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Key Proposed Amendments to the Companies Act

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Presenter



Russel Ngoben

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Business Accountant

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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 33 – Annual returns;
- Section 45 – Loans or other financial assistance to directors and group of companies;
- Section 48 - Share buy-backs;
- Section 90 – Appointment of Auditors, and
- Section 118 - Application of the Takeover Regulations to private companies.

Proposed Company Law Amendment – Detailed:

Section 33: Annual Returns

Section 33: Annual Returns

- The draft bill includes a requirement that all companies must submit **LATEST** Annual Financial Statements. The current Act only requires companies that by law need to be audited to submit AFS.
- Furthermore, the proposed amendment to the section introduces a new subsection subparagraph (aA) which provides that the filing of an annual return must include a copy of the company's securities register as required in terms of section 50.

Section 38 - Validation of irregular creation, allotment or issuing of shares:

- The Companies Act does not allow for a company to fix its share capital structure where it contains errors.
- It is proposed that a company or any interested person be permitted to approach a court for an order validating the creation, allotment or issue of shares.

Section 45 – Loans or other financial assistance to directors and group of companies:

- Presently, any financial assistance granted by a company to its subsidiary must be authorised by the board and the shareholders by way of a special resolution.
- A new subsection (2AA) that states that the provisions of 45(2) do not apply to the giving of financial assistance by a company to its own subsidiaries.

Section 48 Share buy-backs:

- The Bill requires that a share buyback must be approved by a special resolution of shareholders if shares are to be bought back from a director, a prescribed officer or a person related to a director or a prescribed officer.
- 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 90

Amendment of Section 90 – Appointment of Auditors:

- The bill proposes that the requirement to appoint auditors at an AGM be changed or removed. The appointment of auditors will now be by a way of a shareholder's meeting.

Application of the Takeover Regulations to private companies (s 118):

- The bill proposes that the Takeover Regulations should only apply with respect to an 'affected transaction' or 'offer' involving a private company or its securities, if the private company is required to have its annual financial statements audited or if its memorandum of incorporation requires it to do so.

Summary

The webinar covered the following topics:

- Section 33 – Annual returns;
- Section 45 – Loans or other financial assistance to directors and group of companies;
- Section 48 - Share buy-backs;
- Section 90 – Appointment of Auditors, and
- Section 118 - Application of the Takeover Regulations to private companies.

Q&A

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**Thank you for your
participation**

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