

# How deregistered companies affect commercial property sales

WHEN purchasing a property from a company or close corporation (CC) it is essential to ascertain whether the selling entity is currently registered with the Companies and Intellectual Properties Commission or CIPC, previously known as CIPRO.

**‘If a company or CC fails to submit their annual returns for two or more years or has been inactive for at least seven years, the Companies Commissioner may deregister that company. This renders it unable to sell or transfer any property it owned’**

“This is very much a case of: the buyer beware,” says Leon Breytenbach, National Manager of the Rawson Property Group’s commercial division, “since it is very common for neither the public nor the affected company to be aware of the actual deregistration, once it has taken place. Thus,” he continues, “many third parties with no knowledge of the incapacity continue to transact with deregistered companies.

Affected companies that are unaware of their deregistered status also carry on with their business, ignorant of their illegality.”

As can be imagined, wishing to purchase from a deregistered entity will bring serious delays and complications to the transaction.

## How could this affect your transaction?

The implications of deregistration are far reaching. As previously mentioned, it is vital for you or your conveyancing attorney to ascertain the legality of the entity with whom you wish to transact. Deregistration renders it unable to trade in the name of that entity or enter into binding business contracts.

“Should such an entity be the owner of immovable property,” says Breytenbach, “it would not be possible for it to sell or pass transfer of this property, causing a significant delay. There is a solution, however,” he continues, “as applications may be made to reinstate the registration of either a company or CC if it was deregistered as a result of non-filing of annual returns.”

According to the Companies Act, Section 82(4) read with Schedule Three, Part Eight, reinstatement would effectively revive the company or CC’s rights and obligations.

However, when the entity is the owner of immovable property, additional requirements must be supplied. These consist of written consent from both the Department of the Treasury and the Department of Public Works, which must be obtained prior to lodging the application.

**‘Also required would be an affidavit indicating the reason for non-filing of annual returns, if this was the cause of the deregistration, as well as documentary proof that the entity was in business and had any outstanding assets at the time of deregistration’**

All of the above requirements present a lengthy and inconvenient obstacle to the finalisation of the

transaction

“The process of transfer of any property owned or purchased by any deregistered company or CC will be effectively delayed until that entity is re-registered,” says Breytenbach. “Thus you must be aware that extended delays will arise and must be factored into any time constraints where a deregistered entity is involved.

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**‘Thus the best advice, which may be offered to a buyer or seller, would be to verify the status of your company or CC with CIPC, as well as that of any entity with whom you intend to transact, prior to entering into a contract for the sale or purchase of immovable property’**