



Central Chamber

Newsletter

May

2005

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ANNUAL DUTY

(Item 723) Acknowledgements ICSA Corporate Governance Technical Newsletter

From 1 May 2005 all private companies will be obliged to lodge an annual return, regardless of whether the company is in business or dormant.

As a consequence of private companies being required to lodge annual returns from 1 May 2005, on the anniversary date of their incorporation, private companies that were incorporated in May 2005 will have to submit their first annual return by no later than 30 June 2005 will be required to pay their annual duty by 31 July 2005, with subsequent months being treated likewise.

The annual duty for a company with a turnover of less than R10 million is R450.

Companies with annual turnover from R10 million to R50 million will be required to pay an annual duty of R2 005.

Companies with an annual turnover of in excess of R50 million will be required to pay annual duty of R4000.

All persons wishing to lodge an annual return will be required to register as a customer on the CIPRO website (www.CIPRO.co.za). Thereafter payment may either be made by credit card or by a deposit into ABSA Bank account number 4055681017, branch code 323345.

DIRECTOR REMUNERATION: INCREASE IN LINE WITH ADDED RESPONSIBILITIES

(Item 724) Acknowledgements ICSA Corporate Governance Technical Newsletter

South African surveys indicate:

- Audit Committees in South Africa meet an average of 4 times a year (against 8 times a year in the USA);
- The average ratio of non-executive : executive directors is 5:2;
- The Chairmen of 68% of Audit Committees are independent non-executive directors;
- The average number of Board meetings now exceeds 6 per annum (2002 : 4);
- The average annual non-executive director's fees amount to R100 000 (R52 000 in the State owned enterprise category) an increase of almost 40 per cent in one year, with fees reported at in excess of R250 000 per annum.

The South African trend is that a director, who is also a member of the Audit Committee could have 10 meetings a year, as compared with 14 meetings a year in the USA.

Given that meetings will take between 3 and 5 hours each and that reading and other time is involved, the average remuneration rate is in excess of R1 000 per hour. R1 000 per hour is of course substantially below the professional fee rate of top professionals. Given that this rate is considerably below market rates, the pay is unlikely to attract top professionals.

The trend of increasing director's remuneration, in line with increased time commitment is international, with USA surveys reflecting director pay

increases of 23 percent in 2003 and 2004.

While the emphasis for executive directors is performance linked earnings; for independent non-executive directors the emphasis is on time committed to company business.

DIRECTORS: EVALUATION OF PERFORMANCE

(Item 725) Acknowledgements ICSA Corporate Governance Technical Newsletter

In South Africa many boards of directors have initiated processes for the evaluation of the performance of the board, as an entity. Far fewer companies have proceeded to the next stage of evaluation the performance of individual directors.

The approach of using a tick-box to indicate whether or not there has been compliance is not effective and it is necessary for boards to systematically examine the Board's purpose, tasks, talents and information.

In the USA, several investor groups including Calpers and TIAA-Cref and other heavyweights are insisting on a process for the evaluation of the performance of individual boards being followed.

The Canadian Coalition for Good Governance has recently recommended that all boards should evaluate the performance of individual directors.

South African boards of directors need to remember that the evaluation of the performance of a director does not necessarily mean that the director has to withdraw from the board. Instead it provides a means for the board to identify the strong points of each director, so that it is able to provide relevant training and facilitation for the

continuing positive step, which all boards are encouraged to take, in the interests of the future of the company.

With regard to disclosure on the evaluation of directors, the Toronto Stock Exchange, as part of its listing guidelines, has suggested that companies should disclose the following matters:

- Discuss whether or not the Chairman should be assessed;
- Describe the assessment process;
- Disclose how frequently the assessments take place;
- Describe the actions taken as a result of the assessments.

It is in the interests of transparency to follow the recommendations of the Toronto Stock Exchange when making declarations to members. Certainly it goes well beyond the normal procedure of disclosing how and who has assessed the directors.

