

REPUBLIC OF SOUTH AFRICA

**CLOSE CORPORATIONS
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Trade and Industry (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 31B—2001]

ISBN 0 621 30859 5

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Close Corporations Act, 1984, so as to allow the electronic lodgement of and access to all documents which have been or are required to be lodged in terms of that Act; to provide for the payment of fees in respect of documents so lodged; to allow the Registrar to amend registration numbers; and to amend an obsolete provision; 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 69 of 1984, as amended by section 1 of Act 38 of 1986 and section 1 of Act 26 of 1997

1. Section 1 of the Close Corporations Act, 1984 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “director” of the following definition:
“‘electronic’ includes created, recorded, transmitted or stored in digital or other intangible form of electronic, optical or similar means;”; and

(b) by the addition of the following subsections, the existing section becoming subsection (1):

“(2) Subject to subsection (3), the performance of the acts denoted by any of the following words or expressions, namely—

- (a) ‘give notice’;
- (b) ‘issue, distribute, deliver or cause it to be done’; and
- (c) ‘lodge’;
- (d) ‘lodge in the prescribed form’;
- (e) ‘lodge in the prescribed manner’;
- (f) ‘lodge under cover of’;
- (g) ‘notify in the prescribed form’;
- (h) ‘payment of prescribed fee’;
- (i) ‘publish’;
- (j) ‘registration’;
- (k) ‘written application’;

and any word or expression derived therefrom, must be regarded as including all electronic methods of performing such acts.

(3) (a) Subsection (2) shall not apply to a section of this Act until the Registrar publishes a notice in the *Gazette* making it applicable to that section.

(b) Different dates may be determined by the Registrar in respect of the application of subsection (2) to different sections of this Act.”.

Amendment of section 5 of Act 69 of 1984

2. Section 5 of the principal Act is hereby amended—
- (a) by the insertion after subsection (1) of the following subsection:
- “(1A) Any person may, on payment of the prescribed fee, through any electronic medium approved by the Registrar— 5
- (a) inspect any document which has been lodged with the Registrar under this Act and converted into electronic format; or
- (b) obtain a copy of or extract from any such converted document.”; and
- (b) by the substitution in subsection (2) for the words following upon paragraph (b) of the following words: 10
- “no fee referred to in subsection (1) or (1A) shall be payable.”.

Amendment of section 6 of Act 69 of 1984

3. Section 6 of the principal Act is hereby amended—
- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph: 15
- “(bA) by means of such electronic form of transfer of money as the Registrar may approve; or”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) No document, form, return or notice in respect of which any fee is payable or any payment is required to be done in terms of this Act, shall be complete unless proof of payment of the required fee or other money has been lodged with, or acknowledged as having been received by, the Registrar.”. 20

Amendment of section 10 of Act 69 of 1984, as amended by section 2 of Act 38 of 1986 25

4. Section 10 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) providing for the reproduction of any records relating to corporations in the Registration Office or the office of the Master by means of microfilm, microcard, miniature photographic process, the conversion into electronic format in such a way as to allow such records to be reconverted to their original form without changing their original contents or form or any other process deemed suitable by the Minister;”. 30

Substitution of section 13 of Act 69 of 1984, as substituted by section 3 of Act 38 of 1986 35

5. The following section is hereby substituted for section 13 of the principal Act:

“Registration of founding statement

13. If a founding statement referred to in section 12 complying with the requirements of this Act is lodged with the Registrar **[in triplicate]** in the manner prescribed, and if the business to be carried on by the corporation is lawful, the Registrar shall upon payment of the prescribed fee register such statement in his or her registers and shall give notice of the registration in the *Gazette*.”. 40

Amendment of section 14 of Act 69 of 1984, as amended by section 4 of Act 38 of 1986 45

6. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) Upon the registration of such founding statement the Registrar shall assign a registration number to the corporation concerned and endorse under his or her hand on the statement, or otherwise issue in writing, a certificate that the corporation is incorporated: Provided that the Registrar may change or amend such registration number in order to rectify duplications of such numbers or to achieve 50

any other objective which it is necessary or expedient to achieve for the proper maintenance of the register of close corporations.”.

