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Kaapstad,

THE PRESIDENCY

No. 370 20 April 2011

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

No. 3 of 2011: Companies Amendment Act, 2011

DIE PRESIDENSIE

Nr. 370 20 April 2011

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

Nr. 3 van 2011: Maatskappy-wysigingswet, 2011



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

a general offer, if the offer succeeds to the extent contemplated above].”.

Amendment of Title of Part A of Chapter 6 of Act 71 of 2008

80. Chapter 6 of the principal Act is hereby amended by the substitution after the Title of the Chapter, for the Part heading, of the following heading: 5

“Part A”.

Amendment of section 128 of Act 71 of 2008

81. Section 128 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(f) for subparagraph (i) of the following subparagraph: 10

“(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they [fall] become due and payable within the immediately ensuing six months; or”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) For the purpose of subsection (1)(f)(g), an employee of a 15 company is not related to that company solely as a result of being a member of a trade union that holds [shares] securities of that company.”.

Amendment of section 129 of Act 71 of 2008

82. Section 129 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection: 20

“(7) If the board of a company has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution contemplated in this section, the board must deliver a written notice to each affected person, setting out the criteria referred to in section 128(1)(e)(f) that are applicable to the company, and its reasons for not adopting a resolution 25 contemplated in this section.”.

Amendment of section 132 of Act 71 of 2008

83. Section 132 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(b) for paragraph (b) of the following paragraph: 30

“(b) [a] an affected person applies to the court for an order placing the company under supervision in terms of section 131(1); or”; and

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) a court makes an order placing a company under supervision during 35 the course of liquidation proceedings, or proceedings to enforce a security interest, as contemplated in section 131(7) [a court makes an order placing a company under supervision].”.

Amendment of section 133 of Act 71 of 2008

84. Section 133 of the principal Act is hereby amended— 40

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) as a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the business rescue proceedings began;” 45

(b) by the substitution in subsection (1) for paragraphs (d) and (e) of the following paragraphs respectively:

“(d) criminal proceedings against the company or any of its directors or officers; [or]

(e) proceedings concerning any property or right over which the 50 company exercises the powers of a trustee; or”; and

sekuriteite in die maatskappy te verkry sonder om 'n algemene aanbod te maak, indien die aanbod in die mate soos hierbo beoog slaag.”.

Wysiging van Titel van Deel A van Hoofstuk 6 van Wet 71 van 2008

80. Hoofstuk 6 van die Hoofwet word hierby in die Engelse teks gewysig deur na die titel van die Hoofstuk, die opskrif vir die deel deur die volgende opskrif te vervang:

“Part A”.

Wysiging van artikel 128 van Wet 71 van 2008

81. Artikel 128 van die Hoofwet word hierby gewysig—

(a) deur in die Engelse teks in subartikel (1)(f) subparagraaf (i) deur die volgende subparagraaf te vervang: 10

“(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they [fall] become due and payable within the immediately ensuing six months; or”; en

(b) deur subartikel (2) deur die volgende subartikel te vervang: 15

“(2) Vir doeleindes van subartikel (1)(f)(g) is 'n werknemer van 'n maatskappy nie aan daardie maatskappy verwant slegs as gevolg van lidmaatskap van 'n vakbond wat [aandele] sekuriteite van daardie maatskappy besit nie.”.

Wysiging van artikel 129 van Wet 71 van 2008 20

82. Artikel 129 van die Hoofwet word hierby gewysig deur in die Engelse teks subartikel (7) deur die volgende subartikel te vervang:

“(7) If the board of a company has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution contemplated in this section, the board must deliver a written notice to each affected person, setting out the criteria referred to in section 128(1)(e)(f) that are applicable to the company, and its reasons for not adopting a resolution contemplated in this section.”. 25

Wysiging van artikel 132 van Wet 71 van 2008

83. Artikel 132 van die Hoofwet word hierby gewysig— 30

(a) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) 'n geaffekteerde persoon by die hof aansoek doen vir 'n bevel om die maatskappy kragtens artikel 131(1) onder toesig te plaas; of”; en

(b) deur in subartikel (1) paragraaf (c) deur die volgende paragraaf te vervang: 35

“(c) 'n hof[,] 'n bevel uitreik wat die maatskappy tydens die likwidasieverrigtinge, of verrigtinge om 'n sekuriteitsbelang af te dwing, [’n bevel maak wat die maatskappy] onder toesig plaas, soos beoog in artikel 131(7).”.

