

2. PHILOSOPHICAL PILLARS OF THE PROPOSED AMENDMENTS

- 2.1. It is necessary at the outset, and before identifying and explaining the proposed amendments, to point out that there are a number of important policy objectives which the proposed amendments are designed to achieve. In order to appreciate these underlying policy objectives it is necessary to identify them and thereafter to group the proposed amendments into the various categories of policy objectives so identified.
- 2.2. The three prime categories of policy objectives sought to be addressed by the proposed amendments are as follows :-
 1. first, the ease of doing business. In this regard it is important that company law should, among other factors, be clear, user friendly, consistent with well-established principles and not be over burdensome on the conduct of business. This is important not only for the attraction of foreign investors but also for the efficient and effective conduct of the domestic economy and for the creation of jobs. As will be seen from the explanations set out in this memorandum, in respect of many of the proposed amendments, they are technical in nature, and based on submissions received during the extensive engagement with interested parties, and are designed to ease the doing of business through providing legal certainty where these do not currently apply, providing greater flexibility to companies in certain circumstances, or removing unnecessary provisions in the Act. These changes are discussed in Section 4 below;
 2. secondly, the achievement of equity as between directors and senior management on the one hand, and shareholders and workers on the other hand as well as addressing public concerns regarding high levels of inequalities in society. Certain of the proposed amendments are designed to achieve better disclosure of senior executive remuneration and the reasonableness of the remuneration. These issues are addressed primarily in the proposed requirements of the Remuneration Report. These are issues which have raised similar concerns in other leading

jurisdictions. The provisions relating to transparency on the pay gap and the reasonableness of remuneration provide an objective benchmark which will assist the public dialogue on this topic. The changes are discussed in Section 5 below;

3. thirdly, the efforts to counter money laundering and terrorism. South Africa is part of an international effort by leading economies to address this concern. South Africa's rating in the Mutual Evaluation Assessment of the country's anti-money laundering and combating the financing of terrorism pointed to weaknesses in determining the true owner of shares in companies. To address this, the Bill sets out proposed amendments relating to disclosure of ultimate beneficial ownership in the shares of a company. Government's efforts to counter money laundering and terrorism feature not only in the proposed amendments to the Companies Act but also in other areas of legislation and administration. Again, these concerns are being addressed in many foreign jurisdictions. The changes are discussed in Section 6 below.

2.3. The fairly extensive amendments to the provision relating to the social and ethics committee are designed to deal with several of the policy areas referred to in paragraph 2.2 above. In particular a number of gaps have been remedied such as the requirement regulating annual general meetings for shareholders to appoint the members of the Social and Ethics Committee, and the mechanism and timelines for the appointment of the Social and Ethics Committee. In addition provision will be made for deficiencies described in the Social and Ethics Report to be remedied and for the attendant sanctions for non-compliance with remedying deficiencies.

2.4. The remainder of the proposed amendments which do not fall within any of the three prime categories of policy objectives are essentially purely administrative issues, enhancement of regulatory efficiency and tidying up of drafting deficiencies. Examples of these include :-

1. the definition of the BEE Commission. The insertion of this definition was necessary having regard to the fact that it is referred to in the text of the Act, as amended; and
2. changes relating to the Companies Tribunal. These are required to promote regulatory or institutional efficiency.