

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 20c Price
Oorsee 30c Overseas
POSVRY—POST FREE

Vol. 133]

KAAPSTAD, 23 JULIE 1976

[No. 5220

CAPE TOWN, 23 JULY 1976

DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 1239.

23 Julie 1976.

No. 1239.

23 July 1976.

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

No. 111 van 1976: Maatskappywysigingswet, 1976.

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

No. 111 of 1976: Companies Amendment Act, 1976.

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

ACT

To amend the Companies Act, 1973, so as to authorize the making of regulations providing for the making and admissibility in evidence of certain copies of certain records; to render a change of name of a company immediately effective; to extend the powers of a company in relation to additions to or alterations of its objects and powers; to extend the powers of a company to convert shares of one class into shares of another class; to restrict the reduction of share capital where shares have been converted into redeemable preference shares; to dispense with the need for a prospectus for certain offers of shares by a listed company; to reduce the requirements relating to the contents of a prospectus for certain offers of shares by an unlisted company; to further regulate the publication of an advertisement relating to an offer of shares; to relieve a company of the obligation to lodge with its annual return a list of other directorships held by its directors; to exempt certain external companies from the payment of annual duty; to further regulate voting at meetings of a company; to further regulate the voting rights of the holders of preference shares; to further regulate the passing of a special resolution; to further regulate the making of loans to and the provision of security for a director or manager; to further regulate the resignation or removal of an auditor of a company; to further regulate the submission of group annual financial statements; to replace certain provisions relating to the disclosure of loans made to or security provided for a director or manager; to restrict the right of directors and former directors to vote in respect of the nomination of a liquidator; to limit to winding-up or judicial management the circumstances in which the court may inquire into and make orders in regard to the liability of delinquent directors and others; to permit a provisional judicial manager to call certain meetings of creditors; and to effect certain textual alterations; to make special provision in regard to annual financial statements prepared prior to 20 November 1974; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 5 July 1976.)

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 15 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended—

Amendment of
section 15 of
Act 61 of 1973.

(a) by the insertion after paragraph (b) of subsection (1) of the following paragraphs:

“(bA) providing for the reproduction of any records in the Companies Registration office or the office of

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

- the Master by microfilm, microcard, miniature photographic process or any other process deemed suitable by the Minister;
- (bB) providing for the use for official purposes and the admissibility in evidence in any proceedings, whether in a court of law or otherwise, of any reproduction contemplated in paragraph (bA);"; and
- (b) by the substitution for paragraph (c) of the said subsection (1) of the following paragraph:
- "(c) providing for the keeping and preservation of any records, or any reproduction thereof contemplated in paragraph (bA), in the Companies Registration Office or the office of the Master, the removal from such offices and preservation in any other place of such records or reproductions and prescribing the circumstances under which any such records or reproductions may be destroyed;".
- (2) Subsection (1) shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
2. Section 38 of the principal Act is hereby amended by the substitution for the Afrikaans text of paragraph (c) of subsection (2) of the following paragraph: Amendment of section 38 of Act 61 of 1973.
- "(c) die gee van lenings deur 'n maatskappy aan ander persone as direkteure wat *bona fide* in diens van die maatskappy is, ten einde daardie persone in staat te stel om aandele van die maatskappy of sy houermaatskappy te koop of daarop in te skryf om deur hulself as eienaars gehou te word."
3. Section 44 of the principal Act is hereby amended by the deletion of subsection (5). Amendment of section 44 of Act 61 of 1973.
4. Section 55 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 55 of Act 61 of 1973.
- "(1) Subject to the provisions of section 53 (a), a company may by special resolution make additions to or alter the provisions of its memorandum with respect to the objects and powers of the company."
5. (1) Section 75 of the principal Act is hereby amended— Amendment of section 75 of Act 61 of 1973.
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- "(1) Subject to the provisions of sections 56 and 102 a company having a share capital, if so authorized by its articles, may by special resolution—"; and
- (b) by the addition to the said subsection (1) of the following paragraph:
- "(f) convert any of its shares, whether issued or not, into shares of another class."
- (2) Subsection (1) shall be deemed to have come into operation on 1 January 1974.
6. The following section is hereby substituted for section 99 of the principal Act: Substitution of section 99 of Act 61 of 1973.
99. If a company has converted any of its shares into preference shares which are, or at the option of the company are liable, to be redeemed, the provisions of section 98 shall apply to such preference shares."
- Conversion of shares into certain preference shares.

