

COMPANIES AMENDMENT BILLS OPEN FOR PUBLIC COMMENT

Background

The Portfolio Committee on Trade, Industry and Competition has invited written submissions on the Companies Amendment Bill and the Companies Second Amendment Bill. The due date for comments is 2 October 2023.

The Bill follows in the footsteps of a 2021 Bill that was never passed. Some of the proposals contained in the 2021 Bill appear once again in the 2023 version, but others were dropped from the Bill.

The main aims of the Bills are to:

- Promote the ease of doing business and cut unnecessary red tape;
- Achieve equity between directors and senior management on the one hand, and shareholders and workers on the other hand;
- Provide greater disclosure of the ultimate owner of shares in a business; as part of the broader efforts to combat corruption and money-laundering.

The Bills provide for an extension of the time limit within which a director might be declared delinquent by the courts, from two years to five years, with potential for further extension beyond this period under justifiable circumstances.

The Bills also provide for greater transparency on the beneficial owners of companies.

Furthermore, the Bills allow for access to the beneficial ownership register of companies. However, the right to inspect and copy information contained in the annual financial statements and meetings will not apply to a private, non-profit, or personal liability company whose public interest score is under 100 and whose annual financial statement is internally prepared; or whose public interest score is under 350 and whose annual financial statement is independently prepared.

Agbiz comments

The main concern that Agbiz raises in its draft comments, is around the provisions in the Bill that deal with the preparation, presentation and voting on companies' remuneration policy and a directors' remuneration report. The Bill requires listed companies to disclose the ratio of the top-paid employees with those in the bottom-paid 5%. Shareholders will have to be advised at annual general meetings of remuneration policies, the remuneration of specified top executives and the gap between the earnings of the top and bottom 5% of earners in a company. Both the social and ethics committee report and the remuneration report are required to be discussed during the shareholders meetings.

In its draft comments, Agbiz points out that remuneration is a responsibility of the board of directors and in most instances the remuneration committee only makes recommendations to the board. Shareholders do not owe any duty to the company and can therefore not be held accountable if wrong decisions are made which proves not to be in the interest of the company. The proposed voting requirements may impede the directors' ability to exercise their judgement and duties in an unfettered and objective manner.

Way forward

Draft comments have been prepared and sent to members for their input. Agbiz will request an opportunity to address the portfolio committee on our comments. BUSA is also likely to submit comments. Public hearings are expected to take place on 17, 18 and 20 October.

By Agbiz Head: Legal Intelligence, Annelize Crosby