

## COMPANY SECRETARIAL DASHBOARD

	<b>Implementation item</b>	<b>Comments</b>	<b>Status</b>
1	Adopt a new Memorandum of Incorporation	All companies which existed before 1 May 2011 are required to lodge an amendment to their Memorandum and Articles of Association by no later than 1 May 2013 so as to make it consistent with the new Act (now referred to as the Memorandum of Incorporation or MOI)	
2	Consider the role of existing shareholder agreements and amend it to ensure that it is consistent with the new Act	South African Corporate Registrations (Pty) Ltd need to be informed whether there is a shareholders agreement in existence	
3	Change name to reflect new rules on name endings, if required		
4	Identify prescribed officers	This should be noted at the next board meeting	
5	Check that all directors, prescribed officers, committee members, company secretaries and auditors are eligible and not disqualified		
6	Educate directors, prescribed officer and other relevant staff as to their responsibilities	South African Corporate Registrations (Pty) Ltd is able to provide Companies Act training and guidance to Directors of their responsibilities under the new Act	
7	Consider whether adequate indemnity and/or insurance has been provided for directors and public officers	<p>Section 78(7) of the Companies Act allows for a Company to purchase Directors' &amp; Officers' (D&amp;O) Liability Insurance which is a contract of insurance designed to protect past, present and future D&amp;O's by indemnifying them for loss resulting from a wrongful act, including errors or omissions for which the D&amp;O is alleged to have committed in their capacity as a director or officer. The cover includes reimbursement for civil damages, defence costs, judgments, settlements and reimbursement to the D&amp;O's company/employer for any indemnification to the director or officer for any such costs.</p> <p>South African Corporate Registrations (Pty) Ltd has entered into a sub-agency agreement with Risk Benefit Solutions (Pty) Ltd to provide our clients with Director and Officer</p>	

		liability Insurance at very competitive rates. We believe that the nominal cost of the insurance premium is negligible compared to the risks associated with a claim made by shareholders, employees or creditors under the new Act.	
8	Establish an audit committee and social and ethics committee with the correct membership	Dependent on the public interest score of the Company	
9	Determine the extent of the Company's responsibility to have its financial statements audited and appoint an auditor where necessary	The Company is obliged to have its financial statements audited in terms of Section 30(2) of the Companies Act until such time that it amends its Articles of Association and that it does not meet the Audit thresholds	
10	Endorse share certificates where the transfer of shares is restricted	The shareholders of the Company are South African residents and the share certificates of the Company are not required to be endorsed for South African Reserve Bank Exchange Control purposes	
11	Optional conversion of par value shares to shares having no par value	The Company has sufficient authorized share capital and therefore will not need to convert the share capital	
12	Directors need to know their duties, conduct and liabilities as a Director.	All Directors should attend Companies Act training and have unlimited access to a Company Secretary should they require clarity on a certain action	
13	Ensure the Company complies with the provisions pertaining to shareholder and board meetings and resolutions		
14	Ensure that measures are instituted to keep the required documents and registers are maintained		

**A SUMMARY OF THE ALTERABLE PROVISIONS CONTAINED IN THE COMPANIES ACT, ACT 71 OF 2008, AS AMENDED**

NO	SECTION IN ACT	SUBJECT MATTER	RECOMMENDATION	
1	Section 4(2)(c)	When applying the solvency and liquidity test in respect of a distribution as defined, all amounts due by a company to satisfy the preferential rights, upon liquidation of the company at that stage, of shareholders whose preferential rights upon liquidation are superior to the preferential rights upon liquidation of those having received. No change recommended, except perhaps for companies with large number of shareholders.	No alteration recommended.	

