VAN HUYSSTEENS
COMMERCIAL ATTORNEYS

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"Life is really simple, but we insist on making it complicated".
- Confucius

DIRECTORS' PERSONAL FINANCIAL INTERESTS
Omar v Inhouse Venue Technical Management (Pty) Ltd

Section 75 of the Companies Act, 2008 regulates the position of a director who has personal financial interests in the company's business. The section states that a director must disclose his or her personal financial interest and the nature thereof before a matter pertaining thereto may be considered at a board meeting. If an agreement or decision was approved by the board of directors without such disclosure, the decision or agreement will only be valid if ratified by an ordinary resolution of the shareholders or declared to be valid by a court.

In the matter of Omar v Inhouse Venue Technical Management (Pty) Ltd ("Omar-case") the court held that that section 75 does not contain any provisions affording either the company, its shareholders or fellow directors, a right of recovery or other cause of action for losses occasioned by the failure of a director to disclose his or her personal financial interest. The director may face possible claims from shareholders, the company or third parties in terms of other provisions of the Companies Act.

In the Omar-case the minority shareholder required to be fairly compensated for his minority shareholding. The directors said that a fair offer has been made to the minority shareholder and that he was not happy with their offer. The minority shareholders sought relief under the Companies Act. The court concluded that the directors of the company have acted in contravention of section 75 of the Companies Act in failing to disclose their personal financial interests in transactions undertaken by the Company. As penalty, the court concluded that a chartered accountant must determine the fair market value of the minority shareholders' shares to be purchased by the Company; and that the chartered accountant must take into account the contraventions of section 75 of the Companies Act to increase the purchase consideration to be paid by the company to the minority shareholder for his shares.

Law & Laughter

Q: *How do you get a group of lawyers to smile for a picture?*
A: *Just say "Fees!"*

SA HAS BUSINESS UNFRIENDLY LAWS – DOES YOUR COMPANY STILL EXIST?

Every South African company must file annual returns every year within 30 days from the anniversary of its date of registration. When failing to file annual returns your company will be deregistered by the Companies and Intellectual Property Commission. ("CIPC").

While being a deregistered company, all corporate activities undertaken and contracts concluded will be invalid. The company or any interested party may, however, apply for the company to be reinstated and again be placed on the register of companies. However, the question as to the retrospective effect of the reinstatement of a company under the Companies Act has resulted in conflicting decisions in different divisions of our courts. It was universally accepted that reinstatement brings in its wake retrospectivity to the extent of revesting the company with its former assets, however, it does not validate contracts concluded on behalf of the company during its period of deregistration.

In the recent case law the court confirmed that an application to CIPC for re-instatement is with full retrospective effect and all contracts concluded by a deregistered company will be valid once the company is reinstated. Important to note is that the contracts concluded while being a deregistered company will not be enforceable in any court of law until such company is reinstated and again listed on the register of companies.

If you are unsure about the status of your company please contact our team of corporate attorneys to assist you in filing your annual returns and reinstating your company on your behalf.

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