

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 746

10 April 1985

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10 April 1985

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

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

No. 29 of 1985: Companies Amendment Act, 1985.

No. 29 van 1985: Maatskappywysigingswet, 1985.

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COMPANIES AMENDMENT ACT, 1985

**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 regulate the allocation of registration numbers to companies and the use thereof; to extend the power to prepare broker's transfer forms; to provide that certain members or debenture holders of a company may be excluded from a rights offer; to further regulate the granting of loans to and the provision of security for a director or manager of a company; to exempt external companies in specified circumstances from certain requirements in connection with the consent to act as a director or an officer; and to extend the provisions relating to the examination of persons in the winding-up of a company; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)  
(Assented to 19 March 1985.)

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

Amendment of section 50 of Act 61 of 1973, as amended by section 12 of Act 83 of 1981.

1. Section 50 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph: 5

“(c) shall have its name and registration number mentioned in legible characters in all notices and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company and in all letters, delivery notes, invoices, receipts, and letters of credit of the company.”

Amendment of section 63 of Act 61 of 1973, as amended by section 4 of Act 76 of 1974 and section 3 of Act 29 of 1982.

2. Section 63 of the principal Act is hereby amended by the addition of the following subsection:

“(4) Upon the registration of the memorandum and articles of a company the Registrar shall allocate a registration number to the company concerned.”

Amendment of section 135 of Act 61 of 1973, as amended by section 7 of Act 76 of 1974 and section 5 of Act 29 of 1982.

3. Section 135 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (i) of the proviso to paragraph (b) of the following subparagraph:

“(i) such broker's transfer form shall be prepared—  
(aa) by a stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 25 1947); **[or]**

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(bb) by a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965), and authorized thereto in writing by the Registrar, at a branch thereof designated by the Registrar;

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(cc) by a stock exchange in the Republic; or

(dd) by a company authorized thereto in writing by the Registrar and carrying on the business of a clearing-house for securities on such stock exchange,

and shall bear the signature of the stock-broker concerned or of a person in the service of the banking institution, stock exchange or company concerned or an authorized facsimile of that signature;”.

Amendment of section 142 of Act 61 of 1973, as amended by section 7 of Act 111 of 1976 and section 5 of Act 64 of 1977.

## 4. Section 142 of the principal Act is hereby amended—

(a) by the substitution for the definition of “rights offer” of 15 the following definition:

“‘rights offer’ means an offer for subscription, with a right to renounce in favour of other persons, to [the] those members or debenture holders of a company who are not excluded from such offer 20 under subsection (2), for any shares (as defined in relation to an offer of shares for subscription or sale in section 1 (1)) of that company or any other company, where a stock exchange within the Republic or a stock exchange recognized by the Minister for the purposes of this definition by notice in the Gazette, has granted or has agreed to grant a listing for the shares which are the subject of the offer;” and

(b) by the addition of the following subsection, the existing 30 section becoming subsection (1):

“(2) (a) Notwithstanding anything contained in the articles of a company, the company may, with the written approval of the Registrar and subject to such conditions as he may determine, exclude any 35 category of members or debenture holders of the company not resident within the Republic from any rights offer.

(b) An application for a written approval referred to in paragraph (a) shall be accompanied by the prescribed fee.”.

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.

## 5. Section 226 of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of subsection (1A) of the following subparagraph:

“(ii) more than one-half of the equity share capital of that 45 other company or body corporate or, if that other body corporate is a corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984), more than 50 per cent of the interest in such corporation is held by such director, manager or nominee or 50 such directors, managers or nominees; and”.

Amendment of section 322 of Act 61 of 1973, as amended by section 20 of Act 59 of 1978, section 28 of Proclamation 234 of 1978 and section 13 of Act 29 of 1982.

## 6. Section 322 of the principal Act is hereby amended by the addition of the following subsection:

“(4) Upon the registration of the memorandum of an external company the Registrar shall allocate a registration 55 number to the company concerned.”.

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Amendment of section 327 of Act 61 of 1973, as amended by section 21 of Act 59 of 1978.

7. Section 327 of the principal Act is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that—

- (a) where a director is not resident in the Republic— 5  
 (i) the entries referred to in section 216 (1) shall be made in the register not later than the end of the financial year of the company and the return referred to in section 216 (2) shall be lodged together with the annual return referred to in section 330; and 10  
 (ii) the form of consent prescribed under section 211 may be signed by the director or his duly authorized agent on his behalf;  
 (b) the provisions of section 211 in respect of such 15  
form shall not apply where the sole purpose of the company in establishing a place of business in the Republic is to establish a share registration office or a share transfer office.”

Amendment of section 331 of Act 61 of 1973, as amended by section 24 of Act 59 of 1978.

8. Section 331 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

- “(b) have the name of the company and of the foreign country in which the company is incorporated, as well as the registration number referred to in section 322 (4), mentioned in legible characters in all bill-heads and letter-heads and in all notices, advertisements and other official publications of the company, and for the purposes of this subsection the provisions of section 50 shall mutatis mutandis apply.” 25 30

Amendment of section 417 of Act 61 of 1973.

