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PRESIDENT'S OFFICE

No. 944.

18 July 1997

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

No. 26 of 1997: Close Corporations Amendment Act, 1997.

KANTOOR VAN DIE PRESIDENT

No. 944.

18 Julie 1997

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 26 van 1997: Wysigingswet op Beslote Korporasies, 1997.

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.

ACT

To amend the Close Corporations Act, 1984, so as to substitute the definition of "Court" and to regulate the definition of "name", in relation to a corporation, anew: to clarify the jurisdiction of courts in respect of corporations; to provide for a literal translation of a corporation's name into any one other official language; to provide for the reservation of a name for a corporation; to compel a corporation to subjoin the statement "In Voluntary Liquidation" to its name in appropriate circumstances; to further regulate the use and publication of the name of a corporation; to further determine the nature of a member's interest in a corporation; to provide for the attachment and sale in execution of a member's interest; to further regulate participation in the management of a corporation; to provide for the adjournment of and subsequent quorum for a meeting of members of a corporation at which a quorum is not present; to further determine the powers of members to bind a corporation; to provide for a longer period within which a vacancy in the office of accounting officer shall be filled; to further prescribe the duties of an accounting officer who has resigned or has been removed; to clarify the liability for the debts of a corporation by a member who fails to deliver the member's contribution; to exclude the application of the provisions of the Companies Act in respect of compromises and arrangements in so far as they relate to the liquidation of a corporation; to provide for an offer of composition to be made in the winding-up of a corporation; and to prescribe a penalty for a further offence; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 2 July 1997.)

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

Amendment of section 1 of Act 69 of 1984, as amended by section 1 of Act 38 of 1986

1. Section 1 of the Close Corporations Act, 1984 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "Court" of the following definition:

" 'Court', in relation to—

(a) any corporation, means any court having jurisdiction in terms of section 7; and

(b) any offence under this Act, means any court having jurisdiction in respect of that offence.”; and

(b) by the insertion after the definition of “Minister” of the following definition:
 “ ‘name’, in relation to a corporation, means the full registered name of that corporation, or a registered literal translation of that name into any one other official language of the Republic, or a registered shortened form of that name or any such translation thereof, referred to in section 12(a).”.

Substitution of section 7 of Act 69 of 1984, as substituted by section 1 of Act 64 of 1988

2. The following section is hereby substituted for section 7 of the principal Act:

“Courts having jurisdiction in respect of corporations

7. For the purposes of this Act any High Court and any magistrate’s court, within whose area of jurisdiction the registered office or the main place of business of the corporation is situated, shall have jurisdiction.”.

Amendment of section 12 of Act 69 of 1984, as amended by section 1 of Act 81 of 1992

3. Section 12 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) The full name of the corporation: Provided that a literal translation of that name into [the] any one other official language of the Republic, or a shortened form of that name or such translation thereof, may in addition be given.”.

Repeal of section 18 of Act 69 of 1984

4. Section 18 of the principal Act is hereby repealed.

Substitution of section 19 of Act 69 of 1984

5. The following section is hereby substituted for section 19 of the principal Act:

“Undesirable names and reservation of names

19. (1) No founding statement containing a name for a corporation to be incorporated and no amended founding statement containing a new name for a corporation shall be registered if the name is in the opinion of the Registrar undesirable.

(2) Any person who intends to form a corporation or any COIPOEXIOII which intends to change its name shall, on the prescribed form and on payment of the prescribed fee, apply to the Registrar for the reservation of a name: Provided that a company being converted into a corporation in terms of this Act shall not be required to so reserve its name if the name remains identical.

(3) A reservation contemplated in subsection G?) shall be valid from the date of approval by the Registrar for a period not exceeding two months.”.

Amendment of section 22 of Act 69 of 1984

6. Section 22 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:
 “(1) The abbreviation CC [or BK], in capital letters, or its equivalent in any other official language, shall be subjoined to the [English or Afrikaans] name [, as the case may be, of used by a corporation [which it uses].”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) If a corporation is being wound up, the statement “In Liquidation” or “in Voluntary Liquidation”, as the case may be, shall for the duration of such winding-up be subjoined to the name [of] used by the corporation [which it uses].”; and

(c) by the insertion after subsection (3) of the following subsection:

“(4) Any corporation which fails to comply with the provisions of subsection (3) shall be guilty of an offence.”.

Substitution of section 22A of Act 69 of 1984, as inserted by section 4 of Act 81 of 1992

7. The following section is hereby substituted for section 22A of the principal Act:

“Improper references to incorporation in terms of Act

22A. Any person carrying on business under a name or title—

(a) to which [the] an abbreviation [“CC” or “BK”, as the case may be,] contemplated in section 22(1) is subjoined; or

(b) of which the words “close corporation” or [“beslote korporasie”] its equivalent in any other official language or any abbreviation thereof form part in a way which indicates incorporation as a close corporation in terms of this Act.

shall, unless duly incorporated as a close corporation in terms of this Act, be guilty of an offence.”.

