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OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 2192.

21 October 1981.

No. 2192.

21 Oktober 1981.

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

83 of 1981: Companies Amendment Act, 1981.

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

No. 83 van 1981: Maatskappywysigingswet, 1981.

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

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 substitute an obsolete appellation; to extend the powers and duties of the Registrar of Companies; to delete a reference to the Senate; to empower the Registrar under certain circumstances to incorporate a branch of a foreign company or association not for gain as a company limited by guarantee; to make provision for the reservation, registration, use, change and deregistration of a shortened form of the translated name of a company; further to circumscribe the formal requirements for debentures and debenture certificates; further to regulate the evidential value of debentures; further to circumscribe the particulars to be shown in a company's register of debenture-holders; to oblige any person giving written consent to his appointment as auditor of a company to make use of a prescribed form for the purpose; to oblige any auditor of a company to give notice on a prescribed form to the company concerned of a change in the particulars which are to be entered in respect of him in the company's register of directors and officers; to make provision that a company shall lodge returns with the Registrar with regard to the entry in its register of directors and officers of particulars pertaining to its auditor; to alter the requirements for the voluntary winding-up of a company by members and for such a winding-up by creditors; to redetermine the time at which the voluntary winding-up of a company shall commence; to adjust accordingly the time at which certain consequences of the commencement of such a winding-up shall set in; to make further provision as to the transmission or lodging of certain documents in connection with the voluntary winding-up of a company to or with certain officers or registrars; and to effect certain textual improvements; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 1 October 1981.)

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

Amendment of
section 1 of
Act 61 of 1973,
as amended by

1. Section 1 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) in the definition of "Minister" for the 5

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

section 1 of Act 76 of 1974, section 1 of Act 64 of 1977, section 26 of Proclamation 234 of 1978 and section 1 of Act 84 of 1980.

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

Amendment of section 11 of Act 61 of 1973.

Amendment of section 15A of Act 61 of 1973.

Insertion of section 21A in Act 61 of 1973.

expression "Minister of Economic Affairs" of the expression "Minister of Industries, Commerce and Tourism".

2. Section 7 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 5

"(1) The Minister shall, subject to the laws governing the public service, appoint a Registrar of Companies, who shall—

(a) exercise the powers and perform the duties assigned to the Registrar by this Act; **[and shall]** 10

(b) **[under]** subject to the directions of the Minister, be responsible for the administration of the Companies Registration Office; and

(c) if authorized thereto by the Minister in writing and subject to such conditions as the Minister may determine, exercise any power and perform any duty assigned to the Minister by sections 15A, 258 (1), 259, 261, 263 (1) (b), 272 and 329 (6)."; and 15

(b) by the substitution for subsection (2) of the following subsection: 20

"(2) The person holding office as Registrar of Companies under **[the repealed Act]** this Act before the amendment thereof by the Companies Amendment Act, 1981, at the commencement of **[this Act]** section 2 of the last-mentioned Act, shall be deemed to 25 have been appointed as the Registrar of Companies under this Act as so amended."

3. Section 11 of the principal Act is hereby amended by the deletion of the words "in the Senate and".

4. Section 15A of the principal Act is hereby amended— 30

(a) by the deletion in the words preceding paragraph (a) of subsection (1) of the words "or, if authorized thereto by the Minister, the Registrar";

(b) by the deletion in paragraph (b) of subsection (1) of the words "or the Registrar"; and 35

(c) by the deletion in subsection (3) of the words "or the Registrar, as the case may be".

5. The following section is hereby inserted in the principal Act after section 21 and before the heading to section 22:

21A. (1) Notwithstanding anything to the contrary 40
in this Act contained, a branch, established in the Republic, of—

(a) a company or other association of persons, incorporated outside the Republic; or

(b) an association of persons which is not incorporated and has its head office in a foreign country, 45

may be incorporated under section 21 if—

(i) the main object in the Republic of that branch corresponds with the main object of the company or association concerned; 50

(ii) the said branch complies with the requirements of section 21; and

(iii) the whole of the business and all the property, rights and obligations in the Republic of the company or association concerned will, on incorporation under section 21 of the said 55

"Incorporation of certain branches of foreign companies and associations not for gain.

