



LAW LETTER

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the new companies bill

The present Companies Act has been on the statute books for thirty years and is long due, as Henry Beecher puts it, for a winding up and a setting to true time. Public opinion on corporates has developed over the years and it is about time that the law caught up.

The Department of Trade and Industry's Corporate Law Reform project has produced an initial draft Bill, which was published for public comment early in 2007. The draft Bill has been substantially amended in the light of public comment and will go through the legislative process in the next few months. The Department is keeping the final draft Bill a closely-guarded secret, but we have a reasonable idea of the final content based on the first draft and seminars recently presented by the draftspersons.

The Companies Bill rationalises and codifies the existing law, as set out in the existing Companies Act, its many amendments and court judgements over the years. The Bill also introduces new principles. The Bill seeks to reduce the costs and complexities of forming and keeping a company. The Bill also tries to grant the flexibility enjoyed by close corporations to certain types of new companies. A company owned by one person or by people who are related, for



by Tim Brown
Commercial Division

example, need not have an auditor, audited financial statements or an annual general meeting. Companies will also require a simpler Memorandum of Incorporation that will replace the existing Articles of Association and Memorandum of Association. Directors will have a legal duty to take reasonable care in performing their functions, and the courts will be empowered to place directors under probation or to ban a person from acting as a director.

The Bill is likely to be enacted towards the end of this year and will only be implemented a year later, probably towards the end of 2009.

Existing companies will continue and will have two years to adopt new Memoranda of Incorporation. Close corporations, on the other hand, will be phased out and owners will have a period of time to convert their corporations into new companies.

We will be keep you informed of developments.

Law and institutions ... like clocks ... must be occasionally cleansed, and wound up, and set to true time. Henry Ward Beecher.



sars strikes back

The withholding tax payable on property bought from foreign sellers came into force on 1 September 2007. This tax is intended to ensure that SARS gets every cent of the capital gains tax due to it on property sales; the theory being that foreigners are more likely to not disclose the capital gain.

People buying property from sellers who are not resident in South Africa must now withhold, and pay over to SARS, portion of the purchase price on the property. The amount to be withheld varies depending on who the seller is, namely:

- 5% for natural persons;
- 7.5% for companies; and
- 10% for trusts.

If the purchaser is a South African resident, the amount withheld must be paid over to SARS within 14 days, while non-resident purchasers must pay within a 28-day period.

The withholding tax only applies to property sales in excess of R2 000 000.



by Redvers Lee
Property Division

Failure to withhold has serious consequences for purchasers, estate agents and conveyancers. Purchasers become personally liable for the amount not withheld if they knew or should reasonably have known that the seller is a non-resident. Estate agents and conveyancers, on the other hand, are required to give written notice to purchasers advising that a seller is a non-resident and that tax must be withheld. If an agent or conveyancer fails to notify the purchaser, he or she becomes liable to SARS for a penalty. The only bright side for estate agents and conveyancers is that the penalty is limited to the amount of their fee - at most, non-compliant agents or conveyancers will have provided a service free of charge.



*It was as true as taxes is. And nothing's truer than them.
Charles Dickens, David Copperfield.*



things get sticky

Venn Nemeth and Hart has a long-standing partnership with Feedback, a non-profit organisation that redistributes excess food from restaurants, sports events and other sources to needy communities in and around Pietermaritzburg.

We recently held a Sandwich Run as part of our ongoing support of Feedback. Directors, secretaries and staff were handed aprons and pointed towards piles of bread loaves, tubs of margarine and plenty of peanut butter and jam.

Each department had 15 minutes to win glory in a sandwich-making frenzy against our other departments. An hour later, in a scene reminiscent of the title to Chinua Achebe's famous novel, *Things Fall Apart*, 45 loaves of ready-to-eat sandwiches had been produced, for distribution, but things had become decidedly sticky.

All sandwiches were distributed to Feedback

The rule is, jam tomorrow and jam yesterday - but never jam today.
Lewis Carroll,
Through the Looking Glass.



beneficiaries in Pietermaritzburg and its surrounds including Ikusasa Elihle Creche in Imbali; Zenzeleni Pre-School in KwaMpumuza and Imbali Creche.

Such was the enthusiasm of our teams that we are planning a second Sandwich Run for 2008, but this time with 100 loaves of bread. And, who knows, maybe we will challenge other law firms to spread some bread with us!

the public law unit expands

Robbyn Richards has recently joined our Public Law Unit. Robbyn is an admitted attorney. She completed her LLB at the University of KwaZulu-Natal, Howard College and served articles with a law firm in Durban.

Robbyn has worked as a Senior Researcher at the University of Pretoria's Centre for Land-Related, Regional and Development Law and Policy (which we will, mercifully, refer to as simply "the Centre"). During Robbyn's time at the Centre she worked on a number of important public sector projects including the rationalisation of KwaZulu-Natal's local government laws, the KwaZulu-Natal White Paper on Local Government, the KwaZulu-Natal Social Development Bill and

the updating of the National Housing Bill.

Robbyn has participated in research on environmental management, indigenous law and traditional leadership, culminating in various articles and contributions to academic works. She also co-authored for the Rabie and Fuggle textbook on Environmental Management.

Robbyn's background in the public sector environment, and local government policy and law in particular, will add new depth to the Public Law Unit.



The outcome of any serious research can only be to make two questions grow where one question grew before. Thorstein Veblen.



the **new** crop

In days gone by, genteel fathers paid a small fortune for the privilege of having their sons taken on as articled clerks to attorneys. The attorneys cheerfully pocketed the cash and the hapless sons generally endured a very dry and dusty apprenticeship.



While doing his masters, Darren lectured on commercial law topics. He enjoys sport and autobiography, and has recently read Sir Alex Ferguson's *My Life*. Darren attended the Global Young Leaders Conference in Washington and New York in 2001.

While some of us might still fondly think that our predecessors were onto a good thing, legal training has thankfully changed over the years. As may be seen from our latest batch of candidates, law is no longer the exclusive preserve of men. (There is many a rose amongst the thorns at Venn Nemeth and Hart!) Nor does articles with a good law firm mean a dreary slavery to menial tasks. Modern legal training provides the skills necessary to make the essential leap from theoretical foundation to strategic application. We are pleased to introduce a group of well-rounded and dedicated young people who will be making that critical leap over the next two years:



Kashi Rampararat completed her LLB at the University of KwaZulu-Natal, Howard College. She has participated in academic Olympiads in an impressive range of subjects, including English, Afrikaans, Maths, Physics and Biology. Kashi enjoys community fundraising and helping out at local schools.



Portia Makhanya is from Umlazi and attended Durban Girls High before tackling her LLB at Howard College. Portia's work experience is interestingly varied and includes trainee positions at King Edward

Hospital and the South African Police Service. When not working, Portia enjoys a hard aerobics session.

Darren Subramanien is a Maritzburg boy and has a masters degree in labour law.

Training is everything. The peach was once a bitter almond; cauliflower is nothing but cabbage with a college education. Mark Twain.

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