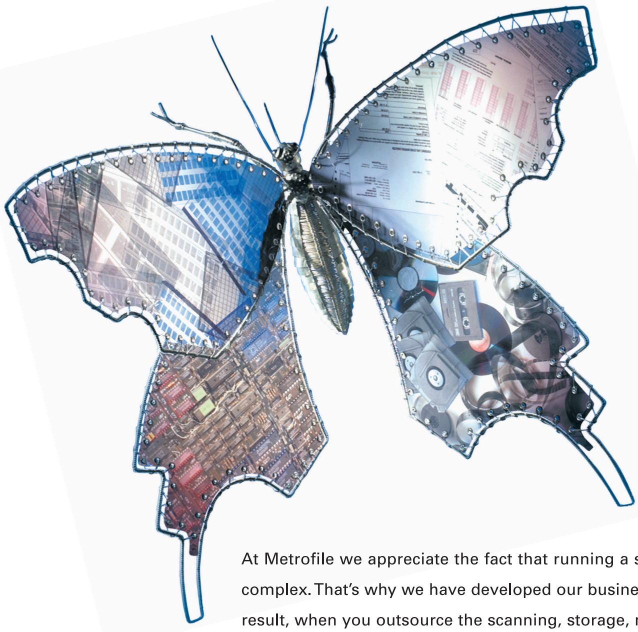
Deloitte & Touche

RETENTION OF DOCUMENTS

metrofile

metromorphosis*



*** [vb] the process by which a corporate body identifies, stores, accesses and retrieves corporate records in any format, at any time, during any stage of its ongoing evolutionary life-cycle.**

At Metrofile we appreciate the fact that running a successful company is becoming increasingly complex. That's why we have developed our business to help simplify and streamline yours. As a result, when you outsource the scanning, storage, management and retrieval of your digital data and paper documents to Metrofile we can help you secure real and measurable competitive advantages.

For example Metrofile systems have been specially developed to ensure the efficient movement of documents through your company, saving you precious time and resources. We're uniquely positioned to help you meet the latest requirements of corporate governance in terms of managing all your information and records. What's more, by providing you with quick and easy access to all information throughout your organisation, you'll decrease operational costs and increase bottom line performance.

For more information about how Metrofile can help your operation evolve ahead of your competition simply visit **www.metrofile.com** or call:

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metrofile

paper records to digital assets

Retention of Documents Endorsement

Metrofile is the South African market leader in the management of business records, and is committed to help customers reduce costs and improve productivity in document-centric process.

All companies have a combination of paper and electronic documents, and are required by legislation and customer service requirements to secure the availability of the documents for the duration of their life-cycle. For most organisations, the volume of documentation is growing at an exponential rate, and is becoming increasingly difficult to manage.

Metrofile is uniquely positioned to provide consulting and implementation of full life-cycle paper and electronic records management on or off-site. We add value to the acquisition of documents once they are received in mail rooms or in electronic format. Transformation through scanning or digitising, converts these documents into the most appropriate format. Business Process Management tools and outsourcing services provide a platform ensuring that business processes are optimised. Distribution of physical or electronic documents guarantees efficient delivery in a format that best suits the customer's requirements. Metrofile services and solutions in the preservation of paper and electronic repositories through to final destruction ensure that customers satisfy legislative and Corporate Governance requirements.

The Metrofile / Deloitte & Touche association is a powerful combination in bringing to our customers a full records management solution from consulting through to implementation.

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While every care has been taken to ensure the accuracy of the information in this publication, Deloitte & Touche or its affiliates cannot be held liable or responsible for any errors or omissions or incorrect interpretation of legal requirements with respect to the retention or destruction of documents. It must be recognised, that changes in legislation and general practice continually occur. This publication serves merely as a guideline and must not be interpreted as constituting legal, accounting or other professional advice.

This publication discusses the alternative available means of storing company and personal documents. It also lists the periods that documents should be retained. This book only acts as a guide to the retention of documents and records. Every company and individual must decide what methods would suit them best. This publication has been prepared by Deloitte & Touche's National Accounting, Auditing and Legal Divisions for the use of clients and staff of Deloitte & Touche. It reflects our interpretation of the law as in existence on 1 February 2003.

