



Companies and Intellectual
Property Commission

a member of **the dti** group

PRACTICE NOTE 2 OF 2012

IN TERMS OF

REGULATION 4 OF THE COMPANIES REGULATIONS, 2011

INTERPRETATION AND APPLICATION OF SECTION 23 OF THE COMPANIES ACT, 2008, AND REGULATION 43 OF THE COMPANIES REGULATIONS, 2011 - SIBAKHULU CONSTRUCTION (PTY) LTD V WEDGEWOOD VILLAGE GOLF AND COUNTRY ESTATE (PTY) LTD

1. Section 23 (3) of the Companies Act, 2008, requires every company and external company to -
 - “(a) continuously maintain at least one office in the Republic; and
 - (b) register the address of its office, or its principal office if it has more than one office –
 - (i) initially in the case of –
 - (aa) a company, by providing the required information on its Notice of Incorporation; or
 - (bb) an external company, by providing the required information when filing its registration in terms of subsection (1); and
 - (ii) subsequently, by filing a notice of change of registered office, together with the prescribed fee.”

A company or external company must, in terms of regulation 21, notify the CIPC of a change of registered office by filing Form CoR 21.1.

2. In a recent Western Cape High Court decision, **Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf and Country Estate (Pty) Ltd**, the provisions of section 23 of Companies Act, 2008, were considered. The matter involved concurrent applications for liquidation and business rescue and the Court considered the common law as the Companies Act, 2008, contains no specific provisions with regard to which High Court would have jurisdiction.
3. Judge Binns-Ward found that under the Companies Act, 2008, -
 - the place where the company's registered office is situated determines the identity of the court which has jurisdiction over the company (at least for purposes of winding up and business rescue proceedings in respect of that company);

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- a company's registered address must be the address of an office maintained by the company and not the office of a third party; and
 - if the company has more than one office, its "principal office" must be its registered office – with "principal office" denoting the place where the administrative business of the company is principally conducted.
4. The Judge further found that whereas the repealed Companies Act, 1973, expressly acknowledged the possibility of a distinction between a company's registered office and its main place of business, the Companies Act, 2008, requires the registered office and the principal place of business for jurisdictional purposes to be one and the same address.
5. This Practice Note does not express any opinion on the judgment but acknowledges the fact that the other High Courts may support and follow this judgment and, therefore, deems it in the general public interest to bring the implications thereof to the attention of all companies and advisors of companies, whether existing or still to be formed. The implications could be summarised as follows:
- the transitional provisions in Schedule 5 of the Companies Act, 2008, do not deal with the registered office of a pre-existing company and accordingly section 23(3) applies equally to pre-existing companies and companies incorporated under the Act;
 - companies should no longer use an address chosen for convenience as its registered office (e.g. the address of its auditors);
 - companies should ensure that CIPC's records reflect the registered office at the address where the administrative business of the company is conducted or, should they have more than one office, their principal office;
 - service of legal documents and process on the company (at the very least in respect of business rescue and winding up applications) should be at its registered office and not alternatively at its principal place of business, as currently provided for by Rule 4 of the Uniform Rules of Court.
6. Companies may notify the CIPC of any change their registered office by filing a Notice of Change of Registered Office on Form CoR 21.1 in terms of section 23 (3) (b) of the Act. There is no fee payable for any such filing.



Mrs Astrid Ludin
COMMISSIONER
30 April 2012