

Discussion Paper

DEVELOPING COMPANY REGISTRATION IN LESOTHO

1 Organisational issues

1.1 The 2004 report noted a proposal to transfer the Companies Registry to the Ministry of Trade and Industry, Cooperatives and Marketing. Clause 264(4) of the Draft Companies Act provides that the office of the Registrar shall be within the Ministry in charge of Trade and Industry in Lesotho.

1.2 Consideration needs to be given to the practical implications.

2 Current computerisation

2.1 A system is being implemented which allows Registry personnel to enter in respect of each company:

- (a) registration number
- (b) date of incorporation
- (c) registered name
- (d) registered office (physical address)
- (e) postal address
- (f) directors
- (g) share capital
- (h) shareholders and shareholding

2.2 Similar information is held for associations, with details of members of the association and committee members of the association.

2.3 The system also provides for searches by name or number. Access is controlled by use of user names and passwords. There is an audit trail of additions, deletions and edits.

2.4 It is essential that back-up copies of the database are taken at regular intervals (weekly or daily).

3 Next steps

3.1 It is important to have a controlled programme to ensure that details of all currently registered companies and associations are included in the computerised register. A possible approach would be:

- (a) enter all new companies as they are registered, for the time being also entering number and name (not necessarily other details) in the manual register;
- (b) enter all companies from the current register, from the beginning up to the point where the 'new' companies are already registered – after this it need no longer be used when checking availability of names;

- (c) enter companies from the previous register, then work back to the oldest, then the societies registers – as each register is completed it will no longer be required for name checks.

3.2 Meanwhile, there should be a *Request for Change* to provide that

- (a) there should be an option to register either a ‘new company’ or an ‘existing company’, with the computer system allocating a registration number automatically for a new company and only allowing a number to be entered manually for an existing company;
- (b) there should be an additional category of registration for ‘reserved name’: this would be numbered automatically in a separate series, the address field would be used for details of the applicant and there would be a provision that, if it was not deleted in the meantime, it would be deleted automatically after 30 days.

3.3 Once these changes are implemented, it will no longer be necessary to maintain the manual register (which until this stage has been needed to provide the company number). Staff will need to delete a ‘reserved name’ when they register a new company.

4 Further development

4.1 The intention is to specify requirements for:

- (a) revised incorporation procedures, including scanning of documents, automatic production of certificates and other documentation (*see Annex A*);
- (b) automatic transmission of information to LRA and other bodies;
- (c) revised procedures for recording and scanning other documents;
- (d) revised procedures for handling annual returns;
- (e) automated procedures for issue of statutory letters, Gazette notices and removal of companies from the register (*see Annex B*), together with procedures for the restoration of companies to the register;
- (f) facilities for making information available to the public, including printed reports and access to information via a web site;
- (g) management information on all activities.

5 Company law issues

5.1 Some issues that have been identified from the viewpoint of Registry procedures are already being addressed. These include the abolition of restrictions on married women becoming company directors, which is being addressed in both the Equality Bill and the Draft Companies Act. The latter also replaces the memorandum and articles of association with a single constitutional document, which is signed by the proposed directors. This does not require restrictive objects and the concept of *ultra vires* is being abolished. There is no need for a sworn declaration that the requirements of the legislation have been complied with.

5.2 Revision of the fees structure will need to be addressed in regulations.

5.3 The proposal to dispense with certificates entitling a private company to commence business will be pursued with MTICM.

5.4 *Re-registration*

5.4.1 The Draft Companies Act currently requires that existing companies will need to apply for re-registration if they are to remain on the register. We should consider whether this is really necessary, especially if there are plans to improve annual return procedures and to remove defunct companies from the register.

5.5 *Forms and guidance*

5.5.1 Forms are currently prescribed by regulation. It would be preferable that the format of information delivered to the Registrar should be determined by the Registrar. This would allow the Registrar to update forms as necessary and, in due course, specify requirements for information delivered electronically.

5.5.2 For the present, it is proposed that the Registry should make available forms which provide for the efficient collection of information required under legislation and make these available to its customers.