As an interim measure it may be adequate for companies, in their disclosure to shareholders, to disclose the strong points of the individual members of the board. The consolidation of the strong points would then clearly indicate the strength of the board as an entity. Notwithstanding the declaration to shareholders, directors should address the question of whether or not the talents of directors who do not have all the necessary skills could be improved, by a process of continuing professional development.

The role of the company secretary in facilitating continuing professional development, as well as induction training, is emphasized.

LATENT DEFECTS

(Item 726) Acknowledgements ICSA Corporate Governance Technical Newsletter

In the case of Waller v Pienaar 2004 (6) SA303 (C), the Court considered an incident in which a buyer purchased a building which, because the filling was poorly compacted, resulted in extensive cracking.

The Court found that the defects were latent and that the seller concealed the existence of the defects, to induce the plaintiff into buying the property. Accordingly, the sale was cancelled.

MAINTENANCE OF SURVIVING SPOUSES ACT: LIFE LONG SAME-SEX RELATIONSHIPS

(Item 727) Acknowledgements ICSA Corporate Governance Technical Newsletter

In the case of Tobinson v Volks NO 2004 (6) SA288 (C), the court considered a situation in which an applicant had been in a life long same-sex relationship with the deceased and sought maintenance from the estate of the deceased.

The Court ruled that when a breakdown of an intimate relationship takes place it would be callous to ignore complex issues of financial dependence which a surviving spouse might make on the estate of a deceased partner. To ignore the arrangement and to impose a particular religious view on their world was to undermine the dignity of difference. The Court accordingly ordered that the definition of spouse in the Maintenance of Surviving Spouses act 1990 should be amended to include “

A person in a permanent life partnership”. The maintenance claim was accordingly allowed.

PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT: REGULATIONS REGARDING THE REGISTER FOR TENDER DEFAULTERS

(Item 728) Acknowledgements ICSA Corporate Governance Technical Newsletter

Government Gazette 27365 of 11 March 2005, contains regulations regarding the register for tender defaulters.

The regulations provide that entries in the register shall be for a period of 20 years. The register shall include details of the names of persons convicted, their identity number, the trade name of the enterprise, the company registration number, the VAT registration number and other relevant information.

A copy of the register must be maintained on the website of the National Treasury
www.treasury.gov.za.

SHAREHOLDERS' INTERESTS: CONFIDENTIALITY MAY BE BROKEN BY CUSTODIAN BANKS

(Item 729) Acknowledgements ICSA Corporate Governance Technical Newsletter

In Canada a custodian Bank employee has recently leaked information to a third party. The former CIBC Mellon employee had provided details to a third party about the holdings of a particular security. Obviously the knowledge of changes in shareholding, when provided in detail, could lead to market abuse.

The latest release of information has led several companies wanting to institute their own procedures with regard to records and who controls their share registers.

In South Africa, where information about listed companies' shareholders is held by share registrars and employees of the CSDP participants of STRATE, the likelihood of information being leaked to third parties about recent share trades is evident. Clearly companies may seek to include confidentiality clauses in their agreements with the share registrars.

PUBLIC HOLIDAYS – DECEMBER 2005

(Item 730) Acknowledgements Impressions – PIFSA

In spite of what the calendars say this year, until President Mbeki says so, Tuesday the 27 December is a working day and not a paid holiday.

There has been some confusion about the status of Tuesday, 27 December 2005 as a public holiday.

Lucas Moeti, PIFSA and CMTA Admin Department, requested clarity from the Department of Home Affairs.

They have replied confirming our interpretation that Tuesday, 27 December 2005 is not a public holiday. There is no provision in the Public Holiday Act making a Tuesday a public holiday in the event of either Sunday or Monday or both being public holidays.

The only person who can declare a day a public holiday is the State President by proclamation in the Government Gazette.

The 27th December 2005 will remain a normal working day unless the State President decides otherwise.

