



# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1193.

9 June 1989

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

No. 78 of 1989: Companies Amendment Act, 1989.

No. 1193.

9 Junie 1989

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

No. 78 van 1989: Maatskappywysigingswet, 1989.

Act No. 78, 1989

COMPANIES AMENDMENT ACT, 1989

**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 provide for certain fees to be prescribed by regulation; to provide for the establishment of a Securities Regulation Panel; to prescribe the functions and powers of the said panel; to determine the administration and financing of the panel; to prohibit certain dealings in securities; to place an obligation on certain persons to furnish information; and to further regulate and prescribe penalties for offences; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)*  
*(Assented to 1 June 1989.)*

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

**Amendment of "Arrangement of Act" of Act 61 of 1973**

1. The "Arrangement of Act" of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the description of the contents of Chapter XV of the following words: 5
- "Chapter XVA Regulation of Securities 440A-440J".

**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 and section 4 of Act 31 of 1986**

2. Section 63 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 10
- "(2) **[The fee for the registration of a company shall be a basic amount of one hundred and seventy rand and]** In addition to the prescribed fee referred to in subsection (1) an additional fee shall be payable calculated at the rate of—".

**Amendment of section 178 of Act 61 of 1973, as amended by section 15 of Act 64 of 1977, section 7 of Act 84 of 1980, section 10 of Act 29 of 1982 and section 9 of Act 31 of 1986**

3. Section 178 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15
- "(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 20

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the payment to the Registrar of [an] the prescribed additional fee [in the amount of forty rand] in respect of each such failure.”.

#### Insertion of Chapter XVA and sections 440A to 440J in Act 61 of 1973

#### 4. The principal Act is hereby amended—

(a) by the insertion after section 440 of the following superscriptions:

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#### “CHAPTER XVA

#### REGULATION OF SECURITIES”;

and

(b) by the insertion after the said superscriptions of the following sections:

#### “Definitions

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**440A.** (1) In this Chapter, unless the context otherwise indicates—

‘acquisition’, in relation to shares or other securities of any company, means the acquisition of shares or other securities in such company by any means whatsoever, including purchase or subscription;

‘acting in concert’ means, subject to subsection (2) (a), acting in pursuance of an agreement, arrangement or understanding (whether formal or informal) between two or more persons pursuant to which they or any of them co-operate to obtain control of a company by any means whatsoever, including the acquisition by any of them of shares or other securities in such company, or the redemption of shares in, or the reduction of the share capital of, any such company;

‘affected transaction’ means any transaction or scheme, whatever form it may take, pursuant to which, taking into account any shares held before such transaction or scheme, control of any company (excluding a close corporation) vests in—

(a) any person; or

(b) two or more persons acting in concert,

in whom control did not vest prior to such transaction or scheme;

‘chairman’ means the chairman of the panel designated in terms of section 440B (4) or (5);

‘company’ includes an external company and any other body corporate;

‘control’ means, subject to subsection (2) (b), a holding or aggregate holdings of shares or other securities in a company entitling the holder thereof to exercise, or cause to be exercised, the specified percentage or more of the voting rights at meetings of that company, irrespective of whether such holding or holdings confer *de facto* control;

‘executive director’ means the executive director of the panel appointed in terms of section 440B (11);

‘offeree company’ means any company the control of which changes or is proposed to be changed or is acquired pursuant to any affected transaction or proposed affected transaction;

‘offeror’ means any person or two or more persons acting in concert who enter into or propose any affected transaction;

‘panel’ means the Securities Regulation Panel established by section 440B;

‘rules’ means the rules made from time to time by the panel and approved by the Minister and published by him by notice in the *Gazette*;

‘security’ means any shares in the capital of a company and includes stock and debentures convertible into shares and any rights or interests in a company or in or to any such shares, stock or debentures, and includes any ‘financial instrument’ as defined in the Financial Markets Control Act, 1989;

‘specified percentage’ means the percentage, or different percentages in respect of different types of companies, prescribed in the rules for the purposes of determining control as defined in this section:

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Provided that the percentage shall in no case fall below 20 per cent of the issued securities of any class.

(2) For the purposes of subsection (1)—

- (a) the following persons shall be deemed to be acting in concert with one another unless the contrary is established, namely—
    - (i) a company, its holding company, subsidiaries, companies which are subsidiaries of its holding company and their subsidiaries, and companies of which such companies are associated companies, and for the purposes hereof ownership or control by a company of 20 per cent or more of the equity share capital of another company shall constitute the latter company as the former company's associate;
    - (ii) a company with—
      - (aa) any of its directors;
      - (bb) any company controlled by one or more of its directors; or
      - (cc) any trust of which any one or more of its directors is a beneficiary;
    - (iii) a company with any of its pension, provident or benefit funds; and
  - (b) a security which is convertible into a voting security shall, even before its conversion, be deemed to confer those voting rights which it would confer after conversion.
- (3) When the panel makes rules, it shall, not less than one month before submitting the rules to the Minister for his approval, publish the text of the proposed rules in the *Gazette*, together with a statement of its intention to so submit such rules.

