

# **Companies Act Amendments for Bookkeepers**

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**23 SEPTEMBER 2021**

# Presenter

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- Explore ProTech Entrepreneurial Haven (Co-Founder)
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# COURSE OUTLINE

# Learning Outcomes

## By the end of this webinar you should:

- Understand the purpose of the Companies Act, 2008;
- Understand the CIPC's regulatory role.
- Be aware of key sections in the Companies Act that directly effect the day to day duties of bookkeepers;
- Understand how these key sections affect the bookkeeper/accountant's work on a practical day to day basis; and
- Be aware of practical tips that can be applied on a daily basis, as certain transactions occur.

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# Quote

*Your smile will give you a positive countenance that will make people feel comfortable around you.*

Les Brown



# **MODULE 1**

## **INTRODUCTION TO KEY PROPOSED AMENDMENTS TO THE COMPANIES ACT, 2008**

# **KEY PROPOSED AMENDMENTS TO THE COMPANIES ACT**

On 21 September 2018 a draft amendment Bill to the Act (Bill) was published for public comment. As at the date hereof, the Bill has not been passed into law.

The Bill represents the first set of substantive amendments to the Act since it came into effect on 1 May 2011.

# KEY PROPOSED AMENDMENTS TO THE COMPANIES ACT

- Section 16 - Amending Memorandum of Incorporation
- Section 25 - Location of company records
- Section 26 - Access to company records
- Section 30(4) - Annual Financial Statements
- Section 30(4A) - Duty to prepare a directors' remuneration report
- Section 33 - Annual returns
- Section 38A - Validation of irregular creation, allotment or issue of shares
- Section 40 - Consideration for shares

# KEY PROPOSED AMENDMENTS TO THE COMPANIES ACT

- Section 45 - Loans or other financial assistance to directors and group of companies;
- Section 48 - Share buy-backs
- Section 61 - Shareholders meetings
- Section 72 - Board committees
- Section 90 - Appointment of Auditors
- Section 118 - Application of the Takeover Regulations to private companies
- Section 135 - Post commencement finance

# **SECTION 16**

# **AMENDING MEMORANDUM OF INCORPORATION**

# SECTION 16 - AMENDING MEMORANDUM OF INCORPORATION

Section 16(9), currently provides that the amendments 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
- ~~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 any other case 10 business days after receipt of the Notice of Amendment, if the Commission after the expiry of the 10 business day 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 16 - AMENDING MEMORANDUM OF INCORPORATION

Effect on bookkeepers/ accountants/ auditors:

- Where the MOI is amended, for example, to:
  - Not require an audit,
  - Increase share capital,
  - Financial year end changed
  - Etc.
- We need to check very carefully the date on which changes become effective

## **SECTION 25**

# **LOCATION OF COMPANY RECORDS**



# **SECTION 25 - LOCATION OF COMPANY RECORDS**

- Section 25 is amended with the requirement that the Commission must publish the location at which particular records are kept, if not at the company's registered office.
- Currently the 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

- Section 26 is amended by changing the access that a person who does not hold or does not have a beneficial interest in any securities issued by a profit company, or who is not a member of a non-profit company have in terms of company records.
- The current Act only allows other persons to inspect or copy the securities register.
- The draft Bill proposes access to:

## RECORDS

The draft Bill proposes access to:

- the Company's **Memorandum of Incorporation** and any amendments to it, and any rules made by the company, as mentioned in section 24(3)(a);
- the **records** respecting the company's **directors**, as mentioned in section 24(3)(b);
- the **notices and minutes of annual meetings**, and communications mentioned in section 24(3)(d) and (e), but the reference in section 24(3)(d) to shareholders meetings, and the reference in section 24(3)(e) to communications sent to holders of a company's securities, must be regarded in the case of a non-profit company as referring to a meeting of members, or communication to members, respectively; and
- the **securities register of a profit company, or the members register of a nonprofit company that has members**, as mentioned in section 24(4).

# **SECTION 26 - ACCESS TO COMPANY RECORDS**

- The request for access must also be complied with within 5 business days, instead of the current 14 business days.

