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OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 1308.

25 June 1980.

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25 Junie 1980.

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

No. 84 of 1980: Companies Amendment Act, 1980.

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

No. 84 van 1980: Maatskappywysigingswet, 1980.

COMPANIES AMENDMENT ACT, 1980

Act No. 84, 1980

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 further define the expression "Master"; to provide for the renewal of the registration of a name as a defensive name; to authorize the Registrar of Companies to order in certain circumstances the change of certain names relating to companies, or a translation or shortened form thereof; to alter the words of the statement which has to be included and subjoined to the name of an association not for gain; to abolish certain fees and to further regulate the payment of certain additional fees; to prescribe the requirements which have to be complied with before any change in the situation of the registered office or of the postal address of a company shall for the purposes of the said Act take effect; to impose upon directors and secretaries of companies which are being wound up a duty to notify the liquidator of any change of address; to authorize a liquidator to terminate with the Master's consent certain leases before the first general meeting of the company or of the creditors or contributories is convened by him; to determine the conditions on which and the circumstances under which a liquidator may sell property of a company being wound up before the said first meeting is so convened; and to extend the powers of the Court to declare the dissolution of a company to have been void; relating to certain meetings of creditors of a company under judicial management; so as to provide for the payment of remuneration to a provisional judicial manager and a judicial manager of a company under judicial management; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 12 June 1980.)*

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

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

"Master" means the Master of the Supreme Court, and in relation to—

10 (a) a company in respect of which application is made to a Court for a winding-up or judicial management order, the Master having jurisdiction in the area of jurisdiction of the Court where application is made;

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 and Proclamation 234 of 1978.

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- 5 (b) a company being wound up by the Court or under
judicial management, the Master having jurisdic-
tion in the area of jurisdiction of the Court which
issued the winding-up or judicial management
order;
- (c) a company other than a company referred to in
paragraph (a) or (b), the Master having jurisdic-
tion in the area in which the registered office of that
company is situated;
- 10 (d) any other body corporate, the Master having
jurisdiction in the area where the main place of
business of that body corporate is situated;"

(2) The provisions of subsection (1) shall not apply to a
company—

- 15 (a) in respect of which before the commencement of that
subsection an application for a winding-up or judicial
management order has been filed with the Registrar of
the Court; or
- 20 (b) which at the said commencement is being wound up by
the Court or is under judicial management.

2. Section 43 of the principal Act is hereby amended by the
substitution for subsection (2) of the following subsections:

Amendment of
section 43 of
Act 61 of 1973.

25 "(2) Any person may **[annually]** on application on the
prescribed form and on payment of the prescribed fee apply
to the Registrar—

- (a) to register any name as a defensive name; or
(b) to renew the registration of a name as a defensive
name,

30 which is not in the opinion of the Registrar undesirable and
in respect of which he has furnished proof, to the satisfaction
of the Registrar, that he has a direct and material interest.

(2A) If the Registrar grants any application referred to in
subsection (2) he shall register the name in question as a
defensive name for a period not exceeding one year or renew
35 the registration of the name in question as a defensive name
for a period not exceeding one year, as the case may be."

3. (1) Section 45 of the principal Act is hereby amended—

Amendment of
section 45 of
Act 61 of 1973.

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

40 "(1) If within a period of one year after the
registration of any memorandum, translation or short-
ened form of a 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
45 amended certificate of incorporation or a certificate of
change of name, translation or shortened form of a name
referred to in section 44 (2), it appears that the name
contained in the memorandum or the translation or
shortened form of such name or the name referred to in
50 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, is in
the opinion of the Registrar undesirable, he shall within
55 such period order the company concerned or the person
referred to in section 43 (2) to change the name,
translation or shortened form of the name concerned;"

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

60 "(2) If within a period of one year after the
registration of any memorandum, translation or short-
ened form of a 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
65 of name, translation or shortened form of a name

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5 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 or
shortened form of such 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, on the
grounds that such name, translation or shortened form of
a name is calculated to cause damage to the objector, the
10 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 or shortened form of a name.”

(2) Subsection (1) (b) shall be deemed to have come into
15 operation on 1 January 1974.

4. Section 49 of the principal Act is hereby amended by the
substitution for subsection (3) of the following subsection:

Amendment of
section 49 of
Act 61 of 1973.