#### Establishment of panel

**440B.** (1) There is hereby established a body corporate to be known as the Securities Regulation Panel.

(2) The members of the panel shall be appointed by the Minister and shall consist of—

- (a) the chairman;
  - (b) the Registrar;
  - (c) the chairman of the Competition Board established by section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979);
  - (d) such persons as are nominated by the bodies, associations and institutions referred to in subsection (3); and
  - (e) any person co-opted in terms of subsection (6).
- (3) Each of the following bodies, associations and institutions shall be entitled to nominate one person, and in the case of the Johannesburg Stock Exchange three persons, to serve on the panel, namely—
- (a) the Johannesburg Stock Exchange;
  - (b) the South African Federated Chamber of Industries;
  - (c) the Association of Chambers of Commerce and Industry of South Africa;
  - (d) the Afrikaanse Handelsinstituut;
  - (e) the Clearing Bankers Association of South Africa;
  - (f) the Association of General Banks;
  - (g) the Merchant Bankers' Association;
  - (h) the Shareholders' Association of South Africa;
  - (i) the Pensions Institute (of Southern Africa);
  - (j) the Chamber of Mines of South Africa;
  - (k) the Life Offices' Association of South Africa;
  - (l) the South African Institute of Chartered Accountants; and



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(m) the Association of Law Societies of the Republic of South Africa.

(4) The chairman, who need not be one of the nominated members, shall be designated by the members of the panel nominated in terms of subsection (3).

(5) The panel may designate a member of the panel as acting chairman to exercise and perform the powers and duties of the chairman whenever the chairman is unable to do so or while the office of chairman is vacant. 5

(6) The panel shall be entitled, from time to time, to co-opt not more than four persons as additional members.

(7) Every member of the panel shall hold office for a period of five years: Provided that any body, association or institution referred to in subsection (3) may apply to the Minister to have the person nominated by it and appointed by the Minister, replaced by any other nominee before the expiry of his term of office. 10

(8) If, during any such five-year period, a member of the panel nominated pursuant to the provisions of subsection (3), dies, becomes incapacitated, resigns, or becomes disqualified from being appointed or acting as a director of a company in terms of section 218, or ceases for any other reason to be a member of the panel, the vacancy arising in this manner may be filled for the unexpired period of such member's term of office by a person nominated by the body, association or institution of which the member who ceases to be on the panel was a nominee. 15 20

(9) A member of the panel shall, on the expiry of his term of office, be eligible for reappointment.

(10) (a) The meetings of the panel shall be held at such times and places as the chairman may determine. 25

(b) The person presiding at a meeting of the panel shall determine the procedure at such meeting.

(c) The decision of a majority of the members of the panel present at any meeting thereof at which there is a quorum (as determined in accordance with the rules of the panel) shall constitute the decision of the panel, and in the case of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote. 30

(d) No proceedings of the panel shall be invalid by reason only of the fact that a vacancy existed on the panel or that any member was not present during such proceedings or any part thereof. 35

(11) The panel shall appoint an executive director to hold office for such period and on such conditions as the panel may determine.

(12) There shall be an executive committee of the panel, consisting of the executive director and so many members of the panel, of whom one may be the chairman of the panel, as the panel may determine. 40

(13) The panel may appoint such officers and employees as are required for the proper performance of the panel's functions.

(14) The panel may delegate any of its powers to the executive committee or to any subcommittee of the panel which may be established by the panel. 45

### Functions of panel

440C. (1) The functions of the panel shall be to—

- (a) regulate, in such manner as it may deem necessary or appropriate—
  - (i) all transactions or schemes which constitute affected transactions; 50
  - (ii) all proposals which on successful completion or implementation would become affected transactions; and
- (b) supervise dealings in securities in accordance with the provisions of this Chapter. 55

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(2) It shall not be the function of the panel to judge the commercial advantages and disadvantages of affected transactions.

(3) Without derogating from the provisions of subsection (1), the functions of the panel shall include the making of rules in respect of matters falling within the provisions of this Chapter, including rules relating to the following aspects of affected transactions, namely—

- (i) the duties of the offeror; and
- (ii) the duties of the offeree company.

(4) The rules shall make provision for—

- (a) the administration and financing of the panel;
- (b) the remuneration and allowances of the executive director and the conditions upon which he is appointed;
- (c) the remuneration and allowances of members and officers and employees of the panel, and the conditions upon which such members, officers and employees are appointed;
- (d) appeals from decisions of—
  - (i) the executive director to the executive committee referred to in subsection (12) of section 440B;
  - (ii) the said executive committee to the panel; and
  - (iii) a subcommittee of the panel to the panel.

