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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 594.

23 Maart 1990

No. 594.

23 March 1990

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

■o. 18 van 1990: Maatskappywysigingswet, 1990.

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

No. 18 of 1990: Companies Amendment Act, 1990.

COMPANIES AMENDMENT ACT, 1990

Act No. 18, 1990

GENERAL EXPLANATORY NOTE:

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

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

ACT

To amend the Companies Act, 1973, so as to further regulate objections to names of companies and defensive names; to further regulate recourse to the Court in matters as to names; to abolish the requirement that copies of a memorandum and articles certified by a notary public as true copies, be lodged with a view to registration thereof; to provide for the disposal of the books and papers of a company which has been deregistered; to require that cessions by a company of its assets be entered in a register; to further regulate the offer for sale of shares to the public without a prospectus; and to provide that particulars of a secretary which is a body corporate be entered in the register of directors and officers; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 9 March 1990.)

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

Amendment of section 45 of Act 61 of 1973, as substituted by section 9 of Act 83 of 1981

5 1. Section 45 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended—

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

10 “(2) If within a period of one year after the registration of any memorandum, translated name or shortened form of a name or translated name of a company or a name referred to in section 43 (2) or after the date of an amended certificate of incorporation or a certificate of change of name, translated name or shortened form of a name or translated name referred to in section 44 (2), any person lodges an objection in writing with the Registrar against the name contained in the memorandum or the translated name or shortened form of such name or translated name or the name referred to in section 43 (2) or the changed name or translated name or the shortened form of that changed name or translated name referred to in the last-mentioned certificate, on the grounds that such name, translated name or shortened form of a name or translated name is calculated to cause damage to the objector or is undesirable, the Registrar may, if he is

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satisfied that the objection is sound, order the company concerned or the person referred to in section 43 (2) to change the said name, translated name or shortened form of a name or translated name.”; and

(b) by the insertion after subsection (2) of the following subsection:

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5 “(2A) Within a period of two years after the registration of any memorandum, translated name or shortened form of a name or translated name of a company or a name referred to in section 43 (2) or after the date of an amended certificate of incorporation or a certificate of change of name, translated name or shortened form of a name or translated name referred to in section 44 (2), a person who has not lodged any relevant objection in terms of subsection (2) may apply to the Court for an order directing the company concerned or the person referred to in section 43 (2) to change the said name, translated name or shortened form on the grounds that the said name, translated name or shortened form is undesirable or is calculated to cause damage to the applicant, and the Court may on such application make such order as it deems fit.”

Substitution of section 48 of Act 61 of 1973

2. The following section is hereby substituted for section 48 of the principal Act:

15 “**Recourse to Court in matters as to names**

48. Any company or person aggrieved by any decision or order of the Registrar under section 41, 42, 43, [or] 44 [or by any order made by the Registrar under section] or 45 may, within one month after the date of such decision or order, apply to the Court for relief, and the Court shall have power to consider the merits of any such matter, to receive further evidence and to make any order it deems fit.”

Amendment of section 63 of Act 61 of 1973, as amended by section 4 of Act 76 of 1974, section 3 of Act 29 of 1982, section 2 of Act 29 of 1985, section 4 of Act 31 of 1986 and section 2 of Act 78 of 1989

25 3. Section 63 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

30 “(1) If a memorandum and articles complying with the requirements of this Act [together with two copies thereof certified by a notary public as true copies] are lodged with the Registrar in the manner prescribed, he shall, upon payment of the prescribed fee, register such memorandum and articles, impress his seal [on one copy thereof,] thereon and endorse thereon the date of registration and the certificate provided for in section 64.”

Amendment of section 73 of Act 61 of 1973, as amended by section 5 of Act 59 of 1978, section 4 of Act 29 of 1982 and section 5 of Act 31 of 1986

35 4. Section 73 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

40 “(5A) (a) When any company has been deregistered the books and papers of the company may be disposed of in such way as the Registrar may direct.
(b) After five years from the deregistration of a company, no responsibility shall rest on any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to a person claiming to be interested therein.”

Substitution of section 127 of Act 61 of 1973

5. The following section is hereby substituted for section 127 of the principal Act:

45 “**Register of pledges, cessions and bonds**

127. Subject to the provisions of section 129, every company shall keep at its registered office a register of pledges, cessions, notarial bonds, [and] mortgage bonds and notarial debentures and enter therein all pledges, cessions, notarial bonds, mortgage bonds and notarial debentures affecting property of the company, giving in each case a short description of the property pledged, ceded or bound, the amount of the pledge, cession

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or bond and the names and addresses of the persons in whose favour any pledge, cession, bond or debenture was executed or to whom any pledge has been delivered.”.

Amendment of section 146 of Act 61 of 1973

5 6. Section 146 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection :

“(2) For the purposes of subsection (1) (a) it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares was made with a view to the shares being offered for sale to the public if it is shown
10 that an offer for sale to the public in respect of such shares or any of them was made within [six] eighteen months after the allotment or agreement to allot.”.

Amendment of section 215 of Act 61 of 1973, as amended by section 14 of Act 59 of 1978

15 7. Section 215 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every company shall keep in one of the official languages of the Republic a register of directors and officers of the company and secretaries thereof which are bodies corporate and cause to be entered therein—

(a) in respect of every director or officer—

20 [(a)] (i) his full forenames and surname and any former forenames and surname, his identity number or, if he has no such number, his date of birth, [and if any officer is a corporate body the address of its registered office; (aA)] his nationality if not South African, his occupation, his residential, business and postal addresses and the
25 date of his appointment; and

[(b)] (ii) the name and the registered office of every other company of which such director is a director; [and]

(b) in respect of every officer or secretary which is a body corporate, its name, its registration number, the address of its registered office and the date of
30 its appointment; and

(c) any changes occurring from time to time in the particulars referred to in paragraphs (a) [(aA)] and (b) and the dates and nature of such changes.”.

Amendment of section 216 of Act 61 of 1973, as substituted by section 15 of Act 59 of 1978 and amended by section 15 of Act 83 of 1981 and section 10 of Act 70 of 1984

35 8. Section 216 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A company shall within 14 days after receipt of any particulars referred to in section 215 (1) (a) (i) and (b) [and (aA)] or of notice of any change in the particulars referred to in the said section 215 (1) (a) (i) or (b) or after any
40 director or officer or a secretary which is a body corporate has vacated his office, lodge a return with the Registrar in the prescribed form reflecting the contents of such register after such particulars or such change therein or a statement that such vacation of office has occurred, have been entered in the register: Provided that any entry of such a vacation of office previously advised to the Registrar,
45 shall not be reflected in such return.”.

Short title and commencement

9. (1) This Act shall be called the Companies Amendment Act, 1990.

(2) Section 3 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.