



COMPANIES AMENDMENT ACTS, 2024 KEY AMENDMENTS TO THE COMPANIES ACT

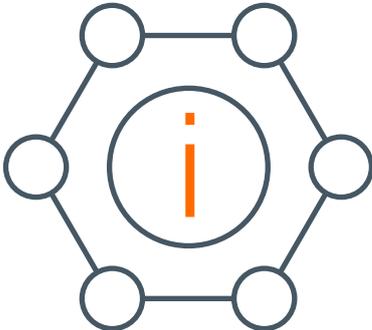
Specific sections of the [Companies Amendment Act, 2024](#) and the entire [Companies Second Amendment Act, 2024](#) (collectively, Companies Amendment Acts, 2024) came into effect on 27 December 2024. The Companies Amendment Acts, 2024 introduce several changes to the Companies Act, 2008 (Companies Act).

Several amendments in the Companies Amendment Acts, 2024 that have not come into effect require the manner and form of documents, fees, or other items to be prescribed or determinations to be published, including through amended Companies Regulations, to implement the relevant amendment. However, updates to the Companies Regulations have not yet been published.

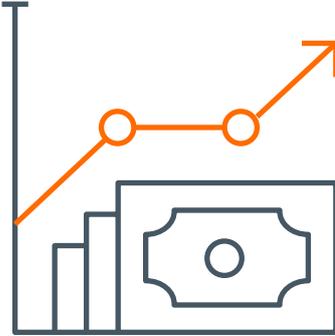
Key amendments that are not yet in effect include:

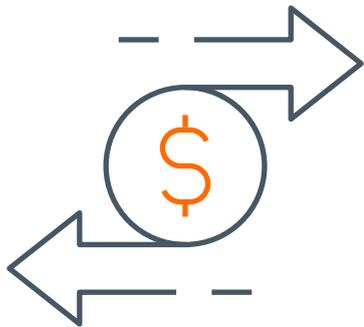
- (i) the new remuneration provisions requiring (among other things), shareholder approval of public and state-owned companies' remuneration policies and remuneration reports;
- (ii) the provisions enabling third parties to access certain company records, including annual financial statements, directly from certain categories of companies;
- (iii) the amendments altering how a private company will be considered a "regulated company" for purposes of the application of the takeover provisions; and
- (iv) the provisions empowering the court to validate invalid creations, allotments or issues of shares.

Below we highlight the key corporate-related amendments to the Companies Act, 2024. Amendments highlighted in green are in effect and amendments highlighted in red are not in effect at the time of writing. Where relevant, practical actions that companies should take to comply with the new amendments or to address the impact of the new amendments, once effective, are included.

KEY AMENDMENTS STATUS	SUMMARY OF KEY AMENDMENTS	PRACTICAL ACTION FOR COMPANIES
 <p>THE EFFECTIVE DATE OF MOI AMENDMENTS</p> <p>Section 16(9)</p> <p>IN EFFECT ✓</p>	<p>Amendments to the MOI take effect either 10 business days after receipt of the Notice of Amendment by the Companies and Intellectual Property Commission (CIPC) (unless endorsed sooner or rejected by the CIPC) or such later date specified in the Notice of Amendment.</p>	<p>Consider the timing of transactions involving amendments to an MOI. Build in requisite time in transactional agreements where amendments to the MOI are required.</p>
 <p>THIRD-PARTY ACCESS TO INFORMATION</p> <p>Section 26</p> <p>NOT IN EFFECT ✗</p>	<ul style="list-style-type: none"> • Third parties have the right to access directly from a company, the company's MOI, rules, the record of directors contemplated in section 24(3)(b), the annual financial statements (AFS) and the register of disclosure of beneficial interests (where this is required). This is in addition to the securities and directors' registers, to which they already have access. • Third parties cannot have access to the AFS of private, personal liability and non-profit companies with a public interest score below a certain threshold (less than 100 for internally prepared AFS and less than 350 for independently prepared AFS). 	<p>Have systems in place to comply with obligations to disclose requested information and to guarantee that only lawfully requested information is disclosed as per the Companies Act.</p> 
 <p>AFS AND THE FILING OF AFS WITH ANNUAL RETURNS</p> <p>Sections 30(4) and 33(1)</p> <p>NOT IN EFFECT ✗</p>	<ul style="list-style-type: none"> • Each director and prescribed officer must be named in the AFS remuneration details. • Public, state-owned or other profit or non-profit companies whose public interest score exceeds the specified thresholds (100/350) must include a copy of their latest AFS (approved by the board) in their annual return. 	<p>Companies that have not yet named their directors or prescribed officers in their AFS must correct this.</p>

