GreymatterFinch

THE COMPANIES ACT AMENDMENTS

OCTOBER 2024

GREYMATTERFINCH IS HERE TO HELP

“Without strong watchdog institutions, impunity becomes the very foundation upon which systems of corruption are built. And if impunity is not demolished, all efforts to bring an end to corruption are in vain.”

— Rigoberta Menchú, Nobel Prize laureate

DEAR

On 26 July 2024, the President signed into law the First and Second Companies Amendment Acts, which introduced several important changes for businesses operating under South Africa’s Companies Act of 2008. These amendments bring new regulations that will impact your company’s reporting, transparency and governance obligations. As always, GreymatterFinch (GMF) is here to help you navigate these changes.

This newsletter provides an overview of the key amendments and how they may affect your business. However, this summary does not replace legal advice. It is important to speak to your sponsor or seek legal expert guidance.

A QUICK OVERVIEW OF THE KEY CHANGES

THE COMPANIES AMENDMENT ACT (16 OF 2024)

This act focuses on improving transparency and governance while easing administrative burdens. Here are the main changes:

REMUNERATION PROVISIONS

Public and state-owned companies must present a remuneration policy and report at annual general meetings (AGM), including disclosures about the pay gap. If shareholders do not approve the report, the directors will have the opportunity to address any concerns at the next AGM. Should the report be rejected again, it could result in the dismissal of directors.

SOCIAL AND ETHICS COMMITTEE (SEC) REQUIREMENTS

Companies are now required to ensure that most SEC members are non-executive directors. The SEC report must also be presented at the AGM, though its specific content requirements have not yet been fully clarified.

DIRECTOR AND OFFICER DISCLOSURE

Companies submitting audited financial statements must now include the names of all directors and prescribed officers in the annual financial statements (AFS).

THIRD-PARTY ACCESS TO RECORDS

The memorandum of incorporation (MoI), director records, financial statements, and the register of beneficial interests must now be accessible to third parties. Depending on their public interest score, smaller companies might be exempt.

PRIVATE COMPANY TAKEOVER PROVISIONS

These provisions now apply to private companies with 10 or more shareholders, subject to specific financial thresholds.

THE COMPANIES SECOND AMENDMENT ACT (17 OF 2024)

The second act primarily focuses on director accountability, drawing from the Zondo Commission of Inquiry into State Capture findings, which revealed widespread state capture in South Africa. Key changes include:

DIRECTOR LIABILITY

The time limit for director liability claims has been extended beyond three years, giving companies more flexibility in addressing directors’ misconduct.

DIRECTOR DELINQUENCY

Applications for director delinquency rulings can now be filed within 60 months (previously 36 months), allowing more time to hold directors accountable for corporate governance failures.

As specialists in financial, integrated, sustainability, and other stakeholder reporting, GMF is well-equipped to help you address the reporting implications of the Companies Amendment Acts. We ensure your disclosures and reports are clear, compliant, and aligned with shareholder expectations.

YOUR SEC REPORT

If your company has an SEC, its report must be presented at the AGM. A companies SEC report is not a Sustainability or ESG report but its anticipated that there may be ESG elements reviewed under the SEC depending on the company.

While the precise content requirements for the report are not yet defined, following the King IV[1] guidelines is advisable. King IV suggests the SEC report should cover social, ethical and environmental responsibilities, including stakeholder relationships and human rights. You are on the right track if your SEC report aligns with King IV.

WHAT EVERYONE IS TALKING ABOUT – REMUNERATION

“Silence is compliance, and not saying anything means you are okay with what is going on.”

– Porsha Williams

One of the more contentious changes is the introduction of stricter remuneration disclosure requirements.

The new provisions require public and state-owned companies to disclose their remuneration policies as well as detailed pay gap information. Furthermore, if shareholders do not approve the remuneration report by ordinary shareholder resolution, the company must address the concerns raised, and directors may face dismissal if these issues are not resolved.

Responses to these changes have been mixed. Many political parties, community organisations, and unions have commended the regulations for promoting transparency and tackling income inequality.

“The amendments address public concerns regarding high levels of inequalities in society by introducing better disclosure of senior executive remuneration and the reasonableness of the remuneration.”

– President Cyril Ramaphosa

However, others have expressed concerns about potential unintended consequences. For instance, companies may seek to outsource lower-level jobs to narrow the pay gap. There are also worries that forcing non-executive directors to step down following a second failed remuneration vote could result in a loss of valuable expertise on the board. Ironically, if shareholders insist that companies’ significantly increase their wage costs, to decrease the pay gap, there might be less capital left to pay dividends.

Companies will need to refine their remuneration strategies and ensure clear communication with shareholders to avoid governance challenges. Given the complexities, GMF can assist you in developing remuneration reports that clearly articulate your policies and implementation outcomes, aligned with regulatory requirements and best practice.

Our research into pay-gap disclosures includes an analysis of methodologies and best practice disclosures from the UK and the USA. In the USA, companies can determine their pay ratios using statistical sampling or other reasonable methods, while the UK mandates detailed disclosures comparing CEO pay to employee compensation across various percentiles.

Ultimately, these new provisions reflect a global shift towards greater transparency in corporate pay structures. Companies that embrace these changes early will ensure compliance and position themselves as leaders in equitable business practices.

Forward to friend

BROADER IMPLICATIONS

The Second Amendment Act aims to enhance mechanisms for holding directors accountable for financial losses or governance failures. King IV clearly states that the board is responsible for the reports issued by the company.

> *“The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of its performance, as well as its short-, medium- and long-term prospects.”*
>
> *– King IV Principle 5*

This means the board must take responsibility for the group’s reporting by approving management’s selection of reporting frameworks while considering legal requirements and the intended purpose of each report.

Consequently, GMF’s clients must produce high-quality, transparent, accurate reports that the board can confidently endorse. This is what we do best.

WHAT NOW?

As mentioned earlier, we recommend seeking expert legal assistance to review your current governance and reporting practices to ensure compliance with the amendments.

With the Companies Amendment Acts now gazetted, updates to the Companies Regulations are expected soon. However, the Department of Trade, Industry and Competition (DTIC) has not yet provided a timeline for these updates or announced commencement dates for the amendments. The DTIC has suggested a delayed or staggered implementation to give companies sufficient time to prepare for the new obligations.

THE ONE-STOP REPORTING HUB

GMF can assist you to prepare for these amendments.

- ✓ We can ensure that your SEC report aligns with King IV
- ✓ We can assist you in developing meaningful and transparent pay gap disclosures
- ✓ GMF can review and highlight any omissions or inconsistencies in the remuneration details of each director and prescribed officer in your AFS to help ensure full compliance
- ✓ We can repackage, design, and typeset your MoI, AFS, register of beneficial interests and other records and provide digital solutions to ensure they are well-presented and easily accessible on your website
- ✓ Our Corporate Actions team is available 24/7 to assist with high-quality typesetting and quality control to ensure seamless corporate actions documentation for other changes in the Acts that may not have direct reporting requirements.

We will closely monitor developments and will keep you informed as new details emerge. In the meantime, please feel free to reach out with any questions or for assistance in navigating these changes.

Email us at info@greymatterfinch.com or phone (+27)10 109 3700 to make an appointment with one of our reporting specialists.

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