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THE PRESIDENCY

No. 20

11 January 2006

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 25 of 2005: Close Corporations Amendment Act, 2005.



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GENERAL EXPLANATORY NOTE:

] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 8 January 2006.)

ACT

To amend the Close Corporations Act, 1984, so as to empower a court to make an appropriate order in respect of a corporation and members of such corporation after the restoration by the registrar of the registration of that corporation; to adjust the requirements for membership of a corporation; and to allow a corporation to appoint another corporation as accounting officer; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 26 of Act 69 of 1984, as amended by section 6 of Act 38 of 1986

1. Section **26** of the Close Corporations Act, 1984 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (7) of the following subsection: 5

“(7) The Registrar shall give notice of the restoration of the registration of a corporation in the *Gazette*, and as from the date of such notice=

(a) the corporation shall [**continue to exist and**] be deemed **to** have continued in existence as from the date of deregistration as if it [**were**] had not been deregistered; and 10

(b) a member, or any other person having a material interest, may apply to a court for any one or more of the following orders:

(i) An order that the legal liability incurred by a member in terms of subsection **(5)** shall cease to exist; 15

(ii) an order that the corporation whose registration has been restored shall become liable for any liabilities incurred by any member of the corporation in terms of subsection **(5)**;

(iii) an order that the corporation whose registration has been restored shall compensate a member who lawfully paid a claim that arose as a consequence of the provisions of subsection **(5)**; 20

(iv) any other order that the court on the basis of fairness deems

Amendment of section 29 of Act 69 of 1984, as amended by section 3 of Act 64 of 1988 and section 1 of Act 17 of 1990

2. Section 29 of the principal Act is hereby amended by the substitution for subsections (1) and (1A) of the following subsections, respectively:

“(1) Subject to **[the provisions of]** subsection **(1A)** or (2)(b) and (c), only natural persons may be members of a corporation and no juristic person or trustee of a trust *inter vivos* in that capacity shall directly or indirectly (whether through the instrumentality of a nominee or otherwise) hold a member’s interest in a corporation. 5

(1A) **[The provisions of subsection (1) shall not apply to the membership of a corporation of a] A natural or juristic person [who holds that membership for the benefit] in the capacity of a trustee of a trust *inter vivos* [if immediately before 13 April 1987 a natural person held membership of the] may be a member of a corporation [for the benefit of that trust]:** Provided that— 10

(a) no juristic person shall directly or indirectly be a beneficiary of that trust; 15

(b) the member concerned shall, as between himself or herself and the corporation, personally have all the obligations and rights of a member;

(c) the corporation shall not be obliged to observe or have any obligation in respect of any provision of or affecting the trust or any agreement between the trust and the member concerned of the corporation; and 20

(d) if at any time the number of natural persons at that time entitled to receive any benefit from the trust shall, when added to the number of members of the corporation at that time, exceed 10, the provisions of, and exemption under, this subsection shall cease to apply and shall not again become applicable notwithstanding any diminution in the number of members or beneficiaries.”. 25

Amendment of section 60 of Act 69 of 1984, as amended by section 9 of Act 81 of 1992

so appointed.

(b) The liability of a partner in respect of debts and liabilities incurred by a firm contemplated in paragraph (a)(iii) during the partner’s period as a partner and the liability of a member in respect of debts and liabilities incurred by a corporation contemplated in paragraph (a)(iv) during the member’s period as a member may not be excluded by operation of law or in any other way. 40

(c) For the purposes of paragraph (b), “debts and liabilities incurred” means debts and liabilities incurred by the firm or corporation, as the case may be, in connection with the performance by the firm or corporation, as the case may be, of 45

Substitution of certain words in Act 69 of 1984

4. The principal Act is hereby amended by the substitution for the words “he”, “him”, “his” and “himself”, wherever they occur except in sections 10(1)(m) and (o), 13, 14, 15(1), 72 and 76(3)(b), of the words “he or she”, “him or her”, “his or her” and “himself or herself”, respectively.

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Short title

5. This Act is called the Close Corporations Amendment Act, 2005.