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THE PRESIDENCY

No. 1210

20 October 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 20 of 2004: Companies Amendment Act, 2004.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 15 October 2004.)

ACT

To amend the Companies Act, 1973, so as to insert a definition and substitute certain obsolete expressions; to clarify a provision relating to the removal of the names of persons from certain registers of companies; to make further provision regarding persons disqualified from serving on the management of companies; and to authorise the Registrar of Companies to keep a register of such disqualified persons; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 61 of 1973, as amended by section 1 of Act 76 of 1974, section 1 of Act 64 of 1977, section 26 of Proclamation No. 234 of 1978, section 1 of Act 84 of 1980, section 1 of Act 83 of 1981, section 1 of Act 29 of 1982, section 1 of Act 31 of 1986, section 1 of Act 82 of 1992, section 1 of Act 35 of 1998, section 2 of Act 37 of 1999 and section 1 of Act 35 of 2001 5

1. Section 1 of the Companies Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the insertion in subsection (1), after the definition of “director”, of the following definition: 10

“**Director of Public Prosecutions**’ means a Director of Public Prosecutions appointed under section 13(1) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), who has jurisdiction;”.

Amendment of section 91A of Act 61 of 1973, as inserted by section 1 of Act 60 of 1998 15

2. Section 91A of the principal Act is hereby amended by the insertion in subsection (4), after paragraph (c), of the following paragraph:

“(cA) A court may not order the name of a member of a company contemplated in this subsection to be removed from a subregister, unless such person was a party to or had notice of a fraud or illegality as contemplated in paragraph (c).”. 20

Amendment of section 218 of Act 61 of 1973, as amended by section 17 of Act 59 of 1978 and section 24 of Act 132 of 1993

3. Section 218 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading: 5
“Disqualification of directors and others”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10
 “(1) Any of the following persons shall be disqualified from being appointed or acting as a director of a company or, except for a body corporate, from being concerned or taking part, directly or indirectly, in the management of a company:”;
- (c) by the addition to paragraph (d) of subsection (1) of the following subparagraph: 15
 “(iv) any person who has, in terms of an Act of Parliament, been removed from office for not being a fit and proper person to serve as a director or in the management or in any other position of trust of the body in question due to theft, fraud, forgery, uttering a forged document, corruption, whether in terms of the common law or not, or any other act involving dishonesty.”;
- (d) by the insertion after subsection (1) of the following subsection: 20
 “(1A) (a) (i) The Registrar of the Court shall, upon—
 (aa) the issue of a sequestration order;
 (bb) the issue of an order for the removal of a person from an office of trust on account of misconduct; or 25
 (cc) a conviction for an offence referred to in subsection (1)(d)(iii), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Registrar.
 (ii) The Registrar shall notify each company which has as a director the person to whom the order or conviction relates, of the order or conviction. 30
 (iii) A company notified in terms of subparagraph (ii) shall, within a period of 60 days from notification, inform its shareholders in writing of such notification.
 (b) The Registrar shall establish and maintain a register of the orders and convictions contemplated in paragraph (a) and such register shall be open to inspection *mutatis mutandis* as if it were a register contemplated in section 113. 35
 (c) (i) If a person’s name has been entered on the register contemplated in paragraph (b) because that person was declared insolvent, the Registrar shall remove that person’s name from the register as soon as he or she is rehabilitated. 40
 (ii) The Registrar shall remove a person’s name from the register where a court has granted authority as contemplated in subsection (1)(d).”;
- (e) by the substitution for subsection (2) of the following subsection: 45
 (2) Any person disqualified from being appointed or acting as a director of a company and who purports to act as a director or directly or indirectly takes part in or is concerned in the management of any company, or any director or officer of the company in question who knew or who could reasonably be expected to know of the disqualification— 50
 (a) shall be guilty of an offence;
 (b) shall be liable, jointly and severally, for all debts incurred by the company for the period during which such person knew or could reasonably be expected to know of the disqualification.”. 55

Amendment of section 219 of Act 61 of 1973**4. Section 219 of the principal Act is hereby amended—**

(a) by the insertion after subsection (4) of the following subsection:

“(4A) (a) The Registrar of the Court which made an order under subsection (1) shall, within seven days after the making of the order, transmit a copy of the order to the Registrar, who must notify each company which has as a director the person to whom the order relates, of the order. 5

(b) A company notified in terms of paragraph (a) shall, within a period of 60 days from notification, inform its shareholders in writing of such notification. 10

(c) The Registrar shall establish and maintain a register of the orders made under paragraph (a) and the names of the persons to whom the orders relate, and such register shall be open to inspection *mutatis mutandis* as if it were a register contemplated in section 113. 15

(d) The Registrar shall remove a person’s name from the register—

(i) if an appeal against an order contemplated in subsection (1) is successful; or

(ii) where a court has granted leave as contemplated in subsection (1).”; and 20

(b) by the substitution for subsection (5) of the following subsection:

“(5) Any person who contravenes any order made under subsection (1) or any director or officer of the company in question who knew or who could reasonably be expected to know of the contravention—

(a) shall be guilty of an offence; 25

(b) shall be liable, jointly and severally, for all debts incurred by the company for the period during which such person knew or could reasonably be expected to know of the contravention.”.

Substitution of certain expressions in Act 61 of 1973**5. The principal Act is hereby amended—** 30

(a) by the substitution for the expression “Attorney-General”, wherever it occurs in sections 219(2)(a)(i) and (3), 400(3) and (4), 401 and 426, of the expression “Director of Public Prosecutions”; and

(b) by the substitution for the expression “Supreme Court”, wherever it occurs in section 1 in the definition of “Master”, and in sections 12(1) and (2), 18, 35 334(2) and 440D(5), of the expression “High Court”.

Short title

6. This Act is called the Companies Amendment Act, 2004.