



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 517.

24 Maart 1982.

No. 517.

24 March 1982.

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

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

No. 42 van 1982: Wysigingswet op Openbare Rekenmeesters en Ouditeurs, 1982.

No. 42 of 1982: Public Accountants' and Auditors' Amendment Act, 1982.

Wet No. 42, 1982

WYSIGINGSWET OP OPENBARE REKENMEESTERS EN
OUDITEURS, 1982

ALGEMENE VERDUIDELIKENDE NOTA:

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Openbare Rekenmeesters en Ouditeurs, 1951, ten einde die werksaamhede van rekenmeesters en ouditeurs en hulle aanspreeklikheid ten opsigte van die verrigting van hul werksaamhede verder te reël.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 4 Maart 1982.)

DAAR WORD BEPAAL deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 26 van Wet 51 van 1951, soos gewysig deur artikel 11 van Wet 47 van 1956, artikel 8 van Wet 30 van 1962 en artikel 12 van Wet 53 van 1975.

1. Artikel 26 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1951, word hierby gewysig—

- (a) deur in paragraaf (a) van subartikel (3A) die woord „trustee” waar dit ook al voorkom deur die woord „kurator” te vervang;
- (b) deur in subartikel (3A) die volgende paragraaf na paragraaf (a) in te voeg:
- „(aA) Indien iemand wat in die hoedanigheid van 10

ouditeur van 'n onderneming opgetree het onmiddellik voor die sekwestrasie of likwidasie (hetsy voorlopig of finaal) daarvan en wat nie ingevolge subartikel (3) (a) gehandel het of ingevolge paragraaf (a) van hierdie subartikel 'n skriftelike verslag gestuur het nie, te eniger tyd skriftelik daartoe versoek word deur die persoon aangestel as kurator of voorlopige kurator of as likwidateur of voorlopige likwidateur, na gelang van die geval, van daardie onderneming, moet hy onverwyld die persoon wat bedoelde versoek doen, in kennis stel of 'n skriftelike verslag by paragraaf (a) van hierdie subartikel vereis word al dan nie, en in die geval waar hy die persoon wat bedoelde versoek doen, in kennis stel dat sodanige verslag wel aldus vereis word, moet hy onverwyld die verslag aan hom stuur, en terselfdertyd afskrifte van daardie verslag aan die persoon in beheer van daardie onderneming en aan die raad verskaf.”;

- (c) deur paragraaf (b) van subartikel (3A) deur die volgende paragraaf te vervang:

„(b) Die bepalings van subartikel (3) (c) is *mutatis mutandis* van toepassing met betrekking tot inligting wat ingevolge paragraaf (a) van hierdie subartikel aan die raad verstrekkend is, en die bepalings van subartikel (3) (e) is *mutatis mutandis* van toepassing met betrekking tot enige bepaling van hierdie subartikel.”;

- (d) deur subartikel (5) deur die volgende subartikel te vervang:

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PUBLIC ACCOUNTANTS' AND AUDITORS' AMENDMENT
ACT, 1982

Act No. 42, 1982

GENERAL EXPLANATORY NOTE:

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Public Accountants' and Auditors' Act, 1951, so as to further regulate the functions of accountants and auditors and their liability in respect of the performance of their functions.

(Afrikaans text signed by the State President.)
(Assented to 4 March 1982.)

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 26 of the Public Accountants' and Auditors' Act, 1951, is hereby amended—

- 5 (a) by the substitution in paragraph (a) of subsection (3A) in the Afrikaans text for the word "trustee", wherever it occurs, of the word "kurator";
- (b) by the insertion in subsection (3A) after paragraph (a) of the following paragraph:
- 10 "(aA) If any person who was acting in the capacity of
auditor to any undertaking immediately prior to its sequestration or liquidation (whether provisional or final) and who has not taken action in terms of subsection (3) (a) or despatched a report in writing in terms of paragraph (a) of this subsection, is at any time requested in writing to do so by the person appointed as trustee or provisional trustee or as liquidator or provisional liquidator, as the case may be, of such undertaking, he shall forthwith inform the person so requesting whether or not a report in writing is required by paragraph (a) of this subsection, and in the event of his informing the person so requesting that such report is so required, he shall forthwith despatch the report to him, and at the same time supply copies of such report to the person in charge of such undertaking and to the board.";
- 15
- 20
- 25
- 30 (c) by the substitution for paragraph (b) of subsection (3A) of the following paragraph:
"(b) The provisions of subsection (3) (c) shall *mutatis mutandis* apply with reference to any information supplied to the board in terms of paragraph (a) of this subsection, and the provisions of subsection
- 35 (3) (e) shall *mutatis mutandis* apply with reference to any provision of this subsection.";
- (d) by the substitution for subsection (5) of the following subsection:

Amendment of section 26 of Act 51 of 1951, as amended by section 11 of Act 47 of 1956, section 8 of Act 30 of 1962 and section 12 of Act 53 of 1975.