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

branch, be transferred in due form to, vest in and be binding upon the company so incorporated.

(2) Notwithstanding anything to the contrary contained in any law—

(a) no transfer or stamp duty shall be payable in respect of the transfer of property contemplated in subsection (1) (iii); and

(b) any licence, exemption, permit, certificate or authority held in terms of any law by the company or association concerned in respect of its business or property in the Republic, shall with effect from the date of incorporation of the branch concerned as a company by virtue of the provisions of subsection (1), for the purposes of any such law be deemed to be held by the company so incorporated in respect of that business or property.

(3) The provisions of this Act with regard to external companies shall not apply in the case of an external company a branch of which has been incorporated as a company by virtue of subsection (1)."

Amendment of section 42 of Act 61 of 1973.

6. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Registrar may, on written application on the prescribed form and on payment of the prescribed fee, reserve a name (approved by him) or [a] literal translation into the other official language of the Republic of a name of a company or a shortened form of the name or name so translated of a company, pending the registration of a memorandum or a change of name by [a] that company or the registration of another form of the name or translated name."

Amendment of section 43 of Act 61 of 1973, as amended by section 2 of Act 84 of 1980.

7. Section 43 of the principal Act is hereby amended—

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

"(1) The memorandum of any company to be incorporated may contain a literal translation into the other official language of the Republic of the company's name and one shortened form of [the name of the company] that name or the name so translated (hereinafter in this Chapter referred to as the translated name), and any company may, on the prescribed form and on payment of the prescribed fee, apply to the Registrar for the registration of such [translation] translated name and shortened form of its name or translated name, if in each case the [translation] translated name and shortened form of the name or translated name concerned is not in the opinion of the Registrar undesirable."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) The Registrar shall register such [literal translation] translated name or shortened form of the name or translated name of the company concerned or such defensive name and, where registration is effected pursuant to an application under subsection (1) or (2), the Registrar shall give notice thereof in the *Gazette*."

Amendment of section 44 of Act 61 of 1973, as amended by section 3 of Act 111 of 1976.

8. Section 44 of the principal Act is hereby amended—

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

"(b) Where a company changes its name, it shall at the same time, if the [translation] translated name or

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

shortened form of the name or translated name of the company has been registered under section 43 [(1) (3)], and such [translation] translated name or shortened form is no longer applicable to the name of the company as changed, apply on the prescribed form and on payment of the prescribed fee—

- (i) to change such [translation] translated name or shortened form of the name or translated name to a new [translation] translated name or shortened form of the name or translated name approved by the Registrar; or
- (ii) to deregister such former [translation] translated name or shortened form of the name or translated name of the company.”; and
- (b) by the substitution for subsection (2) of the following subsection:

“(2) Where the name, [translation] translated name or shortened form of the name or translated name of a company is changed, the Registrar shall enter the new name, [translation] translated name or shortened form of the name or translated name in the register in place of the former name, [translation] translated name or shortened form of the name or translated name, issue a certificate of incorporation altered to meet the circumstances of the case or a certificate that the new name, [translation] translated name or shortened form of the name or translated name, has been entered in the register in place of the former name, [translation] translated name or shortened form of the name or translated name and give notice of the change of name, [translation] translated name or shortened form of the name or translated name in the *Gazette*.”

Substitution of section 45 of Act 61 of 1973, as amended by section 3 of Act 84 of 1980.

9. The following section is hereby substituted for section 45 of the principal Act:

“Order to change name. 45. (1) If within a period of one year after the registration of any memorandum, [translation] translated name or shortened form of a name or translated name of a company or after the registration or the renewal of the registration of a name referred to in section 43 (2) or after the date of an amended certificate of incorporation or a certificate of change of name, [translation] translated name or shortened form of a name or translated name referred to in section 44 (2), it appears that the name contained in the memorandum or the [translation] translated name or shortened form of such name or translated name or the name referred to in section 43 (2) or the [name or the translation or shortened form of a name to which a company has changed its name or the translation or shortened form thereof] changed name or translated name or the shortened form of that changed name or translated name referred to in the last-mentioned certificate is in the opinion of the Registrar undesirable, he shall within such period order the company concerned or the person referred to in section 43 (2) to change the name, [translation] translated name

or shortened form of the name or translated name concerned.

