

REPUBLIC OF SOUTH AFRICA

CORPORATE LAWS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 23573 of 28 June 2002)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 32—2002]

ISBN 0 621 32269 5

No. of copies printed 1 800

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 make further provision for the manner of payment of fees or other moneys payable in terms of the Act; to clarify that each application for the reservation of a company name must be accompanied by a prescribed fee; to further regulate the registration of a memorandum and articles of association of a company; and to introduce the lodgement of an annual return by companies; to amend the Close Corporations Act, 1984, so as to make further provision for the manner of payment of fees or other moneys payable in terms of the Act; and to introduce the lodgment of an annual return by close corporations; and to provide for matters connected therewith.

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

Amendment of section 10 of Act 61 of 1973, as amended by section 2 of Act 31 of 1986 and section 3 of Act 35 of 2001

1. Section 10 of the Companies Act, 1973, is hereby amended— 5
 (a) by the deletion of paragraphs (a) and (b) of subsection (1); and
 (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
 “(c) in such **[other]** manner, including **[such]** any electronic form of transfer of money, as the Registrar may direct.”. 10

Amendment of section 42 of Act 61 of 1973, as amended by section 6 of Act 83 of 1981 and section 2 of Act 35 of 1998

2. Section 42 of the Companies Act, 1973, is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) Subject to the provisions of section 41, the Registrar shall, on written application on the prescribed form and on payment of the prescribed fee for each such written application form lodged, reserve a name (approved by the Registrar) or literal translation into not more than one other official language of the Republic of a name of a company or a shortened form of the name or name so translated of a company, pending the registration of a memorandum or a change of name by that company or the registration of another form of the name or translated name.”. 15
20

Amendment of section 63 of Act 61 of 1973, as amended by section 4 of Act 76 of 1974, section 3 of Act 29 of 1982, section 2 of Act 29 of 1985, section 4 of Act 31 of 1986, section 2 of Act 78 of 1989 and section 7 of Act 35 of 2001

3. Section 63 of the Companies Act, 1973, is hereby amended by the substitution for subsection (2) of the following subsection: 5

- “(2) In addition to the prescribed fee referred to in subsection (1) an additional fee shall be payable calculated at the rate of—
- (a) in the case of a company having a nominal share capital with shares having a par value, **[five rand]** a prescribed amount for each thousand rand or part thereof; 10
 - (b) in the case of a company having shares of no par value, **[five rand]** a prescribed amount for each thousand shares or part thereof;
 - (c) in the case of a company having both shares of par value and shares of no par value, the aggregate of the amounts calculated on the basis laid down in paragraphs (a) and (b) of this subsection.”. 15

Amendment of section 73 of Act 61 of 1973, as amended by section 5 of Act 59 of 1978, section 4 of Act 29 of 1982, section 5 of Act 31 of 1986, section 4 of Act 18 of 1990 and section 28 of Act 35 of 2001

4. Section 73 of the Companies Act, 1973, is hereby amended by the substitution for subsection (1) of the following subsection: 20

- “(1) If a company has failed, for a period of more than six months, to lodge an annual return in compliance with section 173 or if the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, **[he]** the Registrar shall, in accordance with subsection (7), send to the company by registered post a letter enquiring whether it is carrying on business or is in operation.”. 25

Insertion of section 173 in Act 61 of 1973

5. The following section is hereby inserted in the Companies Act, 1973, after section 172:

“Annual return 30

173. (1) (a) In order to assist the Registrar to determine whether the information required to be disclosed in terms of this Act by a company has been disclosed and is still valid, every company shall not later than the end of the month following upon the month within which the anniversary of the date of its incorporation occurs, on payment of the prescribed fee, lodge with the Registrar a return in the prescribed form. 35

(b) If the date of the company’s incorporation cannot be established from the documents in the Companies Registration Office, the date of such anniversary shall for purposes of this section be deemed to be 30 June.

(2) A copy of the annual return contemplated in subsection (1) shall be kept at the registered office of the company, and the provisions of section 113 relating to the inspection of the register of members of the company and the furnishing of copies thereof shall apply *mutatis mutandis* to the annual return by a company. 40

(3) For purposes of this section “company” includes an external company. 45

(4) Any company which fails to comply with any provision of this section, is guilty of an offence.”.

