

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**CORPORATE LAWS
AMENDMENT BILL**

[B 6—2006]

*(As agreed to by the Portfolio Committee on Trade and Industry
(National Assembly))*

[B 6A—2006]

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AMENDMENTS AGREED TO
CORPORATE LAWS AMENDMENT BILL
[B 6—2006]

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 20 of Act 61 of 1973

5. Section 20 of the Companies Act, 1973, is hereby amended by the deletion of subsection (4).

CLAUSE 7

1. On page 5, in line 34, to omit “consider” and to substitute “account for”.

CLAUSE 17

Clause rejected.

CLAUSE 19

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

19. Section 228 of the Companies Act, 1973, is hereby amended by the substitution of the following section:

“Disposal of undertaking or greater part of assets of company

228. (1) Notwithstanding anything contained in its memorandum or articles, the directors of a company shall not have the power, save by a special resolution of its members, to dispose of—

(a) the whole or the greater part of the undertaking of the company; or

(b) the whole or the greater part of the assets of the company.

(2) If in relation to the consolidated financial statements of a holding company, a disposal by any of its subsidiaries would constitute a disposal by the holding company in terms of subsection (1)(a) or (b), such disposal requires a special resolution of the shareholders of the holding company.

(3) A special resolution of a company shall not be effective in approving a disposal described in subsection (1) or (2) unless it authorizes or ratifies in terms the specific transaction.

(4) An undertaking or assets of a company, and the part to be disposed of, shall be calculated for purposes of subsections (1) and (2) according to the fair value of the undertaking or assets as described in financial reporting standards.

(5) Subsections (1) to (4) shall not apply to a disposal between a wholly owned subsidiary and its holding company, or between two wholly owned subsidiaries of the same holding company.”.

CLAUSE 24

1. On page 11, in line 34, to omit “any professional or industry code” and to substitute “the Independent Regulatory Board for Auditors”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 271 of Act 61 of 1973

25. Section 271 of the Companies Act, 1973, is hereby amended by the insertion of the following subsection:

“(4) In the case of a public interest company with an audit committee, an appointment by the directors in terms of subsection (1) shall only be valid if the audit committee is satisfied that the auditor is independent of the company.”.

CLAUSE 29

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

30. The following section is hereby inserted in the Companies Act, 1973, after section 275:

“Certain non-audit services not open to current auditor of public interest company

275A. (1) An auditor appointed to a public interest company may not for the duration of the appointment perform for that company services prohibited under the code of professional conduct mentioned in section 21(2)(a) of the Auditing Profession Act, 2005 (Act No. 26 of 2005).

(2) The Independent Regulatory Board for Auditors shall in the code mentioned in subsection (1) define and prohibit the provision by an auditor of certain non-audit services in circumstances in which these will be subject to the auditor’s own auditing.

(3) Subsection (1) does not affect the power of an audit committee under section 270A(1)(d) or (e) to further limit the services which an auditor of that company may render.”.

CLAUSE 31

1. On page 13, in line 34, to omit “in the conduct of the affairs of the company”.
2. On page 13, in line 35, to omit “of section 22”.

3. On page 13, in line 37, to omit “which has caused or is likely to cause financial loss to the company or to any of its members or creditors,”.

CLAUSE 33

1. On page 14, in line 26, to omit “framework of financial reporting”.
2. On page 14, in line 27, after “standards” to insert “developed for limited interest companies under section 440S(1)(b)”.

CLAUSE 36

1. On page 15, in line 34, to omit “an inaccuracy in or” and to substitute “a failure to comply with or an”.
2. On page 15, in line 36, to omit “inaccuracy” and to substitute “failure”.

CLAUSE 41

1. On page 16, in line 34 and 35, to omit “(i)” and to substitute “(i)”.

CLAUSE 44

1. On page 17, in line 53, to omit “interest” and to substitute “interest”.

CLAUSE 50

1. On page 20, in line 27, to omit “one person” and to substitute “two persons”.
2. On page 21, in line 39, after “develop” to insert “accounting”.
3. On page 22, in line 28, to omit “promote” and to substitute “contribute to”.
4. On page 25, in line 30, after “the” to insert “preparation or approval of the”.
5. On page 25, in lines 49 and 51, to omit “nominated officer” and to substitute “Minister”.
6. On page 25, from line 53, to omit subsection (5) and to substitute:

(5) A court shall not convict a company or director of an offence under subsection (1) or section 287 if—
(a) it is satisfied that the company has performed substantially in terms of an agreement under subsection (2); or
(b) the company or director has been convicted of an offence under section 287A.

CLAUSE 51

1. On page 26, in line 42, to omit “and”.
2. On page 26, in line 43, after “paragraphs” to insert “(d),”

3. On page 26, after line 44, to insert:
 - (d) in section 37, 140A, 143, 145, 145A, 146, 146A, 147(2)(a), 148, 149, 153(4), 156, 162, 169, 218, 219, 255, 256(5), 260, 284, 287A, 424 or 440D(3) or (4), to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
4. On page 26, in line 49, to omit “[or],” and to substitute “or”.
5. On page 26, in line 49, to omit “or 287A”.

CLAUSE 53

1. On page 29, from line 7, to omit all the words from “(a)” up to and including “(b)” in line 10.
2. On page 29, in line 12, to omit “following” and to substitute “beginning after”.
3. On page 29, in line 13, to omit “or (2)”.
4. On page 29, after line 16, to insert:
 - (3) (a) Prior to the development of accounting standards contemplated in section 285A(2)(a), a limited interest company must prepare its financial statements in accordance with a set of accounting practices adopted by that company, which must comply with the framework for the preparation and presentation of financial statements included in financial reporting standards.
 - (b) The accounting practices referred to in (a) must be appended to any financial report that is based on these practices.
 - (c) The provisions of paragraphs (a) and (b) apply to financial statements for financial years ending on or subsequent to 31 December 2005.
5. On page 29, in line 17, to omit “(3)” and to substitute “(4)”.

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