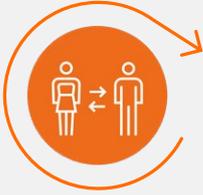
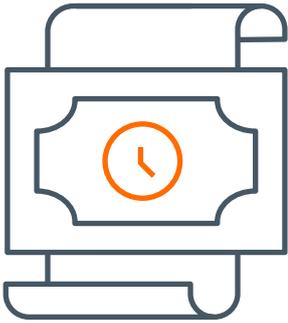
KEY AMENDMENTS STATUS	SUMMARY OF KEY AMENDMENTS	PRACTICAL ACTION FOR COMPANIES
<div data-bbox="260 365 464 555" data-label="Image"> </div> <p data-bbox="185 584 528 678">DIRECTORS AND PRESCRIBED OFFICERS' REMUNERATION</p> <p data-bbox="196 712 517 741">Sections 30A and 30B</p> <p data-bbox="228 775 485 808">NOT IN EFFECT ❌</p>	<ul data-bbox="616 365 975 1883" style="list-style-type: none"> • All public and state-owned companies must present a remuneration policy (valid for three years) for shareholder approval at the AGM by ordinary resolution and if not approved, the policy must be presented at the next AGM or shareholders' meeting called for that purpose. • Any material amendments to the policy can only be implemented after approval by ordinary resolution at a special shareholders' meeting or the AGM. • All public and state-owned companies must present a remuneration report for shareholder approval at the AGM by ordinary resolution. The implementation report (forming part of the remuneration report) must include various details, including pay gap disclosures. • If the remuneration report is not approved at the AGM, the remuneration committee must at the next AGM, explain how shareholder concerns have been addressed and non-executive directors on the remuneration committee (serving 12 months or more) must stand for re-election as remuneration committee members. • If the remuneration report is again not approved, there are further consequences, including in-scope non-executive directors becoming ineligible to serve on the committee for a period of two years. They can remain as directors on the board, provided they successfully stand for re-election. <p data-bbox="616 1921 967 2045">(For the detail of the consequences of non-approval of the remuneration report, see sections 30B(4),(5) and (6).)</p>	<ul data-bbox="1054 365 1414 1088" style="list-style-type: none"> • Start preparing early for pay gap disclosure requirements and partake in active shareholder engagement ahead of the AGM. • Review the structure of remuneration policies and remuneration reports to cater for the new requirements, particularly around remuneration disclosures in remuneration reports. • Update AGM notices to reflect the presentation and approval of the remuneration policy and remuneration report as ordinary resolutions and re-election/conditional re-election of directors as needed. • Consider director rotation provisions and nomination committee terms. <div data-bbox="1078 1133 1390 1518" data-label="Image"> </div>

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 <p>COURTS CAN RECTIFY INVALID SHARE CREATIONS AND ISSUES</p> <p>Section 38A</p> <p>NOT IN EFFECT ❌</p>	<p>If a relevant court receives an application made by the company or a party who holds an interest in the company, the court may validate an invalid creation, allotment or issue of shares, should the court find it is just and equitable to do so.</p>	
 <p>PRESENTATION OF REMUNERATION REPORT AT PUBLIC COMPANY'S AGM</p> <p>Section 61(8)(a)(iv)</p> <p>IN EFFECT ✅</p>	<p>The presentation of a remuneration report must form part of the minimum business to be transacted at a public company's AGM.</p> <p><i>Notwithstanding that this amendment is now effective, the obligations on public and state-owned companies to present the remuneration report and remuneration policy for shareholder approval and the consequences of non-approval of the remuneration report (sections 30A and 30B) are not yet effective.</i></p>	<p>Consider the revised requirements and how to approach such, given the substantive provisions to present the remuneration report for shareholder approval are not yet effective.</p>

