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GOVERNMENT GAZETTE

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 958.

17 May 1978.

No. 958.

17 Mei 1978.

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

No. 59 of 1978: Companies Amendment Act, 1978.

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

No. 59 van 1978: Maatskappywysigingswet, 1978.

COMPANIES AMENDMENT ACT, 1978.

Act No. 59, 1978

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 provisions of the Companies Act, 1973, relating to the inspection of, the obtaining of certificates as to the contents of, and the obtaining of copies of or extracts from, documents kept by the Registrar of Companies; so as to empower the Minister to make regulations prescribing how records required to be kept by a company may be kept; to empower the Minister to prohibit the disclosure by companies of particular information and to exempt companies from the obligation to disclose such information; to further regulate the procedure in connection with the deregistration of companies; to change the basis on which fees may be charged by companies for the furnishing of copies of or extracts from certain registers and documents; to further regulate applications for a certificate to commence business; to determine in greater detail the liability of companies and external companies for the payment of annual duty; to further regulate the particulars to be furnished in the written consent of a person to act as director or officer of a company, the duty of such person to lodge such consent, the particulars to be caused to be entered by a company in the register of directors and officers and the duties of a company and other persons in respect of the said register; to abolish the central register of directors and officers; to further define the persons disqualified from being appointed or from acting as a director of a company or from being appointed as auditor of a company; to make further provision in regard to the documents which shall accompany the memorandum of an external company when lodged for registration; to further regulate the time when certain entries shall be made in the register of directors, managers and secretaries of an external company; to make further provision in regard to the lodging of an annual return by an external company and in regard to certain other administrative duties of such a company; to effect certain textual changes; to further regulate the procedure in connection with the deregistration of external companies; and to further define the circumstances in which a company shall be deemed unable to pay its debts; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 2 May 1978.)

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

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1. Section 9 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended—

Amendment of section 9 of Act 61 of 1973.

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

5 "Subject to the provisions of subsection (4), any person may, on payment of the prescribed fee (including an additional fee if any document is not uplifted personally at the Companies Registration Office)—"; and

10 (b) by the addition of the following subsection:

15 "4) No person may inspect a document referred to in subsection (1) or obtain a certificate as to the contents or part of the contents thereof or obtain a copy thereof or an extract therefrom, if the Registrar is satisfied that such document contains particular information or a particular fact concerning the affairs or business of a company, or of any of its subsidiaries, which information or fact the company has been prohibited under section 20 15A (1) from disclosing or from stating on or in any document, or which information or fact the company has been exempted under that section from any obligation so to disclose or state: Provided that the provisions of this subsection shall not apply to such portions of such document as do not contain or refer to or give any 25 indication of the particular information or particular fact which the company has been prohibited or exempted from disclosing or stating as aforesaid."

2. (1) Section 15 of the principal Act is hereby amended by the insertion after paragraph (c) of subsection (1) of the following 30 paragraph:

Amendment of section 15 of Act 61 of 1973, as amended by section 1 of Act 111 of 1976.

"(cA) prescribing how records required under this Act to be kept by a company may be kept, and prescribing the circumstances under which any such records may be destroyed;"

35 (2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

3. The following section is hereby inserted in the principal Act after section 15:

Insertion of section 15A in Act 61 of 1973.

40 "Prohibition of disclosure of, and exemption from obligation to disclose, certain information. 15A. (1) The Minister or, if authorized thereto by the Minister, the Registrar, may—

(a) by notice in writing prohibit any company from disclosing, or from stating on or in any document of the company;

45 (b) on the written application of a company to the Registrar, exempt it, subject to such conditions or restrictions as the Minister or the Registrar may deem fit, from the obligation to disclose, or to state on or in any of its documents,

50 particular information or a particular fact concerning the affairs or business of the company, or that of any of its subsidiaries, which the company would otherwise be required under this Act to disclose or to state on or in any document.

55 (2) Notwithstanding the provisions of subsection (1) any company shall, if the Registrar in a particular case in writing requires the company to do so, submit to the Registrar information which the company would otherwise have been required to submit to the Registrar in terms of the provisions of this Act.

60 (3) The Minister or the Registrar, as the case may be, shall, when considering whether to impose a prohibition or grant an exemption under subsection (1), have regard to the right of the members of the company and of other persons to be informed of the state of the affairs and the business and of the profit 65

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or loss of the company or of the company and its subsidiaries.