# **SECTION 25 & 26 - IMPLICATIONS FOR BOOKKEEPERS**

- Educate client that these records need to be available and the location of the records need to be disclosed and will be published.

# SECTION 25 & 26 - POINT TO PONDER

- The Australian Securities and Investments Commission (ASIC) and the New Zealand Companies Office (NZCO) publish full details of private company share structures (including details about shareholders and ultimate holding companies) on their respective online platforms. Coupled with this, regulations require companies to notify ASIC and NZCO, within prescribed periods, if any changes to their share structures occur.
- By emulating the approach of ASIC and NZCO, CIPC could reduce the barriers to accessing information under section 26(2) of the Act and simultaneously reduce the opacity of private company share structures.

# **SECTION 30(4)**

# **ANNUAL FINANCIAL STATEMENTS**



# **SECTION 30(4) - ANNUAL FINANCIAL STATEMENTS**

The proposed amendments to section 30(4) sets out to clarify the confusion that exists with regards to the disclosure of directors remuneration and states that each individual director or prescribed officer must be named.

# **SECTION 30(A)**

## **DUTY TO PREPARE DIRECTORS' REMUNERATION REPORT**

# **SECTION 30(A) - DUTY TO PREPARE DIRECTORS' REMUNERATION REPORT**

The following section is hereby inserted in the principal Act after section 30:

“Duty to prepare directors’ remuneration report

30A (1) The directors of a public company must prepare a directors’ remuneration report for each financial year of a company

# **SECTION 30(A) - DUTY TO PREPARE DIRECTORS' REMUNERATION REPORT**

(2) The directors' remuneration report must, in the prescribed manner, consist of the following parts:

(a) The background statement;

(b) An overview of the main provisions of the company's policy on remuneration; and

(c) an implementation report containing details of remuneration and benefits awarded to individual directors.

# **SECTION 30(A) - DUTY TO PREPARE DIRECTORS' REMUNERATION REPORT**

(3) The directors' remuneration report must be approved by the board and signed on behalf of the board by a director of the company;

(4) The directors' remuneration report of a company must be presented to the shareholders at the annual general meeting.

# **SECTION 30(A) - IMPLICATION FOR BOOKKEEPERS**

*This proposed amendment align the Companies Act with the King IV Report requirements.*

Opportunity for Bookkeepers:

- Educate Clients & Additional Work Opportunity
- Also ensure the necessary information is neatly set out and available in the bookkeeping records

# **SECTION 33**

# **ANNUAL RETURNS**

# SECTION 33 - ANNUAL RETURNS

- The draft Bill removes the section that states that a company must file a copy of its annual financial statements if it is required to have such statements audited in terms of section 30(2) or the regulations contemplated in section 30(7) and replaces this with the requirement to file a copy of its latest annual financial statements.



# SECTION 33 - ANNUAL RETURNS

- This therefore requires all companies to submit annual financial statements, irrespective on whether the company's financial statements are required to be audited.
- The draft Bill includes the requirement that all companies must file a copy of their company's securities register.

# **SECTION 33 - IMPLICATION FOR BOOKKEEPERS**

- Learn XBRL process or make strategic partnerships with other professionals in the industry that offer this service so that when all companies are required to file using XBRL you are prepared.
- Review th XBRL taxonomy to make sure our books are in a format where amounts can be easily ‘mapped’ in the XBRL language
- Make sure the company security register is maintained and up to date

# **SECTION 38A**

**VALIDATION OF IRREGULAR CREATION,  
ALLOTMENT OR ISSUING OF SHARES**

# **SECTION 38A - VALIDATION OF IRREGULAR CREATION, ALLOTMENT OR ISSUING OF SHARES**

Section 38A is a new section which allows for the validation by the court of the irregular creation, allotment or issuing of shares.