20 “(3) The name of an association not for gain incorporated
under this Act shall not include the word and statement
referred to in subsection (1) (c) but the statement [**‘Incor-
porated Association not for Gain’**] **‘Association incorpor-
ated under section 21’** shall be included in and be subjoined
to the said name: Provided that an association not for gain
incorporated under this Act before the commencement of the
25 Companies Amendment Act, 1980, may instead of the said
statement include in and subjoin to its name the statement
‘Incorporated association not for gain.’”

5. (1) Section 86 of the principal Act is hereby amended by the
deletion of the words “and accompanied by the prescribed fee” in
30 paragraph (b) of subsection (4).

Amendment of
section 86 of
Act 61 of 1973.

(2) Subsection (1) shall come into operation on a date to be
fixed by the State President by proclamation in the *Gazette*.

6. (1) Section 170 of the principal Act is hereby amended—

Amendment of
section 170 of
Act 61 of 1973.

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

“(2) (a) Upon incorporation of a company, notice of
the situation of the registered office and of the
postal address shall be given to the Registrar
40 [and].

(b) At least twenty-one days’ notice of any intended
change in the situation of the registered office or
of the postal address shall be given to the Regis-
trar [before such change is made. The Registrar
shall record any notice so given].

45 (c) Particulars of which notice was given to the
Registrar in terms of paragraph (a) or (b), shall be
recorded by the Registrar, and he shall notify the
company of the date on which the particulars of
any change referred to in paragraph (b) have been
50 recorded by him.

(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
55 paragraph (b) and the Registrar has recorded the
particulars thereof.”; and

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

60 “(3) Any notice referred to in subsection (2) shall be
in the prescribed form [and shall be accompanied by
the prescribed fee].”

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(2) Subsection (1) shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

7. (1) Section 178 of the principal Act is hereby amended—

5 (a) by the substitution in subsection (1) for the expression "section 93 (3), 170 (2), 173, 174, 175, 200 (1), 211 (3), 216 (2) and 276" of the expression "sections 173, 174, 175 and 200 (1)"; and

Amendment of section 178 of Act 61 of 1973, as amended by section 15 of Act 64 of 1977.

10 (b) by the addition to subsection (1) of the following proviso:

15 "Provided that any company which has failed within the time prescribed in the relevant provision to lodge any document or to give any notice required under section 93 (3), 216 (2) or 276, may thereafter lodge such document or give such notice subject to the payment of an amount of R20 to the Registrar."

(2) Subsection (1) shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

8. The following section is hereby inserted in the principal Act 20 after section 363:

Insertion of section 363A in Act 61 of 1973.

25 "Change of address by directors and secretaries and certain former directors and secretaries. 363A. (1) Any person who is a director or secretary of a company which is being wound up and who, after the winding-up of such company has commenced but before the liquidator's final account has in terms of section 408 been confirmed, changes his residential or postal address, shall notify the liquidator by registered post of his new residential or postal address within fourteen days after such change, or, if the liquidator has not been appointed on the date of such change, within fourteen days after the appointment of the liquidator.

30 (2) Any person who fails to comply with any requirement of subsection (1) shall be guilty of an offence.

35 (3) Whenever at the trial of any person charged with an offence referred to in subsection (2) it is proved that such person is a director or secretary of a company which is being wound up and that he has changed his residential or postal address after the winding-up of that company has commenced and that the liquidator has no written record of such change, it shall be presumed, unless the contrary is proved, that he did not notify the liquidator of such change."

45 9. Section 386 of the principal Act is hereby amended—

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

Amendment of section 386 of Act 61 of 1973.

50 "(2) Subject to the consent of the Master, a [provisional] liquidator may, at any time before a general meeting contemplated in subsection (1) (d) is convened for the first time, terminate any lease in terms of which the company is the lessee of movable or immovable property."; and

55 (b) by the insertion after subsection (2) of the following subsections:

60 "(2A) At any time before a general meeting contemplated in subsection (1) (d) is convened for the first time the liquidator shall, if satisfied that any movable or immovable property of the company ought forthwith to be sold, recommend to the Master in writing accordingly, stating his reasons for such recommendation.

(2B) The Master may thereupon authorize the sale of such property or any portion thereof on such conditions and in such manner as he may determine: Provided that if such property or a portion thereof is subject to a

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preferential right, the Master shall not authorize the sale of such property or portion unless the person entitled to such preferential right has given his consent thereto in writing.”