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- „(5) Ten opsigte van 'n mening uitgespreek of sertifikaat gegee of verslag of verklaring gedoen of 'n staat, rekening of dokument gesertifiseer in die gewone loop van sy pligte deur 'n ouditeur of 'n persoon wat kragtens hierdie Wet as 'n rekenmeester en ouditeur geregistreer is—
- (a) loop hy geen aanspreeklikheid op teenoor sy kliënt of 'n derde party nie, tensy bewys word dat daardie mening of daardie sertifikaat of daardie verslag of verklaring of daardie staat, rekening of dokument kwaadwillig of na aanleiding van 'n nalatige verrigting van sy pligte uitgespreek, gegee, gedoen of gesertifiseer, na gelang van die geval, is; en
- (b) is hy, waar bewys word dat daardie mening of daardie sertifikaat of daardie verslag of verklaring of daardie staat, rekening of dokument na aanleiding van 'n nalatige verrigting van sy pligte uitgespreek, gegee, gedoen of gesertifiseer, na gelang van die geval, is, teenoor 'n derde party wat hom op daardie mening, sertifikaat, verslag, verklaring, staat, rekening of dokument verlaat het, aanspreeklik vir geldelike verlies gelyk gevolg daarvan dat die derde party hom daarop verlaat het, slegs indien bewys word dat die ouditeur of persoon aldus geregistreer—
- (i) geweet het of daar onder die bepaalde omstandighede redelikerwys van hom verwag kon gewees het om te weet, toe daardie mening uitgespreek of daardie sertifikaat gegee of daardie verslag of verklaring gedoen of daardie staat, rekening of dokument gesertifiseer is—
- (aa) dat daardie mening, sertifikaat, verslag, verklaring, staat, rekening of dokument deur sy kliënt gebruik sou word om die derde party oor te haal om op een of ander wyse op te tree of nie op te tree nie of om die besondere transaksie wat die derde party aangegaan het of 'n ander transaksie van soortgelyke aard met die kliënt of iemand anders aan te gaan; of
- (bb) dat die derde party hom op daardie mening, sertifikaat, verslag, verklaring, staat, rekening of dokument sou verlaat met die doel om op een of ander wyse op te tree of nie op te tree nie of om die besondere transaksie wat die derde party aangegaan het of 'n ander transaksie van soortgelyke aard, met die kliënt of iemand anders aan te gaan; of
- (ii) te eniger tyd nadat daardie mening uitgespreek of daardie sertifikaat gegee of daardie verslag of verklaring gedoen of daardie staat, rekening of dokument gesertifiseer is, op enige wyse aan die derde party die voorstelling gedoen het dat daardie mening, sertifikaat, verslag, verklaring, staat, rekening of dokument juis was, terwyl hy op daardie tyd geweet het of daar op daardie tyd onder die bepaalde omstandighede redelikerwys van hom verwag kon gewees het om te weet dat die derde party hom op daardie voorstelling sou verlaat met die doel om op een of ander wyse op te tree of nie op te tree nie of om die besondere transaksie wat die derde party aangegaan het of 'n ander transaksie van soortgelyke aard, met die kliënt of iemand anders aan te gaan.”; en