(2) If within a period of one year after the registration of any memorandum, **[translation]** translated name or shortened form of a name or translated name of a company or a name referred to in section 43 (2) or after the date of an amended certificate of incorporation or a certificate of change of name, **[translation]** translated name or shortened form of a name or translated name referred to in section 44 (2), any person lodges an objection in writing with the Registrar against the name contained in the memorandum or the **[translation]** translated name or shortened form of such name or translated name or the name referred to in section 43 (2) or the **[name or the translation or shortened form of a name to which a company has changed its name or the translation or shortened form thereof]** changed name or translated name or the shortened form of that changed name or translated name referred to in the last-mentioned certificate, on the grounds that such name, **[translation]** translated name or shortened form of a name or translated name is calculated to cause damage to the objector, the Registrar may, if he is satisfied that the objection is sound, order the company concerned or the person referred to in section 43 (2) to change the said name, **[translation]** translated name or shortened form of a name or translated name.

(3) If, at any time, the Registrar is of the opinion that the name of a company, or the **[translation]** translated name or shortened form of a name or translated name of a company, gives so misleading an indication of the nature of its activities as to be calculated to deceive the public, he may order the company concerned to change its name or **[the translation]** translated name or the shortened form of its name or translated name, as the case may be."

Amendment of section 46 of Act 61 of 1973.

10. Section 46 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) An order under section 45 for the change of a name or translated name of a company **[or a translation]** or a shortened form of a name or translated name of a company or a name referred to in section 43 (2) shall be issued by the Registrar in writing and sent by registered post to the company at its registered office, or to the person referred to in section 43 (2) at his last-known address, and shall require such company or such person to comply with the order within two months from the date of its issue."

Amendment of section 47 of Act 61 of 1973.

11. Section 47 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Registrar may for the purposes of any decision as to any name, **[translation]** translated name or shortened form of a name or translated name referred to in section 41, 42, 43, 44 or 45 call for such evidence on affidavit or otherwise, as he may deem fit."

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

Amendment of
section 50 of
Act 61 of 1973.

12. Section 50 of the principal Act is hereby amended—

(a) by the substitution for paragraph (ii) of the proviso to subsection (1) of the following paragraph:

“(ii) no company shall use the shortened form of its name or translated name unless it is used in 5 conjunction with its name or translated name.”; and

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

“(2) If a **[translation of the]** translated name of a 10 company has been registered, the use of **[such registered]** that translated name; and if the name of a company consists of or contains words in one of the official languages of the Republic, the use of a name consisting of or containing a literal translation of such 15 words into the other official language, shall be deemed to be sufficient compliance with the requirements of this section.”.

Amendment of
section 126 of
Act 61 of 1973.

13. Section 126 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following 20 subsection:

“(2) Any debenture or debenture certificate shall be signed by one director of the company and an officer of the company duly authorized thereto by the 25 directors and shall, in the case where the debenture concerned is not a bearer debenture and in the case of a debenture certificate, specify the debentures, other than bearer debentures, of that company held by the person [therein] named therein.”; and

(b) by the substitution for subsection (4) of the following 30 subsection:

“(4) Any debenture or debenture certificate issued in terms of this section shall be *prima facie* evidence of the title thereto of the person named therein [to such debenture or debenture certificate] or, in the case of a 35 bearer debenture, of the bearer thereof.”.

Substitution of
section 128 of
Act 61 of 1973.

14. The following section is hereby substituted for section 128 of the principal Act:

“Register of
debenture-
holders.

128. Subject to the provisions of section 129, every 40 company shall keep at its registered office a register of debenture-holders showing the number of debentures issued and outstanding and whether or not they are payable to bearer and specifying the names and addresses of the holders, other than bearers, 45 thereof.”.

Amendment of
section 216 of
Act 61 of 1973,
as substituted by
section 15 of
Act 59 of 1978.

15. Section 216 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) and the words following thereon of the following paragraph and words:

“(b) in the case of a change in such particulars, 50 **[including]** but excluding any change contemplated in section 215 (2) **[but excluding]** and a change by way of the vacation of his office by the person concerned, within fourteen days after the date of the occurrence of the change, 55 and such particulars or any change therein shall upon receipt thereof, and if any director or officer **[or auditor]** has vacated his office, a statement that such

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

- vacation of office has occurred shall forthwith, be entered in such register by the company.”; and
- (b) by the substitution in subsection (2) for the words “director, officer or auditor” of the words “director or officer”.

