



LATEST IMPORTANT AMENDMENTS TO THE COMPANIES ACT

This note briefly sets out selected sections of the Companies Amendment Act 16 of 2024 and the Companies Second Amendment Act 17 of 2024 which affects our clients from 27 December 2024, and which amends (“the amendments”) the Companies Act 71 of 2008 (“the Act”).

SECTION 77 OF THE ACT

LIABILITY OF DIRECTORS AND PRESCRIBED OFFICERS:

Prior to the amendments, Section 77(7) of the Act provided that proceedings to recover any loss, damages or costs from directors who have caused such loss, damages or costs to the company as a result of breach of their fiduciary duties must be instituted within three years of the act or omission that gave rise to such loss or damages.

In terms of the amendments, the three-year period within which to institute these proceedings may now be extended by a Court on good cause shown, regardless of whether such period has expired or not; or that the act or omission that resulted in the loss, damages or costs occurred prior to the amendments taking effect.

SECTION 162 OF THE ACT

APPLICATION TO DECLARE DIRECTOR DELINQUENT OR UNDER PROBATION:

Prior to the amendments, applications to declare a director delinquent or under probation could be made either if the person is still a director of the company or within the 24 months immediately preceding the application, was a director of a company.

The amendments have now extended the 24-month period to 60 months, or such longer period determined by a Court on good cause shown, regardless of whether such period has expired or not; or that the act or omission that resulted in the loss, damages or costs occurred prior to the amendments taking effect.

SECTION 16 OF THE ACT AMENDING MEMORANDUM OF INCORPORATION:

Prior to the amendments, an amendment to an MOI took effect on the later of the date on, and time at which the Notice of Amendment is filed; or the date, if any, set out in the Notice of Amendment.

The amendments now provide that the amendment to an MOI takes effect 10 business days after receipt of the Notice of Amendment by the CIPC, unless endorsed or rejected by the CIPC prior to the expiry of the 10 business days period; or such later date, if any, as set out in the Notice of Amendment.

SECTION 40 OF THE ACT CONSIDERATION FOR SHARES:

The amendments now determine that if shares are issued for, or with delayed consideration, those shares must be transferred to stakeholder, who has no interest in the company or in the subscribing party, in the form of an attorney, notary or escrow agent to be held in terms of a stakeholder agreement, and no longer to a “third party, to be held in trust”.

SECTION 45 OF THE ACT FINANCIAL ASSISTANCE:

The onerous administrative requirements that previously had to be met before a company was able to provide financial assistance to a related or inter-related company no longer apply, in terms of the amendments, to the

giving of financial assistance to or for the benefit of its subsidiaries. This relaxation, however, does not apply to the giving of financial assistance by a company for the acquisition of its shares in terms of Section 44 of the Act.

SECTION 135 OF THE ACT

POST-COMMENCEMENT FINANCE:

The amendments relating to post-commencement finance during business rescue proceedings greatly assist landlords in that any amounts due to, but not paid to the landlord during business rescue proceedings in respect of all public utility services, such as the company's share of rates and taxes, electricity, water, sanitation and sewer charges which have been paid by the landlord during business rescue proceedings, is now regarded as post-commencement financing, and will rank behind employees' claims, but before all secured or unsecured pre-commencement claims.

Contact RSW Law to assist you with:

- Instituting or defending proceedings to recover loss, damages or costs from directors, and with delinquency applications;
- Timeously and correctly amending Memorandums of Incorporation;
- Acting as the stakeholder and drafting the stakeholder agreement; and
- Advice to business rescue practitioners and creditors on all aspects of business rescue, including the ranking, payment and enforcement of claims for post-commencement financing.



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