7th "Edition 2003

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Introduction

The term “document” as used in this publication, includes accounting records, papers, vouchers, invoices and all other company records.

Record keeping has become a major problem to modern businesses because of the large volume of information which has to be stored. As a result, every organisation should specify a policy with respect to the period and the manner in which its records will be retained.

The policy and procedures of the organisation in this regard should preferably be contained in a comprehensive document management policy dealing expressly with document retention and destruction. Provisions regarding security of the various documents may also be included in this manual.

In addition to commercial requirements, various statutes which specify minimum retention periods for certain records must be considered.

Generally, the minimum number of documents should be retained, while those that are not subject to regulatory retention requirements could be destroyed in accordance with a formal record destruction policy which takes all legal consequences of destruction into account. If records are kept beyond a point where they are no longer useful or their retention can cause an unnecessary financial burden upon a company.

In terms of paper documentation this means using up space by filling up filing cabinets. In the case of records in the electronic corporate memory– this means an accumulation of data, which restricts space and may compromise the efficiency of the system.

The following two important points should be borne in mind:

- The legal and commercial implications if the document is destroyed.
- The possibility of retaining the record in some other more efficient form.

Purpose of the Publication

This publication has been compiled:

- as an easy reference guide to what documents should be retained;
- to summarise prescribed periods of retention for specific documents;
- to discuss available means of storing documents electronically; and
- to outline procedures and documentation required when microfilming.

Periods of Retention

The tables of periods of retention specified in Appendix A are intended primarily for companies and close corporations, and covers only certain documents used in specialised businesses. This publications should, therefore, not be interpreted as recording the legal requirements for retention of all documents. Unless otherwise stated, the retention period is the minimum number of years from the date of creation of the document or date of the last entry in the record. Where there is no statutory requirement, the retention period indicated is based on the conservative period used in general practice. Our National Accounting, Auditing and Legal Divisions are able to advise clients as to the retention period laid down in many statutes. Should clients have questions regarding the retention of any document, whether of an accounting nature or not, we would be pleased to assist.

Destruction of Documents

As a general guideline, the following documents should be destroyed:

- All paperwork not needed from a commercial or legal perspective.
- Duplicates of reports, minutes and other papers when the master copy is held by the originator and the need for duplicates has passed.

Shredding is considered the best method of disposing of unwanted documents, especially confidential documents. Salvage disposal does not necessarily ensure confidentiality of the documents while burning may pose environmental and safety problems.

Available Means of Storing Documents

Each of the various means of storing documents has its advantages and disadvantages. An organisation must decide which is the most cost effective to its type of business. The following are some of the means of storing information:

- Original documents.
- Electronic storage of documents. Increasing use is being made of scanning as a means of converting paper documents to an electronic format.
- Microfilming (including microfiche).

Original Document

Advantages

- The intrinsic value of the original is retained.
- Legally, it will always be accepted as the best evidence available.

Disadvantages

- The cost of the storage area and the cost of the equipment required to keep the original documents may be higher than storing by other means.
- If other premises are used to store documents, access may be difficult.
- Documents that are removed may not be replaced or may be replaced incorrectly.
- The condition of the original documents may deteriorate if kept for a long period or if referred to frequently.

Electronic Storage Media

Advantages

- Records which are processed by a computer are normally written to storage media such as network drives, tapes, cassettes, etc. They can be stored in this format and no further processing is needed.
- Paper based documents can be converted into electronic records by imaging technologies such as scanners.

- Electronic retention of records is given legal recognition by the Electronic Communications and Transactions Act, 25 of 2002 ("the ECT Act"), provided certain requirements are met.
- Legal requirements to retain an "original" and the evidential weight of electronically imaged records are facilitated by the ECT Act.
- Records can be accessed more easily than storing in the paper format.

Disadvantages

- With advances in computer technology, electronically stored records may be rendered unreadable by upgrades in hardware and software in the future.

