Mervyn King awarded honorary fellowship of ICSA
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Karen Waldeck-Kruger is an admitted attorney of the High Court of South Africa. After obtaining her LLB degree at the University of Johannesburg, she enrolled for a Master of Law (LLM) specialising in Corporate Law. She successfully completed all the required subjects for the degree and is concluding the submission of a dissertation. Karen gained experience in the company secretarial field over the past ten years while working at CorpStat Governance Services. She is experienced in board and committee meeting support.

Elise Waldeck holds a post-graduate Diploma in Corporate Law (RAU) and attended in 2012 the advanced company law I and II of the Companies Act 71 of 2008 at Wits University under Prof Michael Katz. She headed the secretarial services department of Grant Thornton prior to starting her own secretarial services business. Her expertise lies with meeting administration, governance advisory and compliance in accordance with King III and the Companies Act. She has acted as locum in secretarial departments of various organisations and has reliable knowledge on the different levels of positions and people required.

William Somerville is a qualified chartered secretary and holds an FCIS, ACMA and a Diploma in Corporate Law (RAU). He was formerly Group Company Secretary of Absa, a position he held for 12 years until October 2007. He has extensive experience in company secretarial and corporate governance matters. This includes providing support to the board of directors and committees, corporate governance advice, annual reports and director orientation and training. He has experience in the JSE Listings Requirements as well as considerable knowledge of employee share schemes and BEE schemes.

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HEAD OFFICE

Chief Executive:
Stephen Sadie
Riviera Road Office Park
PO Box 3146, Houghton 2041.
Telephone: 011 551 4000
Fax: 011 551 4028
Website:
http://www.chartsec.co.za

Branches

Botswana Branch
Brian Dialwa
Tel: +267 3908 709
Fax: +267 3908 845
E-mail: dialwa@hotmail.com

KZN Branch
Raymond Pillay
Telephone: 083 254 6192
E-mail: raymondpillay@woolworths.co.za

Lesotho Centre
Robert Likhang
Webpage: http://www.chartsec.co.za

Namibia Branch
Elise Strauss-Symons
Tel: +264 (61) 225 292
E-mail: emstrauss@geonamibia.net

Swaziland Centre
Sandle Mbharnai
Telephone: +268 7602 2200
E-mail: sandile.mbharnai@gmail.com

Editorial

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Reading the journal counts 2 hours towards non-verifiable CPD.
CHIEF EXECUTIVE’S MESSAGE

International events

By Stephen Sadie

It has been a rather hectic first quarter. There were a number of events planned to coincide with the two international council meetings that we hosted in Johannesburg from the 15 – 18 March 2017.

International perspectives on corporate governance

A seminar on International Perspectives on Corporate Governance was held on 16 March 2017 at the Killarney Country Club which was attended by 70 delegates. Speakers from nine different countries shared their insights into various aspects of corporate governance.

Jeremy Maggs as MC put the speakers through their paces as he asked them questions about corporate governance. David Venus, international president, highlighted the achievements of variousICSa divisions. However he praised Southern Africa for keeping the flag flying since 1909. There was a great opportunity for international and local delegates to interact emphasising the international nature of our Institutes. Read more about this on page 6.

ICSa council

Nine divisions attended the Institute of Chartered Secretaries and Administrators (ICSa) Council meeting that was held on 17 – 18 March 2017. The new curriculum has been approved by Council. Plans are now in place to introduce the new curriculum. An international AGM will be held in London in October 2018 to vote on certain changes to the Charter and Byelaws. We will provide further information on this in the following months. Farai Musamba of Zimbabwe and I gave presentations on the key issues facing our respective divisions.

A highlight of the meeting was the presentation by Mervyn King on the Rationale and Concepts behind King IV. After the presentation, the international president, David Venus, awarded honorary fellowship to Mervyn King (see cover photo). Mervyn is well known to ICSa as he had spoken at many of the national conferences over the past few years.

Mervyn showed his appreciation in an email to the Council written a few days later: “Thank you to the ICSa for bestowing on me an honorary fellowship. The company secretary plays a critical role in ensuring that quality governance is embedded into the DNA of a company. I am humbled by the award and deeply appreciative.” Read more about this on page 10.

New MoI

After a year of preparation, a new MoI was finally adopted at a members’ meeting on 18 March 2017. This was a major step forward on the old Articles of Association, which were adopted in 2002. The new MoI really modernises the governance structures of CSSa, for example, the board will be much smaller. Thank you to all the members that took the time to cast their votes.

Strategic planning

A board strategic planning session was held on 18 March 2017. CSSa has a two year cycle for its strategic plans. The session was facilitated by Rod Charlton of Stratfield Performance Consulting. The strategic plan will be in operation until December 2018.

Cabinet reshuffle

As I write this editorial, the country is suffering from the aftershocks of the midnight cabinet reshuffle. S&P Global Ratings has already downgraded SA’s debt. We are facing tough times in our economy. The challenges facing corporate governance have never been greater. I wish all our members and students fortitude in facing the challenges of our time.

As I said at the start of this message, it has been a rather hectic first quarter.
Make sure you head down the right career path!

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- Possible career paths include company secretary, governance professional, risk and compliance manager, accountant, business owner, CEO or consultant.
- CSSA is a registered professional body with SAQA and an accredited quality assurance partner with Fasset. It was established in 1909.
- CSSA is the leading professional institute for corporate governance and company secretaryship in Southern Africa. We equip professionals with skills in governance, law, compliance and accounting.

SO if you have a keen interest in business and the legal regulatory environment within which it operates, enrol with CSSA today!

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Access to the goings-on at the AGM

By Ann Crotty, Sunday Times journalist

For a few hours every year the board of Coronation Fund Managers may harbour a few regrets for a decision that has made scores of their top executives multi-millionaires, the decision to list the company. For years it must have all seemed terribly easy. The share went from strength to strength as investment funds poured in and Coronation featured among the top performers year-after-year-after year. Inevitably shareholders were delighted but better still, they were passive. Annual general meetings, the only opportunity shareholders have to engage with their company, were quiet uneventful affairs.

Then things began to change. The economy went into a deep slump after the 2008 global financial crash and competition in the fund management industry began to heat up. All of that might have been easy enough to deal with. What proved really difficult was when shareholder activist Theo Botha decided Coronation was a big part of the systemic problem that is executive remuneration.

Botha’s primary issue with Coronation was the fund manager’s remuneration policy. So exercised was he about the lack of transparency around the policy that he eventually decided to travel all the way from Pretoria to attend the annual general meeting in Cape Town. And so, in 2014 Botha ensured the Coronation AGM was more than the usual exchange of pleasantries between a few happy shareholders and a confident (some might say borderline arrogant) board.

For those who have never witnessed it, watching Botha in action at an AGM is a sight to behold. If David Attenborough’s Planet Earth covered the corporate world Botha would feature regularly.

Occasionally there are one or two other shareholders in attendance who are more intent on challenging the board than complimenting them. But more often than not, given the general lack of shareholder engagement, Botha is on his own at an AGM. And invariably, because of his reputation, the board will have assembled a team of lawyers, accountants and media-handlers around them to minimize the potential fall out. So it is Botha versus the might of the corporate world.

Here’s how it usually unfolds - the AGM commences with a few pleasantries; the chairman asks if there are any questions. And in true David and Goliath fashion Botha steadies his slingshot and fires question after question in a chillingly unflappable manner paying no attention to the mounting hostility or whatever is fired back in his direction. Quite often the hostility comes not only from members of the board but also from sections of the shareholders in attendance. This is particularly the case in AGMs located around the Stellenbosch area where there seems to be an unusually high level of deference for authority.

The first time Botha made an appearance at a Remgro AGM you could sense the utter amazement of shareholders as he interrogated chairman Johann Rupert. Initially ruffled Rupert soon got into the swing of things and by year two or three seemed to enjoy the interaction. Not so the shareholders who never seemed comfortable with their leader being challenged.

But getting back to Coronation. By year two Botha’s concerns had spread beyond just
the remuneration policy and now included the board’s recording of the previous year’s AGM. Botha doesn’t engage with companies lightly. He spends an inordinate amount of time researching and preparing his questions and, in this case, still more time traveling. AGMs he attends such as Coronation’s can run to two hours, four times the traditional 30 minutes.

So he was understandably peeved to discover the minutes of the previous year’s two hour long AGM had been reduced to a few lines stating that shareholders asked questions and they were answered. It also provided the results of the voting on resolutions. There was no reference to the at-times heated engagement between Botha and the board about the remuneration policy, which had never been disclosed to shareholders.

Coronation had disclosed everything it was required to disclose in terms of the Companies Act and the JSE’s listing requirements. Surprisingly for a piece of legislation that is regarded as being ‘shareholder friendly’ the Act contains minimal requirements for disclosing details of shareholder meetings. This may be because at the time it was being drawn up AGMs were largely docile uneventful affairs.

Until two years ago companies weren’t even required to disclose the details of the results of voting on resolutions. They merely had to disclose whether or not resolutions had been passed. Imagine how politicians would enjoy that sort of light touch regulation. Imagine we were merely told the ANC won the elections and no details were provided about the numbers of votes they received and what support the other parties received.

