

Overview of the 2024 amendments to the Companies Act 71 of 2008 for Audit Committees and Financial Management

The Companies Amendment Act 16 of 2024 and the Companies Second Amendment Act 17 of 2024 amendments which came into effect on 27 December 2024

April 2025



Introduction

This document provides an overview of the amendments to the Companies Act, 71 of 2008 ("**Companies Act**") that came into effect on [27 December 2024](#) in terms of the Companies Amendment Act 16 of 2024 and the Companies Second Amendment Act 17 of 2024.

NOTE

Note that not all of the amendments contemplated in the Companies Amendment Act 16 of 2024 have become effective yet.

References in this document to sections are to sections in the Companies Act, unless expressly stated otherwise.



New definitions [section 1]

New definitions incorporated into the Companies Act:

- The following new definitions have been incorporated into the Companies Act:
 - “**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.
- These definitions will accommodate the amendments which are anticipated to be made in the next round of amendments to **section 195(1)(d)** which (once adopted) will expand the Companies Tribunal’s functions to enable it to *“conciliate, mediate, arbitrate or adjudicate any administrative matters affecting any person in terms of the Companies Act as may be referred to it in the prescribed manner by the B-BBEE Commission in terms of the B-BBEE Act”*.

Amended definition [section 1]

Amended definition:

- The definition of “*securities*” is amended to remove reference to “*other instruments*”, as it was ambiguous as to what “*other instruments*” referred to.
- “**Securities**” for purposes of the Companies Act means shares or debentures, irrespective of their form or title, issued or authorised to be issued by a profit company.
- If the Memorandum of Incorporation (“**MOI**”) of a company reflects the definition of “*securities*” to include “*other instruments*” then such definition shall continue to apply to that company until the MOI is amended to remove the words “*other instruments*”.

Effective date of registration of amendments to the MOI of a company [section 16(9)(b)]

- Other than in the case of an amendment to a company’s name, which takes effect on the date set out in the amended registration certificate issued by CIPC, in any other case an amendment to a company’s MOI takes effect:
 - **10 business days** after receipt by CIPC of the Notice of Amendment, unless endorsed or rejected by CIPC prior to expiry of the 10-business day period; or
 - such later date as set out in the Notice of Amendment.
- This amendment provides legal certainty on when the amendments to an MOI may be deemed to become effective.
- An example of why this is relevant is if the change to the MOI relates to the increase in authorised shares. Once the time period set out in **section 16(9)(b)** has passed, the directors may allot and issue shares out of such authorised shares, even if CIPC has not yet issued a registration certificate to confirm registration of the amendments.

NOTE

Consideration for shares/Trust arrangements [section 40]

Context

- **Section 40** provides that the board of a company may only issue shares once full adequate consideration has been received.

Exception

- **Section 40(5)** provides an exception in circumstances where the consideration is in the form of an:
 - instrument such that the value cannot immediately be realised by the company; or
 - agreement for future services, benefit or payment.

Previous dispensation relating to trust arrangements

- The consideration is only deemed to have been received when the value is actually realised.
- For shares contemplated in **section 40(5)** that were not yet paid for, such shares were required to be issued and transferred to a third party to be held "in accordance with a trust agreement".

Amendments

- **Section 40(5)(b)(ii)** has been amended to provide that the issued shares are to be transferred to a "*stakeholder*" to be held in terms of a "*stakeholder agreement*". Such shares will only be transferred to the subscribing parties in accordance with the stakeholder agreement after the shares have been fully paid up.
- The term "*stakeholder*" replaces "*third party*" and "*stakeholder agreement*" replaces "*trust agreement*".

Definitions

- "*Stakeholder*" means an independent 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.
- "*Stakeholder agreement*" means a written contract between the stakeholder and the company.

Rationale

- It was not clear under the previous provisions what kind of a "trust" arrangement was being referred to in **section 40(5)** and whether it referred to a trust which is subject to the Trust Property Control Act.
- The amendments remove this uncertainty.

Why is this relevant to Audit Committees and Financial Management:

The legal and accounting nuances in relation to shares which are held by a stakeholder in terms of a stakeholder agreement need to be carefully considered.

NOTE

Financial assistance [section 45]

Amendments

- The heading to **section 45** has been changed to “*financial assistance*”. Note that the heading to **section 45** before the amendment was “*loans or other financial assistance to directors*”, which was confusing, as **section 45** has a broader application than only to directors.
- **Section 45(2A) [new]** provides that **section 45** does not apply to the giving by a (holding) company of financial assistance to or for the benefit of its subsidiaries.
- These changes remove the burden of complying with the provisions of **section 45** in the case of financial assistance by a company to its subsidiary.