  To overcome this, records would have to be reformatted to new computer files which could be costly.
- Electronic records are inherently more susceptible to alteration than paper documents and proper technical and operational procedures must be employed to ensure an audit trail can be produced evidencing the fact that the records remained complete and unaltered. Storing a record in a "tamper proof" read only electronic format will have more legal value than merely storing an alterable word processed format.
- Hardware and software originally used in imaging paper documents that are necessary for future access may also have to be stored to avoid the cost of converting records.
- Additional copies should be kept in an offsite storage area as backup.

Computer Output to Microfilm (COM)

COM is a means of converting information generated by computer direct onto microfilm without first printing onto paper.

COM is relatively low tech and is an accepted medium worldwide. It is technology free and therefore will not require updating. Being an analogue media, it can be viewed with the naked eye.

No high-tech retrieval system is required.

Microfilming (Including Microfiche)

Advantages

- Accessibility to records is easier than in original format.
- Considerably less storage space required. (Microfilm copies usually take up approximately 2% of the space required by the original documents).
- Once filmed, individual documents cannot be misfiled as they are filmed in a set order.
- Print copies can be taken of microfilm, and thus the microfilm need not be removed from its place of storage.
- Computer output can be printed directly onto microfilm without the use of an intermediate paper print.
- Certain statutes allow certain records to be kept in this format.
- Microfilming may make it possible to decentralise records and thereby reduce the chance of loss through fire, etc.
- Once a document has been microfilmed no further notes or amendments can be added and therefore there is less danger of fraudulent alteration to records.
- The availability and preservation of the original document is ensured when microfilm copies are made thereof, because the original need not be handled so frequently.
- If silver hailid film is used it is estimated that it will last 200 years. CD's and stiffies have a limited life span.
- Digital cannot be read with the naked eye. Rapid technology changes give rise to the risk of technology obsolescence ie. no drives to read the CD and stiffies.

Disadvantages

- Where the originals are destroyed after microfilming this may give rise to certain legal implications, unless proper procedures for microfilming are in place.
- There must be some proof as to the authenticity of the microfilm copy, i.e. there must be proof that it is a true copy of the original. (Refer to Appendix B).
- High cost of equipment to convert computer output directly onto microfilm.

- Additional copies have to be kept in a different storage area as backup.
- Initial cost of capturing documents.
- Difficulty of retrieval unless well cross-indexed and properly stored.

Audit Requirements

Before instituting any system of storing records, other than originals, it is essential that an organisation consult with its auditors. Auditors usually only accept originals of documents for audit tests and thus originals of documents must not be destroyed until the auditors have either completed the examination of the financial statements or become satisfied that microfilms provide competent evidential matter for audit purposes.

Before any source documents are destroyed, the auditors and the entity's management should be satisfied that microfilms supporting financial statement data are competent evidential matter for audit purposes.

The validity of microfilm for audit purposes will depend on:

- the audit objectives;
- the financial statement assertions;
- conditions of internal accounting controls;
- the kinds and competence of other available audit evidence;
- the relative risks of material errors or irregularities arising in the capture process;
- a formally recorded policy approved by senior management setting out the documents which may be destroyed;
- before source documents are destroyed, related microfilms should be read and compared with source documents on a test basis to ensure that the microfilms are readable and that no source documents were omitted or duplicated in the microfilming process;
- all such destruction's have been properly authorised in accordance with that policy;
- source documents are effectively cancelled after microfilming to avoid them being microfilmed a second time; all source documents submitted are microfilmed;

- registers are kept to record and control documents microfilmed and destroyed;
- indexing and retrieval controls are adequate to ensure quick and easy reference to any document on the microfilm;
- the internal auditors make periodic tests of the microfilming process.

Categories of microfilmed documents

There are 2 different categories of microfilmed documents,

- Internally generated documents raised by the company (e.g. invoices, store requisitions, goods received notes, etc.).
- Documents which originate from third parties (e.g. purchase invoices).

Internally generated documents would be more readily accepted in the form of microfilm for audit purposes.

Auditors would generally insist on third party source documents being retained in their original form.

Generally, the auditor would assume that microfilms prepared internally by an entity have less reliability as audit evidence than the source documents from which they were prepared.

