



Central Chamber

Newsletter

April

2005

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BROAD BASED BLACK ECONOMIC EMPOWERMENT

(Item 706)

PIFSA and all chambers will be shortly arranging a series of presentations/seminars which will cover the above vital topic. The Chamber receives daily inquiries from members, who are under pressure from (mostly) clients to register or prove their Empowerment Status.

Of concern to PIFSA is the fact that the legislation has not yet been published in its entirety and is therefore not legally enforceable but, notwithstanding this, clients are applying commercial pressure to members in advance of the legislation to become "B E E Compliant". In their headlong rush to become compliant in order to secure orders, members are making serious errors and choosing the wrong partners for the wrong reasons, thus incurring enormous expense with minimal, if any, benefit at all.

PIFSA is in the process of reaching agreement with an Empowerment Consultancy on a joint venture into this aspect of business for the broader industry. PIFSA's involvement will ensure that the process is constantly monitored and that all members receive the same sound advice. We implore you not to proceed with any schemes under duress and to contact the Chamber regarding the series of informative seminars which are being arranged, with the first one during the month of April. For further information, please contact Nicky Pottow on (011) 699 3044.

ANNUAL GENERAL MEETING

(Item 707)

The 90th AGM of the Central Chamber was held on Thursday 14th April 2005 in the Nampak Auditorium of the Cross Media Training Centre in Honeydew. A

record number of 250 persons attended the meeting, which was addressed by the Chamber Present, Mr Vic Sweet, Professor Nick Binedell of the Gordon Institute of Business Science (the name of the Business School of the University of Pretoria) and Mr Chris Sykes, chief executive officer of the Printing Industries Federation of South Africa.

Mr Sweet, apart from covering the report of the Executive Committee and the annual report for the year ended 31st December, 2004, addressed members on the need to make greater use of the Skills Development Act and to ensure that the objectives enshrined in this legislation were applied to managerial/executive level and not confined to only technical employees on the factory floor.

Professor Binedell addressed members on the need for businessmen and entrepreneurs to ensure that their business acumen remains as much "state of the art" as does their technology on the factory floor. He warned that business management is going to become infinitely more complex in the future and the consequences of failure more severe. He advocated that members, especially smaller members, seriously consider enrolling one or more of their management team on the three-day First Paper House Executive Development Programme, to be run in September 2005.

Mr Sykes addressed the meeting on the requirements of Broad Based Black Economic Empowerment and the ways in which PIFSA is addressing this problem, being faced by all members. He also brought members up-to-date on what had happened in respect of the Statutory Council and MAPPP SETA.

At the close of the meeting, Certificates for students who were

successful in the course "Estimating for Printers" were handed out, including the certificate for their best student in the country, from Belman Litho who scored 98 per cent.



Members of the Executive Committee

The following were elected to the Executive Committee for the period 2005/6:

- President - Mr Vic Sweet (Ultra Litho)
- Vice-president/Treasurer - Mr John Latter (Britepack)
- Mr Andre Smit (Media 24)
- Mr Lawrence Kropf (Beith)
- Mr Charles de Beer (Caxton)
- Mr Michael Gassenheimer (Davmark)
- Mr Wiseman Madinane (Gillmich Business Forms)
- Mr Bhadresh Rama (Golden Era Printers)
- Mr Mike Bath (Goldfields Press)
- Mr Michael Boatwright (Ince)
- Mr Don Lewis (Lithotech)
- Mr Andrew Read (Lithotech – Alternate)
- Mr Stewart Blanckensee (Lloyd-Gray)
- Mr Deon Joubert (Merpak)
- Mr Kevin Mortimer (Mortimer Offset)
- Mr David Baker (Multiprint Litho)
- Mr Aaron Ntshangase (Nampak)
- Mr Neil de Greef (Screenline)



John Latter (Vice President) with Gary Bailey

At the conclusion of the meeting, 235 of the 250 delegates stayed for a cocktail party, hosted by ABSA Bank and to a four-course dinner, at which the wine and soft drinks were sponsored by ABSA Bank as well as a talk by Gary Bailey, the former Manchester United goalkeeper, who gave his views on leadership and the implications for the 2010 Soccer World Cup being held in South Africa. The Chamber Executive Committee records their gratitude to ABSA Bank for their sponsorship which has lasted for three years.



Central Chamber team with Gary Bailey

FIRST PAPER HOUSE EXECUTIVE DEVELOPMENT PROGRAMME

(Item 708)

The management of First Paper House have once again kindly agreed to subsidise the 5th E D P in 2005, which will carry their name and which will be handled by the Gordon Institute of Business Science at their Illovo campus. This program will once again be offered over three days, this time without any optional extras.

