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THE PRESIDENCY

No. 1770

1 July 1992

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

No. 81 of 1992: Close Corporations Amendment Act, 1992.



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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.
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ACT

To amend the Close Corporations Act, 1984, so as to further regulate the contents of and the change of founding statements of close corporations; to make other provision for name changes of close corporations; to prohibit under penalty certain references to incorporation of close corporations; to provide further for the publication of names of close corporations and the conversion of companies into close corporations; to further determine the contents of the register of fixed assets of close corporations; and to define more closely the appointment, removal from office and resignation of accounting officers of close corporations; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 18 June 1992.)

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

Amendment of section 12 of Act 69 of 1984

1. Section 12 of the Close Corporations Act, 1984 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) the full name of each member, **[and]** his identity number or, if he has no such number, the date of his birth, and his residential address.”.

Amendment of section 15 of Act 69 of 1984, as amended by section 5 of Act 38 of 1986

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

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

“(1) If any change is made or occurs in respect of any matter particulars of which are stated in a founding statement of a corporation in accordance with paragraph (b), (d), (e) or (f) of section 12, the corporation shall, subject to the provisions of section 29(3)(c) and (d), within 28 days after such change lodge with the Registrar for registration in his registers an amended founding statement, in **[duplicate]** triplicate in the prescribed form together with the prescribed fee, signed by or on behalf of every member of the corporation and by or on behalf of any person who will become a member on such registration, and which contains particulars and the date of the change.”; and

(b) by the addition to subsection (2) of the following proviso:

“Provided that a statement in the prescribed form which upon registration thereof shall form part of the founding statement or amended founding statement, shall, instead of an amended founding statement, be lodged with the Registrar for registration if any such change is made or occurs in respect of—

(a) any matter of which particulars are so stated in accordance with paragraph (c) of section 12, in which case the accounting officer may sign such statement on behalf of the members if the corporation has approved of the said change and the accounting officer so certifies in writing; or

(b) the name or address of the duly appointed accounting officer, in which case the accounting officer may sign such statement on behalf of the members, and the said change shall take effect upon the date mentioned in the statement.”.

Amendment of section 20 of Act 69 of 1984

3. Section 20 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Any interested person may **[within a period of one year referred to in subsection (1)]**—

(a) within a period of one year referred to in subsection (1), on payment of the prescribed fee apply in writing to the Registrar for an order directing the corporation to change its name on the ground of undesirability or that such name is calculated to cause damage to the applicant; or

(b) within a period of two years after the registration of a founding statement apply to a Court for an order directing the corporation to change its name on the ground of undesirability or that such name is calculated to cause damage to the applicant, and the Court may on such application make such order as it deems fit.”; and

(b) by the insertion after subsection (3) of the following subsections:

“(3A) Any person feeling aggrieved by any decision or order of the Registrar under this section may, within one month after the date of such decision or order, apply to a competent provincial or local division of the Supreme Court for relief, and the Court may consider the merits of any such matter, receive further evidence and make any order it deems fit.

(3B) No prescribed fee mentioned in section 15(1) shall be payable in respect of the registration of an amended founding statement by virtue of an order under subsection (3) of this section.”.

Insertion of section 22A in Act 69 of 1984

4. The following section is hereby inserted in the principal Act after section 22:

“Improper references to incorporation in terms of Act

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

(a) to which the abbreviation “CC” or “BK”, as the case may be, is subjoined; or

(b) of which the words “close corporation” or “beslote korporasie” 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

5. Section 23 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- 5 “(b) shall have that name (or such translation thereof) and registration number mentioned in legible characters in all notices and other official publications **[including advertisements]** of the corporation, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money, goods or services purporting to be signed by or on behalf of the corporation, and all letters, delivery notes, invoices, receipts and letters of credit of the corporation; and”.

Amendment of section 27 of Act 69 of 1984, as amended by section 7 of Act 38 of 1986 and section 2 of Act 64 of 1988

6. Section 27 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“If the provisions of subsection (2) have been complied with, the Registrar shall, **[unless he has reason to believe] if he is satisfied** that the company concerned has **[failed to comply with any requirement]** complied materially with the requirements of the Companies Act—”.

Amendment of section 56 of Act 69 of 1984

7. Section 56 of the principal Act is hereby amended by the substitution in paragraph (b) of subsection (1) for the words preceding the proviso of the following words:

- 25 “a register of fixed assets showing in respect thereof the respective dates of any acquisition and the cost thereof, depreciation (if any), and where any assets have been revalued, the date of the revaluation and the revalued amount thereof, the respective dates of any disposals and the consideration received in respect thereof:”.

Amendment of section 59 of Act 69 of 1984

8. Section 59 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

- 35 “(a) An accounting officer shall on resignation or removal from office forthwith inform every member of the corporation thereof in writing, and shall send a copy of the letter to the last known address of the registered office of the corporation and shall in addition forthwith by certified post inform the Registrar—

- 40 (i) that he has resigned or been removed from office;
(ii) of the date of his resignation or removal from office;
(iii) of the date up to which he performed his duties; and
(iv) that as at the time of his resignation or removal from office he was not aware of any matters in the financial affairs of the corporation which are in contravention of the provisions of this Act.”.

Amendment of section 60 of Act 69 of 1984

9. Section 60 of the principal Act is hereby amended—

- 45 (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“No person shall **[be qualified for appointment as]** be appointed as or hold the office of an accounting officer of a corporation, unless he is a member of a recognized profession which—”; and

- 50 (b) by the substitution for subsection (4) of the following subsection:

“(4) A firm as defined in section 1 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and any other firm may be appointed as an accounting officer of a corporation, provided **[that]** each partner in the latter firm is qualified to be so appointed.”.

Amendment of section 82 of Act 69 of 1984

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

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

Short title

11. This Act shall be called the Close Corporations Amendment Act, 1992.