

## Recent amendments to the Companies Act: a quick reference guide January 2025

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Certain provisions of the Companies Amendment Act No 16 of 2024 ("**Companies Amendment Act**") and the whole of the Companies Second Amendment Act No 17 of 2024 came into force on 27 December 2024. Set out below is a quick reference guide to noteworthy amendments to the Companies Act No 71 of 2008 ("**Companies Act**") that are now in operation.

We note that the Companies Regulations have not, as yet, been updated to take into account the amendments referred to below. This, together with the partial implementation of the Companies Act amendments, has resulted in certain inconsistencies in the legislation. We do not address these inconsistencies in this reference guide.

## Noteworthy amendments in effect

Previously	Since 27 December 2024
<p><b>Date on which an amendment to an MOI takes effect (section 16)</b></p> <ul style="list-style-type: none"> <li>The effective date of an amendment to an MOI (other than a name change) was the date of "filing" of the notice of amendment with CIPC.</li> </ul>	<ul style="list-style-type: none"> <li>An amendment to an MOI (other than a name change) takes effect ten business days after receipt of the notice of amendment by CIPC, unless endorsed or rejected with reasons within such ten day period.</li> </ul>
<p><b>Financial assistance (section 45)</b></p> <ul style="list-style-type: none"> <li>This section sets out the requirements for the giving of financial assistance by a company to certain persons, including related or inter-related companies.</li> </ul>	<ul style="list-style-type: none"> <li>Financial assistance to a South African subsidiary is exempted from the requirements of section 45.</li> </ul>
<p><b>Share repurchases (section 48)</b></p> <ul style="list-style-type: none"> <li>A special resolution was required for a share repurchase from a director or prescribed officer (or a person related to them) ("<b>Director Repurchase</b>").</li> <li>The requirements of sections 114 and 115 were applicable to share repurchases of more than 5% of a particular class (which included an independent expert's report, special resolution and appraisal rights).</li> </ul>	<ul style="list-style-type: none"> <li>The requirement of a special resolution for a Director Repurchase remains intact.</li> <li>There are no longer any specific requirements for share repurchases of more than 5%.</li> <li>A special resolution is required for <u>all</u> share repurchases, unless the repurchase -             <ul style="list-style-type: none"> <li>constitutes a pro rata offer to all shareholders of a particular class (which may include directors or prescribed officers or persons related to them); or</li> <li>is effected on a stock exchange.</li> </ul> </li> </ul>
<p><b>Shares issued for future consideration (section 40(5) - (7))</b></p> <ul style="list-style-type: none"> <li>If future services, future benefits or a future payment constitute the consideration for a share issue, the shares concerned must be transferred to a <u>third party</u> to be held in <u>trust</u> in accordance with a <u>trust agreement</u>.</li> </ul>	<ul style="list-style-type: none"> <li>Such shares must be transferred to a "<u>stakeholder</u>" (being an independent third party who may be an attorney, notary public or escrow agent) to be held in terms of a <u>stakeholder agreement</u> between the stakeholder and the company.</li> </ul>

Previously	Since 27 December 2024
<p><b>Social and ethics committees (sections 72)</b></p> <ul style="list-style-type: none"> <li>• All types of companies to which the requirement for a social and ethics committee ("SEC") applied were treated in the same manner in that - <ul style="list-style-type: none"> <li>○ the board was required to appoint the SEC;</li> <li>○ the SEC had to comprise at least three directors or prescribed officers of the company, at least one of whom was a non-executive director who had not been involved in the day-to-day management of the company's business for the previous three financial years ("<b>Non-Executive Director</b>")</li> </ul> </li>   <li>• One of the grounds upon which a company could be exempted by the Companies Tribunal from having an SEC was if that company already had a formal mechanism within its structures that substantially performed the functions of an SEC; provided that such formal mechanism had to be "required in terms of other legislation".</li> </ul>	<ul style="list-style-type: none"> <li>• The legislature has introduced a distinction between, on the one hand, state-owned companies and public companies (both listed and unlisted) and, on the other hand, all other companies to which the requirement for an SEC applies - <ul style="list-style-type: none"> <li>○ <u>the SEC of a public company or a state-owned company</u> must - <ul style="list-style-type: none"> <li>➤ comprise at least three members, the majority of whom must be Non-Executive Directors;</li> <li>➤ be appointed by the board initially and, thereafter, must be elected by its shareholders at each annual general meeting;</li> </ul> </li> <li>○ <u>the SEC of a company, other than a public company or state-owned company,</u> must - <ul style="list-style-type: none"> <li>➤ comprise at least three directors or prescribed officers, at least one of whom must be a Non-Executive Director;</li> <li>➤ be appointed annually by the board.</li> </ul> </li> </ul> </li>   <li>• It is no longer necessary for the relevant formal mechanism to be "required in terms of other legislation". Accordingly, the Companies Tribunal may exempt a company from having an SEC if it already has such a formal mechanism, regardless of whether the mechanism is mandated by other legislation or not.</li> </ul>
<p><b>Annual general meetings (section 61(8))</b></p> <ul style="list-style-type: none"> <li>• Certain business must, at a minimum, be dealt with at the annual general meeting of a public company.</li> </ul>	<ul style="list-style-type: none"> <li>• The scope of business to be dealt with at an annual general meeting has been expanded and includes the presentation of an SEC report and a remuneration report and the appointment of the SEC.</li>   <li>• However, the sections which deal with the substantive obligations relating to the preparation of the SEC report and remuneration report are not in operation yet - see <b>Amendments not yet in effect</b> below.</li> </ul>