(4) Any company which contravenes a prohibition imposed under subsection (1) (a) and any director or officer of a company who contravenes such prohibition, shall be guilty of an offence.

(5) For the purposes of this section a company shall include an external company."

4. Section 21 of the principal Act is hereby amended by the substitution in paragraph (a) of subsection (2) for the words preceding the proviso of the following words: Amendment of section 21 of Act 61 of 1973.

"The income and property of the association whencesoever derived shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to the members of the association or to its **controlling holding or controlled** company or subsidiary."

5. Section 73 of the principal Act is hereby amended— Amendment of section 73 of Act 61 of 1973.

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

"(1) If a company has failed, for a period of more than two years, to lodge with the Registrar an annual return in compliance with the provisions of section 173 or when the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he shall, in accordance with subsection (7), send to the company by certified post a letter enquiring whether it is carrying on business or is in operation."

(b) by the deletion of subsection (2);

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

"(3) If the Registrar does not within one month after sending the **second** letter receive any answer thereto or receives an answer to the effect that the company is not carrying on business or is not in operation, he may publish in the *Gazette* and send to the company by certified post a notice that at the expiration of **three** two months from the date of that notice **the name of** the company mentioned therein will, unless good cause is shown to the contrary, be **struck off the register and the registration of its memorandum and articles will be cancelled** deregistered."

(d) by the deletion of subsection (4);

(e) by the substitution for subsection (5) of the following subsection:

"(5) At the expiration of the period mentioned in any notice referred to in subsection (3) **or (4)** or upon receipt from any company of a written statement signed by every director thereof to the effect that the company has ceased to carry on business and has no assets or liabilities, the Registrar may, unless good cause to the contrary **is previously** has been shown by the company, **strike its name off the register and cancel the registration of the memorandum and articles** deregister the company concerned, and shall give notice to that effect in the *Gazette* and the date of the publication of such notice in the *Gazette* shall be deemed to be the date of **the cancellation of the registration as aforesaid** deregistration: Provided that

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the liability (if any) of every director, officer and member of the company shall continue and may be enforced as if the **[aforesaid registration] company** had not been **[cancelled] deregistered.**”; and

5 (f) by the substitution for subsection (6) of the following subsection:

10 “(6) (a) The Court may, on application by any **[company whose name has been struck off the register and the registration of whose memorandum and articles has been cancelled, or by any member, creditor,]** interested person or the Registrar, if it is satisfied that **[the] a** company was at the time of **[the striking off and cancellation] its deregistration** carrying on business or was in
15 operation, or otherwise that it is just that **[the name of the company and]** the **[said]** registration of the company be restored, make an order that **[such company’s name and]** the said registration be restored accordingly, and thereupon the company shall be deemed to have continued in
20 existence as if **[the registration of its memorandum and articles] it** had not been **[cancelled] deregistered.**

25 (b) Any such order may contain such directions and make such provision as to the Court seems just for placing the company and all other persons in the **[same]** position, as nearly as may be, as if **[the name of]** the company had not been **[struck off the register and the registration of its memorandum and articles had not been cancelled] deregistered.**”

6. Section 113 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 113 of Act 61 of 1973.

35 “(2) Any person may apply to a company for a copy of or extract from the register of members and the company shall either furnish such copy or extract on payment by the applicant of an amount of twenty-five cents or such lesser amount as the company may determine for every
40 **[hundred words or fraction thereof] page** of the required copy or extract, or afford such person adequate facilities for making such copy or extract.”

7. Section 130 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 130 of Act 61 of 1973.

45 “(2) A copy of any trust deed for securing any issue of debentures shall be transmitted to every holder of any such debentures at his request on payment, in the case of a printed trust deed, of an amount of twenty-five cents or such lesser amount as may be determined by the company, or where the trust deed has not been printed, on payment of an amount of
50 twenty-five cents or such lesser amount as may be determined by the company for every **[hundred words or part thereof] page** of the required copy.”

8. (1) The following section is hereby substituted for section 150 of the principal Act: Substitution of section 150 of Act 61 of 1973.

55 “Consent of person named as director. 150. No person shall be named as a director or proposed director of a company in any prospectus relating to shares of that company unless, at any time prior to the registration of such prospectus—
60 (a) his written consent, in the prescribed form, to act as such director has **[at any time before the registration of such prospectus]** been lodged with the company; and

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(b) the return referred to in section 216 (2) reflecting the relevant particulars in regard to such person, has been lodged with the Registrar."

