



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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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

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Vol. 250

KAAPSTAD, 23 APRIL 1986

No. 10200

CAPE TOWN, 23 APRIL 1986

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 726.

23 April 1986

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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. 38 van 1986: Wysigingswet op Beslote Korporasies, 1986.

No. 38 of 1986: Close Corporations Amendment Act, 1986.

## CLOSE CORPORATIONS AMENDMENT ACT, 1986

Act No. 38, 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.

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# ACT

To amend the Close Corporations Act, 1984, so as to replace the designation of the Minister concerned; to provide that the founding statement of a close corporation shall be lodged with the Registrar of Close Corporations in triplicate; and that a copy of the certificate of incorporation of a close corporation shall be conclusive proof of incorporation of the corporation; to provide for the lodging of an amended founding statement if the founding statement of a close corporation is altered by an order of court; to delete the provision concerning the liability of former members of a close corporation for the outstanding liabilities of the corporation at de-registration; to provide that the registration number of a company converted into a close corporation shall be stated on the certificate of incorporation; that the consent in writing of a member holding a member's interest of at least 75 per cent, or of members holding together at least that percentage of the members' interests, in a close corporation, shall be required for certain acts; that only members present at a meeting of members of a close corporation may vote at that meeting; and for the date on which the first financial year of a close corporation converted from a company shall end; to make further provision in connection with the nature and contents of the annual financial statements of a close corporation; to further define the duties of an accounting officer of a close corporation; to extend the period within which a liquidator of a close corporation is required to give security; and to effect certain textual improvements; and to provide for matters connected therewith.

*(English text signed by the State President.)*  
*(Assented to 9 April 1986.)*

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

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

10      "Minister", in relation to any matter to be dealt with in the office of a Master in connection with the winding-up of a corporation, means the Minister of Justice and, in relation to any other matter, means the Minister of **[Industries, Commerce and Tourism]** Trade and Industry;"

Amendment of section 1 of Act 69 of 1984.

## CLOSE CORPORATIONS AMENDMENT ACT, 1986

Act No. 38, 1986

2. Section 10 of the principal Act is hereby amended by the substitution for paragraph (m) of subsection (1) of the following paragraph: Amendment of section 10 of Act 69 of 1984.
- 5 “(m) providing for the appointment by the Registrar in specified circumstances of an inspector to investigate the affairs of a corporation, for the powers of an inspector in conducting any such investigation, for the duty of any member, officer, employee or **[accountant] accounting officer** of a corporation to make available
- 10 books and documents in his custody or under his control and to afford such assistance as an inspector may require in connection with any such investigation; for reporting by an inspector to the Registrar; for the making available by the Registrar of any such report to
- 15 other persons; for the admissibility of any such report as evidence in legal proceedings; and for defraying the expenses of, and in connection with, any such investigation;”.
3. The following section is hereby substituted for section 13 of the principal Act: Substitution of section 13 of Act 69 of 1984.
- 20 “Registration of founding statement. 13. If a founding statement referred to in section 12 complying with the requirements of this Act is lodged with the Registrar in **[duplicate] triplicate** in the manner prescribed, and if the business to be carried on by the corporation is lawful, the Registrar shall upon payment of the prescribed fee register such statement in his registers and shall give notice of the registration in the *Gazette*.”
- 25
4. Section 14 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 14 of Act 69 of 1984.
- 30 “(2) A certificate of incorporation given by the Registrar in terms of subsection (1) or section 27 (4) (c), or a copy thereof, as the case may be, shall upon its mere production, in the absence of proof of fraud or error, be conclusive evidence that all the requirements of this Act in respect of registration of the corporation concerned and of matters precedent and incidental thereto have been complied with, and that the corporation concerned is duly incorporated under this Act.”
- 35
5. Section 15 of the principal Act is hereby amended— Amendment of section 15 of Act 69 of 1984.
- 40 (a) by the insertion after subsection (2) of the following subsection:
- “**(2A) If a founding statement is altered or something is added thereto by an order of court referred to in section 49, the provisions of subsection (1) in relation to the lodging of an amended founding statement therein referred to, shall *mutatis mutandis* apply in respect of such founding statement.**”; and
- 45 (b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:
- 50 “(a) If a corporation fails to lodge an amended founding statement in terms of and in accordance with the provisions of subsection (1) **[or], (2) or (2A)**, as the case may be, the Registrar may on his own initiative or on application by any member or creditor of the corporation serve on the members of the corporation in accordance with section 25 (2) (a) a reminder by certified post to make good the default within 28 days of the date of the reminder.”
- 55
6. (1) Section 26 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: Amendment of section 26 of Act 69 of 1984.
- 60 “(5) If a corporation is deregistered while having out-

## CLOSE CORPORATIONS AMENDMENT ACT, 1986

Act No. 38, 1986

standing liabilities, the persons who are members of such corporation at the time of deregistration [**and all other former members,**] shall be jointly and severally liable for such liabilities **[incurred while they were members of the corporation]."**

5 (2) Subsection (1) shall be deemed to have come into operation on 1 January 1985.

