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Audit, Tax and Advisory Services

Upcoming Event:

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Insights into the proposed companies bill to the companies act of Zimbabwe

THE Companies Act [Chapter 24:03] is an Act from 1951, which came into effect on April 1, 1952 in the Rhodesian era to cater for the then few established companies. Since then, the Act has seen several amendments as it was necessary to line up with local progress and expansions. International standards continue to transform and economies continue to see modifications and the need to bring our Companies Act in line with these international standards and best practices has come back around.

The current Companies Act is well respected and established in Zimbabwe, having plenty of case law around it but this Act still falls behind the current constitutional, economic and regulatory environment. There is an urgent need to encourage the formation of different sizes of companies, improve the ease of doing business and attract investors.

The overhaul of the Companies Act is a Government project under the Rapid Results Initiative being overseen by the Office of the President and Cabinet. The project is being carried out with the technical assistance of strategic partners such as the World Bank Group. The main aim of the project is to improve the ease of doing business. The project also seeks to improve Zimbabwe's ranking as a sound investment destination by implementing gap closing measures in several thematic areas. The Companies Act is included under the thematic area on protecting investors and enforcing contracts.

In order to appreciate the proposed amendments, which seek to improve Zimbabwe's Companies Act, it is essential to take a look at some of the shortfalls of the current Companies Act before dealing with some of the proposed amendments.

The Shortfalls of the current Companies Act

i. The failure to recognise aspects of Corporate Governance

The Companies Act fails to recognise progressive mechanisms such as corporate governance, a progressive development which is envisaged by the National Code on Corporate Governance (NCGC). The recognition of Corporate Governance is in line with international standards as it promotes transparency and accountability in corporate structures. The manner in which company officials conduct the affairs of companies requires a measure of regulation, without too much interference, in order to protect the interests of the company itself and those conducting business with it. This in turn reassures investors as they feel better protected from possible prejudice. Corporate Governance as envisaged in the National Code and under international best practice entails clearer and expanded provisions for derivative litigation; further details for shareholder meetings; further details on conflict of interest transactions and further protection for minority parties. Corporate Governance necessitates clearer statements on the duties of directors and the role of the board. The

area of Corporate Governance is one in which our neighbour, South Africa is far more advanced in and the investor confidence in South Africa compared to Zimbabwe is evident.

ii. The failure to make provision for ICT

Our Companies Act does not provide for the option of utilising modern information communication technology with all its benefits. The company registration processes have been generally manual taking up to a month before a company can be registered in order to start a business in Zimbabwe. It must be acknowledged, however, that there are efforts currently being implemented under the e-Government initiative to computerize the Companies Registry. Once up and running, along with the required legislative framework, this feature will promote a definite improvement in the registration of companies in Zimbabwe. The capability for e-filing in this modern age is indispensable.

iii. The failure to provide for all sectors of the economy

The current Companies Act does not adequately support or encourage the informal sector and the small to medium sized business which covers a close majority of Zimbabwe's economic structure. With the formal industry struggling due to various operational challenges which include limited access to working capital and unsustainable cost structures, there have been obvious changes in the structure of businesses with growth in the informal sector. The growth of the informal sector, however, is not sufficiently supported by the legal framework in terms of the ease of doing business. A recognised, market friendly but simple legal entity that would better serve the small to medium enterprise is required within the legal framework.

iv. The failure to provide for financial reporting comprehensively

Our current Companies Act does not contain adequate, up to date financial reporting structures. The requirements for preparing financial statements in the current Companies Act were last updated in 1999. Further reporting elements are required in order to compel comprehensive reporting in line with modern trends and international best practice. There is a need to fall in line with other local laws such as the Banking Amendment Act, the Money Laundering and Proceeds of Crime Act and the Public Accountants and Auditors Act. The failure to align with other legal frameworks leaves room for fraudulent activities to take place undetected over long periods.

v. The failure to provide for adequate and robust business rescue

Our current Companies Act lacks simple corporate rescue provisions similar to those adopted in neighbouring South Africa in order to assist in the resuscitation of a company. Our cur-

rent insolvency laws are fragmented and spread out in various pieces of legislation. The time frame for winding up a company is long and the procedures are cumbersome. Creditors suffer unjustifiably before recovering anything, if they recover at all. The amendment seeks to harmonise the process of liquidation, curatorship, administration, sequestration and appropriate rescue of troubled companies.

