

Sustainability - law or conscience?

Corporate leaders need to understand the increasing importance of adapting to the pressure to ensure their entities' sustainability and profitability. In these changing times, sustainability reporting is rapidly gaining credence. Equally important, however, is understanding the legislation around it.



Legal constraints

According to Etienne Swanepoel, corporate and commercial law specialist and partner at Webber Wentzel Attorneys, determining the legal requirements applicable to sustainability reporting is a mechanical process. The first question to ask is whether the company in question is listed, as different provisions apply to listed and unlisted companies.

"Legislation around sustainability reporting is relatively intricate and complex," says Swanepoel. "Broadly speaking, there are three sets of legal requirements for listed companies. These are the JSE listings requirements, the Companies Act and the King III Report, which replaces the current *King Report* on 1 March 2010." In addition, the *King Report* is supported by additional guidelines, such as the *Global Reporting Initiative (GRI)* and the *Institute of Directors Practice Notes*.

King III

Graham Terry, SAICA's senior executive of strategy and thought leadership, says the *King III Report* is specifically aimed at corporate governance and highlights the concepts of integrated sustainability as well as social transformation.

"This leads to a strong focus on the effects that businesses have on society and the environment. There is also a strong emphasis on sustainability reporting. South African companies are starting to realise its importance, but it is a slow process. When it comes to legislation around sustainability reporting, it is becoming abundantly clear that the *King III Report* may have a substantial impact on the way businesses are managed and a clear understanding of the Code is a necessity."

International models

According to Swanepoel, there are two models for corporate governance. "The first model is a 'Comply or Else' approach to legislation, as followed in the US. With this model, non-compliance may have legal consequences. In South Africa, and most other countries, a 'Comply or Explain' model is applied. This means that, while guidelines such as *King III* exist, it is not law and if businesses can give a valid explanation for not complying, they cannot be held legally responsible. There are, however, two broad exceptions to this rule, namely the Employment Equity Act and Black Economic Empowerment Act.

He notes, however, that the JSE Listings Requirements are currently under review and that developments akin to those in the National Environmental Management Act should also be closely watched.

Swanepoel says that non-compliance (apart from possible breaches of the JSE Listings Requirements in the case of listed companies) does hold its fair share of risk as companies might very well end up with egg on their faces, not only from their peers, but from the consumer as well, if they choose to ignore these guidelines. He concludes that legal regulation in this area is certain to increase in the future apart from the obvious moral and business imperatives to do so sooner.

Green economics

According to Terry, no market leader who wants to ensure profitability in his/her business can ignore the demands of customers, as sustainable business practise is at the top of many consumers' minds.

"A public that is increasingly well-informed on 'green' issues will increasingly demand businesses to make more responsible choices and those who comply will be rewarded with their patronage. More and more businesses of all sizes are finding ways to make their operations more sustainable and environmentally friendly," he says.

He adds that green business is no longer just a buzzword. "It has a strong business case in today's market place and not only adds value, but reduces risk. The consumer's drive for more responsible business is felt in almost all spheres of the economy - the government is under pressure to put measures in place that will reduce our country's carbon footprint, which, if passed, will filter down to the business sector and severely affect their day-to-day operations.

Those who choose to ignore the consumer demand will simply find themselves without customers in the not so distant future. The green movement is not going to disappear and will only strengthen as the environment continues to deteriorate. Although the United Nations Climate Change Conference, held in Copenhagen late last year, failed to deliver a binding agreement between the world's worst carbon emitters, the global drive towards greener business is not about to stop anytime soon."

Green leaders

According to Terry, chartered accountants have a pivotal role to play in this new era of business. "They already occupy a unique position in corporate South Africa in identifying and presenting relevant, accurate financial information to stakeholders in times of change. As importantly, they are ideally positioned to utilise their skills to contribute to the sustainability debate by presenting important non-financial information.

They are ideally positioned to provide unique insight into the dynamics of sustainability reporting. In an environment where the consumer will act as the judge and jury, and the international community is demanding stronger legislation, there has never been such an important time for both accountants and business leaders to get to grips with the importance of sustainability reporting."

A key resource is SAICA's recently launched book, Green and the sustainability website www.sustainabilitysa.org.