

Vol. 487

Cape Town,  
Kaapstad, 11 January  
Januarie 2006

**No. 28390**

**THE PRESIDENCY**

No. 20

11 January 2006

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

**No. 25 of 2005: Close Corporations Amendment Act, 2005.**

**DIE PRESIDENSIE**

No. 20

11 Januarie 2006

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

**No. 25 van 2005: Wysigingswet op Beslote Korporasies, 2005.**

**GENERAL EXPLANATORY NOTE:**

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
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- Words underlined with a solid line indicate insertions in existing enactments.
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*(English text signed by the President.)  
(Assented to 8 January 2006.)*

**ACT**

**To amend the Close Corporations Act, 1984, so as to empower a court to make an appropriate order in respect of a corporation and members of such corporation after the restoration by the registrar of the registration of that corporation; to adjust the requirements for membership of a corporation; and to allow a corporation to appoint another corporation as accounting officer; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 26 of Act 69 of 1984, as amended by section 6 of Act 38 of 1986**

1. Section 26 of the Close Corporations Act, 1984 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (7) of the following subsection: 5

- “(7) The Registrar shall give notice of the restoration of the registration of a corporation in the *Gazette*, and as from the date of such notice—
- (a) the corporation shall [**continue to exist and**] be deemed to have continued in 10 existence as from the date of deregistration as if it [**were**] had not been deregistered; and
- (b) a member, or any other person having a material interest, may apply to a court for any one or more of the following orders:
- (i) An order that the legal liability incurred by a member in terms of subsection (5) shall cease to exist;
- (ii) an order that the corporation whose registration has been restored shall become liable for any liabilities incurred by any member of the corporation in terms of subsection (5);
- (iii) an order that the corporation whose registration has been restored shall compensate a member who lawfully paid a claim that arose as a consequence of the provisions of subsection (5);
- (iv) any other order that the court on the basis of fairness deems appropriate.”.

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**ALGEMENE VERDUIDELIKENDE NOTA:**

- [ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.  
 \_\_\_\_\_ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.
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*(Engelse teks deur die President geteken.)  
 (Goedgekeur op 8 Januarie 2006.)*

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**WET**

**Tot wysiging van die Wet op Beslote Korporasies, 1984, ten einde 'n hof te magtig om 'n gepaste bevel te gee ten opsigte van 'n korporasie en lede van sodanige korporasie na die herstel van die registrasie van daardie korporasie deur die registrator; en 'n korporasie toe te laat om 'n ander korporasie as rekeningkundige beampete aan te stel; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

**Wysiging van artikel 26 van Wet 69 van 1984, soos gewysig deur artikel 6 van Wet 38 van 1986**

1. Artikel 26 van die Wet op Beslote Korporasies, 1984 (hierna die Hoofwet genoem), word hierby gewysig deur subartikel (7) deur die volgende subartikel te vervang: 5  
 “(7) Die Registrator moet van die herstel van die registrasie van 'n korporasie in die *Staatskoerant* kennis gee, en vanaf die datum van sodanige kennisgewing—  
 (a) [bestaan] word die korporasie **[voort en word hy]** geag vanaf die datum van deregistrasie voort te bestaan het asof hy nie gederegistreer is nie; en 10  
 (b) kan 'n lid, of enige ander persoon wat 'n wesenlike belang het, by 'n hof aansoek doen vir enige van die volgende bevele:  
 (i) 'n Bevel dat die regsaanspreeklikheid deur die lid ingevolge subartikel (5) opgedoen, beëindig word;  
 (ii) 'n bevel dat die korporasie waarvan die registrasie herstel is aanspreeklik word vir enige laste deur enige lid van die korporasie ingevolge subartikel (5) opgedoen; 15  
 (iii) 'n bevel dat die korporasie waarvan die registrasie herstel is 'n lid moet vergoed wat regsgeldiglik 'n eis betaal het wat as gevolg van die bepalings van subartikel (5) onstaan het;  
 (iv) enige ander bevel wat die hof op grond van billikheid toepaslik ag.”. 20

**Amendment of section 29 of Act 69 of 1984, as amended by section 3 of Act 64 of 1988 and section 1 of Act 17 of 1990**

**2.** Section 29 of the principal Act is hereby amended by the substitution for subsections (1) and (1A) of the following subsections, respectively:

“(1) Subject to [the provisions of] subsection (1A) or (2)(b) and (c), only natural persons may be members of a corporation and no juristic person or trustee of a trust *inter vivos* in that capacity shall directly or indirectly (whether through the instrumentality of a nominee or otherwise) hold a member’s interest in a corporation.” 5

(1A) [The provisions of subsection (1) shall not apply to the membership of a corporation of a] A natural or juristic person [who holds that membership for the benefit] in the capacity of a trustee of a trust *inter vivos* [if immediately before 13 April 1987 a natural person held membership of the] may be a member of a corporation [for the benefit of that trust]: Provided that— 10

- (a) no juristic person shall directly or indirectly be a beneficiary of that trust; 15
- (b) the member concerned shall, as between himself or herself and the corporation, personally have all the obligations and rights of a member;
- (c) the corporation shall not be obliged to observe or have any obligation in respect of any provision of or affecting the trust or any agreement between the trust and the member concerned of the corporation; and 20
- (d) if at any time the number of natural persons at that time entitled to receive any benefit from the trust shall, when added to the number of members of the corporation at that time, exceed 10, the provisions of, and exemption under, this subsection shall cease to apply and shall not again become applicable notwithstanding any diminution in the number of members or beneficiaries.”. 25

**Amendment of section 60 of Act 69 of 1984, as amended by section 9 of Act 81 of 1992**

**3.** Section 60 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) (a) A corporation may appoint as its accounting officer— 30

- (i) any person who is a member of a recognised profession listed in a notice referred to in subsection (2);
- (ii) a firm as defined in section 1 of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991); [and]
- (iii) any other firm, [may be appointed as an accounting officer of a corporation, provided] if each partner in the [latter] firm is qualified to be so appointed; or 35
- (iv) any other corporation, if each member of such corporation is qualified to be so appointed.

