

CCASA presents:

CHANGES TO THE COMPANIES ACT, 2008

A workshop presented by CCASA CEO, Alison Lee

Changes to the Companies Act, 2008 are moving forward, finally ... but with a lot more added detail.

Companies Amendment Bill, 2021

The Companies Amendment Bill, 2021 was published by the Department of Trade, Industry and Competition (the dtic) for public comment on Friday, 1 October 2021. Comments on the Bill must be submitted by Friday, 31 October 2021.

Replaces earlier 2018 version

This publication of the 2021 Amendment Bill follows the publication of an earlier version of the Bill on 21 September 2018 which dealt with administrative bottlenecks as identified during the implementation of the Companies Act 2008.

Various Policy Objectives

The 2021 version is a completely redrafted Bill with significant amendments, which are aimed at achieving a number of policy objectives –

- improving ease of doing business;
- providing for greater transparency on wage ratios;
- addressing true or beneficial ownership of companies in order to address money laundering challenges;
- improving and enhancing from a transparency perspective, compliance activities and the role of the social and ethics committee.

Corporate Counsel and Company Secretaries, without exception, must peruse and understand these amendments, as they will at some stage apply when performing legal activities on behalf of one's organization.

Attend CCASA's one-day workshop with guest speaker, Professor Michael Katz from ENSAfrica

Instead of spending days trying to read over these changes, join the CCASA team for a one-day interactive workshop where the Amendment Bill will be unpacked and the various changes discussed, analysed and applied to one's legal and business environment.

Professor Michael Katz from ENSAfrica has kindly offered to join us for a 60-minute discussion on the Amendment Bill, advising, inter alia, why the amendments were necessary, the rationale behind the amendments and the various policy objectives which it is hoped these amendments will achieve.

The 2021 Amendment Bill seeks to do the following:

Definitions

- amends the definition of securities;
- provides for the definition of true owner.

Directors' remuneration report for public companies - remuneration policy and directors' remuneration report

- provides for the preparation, presentation and voting on a company's remuneration policy and the directors' remuneration report;
- the Bill seeks to align the provisions of the Act with the recommendations of the King IV Report on Corporate Governance in South Africa (King IV) in relation to remuneration governance. King IV recommends that companies publish a remuneration report in their annual statement, setting out their remuneration policy and how the policy was implemented by the board. In addition, King IV recommends that companies table their remuneration policy and implementation report for shareholder approval, by way of two separate non-binding advisory votes at each AGM;
- the provisions of the Bill mirror those of King IV in that it introduces a new requirement for public companies to prepare a similar directors' remuneration report annually. However, the Bill does not go as far as King IV as it only requires the report to be approved by the board. The Bill does not envisage a shareholder non-binding advisory vote on the report. It only proposes that the report be presented to shareholders at the AGM.

Commission to receive annual financial statements, securities register and register of disclosure of beneficial ownership

- Certain companies to file copies of their annual financial statements, securities register and register of disclosure of beneficial ownership with the Commission.

Public Access to company records

- Companies must file a copy of their securities register annually with the Companies and Intellectual Property Commission (CIPC), together with their annual returns;
- Differentiates between types of companies who have a duty to grant access of its records to third parties, when requested.

Effective date of amendments to MOI

- clarifies when a Notice of Amendment of a Memorandum of Incorporation takes effect. The current provisions of the Act are unclear and many adopted the view that the amendments were effective immediately upon filing;
- the Bill proposes that amendments to MOIs (other than in relation to a name change) will take effect only after 10 business days of being filed if not rejected by the CIPC. It is not clear what the effective date of MOI amendments will be if the CIPC rejects the filing.

Court validation of irregular creation, allotment or issue of shares - power of the court to rectify invalid creation, allotment or issue of shares

- empowers the Court to validate the irregular creation, allotment or issue of shares;
- on application by the company or an interested party to the relevant Court, an invalid creation, allotment or issue of shares, may be validated or the terms thereof confirmed. Currently, the Act does not allow a court to do so;
- share capital structure of companies: The Companies Act does not allow for a company to fix its share capital structure where it contains errors. It is proposed that a company or any interested person be permitted to approach a Court to apply for an order validating the creation, allotment or issue of shares. Historically, this type of Court application was allowed for under the old 1973 Companies Act. The proposed change is welcomed, as there is presently a gap in the legislation.

Shares not fully paid up may be transferred to certain entities

- clarifies how shares which are not fully paid are to be dealt with.