Wysiging van artikel 133 van Wet 71 van 2008 40

84. Artikel 133 van die Hoofwet word hierby gewysig—

(a) deur in die Engelse teks in subartikel (1) paragraaf (c) deur die volgende paragraaf te vervang:

“(c) as a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the business rescue proceedings began;”; 45

(b) deur in subartikel (1) paragrawe (d) en (e) onderskeidelik deur die volgende paragrawe te vervang:

“(d) strafregtelike verrigtinge teen die maatskappy of enige van sy direkteure of beamptes; [of] 50

(e) verrigtinge rakende enige eiendom of reg waaroor die maatskappy die bevoegdheids van 'n trustee uitoefen; of”; en

- (c) by the insertion in subsection (1) of the following paragraph after paragraph (e):

“(f) proceedings by a regulatory authority in the execution of its duties after written notification to the business rescue practitioner.”.

Amendment of section 134 of Act 71 of 2008

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85. Section 134 of the principal Act is hereby amended—

- (a) by the insertion after the section number of the following number:

“(1)”; and

- (b) by the substitution of paragraph (c) of the following paragraph:

“(c) despite any provision of an agreement to the contrary, no person may exercise any right in respect of any property in the lawful possession of the company, irrespective of whether the property is owned by the company, except to the extent that the practitioner consents in writing.”.

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Amendment of section 135 of Act 71 of 2008

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86. Section 135 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“After payment of the practitioner’s remuneration and [costs] expenses referred to in section 143, and other claims arising out of the costs of the business rescue proceedings, all claims contemplated—”;

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and

- (b) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph:

“(i) all claims contemplated in subsection (2), irrespective of whether or not they are secured; and”.

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Amendment of section 136 of Act 71 of 2008

87. Section 136 of the principal Act is hereby amended—

- (a) by the insertion in paragraph (a) of subsection (1) after the word “proceedings” where it first appears, of a “;”;

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- (b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to [sections 35A and 35B of the Insolvency Act, 1936 (Act No. 24 of 1936)] subsection (2A), and despite any provision of an agreement to the contrary, during business rescue proceedings, the practitioner may [cancel or]—

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(a) entirely, partially or conditionally suspend, for the duration of the business rescue proceedings, [entirely, partially or conditionally any provision of] any obligation of the company that—

(i) arises under an agreement to which the company [is] was a party at the commencement of the business rescue [period, other than an agreement of employment] proceedings; and

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(ii) would otherwise become due during those proceedings; or

(b) apply urgently to a court to entirely, partially or conditionally cancel, on any terms that are just and reasonable in the circumstances, any obligation of the company contemplated in paragraph (a).”; and

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- (c) by the insertion after subsection (2) of the following subsection:

“(2A) When acting in terms of subsection (2)—

(a) a business rescue practitioner must not suspend any provision of—

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(i) an employment contract; or

(ii) an agreement to which section 35A or 35B of the Insolvency Act, 1936 (Act No. 24 of 1936), would have applied had the company been liquidated;

- (c) deur in subartikel (1) die volgende paragraaf na paragraaf (e) in te voeg:
“(f) verrigtinge deur ’n reguleringsowerheid in die uitvoering van sy pligte na skriftelike kennisgewing aan die ondernemingreddingspraktisyn.”

Wysiging van artikel 134 van Wet 71 van 2008

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85. Artikel 134 van die Hoofwet word hierby gewysig—

- (a) deur die volgende nommer na die artikelnommer in te voeg:
“(1)”; en
- (b) deur in die Engelse teks paragraaf (c) deur die volgende paragraaf te vervang:
“(c) despite any provision of an agreement to the contrary, no person may exercise any right in respect of any property in the lawful possession of the company, irrespective of whether the property is owned by the company, except to the extent that the practitioner consents in writing.”

