



MoneyTalk

Trusts may become a Member of a CC

With effect from 11 January 2006, amendments to the Close Corporations Act, 1984, have the effect of allowing trusts inter vivos, under certain circumstances, to become members of close corporations.

This amendment creates the opportunity to effectively use a CC in estate planning but it should be used with great care. It is important to take note of the following:

- *An inter vivos trust of which a juristic person, i.e. a CC or company, is directly or indirectly a beneficiary may not become a member of a CC. A trust, whether testamentary or inter vivos, may, however, be a beneficiary of another inter vivos trust which is a member of a CC*
- *An inter vivos trust will automatically lose its membership of a CC if at any time the number of natural persons being beneficiaries of the trust plus the number of members of the CC exceed 10. The trust will not be able to regain its membership even if the number of beneficiaries and/or members is reduced. These provisions are extremely harsh and will probably be the subject of many court cases until more sensible and practical arrangements have been ordered by court or the provision in the Act have been amended.*

The loss of membership can easily arise. The Act does not contain any provisions regarding the member's interest and contributions where the trust loses its membership of a CC. It is anticipated that case law will eventually resolve this uncertainty.

The Trustees of the inter vivos trust should appoint one of them as the representative in whose name the trusts' membership will be held. Certain power of attorney and special attention to documents and submissions will be necessary for this appointment.

Good news for those trusts otherwise utilising company's requiring expensive annual audits, subject to annual return submissions and additional statutory obligations, etc!!

This publication is extracted from CIPRO Practice Note no 1 of 2006 and other circulated documents relating.

This publication is subject to our standard Disclaimer to be found at our website www.sjcasa.co.za.

4 April 06