(b) The liability of a partner in respect of debts and liabilities incurred by a firm contemplated in paragraph (a)(iii) during the partner’s period as a partner and the liability of a member in respect of debts and liabilities incurred by a corporation contemplated in paragraph (a)(iv) during the member’s period as a member may not be excluded by operation of law or in any other way. 40

(c) For the purposes of paragraph (b), “debts and liabilities incurred” means debts and liabilities incurred by the firm or corporation, as the case may be, in connection with the performance by the firm or corporation, as the case may be, of its duties in terms of section 62.”. 45

**Wysiging van artikel 29 van Wet 69 van 1984, soos gewysig deur artikel 3 van Wet 64 van 1988 en artikel 1 van Wet 17 van 1990**

2. Artikel 29 van die Hoofwet word hierby gewysig deur subartikels (1) en (1A) onderskeidelik deur die volgende subartikels te vervang:

“(1) Behoudens [die bepalings van] subartikel (1A) of (2)(b) en (c) kan slegs natuurlike persone lede van 'n korporasie wees en mag geen regspersoon of trustee van 'n trust *inter vivos*, in daardie hoedanigheid, regstreeks of onregstreeks (hetby deur bemiddeling van 'n genomineerde of andersins) 'n ledebelang in 'n korporasie behou nie.

(1A) [Die bepalings van subartikel (1) is nie van toepassing nie op die lidmaatskap van 'n korporasie van] 'n [natuurlike persoon] Natuurlike of regspersoon in die hoedanigheid van 'n trustee van 'n trust *inter vivos* [hou indien 'n natuurlike persoon onmiddellik voor 13 April 1987 lidmaatskap van die kan 'n lid van 'n korporasie wees [ten behoeve van daardie trust gehou het]: Met dien verstande dat—

- (a) geen regspersoon, direk of indirek, 'n bevoordeelde van daardie trust is nie;
- (b) die betrokke lid tussen homself of haarself en die korporasie, persoonlik al die regte en verpligtinge van 'n lid het;
- (c) die korporasie nie verplig is tot nakoming van of enige verpligting het ten opsigte van 'n bepaling van of rakende die trust of 'n ooreenkoms tussen die trust en die betrokke lid van die korporasie nie; en
- (d) indien te eniger tyd die aantal natuurlike persone wat op daardie tydstip geregtig is om enige voordeel van die trust te ontvang tesame met die aantal lede van die korporasie op daardie tydstip, 10 oorskry, die bepalings van, en die vrystelling kragtens, hierdie subartikel ophou om van toepassing te wees en nie weer van toepassing word nie ondanks 'n vermindering in die lede of begunstigdes.”.

**Wysiging van artikel 60 van Wet 69 van 1984, soos gewysig deur artikel 9 van Wet 81 van 1992**

3. Artikel 60 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) (a) 'n Korporasie kan as sy rekeningkundige beamppte aanstel—

- (i) enige persoon wat 'n lid is van 'n erkende professie wat gelys is in 'n kennisgewing in subartikel (2) gemeld;
- (ii) 'n [Firma] firma soos omskrywe in artikel 1 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991) [, en];
- (iii) enige ander firma [kan as rekeningkundige beamppte van 'n korporasie aangestel word], mits elke vennoot van [laasgenoemde] die firma kwalifiseer om aldus aangestel te word; of
- (iv) enige ander korporasie, indien elke lid van sodanige korporasie kwalifiseer om aldus aangestel te word.

(b) Die aanspreeklikheid van 'n vennoot ten opsigte van skulde en laste opgedoen deur 'n firma beoog in paragraaf (a)(ii), tydens die vennoot se tydperk as 'n vennoot en die aanspreeklikheid van 'n lid ten opsigte van skulde en laste opgedoen deur 'n korporasie beoog in paragraaf (a)(iii), tydens die lid se tydperk as 'n lid, mag nie deur regswerking of op enige ander wyse uitgesluit word nie.

(c) By die toepassing van paragraaf (b) beteken "skulde en laste opgedoen" skulde en laste opgedoen deur die firma of korporasie, na gelang van die geval, in verband met die uitvoering deur die firma of korporasie, na gelang van die geval, van sy pligte kragtens artikel 62.”.

**Substitution of certain words in Act 69 of 1984**

**4.** The principal Act is hereby amended by the substitution for the words "he", "him", "his" and "himself", wherever they occur except in sections 10(1)(m) and (o), 13, 14, 15(1), 72 and 76(3)(b), of the words "he or she", "him or her", "his or her" and "himself or herself", respectively. 5

**Short title**

**5.** This Act is called the Close Corporations Amendment Act, 2005.

**Vervanging van sekere woorde in Wet 69 van 1984**

**4.** Die Hoofwet word hierby gewysig deur die woorde “hy”, “hom”, “sy” en “homself” waar dit ook al voorkom, behalwe in artikels 10(1)(m) en (o), 13, 14, 15(1), 72 en 76(3)(b), onderskeidelik deur die woorde “hy of sy”, “hom of haar”, “sy of haar” en “homself of haarself” te vervang. 5

**Kort titel**

**5.** Hierdie Wet heet die Wysigingswet op Beslote Korporasies, 2005.