Wysiging van artikel 135 van Wet 71 van 2008

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86. Artikel 135 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
“Na betaling van die praktisyn se vergoeding en koste bedoel in artikel 143, en ander eise voortspruitend uit die [koste] uitgawes van die ondernemingreddingsverrigtinge, sal alle eise beoog—”; en
- (b) deur in die Engelse teks subartikel (3)(a) subparagraaf (i) deur die volgende subparagraaf te vervang:
“(i) all claims contemplated in subsection (2), irrespective of whether or not they are secured; and”.

Wysiging van artikel 136 van Wet 71 van 2008

87. Artikel 136 van die Hoofwet word hierby gewysig—

- (a) deur in die Engelse teks in paragraaf (a) van subartikel (1) na die woord “proceedings” waar dit die eerste keer voorkom, ’n “,” in te voeg;
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
“(2) Behoudens [artikels 35A en 35B van die Insolvensiewet, 1936 (Wet 24 van 1936)] subartikel (2A), en ongeag enige bepaling van ’n ooreenkoms tot die teendeel, kan die praktisyn tydens ondernemingreddingsverrigtinge [enige bepaling van ’n ooreenkoms, buiten ’n indiensnemingsooreenkoms, waartoe die maatskappy by die inwerkingtreding van die ondernemingreddingstydperk ’n party is, kanselleer of opskort]—
- (a) enige verpligting van die maatskappy wat—
- (i) kragtens ’n ooreenkoms waartoe die maatskappy by die inwerkingtreding van die ondernemingreddingsverrigtinge ’n party was, ontstaan; en
- (ii) andersins tydens daardie verrigtinge sou verval, geheel en al, gedeeltelik of voorwaardelik [kanselleer of] opskort; of
- (b) dringend by ’n hof aansoek doen om enige verpligting van die maatskappy soos beoog in paragraaf (a), geheel en al, gedeeltelik of voorwaardelik te kanselleer, op enige terme wat in die omstandighede regverdig en redelik is.”; en
- (c) deur die volgende subartikel na subartikel (2) in te voeg:
“(2A) Wanneer hy of sy ingevolge subartikel (2) optree—
- (a) moet ’n ondernemingreddingspraktisyn nie enige bepaling van—
- (i) ’n indiensnemingskontrak; of
- (ii) ’n ooreenkoms waarop artikel 35A of 35B van die Insolvensiewet, 1936 (Wet No. 24 van 1936), van toepassing sou gewees het indien die maatskappy gelikwider sou wees,

- (b) a court may not cancel any provision of—
- (i) an employment contract, except as contemplated in subsection (1);
 - (ii) an agreement to which section 35A or 35B of the Insolvency Act, (Act No. 24 of 1936), would have applied had the company been liquidated; and
- (c) if a business practitioner suspends a provision of an agreement relating to security granted by the company, that provision nevertheless continues to apply for the purpose of section 134, with respect to any proposed disposal of property by the company.”

Substitution for section 138 of Act 71 of 2008

88. The principal Act is hereby amended by the substitution for section 138 of the following section:

“Qualifications of practitioners

138. (1) A person may be appointed as the business rescue practitioner of a company only if the person—

- (a) is a member in good standing of a legal, accounting or business management profession accredited by the Commission [subject to regulation by a regulatory authority];
- (b) has been [prescribed] licensed as such by the [Minister] Commission in terms of subsection (2);
- ~~(b)~~ (c) is not subject to an order of probation in terms of section 162(7);
- ~~(c)~~ (d) would not be disqualified from acting as a director of the company in terms of section 69(8);
- ~~(d)~~ (e) does not have any other relationship with the company such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship; and
- ~~(e)~~ (f) is not related to a person who has a relationship contemplated in paragraph (d).

