

REPUBLIC OF SOUTH AFRICA

COMPANIES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill
published in Government Gazette No. of) (The English text is the official text of the
Bill)*

(MINISTER OF TRADE, INDUSTRY AND COMPETITION)

[B —2021]

GENERAL EXPLANATORY NOTE:

[] Words in bold typed in square brackets indicate omissions from existing enactment

_____ Words underlined with solid line indicate insertions in existing enactments.

BILL

To amend the Companies Act, 2008, so as to change the definition of securities; to provide for the definition of true owner; to provide for the preparation, presentation and voting on companies' remuneration policy and directors' remuneration report; to provide for the filing of the annual financial statement, the filing of the copy of the company's securities register and the copy of the register of disclosure of beneficial ownership with the Commission; to differentiate where the right to gain access to companies' records may be limited; to clarify when a Notice of Amendment of a Memorandum of Incorporation takes effect; to empower the court to validate the irregular creation, allotment or issue of shares; to clarify how shares which are not fully paid are to be dealt with; to exclude the holding company from the requirements relating to financial assistance; to provide for instances where a special resolution is required for acquisition of shares by the company; to extend the definition of an employee share scheme to include situations where there are purchases of shares of a company; to provide for the circumstances under which a private company will be a regulated company; to provide for circumstances where a company is unable to identify the details of persons who hold a beneficial interest in its securities; to deal with the composition of the social and ethics Committee; the publication of the application for exemption from the requirement to appoint a social and ethics committee; to provide for the presentation and approval of the social and ethics committee report at the annual general meeting or shareholders' meeting as the case may be; to ensure the differentiation of duties between the chairperson of the Tribunal and the Chief Operation Officer; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 71 of 2008, as amended by section 1 of Act 3 of 2011 and section 111 of Act 19 of 2012

1. Section 1 of the Companies Act, 2008 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion after the definition of "**Banks Act**" of the following definitions:
- "**B-BBEE Act**' means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);"
- "**B-BBEE Commission**' means the Broad-Based Black Economic Empowerment Commission as established in terms of the B-BBEE Act;"
- (b) by the substitution for the definition of "**securities**" of the following definition:
- "**securities**' for the purposes of this Act, means any shares or debentures [**or other instruments**], irrespective of their form or title, issued or authorised to be issued by a profit company;"; and
- (c) by the insertion after the definition of "**this Act**" of the following definition:
- "**Treasury Regulations**' means any regulations made under the Public Finance Management Act, 1999 (Act No. 1 of 1999)."
- "**true owner**' means a natural person, who would in all the circumstances be considered to be the ultimate and true owner of the relevant securities, whether by reason of being capable either directly or indirectly (via the intermediation of others in the chain of holders of beneficial interest in the relevant securities) of directing the registered holder with regard to the securities or because of being a person for whose benefit the securities enure or for any other reason, not limited *ejusdem generis*, which could be the registered holder itself, or if the registered holder is not the true owner or the only true owner, would be the last person in the chain of any holders of beneficial interest in the relevant securities;"

Amendment of section 16 of Act 71 of 2008, as amended by section 11 of Act 3 of 2011

2. Section 16 of the principal Act is hereby amended –
- (a) by the substitution in subsection (9) for paragraph (b) of the following paragraph:
- "(b) in any other case, ~~[on the later of]~~
- (i) 10 business days after receipt of the Notice of Amendment by the Commission, unless endorsed or rejected with reasons by the Commission prior to the expiry of the 10 business days period [the date on, and time at, which the Notice of Amendment is filed]; or

- (ii) the date, if any, set out in the Notice of Amendment, provided that such date shall not be a date prior to expiry of the 10 business days stipulated in subparagraph (b)(i).".

Amendment of section 25 of Act 71 of 2008

3. Section 25 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"(2) A company must file a notice, which the Commission must publish as prescribed, setting out the location or locations at which any particular records referred to in section 24 are kept or from which they are accessible if those records—".

