



Importance of legislation

The Editor:
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Legislation is one of the most important instruments of government in organising society and protecting citizens. It determines amongst others the rights and responsibilities of individuals and authorities to whom the legislation applies. On the other hand, a law has little or no value if there is neither discipline nor enforcement.

In the private sector the Companies Act governs the relationship between the owners (shareholders) and management (directors) of companies. These regulations also affect various interest groups such as investors and creditors.

Registered Accountants and Auditors who are registered in terms of Act 80 of 1991, have sole statutory right to fulfil the attestation function as auditors of companies. Therefore article 300 of the Companies Act describes in detail the activities of the auditor. The statutory duty to control adherence to the Companies Act requirements and where necessary to report violations thereof, thus rests with the auditor.

Given the importance of the Companies Act to the auditor in public practice, the professional bodies, namely the Public Accountants' and Auditors' Board and the South African Institute of Chartered Accountants, have given detailed requirements with regard to this law in their prescribed auditing curriculum for accredited universities. As is to be expected, the Companies Act forms a substantial part of the official syllabus.

Adherence to the Companies Act requirements, according to *The first report of the commission of inquiry into the affairs of the Masterbond group and investor protection in*

South Africa (hereinafter referred to as the Nel Commission) and research completed by the School of Accountancy at the University of Pretoria in 1997 *The disclosure of remuneration paid to the external auditor by listed companies*, as well as reports which appear almost daily in the media, seems minimal, and furthermore, there appears to be scant discipline with regard to the application of the Companies Act requirements.

The Nel Commission finds, amongst others, "Bearing in mind that 2058 companies were liquidated during 1994 and 1719 during 1995, that Attorneys-General and the Office for Serious Economic Offences cannot cope with the number of reported frauds and that the Commercial Crime Unit of the police cannot cope with the numerous contraventions of the Companies Act, the content of the reports of the Board (Public Accountants' and Auditors' Board, PAAB) disclose a pathetic situation in regard to the reporting of material irregularities by auditors." The PAAB's report indicates that a mere 5 violations of the Companies Act were reported to the Public Accountants' and Auditors' Board by auditors in public practice.

The Nel Commission further finds that auditors in the performance of their duties do not address negligent (ignorant) or deliberate violations of the Companies Act.

Research by the School of Accountancy finds the following: "Of the companies surveyed only 14% (1992), 3% (1993) and 3% (1994) fully adhered to the requirements of the Companies Act with regard to the disclosure of remuneration paid to the auditor." This report (56 pages) was sent to the PAAB and SAICA. Receipt of the report was acknowledged. However, the regulatory bodies did not make the effort to alert practitioners through their publications to these deficiencies.

This situation is further worsened, or is possibly the result of, Companies Act requirements having exceptionally low priority in the Qualifying Examination which was conducted until 1998 by the Public Accountants' and Auditors' Board. In the last 10 years the Companies Act questions in the Qualifying Examination represented fewer than 4% of the auditing paper.

Companies' non-adherence to the Companies Act requirements, and the level of discipline regarding this issue amongst auditors in public practice, who have the sole statutory right to conduct audits of companies, is disturbing.

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In 1999, Part 1 of the Qualifying Examination moved to the South African Institute of Chartered Accountants – and no Companies Act question was asked. In Part 2 of the Qualifying Examination (Public Practice Examination), which was conducted this year in March and November by the Public Accountants' and Auditors' Board, no marks were allocated to Companies Act knowledge.

This indicates that the examining bodies have accepted a policy that the Companies Act will no longer be examined, or is inexam-inable. This tendency has been steadily gaining ground over the last ten years.

This resulted in certain universities having substantially reduced the teaching of the Companies Act, and that students have begun to show a preference for such universities, since the extent of the study material is considerably reduced, and the consequently run no risk of being unsuccessful in the examinations of the professional body.

This situation with regard to the Companies Act is extremely critical – it disadvantages the public, damages foreign investor confidence and holds the risk that auditors may lose their sole statutory right to be appointed as auditors of companies.

The Public Finance Management Act which becomes effective on 1 April 2000, is second only to the Constitution in its importance to South Africa. The influence of this law on the public sector and public entities is great – it will transform the authorities from an administration driven concern, to statutory performance management. It is both heartening and encouraging that the Office of the Auditor General is already acutely examining its audit approach, and has already made significant progress in integrating the presently greatly divergent regulation and performance audit approaches into one comprehensive approach. This Act is a significant advance, but to have real impact, it will also have to be enforced.

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The Office of the Auditor General and the private auditing firms to whom the audit work may be contracted out, have a vital role to fulfil in ensuring that the Public Finance Management Act achieves its goal. *Auditing SA*