5.5.3 The Registry should also make available guidance notes on such issues as:

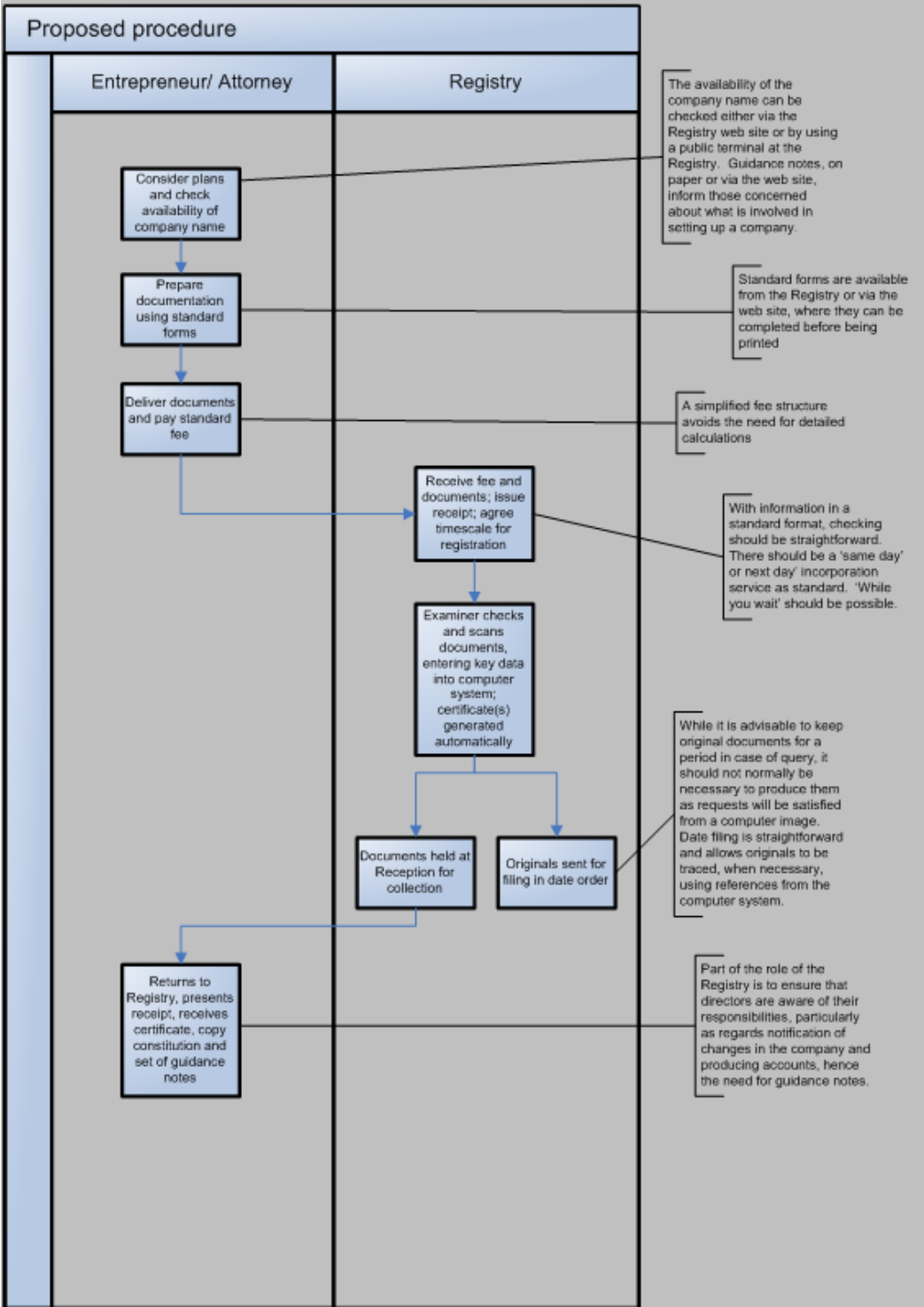
- (i) How to incorporate a company
- (ii) Company names
- (iii) Responsibilities of company officers
- (iv) Information available from the Companies Registry
- (v) Registered offices
- (vi) Annual returns
- (vii) Financial statements
- (viii) Removal from the Register

6 Financial issues

6.1 It is proposed that stamp duty on incorporations, which constitutes a tax on investment, should be abolished. This needs to be pursued with the Ministry of Finance.

6.2 The incorporation fee should reflect the actual costs incurred by the Registry in providing the service in question. This does not vary significantly according to the extent of a company's capital. It is therefore proposed that there should be a flat-rate fee for incorporation.

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**REMOVAL OF COMPANIES FROM THE REGISTER
PROCEDURE UNDER DRAFT COMPANIES ACT**

