

NUUSBRIEF

NEWSLETTER

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Is daar geen verskil tussen 'n Hoof Uitvoerende Beampte en 'n Besturende Direkteur nie?

Die kort antwoord hierop is dat dit regtig afhang van die spesifieke maatskappy wat betrokke is. In Suid-Afrika word die terme dikwels afwisselend gebruik, met maatskappye wat beheer word deur 'n HUB (hoof uitvoerende beampte) of BD (besturende direkteur), na gelang van die grootte en struktuur van die betrokke besigheid. Algemene praktyk skryf voor dat die terme BD en HUB, veral laasgenoemde, slegs met maatskappye geassosieer moet word; hou egter in gedagte dat dit nie noodwendig sal verhoed dat 'n persoon binne enige van die ander ondernemingstipes 'n BD of HUB genoem word nie.

Desnieteenstaande moet die direksie in wese een van sy lede as die direkteur aanstel wat verantwoordelik is vir die 'bestuur' van die sake van die maatskappy in die loop van sy daaglikse bedrywighede. Die BD of HUB sien dienooreenkomstig na hierdie sy van sake om en kan selfs 'n uitvoerende komitee of bestuurskomitee aanstel (waaroor hy/sy sal toesig hou) om hom/haar te help om die besigheid te bedryf. Ongeag die spesifieke titel wat betrokke is, is dit die funksie wat deur hierdie persoon vervul word, in samehang daarmee of hy/sy as bestuurder van die maatskappy as geheel aangestel is, en met die magte wat op versoek van die direksie aan hom/haar verleen word wat sy/haar posisie in die organisasie dikteer — en by implikasie sy/haar verpligting om aan die direksie terug te rapporteer reguleer.

In situasies waar 'n maatskappy beide 'n HUB en 'n BD het, sal eersgenoemde gewoonlik die meer senior posisie beklee. 'n Maatskappy kan byvoorbeeld 'n aantal filiale of verskillende sake-eenhede binne sy struktuur hê en elkeen van hulle kan deur 'n BD bestuur word. Die persoon wat daarvoor verantwoordelik is om oor die hele sake-entiteit toesig te hou en aan wie die onderskeie BD's rapporteer, sal die HUB wees.

Nóg die huidige Maatskappywet nóg die voorgestelde Maatskappywetsontwerp defi-nieer spesifiek óf BD óf

HUB, of die funksies wat elkeen sal moet vervul — voorkeur word eerder daaraan verleen om te fokus op die begrip 'direkteur' of 'beampte'. Die maatskappy self is dus verantwoordelik vir die definiëring van die rol of funksies wat sy besturende direkteur moet vervul, hoewel dit gebruikelik is om bloot te definieer watter praktyke die BD of HUB nie toegelaat word om sonder die magtiging van die direksie uit te voer nie.

Dit verleen aan die HUB/BD die nodige vryheid om daaglikse besluite te neem en te implementeer om die ordelike en doeltreffende funksionering van die besigheid as geheel te verseker.

Samevattend sal daar 'n wesenlike verskil tussen 'n BD en 'n HUB wees indien albei binne dieselfde maatskappy aangetref word en verteenwoordigend is van verskillende persone wat verskillende posisies beklee — aangesien die HUB gewoonlik meer senior as die BD sal wees en dienooreenkomstig meer verant-waardelikhede en pligte sal hê, waarvan een rapportering aan die direksie sal behels. Waar 'n maatskappy egter óf 'n BD óf 'n HUB aan die stuur het wat die daaglikse bedrywighede van die maatskappy as geheel beheer, sal daar geen verskil in funksie of geassosieerde implikasies wees nie, buiten verskillende name vir dieselfde pos.

Investments for Dummies

By Janus Nieuwoudt

It is rather frustrating opening every article these days for the last three months and reading: "due to the current economic state... blah blah blah". Unfortunately that is a fact. Having a few shares in a small business and then of course trying to invest the small remaining profit of a less established company can be tricky.

Even radio advertisements state the obvious: do not cash in or cancel any investments. The difficulties of the times are making everybody a bit morbid. Investment bankers, lawyers and even accountants and financial officers are taking drastic steps, irrational even. The uncomfortable truth is that you are going to have to hang on to these investments so that you don't lose that investment capital.

The markets are down by approximately 29.3% since June to December 2008. The world is in an economic recession and all are feeling the effects of the credit crunch because un-marginalised debt was given to borrowers who were already over exposed.

Understanding the magnitude of the situation is also tricky. If the markets are down by 29.3%, you pay the fund managers a fee of between five to ten per cent (depending on the investment vehicle), what will actually be added to cash flow return? On the other hand of the economy, selling off shares in already unstable

companies will eradicate any possible future growth, as share prices are determined by the buyers, who won't buy at high prices just to save the company from going under. (For those who didn't know, the latter is a criminal offence called insider trading.)

The solution is quite simple, pray like we are already in a recession, and trade like we are in the United States (before the recession). Consider restructuring your company's investments, or move capital to more reliable funds under the same umbrella. For your information, you are permitted to reselect a fund manager.

