



Summary of Companies Act changes



Companies Amendment Act

The sections below of the Companies Act are now in full effect and companies need to be aware of them. Continuous training on the amendments to the Companies Act will be done in Compliance in Practice, Techtalk and other training platforms.

SECTION	CHANGE
1	The definition of securities has been amendment to only refer to shares and debentures. This ensures that the definition is interpreted narrowly and will no longer include any other instruments as referred to in the previous definition.
16	Amendments to the memorandum of incorporation will become effective 10 business days after receipt of the notice of amendment by the CIPC, unless CIPC endorses or rejects the notice with reasons prior to the 10 days expiring. A later date can be set in the notice of amendment. This ensures there is a reasonable time period for amendments to be effective to ensure all relevant parties are aware and to ensure CIPC cannot reject amendments arbitrarily.
40	If the consideration for any shares that are issued or to be issued is in the form of an instrument such that the value of the consideration cannot be realised by the company until a date after the time the shares are to be issued, or is in the form of an agreement for future services, future benefits or future payment by the subscribing party – there is no longer a need for the shares to be held in trust by a third party but will be held by a stakeholder in terms of a stakeholder agreement. This does away with whether such a Trust is a Trust in terms of the Trust Property Control Act. Makes it an easier transaction with less compliance obligations.
45	The amendments to Section 45 of the Companies Act in South Africa make it easier for companies to provide financial assistance to their subsidiaries. As such the amendments remove requirements that apply to financial assistance between related companies such as a need for a special resolution, performing solvency and liquidity and shareholder and trade union notification requirements.
48	A company does not need a special resolution to buy back shares if the offer is made equally to all shareholders pro rata. This includes situations where directors, officers, or their relatives hold shares that are part of the offer. Additionally, no special resolution is needed for transactions on a recognized stock exchange. This is to make the process easier.
61	The annual general meeting of a public company must now add to the required presentations a social and ethics committee and a remuneration committee. In addition AGMs of public companies must appoint a social and ethics committee.
72	The category of companies to have a social and ethics committee remains, with the option of an exemption as has always been the case. The amendments now outline the full process on how to appoint a social and ethics committee.
90	No longer a need to have a dedicated shareholders meeting to appoint an auditor at the point of a company being incorporated. This can now be done at the usually first annual general meeting. The cooling off period to be appointed an auditor of the company has been reduced from 5 years to 2 years. This is not relation to rotation of auditors as contemplated in section 92.
95	In terms of employee share schemes it no longer only refers to issuing of shares (new shares for example) but also purchasing of shares (already existing shares for example). The previous definition had a narrow approach on how shares work.
135	Operating expenses paid by the landlord on behalf of the company in business rescue are now considered as post-commencement financing ranking after business rescue remuneration and expenses and above all other claims.