VAT Documentation

A VAT vendor must keep all documents which relate to detailed transactions, i.e. tax invoices, stocklists, deposit slips, debit notes, credit notes, paid cheques, bank statements and any other relevant documents.

Besides all these transaction documents, a registered vendor must also keep detailed records of all his purchases and sales, showing persons from whom purchases were made or to whom sales were effected.

An inspector from the Receiver of Revenue expects to find a coherent set of accounting records from which he could identify individual transactions for the tax period.

To keep transaction documents electronically, permission must be obtained from the Receiver of Revenue. According to the Value Added Tax Act 89 of 1991 Section 55 (4) (a) – the Commissioner has the discretion to authorise the retention of the information contained in any records or documents (other than ledgers, cash books, journals and paid cheques), in a form acceptable to him, in lieu of the originals.

Exporters need to keep sufficient evidence to satisfy the Receiver of Revenue that the goods or services supplied were in fact exported from South Africa (to prove that the goods or services in fact qualified for zero-rating).

Appendix A

Minimum Periods of Retention

Column 1 lists the minimum periods of retention required for the original records if no microfilm copy is made.

Column 2 lists the minimum period of retention for the original record if a microfilm copy is made.

Column 3 lists the Act which refers to period of retention, or if there is no relevant Act, the recommended standard practice.

References for Column 3

1. Standard practice.
2. Companies Act No.61 of 1973 – Regulations for the Retention and Preservation of Records (R2592 of 25 November 1983).
3. Stamp Duties Act No. 77 of 1968, Section 23(6).
4. Income Tax Act No. 58 of 1962, Sections 75(1) and (2).

In terms of the Income Tax Act No. 58 of 1962, Section 75 "The Commissioner may, subject to such conditions as he may determine, and in respect of such books (other than ledgers, cash books and journals) or documents as he may specify, authorise the retention of any book or document referred to in subsection (1) in a form acceptable to him lieu of the original thereof."

For years of assessment ending on or after 1 January 1993, all accounting records are to be retained for a period of five years from the date of receipt by Revenue, of the tax return which incorporates information drawn from the last entry of that record. The Income Tax Act No. 113 of 1993 changed the retention period from five years to four years for years of assessment ending on or after 1 January 1994. The Taxation Laws Amendment Act No. 97 of 1993 brings the retention period for VAT documents into line with the requirements of the Income Tax Act No. 113 of 1993.

Consequently, the retention of accounting records for the 1993 year of assessment is five years from the date of receipt by Revenue of the tax return which incorporates information drawn from the last entry of that record. For years of assessment ended on or after 1 January 1994 the period at retention has been reduced to four years on the same basis as for the 1993 year of assessment.

5. Customs and Excise Act No. 91 of 1964, Section 101 and Regulation 1.04 - Government Gazette No 4040 R17770 dated 5 October 1973.

6. Basic Conditions of Employment Act No. 75 of the 1997, Section 29 (4), 31(2). Manpower Training Act No. 56 of 1981, Section 44 (3).

7. Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 Section 81(2). (Departmental practice recommends a limit of seven years on the requirement to preserve records).

8. Occupational Health and Safety Act No. 85 of 1993, Regulations.

9. Co-Operatives Act No. 91 of 1981 Section 237.

10. Prescription Act No. 68 of 1969, Section 11c. The effect of prescription is, that the rights resulting from a contract are no longer enforceable by direct legal action:
    - but the rights themselves are not destroyed, because the corresponding obligation or debt remains as a natural obligation;
    - therefore for safety reasons, documents should be kept longer than the periods laid down in the Prescription Act;
    - moreover, these periods can be extended because of interruption or suspension of the prescription.