The JSE now requires companies to disclose detailed results within 24 hours of the meeting. This transparency means anyone who was unable to attend the meeting now has the opportunity to actually check out what’s happening with the governance of publicly listed companies. From the voting records they can see what shareholders think of a company’s remuneration policy, what sort of support there is for individual directors and; following IRBA’s proposal on mandatory auditor rotation they will be able to identify the growing trend to vote against the re-appointment of auditors. Most of all, the millions of ordinary savers and investors are able to see how engaged their highly remunerated institutional fund managers are.

But again, Botha’s beef wasn’t with disclosure of voting results. Coronation’s disclosure was in line with JSE requirements. Botha wanted to know why Coronation had not supplied more details of the AGM discussion, which included several undertakings given by the board. It was a public discussion about issues that were of interest to all shareholders. And how could Botha or any other shareholder hold the board to account if they had not recorded the undertakings they’d given?

The Coronation board was not budging. It had disclosed as much as it intended and was legally required to disclose.

It has to be said no company provides shareholders with the sort of information Botha is asking from Coronation. Why not?

Under pressure from Botha Coronation did start to audio record the AGMs but it has refused to provide access to the recordings. That is just bizarre.

The vast majority of shareholders aren’t really that interested in what goes on at AGMs. Even institutional shareholders say they don’t have the time to attend. Which is why they shouldn’t be forced to listen to or read a full account of the goings-on. But surely they should have the opportunity to if they wanted. In these days of hyper connectivity it is surely a small matter to access the company’s website and download a recording of an AGM. Rather like being able to access an analysts’ presentation after the event.

Unless there’s a major corporate event an AGM is the only time in the year that shareholders/stakeholders have the opportunity to get a close look at their company. Boards should embrace that opportunity by providing the fullest access possible. And access to a more detailed account of the goings-on at an AGM is the least that engaged shareholders like Botha deserve.
International perspectives on corporate governance

By Stephen Sadie, CEO, CSSA

An International Perspectives on Corporate Governance seminar was held at the Killarney Country Club on 16 March 2017 which was attended by 70 delegates. One of the benefits of belonging to an international Institute is that it provides our local members with insights and access to what members are doing in other countries. We were privileged to host both the ICSA Council and CSIA Council meetings in Johannesburg. This opportunity allowed for interaction between international delegates and local members.

David Venus, International President of ICSA provided a good overview of what ICSA was doing and highlighted some of the achievements of the various divisions. He paid special tribute to CSSA for its milestones (see his speech).

Alwyn Fouchee, Head of Regulatory Compliance, JSE Ltd. gave a useful overview of how King IV applied to the listings requirements, which both local and international delegates found interesting.

Jeremy Maggs as MC did an excellent job of interviewing the speakers and kept the discussion very lively. The panels included representatives from nine different countries.

Panel 1 covered social media and technology, cyber security, stakeholder inclusivity and King IV. The speakers were:

- Kerry Heath - Governance New Zealand
- Wee-Liang Tan - Singapore Association of the institute of Chartered Secretaries and Administrators
- Tom Omariba - Institute of Certified Public Secretaries of Kenya
- Jill Parratt - Chartered Secretaries Southern Africa
- Tim Sheehy - The Institute of Chartered Secretaries and Administrators
- Sikkie Kajee - Chartered Secretaries Southern Africa

A cocktail party after the seminar had a lively buzz as various delegates were able to network with each other. The international visitors got a real taste of Africa through listening to the melodies of a marimba band. We received numerous compliments from the international delegates on the success of the seminar. These type of events are useful for local members to get a real experience of what it means to belong to an international organisation.
Good afternoon Ladies and Gentlemen.
It’s a great honour to be invited to address you today in my capacity as International President of the Institute of Chartered Secretaries and Administrators.

It is marvellous to see so many company secretaries here today. It is truly an international gathering. It sets me thinking about the appropriate word to choose for a collection of company secretaries. Certainly in our early days, we could have been described as a flock of company secretaries in recognition of the ICSA emblem of a Secretary Bird, then later perhaps a quill or a quorum, and more recently perhaps a compliance or even a modesty of company secretaries. None of those will do nowadays!

As we can see from the topics to be discussed today by our two panels, our roles are much more strategic and central to an organisation’s core business. So I think nothing less than a Government of company secretaries will do!

I am very pleased that we are joined by colleagues from the Corporate Secretaries International Association, which consists of 14 national representative organisations whose members are governance professionals around the world. I am delighted that representatives of our two bodies are able to meet here in Johannesburg. I would like to congratulate CSIA on the progress it has made in the short time since it was formed in 2010 and, in particular, its development of the Company Secretaries Tool Kit which is proving a valuable resource for training aspiring company secretaries around the globe. I know that ICSA members were involved...
in writing the kit and many are now acting as trainers. Many congratulations on this achievement.

Before I talk a little about the international work of the ICSA, I would like to pay tribute to our Southern African Division who are our hosts today. The Institute is formed of 9 international Divisions, and after the UK, Southern Africa is the oldest. It was established in 1909, just 7 years after the ICSA received its Royal Charter and only 18 years after the Institute was founded in London in 1891. So many congratulations on your continuous role of qualifying and representing Chartered Secretaries in South Africa for 108 years.

Chartered Secretaries Southern Africa, or CSSA for short, has never been more relevant and influential than it is today. The King Report on Corporate Governance is hugely respected and has been adopted in whole or in part in many countries. In the early days, Clive Kneale, a former technical adviser, was their representative. Philip Armstrong, a Past President was the main editor of the King II report and Stephen Sadie has represented CSSA on the King Committee for King III and King IV which was published in November last year. CSSA played a significant part in the deliberations leading to King IV, making a particular contribution to the recognition of the role of the company secretary in the report.

A particular feature of the recent King Reports is its focus not only on governance of listed companies but on the governance of all organisations both public and private, for profit and not for profit. This is a distinguishing feature of Kings III and IV from other codes and was and still is ground-breaking. In recognition of this need for proper governance across all sectors of the economy, CSSA initiated a public sector governance module to its exams in 2016 and the first set of exams were written in October last year.

Southern Africa has celebrated its 60th anniversary in 2016 of hosting Reporting Awards. That’s a long time and well in advance of most jurisdictions. The name was changed from the Annual Report Awards to the Integrated Reporting Awards in 2013 to reflect the increasing prominence of integrated reporting. Prof Mervyn King, chairman of the International Integrated Reporting Awards, has been closely associated with the event.

CSSA has also been at the forefront of seeking to make membership of a professional body available to as many South Africans as possible. While there have been a growing number of LLB students enrolling with CSSA, it continues to offer a tertiary qualification to those who are not able to get access to a university. This is commendable and I must never forget that if in 1971 a university degree was a requisite for taking our exams, I wouldn’t be standing here today as President, let alone having enjoyed a wonderful career as a Chartered Secretary.

It is worth telling you a little about recent activity and progress in other Divisions of ICSA. In the UK, the Institute is more respected and relevant than I can remember in all my years of membership and is frequently consulted by Government and Regulators. Brexit has brought a renewed focus on corporate governance and there are at present two consultations taking place on possible changes which will lead to a revision in the UK Corporate Governance Code and possible legislation. ICSA is playing a leading role in the debate, including exchanging correspondence with the Prime Minister Theresa May and leading the call for the reinstatement of the need for a qualified company secretary for large unlisted companies and the possible formulation of a governance code specifically for them.

New routes to membership are being put in place by many Divisions. In the UK, a “Fast Track” programme for suitable lawyers and accountants is proving very popular and Hong Kong/China, Malaysia, Zimbabwe, and the UK among others have established successful collaborative programmes with various universities which lead to both a masters’ degree in corporate governance and membership of the ICSA.

Hong Kong/China, Malaysia and the UK have all recently held annual conferences or awards that have attracted record numbers; this is a sure sign of relevance and the growing interest and importance of governance around the world.

Singapore is playing a central role in a debate initiated by the Singapore Stock Exchange as to whether dual-class shares should be permitted to trade in respect of local companies. I find this very interesting. In many jurisdictions, although not of course the USA, dual-class shares are discouraged or outlawed for placing the preferred shareholders, usually but not exclusively the founders, at an unfair advantage over the other ordinary investors. Can this be right? My instinct is to say no but corporate governance should never be conflated with democracy. The two are not the same.
Transparency and fairness are the key to proper and effective corporate governance and it should be possible for this to be achieved with a dual-class share structure. I am sure we will all look with interest to the result of this debate in Singapore.

Our Australian Division has conducted the first ever survey of Ethics and ethical standards in that country, including asking other professionals and businesses which jobs in Australia are the most respected. Bottom of the poll came Estate Agents – isn’t it the same throughout the world? – but top of the poll were – wait for it – company secretaries! So no surprise there!

Earlier this week, our Director General, Tim Sheehy and I visited Zimbabwe. It was the first time in some years that an International President has visited and we received a very warm welcome from our members and students. We took part in a lively and well attended seminar that demonstrated the expertise, eloquence and enthusiasm of our membership in that country. Our Zimbabwean friends are to be congratulated on maintaining a vibrant and healthy division during difficult economic times.

