

Talking Companies

Trade and Industry Minister Rob Davies has indicated that the Companies Act 2008 (“A piece of legislation which is going to bring about some dramatic changes to the business landscape in this country”) will be implemented in the third quarter of 2010.

Some highlights of the Companies Act 2008 are:

- The Act repeals Companies Act 1973 entirely (except for the sections dealing with the winding up of companies on the grounds of insolvency).
- The Act is a complete re-write of company law : many new concepts have been added, and where old principles are retained many sections have been reworded. The order of sections has changed and the Act is considerably shorter than the Companies Act 1973.
- The Act will apply to existing companies – although the enforcement of compliance with certain requirements may be delayed for two years.
- There will be no new registrations of Close Corporations from the date the Act comes into operation.
- Many of the provisions of the Act will also be applicable to Close Corporations and businesses will have to determine whether there is a benefit to continuing to operate as a CC.
- Three important documents will govern a company –
 - The Memorandum of Incorporation – previously the Articles of Association
 - The Company Rules
 - Shareholders Agreements
 These documents will all have to be consistent with the Act and will have to be carefully examined by each company.
- The distinction between shares having a par value and no par value shares has been removed and all companies with par value shares will have to convert those shares in time.
- While all companies must keep appropriate accounting records and produce annual financial statements, not every company will have to undergo an audit. For many companies, an independent review will suffice and certain others must merely have their financial statements independently compiled. Some companies will be exempt from the audit and /or review requirements.

- Certain companies must comply with “enhanced accountability and transparency” provisions.
- The Companies Act contains an “anti-avoidance” provision.
- Communications with shareholders and

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- others entitled to receive certain notices must be in the prescribed form or in “plain language”.
- The standard of conduct expected of directors has been codified.
- Before certain decisions of the board can be implemented the board must be satisfied that the company meets the “solvency and liquidity test”. For example, where the company distributes a dividend or grants financial assistance to a purchaser of its shares.
- Shareholders are given enhanced rights – particularly where a decision affects the value of their shares in a “materially adverse manner” or where the directors are about to act in a manner inconsistent with the Act, the memorandum of incorporation or the company rules.
- The position of employees (especially in respect of business rescue proceedings) is afforded greater protection.
- “Financially distressed” companies which have a reasonable prospect of

being restored to financial health can make use of the new business rescue procedure.

All these matters will be dealt with in future issues of “Talking Companies”.

Compiled by Graeme Fraser and Veldra Morris - www.companiesactonline.co.za in association with Horwath in Southern Africa (Pty) Ltd. The advice contained in these newsletters is of general application and is not intended to be legal advice.