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

7. Section 142 of the principal Act is hereby amended—
- Amendment of
section 142 of
Act 61 of 1973.
- (a) by the insertion before the definition of "expert" of the following definition:
" 'company' includes an external company;";
- (b) by the insertion after the definition of "issued generally" of the following definition:
" 'letter of allocation' means any document conferring a right to subscribe for shares in terms of a rights offer;"; and
- (c) by the insertion after the definition of "promotor" of the following definition:
" 'rights offer' means an offer for subscription, with a right to renounce in favour of other persons, to the members or debenture holders of a company, any of whose shares are listed on a stock exchange within the Republic or which is recognized by the Minister for the purposes of this definition by notice in the *Gazette*, of any shares (as defined in relation to a prospectus in section 1 (1)) of that company, where such a stock exchange has granted or has agreed to grant a listing for the shares which are the subject of the offer;".
8. Section 144 of the principal Act is hereby amended by the addition to paragraph (c) of the word "or" and the addition of the following paragraph:
" (d) if it is a rights offer."
- Amendment of
section 144 of
Act 61 of 1973.
9. The following section is hereby inserted in the principal Act after section 145:
- Insertion of
section 145A in
Act 61 of 1973.
- 145A. (1) No person shall issue, distribute or deliver or cause to be issued, distributed or delivered a letter of allocation unless it is accompanied by such documents as are required and have been approved by the stock exchange concerned.
- (2) Any person who contravenes any provision of subsection (1) and, if such person is a company, any director or officer of such company who knowingly is a party to the contravention, shall be guilty of an offence.
10. The following section is hereby inserted in the principal Act after section 146:
- Insertion of
section 146A in
Act 61 of 1973.
- 146A. (1) A company desiring to issue a letter of allocation shall lodge with the Registrar for registration a copy thereof together with the prescribed fee and a copy of every document referred to in section 145A and every such copy shall be certified, by not less than two directors of the company, as a true copy of the original approved by the stock exchange concerned.
- (2) Every copy mentioned in subsection (1) shall be accompanied by a copy of any contract referred to therein and, if such contract is not in an official language, by a translation thereof into one of the official languages.
- (3) As soon as the Registrar has registered the documents referred to in subsection (1), he shall give notice of the registration to the company concerned or the person who lodged them with him on behalf of such company.

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

- (4) Every letter of allocation which is issued shall—
- (a) state on the face of it that a copy thereof together with copies of all other documents referred to in subsections (1) and (2) have been registered as required by this section; and
- (b) be accompanied by a copy of every document lodged therewith in terms of subsection (1): Provided that the provisions of this paragraph shall not apply to any letter of allocation issued in connection with a renunciation of part of the rights to subscribe in terms of the rights offer.
- (5) The provisions of sections 151, 153 (1) and (4), 154 (4) and (5), 158, 160, 161, 162 and 163 shall apply *mutatis mutandis* to a rights offer and all documents issued in connection therewith in terms of this section.
- (6) Any person who contravenes any provision of this section, and if such person is a company, any director and officer of such company who knowingly is a party to such contravention, shall be guilty of an offence.”.

11. Section 148 of the principal Act is hereby amended by the substitution for paragraph (b) of section (1) of the following paragraph: Amendment of section 148 of Act 61 of 1973.

“(b) Where the intended offer relates to shares which are or are to be in all respects uniform with existing shares previously issued and a stock exchange within the Republic has not in respect of such first-mentioned shares granted or agreed to grant a listing, and such offer is made only to existing members or debenture holders of a company with the right to renounce in favour of other persons, the prospectus may state, instead of the matters referred to in paragraph (a), at least the matters specified in Part III of Schedule 3.”.