Amendment of section 26 of Act 71 of 2008, as amended by section 17 of Act 3 of 2011

4. Section 26 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) the reports to annual meetings **[,and annual financial statements,]** as mentioned in section 24(3)(c)(i)**[and(ii)]**";

(b) by the insertion in subsection (1) after paragraph (c) of the following paragraph:

"(cA) the annual financial statements as stipulated in section 24(3)(c)(ii)";

(c) by the deletion in subsection (1) of the word "and" at the end of paragraph (d) and by the addition of the following paragraphs:

"(e) the securities register of a profit company, or the members register of a non-profit company that has members, as mentioned in section 24(4)**[.]**and

(f) the register of the disclosure of beneficial interest of the company as mentioned in section 56(7)(a)."

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

"(2) A person not contemplated in subsection (1) has a right to inspect **[or] and** copy the information contained in the records referred to in subsection(1)(a),(b),(cA),(e) and (f), upon payment of no more than the prescribed maximum charges for any such inspection and copy. [the securities register of a profit company, or the members register of a non-profit company that has members, or the register of directors of a

company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection].

(e) by the insertion after subsection (2) of the following subsection:

(2A) The right to inspect and copy information contained in the records referred to in subsection 1(c) and (d), as contemplated in subsection (2), shall not apply to a private company, non-profit company or personal liability company, wherein-

(a) an annual financial statement is internally prepared in a company with a Public Interest Score of less than 100; or

(b) an annual financial statement is independently prepared in a company with a Public Interest Score of less than 350.”.

(f) by the substitution in subsection (4) for paragraphs (a) of the following paragraph:

"(a) for a reasonable period during business hours at a location referred to in section 25(1);";

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

“(5) Where a person receives a request in terms of subsection (4)(b) it must within **[14]** 10 business days comply with the request by providing the opportunity to inspect or copy the register or the records concerned to the person making such request;”;

(h) by the deletion of subsection (6).

(i) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:

“(9) It is an offence for a company, director or prescribed officer of a company, to-.”;

(j) by the insertion after subsection (9) of the following subsection:

“(9A)(a) Notwithstanding the provisions of subsection (9), a director or prescribed officer of the company shall not be guilty of an offence if he or she shows that he or she took all reasonable steps to secure the company’s compliance with the requirements of section 26 and section 31 of this Act.

- (b) It is a legal defence for such an offence to show that he acted reasonably and that in the circumstance the default was excusable.

Amendment of section 30 of Act 71 of 2008, as amended by section 20 of Act 3 of 2011

5. Section 30 of the principal Act is hereby amended –
- (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
“(a) the remuneration, as defined in subsection (6), and benefits received by each director, or **[individual holding any prescribed office]** prescribed officer in the company, and such individual must be named;”.
- (b) by the insertion after subsection (4) of the following subsection:
“(4A) Where any provisions of the directors’ remuneration report as contemplated in section 30A becomes subject to audit in terms of this section, nothing will require any company policies or the background statement of the remuneration report to be made subject to such audit.”.

Insertion of section 30A in Act 71 of 2008

6. The following section is hereby inserted in the principal Act after section 30:
- "Duty to prepare and present the company’s remuneration policy and the remuneration report**
- 30A.(1)** A public company or state-owned company must prepare and present the remuneration policy for directors and prescribed officers for approval by ordinary resolution, at the annual general meeting.
- (2) The remuneration policy as contemplated in subsection (1) must be presented thereafter for approval by ordinary resolution at the annual general meeting and every three years or whenever any material change to the remuneration policy is made.
- (3) The remuneration report must, in the prescribed manner, consist of the following parts:
- (a) background statement;
- (b) the company’s remuneration policy as contemplated in subsection (1), which must be set out in a separate part of the remuneration report;
- (c) an implementation report containing details of remuneration and benefits received by each director or prescribed officer as required in terms of section 30(4), (5) and (6) of this Act;

- (d) the total remuneration including all salary, benefits (including employer contributions to benefit funds), short-term incentives (bonuses) and long-term incentives such as share options and any other type of long-term incentive awards which has been settled in the year under review of the employee of the company with the highest total remuneration, be it the chief executive officer or any other prescribed officer in the company as may be specified in terms of section 30(4) and (6) of this Act;
- (e) the total remuneration, including all salary, benefits (including employer contributions to benefit funds) and incentives (bonuses), as recorded in the company's payroll record, of the employee as defined by section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995) of the company, with the lowest total remuneration in the company; and
- (f) the average remuneration of all employees, median remuneration of all employees and the remuneration gap reflecting the ratio between the total remuneration of the top 5% highest paid employees and the total remuneration of the bottom 5% lowest paid employees of the company.