Amendment of section 178 of Act 61 of 1973, as amended by section 15 of Act 64 of 1977, section 7 of Act 84 of 1980, section 10 of Act 29 of 1982, section 9 of Act 31 of 1986, section 3 of Act 78 of 1989 and section 47 of Act 88 of 1996 50

6. Section 178 of the Companies Act, 1973, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A company or an external company which has failed to lodge a return or other document required by section 93(3), 173, 200(1), 216(2) or 276 within the period specified by the relevant provision, may thereafter, without derogating from any provision of this Act, lodge such return or other document subject to the payment to the Registrar of the prescribed additional fee in respect of each such failure.”. 5

Amendment of section 441 of Act 61 of 1973, as amended by section 30 of Act 111 of 1976, section 29 of Act 64 of 1977, section 27 of Act 59 of 1978, section 16 of Act 84 of 1980, section 30 of Act 83 of 1981, section 11 of Act 29 of 1985, section 15 of Act 31 of 1986, section 5 of Act 78 of 1989, section 7 of Act 69 of 1990, section 14 of Act 82 of 1992, section 19 of Act 35 of 1998, section 21 of Act 37 of 1999 and section 27 of Act 35 of 2001 10

7. Section 441 of the Companies Act, 1973, is hereby amended by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) in section 173, 242, 268C, 268I or 287, to a fine or to imprisonment not exceeding a period of three months or to both such fine and imprisonment;”. 15

Amendment of section 6 of Act 69 of 1984, as amended by section 3 of Act 22 of 2001

8. Section 6 of the Close Corporations Act, 1984, is hereby amended by the deletion of paragraphs (a) and (b) of subsection (1).

Insertion of section 15A in Act 69 of 1984 20

9. The following section is hereby inserted in the Close Corporations Act, 1984, after section 15:

“Annual return

15A. (1) In order to assist the Registrar to determine whether the information required to be disclosed in terms of this Act by a corporation has been disclosed and is still valid, every corporation shall not later than the end of the month following upon the month within which the anniversary of the date of its incorporation occurs, on payment of the prescribed fee, lodge with the Registrar a return in the prescribed form. 25

(2) A copy of the annual return contemplated in subsection (1) shall be kept at the registered office of the corporation, and the provisions of section 16 relating to the inspection of the founding statement and proof of its registration shall apply *mutatis mutandis* to the annual return by a corporation. 30

(3) Any corporation which fails to comply with any provision of this section, is guilty of an offence.”. 35

Amendment of section 26 of Act 69 of 1984, as amended by section 6 of Act 38 of 1986 and section 14 of Act 22 of 2001

10. Section 26 of the Close Corporations Act, 1984, is hereby amended by the substitution for subsection (1) of the following subsection: 40

“(1) If a corporation has failed, for a period of more than six months, to lodge an annual return in compliance with section 15A or if the Registrar has reasonable cause to believe that a corporation is not carrying on business or is not in operation, [he] the Registrar shall serve on the corporation at its postal address a letter by registered post in which the corporation is notified thereof and informed that if [he] the Registrar is not within 60 days from the date of [his] the letter informed in writing that the corporation is carrying on business or is in operation, the corporation will, unless good cause is shown to the contrary, be deregistered.”. 45

Amendment of section 82 of Act 69 of 1984, as amended by section 10 of Act 81 of 1992 and section 18 of Act 26 of 1997

11. Section 82 of the Close Corporations Act, 1984, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) in section 15A, 16, 41 or 49, to a fine not exceeding R100 or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.”. 5

Short title and commencement

12. This Act is called the Corporate Laws Amendment Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 10

MEMORANDUM ON THE OBJECTS OF THE CORPORATE LAWS AMENDMENT BILL, 2002

OBJECTS

The Companies and Close Corporations Registration Offices and the Patents and Trade Marks Registration Offices have been amalgamated into a single office styled "CIPRO" — an acronym for "Companies and Intellectual Property Registration Office". The National Treasury has granted approval for the establishment of the trading entity, CIPRO, under the Public Finance Management Act, 1999 (Act No. 1 of 1999), with effect from 1 April 2002 on condition that CIPRO covers its operational costs within the next two years from funds generated for services rendered by it.

To enable CIPRO to be successful, the manner of payment for the services rendered by it must be changed to give CIPRO access to these funds. The current manner of payment by way of revenue stamps affixed to documents, leads to great difficulty in recovering the money from the National Revenue Fund. For CIPRO to be able to perform its role and function and to introduce e-commerce in the lodgment of documents and disclosure of corporate information, commercially common and generally used forms of payment must be introduced. This Bill seeks to allow this.

A further aspect of concern is the unsatisfactorily compliance with the requirements of the Companies Act and the Close Corporations Act regarding disclosure of certain information. The world trend is to require annual returns to be lodged by all corporate entities to confirm or indicate changes in particulars in respect of the particular entity. The introduction of an annual return will greatly benefit the integrity of the South African registry's data base on registered companies and close corporations. The latter aspect is of utmost importance for the South African legal system, creditors and investors.

CONSULTATION

The National Treasury has approved all the principles involved, the South African Revenue Service concurs and the Standing Advisory Committee on Company Law has noted with approval the developments.

FINANCIAL IMPLICATIONS FOR STATE

The Bill will have no immediate financial implications for the State, but will in time lead to CIPRO not being dependent on the State to cover its operational costs.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Trade and Industry are of the view 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.

Printed by Creda Communications

ISBN 0 621 32269 5