

**EDITORIAL ISSUED BY THE PROUDLY SOUTH AFRICAN CAMPAIGN AND CGF  
RESEARCH INSTITUTE (PTY) LTD (CGF)**

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**SUBJECT: New Companies Act 2008 places emphasis on corporate governance compliance for all companies, including CCs**

**Proudly positioning small companies for competitiveness, success**

The truism - change is the only constant - certainly rings true for all South Africans. Since the advent of our first fully-inclusive democracy in 1994, accompanied by the increased exposure to global markets and influences, individuals and businesses alike have had to contend with an unprecedented pace of change, both in the social and business arena.

But, for many South Africans, transformation means much more than merely adopting an “adapt or die” attitude. Businesses, especially, that have embraced change as a positive force for renewal and innovation, have been rewarded with greater competitiveness and sustained growth.

Indeed, the general acceptance of transformation as a tool to improve our country and the prospects of all its people, has been quite remarkable, setting a benchmark for others to follow. But transformation does not come without its challenges. This is evidenced, for example, by the enactment of the Broad-Based Black Economic Empowerment Act 2003, with many companies even today still grappling with the provisions and applications of the Act. Not to mention the many other areas in which legislation is being amended, supplemented or repealed as part of the ongoing process to ensure that our country has a crisp and progressive set of rules to keep our economy and society abreast of international trends and benchmarks.

Understandably, the changes we are experiencing are not only attached to benchmarks - they are also vital to ensure that the ultimate law that protects the rights of all South Africans, as enshrined in our Constitution, is safeguarded and remains relevant for all the people of South Africa. Again, quite unlike any country in the world, South Africa has witnessed no less than thirteen Constitutional changes since this progressive Constitution was promulgated in 1996.

More recently, the Companies and Intellectual Property Registration Office (CIPRO) has announced that it will not be registering any new CCs (Close Corporations) as a legal entity for small businesses. It is rumored that existing CCs may be phased out over the next five to ten years.

The rationale for this move is based on the new Companies Act 2008 which has introduced a complete overhaul of the existing South African company law. It is anticipated that this new Act will make more appropriate provision for small business entities and professionals.

“Whilst the new Companies Act is broader than the preceding Act and very progressive in its approach, many smaller companies will find themselves challenged as they enter a world with new rules in 2010. This can be likened to the quantum leap that a junior primary scholar, however bright, would have to make if he/she should enter university for the first time, without having attended high school”, says Terry Booyesen, Chief Executive of CGF Research Institute (Pty) Ltd, strategic partner and member of the Proudly South African Campaign.

In addition to these legislative changes that impact businesses, the draft Report on Governance for South Africa (King III) will also become effective and applicable to **all** businesses from next year. Again, this presents new ground for smaller companies which previously were not compelled to comply with the governance requirements captured in the King Reports (I/II) for Corporate Governance. This presents an entirely new ballgame for the business leadership of many smaller businesses who will now need to fully understand the compliance issues to ensure that they can factor-in the recommendations into their business operations.

Once the new Companies Act becomes effective, smaller companies will need to formally address various governance issues such as Risk Management, IT Governance, Business Continuity, Annual audits, auditor rotation and the appointment of a Company Secretariat. “This will, undoubtedly, become the next major challenge facing smaller, unlisted companies who have not been expected to meet these requirements before”, says Booyesen.

“Whilst some smaller companies may resist adopting these new rules, those that embrace and incorporate these changes pro-actively will benefit over those CCs that lag behind in implementation. In the past, CCs may well have been marginalised by bigger companies in the sense of being viewed as ‘lesser entities’. However once the new Companies Act is enacted, CCs will eventually become extinct with most new companies being registered as a (Pty) Ltd”.

### **Professional help at hand**

To smooth-over this potential painful transition, CGF Research Institute (Pty) Ltd has designed tailor-made products and services to assist smaller companies to grasp the pressing issues associated with corporate governance, risk and compliance (GRC). With CGF’s extensive corporate GRC experience and extended strategic partner alliances, smaller companies are able to immediately benefit from CGF’s vast information which has been meticulously compiled and used by many of South Africa’s larger companies over the past five years.

In anticipation of assisting smaller companies in making sense of the new law and recommendations, **CGF’s Corporate Governance Body of Knowledge** web-based products will guide smaller companies in understanding the vastness of the GRC related issues and the extent to which they will need to comply.

CGF offers numerous governance reports, executive newsletters and summaries, policy templates and extended business services through its strategic partners and alliances. These will specifically assist the leadership of smaller companies to deal effectively and efficiently with the changes as required by the new law and regulations.

Less prepared companies will need assistance in order to “catch-up” with the many matters considered basic to larger companies, and, indeed, to also be compliant with the law. For example, if a ‘newcomer’ small company does not know the difference between a shareholder and a director, or the legal requirements associated with Records and Contracts Management, where will this leave the company? Will the company in this position be able to compete against its peers, let alone survive in a larger company’s supply chain?

If these basic elements are ignored by the smaller company, they will most likely become dysfunctional, be illegally operative and be doomed to failure. CGF has aligned its business model with specialist companies to offer independent business solutions for smaller companies that require assistance on a vast array of issues, such as:

- advice on legal and audit issues;
- consulting in the business’ strategy and supply chain;
- implementation of business continuity, compliance and risk management systems.

Booyesen has confirmed that other strategic CGF partners include highly reputable companies such as ContinuitySA (Pty) Ltd, Spescom Ltd and IBM South Africa, all of whom are well-equipped to assist smaller companies to prepare for the anticipated changes - through either direct consulting or the provision of products and services.

“Adopting an avoidance strategy will not serve the interests of an existing CC either, for as long as they are around, they will henceforth have to annually provide CIPRO with registers that reflect their financial reports. Those that fail to provide their ‘annual returns’ will find themselves being deregistered by CIPRO”, he said.

For more information on this captivating subject, contact:

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