Companies and Intellectual Property Commission

a member of the dti group

NOTICE TO CUSTOMERS

(Notice No. 74 Of 2018)

TO PROVIDE REASON(S) OR NOT FOR REMOVAL OF DIRECTOR BY THE SHAREHOLDERS

CIPC would like to draw your attention to the following requirement to avoid unnecessary queries to your application regarding removal of directors by shareholders:

Section 71(1) and (2) of the Companies Act does not specifically prescribe any grounds for the removal of a director by shareholders. This can be construed as the majority of shareholders are not required to have any particular reason to remove a director, it is their right to do so.

However the Western Cape High Court in Pretorius' case held that the notice was defective in that it didn't comply with s71 (2) and thus the resolution for the removal of the director was invalid. The court held that the requirement that the director be afforded a **"reasonable opportunity to make presentation"** is to be interpreted as requiring the shareholders to furnish the director concerned with the reason(s) for the proposed resolution in advance, in order to properly make a presentation at the meeting.

As the Pretorius judgment was not taken for appeal, therefore it is binding and shareholders are thus required to provide reasons to directors in advance of a meeting proposing their removal.

To ensure that your COR39 application is not rejected, clearly specify the reason(s) for removal in the Notice to the affected director.

Yours Sincerely

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Advocate Rory Voller

CIPC Commissioner

Date: 20/11/2018

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