The conclusion: rather simple. Settle down to a panic and make informed decisions as believe it or not, not even the best of fund managers know all the options. Paying fund managers exorbitant fees to gamble with your investment is not exactly helping the already fragile situation.

Last days of *Manuel* tax

By Janus Nieuwoudt

Another era has passed and the Mbeki presidential governance has come to an abrupt end, with it unfortunately the expertise of current minister of finance, Trevor Manuel. There is strong speculation that this will be the last term for this Minister of Finance, therefore the National Budget Speech was to be anticipated.

The happenings of the last few months have caused many a mixed emotion. An interview published on fin24.com, Manuel spewed doubt upon the nation like never before. The current account stood at 7.9% of GDP in the third quarter of 2008 and is forecasted to widen even further. While the Rand-Dollar exchange looks even more worrying. The Rand has lost another 5% this year and is currently trading around R10.10 per dollar. Given the terrible uncertainty it seems that the politics in the country will push down the Rand to at least R13.85 against the greenback.

For those of us who do not understand what effect that holds, it is rather simple, should the politicians keep on throwing empty promises over the Parliament floor, we will see the Dollar at R14.00, as in 2001. The super-spike would affect interest rates, inflation and yes, petrol prices - again. The effect is horrific to say the very least.

In November 2008, Manuel stated at the Fin24.com Money Clinic that South Africa will not slip into a recession, due to the 2010 Soccer World Cup. Brait economist Colen Garrow felt a little different; according to Fin24.com Garrow predicts the National Budget for 2009 / 2010 will see a greater emphasis on welfare spending. So we might see a few tax breaks and hopefully so for small and medium sized businesses.

Manuel's conservative approach to budget surpluses also seems to be under fire, as it is being said that surpluses should be spent on economic development in a developing economy, apparently to the advantage of the GDP growth.

One thing that is for sure, should this be the last term for Trevor Manuel, it would be big shoes that would be very difficult to fill.

Is that for me... or my tender?

The thin blue line between gifts and bribes is an everyday headache in the corporate arena. The question to be asked is; do you allow your employees the opportunity to get corporate gifts from other companies, or is it taboo, purely due to the amount of corruption in everyday business?

A 'gifts and bribes' policy is an integral part of sound business practice. Things to be included in this policy are fraud and corruption, gifts and bribes. Now you might ask what does that have to do with you? Well quite simple really, even if you are a two-man accounting firm.

The definition of fraud according to 'Practical Guide to Human Resources Management' is the following: "Criminal deception, the use of false representations to gain an adjust advantage, dishonest artifice or trick, a person or thing not fulfilling expectation." What most professionals don't know is that fraud can stretch from anything as simple as an employee signing as a director or clocking in for a fellow employee; right out to the hardcore offences like changing IRP5 information or altering already signed off documents.

Bearing that in mind, how harmless is corporate gifting really? Are corporate gifts really just a novelty? Having a proper gifts and bribes policy can save you and your employees a lot of hassle. In this document certain fundamentals should be included. For instance, there is no crime in distinguishing between gifts and bribes, we all do certain favours- well reasonable above board favours - for our clients. A gift in that situation is absolutely fine, however, when you feel obligated to do business with

them because of the gift... well then, that is clearly a bribe.

Back to the safeguarding of you and your employees; a number of principles should be taken into account when drafting your gifts and bribes policy. Unfortunately this will involve quite a number of man hours, as this is indeed a two way street. Things to determine for instance are to obtain a copy of similar policies from your clients and contractors. Obtain frequency, appropriateness, receivers and motives for gifts. Receiving gifts is a bit trickier, yet so simple. Ask yourself two things: motive and benefit, and *voila*. Your teenager might be nagging you for a 1-series "Beemer", but that doesn't make it right to get it from a supplier on a tender, to supply your fleet with delivery vehicles.

To leave the doomsday-like approach behind, just be careful. According to the new Corruption Act 12 of 2004 it is a criminal offence not to report corruption, theft or fraud, or a suspicion thereof in excess of R100 000.00 to the police. As for the whistle blowers, they are protected under whistle blower legislation. So no, you can't fire them.

So next time you sip French Champagne on a balcony in Fresnye, think of the implications thereof...

Wat moet gedoen word om vennootskappe te beskerm?

Watter ooreenkomste/kontrakte moet in plek gestel word om die vennote vir die duur van die vennootskap teen individuele aanspreeklikheid te beskerm en ook te verseker dat elke vennoot die geleentheid het om die ander se aandeel te koop ingeval een sterf terwyl die vennootskap nog van krag is?

