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Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 325

Cape Town

1 July 1992

No. 14078

THE PRESIDENCY

No. 1771

1 July 1992

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

No. 82 of 1992: Companies 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.

ACT

To amend the Companies Act, 1973, so as to delete the definitions of “controlled company” and “controlling company” and redefine “subsidiary”; to further regulate the conversion of stated capital into share capital; to restrict the application of the share premium account of a company for certain purposes; to make different provision in relation to the notice of certain meetings and the particulars required to be entered in a certain register in respect of the directors of a company; to create a presumption in relation to certain transactions effected by a company without the required consent of all its members; to alter the provisions in connection with the resignation of the auditor of a company and the appointment of another auditor; to further determine the contents of the register of fixed assets of a company; to further circumscribe the requirements of certain annual financial statements; and to delete or replace certain obsolete references; and to provide for matters connected therewith.

(English 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 1 of Act 61 of 1973, as amended by section 1 of Act 76 of 1974, section 1 of Act 64 of 1977, section 26 of Proclamation 234 of 1978, section 1 of Act 84 of 1980, section 1 of Act 83 of 1981, section 1 of Act 29 of 1982 and section 1 of Act 31 of 1986

1. Section 1 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion in subsection (1) of the definitions of “controlled company” and “controlling company”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) (a) For the purposes of this Act, a company shall be deemed to be a subsidiary of another company if—
- (i) that other company is a member of it and—
- (aa) holds a majority of the voting rights in it; or
- (bb) has the right to appoint or remove directors holding a majority of the voting rights at meetings of the board; or
- (cc) has the sole control of a majority of the voting rights in it, whether pursuant to an agreement with other members or otherwise; or

- (ii) it is a subsidiary of any company which is a subsidiary of that other company; or
- (iii) subsidiaries of that other company or that other company and its subsidiaries together hold the rights referred to in subparagraph (i)(aa), (bb) or (cc).
- 5 (b) In determining whether a company holds the majority of the voting rights as contemplated in paragraph (a)(i)(aa)—
- (i) voting rights which are exercisable only in certain circumstances shall be taken into account only—
- 10 (aa) when those circumstances have arisen, and for so long as they continue; or
- (bb) when those circumstances are under the control of the person holding the voting rights;
- 15 (ii) voting rights held by a person in a fiduciary capacity shall be treated as not held by him but by the beneficiary of such voting rights;
- (iii) voting rights held by a person as nominee for another person shall be treated as not held by him but by that other person, and voting rights shall be deemed to be held by a nominee for another person if they are exercisable only on the instructions or with the consent or concurrence of that other person.
- 20 (c) A body corporate or other undertaking which would have been a subsidiary of a company had the body corporate or other undertaking been a company shall be deemed to be a subsidiary of that company.”.

25 **Amendment of section 75 of Act 61 of 1973, as amended by section 5 of Act 111 of 1976 and section 6 of Act 31 of 1986**

2. Section 75 of the principal Act is hereby amended by the addition of the following subsection:

- 30 “(4) If, in the case of a company which has converted its share capital under subsection (1)(f) and at any time thereafter passed a special resolution to convert its stated capital as contemplated in subsection (1)(g), shares which at the time of the passing of that special resolution have not been taken or agreed to be taken by any person—
- 35 (a) are converted as so contemplated, subsection (3)(a) shall apply *mutatis mutandis* in respect of any amount by which the share capital of the company is increased, which amount shall be the amount by which the nominal share capital after the conversion under subsection (1)(g) exceeds the nominal share capital before the conversion under subsection (1)(f);
- 40 (b) are not converted as so contemplated, those shares shall be cancelled *mutatis mutandis* in accordance with subsection (1)(h).”.