With all of this activity in our various Divisions, it is sometimes asked why the International body is important. Well, it is very important. It is the glue that binds our common values and a shared pride in our professional qualification! Although globalisation is being questioned now in many parts of the world, there is no doubt that our portable qualification, based on a common qualifying standard determined from the centre, is highly prized by our members and students and there are many, many members who have moved to other jurisdictions and have worked effectively and successfully in new roles.

Our qualification enables them to do this and is a differentiator from most other professions. We share ideas and best practice and the ICSA Council has recently established a Thought Leadership Committee, or TLC for short, to write guidance notes and other literature on corporate governance issues for a worldwide audience. I believe that this committee will become a cornerstone of our international outreach in the coming years.

International Council is also considering new qualifications and routes to membership designed to attract those engaged in governance roles, whatever their organisation or job title.

All this would not be possible without a strong centre that is our International body.

In closing, I would like to thank the Southern African Executive Committee, its directors and their executive team for arranging today’s events at the same time as hosting international meetings of CSIA and the ICSA this week! This has been quite a Herculean task and I am sure there have been long hours and some sleepless nights. It is right that I single out for praise and special thanks your President, Karyn Southgate, my colleague on International Council, Jill Parratt and your Chief Executive, Stephen Sadie.

Ladies and gentlemen, thank you very much for the opportunity to address you and please enjoy today’s event.
Mervyn King awarded honorary fellowship of ICSA

On Saturday 18 March Professor Mervyn King was awarded honorary fellowship of the international Institute.

David Venus, ICSA International President, presented the award to Mervyn King recognising his immense contribution to corporate governance.

“It gives me great pleasure today to present honorary fellowship to Professor Mervyn King. This recognises your outstanding contribution to the governance profession over some four decades since you entered the world of commercial enterprise, having initially practised as an attorney and advocate.

Most famously, you have been the driving force on the King Committee from the very first King Report in 1994, to the most recent in 2016. The King reports have been lauded around the world and have been ground-breaking in their application to organisations in the public and private sectors, both for profit and not-for-profit.

You have been a strong supporter and advocate of our Institute for many years and have spoken at a number of our conferences, including most recently at our Zimbabwean Division’s Excellence in Governance Awards in 2016.

It is my privilege to present honorary fellowship to you here in your home country of South Africa. Your leadership has set the bar higher, challenging the governance profession worldwide to grow and evolve and to grasp the opportunities afforded by good corporate governance, in order to make business better and more accountable to the citizens it serves. ICSA is extremely proud to elect you as an honorary fellow of our Institute.”
Six technology trends that SMEs should be aware of

Interview with Klaus-Michael Vogelberg, Sage Chief Technology Officer

Sage, a supplier of Cloud accounting software, has predicted that chatbots, collective intelligence and blockchain are some of the big technology trends that will change the way entrepreneurs run their businesses in 2017. Sage Chief Technology Officer, Klaus-Michael Vogelberg, said: “As every business – big or small – is transforming more or less intensively into a tech-enabled business, today’s entrepreneurs should be on the lookout for the opportunities these technological developments can bring to their business.”

Vogelberg sees six major trends in 2017 that could make a big difference to the way business builders will work in 2017 and beyond.

Trend #1: Chatbots and autonomous interfaces

Autonomous interfaces such as chatbots or digital agents will become increasingly common on different devices and user interfaces which entrepreneurs use to manage and control their businesses. These interfaces will dramatically change the way that humans and computers work and interact with each other. While, in the past, people used a keyboard or mouse to interact with their PCs, they will gradually start talking with their systems or using gesture control such as hand, head or eye gestures to interact with them. The user experience will not only become more convenient but also more enjoyable – these systems will work autonomously and have self-learning capabilities. Eventually, software could act without user intervention, or ask a certain question only once and use this information for all further activities.

In June 2016, Sage launched the first accounting chatbot, Pegg™. Pegg acts as a smart assistant that allows users to track expenses and manage finances through messaging apps such as Facebook messenger and Slack. Pegg hides the complexities of accounting and lets entrepreneurs manage finances through conversation, making the process as simple as writing a text. By digitising information at the point of capture, it takes away the hassle of filing receipts and expenses, eliminating the need for paper and data entry.

Trend #2: Artificial & collective intelligence

According to Vogelberg, artificial and collective intelligence is another major trend to look out for, even for smaller companies. With mushrooming data volumes being generated by all sorts of sensors and devices on the one hand (see trend #6), and computer power and special analysis software and intelligent agents becoming increasingly affordable and powerful on the other, companies need to find ways to extract knowledge from today’s wealth of Big Data.

Vogelberg therefore advises SMEs to “team up”. “If small and medium-sized enterprises join forces and – while considering their corporate data protection policies and personal rights laws – share, for example, computer power and data with other companies in a structured and systematic manner, they could profit from this collaboration by receiving a better and larger data pool and superior data intelligence. Similar to crowdsourcing mechanisms, this enriched data pool would enable companies to better understand how customers behave, what they need, what to offer them and the business areas to invest in.”

Trend #3: Blockchain – or how to create trust in the digital age

According to Vogelberg, business builders should also carefully analyse if, and how, the new blockchain technology could impact their current business models. Particularly all those industries which work as intermediaries between two parties – such as lawyers, notaries, or real-estate or financial brokers – could be affected by this new, innovative approach. Bookkeepers and accountants might also be affected in the way they do business in the future, as blockchain has the potential to eliminate a significant part of the workload – such as checking and booking transactions, transferring money or paying
invoices – handled by these professions today.

Why could this happen? Blockchain organises transactions of digital assets between two parties in a radically new way. Instead of using middlemen or intermediaries such as banks, notaries, state authorities or trading platforms to legitimise the exchange of certain assets – such as digital properties, digital trading goods, digital contracts, or even financial transactions via digital currencies such as Bitcoins – blockchains allow individuals to transfer these assets in a direct, safe, secure, and immutable way between each other. A decentralised, distributed ledger, essentially an asset database shared across multiple participants, combined with crypto-economic algorithms serve as the technological basis of a blockchain. All participants of a blockchain (so called nodes) have access to the distributed ledger, which contains an inventory of all the relevant digital assets. All parties within this network have their own identical copy of the ledger. Any changes to it are applied to every copy in a matter of minutes or even seconds. Thus, the system is transparent and creates trust among all nodes without the need for legitimisation by any other third party authority. (Editors note: see article on page 14)

Trend #4: Revolutionising the movement of money

The way people use money and transfer their payments from one account to another has already changed dramatically: at the frontend, in-app payment solutions nowadays enable users to effortlessly make one-click payments and purchase goods via mobile devices or websites. This functionality is already available in many apps today. But at the backend, systems such as accounting software are less user-friendly and less integrated. For example, companies currently have almost no possibility to make one-click invoice payments or easily manage their financial transactions between partners, suppliers and their bank with a fingertips.

In 2017, more and more new solutions will allow companies to establish an end-to-end payments value chain with their suppliers and customers. These new solutions enable ubiquitous anytime anywhere, immediate and omni-channel payments and will be fully integrated into the financial accounting systems of tomorrow’s enterprises. All parties, such as e-commerce platforms, banks, fin-techs or partners, will profit from open API standards which will be used for creating new services and enable seamless, fully-automated processing of payments and financial transactions.

Trend #5: Platform-based infrastructure

In 2017, more and more SMEs will replace their stand-alone, on-site software systems with integrated, cloud-based software solutions that operate on global Cloud platforms such as Salesforce.com who are offering their users access to a wealth of business apps and integrated services. Moreover, companies will also benefit from mobile-app platforms such as the one operated by the Apple Mobility Partner Program.

“The big benefit of these platforms is that they give even smaller companies access to innovative business software solutions and services which these companies would not have been able to afford five years ago. To some extent, these types of cloud platforms are democratising the way in which companies gain access to state-of-the-art apps and smart and scalable technologies,” says Vogelberg. “They allow business builders to discover new ways of working and give them the infrastructure needed to receive every kind of data from partners or the Internet of Things, analyse it, and then – in a “citizen developer” style – create something new and productive”.

Trend #6: Internet of things will create new services and job profiles

Small and medium-sized enterprises should be on the lookout for new possibilities that emerge with the realisation of the Internet of Things. Multiple data streams originating from all sorts of sensors built into e.g. machines, cars, mobile and immobile goods, clothes or even human beings (e.g. for medical monitoring purposes) will result in a true treasure trove of data, thus creating all sorts of new services. SMEs should think about how to use these data streams to grow their business:

Mechanics will develop new services such as predictive maintenance for all sorts of technical infrastructures.

Logistic companies will optimise the navigation of their truck fleets by using traffic data from many different sources including smart city data from traffic lights, streets or other vehicles.

Concierge services will develop all sorts of surveillance services with the realisation of new smart home technology.

Retail companies and shop owners might connect to smart home devices such as refrigerators or Amazon-style dash buttons to supply customers automatically and predictively with goods and services.

Mobile medical care services will innovate their work with the assistance of all sorts of new devices to improve their support of elderly people living alone at home.