Amendment of section 23 of Act 69 of 1984, as amended by section 5 of Act 81 of 1992

8. Section 23 of the principal Act is hereby amended—

(a) by the substitution for paragraph (u) of subsection (1) of the following paragraph:

“(a) shall display its registered full name (or a registered literal translation thereof into [the] any one other official language of the Republic) and registration number in a conspicuous position and in characters easily legible on the outside of its registered office and every office or place in which its business is earned on.”; and

(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) issues or authorises the issue of any such letter, [advertisement,] delivery note, invoice, receipt or letter of credit of the corporation,”.

Amendment of section 30 of Act 69 of 1984

9. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The interest of any member in a corporation shall be a single interest expressed as a percentage and shall be moveable property which shall be transferable in the manner provided by this Act.”.

Insertion of section 34A in Act 69 of 1984

10. The following section is hereby inserted in the principal Act after section 34:

“Attachment and sale in execution of member’s interest

34A. The provisions of section 34 shall apply mutatis mutandis to any attachment and sale in execution of a member’s interest in a corporation.”.

Amendment of section 47 of Act 69 of 1984

11. Section 47 of the principal Act is hereby amended—

- (a) by the substitution for the heading to the section of the following heading:
 “Disqualified persons regarding management of corporation”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “Notwithstanding any other provision of this Act or in any association 5
 agreement or any other agreement [between members] to the contrary,
 the following persons shall [, if they are members,] be disqualified from
 taking part in the management [of the business] of a corporation.”; and
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) Any person disqualified under the provisions of subsection (1)(b) 10
 or (c) who directly or indirectly takes part in or is concerned with the
 management [**of the business**] of any corporation, shall be guilty of an
 offence. ”.

Amendment of section 48 of Act 69 of 1984, as amended by section 9 of Act 38 of 1986 15

12. Section 48 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

- “(2A) Unless an association agreement provides otherwise, a meeting at which a quorum is not present within half an hour after the time appointed for the meeting, shall be adjourned to a day not earlier than seven days and not later than 21 days after the date of that meeting, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present in person shall constitute a quorum. 20
- (2B) Where a meeting has been adjourned as contemplated in subsection (2A), the member who adjourned the meeting shall, upon a date not more than three days after the adjournment, send a written notice to each member of the corporation stating— 25
- (a) the date, time and place to which the meeting has been adjourned;
 (b) the matters before the meeting when it was adjourned: and
 (c) the grounds for the adjournment.”. 30

Substitution of section 54 of Act 69 of 1984, as amended by section 10 of Act 38 of 1986

13. The following section is hereby substituted for section 54 of the principal Act:

“Power of members to bind corporation

54. (1) Subject to the provisions of this section, any member of a corporation shall in relation to a person who is not a member and is dealing with the corporation, be an agent of the corporation. 35
- (2) Any act of a member shall bind a corporation whether or not such act is performed for the carrying on of the business of the corporation unless the member so acting has in fact no power to act for the corporation in the particular matter and the person with whom the member deals has, or ought reasonably to have, knowledge of the fact that the member has no such power.”. 40

Amendment of section 59 of Act 69 of 1984, as amended by section 8 of Act 81 of 1992 45

14. Section 59 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding the proviso of the following words:
 “If a vacancy occurs in the office of an accounting officer, whether as a result of a removal, resignation or otherwise, the corporation shall within 50 [14] 28 days appoint another accounting officer and comply with the provisions of subsection (2) of section 15.”; and
- (b) by the substitution for subparagraph (iv) of paragraph (a) of subsection (5) of the following subparagraph:

“(iv) [that as] **whether, at the time of [his] the resignation or removal from office of the accounting officer**, [he] that officer was [not] aware of any matters in the financial affairs of the corporation which are in contravention of the provisions of this Act: Provided that an accounting officer who was aware of any such matter shall submit the full particulars thereof in writing to the Registrar.” 5

Amendment of section 63 of Act 69 of 1984, as amended by section 5 of Act 64 of 1988

15. Section 63 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph: 10

“(a) Where the name of the corporation is in any way used without the abbreviation [CC or BK] **as required by section 22(1), any member of the corporation who is responsible for, or who authorized or knowingly permits the omission** of such abbreviation, shall be so liable to any person who enters into any transaction with the corporation from which a debt accrues for the corporation while [he] that person, in consequence of such omission, is not aware that [he] the person is dealing with a corporation;” 15

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) where any member fails to pay money or to deliver or transfer property to the corporation as required by section 24(4), **[he] that member** shall be so liable for every debt of the corporation incurred from [its] the date of registration of the founding statement in which particulars of the contribution concerned are stated to the date of the actual payment, delivery or transfer of such money or property:” 20
and 25

(c) by the deletion of paragraph (c).