(4) The remuneration report must be –

- (a) approved by the board of the company;
 - (b) presented to the shareholders at the annual general meeting; and
 - (c) voted by the shareholders for approval as contemplated in subsection (6).
- (5) The voting on the remuneration report as contemplated in subsection (4) shall constitute the voting on the remuneration policy as contemplated in subsection (1) and (2) and the implementation report as contemplated in subsection (6).
- (6) The implementation report and the remuneration policy shall be construed as separate documents with separate voting requirements which shall be approved by ordinary resolution.
- (7) Where the remuneration policy is not approved by ordinary resolution, it must be presented at the next annual general meeting or at the shareholders' meeting called for this purpose, until the approval of the remuneration policy is obtained.

- (8) Any changes to the remuneration policy may be implemented once the approval of the shareholders is obtained, by ordinary resolution in terms of subsection (7).
- (9) Where the implementation report is not approved by ordinary resolution as contemplated in subsection (6) –
- (a) the remuneration committee or the directors' committee responsible for remuneration matters of the company shall, in the following annual general meeting, present an explanation on the manner in which the shareholders' concerns have been taken into account; and
- (b) the non-executive directors that serve on the directors' committee responsible for remuneration shall be required to stand down for re-election every year of such rejection of the implementation report.”.

Amendment of section 31 of Act 71 of 2008, as amended by section 21 of Act 3 of 2011

7. Section 31 of the principal Act is hereby amended –
- (a) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- "(4) It is an offence for a company, director or prescribed officer of a company, to—".

Amendment of section 33 of Act 71 of 2008, as amended by section 23 of Act 3 of 2011

8. Section 33 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the following subsection:
- (1) Every company must file an annual return with the Commission in the prescribed form with the prescribed fee, and within prescribed period after the end of the anniversary of the date of its incorporation, including in that return-
- "(a) a copy of its annual financial statements pertaining to the last financial year, or the financial year just prior to the last financial year if the filing date of the annual return is less than six months following the end of the last financial year and the annual financial statement of the last financial year have not been prepared as required by section 30(1), for the public company, state-owned company or private company whose public interest score exceeds the limits set out in section 30(2) or

regulations as contemplated in section 30(7) [if it is required to have such statements audited in terms of section 30(2) or the regulations contemplated in section 30(7); and]”; and

- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:
“(aA) a copy of the company’s securities register as required in terms of section 50;
(aB) a copy of the register of the disclosure of beneficial interest as required in terms of section 56, and
(b) any other prescribed information.”.
- (c) by the insertion after subsection (1) of the following subsection:
“(1A) The Commission shall make the annual return contemplated in subsection (1) available electronically to any person as prescribed.”.

Insertion of section 38A in Act 71 of 2008

9. The following section is hereby inserted in the principal Act after section 38:

"Validation of irregular creation, allotment or issuing of shares

- 38A.(1) Where a company purports to create, allot or issue shares by virtue of any provision of this Act, the Memorandum of Incorporation of the company, any other law or otherwise, where the creation, allotment or issuing of those shares is invalid or the terms of creation, allotment or issue are inconsistent with, or not authorised by those provisions, a court may—**
- (a) upon receipt of an application made by the company or by any party who holds an interest in the company; and
- (b) after satisfying itself that it is just and equitable to do so, make an order validating the creation, allotment or issue of these shares or confirming the terms of the creation, allotment or issue, subject to such conditions as may be imposed by the court.
- (2) After the payment of all prescribed fees by the company, the shares shall be deemed to have been validly created, allotted or issued upon the terms of the creation, allotment or issue of the shares and subject to the conditions as may be imposed by the court.”.