(2) [The Minister] For the purposes of subsection (1)(a)(ii), the Commission may [designate one] license any qualified person [or association within the Republic to regulate the practice of persons as] to practice [practitioners] in terms of this [Act] Chapter and may suspend or withdraw any such licence in the prescribed manner, [if that person or association—

- (a) is committed to achieving the purposes of this Chapter;
- (b) functions predominantly to promote sound principles and good practice of business turnaround or rescue; and
- (c) has sufficient human, financial and operational resources, and adequate administrative procedures and safeguards, to enable it to function efficiently and to effectively carry out its functions in terms of this Chapter, or presents to the Minister a credible plan to acquire or develop those resources].

(3) The Minister may make regulations prescribing—

- (a) [impose reasonable conditions upon a person or association designated by the Minister in terms of subsection (2), with respect to the carrying out of its functions and powers in terms of this Chapter; and] standards and procedures to be followed by the Commission in carrying out its licencing functions and powers in terms of this section; and
- (b) [make regulations prescribing—] minimum qualifications for a person to practice as a business rescue practitioner, including different minimum qualifications for different categories of companies

- opskort nie;
- (b) mag 'n hof nie enige bepaling van—
- (i) 'n indiensnemingskontrak kanselleer nie, buiten op die wyse in subartikel (1) beoog; of
- (ii) 'n ooreenkoms waarop artikel 35A of 35B van die Insolvensiewet, 1936 (Wet No. 24 van 1936), van toepassing sou gewees het indien die maatskappy gelikwider sou wees; en
- (c) indien 'n ondernemingspraktisyn 'n bepaling van 'n ooreenkoms ten opsigte van sekuriteit wat deur die maatskappy toegestaan is opskort, is daardie bepaling nogtans steeds van toepassing by die toepassing van artikel 134, ten opsigte van enige voorgestelde beskikking oor eiendom deur die maatskappy.”

Vervanging van artikel 138 van Wet 71 van 2008

88. Die Hoofwet word hierby gewysig deur subartikel 138 deur die volgende artikel te vervang:

“Praktisyns se kwalifikasies

138. (1) 'n Persoon mag as die [praktisyn] ondernemingreddingspraktisyn van 'n maatskappy aangestel word slegs indien die persoon—
- (a) 'n lid van goeie naam is van 'n [beroep behoudens regulasies deur 'n regulerende gesag] regs-, rekeningkundige of ondernemingsbestuur-beroop geakkrediteer deur die Kommissie; of
- (b) [wat deur die Minister] deur die Kommissie kragtens subartikel (2) [voorgeskrif is] as sodanig gelisensieer is;
- [(b)] (c) nie kragtens artikel 162(7) aan 'n proefbevel onderhewig is nie;
- [(c)] (d) nie kragtens artikel 69(8) gediskwalifiseer sou wees om as 'n direkteur van die maatskappy op te tree nie;
- [(d)] (e) nie enige ander verwantskap met die maatskappy het wat 'n redelike en ingeligte derde party sou laat aflei dat die integriteit, onpartydigheid of objektiwiteit van daardie persoon deur daardie verwantskap in verdenking gebring word nie; en
- [(e)] (f) nie verwant is aan 'n persoon wat 'n verwantskap het soos beoog in paragraaf (d) nie.
- (2) [Die Minister kan een persoon of vereniging in die Republiek aanwys om die praktyk van persone as praktisyns kragtens hierdie Wet te reguleer, indien daardie persoon of vereniging—
- (a) daartoe verbind is om die doelstellings van hierdie Hoofstuk te bereik;
- (b) hoofsaaklik optree om gesonde beginsels en goeie praktyk van ondernemingsregruk of -redding te bevorder; en
- (c) voldoende mense-, finansiële en operasionele hulpbronne, en toereikende administratiewe prosedures en veiligheidsmaatreëls, het om hom in staat te stel om doeltreffend te funksioneer en sy funksies kragtens hierdie Hoofstuk effektief uit te voer, of aan die Minister 'n geloofwaardige plan voor te lê om daardie hulpbronne te verkry of te ontwikkel.] By die toepassing van subartikel (1)(a)(ii) kan die Kommissie enige gekwalifiseerde persoon lisensieer om ingevolge hierdie Hoofstuk te praktiseer en kan sodanige lisensie op die voorgeskrewe wyse opskort of intrek.
- (3) Die Minister kan regulasies uitvaardig wat—
- (a) [kragtens hierdie Hoofstuk redelike voorwaardes ten opsigte van die uitvoering van funksies en bevoegdhede aan 'n persoon of vereniging oplê wat kragtens subartikel (2) deur die Minister aangewys is; en] standarde en prosedures voorskryf wat die Kommissie moet volg in die uitvoering van sy lisensieringsfunksies en -bevoegdhede ingevolge hierdie artikel; en
- (b) [regulasies uitvaardig wat—] minimum kwalifikasies voorskryf vir 'n persoon om as 'n ondernemingreddingspraktisyn te praktiseer, met

- (i) **minimum qualifications for admission of a person to the practice of a business rescue practitioner; and**
- (ii) **procedures to be followed by a person or association designated by the Minister in terms of subsection (2) in carrying out its functions and powers in terms of this Chapter].”** 5

Amendment of section 139 of Act 71 of 2008

89. Section 139 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- “(a) Incompetence or failure to perform the duties of a business rescue practitioner of the particular company;” 10

Amendment of section 140 of Act 71 of 2008

90. Section 140 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) The practitioner must, as soon as practicable after appointment, inform all relevant regulatory authorities having authority in respect of the activities of the company, of the fact that the company has been placed under business rescue proceedings and of his or her appointment.” 15

Amendment of section 141 of Act 71 of 2008

91. Section 141 of the principal Act is hereby amended by the substitution in subsection (2)(c) for subparagraph (i) of the following subparagraph: 20

- “(i) voidable transactions, or the failure by the company or any director to perform any material obligation relating to the company, the practitioner must **[direct the management to]** take any necessary steps to rectify the matter and may direct the management to take appropriate steps.” 25

Amendment of section 142 of Act 71 of 2008

92. Section 142 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:

“(a) Any material transactions **[involved]** involving the company or the assets of the company, and occurring within 12 months immediately before the business rescue proceedings began; 30

(b) any court, arbitration or administrative proceedings, including pending enforcement proceedings, involving the company;” and

- (b) by the substitution for subsection (4) of the following subsection: 35

“(4) No person is entitled, as against the practitioner of a company, to retain possession of any books or records of the company, or to claim or enforce a lien over any such books or records, unless such books or records are in the lawful possession of such person and he or she has made copies available to the practitioner or has afforded the practitioner a reasonable opportunity to inspect the books or records concerned.” 40

inbegrip van verskillende minimumkwalifikasies vir verskillende kategorieë maatskappye

- (i) minimum kwalifikasies voorskryf vir toelating van 'n persoon tot die praktyk van 'n ondernemingreddingspraktisyn; en 5
- (ii) prosedures voorskryf wat 'n persoon of vereniging wat kragtens subartikel (2) deur die Minister aangewys is, in die uitvoering van sy funksies en bevoegdhede kragtens hierdie Hoofstuk moet volg.”.

Wysiging van artikel 139 van Wet 71 van 2008 10

89. Artikel 139 van die Hoofwet word hierby gewysig deur in subartikel (2) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) Onbevoegdheid of versuim om die pligte van 'n ondernemingreddingspraktisyn van die spesifieke maatskappy uit te voer;”.

Wysiging van artikel 140 van Wet 71 van 2008 15

90. Artikel 140 van die Hoofwet word hierby gewysig deur die volgende subartikel na subartikel (1) in te voeg:

“(1A) Die praktisyn moet, so gou moontlik na aanstelling, alle relevante reguleringsowerhede wat gesag het ten opsigte van die aktiwiteite van die maatskappy, inlig van die feit dat die maatskappy onder ondernemingreddingsverrigtinge geplaas is en van sy of haar aanstelling.” 20

Wysiging van artikel 141 van Wet 71 van 2008

91. Artikel 141 van die Hoofwet word hierby gewysig deur in subartikel (2)(c) subparagraaf (i) deur die volgende subparagraaf te vervang: 25

“(i) vernietigbare transaksies, of 'n versuim deur die maatskappy of enige direkteur om 'n wesenlike verpligting met betrekking tot die maatskappy na te kom, moet die praktisyn [aan die bestuur opdrag gee om] alle nodige stappe te doen om die aangeleentheid reg te stel en kan die bestuur opdrag gee om die gepaste stappe te doen;” 30