		the distribution, are to be disregarded, unless the MOI provides otherwise.		
2	Section 15(3)	The board of a company may make, amend or repeal rules relating to the governance of the company in respect of matters not addressed in the Act or the company's MOI, unless the MOI provides differently.	Particularly with medium to larger companies the exercise of this right may impede shareholders rights, and for this reason this power should perhaps then be curbed.	
3	Section 16(2)	Section 16(1)(c) provides that a company's MOI may be amended by special resolution proposed by either the board or shareholders entitled to exercise at least 10% of the voting rights. Section 16(2) provides that an MOI may set different requirements as to how such special resolution may be proposed.	No change recommended, except perhaps for companies with large number of shareholders.	
4	Section 19(1)(b)(ii)	A company has all the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, or to the extent that the company's MOI provides otherwise.	No change required, except in the case of SPV's	
5	Section 26(3)	Section 26(1) grants certain rights to information and access to a company's records to its shareholders, and Section 26(2) grants certain limited rights to non-shareholders. Section 26(3) provides that the company's MOI may establish additional information rights, over and above those in Sections 26(1) and (2).	No change recommended.	
6	Section 32(b)(ii)(aa)	Even if a company's annual financial statements need not be audited on a compulsory basis, as required by the Act, a company's MOI may make provision for voluntary auditing.	No change recommended.	
7	Section 34(2)	Chapter 3 of the Act, dealing with enhanced accountability and transparency, can voluntarily be made applicable to a company to which it would otherwise not apply, if its MOI so provides.	No change recommended.	
8	Section 36(2)(b)	The authorisation and classification of shares, the numbers of authorised shares of each class, and the preferences, rights, limitations and other terms associated with each class of shares, as set out in a company's MOI, may be changed by the board of that company, unless the company's MOI provides differently.	Recommended that this power be curbed, particularly in regard to medium to large companies, for the protection of shareholders.	
9	Section 36(3)(a)	A company's board may increase or decrease the number of authorised shares of any class of shares of that company, except to the extent that the MOI provides differently.	Recommended that this power be curbed, particularly in regard to medium to large companies, for the protection of shareholders.	

10	Section 37(5)	A company's MOI may, subject to any other law, establish, for any particular class of shares, preferences, rights, limitations or other terms, as further provided for in Sections 37(5)(a) to and including (d).	Only necessary to consider in regard to larger companies.	
11	Section 37(6)	A company's MOI may provide for preferences, rights, limitations or other terms of any class of shares of that company to vary in response to any objectively ascertainable external fact or facts.	Only necessary to consider in regard to larger companies.	
12	Section 39(1)(a)	Section 39, dealing with subscription of shares, does not apply to a public company or SOC, accept to the extent that the company's MOI provides otherwise.	No change recommended.	
13	Section 39(3)	Section 39(2) creates a right of first preference to existing shareholders to be offered and to subscribe for new shares in the company pro-rata to their existing shareholding. Section 39(3) provides that a private or personal liability company's MOI may limit, negate, restrict or place conditions upon this right.	No change recommended.	
14	Section 39(4)	Except to the extent that a company's MOI provides differently, a shareholder may, in exercising the right referred to immediately above, subscribe for fewer shares than his pro-rata entitlement, and shares not subscribed for may be offered to other persons to the extent permitted in the MOI.	No change recommended for small and medium sized company.	
15	Section 43(2)(a)	The board of a company may authorise the company to issue a secured or unsecured debt instrument at any time, except to the extent provided otherwise by the company's MOI.	Only required for minority shareholder protection.	
16	Section 43(3)	A debt instrument issued by the company may grant certain special privileges, further referred to in Section 43(3), except to the extent that the MOI provides differently.	Not necessary for smaller and medium sized companies.	
17	Section 44(2)	The board may authorise the company to provide financial assistance for the subscription of its own securities, except to the extent that the company's MOI provides differently.	Not really necessary to curb this power, because of strong duty on board created by Section 44(3). Consider however for minority protection.	
18	Section 45(2)	The board may authorise the company to provide financial assistance to: <ul style="list-style-type: none"> <li>• a director or prescribed officer of the company or of a related or inter-related company; or</li> <li>• a related or inter-related company or corporation; or a member of a related or inter-related corporation; or to a person related to any such company, corporation, director, prescribed officer or member, except to the extent that a company's MOI provides</li> </ul>	Curbing this power should be considered, particularly in regard to larger companies and for the sake of minority protection of shareholders.	