12. Section 157 of the principal Act is hereby amended— Amendment of section 157 of Act 61 of 1973, as amended by section 8 of Act 76 of 1974.

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

“(f) where all the shares which are the subject of an offer are intended to be offered only to the members of a company or debenture holders, as the case may be, with or without the right to renounce in favour of other persons—

- (i) the issue price of such shares;
- (ii) the ratio in which such shares will be offered to the members or debenture holders entitled to accept the offer; and
- (iii) the last day on which members or debenture holders must register as such in order to be entitled to receive the offer;”;

(b) by the addition to the said subsection (1) of the following paragraph:

“(g) the last day for subscribing.”.

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

13. (1) Section 173 of the principal Act is hereby amended by the deletion of subsection (8). Amendment of section 173 of Act 61 of 1973.

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1975.

14. (1) Section 175 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 175 of Act 61 of 1973.

“(1) Every external company shall pay for the benefit of the Consolidated Revenue Fund an annual duty calculated in accordance with section 174 (2): Provided that where any external company has established and maintains a place of business in the Republic solely for the purpose of maintaining a share registration office or a share transfer office therein, the annual duty payable by such company shall be a fixed amount of fifty rand: Provided further that this section shall not apply to an external company which is operating a scheduled international air transport service as the designated carrier of another State in terms of a bilateral agreement between the Government of the Republic and that State.”.

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

15. Section 189 of the principal Act is hereby amended— Amendment of section 189 of Act 61 of 1973.

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

“(1) Any member of a company entitled to attend and vote at a meeting of the company, or where the articles of a company limited by guarantee so provide, any member of such company, shall be entitled to appoint another person (whether a member or not) as his proxy to attend, speak, and vote in his stead at any meeting of the company: Provided that, unless the articles otherwise provide, a proxy shall not be entitled to vote except on a poll and a member of a private company shall not be entitled to appoint more than one proxy;” and

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

“(a) In every notice calling a meeting of a company having a share capital and on the face of every proxy form issued at the company's expense there shall appear with reasonable prominence a statement that a member entitled to attend and vote at the meeting is entitled to appoint a proxy or, where it is allowed, one or more proxies, to attend and speak and vote thereat in his stead, and that a proxy need not also be a member of the company.”.

16. Section 194 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections: Amendment of section 194 of Act 61 of 1973.

“(1) Notwithstanding the provisions of section 193 (1), the articles of a company may provide that preference shares shall not confer the right to vote at meetings of the company except—

(a) during any period determined as provided in subsection (2) during which any dividend or any part of any dividend on such shares or any redemption payment thereon remains in arrear and unpaid; or

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

(b) in regard to any resolution proposed which directly affects any of the rights attached to such shares or the interests of the holders thereof, including a resolution for the winding-up of the company or for the reduction of its capital.

(2) The period referred to in subsection (1) (a) shall be a period commencing on a day specified in the articles of the company concerned, not being more than six months after the due date of the dividend or redemption payment in question, or, where no due date is specified, after the end of the financial year of the company in respect of which such dividend accrued or such redemption payment became due."

17. Section 197 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 197 of Act 61 of 1973.

"(1) Any person present and entitled to vote, on a show of hands, as a member or as a proxy or as a representative of a body corporate at any meeting of the company shall on a show of hands have only one vote, irrespective of the number of shares he holds or represents."

18. Section 199 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 199 of Act 61 of 1973.

"(1) A resolution by a company shall be a special resolution if at a general meeting of which not less than twenty-one clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which—

(a) members holding in the aggregate not less than one-fourth of the total votes of all the members entitled to vote thereat, are present in person or by proxy; or

(b) in the case of a company limited by guarantee, not less than one-fourth of the members entitled to vote thereat are present in person or by proxy,

the resolution has been passed, on a show of hands, by not less than three-fourths of the number of members of the company entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the members present in person or by proxy are entitled."