Early last year Sage demonstrated its partnership with TomTom telematics which enables Sage Live customers to keep track of vehicle journeys, and feed data into the accounting process in real time.

In summary, Vogelberg said: “In 2017, every business will need to start thinking of itself as a technology business. To stay competitive, they will need to grasp the opportunities that this development brings with it and change almost every aspect of today’s more or less traditional ways of working. The good news is that this technology means that we believe that very soon, business admin could become completely invisible, as easy as messaging a friend, or even completely automated, as machines learn like humans.

This will empower entrepreneurs to stay focused on building their businesses, driving growth in the economy and contributing to their communities – not basic admin.”
Sustainability and diversity of experience are top of mind for SA directors

Grant Thornton Global Corporate Governance Report

The biggest issue on the minds of South African directors is that of sustainability, according to a new report on global corporate governance released by Grant Thornton.

In the report entitled Boards of the future: steering organisations to thrive, 76% of South African business executives highlighted sustainability as a key area of focus, compared to only 35% of directors questioned globally.

According to Carla Clamp, Director: Advisory Services at Grant Thornton, this elevated focus on sustainability in South Africa can be ascribed to local boards’ increased commitment to integrated reporting and sustainable business practices.

“Our report outlined some of the most common issues for company directors in various countries, and findings reveal that integrated reporting and the release of the King IV Code of Corporate Governance are top of mind for local directors.”

The annual Corporate Governance report draws its data from Grant Thornton’s International Business Report (iBR) which provides insight into the views and expectations of more than 10,000 businesses per year across 36 economies. The data for this report draws on 1,865 telephone interviews with business leaders and 82 in-depth interviews with board directors across nine countries conducted between November 2015 and February 2016.

“In the past directors were only required to sign off on the accuracy of financial statements, but integrated reporting asks boards to do a more comprehensive report-back on all aspects of their operations, including its impact on society and what this means for the company’s future,” says Clamp. “This increased emphasis on integrated thinking and reporting processes has clearly resulted in directors having a very different mind-set when it comes to reporting to shareholders and other key stakeholders.”

The final version of the King IV Code of Corporate Governance was released in November 2016 and, as Grant Thornton’s report states, “the code aims to boost corporate governance by drawing on best practice in governance codes from around the world and changes in the global environment. At the core of the new standards is integrated thinking and taking a stakeholder-inclusive approach to effective management.”
The report reveals that another common challenge facing directors is the need for diversity of experience, with 88% of respondents globally recognising they need to do more to address this. This is arguably more difficult to measure than gender or ethnic diversity.

“The lack of diversity among directors is an issue that was highlighted in previous corporate governance reports, and it is interesting that not just South Africa battles with this. An improved combination of experience and skills among directors will equip them better to identify emerging risks and threats and make better decisions,” says Clamp.

She emphasises that diversity in thinking about current and future threats is often not encouraged by homogenous boards which may suffer from “group think” and this may lead to companies being less prepared for the future.

“Gender diversity has remained a challenge for boards globally, but we are encouraged by the progress we are making in this regard in South Africa,” says Clamp.

In the new King IV Code, a company will be required to promote diversity in its membership across a variety of attributes including field of knowledge, skills, experience as well as age, culture, race and gender. This has been implemented so as to promote greater diversity and companies are expected to set targets, to be disclosed, for race and gender representation in their membership.

“The disclosure principle does not amount to a quota system, but rather a way of forcing companies to think about this important issue,” says Clamp.

The report also found that business leaders recognise the importance of digital expertise in companies, but only 25% of companies surveyed said this is an area where their board should increase focus over the next ten years.

“We believe this is a critical issue for directors to address. Cyber threats are becoming an increasing risk for companies globally and directors need to be able to identify not only current, but future unknown challenges and opportunities or they could run the risk of being left behind,” says Clamp.

She acknowledges that age can be a hindrance in this regard, where those individuals with the relevant board experience likely not being as technology literate as those that have grown up with it, impacting their ability to advise on related matters.

On the whole, Clamp is encouraged that survey results indicate that directors recognise the issues their boards are facing and have thought about ways to address these.

“Nearly 60% of those surveyed in Africa (compared to 30% globally) believe the best way to encourage more diversity at board level is to invest in mentoring schemes, while 54% believe companies should identify future executives earlier in their careers (compared to 34% globally).”

The report further encourages companies to signpost the route to the top, which should make it easier for the best and brightest talent with a variety of skills and experience levels to have a clear vision of what they need to do in the years ahead in order to join senior management and the Board.

“It is only by considering a wide array of candidates with different skills and experience that boards of directors can be strengthened sufficiently to ensure a high quality of corporate governance,” concludes Clamp.

The launch of .africa

By Kareema Shaik, Adams & Adams

The long-awaited and eagerly anticipated .africa domain extension is expected to be launched in the next few months, according to the ZA Central Registry (ZaCR), who also brought us the capetown, .joburg and .durban domain extensions.

The launch of .africa was suspended by ICANN due to an on-going Independent Review Process (IRP) as a result of a competing application but the ZaCR bid has now been approved and preparations are underway for the launch.

The expected launch date is early in April 2017 but this date has not yet been confirmed.

The launch will start with a 60-day Sunrise Phase during which trade mark holders with validated trademarks, either through the Mark Validation System (MVS) or the Trademark Clearinghouse (TMCH), will be permitted to apply for domain names corresponding with their trade marks. Where there are competing applications during this stage, priority will be given to African trade mark registrations.

The Sunrise Phase will be followed by the Early Access Phase, estimated to launch in June 2017, which will run for 4 weeks. This phase is aimed at the registration of premium and generic domain names for which applicants do not have validated trademarks. Any individual may apply for a domain name during this phase. The general availability is expected to launch in early July.
South African business rescue: open for abuse?
By John Bell and Jennifer Barnett, Baker McKenzie

It has been five years since the South African legislature introduced business rescue, a corporate restructuring procedure, which given the current economic climate is a concept that most corporates should now be familiar with. Despite its progressive intentions and increasing popularity, business rescue is often abused, usually by directors and stakeholders who have in-depth knowledge of the affairs of the company, the causes and consequences of the financial demise of the company, and who are often the initiators of the process.

Business Rescue is designed to encourage recovery so that the business continues trading but has as its secondary object, the aim to obtain the best possible result for creditors when recovery of the business is not possible.

A loophole exists in this secondary object and at the start of the business rescue process because it is required to be initiated before the company becomes insolvent. In other words, when the company is financially distressed. Evidently, the first persons who would have knowledge of the affairs of the business would be the directors and stakeholders. Directors are (and rightly so) entitled (and in certain instances obliged) to initiate business rescue by filing a resolution contemplated in section 129 of the Companies Act and following that, to appoint a business rescue practitioner (which is generally one of their choice as long as the business rescue practitioner meets the requirements for appointment). Once the appointment is made, the business rescue practitioner, who assumes various powers and duties under the Companies Act, is obliged to carry out the process without interference. However, directors of the company must co-operate with and assist the business rescue practitioner.

In this regard the general moratorium on legal proceedings is essential to achieving the goals of business rescue and therefore, when a company is in business rescue, all legal proceedings against the company, including arbitration proceedings, are prohibited (unless one of the exceptions apply) or are suspended for the duration of the business rescue proceedings.

However, the effect of the moratorium coupled with the cumbersome requirement of being able to justify the “rescue” of a company through the secondary goal opens the business rescue process to abuse. This
is because by filing a resolution for business rescue, directors will be able to use the process to strategically avoid paying the creditors of the company (for a protracted period at least) and preventing the liquidation of the company and the consequences which flow from it, including insolvency enquiries, the setting aside of voidable dispositions and directors attracting personal liability.

More often than not, business rescue practitioners advertise business rescue by playing on the moratorium, which is an attractive mechanism when a company is being pursued by creditors, to fend them off and, in some instances, to fend off a formal enquiry by a creditor who wants to delve into the affairs of the company and the actions of its directors and officers.

Directors, with full knowledge of their indiscretions and dealings in the business, possibly in contravention of legislation (particularly the Insolvency Act and the Companies Act – which would invoke the sanctions mentioned and which might put them in the uncomfortable situation of having to explain themselves in insolvency enquiries) are incentivised to avoid the sanctions provided by such legislation and to pursue business rescue. The achievement of the secondary purpose of business rescue, given the South African Revenue Service’s concurrent ranking (as opposed to preferent in liquidation proceedings) and the clear lack of judicial oversight of the business rescue process, coupled with the fact that the Companies Act provides no sanction for non-compliance by a business rescue practitioner with section 141 of the Companies Act, (as set out below) creates the ideal mechanism for directors to abuse the business rescue process in what purports to be a legitimate manner.

Section 141 (1) of the Companies Act places an obligation on a business rescue practitioner to investigate the affairs of the company, its business, property and financial situation. In terms of subsection 141(2)(c), if the business rescue practitioner concludes that there is evidence of voidable transactions, reckless trading, contravention of law or fraud, the business rescue practitioner is then limited to directing the management to take appropriate steps or (in the case of fraud, reckless trading or contraventions of law) report any such activity to the appropriate authorities.

