

NEW WAVE OF COMPLIANCE HEADACHES FOR THE COMPANY SECRETARY

2008 and 2009 have seen the release of two important documents that will have a material impact on the life of any company secretary over the next twelve to eighteen months as we strive to ensure that our organisations are aligned with the legislative and best practice requirements out there.

Firstly, there was the **Companies Bill** that was published in its final version in 2008 after undergoing all the necessary procedural processes and approvals. Word has it that it will take effect in June 2010. Between then and now, company secretaries who are in law required to inform the directors of their rights and duties and of all statutory and compliance requirements and who are furthermore required to report non-compliance and to ensure the company's compliance to the Companies Act will have their hands full. The board of directors will look to the company secretary for guidance and assurance that the company is in compliance with the new set of do's and don'ts.

Secondly, February 2009 saw the release of the first draft of **King III** for public comment. The King III report is based on an "apply or explain" basis, which enables companies to operate for the purposes for which they were intended, without being bound to follow standards which are inflexible. Again, the board of directors will look to the company secretary for guidance as to the appropriate structures and processes that will enhance the company's governance performance and reputation.

In order for the company secretary to meet the expectations of all concerned, the following will amongst other things be required from the company secretary in the next few months:

- To become *au fait* with all of the new requirements and recommendations;
- To identify those matters that are relevant to the company and need to be addressed;
- To provide guidance on the impact and implications thereof on the company and the board of directors;
- To implement the necessary processes and procedures to ensure compliance to the fullest extent;
- To report on the company's performance in these areas to all stakeholder; and
- To ultimately give comfort and assurance to the board of directors that the company is in compliance and will continue as such going forward.

This is a mammoth task and one which the company secretary needs to deal with while at the same time taking care of the ongoing day-to-day demands. These are exciting and challenging times for the committed and professional company secretary. At the same time it provides the opportunity to confirm the enormous value that the company secretary adds to the successful management of the company's affairs – an opportunity which should be grabbed with both hands!!

ANNAMARIE VAN DER MERWE
MARCH 2009