11. Close Corporations Act No. 69 of 1984, Regulations.

12. Insolvency Act No. 24 of 1936, Section 155 and Section 134 (1).

13. Value Added Tax Act No. 89 of 1991, Section 55 (1)

14. Labour Relations Act No. 66 of 1995, Section 53 (4), 54(1), 98(4), 99; 205 (2)(a).

15. Transfer Duty Act No. 40 of 1949 Section 15(1).

16. Mutual Banks Act No. 124 of 1993, Section 42.

17. Stock Exchange Control Act No. 1 of 1985, Section 43.

18. Second Hand Goods Act No. 23 of 1955 Section 6(8).

19. Sale and Service Matters Act No. 25 of 1964, Section 11 and Government Notice R452 and R453, 4 March 1983.

20. Electronic Communications and Transactions Bill, Section 52

21. Collective Investment Schemes Control Bill, Section 54

22. Co-operative Act No. 91 of 1981, Section 237

23. Pension fund Act No. 24 of 1956, Section 30L

24. Financial Advisory and Intermediary Service Bill, Section 18

25. Agricultural Produce Agents Act No. 12 of 1992, Section 18

26. Bank's Act 94 of 1990, Section 86

27. Financial Intelligence Centre Act No. 38 of 2001, Section 22

28. National Nuclear Regulator Act No. 47 of 1999, Section 40

Appendix A (continued)

Document	Period Of Retention		
	Original	Original if Microfilmed or electronic	Reference
Accounting Records	**Years**	**Years**	
Accounting records by an Agricultural Produce Agent	3	Nil	25
Accounting records of Mutual Banks	15	Nil	16
Ancillary books of account and supporting schedules	15	3	2&4
Annual financial statements	15	3	2&4
Annual financial statements working papers	4	1	4
Bank instructions	4	1	4
Bank statements and vouchers	4	1	4
Bills of Exchange	6	1	10
Books of account	15	3	2&4
Cash books	15	3	2&4
Cheques	4	1	13
Consolidation schedules	15	3	2&4
Costing records	15	3	2
Collective investment scheme's accounting records	5	Nil	21
Creditors' invoices and statements	15	3	2
Creditors' ledgers	15	3	2&4
Debtors' ledgers	15	3	2&4
Debtors' statements	4	1	4
Deposit slips	4	1	4
Dividend and interest payment lists (listed company)	15	3	2
Fixed asset register	15	3	2&4
General ledgers	15	3	2&4
Goods received notes	4	1	4
Insolvent businesses	3	Nil	12
Insolvent estates (books and documentsin possession of trustee)	6 months after confirmation by Master of final trustee's account	6 months after confirmation by Master of final trustee's account	12&22
Journals			
* Books	15	3	2&4
* Vouchers	15	3	2&4
Payrolls	7	Nil	4&7
Petty cash books	15	3	2&4
Purchases invoices (with supporting documentation)	4	1	4
Purchases journals (with supporting documentation)	15	3	2&4
Purchase orders	4	1	4
Railage and shipping documents	4	1	4
Receipts	4	1	4

Document	Period Of Retention		
	Original	Original if Microfilmed	Reference
Records of certain sales of property	5	Not discussed in act	15
"Returns , notices, reports, statements or minutes lodged with the Registrar"	10	Nil	26
Sales invoices (with supporting documentation)	4	1	4
Sales journals	15	3	2&4
Second hand goods Details of acquisition and disposal	3	Nil	19
Shipping documents - inwards and outwards (after completion of shipment date)	2	Nil	5
Stock records (supporting schedules)	15	3	2&4
Stock sheets	4	1	4
Year end working papers for companies	4		4
Contracts and Agreements			
Agreements of historical significance	Permanently	Nil	N/A
Records for establishment of a business relationship	5	Nil	27
Records of transactions concluded	5	Nil	27
Debts (The Prescription Act should be referred to as the period depends on the type of debts)	4-30	Not discussed in act	4&10
Indemnities and guarantees (after date of expiry)	5	Nil	1
Licensing agreements (after date of expiry)	5	Nil	1
"Rental and hire purchase agreements, suspensive sale agreements (after date of expiry)"		Nil	1
Correspondence			
General	3	Nil	1
Accounting related	5	Nil	1
Agreements (after termination)	5	Nil	1
Electronic Data			
Electronic personal information	As long as needed	Nil	20
Record of third party to whom personal information was disclosed	1	Nil	20
Employee Records			
Accident books and records	7	Nil	6&7
Application for jobs - unsuccessful	1	Nil	1
Apprentice records of remuneration	3	At discretion of Training Board	6
Arbitratration award records	3	3	14

