



NEWSLETTER

CENTRAL CHAMBER

January 2006

91st ANNUAL GENERAL MEETING

Please diarise the Chamber's Annual General Meeting.

This meeting will be held on Thursday 16th March 2006 at 17h00 for 17h30 in the Nampak Auditorium of the Cross Media Training Centre (SA Printing College).

Please set aside this date to support your Committee.

As usual the meeting will be followed by a formal dinner at 19h30 with another interesting guest speaker.

The cost of the dinner this year will be R160.00 per person (including VAT).

We look forward to seeing you there.

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CONSUMER CREDIT LEGISLATION

Item 839 (Acknowledgements: SACOB)

The Consumer Credit Bill will probably be tabled at the beginning of 2006 and it is anticipated that it could become law early in the New Year. While Business is not necessarily opposed to the legislation, there are misgivings as to whether it will achieve the intended objective of giving greater access to credit to more people, particularly those in the lower income levels. It has been claimed that the legislation shifts the balance of power from the credit provider to the credit receiver. Maybe, but it seems evident that the business of lending in a high risk market will (where tightly regulated) result in risk aversion measures.

NATIONAL ANTI-CORRUPTION FORUM (NACF)

Item 840 (Acknowledgements: SACOB)

An NACF meeting is scheduled for the end of November at which the Business representatives are required to present a progress report on the initiatives they have introduced as part of their undertaking given at the Anti-corruption Summit earlier in the year. Those initiatives to date include the securing of financial resources (internally and externally) to finance a guide to assist Businesses to combat/prevent corruption. Investigations are in hand to consider the feasibility and legal implications of preparing a 'blacklist' of businesses that have been exposed to corrupt activities.

INACTION LETS HIV WILDFIRE RAGE OUT OF CONTROL

Item 841 (Acknowledgements: SACOB)

Fifteen years ago, South Africa had an HIV infection rate of a mere 1%, but a failure to respond timeously has allowed it to soar to 30%.

This is according to the latest UNAIDS Global Aids Epidemic Update Report, which was released worldwide recently.

The report states that the most notable feature of South Africa's epidemic was the speed at which it evolved, and it shows no sign of relenting.

Sub-Saharan Africa has just over 10% of the world's population but is home to more than 25,8 million people living with HIV. Some 6 million of those are in South Africa, making the epidemic here one of the largest in the world.

The report also blames Aids for a 62% increase in deaths of South Africans aged 15 years and older from 1997 to 2002, and a more than 50% rise in deaths in the 25 to 44 age group.

While the picture may look bleak for South Africa, the report indicates that parts of Southern African have shown optimistic signs.

In Zimbabwe, recent data from that country's national surveillance system has shown a decline in HIV prevalence among pregnant women, from 26% in 2002 to 21% last year.

The report states that condom use within casual partnerships had reached high levels (86% among men and 83% among women) and there appeared to be a reduction in the number of sexual partners that individuals have.

(Extract from The Star 22nd Nov. 2005)

ARBITRATION: NOTICE TO ALL PARTIES NEEDS TO BE RECEIVED BEFORE HEARING

Item 842 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

In the case of *Vidavsky v Body Corporate of Sunhill Villas 2005 (5) SA 200(SCA)*, the Court found that it is necessary for each party to a dispute to be given notice of an arbitration tribunal.

This qualifies the provisions of Section 115(2) of the Arbitration Act, which permits an Arbitration Tribunal to proceed, in the absence of a party to the dispute.

CHIEF EXECUTIVE OFFICERS PERSONALLY ANSWERING E-MAILS FROM INDIVIDUAL STAFF MEMBERS

Item 843 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

A survey by the Wall Street Journal, conducted by the Business Round Table, found that 39 out of 44 companies claimed that their Chief Executive Officers personally receive and reply to e-mails from ordinary members of staff, on matters of concern or suggestions.

Answering personal e-mails from staff members is believed to be a powerful leadership tool that can provide early warning signs, boost morale, uncover new ideas and cut through corporate red-tape. The question is "can Chief Executive Officers cope!"

