

Companies Tribunal

A GUIDE FOR FILING

APPLICATIONS



Companies Tribunal

a member of the dti group



1. *What is the Companies Tribunal?*

The Companies Tribunal (Tribunal) is an agency of the Department of Trade and Industry (the dti) established in terms of the Companies Act No 71 of 2008 (the Act) and has jurisdiction throughout the Republic of South Africa. It is independent, and subject to the Constitution and the law. It exercises its functions in accordance with the Act and performs its functions fairly and without fear, favour or prejudice and in a transparent manner. Its objective is to ensure speedy resolution of matters.

Note: The intention of this booklet is to provide an easy-to-understand guide in respect of applications and referrals that can be brought to the Tribunal in terms of the Act. It should not replace the need to consult the Act.

2. Functions of the Tribunal:

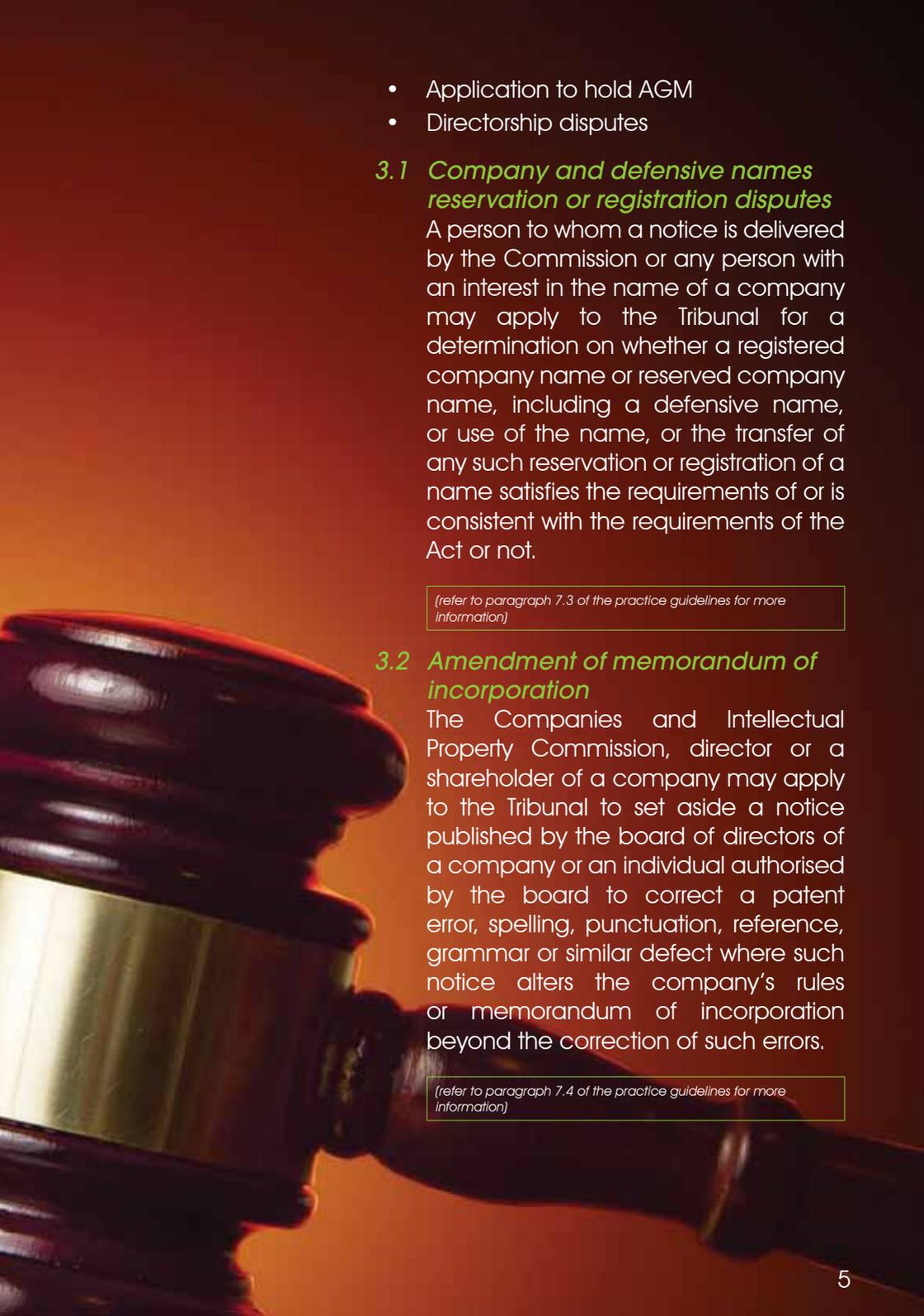
- To adjudicate any application and make orders in terms of the Act.
- Serve as a forum for voluntary alternative dispute resolution.
- Review the administrative decisions and compliance notices of the Companies and Intellectual Property Commission (CIPC).