(2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

9. (1) Section 172 of the principal Act is hereby amended by the deletion of paragraph (d) of subsection (3).

Amendment of section 172 of Act 61 of 1973, as amended by section 9 of Act 76 of 1974.

(2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

10 10. Section 174 of the principal Act is hereby amended—

Amendment of section 174 of Act 61 of 1973, as amended by section 10 of Act 76 of 1974 and section 22 of Act 114 of 1977.

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

"(c) thereafter **【, in respect of every financial year】** not later than one month after the end of **【such】** every financial year,";

(b) by the deletion of the proviso to subsection (1); and

(c) by the substitution for paragraph (b) of the proviso to subsection (3) of the following paragraph:

"(b) if a company is deregistered under section 73 (5) it shall cease to be liable for payment of any annual duty provided for in subsection (1) which was owing by it on the date of its deregistration but if **【the name of】** any deregistered company is restored to the register of companies, the company concerned shall within thirty days thereafter pay the annual duty provided for in subsection (1) or such part thereof as the Court may direct."

11. Section 175 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

Amendment of section 175 of Act 61 of 1973, as amended by section 14 of Act 111 of 1976 and section 23 of Act 114 of 1977.

"(b) thereafter **【, in respect of every financial year,】** not later than one month after the end of **【that】** every financial year."

12. Section 206 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

Amendment of section 206 of Act 61 of 1973.

"(2) Any member of a company shall be entitled to be furnished, within seven days after he has made a written request **【in that behalf】** therefor to the company, with a copy of the minutes of the proceedings at any general meeting of the company, certified by the secretary or a director of the company as correct, at a charge not exceeding an amount of **【twenty】** twenty-five cents for every **【hundred words or part thereof】** page of the copy required."

13. (1) The following section is hereby substituted for section 211 of the principal Act:

Substitution of section 211 of Act 61 of 1973, as amended by section 17 of Act 64 of 1977.

211. (1) **【No】** Any person who, **【shall be capable of being appointed as a director of a company】** before the issue of a certificate to commence business, **【unless he has】** is appointed as a director or officer of a company having a share capital, shall—

(a) before such certificate is issued, **【signed】** sign and **【lodged】** lodge with the **【Registrar】** company **【in the prescribed form, containing the particulars under section 215 (1) (a) and (b), a】** his written consent **【in writing】** to act as

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such a director or such an officer, on a duly completed prescribed form containing the particulars prescribed by the Minister by regulation; and

- 5 (b) in the case of a director, either in the memorandum of the company **【subscribed】** subscribe for a number of shares not less than the number, if any, required to be held by a director thereof as qualification shares, or **【signed】** sign and
10 **【lodged】** lodge with the Registrar a contract in the prescribed form in writing to **【take from the company and pay for】** subscribe for or otherwise acquire such shares.

15 (2) **【The】** For the purposes of this section 'qualification shares' **【mentioned in subsection (1) (b) mean】** means the qualification shares required to be held on appointment to the office of director or within a period determined by reference to the time of appointment.

20 (3) **【Where a】** Any person who is appointed as a director or officer of a company at any time after it has become entitled to commence business, **【the company】** shall within twenty-eight days after the date of such appointment or within such further
25 period as the Registrar, on good cause shown and on payment of the prescribed fee, may allow, lodge with the **【Registrar】** company **【the】** his written consent to such appointment **【in】** on the prescribed form
30 **【under】** referred to in subsection (1) (a), duly completed and signed by him **【by that person to his appointment as such】**: Provided that the provisions of this subsection shall not apply to the reappointment of a retiring director.

35 (4) Failure to comply with the provisions of subsection (1) or (3) shall not affect the validity of an appointment.

(5) This section shall not apply in respect of any person deemed to be a director under section 208 (2).

40 (6) Any person appointed as a director or officer of a company in the circumstances referred to in subsection (1) or (3), who fails to comply with the applicable provisions of those subsections, shall be guilty of an offence.

45 (7) Any company which publishes, and every director or officer of the company who knowingly is a party to the publication of, the name of any person as a director of the company when such person is not a director or has not validly been appointed as director of the company, shall be guilty of an offence.