However, notwithstanding these provisions, in the absence of clear direction as to what steps management should take in such circumstances, including what the sanctions are for non-compliance with these subsections, section 141 is rendered toothless. Moreover, it is difficult to envisage how management (whilst a company is in business rescue) would take any necessary or appropriate steps to remedy situations where the behaviour described in these subsections is evident. In most instances the management of smaller companies will be undertaken by the directors and stakeholders, who may be responsible for the conduct. A further difficulty is that there is no obligation on the business rescue practitioner to bring any of these unlawful activities to the attention of the affected persons to the business rescue proceedings.

Business rescue has been a process of trial and error, with South African courts left with the daunting task of interpreting the provisions of Chapter 6 of the Companies Act so as to give effect to the business rescue process. It was held in the case of Sulzer Pumps (South Africa) (Pty) Ltd vs. O & M Engineering CC that no court can allow business rescue to be used as an abuse of the court process. Courts therefore have a duty to ensure that the entry into business rescue is not feigned.

How does one then go about protecting the sanctity of the business rescue process without losing sight of its purpose?

In our view, it would be prudent for the legislature to take cognisance of the practical difficulties and potential avenues of abuse which have occurred since the introduction of the concept of Business Rescue, with a view to formulating regulations and or amendments to Chapter 6 whereby –

- a form of judicial oversight over the business rescue process is introduced;

- business rescue practitioners are properly mandated and regulated in the manner in which they are to assess whether business rescue is appropriate after having had regard to the facts and circumstances in which business rescue is sought to be commenced, including the reasons behind the directors passing a resolution contemplated in section 129;

- section 141 is revisited and amended in such a manner so as to properly safeguard creditors and other affected persons’ rights, including bringing to book persons who ought to be held responsible for the illicit behaviour described therein and allowing for any such evidence to be published and brought to the affected persons’ attention; and

- proper sanctions and remedies are introduced against business rescue practitioners, directors and affected persons who abuse business rescue proceedings.

It might also be necessary for courts to revisit the criticism levelled by the SCA in the matter of Oakdene Square Properties and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd in respect of the Western Cape High Court judgment in Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd. In this regard the SCA considered the test laid down in the Southern Palace judgment relating to when the requirement of a reasonable prospect of success is met as ‘too stringent’ and that there should not be general minimum criterion of what would constitute a reasonable prospect of success.

Business rescue is no doubt a process which is here to stay and which is, and will, continue to play an important part in the insolvency and restructuring space. However, in order for it to be regarded as a trustworthy and sustainable manner of restructuring and a suitable alternative to the mere winding up a company, it is crucial that statutory safeguards be introduced to protect the rights of creditors and other affected persons who might not have the financial means to resort to litigation for purposes of highlighting and preventing abuse of the business rescue process.
Blockchain - beyond financial services -
How distributed ledgers could have surprising, and significant, application in other sectors

By Mary Ann Francis, Executive Advisor and Practice Partner for Global Treasury, Payments and blockchain, and Gilles Gravier, Director and Senior Advisor for Open Source and blockchain, Wipro Limited

Distributed ledger technology has, so far, been largely discussed only in the context of the financial services industry, specifically in the area of payments. Blockchain technology was popularised by its application in the wildly-popular new crypto-currency Bitcoin, for example.

But blockchain has many wondrous applications in a variety of other industries as well; where visionary firms are starting to understand its power to transform their operations.

Essentially, blockchain allows for the creation of timestamped digital assets, and digital records, which are impossible to tamper with, delete, or edit, commonly referred to as immutable.

So, for a vastly different scenario than moving currencies – imagine a diamond producer leveraging holographic identity technology, where a record of all transactions could be connected to this holograph, and entered into a blockchain. Consumers could see the public record of all prior transactions, and get assurance that the diamond was sourced ethically.

Following the same principles, a blockchain could be used by fine art distributors to confirm the validity of its pieces, or by lawyers to validate the accuracy of photo and video evidence, or by governments when issuing title deeds to homeowners.

The possibilities are endless. There are already companies, start-ups, offering products that cover these specific use cases.

Transparency and efficiency
As a distributed ledger, blockchain technology presents companies with an opportunity to fundamentally re-architect many of its internal processes, and the ways in which they interact with partners, suppliers, distributors, and others in the varied ecosystem.

Whether the use-case is smart-contracts,
cryptocurrencies, proof-of-assets, or anything else that blockchains enable, companies are able to interact in a more collaborative, but highly-secure, trusted, manner.

But many CEOs remain reticent to seriously look at adopting blockchain technologies into the company’s business strategies. And it’s true that this area of technology seems to be moving at a rapid pace – zooming into mainstream conversations on the back of Bitcoin and other virtual currencies. To some, blockchain looks volatile, uncertain, risky.

However, blockchain technology can be applied to businesses in South Africa, to improvise record management and transactional efficiency in a wide range of different processes and value chains.

So just how quickly could blockchains take off in SA, considering the very many possibilities for the technology? At this year’s Gartner Symposium/ITxpo Africa, held in late-September in Cape Town, conference delegates showed overwhelming interest in its use.

From keynotes to sideline discussions, the enthusiasm for blockchain technology was palpable, making analysts more bullish on the prospects for blockchain in the short-term. Very possibly, the technology could grip the imaginations of business in a similar way to the Cloud revolution, for instance.

**Getting started**

The best starting point is to research blockchain deeply and widely, understanding potential use-cases for your industry; and then looking at which internal processes and external transactions could potentially be improved. Which areas would benefit from greater transparency, greater collaboration?

Every company is different. Some rely more heavily on digital assets and services than others, others have embraced connected sensors and devices (the “Internet of Things”) more warmly than others, and some naturally have a more innovative leaning.

But in our experience there are exciting blockchain-related opportunities in even the most traditional organisations.

Following this discovery phase, it is critical to partner with an objective blockchain specialist that can help to craft the strategy. Firms that try to ‘rate their own work’ in this field often miss opportunities, or create blockchain plans that fail to respond to the most urgent business priorities. As we find ourselves in the top of the hype-cycle for blockchain, we still find ourselves in search of the app that brings maximum ROI.

It is recommended that businesses look for three key competencies in a blockchain partner:

- Thought-leading advisory and consulting services with the ability to design, implement and support blockchain initiatives, along with rich domain expertise in use cases across various industry verticals
- A deep pool of partners, start-ups and innovators with whom solutions can be created and tailored to the organisation’s unique needs
- The execution capability to actually run blockchain PoCs and evolve them into fully-fledged solutions – integrating the technology into existing operations.

With blockchain, the traditional principles governing ‘systems of record’ are fundamentally reversed, and many business leaders are still somewhat confused about how this highly-sophisticated shared ledger technology actually works.

But while it’s essential to read deeply and understand blockchain principles, for one’s end-client, we can refer to the analogy of the internet to explain why we don’t have to wait for clients wrap their heads around the technology.

Most of us do not understand the technicalities of the TCP/IP protocol, but that doesn’t hinder us from surfing the web and exchanging emails. In the same way, clients will come to trust blockchain, in the same way they trust the Internet.

Those organisations starting now on a blockchain journey will have a first-mover advantage over slower-moving peers, getting a jump start on the competition and repositioning themselves for a future where blockchains govern all sorts of interactions and transactions in the future. Scale use of blockchain is still a 3-5-year journey – starting now will lessen the urgency some are experiencing now.
KPMG surveys audit committee concerns

A summary of the survey finding by Cooley LLP

What are audit committee members’ greatest concerns? Audit committee members participating in KPMG’s 2017 Global Audit Committee Pulse Survey identified risk management as the biggest challenge for audit committees in 2017, with 42% of those surveyed characterizing their existing risk management programs as requiring “substantial work,” and a “similar percentage” indicating that it is “increasingly difficult to oversee those major risks.” However, only 51% indicated that they have the time to oversee major risks effectively and only 46% say they have the expertise. Moreover, 39% say it is increasingly difficult to find the necessary time and 43% say the same with regard to the necessary expertise. Also high on the list of challenges were legal/regulatory compliance, cybersecurity risk, the control environment in the extended organization and tone at the top.

One in four survey participants viewed tone at the top as a major challenge, while one in five considered short-termism (short-term pressures and aligning long- and short-term priorities) a major challenge. With regard to audit committee attention to any of the issues identified as major challenges, the most common response was that committee members were “somewhat satisfied” that the committee’s agenda was properly focused on those issues; members were mostly “satisfied” only with regard to legal and regulatory compliance (54%). In fact, 22% indicated that they were “not satisfied” with respect to the committee’s attention to tone at the top/corporate culture, and 23% were “not satisfied” that there was adequate time on the committee’s agenda for examining short-termism. Indicators that KPMG identified as early warning signs of short-termism included board presentations that emphasized historical issues or topics with a short-term focus, infrequent forward-looking discussions about risk and opportunity, incentive compensation “strongly tied” to short-term goals with few long-term goals, and little weight being assigned to non-financial performance measures that contribute to long-term performance.