19. The following section is hereby substituted for section 226 of the principal Act: Substitution of section 226 of Act 61 of 1973.

"Prohibition of loans to, or security in connection with transactions by, directors and managers. 226. (1) No company shall directly or indirectly make a loan to—

(a) any director or manager of—

(i) the company; or

(ii) its holding company; or

(iii) any other company which is a subsidiary of its holding company; or

(b) any other company or other body corporate controlled by one or more directors or managers of the company or of its holding company or of any company which is a subsidiary of its holding company;

or provide any security to any person in connection with an obligation of such director, manager, company or other body corporate.

(1A) For the purpose of subsection (1)—

(a) "loan" includes—

(i) a loan of money, shares, debentures or any other property; and

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

- (ii) any credit extended by a company, where the debt concerned is not payable or being paid in accordance with normal business practice in respect of the payment of debts of the same kind; and
 - (b) one or more directors or managers of a company contemplated in subsection (1) (b) shall be deemed to control another company or body corporate if—
 - (i) such director or manager or his nominee is a member or such directors or managers or their nominees are members of such other company or body corporate and the composition of its board of directors is controlled by such director, manager or nominee or such directors, managers or nominees, and such composition shall be deemed to be so controlled if such director or manager or his nominee or such directors or managers or their nominees may, by the exercise of some power and without the consent or concurrence of any other person, appoint or remove the majority of the directors concerned, and such director, manager or nominee or such directors, managers or nominees shall be deemed to have power to appoint a director where a person cannot be appointed as a director without his or their consent or concurrence; or
 - (ii) more than one-half of the equity share capital of that other company or body corporate is held by such director, manager or nominee or such directors, managers or nominees; and
 - (c) "security" includes a guarantee.
- (2) The provisions of subsection (1) shall not apply—
- (a) in respect of—
 - (i) the making of a loan by a company to its own director or manager; or
 - (ii) the provision of security by a company in connection with an obligation of its own director or manager,with the consent of all the members of the company or in terms of a special resolution relating to a specific transaction; or
 - (b) subject to the provisions of subsection (3), in respect of anything done to provide any director or manager with funds to meet expenditure incurred or to be incurred by him for the purposes of the company concerned or for the purpose of enabling him properly to perform his duties as director or manager of that company; or
 - (c) in respect of anything done *bona fide* in the ordinary course of the business of a company actually and regularly carrying on the business of the making of loans or the provision of security; or
 - (d) to the provision of money or making of loans by a company for the purposes contemplated in section 38 (2) (b) and (c); or

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

(e) to the making of a loan or the provision of security with the approval of the company in general meeting for housing for its director or manager; or

(f) in respect of—

(i) the making of a loan by a company to a director or manager of its subsidiary; or

(ii) the provision of security by a company to another person in connection with an obligation of a director or manager of its subsidiary.

(3) No loan shall be made or security provided by virtue of the provisions of subsection (2) (b), except—

(a) with the prior approval of the company given at a general meeting at which the amount of the loan or the extent of the security and the purposes thereof are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next annual general meeting of the company, the loan shall be repaid or the liability under the security shall be discharged, within six months from the conclusion of that annual general meeting.

(4) Any director or officer of a company who authorizes, permits or is a party to the making of any loan or the provision of any security contrary to the provisions of this section, shall—

(a) be liable to indemnify the company and any other person who had no actual knowledge of the contravention, against any loss directly resulting from the invalidity of such loan or security; and

(b) be guilty of an offence.

(5) For the purposes of subsection (4) "director or officer of a company" includes, where the company is a subsidiary, any director or officer of its holding company."

20. Section 270 of the principal Act is hereby amended by the substitution for paragraph (c) in subsection (2) of the following paragraph: Amendment of section 270 of Act 61 of 1973.

"(c) he has given the company and the Registrar notice in writing of his unwillingness to be reappointed at the next annual general meeting."

21. The following section is hereby substituted for section 277 of the principal Act: Substitution of section 277 of Act 61 of 1973.

