the dtic Outlines the Main Features of the Draft Companies Amendment Bill, 2021

thedtic.gov.za/the-dtic-outlines-the-main-features-of-the-draft-companies-amendment-bill-2021/

The Department of Trade, Industry and Competition (**the dtic**), held a briefing today on the Draft Companies Amendment Bill, 2021, which will be published for public comment on Friday 01 October, 2021.

This follows publication on 21 September 2018, of an earlier version of the Bill, which dealt with administrative bottlenecks identified during the implementation of the Act since May 2011. The 2021 version is a redrafted bill with significant amendments.

The series of amendments in the 2021 Bill are aimed at achieving **three policy objectives** – improving ease of doing business in respect of certain provisions of the Companies Act; providing for greater transparency on wage ratios at firm level and; addressing true or beneficial ownership of companies, to address money laundering challenges.

1. *Improving ease of doing business*

Company law should, among other factors, be clear, user friendly, consistent with well-established principles and not be over burdensome on the conduct of business. This is important not only for the attraction of foreign investors but also for the efficient and effective conduct of the domestic economy and for the creation of jobs. A number of changes are proposed to the Companies Act to align he legislation with this objective. These are based on submissions received during the extensive engagement with bsuiness assc oiations, firms, lawyers and investor groups and are designed to ease the doing of business through providing legal certainty where these do not currently apply, providing greater flexibility to companies in certain circumstances, or removing unnecessary provisions in the Act.

1. *Providing for greater transparency on wage ratios*

The Bill seeks to clarify responsibilities between directors and senior management on the one hand, and shareholders on the other hand as well as addressing public concerns regarding high levels of inequalities in society. Excessive remuneration particularly at the highest levels of a company is a matter of great concern internationally and in SA.

The amendments respond to shareholder concerns regarding excessive executive pay through two proinciple mechanisms: first, greater disclosure requirements in annual reports of companies; and second, improved shareholder rights in respect of remuneration policies.

Amendments in the Bill require that certain categories of firms disclose information on the remuneration of directors and prescribed officers. Furthermore, it requires that companies disclose the average remuneration of all employees, and the ratio between the total remuneration of the top 5% highest paid employees and the total remuneration of the bottom 5% of the lowest paid employees of the company. Shareholder approval is required for the company's remuneration policy.

> *Addressing true or beneficial ownership of companies, to address money laundering challenges*

Uncovering true or beneficial ownership is a critical measure in global efforts to confront and address money laundering, corruption and the financing of terrorism. The Companies Amendment Bill proposes new provisions on beneficial ownership, placing an obligation on companies to know and disclose the identity of their true shareholders who hold a beneficial interest amounting to 5% or more of the total shares in a company.

The changes respond to concerns raised by social partners and many interested parties following a series of extensive consultations with the public, interest groups and interested persons, as well as the National Economic Development and Labour Council (Nedlac), the Specialist Committee on Company Law (SCCL), the Johannesburg Stock Exhange, the SA Institute of Chartered Accountants, the Institute of Directors in Southern Africa, the Helen Suzman Foundation and Amabhungane *inter alia*.

"We are releasing this Bill for public comment prior to Cabinet considering it for approval. The amendments seek to update the Companies Act in light of developments in the field, address public concerns and improve the ease of doing business. One area covered in the Bill relates to remuneration policies and we are not the only country grappling with the challenge of high levels of inequality. Shareholder disquiet with the remuneration policies of some listed firms has featured at recent AGMs. The Bill proposes a transparency-driven approach, with clearer shareholder powers than what is currently the case. Public comments would be appreciated on this and the other provisions of the Bill," Ebrahim Patel, Minister of Trade, Industry and Competition said today at the public release of details of the Bill.

"Since the implementation of the Companies Act a number of deficiencies have manifested which has caused unnecessary costs of compliance and retards the efficient and effective conduct of business. The Bill aims to eliminate, as far as possible, these deficiencies. In addition, certain unintended consequences of the existing legislation have also adversely impacted on the conduct of business and, so again, the Bill aims to remedy these problems. All of these remedial measures take into account best practice which has arisen during the intervening period since the drafting of the existing Act." Professor Michael Katz, Chairman of the Specialist Committee on Company Law (SCCL).

The amendments contained in the Bill set out to improve accountability and scrutiny on remuneration practices, promote shareholder activism and corporate governance. Furthermore, they also relieve companies of onerous, impractical and burdensome provisions in previous iterations of companies legislation. Lastly, they give South Africa instruments to undertake its role in the global offensive against illict cross-border behavior.

Enquiries:
Bongani Lukhele – Director: Media Relations
Tel: (012) 394 1643
Mobile: 079 5083 457
WhatsApp: 074 299 8512
E-mail: BLukhele@thedtic.gov.za
Follow us on Twitter: @the_dti

Share this: