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**26 November 2010**

**For attention:**

**Mr Andre Hermans**

**Committee Secretary: Portfolio Committee on Trade and Industry**

**Parliament**

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## **SAIBA SUBMISSION ON THE COMPANIES AMENDMENT BILL 2010 (B40-2010)**

The Portfolio Committee on Trade and Industry intends holding public hearings on the Bill on 30 November 2010 and 1 December 2010. SAIBA hereby wishes to make use of this opportunity to deliver an oral and written submission on the Bill. We will therefore be pleased if you will accept our submission on the Companies Amendment Bill 2010.

Mr Stiaan Klue, Director will represent the Southern African Institute for Business Accountants (SAIBA).

Kind regards

**Dr Renier C Nell**

**President**

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M P C Swarts (Namibia)**

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### 1. SUBMISSION

#### 1.1. Section 1: Definitions:

We agree with the amendments proposed to Section 1 of the Companies Act:

“‘audit’ has the meaning set out in the Auditing Profession Act, but does not include an ‘independent review’ of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

#### 1.2. Section 30: Annual Financial Statements

We agree to the insertion of a new section 30(8):

“(8) Despite section 1 of the Auditing Profession Act, an independent review of a company’s annual financial statements required by this section does not constitute an audit within the meaning of that Act.”.

## **2. MOTIVATION**

### **2.1. Introduction**

It is important that we familiarise ourselves with the initial intention of the company law reform that led to the proposed new Companies Act which was approved by Cabinet in early 2007 i.e. ***“ it is not the aim of the DTI simply to write a new Act by unreasonably jettisoning the body of jurisprudence built up over more than a century. The objective of the review is to ensure that the new legislation is appropriate to the legal, economic and social context of South Africa as a constitutional democracy and open economy. Where current law meets these objectives it should remain as part of company law.”***

The policy paper furthermore stated that company law should promote the competitiveness and development of the South African economy.

The introduction of the Independent Review as a non-audit assurance service to be provided by persons currently recognised as Accounting Officer will achieve the approved principles of the new Companies Act 2008.

### **2.2. Fundamental principles on which the Act was drafted**

Following on the above it is important that the Companies Amendment Bill 2010 adhere to the following fundamental principles set:

- Alignment of company law to the South African Constitution and Bill of rights;
- A unitary statute to govern all corporate business forms i.e. combine the companies act and close corporations act into one new companies act;
- One common legislation that governs both public and private companies irrespective of their size and the management thereof;
- Simplifying and reducing the cost of formation and maintenance of the legal entity;
- Accountability to all stakeholders; and

- Emulate international best practices.

SAIBA support the notion that any amendments should be measured against the above principles before being adopted.

### 2.3. Differentiation between types of companies

The Companies Act 2008 introduces audit exemption for owner managed private companies and an alternative report to the audit for non-public interest non owner managed private companies. Thresholds will be used to determine if a company is classified as public interest. This alternative report is called the independent review. Draft regulations have proposed that the independent review should be classified as:

- International Standard on Review Engagements (ISRE2400);
- International Standard on Related Services: Factual Findings (ISRS 4400);
- International Standard on Related Services: Compilations (ISRS 4410).

It is also important that all stakeholders have a common understanding of the international developments related to non-audit assurance and related services engagements. This will assist in ensuring that South Africa adopts the most appropriate reporting model.

However the standards for conducting the independent review and the qualification of the professional that will be allowed to issue the independent review reports will be set by the regulations to the companies act. We believe that South Africa has developed its own local resource in the form of accounting officers that are the natural "Heirs apparent" to be appointed as persons capable of performing independent review engagements. In 1984 South Africa enacted the Close Corporation Act which mandated that all close corporations should appoint an accounting officer to issue an assurance type report on the financial statements of close corporations.

The introduction of the accounting officer was such huge success that numerous other statutes adopted the accounting officer model for reporting

purposes. These include the Sectional Titles Act 1986, South African Schools Act 1996, Non Profit Organisations Act 1997, and National Credit Act 2005. We estimate that the number of people qualifying to act as accounting officers are between 30 000 – 40 000. All of them are members of approved professional accountancy bodies.