- 5 10. The following section is hereby substituted for section 420 of the principal Act: Substitution of section 420 of Act 61 of 1973.

10 “Court may declare dissolution void. 420. When a company **[including any other body corporate,]** has been dissolved, the Court may at any time **[within two years of the date of the dissolution,]** on an application by the liquidator of the company, or by any other person who appears to the Court to have an interest, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon any proceedings may be taken against the company as might have been taken if the company had not been dissolved.”

11. Section 428 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (2). Amendment of section 428 of Act 61 of 1973.

- 20 12. Section 431 of the principal Act is hereby amended— Amendment of section 431 of Act 61 of 1973.
- (a) by the deletion of the word “and” at the end of paragraph (b) of subsection (2);
- (b) by the insertion of the word “and” at the end of paragraph (c) of subsection (2); and
- 25 (c) by the addition to subsection (2) of the following paragraph:
- “(d) to consider the passing of a resolution referred to in section 435 (1).”

- 30 13. Section 432 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (3). Amendment of section 432 of Act 61 of 1973.

14. The following section is hereby inserted in the principal Act after section 434: Insertion of section 434A in Act 61 of 1973.

35 “Remuneration of provisional judicial manager or judicial manager. 434A. (1) The provisional judicial manager or the judicial manager shall be entitled to such remuneration for his services as may be fixed by the Master from time to time.

(2) In fixing the remuneration the Master shall take into account the manner in which the provisional judicial manager or the judicial manager has performed his functions and any recommendation by the members or creditors of the company relating to such remuneration.

(3) The provisions of sections 151 and 151bis of the Insolvency Act, 1936 (Act No. 24 of 1936), shall apply with reference to any fixing of remuneration by the Master under this section.”

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- 50 15. Section 435 of the principal Act is hereby amended— Amendment of section 435 of Act 61 of 1973, as amended by section 29 of Act 111 of 1976.
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- 55 “(a) The creditors of a company whose claims arose before the granting of a judicial management order in respect of such company may at a meeting convened by the judicial manager or provisional judicial manager for the purpose of this subsection or by the Master in terms of section 429 (b) (ii), resolve that all liabilities incurred or to be incurred by the judicial manager or provisional judicial manager in the conduct of the company’s business shall be paid in preference to all other liabilities not already discharged exclusive of the costs of the judicial management, and thereupon all claims
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based upon such first-mentioned liabilities shall have preference in the order in which they were incurred over all unsecured claims against the company except claims arising out of the costs of the judicial management.”; and

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

10 “(2) (a) A meeting convened by the provisional judicial manager or the judicial manager in terms of subsection (1) shall be convened by him by written notice sent by registered post at least ten days before the date of the meeting, as specified in the notice, to every creditor of the company whose name and address is known to him, and also by notice in one or more newspapers circulating in the district where the company’s main place of business is situated.

- 15 (b) The last-mentioned notice shall comply with the provisions of section 40 (3) (c) of the Insolvency Act, 1936 (Act No. 24 of 1936), and shall appear at least ten days before the date of the meeting.

20 (3) The provisional judicial manager or the judicial manager, as the case may be, shall preside over a meeting referred to in subsection (2), and the laws relating to insolvency shall apply *mutatis mutandis* in respect of the conduct of any such meeting, the right to vote thereat, the manner of voting and the calculation of the value of votes, as if such meeting were a meeting of creditors in an insolvent estate: Provided that for the purposes of voting at any such meeting convened by a provisional judicial manager, the claims of creditors shall be determined to the satisfaction of the provisional judicial manager.”.

35 16. Section 441 of the principal Act is hereby amended—

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

40 “(d) in section 90, 286, 288, 297, 298, 299, 302, 308, 312 (5), 363, 363A, 365, 414 or 421, to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;”;

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

45 “(g) in section 81, 93, 164, 166, 170, 207, 211 (7), 239, 291 or 295, to a fine not exceeding five hundred rand;”;

- (c) by the substitution for paragraph (n) of subsection (1) of the following paragraph:

50 “(n) in section 46, 51, 58, 80, 96, 98, 102, 139, [170,] 173, 200 (6), 213, 253, 269, 271, 309, 356 or 357, to a fine not exceeding ten rand [per day] 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 and section 27 of Act 59 of 1978.

17. This Act shall be called the Companies Amendment Act, Short title. 55 1980.