Wysiging van artikel 142 van Wet 71 van 2008

92. Artikel 142 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (3) paragrafe (a) en (b) deur die volgende paragrafe te vervang:

“(a) enige wesenlike transaksies wat die maatskappy of die bates van die maatskappy [raak] betrek, en plaasgevind het binne 12 maande onmiddellik voor die ondernemingreddingsverrigtinge begin het; 35

(b) enige hof-, arbitrasie- of administratiewe verrigtinge, insluitende hangende afdwingverrigtinge, waarby die maatskappy betrokke is;” en 40

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Geen persoon het die reg, teenoor die praktisyn van 'n maatskappy, om besit van enige boeke of rekords van die maatskappy te behou of om 'n retensiereg oor enige sodanige boeke of rekords te eis of af te dwing nie, tensy sodanige boeke of rekords wettiglik in die besit van sodanige persoon is en hy of sy kopieë aan die praktisyn beskikbaar gestel het of die praktisyn 'n billike geleentheid gebied het om die betrokke boeke en rekords te inspekteer.” 45

Amendment of section 143 of Act 71 of 2008

93. Section 143 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) [that] the remuneration provided for in the agreement is [egregiously] unreasonable having regard to the financial circumstances of the company.”. 5

Amendment of section 144 of Act 71 of 2008

94. Section 144 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) notice, which must be given in the prescribed manner and form to employees at their workplace, and served at the head office of the relevant trade union, of each court proceeding, decision, meeting or other relevant event concerning the business rescue proceedings [and such notice must be given to employees at their workplace and served at the head office of the relevant trade union];” and 10 15

(b) by the substitution in subsection (3) for paragraph (f) of the following paragraph:

“(f) vote with creditors on a motion to approve a proposed business plan, to the extent that the employee is a creditor, as contemplated in subsection [(1)](2); and” 20

Amendment of section 151 of Act 71 of 2008

95. Section 151 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) [The] Within 10 business days after publishing a business rescue plan in terms of section 150, the practitioner must convene and preside over a meeting of creditors and any other holders of a voting interest, called for the purpose of considering the [proposed rescue] plan [within 10 business days after the publication of that plan in terms of section 150].” 25

Amendment of section 152 of Act 71 of 2008

96. Section 152 of the principal Act is hereby amended— 30

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) introduce the proposed business plan for consideration by the creditors [,] and, if applicable, by the shareholders;” and

(b) by the substitution in subsection (6) for paragraph (b) of the following subsection: 35

“(b) if the business rescue plan was approved by the shareholders of the company, as contemplated in subsection (3)(c), the practitioner may amend the company’s Memorandum of Incorporation to authorise, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorised, but are contemplated to be issued in terms of the business rescue plan, despite any provision of section 16, 36 or 37 to the contrary.” 40

Amendment of section 153 of Act 71 of 2008

97. Section 153 of the principal Act is hereby amended by the insertion after subsection (6) of the following subsection: 45

“(7) On an application contemplated in subsection (1)(a)(ii), or (1)(b)(i)(bb), a court may order that the vote on a business rescue plan be set aside if the court is satisfied that it is reasonable and just to do so, having regard to—

(a) the interests represented by the person or persons who voted against the proposed business rescue plan; 50

Wysiging van artikel 143 van Wet 71 van 2008

93. Artikel 143 van die Hoofwet word hierby gewysig deur in subartikel (4) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) [dat] die vergoeding waarvoor in die ooreenkoms voorsiening gemaak is, met inagneming van die finansiële omstandighede van die maatskappy, [uiters] onredelik is.”. 5

Wysiging van artikel 144 van Wet 71 van 2008

94. Artikel 144 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (3) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) ’n kennisgewing, wat op die voorgeskrewe wyse en vorm by hul werkplek aan die werknemers gegee moet word, en by die hoofkantoor van die betrokke vakbond beteken moet word, van elke hofverrigting, besluit, vergadering of ander relevante gebeurtenis rakende die ondernemingreddingsverrigtinge te ontvang, en sodanige kennisgewing moet by hulle werkplek aan werknemers gegee word en by die hoofkantoor van die betrokke vakbond beteken word];” en 10 15