A recent survey by the European Federation of Accountants entitled "Survey on the Provision of Alternative Assurance and Related Services across Europe" issued July 2009 found that most companies in the European Union are exempted from having their financial statements audited. This has led to the development of alternative forms of assurance to be issued on the financial statements of audit exempt or smaller companies.

As the independent review is applicable to audit exempt companies it follows that performing independent review engagements should not, and indeed is not, limited to only registered auditors. In France, as in many other European states, non-auditors may issue independent review reports. Many commentators have also attested to the cost saving benefit provided by independent review engagements.

Independent regulation is only warranted when protection of public interest is required, as stated in the objectives of the Auditing Profession Act 2005. This is not clearly the case with the review as proposed in the Companies Act as any company in the public interest is required to be audited.

We therefore proposes a model of self-regulation whereby the regulation is delegated jointly to the professional bodies recognised in terms of the Act and Companies Regulations 2010, with the close involvement of DTI in the design and monitoring process.

South African policy makers, when drafting the regulations pertaining to the independent review should therefore be careful not to overburden smaller companies, that has no public accountability, by defining the independent review as just another name for an audit and should not turn their backs on a truly South African innovation, the accounting officer.

### **3. CONCLUSION**

SAIBA welcomes the provision in the Companies Act 2008 to remove the statutory obligation on many companies to have their financials audited when there is neither value in it nor any public interest to protect.

We also support the introduction of the Independent Review as a non-audit assurance service to be provided by persons currently recognised as Accounting Officer will achieve the approved principles of the new Companies Act 2008

We believe that this deregulatory measure will support the objectives of the Act in the legal, economic and social context of South Africa as a constitutional democracy and open economy. Furthermore it will bring economic benefits to Small and Medium-sized Enterprises in line with international developments.

### **APPENDIX 1**

#### **1 Background to SAIBA**

##### **1.1 Synopsis**

- SAIBA is a South African professional body established in 1987 to represent the interest of business accountants in private practice and industry;
- SAIBA is a section 21 company registered in terms of the Companies Act 1973;
- SAIBA has a membership of nearly 1000 members;
- The SAIBA Member Handbook provides for a Constitution, By-laws, and a Code of Conduct to govern the Institute and member behaviour. This includes comprehensive investigation and disciplinary procedures;
- The SAIBA qualification is based on the accreditation of University degrees and the recognition of relevant practical experience;
- SAIBA sets mandatory requirements for its members with regards to Continuing Professional Education (CPE).

- SAIBA membership has statutory recognition in terms of various statutes.

## 1.2 Statutory recognition: Close Corporations Act 1984

SAIBA was recognised by Government Gazette on the 7<sup>th</sup> July 1996 as a professional body whose members are allowed to act as Accounting Officers for Close Corporations.

Section 59 of the [Close Corporations Act 69 of 1984](#) requires that all Close Corporations appoint an Accounting Officer.

According to section 60 of the Close Corporations Act the qualifications of an Accounting Officer is determined as:

- A relevant qualification in accounting approved by the Minister of Trade and Industry;
- Membership of a professional body that implements an effective investigation and disciplinary process, and
- Membership of a professional body approved by the Minister of Trade and Industry by notice in the Government Gazette.

On 1 July 2006 SAIBA obtained recognition as a professional body for Accounting Officers in terms of the Close Corporations Act of Namibia.

## 1.3 Other statutory recognition

SAIBA members, as Accounting Officers, are also recognised in terms of the following statutes. Refer appendix 1 for extracts of the statutes:

- Sectional Titles Act 1986;
- South African Schools Act 1996;
- Non Profit Organisations Act 1997;
- National Credit Act 2005.

## 1.4 Industry recognition

SAIBA has a formal reciprocal agreement with the South African Institute of Tax Practitioners (SAIT). [SAIT](#) is a professional body with membership represented in the tax profession. The agreement pertains to dual membership recognition and technical co-operation. SAIBA members that also register with SAIT qualify to be recognised as Commissioner of Oaths. SAIBA is represented via its relationship with SAIT on the [SARS National Stakeholders Committee](#) of the South African Revenue Services (SARS).