# **SECTION 38A - VALIDATION OF IRREGULAR CREATION, ALLOTMENT OR ISSUING OF SHARES**

38A. (1) Where a company purports to create, allot or issue shares, by virtue of any provision of this Act, the Memorandum of Incorporation of the company, any other law or otherwise, and the creation, allotment or issuing of those shares is invalid on the terms of creation, allotment, or issue are inconsistent with, or not authorised by, those provisions, a court may -

# **SECTION 38A - VALIDATION OF IRREGULAR CREATION, ALLOTMENT OR ISSUING OF SHARES**

- (a) Upon receipt of an application made by the company or by any interested person; and
- (b) After satisfying itself that it is just and equitable to do so, make an order validating the creation, allotment or issue of these shares or confirming the terms of the creation, allotment or issue, subject to such conditions as may be imposed by the court.

# **SECTION 38A - VALIDATION OF IRREGULAR CREATION, ALLOTMENT OR ISSUING OF SHARES**

(3) Upon the registration of the copy of the court order by the Commission in terms of subsection (1), and after the payment of all prescribed fees by the company, if any, the shares must be deemed to have been validly created, allotted or issued upon the terms of the creation, allotment or issue of the shares and subject to the conditions imposed by the court.”

# **SECTION 38A - IMPLICATION FOR THE BOOKKEEPER**

Make sure when share transactions are captured, these are authorised and valid in terms of the MOI and attach the parts of the MOI that has been checked for validity to these transactions.

And if not... there will soon be this option.



# **SECTION 40**

# **CONSIDERATION FOR SHARES**

# SECTION 40 - CONSIDERATION FOR SHARES

- Section 40(5)(b) currently require that shares that cannot be realised by the company until a later date must be kept in a trust.
- The proposed amendment removes the requirement for the shares to be kept in trust but rather that shares can be transferred to a third party as a stakeholder.

## **SECTION 45**

# **LOANS OR OTHER FINANCIAL ASSISTANCE TO DIRECTORS**

# **SECTION 45 - LOANS OR OTHER FINANCIAL ASSISTANCE TO DIRECTORS**

- The proposed amendments to this section includes the amendment of the heading from “Loans or other financial assistance to directors” to “Financial assistance to directors and group of companies” and
- a new subsection (2AA) that states that section 45(2) does not apply to the giving of financial assistance by a company to its own subsidiaries, **which eases the burden of companies providing financial assistance to their own subsidiaries and having to apply all the requirements of this section.**

# **SECTION 45 - IMPLICATIONS FOR BOOKKEEPERS**

- Capture the necessary documents, special resolutions, liquidity and solvency tests, etc. as part of the supporting documents for ANY loan from a company to another group company or director.
- Until this amendment is passed, then you don't have to do this for loans to subsidiaries.
- Educate clients about this requirement, and offer to help with preparing the necessary documents as part of a value added service!

## **SECTION 48**

# **COMPANY OR SUBSIDIARY ACQUIRING COMPANY'S SHARES**

# **SECTION 48 - COMPANY OR SUBSIDIARY ACQUIRING COMPANY'S SHARES**

- A decision by the board of a company as contemplated in subsection 2(a) must be approved by a special resolution of the shareholders of the company-

(a) If any shares are to be acquired by the company from -

(i) A director;

(ii) A prescribed officer of the company; or

(iii) A person related to a director or a prescribed officer; or

# **SECTION 48 - COMPANY OR SUBSIDIARY ACQUIRING COMPANY'S SHARES**

(b) If it entails the acquisition of shares in the company other than due to -

(i) a pro rata offer made to all the shareholders of the company or a particular class of shareholders of the company; or

(ii) transactions effected in the ordinary course on a recognised stock exchange on which shares of the company are traded.”



# SECTION 48 - COMPANY OR SUBSIDIARY ACQUIRING COMPANY'S SHARES

The requirement for shares when repurchased from a director, a prescribed officer or a related person to the directors or prescribed officer, to be approved by special resolution has been amended and a special resolution is not required if a pro rata offer is made to all the shareholders or a particular class of shareholders or the transaction is effected in the ordinary course on a recognised stock exchange on which the shares traded.