Substitution of section 276 of Act 61 of 1973.

16. The following section is hereby substituted for section 276 of the principal Act:

“Notice by, and entries in register of directors and officers and lodging of returns pertaining to, auditors.

276. (1) The written consent contemplated in section 269 (1) shall be given by the person concerned on the prescribed form.

(2) Any other person who consents to his appointment as auditor of a company, other than a retiring auditor contemplated in section 270 (2), shall give notice on the prescribed form to the company concerned of such consent on his part.

(3) Any auditor of a company shall give notice on the prescribed form to the company concerned of any change in his particulars which are in terms of section 215 (2) to be entered in the register referred to in that section, and he shall give such notice within fourteen days after the occurrence of any such change.

(4) A company shall, after any entry has been made in the register referred to in section 215 in respect of particulars pertaining to the auditor of the company, lodge with the Registrar a return in the prescribed form, and the company shall lodge such return within fourteen days after an auditor has vacated his office or after receipt of a notice contemplated in subsection (2) or (3) of this section, as the case may be.

(5) Any company which fails to lodge a return contemplated in subsection (4), and any person who fails to comply with any provision of subsection (2) or (3), shall be guilty of an offence.”

Amendment of section 340 of Act 61 of 1973.

17. Section 340 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) in the case of a winding-up by the Court, the presentation of the application, unless that winding-up has superseded a voluntary winding-up, when it shall be the [passing] registration in terms of section 200 of the special resolution to wind up the company;”;

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

“(b) in the case of a voluntary winding-up, the [passing] registration in terms of section 200 of the special resolution to wind up the company;”.

Substitution of section 349 of Act 61 of 1973.

18. The following section is hereby substituted for section 349 of the principal Act:

“Circumstances under which company may be wound up voluntarily.

349. A company, not being an external company, may be wound up voluntarily

[(a) where its memorandum or articles provide—

- (i) for the period of its duration; or
(ii) for its dissolution on the occurrence of any event,

if that period has expired or that event has occurred and the company has by resolution passed at a general meeting resolved that it be wound up voluntarily; or

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

(b) if the company has by special resolution resolved that it be so wound up [voluntarily].”

Amendment of section 350 of Act 61 of 1973.

19. Section 350 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A voluntary winding-up of a company [may] shall be a members’ voluntary winding-up if the resolution contemplated in section 349 so states, but such a resolution shall be of no force and effect unless—

(a) [a copy of the resolution passed under section 349 together with a copy of a further resolution passed at the same meeting nominating a person or persons for appointment as liquidator or liquidators is lodged with the Master within twenty-one days after the passing of such resolutions] it has been registered in terms of section 200; and

(b) prior to the registration thereof—

(i) security has been furnished to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding twelve months from the commencement of the winding-up of the company [is furnished within the said period of twenty-one days]; or

[(c)] (ii) the Master has dispensed with the furnishing of such security on production to him [within the said period of twenty-one days] of—

(aa) a sworn statement by the directors of the company [supported by] that it has no debts; and

(bb) a certificate by the auditor [thereof] of the company that to the best of his knowledge and belief and according to the records of the company, it has no debts.”

Amendment of section 351 of Act 61 of 1973.

20. Section 351 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A voluntary winding-up of a company shall be a creditors’ voluntary winding-up [in every case where a resolution provided for in section 349 has been passed after the consideration by the meeting concerned of the statement of affairs referred to in section 363 (1) and a copy of the said resolution is lodged with the Master within fourteen days after the passing thereof and in respect of which the provisions of section 350 relating to security do not apply] if the resolution contemplated in section 349 so states, but such a resolution shall be of no force and effect unless it has been registered in terms of section 200.”

Substitution of section 352 of Act 61 of 1973.

21. The following section is hereby substituted for section 352 of the principal Act:

“Commencement of voluntary winding-up. 352. (1) A voluntary winding-up of a company shall [be deemed to] commence at the time of the [passing] registration in terms of section 200 of the special resolution authorizing the winding-up.