The programme will run for Tuesday, Wednesday and Thursday - to leave the beginning and end of the week open - and will be held in either July or September, depending on availability of dates. The date will be arranged to ensure that school holidays, public holidays and month-ends are kept free.

The sub-committee of the Chamber's Executive Committee, in consultation with the administration of G I B S have rearranged the programme and redefined the courses and the content, according to current requirements.

Members are urged to be aware of the fact that the printing and packaging industry is undergoing drastic change at this present time, with new legislation and new market forces in play. The number of companies operating within the industry as well as the number of employees has dropped significantly over the past five years and, if European and American trends are to be followed, will continue to shrink. It therefore stands to reason that only those firms with highly skilled and alert management teams will survive. All members, particularly those with fewer than 50 employees, are urged to seriously consider attending this programme in order to insure their survival. First Paper House have recognised the importance of this to them and their customers and have

subsidised the programme to the extent that it is less expensive than other programmes run by the University of Pretoria (GIBS).

Inquiries may be directed to Ms Nicky Pottow on (011) 699 3044.

BUDGET 2005/06 – ECONOMIC

(Item 709) Acknowledgements SACOB

The State President's State of the Nation address that precedes the Budget provides an indication as to the direction and emphasis to be followed by the government in the forthcoming fiscal year. The Budget gives practical effect to that direction and emphasis.

The economic backdrop to the Budget is one of a strong rand, high consumer spending and low inflation. Economic growth has exceeded expectations and revenues are strong. Although a strong Rand puts downward pressure on the inflation rate it reduces the competitive advantage provided by the Rand's sharp decline in 2000/01. Exporter interests have been particularly affected by the Rand's strength and much debate has focused on the need to cut interest rates further with a view to weakening the rand. The danger is that such a course could further fuel consumer spending.

The Budget continues with the expansionary course of the 2004/05 Budget. Expenditure increases by 13,5 % and the deficit before borrowing moves to 3,1% in contrast to 2,3% in 2004/05. The ratio of Government debt to GDP over the next three years remains at a level of 36%. This does not account for the funding needs of both Eskom and Transnet. Accordingly, the public sector borrowing requirement is set to rise sharply and this implies that there will be upward pressure on long term interest rates. The high rate of growth in domestic demand that is financed

largely from credit has generated concern in some quarters as to the soundness of pursuing an expansionary course during the present stage of the business cycle.

Despite recent financial trends no announcement was made to introduce further exchange control relaxation. SACOB believes that such relaxations are warranted as it could reduce the currency's volatility and allow the exchange rate to be appropriately market related. Even so the exchange control compliance procedures should be examined with a view to making them less onerous.

BUDGET 2005/06 – TAXATION

(Item 710) Acknowledgements SACOB

The reduction in the corporate tax rate from 30% to 29% is modest and with STC means that the aggregate tax rate declines from 37,5% to 36,9% (assuming full profit distribution by a company). In circumstances where many countries have been lowering their corporate tax rates, it really is necessary to bring the South African tax regime into line with that of the country's main competitors.

Proposals for assisting small business were announced (see SARS web site at www.sars.gov.za) that included: -

- A single tax registration form (includes income tax and VAT);
- Raising of the turnover limit from R5 to R6million;
- Small business with turnover of less than R1million/annum will submit VAT returns once every four months;
- From August, Skills Development Levies no longer applicable for businesses with an annual payroll of less than R0,5million;
- Abolition of RSC levies from July 2006 – no doubt to be replaced by another levy type;

- eFiling online for tax clearance certificates;
- New tax structure for Small Business Corporations;
- Sole proprietors tax threshold increased to R35 000.

The Revenue side of the Budget may be measured against certain guiding principles namely: ensuring that the tax burden does not exceed 25% of GDP; adjusting for 'bracket creep'; improving competitiveness and encouraging investment by tax reductions according to best practice; improving personal savings by moving towards consumption taxes; fostering efficiency by minimizing compliance costs; broadening the tax base by way of moving towards indirect taxes; and securing equity through progressive taxes. Alleviating the effects of 'bracket creep' appears reasonable. It is evident that the proposed changes to the treatment of motor vehicle allowances and medical aid contributions will increase the effective tax burden on the higher income groups of taxpayers in 2006.

Despite the concessions announced on tax compliance procedures for certain small business operations, the following still applies for those outside the concessionary threshold:

- VAT to be paid on the 25th of the month;
- PAYE to be paid by the 7th of the month;
- UIF to be paid by the 7th of the month;
- Skills Develop. Levy by the 7th of the month;
- RSC levies by the 15th of the month (on sales or salaries);
- Workmen's Compensation – annually.