50 **【(8) Any company which fails to comply with the provisions of subsection (3) and every director or officer thereof who is a party to such failure, shall be guilty of an offence.】**

55 (2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

14. (1) Section 215 of the principal Act is hereby amended—
(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

Amendment of section 215 of Act 61 of 1973.

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- 5 “(a) his full forenames and surname and any former forenames and surname, **[his nationality if not South African, his occupation,]** his identity number or, if he has no such number, his date of birth, [his residential, business and postal addresses and the date of appointment,] and if any officer is a corporate body, the address of its registered office;”;
- 10 (b) by the insertion after paragraph (a) of subsection (1) of the following paragraph:
 “(aA) his nationality if not South African, his occupation, his residential, business and postal addresses and the date of appointment;” and
- 15 (c) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
 “(c) any changes occurring from time to time in the particulars referred to in paragraphs (a), (aA) and (b) and the dates and nature of such changes.”.
- 20 (2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

15. (1) The following section is hereby substituted for section 216 of the principal Act:

Substitution of section 216 of Act 61 of 1973, as amended by section 18 of Act 64 of 1977.

- 25 “Duties of directors and others and of company in respect of register.
216. (1) Any person **[, except an auditor referred to in section 215 (2),]** in respect of whom the particulars referred to in section 215 are in terms of that section to be entered in the register mentioned in that section, shall furnish such particulars in writing to the company concerned—
- 30 (a) in the case of a person appointed as a director or officer of the company, within **[fourteen]** twenty-eight days after the date of his appointment **[in the form in which his consent to act as a director or officer is to be lodged with the Registrar under section 211];** and
- 35 (b) in the case of a change in such particulars, including any change contemplated in section 215 (2), but excluding 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,
- 40 and such particulars or any change therein shall upon receipt thereof, and if any director, officer or auditor has vacated his office, a statement that such vacation of office has occurred shall forthwith, be entered in such register by the company.
- 45 (2) A company shall within fourteen days after receipt of any particulars referred to in section 215 (1) (a) and (aA) or of notice of any change in **[such]** the particulars referred to in **[subsection (1)]** section 215 (1) (a) or after any director, officer or auditor has vacated his office, lodge a return with the Registrar in the prescribed form reflecting the contents of such register after such particulars or such change therein or a statement that such vacation of office has occurred, **[has]** have been entered in [such] the register: Provided that any **[entries]** entry of such a [vacations] vacation of office previously advised to the Registrar, shall not be reflected in such return **[: Provided further that in the case of a director of the company such return shall not be lodged in respect of the particulars furnished under section 215 (1) (b) or of a change in his residential, postal or business address].**
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(3) In respect of any of the matters referred to in section 211 (1) the return referred to in subsection (2) shall contain a statement, signed by a director or officer of the company, that—

- 5 (a) the consent, referred to in section 211, of the director or officer in respect of whom particulars are reflected in such return, has been obtained on a duly completed and signed prescribed form;
- 10 (b) any person appointed as director or officer of the company, is not disqualified under section 218 or 219; and
- 15 (c) the written consent under section 218 (1) (b) of the husband of any woman appointed as a director of the company has been obtained on the prescribed form.

(4) Any written consent referred to in section 211 shall be retained by the company and the Registrar may from time to time by notice in writing require a company to transmit to him within fourteen days after the date of the receipt of such notice, a certified copy of the consent of any director or officer of the company to act as such.

(5) Any person who or company or external company which fails to comply with any provision of this section shall be guilty of an offence.”

(2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

16. (1) Section 217 of the principal Act is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

Repeal of section 217 of Act 61 of 1973.

17. (1) Section 218 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

35 “(b) a minor or any other person under legal disability, save a married woman subject to the marital power of her husband whose written consent to her appointment as a director has, on the form referred to in section 211 (1) (a), been lodged with the **[Registrar]** company;”

(2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

Amendment of section 218 of Act 61 of 1973.

18. Section 275 of the principal Act is hereby amended—

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

45 “(a) a director, **[or]** officer or employee of the company;” and

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

50 “(b) a director, **[or]** officer or employee of any company performing secretarial work for the company;”

Amendment of section 275 of Act 61 of 1973, as amended by section 24 of Act 64 of 1977.

19. Section 310 of the principal Act and the heading thereto are hereby repealed.

Repeal of section 310 of Act 61 of 1973 and heading thereto.

