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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Price 20c Prys
Overseas 30c Oorsee
POST FREE—POSVRY

Vol. 113]

CAPE TOWN, 20 NOVEMBER 1974

[No. 4502

KAAPSTAD, 20 NOVEMBER 1974

DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 2162.

20 November 1974.

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20 November 1974.

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

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

No. 76 of 1974: Companies Amendment Act, 1974.

No. 76 van 1974: Maatskappywysigingswet, 1974.

ACT

To amend the Companies Act, 1973, so as to further define the expressions "controlling company", "holding company", "subsidiary company" and "wholly owned subsidiary"; to further regulate the lending of money by controlled companies; to further regulate a subsidiary's membership of its holding company; to further prescribe the registration fees and annual duties payable by companies; to further regulate the position of share premiums in relation to share capital; to further define the expression "security"; to further regulate the transfer of listed securities; to regulate the publication of particulars of offers of shares and debentures to members of listed companies; to alter the requirements relating to certificates to commence business; to prescribe the quorum at a general meeting of a private company; to regulate changes in the financial year of a company; to further prescribe the requirements relating to group annual financial statements; to further prescribe the requirements relating to half-yearly interim reports; and to further prescribe the requirements in respect of take-over offers; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 11 November 1974.)*

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

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

Amendment of section 1 of Act 61 of 1973.

- (a) by the substitution in subsection (1) for paragraph (a) of the definition of "controlling company" of the following paragraph:
 "(a) if it holds more than fifty per cent of the equity share capital of that other company; or";
- (b) by the substitution in the said subsection (1) for the definition of "holding company" of the following definition:
 "'holding company' means a holding company as defined in subsection (4);";
- (c) by the substitution in the said subsection (1) for the definition of "subsidiary company" of the following definition:
 "'subsidiary company' or 'subsidiary' means a subsidiary company as defined in subsection (3);";
- (d) by the substitution in the said subsection (1) for the definition of "wholly owned subsidiary" of the following definition:
 "'wholly owned subsidiary' means a wholly owned subsidiary as defined in subsection (5);"; and

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- (e) by the addition of the following subsections:
- “(3) (a) For the purposes of this Act, a company shall, subject to the provisions of paragraph (c), be deemed to be a subsidiary of another company if—
- (i) that other company either—
 - (aa) is a member of it and controls the composition of its board of directors; or
 - (bb) holds more than one-half of its equity share capital; or
 - (ii) it is a subsidiary of any company which is a subsidiary of that other company; or
 - (iii) subsidiaries of that other company together hold more than one-half of its equity share capital; or
 - (iv) that other company and one or more of its subsidiaries together hold more than one-half of such capital.
- (b) For the purposes of paragraph (a), the composition of a company’s board of directors shall be deemed to be controlled by another company, if that other company may, by the exercise of some power, without the consent or concurrence of any other person, appoint or remove the majority of the directors, and for the purpose of this paragraph a company shall be deemed to have power so to appoint a director where—
- (i) a person cannot be so appointed as director without its consent or concurrence; or
 - (ii) a person’s appointment as director follows necessarily from his appointment as director of it.
- (c) In determining whether one company is a subsidiary of any other company—
- (i) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;
 - (ii) any shares held or power exercisable—
 - (aa) by any person as a nominee for that other company (except where that other company is concerned only in a fiduciary capacity); or
 - (bb) by a subsidiary of that other company or a nominee for such subsidiary (except where such a subsidiary is concerned only in a fiduciary capacity),shall, subject to the provisions of subparagraphs (iii) and (iv), be deemed to be held or exercisable by that other company;
 - (iii) any power exercisable by virtue of any debentures held, shall be disregarded;
 - (iv) any shares held or power exercisable by that other company or its subsidiary or a nominee of such company or subsidiary (otherwise than as mentioned in sub-paragraph (iii)), shall be treated as not held or exercisable by that other company, if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money, and the shares are so held or the power is so

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exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(d) A body corporate which would have been a subsidiary of another company had it been a company as defined in this Act, shall be deemed to be a subsidiary of such other company.

(4) For the purposes of this Act, a company shall be deemed to be a holding company of another company if that other company is its subsidiary.

(5) For the purposes of this Act, a subsidiary shall be deemed to be a wholly owned subsidiary of another company if it has no members except that other company and a wholly owned subsidiary of that other company and its or their nominees.”

2. Section 37 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 37 of Act 61 of 1973.

“(1) No part of the funds of a company shall be employed directly or indirectly in loans to any company which is its controlling company, unless all its members consent to the loan: Provided, however, that this subsection shall not be construed as prohibiting the lending of money in the ordinary course of its business by a company actually carrying on a business which includes the lending of money.”

