

PUBLIC HEARINGS INTO COMPANIES AMENDMENT BILLS

Background

The Portfolio Committee on Trade, Industry and Competition conducted public hearings into the Companies Amendment Bill and the Companies Second Amendment Bill on 17, 18 and 20 October. There was a lot of public interest in these Bills and many organisations, including BUSA, BASA, COSATU, the Consumer Goods Council of South Africa, the JSE, the Law Society and the King Committee presented their views on the Bills. Agbiz also appeared before the committee to make a submission.

The main aims of the amendment Bills are to:

- ❖ Promote the ease of doing business and cut unnecessary red tape.
- ❖ Achieve equity between directors and senior management on the one hand, and shareholders and workers on the other hand.
- ❖ Provide greater disclosure of the ultimate owner of shares in a business as part of the broader efforts to combat corruption and money-laundering.

The Bills provide for an extension of the time limit within which a director might be declared delinquent by the courts, from two years to five years, with potential for further extension beyond this period under justifiable circumstances.

The Bills also provide for greater transparency on the beneficial owners of companies.

Furthermore, the Bills allow for access to the beneficial ownership register of companies. However, the right to inspect and copy information contained in the annual financial statements and meetings will not apply to a private, non-profit, or personal liability company whose public interest score is under 100 and whose annual financial statement is internally prepared; or whose public interest score is under 350 and whose annual financial statement is independently prepared.

Agbiz comments

Agbiz told the committee that the organisation and its members subscribe to the principles of good corporate governance as set out by the King IV. In addition, several members are listed on the JSE and adhere to the extended corporate governance prescripts of the JSE listing requirements. Agbiz was a member of BUSA and fully support the inputs made by BUSA inputs.

Agbiz cautioned against the unintended consequences of certain of the proposed amendments. The main concern that Agbiz raised, was around the provisions in the Bill that deal with the preparation, presentation and voting on companies' remuneration policy and a directors' remuneration report. The Bill requires listed companies to disclose the ratio of the top-paid employees with those in the bottom-paid 5%. Shareholders will have to be advised at annual general meetings of remuneration policies, the remuneration of specified top executives and the gap between the earnings of the top and bottom 5% of earners in a company. The Bill then requires remuneration committee members to stand down for re-election in the case of the non-approval of the implementation report. Agbiz argued that this could result in directors not wanting to serve on the remuneration committee due to perceived reputational risk. Both the social and ethics committee report and the remuneration report are required to be discussed during the shareholders meetings.

Agbiz also cautioned against the broadening of public access to company information – especially financial statements and argued that the Promotion of Access to Information Act of 2000 already sets out the ground rules for access to information held by public and private bodies. Persons requiring access to information should be able to prove that they have a beneficial interest in the company in order to access these documents.

Next steps

The Department of Trade and Industry will now prepare responses to the points raised during the public hearings and will share their responses with the portfolio committee whereafter the committee will start deliberating on the Bills clause by clause.

By Agbiz Head: Legal Intelligence Annelize Crosby