Caveat

- Loans by a subsidiary to its holding company, or between other related or inter-related companies (excluding a company to its subsidiary) are still subject to **section 45**.

Why does this matter to Audit Committees and Financial Management:

1. The provision of financial assistance by a company to its subsidiary no longer requires compliance with section 45 – i.e. does not require the prior approval by way of special resolution, nor a solvency and liquidity test nor notice to shareholders and trade unions.
2. The definition of “subsidiary relationships” in section 3 of the Companies Act must be carefully considered [see next page].
3. A company’s MOI takes precedence over the amendments to the Companies Act (where the MOI contains stricter provisions than those provided in the Companies Act), accordingly if the MOI stipulates that a special resolution is required in the case of the advance of financial assistance to a subsidiary, then such approval will still be required. [Section 45(4) provides that the board must ensure that any conditions or restrictions in relation to the granting of financial assistance set out in the MOI must have been satisfied].
4. It is recommended that the company’s MOI be updated to conform with the latest legislative amendments.



Subsidiary relationships

This is an extract from section 3 of the Companies Act

3. Subsidiary relationships.–(1) A company is–
- (a) a subsidiary of another juristic person if that juristic person, one or more other subsidiaries of that juristic person, or one or more nominees of that juristic person or any of its subsidiaries, alone or in any combination–
 - (i) is or are directly or indirectly able to exercise, or control the exercise of, a majority of the general voting rights associated with issued securities of that company, whether pursuant to a shareholder agreement or otherwise; or
 - (ii) has or have the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board; or
 - (b) a wholly-owned subsidiary of another juristic person if all of the general voting rights associated with issued securities of the company are held or controlled, alone or in any combination, by persons contemplated in paragraph (a).

Share buy-backs: Company or subsidiary acquiring company shares [section 48]

Previous dispensation

- **Section 48(8)** has been completely overhauled.
- The previous position was that:
 - buy-backs from directors and prescribed officers (or a person related to a director or prescribed officer) needed to be approved by a special resolution; and
 - buy-backs of **more than 5%** of shares of a particular class were subject to the requirements of **sections 114 and 115**, which *inter alia* required the passing of a special resolution and an independent expert report.
- This resulted in confusion as to whether a buy-back of more than 5% constituted a scheme of arrangement, or whether it was merely subject to the procedural requirements for a scheme of arrangement.

Amendments

- A special resolution is required to approve buy-backs of shares from a director, a prescribed officer or person related to the aforementioned or the acquisition of any shares in the company, with the exception of shares:
 - acquired as a result of a **pro rata offer** made by the company to all shareholders of the company or a particular class of shareholders of the company; or
 - transactions effected on a **recognised stock exchange** on which the shares of the company are traded.
- Buy-backs have been delinked from **sections 114 and 115** and so there is now clarity that they do not constitute a scheme of arrangement. As such there are no appraisal rights and take over law does not apply solely as a result of a buy-back.

Why does this matter to Audit Committees and Financial Management:

1. The previous requirements for independent expert reports, **section 164** appraisal rights, and a special resolution if the repurchase related to the acquisition of shares of more than 5% of the issued shares in a particular class have been removed.
2. A special resolution of the shareholders of the company is required for all share buy-back transactions, except:
 - a transaction where the shares are acquired as a result of a *pro rata* offer made to all shareholders of a class; OR
 - a transaction effected on a recognised stock exchange.
3. The obligation for companies implementing a buy-back to comply with solvency and liquidity requirements remains [as every buy-back needs to comply with the requirements for a distribution as contemplated in **section 46**].

NOTE

Shareholders meetings of public companies [section 61]

- **Section 61(8)(a)** sets out what documents must be presented at an annual general meeting ("AGM") of a public company convened in terms of **section 61(7)**.
- Previously **section 61(8)(a)** provided for the presentation of:
 - i. the directors' report;
 - ii. audited financial statements for the immediately preceding financial year; and
 - iii. an audit committee report.
- It has now been expanded to include the presentation of:
 - iv. a social and ethics committee report; and
 - v. a remuneration report.
- These are to be prepared in compliance with the principles set out in the King IV Report on Corporate Governance as the requirements of the Companies Act relating to these reports are not yet effective.
- Previously **section 61(8)(c)** provided that an AGM of a public company convened in terms of **section 61(7)** must include providing for the **appointment of**:
 - i. an auditor for the ensuing financial year; and
 - ii. an audit committee;
- It has now been expanded to include providing for the appointment of:
 - iii. a social and ethics committee.
- Social and ethics committees of public companies are now required to be appointed at an AGM.
- Practically, where members of a social and ethics committee of a public company have been appointed by the board of the public company, they shall continue to serve as members of the social and ethics committee until the next AGM at which the members can be changed or their appointment confirmed.