3. Section 39 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph: Amendment of section 39 of Act 61 of 1973.

“(a) a subsidiary which, at the commencement of this section is, or before it became a subsidiary was, lawfully a member of its holding company, from continuing to be a member, but no such subsidiary shall have the right to vote at meetings of the holding company or any class of members thereof; or”.

4. Section 63 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 63 of Act 61 of 1973.

“(2) The fee for the registration of a company shall be a basic amount of fifteen rand and an additional fee calculated at the rate of—

(a) in the case of a company having a nominal share capital with shares having a par value, two rand and fifty cents for each thousand rand or part thereof;

(b) in the case of a company having shares of no par value, two rand and fifty cents for each thousand shares or part thereof;

(c) in the case of a company having both shares of par value and shares of no par value, the aggregate of the amounts calculated on the basis laid down in paragraphs (a) and (b) of this subsection:

Provided that the minimum registration fee payable shall be twenty-five rand.”.

5. Section 76 of the principal Act is hereby amended by the addition of the following subsection: Amendment of section 76 of Act 61 of 1973.

“(5) This section shall also apply to any company in respect of any balance of share premiums which arose from the issue of shares on or after 1 January 1953.”.

6. Section 134 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph: Amendment of section 134 of Act 61 of 1973.

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“(c) ‘security’ means any listed security as defined in section 1 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 1947);” and

(b) by the deletion of paragraph (e).

7. Section 135 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: Amendment of section 135 of Act 61 of 1973.

“(b) a security may be transferred by means of a securities transfer form and a broker’s transfer form: Provided that—

- (i) such broker’s transfer form shall be prepared by a stockbroker as defined in section 1 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 1947), and shall bear his signature or an authorized facsimile thereof;
- (ii) such securities transfer form need not be completed with reference to the particulars relating to the transferee and the consideration passing;
- (iii) a separate broker’s transfer form may be used in respect of each person to whom transfer is passed.”.

8. Section 157 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph: Amendment of section 157 of Act 61 of 1973.

“(f) where all the shares which are the subject of an offer are intended to be offered only to the members of the company or debenture holders, as the case may be, and its shares or one or more classes thereof, are listed by a stock exchange within the Republic—

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

9. Section 172 of the principal Act is hereby amended by the addition of the following subsection: Amendment of section 172 of Act 61 of 1973.

“(8) This section shall not apply to an existing company which was entitled, under the repealed Act, to commence business or exercise borrowing powers.”.

10. Section 174 of the principal Act is hereby amended— Amendment of section 174 of Act 61 of 1973.

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

“(2) The rate of the annual duty shall be—

- (a) in the case of a company having a nominal share capital, two rand and fifty cents per each ten thousand rand or part thereof of its issued share capital plus the amount of its share premium account;
- (b) in the case of a company having shares of no par value, two rand and fifty cents per each ten thousand rand or part thereof of the amount of its stated capital account;
- (c) in the case of a company having both shares of par value and shares of no par value, the aggregate of the amounts calculated on the bases laid down in paragraphs (a) and (b) of this subsection; and

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- (d) in the case of the payment of annual duty on the commencement of business of a company, two rand and fifty cents per each ten thousand rand or part thereof of the amount of the issued share capital or stated capital, in the case of shares of no par value, of the company as at the date of the issue of the certificate to commence business:

Provided that the minimum annual duty payable in respect of each company shall be fifty rand.”; and

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

“(5) If a company changes its financial year under section 285 (2) (b), the amount of the annual duty payable for the additional period shall be half of the annual duty payable for a full financial year.”.

11. Section 190 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph: Amendment of section 190 of Act 61 of 1973.

- “(b) in the case of a private company, not being a private company having one member, two members entitled to vote, present in person or by proxy or, if a member is a body corporate, represented; and”.

12. Section 285 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 285 of Act 61 of 1973.

“(2) A company may at any time—

- (a) on payment of the prescribed fee and on lodgement with the Registrar of the prescribed form, change the end of its financial year to a date being not more than six months earlier; or
- (b) with the approval of the Registrar given on good cause shown and upon payment of the prescribed fee and the annual duty referred to in section 174 (5), change the end of its financial year to a date, being not more than six months later.”.

13. The following section is hereby substituted for section 288 of the principal Act: Substitution of section 288 of Act 61 of 1973.

“Obligation to lay group statements before annual general meeting.