9. Section 417 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:  
 “(1) In any winding-up of a company unable to pay its debts, the Master or the Court may, at any time after [it has made] a winding-up order has been made, summon before him or it any director or officer of the company or person known or suspected to have in his possession any property of the company or believed to be indebted to the company, or any person whom the Master or the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.”;  
 (b) by the insertion after subsection (1) of the following subsection: 45  
 “(1A) Any person summoned under subsection (1) may be represented at his attendance before the Master or the Court by an attorney with or without counsel.”;  
 (c) by the substitution for paragraph (a) of subsection (2) of the following paragraph: 50  
 “(a) The Master or the Court may examine any person summoned under subsection (1) on oath or affirmation concerning any matter referred to in that subsection, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.”;  
 (d) by the substitution for subsections (3) and (4) of the following subsections, respectively:  
 “(3) The Master or the Court may require any such person to produce any books or papers in his custody 60 or under his control relating to the company but with-

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out prejudice to any lien claimed with regard to any such books or papers, and the Court shall have power to determine all questions relating to any such lien.

(4) If any person who has been duly summoned under subsection (1) and to whom a reasonable sum for his expenses has been tendered, fails to attend before the Master or the Court at the time appointed by the summons without lawful excuse made known to the Master or the Court at the time of [its] the sitting and accepted by [it] the Master or the Court, the Master or the Court may cause him to be apprehended and brought before him or it for examination.”; and

(e) by the addition of the following subsections:

“(5) Any person summoned by the Master under subsection (1) shall be entitled to such witness fees as he would have been entitled to if he were a witness in civil proceedings in a magistrate’s court.

(6) Any person who applies for an examination or enquiry in terms of this section or section 418 shall be liable for the payment of the costs and expenses incidental thereto, unless the Master or the Court directs that the whole or any part of such costs and expenses shall be paid out of the assets of the company concerned.

(7) Any examination or enquiry under this section or section 418 and any application therefor shall be private and confidential, unless the Master or the Court, either generally or in respect of any particular person, directs otherwise.”.

Substitution of section 418 of Act 61 of 1973.

10. The following section is hereby substituted for section 418 of the principal Act:

“Examination by commissioners.

418. (1) (a) Every magistrate and every other person appointed for the purpose by the Master or the Court shall be a commissioner for the purpose of taking evidence or holding any enquiry under this Act in connection with the winding-up of any company.

(b) The Master or the Court may refer the whole or any part of the examination of any witness or of any enquiry under this Act to any such commissioner, whether or not he is within the jurisdiction of the Court which issued the winding-up order.

(c) The Master, if he has not himself been appointed under paragraph (a), the liquidator or any creditor, member or contributory of the company may be represented at such an examination or enquiry by an attorney, with or without counsel, who shall be entitled to interrogate any witness: Provided that a commissioner shall disallow any question which is irrelevant or would in his opinion prolong the interrogation unnecessarily.

(d) The provisions of section 417 (1A), (2) (b) and (5) shall apply *mutatis mutandis* in respect of such an examination or enquiry.

(2) A commissioner shall in any matter referred to him have the same powers of summoning and examining witnesses and of requiring the production [or delivery] of documents, as the Master who or the Court which appointed him, and, if the commissioner is a magistrate, of punishing defaulting or recalcitrant witnesses, or causing defaulting witnesses to be ap-

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prehended, and of **[allowing costs and expenses to witnesses]** determining questions relating to any lien with regard to documents, as the Court **[which appointed him]** referred to in section 417.

(3) If a commissioner—

(a) has been appointed by the Master, he shall, in such manner as the Master may direct, report to the Master; or

(b) has been appointed by the Court, he shall, in such manner as the Court may direct, report to the Master and the Court,

on any examination or enquiry referred to him.

(4) Any witness who has given evidence before **[a] the Master or the Court** under section 417 or before a commissioner under this section, shall be entitled, at his cost, to a copy of the record of his evidence.

(5) Any person who—

(a) has been duly summoned under this section by a commissioner who is not a magistrate and who fails, without sufficient cause, to attend at the time and place specified in the summons; or

(b) has been duly summoned under section 417 (1) by the Master or under this section by a commissioner who is not a magistrate and who—

(i) fails, without sufficient cause, to remain in attendance until excused by the Master or such commissioner, as the case may be, from further attendance;

(ii) refuses to be sworn or to affirm as a witness; or

(iii) fails, without sufficient cause—

(aa) to answer fully and satisfactorily any question lawfully put to him in terms of section 417 (2) or this section; or

(bb) to produce books or papers in his custody or under his control which he was required to produce in terms of section 417 (3) or this section,

shall be guilty of an offence.

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 and section 30 of Act 83 of 1981.

Short title and commencement.

11. Section 441 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) in section 90, 286, 288, 297, 298, 299, 302, 308, 312 (5), 363, 363A, 365, 414, 418 (5) or 421, to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;”.

12. (1) This Act shall be called the Companies Amendment Act, 1985.

(2) Section 1 and 8 shall come into operation on 1 December 1985.