

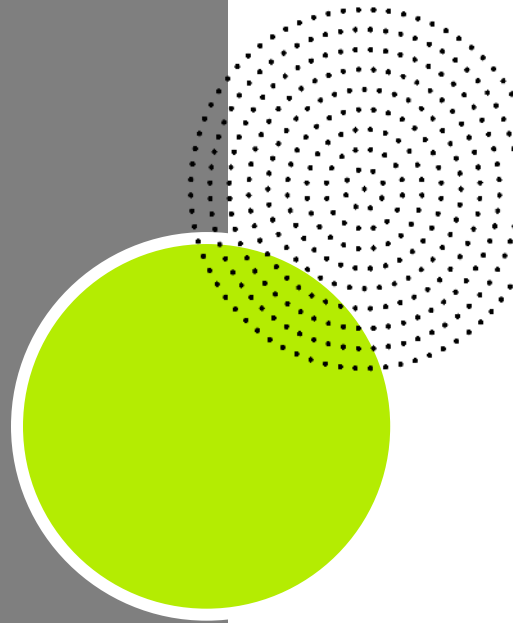
COMPANIES AMENDMENT BILL, 2021

APRIL 2022

PRESENTED BY
ESMERELDA OOSTHUIZEN

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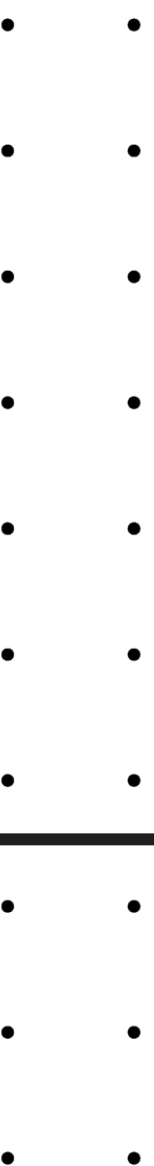
1. Background



1. TIMELINE OF CHANGES

- Department of Trade, Industry and Competition (DTIC) published the Companies Amendment Bill, 2021 (Bill) for public comment on **1 October 2021**
- Second draft of the Companies Amendment Bill – this will represent the first set of substantive amendments to the Companies Act 71 2008 (Act) since it came into effect on 1 May 2011
- Published by Minister Ebrahim Patel

2. Overview of the proposed amendments



2. OVERVIEW OF PROPOSED AMENDMENTS

Background note and explanatory memorandum to the Bill, published in the Government Gazette No. 45250:

- changing the definition of “securities”;
- providing for the definition of “true owner”;
- providing for the preparation, presentation and voting on companies’ remuneration policies and directors’ remuneration implementation reports;
- providing for the filing of annual financial statements and copies of companies’ securities registers and registers of disclosure of beneficial ownership with the Companies and Intellectual Property Commission;

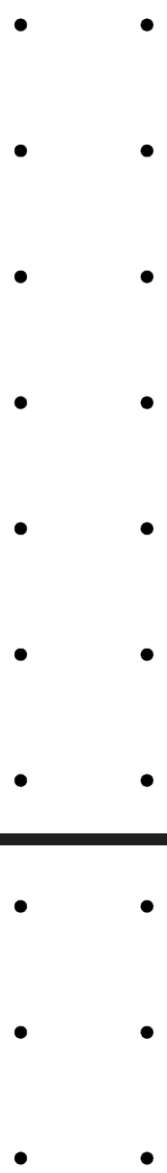
2. OVERVIEW OF PROPOSED AMENDMENTS

- differentiating where the right to gain access to companies' records may be limited;
- clarifying when a notice of amendment of a memorandum of incorporation takes effect;
- empowering the court to validate the irregular creation, allotment or issue of shares;
- clarifying certain aspects relating to partly paid shares;
- excluding subsidiary companies from certain of the requirements relating to inter-group financial assistance;
- providing for instances where a special resolution is required for the acquisition of shares by a company;
- extending the definition of an employee share scheme to include situations where there are purchases of shares of a company;

2. OVERVIEW OF PROPOSED AMENDMENTS

- providing for the circumstances under which a private company will be a regulated company in the context of affected transactions;
- providing for circumstances where a company is unable to identify the persons who hold a beneficial interest in its securities;
- dealing with the composition of the social and ethics committee and the publication of the application for exemption from the requirement to appoint a social and ethics committee;
- providing for the presentation and approval of the social and ethics committee report at the annual general meeting or other meetings of shareholders; and
- ensuring the differentiation of duties between the chairperson of the Companies Tribunal and its chief operation officer.

