

Public sector leads the accountability contest: changes to the *Companies Act* necessary

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The *Public Finance Management Act* (PFMA) has quietly revolutionized accountability measures in the public sector. Although public perception may indicate otherwise, national and provincial government departments are considerably more accountable than private sector companies.

This assertion refers to the full accountability cycle from the budgeting phase, which is published and debated in public, to the reports which are tabled and discussed in Parliament and Provincial legislatures. Other accountability structures such as the Standing Committee on Public Accounts, Finance Committees, and the independent Office of the Auditor-General contribute towards making departments accountable.

Whilst the comparison of departments with private companies may seem forced, the comparison of so-called public entities with private sector companies is more commonly accepted. After all, many public entities are also companies, incorporated under the *Companies Act*.









The PFMA contains a whole chapter (Chapter 6) specifically designed to ensure that public entities are managed efficiently and effectively, and to spell out clearly the responsibilities of the stewards entrusted with the entities' financial management. This is a direct parallel with the responsibilities of company directors and officers who also fulfill a stewardship role in managing the funds invested by shareholders.













Although both private sector companies and public entities have to prepare annual financial statements, there are a number of factors which undermine the real function that private company financial statements are supposed to fulfill. Many private sector companies use the annual report (of which the financial statements are part) as a public relations exercise. The flamboyant presentations, pictures, graphs and colorful layouts

distract attention from the “financials”. And because the publication of financial results of listed companies is “big business” for the printed media, and taking into account the advertising “muscle” of these companies, critical analysis of financial results is the singular task of not even a handful of genuine investigative journalists. And they have to struggle to find editors who are not in awe of big business, but are bold enough to publish critical comment.

The end result: The illusion is created that private sector companies are accountability champions whilst the public sector entities are seen to be lagging behind.

It is therefore necessary to highlight the real lead that public sector organisations have taken with regard to advancing accountability. In the table below some critical factors that improve accountability are compared. It is clear that urgent action is needed to bring the private sector on par with the stringent requirements applied in the public sector.

Accountability aspect	Public entities		Private companies	
Maximum period in which to publish audited annual financial statements	5 months after year end		normally 9 months after year end (in certain cases as much as 18 months)	
Statutory requirement to have an audit committee	yes		no	
Statutory requirement to have an internal audit function	yes		no	
Statutory requirement to include performance information in annual	yes		no	

financial statements				
Statutory prohibition on members of managing body to use “insider information” for personal gain	yes: in all instances		yes, but only prohibited if used to trade in securities or financial instruments	
Disclosure of interests in contracts by members of managing body	yes, such member has to withdraw from proceedings		yes, member may not vote, but may attend proceedings	
Statutory duty on managing body to ensure that organisation has an effective and efficient internal control system	yes		no	
Right of the Auditor-General to investigate organisation if complaint is received and public interest is concerned	yes, even if public entity has a private sector auditor		no	
Statutory duty to disclose losses recovered or written off	yes, all		yes, but only if material	
Auditor-General involved before external auditors may be discharged	yes		no	

Space is limited. The above table therefore lists only a few examples to support the proposition that the public sector leads the “accountability contest”.

Through applying the concept of ownership control, introduced by the PFMA, many companies that do not directly meet the requirements of a public entity are also indirectly “drawn into the net” if classified as national or provincial government business enterprises. By definition, government business enterprises are also public entities. If, for example a public entity has the right to appoint the Chief Executive Officer of XYZ Limited, then XYZ Limited is also deemed to be a public entity, and it then has to comply with the PFMA. Other rights, such as appointing the majority of members of the Board or rights to cast the majority of votes at Board or general meetings, also brings about ownership control and public entity status.

In view of the inferior accountability arrangements in the private sector, the ownership control effect that certain private sector companies are also forced to meet the public sector accountability requirements, is a constructive move that will contribute towards better accountability in certain private sector institutions.

In view of the increase in corporate failures and the inability of many companies to meet the most basic public interest requirements, the *Companies Act* should ideally be amended to make these arrangements applicable to all companies.