Navigating the rising tide of uncertainty

What is clouding the view from the top? In a word, uncertainty. Conducted in September and October of 2019 (before the global outbreak of COVID-19), PwC’s 23rd Annual Global CEO Survey, which involved 1,581 chief executives in 83 territories, explores the sources and manifestations of uncertainty and how CEOs are taking action to address it.

For more details, please visit: https://www.pwc.com/gx/en/ceo-agenda/ceosurvey/2020.html

Duties of Namibian Directors

The Namibian Companies Act 28 of 2004 (the "Companies Act") defines the term director as: “any person occupying the position of director or alternate director of a company, by whatever name that person may be designated”.

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 director’s powers contained in the Articles of Association, 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

A director of a Namibian Company who also holds an office under the company will thereby undertake additional functions, therefore differentiation would be important between the executive director (who participates in the day-to-day management of the company’s affairs) and the non-executive director who has not undertaken any special functions. It should be noted that the standards of care and skill apply to both types of directors.

Why are financial and other institutions asking so many questions these days?

Consumers should realise that all financial institutions and businesses mentioned under Schedule 1 and 3 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012)(the FIA) are obligated under that Act to ask certain questions and to record certain information regarding their clients, in order to know their clients.

Amongst other things, the following legal obligations must be met:
- To identify their clients in line with the requirements of the Act and its Regulations;
- To keep certain records regarding information on their clients, in line with the requirements of the Act and its Regulations; and
- To report suspicious transactions or activities in line with the requirements of the Act and its Regulations.

Identification information may include: full names, nationality, national ID number/ passport number/ date of birth (with a copy of identification), address, contact particulars, occupation, source of income, nature of business activities (if any), the source of funds involved in this particular transaction, and so on. A full record must also be kept of such information.
Why are financial and other institutions asking so many questions these days? (Cont’d)

The purpose of the FIA is to combat the crimes of money laundering, the financing of terrorism and the financing and proliferation of weapons of mass destruction. The obligation for all countries to combat these crimes derives from certain United Nations Conventions and certain United Nations Security Council Resolutions.

The same information (specifically pertaining to identification) is asked of the consumer over and over again whether opening a bank account, buying property or a car, taking out insurance policies, making an investment, taking out a loan or sending money overseas. In some instances, different divisions of the same bank will ask the same information of their clients, depending on the type of transaction that the client is conducting, such as buying a house, car, unit trusts, taking out a loan or requesting services from an auditor.

Consumers should note that failure by these businesses and institutions to comply with the abovementioned obligations is a criminal offence and the persons responsible for such businesses and institutions, if found guilty, may be fined a maximum of N$100 million, 30 years’ imprisonment or both. It is therefore in the best interest of these businesses to comply with the FIA and to obtain the required identification and other information from their clients.

Clients or consumers who refuse to give the required information may be regarded as acting suspiciously and these businesses can either refuse to do any further business with the client or to report the client’s suspicious behaviour to the Financial Intelligence Centre to take further action.

The End of the State of Emergency

On Thursday, September 17, the Namibian government allowed the state of emergency to end which was initially introduced due to the coronavirus disease (COVID-19) pandemic.

It was further stated that international travel will be allowed to resume from Friday, September 18. According to the Government Gazette No. 7342, Public Health Covid-19 General Regulations, the following should be taken into account:

- The nationwide curfew in place under the state of emergency had been lifted.
- Travel into and out of restricted areas such as Windhoek and towns of Rehoboth (Hardap region) and Okahandja (Ojozondjupa region) is also permitted.
- Gatherings of up to 50 people or up to 50 percent of a venue's capacity are now permitted, and casinos have been allowed to reopen.

With regards to international travel, point of entry by air is currently permitted via Hosea Kutako International Airport in Windhoek or the Walvis Bay airport for Walvis Bay. It should be noted that Tourists do not need to be quarantined, except for mandatory testing on the 5th day of arrival as set out in Government Gazette No. 7346, Amendment of Public Health Covid-19 Regulations.

In addition to the above, any person entering Namibia must provide a negative COVID-19 test result not older than 7 days prior to arrival in Namibia. Other travelers must notify the nearest Namibian Embassy or High Commission of their intent to travel to Namibia at least two weeks prior to departure, and quarantine upon arrival in an approved facility at their own expense.

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