3. What kind of applications does the Tribunal adjudicates?

NB: Before submitting an application, an applicant must make sure that the application relates to a matter that falls within the jurisdiction/authority of the Tribunal.

The Tribunal has jurisdiction to consider and hear matters relating to

- Company and defensive names reservation or registration disputes;
- Amendments to memorandum of incorporation;
- Review Compliance orders of the Companies and Intellectual Property Commission (CIPC);
- Review Notices by the CIPC in respect of the appointment of a company secretary, auditor or audit committee
- Company disputes arising from the Act may be referred to the Tribunal for mediation, conciliation and arbitration.
- Exemptions relating to the appointment of a social and ethics committee
- Exemptions from the applicable provision of the Act on the basis of related and inter-related persons, and control relationships
- Anti-avoidance exemptions and substantial compliance of the Act
- Extension of Annual General Meetings (AGM)

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- Application to hold AGM
 - Directorship disputes

3.1 Company and defensive names reservation or registration disputes

A person to whom a notice is delivered by the Commission or any person with an interest in the name of a company may apply to the Tribunal for a determination on whether a registered company name or reserved company name, including a defensive name, or use of the name, or the transfer of any such reservation or registration of a name satisfies the requirements of or is consistent with the requirements of the Act or not.

(refer to paragraph 7.3 of the practice guidelines for more information)

3.2 Amendment of memorandum of incorporation

The Companies and Intellectual Property Commission, director or a shareholder of a company may apply to the Tribunal to set aside a notice published by the board of directors of a company or an individual authorised by the board to correct a patent error, spelling, punctuation, reference, grammar or similar defect where such notice alters the company's rules or memorandum of incorporation beyond the correction of such errors.

(refer to paragraph 7.4 of the practice guidelines for more information)

3.3 *Application for a Review*

3.3.1 *Administrative decision*

An applicant who is not satisfied with an administrative decision, order or notice of CIPC can apply to the Tribunal for a review of such order, notice or decision. The decisions of CIPC that may be taken for review with the Tribunal include decisions regarding name reservation and registration, director registration and deregistration. After the review process the Tribunal must issue a decision confirming, amending or rejecting the decision of CIPC and it may make an administrative order directing CIPC to reserve a contested name for the applicant in terms of section 12; or register the contested name, or amended name as the name of a company; or *cancel* a reservation granted in terms of section 12, if the reserved name has not been used by the person entitled to it.

3.3.2 *Compliance orders*

A person issued with a compliance notice by the Commission may in terms of section 172 apply to the Tribunal for a review of such notice within 15 days of receiving such notice or within such longer time allowed by the Tribunal on good cause shown by the applicant.

(refer to paragraph 7.12 of the practice guidelines for more information)

3.3.3 *Review of a notice by the Commission in respect of the appointment of company secretary, auditor or audit committee*

A company or a director may approach the Tribunal to set aside a notice issued by the Commission to appoint a company secretary, auditor, or audit committee as well as the decision to recover from a director who knowingly permitted the company to fail to make the appointment costs associated with the Commission convening a meeting to make such appointments.

