

## Amendments to the Companies Act, No 71 of 2008 partly promulgated – summary of requirements

On 27 December 2024, certain sections of the Companies Amendment Act, No 16 of 2024 as well as the entire Companies Amendment Act, No 17 of 2024 were published in the Government Gazette, making these amendments to the Companies Act of 2008 (“the Companies Act”) immediately effective.

The summary below details those sections that are now effective and the practical implications of the amended requirements:

| Provisions that are effective as of 27 December 2024:   |   |   |
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| Section number  | Comments  | Effective   |
| <p>The <b>Companies Second Amendment Act 17 of 2024</b> follows from the recommendations made by the Zondo Commission of Enquiry into State Capture and aims to <b>extend the time bars</b> applicable to <b>applications for Director Delinquency and proceedings to recover loss due to Director Liability</b>.</p> | <ul style="list-style-type: none"> <li>&gt; All provisions of the Companies Amendment Act, No 17 of 2024 have become effective.</li> <li>&gt; In summary, this means that there is now the possibility, on good cause shown that:               <ul style="list-style-type: none"> <li>○ legal action can be instituted against a director to recover any loss, damages or costs incurred by a company due to the individual allegedly having failed to comply with the relevant requirements of the Companies Act, <b>more than three years</b> after the act or omission that gave rise to the liability.</li> <li>○ Therefore, liability is now an indefinite possibility faced by directors; and an application can be brought to have a director declared delinquent or under probation, <b>more than five years</b> (previously two years) after the individual has been a director of the particular company.</li> <li>○ The potential risk for those serving as directors is potentially indefinite.</li> </ul> </li> </ul> |  |

Not all the provisions of the **Companies Amendment Act, No 16 of 2024** came into effect as the finalisation of regulations is awaited. Below is a summarised version of the provisions that did become effective (section numbers quoted refer to the Companies Act of 2008):

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| <b>Section 1</b>  | The <b>definition of “securities”</b> has now been amended to only include shares and debentures with the deletion of “or other instruments” from the definition.   |    |
| <b>Section 16</b> | <b>Amendments to a memorandum of incorporation</b> will only take effect 10 business days following filing thereof unless rejected by the CIPC within that period.  |    |
| <b>Section 40</b> | <p>Wording amendments to replace reference to shares held “<b>in trust</b>” with “<b>stakeholder in terms of a stakeholder agreement</b>”.</p> <p>(a trusted third party who has no interest in the company or subscribing party in the form of an attorney, notary public or escrow agent (New ss40(6A) defines ‘stakeholder’ and ‘stakeholder agreement’)</p> |    |
| <b>Section 45</b> | The heading is amended to refer to “ <b>financial assistance</b> ” only and holding companies will no longer be required to comply with the requirements of section 45 where financial assistance is provided to subsidiaries.  |  |
| <b>Section 48</b> | <b>Share buybacks</b> are subject to a special resolution unless the shares are being acquired as a result of a <i>pro-rata</i> offer made by the company to all the company’s shareholders or a particular class thereof, or the acquisition of shares is as a result of transactions effected on a recognised stock exchange.                                 |  |
| <b>Section 61</b> | The <b>AGM notice</b> will in future have to include items relating to the presentation of the <b>social and ethics report</b> and the remuneration report as well as the appointment of a social and ethics committee.   |  |
| <b>Section 72</b> | The most significant implication of this amendment is that <b>members of the social and ethical committee</b> of a public company or state-owned company will now be appointed/elected (similar to that of the audit committee) by shareholders at the AGM on an annual basis.  |  |

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|                           | <p>Members of the social and ethics committee of any other company will continue to be appointed by the board of directors of the company, but such appointment must now also be done on an annual basis.</p> <p>Social and ethics committee membership requirements will be unchanged for all companies except public and state-owned companies which will now require that a majority of the members must be non-executive directors who have not been involved in the management of the company during the previous three financial years.</p> <p><i>As is the current position, all companies must have a minimum of three members. For companies other than public and state-owned companies, members may be directors or prescribed officers and at least one must be a non-executive director, independent for at least the previous three financial years.</i></p> <p>As is currently the position, companies have 12 months to make membership appointments from the effective date of the relevant provisions (27 December 2024) or the date on which the requirements are triggered.</p> |   |
| <p><b>Section 90</b></p>  | <p>Confirmed that the <b>appointment of auditors</b> by shareholders as required by the Companies Act may be done at any shareholders' meeting (not only the AGM), with the effect that such resolution can now also be dealt with by way of a written resolution as contemplated in section 60 of the Act.</p>   |  |
| <p><b>Section 95</b></p>  | <p>Confirmed that the definition of an <b>employee share scheme</b> now also includes reference to a scheme in terms of which shares can be purchased by the company for purposes of the scheme.</p>  |  |
| <p><b>Section 135</b></p> | <p>The <b>rights of landlords</b> in the event of a <b>tenant being in business rescue</b> have now been extended as far as payment of public utility services, with such payments being classified as post-commencement financing with preferential treatment.</p>   |  |

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| <b>Section 160</b> | An administrative order to <b>change the name of a company</b> must now indicate a date by which compliance is required in the absence of which the CIPC may on application change the name of the company to reflect its registration number. |  |
| <b>Section 167</b> | References to entities other than the <b>Companies Tribunal</b> have been deleted which means that the provisions of this section will only apply if the Companies Tribunal has been involved in resolving a dispute between parties.          |  |
| <b>Section 194</b> | The <b>powers of the chairperson of the Companies Tribunal</b> have now been extended to include several significant matters, such as the appointment of a chief operating officer.  |  |
| <b>Section 204</b> | Amendments to the functions of the <b>Financial Reporting Standards Council</b> who will in future be empowered to issue financial reporting pronouncements in fulfilment of its functions.  |  |

### Provisions that are NOT yet effective

As mentioned above [all provisions of the Companies Amendment Act, No 17 of 2024](#) have become effective.

