

# **Companies Act Amendment Bill**

Presenter: Caryn Maitland

*2018 vs 2021 Update*

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# Presenter

## Caryn Maitland

Caryn is a qualified CA(SA and RA, who has lectured extensively at UKZN (and other institutes) where she lectured Advanced Financial Accounting up until 2011 as well as co-ordinating the module on the Pietermaritzburg campus and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN.

She has conducted independent workshops and seminars for professional accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor to the SAICA Eastern Region Midlands District, Northern District and Southern District Associations, as well as the Small Practice Interest Group in Durban – specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.

Caryn is also a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa. Maitland was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Maitland's passion is IFRS and IFRS for SME's and was delighted at the opportunity granted in 2013 to serve on the APC subcommittee constituted to investigate the need for Micro GAAP and the role of IFRS for SME's for small and medium sized practitioners. Caryn, also serves on the Joint Accountants, Auditors and Attorneys Committee of SAICA, and is part of the School Governing Body project initiated by SAICA in KwaZulu-Natal, and has been appointed as an alternative member to the APC in June 2020

Caryn was elected as the first woman Chairperson for the Midlands District Association for SAICA in 2018 and also serves on the Eastern Region SMP Committee as well as the Local Subvention Committee for SAICA. In 2019 Caryn was appointed to the SAICA Eastern Region Council. As someone who is committed to environmental affairs, Caryn serves as a non-executive director for the Institute of Natural Resources, a Non Profit Company focusing on research. Since 2018 Caryn has worked extensively with commerce and industry, assisting analysts, directors and other users of financials to interpret, prepare, analyse and forecast based on the results of financial statements.



# Companies Act Amendment Bill

- Published on 21 September 2018
  - Open for comments
  - Original deadline 20 November 2018
  - Extended to 14 December 2018
- Re Published 1 October 2021
  - Comments closed on 31 Oct 2021

# Themes of 2021 version

- Improving the ease of doing business
- Promoting the greater transparency on wages
- Addressing true or beneficial ownership of companies
  - To address money laundering challenges

# Companies Act Amendment Bill

## **Amendment of section 1 - Definitions**

- Insertion of the definition of the B-BBEE Act and B-BBEE Commission
- Substitution of definition of securities (options)
- Insertion of the definition of Treasury Regulations (PFMA)
- Insertion of definition of “True Owner”

# \*True Owner\*

- Means Natural person
- Who would in all circumstances be considered the ultimate and true owner of the relevant securities
- Whether by reason of being capable of directly or indirectly
  - Directing the registered holders of the securities or
  - Because of being the person whose benefit the securities enure
  - (last person in the chain)

# Companies Act Amendment Bill

## **Amendment of section 16 – Amending Memorandum of Incorporation**

- Update effective date of amending MOI
- Currently Section 16(9)(a) states on the later of the date on, and time at, which the Notice of Amendment is filed, or the date set out in the in the Notice of Amendment.
- The proposed amendment states that the amendment to the MOI will take effect 10 business day after the receipt of the Notice of Amendment, if the Commission after the 10 business days has not endorsed the Notice or failed to deliver a reaction to the Notice of Amendment to the company with reasons.
- unchanged



# Companies Act Amendment Bill

## **Amendment of section 25 – Location of company records**

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

# Companies Act Amendment Bill

## **Amendment of section 26 – Access to company records**

- The current Act only allows other persons to inspect or copy the securities register.

# Companies Act Amendment Bill

## **Amendment of section 26 – Access to company records (2018 amendment)**

The draft Bill proposes access to:

- a) the Company's Memorandum of Incorporation and any amendments to it, and
- b) any rules made by the company, as mentioned in section 24(3)(a);
- c) the records respecting the company's directors, as mentioned in section 24(3)(b);

# Companies Act Amendment Bill

## **Amendment of section 26 – Access to company records**

(d) 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

(e) the securities register of a profit company, or the members register of a non-profit company that has members, as mentioned in section 24(4).

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

# Section 26 2021

- Excludes private companies, incs and NPCs that fall “below a certain threshold”
- That is those below 100 points and those below 350 whose AFS are independently complied

# Companies Act Amendment Bill

## **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.**
- S30A contemplates a Directors Remuneration Report – such report must be audited

# Companies Act Amendment Bill (2021)

## **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 and sets out what must be included in this report.
- Aligns with King IV
- This report must be approved by the board and signed on behalf of the board by a director.
- Presented to shareholders at the AGM.
- The draft Bill does not require a non-binding shareholders vote on the remuneration policy and implementation report.