Amendment of section 76 of Act 61 of 1973, as amended by section 5 of Act 76 of 1974

3. Section 76 of the principal Act is hereby amended by the substitution for 45 subsection (3) of the following subsection:

- “(3) The share premium account may, notwithstanding anything contained in subsection (1), be applied by the company—
- (a) in paying up unissued shares of the company to be issued to members of the company as fully paid capitalization shares; **[or]**
- 50 (b) in writing off—
- [(a)]** (i) the preliminary expenses of the company; or
- [(b)]** (ii) the expenses of, or the commission paid or discount allowed on, the creation or issue of any shares **[or debentures]** of the company; or
- 55 (c) in providing for the premium payable on redemption of any redeemable preference shares **[or of any debentures]** of the company: Provided that—

- 5 (i) such premium shall not be so provided unless it is payable according to the terms of issue of the shares concerned and such terms have been embodied in the articles of the company as from a date prior to the date on which such shares were allotted and issued or on such later date as may be allowed by the Court on application to it;
- 10 (ii) in the case of ordinary shares which are converted into redeemable preference shares redeemable at a premium, only that portion of the amount standing to the credit of the share premium account which arose on the original issue of such shares may be applied in providing for the premium payable on redemption;
- (iii) the provisions of paragraphs (i) and (ii) of this proviso shall not apply in respect of redeemable preference shares issued before the commencement of the Companies Amendment Act, 1992.”.

15 **Amendment of section 186 of Act 61 of 1973**

4. Section 186 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- 20 “(2) Notwithstanding the provisions of subsection (1), a meeting of a company shall be deemed to have been duly called—
- (a) in the case of a meeting which is called on a shorter period of notice than is prescribed in that subsection or provided for in the company’s articles, **[shall be deemed to have been duly called]** if it is so agreed, before or at the meeting, by a majority in number of the members having a right to attend and vote at the meeting who hold not less than
- 25 ninety-five percent of the total voting rights of all the members of the company; or
- (b) in the case of a meeting in respect of which notice as contemplated in subsection (1)(a) has not been given, if it is so agreed in writing, before or at the meeting, by all the members of the company.”.

30 **Amendment of section 215 of Act 61 of 1973, as amended by section 14 of Act 59 of 1978 and section 7 of Act 18 of 1990**

5. Section 215 of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (1) of the following subparagraph:

- 35 “(ii) the name and **[registered office]** registration number of every other company of which such director is a director;”.

Amendment of section 226 of Act 61 of 1973, as substituted by section 19 of Act 111 of 1976 and amended by section 21 of Act 64 of 1977 and section 5 of Act 29 of 1985

40 6. Section 226 of the principal Act is hereby amended by the substitution in paragraph (a) of subsection (2) for the words following upon subparagraph (iv) of the following words:

- 45 “with the prior consent of all the members of the company or in terms of a special resolution relating to a specific transaction: Provided that in respect of any such loan made or security provided at any time before the date of commencement of the Companies Amendment Act, 1992, such consent shall be deemed to have been given if the transaction concerned has subsequently, whether before or after that date, been ratified by all the members of the company; or”.

50 **Amendment of section 227 of Act 61 of 1973**

7. Section 227 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

5 “No company shall make any payment or grant any benefit or advantage to any director or past director of the company or of its **[controlled or controlling company or of any company controlled by its controlling]** subsidiary company or holding company or of any subsidiary of its holding company—”.

Amendment of section 275 of Act 61 of 1973, as amended by section 24 of Act 64 of 1977 and section 28 of Act 80 of 1991

8. Section 275 of the principal Act is hereby amended—

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

“(g) not qualified to act as such under the Public Accountants’ and Auditors’ Act, **[1951 (Act No. 51 of 1951)]** 1991 (Act No. 80 of 1991).”; and

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

“(3) The provisions of subsection (1) shall not be construed as prohibiting the appointment as auditor of a private company no shares of which are held by a public company, of a person who by himself or his partner or employee habitually or regularly performs the duties of secretary or bookkeeper of such private company if he is registered under the Public Accountants’ and Auditors’ Act, **[1951]** 1991, and all the shareholders of such private company agree in writing to his appointment and the relevant circumstances are set out in the auditor’s report on the affairs and annual financial statements of such private company.”.