		differently.		
19	Section 47(1)	The board of a company may approve the issuing of any authorised shares, as capitalisation shares, on a pro-rata basis to the shareholders of one or more classes of shares under certain conditions, except to the extent that the company's MOI limits this power.	Curbing this power should be considered, particularly in regard to larger companies and for the sake of minority protection of shareholders.	
20	Section 56(1)	Except to the extent that a company's MOI provides otherwise, the company's issued securities may be held by, and registered in the name of, one person for the beneficial interest of another person.	No curbing recommended.	
21	Section 57(2)(a)	In a profit company having only one shareholder, except an SOC, that shareholder may exercise all voting rights in regard to that company without any notice or compliance with internal formalities (i.e. no meetings required), unless the company's MOI provides differently.	No change required.	
22	Section 57(3)(a)	If a profit company, other than a SOC, has only one director, that director may exercise any power and perform all functions of the board, without any notice or compliance with internal formalities (i.e. no meetings required) except if the MOI provides differently.	No change required.	
23	Section 57(4)(a)	Other than with SOC's, if every shareholder is also a director, separate and formal shareholders meetings are not necessary and the board meetings can effectively also serve as shareholder meetings, unless the MOI provides differently.	No change required, because this provision simplifies the corporate governance of small entities.	
24	Section 58(3)	Section 58 deals with a shareholder's right to be represented by proxy, and Section 58(3) states that: <ul style="list-style-type: none"> <li>• a shareholder may appoint two or more persons concurrently as proxies;</li> <li>• a proxy may delegate his authority to another person; and</li> <li>• a copy of the document appointing a proxy must be delivered to the company before the proxy exercises any rights pursuant thereto;</li> </ul> except to the extent that the MOI provides differently.	No change recommended.	
25	Section 58(7)	If a proxy is appointed without direction (i.e. specific instructions as to how to vote) he may exercise or abstain from exercising any voting right of the shareholder that appointed him according to his own discretion, unless the MOI provides differently.	No change recommended.	

26	Section 59(3)	Section 59 stipulates that the board of a company may set a so-called record date for certain purposes. Section 59(3) provides that if the board does not determine a record date for any action or event, the record date is as stipulated in Sections 59(3)(a) or 59(3)(b), unless the company's MOI provides otherwise.	No change recommended.	
27	Section 61(3)	The board of a company, or any other person specified in the company's MOI, must call a shareholders meeting under certain circumstances.	No change recommended.	
28	Section 61(4)	The board of a company must <i>inter alia</i> call a shareholders meeting if at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at a shareholders meeting, requires such meeting. The threshold of 10% may be reduced (but not increased) in the MOI.	No change recommended, except perhaps for companies with large number of shareholders.	
29	Section 61(9)	Unless the MOI provides differently, the board may determine the location for any shareholders meeting and it may even be held in a foreign country.	It is difficult to conceive that a board will maliciously call a meeting in a foreign country to the detriment of shareholders, but the safest would be to curb this power by requiring that all meetings should at least be held in South Africa.	
30	Section 62(2)	Section 62(1) provides that notice of shareholder meetings must be given to shareholders at least 15 business days prior to the meeting, in the case of public companies and NPC's having voting members, and ten business days in all other cases. Section 62(2) provides that these periods may be made longer or shorter in a company's MOI.	No change recommended.	
31	Section 63(2)	Unless prohibited in a company's MOI, a shareholders meeting may be conducted entirely by electronic communication or shareholders or their proxies may participate by electronic communication in such meeting, subject to certain conditions.	No change recommended.	
32	Section 64(2)	The minimum quorum requirement for a shareholders meeting is 25% of the voting rights in the company, but this percentage may be increased or reduced in a company's MOI.	No change recommended, unless necessary or advisable for additional shareholder protection.	
33	Section 64(6)	Section 64(4) provides that, if the required quorum at a shareholders meeting is not present within one hour after the appointed time for the meeting to begin, the meeting is then to be postponed for one week. Section 64(6) provides that the period of one hour and one week respectively may be altered (i.e. shortened or lengthened) in a company's MOI.	No change recommended.	