Amendment of section 15 of Act 69 of 1984, as amended by section 5 of Act 38 of 1986 and section 2 of Act 81 of 1992

7. Section 15 of the principal Act is hereby amended— 5

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

“(1) If any change is made or occurs in respect of any matter particulars of which are stated in a founding statement of a corporation in accordance with paragraph (b), (d), (e) or (f) of section 12, the corporation shall, subject to the provisions of section 29(3)(c) and (d), within 28 days after such change lodge with the Registrar for registration in his or her registers an amended founding statement, **[in triplicate]** in the prescribed form together with the prescribed fee, signed by or on behalf of every member of the corporation and by or on behalf of any person who will become a member on such registration, and which contains particulars and the date of the change.”; and 10 15

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

“(2B) Upon registration of any amended founding statement in accordance with the requirements of subsection (1), (2) or (2A), the Registrar shall issue a certificate to the effect that the amended founding statement has been registered.”. 20

Amendment of section 20 of Act 69 of 1984, as amended by section 3 of Act 81 of 1992

8. Section 20 of the principal Act is hereby amended by the substitution for subsection (3B) of the following subsection: 25

“(3B) No prescribed fee mentioned in section 15(1) shall be payable in respect of the registration of an amended founding statement by virtue of an order under subsection (1) or (3) of this section.”.

Amendment of section 23 of Act 69 of 1984, as amended by section 5 of Act 81 of 1992 and section 8 of Act 26 of 1997 30

9. Section 23 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) shall have that name (or such translation thereof) and registration number mentioned in legible characters in all notices and other official publications of the corporation, including notices or other official publications in electronic format, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money, goods or services purporting to be signed by or on behalf of the corporation, and all letters, delivery notes, invoices, receipts and letters of credit of the corporation; and”.

Amendment of section 27 of Act 69 of 1984, as amended by section 7 of Act 38 of 1986, section 2 of Act 64 of 1988 and section 6 of Act 81 of 1992 40

10. Section 27 of the principal Act is hereby amended by the substitution in subsection (4)(c) for the words preceding the proviso of the following words:

“endorse on the founding statement, or otherwise issue in writing, a certificate of incorporation as provided by section 14(1)”.

Amendment of section 32 of Act 69 of 1984

11. Section 32 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 41 of Act 69 of 1984

12. Section 41 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 50

“(1) A corporation shall not issue or send to any person any business letter, whether in electronic or any other format, bearing a registered name of the corporation, unless the forenames (or the initials [**thereof**]) and surname of every member thereof [**is**] are stated thereon.”.

Amendment of section 47 of Act 69 of 1984, as amended by section 11 of Act 26 of 1997 5

13. Section 47 of the principal Act is hereby amended by the deletion of subparagraph (i) of paragraph (a) of subsection (1).

Substitution of certain expression in Act 69 of 1984

14. The principal Act is hereby amended by the substitution for the expression 10 “certified post”, wherever it occurs, of the expression “registered post”.

Short title

15. This Act is called the Close Corporations Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE CLOSE CORPORATIONS AMENDMENT BILL, 2001

1. Approximately four years ago the South African Close Corporations Registration Offices (Sacro), in co-operation with the South African Revenue Service (Sars), departments of state, other regulators and the private sector, embarked on the development of a completely electronic and computerised system for the incorporation of close corporations and the registration of corporate information in respect of such corporations. The development phase has now been finalised and Sacro is now ready to finalise the implementation of the system.

2. The Bill therefore seeks to amend the Close Corporations Act, 1984 (Act No. 69 of 1984) ("the Act"), so as to make provision for the lodgement of documents and disclosure of information in respect of close corporations by means of the electronic process. The new matters that the Bill seeks to introduce in the Act relate to—

- * the phasing in of the electronic lodgement of corporate forms;
- * the phasing in of the electronic payment of fees prescribed by the Act; and
- * the electronic disclosure of corporate information.

3. Consultation

The system has, over several years, been developed in ongoing co-operation with Sars and in consultation with departments of state, other regulators and the private sector. They include the following:

- * The Deeds Office;
- * the Department of Finance;
- * the National Treasury;
- * the Registrar of Banks;
- * the South African Reserve Bank;
- * the Banking Council;
- * the accounting and legal professions.

All the participants support the final implementation of the system.

4. Financial implications for State

The Bill will have no financial implications which have not yet been properly provided for and expended under previous and current budgets.

5. Parliamentary procedure

The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.