288. (1) Where at the end of its financial year a company, which is not a wholly owned subsidiary of another company incorporated in the Republic (including an external company which is a subsidiary of a company incorporated in the Republic), has subsidiaries, group annual financial statements shall be made out and shall be laid before the annual general meeting of the company before which its own annual financial statements are so laid under section 286 (1).

(2) 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 concerns 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.

- (3) (a) Any director or officer of a company who fails to take all reasonable steps to comply or to

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secure compliance with the provisions of this section or with any other requirements of this Act as to matters to be stated in group annual financial statements, shall be guilty of an offence.

- (b) In any proceedings against any director or officer of a company under paragraph (a), the defence referred to in section 284 (4) (b) shall be available to him.”.

14. The following section is hereby substituted for section 290 of the principal Act: Substitution of section 290 of Act 61 of 1973.

“Where annual financial statements are to be consolidated.

290. Consolidated annual financial statements shall be made out unless the directors of the company are of the opinion that the required information about the state of affairs, business and profit or loss of the company and its subsidiaries would be presented more effectively and meaningfully in the manner contemplated in section 289 (1) (b).”.

15. Section 291 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 291 of Act 61 of 1973.

“(2) If the directors of a company are of the opinion that—

- (a) if a subsidiary were to be dealt with in group annual financial statements, the result would be misleading or harmful to the business of the company or any of its subsidiaries; or
- (b) the business of the company and that of a subsidiary are so different that they cannot reasonably be treated as a single undertaking or are of such opinion about each of the company’s subsidiaries,

group annual financial statements need not deal with that subsidiary, or, as the case may be, no group annual financial statements shall be required, if the Registrar approves.”.

16. Section 292 of the principal Act is hereby repealed. Repeal of section 292 of Act 61 of 1973.

17. The following section is hereby substituted for section 293 of the principal Act: Substitution of section 293 of Act 61 of 1973.

“Accounting periods of company and subsidiary to be the same.

293. The directors of any subsidiary shall, notwithstanding anything to the contrary in this Act or in its articles, cause annual financial statements as required by section 286 to be made out so as to cover an accounting period or accounting periods ending on the same date or dates as the period or periods covered by the annual financial statements of its holding company or holding companies.”.

18. The following section is hereby substituted for section 294 of the principal Act: Substitution of section 294 of Act 61 of 1973.

“Duty of auditor to report on decisions of directors on consolidated and group annual financial statements.

294. In every case where the directors of a holding company have decided not to make out consolidated annual financial statements under section 290, or not to deal with any subsidiary in group annual financial statements under section 291 (1), the auditor of the holding company shall report on such decision of the directors.”.

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19. Section 295 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: Amendment of section 295 of Act 61 of 1973.

“(3) If any company making any loan or providing any guarantee or security referred to in subsection (2) 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 in respect of the matters provided for in subsection (2).”.

20. The following section is hereby substituted for section 298 of the principal Act: Substitution of section 298 of Act 61 of 1973.

“Approval and signing of financial statements.

298. (1) The annual financial statements of a company other than the auditor's report, shall be approved by its directors and signed on their behalf by two of the directors or, if there is only one director, by that director, and group annual financial statements shall similarly be approved and signed by the directors of the holding company.

(2) If a copy of any annual financial statements, or group annual financial statements which have not been approved and signed as required by subsection (1), is issued, circulated or published, every director or officer of the company concerned who is a party to such issue, circulation or publication thereof, shall be guilty of an offence.”.

21. Section 300 of the principal Act is hereby amended— Amendment of section 300 of Act 61 of 1973.

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

“(a) to examine the annual financial statements and group annual financial statements to be laid before its annual general meeting;”;

(b) by the substitution for paragraph (h) of the following paragraph:

“(h) to examine group annual financial statements and satisfy himself that they comply with the requirements of this Act;”;

(c) by the substitution for paragraph (i) of the following paragraph:

“(i) to examine such of the accounting records of the company and carry out such tests in respect of such records and such other auditing procedures as he considers necessary in order to satisfy himself that the annual financial statements or group annual financial statements fairly present the financial position of the company or of the company and its subsidiaries and the results of its operations and those of its subsidiaries, in conformity with generally accepted accounting practice applied on a basis consistent with that of the preceding year;”.

22. Section 301 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 301 of Act 61 of 1973.

“(1) When the auditor of a company has complied with the requirements of, and has satisfied himself as to the matters stated in, section 300, and has carried out his audit free from any restrictions whatsoever, he shall make a report to the members of the company to the effect that he has examined the annual financial statements and group annual financial statements and that in his opinion they fairly present the financial position of the company and its subsidiaries and the results of its operations and that of its subsidiaries in the manner required by this Act.”.