(refer to paragraph 7.9 of the practice guidelines for more information)

3.4 Exemptions

3.4.1 Exemption from appointing a Social and Ethics Committee

State owned companies, listed public companies or any company with a public interest score of above 500 points in any of two of the previous five years, are required in terms of the Act to appoint a social and ethics committee. Companies can however apply in terms of section 72 (5) for an exemption from establishing such a committee. To be eligible for exemption companies must meet certain requirements stipulated in section 72 (5) (a) and (b).

(refer to paragraph 7.8 of the practice guidelines for more information)

3.4.2 Related and inter-related persons and control

When an individual or a juristic person is related to another individual or a juristic person as stated in section 2(1), but can show that with regard to the particular matter arising in terms of the Act there is sufficient evidence to conclude that he/she/it acts independently of the related or inter-related person, he/she/it may be exempted from an application of the particular provision of the Act. See paragraph 7.1 of the practice guidelines.

3.4.3 Anti-avoidance exemptions and substantial compliance

A person may apply to the Tribunal to have an agreement, transaction, arrangement, resolution or provision of a company's memorandum of incorporation or company rules exempted from any prohibition or requirement arising out of an unalterable provision of the Act except those provisions that fall within the jurisdiction of the Takeover Regulation Panel.

(refer to paragraph 7.2 of the practice guidelines for more information)

3.5 *Extension of Annual General Meetings (AGM)*

Public Companies are required in terms of the Act to convene an AGM each year. Where companies are unable to convene an AGM, they can apply to the Tribunal for extension of time to hold the AGM. Upon consideration of the application the Tribunal can either grant or refuse an application for extension.

(Refer to paragraph 7.5 of the practice guidelines)

3.6 *Application to hold AGM*

Any shareholder may apply to the Tribunal for its company to convene its AGM if the company is unable to hold an AGM because it has no directors, or if the directors are incapacitated.

(Refer to paragraph 7.6 of the practice guidelines)

3.7 *Change of financial year end*

Companies registered with CIPC are required to have financial year end for purposes of submitting annual returns to CIPC or holding AGMs. A company must apply to the Tribunal for permission to change its financial year end.

3.8 *Directorship disputes*

In a company with less than three directors, the one director or a shareholder of the company, may apply to the Tribunal for removal of a director on grounds that the particular director has become ineligible or disqualified in terms of section 69 (other than section 69(8)(a)) or is incapacitated to the extent of being unable to perform his/her director's functions and is unlikely to regain capacity within a reasonable time or has neglected or been derelict in the performance of his/her director's functions.

(see paragraph 7.7 of the practice guidelines)



3.9 Matters to be dealt with in terms of Alternative Dispute Resolution (ADR)

As an alternative to applying for relief to a Court, or filing a complaint with CIPC in terms of Part D of the Act, a person who would be entitled to apply for relief, or file a complaint in terms of the Act, may refer such a matter to the Tribunal for resolution by mediation, conciliation or arbitration through section 166 of the Act. However, the referral to mediation, conciliation or arbitration is subject to the other party agreeing to the process.

(Refer to the ADR brochure for more information)

4. How to file an application with the Tribunal?

4.1 Filing of an application with registrar

An application must be filed with the registrar of the Tribunal using form CTR 142 and it must be accompanied by the supporting affidavit detailing the grounds of the application and stating the particular provisions of the Act on which the application is based.

4.2 Serving the respondent

The applicant must serve a copy of the application and affidavit (in the manner as prescribed in the Act) on each respondent named in the application within 5 business days after filing it at the Tribunal.

4.3 Answering affidavit

A respondent who has been served with an application that has been filed with the Tribunal and who wishes to oppose, must within 20 business days after being served, serve a copy of an answer on the initiating party and file the answer with proof of service with the Tribunal. The answer must be in a form of an affidavit except where the opposition relates to point of law.

4.4 Replying Affidavit

After receiving an answer from the respondent, the Applicant may reply within 15 business days. In terms of Regulation 144, the Applicant's response must be in an affidavit format called the Replying Affidavit. The replying affidavit must be served on the respondent and filed with the Tribunal together with a proof of service.