20. (1) Section 322 of the principal Act is hereby amended by the deletion of paragraph (f) of subsection (1).

55 (2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

Amendment of section 322 of Act 61 of 1973.

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21. (1) Section 327 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 327 of Act 61 of 1973.

5 “(1) The provisions of sections 211, 215 and 216 shall *mutatis mutandis* apply to a director, local manager and local secretary of an external company: Provided that where a director is not resident in the Republic—

10 (i) the entries referred to in section 216 (1) shall be made in the register not later than the end of the financial year of the company and the return referred to in section 216 (2) shall be lodged together with the annual return referred to in section 330; and

15 (ii) the form of consent prescribed under section 211 may be signed by the director or his duly authorized agent on his behalf [, shall be lodged with the Registrar together with the annual return under section 330]”.

(2) Subsection (1) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

22. Section 329 of the principal Act is hereby amended by the insertion in subsection (1), in the Afrikaans text, after the expression “tot en met (e),” of the word “hou”. Amendment of section 329 of Act 61 of 1973.

23. (1) Section 330 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 330 of Act 61 of 1973.

25 “(1) Every external company shall not later than one month after the end of its financial year lodge with the Registrar a return in the prescribed form, specifying the particulars prescribed by the Minister by regulation, in regard to the company, as at the date of the end of its financial year.”.

30 (2) Subsection (1) shall be deemed to have come into operation on 7 October 1977.

24. Section 331 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 331 of Act 61 of 1973.

35 “(2) An external company shall not issue or send to any person in the Republic any trade catalogue, trade circular or business letter bearing the company’s name unless the names of its directors, their nationality if not South African, the names of its local managers and its local secretary are stated therein.”.

40 25. Section 332 of the principal Act is hereby amended— Amendment of section 332 of Act 61 of 1973.
(a) by the substitution for subsection (2) of the following subsection:

45 “(2) If the Registrar has reasonable cause to believe that an external company has ceased to have a place of business in the Republic, he shall send **[to the company]** by **[registered]** certified post **[letters addressed]** to the company at its postal address and at the address of its registered office, **[and]** to the person authorized to accept service on its behalf and to its auditor, letters [enquiring whether it continues to have such a] requiring details of its said place of business, if any.”;

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

55 “(3) If the Registrar does not within one month of sending the letters receive any answer thereto or if he receives an answer to the effect that the company has ceased to have a place of business in the Republic, he may publish in the *Gazette* and may by certified post send to the company at its postal address and at the address of its registered office, to the person authorized to accept service on its behalf and to its

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auditor, a notice to the effect that at the expiration of a period of two months from the date of that notice the said company will, unless good cause is shown to the contrary, be deregistered."; and

5 (c) by the addition of the following subsection:

“(4) At the expiration of the period of two months mentioned in any notice referred to in subsection (3) or upon receipt from any external company of a notice contemplated in subsection (1), the Registrar may, unless good cause to the contrary has been shown by the company, deregister the company and shall, if he so deregisters the company, give notice to that effect in the *Gazette* and the date of the publication of such notice in the *Gazette* shall be deemed to be the date of deregistration: Provided that the liability (if any) of every director, officer and member of the company shall continue and may be enforced as if the company had not been deregistered.”

26. Section 345 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: Amendment of section 345 of Act 61 of 1973.

“(b) any process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned by the sheriff or the messenger with an endorsement that he has not found sufficient **[assets]** disposable property to satisfy the judgment, decree or order or that any **[assets]** disposable property found did not upon sale satisfy such process; or”

27. (1) Section 441 of the principal Act is hereby amended— Amendment of section 441 of Act 61 of 1973, as amended by section 30 of Act 111 of 1976 and section 29 of Act 64 of 1977.

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

“(c) 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 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;”

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

“(d) in section 90, 286, 288, 297, 298, 299, 302, 308, **[310,]** 312 (5), 363, 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;” and

45 (c) by the substitution for paragraph (o) of subsection (1) of the following paragraph:

“(o) in section **[211 (8)]** 211 (6), 216 or 252, to a fine of five rand for each day during which the contravention continues.”

(2) Subsection (1) (c) shall come into operation on a date fixed by the Minister by notice in the *Gazette*.

28. This Act shall be called the Companies Amendment Act, Short title. 1978.