COMPANIES AMENDMENT BILL

Item 844 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The Companies Amendment Bill, published for public comment on 13 July 2005, has met with a great deal of opposition and it has become evident that the Bill, in its present form, may not be generally acceptable.

Amongst the proposed amendments is an amendment which refers to any person who is a party to the presentation, approval, publication and issue or supply of materially false or misleading statements, being guilty of an offence. This poses a risk to employees and consultants.

CAPITAL GAINS TAX: COMPREHENSIVE GUIDE TO CAPITAL GAINS TAX

Item 845 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The South African Revenue Services has issued an updated draft Capital Gains Tax Comprehensive Guide, dated 11 November 2005.

This contains amendments to the previous draft Comprehensive Guide, released on 9 June 2005 for public comment.

COMPUTER VIRUS: COURT JAILS GUILTY PARTY

Item 846 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The conviction of a former employee of Edgars, to 5 years imprisonment is set out in an unreported case 41/258/02, discussion of which is set out in an article entitled "malicious injury to property caused by a computer virus" by Watney M, which appeared in issue 2005.3 of the "Tydskrif vir die Suid-Afrikaanse Reg 603".

The guilty person, who alleged unfair treatment, admitted having intentionally loaded software which contained a virus, into the central Edgars network, causing nationwide failure. Sales of between R19 million and R57 million were lost, as the consequence of downtime. In addition, the company lost all the data on its in-store file server and damage was caused to the hard drive.

The Court found that the then employee was guilty of malicious damage to property, as the consequence of the computer system qualifying as "corporeal property".

SARS:

TAX GUIDE FOR SMALL BUSINESS 2005/6

Item 847 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The South African Revenue Services has, in a document dated September 2005, issued a tax guide for small businesses in respect of the financial year 2005/6. The guide has been updated to include the Taxation Laws Amendment Acts promulgated on 13 and 19 July 2005.

FEWER SA GOODS ON BRITISH SHELVES

Item 848 (Acknowledgements NAFCOJCCI)

Very few SA Suppliers have been successful in Britain – in fact, there has been an overall decline in the number of locally-produced goods on British supermarket shelves. To facilitate the importation of South African consumer goods into Britain, a SA Retailer and Wholesaler Association (SARWA) has been launched to help overcome technical problems as well as the cost of importation. SARWA will also provide the required EU address on the labels of imported goods.

NEW REGULATIONS REGARDING TRAILERS

Item 849 (Acknowledgements NAFCOJCCI)

A new National Road Traffic Act regulation comes into effect from 1 January 2006. People traveling on holiday need to be aware that unless they comply, they could be fined for "unroadworthy" trailers.

All trailers (this includes small "venter" type trailers and caravans) must have the relevant yellow reflective strips, known as contour markings, applied. The reflective tape is available from most hardware stores and large retail outlets.

MEN ON THE SIDE OF THE ROAD PROJECT

Item 850 (Acknowledgements NAFCOJCCI)

This project, aimed at men standing on the side of the road waiting for daily jobs, has already won three international awards. The project assesses the skills levels of the unemployed, and then trains them in collaboration with partners such as SAPICS (the society of storemen), Corobrik (construction), Stodels (gardening), and the Construction SETA. A placement service is also part of the project. In addition, the organizers are looking at essential aspects like providing toilets and access to water etc.

The unemployment situation in South Africa is desperate – initiatives like this can make a difference.

EMPLOYEE COMMUNICATION PRIVACY IN THE WORKPLACE

Item 851 (Acknowledgements NAFCOJCCI)

Aspects of the Interception of Communications and Provision of Communications Related Act (RICA) 70 of 2002 covering company policies on the interception of communication came into effect in September 2005. The Act creates some uncertainty as to the circumstances under which an employer may monitor, view, examine or inspect the contents of a message intended for an employee. The Act states that, provided that the employee is informed and has given permission, an employer has the right to intercept an employee's communication, in whatever form, if it relates to the business, or takes place during the course of carrying on that business.