#### **1.5 Services provided by SAIBA members**

##### **Assurance and related services:**

Accounting officers review an entities systems, financial statements and accounting policies while checking the accuracy of the company's financial records. The accounting officer is responsible for issuing a report in terms of an underlying statutory framework;

##### **Taxation:**

SAIBA members in practice advise their clients on tax planning and assist with the submission on tax returns and related administrative duties.

##### **Financial Management:**

Strategic and operational assistance with a clients or employers budgeting, cash flow forecasting, business plans and advice regarding corporate structures and financing.

##### **Management Consultancy:**

Business improvement services;

##### **Secretarial and Accounting Services:**

Assistance with compliance with statutory requirements, develop or improve accounting systems, and general bookkeeping services.

##### **Information Technology:**



**Creation and maintenance of business information services.**

**Management Accounting:**

**Provide accounting information that assist management in making informed business decisions. Activities include forecasting and planning, performing variance analysis, reviewing and monitoring costs inherent in the business.**

**Business rescue and insolvency practitioners:**

**Evaluate a business survival potential and assist with the turn around or liquidation of a struggling business.**

**Financial accounting:**

**Prepare financial statements; record, monitor and interpret financial information; Advise on improvements to internal and production controls;**

## **APPENDIX 2: DETAIL OF STATUTORY RECOGNITION**

**ACCOUNTING OFFICER FOR A BODY CORPORATE - [Sectional Titles Act 95 of 1986](#)**

**Section 36. Annual financial estimate, financial statement and report (1) Before every annual general meeting, the trustees shall cause to be prepared an itemised estimate of the anticipated income and expenses of the body corporate during the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration in terms of rule 56 hereof. (2) The estimate of expenses referred to in sub-rule (1) shall include a reasonable provision for contingencies and the maintenance of the common property; 40.**

**Audit At the first general meeting and thereafter at every ensuing annual general meeting, the body corporate shall appoint an Auditor to hold office from the conclusion of that meeting until the conclusion of the next annual**

general meeting : Provided that where a scheme comprises less than 10 units, an Accounting Officer may be appointed for that purpose and the Auditor or Accounting Officer, as the case may be, must sign the financial statements.[Rule 40 substituted by GN R2345/90 and GN R1109/2005] 51. (1) An annual general meeting shall be held within four months of the end of each financial year. (2) Unless otherwise decided at a general meeting or by the trustees, the financial year of the body corporate shall run from the first day of March of each year to the last day of February of the following year.[Rule 51 substituted by GN R1422/97]

**ACCOUNTING OFFICER FOR A SCHOOL – [South African Schools Act 84 of 1996](#)**

Section 43. (1) The governing body of a public school must appoint a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act No.26 of 2005) to audit the records and financial statements referred to in section 42. (2) If the audit referred to in subsection (1) is not reasonably practicable, the governing body of a public school must appoint a person to examine and report on the records and financial statements referred to in section 42, who- (a) is qualified to perform the duties of an Accounting Officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or (b) is approved by the Member of the Executive Council for this purpose.

**ACCOUNTING OFFICER FOR AN INSURANCE INTERMEDIARY - [Short Term Insurance Act 53 of 1998](#), [Intermediary Guarantee Facility Limited Solvency](#)**

**Certificate Paragraph 5, Financial Advisory and Intermediary Services Act 37 of 2002**

**An auditor or an accounting officer has to report in terms of the Intermediary Guarantee Facility Ltd. Solvency Certificate paragraph 5 that during the course of the examination there was any reason to believe that the Intermediary will / will not continue as a going concern in the foreseeable future having taking into account all contingent liabilities of the Intermediary, if any.**

**Financial Advisory and Intermediary Services (Guidance Note for Accountants and Auditors - <http://www.fsb.co.za> - as issued by the FSB on 15 June 2005):**

