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Key Proposed Amendments to the Companies Act

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Presenter



Russel Ngobeni

Entrepreneur

Business Accountant

Tax Practitioner

Motivational Speaker

Small Business Mentor

Business Strategist

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Course Outline

Overview

The Department of Trade and Industry published the long awaited Draft Companies

Amendment Bill for public comment on 21 September, with a comment deadline of 20 November 2018.

Overview

- The proposed amendments' objective is to get companies to comply with high standards of corporate governance and transparency.
- Besides being a legal requirement, these traits are good for building trust with stakeholders, business success and longevity.
- Specifically, the Companies Act, 71 of 2008 requires companies to disclose their directors' or prescribed officers' remuneration.

Learning Objectives

By the end of this event the participant should:

- Know key proposed amendments to the Companies Act and when they will take effect.
- Understand how the amendments affect the bookkeeper and accountant's work.
- Understand how to apply the amendments practically.

Content

The webinar will cover the following topics:

- Section 16 – Amending Memorandum of Incorporation;
- section 25 – Location of company records;
- section 26 – Access to company records, and
- Section 30 – Duty to prepare a directors’ remuneration report.

Proposed Company Law Amendment – Detailed:

Section 16(9) - MOI

Section 16(9) – Effective date of amendment of a memorandum of incorporation (“MOI”)

Section 16 (9), currently provides that the amendment to the company’s MOI would take effect on

- a) the date set out in the amended registration certificate issued by the Commission in the case of an amendment that changes the name of the company, or

Section 16(9) – MOI (cont.)

~~b) in any other case, the date on which the Notice of Amendment is filed or the date, if any, set out in the Notice of Amendment.~~

"b in an other case 10 business days after receipt of the Notice of Amendment, if the Commission after the expiry of the 10 business days has not endorsed the Notice of Amendment or has failed to deliver a rejection of the Notice of Amendment to the company with reasons";

Section 25: Location of Company Records

Section 25 proposed Amendment:

“(2) A company must file a notice, **which the Commission must publish** as prescribed, setting out the location or locations at which any particular records referred to in in Section 24 are kept or from which they are accessible...”

The current Act only requires for the notice to be filed with the Commission and not the publication thereof.

Section 26: Access to company records

Section 26: Access to company records

- An amendment to section 26 will allow persons who are not shareholders of the company to inspect and copy that company's MOI and rules, the records of directors, minutes and notices of shareholders' meetings and notices sent to the holder of securities.
- The payment of an amount not exceeding the prescribed minimum fee for such an inspection is still applicable.

Section 26: Access to company records

Section 26: Access to company records (cont.)

- Annual Financial Statements are **still excluded** from this right of access.
- ~~In the past this right of access was limited to the securities register and the register of directors.~~
- The person receiving the request for access must **within 5 business days**, ~~instead of the current 14 business days~~, comply with such a request by providing the opportunity to inspect or copy the register concerned to the person making such a request.

Section 30: Disclosure of remuneration payable to 'prescribed officers' (s 30):

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The Bill proposes that remuneration and benefits received by 'prescribed officers' in addition to directors, must be disclosed in the audited annual financial statements of the company.

Section 30: Disclosure of remuneration payable to 'prescribed officers' (s 30):

Section 30(4A) – Duty to prepare a directors' remuneration report:

- Section 30(4A) sets out the requirements that public companies must prepare a directors' remuneration report.
- **The Director's Remuneration Report must in the prescribed manner consist of:**
 - The background statement;
 - An overview of the main provisions of the company's policy on remuneration; and
 - An implementation report containing details of remuneration and benefits awarded to individual directors.

Section 30: Disclosure of remuneration payable to 'prescribed officers' (s 30):

Section 30(4A) – Duty to prepare a directors' remuneration report (cont.):

- The remuneration report must be approved by the board and be signed.
- The report must be presented to shareholders at an AGM.

Summary

The webinar covered the following topics:

- Section 16 – Amending Memorandum of Incorporation;
- section 25 – Location of company records;
- section 26 – Access to company records, and
- Section 30 – Duty to prepare a directors’ remuneration report.

Q&A

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