# Companies Act Amendment Bill

## **Section 30(4A) – Duty to prepare a directors' remuneration report (continued)**

### **Content of report**

- Background statement
- Main provisions of company policy on remuneration
- Implementation report (awards to individual directors – benefits & remuneration)
- Approved by Board, signed by director



# \*\*S30A Remuneration Report

- **Duty to Prepare and present the company's remuneration policy and the remuneration report**
- Public and State owned
- For directors and PO – requires an **ORDINARY RESOLUTION** at AGM
- Remuneration Policy must be presented and approved
  - Prospectively 3 years or when there is material change

# \*\*S30A Remuneration Report

- **Report must include**

- Background statement
- Remuneration policy set out separately in report
- Implementation report containing S30 (4-6) detail
- Total remuneration of highest paid employee (CEO or other PO)
- Total remuneration of lowest paid employee (CEO or other PO)
- Average, median and remuneration gap (5% of top to 5% of lowest) of all employees

# \*\*S30A Remuneration Report

- **Report must be**

- Approved by the board
- Presented at the AGM
- Voted by shareholders for approval
- Need to vote on Remuneration policy and report separately
- Implementation report and rem policy construed as separate reports both require ordinary resolution
- If rem policy not approved, must be presented at next AGM
- Any changes to rem policy must be implemented once shareholder approval obtained

# \*\*S30A Remuneration Report

- **Where the implementation report is not approved**

- Remco/director committee must present an explanation at the next AGM on matters of concern raised by SHs and how addressed
- NON executive directors that served on Remco or similar committee shall be required to stand down for re-election every year of such rejection of the implementation report

# Companies Act Amendment Bill

## Section 33 – Annual return (2018 amendment)

- 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)**
- Replace with requirement that companies must file a copy of its **latest** annual financial statements.
- Implication – ALL financials will have to be filed
- The draft Bill includes the requirement that all companies **must file a copy of their company's securities register S33(aA)**.

# Companies Act Amendment Bill

## **Section 33 – Annual return (2021 amendment)**

Clarifies AFS to be submitted

- Public, state owned and private companies requiring audit per Act
- Requires the security register be submitted plus a register of beneficial interest
- Annual returns will be made available electronically to anyone who qualifies

# Companies Act Amendment Bill

## **Section 38A – Validation of irregular creation, allotment or issuing of shares (unchanged)**

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

# Companies Act Amendment Bill

## **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**.
- Stakeholder – trusted third party who has no interest in Co



# Companies Act Amendment Bill

## 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.

# Companies Act Amendment Bill

## **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
- NOW - 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

# Companies Act Amendment Bill

## **Section 56**

### **Fine tuned**

“A person is regarded to have a beneficial interest in a security of a public company....

Inserted concept of true owner...

# Companies Act Amendment Bill

## Section 61 – Shareholders meetings

- 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.

# Companies Act Amendment Bill

## **Section 72 – Social and Ethics Com**

2021 – emphasis on exemption through the Tribunal and Holding Co can cover the function

Minister may prescribe minimum qualifications

40 day vacancy rule

Content of Report

Approved by Ordinary resolution of SHs

Steps if report is rejected

# Companies Act Amendment Bill

## Section 72 – Board committees

- The proposed amendment requires all public (*no longer only listed public companies, PI Score requirement??*) 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**. 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

# Companies Act Amendment Bill

## 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**



# Companies Act Amendment Bill

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



# Companies Act Amendment Bill

## **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.

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# Companies Act Amendment Bill

## **B-BEE Commission**

- The Bill seeks to allow the Companies Tribunal the power to adjudicate cases referred to it by the B-BEE Commission
- B-BEE forming strategic partnerships with SARS, SIU, Competition Commission and SARS

# Companies Act Amendment Bill

## **Naming Disputes**

- Companies Tribunal has authority to deal with disputes
- Proposed that CIPC can force the company name to be the registration number after the Tribunal has ruled

# Companies Act Amendment Bill

## **Financial Reporting Standards Council**

- Proposed that the FRSC be able to issue and release financial standards directly

# Challenges not addressed

- Voluntary vs Statutory Audit
  - CIPC information notice 8 June 2018
  - Confirmation notice 15 October 2018 (Katz opinion)
- AFS prepared 6 months after year end
- Review of PI Score
- Compliance penalty
- Definition of financial distress
- Definition of turnover

**Thank you for your  
participation**