4.5 Completion of filing

Upon completion of the exchange of documentation the Tribunal will set the matter down for hearing and inform all parties about the date, time and place of the hearing using form CTR 151.

4.6 Amendment of documents

An initiating party may apply at any time before the end of a hearing to amend the initiation documents as filed with the Tribunal.

4.7 Late filing extension and reduction of time

A party to any matter may apply to the Tribunal to condone late filing of a document, or to request an extension or reduction of the time for filing a document, by filing a request (form CTR 147).

4.8 Withdrawals and postponements

At any time before the Tribunal makes a determination/decision, the initiating party may withdraw all or part of its application by serving a Notice of Withdrawal (form CTR 148) on each party and filing it with proof of service with the Tribunal. If the parties agree to postpone a hearing, the initiating party must notify the registrar as soon as possible.

4.9 Cost of withdrawal

An application for withdrawal may include consent to pay costs by the initiating party and if no consent to pay costs is included the other party may apply to the Tribunal for an appropriate order for costs.

4.10 Hearing

A member of the Tribunal assigned by the Chairperson of the Tribunal may within 20 working days after the filing of documents is completed convene a Pre-Hearing Conference with the Applicant, each Complainant and each Respondent at a date and time determined by the said member. The Pre-Hearing Conference may be conducted in person, telephonically and is not open to the public. This is provided for in Regulation 149.

The Tribunal member presiding at a hearing may strike a matter off the roll if the applicant is not present. If a matter is struck off the roll, the matter may not be re-enrolled unless the party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the

hearing. This is governed by Regulation 152.

4.11 Decision

After the conclusion of the hearing or receipt of an application for a Default Order, the Tribunal will make a ruling, by either granting the order, decline or dismiss the application depending on the circumstances of the case. If for example the Respondent is ordered to change the name, it has to comply with the decision of the Tribunal within a certain time period. If he fails to comply, the Applicant has a right to apply to the CIPC, to issue a Compliance Notice compelling the Respondent to comply. If upon receipt of the Compliance Notice the Respondent still refuses to comply, CIPC can make an application to court for the imposition of an administrative fine or may refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of the Act.

