

Corporate Governance in the spotlight

Corporate Governance has recently featured prominently both in the media and in the Government Gazette, albeit, ironically, for opposing reasons. The governance challenges facing state owned enterprises are well known and often reported on in the media. Within government, a series of high-profile suspensions have left the key departments of Rural Development and Land Reform, Agriculture, Forestry and Fisheries and Water and Sanitation leaderless. Clearly, there is no better time to have a closer look at corporate governance. At the same time, a number of new policy guidelines, regulations and legislation has been published in an effort to address some of the governance challenges through.

Governance of SOEs featured prominently in Minister Gigaba's Inclusive Growth Action Plan (IGAP) released on the 12th of July with no less than six interventions planned for March 2018. The interventions include the following:

- A private sector participation framework;
- A remuneration framework;
- A board appointment framework;
- A draft Shareholder Bill;
- A framework for the determination and costing of developmental mandates; and
- A Terms of reference for the implementation of the Remuneration Standards Committee.

Although the exact content of these reforms is still unknown, it certainly points towards greater state intervention into the governance of SOEs.

Last week the Department of Trade and Industry also released draft regulations laying out the composition, responsibilities and functioning of the boards governing Special Economic Zones. To a large extent the draft regulations seem to take inspiration from the Companies Act which forms the basis of the legal framework for corporate governance in Companies. Although it seems to duplicate many provisions in the Companies Act, such duplication may be necessary as Special Economic Zones are statutory bodies and therefore do not fall within the Companies Act nor the Public Finance Monetary Act. From a business point of view, one can take heart from the fact that the regulations are modelled on the former and not the latter.

Finally, the Competition Commission also published a draft guideline document in the Government Gazette last week to assist companies to stay on the right side of the Competition Act when sharing certain information. In terms of the Act, competitors are prohibited from engaging in practices that may be viewed as reducing competition in a given industry or sector. Where certain information is passed between competitors, it may be viewed as anti-competitive behavior by the Commission. However, where companies form part of an industry association, the sharing of certain information is often instrumental



in assisting the association to promote the interests of the sector or industry as a whole. Since there is clearly a great deal of ambiguity surrounding this topic, Organized Business has been calling for a guideline of this nature precisely to assist companies and industry associations to stay on the right side of the Act. Provided the guidelines are sufficiently detailed and clear, they should go some way towards assisting industry associations in particular to maintain high standards of corporate governance. Since Agbiz is an industry association in its own right, we will study the draft guideline in great deal and prepare inputs where necessary.

ENQUIRIES:

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