Amendment of section 66 of Act 69 of 1984

16. Section 66 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30

“(1) The provisions of the Companies Act which relate to the winding-up of a company, including the regulations made thereunder, (except sections 311, 312, 313, 337, 338, 344, 345, 346(2), 347(3), 349, 364, 365(2), 367 to 370, inclusive, 377, 387, 389, 390, 395 to 399, inclusive, 400(1)(b), 401, 402, 417, 418, 419(4), 421, 423 and 424), shall apply *mutatis mutandis* and in so far as they can be applied 35
to the liquidation of a corporation in respect of any matter not specifically provided for in this Part or in any other provision of this Act.”

Substitution of section 72 of Act 69 of 1984

17. The following section is hereby substituted for section 72 of the principal Act:

“Composition” 40

72. (1) Any person, in this section referred to as “the offeror”, may at any time after the commencement of the liquidation of a corporation which is unable to pay its debts, submit to the liquidator a written offer of composition.

(2) If the liquidator is of the opinion that the creditors will probably accept the offer of composition, the liquidator shall send by registered post or deliver to every known creditor as well as the Master, a copy of the offer referred to in subsection (1) with the liquidator’s report thereon, and an explanation of the effect of the composition. 45

(3) If the liquidator is of the opinion that there is no likelihood that the creditors will accept the composition or that he or she has insufficient information at his or her disposal to make a recommendation, the liquidator 50

shall inform the offeror in writing that the offer is unacceptable and that he or she does not propose to send a copy thereof to the creditors and the Master.

(4) The offeror may, within 30 days from the date on which the liquidator advised that offeror of the rejection of the offer, submit representations in writing to the Master who, after having allowed the liquidator 14 days to comment in writing, shall consider the representations and comment and may thereafter direct the liquidator to send by registered post or deliver a copy of the offer to every known creditor of the corporation together with the liquidator's report thereon, and an explanation of the effect of the composition. 5 10

(5) Whenever the liquidator posts or delivers to the creditors and the Master an offer of composition in terms of the provisions of this section, he or she shall simultaneously give notice to the creditors of the meeting at which the offer and any other matter mentioned in the notice, are to be considered. 15

(6) An offer of composition may be considered at a general meeting of creditors of the corporation in terms of this Act, provided that notice was given to creditors and the Master not less than 10 days and not more than 28 days before the date of such a meeting. 20

(7) An offer of composition which has been accepted by creditors whose votes amount to not less than two-thirds in value and two-thirds in number, calculated in accordance with the provisions of section 52 of the Insolvency Act, 1936 (Act No. 24 of 1936), of the votes of all the creditors who proved claims against the corporation, shall be binding upon every person who had notice of and was entitled to vote at that meeting, whether or not that person was present or represented at the meeting, as if that person were a party to the composition: Provided that— 25

(a) no offer may be so accepted if it contains any condition whereby any creditor would obtain any benefit to which that creditor would not have been entitled upon the distribution of the estate in the ordinary way; 30

(b) payment under the composition has been made or security for such payment has been given as specified in the offer of composition: and 35

(c) the right of any secured or preferent creditor shall not be prejudiced thereby, except insofar as that creditor has expressly and in writing waived the preference. 35

(8) A composition shall not affect the liability of a surety of the corporation. 40

(9) Any money to be paid and anything to be done for the benefit of creditors in pursuance of a composition shall be paid and done through the liquidator: Provided that any creditor who has failed to prove a claim before the liquidator has made a final distribution amongst those creditors who have proved their claims, shall be entitled to prove a claim and share in such final distribution up to the amount to which that creditor may have been entitled to under the composition: Provided further, that no claim shall be proved against the corporation after the expiration of six months as from the date of the meeting at which the composition was accepted, except with leave of the Court or Master and on payment of such sum to cover the costs or any part thereof, occasioned by the late proof of the claim, as the Court or Master may direct. 45 50

(10) When a composition has been entered into between a corporation and its creditors, the liquidator shall, in terms of this Act, frame an account and plan of distribution of all the assets which are or will become available for creditors under the composition. 55

(11) If an accepted offer of composition so provides, the offeror may apply to the Court for the setting aside of the winding-up of the corporation and the Court may make such an order provided that the offeror has, not less than three weeks before making the application, given notice by advertisement in the *Gazette*, of the intention to make the application and has served a copy of the application on the Master, the Registrar and the liquidator. 50

(12) The application for the setting aside of the liquidation of the corporation may be opposed by any creditor or other interested person on the following grounds:

- (a) That the composition approved under this section unfairly prejudices the interests of a creditor of the corporation;
- (b) that there has been some material irregularity at or in the relation to the meetings held for the consideration of the composition;
- (c) that insufficient or materially inaccurate information on the composition was disclosed; or
- (d) any other grounds that the Court may deem sufficient.

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Amendment of section 82 of Act 69 of 1984, as amended by section 10 of Act 81 of 1992

18. Section 82 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) in section 20, ~~22~~, 22A, 23 or 47, to a fine not exceeding R500 or imprisonment 15 for a period not exceeding six months, or to both such fine and such imprisonment: and”.

Short title

19. This Act shall be called the Close Corporations Amendment Act, 1997.