"Removal of auditor appointed by directors or Registrar, and filling of vacancy.

277. Subject to the provisions of section 279, a company may at a general meeting by resolution remove any auditor appointed by the directors or the Registrar under section 269 or 271 or by the directors under section 273 before the expiration of his term of office and at the same meeting appoint another person as auditor in his place: Provided that where an auditor has reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, and he has made a report thereon in writing to the directors of the company, he may not

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

be removed from office until the provisions of section 26 (3) (b) of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), have been complied with."

22. The following section is hereby substituted for section 278 of the principal Act: Substitution of section 278 of Act 61 of 1973.

"Removal of auditor and appointment of new auditor.

278. Any company may, subject to the provisions of section 279, at an annual general meeting by resolution passed by not less than three-fourths of such members entitled to vote as are present in person or by proxy, determine that any person then holding office as its auditor shall not be re-appointed or that some other person shall be appointed as the auditor of the company: Provided that where an auditor has reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, and he has made a report thereon in writing to the directors of the company, he may not be removed from office until the provisions of section 26 (3) (b) of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), have been complied with."

23. (1) Section 280 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections: Amendment of section 280 of Act 61 of 1973.

"(2) An auditor intending to resign shall deliver to the company and to the Registrar a written notification in the prescribed form to the effect that he has no reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors other than an irregularity (if any) which has been reported to the Public Accountants' and Auditors' Board in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), and it shall not be necessary that such an auditor shall have carried out, for the purposes of such notification, a special audit subsequent to the date up to which the last annual financial statements on which he has already reported, were made up.

(3) The directors of the company shall forthwith upon receipt of the said written notification appoint an auditor to fill the vacancy and shall lodge the said notification together with the return required under section 276 with the Registrar, who shall forthwith notify the auditor whose resignation has been tendered, of the receipt of the said notification and return."

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

24. Section 288 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 288 of Act 61 of 1973, as amended by section 13 of Act 76 of 1974.

"(2) Subject to the provisions of section 291 such group annual financial statements shall together with the company's own annual financial statements in conformity with generally accepted accounting practice fairly present the state of affairs and business of the company and all its subsidiaries at the end of the financial year concerned and the profit or loss of the company and all its subsidiaries for that financial year, as a whole so far as con-

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

cerns the members of the company and shall for that purpose include at least the matters prescribed by Schedule 4, in so far as they are applicable and comply with any other requirements of this Act.”.

25. The following section is hereby substituted for section 295 of the principal Act:

“Annual financial statements to disclose loans to and security for benefit of directors and managers.

295. (1) The annual financial statements of a company shall state—

Substitution of section 295 of Act 61 of 1973, as amended by section 19 of Act 76 of 1974.

- (a) the amount and particulars of every loan referred to in section 226 (1) which has during the financial year concerned been made by virtue of the provisions of section 226 (2) (a), (b) or (e), including every such loan which has during the said financial year been repaid;
- (b) the particulars of every security (and of the transaction to which it relates) referred to in section 226 (1), which has during the financial year concerned been provided by virtue of the provisions of section 226 (2) (a), (b) or (e), including every such security which has during the said financial year been cancelled;
- (c) the balance outstanding of every loan described in paragraph (a), made at any time before the said financial year and outstanding at the end thereof; and
- (d) the particulars of every security (and of the transaction to which it relates) described in paragraph (b), provided at any time before the said financial year and still in existence at the end thereof (including, if applicable, the balance outstanding on the said transaction to which it relates).

(2) If a company which has made a loan or provided any security referred to in subsection (1) is a subsidiary and its holding company is by this Act required to make out group annual financial statements or otherwise to furnish particulars of such subsidiary, there shall be included therein the information provided for in subsection (1).

(3) Where a loan is a loan of shares, debentures or other property, or where any security is provided in respect of a loan of shares, debentures or other property, the requirements of this section may be complied with by stating the particulars in the directors’ report or by way of a note to the annual financial statements.