Appropriate focus on CFO succession planning (44%) and finance department “bench strength” (26%) were other areas where survey participants were “not satisfied.” In addition, 24% were “not satisfied” with the level of the committee’s focus on the company’s readiness for the OECD country-by-country tax reporting. Only 13% of participants indicated that their companies had clear implementation plans for the new revenue recognition standard, while 24% were still assessing the effects and had not developed an implementation plan; 16% of participants were not even familiar with the new standard.

With regard to cybersecurity management, survey participants identified “organizational awareness” and “keeping technology systems up to date” as the two biggest “gaps.” KPMG indicated that there is a shift in focus in cybersecurity from prevention to detection and containment, with increasing concern about “adjacencies” that can allow hackers to enter the system. In addition, KPMG advised, this risk should be viewed as an enterprise risk, not simply an IT risk.

With regard to internal audit, survey participants indicated that, beyond financial reporting and compliance risks, internal auditors should maximize their value by focusing on key risk areas (including operational risks) and related controls.

KPMG recommended that committee members engage in dialogue with management about non-GAAP financial measures and related controls. The survey showed that 31% of the survey participants were on audit committees that discussed with management the process used to develop non-GAAP financial measures, and 27% discussed the adequacy of controls and processes related to development of these measures. But, significantly, only 24% discussed the correlation of the measure with the actual business and 24% had only limited input on the issue altogether. Among the questions that KPMG suggests: what is the process by which the company selects the measures to present? What are the roles of the “disclosure committee” and the audit committee? Is the audit committee satisfied that the measures are being used to promote transparency rather than obfuscation or distortion?

When asked what would most improve the committee’s performance, the survey participants cited better understanding of the business and its risks (39%), additional expertise in technology or cybersecurity (31%) and, interestingly, greater willingness and ability to challenge management (27%).

The survey was conducted by KPMG from August to October 2016, and included over 800 audit committee members (55% of whom were audit committee chairs).
Mauritius balances regulation and business development

Interview with Soria Hay, Head of Corporate Finance, Bravura

Mauritius dominates the World Bank rankings in Africa for “Ease of Doing Business”, taking the top spot in 2016 for its competitive approach in regulation and taxation matters. Soria Hay, Head of Corporate Finance at investment bank and advisory firm Bravura, says businesses can expect a robust regulatory framework which continues to strike the right balance between the need for regulation and business development.

In a new example of the move to tighter regulation, the Financial Services Commission (FSC) is implementing a licensing requirement for all individuals and entities carrying out financial services in Mauritius. “Where previously any business could deliver financial services, businesses now have to apply for a specific licence for the type of financial services offered,” says Hay. “Applicants are required to comply with various requirements, including the updated Code of Corporate Governance, to prevent conflict of interest, financial crimes and money laundering. This legislation is necessary to further entrench Mauritius as an International Financial Centre of substance.”

Hay says a company with a global investment strategy and a desire to take advantage of the benefits of highly developed financial market infrastructure would do well to consider Mauritius as its business jurisdiction and the Stock Exchange of Mauritius (SEM) as its primary listing market. “The benefits of doing business in Mauritius coupled with a secondary listing within the Common Monetary Area provide an excellent growth platform,” says Hay.

Bravura itself is held by a SEM-listed holding company, CMB International, which also holds a secondary listing on the Namibian Stock Exchange. “The internationalisation of the Stock Exchange of Mauritius has made it one of the leading and most innovative exchanges in Africa which offers a listing, trading and capital-raising platform of choice for a multitude of companies wishing to use the platform in order to fuel their growth initiatives,” says Hay. “The flexibility of the SEM rules, while at the same time respecting international regulatory standards, has contributed significantly to an influx of companies operating in the global business in Mauritius to select SEM as a primary listing destination,” says Hay.

Created in 1989, the SEM has grown from six listings to c.150 listings in 2016 and operates two distinct boards, including the Official Market where some of the largest companies in Mauritius as well as global companies are listed. The Development and Enterprise Market, on the other hand, offers opportunities for start-ups and other companies looking for a viable alternative platform to raise capital and pursue their development objectives. Value creation by companies listed on the SEM is evidenced by a number of listed companies achieving annualised total USD returns of over 12% over an extended period of more than 20 years.

“A number of SEM-listed investment holding companies and property companies have successfully tapped into the deep pool of capital in the CMA, with Inward Listed SEM companies having raised a total of c.USD1.5bn from 2012 to 2015.

Whilst a listing on the Official Market requires a minimum market capitalisation of MUR 20m (c.USD 600k), certain other Listing Rules (e.g. shareholder spread) can be waived at the discretion of the SEM’s Listing Executive Committee e.g. in the case where a new investment holding company with a global business company license (“GBC 1”) is seeking a listing. This creates a welcoming and flexible listing environment for companies seeking a growth platform.

“Mauritius offers a business-friendly environment that includes no exchange control, low overall taxation, a considerable suite of double tax treaties and investment promotion and protection agreements, political stability, a well-developed legal system and a significant number of professional advisors,” says Hay. “We have a growing pool of clients who are choosing Mauritius as a business and listing base, and can certainly base our corporate finance advisory services on our own positive experience.”
SARS clarifies VAT and PAYE on director fees, but at what cost?

Pieter Faber, Senior Executive, Tax and Legislation, The South African Institute of Chartered Accountants

In 2016 the matter of whether non-executive directors (NED) were common law or deemed employees for Pay As You Earn (PAYE) purposes led to some debate with SARS and National Treasury. The other debatable issue has been whether those NEDs should be subject to Value-added Tax (VAT) to their directors’ fees. SARS noted that it would clarify the matter with an interpretation note or ruling on the VAT and PAYE principles rather than amending the legislation to merely deal with this specific instance.

Pursuant to this, on 14 February 2017, SARS issued Binding General Ruling 40 (PAYE) and 41 (VAT) to deal with the relevant tax consequences. These rulings clarify that resident NEDs are not common law or deemed employees and no PAYE will apply to them. However, the rulings also confirm that if such a director earns more than R1 million, he or she will be liable to register for and pay VAT. To this extent SARS also issued an additional communication on 16 February confirming that NEDs earning fees in excess of R1 million must register for VAT from the date that they earn or expect to earn more than R1 million over a 12-month period. This will, however, not apply to NEDs from whom PAYE was withheld historically as they only have to register going forward.

Unfortunately, the rulings do not address the concern raised that in terms of the Companies Act 2008 there is no distinction between an executive and non-executive director as to duties etc. as this is merely a governance construct.

These rulings, will, however, create some interesting challenges for NEDs.

What about non-tax resident NEDs?
Non-tax resident NEDs do not fall within the PAYE exclusion referred to in the rulings and such directors will continue to be subject to PAYE. However, as SARS have confirmed that these people do in fact carry on an independent trade even if they receive remuneration, they will seemingly also be liable to register for VAT should they render services in South Africa. This is due to the specific “independent trade” override to the remuneration exclusion in the VAT Act.

Who will carry the extra cost?
Directors are usually appointed on an agreed fee and in many instances these appointments did not consider VAT. Without VAT being specifically agreed, the stated amount of consideration will invariably be VAT inclusive. This will result in NEDs having to renegotiate their fees with companies on whose boards they serve. Furthermore, it is debatable whether the relevant company will be able to claim a VAT input on the VAT charged by the NEDs. One could argue that the fees for these services are invariably not incurred in the furtherance of the company’s enterprise activities, but rather for formulating its strategy. Should such a company agree to increase the NEDs’ fee to take cognisance of the VAT, this will invariably cost the company more money.

Suppose a non-executive director agreed to a fee of R1, 5 million per year. If it is agreed this is VAT inclusive, he will now only receive R1, 31 million, essentially losing R190 000. If the company agrees to amend his fee to result in an R1, 5 million nets payable to the NED, it will now have to pay him R1,71 million, increasing its cost by R210 000 as it possibly cannot claim the VAT input.

Retrospective VAT registration
The SARS communication to NEDs about their liability for VAT clearly states that only NEDs who had PAYE historically withheld and who are required to register, are allowed to register for VAT from the current period (i.e. February 2017) going forward. However, NEDs who had no PAYE withheld and non-tax resident NEDs who have exceeded the R1 million threshold historically will now have to register retrospectively, triggering penalties and interest in respect of the past non-payment of VAT. The input VAT that they would want to claim for expenses incurred for such historical periods will also be a challenge as they possibly do not comply with the documentation requirements. They may also face some challenges recovering the VAT from the companies they served.

Provisional tax, SDL and UIF
As NEDs never received remuneration, but trade income, they will also be liable to register for provisional tax and submit bi-annual returns, irrespective of whether they earn above or below R1 million.

Furthermore, where companies have historically withheld UIF and SDL, these amounts were, according to SARS’ binding ruling clarification, never payable as the NEDs were never employees for PAYE purposes. However, employers will only be able to claim the last five years of UIF and SDL due to prescription of self-assessments and will also be liable to refund the employee UIF contribution to NED as it should never have been deducted.

However, if a claim is made, SARS would also have the opportunity to reopen assessment for at least three years for companies who claimed these expenses. Practically, and given the immaterial quantum, employers may choose not to recover these amounts from SARS.
The position for non-tax resident NEDs is less clear as they possibly are still liable for SDL as being PAYE employees but not UIF as they are independent contractors. Further clarification may be necessary from SARS in this regard.

