

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

ACT

To amend the Companies Act, 1973, so as to define the expression "close corporation"; to make provision for the cancellation of the registration of certain documents when a company is converted into a close corporation; to make provision for the conversion of a close corporation into a company; to determine the effect of the conversion of a close corporation into a company; and to provide for incidental matters.

*(English text signed by the Administrator-General on
17 February 1989)*

BE IT ENACTED by the National Assembly, as follows:-

1. The following heading and sections are hereby inserted in the Companies Act, 1973, after section 29:

"Conversion of Companies and Close Corporations

29A. In sections 29B, 29C and 29D "close corporation" means a corporation as defined in section 1 of the Close Corporations Act, 1988.

29B. When a company is converted into a close corporation in terms of the Close Corporations Act, 1988, the Registrar shall, simultaneously with the registration of the founding statement of the close corporation by the Regis-

Insertion of sections 29A, 29B, 29C and 29D in Act 61 of 1973.

Meaning of "close corporation".

Cancellation of registration of memorandum and articles by Registrar upon conversion of company into close corporation.

trar of Close Corporations in terms of the said Act, cancel the registration of the memorandum and articles of association of the company concerned.

Conversion of close corporation into company.

29C. (1) A close corporation may, with the written consent of all its members, be converted into a company, provided that every member of the close corporation becomes a member of such company.

(2) A close corporation to be converted into a company as contemplated in subsection (1) may, subject to the provisions of this section, apply to be incorporated as a company under Chapter IV of this Act.

(3) If an application referred to in subsection (2) complies with the provisions of the said Chapter IV and of subsection (4) -

(a) the Registrar shall register the memorandum and articles in accordance with the provisions of section 63; and

(b) the Registrar shall satisfy himself that simultaneously with such registration, the registration of the founding statement of the close corporation concerned is cancelled in accordance with the provisions of the Close Corporations Act, 1988.

(4) (a) An application referred to in subsection (2) shall be accompanied by -

(i) a statement of the paid-up share capital (if any) for an amount not greater than the excess of the fair value of the assets to be acquired by the company, over the liabilities to be assumed by the company by reason of the conversion: Provided that the company may treat any portion of such excess not reflected as paid up share capital, as distributable reserves; and

(ii) a statement by the close corporation's accounting officer, based on the performance of his duties under the Close Corporations Act, 1988, that he is not aware of any contravention of the said Act by the close corporation or its members or of any circumstances which may render

the members of the close corporation together with the close corporation jointly and severally liable for the corporation's debts.

(b) The shares or the nominal value of the shares to be held in the company by the members individually need not necessarily be in proportion to the members' interests as stated in the founding statement of the close corporation concerned.

(5) The Registrar shall give notice in the *Official Gazette* of the conversion of a close corporation into a company.

Effect of conversion of close corporation into company.

29D. (1)(a) On the registration of a company converted from a close corporation, all the assets, liabilities, rights and obligations of the corporation shall vest in the company.

(b) Any legal proceedings instituted before the registration by or against the corporation, may be continued by or against the company, and any other thing done by or in respect of the corporation, shall be deemed to have been done by or in respect of the company.

(2) Upon the production by a company which has been converted from a close corporation of a certificate of incorporation referred to in section 64 to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with the requirements of such registrar or officer as to the form of application (if any) and the payment of any required fee, such registrar or other officer shall make in his register all such alterations as are necessary by reason of the change effected by the conversion of the close corporation into a company: Provided that no transfer or stamp duty shall be payable in respect of such alterations in a register."

Short title and commencement.

2. This Act shall be called the Companies Amendment Act, 1989, and shall come into operation on the date on which the Close Corporations Act, 1988, comes into operation.