Amendment of section 40 of Act 71 of 2008, as amended by section 28 of Act 3 of 2011

10. Section 40 of the principal Act is hereby amended –

(a) by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph:

"(ii) cause the issued shares to be transferred to a stakeholder [third party], to be held [in trust] in terms of a stakeholder agreement, and later transferred to the subscribing party in accordance with [a trust agreement] the stakeholder agreement."

(a) by the substitution for subsection (6) of the following subsection:

"(6) Except to the extent that a [trust agreement] stakeholder agreement contemplated in subsection (5)(b) provides otherwise - "

(c) by the insertion after section 5 of the following subsection:

"(5A) for the purposes of subsection (5) and (6),

(a) 'Stakeholder' means a trusted third party who has no interest in the company or the subscribing party who may be in the form of an attorney, notary public or escrow agent;

(b) 'stakeholder agreement' means a contract or an arrangement or understanding between the stakeholder and the company."

Amendment of section 45 of Act 71 of 2008, as amended by section 31 of Act 3 of 2011

11. Section 45 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[Loans or other financial assistance to directors]Financial assistance";

(b) by the insertion after subsection (2) of the following subsection of the following subsection:

"(2A) The provisions of this section shall not apply to the giving by a company of financial assistance to, or for the benefit of its subsidiaries."

Amendment of section 48 of Act 71 of 2008, as amended by section 32 of Act 3 of 2011

12. Section 48 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

- "(8) A decision by the board of a company as contemplated in subsection (2)(a) must be approved by a special resolution of the shareholders of the company—
- (a) if any shares are to be acquired by the company from—
 - (i) a director of the company;
 - (ii) a prescribed officer of the company; or
 - (iii) a person related to a director of the company or a prescribed officer;
or
 - (b) if it entails the acquisition of shares in the company, other than shares acquired as a result of —
 - (i) a *pro rata* offer made by the company to all shareholders of the company or a particular class of shareholders of the company, notwithstanding that the *pro rata* offer made to all shareholders may also include shareholders who are one or more of the persons referred to in paragraph (a) above; or
 - (ii) transactions effected on a recognised stock exchange on which the shares of the company are traded.”.

Amendment of section 56 of Act 71 of 2008, as amended by section 36 of Act 3

13. Section 56 of the principal Act is hereby amended –

- (a) by the substitution for subsection (2) of the following subsection and subsequent sub-paragraph:

“(2) A person is regarded to have a beneficial interest in a security of a **[public]** company if the security is held *nomine officii* by another person on that first person’s behalf or if that first person-

- (a) is married in community of property to a person who has a beneficial interest in that security;
- (b) is the parent of a minor child who has a beneficial interest in that security;
- (c) acts in terms of an agreement with another person who has a beneficial interest in that security, and the agreement is in respect of the co-operation between them for the acquisition, disposal or any other matter relating to a beneficial interest in that security;
- (d) is the holding company that has a beneficial interest in that security;

- (e) is entitled to exercise or control the exercise of the majority of the voting rights at the general meetings of a juristic person that has a beneficial interest in that security; **[or]**
- (f) gives directions or instructions to a juristic person that has a beneficial interest in that security, and its directors or the trustees are accustomed to act in accordance with that person's directions and instructions; or
- (g) otherwise holds a beneficial interest.”.

(b) by the insertion after subsection (2) of the following subsection:

“(2A) For the purposes of subsections (3) to (7), a person is also regarded to have a beneficial interest in a security, if that person is a true owner in terms of this Act.”.

(c) by the substitution for subsection (3) of the following subsection:

“(3) If a security of a **[public]** company is registered in the name of a person who is not a holder or who is the only holder of the beneficial interest in **[all of the securities]** that security in the same company held by that person, that registered holder of security must disclose -”.

(d) by the substitution for subsection (4) of the following subsection:

“(4) The information required in terms of subsection (3) must -

- (a) be disclosed in writing to the company on registration, and within five business days after the end of every month during which a change has occurred in the information as contemplated in subsection (3), or more promptly or frequently to the extent so provided by the requirements of a central securities depository; and
- (b) otherwise be provided on payment of a prescribed fee charged by the registered holder of securities on demand by the company.”.