Financial assistance resolution requirements – exclusions as between holding company and subsidiaries - intra-group financial assistance

- the financial assistance requirements in section 45 of the Act will no longer apply to financial assistance by a company to its own subsidiary company. This is a welcome exemption for group companies;
- presently, any financial assistance granted by a company to its subsidiary must be authorised by the board and the shareholders by way of a special resolution;
- the Bill now proposes that the special resolution requirement should not apply where a company gives financial assistance to its own subsidiary;
- excludes the holding company from the requirements relating to financial assistance.

Employee share schemes

- extends the definition of an employee share scheme to include situations where there are purchases of shares of a company.

Share Buy Backs

- certain share repurchases will be exempted from shareholder approval;
- a share buyback will no longer require the approval of shareholders by special resolution if it entails a pro-rata repurchase from all shareholders or a repurchase in the ordinary course on a recognised stock exchange on which the shares are traded;
- the Bill requires that a share buyback must be approved by a special resolution of shareholders if shares are to be bought back from a director, a prescribed officer or a person related to a director or a prescribed officer.

Beneficial owners of shares

- provides for circumstances where a company is unable to identify the details of persons who hold a beneficial interest in its securities.

Social and ethics committee - appointment, composition and reporting

- deals with the composition of the social and ethics Committee;
- deals with the publication of the application for exemption from the requirement to appoint a social and ethics committee;
- provides for the presentation and approval of the social and ethics committee report at the annual general meeting or shareholders' meeting as the case may be;
- currently, the Regulations set out the types of companies required to appoint a social and ethics committee (SEC). These include state owned companies, listed companies, and any other company that has, in two of the previous five years, scored above 500 points as their public interest score. The Bill proposes to amend the Act to include a requirement that all public companies, whether listed or unlisted, must appoint a SEC;
- in addition, the Bill seeks to amend the SEC composition requirements contained in the Regulations by inserting new provisions in the Act;
- the Bill also contemplates that the social and ethics committee must prepare a formal report to present to shareholders at each AGM. Currently, the Regulations only require a member of the SEC to report to shareholders at the AGM. The Bill does not provide guidance on what the formal report should cover. Some of the proposed amendments in relation to SECs may have fit better in amended Regulations in order to avoid any confusion or conflicts between the provisions of the Act and the Regulations;
- in terms of the Bill, it is mandatory for a public company or a state owned company to appoint a social and ethics committee at each annual general meeting;
- The Bill sets out the composition of that committee and its functions;
- The Bill allows companies to apply to the Companies Tribunal for an exemption from these requirements if the company has another mechanism within its structures to perform the functions of the committee or if it is not necessary in the public interest to require the company to have a committee, having regard to the nature and extent of the activities of the company.

Disclosure of directors' and prescribed officer's remuneration and benefits

- the Bill intends to clarify the disclosure requirements of section 30(4) of the Act in terms of which the remuneration and benefits received by each individual director must be disclosed in the company's audited annual financial statements (in the case of companies required to be audited under the Act). These disclosure requirements will now also apply to prescribed officers and each director and prescribed officer must be referred to by name;
- it is proposed that remuneration and benefits received by a “prescribed officer” must also be disclosed in the audited annual financial statements of the company, in addition to that which is disclosed for each director. A “prescribed officer” is typically an executive who is in a position to influence the management of the company.

Requirements for appointment of auditors

- a private company required to be audited in terms of the Act or its MOI, must appoint an auditor annually at a shareholders' meeting and not necessarily at the AGM, as is currently the case;
- the Bill proposes to reduce the disqualification period for a person contemplating to serve as auditor but who served as a director, prescribed officer, employee, company secretary or bookkeeper of the company for the two financial years preceding the date of appointment of the auditor. Currently, the disqualification period is longer, being five financial years. The provisions are designed to ensure that an auditor is independent of the company of which he or she audits. The Companies Act presently prohibits a person who has enjoyed a close working relationship with the company (for example a director, a prescribed officer, employee or consultant) within the past five years from being appointed auditor. It is proposed that the five-year period be reduced to two years.

Business rescue and the treatment of landlords

- the Bill provides that any amounts due by a company under business rescue to a landlord will be regarded as “post commencement financing” and the landlord will have a voting interest in the business rescue proceedings. Post commencement finance, whether secured or unsecured, enjoys preference over unsecured creditors.

Limitation of scope of application of the takeover provisions to private companies

- currently, the provisions in relation to affected transactions (Parts B and C of Chapter 5 of the Act) and the takeover regulations only apply to private companies if more than 10% of the shares in the company were transferred in the preceding 24 months;
- the Bill proposes to limit the scope of application of the takeover provisions only to private companies which at the time of the particular affected transaction, are required to be audited under the Act (or if the MOI requires the company to be subject to the takeover provisions). This is a material proposed amendment as it limits the scope of application of the takeover provisions substantially insofar as private companies are concerned;
- application of the Takeover Regulations to private companies: It is proposed that the Takeover Regulations should only apply with respect to an “affected transaction” or “offer” involving a private company or its securities, if the private company is required to have its annual financial statements audited or if its memorandum of incorporation requires it to do so. The change should be embraced as, to date, the Takeover Regulations apply to many transactions undertaken by private companies where it is simply inappropriate and unnecessary.

