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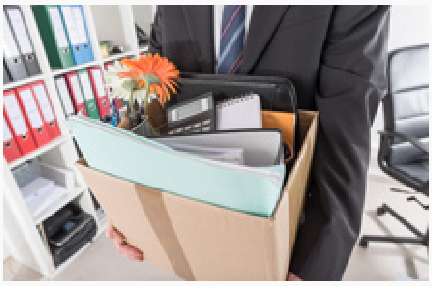
Directors Don't Like Goodbyes

December 2016

DIRECTORS DON'T LIKE GOODBYES

"Parting is such sweet sorrow" (Shakespeare)



One of the predicted negatives from the Companies Act (the Act) and the King Codes was it would be difficult to find directors. The Act and King Codes put extensive liabilities on directors, encouraged annual appraisal of directors, term limits for directors and recommended strong codes of conduct to ensure directors fulfilled their fiduciary roles.

Non-executive directors seemed particularly vulnerable as they are not part of day-to-day operations, have to wade through extensive board packs before each meeting and attract the same liabilities as executive directors.

It thus seems intuitive that directors would be reluctant to serve with the introduction of all these governance measures.

The predictions were wrong - directors are staying put

Research done in the United States contradicts this and shows that directors are keen to remain in office for as long as possible. It seems the prestige and access to high-power networks outweighs the negatives.

Directors in America feel more than one in three directors should be replaced but the research shows that only 15% of directors were appointed in the last two years.

Which directors should you replace?

- The first category is directors who arrive at meetings unprepared – these reportedly account for 25% of boards of directors.
- Second is the one upmanship category. They always have to show up other members leading to dysfunctional boards.
- Next come those who don't speak up. Many of these feel the chief executive (CEO) should go but don't say a word about it.
- Then there are the over-controlling CEOs who are afraid of board oversight and divide and rule the members of the board. In similar vein, CEOs who become Chairperson smother the new CEO as they believe only they can effectively run the company.
- Finally, there is the "old guard" who believe their experience is vital to the board but, over time, lose the ability to think independently and to voice contrary opinions.

You have to question just how effective the governance is in these organisations. Correctly applied, appraisals, strict enforcement of term limits and codes of conduct should weed these categories out.

It would appear that directors agree that weaker members should be replaced, but they do not see themselves as being a weak link – it is always the other director who should go.

It is important that governance is not just a box-ticking exercise. There is a strong argument that new blood brings new energy and ideas to a board of directors. Jack Welch, the long time CEO of General Electric, maintained that getting rid of non-performers greatly enhanced the organisation.

BEWARE OF TRUMP'S VICTORY – HARD ECONOMIC TIMES LOOM FOR SA

Donald Trump will soon be the 45th President of the United States. So far he is still threatening to implement his populist campaign promises (e.g. partially repeal Obamacare, tear up trade agreements and deport 11 million illegal immigrants) and has appointed a hard-line conservative to a senior position in the White House.

The American economy and how South Africa will fare

The most critical issue for us is the economy. So far, it does not look good. Trump has promised the US corporate tax cuts and a massive infrastructure program. Global markets are worried about this, particularly emerging markets, like South Africa. These programs will see the US deficit increase from the current 80% of GDP to well over 100%.

US long term interest rates have sharply spiked upwards since Trump won. The well-known economist Henry Kaufman has predicted that the thirty five year bull market for low long term interest rates is over. This is because Trump's policies threaten to revive inflation in the United States which will push up interest rates to dampen inflationary expectations. In turn, this will encourage investors to reduce their exposure to higher risk emerging market bonds, resulting in a sell-off of emerging currencies - to date the Rand has lost more than 8% to the US$.

To protect their currencies, emerging markets will raise interest rates which will reduce the potential for economic growth. This is not good news for South Africa as our economy will only grow 0.5% this year and if this is reduced in future years, we face more tax increases, lower employment and social unrest.

What about commodities?

The stimulus package will initially benefit commodities such as iron ore and copper. If the package translates into economic growth, this will help South Africa's major commodities such as platinum. So far platinum has dropped since Trump's election, indicating that US economic growth beyond the stimulus package may be low. Gold, our other major commodity export, has also dropped as rising interest rates dampen demand.

Protectionism

Trump has also promised to repeal free trade agreements, heralding a return to the economic nationalism of the 1930's. Our economy is an open one and has benefited from lower tariffs, whilst growing protectionism will reduce the prospect of economic growth.

So what? And will it actually happen?

Difficult times since the global financial crisis of 2008/9 have undermined the post Second World War economic consensus which has bought prosperity to the world. The problem with rising protectionism is that it does not bring economic prosperity but instead increases the potential for populism, which is already a rising trend globally.