Excluded from these amendments are the more material and controversial changes pertaining to

- (i) remuneration disclosures;
- (ii) access to private company financials; and
- (iii) from a Merger and Acquisition transaction perspective, the new thresholds that will trigger the requirements for private companies to comply with the Takeover Regulations and the scrutiny of the Takeover Regulation Panel when implementing affected transactions.

Other changes that remain subject to promulgation include those

- (i) removing the right of ‘accredited entities’ performing alternative dispute resolution in favour of using the Tribunal for this function;
- (ii) provisions enabling the validation of irregular share issues; and
- (iii) provisions placing additional obligations on Companies to publish where their records are kept and when financial statements need to be filed.

These provisions, along with the requisite regulations, are expected to take effect by **April 2025**.

As far as the [Companies Amendment Act, No 16 of 2024](#), the provisions that are not yet effective can be summarised as follows:

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| <p><b>Section 26</b></p> | <p><b>A third-party obtaining access to the annual financial statements</b> of any company that is required by law to audit its annual financial statements, in addition to public companies and state-owned companies.</p> <p>Members of the public have been granted an additional right to request, inspect, and copy the Annual Financial Statements of a company based on its Public Interest Score, similar to the criteria for compulsory audits.</p> <p>Members of the public may request to inspect and copy a company’s Annual Financial Statements issued within the last seven years unless:</p> <ul style="list-style-type: none"> <li>• The Annual Financial Statements were internally prepared for a company with a Public Interest Score of less than 100; or</li> <li>• The Annual Financial Statements were independently prepared for a company with a Public Interest Score of less than 350.</li> </ul> <p>Members of the public may request to inspect and copy a company’s Memorandum of Incorporation (including any amendments), Company Rules, the disclosure of beneficial interest, and Director and Shareholder registers.</p> <p>A person who wishes to access these records must submit a formal request to the company and may inspect and copy the requested records during reasonable business hours at the registered office/location of records of the company, following the payment of prescribed nominal amounts.</p> <p>Companies must comply within 10 business days (previously 14 business days) after receiving a request for access to information or documents contemplated in Section 26. It is considered an offence for a company to fail</p> |  |
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|                       | <p>to accommodate any reasonable access request or to unreasonably refuse access.</p> <p>For this reason, and given past cases involving this section, it is important for a company to obtain legal advice if they are faced with a situation where a request is made and found to be contrary to the business interest of the company to grant access.</p> <p>This additional right of access to Annual Financial Statements by members of the public is interesting given the amendments to Section 30 of the Companies Act, under which companies that require an audit per the Companies Act must disclose in their Annual Financial Statements the remuneration and benefits received by each of a company's Directors and prescribed officers.</p> |   |
| <b>Section 30</b>     | <p><b>Disclosure of Directors' and Prescribed Officers' Remuneration in the Annual Financial Statements.</b></p> <p>Amendments to the wording of section 30 relating to prescribed officers as well as the new requirements (sections 30A and 30B) relating to the preparation and presentation of a remuneration policy and <b>remuneration report</b> to be approved by shareholders, including specific information such as the pay gap ratio, etc. as well as the so-called "two-strike" rule relating to barring of the non-executive Remco members following two successive failed votes on the remuneration report.</p>  |    |
| <b>Section 33</b>     | <p>Amendments to the wording of this section to clarify the requirement that a public company, a state-owned company and any other company with the relevant public interest score is required to <b>file a copy of the latest annual financial statements</b> together with the annual return.</p>   |  |
| <b>Section 38</b>     | <p>Validation of <b>irregular creation, allotment or issuing of shares</b> by a court of law</p>  |  |
| <b>Section 72(12)</b> | <p>The new requirement for a <b>report by the social and ethics report</b> that meets the regulatory requirements to be submitted to shareholders, either at the AGM (public and state-owned company) or at a shareholders' meeting,</p>  |  |

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|   | alternatively by way of written resolution (any other company required to have a social and ethics committee).  |   |
| <b>Section 118</b>  | Amendments to the description of <b>private companies</b> involved in a transaction to which certain provisions of the Companies Act as well as the Takeover Regulations will apply, effectively amending the definition of “regulated companies” as per section 117(1)(i). |  |
| <b>Section 166</b>  | Limiting the ability to <b>mediate or arbitrate a dispute</b> between parties in terms of the Companies Act to the <b>Companies Tribunal</b> by removing references to “an accredited entity or any other person”.  |  |
| <b>Section 195</b>  | The ability of the <b>B-BBEE Commission</b> to refer certain matters to the Companies Tribunal.   |  |
| <p><b>*Note</b> that all sections relating to beneficial ownership reporting and annual returns as amended by the <a href="#">The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 (General Laws Amendment Act)</a> and <a href="#">Companies Regulations</a> came into effect on 24 May 2023.</p> |   |   |