# **SECTION 48 - IMPLICATION FOR BOOKKEEPERS**

- All share buy - backs to be supported by the prove that the requirements of Section 48 have been complied with, including the special resolution, until
- The amendment is passed, then no Special Resolution in the stipulated circumstances
- Educate your clients on these requirements and offer to help them with the documentation as a value-added offer to your service!

# **SECTION 61**

# **SHAREHOLDERS MEETING**

# **SECTION 61 - SHAREHOLDERS MEETING**

- Section 61 is amended by requiring the presentation of a social and ethics committee report and a remuneration report to shareholders at the AGM in addition to the presentation of the directors' report, audited financial statements and the audit committee report.

# **SECTION 72**

# **BOARD COMMITTEES**

# SECTION 72 – BOARD COMMITTEES

- The proposed amendment requires all public (no longer only listed public companies) and state-owned companies to appoint a social and ethics committee.
- The amendments also require that the social and ethics committee report must be externally assured and be presented at the shareholder meeting.
- Much of the requirements currently included in the Companies Regulations have now been added to the draft Bill.

# **SECTION 72 – BOARD COMMITTEES**

- The Regulations currently only require the social and ethics committee to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

# **SECTION 61 & 72 – IMPLICATIONS FOR BOOKKEEPERS**

- Extra Service:
  - Drafting of the Social & Ethics Committee Report
  - Training on Requirements
  - Assurance service
  - Remember to include in AGM Agenda



# **SECTION 90**

# **APPOINTMENT OF AUDITOR**

# **SECTION 90 – APPOINTMENT OF AUDITOR**

- The proposed amendment removes the requirement for auditors to be appointed at the annual general meeting, which has been an issue for private companies which are not required to have an annual general meeting. The auditors can now be appointed at a shareholders meeting.

# SECTION 90 – IMPLICATION FOR BOOKKEEPERS

- Educate clients & offer to help with change of auditors as and when required
- When amendment goes through auditors may be changed at a normal shareholders meeting - don't have to wait for AGM

# **SECTION 118**

## **APPLICATION OF THIS PART, PART C AND TAKEOVER REGULATIONS**

# **SECTION 118 – APPLICATION OF THIS PART, PART C AND TAKEOVER REGULATIONS**

- The draft Bill proposes that the takeover provisions will only apply to private companies that falls within the provisions of section 84(1)(c) which states:
- “(c) a private company, a personal liability company or a non-profit company-
- (i) if the company is required by this Act or the regulations to have its annual financial statements audited every year:  
Provided that the provisions of Parts B and D of this Chapter will not apply to any such company; or

# **SECTION 118 – APPLICATION OF THIS PART, PART C AND TAKEOVER REGULATIONS**

- The draft Bill proposes that the takeover provisions will only apply to private companies that falls within the provisions of section 84(1)(c) which states:

“

- (ii) otherwise, only to the extent that the company's Memorandum of Incorporation so requires, as contemplated in section 34(2).”

# SECTION 118 – IMPLICATIONS FOR BOOKKEEPERS

- Advise clients when the takeover regulations doesn't apply
- Otherwise make sure that takeover transactions comply with requirements of s118

# **SECTION 135**

## **POST COMMENCEMENT FINANCE**



# **SECTION 135 – POST COMMENCEMENT FINANCE**

- Section 135 is amended with the inclusion of amounts owed by the company to any owner of the property, including a landlord for the property where the company that is placed in business rescue is operating from to post commencement financing.

# SECTION 135 – IMPLICATIONS FOR BOOKKEEPERS

- When client is in business rescue,
- Understand which amounts to account for as post commencement finance.

# JUST A NOTE

- There are also various amendments relating to the Companies Tribunal and the Financial Reporting Standards Council which interested parties can refer to.

# **APPENDIX A**

# **RESOURCES**

# RESOURCES

- [Cliffe Dekker Hofmeyr Revisiting the Companies Amendment Bill 2018 - should CIPC make details about private company share structures readily available to the public?](#)
- [SAICA Summary of Changes - Companies Act Amendment Bill](#)
- [SAICA Companies Act Guide](#)
- [The Companies Act, No. 71 2008](#)

# QUESTIONS

**Thank you  
for your participation**