3. Disclosure of remuneration



3. DISCLOSURE OF REMUNERATION

- Significant departure from the provisions of the 2018 Draft = executive remuneration
- Another significant development is the disclosure of beneficial ownership
- Significant amendments to the **new section 30A** of the Act
- **What is the importance of section 30A?**
- Requires public and state-owned companies to publish, in their annual financial statements and reports, details about director and prescribed officer remuneration as well as the gap between their highest paid and lowest paid employees.

3. DISCLOSURE OF REMUNERATION

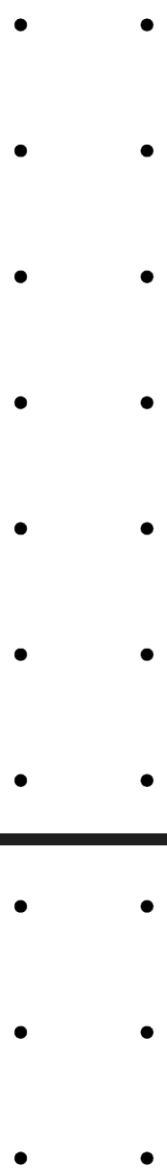
DTIC asserts the rationale for section 30A

- Need to address this by augmenting the extent of disclosure of executive remuneration to provide for:
 1. additional shareholder control over excessive remuneration and the perceived injustices associated with that;
 2. curtailing a board's desire to award excessive remuneration for fear of reputational harm; and
 3. more generally, entrenching good governance principles as contemplated under the King IV Report on Corporate Governance
- The construction of section 30A provides for a remuneration policy, an implementation report and a remuneration report.

3. DISCLOSURE OF REMUNERATION

- The Bill, in section 30, provides that where remuneration and benefits are received by company directors or prescribed officers, such directors or prescribed officers must be named in the annual financial statements
- This is, however, limited to companies that are required in terms of the Act to have their annual financial statements audited. Research presented by Business Unity South Africa (BUSA) showed that it is common practice in a number of jurisdictions to require disclosure of remuneration for specified senior executive positions

4. Balancing Act



4. BALANCING ACT

- Reporting on the remuneration gap
- implementation report is voted down
- section 71 of the Act
- positive development for corporate governance

4. BALANCING ACT

Substitution of section 204 of Act 71 of 2008

- Section is substituted – Functions of Financial Reporting Standards Council (page 23 of the Amendment Bill)
- Amendments to take note:
- Clause 4, 5, 6, 8, 14, 16, 26

4. BALANCING ACT

Proposed amendment to section 90 of the Act

- This recognises the impact of the new provisions in the Auditor legislation requiring Mandatory Audit firm rotation. This effectively limits the selection of audit firms in an economy that has a shortage of suitably resourced audit firms.
- It is therefore important to reduce the cooling off period of auditor involvement. This Bill will widen the pool of audit firms that a company will have access to and thus make it easier for companies to appoint suitably- resourced firms.

4. BALANCING ACT

- Certain financial reporting requirements will not be applicable to small and medium enterprise which have a public interest score below certain levels. It is unnecessary to have enterprises which really don't operate significantly in the public domain to have burdensome and costly financial reporting requirements

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INFORMATION

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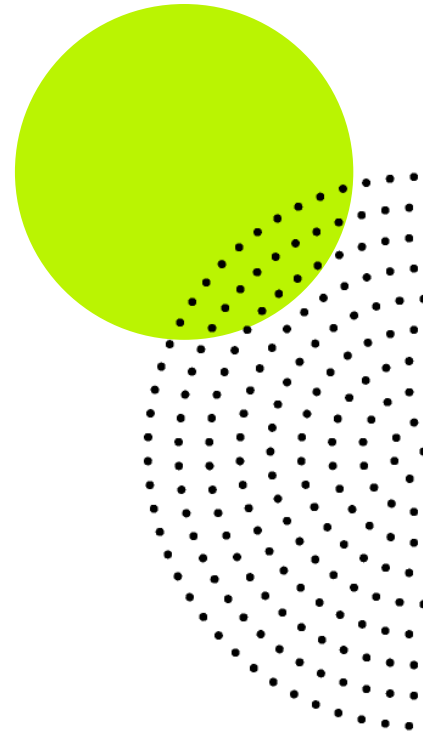
FINAL QUIZ



QUESTIONS & ANSWERS

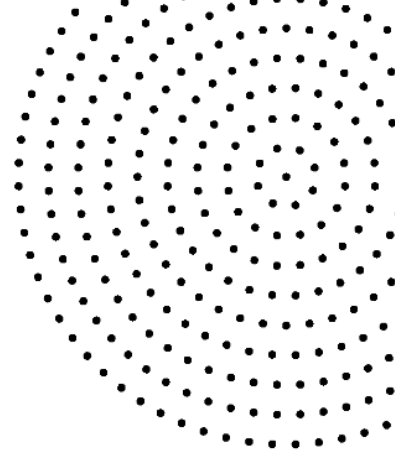
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