



Companies and Intellectual  
Property Commission

a member of **the dtic** group

# COMPANIES AMENDMENT BILLS EXPLAINED

**MS. LUCINDA STEENKAMP**  
SENIOR LEGAL ADVISOR: CIPC



# BACKGROUND

The Department of Trade, Industry and Competition is responsible for and the custodian of various pieces of legislation, including the Companies Act, 71 of 2008 and the CIPC is tasked with enforcing the Act, in line with the functions and objectives as set out in Sections 186 and 187 of the Act.

Section 188 of the Act, provides for the Commission to advise the Minister of the dtic on matters of relating to company and intellectual property law; and importantly recommend changes to bring the law and the administration of the Act in line with international best practices.

We have seen many changes to the Companies Act in recent times, most noticeable the introduction of beneficial ownership, through the promulgation of the General Laws Amendment Act, 22 of 2022.

## BACKGROUND (CONT...)

In 2018 the Companies Act was reviewed by the dtic to identify certain deficiencies and anomalies in the Act, as discovered with implementation.

The Companies Amendment Draft Bill was published in the GG for public comment in September 2018, followed by extensive public engagements. The process of review was however interrupted by Covid-19.

Following the conclusion of the engagements, the Companies Amendment Bill was published for a second time in October 2021.

After careful consideration of the submissions and comments on the Draft Bill, certain amendments were done, resulting in the current Companies Amendment Bill, 2023.

## BACKGROUND (CONT...)

The findings of the Judicial Commission on State Capture (Zondo Commission), resulted in the development of a further Bill, the Companies Second Amendment Bill, 2023.

Both Amendment Bills are aimed at correcting deficiencies within the current Companies Act, simplifying certain complex issues and rectifying anomalies, as far as possible.

# KEY AMENDMENTS

**Section 16** of the Act relates to the amendment of a company's MOI – with uncertainty relating to the effective date of such an amendment.

Effective from date of resolution (which no longer lapses in terms of the Act) or only effective once filed AND accepted by the CIPC?

**Proposed amendment** – the CoR15.2 – Notice of Amendment will take effect 10 (ten) business days after filing the amendment with the CIPC – provided that the CIPC has not rejected the amendment application. If accepted by the CIPC (registered), the effective date will be the date of registration.

# KEY AMENDMENTS

**Section 25(2)** provides for the location of company records to be filed with the CIPC (CoR22) if it changes or if it is not the same as the registered address of the company.

**Proposed amendment** – Commission to publish a list (notice) of location of company records of companies – list of CoR22 applications filed.

**Section 26** – the list of documents to which access must be given does not include the beneficial interest register.

**Proposed amendment** - the beneficial interest register should be included in the list to which there is a right of access in terms of section 26(1). **HOWEVER** – the right of inspection of documents will not apply to private-, personal liability-, or non-profit companies with a PIS below the prescribed threshold.

# KEY AMENDMENTS

**Section 30(4)** – there is no obligation to name directors and prescribed officers that receive remuneration or benefits from the company, only the particulars of the remuneration / benefits. **PIS applies and only applicable to companies required to have AFS audited.**

**Proposed amendment** – disclosure of remuneration / benefits in the financial statements of a company to include the name of the relevant director / prescribed officer receiving the remuneration / benefits.

**Section 30A** – inclusion in the Act to address the deficiencies relating to equity between directors and senior managers on the one hand and shareholders and company employees on the other.

**Proposal** – new section will place a statutory requirement on public- and state-owned companies to provide for a remuneration policy for directors / prescribed officers; **AND** this policy will be subject to approval by ordinary resolution at the AGM. **Consequences for failure to obtain approval and non-approval.**

# KEY AMENDMENTS

**Section 33** – all companies are required to file an AR, including a copy of its AFS – burdensome for small companies.

**Proposed amendment** – filing of AFS shall only apply to public-, and state-owned companies; OR any other profit / non-profit companies with a PIS higher than the threshold as set out in section 30(2) or regulation 30(7).

**Section 38A** – no remedy in terms of section 38 (issue of shares) for a court to validate the creation, allotment or issue of shares – i.e. issued more than authorized.

**Proposal** – empowerment of the court to validate otherwise invalid creation, allotment or issue of shares if good reasons exist.



# KEY AMENDMENTS

**Section 118** – the Takeover Regulation Panel has jurisdiction over public companies, state-owned companies and certain categories of private companies. Limitations imposed on certain categories of private companies proved to be unnecessarily burdensome.

**Proposed amendment** - TRP to have jurisdiction over public companies, SOC's and private companies, **ONLY** in the following circumstances:

- Private company with 10< shareholders;
- Private company exceeding the threshold of annual turnover or asset value – to be determined by Minister in consultation with TRP.

# KEY AMENDMENTS

**Section 135** – during business rescue proceedings there is a moratorium on legal proceedings against the company in business rescue. Furthermore, a landlord renting to a company in business rescue remains responsible for municipal services, which cannot be recovered from the company. If not paid by the landlord, this could result in termination of basic services such as water and electricity.

**Proposed amendment** – landlords of a company as tenant that continue to pay for municipal services will have a preference claim as the provider of post commencement finance. Payment of such utilities should be regarded as providing post-commencement finance.

# KEY AMENDMENTS

**Section 160** – name objections may be directed to the Companies Tribunal for adjudication, which (in some cases) results in an order for the Respondent company to change its name. However, the Act does not provide for a specific time period within which such changes must be effected and often results in the Applicant having to return to the CT to enforce the order.

**Proposed amendment** – CT must indicate the date (i.e. 60 days; 90 days) in terms of which the order must be effected. After such time lapsed, the Applicant does not need to approach the CT again for enforcement, but may approach the Commission directly to change the Respondent company name to its registration number.

## SECOND AMENDMENT BILL – KEY AMENDMENT

**Section 162** – Applications to declare directors delinquent or under probation.

An application for delinquency may be brought before a court, if the person concerned **is a current director** of that company; or within **24 months immediately before** the application for delinquency, was a director of that company.

The Zondo-Commission findings included recommendations concerning two specific companies and applications for delinquency. Unfortunately, due to the extensive time taken for the State Capture Report to be released, the time-bar of 24 months was already applicable.

## SECOND AMENDMENT BILL – KEY AMENDMENT

**Proposed amendment** – although the recommendation by the Zondo Commission was limited to specific companies, it is considered in the general public interest to extend the time bar from **24 months (2 years)** to **60 months (5 years)**.

The time bar in terms of applications for delinquency declarations must be fair to both the applicant and respondent – and thus cannot be allowed to be open-ended (indefinitely).

In certain circumstances the courts may be empowered to extend the period of 5 years even further on good cause shown.

## SECOND AMENDMENT BILL – KEY AMENDMENT

Most importantly the extension of the 60 month period on good cause shown, will have retrospective effect.

**Section 77** – in terms of the liability of directors a further time bar of three (3) years exist, within which a claim for damages or loss against a director may be brought.

**Proposed amendment** – empowering the court to extend the period of three years on good cause shown, including having retrospective effect.



**THANK YOU –  
QUESTIONS WELCOME!**