(b) deur in subartikel (3) paragraaf (f) deur die volgende paragraaf te vervang:

“(f) tesame met skuldeisers te stem oor ’n mosie om ’n voorgestelde sakeplan goed te keur, in die mate wat die werknemer ’n skuldeiser is, soos beoog in subartikel [(1)](2); en”. 20

Wysiging van artikel 151 van Wet 71 van 2008

95. Artikel 151 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die praktisyn moet binne 10 sakedae na die publikasie van ’n ondernemingreddingsplan ingevolge artikel 150, ’n vergadering van krediteure en enige ander houers van ’n stemdraende belang belê en daarop voorsit, welke vergadering byeengeroep word ten behoeve van die oorweging van die [voorgestelde] reddingsplan[, binne 10 sakedae na die publikasie van daardie plan kragtens artikel 150].” 25 30

Wysiging van artikel 152 van Wet 71 van 2008

96. Artikel 152 van die Hoofwet word hierby gewysig—

(a) deur in die Engelse teks in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) introduce the proposed business plan for consideration by the creditors [,] and, if applicable, by the shareholders;” en 35

(b) deur in die Engelse teks in subartikel (6) paragraaf (b) deur die volgende subartikel te vervang:

“(b) if the business rescue plan was approved by the shareholders of the company, as contemplated in subsection (3)(c), the practitioner may amend the company’s Memorandum of Incorporation to authorise, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorised, but are contemplated to be issued in terms of the business rescue plan, despite any provision of section 16, 36 or 37 to the contrary.”. 40 45

Wysiging van artikel 153 van Wet 71 van 2008

97. Artikel 153 van die Hoofwet word hierby gewysig deur die volgende subartikel na subartikel (6) in te voeg:

“(7) In geval van ’n aansoek beoog in subartikel (1)(a)(ii), of (1)(b)(i)(bb), kan ’n hof beveil dat die stemming oor ’n ondernemingreddingsplan tersyde gestel word indien die hof oortuig is dat dit redelik en regverdig is om dit te doen, met inagneming van— 50

(a) die belange verteenwoordig deur die persoon of persone wat teen die voorgestelde ondernemingreddingsplan gestem het;

- (b) the provision, if any, made in the proposed business rescue plan with respect to the interests of that person or those persons; and
- (c) a fair and reasonable estimate of the return to that person, or those persons, if the company were to be liquidated.”

Amendment of section 159 of Act 71 of 2008

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98. Section 159 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) that Act applies to a disclosure contemplated in this section by an employee, as defined in that Act, irrespective of whether that Act would otherwise apply to that disclosure.”;
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
(a) it is made in good faith to the Commission, the Companies Tribunal, the Panel, a regulatory authority, an exchange, a legal adviser, a director, prescribed officer, company secretary, auditor, a person performing the function of internal audit, board or committee of the company concerned; and”;
- (c) by the substitution in subsection (3)(b) for the words preceding paragraph (i) of the following words:
“the person making the disclosure reasonably believed at the time of the disclosure that the information showed or tended to show that a company or external company, or a director or prescribed officer of a company acting in that capacity, **[has] had—**”;
- (d) by the substitution in subsection (3)(b) for subparagraphs (ii) and (iii) of the following subparagraphs:
“(ii) failed or **[is] was** failing to comply with any statutory obligation to which the company **[is] was** subject;
(iii) engaged in conduct that **[has] had** endangered, or **[is] was** likely to endanger, the health or safety of any individual, or had harmed or was likely to harm **[damage]** the environment;”;
- (e) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
“(b) directly or indirectly makes an express or implied threat, whether conditional or unconditional, to cause any detriment to the first person or to another person, and—
(i) intends the first person to fear that the threat will be carried out; or
(ii) is reckless as to causing the first person to fear that the threat will be carried out, **[irrespective of whether the first person actually feared that the threat would be carried out.]** irrespective of whether the first person actually fears or feared that the threat will or would be carried out.”;
- (f) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
“A public company **[and] or** a state-owned company must directly or indirectly—”.