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

“(5) **[A company that knows or has reasonable cause to believe that any of its securities are held by one person for the beneficial interest of another, by notice in writing, may require either of those persons to]**

Unless a company knows the identity of all the persons who hold a beneficial interest in its securities directly or indirectly, the company must each quarter of the year require the registered holder of any of its securities of which any beneficial interest holder is in doubt, and any person which it has any cause to believe is a beneficial interest holder, including the true owner, to –

(a) confirm **[or deny that fact]** whether the registered holder is the holder of the beneficial interest in the securities of the company, if not, provide details of all the beneficial interest holders in the securities and the extent of their holding during the preceding quarter and any preceding period for which the details are not known by the company;”.

(f) by the substitution in subsection (6) for the following subsection:

“(6) The information required in terms of subsection (5) must be provided not later than 10 business days after receipt of the notice from the company.”.

(g) by the substitution in subsection (7) for the following subsection:

“(7) **[A]** Every company **[that falls within the meaning of ‘regulated company’ as set out in section 117 (1)(i)]** must—

(a) establish and maintain a register of the disclosures made in terms of this section; and

(b) publish in its annual financial statement, if it is required to have such statements audited in terms of section 30(2), a list of persons who in aggregate, alone or together with another person hold beneficial interests amounting 5% or more of the total number of securities of that class, issued by the company or any such percentage as may be prescribed by the Minister [equal to or in excess of 5% of the total number of securities of that class issued by the company with the extent of those beneficial interests].”.

Amendment of section 61 of Act 71 of 2008, as amended by section 39 of Act 3 of 2011

14. Section 61 of the principal Act is hereby amended—

(a) by the deletion in subsection (8) of the word "and" at the end of paragraph (a)(ii);

(b) by the addition in subsection 8(a) of the following subparagraphs:

"(iv) a social and ethics committee report; and
(v) a remuneration report."

- (c) by the deletion in subsection (8) of the word "and" at the end of paragraph (c)(i) and by the addition of the following subparagraph:

"(iii) social and ethics committee;"

Amendment of section 72 of Act 71 of 2008, as amended by section 47 of Act 3 of 2011

15. Section 72 of the principal Act is hereby amended—

- (a) by the substitution for subsection (5) of the following subsection:

"(5) A company that falls within the category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal for exemption from that requirement in the following manner —

(a) the company must publish the intention to lodge an application for exemption with the Tribunal, in the prescribed manner;

(b) apply to the Tribunal in the prescribed manner and form, for an exemption from the requirement and the Tribunal may grant such exemption if it is satisfied that—

(i) the company has a formal mechanism within its structures which substantially performs the functions of the social and ethics committee in terms of this section and the regulations; or

(ii) it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the structure and activities of the company;"; and

- (b) by the insertion after subsection (5) of the following subsection:

"(5A) A social and ethics committee shall not be required where –

(a) the company is a subsidiary of another company that has a social and ethics committee, the existing social and ethics committee will perform the functions required by this section on behalf of the subsidiary company; or

(b) it has been exempted by the Tribunal in terms of subsection (5) and (6)."

- (c) by the insertion after subsection (5A) of the following subsection:

“(5B) The Minister may prescribe the minimum qualification requirements for members of the social and ethics committee as he or she may deem necessary to ensure that any such committee, taken as a whole, comprises persons with adequate relevant knowledge and experience to equip the committee to perform its functions.”.

(d) by the insertion of the following subsections after subsection (7).

“(8) The social and ethics committee of a company must comprise not less than three directors and may in addition include prescribed officers, provided that

(a) in the case of a public company and state-owned company the majority of the directors are not involved in the day-to-day management of the business of the company, and must not have been so involved at any time during the previous three financial years; and

(b) in the case of any other company, not being a public company or state-owned company, must consist of not less than three directors or prescribed officers provided that at least one of the directors must not be involved in the day to day management of the business of the company and must not have been so involved within the previous three financial years.”.