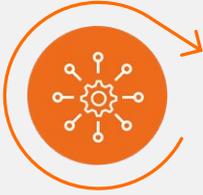
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 <p>INTRA-GROUP FINANCIAL ASSISTANCE EXEMPTION</p> <p>Section 45(2A)</p> <p>IN EFFECT ✓</p>	<p>The financial assistance requirements in section 45 of the Companies Act do not apply to a company providing financial assistance to, or for the benefit of its subsidiaries, as defined in the Companies Act. This exemption does not apply to a beneficiary that otherwise meets the definition of a subsidiary but is a foreign entity.</p>	<p>Review MOIs to assess whether there are provisions that allow for the passing of special resolutions where a company provides financial assistance to its subsidiaries. If these provisions were included to reflect the position of the Companies Act, they should be removed. If, however, the provisions are a commercial requirement, they should be retained. The provisions should not be removed where they relate to financial assistance to a foreign entity which would otherwise meet the definition of a subsidiary (in which case, the exemption does not apply).</p>
 <p>REQUIREMENTS FOR SHARE REPURCHASES</p> <p>Section 48(8)</p> <p>IN EFFECT ✓</p>	<ul style="list-style-type: none"> • The requirements of sections 114 and 115 of the Companies Act no longer apply to share repurchases of over 5%. • Shareholders must pass a special resolution for all share repurchases unless the repurchased shares are acquired through: (i) a pro-rata offer made to all shareholders or a particular class of shareholders; or (ii) transactions effected on a recognised stock exchange (being a licensed exchange in terms of the Financial Markets Act, 2012) on which the shares are traded. 	<p>Review MOIs to assess whether there are provisions reflecting compliance with the previously stated provision. If so, these provisions should be removed or updated to refer to the new position unless there is a commercial reason for the provision.</p> 

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<div data-bbox="260 365 464 560" data-label="Image"> </div> <p data-bbox="220 584 494 651">SOCIAL & ETHICS COMMITTEE (SEC)</p> <p data-bbox="183 680 531 779">Various sub-sections of section 72 and sections 61(8)(a) and (c)</p> <p data-bbox="263 808 451 842">IN EFFECT ✓</p>	<ul data-bbox="608 365 978 1630" style="list-style-type: none"> • If a company has a formal mechanism within its structures which performs the functions of an SEC, it can apply for an exemption from the requirement to have an SEC, irrespective of whether there is a legislative requirement to have the formal mechanism. The company must publish an intention to lodge an exemption application in the prescribed manner. • For public and state-owned companies, the majority of SEC members must be non-executive directors who have not been involved in the day-to-day management within the previous three financial years. • Public and state-owned companies must elect the SEC every year at the AGM. The appointment of the SEC and presentation of the SEC report must form part of the minimum business to be transacted at the AGM. <i>Notwithstanding that the amendment providing for the SEC report to form part of the minimum transacted business at the AGM is now effective, the obligations on the SEC to prepare and present to shareholders the SEC report in the prescribed manner (section 72(12)) is not yet effective.</i> • For other companies, the board must appoint the SEC annually and present its SEC report annually at a shareholders' meeting or by written resolution. <p data-bbox="620 1671 981 2047"><i>*The amendments relating to the SEC are less extensive than they appear given the existing provisions in the Companies Regulations. Until deleted or updated, the provisions in the Companies Regulations remain in force and should be read together with the new provisions. However, if there are any conflicts or inconsistencies, the new provisions in the Companies Act will prevail.</i></p>	<ul data-bbox="1050 365 1417 707" style="list-style-type: none"> • Consider the revised composition requirements of the SEC and update template notices to cater for the election of the SEC. • Review SEC policies, terms of reference and charters to align with the new requirements where needed. • Review and update MOIs to the extent SEC provisions are dealt with. <div data-bbox="1059 757 1417 1111" data-label="Image"> </div>

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 <p>SOCIAL & ETHICS COMMITTEE (SEC)</p> <p>Sections 72(6B) and 72(12)</p> <p>NOT IN EFFECT ❌</p>	<ul style="list-style-type: none"> • The Minister may prescribe minimum qualifications, skills and experience requirements for SEC members. • The SEC must prepare the SEC report in the prescribed manner and form, describing how the committee performed its functions. • The SEC of a public company or state-owned company must present its SEC report at the AGM. The board of other companies required to have an SEC must present its SEC report annually at a shareholders' meeting or with written resolution. 	<ul style="list-style-type: none"> • Review and update the structure and content of the SEC reports to align with the prescribed manner and form (once prescribed). • Review and update template notices to cater for the presentation of the SEC report.
 <p>APPOINTMENT OF AUDITORS/AUDITOR DISQUALIFICATION PERIODS</p> <p>Section 90</p> <p>IN EFFECT ✅</p>	<ul style="list-style-type: none"> • Auditors of private companies required to be audited in terms of the Companies Act or its MOI can be appointed at a shareholders' meeting rather than the AGM (as previously indicated). • The disqualification period for auditor appointments has been shortened from five to two financial years under section 90(2)(b)(v). 	<p>Review MOIs to assess whether there are provisions reflecting compliance with the previously stated provision and if so, these provisions should be removed or updated to refer to the new position.</p> 

