
REPUBLIC OF SOUTH AFRICA

**COMPANIES SECOND
AMENDMENT ACT**

REPUBLIEK VAN SUID-AFRIKA

**TWEEDE MAATSKAPPY-
WYSIGINGSWET**

GENERAL EXPLANATORY NOTE:

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

ACT

To amend the Companies Act, 1973, so as to make provision for uncertificated securities; and to provide for matters connected therewith.

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

Insertion of section 91A in Act 61 of 1973

1. The following section is hereby inserted in the Companies Act, 1973, after section 91:

“Uncertificated securities

91A. (1) In this section—

(a) **‘central securities depository’** means a central securities depository as defined in section 1 of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992);

(b) **‘participant’** means a depository institution accepted by a central securities depository as a participant in terms of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992);

(c) **‘subregister’** means the record of uncertificated securities administered and maintained by a participant, which forms part of the relevant company’s register of members as referred to in this Act;

(d) **‘uncertificated securities’** means securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), which are by virtue of this section transferable without a written instrument and are not evidenced by a certificate.

(2) (a) This section shall apply to uncertificated securities, notwithstanding any provision to the contrary contained in this Act or in any other law, the common law, an agreement or any articles.

(b) Where any provision of this Act is not expressly or impliedly amended by this section, this Act shall apply in respect of uncertificated securities in the same manner as it applies to securities in certificated form.

(3) (a) A company shall enter in its register of members, in respect of every class of securities, the total number of securities held in uncertificated form.

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(b) A subregister which shall form part of the relevant company's register of members shall, notwithstanding subsection (4)(d), contain the details referred to in sections 105 and 133: Provided that no name of any person for whom a participant holds uncertificated securities as nominee shall form part of the subregister;

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(c) A participant shall be responsible for entering the information referred to in sections 105 and 133 in a subregister and for ensuring the correctness of all transfers of uncertificated securities effected by the participant.

(d) A participant shall, at the request of a company and against payment of such fee as may be prescribed by the Minister from time to time, furnish that company with such details of uncertificated securities in the company as are reflected in the subregister maintained by the participant.

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(e) (i) A person who wishes to inspect a subregister may do so only through the relevant company in terms of section 113.

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(ii) A company shall, within seven days of the date of a request for inspection, be required to produce a subregister which reflects at least the details referred to in paragraph (c) at the close of business on the day on which the request for inspection was made.

(f) (i) Every person for whom a participant holds uncertificated securities shall receive a regular statement from such participant setting out the number and identity of the uncertificated securities held on such person's behalf.

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(ii) The cost and frequency of each statement shall be determined by regulation but shall not be borne by the person for whom the uncertificated securities are held.

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(4) (a) Transfer of ownership in an uncertificated security shall be effected upon the debiting and crediting, respectively, of both the account in the subregister from which the transfer is effected and the account in the subregister to which transfer is to be made, in accordance with the rules of a central securities depository.

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(b) A transferee shall, upon the entry of his, her or its name in a subregister, become a member of and be recognised as a member by the company in respect of the uncertificated securities registered in his, her or its name.

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(c) Transfer of ownership and membership in accordance with paragraphs (a) and (b) shall occur notwithstanding any fraud or illegality which may affect the uncertificated securities in respect of which the transfer was effected or which may have resulted in the transfer being effected: Provided that a transferee who was a party to or had notice of the fraud or illegality may not rely on this paragraph.

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(d) Section 133 shall not apply to the transfer of ownership of uncertificated securities and also not to the acquisition of membership of a company as a result of such transfer.

(e) A company shall be liable to a participant for such fee as may be prescribed by the Minister from time to time in respect of the transfer of ownership of uncertificated securities in the company.

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(5) (a) Only a participant may effect the transfer of uncertificated securities in a subregister maintained by it.

(b) A participant shall transfer uncertificated securities in a subregister administered and maintained by it, only on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of a central securities depository or by order of court.

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(c) Nothing in this section shall prejudice any power of a participant to effect transfer to a person to whom the right to any uncertificated securities of a company has been transmitted by operation of law or agreement.

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(6) Section 114 shall not apply to a subregister.

(7) (a) Subject to paragraph (b), a company shall not issue certificates evidencing, or purporting to evidence, title to uncertificated securities of the company, and sections 96 and 140 shall not apply to uncertificated securities.

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(b) Any person who wishes to withdraw his, her or its uncertificated securities held by a participant and to obtain a certificate in respect of all or part of those securities, shall notify the participant thereof, in which case—

- (i) the participant shall within seven days notify the relevant company to provide such a certificate and shall remove the details of the uncertificated securities so withdrawn from the subregister maintained by the participant; 5
- (ii) the company shall, immediately on receipt of such a notice from a participant, enter the relevant person's name and details in respect of his, her or its holding in the company's register of members and indicate on such register that the securities so withdrawn are no longer held in uncertificated form; 10
- (iii) the company shall within 14 days of receipt of the notice referred to in subparagraph (ii) prepare and deliver to the relevant person a certificate in respect of the securities so withdrawn, and notify the central securities depository that the securities are no longer held in uncertificated form; and 15
- (iv) transfer of ownership or acquisition of membership in respect of the securities so withdrawn shall not be capable of being effected through a central securities depository while they remain in certificated form. 20

(8) A person who takes any unlawful action in consequence of which any of the following events occur in a register or subregister, namely—

- (a) the name of any person remains in, is entered in, or is removed or omitted; 25
 - (b) the number of uncertificated securities is increased, reduced, or remains unaltered; or
 - (c) the description of any uncertificated security is changed,
- shall be liable to any person who has suffered any direct loss or damage arising out of such action. 30

(9) (a) A person who gives an instruction to transfer uncertificated securities shall warrant the legality and correctness of any such instruction.

(b) The person referred to in paragraph (a), shall indemnify the company and the participant effecting the transfer against any claim and against any direct loss or damage suffered by them arising out of such a transfer by virtue of an instruction referred to in paragraph (a). 35

(c) A participant who transfers uncertificated securities other than pursuant to an instruction to transfer that was sent and properly authenticated in terms of the rules of a central securities depository, shall indemnify the company against any claim made upon it and against any direct loss or damage suffered by it arising out of such transfer and such participant shall, in addition, indemnify any person who suffers any direct loss or damage arising out of such transfer, against such loss or damage. 40

(10) (a) Subject to subparagraph (b), when any new offer of securities is made by a company, the offeree may elect whether all or any part of the securities offered to him, her or it must be issued in certificated or uncertificated form. 45

(b) A company shall only issue or allot uncertificated securities to a person who is already a client of a participant or for whom a participant has agreed to act. 50

(11) The Minister may make regulations regarding matters which are supplementary and ancillary to the provisions of this section and which are not inconsistent with another provision of this Act.

(12) Any person—

- (a) other than a participant, who effects the transfer of uncertificated securities in contravention of subsection (5)(a); 55
- (b) who takes any unlawful action contemplated in subsection (8); or

(c) who, without proper authority, accesses any computer system or record maintained by a participant or a central securities depository, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”

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Short title

2. This Act is called the Companies Second Amendment Act, 1998.