(e) by the insertion of a subsection (9) after subsection (8) -

“(9) A board of a company that is required to have a social and ethics committee that-

(a) exists on the effective date, must appoint the first members of committee within 12 months after-

(i) the effective date; or

(ii) the determination by the Tribunal of the company’s application, if any and the Tribunal has not granted the company an exemption;

(b) is incorporated on or after the effective date, must constitute a social and ethics committee and appoint its first members within one year after -

(i) its date of incorporation, in the case of a state-owned company;

(ii) the date it first became a listed public company, in such a case; or

(iii) the date the company first met the criteria set out in sub-paragraph (1(c) , in any other case.”.

(f) by the insertion of a subsection (10) after subsection (9) :-

“(10) Thereafter:-

- (a) at each annual general meeting of a public company or state-owned company, such company, elect a social and ethics committee: or
- (b) by a board of the company where such company is any other company, not being a public company or state-owned company, required to have a social and ethics committee.”.

(g) by the insertion of subsection (11) after subsection (10) -

(11) Where a vacancy arises in the social and ethics committee, the board must appoint a person to fill such vacancy within 40 days after the vacancy arises.”.

(h) by the re-numbering of subsection (8) as subsection (12) -

(i) by the insertion after subsection (12) of the following subsection:

“13(a) A social and ethics committee must present a social and ethics committee report in the prescribed manner and form describing how the committee performed its functions in terms of this Act and regulations.

(b) A social and ethics report presented by the social and ethics committee in terms of subsection (13)(a) must contain the additional information in the form of a statement that -

- (i) the social and ethics committee has fulfilled its mandate in the manner prescribed; and
- (ii) there has not been an instance of material non-compliance where there has been one or more instances of non-compliance, where such fact has been disclosed.

(c) The social and ethics committee must present its report-

- (i) in the case of a public company or state-owned company at its next annual general meeting; and
- (ii) in the case of any other company, annually at the shareholders' meeting or with a resolution as contemplated in section 60(1).

(d) The social and ethics committee report presented to shareholders as contemplated in sub-paragraph (c) shall be approved by an ordinary resolution.

(e) Where the social and ethics committee report fails to meet the approval in terms of sub-paragraph (d),the social and ethics committee shall-

- (i) engage with the shareholders who voted against the report and who are willing to engage on the vote; and
 - (ii) within a period of four months after the meeting at which the report was rejected publish a statement on its website, and Stock Exchange News Service in the case of public companies, which statement shall also form part of the committee report contemplated in subsection 13(a), setting out in such a statement-
 - (aa) the steps that were taken to engage with the dissenting shareholders;
 - (bb) the outcome of such engagement; and
 - (cc) the actions that will be taken by the company to address the issues raised by the dissenting shareholders.
 - (iii) such a statement to be presented at the next annual general meeting as part of the committee report as contemplated in subsection (13)(a).”.
- (j) by the numbering of subsection 9 as subsection (14).
 - (k) by the numbering of subsection (10) as subsection (15).

Amendment of section 90 of Act 71 of 2008, as amended by section 55 of Act 3 of 2011

16. Section 90 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1A) of the following subsection:

"(1A) A company referred to in section 84(1)(c)(i), or a company that is required only in terms of its Memorandum of Incorporation to have its annual financial statements audited as contemplated in section 34(2) and 84(1)(c)(ii), must appoint an auditor [—

- (a) in accordance with subsection (1), if the requirement to have its annual financial statements audited applies to that company when it is incorporated; or**
- (b) at the annual general meeting at which the requirement first applies to the company, and each annual general meeting thereafter.] at a shareholder’s meeting at which the requirement first applies to the company, and annually at the shareholders meeting thereafter.”; and**

(b) by the substitution in subsection (2)(b) for subparagraph (v) of the following subparagraph:

"(v) a person who, at any time during the **[five]** two financial years immediately preceding the date of appointment, was a person contemplated in any of subparagraphs (i) to (iv);"; or

Amendment of section 95 of Act 71 of 2008, as amended by section 58 of Act 3 of 2011

17. Section 95 of the principal Act is hereby amended by the substitution in subsection (1)(c) for subparagraph (i) of the following subparagraph:

"(i) by means of the issue or purchase of shares in the company;"; or

Amendment of section 118 of Act 71 of 2008, as amended by section 53 of Act 3 of 2011