Document	Period Of Retention		
	Original	Original if Microfilmed	Reference
Collective agreement records	3	3	14
Copy of Occupational Health and Safety act where employer has more than 20 employees	Indefinitely	Nil	8
Determination records made in respect of Wage Act 3	3	3	6&14
"Dispute records prescribed details of any: strike, lockout, protest action involving employees"	3	3	14
Expense accounts	4	1	4
Factory register	Permanently	Nil	8
Health and safety committee recommendations to employers	3	Nil	8
Medical surveillance records	40	Nil	8
Payrolls	7	Nil	"4,6&7"
Personal records of organisation's executives (for historical purposes)	Permanently	Nil	N/A
Record of Incidents reported at work	3	Nil	8
Record of assessments and monitoring of asbestos	40	Nil	8
Salary revision schedules	7	Nil	6&7
Salary wage register	7	1	4&7
Staff records (after date employment ceases)	7	Nil	6&7
Tax returns - employees	4	1	4
Time and piecework records	7	Nil	6&7
Unemployment insurance contributor's card	Until service terminate	Nil	6
Wage and salary records (including overtime details)	7	Nil	"4,6&7"
Workmen's Compensation documents	3	At discretion of Training Board	
Financial Service Providers			
Premature cancellation of transactions or products by clients	5	Nil	24
Complaints received	5	Nil	24
Records of non compliance with the act and reasons	5	Nil	24
Insurance Records			
Claim reports and accident reports (after date of settlement)	3	Nil	1
Policies (after date of lapse)	4	Nil	4
Investment Records			
Certificates and other documents of title	Permanently or until sold	Nil	N/A
Schedules and documents (after date investment sold)	15	3	2&4
Share investment certificates	Permanency or until sold	Nil	N/A

Document	Period Of Retention		
	Original	Original if Microfilmed	Reference
Transfer of marketable securities	5	3	2&4
Nuclear Regulations			
Record of nuclear accidents and incidents	40	Nil	28
Patents			
Patent agreement with staff	Duration of or service of employee	Nil	1
Report and opinion on patents and trademarks (after date of expiry)	5	Nil	1
Pension Records			
Actuarial valuation reports	10	Nil	1
Contribution records	4	1	4
Fund's annual accounts	Permanently	Nil	N/A
"Group health, life and personal accident policies (after date of final cessation of any benefit payable under the policy)"	5	Nil	1
"Individual life policies under ""Top Hat"" schemes (after date of final cessation of benefit)"	5	Nil	1
Investment records	15	3	2
Minutes of meetings of members and trustees	Permanently	Nil	N/A
Pension fund account records	15	3	2
Pension fund rules (including superseded rules)	Permanently	Nil	N/A
Records of proceedings relating to the justification of a complaint	indefinitely	Nil	23
Property Records			
Agreements with architects and builders (after date of completion)	5	Nil	1
Deeds of title	Permanently or until disposed of	Nil	N/A
Leases (after date of expiry of lease and all queries have been settled)	5	Nil	2&4
Sectional title records	Permanently	Nil	N/A
Transfer duty records	Permanently or until disposed of	Nil	N/A
Share Registration Records			
Acceptance forms	12	Nil	1
Accounting records of stock of brokers and carrier against shares	5	Nil	17
Allotment letters	12	Nil	1
Allotment letters	15	3	2
Annual return and supporting documents	15	3	2