Social and Ethics Committee [section 72]

- **Section 72(5)** has been updated with a revised process to apply to the Tribunal for an **exemption** from having to appoint a social and ethics committee .
- A company is now required to publish an intention to lodge an application for exemption with the Tribunal in the prescribed manner and to submit an application to the Tribunal for such exemption in the prescribed manner and form.
- **Section 72(6A) [new]** provides that a social and ethics committee is NOT required in the following circumstances:
 - where the company is a **subsidiary** of another company **that has a social and ethics committee** that performs this function on behalf of the subsidiary company; or
 - where the company has been **exempted** from appointing a social and ethics committee by the Tribunal.
- **Section 72(6B) [new]** provides that the Minister may prescribe the minimum qualifications, skills and experience requirements for members of the social and ethics committee that the Minister

may consider necessary to ensure that any such committee comprised persons with adequate knowledge and experience to equip the committee to perform its functions.

- **Section 72(7A) [new]** provides that the social and ethics committee must comprise not less than **three members**, provided that:
 - for **public and state-owned companies**, the majority of the members must be non-executive directors (persons not involved in the day-to-day management of the company) and must not have been involved in the day-to-day management of the company anytime during the previous three financial years; and
 - for **all other companies**, at least one of the three members (who may be either directors or prescribed officers), must be a non-executive director who is not involved in the day-to-day management of the company and has not been so involved within the previous three financial years.
- **Section 72(8A)(a) [new]** provides that a board of a company that is required to have a social and ethics committee must appoint the first members of the committee **within 12 months** after:
 - the amendment becoming effective, i.e. **27 December 2024**; or
 - the determination of the Tribunal to **not grant the company an exemption** (in the case of such an application).
- **Section 72(8A)(b) [new]** provides that a board of a company that is required to have a social and ethics committee must constitute its social and ethics committee **within 12 months** after:
 - its **date of incorporation** (where incorporated after 27 December 2024) in the case of a public company or state owned company; or
 - in the case of any other company, the date that the company first **met the criteria** determined in terms of section 72(4)(a).
- **Section 72(9A) [new]** provides that thereafter:
 - **at each AGM** of a public company or state-owned company such company must elect a social and ethics committee; or
 - for any other type of company the **board must annually appoint** a social and ethics committee where such company is required to have a social and ethics committee.
- **Section 72(11) [new]** provides for the filling of a vacancy on the social and ethics committee by the board of a company (public private and state owned companies) within 40 days after the vacancy arises.
- **Section 72(12) [new]** is a new provision that provides that a social and ethics committee must prepare for shareholders a social and ethics committee report in the prescribed manner and form describing how the committee performed its functions in terms of the Companies Act and Regulations. Such report is to be presented (in the case of a public company and state owned company) at the company's next AGM and in respect of other companies annually at a shareholder meeting or with a resolution as contemplated in **section 60(1)**, i.e. to be adopted by way of a written resolution of the shareholder(s).
- It is relevant to note that:
 - Principle 8 of the King IV Report on Corporate Governance includes recommended practices with regards to social and ethics committees and the JSE requires implementation of the King IV Code through the application of the King Code disclosure and application regime for public companies listed on the JSE.
 - The JSE mandates the appointment of, and specific disclosures relating to, a social and ethics committee [J3.84(c)], which will apply to public companies listed on the JSE.

Liability of directors and prescribed officers [section 77(7)]

- **Section 77(7) [new]** is a special time-bar that limits the time within which a claim may be brought against a:
 - director;
 - prescribed officer;
 - board committee member; or
 - audit committee member,for liability as contemplated in **section 77** to three years, however this period of **three years** may be extended by a court on good cause shown (even after the three-year period has expired).

Appointment of auditor [section 90]

- **Section 90(1A) [new]** provides that a private company, a personal liability company, or a non-profit company that is required to have its annual financial statements audited in terms of the Companies Act must appoint an auditor **at a shareholders' meeting** at which the requirement first applies to the company, and thereafter annually at the shareholders meeting.
- **Section 90(2)(b)(v) [new]** provides that to be appointed as an auditor of a company, the person or firm must not at any time during the **last two financial years** immediately preceding the date of appointment have been a person who fulfilled any of the roles contemplated in **section 90(2)(b)(i) to (iv)**.

NOTE

Why does this matter to Audit Committees and Financial Management:

- The effect of the change to **section 90(2)(b)(v)** is to **reduce the cooling-off period** for the appointment of auditors (who have been involved in certain roles/aspects of the company as contemplated in **section 90(2)(b)(i) to (iv)**) from **five to two years**.