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23. Section 302 of the principal Act is hereby amended— Amendment of section 302 of Act 61 of 1973.
- (a) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
- “(a) of the annual financial statements and group annual financial statements, if any; and”;
- (b) by the substitution for paragraph (b) of the said subsection (4) of the following paragraph:
- “(b) of the annual financial statements of every private company which is a subsidiary of that public company.”; and
- (c) by the insertion after the said subsection (4) of the following subsection:
- “(4A) (a) The Registrar may on application by any public company made to him on the prescribed form, on good cause shown and on payment of the prescribed fee, exempt such a public company from the requirements of subsection (4) (b).
(b) Any such exemption by the Registrar shall expire after two years but may be renewed on application by the company.”.

24. The following section is hereby substituted for section 303 of the principal Act: Substitution of section 303 of Act 61 of 1973.

“Half-yearly interim reports.

303. Every public company having a share capital, other than a wholly owned subsidiary, shall not later than three months after the expiration of the first period of six months of its financial year send to every member and holder of debentures of the company an interim report fairly presenting the business and operations of the company or, in the case of a holding company, of the company and its subsidiaries, during the said period of six months, and the results thereof: Provided that—

- (a) the first interim report to be sent to members and holders of debentures of a company after its incorporation shall—
- (i) in any case where proviso (a) to section 285 (1) applies and where the period of the first financial year of the company exceeds nine months, be in respect of a period of six months commencing on the date of incorporation of the company; and
- (ii) in any case where proviso (b) to section 285 (1) applies, be in respect of a period commencing on the date of incorporation of the company and ending six months before the end of its first financial year;
- (b) where a company has changed the end of its financial year under section 285 (2) (b) an additional interim report shall be made out for the period from the beginning of the financial year so changed to the date of the end of the financial year before it was so changed.”.

25. Section 304 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 304 of Act 61 of 1973.

“(1) Every public company having a share capital, other than a wholly owned subsidiary, which does not within three months after the end of its financial year issue copies of its annual financial statements in terms of section 302 (1) shall not later than the date on which the said period of three months expires send to every member and holder of debentures of the company a copy

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of the provisional annual financial statements of the company fairly presenting the business and operations of the company or, in the case of a holding company, of the company and its subsidiaries during that accounting period, and the results thereof.”.

26. The following section is hereby substituted for section 305 of the principal Act:

“Form and contents of interim report and provisional annual financial statements.

305. (1) For the purposes of sections 303 and 304 interim reports and provisional annual financial statements shall respectively be in accordance with and include at least the matters prescribed by Schedule 4 in so far as they are applicable and shall comply with the other requirements of this Act.

Substitution of section 305 of Act 61 of 1973.

(2) Provisional annual financial statements shall not be required to be audited.

(3) Every interim report and all provisional annual financial statements of a company shall be approved by the directors and signed on their behalf by two of the directors.”.

27. The following section is hereby substituted for section 306 of the principal Act:

“Copies of interim report and provisional annual financial statements to be lodged with Registrar.

306. Every company which issues an interim report or provisional annual financial statements shall, within seven days from the date of issue, lodge a copy of such interim report or provisional annual financial statements under cover of the prescribed form with the Registrar.”.

Substitution of section 306 of Act 61 of 1973.

28. Section 307 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Registrar may on application by any company made to him before the expiry of the periods in which an interim report under section 303 or provisional annual financial statements under section 304 are required to be issued, on good cause shown and on payment of the prescribed fee, extend the said periods respectively by such period as he may in each case deem fit.”.

Amendment of section 307 of Act 61 of 1973.

29. Section 309 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any member or holder of debentures of a company shall be entitled to be furnished on demand without charge with a copy of the last annual financial statements (including group annual financial statements) and provisional annual financial statements and of the last interim report of the company.”.

Amendment of section 309 of Act 61 of 1973.

30. Section 314 of the principal Act is hereby amended by the addition to subsection (2) of the following proviso:

“Provided that if the consideration offered consists wholly or partly of cash and any of the shareholders is resident outside the Republic, the offer may, with the approval of the Minister, granted after consultation with the Minister of Finance, provide for payment or settlement of such consideration to or in respect of the shareholders referred to in a manner other than the manner of payment or settlement thereof to or in respect of shareholders resident in the Republic, but in such a manner that all shareholders receive equivalent treatment.”.

Amendment of section 314 of Act 61 of 1973.

31. This Act shall be called the Companies Amendment Act, 1974, and the provisions thereof, except section 5, shall be deemed to have come into operation on 1 January 1974.

Short title and date of commencement.