

CLOSE CORPORATIONS ACT 69 OF 1984

[ASSENTED TO 19 JUNE 1984] [DATE OF COMMENCEMENT: 1 JANUARY 1985]

(English text signed by the State President)

as amended by

Close Corporations Amendment Act 38 of 1986

Close Corporations Amendment Act 64 of 1988

Close Corporations Amendment Act 17 of 1990

Close Corporations Amendment Act 81 of 1992

Close Corporations Amendment Act 26 of 1997

ACT

To provide for the formation, registration, incorporation, management, control and liquidation of close corporations; and for matters connected therewith.

Section 1 Definitions

In this Act, unless the context otherwise indicates-

'accounting records', in relation to a corporation, includes accounts, deeds, writings and such other documents as may be prescribed;

'association agreement', in relation to any corporation or the members thereof, means an association agreement which has been entered into in terms of section 44 by the members of the corporation, including any such agreement which has been altered or added to as contemplated in subsection (3) of section 49, or an agreement which has replaced it as contemplated in that subsection;

'Companies Act' means the Companies Act, 1973 (Act 61 of 1973);

'company' means a company as defined in section 1 (1) of the Companies Act;

'corporation' means a close corporation referred to in section 2 (1) which has been registered under Part III of this Act;

'Court', in relation to-

(a) any corporation, means any court having jurisdiction in terms of section 7; and

(b) any offence under this Act, means any court having jurisdiction in respect of that offence;

[Definition of 'Court' substituted by s. 1 (a) of Act 26 of 1997.]

'deregistration', in relation to a corporation, means the cancellation of the registration of the corporation's founding statement; and 'deregister' has a corresponding meaning;

'director', in relation to a company, means a director as defined in section 1 (1) of the Companies Act;

'founding statement', in relation to a corporation, means the founding statement of the corporation referred to in section 12 which has been registered in terms of section 13, and also any amended founding statement in respect of that corporation registered in terms of section 15 (1) or (2);

'holding company', in relation to a company, means a holding company as defined in section 1 (1) of the Companies Act;

'Master' means the Master of the Supreme Court, and in relation to-

(a) a corporation in respect of which application is made to a Court for a winding-up order, the Master having jurisdiction in the area of jurisdiction of the Court where application is made;

(b) a corporation being wound up by a Court, the Master having jurisdiction in the area of jurisdiction of the Court which issued the winding-up order;

(c) a corporation other than a corporation referred to in paragraph (a) or (b), the Master having jurisdiction in the area in which the registered office of that corporation is situated;

'member', in relation to a corporation, means a person qualified for membership of a corporation in terms of section 29 and designated as a member in a founding statement of the corporation, including, subject to the provisions of this Act, a trustee, administrator, executor or curator, or other legal representative, referred to in paragraph (c) of subsection (2) of section 29, in respect of any such person who is insolvent, deceased, mentally disordered or otherwise incapable or incompetent to manage his affairs, but excluding any such person who has in terms of this Act ceased to be a member;

'member's interest' or 'interest', in relation to a member of a corporation, means the interest of the member in the corporation expressed in accordance with section 12 (e) as a percentage in the founding statement of the corporation;

'Minister', in relation to any matter to be dealt with in the office of a Master in connection with the winding-up of a corporation, means the Minister of Justice and, in relation to any other matter, means the Minister of Trade and Industry;

[Definition of 'Minister' substituted by s. 1 of Act 38 of 1986.]

'name', in relation to a corporation, means the full registered name of that corporation, or a registered literal translation of that name into any one other official language of the Republic, or a registered shortened form of that name or any such translation thereof, referred to in section 12(a);

[Definition of 'name' inserted by s. 1 (b) of Act 26 of 1997.]

'officer', in relation to-

(a) a corporation, means any manager or secretary thereof, whether or not such manager or secretary is also a member of the corporation;

(b) a company, means an officer as defined in section 1 (1) of the Companies Act;

'prescribe' means prescribe by regulation; and 'prescribed' has a corresponding meaning;

'Registrar' means the Registrar of Close Corporations referred to in section 4;

'registration', in relation to-

(a) any corporation, means the registration of the founding statement of the corporation referred to in section 12;

(b) the founding statement or any amended founding statement of a corporation, means the registration thereof in terms of section 13 or section 15 (1) or (2), as the case may be;

(c) any matter in connection with a corporation, or any member thereof, particulars of which are specified in terms of this Act in a founding statement of the corporation, means the specifying of particulars thereof in any such statement; and

(d) any other matter in connection with which any duty or power in relation to the registration thereof is in terms of this Act imposed on or granted to the Registrar, means the registration thereof by him in accordance with any applicable provision of this Act; and 'registered' has a corresponding meaning;

'Registration Office' means the Close Corporations Registration Office referred to in section 3;

'regulation' means any regulation made under this Act;

'subsidiary', in relation to a company, means a subsidiary as defined in section 1 (1) of the Companies Act;

'this Act' includes the regulations.

