

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 370

26 April 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 3 of 2011: Companies Amendment Act, 2011



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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.

(English text signed by the President.)
(Assented to 19 April 2011.)

ACT

To amend the Companies Act, 2008, so as to effect certain legal-technical and grammatical amendments in order to ensure the proper application and administration of the principal Act subsequent to its commencement; to correct certain errors resulting in inconsistency and ambiguity in the principal Act; to establish a proper foundation for certain necessary regulations; to continue the mechanisms established under section 335 of the Companies Act, 1973, which allow for the transfer of registration of foreign companies to the jurisdiction of the Republic; to further provide for companies trading under insolvent circumstances; to extend the grounds for disqualification as a director; to provide for the terms of office of members of the Companies Tribunal; and to provide for matters connected therewith.

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

Arrangement of Sections

Sections

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1. Amendment of section 1 of Act 71 of 2008
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3. Amendment of section 5 of Act 71 of 2008
4. Amendment of section 6 of Act 71 of 2008
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Part 1

General Provisions, Interpretation and Amendments affecting Chapter 1

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Amendment of section 1 of Act 71 of 2008

1. (1) Section 1 of the Companies Act, 2008 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion before the definition of “advertisement” of the following definitions:

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“‘**accounting records**’ means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act, including but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;

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‘**acquiring party**’, when used in respect of a transaction or proposed transaction, means a person who, as a result of the transaction, would directly or indirectly acquire or establish direct or indirect control or increased control over all or the greater part of a company, or all or the greater part of the assets or undertaking of a company;”;

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- (b) by the insertion before the definition of “alterable provision” of the following definition:

“‘**all or the greater part of the assets or undertaking**’, when used in respect of a company, means—

- (a) in the case of the company’s assets, more than 50% of its gross assets fairly valued, irrespective of its liabilities; or

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- (b) in the case of the company’s undertaking, more than 50% of the value of its entire undertaking, fairly valued;”;

- (c) by the substitution in the definition of “amalgamation or merger” for paragraph (b) of the following paragraph:

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“(b) the survival of at least one of the amalgamating or merging companies, with or without the formation of one [ore] or more new companies, and the vesting in the surviving company or companies, together with any such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;”;

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- (d) by the substitution for the definition of “audit” of the following definition:

“‘**audit**’ has the meaning set out in the Auditing Profession Act, but does not include an ‘**independent review**’ of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);”;

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