18. Section 118 of the principal Act is hereby amended –

(a) by the substitution in subsection (1)(c) for subparagraph (i) of the following subparagraph:

"(i) **[the percentage of the issued securities of that company that have been transferred, other than by transfer between or among related or inter-related persons, within the period of 24 months immediately before the date of a particular affected transaction or offer exceeds the percentage prescribed in terms of subsection (2);**
it has ten or more shareholders with a direct or indirect shareholding in the company and meets or exceeds the financial threshold of annual turnover or asset value determined in terms of section 118(2), provided that the Panel may exempt any particular transaction affecting a private company in terms of section 119(6);"; or

(b) by the substitution of subsection (2) of the following subsection:

"(2) The Minister, **[after consulting]** in consultation with the Panel, **[may prescribe a minimum percentage, being not less than 10%, of the issued securities of a private company which, if transferred within a 24-month period as contemplated in subsection (1)(c)(i), would bring that company and its securities within the application of this Part, Part C, and the Takeover Regulations in terms of that subsection.]** must determine the financial thresholds based on the annual turnover or asset value of the company in the Republic, in general or in relation to specific

industries, for purposes of determining or identifying the private companies to which the provisions of this Chapter 5, Part B and Part C apply.”.

Amendment of section 135 of Act 71 of 2008, as amended by section 86 of Act 3 of 2011

19. Section 135 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) To the extent that any amounts due to the landlord, subject to a contract by the company which is placed in business rescue proceedings, are not paid to the landlord during business rescue proceedings, in respect of and not exceeding the aggregate for all public utility services, such as, the company’s share of rates and taxes, electricity, water, sanitation and sewer charges paid by the landlord to third parties during the business rescue period referred to in this section, is regarded as post-commencement financing as contemplated in section 135(1).”.

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) After payment of the practitioner’s remuneration and expenses referred to in section 143, post-commencement financing, and other claims arising out of the costs of the business rescue proceedings, all claims contemplated—”; and

(c) by the insertion of the amendment after subsection (3)(a) of the following subsections:

“(3)(b) in subsection (1A) will rank below the claims contemplated in subsection (1), but ahead of all the secured and unsecured claims against the company; and

(c) in subsection (2) will have preference in the order in which they were incurred over all unsecured claims against the company.”.

Amendment of section 145 of Act 71 of 2008

20. Section 145 of the principal Act is hereby amended—

(a) by the deletion in subsection (4) of the word "and" at the end of paragraph (a) and by the substitution in that subsection for the full-stop of the expression "; and" at the end of paragraph (b); and

(b) by the addition in subsection (4) of the following paragraph:

"(c) a landlord referred to in section 135(1A) has a voting interest equal to the amount referred to in that section."

Amendment of section 160 of Act 71 of 2008, as amended by section 99 of Act 3 of 2011

21. Section 160 of the principal Act is hereby amended by the addition of the following subsection:

"(5)(a) Where the companies Tribunal has issued an administrative order in terms of subsection (3)(b)(ii), the administrative order must stipulate the date for compliance by the company.

(b) Where the company fails to change its name within the determined period in terms of the administrative order of the Companies Tribunal, the applicant may approach the Commission, after the expiration of the determined period, to substitute the name of the respondent with its' company's registration number followed by 'Inc', '(Pty) Ltd', 'Limited' or 'SOC Ltd'."

Amendment of section 166 of Act 71 of 2008, as amended by section 105 of Act 3 of 2011

22. Section 166 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) As an alternative to applying for relief to a court, or filing a complaint with the Commission in terms of Part D, a person who would be entitled to apply for relief, or file a complaint in terms of this Act, may refer a matter that could be the subject of such an application or complaint for resolution by mediation, conciliation or arbitration to [—
(a)] the Companies Tribunal [;].
[(b) an accredited entity, as defined in subsection (3); or
(c) any other person]."

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

"(2) if the Companies Tribunal, [or an accredited entity,] to whom a matter is referred for [alternative dispute resolution] mediation or conciliation, concludes that either party to the conciliation or [.] mediation [or arbitration]

is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the Companies Tribunal **[or accredited entity]** must issue a certificate of non-resolution in the prescribed form **[stating that the process has failed]**."

