

# BUSINESS LAW QUARTERLY Namibia Newsletter APRIL 2018



A quarterly newsletter published by PwC Namibia providing informed commentary on current developments in the Namibian business arena and related fields.

## Duties and Responsibilities of Company Directors

Upon accepting to be a director of a company, there are certain duties and liabilities that are expected from you.

Judge Middleton in the ASIC vs Healey case indicated that a director is an essential component of corporate governance. Each director is placed at the apex of the structure of direction and management of a company. The higher the office that is held by a person, the greater the responsibility that falls upon him or her. The role of a director is significant as their actions may have a profound effect on the community, and not just shareholders, employees and creditors.

Directors have the following Roles and Functions:

- Direct the Company
- Develop business strategies
- Ensure that strategies are implemented
- Reporting to Stakeholders

In addition to the directors powers contained in the Articles of Associations, Directors also have the authority to enter into transactions and the delegation of powers

The overriding duty of any director is to act at all times in the best interest of the company. Their duties can be summarized under the following:

1. Duty of Care
2. Fiduciary Duty
3. Duty to Act within Authority

“While the board has collective authority, each director has individual responsibility. The Law looks at each director’s conduct [...] to decide whether or not he/she is responsible” - Mervin King

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## PwC Business School Calendar– April-June 2018

24-25 April: Developing effective telephone skills

27 April: Director’s Training-Remuneration Principles

8-9 May: Effective Business Writing Skills

14-16 May: Basic Accounting training - Windhoek

22-23 May: Executive Secretaries & PA Development programme

29-30 May: Executive Secretaries & PA Development programme

30-31 May: Professional Behaviour in the workplace

1 June: Director's Training - Remuneration Principles

6-8 June: Finance for Non-Finance Managers

12-15 June: Annual Tax Symposium - Windhoek

13 June: Tax Refresher Course



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## Cyber Security

Cybersecurity is not just about technology. It also involves people, information, systems, processes, culture and physical surroundings. It aims to create a secure environment where businesses can remain resilient in the event of a cyber-attack.

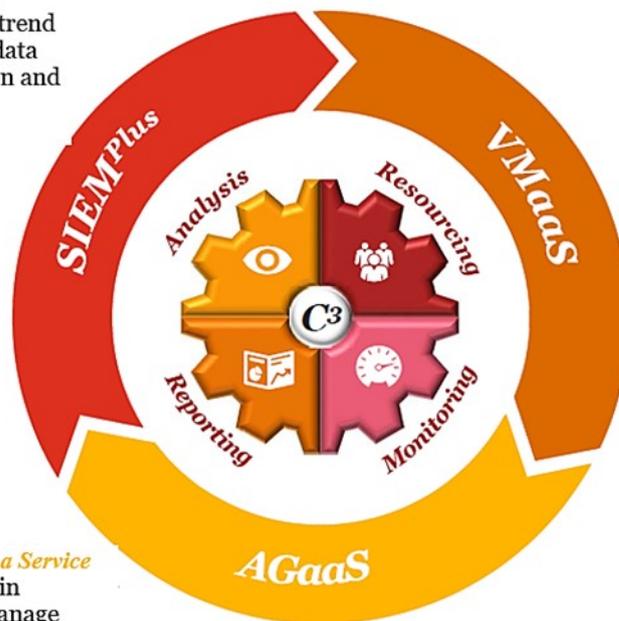
Cyber-attacks can result in enormous financial losses and cause reputational damage to businesses. With the number of high profile security breaches and cyber-attacks growing each year, businesses are under immense pressure to take proactive steps to minimise the chance of a cybersecurity breach and, when compromised, to slow the attackers' progress, and react quickly and efficiently to reduce the impact of the crime.

To maximise cyber-resilience, companies must identify and address system vulnerabilities, gain control over high risk accounts, and put in place robust event correlation, incident detection and response capabilities. The activities associated with these critical areas are both time and resource intensive – stretching already constrained internal security and operations teams.

PwC's Managed Security Services free internal security teams to focus on protecting the business.

### *SIEM<sup>Plus</sup>*

Correlate and analyse real-time event data for incident detection, response and containment. Integrate trend and threat intelligence data for incident classification and response prioritisation



### *Vulnerability Management as a Service*

Identify and prioritise exposures associated with inherent system security vulnerabilities and infrastructure configuration errors

### *Access Governance as a Service*

Establish and maintain accountability and manage exposures associated with user roles and privilege abuse

**Figure: PwC Managed Services**

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The Bank of Namibia has released a position paper on Distributed Ledger Technologies and Virtual Currencies in Namibia. This article looks at a short description of the Banks position on virtual currencies, particularly cryptocurrencies.

The Bank's understanding of virtual currency is a type of digital currency that is unregulated with no legal tender status or relations to any central bank or public authority of a particular jurisdiction. Rather, its value is derived from the common acceptance among a group of natural or legal persons as a means of payment that can be transferred, stored, or traded electronically. The Bank does not consider virtual currencies to be legal tender or payment instruments in Namibia and users should be aware and cautious of the risks involved

The Currency and Exchanges Act 9 of 1933 read in conjunction with the Exchange Control Regulations 1961 (Excon Act), does not make provision for the establishment of virtual currency exchanges or bureaus in Namibia. In addition to the Bank not recognising virtual currencies as legal tender in Namibia, it also does not recognise it to be a foreign currency that can be exchanged for local currency. This is because virtual currencies are neither issued nor guaranteed by a central bank nor backed by any commodity.

The European Central Bank has highlighted typical risks that are associated with virtual currencies which users should be aware of. These are:

- Credit risks
- Liquidity risks
- Operational risks
- Legal risks

Users of virtual currencies should also be aware of risks related to Money Laundering and the Financing of Terrorism when engaging in the trading of virtual currencies.

In conclusion, due to the unregulated nature of cryptocurrencies, individuals that engage in such trading would be doing so at their own risk, and as a result, expose themselves to financial losses due to lack of regulatory protection.

*The position paper is available at <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/c6/c6e59534-4bc8-4730-a091-eaffa172d2e9.pdf>*

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