Section 27 Conversion of companies into corporations

(1) Any company having ten or fewer members all of whom qualify for membership of a corporation in terms of section 29 of this Act, may be converted into a corporation, provided that every member of the company becomes a member of the corporation.

(2) In respect of a conversion referred to in subsection (1), there shall be lodged with the Registrar-

(a) an application for conversion, in the prescribed form, signed by all the members of the company, containing a statement that upon conversion the assets of the corporation, fairly valued, will exceed its liabilities, and that after conversion the corporation will be able to pay its debts as they become due in the ordinary course of its business;

(b) a statement in writing by the auditor of the company that he has no reason to believe that a material irregularity contemplated in subsection (3) of section 26 of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), has taken place or is taking place in relation to the company or, where steps have been taken in terms of that subsection, that such steps and other proceedings in terms of the subsection have been completed; and

(c) a founding statement referred to in section 12 lodged in accordance with section 13.

(3) For the purposes of the founding statement referred to in subsection (2) (c)-

(a) there shall, in regard to the requirements of section 12 (f), be a statement of the aggregate of the contributions of the members, which shall be for an amount not greater than the excess of the fair value of the assets to be acquired by the corporation over the liabilities to be assumed by the corporation by reason of the conversion: Provided that the corporation may treat any portion of such excess not reflected as members' contributions, as amounts which may be distributed to its members;

(b) the members' interests stated in terms of section 12 (e) need not necessarily be in proportion to the number of shares in the company held by the respective members at the time of the conversion.

(4) If the provisions of subsection (2) have been complied with, the Registrar shall, if he is satisfied that the company concerned has complied materially with the requirements of the Companies Act-

(a) register the founding statement in accordance with the provisions of section 13;

(b) satisfy himself that, simultaneously with such registration, the registration of the memorandum and the articles of association of the company concerned is cancelled in accordance with the provisions of the Companies Act;

(c) endorse on the founding statement a certificate of incorporation as provided by section 14 (1): Provided that such certificate shall state the fact that the corporation has been converted from a company and shall mention the name and registration number of the former company; and

[Para. (c) substituted by s. 7 of Act 38 of 1986.]

(d) give notice in the Gazette of the conversion.

[Sub-s. (4) amended by s. 6 of Act 81 of 1992.]

(5) (a) On the registration of a corporation converted from a company, the assets, rights, liabilities and obligations of the company shall vest in the corporation.

(b) Any legal proceedings instituted by or against the company before the registration may be continued by or against the corporation, and any other thing done by or in respect of the company shall be deemed to have been done by or in respect of the corporation.

(c) The conversion of a company into a corporation shall in particular not affect-

(i) any liability of a director or officer of the company to the company on the ground of breach of trust or negligence, or to any other person pursuant to any provision of the Companies Act; or

(ii) any liability of the company, or of any other person, as surety.

(d) The juristic person which prior to the conversion of a company into a corporation existed as a company, shall notwithstanding the conversion continue to exist as a juristic person but in the form of a corporation.

[Para. (d) added by s. 2 (1) of Act 64 of 1988.]

(6) The corporation shall forthwith after its conversion from a company, give notice in writing of the conversion to all creditors of the company at the time of conversion, and to all other parties to contracts or legal proceedings in which the company was involved at the time of the conversion.

(7) Upon the production by a corporation which has been converted from a company of a certified copy of its founding statement referred to in subsection (4) (a), to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with all the requirements pursuant to any such law as to the form of application (if any) and the payment of any required fee, such registrar or officer shall make in his register all such alterations as are necessary by reason of the conversion of the company into a corporation: Provided that no transfer or stamp duties shall be payable in respect of such alterations in registers.

(8) If the accounting officer mentioned in the founding statement of a converted corporation is not the person who or firm which has acted as auditor for the company, the appointment of that person or firm shall lapse upon the conversion into a corporation.

(9) If a corporation is converted into a company in accordance with the provisions of the Companies Act, the registration of the founding statement of the corporation shall be cancelled simultaneously with the registration of the memorandum and articles of association of the company in terms of that Act.

Section 40 Financial assistance by corporation in respect of acquisition of members' interests

A corporation may give financial assistance (whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise) for the purpose of, or in connection with, any acquisition of a member's interest in that corporation by any person, only-

- (a) with the previously obtained written consent of every member of the corporation for the specific assistance;
- (b) if, after such assistance is given, the corporation's assets, fairly valued, exceed all its liabilities;
- (c) if the corporation is able to pay its debts as they become due in the ordinary course of its business; and
- (d) if such assistance will in the particular circumstances not in fact render the corporation unable to pay its debts as they become due in the ordinary course of its business.

Section 52 Prohibition of loans and furnishing of security to members and others by corporation

(1) A corporation shall not, directly or indirectly, make a loan-

- (a) to any of its members;
- (b) to any other corporation in which one or more of its members together hold more than a 50 per cent interest; or
- (c) to any company or other juristic person (except a corporation) controlled by one or more members of the corporation,

and shall not provide any security to any person in connection with any obligation of any such member, or other corporation, company or other juristic person.

