

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.



# 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*

PRYS 40c PRICE  
Plus AVB/GST  
BUIELANDS 50c ABROAD  
POSVRY · POST FREE

Vol. 229

KAAPSTAD, 4 JULIE 1984

No. 9286

CAPE TOWN, 4 JULY 1984

KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 1355.

4 Julie 1984

No. 1355.

4 July 1984

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. 70 van 1984: Maatskappywysigingswet, 1984.

No. 70 of 1984: Companies Amendment Act, 1984.

## COMPANIES AMENDMENT ACT, 1984

Act No. 70, 1984

## 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 make provision for the appointment of a Deputy Registrar and an Assistant Registrar; authorize the Registrar of Companies to delegate any of his powers and entrust any of his duties also to an employee in the public service; further regulate the inspection of documents in the Companies Registration Office; define the expression "close corporation"; make provision for the cancellation of the registration of certain documents when a company is converted into a close corporation; make provision for the conversion of a close corporation into a company; determine the effect of the conversion of a close corporation into a company; make other provision in connection with formal requirements regarding names of companies; make provision for a discretion by a Court regarding the settling of a list of creditors entitled to object to a reduction of capital; make further provision relating to the signing of certificates of shares or stock; authorize the said Registrar in certain circumstances to determine the date on which a change in the situation of the registered office, or in respect of the postal address of a company, shall take effect; provide for the imposition by the Registrar of penalties for certain omissions, and for the recovery of such penalties; further regulate the extension by the Registrar of the period within which an annual general meeting of a company is to be held; provide for the signing of certain statements by a secretary who is a body corporate, of a company; authorize certain new categories of interested persons to apply to a Court for the winding-up of a company; extend the period within which certain documents in connection with the voluntary liquidation of a company are required to be lodged with the Master; and to make other provision for permission to a liquidator to be absent from the Republic; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)  
(Assented to 19 June 1984.)*

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

1. (1) Section 7 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended—
5. (a) by the substitution for subsection (1A) of the following subsection:
- “(1A) The Minister may likewise appoint [an acting Registrar] a Deputy Registrar and an Assistant Registrar, who shall, subject to the control of the Registrar,**

Amendment of section 7 of Act 61 of 1973, as amended by section 2 of Act 64 of 1977 and section 2 of Act 83 of 1981.

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5 exercise any power or carry out any duty granted or assigned to the Registrar by this Act, and when the office of Registrar is vacant or when the Registrar is absent or is for any other reason unable to perform his functions,  
 the Deputy Registrar shall act temporarily in his stead.”; and  
 (b) by the substitution for subsection (3) of the following subsection:  
 10 “(3) The Registrar may delegate in writing any of the powers and entrust any of the duties assigned to him by this Act, to any officer or employee in the public service.”  
 (2) The amendments effected by paragraph (b) of subsection (1) shall be deemed to have come into operation on 1 January 15 1974.

2. Section 9 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:  
 20 “(a) inspect the documents [kept] lodged under this Act [by] with the Registrar [in respect of any company]; or”

Amendment of section 9 of Act 61 of 1973, as amended by section 1 of Act 59 of 1978 and section 2 of Act 29 of 1982.

3. (1) The following heading and sections are hereby inserted in the principal Act after section 29:  
 “Conversion of companies and close corporations

Insertion of sections 29A, 29B, 29C and 29D in Act 61 of 1973.

25 **29A.** In sections 29B, 29C and 29D “close corporation” means a corporation as defined in section 1 of the Close Corporations Act, 1984.

30 **29B.** When a company is converted into a close corporation in terms of the Close Corporations Act, 1984, the Registrar shall, simultaneously with the registration of the founding statement of the close corporation by the Registrar of Close Corporations in terms of the said Act, cancel the registration of the memorandum and articles of association of the company concerned.  
 35 Cancellation of registration of memorandum and articles by Registrar upon conversion of company into close corporation.

40 **29C. (1)** A close corporation may, with the written consent of all its members, be converted into a company, provided that every member of the close corporation becomes a member of such company.  
 Conversion of close corporation into company.

(2) A close corporation to be converted into a company as contemplated in subsection (1) may, subject to the provisions of this section, apply to be incorporated as a company under Chapter IV of this Act.

45 (3) If an application referred to in subsection (2) complies with the provisions of the said Chapter IV and of subsection (4)—

(a) the Registrar shall register the memorandum and articles in accordance with the provisions of section 63; and  
 50 (b) the Registrar shall satisfy himself that simultaneously with such registration, the registration of the founding statement of the close corporation concerned is cancelled in accordance with the provisions of the Close Corporations Act, 1984.