REGULATORY IMPACT ASSESSMENTS (RIA'S)

(Item 731) Acknowledgements: SACOB

A consultative consortium under the leadership of the Small Business Project (SBP) has been contracted to undertake research for the Department of the Presidency. Consideration has been given to quantifying the RIA of specific regulatory measures. It must be recalled that the President has on a number of occasions expressed the view that there is a need to reduce the costs of doing business. This SBP project gives substance to that intention.

ANTI-CORRUPTION FORUM

(Item 732) Acknowledgements: SACOB

At a meeting held in Pretoria on 12 May chaired by the Minister Fraser-Moloketi attention was focused on how the numerous resolutions adopted at the Anti-corruption Summit could be advanced. The Minister was at pains to demand a commitment from all the stakeholders (Government depts., Business, and various civil society representatives) to provide undertakings that would give effect to those resolutions.

From the Business side the CEO of Business Against Crime (BAC) undertook to come up with specific projects that BAC would pursue. It is increasingly necessary for Business to show purpose in combating corruption. The adoption of codes of corporate ethics and behavior would be a useful starting point for businesses. Of course the complex regulatory environment confronting business does not assist matters. For example BBBEE procurement requirements has fostered circumvention via 'fronting'.

PASSPORT HASSLES?

(Item 733) Acknowledgements: SACOB

For noting. Reg 6 (2) (e) of the Immigration Act Regs (Govt Gazette 24952 of 21 Feb 2003) states that a passport should contain certain information and characteristics including at least one unused page when presenting the passport for endorsement. It has been reported that certain immigration officials have been insisting that the passport holder should have two clear unused pages. (Source Julian Pokroy, Immigration Law Attorneys)

SARS INTERPRETATION NOTE 27 FAILURE TO WITHHOLD EMPLOYEES' TAX

(Item 734) Acknowledgements: SACOB

This interpretation note from SARS reminds employers that they are held personally liable for the amount of tax that they might fail to withhold, and to pay over to SARS from the remuneration of their employees. In cases where an employer is a company, 'every shareholder and director who controls or is regularly involved in the management of the company's affairs shall be personally liable for the employees tax, additional tax, penalty or interest for which the company is liable' (see para 16(2C) of the Fourth Schedule.

DRAFT HUMAN RESOURCES PROFESSION "BILL"

(Item 735) Acknowledgements: SACOB

A revised version of the Human Resources Profession "Bill" has been released by the SA Board for Personnel Practice for public comment.

A copy of this document can be obtained from Johan Zietsman upon request.

ANC DOCUMENT (DEVELOPMENT AND UNDERDEVELOPMENT)

(Item 736) Acknowledgements: SACOB

The ANC has prepared a document entitled "Development and Underdevelopment" in which they clearly distinguish between two separate sectors of the South African Labour market, viz. the First and Second economies.

The undeveloped sector of the South African Labour Market is encompassed under the second economy. The ANC suggests the relaxation of Labour Laws to allow for the absorption of more second economy workers into the established first economy market.

This is an opportunity for business to stress the importance of the relaxation of these laws and to share some of the difficulties experienced during the first years since the inception of the Labour Relations Act 1995. All comments can be directed to Johan Zietsman.

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TELEPHONE TECHNIQUES AND FRONT OFFICE SKILL WORKSHOP

Our next Telephone Techniques and Front Office Skills course is being held on 11 August 2005.

This hugely successful and well attended course is presented by Mr Geoff Warren Director of the Kwa-Zulu Natal Chamber .



Mr Geoff Warren –

All companies should realise the value of an efficient a motivated receptionist.

Course contents:

- Customer Service
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- Greetings
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- Dealing with Complaints
- Telephone Technique
- Security and the Reception Area

The cost of this course to members is R870.00, which includes VAT, lunch, tea/coffee and course notes.

**PLEASE PHONE NICKY AT THE CENTRAL
CHAMBER TO BOOK YOUR FRONT LINE
LADY/GENTLEMAN ON THIS COURSE**

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 from 6 – 8 September, depending on availability of dates. The date has been 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.



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