34	Section 64(9)	After a quorum has been established at a meeting or for a matter to be considered at a meeting, the meeting may continue or the matter may be considered, so long as at least one shareholder with voting rights entitled to be exercised at the meeting, or on that matter, remains present at the meeting, unless the company's MOI provides otherwise.	No change recommended, unless necessary or advisable for additional shareholder protection.	
35	Section 64(13)	Section 64(12) makes provision for maximum adjournment periods of shareholders meetings, and Section 64(13) provides that a company's MOI may provide for different maximum periods or even for unlimited adjournments.	This is a matter of choice for the company concerned, but for the average company no change is recommended.	
36	Section 65(8)	The ordinary threshold for the adoption of ordinary shareholders resolutions is 50% plus one. This threshold may be increased in a company's MOI, except as regards removal of directors. Different thresholds may be stipulated in regards to different matters. (As is pointed out below, the required threshold for the adoption of special resolutions may also be altered, but the margin between the highest threshold for an ordinary resolutions and the lowest threshold for a special resolution has to be at least 10%.)	This is a matter of choice for the company concerned, but for the average company no change is recommended. Individual shareholders may however, for the sake of minority protection, require higher thresholds.	
37	Section 65(10)	The ordinary threshold for the adoption of special shareholders resolutions is 75%. This threshold may be increased in a company's MOI. Different thresholds may be stipulated in regards to different matters. (As is pointed out above, the required threshold for the adoption of special resolutions may also be altered, but the margin between the highest threshold for an ordinary resolutions and the lowest threshold for a special resolution has to be at least 10%.)	This is a matter of choice for the company concerned, but for the average company no change is recommended. Individual shareholders may however, for the sake of minority protection, require higher thresholds.	
38	Section 65(12)	Section 65(11) stipulates the matters in regard to which special resolutions are required. Section 65(12) stipulates that a company's MOI may require a special resolution in regard to any other stipulated matter as well.	The list in Section 65(11) may need to be extended.	
39	Section 66(1)	The business and affairs of a company must be managed by its board, which can exercise all of the powers and functions of the company, except to the extent that the Act or the company's MOI provides otherwise.	This is a generic provision and enables a company to limit the board's powers in many ways. Under normal circumstances, no curbing of powers under this clause would however be required.	
40.	Section 66(3)	Section 66(2) provides that the board of a private company or personal liability company must consist of at least one director and in other cases of at least three directors. Section 66(3) provides that these minimum numbers may be increased in a company's MOI.	Specific instructions need to be taken and provision made accordingly if you wish to have more than one Director.	

41.	Section 66(4)	<p>A company's MOI may provide for:</p> <ul style="list-style-type: none"> <li>the direct appointment and removal of one or more directors by any person named in or determinable in the MOI;</li> <li>a person to be an <i>ex officio</i> director;</li> <li>the appointment or election of one or more persons as alternate directors;</li> </ul> <p>subject to the overriding proviso that, in the case of all profit companies other than SOC's, at least half of all directors and half of all alternate directors have to be elected by shareholders.</p>	Specific instructions need to be taken and provision made accordingly.	
42	Section 66(5)(b)(i)	A person serving as <i>ex officio</i> director of a company has all the powers and functions of any other director of the company, except to the extent that the <i>ex officio</i> director's powers and functions are restricted in a company's MOI.	Specific instructions need to be taken and provision made accordingly.	
43	Section 66(8)	A company may pay remuneration to its directors for their service as directors, unless the company's MOI provides otherwise.	No alteration recommended, because remuneration in any event has to be sanctioned by a special resolution of shareholders in terms of Section 66(9).	
44	Section 68(1)	Elected directors of a company serve for an indefinite term or for such other term as is to be determined in the company's MOI.	No alteration recommended under normal circumstances, because directors can in any event be removed by ordinary resolution of shareholders.	
45	Section 68(2)	Unless a company's MOI provides differently, directors to be elected by the shareholders have to be voted on individually (i.e. one after the other).	No alteration recommended.	
46	Section 68(3)	Vacancies on the board in regard to directors elected by shareholders can be filled by the board on a temporary basis until the next general meeting of shareholders, unless the company's MOI provides differently.	Specific instructions need to be taken and provision made accordingly.	
47	Section 69(6)	Section 69 deals with ineligibility and disqualification of persons to be directors or prescribed officers. Section 69(6) provides that the company's MOI may impose additional grounds of ineligibility or disqualification, or minimum qualifications to be met by directors of that company.	Specific instructions need to be taken and provision made accordingly.	
48.	Section 72(1)	Section 72(1) provides that the board of a company may appoint board committees and delegate to any committee any authority of the board, except to the extent that the company's MOI provides differently.	No alteration recommended.	
49.	Section 72(2)	Board committees may include non-directors, unless the company's MOI provides differently.	No alteration recommended.	