Besides having to submit these taxes / levies at different dates, they have to be calculated according to different bases.

TAX INVOICING

(Item 711) Acknowledgements SACOB

As from 1 March 2005, new requirements in respect of tax invoicing have been introduced. A firm's VAT number must appear on all its suppliers invoices before any claim on input tax will be considered. The rule extends to any subsequent debit or credit note issued in respect of the supplies. However, the requirement does not apply to tax invoices for amounts less than R3000.

The effect of this requirement means that a firm must ensure that all its regular suppliers have its particulars on their data base. Tax invoices for suppliers exceeding an amount of R3000 must contain the following: -

- The words 'tax invoice' displayed.
- The suppliers name, address, and VAT registration number.
- The recipients name and address.
- The recipients VAT registration number.
- An individual serialized number.
- The tax invoice's date of issue.
- A full description of the goods/services provided.
- The quantity/volume of goods/services provided.
- The consideration for the goods/services.
- The VAT amount charged.

RETIREMENT FUND REFORM

(Item 712) Acknowledgements SACOB

A BUSA Task Team has prepared a 27-page response to the National Treasury's Discussion Paper. At the specific request of the Minister, the issue of retirement fund taxation has been omitted from the response. The government's argument is that regulatory reform must precede tax reform. Originally introduced as a 'temporary' measure, it appears to follow the dictum that nothing is more permanent than the temporary. The fact that the tax impacts unfairly on

the pension fund members whose personal tax rate falls below 18% (the current rate at which such funds are taxed) has not been lost on the legislators. In 2004 they described the delay in addressing the issue as 'harmful to all affected parties'. In 2003 it was organised business that was instrumental in having the rate reduced from 25% to 18%. No further reduction was announced during the latest Budget.

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION (CCMA)

(Item 713) Acknowledgements SACOB

Members should note that:

- the CCMA's financial situation is sound and should be within budget for the financial year ending March, 2005;
- the CCMA has suspended the Convening Commissioners of East London and Port Elizabeth, pending an enquiry as a result of negligent mismanagement;
- the constituencies have been asked to consider their nominations for the next term of office of the Governing Body;
- there has been a request by labour to include membership of **Proudly SA** as a pre-requisite for being a service provider of the CCMA. Business raised a concern that this could be problematic as it restricts service providers and free competition, and might be a breach of the fiduciary duties of Governing Body members. Government has also raised a concern regarding standard tender documents in the Public Service which do not include the PSA requirement. Labour feels very strongly about the issue as business has publicly supported the formation of PSA. This matter

will probably draw more attention in the future;

- there was some discussion around the CCMA's lack of accreditation of agencies to conduct section 188A processes. It was agreed that this process must continue, and applicants will be considered for accreditation; and
- business raised a concern about the current publicity regarding the cost of doing business, and the extent to which the CCMA, through its decisions, requires businesses to over-proceduralise their internal disciplinary enquiry processes. A constructive engagement was held and further discussions will follow.

CORPORATE GOVERNANCE : IDENTIFYING KEY RISK AREAS AND KEY PERFORMANCE INDICATORS

(Item 714) Acknowledgements ICSA Corporate Governance Technical Newsletter

The Code to the King Report 2002, which all companies listed on the JSE Securities Exchange South Africa are required to observe or indicate why due observance has not been given, provides in 2.1.11: "The Board must identify key risk areas and key performance indicators of the business enterprise. These should be regularly monitored with particular attention given to technology and systems.

It would seem that a number of companies that are listed on the JSE Securities Exchange South Africa, have not identified key risk areas and key performance indicators. This is a challenge for all companies.

Progress against this criteria should be reported to members, in the latest annual financial statements.

CORPORATE GOVERNANCE : SENIOR INDEPENDENT OR "LEAD" DIRECTORS

(Item 715) Acknowledgements ICSA Corporate Governance Technical Newsletter

Point 9 of chapter 2 of the King Report 2002 recommends that companies should consider the practice of appointing a senior independent or "lead" director. The report notes that the independent or "lead" director fulfils an important role when difficulties arise between the non-executive component of the board, as well as in assisting the Chairperson in fulfilling his or her tasks. The report suggests that the appointment of a senior independent or "lead" director is particularly important where the roles of the Chairperson and Chief Executive Officer are combined, or where both the Chairperson and Deputy Chairperson are executive directors.

It would seem that a large number of South African companies have not addressed the question of appointing a senior independent or "lead" director. This could improve corporate governance.