However, according to Lisa McNamara of the Labour Bulletin, this could be interpreted as intercepting any communication during working hours, or only in respect of communications directly related to the business activities.

RMB SURVEY SHOWS THAT BUSINESS CONFIDENCE IS AT A 23 YEAR HIGH

Item 852 (Acknowledgements NAFCOJCCI)

At the Chamber's half-yearly briefing on 24 November 2005, Rudolph Gouws, economist for Rand Merchant Bank, delivered a positive short-to-medium term prognosis for the economy. He pointed out that business confidence, as measured by the Rand Merchant Bank/BER index, has been around a 23 year high for five quarters. Provided that there are no major external shocks, and the government follows through on the main aspects of its "Accelerated and Shared Growth Initiative" of the decade. As government expands South Africa's infrastructure, and the transport logistics system, in particular, there will be a corresponding rise in private sector investment. Gouws believes that the current interest rates in the country are at an appropriate level. A cautionary note mentioned is that while he does not expect more than a mild slowdown, the growth in consumer spending cannot be sustained at the recent hectic pace.

ESTATE AGENTS: COMMISSION RATE

Item 853 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The Competition Commission has found that it is unlawful to recommend tariffs for estate agents. Consequently the Institute of Estate Agents of South Africa has ruled that all guidelines are abolished.

SURETY: SIGNING CREDIT APPLICATION ON BEHALF OF COMPANY: PERSONAL LIABILITY

Item 854 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

In *Brink v Humphries & Jewell (Pty) Ltd* 2005 (2) SA 419 (SCA), the Supreme Court of Appeal ruled that a credit application form which contained a hidden personal suretyship, by the signatory, may be a trap for the unwary. As a consequence the suretyship would be void, unless the creditor disclosed the existence of the clause.

Those persons involved in signing credit applications on behalf of companies should:

- peruse the contracts to uncover hidden personal suretyship traps; or
- highlight the personal liability clause in such a manner that the signatory may not deny having been aware of the clause

Note:

In the PIFSA Credit Application Form, the fact the signatory binds him/herself as co-principle debtor (a form of suretyship) is not hidden, but proclaimed in bold type above the signature line.

SEXUAL HARASSMENT

Item 857 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The publication of the Code of Good Practice on the handling of harassment cases in the workplace, which appeared in Government Gazette 27865 of 4 August 2005, has redefined sexual harassment and refined proceedings for managing claims

In a recent case of the Labour Court, *Christian v Colliers Properties*, a secretary who rejected her superior's advances, after he had kissed her on the neck, was awarded two years salary and R10 000 in damages, despite her having worked for the company for a period of only three days.

Experts warn that companies have a liability, which becomes particularly evident at annual Christmas parties, company conferences and similar events.

LEGISLATION RELEVANT TO DIRECTORS AND MANAGERS

Item 856 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The legislation relevant to the task of Directors and Managers includes, but is not restricted to, the following:

- a) Protected Disclosures Act: “Whistleblowing” Employees who make protected disclosures (blow the whistle) are protected.
 - b) Broadbased Black Economic Empowerment Act, 2002, and Draft Codes
These measures are to be included in the structure for supply chain management and procurement policies.
 - c) National Environment Management Act and Environment Management Plan Protection of the environment is not only legislated, but voluntary good corporate governance practice, includes the “environment”. There is a particular link between the environment and corporate ethics and the need to be transparent.
 - d) Prevention and Combating of Corrupt Activities Act, 2004
This legislation makes it obligatory to report any corrupt activity, which involves amounts in excess of R100 000, to the South African Police Service. A person guilty of corrupt activities could be fined R250 000, imprisoned for three years and have an additional fine imposed of five times the value concerned (“the gratification”).
 - e) Companies Amendment Act, 2004
 - Previously disqualified persons are not permitted to be directors.
 - Now a disqualified person may not take part in the management of a company.
 - In addition, any director or officer of the company who knew or who could reasonably be expected to know of a qualified person taking part in the management of a company;
 - * is guilty of an offence;
- is liable jointly and severally for all debt incurred by the company for the period during which such person knew or could reasonably be expected to know of the disqualification.