**“Financial statements are to be:**

- Prepared in a manner appropriate to the business of the provider in accordance with generally accepted accounting practice, fairly present the financial position of the business at the last day of the financial year and the results of operations and cash flow information for the period then ended;**
- Prepared using the accrual basis of accounting which requires the effects of transactions and other events to be recognised when they occur and not as cash or its equivalents are received or paid and recorded in the financial year to which they relate;**
- Prepared on a going concern basis unless the provider intends to liquidate the entity, or cease trading, or has no realistic alternative but to do so;**
- Refer to any material matter which has affected or is likely to affect the financial affairs of the provider;**

- **Approved and signed by the provider;**
- **Subject to an audit; and**
- **Issued within six months of the financial year end of the provider.**

#### **“Exemptions**

**In terms of exemption No. 1 of 2003, —Exemption of certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements and Financial Soundness<sup>ll</sup>, certain providers are exempted from section 19(2) (a) and b (i) of FAIS. Section 19(2) (a) obliges the provider to cause the financial statements, pertaining to the business of the provider, to be audited and reported on by an external Auditor.**

**Section b (i) requires financial statements to be prepared in conformity with generally accepted accounting practice. This exemption does not apply in those instances where the provider is obliged by any other law (for example, the Companies Act or the Close Corporations Act) to have financial statements audited and reported on by an external Auditor or, otherwise prepared by an Accounting Officer. The effect of this exemption is such that a provider who would not comply with generally accepted accounting practice in preparing financial statements and would not cause such financial statements to be subject to an audit save for the provisions of FAIS, are not required to do so. For providers to which the exemption applies financial statements still need to be prepared and submitted to the registrar. This exemption does not apply to section 19(3). Providers must submit a report prepared by the Auditor regarding money and assets held on behalf of clients.<sup>ll</sup>**

**ACCOUNTING OFFICER FOR NON-PROFIT ORGANISATIONS - [Non Profit Organisations Act 71 of 1997](#)**

Sections 17(1) and 17(2) of the Act read as follows: “Accounting records and reports 17. (1) Every registered non-profit organisation must, to the standards of generally accepted accounting practice— (a) keep accounting records of its income, expenditure, assets and liabilities; and (b) within six months after the end of its financial year, draw up financial statements, which must include at least— (i) a statement of income and expenditure for that financial year; and (ii) a balance sheet showing its assets, liabilities and financial position as at the end of that financial year. (2) Within two months after drawing up its financial statements, every registered non-profit organisation must arrange for a written report to be compiled by an Accounting Officer and submitted to the organisation stating whether or not— (a) the financial statements of the organisation are consistent with its accounting records; (b) the accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements; and (c) the organisation has complied with the provisions of this Act and of its constitution which relate to financial matters.

**ACCOUNTING OFFICER FOR CREDIT PROVIDERS - [National Credit Act 34 of 2005](#)**

**“Assurance Engagement**

Regulation section 67: the registered credit provider must to appoint an Accounting Officer or Auditor to conduct an assurance engagement in terms of regulation 68. If a credit provider is not required by statute to appoint an

**Accounting Officer or Auditor, a member of one of the following professional bodies should be appointed: South African Institute of Chartered Accountants (SAICA); Commercial and Financial Accountants (CFA) – South African Institute of Professional Accountants (SAIPA); South African Institute of Secretaries and Administrators (ICSA); Institute of Administration and Commerce (IAC); Chartered Institute of Management Accountants (CIMA).**

**Regulation section 68. (1) A credit provider must require the person appointed in terms of regulation 67 to perform an assurance engagement in accordance with guidelines to be issued by the National Credit Regulator and issue a report to the National Credit Regulator on the basis of that person’s findings with regard to that engagement; (2) A credit provider must submit the report contemplated in (1) to the National Credit Regulator within 6 months after the credit provider’s financial year end. (3) The National Credit Regulator must issue guidelines in respect of - (a) the procedures which the person must follow in performing such assurance engagement, and (b) the format and content of the report which must be compiled based on the engagement.”**