(2) The Registrar shall forthwith after the registration by him of a special resolution referred to in subsection (1), transmit a copy thereof to the Master.”

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

Amendment of
section 356 of
Act 61 of 1973.

22. Section 356 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any company which has passed a special resolution under section 349 for its voluntary winding-up, shall within fourteen days after the registration of that resolution in terms of section 200— 5

(a) [within fourteen days from its passing lodge with the Registrar on the prescribed form a copy of such resolution] lodge with the Master a certified copy of the resolution concerned, together with— 10

(i) in the case of a members' voluntary winding-up if any further resolution nominating a person or persons for appointment as liquidator or liquidators of the company has been passed, a certified copy of that resolution; or 15

(ii) in the case of a creditors' voluntary winding-up, two certified copies of the statement referred to in section 363 (1); and

(b) [forthwith] give notice of the voluntary winding-up of the company in the Gazette.” 20

Amendment of
section 357 of
Act 61 of 1973.

23. Section 357 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A copy of every special resolution for the voluntary winding-up of any company passed under section 349 and of every order of court amending or setting aside the 25 proceedings in relation to the winding-up shall, within [seven] fourteen days after the [passing] registration of the resolution in terms of section 200 or the making [thereof] of the order, be transmitted by that company to the officers and registrars referred to in paragraphs (a), (b) and (c) of 30 subsection (1).”

Amendment of
section 359 of
Act 61 of 1973.

24. Section 359 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“When the Court has made an order for the winding-up of 35 a company or [a company has passed] a special resolution for the voluntary winding-up [thereof] of a company has been registered in terms of section 200—”

Amendment of
section 362 of
Act 61 of 1973.

25. Section 362 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 40

“(1) The Court may at any time after making a winding-up order or after [the passing of] a special resolution for the voluntary winding-up of a company has been registered in terms of section 200, order any director, member, trustee, banker, agent or officer of the company 45 concerned to pay, deliver, convey, surrender or transfer to the liquidator of the company forthwith, or within such time as the Court directs, any money, property or books and papers in his hands to which the company is *prima facie* entitled.” 50

Amendment of
section 363 of
Act 61 of 1973.

26. Section 363 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where it is intended to pass a resolution for a creditors' voluntary winding-up of a company, the directors of that company shall make out or cause to be made out, in 55 the prescribed form, a statement as to the affairs of the company and lay it before the meeting convened for the purpose of passing such a resolution [and lodge two certified copies thereof with the Master within fourteen days after the passing of the said resolution].” 60

Act No. 83, 1981

COMPANIES AMENDMENT ACT, 1981

Amendment of section 364 of Act 61 of 1973.

27. Section 364 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“As soon as may be after a final winding-up order has been made by the Court or a special resolution for a creditors’ 5
voluntary winding-up of a company has been [lodged with him] registered in terms of section 200, the Master shall summon—”

Substitution of section 368 of Act 61 of 1973.

28. The following section is hereby substituted for section 368 of the principal Act: 10

“Appoint- 368. As soon as a winding-up order has been
ment of pro- made in relation to a company, or a special
visional liquidator. resolution for a [creditors’] voluntary winding-up of
a company has been [lodged with the Master, he]
registered in terms of section 200, the Master may 15
appoint any suitable person as provisional liquidator
of the company concerned, who shall give security to
the satisfaction of the Master for the proper per-
formance of his duties as provisional liquidator and
who shall hold office until the appointment of a 20
liquidator.”

Amendment of section 369 of Act 61 of 1973.

29. Section 369 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the expression “350” of the expression “356 (2) (a) (i)”; and

(b) by the substitution in paragraph (a) of subsection (2) 25
for the expression “sections 350 and” of the word
“section”.

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 and section 16 of Act 84 of 1980.

30. Section 441 of the principal Act is hereby amended by the substitution in paragraph (o) of subsection (1) for the expression “216 or 252” of the expression “216 (5), 252 or 276 (5)”. 30

Short title and commencement.

31. (1) This Act shall be called the Companies Amendment Act, 1981.

(2) Sections 6 to 12 inclusive, 15 and 16 shall come into operation on 1 December 1981.