7. Section 27 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (4) of the following paragraph: Amendment of section 27 of Act 69 of 1984.

10 "**(c)** endorse on the founding statement a certificate of incorporation as provided by section 14 (1): Provided that such certificate shall state the fact that the corporation has been converted from a company and shall mention the name and registration number of the former company; and"

8. Section 46 of the principal Act is hereby amended by the substitution in the proviso to paragraph (b) for the words preceding paragraph (i) of the proviso of the following words: Amendment of section 46 of Act 69 of 1984.

20 "**Provided that the consent in writing of [75 per cent of the members] a member holding a member's interest of at least 75 per cent, or of members holding together at least that percentage of the members' interests, in the corporation, shall be required for —"**

25 9. Section 48 of the principal Act is hereby amended— Amendment of section 48 of Act 69 of 1984.

(a) by the deletion at the end of paragraph (a) of subsection (2) of the word "and";  
 (b) by the addition at the end of paragraph (b) of subsection (2) of the word "and"; and  
 30 (c) by the addition to subsection (2) of the following paragraph:  
 "**(c) only members present in person at the meeting may vote at that meeting."**

10. Section 54 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: Amendment of section 54 of Act 69 of 1984.

35 "(5) Where the consent in writing of **[all] a member or** members of a corporation is in any particular case required in terms of the proviso to section 46 (b), no act in contravention of such requirement shall be binding on the corporation with respect to any person who has, or ought reasonably to have, knowledge of the fact that the particular act is performed in contravention of such requirement."

11. Section 57 of the principal Act is hereby amended by the addition to paragraph (a) of subsection (4) of the following proviso: Amendment of section 57 of Act 69 of 1984.

45 visio:  
 "**Provided that the first financial year of a corporation converted from a company in terms of section 27, shall end on the date on which the financial year of the company would have ended had it not been so converted; and"**

12. (1) Section 58 of the principal Act is hereby amended— Amendment of section 58 of Act 69 of 1984.

(a) by the deletion at the end of paragraph (b) of subsection (2) of the word "and";  
 (b) by the addition of the following paragraphs to subsection (2):  
 55 "**(d) shall be in agreement with the accounting records, which shall be summarised in such a form that—**  
 (i) compliance with the provisions of this subsection is made possible; and  
 (ii) an accounting officer is enabled to report to

## CLOSE CORPORATIONS AMENDMENT ACT, 1986

Act No. 38, 1986

the corporation in terms of section 62 (1) (c) without it being necessary to refer to any subsidiary accounting records and vouchers supporting the entries in the accounting records:

5 Provided that nothing contained in this paragraph shall be construed as preventing an accounting officer, if he deems it necessary, from inspecting such subsidiary accounting records and vouchers; and

10 (e) shall contain the report of the accounting officer referred to in section 62 (1) (c)."; and

(c) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

15 "(b) In any proceedings against any member of a corporation under paragraph (a) the defence referred to in section 56 [(6)] (5) (b) shall be available to him."

(2) Subsection (1) shall be deemed to have come into operation on 1 January 1985.

20 13. (1) Section 62 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

Amendment of section 62 of Act 69 of 1984.

25 "(a) subject to the provisions of section 58 (2) (d), determine whether the annual financial statements are in agreement with the accounting records of the corporation;

(b) determine the principles of accounting policies applied in the preparation of the annual financial statements; and";

30 (b) by the deletion of the word "or" at the end of subparagraph (i) of subsection (3) (b);

(c) by the insertion of the word "or" at the end of subparagraph (ii) of the said subsection (3) (b); and

35 (d) by the addition of the following subparagraph to the said subsection (3) (b):

"(iii) that the annual financial statements incorrectly indicate that as at the end of the financial year concerned the assets of the corporation exceed its liabilities, or has reason to believe that such an incorrect indication is given,"

40 (2) Subsection (1) shall be deemed to have come into operation on 1 January 1985.

14. Section 76 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the provi-

Amendment of section 76 of Act 69 of 1984.

45 so of the following words:

"If a person who has been nominated as liquidator by any meeting of creditors or of members of a corporation was not properly nominated, or is disqualified from being nominated or appointed as liquidator pursuant to section 372 or 50 373 of the Companies Act, as applied by section 66 of this Act, or has failed to give within a period of ~~seven~~ 21 days as from the date upon which he was notified that the Master had accepted his nomination or within such further period as the Master may allow, the security mentioned in section 375 55 (1) of the Companies Act, as so applied, or, if in the opinion of the Master the person nominated as liquidator should not be appointed as liquidator of the corporation concerned, the Master shall give notice in writing to the person so nominated that he declines to accept his nomination 60 or to appoint him as liquidator, and shall in such notice state his reasons for declining to accept his nomination or to appoint him:"

15. This Act shall be called the Close Corporations Amend- Short title.  
ment Act, 1986.