Conclusion
The clarifications by SARS are welcomed, however, they will cause some concern among NEDs and the companies they serve and further engagements to these practical challenges may be required. It will also result in a lot of additional compliance for NEDs and companies to consider; which will possibly directly impact the fees charged by NEDs.

Failure to file an objection timeously - what to do?
By Pranith Mehta, Hogan Lovells

Any taxpayer who is aggrieved by an assessment raised by South African Revenue Service (SARS) has a right to lodge an objection in terms of section 104(3) of the Tax Administration Act 28 of 2011 (the TAA) read with the Rules promulgated under section 103 of the TAA (the Rules).

It states that a "taxpayer entitled to object to an assessment…must lodge an objection in the manner, under the terms, and within the period prescribed in the “rules””. An assessment raised by SARS must set out the dispute resolution procedure available to the taxpayer.

Dispute resolution procedure as set out in the rules
The Rules provide that a taxpayer must lodge an objection within 30 business days after the date of assessment. If a taxpayer delivers an objection that does not meet the requirements of Rule 7(2), SARS must notify the taxpayer that his objection is not a valid objection and state the ground for invalidity within 30 business days of the invalid objection. The taxpayer is afforded 20 business days to file an amended objection without the need to apply for an extension.

However, if the taxpayer fails to submit a new objection within the 20-business day period, or again submits an objection that
does not comply with the requirements for a valid objection, the taxpayer may only submit a new and valid objection, if that taxpayer also makes an application to SARS for an extension of the period for objection.

**Extension of the objection period**

**Reasonable grounds**

In terms of section 104(4) read with section 104(5) of the TAA, a senior SARS official may extend the 30-business day period for lodging an objection by a further 21 business days if satisfied that reasonable grounds exist for the delay in lodging the objection.

According to SARS Interpretation Note 15 (Issue 4), the senior SARS official should also give consideration to factors such as the reasons for the delay, the length of the delay and the prospects of success based on the merits of the objection.

When applying for an extension in terms of section 104(4) of the TAA, the taxpayer must set out the actual circumstances that existed that led to the delay. These may include the taxpayer's illness; the fact that SARS has incorrect contact details on record for the taxpayer, resulting in the taxpayer not receiving the notification that an assessment has been raised; or that the taxpayer was overseas at the time the assessment was issued and had therefore not received it. However, ignorance of the law or the use of a tax practitioner does not absolve the taxpayer from his responsibility to comply with the TAA.

It follows that the greater the length of the delay, the greater the justification required by SARS. It is likely that SARS would request the taxpayer to provide corroborating evidence, for example a medical certificate.

While the prospects of success is a key factor in the granting of the extension, the strength of the taxpayer’s case does not derogate from the requirement for the taxpayer to provide sound reasons for the delay in the filing of the objection.

**Exceptional circumstances**

In terms of section 104(5)(a) of the TAA, a senior SARS official may extend the 30 business days by a further period that exceeds 21 business days where "exceptional circumstances" gave rise to the delay.

Notwithstanding the above, a taxpayer is precluded from filing an objection more than three years after the date of the assessment as provided for in section 104(5)(b) of the TAA.

In *ABC (Pty) Ltd v The Commissioner for the SA Revenue Service* (ITC: 0038/2015) (ABC Case), the tax court considered whether the taxpayer had discharged the onus of proving that "exceptional circumstances" existed for an extension of the period allowed for the taxpayer to object to an assessment in terms of the TAA. The court held "exceptional circumstances" to mean that "unusual facts must be proven which have a causal connection to the delay which resulted." The judgment in the ABC Case is clear that it is not sufficient that "exceptional circumstances" existed; the taxpayer must demonstrate that those circumstances were in fact the reason for the delay.

Although "exceptional circumstances" is not defined for the purposes of section 104 of the TAA, section 218 of the TAA lists what would constitute exceptional circumstances for the remittance of penalties. Section 218 of the TAA provides an indication of the type of scenarios that would constitute "exceptional circumstances".

Section 218 of the TAA lists natural or human-made disaster; civil disturbance or disruption in services; serious illness or accident; serious emotional or mental distress; and serious financial hardship as examples of "exceptional circumstances".

An objection to SARS's decision on whether or not to allow an extension of the period for the lodging of an objection is also possible under section 104(2)(a) of the TAA. If a senior SARS official does not grant the taxpayer an extension to submit an objection, after considering the reasons furnished by the taxpayer for not lodging the objection within the prescribed time, the taxpayer may object and appeal against such a decision.

In conclusion it is fair to say that a taxpayer is not barred from contesting an assessment where he has failed to file an objection timeously. In fact, a taxpayer has three attempts at submitting a late objection, that is within 21 business days after missing the first deadline; any time before 21 business days after missing the first deadline and three years after the date of the assessment; and finally a taxpayer may even object against the decision by SARS not to allow the late filing of an objection.
Little progress in gender diversity worldwide

Grant Thornton - Women in business survey

Only 28% of senior management roles in South Africa are held by women according to a new report released on International Women’s Day (8 March 2017).

While higher than that of last year, the percentage of women business leaders has not changed significantly since the start of Grant Thornton’s research 13 years ago, when this figure was at 26%.

“We have made no progress, and the small change is probably only due to sampling variations,” says Lee-Anne Bac, director: Advisory Services at Grant Thornton Johannesburg. “Unfortunately, we have a very patriarchal culture in Africa, including South Africa. Until we make a concerted effort to change our mindset to the role of women in the workplace, at home and society at large we’re going to continue to battle with inequality in the workplace. Change starts with how we treat children - we should be striving to raise boys and girls equally in a gender neutral environment.”

The annual report, Women in business: New perspectives on risk and reward, based on Grant Thornton’s International Business Report which surveys 5,500 businesses in 36 economies, also shows that almost a third (31%) of SA companies have no women at all in senior management positions.

Globally, too, the pace of change towards gender equity remains glacial. South Africa is slightly ahead of the global average of 25% of senior roles held by women (SA: 28%) and better than the global average of 34% of businesses with no women in senior management (SA: 31%).

“We shouldn’t, however, be comparing ourselves against the global situation,” points out Bac. “Instead, we should strive to match those countries that are performing at above average rates.”

Globally, Grant Thornton’s data shows developing regions continue to lead the charge on diversity while developed economies lag behind. Eastern Europe performs best, with 38% of senior roles held by women in 2017 and just 9% of businesses with no women in senior management.

“We should set our sights on emulating Eastern Europe, and not benchmarking ourselves against the USA and Europe, particularly at this time,” says Bac.

The MINT economies (Mexico, Indonesia, Nigeria and Turkey) saw the most improvement, with the proportion of senior roles held by women rising from 24% in 2016 to 28% in 2017 and the percentage of businesses with no women in senior management falling from 36% in 2016 to 27% in 2017.

This is in significant contrast to the major developed economies of the G7, which have remained static compared to 2016 with 22% of senior roles held by women and 39% of businesses with no women in senior management.

Common senior roles for women

The report reveals it is still most common for senior women to be in supporting roles, particularly as human resources directors or chief financial officers. However, there has been a slow rise in the number of women in chief executive officer roles in South Africa, from 7% in 2015 to 9% in 2016 and 10% in 2017.

“Again, however, the rise is not very significant,” says Bac, who believes we have reached a point of complacency in this country. “Businesses have put some women in management positions, ticked that box, and now they are not doing anything further.

“Instead, companies should constantly be working to improve gender diversity in the workplace. We have too few women in management positions, and until we tilt that balance it will remain difficult for women to influence the change. Women are fighting from a position of lack of power.”
B-BBEE targets work against gender diversity

Pushing the importance of gender diversity further down the list of priorities are the number of other pressing issues currently facing South Africa. Companies are focused on B-BBEE targets, which are legislated, rather than on diversity targets, which are not.

“In addition, the latest Women in Business IBR survey showed some men are resisting competition from women,” says Bac. “Both are competing for the same senior positions, and it is far easier for men if they only have to compete with 50% of the population.

“But it’s the fault of women as well,” she notes. “We’re not fighting back.”

Focus shifting away from gender equality

The worrying sense that the issue of gender diversity is beginning to lose its bite was also noted in this year’s Grant Thornton Women in Business IBR report.

“We simply cannot let this happen while progress is still marginal,” points out Global leader for tax services and sponsor of women in leadership at Grant Thornton, Francesca Lagerberg. “Companies today need to be more productive, more innovative and in many ways more open if they are to thrive.”

The report looked at the issue of risk and reward, finding that men and women see risk and opportunity in different ways, and that they act differently as a result.

Companies should therefore recognise, celebrate and seize upon these differences. If they fail to create diverse teams, companies become susceptible to ‘groupthink’ – the phenomenon whereby engaging only with those who share a similar view of the world, they muffle other perspectives and do not see change coming.

Diversity even more vital today

Diversity is key to business success. With a mixture of men and women at the helm, companies are better prepared for all eventualities. And yet, in 2017 progress has been minimal.