CORPORATE GOVERNANCE : STATEMENT OF REMUNERATION PHILOSOPHY

(Item 716) Acknowledgements ICSA Corporate Governance Technical Newsletter

The Code to the King Report 2002 which all companies listed on the JSE Securities Exchange South Africa are required to "observe or explain" provides in 2.5.10:

"Companies should establish a formal and transparent procedure for developing a policy on executive and director remuneration which should be supported by a statement of remuneration philosophy in the annual report:"

It is observed that a large number of companies listed on the JSE Securities Exchange South Africa do not publish a statement of remuneration philosophy in their annual report.

DUTY OF CARE: SUPERMARKETS

(Item 717) Acknowledgements ICSA Corporate Governance Technical Newsletter

In the case of *Brauns v Shoprite Checkers (Pty) Ltd* 2004 (6) SA 211 (E), the Court found that a supermarket had a duty to ensure that the floor of the supermarket was kept in a clean and safe condition.

The ice cream supplier to the supermarket had removed partly melted ice cream from a defective freezer, resulting in water being spilt on the floor. This created a potential hazard.

Evidence was led that the manager of the supermarket had been forewarned of the potential hazard to customers. It was also shown that the water had been spilt at least 30 minutes before the accident.

The Court found that the defendant's employees had negligently failed to take reasonable steps to prevent injury to the plaintiff.

It was held that there was no negligence on the plaintiff's behalf, as a customer could not be expected to look at the ground for possible hazards, while at the same time looking at the goods on pallets or shelves or in the refrigerators.

INSURANCE : INSOLVENCY OF INSURED

(Item 718) Acknowledgements ICSA Corporate Governance Technical Newsletter

In the case of *Unitrans Freight (Pty) Ltd* 2004 (6) SA 21 (SCA), the Court considered a case in which a Unitrans

vehicle had collided with another vehicle, which was under the control of a close corporation, which subsequently became insolvent.

In terms of Section 156 of the Insolvency Act an insurer is required to indemnify a third party, on the sequestration of the insured's estate. It provides that a person who is not a party to the policy of insurance may recover directly from the insurer in particular circumstances. The circumstances were that the third party must show that he or she has a good claim in law against the insolvent person and that the insurer is obliged in law to indemnify the insolvent person against the claim.

The Supreme Court of Appeal found the Section 156 had been promulgated to indemnify third parties, which were not party to a contractual relationship with an insurer and that accordingly the third party was able to enforce its claim against the insurer.

INSURANCE: POLICYHOLDER PROTECTION

(Item 719) Acknowledgements ICSA Corporate Governance Technical Newsletter

New policyholder protection rules, which are applicable in both the short term and long term insurance industries came into effect on 30 September 2004.

The rules replace those issued in 2001.

The new rules affect the relationship between the investor and his or her insurer. They have a strong consumer protection bias and ensure that policies are adhered to in the interests of all parties.

The new rules provide that insurers may not insist that the insured undergo a polygraph or lie detector test in connection with any claim. Furthermore, the rules provide that

even where the insured undergoes a test voluntarily and fails, the results of the test may not be used as the basis for rejecting a claim.

While the insured and insurer may agree to submit any dispute to arbitration, an insurance policy may not contain a provision that any dispute can only be resolved by arbitration.

The rules provide that an insurer may only terminate an insurance policy after giving thirty days notice of cancellation. The rules also provide that the insured has a 15 day grace period, from the due date, in which to pay premiums.

PROPERTY : NON DISCLOSURE OF LATENT DEFECTS

(Item 720) Acknowledgements ICSA Corporate Governance Technical Newsletter

In *Walter and Anotehr v Pienaar and Anotehr 2004 (6) SA 303 (C)*, the Court considered a situation in which property had been sold on a voetstoets clause basis, with the seller of the property failing to disclose material facts.

The Court found that a voetstoets clause did not protect a seller who was aware of defects in the property, that were concealed and not disclosed to the buyer.

A seller of the property therefore had a duty to disclose facts about the property in the buyer's right to have these facts communicated to him or her would be mutually recognized by the honest man in the street.

That the defect was visible did not relieve the seller of his duty to disclose the defect.

In the case in question the property, which was sold subject to a voetstoets clause, had been built on uncompacted

sand filling. Civil engineers had recommended that it would be uneconomical to repair the building and that it should be demolished. The Court ordered that the sale agreement be cancelled and that the defendant should pay back the purchase price to the plaintiff.

The Court found that the seller's detailed knowledge of the defect made the subsequent sale without disclosure a fraudulent act.