Document	Period Of Retention		
	Original	Original if Microfilmed	Reference
Application forms	12	Nil	1
Cancelled share or debenture certificates and balance receipts (many large transfer offices keep-for one year only)	3	Nil	1
Cancelled share transfer forms	12	Nil	1&3
Change of address - notification	1	Nil	1
Dividends and interest			
* mandates (from date of receipt)	3	Nil	1
* paid warrants	12	Nil	1
* payment lists	15	3	1
* unclaimed	Until cleared or forfeited whichever is earlier		
Letters of indemnity for lost share certificates	Permanently	Nil	1
"Power of attorney, stop notices and similar court orders (from date person ceased to be a member)"	15	Nil	1
Redemption / conversion discharge forms of endorsed certificates	12	Nil	1
Statutory Records			
Combined company register including:			
Branch register	15	3	2
* Index of members	15	3	2
* Register of debenture holders	15	3	2
* Register of directors' attendance	15	3	2
* Register of directors and officers	15	3	2
* Register of directors' interest in contracts	15	3	2
* Register of members	15	3	2
* Register of pledges and mortgages	15	3	2
* Certificate of change of name	Permanently	3	2
* Certificate of incorporation	Permanently	3	2
* Certificate to commence business	Permanently	3	2
* Founding statement and amendments (Close Corporations)	Permanently	3	2&11
Memorandum and Articles of Association	Permanently	3	2
Minutes of meetings (originals) for:			
* Board meetings	Permanently	3	2
* Committee meetings	Permanently	3	2
* General meetings	Permanently	3	2
* Minute books	Permanently	3	2&11
* Notification of change of address	1	Nil	1
Notices of general and class meetings Proxy forms:			
* used	3	3	2
* used at Court convened meetings	3	3	2

Document	Period Of Retention		
	Original	Original if Microfilmed	Reference
Special resolutions / resolutions passed at general / class meetings	Permanently	3	2
CM 25	Permanently	3	2
CM 26	Permanently	3	2
Tax Records			
Income tax required records	4	1	4
Taxation returns and assessments * Records of subscriptions or levies paid by its members	4	1	4
VAT Documentation			
"Bank statements, deposit slips stock lists, and paid cheques"	four years from date of last entry	1	13
Books of accounts	four years from date of last entry	1	13
Detailed records of the registered vendors' transactions	4	1	13
"Invoices, tax invoices, credit and debit notes"	four years from date of transaction	Nil	13
Systems documentation			
* Charts and codes of accounts	4	1	13
* Accounting system instruction manuals	4	1	13
* Systems and programme documentation	4	1	13
* Other	4	1	13

"In the case of all other records that are not required for the submission of the income tax return, for a period of 5 years from the date of the last entry in any book, or, if not in book form, from the date of completion of the transactions, acts or operations to which they relate."

Appendix B

Certificates

The following are recommended certificates which should be included with every batch of documents microfilmed.

A senior executive of the organisation (or his representative) should be present while documents are being filmed. The senior executive or company representative and photographer from the microfilming company or section are required to sign the certificates.

Certificate to be placed at the end of the microfilm.

Name of Company ....
Date..

CERTIFICATE OF AUTHENTICITY

Microfilm records from.......................... to..

This is to certify that the MICROFILM images appearing on the .... aforementioned sequence starting with

CERTIFICATE OF INTENT dated ....

and ending with

THIS CERTIFICATE OF AUTHENTICITY dated ....

are true and accurate images of the categories of documents referred to in the Certificate of Intent

These documents were photographed in the ordinary course of business and as a regular part of current office procedures.

....	....
Camera Operator	Company Representative

Certificate to be placed at the beginning of the microfilm.

Name of Company ....
Date..

CERTIFICATE OF INTENT

Microfilm records from.................................to......................................
Roll No...

This is to certify and declare that the MICROFILM records which appear on this roll are accurate and true records of the following category of documents of the above company, and that these records are photographed in the ordinary course of business and are preserved by microphotography on this roll of microfilm, exactly as in the original.

(List category of documents here)

These records are microfilmed with the specific intention to destroy or otherwise dispose of the original records and to retain in their stead permanent film images in order to save time, space and filing equipment.

We also certify that no original documents recorded on this roll of microfilm will be destroyed or disposed of until an inspection of the film has ensured the accuracy and completeness of these records and the film images.

....	....
Camera Operator	Company Representative

Appendix C

Legal Aspects of Computer Storage

The Computer Evidence Act, 57 of 1983 has been repealed by section 92 of the ECT Act. The admissibility, evidential weight and procedure for submitting electronic evidence generated "in the ordinary course of business" is now governed by section 15 of the ECT Act.