(5) Rules made or amended by the panel and approved by the Minister shall be published by notice in the *Gazette*.

(6) The panel or its executive committee or its executive director may—

- (a) consult with any person at the request of any interested party in a proposed affected transaction with a view to interpreting any aspect relating to any of the rules which have been made by the panel and which apply to such proposed affected transaction;
- (b) issue information on current policy in regard to proposed affected transactions to serve as guidelines for the benefit of persons concerned in proposed affected transactions;
- (c) receive and deal with representations relating to any matter with which it may deal in terms of this Chapter; and
- (d) perform any other function assigned to it by this Chapter.

(7) Nothing in this section contained shall be construed as obliging any person to notify the panel of, or to consult the panel in connection with, a proposed affected transaction.

#### Investigations by panel

**440D.** (1) For the purposes of performing its functions in terms of this Chapter, the panel or any committee thereof may—

- (a) summon any person who is believed to be able to furnish any information on the subject of an investigation or to have in his possession or under his control any book, document or other object which has any bearing upon that subject, to appear before the panel or committee at a time and place specified in the summons, to be interrogated or to produce such book, document or other object; and
- (b) interrogate any such person under oath or affirmation administered by the chairman or a person appointed by him, and examine or retain for examination any such book, document or other object: Provided that any person from whom any book, document or other object has been taken and retained under this subsection shall, so long as such book, document or object is in the possession of the panel or a committee thereof, at his request be allowed, at his own expense and under the supervision of the investigating officer, to make copies thereof or to take extracts therefrom at any reasonable time.

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(2) A summons for the attendance of any person before the panel or a committee thereof or for the production to the panel or a committee thereof of any book, document or other object shall be in the form prescribed by the panel, shall be signed by the chairman of the panel or committee and shall be served in the manner so prescribed. 5

(3) Any person who has been summoned to attend before, or to produce any book, document or other object to the panel or a committee thereof and who, without sufficient cause (the onus of proof of which shall rest upon him), fails to attend at the time and place specified in the summons or to remain in attendance until he is excused by the chairman thereof from further attendance or, having attended, refuses to be sworn or to make an affirmation after he has been asked by the chairman (or a person appointed by him) to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or other object in his possession or under his control which he has been summoned to produce, shall be guilty of an offence. 10 15

(4) Any person who, after having been sworn or having made affirmation, gives false evidence before the panel or a committee thereof on any matter, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence. 20

(5) The law relating to privilege as applicable to a witness giving evidence before, or summoned to produce a book, document or other object to, a provincial division of the Supreme Court of South Africa shall apply in relation to any person summoned under this section. 25

(6) Nothing contained in this Chapter shall be deemed to compel the production by a legal adviser of a letter, report or other document containing a privileged communication made by or to him as legal adviser, or to authorize the seizure or retention thereof. 30

#### Financing of panel

**440E.** (1) All fees payable under the rules contemplated in section 440C (4) (a) shall be paid to the panel and shall constitute its funds, and the panel shall utilize its funds for defraying expenses incurred in connection with the performance of its functions. 35

(2) The panel may invest any unexpended portion of its moneys and may establish reserve funds and pay into them such amounts as it may deem necessary or expedient. 40

#### Prohibition of use of fraud, deceit or artifice in dealings in securities

**440F.** (1) Any person who, directly or indirectly, in connection with the purchase or sale of any security— 40

- (a) employs any device, scheme or artifice to defraud any person;
  - (b) makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or 45
  - (c) engages in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,
- shall be guilty of an offence.

(2) Any action specified in paragraph (a), (b) or (c) of subsection (1) includes— 50

- (a) any director, past director or officer of a company or any person connected with a company having knowledge of any information likely, when published, to affect the price of securities of that company, dealing, except for the proper performance of the functions attaching to his position with that company, in such securities before the expiration of a period of not less than 24 hours after such 55

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information has been publicly announced for the first time on a stock exchange or in a newspaper or through the medium of the radio or television or by any other means;

- (b) any other person, having directly or indirectly received from any person mentioned in paragraph (a) such information, so dealing, on the basis of such information, in such securities at a time when the said person mentioned in paragraph (a) may in terms of that subsection not so deal in such securities.

(3) Any person who contravenes subsection (1), or subsection (2) as applied by subsection (1), shall, subject to any defence that may be available to him, be liable to any person for any loss or damage suffered by him as a result of such contravention.

(4) The provisions of this section shall not apply to dealings in members' interests in close corporations.