The Court found that it was not sufficient defence for the seller to claim that the purchaser should have referred to Municipal files, as the purchaser was entitled to rely upon the seller to make full disclosure.

RISK MANAGEMENT

(Item 721) Acknowledgements ICSA Corporate Governance Technical Newsletter

The code to the King Report 2002, which all companies listed on the JSE Securities Exchange South Africa are obliged to follow or report on reasons why the provisions have not been followed, contains in clause 3.1.5 the following:

"The Board is responsible for ensuring that a systematic, documented assessment of the processes and outcomes surrounding key risks is undertaken, at least annually, for the purpose of making its public statement on risk management. It should, at appropriately considered intervals, receive and review and review reports on the risk management process in the company. This risk assessment should address the company's exposure to at least the following:

- Physical and operational risks;
- Human resource risks;
- Business continuity and disaster recovery;
- Credit and market risks; and
- Compliance risks

The development of risk management is still lacking in several companies and the attention of management is drawn to the need to ensuring a systematic documentation and assessment of risks.

TRUSTS : APPLICATION OF THE TURQUAND RULE

(Item 719) Acknowledgements ICSA Corporate Governance Technical Newsletter

In the case of Man Truck and Bus SA Ltd v Victor en Andere 2001 (2) SA 562 (NC), the Court accepted that the Turquand Rule also applies the trusts.

The Turquand rule of company law provides that every person contracting with a company may assume that the internal requirements and procedures of the company, enabling the representative to act for the company have been met. The company is accordingly bound by a contract concluded in certain circumstances even though all matters of internal management and procedure may not have been.

In a recent article which appeared in the SA Mercantile Law Journal, (Issue 2 of 2004) H G J Beukes contended in an article entitled "Does the Turquand Rule Apply to Internal Requirements in a Trust Deed?" that it seemed fair to conclude that the Turquand rule does apply to internal requirements in a trust deed.

PUBLIC HOLIDAYS 2006

Please note that in compiling this list, we have adhered to the present Public Holidays Act of 1994. Your attention is drawn to the Public Holiday Act of 1994 that if any of these Public Holidays fall on a Sunday, the following Monday shall be a holiday.

N.B.: This information has been compiled from the official source (Department of Home Affairs) and whilst every effort it made in ensuring that the information supplied to us is correct, PIFSA cannot be held responsible for any changes or inaccuracies by the Department.

SOUTH AFRICA:

New Years Day	1 January
Human Rights Day	21 March
Good Friday	14 April
Family Day	17 April
Freedom Day	27 April
Workers Day	1 May
Youth Day	16 June
National Women's Day	9 August
Heritage Day	24 Sept
Day of Reconciliation	16 Dec
Christmas Day	25 Dec
Day of Goodwill	26 Dec

LESOTHO

New Years Day	1 January
Moshoeshoe's Day	11 March
Good Friday	14 April
Easter Monday	17 April
Worker's Day	1 May
Ascension Day	25 May
Africa Heroe's Day	25 May
King's Birthday	17 July
Independence Day	4 Oct
Christmas Day	25 Dec
Boxing Day	26 Dec

UGANDA

New Years Day	1 January
NRM Anniversary Day	26 Jan
International Women's Day	8 March
Good Friday	14 April
Easter Monday	17 April
Labour Day	1 May
Uganda Martyr's Day	3 June
National Heroes Day	9 June
Independence Day	9 October
Christmas Day	25 Dec
Boxing Day	26 Dec

GHANA

New Years Day	1 January
Eid-UI-Adha	20 Jan
Independence Ann	6 March
Good Friday	14 April
Easter Monday	17 April
Labour Day	1 May
Africa Day	25 May
Republic Day	1 July
Eid-UI-Fitr	November
Farmers Day	First Friday in December
Christmas Day	25 Dec
Boxing Day	26 Dec

KENYA

New Years Day	1 January
Good Friday	14 April
Easter Monday	17 April
Labour Day	1 May
Madaraka Day	1 June
Moi Day	10 Oct
Kenyatta Day	20 Oct
Jamhuri Day	12 Dec
Christmas Day	25 Dec
Boxing Day	26 Dec

NAMIBIA

New Years Day	1 January
Independence Day	21 March
Good Friday	14 April
Easter Monday	17 April
Workers Day	1 May
Casinga Day	4 May
Ascension Day	25 May
Africa Day	26 May
Heroes Day	28 August
International Human Rights Day	10 Dec
Christmas Day	25 Dec
Family Day	26 Dec

**JEWISH HOLIDAYS AND THE
MUSLIM/ISALMIC CALENDAR ARE
ATTACHED AT THE END OF THIS
NEWSLETTER**