Amendment of section 160 of Act 71 of 2008

99. Section 160 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 50
“(1) A person to whom a notice is delivered in terms of **[section 12(3) or section 14(3),]** this Act with respect to an application for reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company’s name, or any other person with an interest in the name of a company, may apply to the Companies Tribunal in the prescribed manner and form for a determination whether the name, or the reservation, registration or use of the name, or the transfer of any such 55

- (b) die voorsiening, indien enige, wat in die voorgestelde onderneming-reddingsplan gemaak is vir die belange van daardie persoon of persone; en
- (c) 'n regverdigde en redelike skatting van die opbrengs vir daardie persoon of persone, indien die maatskappy gelikwideer sou word.”

Wysiging van artikel 159 van Wet 71 van 2008

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98. Artikel 159 van die Hoofwet word hierby gewysig—

- (a) deur in die Engelse teks in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:
- “(b) that Act applies to a disclosure contemplated in this section by an employee, as defined in that Act, irrespective of whether that Act would otherwise apply to that disclosure.”;
- (b) deur in subartikel (3) paragraaf (a) deur die volgende paragraaf te vervang:
- “(a) dit te goeder trou aan die Kommissie, die Maatskappytribunaal, die Paneel, 'n regulerende gesag, beurs, regsadviseur, direkteur, voorgeskrewe beampte, maatskappysekretaris, ouditeur, 'n persoon wat die funksie van interne ouditeur verrig, direksie of komitee van die betrokke maatskappy gemaak is; en
- (c) deur in subartikel (3)(b) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
- “die persoon wat die openbaarmaking doen ten tyde van die openbaarmaking redelikerwys oortuig was dat die inligting getoon het of geneig het om te toon dat 'n maatskappy of eksterne maatskappy, of 'n direkteur of voorgeskrewe beampte van 'n maatskappy wat in daardie hoedanigheid [optree] opgetree het—”;
- (d) deur in subartikel (3)(b) subparagraawe (ii) en (iii) deur die volgende subparagraawe te vervang:
- “(ii) versuim het of versuim om 'n regsverpligting waaraan die maatskappy onderhewig [is] was, na te kom;
- (iii) sodanig opgetree het dat dit enige individu se gesondheid of veiligheid in gevaar gestel het of waarskynlik in gevaar [gaan stel] gestel het, of die omgewing [beskadig] seergemaak het of waarskynlik [sal beskadig] sou seermaak;”;
- (e) deur in subartikel (5) paragraaf (b) deur die volgende paragraaf te vervang:
- “(b) regstreeks of onregstreeks 'n uitdruklike of geïmpliseerde dreigement maak, hetsy voorwaardelik of onvoorwaardelik, om enige benadeling van die eerste persoon of 'n ander persoon te veroorsaak, en—
- (i) die oogmerk het dat die eerste persoon moet vrees dat die dreigement uitgevoer sal word; of
- (ii) onverskillig is daaroor dat veroorsaak kan word dat die eerste persoon vrees dat die dreigement uitgevoer sal word, [ongeag of die eerste persoon werklik gevrees het dat die dreigement uitgevoer sal word.]
- ongeag of die eerste persoon werklik gevrees het dat die dreigement uitgevoer sal word.”;
- (f) deur in subartikel (7) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
- “'n Openbare maatskappy of 'n maatskappy in staatsbesit moet regstreeks of onregstreeks—”.

Wysiging van artikel 160 van Wet 71 van 2008

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99. Artikel 160 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) 'n Persoon aan wie 'n kennisgewing kragtens [artikel 12(3) of artikel 14(3)] hierdie Wet gelewer word ten opsigte van 'n aansoek om die reservering van 'n naam, registrasie van 'n defensiewe naam, aansoek om die reservering van 'n naam of die registrasie van 'n defensiewe naam oor te dra, of die registrasie van 'n maatskappy se naam, of enige ander persoon met 'n belang in die naam van 'n maatskappy, kan op die voorgeskrewe wyse en vorm by die