ANNUAL RETURNS: FURTHER EXTENSION BY CIPRO

Item 858 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The Registrar of Companies, who operates through CIPRO, has again indicated that because of slow response times on the CIPRO website, a further extension has been granted in which to lodge annual returns, to the end of January 2006.

Companies incorporated in May, June, July, August, September, October, November and December must accordingly ensure that their annual returns are successfully lodged by the end of January 2006.

BIRD-FLU VIRUS: SOUTH AFRICAN TECHNOLOGY TO PASTEURISE EGGS

Item 859 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

A South African development has resulted in a new pasteurized egg system considerable reducing the risk of food poisoning, salmonella enteritis. Preliminary laboratory investigations indicated that the pasteurization system maybe effective against the virus that causes Avian Influenza.

It is likely that consumers will soon be able to make the choice of buying pasteurized eggs, which will cost about 8 cents an egg more than unpasteurised eggs.

INCOME TAX ACT: DEPRECIATION AND DEDUCTION IN RESPECT OF WEAR AND TEAR

Item 860 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

In SARS Practice Note No. 13, taxpayers are informed that when the cost of an asset is depreciated on a straight line basis, it will no longer be necessary for the taxpayer to obtain the prior permission of SARS.

It will however be necessary:

- To maintain adequate records
- To apply the straight line method to all assets of the same class
- The Annual tax return must include a schedule disclosing the following information in respect of each asset disposed of during the year:
 - * The date of acquisition as well as the original cost
 - * The income tax value at the end of the immediate [preceding] tax year

- * the price realized on disposal or scrapping as well as the tax value of any profit or loss
- An asset written off in full must be brought into account at a residual value of R1 for record purposes
- The records to be maintained must be such that it will be possible for the aforementioned details to be established at any point in time.

The note confirms that assets must be written off in equal annual installments over the estimated useful life of the asset.

“Small items”, such as loose tools, to a maximum cost of R250 per item, may be written off in full in the year of acquisition.

**PATENTS:
FUND TO AID SMALL AND MEDIUM SIZE ENTERPRISES TO REGISTER PATENTS**

Item 861 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

The Department of Science and Technology’s Innovation Fund has formed a Patent Support Fund for SME’s. This is an attempt to increase the number of patents registered by South Africans.

South Africa has fallen behind other Countries. Records show that the US Patent Trademarks Office has registered the following patents on behalf of residents of Korea, India and South Africa:

Country	1994	2004
Korea	943	3944
India	27	341
South Africa	101	112

South African records show that in 2003, 10 000 patent applications were filed in the South African patent office, with less than 50% of these being lodged by South African nationals. As securing a patent can cost a considerable sum, dependent upon the number of domiciles in which the patent has to be registered, the cost of tens to hundreds of thousands of Rand could be beyond the capabilities

of a small or medium size enterprise. The institution of the Patent Support Fund for SME’s is considered to be highly commendable.

**TAXATION:
LIABILITY OF DIRECTORS AND SHAREHOLDERS**

Item 862 (Acknowledgements ICSA Corporate Governance Technical Newsletter)

Section 16(2C) of the fourth schedule to the Income Tax Act provides that “where an employer is a company every shareholder and director who controls or is regularly involved in the management of the company’s overall financial affairs shall be personally liable”.

The Draconian aspect of the paragraph is that it imposes personal liability on shareholders or Directors for the employee’s tax due by the company, not where they have intentionally or negligently failed in their duties, but merely on the basis of being a shareholder or Director who “controls or is regularly involved in management”.

At this stage there is a great deal of uncertainty whether delegated responsibility for the administration of the company’s tax affairs to a particular Director or Manager would free the other Directors and Managers from liability.

Commentators are suggesting that the effect of the new paragraph 16(2C) of the fourth schedule extends liability too widely. They are suggesting that personal liability should only apply to executive Directors and managers who have failed to pay over taxation of a withholding nature (e.g. PAYE or VAT).

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