

7 August 2008

Ms M A Williams
Secretary to Parliament
P O Box 15
CAPE TOWN
8000

Dear Ms Williams

**SUBMISSION TO PORTFOLIO COMMITTEE FOR TRADE AND INDUSTRY
ON THE COMPANIES BILL (B61 – 2008)**

Introduction

Old Mutual has always been supportive of good corporate governance practices and procedures as well as robust legislation and in light thereof, welcomes the publication of the Companies Bill 2008 and we note the extensive positive changes to the previous version of the Bill, which we believe, *inter alia*, has improved the overall quality of the legislation.

Overall, we are comfortable with the majority of the provisions of the Bill, including the basic principles which underpin it, and the manner in which it links with existing company law, case law, and other legislation such as the Electronic Communications Act and the Promotion of Access to Information Act. A cause for concern is, however, to be found in clause 5 of the Bill, dealing with the interpretation thereof. This is particularly true of clause 5(4) which proposes the concurrent application of different Acts, which will create uncertainty.

We specifically note the system of administrative enforcement in place of criminal sanction to ensure compliance with the Act and we support the creation of flexibility in the administration and management of companies, to ensure that these processes are in line with those in developed countries. However, we respectfully submit that this is based on the increased role and oversight of various regulatory bodies created in terms of the Bill and further that adequate funding and staffing by Government would be **essential** to ensure the necessary efficiencies and resultant success of same, required to underpin the objectives of the Bill. We are also concerned about the very wide and ill-defined powers given to the proposed Commission and Ombud in clause 6 and chapter 7 of the Bill. These could be seen as open to attack under the Constitution because of a lack of regard for the constitutional separation of powers, whereas others may cause uncertainty regarding jurisdiction.

We believe that there remain various uncertainties in interpretation and other issues that need to be considered, and have highlighted these in Annexure A (annexure), for consideration by your technical team.

Close Corporations

As an active supporter of small business development, we would like to caution against the proposed moratorium on the incorporation of close corporations, which allowed for a simpler business structure. The Bill currently provides no certainty as to who would be allowed to review the financial statements of a private company, and whether the current, more cost-efficient option of an accounting officer (as defined in the Close Corporations Act) would remain. We believe that the increase in fees for smaller businesses might be a strain, which should be avoided as far as possible, in an already difficult economic environment.

Director's Liability

Although we note the codification of directors' duties, we are concerned that the current tests for director's liability are still subjective in nature. Please refer to our comments on Section 76(3)(c) in the annexure. In addition, our specific concerns around liability of directors' non-attendance of meetings and related defence are also highlighted therein.

Business Rescue

We submit that the provisions on business rescue could create difficulties in practice, and we believe that the uncertainties created by this Chapter (refer our detailed comments in the annexure could negatively impact businesses in South Africa. We submit an unintended consequence could be that we are to an extent, protecting badly managed companies, to the detriment of well-managed businesses.

Securities & Shares

These two terms are used interchangeably in the Bill, and we highlighted in the annexure that the definition of "securities" in the Securities Services Act might be seen as being applicable to public companies only.

Conclusion

We are appreciative of the opportunity to provide input into this very important piece of legislation, notwithstanding the extremely short period to do so, and trust that our detailed comments as contained in the annexure will provide further food for thought.

Despite the items highlighted above and in the annexure, we believe that the revised Bill is an improvement as drafted, and has eliminated a great number of uncertainties which were prevalent in the 2007 version. Further, it is our view that this Bill will, in conjunction with the King III Report on Corporate Governance, assist in providing the desired framework within which all Businesses can remain competitive in the world economy and continue to thrive.

Please do not hesitate to contact us should you wish to discuss any of the issues in this submission in more detail.

Yours faithfully



R F Foster
Company Secretary