



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Verkoopprijs • Selling price
(AVB uitgesluit/GST excluded)
Plaaslik **45c** Local
Buitelands 60c Other countries
Posvry • Post free

Vol. 249

KAAPSTAD, 27 MAART 1986
CAPE TOWN, 27 MARCH 1986

No. 10170

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 619. 27 Maart 1986

No. 619. 27 March 1986

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

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

No. 31 van 1986: Maatskappywysigingswet, 1986.

No. 31 of 1986: Companies Amendment Act, 1986.

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 abolish annual duty payable by companies; to do away with the duty of companies to lodge annual returns; to increase the fees for the registration of a company and for the alteration of share capital and shares by a company; and to extend the duties of the auditor of a company; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 24 March 1986.)

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

1. Section 1 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the deletion of the definitions of "annual duty" and "annual return".
- 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 and section 1 of Act 29 of 1982.
2. Section 10 of the principal Act is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
- 10 "(1) The payment of all fees, additional fees [annual duty] or other moneys payable to the Registrar as laid down by this Act shall be effected—"; and
- (b) by the substitution for subsection (3) of the following subsection:
- 15 "(3) Any fees, additional fees [annual duty] and any other moneys payable under this Act to the Registrar shall be debts due to the State recoverable by the Minister in any competent court."
- Amendment of section 10 of Act 61 of 1973.
3. Section 21 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:
- 20 "(3) The provisions of [sections] section 49 (1) (c) [and 174] of this Act shall not apply to any such association."
- Amendment of section 21 of Act 61 of 1973, as amended by section 4 of Act 59 of 1978.

COMPANIES AMENDMENT ACT, 1986

Act No. 31, 1986

4. Section 63 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
 “(2) The fee for the registration of a company shall be a basic amount of **[fifty] one hundred and seventy rand** and an additional fee calculated at the rate of—
- 5 (a) in the case of a company having a nominal share capital with shares having a par value, **[two] five rand [and fifty cents]** for each thousand rand or part thereof;
- 10 (b) in the case of a company having shares of no par value, **[two] five rand [and fifty cents]** for each thousand shares or part thereof;
- 15 (c) in the case of a company having both shares of par value and shares of no par value, the aggregate of the amounts calculated on the basis laid down in paragraphs (a) and (b) of this subsection.”
- 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.
5. Section 73 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) If **[a company has failed, for a period of more than six months, to lodge with the Registrar an annual return in compliance with the provisions of section 173 or when]** the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he shall, in accordance with subsection (7), send to the company by certified post a letter enquiring whether it is carrying on business or is in operation.”
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- Amendment of section 73 of Act 61 of 1973, as amended by section 5 of Act 59 of 1978 and section 4 of Act 29 of 1982.
6. Section 75 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (3) of the following paragraph:
 “(a) increases its share capital by shares of a fixed amount, it shall pay to the Registrar an amount of **[two] five rand [and fifty cents]** for each one thousand rand, or part thereof, by which the share capital is increased;”;
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- (b) by the substitution for subparagraph (ii) of paragraph (b) of subsection (3) of the following subparagraph:
 “(ii) pay to the Registrar an amount of **[two] five rand [and fifty cents]** for each thousand rand or part thereof calculated by multiplying the number by which the number of the shares has been increased by the value of each share as certified under subparagraph (i).”
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- Amendment of section 75 of Act 61 of 1973, as amended by section 5 of Act 111 of 1976.
7. Section 173 of the principal Act is hereby repealed.
- Repeal of section 173 of Act 61 of 1973, as amended by section 13 of Act 111 of 1976, section 13 of Act 64 of 1977, section 21 of Act 114 of 1977 and section 7 of Act 29 of 1982.
8. Section 174 of the principal Act is hereby repealed.
- Repeal of section 174 of Act 61 of 1973, as substituted by section 8 of Act 29 of 1982.

COMPANIES AMENDMENT ACT, 1986

Act No. 31, 1986

9. The following section is hereby substituted for section 178 of the principal Act:

“Additional fees in respect of late lodgement of returns and other documents.”

178. (1) A company or an external company which has failed to lodge a return or other document required by section 93 (3), 200 (1), 216 (2) or 276 within the period specified by the relevant provision, may thereafter, without derogating from any provision of this Act, lodge such return or other document subject to the payment to the Registrar of an additional fee in the amount of forty rand in respect of each such failure.

(2) For the purposes of subsection (1) the decision of the Registrar as to the period within which a return or other document contemplated in that subsection was required to be lodged, shall be final.”

Substitution of section 178 of Act 61 of 1973, as substituted by section 10 of Act 29 of 1982.

10. Section 300 of the principal Act is hereby amended by the insertion after paragraph (j) of the following paragraph:

“(jA) when he gets to know, or has reason to believe, that the company is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future, to report forthwith accordingly by certified post to the Registrar;”

Amendment of section 300 of Act 61 of 1973, as amended by section 21 of Act 76 of 1974.

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

“(1) 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]** with the Registrar within fourteen days after the date of such entries; and”

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

12. Section 330 of the principal Act is hereby repealed.

Repeal of section 330 of Act 61 of 1973, as substituted by section 14 of Act 29 of 1982.

13. Section 333 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Every external company which and every director and officer of such company who fails to comply with any requirement of **[section 173 (1) as applied by section 330 or of]** section 325, 326, 327, 328, 329 or 331 shall be guilty of an offence.”

Amendment of section 333 of Act 61 of 1973, as amended by section 15 of Act 29 of 1982.

14. Section 433 of the principal Act is hereby amended by the deletion of paragraph (e).

Amendment of section 433 of Act 61 of 1973.

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

“(n) in section 46, 51, 58, 80, 96, 102, 139, **[173]** 200 (6), 213, 253, 269, 271, 309, 356 or 357, to a fine not exceeding ten rand for each day during which the contravention continues;”

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.

COMPANIES AMENDMENT ACT, 1986

Act No. 31, 1986

16. The repeal of the provisions of the principal Act by this Act does not affect the liability of a company for annual duty which became payable before the commencement of this Act, or for any additional fees in that connection, and for that purpose the relevant provisions of the principal Act remain in force until the duty and additional fees owing have been recovered.

Saving.

17. This Act is called the Companies Amendment Act, 1986, and comes into operation on 1 April 1986.

Short title and commencement.