(2) The provisions of subsection (1) shall not apply in respect of the making of any particular loan or the provision of any particular security with the express previously obtained consent in writing of all the members of a corporation.

(3) Any member of a corporation who authorizes or permits or is a party to the making of any loan or the provision of any security contrary to any provision of this section-

(a) shall be liable to indemnify the corporation and any other person who had no actual knowledge of the contravention against any loss directly resulting from the invalidity of such loan or security; and

(b) shall be guilty of an offence.

(4) For the purposes of this section-

(a) 'loan' includes-

(i) a loan of any property; and

(ii) any credit extended by a corporation where the debt concerned is not payable or is not being paid in accordance with normal business practice in respect of the payment of debts of the same kind;

(b) one or more members of a corporation shall only be deemed to control a company or other juristic person as contemplated in subsection (1) (c), if the circumstances envisaged in section 226 (1A) (b) of the Companies Act in relation to a director or manager or his nominee, or directors or managers or their nominees, referred to in that section, and a company or body corporate, are present in respect of any such member or his nominee, or such members or their nominees, and any such company or other juristic person; and

(c) 'security' includes a guarantee.

Section 52 Prohibition of loans and furnishing of security to members and others by corporation

(1) A corporation shall not, directly or indirectly, make a loan-

(a) to any of its members;

(b) to any other corporation in which one or more of its members together hold more than a 50 per cent interest; or

(c) to any company or other juristic person (except a corporation) controlled by one or more members of the corporation, and shall not provide any security to any person in connection with any obligation of any such member, or other corporation, company or other juristic person.

(2) The provisions of subsection (1) shall not apply in respect of the making of any particular loan or the provision of any particular security with the express previously obtained consent in writing of all the members of a corporation.

(3) Any member of a corporation who authorizes or permits or is a party to the making of any loan or the provision of any security contrary to any provision of this section-

(a) shall be liable to indemnify the corporation and any other person who had no actual knowledge of the contravention against any loss directly resulting from the invalidity of such loan or security; and

(b) shall be guilty of an offence.

(4) For the purposes of this section-

(a) 'loan' includes-

(i) a loan of any property; and

(ii) any credit extended by a corporation where the debt concerned is not payable or is not being paid in accordance with normal business practice in respect of the payment of debts of the same kind;

(b) one or more members of a corporation shall only be deemed to control a company or other juristic person as contemplated in subsection (1) (c), if the circumstances envisaged in section 226 (1A) (b) of the Companies Act in relation to a director or manager or his nominee, or directors or managers or their nominees, referred to in that section, and a company or body corporate, are present in respect of any such member or his nominee, or such members or their nominees, and any such company or other juristic person; and

(c) 'security' includes a guarantee.

Section 55 Application of sections 37 and 226 of Companies Act, 1973

(1) If the relationship between any company and any corporation is such that the corporation, if it were a company, would be a holding company of such company, the provisions of section 37 of the Companies Act regarding-

(a) the employment of funds of a company in a loan to; or

(b) the provision of any security by a company to another person in connection with an obligation of, its holding company, or a company which is a subsidiary of that holding company but is not a subsidiary of itself, shall mutatis mutandis apply in relation to any such employment of funds or provision of security by any such company in respect of any such corporation and in respect of any company which would be a subsidiary of the corporation were it a company, but which is not a subsidiary of the first-mentioned company.

(2) In the application in terms of subsection (1) of the provisions of subsection (3) (b) of the said section 37 of the Companies Act any reference therein to a director or officer, or a former director or officer, of a holding company, shall be construed as a reference to any member or officer, or former member or officer, of a corporation envisaged in subsection (1).

(3) If the relationship between any company and any corporation is as envisaged in subsection (1), the provisions of section 226 of the Companies Act regarding the making by a company of any loan to, or the provision of security by a company to another person in connection with any obligation of-

(a) any director or manager of the company's holding company or of another company which is a subsidiary of its holding company; or

(b) another company or another juristic person controlled by one or more directors or managers of the company's holding company or of a company which is a subsidiary of its holding company,

[Para. (b) substituted by s. 2 (a) of Act 17 of 1990.]

shall mutatis mutandis apply in relation to any such loan or provision of security by any such company in respect of-

(i) any member or officer of any such corporation, or any director or officer of another company which would be a subsidiary of any such corporation were the corporation a company; and

(ii) another company or another juristic person controlled by one or more members of any such corporation, or by one or more directors or managers of a company which would be a subsidiary of the corporation were it a company.

[Sub-para. (iii) substituted by s. 2 (b) of Act 17 of 1990.]

(4) In the application in terms of subsection (3) of the provisions of subsection (5) of the said section 226 of the Companies Act any reference therein to any director or officer of a holding company, shall be construed as a reference to any member or officer of a corporation envisaged in subsection (1).