Tribunal

- ensures the differentiation of duties between the chairperson of the Tribunal and the Chief Operation Officer.

Disputes concerning company names

- in terms of the Companies Act, the Companies Tribunal may deal with disputes regarding company names. It is proposed that where a company has been ordered to change its name, and it fails to do so, the Companies Commission may substitute the name of the company in question with its registration number.

Black economic empowerment

- the Bill seeks to give the Companies Tribunal the power to adjudicate cases referred to it by the B-BBEE Commission. This is not surprising, given the need to ensure cooperation amongst the different regulators.

HANDOUTS WILL INCLUDE:

- Slide deck covering all amendments;
- Details of all sections of the companies act affected, with marked up amendments and supporting commentary on why the amendments were necessary and summary of effects of the amendments, per section.



28 October 2021

The course fee includes the course material in electronic format which will be shared with delegates at least two days before commencement of the workshop.



8:30 - 16:00

Delegates have an option to request hard copies of the course material at an additional fee of R632.50.00*, which includes the courier fee for delivery thereof.



This course will be hosted online via Microsoft Teams

**All amounts are inclusive of VAT*



CCASA members: R4,485.00*
Non CCASA members: R6,785.00*

Closing date for registrations: 22 October 2021

CCASA

CORPORATE COUNSEL ASSOCIATION OF SOUTH AFRICA

REGISTRATION FORM

CHANGES TO THE COMPANIES ACT, 2008 WORKSHOP ONLINE VIA MS TEAMS | 28 OCTOBER 2021

DELEGATE'S DETAILS

TITLE:	NAME:	SURNAME:
CONTACT NUMBER:	E-MAIL ADDRESS:	

Are you a member of CCASA?

 Yes No

Do you require hard copies of the course material at an additional fee?

 Yes No

INVOICING DETAILS

COMPANY NAME:	
POSTAL ADDRESS:	
CONTACT NUMBER:	
VAT REGISTRATION NUMBER:	
PO NUMBER: (IF AVAILABLE)	

AUTHORISATION DETAILS

NAME OF PERSON AUTHORIZING ATTENDANCE:	
DEPARTMENT:	
CONTACT NUMBER:	E-MAIL ADDRESS:

TERMS & CONDITIONS:

Registration can only be confirmed once CCASA is in receipt of a completed registration form. Confirmation of registration together with the invoice will be emailed to each delegate. Should you not have received such confirmation within 2 days of sending your registration form, please contact the CCASA offices.

The full fee is payable on presentation of the invoice. The signatories below confirm on behalf of the company that he/she will accept electronic invoices for the purpose of claiming input tax.

CCASA reserves the right to refuse admission where evidence of full payment cannot be shown - please email proof of payment to the CCASA offices as soon as payment has been made.

Registration fee includes course material in electronic format. Hard copies of course material can be bought at an additional fee as indicated on the course outline.

All amounts indicated on the course outline are exclusive of VAT.

In the event of cancellations:

- No refund will be paid for cancellations received in writing less than 4 days before commencement of the course.
- In the event of a cancellation, you are entitled to send a substitute delegate. In this regard, contact CCASA with the changes within 2 days before the event.

CCASA reserves the right to change any part of its published programme due to unforeseen circumstances or reasons beyond our control. CCASA assumes no liability for changes in the programme, date, content, speakers and online platform.

CCASA reserves the right to cancel any event it deems necessary and will in such an event make a full refund of any registration fee. If for any reason CCASA decides to amend or cancel the event we are not responsible for covering any costs incurred by registrants.

Personal data: by providing CCASA with your personal details you give CCASA permission to process such data, which processing will be in line with the CCASA Section 18 Informed Consent notice.

I / We, the undersigned, have read, understand and agree to the terms and conditions:

SIGNATURE OF DELEGATE:		DATE:
SIGNATURE OF PERSON AUTHORIZING ATTENDANCE:		DATE:

Send your registration form and duly signed Terms and Conditions to: admin@ccasa.co.za

Enquiries:
Ronel Lindeque
e-mail: admin@ccasa.co.za | Tel: (011) 476 3217

No registration form will be accepted unless the Terms and Conditions have been signed by the delegate and received by CCASA.