**Obligation to furnish certain information to panel**

**440G.** (1) Every person who is or becomes directly or indirectly the beneficial owner of more than 10 per cent of any class of any equity security (other than a security exempted in terms of the rules) which is dealt with on a stock exchange, or who is a director or an officer of the issuer of such security, shall lodge, at the time of the listing of such security on a stock exchange, or within 10 days after he becomes such beneficial owner, director or officer, a statement with the panel (and, if such security is listed on a stock exchange, also with the stock exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter, if there has been any change in such ownership during such month, shall file with the panel (and, if such security is listed on a stock exchange, also with the stock exchange) a statement indicating his ownership at the close of the calendar month and such change in his ownership as has occurred during the calendar month.

(2) Any person who fails to comply with any provision of this section shall be guilty of an offence.

**Operation of Chapter in relation to other laws**

**440H.** The provisions of this Chapter shall be in addition to and not in substitution for any other law which is not in conflict with or inconsistent with this Chapter.

**Preservation of secrecy**

**440I.** (1) No person shall, except for the purposes of carrying out his functions or performing his duties in terms of this Act or for the purpose of legal proceedings under this Act or when required to do so by any court or under any law, disclose to any other person any information acquired by him in the carrying out of his functions or the performance of his duties in terms of this Chapter and relating to the business or affairs of any other person.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

**Limitation of liability**

**440J.** No person shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Chapter.



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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, section 30 of Act 83 of 1981, section 11 of Act 29 of 1985 and section 15 of Act 31 of 1986

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

“(1) Any company, director, officer or person convicted of any offence referred to in any of the undermentioned sections shall be liable to be sentenced, in the case of an offence referred to—

- (a) in section 440F (1) or (2), to a fine not exceeding R500 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; 10
- [(a)](b) in section 132, to a fine not exceeding **[ten thousand rand]** R40 000 or imprisonment for a period not exceeding **[ten]** 10 years or to both such fine and such imprisonment; 15
- (c) in section 440G (2) or 440I (2), to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- [(b)](d) in section 37, 143, 145, 145A, 146, 146A, 147 (2) (a), 148, 149, 153 (4), 156, 162, 169, 218, 219, 230, 231, 232, 233, 255, 256 (5), 260, 284, 320 (2), **[or]** 424 or 440D (3) or (4), to a fine not exceeding **[two thousand rand]** R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; 20
- [(c)](e) in section 15A, 38, 141, 153 (3), 165, 222, 224, 226, 234, 237, 238, 249 (1), 250, 251 or 275, to a fine not exceeding **[one thousand rand]** R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment; 25
- [(d)](f) 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]** R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; 30
- [(e)](g) in section 242 or 287, to a fine not exceeding **[one hundred rand]** R1 000 or to imprisonment not exceeding a period of three months or to both such fine and such imprisonment;
- [(f)](h) in section 168, 185, 256 (6), 312 (4), 320 (1) or 331 (1), to a fine not exceeding **[one thousand rand]** R4 000; 35
- [(g)](i) in section 81, 93, 164, 166, 170, 207, 211 (7), 239, 291 or 295, to a fine not exceeding **[five hundred rand]** R2 000;
- [(h)](j) in section 112, 113, 131 or 179, to a fine not exceeding **[two hundred rand]** R800; 40
- [(i)](k) in section 49, 50, 67, 68, 147 (2) (b), 181, 186, 189, 192, 206, 313 or 333 (2), to a fine not exceeding **[one hundred rand]** R400;
- [(j)](l) in section 204 or 245, to a fine not exceeding **[one hundred rand]** R400 for **[each]** every meeting in respect of which the contravention has taken place;
- [(k)](m) in section 171, 200 (5) or 311, to a fine not exceeding **[fifty rand]** R200; 45
- [(l)](n) in section 215, to a fine not exceeding **[five hundred rand]** R2 000 and an additional fine not exceeding **[ten rand]** R40 for every day during which the contravention continues;
- [(m)](o) in section 172, to a fine not exceeding **[one hundred rand]** R400 for every day during which the contravention continues; 50
- [(n)](p) in section 46, 51, 58, 80, 96, 98, 102, 139, 200 (6), 213, 253, 269, 271, 309, 356 or 357, to a fine not exceeding **[ten rand]** R40 for **[each]** every day during which the contravention continues;
- [(o)](q) in section 211 (6), 216 (5), 252 or 276 (5), to a fine of **[five rand]** R20 for **[each]** every day during which the contravention continues.”. 55

Repeal of sections 224, 229 to 233 and 314 to 321 of Act 61 of 1973

6. Sections 224, 229 to 233 and 314 to 321 of the principal Act are hereby repealed.

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**Short title and commencement**

7. (1) This Act shall be called the Companies Amendment Act, 1989, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act. 5