Previously	Since 27 December 2024
<p><b>Definition of "employee share scheme" (section 95)</b></p> <ul style="list-style-type: none"> <li>• In terms of the Companies Act - <ul style="list-style-type: none"> <li>○ an offer of shares pertaining to a qualifying "employee share scheme" does not constitute an "offer to the public", which is subject to restrictions;</li> <li>○ an issue of shares or the granting of financial assistance pursuant to a qualifying "employee share scheme" is exempted from the requirements of sections 41 and 45 respectively.</li> </ul> </li> <li>• An "employee share scheme" was defined as, <i>inter alia</i>, a scheme established by a company for the purpose of offering participation in a company to employees by means of an <u>issue</u> of shares.</li> </ul>	<ul style="list-style-type: none"> <li>• The definition of "employee share scheme" has been broadened to include a scheme which involves the <u>purchase</u> of shares (and not only an issue of shares).</li> </ul>
<p><b>Post commencement finance (section 135)</b></p> <ul style="list-style-type: none"> <li>• Section 135 deals with post-commencement financing in the context of business rescue proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>• Any amounts due, in terms of a contract, to a landlord by a company in business rescue, in respect of public utility services (such as rates and taxes, electricity, water, sanitation and sewer charges), which, during the business rescue proceedings, (i) are paid by the landlord to third parties and (ii) are not paid to the landlord by the company in business rescue, are now also regarded as post-commencement financing.</li> <li>• In addition, the amendments deal with the order of preference in which claims by the landlord for these amounts will rank.</li> </ul>
<p><b>Liability of directors and prescribed officers (section 77)</b></p> <ul style="list-style-type: none"> <li>• The time bar to recover damages for which a director or prescribed officer may be held liable in terms of section 77 is three years after the act or omission that gave rise to that liability.</li> </ul>	<ul style="list-style-type: none"> <li>• The three-year period may be extended by a court on good cause shown.</li> </ul>
<p><b>Director delinquency (section 162)</b></p> <ul style="list-style-type: none"> <li>• An application to declare a director a delinquent (or under probation) could be made if the person concerned was a director of the company within a period of two years prior to the application.</li> </ul>	<ul style="list-style-type: none"> <li>• The two year period has been extended to five years and a court may further extend this period on good cause shown.</li> </ul>

## **Amendments not yet in effect**

A number of amendments contained in the Companies Amendment Act are not yet in effect, but will come into operation on a date still to be proclaimed in the Government Gazette. These include amendments -

- to the circumstances in which a private company must comply with the takeover provisions of the Companies Act and Regulations (section 118);
- which expand the rights of access which outsiders have to company records, including its annual financial statements (section 26);
- which empower a court to validate an irregular creation or issue of shares (new section 38A);
- which require public and state-owned companies to prepare a remuneration policy and remuneration report and which provide for the so-called "two-strike rule" which applies to non-executive remuneration committee members if the remuneration report is not approved by shareholders (new sections 30A and 30B);
- in terms of which the Minister of Trade, Industry and Competition may prescribe minimum qualification, skills and experience requirements for members of the SEC (new section 72(6B));
- which require the SEC to prepare an SEC report "in the prescribed manner and form" which must, in the case of state-owned entities and public companies, be presented at the annual general meeting of the company and, in the case of any other company, be presented annually at a shareholders meeting or by way of a written resolution (new section 72(12)).

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