Public offerings of company securities [section 95]

- Chapter 4 of the Companies Act regulates public offerings of company securities.
- The definition of “*employee share scheme*” is expanded to cover participation by means of the issue or purchase **[new]** of shares in the company.
- The effect of this amendment is that:
 - it should encourage the utilisation of employee share schemes;
 - employee share schemes which involve a purchase of shares will now qualify for the exemptions set out in:
 - › **section 44(3)(a)(i)** (financial assistance for purchase of shares);
 - › **section 45(3)(a)(i)** (financial assistance to directors, prescribed officers and related and inter-related companies/persons); and
 - › **section 96(1)(f)** (public offer exemption).

Business rescue - protection given to landlords for post-commencement financing [section 135]

- Chapter 6 of the Companies Act regulates business rescues and compromises with creditors.
- **Section 135(1A) [new]** provides that any amounts due by a company under business rescue to a landlord in terms of a contract where the landlord has paid to any third party during the business rescue proceedings in respect of public utility services such as the company's share of rates and taxes, electricity and water, sanitation and sewer charges, will be regarded as post-commencement financing with the appropriate ranking of preferences arising therefrom.

Disputes: name reservation or registration [section 160]

- **Section 160(5)(a) [new]** – a Tribunal administrative order must stipulate the date for compliance by the company.
- **Section 160(5)(b) [new]** – if a company fails to change its name within the time period stipulated in an administrative order of the Tribunal, the applicant may approach CIPC to substitute the name of the respondent with its company's registration number followed by "Inc", "(Pty) Ltd", "Limited" or "SOC Ltd", as the case may be.

Delinquency of a director [section 162]

- The amendment to **section 162(2)(a)**, as read with **section 162(2A)**, extends the period within which it is competent to institute legal proceedings to declare a director delinquent or under probation (in cases where such individual is no longer a director of the company), **from 2 years to 5 years** after that person ceases to be a director, or such longer period as a court may determine, on good cause shown.

Dispute resolution / consent order [section 167]

- **Section 167(1) [new]** – if the Tribunal has resolved, or assisted parties in resolving, a dispute, then the Tribunal may record the resolution of that dispute in the form of an **order** and if the parties to the dispute consent to that order, submit it to a court to be **confirmed as a consent order**.

Appointment of Companies Tribunal [section 194]

- **Section 194(1A)(a) [new]** – the chairperson of the Tribunal is the accounting authority of the Tribunal.
- **Section 194(1A)(b) [new]** – the Tribunal's chairperson may appoint the Chief Operating Officer ("COO") and senior managers to assist with his functions under section 194.
- **Section 194(1A)(c) and (d) [new]** deals with the COO's responsibilities.
- **Section 194(1A)(e) [new]** – the Minister, in consultation with the Minister of Finance, determines the remuneration *etc* of the members of the Tribunal and the COO.

Financial Reporting Standards Council [section 204]

- **Section 204(1)** has been amended by giving the Financial Reporting Standards Council the power to issue **financial reporting pronouncements** to adapt international reporting standards for local circumstances in the Government Gazette, provided such pronouncements are not in conflict with IFRS® Accounting Standards or IFRS for SMEs® Accounting Standard.
- "*Financial reporting pronouncements*" means standards, guidelines and circulars developed, adopted, issued, or prescribed by the Financial Reporting Standards Council.

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

Contacts:



Robbie Cheadle

Associate Director

Department of Professional Practice, responsible for Regulatory Reporting for KPMG Southern Africa.

M: 082 450 9773

E: robbie.cheadle@kpmg.co.za



Taskeen Cassim

Senior Manager

Department of Professional Practice, assists with technical auditing matters and regulatory reporting for KPMG Southern Africa

M: 064 750 9932

E: taskeen.cassim@kpmg.co.za



Anton de Bruyn

Director

Head of KPMG Law (a business unit of KPMG Services (Pty) Ltd)
Advises on corporate, commercial and competition law

M: 082 719 0317

E: anton.debruyn@kpmg.co.za



Heather Ashe

Associate Director

KPMG Law (a business unit of KPMG Services (Pty) Ltd)
Advises on corporate, commercial and employment law

M: 082 719 5892

E: heather.ashe@kpmg.co.za



Jerome Gray

Senior Manager

KPMG Law (a business unit of KPMG Services (Pty) Ltd)
Advises on corporate and commercial law

M: 072 461 8645

E: jerome.gray@kpmg.co.za

kpmg.com/socialmedia



© 2025 KPMG Services Proprietary Limited, a South African company with registration number 1999/012876/07 and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.