Jy kan slegs individuele aanspreeklikheid vermy indien jy as 'n maatskappy of beslote korporasie handel dryf. Hou egter asseblief in gedagte dat die hof in beide gevalle die mag het om persoonlike aanspreeklikheid vir die skuld van die maatskappy of beslote korporasie aan die individue toe te ken indien hulle doelbewus betrokke is by roekelose of bedrieglike handeldrywing deur die maatskappy of die korporasie. Dit is noodsaaklik dat jy 'n skriftelike ooreenkoms met jou vennoot sluit wat aan die oorlewende die reg verleen om die belang van die oorledene in die vennootskap te koop. Hierbenewens is dit goeie advies om lewensversekeringspolis op mekaar se lewens uit te neem om die oorlewende in staat te stel om die aankoop van die boedel van die afgestorwe vennoot te befonds. Verder moet die vennootskapversekeringspolis die nodige kontant voorsien om 'n vennoot se belang te koop ingeval een van die vennote permanent ongeskik raak en op 'n permanente basis nie in staat is om sy/haar pligte en

funksies met betrekking tot die vennootskap uit te voer nie.

Die vennootskapsooreenkoms help ook in die geval van konflikoplossing en stemreg deur die vennote. Die ooreenkoms kan bepaal hoe die vennote oor sekere aangeleenthede kan stem, wat hul persentasie stemreg sal wees, wie die beslissende stem het en hoe die konflik of stemming opgelos kan word indien 'n dooiepunt bereik word. In sommige gevalle kan dit verkieslik wees om in die ooreenkoms na arbitrasie en/of bemiddeling te verwys en wie hierdie funksie sal verrig, met inagneming daarvan dat hierdie funksie beslis deur 'n onafhanklike party vir alle vennote verrig moet word.

Die ooreenkoms sal ook uiteensit hoe die wins van die vennootskap verdeel sal word. Dit kan op objektiewe kriteria gebaseer word, byvoorbeeld op persentasie stemreg, of dit kan op subjektiewe kriteria gebaseer word,

byvoorbeeld prestasie. Indien dit op prestasie gebaseer word, sal die vennootskap beoordelingskriteria, evalueringsbeleide en prosedures moet implementeer en dit kan 'n onafhanklike derde party insluit om met hierdie funksie te help.

Die ooreenkoms sal ook botsings van belange moet omskryf en hoe hulle opgelos sal word. Die vennote moet

in die ooreenkoms bepaal of elke individuele vennoot die reg het om te stem oor 'n kontrak waarin hy/sy belang stel en of elke vennoot toegelaat sal word om binne die vennootskap 'mee te ding' of betrekkinge te hê met entiteite wat moontlik 'n botsing van belange kan veroorsaak.

Tax deadlines

2008 tax returns for corporate entities: due 27 February 2009

Provisional tax 2009/02: due 27 February 2009

Important at year-end for audit purposes

Stock count for companies: this have to take place at year-end. You will be contacted by a staff member of our office to schedule an appointment, otherwise please contact us urgently to make arrangements for us to attend the stock count.

Stock count for close corporations: according to law you have to perform a stock count if you carry trading stock. Please ensure that you have these stock count records available in the event of an inspection by SARS.

Important tax changes

From 1 March 2009, employees who receive a travel allowance must keep accurate record of all business travel by means of a logbook.

Taxpayers will have to keep their accounting records up to date due to the fact that the second provisional tax payment for the 2010 tax year will have to be based on at least 80% of the final taxable income for that year in order to avoid penalties and interest. In the past it could be based on the previous year's taxable income as per assessment.

Trust Donations

Please make use of your annual donation of R100 000 per person to your trust. Keep in mind that R100 000 cash should be paid into the bank account of the trust. This amount is free of donations tax and does not have to remain in the trust indefinitely should you not have the cash flow. Even if you withdraw the money at a later date, against a loan account, it will still reduce the value of your personal estate and increase the value of the trust.

Kantoorruus

Ons verwelkom Henk van Zuydam as Senior Ouditbestuurder vanaf 9 Februarie 2009. Hy is afkomstig van Potchefstroom waar hy vir 5 jaar lank 'n vennoot by 'n ouditeursfirma was. Henk het sy klerkskap by Deloitte in Pretoria voltooi waarna hy vir 6 maande in Amerika by Deloitte werksaam was. Hy is 'n gekwalifiseerde GR (SA) en het sy meestersgraad in belasting verwerf. Sy ondervinding behels onder andere internasionale transaksies en onderhandelinge, belastingkonsultasie en – beplanning, herstrukturerings, risiko bestuur en finansiële instrumente.

Henk is getroud met Helene en hulle het twee seuntjies en die derde is oppad. Henk is tans 'n groot Sharks ondersteuner. Ons heet hulle welkom in die Kaap en vertrou dat hulle gou tuis sal voel en vir die Stormers sal skree!

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Jan du Plessis het Januarie 2006 by SDK begin as klerk in die Rekeningkundige afdeling en Desember 2008 voltooi hy sy klerkskap. Hy het nou besluit om sy vlerke te spreid en op 16 Maart 2009 begin hy werk as rekenmeester by Rhebokskloof Landgoed in die Paarl. Ons wil vir hom dankie sê vir die bydrae wat hy by SDK gelewer het en wens hom sterkte toe met sy nuwe werk.

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