

NEW COMPANIES ACT 2003 - SUMMARY OF MAJOR MATTERS

This circular is provided to BIA members only and is for their internal usage only. It sets out particular important changes and matters from the new Companies Act 2003. Members are advised to obtain a copy of the actual Act and Regulations from the government printers and read it thoroughly as it is critical knowledge for every BIA member.

1) **Implementation**

- ◆ The Companies Act itself was brought before parliament in December 2003 and passed in 2004.
- ◆ The Regulations (mainly forms) were only finalised in June 2007, as the Companies Regulations 2007.
- ◆ The effective date was 3 July 2007.
- ◆ The Act is now in force and must be followed.
- ◆ The Registrar has confirmed to the BIA that all events occurring before 3 July, should still be effected with the old forms of the old Act. I.e. If a director change occurred on 30 June 2007 then the old Form 2 should be submitted. This is particularly important for Annual Returns.

However note that most forms need to be submitted within 42 days to avoid penalties, and so this only covers the period to mid-August.

2) **Exempt private company (i.e. small) - only if it satisfies all of (a) to (c)**

- a) total assets less than P2 m
- b) annual turnover less than P5 m
- c) no shareholder is a company

- ◆ Auditor need not be appointed
- ◆ Simplified annual financial statements for the members (gaap and not IFRS)

3) **Audit** (for public and Non-exempt companies)

- ◆ Performed by BIA members holding a valid Practising Certificate
- ◆ Audit required for all Public, and for Non-exempt companies
- ◆ Will apply for all year ends after 3 July so effectively if year end is 31 July 2007.
- ◆ Financial statements must be in accordance with IFRS
- ◆ Material irregularities in the conduct of the company's financial affairs to be reported by the auditor to the Board of Directors within 7 days, whom must then remedy the matter or report to Stock Exchange (public co's) or shareholders (private co's). If not remedied or reported within 30 days then the auditor must report to the Stock Exchange or for non-listed companies report to Registrar of Companies
- ◆ Financial statements to be prepared within 5 months for public companies and 7 months for private companies after balance sheet date of the company

4) Close company

- ◆ 1 to 5 members
- ◆ No directors
- ◆ No share capital
- ◆ No filing of annual returns
- ◆ No company secretary
- ◆ Must have accounting officer (member of BIA)
- ◆ Corporate body cannot be member
- ◆ Audit requirement still applies if Assets > P2m or Turnover > P5m

5) Dormant company

- ◆ Shall be exempt from requirement that accounts be audited & filing annual returns
- ◆ Shall pay lesser fee prescribed for dormant companies

6) Company Secretaries

- ◆ For Public and Non-exempt companies - must be a member of BIA, CIS or a legal practitioner.
- ◆ s.163 of the new act: company secretaries are advised by BIA to incorporate an indemnity clause in their engagement letter
- ◆ s.209 of the new act: company secretaries must write to directors of public companies and their subsidiaries informing them of the requirement to file financial statements with the Registrar of Companies
- ◆ Filing of such audited financial statements should be within 20 days of signing; and applies to every Public company, and any company in which a public company holds >25% of the share capital

7) Shares

- ◆ all shares issued shall be shares of no par value, those issued prior to commencement of the Act shall be converted into shares of no par value
i.e. No share premium accounts anymore
- ◆ Filing fees of just P20 for any issue of shares. No longer the P8,000 per P1million shares issued
- ◆ the value of shares issued or to be issued shall be determined by the board of directors on the basis of what is fair and reasonable to the company and all existing shareholders