REPUBLIC OF SOUTH AFRICA

COMPANIES AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 26506 of 25 June 2004)
(The English text is the official text of the Bill)

(MINISTER OF TRADE AND INDUSTRY)

[B 10—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.

BILL

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

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:

'' **'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

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

''*(c*A*)* 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)*.''.

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:

''**Disqualification of directors and others**'';

(b) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

''(1) Any of the following persons shall be disqualified from being appointed or acting as a director of a company or 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:

''(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:

''(1A) *(a)* (i) The Registrar of the Court shall, upon—

(aa) the issue of a sequestration order;

(bb) an order for the removal of a person from an office of trust on account of misconduct; or

(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.

(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.

(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.

(ii) The Registrar shall remove a person's name from the register where a court has granted authority as contemplated in subsection (1)*(d)*.''; and

(e) by the substitution for subsection (2) of the following subsection:

(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, and any director or officer of the company in question who knew or who could reasonably be expected to know of the disqualification—

(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 the disqualified person acted as director or directly or indirectly took part in or was concerned in the management of the company.''.

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.

(b) 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.

(c) 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

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

''(5) Any person who contravenes any order made under subsection (1) and 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;

(b) shall be liable, jointly and severally, for all debts incurred by the company for the period during which the disqualified person was a director or directly or indirectly took part in or was concerned in the management of the company.''.

Substitution of certain expressions in Act 61 of 1973

5. The principal Act is hereby amended—

(a) by the substitution for the expression ''Attorney-General'', wherever it occurs in the ''Arrangement of sections'' opposite section 401, and 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, 334(2) and 440D(5), of the expression ''High Court''.

Short title

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

MEMORANDUM ON THE OBJECTS OF THE COMPANIES AMENDMENT BILL, 2004

1. The Department of Trade and Industry is currently busy with the reform of corporate law. That process will take some time to finalise. In the mean time, some provisions of the Companies Act, 1973 (Act No. 61 of 1973), need immediate attention. Proposals in this regard are contained in the Companies Amendment Bill, 2004 (''the Bill'').

2. The Bill seeks to insert a definition and to substitute some obsolete expressions contained in the Act.

3. The Bill also seeks to amend section 91A of the Act. That section deals with securities which are transferable without a written instrument and not evidenced by a certificate. Proof of transfer of ownership in uncertificated securities is regulated by section 91A(4). The amendment seeks to make it clear that a court may not remove the name of a person from the relevant register unless the name was entered through fraud or illegality.

4. The Bill furthermore seeks to amend sections 218 and 219 of the Act so as to enhance the principle of good governance of companies. Those sections deal with the circumstances under which persons are disqualified from being directors of companies. The amendments seek to expand those circumstances and to authorise the Registrar of Companies to keep a register of persons disqualified as directors. The proposals also seek to make the disqualified person and any director or officer of the company who knew or who could reasonably be expected to know of the disqualification, jointly and severally liable for the debts of the company incurred during the disqualified person's tenure as a director. The amendments also seek to broaden the offence where a disqualified person is appointed or acts as a director of a company. In terms of the proposals, a director or officer of the company who knew or who could reasonably be expected to know of the disqualification will also be guilty of an offence.

CONSULTATION

5. The proposed amendments have been discussed with the Standing Advisory Committee on Company Law, the Johannesburg Stock Exchange and the Banking Council. Consultations have also taken place with the Master and Registrar of the High Court and with the Department of Justice and Constitutional Development.

FINANCIAL IMPLICATIONS FOR STATE

6. None.

PARLIAMENTARY PROCEDURE

7. The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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