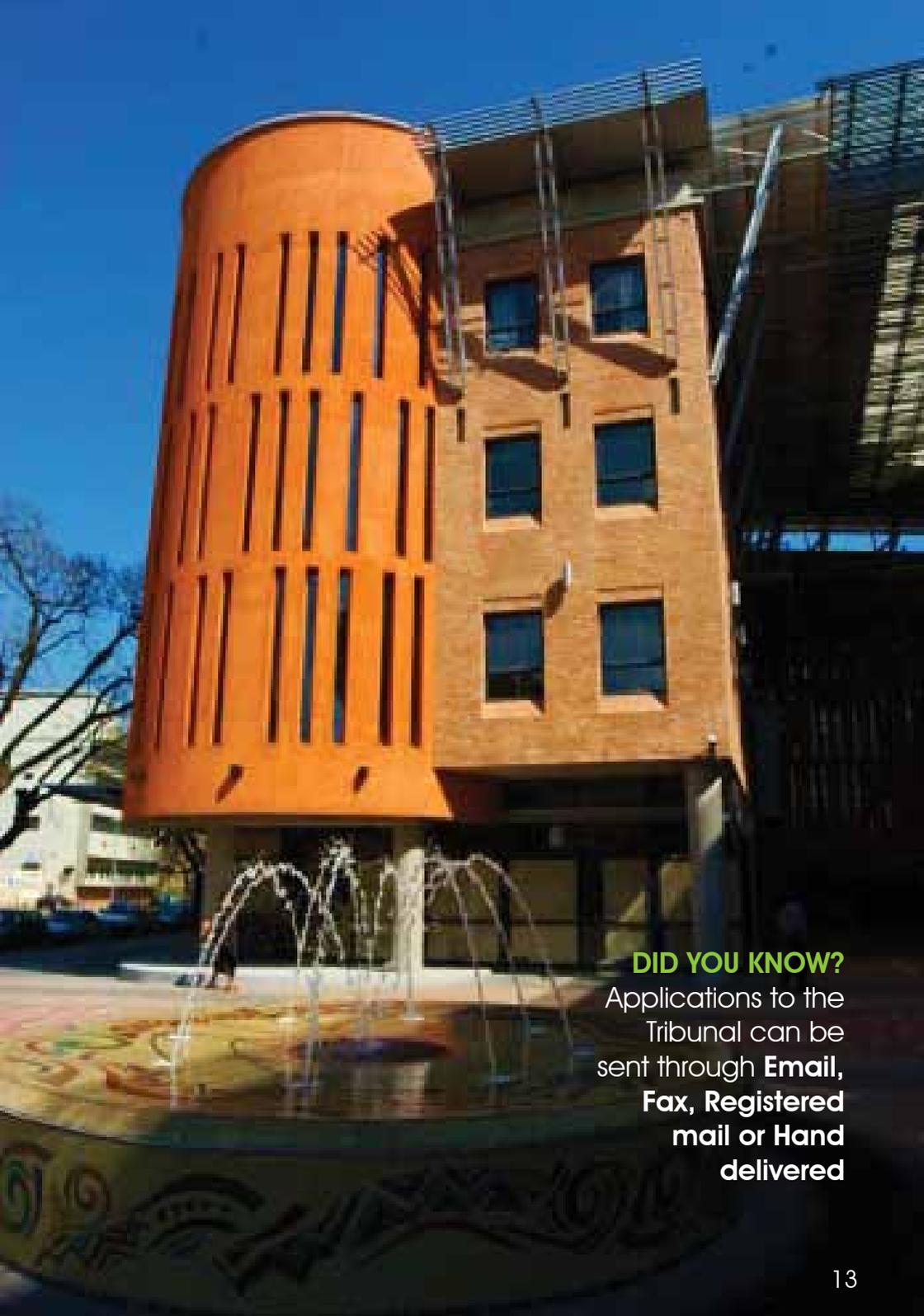
At any particular point in time parties can for example, decide to settle the matter outside the Tribunal, and reach a Settlement Agreement. The Tribunal has to be notified in order to record this fact and regard the matter finalized and closed.

4.12 Default Order

If the respondent does not respond to an application served on it within the prescribed period, the applicant has a right to apply to the Tribunal for a default order using form CTR 145 in terms of Regulation 153 for the Tribunal to grant the order as applied for against the Respondent.

5. *If I am not satisfied with the Tribunal's decision, what are my options?*

The applicant can approach the High Court of South Africa to review the decision.



DID YOU KNOW?

Applications to the Tribunal can be sent through **Email, Fax, Registered mail or Hand delivered**

6. How much does it cost to file a complaint?

Currently the Tribunal does not charge a fee.

7. Where to file an application?

An application must be filed with the Registrar using the following methods: -

- delivered to the physical address;
- sent by registered mail to the postal address;
- sent by fax; or
- sent by e-mail.

In response to an application, the Registrar allocates a unique reference number to the matter. A document that is delivered by fax must include a cover page, and a document that is transmitted by email must be accompanied by a cover message, in either case setting out the name, address, and telephone number of the sender, either the name of the person to whom it is addressed, and the name of that person's attorney, if applicable; or, the name or description of the class of intended recipients. A document delivered by fax must also include the transmission date, the total number of pages and the name and contact details of the sender.





Contact us

Applications to the Tribunal can be sent through by
Email, Fax or Registered mail to

Companies Tribunal
The Registry Office
P.O.Box 27549
Sunnyside
Pretoria, 0132

Tel: 012 394 3071
Fax: 012 394 4071

Email: registry@companiestribunal.org.za
Website: www.companiestribunal.org.za

Or

Hand delivered to

Companies Tribunal
The Department of Trade and Industry (the dti) Campus
77 Meintjies street Block E Third floor
Sunnyside
Pretoria, 0002