(c) by the insertion after subsection (2) of the following subsection:

"(2A)(a) Where the Companies Tribunal has issued a certificate of non-resolution stating that the mediation or conciliation process in terms of this Act has failed, the affected person may refer the matter further to the Companies Tribunal for arbitration.

(b) In the event of arbitration, the arbitrator's award shall be final and binding on the parties."; and

(d) by the deletion of subsections (3), (4) and (5).

Amendment of section 167 of Act 71 of 2008

23. Section 167 of the principal Act is hereby amended –

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

"If the Companies Tribunal [, **or an entity accredited in terms of section 166,**] has resolved, or assisted parties in resolving, a dispute in terms of this Part the Tribunal **[or accredited entity]** may—".

Amendment of section 194 of Act 71 of 2008, as amended by section 112 of Act 3 of 2011

24. Section 194 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) (a) The chairperson of the Tribunal is the accounting authority of the Tribunal and is responsible for—

(i) the control and management of the Tribunal;

(ii) the effectiveness and efficiency of the Tribunal;

(iii) all the income and expenditure of the Tribunal;

(iv) all assets and the discharge of liabilities of the Tribunal; and

(v) the proper diligent implementation of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with respect to the Tribunal.

- (b) The chairperson may appoint—
 - (i) a Chief Operating Officer for a period of 5 years, who may be reappointed for a further period of 5 years.
 - (ii) one or more senior managers, under such terms and conditions as determined by the chairperson.
- (c) The Chief Operating Officer is responsible to perform as the Chief Operating Officer of the Tribunal, subject to—
 - (i) this Act and its regulations;
 - (ii) the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the Treasury Regulations; and
 - (iii) the policies and directions of the Tribunal.
- (d) The Chief Operating Officer is responsible for appointing such other employees as may be required for the proper functioning of the Tribunal.
- (e) The chairperson must, in consultation with the Minister, determine the remuneration, allowances, benefits and conditions of appointment of—
 - (i) the Chief Operating Officer; and
 - (ii) each member of the Tribunal."

Amendment of section 195 of Act 71 of 2008, as amended by section 113 of Act 3 of 2011

- 25.** Section 195 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1) of the word "and" at the end of paragraph (b);
 - (b) by the substitution in subsection (1) for the full stop of a semi-colon at the end of paragraph (c); and
 - (c) by the addition in subsection (1) of the following paragraphs:
 - "(d) conciliate, mediate, arbitrate or adjudicate on any administrative matters affecting any person in terms of this Act as may be referred to it in the prescribed manner by the B-BBEE Commission in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
 - (e) make an appropriate order."

Amendment of section 204 of Act 71 of 2008

- 26.** Section 204 of the principal Act is hereby amended by-

- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(1) Financial Reporting Standard Council must—
(a) receive and consider the relevant information relating to the reliability of, and compliance with, financial reporting standards and adapt international reporting standards for local circumstances through the issue of financial reporting pronouncements (FRP’s) and consider information from the Commission as contemplated in section 187(3)(b);”. and
- (b) by the insertion of the following subsection:
“(2) For the purposes of this section 204, financial reporting pronouncements may be issued by the Financial Reporting Standards Council and published in the Government Gazette from time to time in relation to international reporting standards which require adaptation for local circumstances, provided such pronouncements are not in conflict with the International Financial Reporting Standard or the International Financial Reporting Standards for Small Medium-sized Entities.”.

Amendment of arrangement of sections of Act 71 of 2008

27. The arrangement of sections of the principal Act is hereby amended—
- (a) by the insertion after item 30 of the following item:
"30A. Duty to prepare directors’ remuneration report;".
- (b) by the insertion after item 38 of the following item:
"38A. Validation of irregular creation, allotment or issuing of shares;".
- (c) by the substitution for item 45 of the following item:
"45. **[Loans or other financial assistance to directors]** Financial assistance;";
and
- (d) by the substitution for Part C of the following heading:
"**[Voluntary]** Resolution of disputes (Sections 166 -167).".

Short title and commencement

28. This Act is called the Companies Amendment Act, 2021, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.