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 <p>EMPLOYEE SHARE SCHEMES</p> <p>Section 95(1)(c)</p> <p>IN EFFECT ✓</p>	<p>The definition of "employee share scheme" in section 95(1)(c) now includes share purchase (in addition to share issuance and share option grants).</p>	<p>If companies were previously unable to register their schemes because it was a purchase scheme, they should revisit the scheme and consider whether to register.</p> 
 <p>APPLICATION OF THE TAKEOVER PROVISIONS IN RESPECT OF PRIVATE COMPANIES</p> <p>Section 118(1)(c)(i)</p> <p>NOT IN EFFECT ✗</p>	<p>The takeover provisions in the Companies Act and Companies Regulations apply to affected transactions or offers involving a private company or its securities if the private company: (i) has ten or more shareholders with a direct or indirect shareholding in the company; and (ii) meets or exceeds the financial threshold of annual turnover or asset value to be determined by the Minister (in consultation with the Takeover Regulation Panel). In this case, a private company will be considered a regulated company for purposes of applying the takeover provisions. The TRP may exempt particular transactions affecting an in-scope private company.</p>	<ul style="list-style-type: none"> • Private companies involved in existing or future affected transactions should assess if they will be subject to takeover provisions. • In-scope private companies planning any affected transactions should prepare for the potential impact of complying with takeover-related obligations (such as timing and costs) or prepare to request an exemption from the TRP where appropriate. • In-scope private companies involved in pending transactions at the time the amendments take effect should assess the impact of the takeover provisions on their transaction and whether a TRP exemption is needed.

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 <p>DIRECTOR LIABILITY: PROCEEDINGS TO RECOVER LOSS/ RELAXATION OF TIME BARS</p> <p>Section 77(7)</p> <p>IN EFFECT ✓</p>	<p>The Prescription Act, 1969 does not apply to proceedings to recover loss under section 77(7). A court may, on good cause shown, extend the period (three years), regardless of whether the period has expired. This amendment applies retrospectively.</p>	
 <p>DIRECTOR DELINQUENCY AND PROBATION APPLICATIONS/ RELAXATION OF TIME BARS</p> <p>Sections 162(2) and 162(3)</p> <p>IN EFFECT ✓</p>	<p>The application time to declare a person a delinquent director or under probation has been extended to 60 months after that person ceases to be a director. A court may, on good cause shown, further extend such period. This amendment applies retrospectively.</p>	
 <p>DEFINITION OF SECURITIES</p> <p>Section 1</p> <p>IN EFFECT ✓</p>	<p>The definition of securities has been limited to shares and debentures (ie "or other instruments" has been deleted).</p>	

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 <p>OTHER</p> <p>Sections 40, 135, 160, 167, 194 and 204</p> <p>IN EFFECT ✓</p>	<ul style="list-style-type: none"> • Shares issued for future consideration must be transferred to an independent third party, referred to as a "stakeholder" rather than a "third party" (as previously referred to). These shares must be dealt with in accordance with a "stakeholder agreement" instead of the previously referred to "held in trust" and "trust agreement." • Business rescue provisions have been revised concerning aspects of post-commencement financing. • Various administrative amendments, including amendments relating to administrative orders concerning company name reservation and registration disputes; the provisions dealing with consent orders in respect of alternative dispute resolution and the composition of the Companies Tribunal. • The Financial Reporting Standards Council is empowered to issue financial reporting pronouncements relating to international reporting standards that require adaptation for local circumstances. 	<p>Corporate agreements with alternative dispute resolution mechanisms such as referring disputes to the Companies Tribunal, should be reviewed to assess their continued suitability given the amendments.</p> 
 <p>OTHER</p> <p>Sections 25, 166 and 195</p> <p>NOT IN EFFECT ✗</p>	<ul style="list-style-type: none"> • CIPC must publish the notice filed by a company regarding the location of its records in the prescribed manner. • Amendments relating to alternative dispute resolution processes and the powers of the Companies Tribunal to conciliate, arbitrate and adjudicate administrative matters. 	<p>Corporate agreements with alternative dispute resolution mechanisms such as referring disputes to the Companies Tribunal, should be reviewed to assess their continued suitability given the amendments.</p>

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About Webber Wentzel

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