25 Substitution of section 280 of Act 61 of 1973, as amended by section 23 of Act 111 of 1976

9. The following section is hereby substituted for section 280 of the principal Act:

“Resignation of auditor

30 **280.** (1) The auditor of a company may at any time during the period of his office resign as such provided the requirements of this section are complied with.

35 (2) An auditor intending to resign shall deliver to the company and to the Registrar a written notification in the prescribed form to the effect that he has no reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, other than an irregularity (if any) which has been reported to the Public Accountants’ and Auditors’ Board in terms of the Public Accountants’ and Auditors’ Act, **[1951 (Act No. 51 of 1951)]** 1991 (Act No. 80 of 1991), and it shall not be necessary that such an auditor shall have carried out, for the purposes of such notification, a special audit subsequent to the date up to which the last annual financial statements on which he has already reported, were made up.

45 (3) The directors of the company shall forthwith upon receipt of the said written notification appoint an auditor to fill the vacancy and shall lodge the said notification together with the return required under section 276 with the Registrar **[who shall forthwith notify the auditor whose resignation has been tendered, of the receipt of the said notification and return]**.

50 (4) The resignation of an auditor shall become effective upon the receipt by **[him of the said notification by]** the Registrar of the written notification referred to in subsection (2) **[but shall for purposes of the said return be deemed to have taken place on the date of appointment under subsection (3) of an auditor to fill the vacancy caused by the resignation]**.

- (5) If the directors fail to appoint an auditor to fill the vacancy within three months after the receipt of the written notification referred to in subsection (2), any person who—
- 5 (a) at the expiration of that period of three months was a director of the company or became a director of the company after that period has expired and before the filling of the vacancy; and
- (b) was aware of the vacancy but failed to take all reasonable steps to ensure that it would be filled in accordance with subsection 3,
- 10 shall together with the company be jointly and severally liable for all debts incurred by the company during the existence of the vacancy.”

Amendment of section 284 of Act 61 of 1973

10. Section 284 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:
- 15 “a register of fixed assets showing the respective dates of acquisition and the cost thereof, depreciation, if any, the date of any revaluation and the revalued amount, the respective dates of any disposals and the consideration received in respect thereof.”

Amendment of section 286 of Act 61 of 1973

- 20 11. Section 286 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph (b) of subsection (2):
- “(bA) a cash flow statement;”

Amendment of section 289 of Act 61 of 1973

- 25 12. Section 289 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) Subject to section 290, group annual financial statements may consist of consolidated annual financial statements in accordance with section 286(2)(a) **[and]**, (b) and (bA) and being—
- 30 (i) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group annual financial statements; **[and]**
- (ii) a consolidated income statement dealing with the profit or loss of the company and those subsidiaries; and
- 35 (iii) a consolidated cash flow statement of the company and those subsidiaries.”

Amendment of section 300 of Act 61 of 1973, as amended by section 21 of Act 76 of 1974 and section 10 of Act 31 of 1986

13. Section 300 of the principal Act is hereby amended by the substitution for paragraph (l) of the following paragraph:
- 40 “(l) to comply with any applicable requirements of the Public Accountants’ and Auditors’ Act, **[1951 (Act No 51 of 1951)]** 1991 (Act No. 80 of 1991).”

- 45 **Amendment of section 441 of Act 61 of 1973, as amended by section 30 of Act 111 of 1976, section 29 of Act 64 of 1977, section 27 of Act 59 of 1978, section 16 of Act 84 of 1980, section 30 of Act 83 of 1981, section 11 of Act 29 of 1985, section 15 of Act 31 of 1986, section 5 of Act 78 of 1989 and section 7 of Act 69 of 1990**

14. Section 441 of the principal Act is hereby amended by the deletion in paragraph (d) of subsection (1) of the expression “320(2)”.

Short title

- 50 15. This Act shall be called the Companies Amendment Act, 1992.