The Proposed Companies Bill

i. The provision for Corporate Governance

The proposed amendments to the Companies Act seek to introduce extensive features of Corporate Governance to regulate company officials. The stakeholders, amongst them the Institute of Directors advocated that the duties owed to a company be stated unequivocally along with the liabilities, legal actions and remedies that members and shareholders may bring in order to prevent prejudice.

ii. The provision for Electronic Registration and Filing of Company Documents

The proposed amendments include provisions which permit the option of e-filing and e-registration of company documents. This will allow for speedier company registrations as is the case with other jurisdictions. The e-governance platform is in fact currently carrying out a parallel trial system for name search applications enabling the Registrar of Companies to process company name searches whilst you wait.

iii. The provision for more types of companies in the Companies Act

The Companies Bill sees the inclusion of an amended Private Business Corporation (PBC) Act as it seeks to encourage small to medium sized enterprises to register and be recognised as players in the market. The inclusion of the PBC into the Companies Bill recognises the PBC as a form of a company and facilitates the acceptance of the Private Business Corporations, with their less stringent corporate requirements as a means of conducting business in Zimbabwe for the smaller corporate or family run business.

iv. The provision for updated Financial Reporting provisions

The proposed amendments seek to align the Companies Bill with other Acts of Parliament that deal directly with financial reporting standards such as the Public Accountants and Auditors Act [Chapter 27:12] in an effort to bridge the gap and still maintain the international best practice in financial reporting. Proposals by stakeholders called for the inclusion of reporting requirements for the Audit Committee and the Bill is providing for this.

v. The removal of Winding up and Judicial Management related provisions from the Companies Act

The proposed Companies Bill sees the removal of aspects of winding up, judicial management and insolvency. These provisions, including better and modern elements of business rescue have been included in an all-encompassing Insolvency Bill which is already in its advanced stages for release, under the Rapid Results Initiative, to the public. This shift sees the harmonisation of the fragmented insolvency laws. The Companies Bill does, however, still make provision for the instance in which a company dissolves or winds up on a voluntary basis that is in instances where the company is not insolvent.

vi. The provision for mergers and acquisitions

The new Companies Bill introduces the principles of mergers, acquisitions and conversions into our Companies Act. The current Companies Act does not provide for takeovers and mergers although the Zimbabwe Stock Exchange Rules do provide for publicly listed companies. The new Bill seeks to provide for instances of mergers, acquisitions and conversions in alignment with the Competition Act [Chapter 14:20] which currently prescribes for mergers and related instances.

vii. The removal of the aspect of Share Capital

The new Companies Bill is following the international trends adopted in countries such as South Africa and New Zealand when it comes to the concept of "share capital" and "par value". The history behind this concept is important in understanding it and coming to the realisation that it has now become unnecessary. Historically these concepts were related to providing protection by prohibiting a company from making distributions to shareholders if the company's "share capital" was diminished. The modern trend has seen the adoption of the solvency test before distributions can be made. This solvency test is a new feature of the Companies Bill.

viii. The provision for the re-registration of companies

The Companies Bill is proposing that all companies re-register. This has been acknowledged by the office of the Registrar of Companies to be a necessary evil in light of the amount of inoperative companies with files being held in the Companies Registry. Companies will be given a time frame within which to re-register and confirm their existence. In light of the fact that companies are already required to file annual returns, the exercise of re-registration will not be far from what companies are already required to do.

Concluding remarks

There are several other proposed additions to the Companies Bill which cannot be covered in this article but which I would encourage every stakeholder and citizen to become familiar with. The bill adds many new dynamic



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and proactive aspects to our companies' law lining Zimbabwe up with the region and international best practice. The Companies Bill, with all its new additions makes Zimbabwe a promising business destination where the ease of doing business is promoted and investor confidence is a currency.

The article was written by Phillipa M. Phillips a partner at Phillips Law, a local boutique law firm specialising in immigration and corporate law. Phillipa holds a BA (French & Private Law), an LLB from the University of Cape Town, and LLM from Temple University in Philadelphia, Pennsylvania and is an Advocate of the High Court of South Africa. Phillipa is the local technical consultant for the review of the Zimbabwean Companies Act.

Upcoming KPMG events:

Join us for the next KPMG Audit Committee Forum, 7 July 2016 8.00am to 1.00pm at the Meikles Hotel, Steward Room.

Established in 2015, the KPMG Zimbabwe Audit Committee Forum provides Audit Committee and Board members with practical insights, resources, and peer-exchange opportunities focused on strengthening oversight of financial reporting and audit quality, and how to address the array of challenges facing boards and businesses today.

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