Today, uncertainty has become pervasive and is the ‘new norm’.

“It is even more important to embrace diversity in this volatile, uncertain, complex and ambiguous (VUCA) world,” says Bac.

Businesses need effective leaderships teams equipped to assess the risks and opportunities associated with change, and then develop and implement inclusive strategies in response.

Finally, Bac points out that, to many women, leadership doesn’t look particularly attractive.

“They see this assertive, dominant behaviour, the hard attitude to decision-making, the long hours, and the sacrifices leaders appear to make, and it is not something to strive towards. Businesses need to embrace new leadership styles that allow women to bring their own flair to the workplace.”

Sample

IBR is a survey of both listed and privately held businesses. The data for this release is drawn from interviews with 5,506 chief executive officers, managing directors, chairmen or other senior executives worldwide from all industry sectors conducted between October and December 2016.

Data for the South African results were drawn from 200 multiple choice responses received between July and December 2016, and two qualitative interviews with senior executives.
## Questions | Answers

### My background

My journey as a company secretary began 23 years ago at Deloitte as a trainee company secretary within the Deloitte secretarial department. During this time, Deloitte formed a strategic alliance with Nexia Levitt Kirson whereby Nexia Levitt Kirson agreed to manage Deloitte's financial accounting and company secretarial requirements. Having reached senior company secretarial consultant status after a few years, I spent my last six years at Deloitte managing the in-house office of Nexia Levitt Kirson at Deloitte and providing company secretarial advice to Deloitte partners, managers and clients. I joined Powertech during 2006 as Powertech group company secretary and Altron head-office assistant company secretary. During March 2017, I assumed the role of company secretary – Altron Group Operations.

### What my current job entails

Promoting and facilitating subsidiary company secretarial governance and ensuring compliance with statutory requirements and group policies. I work closely with the Altron Group Company Secretary, Altron In-house Legal Counsel, the tax and corporate finance departments.

### What I enjoy about my career. What my greatest challenges are from day-to-day

The ever changing legislative and governance landscape brings new learning experiences and the opportunity to expand one's knowledge. I enjoy tapping into the extensive knowledge boxes of certain renowned listed company secretaries with whom I have had the privilege of working with.

I find great fulfilment in transferring the practical secretarial skills I have acquired over the years to trainee company secretaries in furthering their careers. I love challenging and being challenged on technical secretarial compliance matters, dissecting the issue at hand and applying best practice.

The greatest challenge for me on a day-to-day basis is keeping my ear on the ground between committee and board meetings in anticipation of potential transactions under discussion so as to proactively plan for what will be required from a company secretarial compliance perspective.

### Why I chose CSSA

I chose the CSSA course as it is recognised as the preferred supporting qualification for the Chartered Secretary professional.

The course not only focuses on *inter alia* corporate law and governance but financial accounting, management accounting and corporate financial management. Although the financial subjects were quite daunting for me, they were essential in acquiring a basic understanding of financial matters discussed at audit committee and board meetings, particularly as I have never worked as an accountant, management accountant or corporate financier.
| Why I recommend the qualification to others | CSSA is a prestigious institution and forms part of the International Institute of Chartered Secretaries and Administrators and is a member of the global federation of Corporate Secretaries International Association. The CSSA professional qualification is a NQ8 level qualification and is recognised in 70 countries across the world. The qualification covers a diverse range of subjects forming a solid foundation for a Chartered Secretary to build on in order to perform his/her duties well. |
| My view of the Chartered Secretary in the work place of today | With increasing scrutiny by stakeholders on good corporate governance practices, it is vital for organisations to pay attention to effective administration, particularly if one considers the potential penalties of non-compliance with relevant legislation and the potential liabilities of directors under the South African Companies Act. Good corporate administration plays a key role in running an organisation that is transparent, ethical and efficient. The Chartered Secretary is a vital element in assisting the governing body and the organisation in ensuring that the organisation operates as a responsible corporate citizen and embraces the principles of King IV by managing and co-ordinating processes that will ensure that these principles are entrenched within the organisation. |
| Inspirational anecdotes | I will never forget the theme of Radio 94.7’s Christmas Wish Initiative a few years ago which identified with three things in life people want most of all:- peace of mind, happiness and freedom. To me, peace of mind stems from knowing that you always give of your best, that you act with integrity and that you treat people as you wish to be treated. This leads to freedom and happiness from within. Continually striving for peace of mind, freedom and happiness from within is reflected in everything one does, leading not only to personal success but the success of the people one influences and the success of the organisation they work for. Through our lives, some of us have faced/will face more adversity than others, criticism, disappointment, doubt, sacrifice and failure. I wish to convey a message to students out there struggling through their CSSA qualification to never give up no matter what extreme adversity you may be facing or have faced and no matter how many times you may fail/ have failed a subject. I failed certain accounting subjects many times (I am no financial guru) and nearly gave up. Failing again and again is soul destroying but winning in the end is absolutely exhilarating. The following quote from a certain Mark Makhubalo resonates with me, “Failure and failure again is the secret ingredient to achieving the right level of success.” |
| Leisure time | After having only qualified during December 2016 and after having spent many years focusing on my son, who at 20 has recently immigrated to the USA, my job and my studies, I haven’t had much time for anything else. However, now that I do have “outside of work time” my new found passion is reading novels. Daphne Du Marier’s “Frenchmans Creek” being my favourite novel thus far. My further passion is animals and their wellbeing. I have recently joined Friends of Free Wildlife, an animal hospital in Midrand, where I will work on weekends. |
Election to membership

The Institute is pleased to welcome the following members to the grade of membership shown below.

**FELLOWSHIP**
- Ayanda Cleopatra Ceba - General Manager: Corporate and Regulatory – Transnet SOC
- Elizabeth Defilo - Company Secretary - Altron Group Operations
- Nkosilathi Hlabangana - Lecturer Accounting and Finance – Baisago University
- Hermanus Wilhelmus Archer Jacobs - Legal Advisor – Oos Vrystaat Kaap Operations
- Busiswe Tshavunwe Mirriam Khangale - Company Secretary – Rand Refinery

**ASSOCIATESHIP**
- Bridget Phumudzo Baai - Executive Corporate Administrator/Company Secretary – Air Traffic and Navigation Services
- Stephen Banda – Adiel Certified Accountants
- Ninke Botes - Senior Assistant: Company Secretarial Services – LDP Incorporated
- Hein Buys - Owner – Wehrner Buys Protea Pharmacy
- Rirhandzu Chauke-Treasury Accountant – Pikitup Johannesburg
- Adrian Davey - Assistant Company Secretary – Woolworths Holdings
- Madoda Sonwabile Dikwayo - Product Manager – Barclays Africa Group
- Clohtilda Chipo Marange - Bookkeeper – Tonway Tyres
- Bernard Kabelo Mofokeng - Principle Specialist: Dispute Resolution – SARS
- Florence Doreen Muranganwa - Senior Support Consultant - Sage
- Madelein Pepperell - Manager Governance Compliance and Risk – International Frontier Technologies SOC
- Zodeck Muchoko - Projects Manager – Finance – Helcraw Electrical
- Thobeka Phumelele Nyawo - Accountant – McDonald’s Head Office
- William Saidi - Finance Executive – Institute of People Management of Zimbabwe
- Zamantungwa Beryl Kumalo - Assistant Company Secretary – Royal Bafokeng Platinum
- Kudzanai Tayengwa - Senior Bookkeeper/Assistant Accountant – Messer Eutectic SA
- Peter Henry Tshephe - Accounts Receivables Administrator – Chartered Secretaries Southern Africa
- Morne Gert Schalk Vorster - Managing Member – Grezen Trading Four CC
- Gladys Zemura - Senior Bookkeeper/Assistant Accountant – Messer Eutectic SA
- Kudzanai Tayengwa - Senior Bookkeeper/Assistant Accountant – Messer Eutectic SA

The Institute is pleased to welcome Elizabeth Bagley as our new Technical Adviser.

Elizabeth Bagley is an admitted attorney, notary and conveyancer and holds B Proc and MBL degrees from Unisa and BA (PPE) and MA (Applied Ethics for Professionals) degrees from Wits University.

She has extensive legal experience and was the Group Legal Advisor and Group Company Secretary of the Edcon Group until August 2008. During her tenure at Edcon she played a significant role in the conclusion of the R25bn private equity buyout by Bain Capital, the largest transaction of its kind in South Africa at the time, and the delisting of Edcon from the JSE. At the time of the introduction of the Companies Act No. 71 of 2008 Elizabeth presented a series of workshops on the new Act on behalf of the Institute of Directors Southern Africa.

She joined Edcon from Edward Nathan & Friedland, where she was a director in the corporate commercial department, at the same time as Phil Armstrong, a CSSA Past President, was a director.

Elizabeth also currently serves as Chairman of the Alexander Forbes Beneficiary Fund, having been appointed as an independent trustee on the Fund’s establishment in 2009, and as an independent trustee of The Alexander Forbes Trust.

Elizabeth comes with years of experience and we wish her the very best in her new role. We look forward to her contribution as Technical Adviser.
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