(4) If the provisions of this section are not complied with in respect of the annual financial statements of a company, the auditor of the company shall in his report relating to such annual financial statements include a statement containing such information in regard to the matter as he is reasonably able to furnish.

(5) (a) Any director or manager or past director or manager of a company or of its holding company (if any) or of any other subsidiary of that holding company shall at the written request of the first-mentioned company or its auditor in writing give such information, including particulars relating to his control of a company or body corporate contemplated in section 226 (1) (b), as the company or its auditor may require for compliance with the provisions of this section.

(b) Any director or manager or past director or manager referred to in paragraph (a) who fails

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

to comply with such request within one month from the date thereof, shall be guilty of an offence.”.

26. The following section is hereby substituted for section 296 of the principal Act: Substitution of section 296 of Act 61 of 1973.

- “Annual financial statements to disclose loans made to and security provided for benefit of directors or managers before their appointment.
296. (1) The annual financial statements of a company shall state—
- (a) the amount and particulars of every loan which has at any time been made by the company to any person before his appointment as director or manager of the company, if—
- (i) the loan was still in existence at the date of such appointment; and
- (ii) such appointment was made at any time during the financial year concerned; and
- (b) the particulars of every security (and of the transaction to which it relates) which has at any time been provided by the company for the benefit of any person before his appointment as director or manager of the company, if—
- (i) the security was still in existence at the date of such appointment; and
- (ii) such appointment was made at any time during the financial year concerned.
- (2) For the purposes of subsection (1)—
- (a) “loan” includes—
- (i) a loan of money, shares, debentures or any other property; and
- (ii) any credit extended by a company where the debt concerned is not payable or being paid in accordance with normal business practice in respect of payment of debts of the same kind; and
- (b) “security” includes a guarantee.
- (3) The provisions of section 295 (2), (3) and (4) shall *mutatis mutandis* apply with reference to loans and securities contemplated in this section.
- (4) This section shall not apply in respect of a loan made or security provided *bona fide* in the ordinary course of the business of a company actually and regularly carrying on the business of the making of loans or the provision of security.”.

27. Section 365 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 365 of Act 61 of 1973.

- “(2) (a) The provisions of the law relating to insolvency in respect of voting, the manner of voting and voting by an agent at meetings of creditors, shall apply *mutatis mutandis* to any meeting referred to in sections 351 and 364: Provided that in any winding-up by the court a director or former director of a company shall have no voting right in respect of the nomination of a liquidator on the ground of his loan account with the company or claims for arrear salary, travelling expenses or allowances due by the company or claims paid by such director or former director on behalf of the company.
- (b) The provisions of paragraph (a) shall *mutatis mutandis* apply to a person to whom a right contemplated in the said paragraph has been ceded.”.

COMPANIES AMENDMENT ACT, 1976

Act No. 111, 1976

28. Section 423 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 423 of Act 61 of 1973.

“(1) Where in the course of the winding-up or judicial management of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any breach of faith or trust in relation to the company the Court may, on the application of the Master or of the liquidator or of any creditor or member or contributory of the company, enquire into the conduct of the promoter, director or officer concerned and may order him to repay or restore the money or property or any part thereof, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retention, breach of faith or trust as the Court thinks just.”.

29. Section 435 of the principal Act is hereby amended by the substitution for subsection (2) of the following section: Amendment of section 435 of Act 61 of 1973.

“(2) The law relating to insolvency shall *mutatis mutandis* apply in connection with the convening of a meeting of creditors referred to in subsection (1), the conduct of that 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 of an insolvent estate: Provided that a provisional judicial manager may with the consent of the Master or of the Court call a meeting of creditors referred to in subsection (1).”.

30. Section 441 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: Amendment of section 441 of Act 61 of 1973.

“(b) 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, to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;”.

31. A company which prior to 20 November 1974 duly complied with section 288 of the principal Act shall be deemed to have complied with that section as substituted by section 13 of the Companies Amendment Act, 1974 (Act No. 76 of 1974). Savings.

32. This Act shall be called the Companies Amendment Act, 1976. Short title.