Despite this, there were similar gloomy forecasts when George Bush was elected in 2000. Bush turned out to be positive for the African continent as he launched a successful crusade to fight AIDS and encouraged more open trade with the USA.

Remember also that power is institutionalised in the United States and Trump as President could well be prevented from introducing many of his proposed controversial initiatives.

DON'T MISS YOUR DEADLINE FOR EMPLOYMENT EQUITY REPORTS

Failure by "designated" employers to lodge their employment equity reports on time risks severe penalties, with first offenders risking a fine of the greater of R1,5m or 2% of turnover (increasing to the greater of R2,7m or 10% of turnover for serial offenders).

Lack of enforcement in the past (apart from a few high-profile exceptions) has perhaps lulled non-compliant employers into a false sense of security but the Labour Minister has threatened a major crackdown and if you missed the 3 October 2016 deadline for manual/postal submission, you would be well advised to remedy that immediately.

Follow the process for electronic submission by the online deadline of **Sunday 15 January 2017**. Go to the Department's "Employment Equity Online Reporting for 2016" https://ee.labour.gov.za/dmiso/ page for details.

Must you report?

Reports must be submitted by all employers who fall into either of these categories –

- All employers with 50 or more employees or
- Employers with fewer than 50 employees who are designated in terms of the turnover threshold applicable as per the following table -

TURNOVER THRESHOLDS

Sector or sub-sectors in accordance with the Standard Industrial Classification	Total annual turnover
Agriculture	R6m
Mining and Quarrying	R22.5m
Manufacturing	R30m
Electricity, Gas and Water	R30m
Construction	R15m
Retail and Motor Trade and Repair Services	R45m
Wholesale Trade, Commercial Agents and Allied Services	R75m
Catering, Accommodation and Other Trade	R15m
Transport, Storage and Communications	R30m
Finance and Business Services	R30m
Community, Special and Personal Services	R15m

(If the tables above do not display correctly, please see the "online version")

Getting this wrong could cost you dearly. Seek advice if in any doubt.

MANDATORY AUDIT FIRM ROTATION IS IN THE NEWS - WILL IT APPLY TO YOU?

There have been many articles in the financial press over mandatory audit firm rotation (MAFR). This followed an announcement by the Independent Regulatory Board for Auditors (IRBA) that they intend to implement MAFR in South Africa.

MAFR is intended to strengthen auditor independence to enhance audit quality. There is no universal acceptance or rejection of MAFR, and it has been controversial in some of the countries where it has been introduced, including countries that have introduced it only to have it repealed later; hence the heated nature of some of the discussions and articles.

Currently, the IRBA has initiated a public consultation process (due to end on 20 January 2017) on its plan to introduce MAFR in 2023 **for listed companies only**. These JSE companies will have to rotate auditors every ten years.

Thus, it is at least several years off and, although media reports led many small companies to worry that they would be caught in the net, it will in fact only impact listed entities.

MINIMUM WAGES FOR DOMESTIC WORKERS INCREASED

This year's new minimum wages for all domestic workers are set out in the table at the end of this article.

Who is covered?

- All domestic workers in South Africa working in a private household
- People employed by employment services
- Independent contractors who are doing domestic work
- A person doing gardening in a private home
- People who look after children, sick or old people and people with disabilities in a private home
- A person driving for the household

But excluding –

- Domestic workers employed on farms
- Domestic workers employed in activities covered by another sectoral determination or bargaining council agreement (such as contract cleaning workers).

Are you in Area A or Area B?

Area A includes most major metropolitan areas; Area B is all other areas. See the full lists on the Department of Labour website.

WAGE TABLE FOR DOMESTIC WORKERS FROM 1 DECEMBER 2016		
Domestic workers who work more than 27 ordinary hours per week		
	A: Major Metro Areas	B: Other Areas
Hourly Rate	R12.42	R11.31
Weekly Rate	R559.09	R508.93
Monthly Rate	R2,422.54	R2,205.17
Domestic workers who work 27 ordinary hours or less per week		
Hourly Rate	R14.54	R13.35
Weekly Rate	R392.58	R360.54
Monthly Rate	R1,701.06	R1,562.21

(If the tables above do not display correctly, please see the "online version")

YOUR TAX DEADLINES FOR DECEMBER

There are no significant tax deadlines for December. Don't forget, if you are involved in a dispute with SARS, the definition of business days allowed for each party to respond excludes not only Saturdays, Sundays and public holidays but also the full period from 16 December 2016 to 15 January 2017.

Thank you for your support in 2016.

Have a Wonderful Festive Season, and a Happy and Prosperous 2017!

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