office of trust** on account of misconduct; or persons convicted of theft, fraud, etc, who had previously been disqualified from taking part of in the management of a close corporation, except if a court authorised them to take part in the management, have been repealed [sec 47(1)(b)(ii) & (iii)] – refer to point 5 in Schedule 3.
- A **person, who has been put on probation by a court in terms of section 162 of the Companies Act**, may not participate in the management of the business of a corporation, except to the extent permitted in the order of probation [sec 47(1A)] – refer to point 5 in Schedule 3.
- **Application of accountability provisions** [sec 34(2) & Chapter 3] **of the Companies Act to a close corporation** (sec 62A) has been amended – refer to point 5 in Schedule 3. **This means that a close corporation should be audited under certain circumstances.**



STUDY

Concentrate only on the points listed above, since this will be sufficient for your studies.

ACTIVITY 1

After you have studied the relevant sections from your prescribed textbook, you should try to answer the following questions to test your knowledge. This should help you identify the specific relationships in a given scenario.

1. Can a private company convert itself into a close corporation? Give a reason for your answer. (1½)
2. All close corporations must calculate a public interest score. True or false? Give a reason for your answer. (1½)
3. If a CC must be audited because of its public interest score, its accounting officer may conduct the audit, provided the accounting officer is registered with IRBA. Discuss. (3)

FEEDBACK ON ACTIVITY 1

1. No. In terms of Schedule 3 of the Companies Act, 2008, no new close corporations may be registered as from 1 May 2011.
2. True. Section 62A of the Close Corporations Act, section 34(2) and section 84(1)(c) of the Companies Act and Companies Regulations 26 and 28 become applicable should the public interest score of a close corporation indicate that an audit is required.

3. The accounting officer is a prescribed officer of the close corporation. In terms of the Act and its Regulations, a company or a close corporation, which must be audited, cannot be audited by its own prescribed officer [sec 90(2)(b)(i)].

9.1.3 SCHEDULE 5: TRANSITIONAL ARRANGEMENTS

Every company that was incorporated or recognised in terms of the Companies Act 61 of 1973 continues to exist as a company as of 1 May 2011, as if it had been incorporated and registered in terms of the Companies Act 71 of 2008, as amended, using the same name and registration number previously assigned to it under the old Act (sec 2).

An existing company may file, within two years from 1 May 2011, without charge

- an amendment to its MOI to harmonise it with the Act
- if necessary, a notice of name change and the copy of a special resolution under section 16 to alter its name to meet the requirements of the Act [sec 4(2)]

During the period of two years immediately following 1 May 2011, if there is conflict between a provision of the Act and a provision of a pre-existing MOI of the company, the latter prevails [sec 4(4)(a)].

Section 4(1)(a) to (d) makes provision for Section 21 companies, Section 53(b) companies, companies falling within the definition of state-owned companies and companies limited by guarantee, and they are respectively all deemed to change their MOIs. Each company should state in its MOI that it is a non-profit company; a personal-liability company; that it changed its name in so far as required to complying with section 11(3); and lastly, that it elects to become a profit company, failing which it must change its MOI to state that it is a non-profit company.

Any shares of an existing company that have been issued at a nominal or par value and are held by a shareholder immediately before 1 May 2011 will continue to have the nominal or par value assigned to them when issued [sec 6(2)].

A person holding office as a director, company secretary or auditor of an existing company immediately before 1 May 2011 continues to hold that office as from 1 May 2011, subject to the company's MOI and this Act [section 7(1)]. Where the person referred to above in terms of the Act is ineligible to be or disqualified from being a director, alternative director, prescribed officer, company secretary or auditor, that person is regarded as having resigned from every such office in any company as from 1 May 2011 [sec 7(2)].

The approval of any distribution, financial assistance, insider share issues or options is subject to the Companies Act, even if a company's shareholders approved such action before 1 May 2011, despite anything to the contrary in the company's MOI [sec 7(6)].

SUMMARY

In this learning unit, we explained and applied certain Schedules to the Companies Act.

After having worked through the learning unit and the references to the prescribed study material, you should be able to:

Give advice, discuss concerns, and apply the requirements of Schedules 2, 3 and 5 of the Companies Act.

LEARNING UNIT 9.2

CLOSE CORPORATIONS ACT

9.2.1 CLOSE CORPORATIONS ACT

The future of the Close Corporations Act

Registration of close corporations (CCs) will cease under the new Companies Act that came into effect on 1 May 2011. However, currently registered CCs will still be maintained. The new Companies Act provides for the continued existence of currently registered CCs, but negates any further registrations of new CCs. All existing CCs registered with the Companies and Intellectual Property Registration Office (CIPRO) as of the effective date of the new Act (1 May 2011) will continue to exist. The new Companies Intellectual Property Commission (CIPCO), which was implemented at the same time that the Act was put into effect, will accommodate all amendments to CCs.

The new Act does not force CCs to convert into companies, but because of simplified legislation, reduction of regulatory burden and simplicity of formation, conversion is encouraged. Under the new Act, the private company will replace the CC as the preferred vehicle for small and medium businesses. CCs will probably be phased out over the next ten years, specifically if one takes into account the amendments made to the Close Corporations Act (see learning unit 9.1.2 above).

What we expect you to know about the Close Corporations Act

We expect you to gain a broad overview of the Close Corporations Act in respect of sections 1, 2, 12, 13, 15, 22, 24, 28 to 30, 33 to 40, 46 to 54, 57 to 60, and 62 and 63, as well as the amendments to the Close Corporations Act through Schedule 3 of the Companies Act as referred to in learning unit 9.1.2 above. You will not be examined on any individual sections.



STUDY

Study the sections listed above as well as the amendments to the Close Corporations Act through Schedule 3 of the Companies Act.

SUMMARY

In this learning unit, we explained what we want you to know about the Close Corporations Act.

After having worked through the learning unit and the references to the prescribed study material, you should be able to:

Give broad advice on the Close Corporations Act.
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LEARNING UNIT 9.3

OTHER LEGISLATION

9.3.1 OTHER LEGISLATION

Depending on the type of company or business, the following legislation is of relevance to an accountant: the Income Tax Act, Banking Act, Insurance Act, Attorneys Act, Insolvency Act, Administration of Estates Act, Insider Trading Act and the Public Finance Management Act.

You must be aware of the various acts that may be relevant and may apply to your client, but are not required to study the individual Acts mentioned.

SUMMARY

In this learning unit, we explained other legislation of relevance to an accountant.

After having worked through the learning unit and the references to the prescribed study material, you should be able to:

Give broad advice on other legislation applicable to companies, which the accountant must take into account.

CONCLUSION

In this topic about **schedules to the companies act and other legislation applicable to companies**, we explained and applied the requirements regarding the Schedules to the Companies Act and explained the Close Corporations Act and other legislation applicable to companies. Congratulations! You have now completed the whole study guide.