50	Section 73(2)	In regard to boards that have at least 12 members, a board meeting must be called if so required by at least 25% of the directors, and in other cases by at least 2 directors, unless the company's MOI specifies a higher or lower percentage or number.	No alteration recommended.	
51.	Section 73(3)	Board meetings may be conducted by electronic communication and one or more directors may participate in a meeting by electronic communication, subject to certain requirements, except to the extent that a company's MOI provides otherwise.	No alteration recommended.	
52	Section 73(4)(a)	The board of a company may determine the form and time for giving notice of its meetings, unless the company's MOI sets pertinent or different requirements.	No alteration recommended, except in the case of medium to large companies where a more structured approach may be appropriate.	
53	Section 73(5)	Except to the extent that a company's MOI provides otherwise, a board meeting may proceed even if proper notice of the meeting was not given, provided certain requirements are met.	No alteration recommended, except in the case of medium to large companies where a more structured approach may be appropriate.	
54	Section 74(1)	Directors may adopt a so-called round robin resolution without meeting formally, subject to certain requirements, unless the company's MOI should provide differently.	Even though all directors are required to have received notice of the matter to be decided, the round robin resolution can now be validly adopted if signed by the majority of directors. It should be considered to provide that all directors, or at least more than a simple majority, should support the resolution.	
55	Section 78(4)	A company may advance expenses to a director to defend himself in any proceedings arising out of his service to the company and may also indemnify a director in regard to any such expenses under certain circumstances, except if the company's MOI provides otherwise.	No alteration recommended.	
56	Section 78(5)	Except to the extent that a company's MOI provides otherwise, a company may indemnify a director against any personal liability, other than liability contemplated in Section 78(6).	No alteration recommended.	
57	Section 78(7)	Except to the extent that a company's MOI provides otherwise, a company may take out insurance indemnifying the company and its directors against certain liabilities and losses.	No alteration recommended.	

58	Section 94(2)	Certain companies are obliged to appoint audit committees, but a company may also voluntarily provide in its MOI for the appointment of an audit committee.	No alteration recommended.	
59	Section 118(1)(c)(ii)	Parts B and C of the Act and the Takeover Regulations can voluntarily be made applicable to a private company even if it should not otherwise apply to that company, if its MOI should so provide.	No alteration recommended.	

### Directors and Officers Insurance (Separate tab)

In terms of the new Companies Act a Director or prescribed officer of a Company may be held liable for any loss, damages or costs sustained by the Company as a consequence of any breach by the Director of a duty contemplated in the standard of Director's conduct, or a failure to disclose a personal financial interest in a particular matter, or any breach by the Director or prescribed officer of a provision of the Companies Act or the Company's Memorandum of Incorporation.

Section 78(7) of the Companies Act allows for a Company to purchase Directors' & Officers' (D&O) Liability Insurance which is a contract of insurance designed to protect past, present and future D&O's by indemnifying them for loss resulting from a wrongful act, including errors or omissions for which the D&O is alleged to have committed in their capacity as a director or officer. The cover includes reimbursement for civil damages, defence costs, judgments, settlements and reimbursement to the D&O's company/employer for any indemnification to the director or officer for any such costs.

South African Corporate Registrations (Pty) Ltd has entered into a sub-agency agreement with Risk Benefit Solutions (Pty) Ltd to provide our clients with Director and Officer liability Insurance at very competitive rates. We believe that the nominal cost of the insurance premium is negligible compared to the risks associated with a claim made by shareholders, employees or creditors under the new Act.

The costs of the insurance can be paid either as an annual premium or on a monthly basis and the costs and the cover are as follows:

Limit of liability	Annual premium per Company	Monthly premium per Company
R 1 000 000	R 750.00	R 70.00
R 2 000 000	R 1 075.00	R 100.00
R 3 000 000	R 1 350.00	R 125.00
R 4 000 000	R 1 720.00	R 160.00
R 5 000 000	R 2 075.00	R 190.00