55 (4) (a) An application referred to in subsection (2) shall be accompanied by—  
 (i) a statement of the paid-up share capital (if any) for an amount not greater than the excess of the fair value of the assets to be acquired by the company, over the liabilities to be assumed by the company by reason of

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the conversion: Provided that the company may treat any portion of such excess not reflected as paid-up share capital, as distributable reserves; and

5 (ii) a statement by the close corporation's accounting officer, based on the performance of his duties under the Close Corporations Act, 1984, that he is not aware of any contravention of the said Act by the close corporation or its members or of any circumstances which may render the members of

10 the close corporation together with the close corporation jointly and severally liable for the corporation's debts.

15 (b) The shares or the nominal value of the shares to be held in the company by the members individually need not necessarily be in proportion to the members' interests as stated in the founding statement of the close corporation concerned.

20 (5) The Registrar shall give notice in the *Gazette* of the conversion of a close corporation into a company.

Effect of conversion of close corporation into company.

25 29D. (1) (a) On the registration of a company converted from a close corporation, all the assets, liabilities, rights and obligations of the corporation shall vest in the company.

(b) Any legal proceedings instituted before the registration by or against the corporation, may be continued by or against the company, and

30 any other thing done by or in respect of the corporation, shall be deemed to have been done by or in respect of the company.

(2) Upon the production by a company which has

35 been converted from a close corporation of a certificate of incorporation referred to in section 64 to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with the requirements of such registrar or officer as to the form of application (if any) and the

40 payment of any required fee, such registrar or other officer shall make in his register all such alterations as are necessary by reason of the change effected by the conversion of the close corporation into

45 a company: Provided that no transfer or stamp duty shall be payable in respect of such alterations in a register."

(2) The provisions of subsection (1) of this section shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

50 4. Section 49 of the principal Act is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

"(7) If a company is being wound up by the Court or

55 voluntarily, or is placed under judicial management, the Registrar shall, on receipt of a copy of the relevant order of Court or on registration of a special resolution for the voluntary winding-up of the company in terms of section 349, alter the register to include in and subjoin to the name of the company concerned the statement 'In Liquidation', 'In Voluntary Liquidation' or

60 'Under Judicial Management', as the case may be, and if the winding-up order or judicial management order is discharged, or the winding-up ceases, the Registrar

Amendment of section 49 of Act 61 of 1973, as amended by section 4 of Act 84 of 1980.

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shall likewise on receipt of a copy of the relevant order of Court, alter the register to omit the said statement from the name of the company concerned.”; and  
 (b) by the deletion of subsection (9).

5 5. Section 85 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 85 of Act 61 of 1973.

“(2) The Court shall, unless it otherwise decides, or only to the extent that it may decide, having regard to any special circumstances, settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their claims, and may order the publication of a notice fixing a period or periods within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.”

6. Section 94 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 94 of Act 61 of 1973.

“(1) A certificate signed—  
 20 (a) by two directors of a company; or [by]  
 (b) by one director and one officer duly authorized thereto by the directors; or  
 (c) in the case of a company having only one director and no officer, by that director,  
 25 and specifying any shares or stock of that company held by any member, shall be *prima facie* evidence of the title of the member to such shares or stock.”

7. Section 170 of the principal Act is hereby amended— Amendment of section 170 of Act 61 of 1973, as amended by section 6 of Act 84 of 1980.

30 (a) by the addition to paragraph (b) of subsection (2) of the following proviso:

“Provided that if less than twenty-one days' notice of an intended change in the situation of the registered office or postal address is given, the Registrar may determine the date on which the change will take effect.”;  
 35 and

(b) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

40 “(d) A change in the situation of the registered office or of the postal address of a company shall for the purposes of this Act not take effect unless [notice of such change has been given in terms of paragraph (b) and] the Registrar has recorded the particulars thereof.”