PUBLIC ACCOUNTANTS' AND AUDITORS' AMENDMENT
ACT, 1982

Act No. 42, 1982

- 5 “(5) Any auditor or any person registered as an
accountant and auditor under this Act shall, in respect
of any opinion expressed or certificate given or report
or statement made or statement, account or document
certified by him in the ordinary course of his duties—
- 10 (a) incur no liability to his client or any third party,
unless it is proved that such opinion was expressed
or such certificate was given or such report or
statement was made or such statement, account or
document was certified maliciously or pursuant to
a negligent performance of his duties; and
- 15 (b) where it is proved that such opinion was expressed
or such certificate was given or such report or
statement was made or such statement, account or
document was certified pursuant to a negligent
20 performance of his duties, be liable to any third
party who has relied on such opinion, certificate,
report, statement, account or document, for finan-
cial loss suffered as a result of having relied
thereon, only if it is proved that the auditor or
person so registered—
- 25 (i) knew or could in the particular circumstances
reasonably have been expected to know, at
the time when the negligence occurred in the
performance of the duties pursuant to which
such opinion was expressed or such certificate
was given or such report or statement was
made or such statement, account or docu-
ment was certified—
- 30 (aa) that such opinion, certificate, report,
statement, account or document would
be used by his client to induce the third
party to act or refrain from acting in
some way or to enter into the specific
35 transaction into which the third party
entered, or any other transaction of a
similar nature, with the client or any
other person; or
- 40 (bb) that the third party would rely on such
opinion, certificate, report, statement,
account or document for the purpose of
acting or refraining from acting in some
way or of entering into the specific
45 transaction into which the third party
entered, or any other transaction of a
similar nature, with the client or any
other person; or
- 50 (ii) in any way represented, at any time after
such opinion was expressed or such certificate
was given or such report or statement was
made or such statement, account or docu-
ment was certified, to the third party that
such opinion, certificate, report, statement,
55 account or document was correct, while at
such time he knew or could in the particular
circumstances reasonably have been expected
to know that the third party would rely on
such representation for the purpose of acting
or refraining from acting in some way or of
60 entering into the specific transaction into
which the third party entered, or any other
transaction of a similar nature, with the client
or any other person.”; and

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- (e) deur die volgende subartikels by te voeg:
- „(6) By die toepassing van paragraaf (b) van subartikel (5) is die feit dat 'n ouditeur of persoon in daardie paragraaf bedoel die werksaamhede van 'n ouditeur of rekenmeester verrig het, op sigself nie bewys nie dat daar redelikerwys van hom verwag kon gewees het om te weet dat—
- (a) sy kliënt sou optree soos in subparagraaf (i) (aa) van genoemde paragraaf (b) beoog; of
- (b) die derde party sou optree soos in subparagraaf (i) (bb) of (ii) van genoemde paragraaf (b) beoog.
- (7) Die bepalinge van paragraaf (b) van subartikel (5) raak nie—
- (a) enige aanspreeklikheid van 'n ouditeur of 'n persoon in daardie subartikel bedoel wat voortspuit uit—
- (i) 'n kontrak tussen 'n derde party en daardie ouditeur of persoon nie; of
- (ii) enige wettereregtelike bepaling nie; of
- (b) enige uitsluiting van aanspreeklikheid deur 'n ouditeur of 'n persoon in daardie subartikel bedoel nie.
- (8) By die toepassing van subartikel (5), (6) of (7) beteken—
- (i) „derde party” enigiemand behalwe die betrokke kliënt, en ook 'n lid van 'n kliënt wat 'n maatskappy of buitelandse maatskappy (soos omskryf in artikel 1 van die Maatskappywet, 1973 (Wet No. 61 van 1973)) is of wat 'n ander regspersoon is; (ii)
- (ii) „kliënt” die persoon vir wie 'n ouditeur of 'n persoon in subartikel (5) bedoel, of sy firma, die betrokke pligte verrig het.”. (i)

Kort titel.

2. Hierdie Wet heet die Wysigingswet op Openbare Rekenmeesters en Ouditeurs, 1982.

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PUBLIC ACCOUNTANTS' AND AUDITORS' AMENDMENT
ACT, 1982

Act No. 42, 1982

(e) by the addition of the following subsections:

- 5 “(6) For the purposes of paragraph (b) of subsection
 (5) the fact that an auditor or a person referred to in
 that subsection performed the functions of an auditor
 or accountant shall not in itself be proof that he could
 reasonably have been expected to know that—
- 10 (a) his client would act as contemplated in subpara-
 graph (i) (aa) of the said paragraph (b); or
 (b) the third party would act as contemplated in
 subparagraph (i) (bb) or (ii) of the said paragraph
 (b).
- (7) The provisions of paragraph (b) of subsection (5)
 shall not affect—
- 15 (a) any liability of an auditor or a person referred to
 in that subsection which arises from—
 (i) a contract between a third party and such
 auditor or person; or
 (ii) any statutory provision; or
- 20 (b) any disclaimer of liability by an auditor or a
 person referred to in that subsection.
- (8) For the purposes of subsection (5), (6) or (7)—
- 25 (i) “client” means the person for whom an auditor or
 a person referred to in subsection (5), or his firm,
 has performed the duties concerned; (ii)
- 30 (ii) “third party” means any person other than the
 client concerned, and includes any member of a
 client which is a company or external company (as
 defined in section 1 of the Companies Act, 1973
 (Act No. 61 of 1973)) or which is any other
 juristic person”. (i)

2. This Act shall be called the Public Accountants' and Short title.
 Auditors' Amendment Act, 1982.