

On Friday, 21 September 2018 the Department of Trade and Industry published the draft Companies Amendment Bill 2018 for comment and comments closed on 20 November 2018. The following is a summary of the more significant changes proposed by the Bill.

Proposed Amendment	Details
Memorandum of Incorporation (section 16)	The Bill proposes that amendments will take effect 10 business days after receipt of the notice of amendment, if the Companies Commission, after the expiry of the 10 business days, has not endorsed the notice of amendment sooner or has failed to reject the amendment with reasons. The notice of rejection also needs to be supplemented with reasons.
Disclosure of Remuneration and Benefits (section 30)	The requirement to disclose the remuneration and benefits received by a director would apply to prescribed officers, and it would be a requirement that each individual is named A 'prescribed officer' is typically an executive who is in a position to influence the management of the company or one of its significant divisions.
Remuneration Report (section 30A)	In line with King IV, public companies would be required to prepare a remuneration report with details of the remuneration and benefits awarded to individual directors, for approval by the Board and presentation at the AGM.
Annual Returns (section 33)	(i) A company would have to submit a copy of its Annual Financial Statements ("AFS") where it is required to have its AFS audited; and (ii) A company would be required to file a copy of its securities register with the CIPC each year along with its Annual Return.
Share capital structure - Court Order (section 38A)	Currently the Companies Act does not allow for a company to fix its share capital structure where it contains errors. The proposed new amendments is to include the power of the court, upon application by an interested person or by the company, to order that shares that were created, allotted or issued invalidly or in an unauthorised manner, to be validly created, allotted or issued if it is "just and equitable" to do so.
Financial Assistance (section 45)	Presently, any financial assistance granted by a company to its subsidiary must be authorised by the board and the shareholders by way of a special resolution. The Bill proposes to limit the net of financial assistance transactions that fall within section 45 by excluding "the giving by a company of financial assistance to, or for the benefit of, its own subsidiary." The restrictions on financial assistance would therefore not apply to the giving by a company of financial assistance to or for the benefit of its subsidiary.
Share Buy Backs (section 48)	A Board decision for a company to acquire its own shares would require approval by a shareholder special resolution: (i) where the shares are to be acquired by a director, prescribed officer or person related to either a director or a prescribed officer; (ii) but not where the acquisition is by way of: – a pro rata offer to all shareholders; or – a transaction in the ordinary course on a recognised stock exchange.

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Social and Ethics Committee (sections 61 & 62)	<p>In addition to the requirements in the current Regulations, all public and state-owned companies would be required to appoint a Social and Ethics Committee at each annual general meeting, which must meet specified composition criteria. The Social and Ethics Committee would be required to prepare a formal report which must be externally assured, for presentation to the shareholders at a shareholders meeting.</p> <p>It also allows companies to apply to the Companies Tribunal for an exemption from these requirements if the company has another mechanism within its structures to perform the functions of the committee or if it is not necessary in the public interest to require the company to have a committee, having regard to the nature and extent of the activities of the company.</p>
Auditor Requirements (section 90)	<p>(i) A company which is required to have its Annual Financial Statements audited, would have to appoint an auditor annually, at a shareholders meeting (not necessarily the AGM); and</p> <p>(ii) The disqualification period for auditors would be reduced from five years to two years.</p>
Limitation of the takeover provisions to private companies (section 118)	<p>The current section 118(1)(c)(i) of the Companies Act mainly regards private companies as regulated companies if more than 10% of its issued securities had been transferred, other than between related or inter-related persons, within a 24-month period prior to the date of the affected transaction.</p> <p>The amendment proposes to only regard private companies as regulated companies if the private company is required by the Companies Act or the regulations to have its annual financial statements audited every year.</p>
Business rescue and the treatment of landlords (sections 135 & 145)	<p>The Bill provides that any amounts due by a company under business rescue to a landlord for rent or services will be regarded as 'post commencement financing' and the landlord will have a voting interest in the business rescue proceedings to the extent of its claim. Post commencement finance, whether secured or unsecured, enjoys preference over unsecured creditors.</p>
Disputes concerning company names (section 160)	<p>In terms of the Companies Act, the Companies Tribunal may deal with disputes regarding company names.</p> <p>It is proposed that where a company has been ordered to change its name, and it fails to do so, the Companies Commission may substitute its registration number as the name of the company in question.</p>
Black economic empowerment (section 195)	<p>The Bill seeks to give the Companies Tribunal the power to adjudicate cases referred to it by the B-BBEE Commission.</p>