The Computer Evidence Act only applied to the presentment of computer print-outs. Also, take note of Ex Parte Rosch [1998] 1 All SA 319 SA (W): The opinion of the court lends itself to the interpretation that one may consider the evidentiary import of computer evidence at two levels. In the first instance, the Court distinguished computer evidence which amounts to "real evidence". In this regard, the Court opined that computer print-outs amount to real evidence if the information in the print-out came about automatically, and not without mediation by a human agency. Thus the court would consider evidence with the view on how it was generated. On the other hand, the Court opined that different rules apply where the information in the print-out did not come about automatically. It is under such circumstances that the Computer Evidence Act, according to the Court, might apply.

As from August 2002 when the ECT Act was promulgated, the provisions of the Computer Evidence Act does not apply.

SECTION 15 OF THE ECT ACT

15. Admissibility and evidential weight of data messages
    (1) In any legal proceedings, the rules of evidence must not be applied so as to deny the admissibility of a data message, in evidence-
        (a) on the mere grounds that it is constituted by a data message; or
        (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.
    (2) Information in the form of a data message must be given due evidential weight.
    (3) In assessing the evidential weight of a data message, regard must be had to-
        (a) the reliability of the manner in which the data message was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the data message was maintained;

(c) the manner in which its originator was identified; and

(d) any other relevant factor.

(4) A data message made by a person in the ordinary course of business, or a copy or printout of or an extract from such data message certified to be correct by an officer in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the r rules of a self regulatory organisation or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

SALIENT PROVISIONS OF SUBSECTION (4)

The electronic record (data message) must have been created in "the ordinary course of business". This is a factual question.
A print-out of an electronic record or extract therefrom may be submitted into evidence.
The printout must be accompanied by a certified statement.
The certified statement must be made by an officer in the service of the organization. See Schedule 1 as to whom qualifies as an "officer" where the organization is subject to the Companies Act.

CONTENTS OF THE CERTIFICATE

What follows must not be regarded as legal advice but merely as a guideline. Independent legal advice must be obtained. We suggest that the certificate deal with the following:

- The identity of the person certifying (the deponent) on behalf of the organization.
- The fact that the deponent qualifies as an "officer in the service" of the organization.
- The electronic record from which the printout was made was generated in the "ordinary course of business" of that organization (not that the printout was made in the ordinary course of the employment of the officer).
- The officer, for and on behalf of the organization, as duly authorized representative, certifies that to the best of organisation's knowledge,

the information contained in the electronic record is true and correct.[1]

- The printout constitutes a true copy of the electronic record.
- The officer has the authority to make this statement on behalf of the organization.

[1] In our view the officer, as a person, need not have direct knowledge of the functioning of the computer system nor of the accuracy of the information.

Appendix D

Legal Aspects of Microfilming

The general rule in the South African law of evidence is that the contents of records must be proved by the best evidence available and in respect of documentary evidence that will be the production of the original document itself.

Where the original document is not available, the Court will generally accept any other evidence of the document, if it is satisfied that the original document in fact existed, that it has been lost or destroyed and a reasonable explanation for its non-production has been given.

Before a microfilmed copy can be accepted in court according to Judge Hiemstra, (Microfilm – Is it Legal? Business SA Vol 14 No 10 1979), it must be proved that:

- the original was destroyed; and
- the microfilm copy is a true copy of the original.

In support of preceding points, it is recommended that the certificates are prepared and photographed with each filming of a particular batch of documents. The microfilm will be of little assistance if there is any suggestion of forgery of the original document.

- Examples of suitable certificates are illustrated in Appendix B.
- Certain documents will not be accepted in microfilm format.

Examples of these are

- Title Deeds to land.
- Licenses.
- Bills of exchange to be presented for payment, acceptance or negotiation.
- Bills of lading to clear goods (after the goods have been cleared, there is no reason why a microfilm cannot be accepted).
- Statutory documents to be retained permanently (Refer to Appendix A).

Where the organisation is aware of any legal action, the document could be microfilmed, but the original should not be destroyed until the legal action is resolved.