8. Section 176 of the principal Act is hereby amended— Amendment of section 176 of Act 61 of 1973.

45 (a) by the substitution for subsection (1) of the following subsection:

50 “(1) If a company, having made default in complying with any provision of this Act which requires it to lodge with, deliver or send to the Registrar any return, annual financial statements or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after [the service of a notice on the company] the Registrar, on his own initiative or on application by any member or creditor of the company, has sent to the company a reminder by certified  
 55 post to its registered office requiring it to do so, the [Court] Registrar may [on an application by any member or creditor of the company or by the Registrar, make an order directing] direct the company [and] or any officer thereof, by written notice served on the

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5 company or officer or sent to the company or officer by certified post to the registered office of the company, to make good the default within [such time as may be specified in the order] thirty days of the date upon which the notice was served or sent.”; and

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

10 “(2) If the company or the officer thereof on whom a notice referred to in subsection (1) was served or to whom it was sent, within the said period of 30 days fails to—

(a) make good the default; or

(b) satisfy the Registrar that, on good cause shown, a penalty ought not to be imposed,

15 the Registrar may, by further written notice served on the company or officer concerned or sent to the company or officer by registered post to the registered office of the company, impose upon that company or officer a penalty not exceeding two hundred rand.”; and

20 (c) by the insertion of the following subsections after subsection (2):

25 “(2A) When the Registrar has served a notice under subsection (2) on a company or an officer thereof or has sent such notice to it or him, he may, not less than twenty-one days after the date upon which that notice was served or sent, forward a certified copy thereof to the clerk of the magistrate’s court in whose area of jurisdiction the registered office of the company is situated, who shall record it, and thereupon such notice shall have the effect of a civil judgment of that magistrate’s court against the company or officer concerned.

30 (2B) On application by the company on which or the officer thereof on whom a notice referred to in subsection (1) was served or to whom it was sent, the magistrate’s court in question may, notwithstanding the provisions of section 12, and before the clerk of that court has recorded the notice in terms of subsection (2A), reduce the amount of the penalty, or set aside the imposition of the penalty, and the court may, where the clerk has already recorded the notice, exempt the company or officer wholly, or to the extent determined by the court, from the effect of the notice.

35 (2C) If a penalty imposed by the Registrar under this section is reduced or set aside in terms of subsection (2B), or the company or officer is so wholly or in part exempted from the effect of the notice, by the magistrate’s court in question, no costs shall be awarded against the Registrar unless it be proved that he acted in bad faith or without reasonable care or diligence.

50 9. Section 179 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

55 “(3) The Registrar may, on application to him before, or, for the purposes of subsection (6), also after, the expiration of the period within which an annual general meeting of a company must be held and on good cause shown, and on payment of the prescribed fee, extend the period within which an annual general meeting of the company concerned must be held by a period not exceeding [six] three months, but, notwithstanding any such extension, the date for the

Amendment of section 179 of Act 61 of 1973, as amended by section 16 of Act 64 of 1977 and section 11 of Act 29 of 1982.

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5 holding of the first annual general meeting following the meeting in respect of which the extension is granted, shall be determined as if such meeting had been held on the last day on which it should have been held if the extension had not been granted.”.

10 10. Section 216 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:  
 “In respect of any of the matters referred to in section 211 (1) the return referred to in subsection (2) shall contain a statement, signed by a director, a secretary who is a body corporate or an officer of the company, that—”.

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.

15 11. Section 346 of the principal Act is hereby amended—  
 (a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:  
 “(c) by one or more of its members, or any person referred to in section 103 (3), irrespective of whether his name has been entered in the register of members or not;”;  
 20 (b) by the deletion of the word “or” at the end of paragraph (d) of subsection (1); and  
 (c) by the insertion of the word “or” at the end of paragraph (e) of subsection (1), and the addition of the following paragraph to subsection (1):  
 25 “(f) in the case of the discharge of a provisional judicial management order under section 428 (3) or 432 (2), by the provisional judicial manager of the company.”.

Amendment of section 346 of Act 61 of 1973.

30 12. Section 356 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
 “Any company which has passed a special resolution under section 349 for its voluntary winding-up, shall within [fourteen] 28 days after the registration of that resolution in terms of section 200 —”.

Amendment of section 356 of Act 61 of 1973, as amended by section 22 of Act 83 of 1981.

40 13. Section 378 of the principal Act is hereby amended—  
 (a) by the substitution for subsection (1) of the following subsection:  
 “(1) A liquidator shall not be absent from the Republic for a period exceeding 60 days unless—  
 (a) the Master has before his departure from the Republic granted him permission in writing to be absent; and  
 45 (b) he complies with such conditions as the Master may think fit to impose.”; and  
 (b) by the substitution for subsection (3) of the following subsection:  
 “(3) Every liquidator who is permitted to absent himself from the Republic for a period exceeding 60 days or who is relieved of his office by the Master or so resigns therefrom, shall give notice thereof in the Gazette.”.

Amendment of section 378 of Act 61 of 1973.

50 14. This Act shall be called the Companies Amendment Act, 1984. Short title.