	Section	Issue	Proposal
	Amendment of section 1 of Act 71 of 2008		
1.	Section 1(1)*(b)* Definition of " 'all of the greater part of the assets or undertaking' , when used in respect of a company, means – *(a)* in the case of a company's assets, more than 50% of its gross assets at fair market value, irrespective of its liabilities; or *(b)* in the case of a company's undertaking, more than 50% of the value of its entire undertaking, fair market value."	In this section it is referred to "fair market value" which is not defined in the Act. The 2008 Act uses the term "fairly valued". "Fairly valued" is different from "fair market value".	It is proposed that "fair market value" is replaced by "fairly valued".
2.	Section 1(1)*(d)* Definition of "asset": " **'asset'** means a resource controlled by an entity as a result of past events, and from which future economic benefits are expected to flow;"	Assets should not be defined, although the definition used in the Bill is aligned with IFRS, IFRS contain many more specific provisions that clarify inclusions and exclusions in both categories. Also, IFRS does not specifically define "equity", which theoretically should also be defined in the Act if assets and liabilities are defined.	Assets should rather be defined with direct reference to the FRS applicable to the reporting entity and within the common law understanding of the terms and thus don't require specific definition in the Act
3.	Section 1(1)*(e)* Definition of "audit" -	The definition of "audit" as including an independent review creates a direct contradiction with the Auditing Professions Act. The new definition of	The Companies Act, 2008 states that where there is a conflict between the provisions of the Companies Act and the Auditing Profession Act

	"by the substitution for the definition of "audit" of the following definition: "audit" has the meaning set out in the Auditing Profession Act, <u>but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb)</u>."	"audit" should also be read with the new Section 30(8) which refers to an independent review not being an audit. There is currently a debate as to whether a review would be considered to fall within the definition of an audit. It is, however, questioned whether this legislation can limit the meaning and reach of the Auditing Profession Act. It is likely that the proposed definition would be seen as an inconsistency with the Auditing Profession Act. In terms of section 5(4)(b) of the Act, the provisions of the Auditing Profession Act would prevail under these circumstances, rendering the proposed definition invalid. Although we also note that section 3(a) of the Bill amends section 5 of the Act to specifically exclude any conflicts with section 30(8) in this regard. Section 30(8) is included by section 19(g) of the Bill and specifically states that "*Despite section 1 of the Auditing Profession Act, an independent review of a company's annual financial statements required by this section does not constitute an audit within the meaning of that Act*". These definitions are also directly in conflict with the construction of assurance in International Standards on Auditing. The Bill also creates a dissonance with ISRE 2400, the International Standards on Review Engagements which will be confusing and contrary to public interest.	that the Auditing Profession Act would prevail – therefore a consequential amendment would need to be passed in relation to the Auditing Profession Act in order to enforce this new definition as opposed to creating a deliberate conflict with the said Act.
4.	"holding company"	The proposed definition of "holding company" would be in conflict with Financial Reporting Standards (FRS), resulting in holding company consolidated	Holding company should rather be defined with direct reference to the FRS applicable to the reporting entity.

		financial statements either being in conflict with the Companies Act, 2008, or FRS.	
5.	Section 1(1)(*t*) Definition of "liability" <u>" **'liability'** means an existing obligation of an entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits;"</u>	Liabilities should not be defined, although the definition used in the Bill is aligned with IFRS, IFRS contain many more specific provisions that clarify inclusions and exclusions in both categories. Also, IFRS does not specifically define "equity", which theoretically should also be defined in the Act if assets and liabilities are defined.	Liabilities should rather be defined with direct reference to the FRS applicable to the reporting entity and within the common law understanding of the terms and thus don't require specific definition in the Act.
6.	Section 1(1)(*bb*) Definition of "private company" is not a [**company or a]** <u>public</u>, personal liability <u>or</u> state owned company".	The definition of a public company states that a "public company" means a profit company that is not a state-owned company, a private company or a personal liability company. This creates a circular reference.	The definition of a private company must be amended to state that a "private company" is a company that restricts the transfer of its securities and does not permit its securities to be offered to the public in its Memorandum of Incorporation.
	Amendment of section 4 of Act 71 of 2008		
7.	Section 2 Solvency and liquidity "*(a)* the assets of the company or, **[if the company is a member of a** **group of companies]** <u>in the case of a holding company</u>, the **[aggregate]** <u>consolidated</u> assets of the company, as fairly valued, equal or exceed	In determining whether the solvency and liquidity test has been met, for a holding company, the Act requires the consideration of the "consolidated assets and liabilities of the company". From a legal point of view the wording of this section is a major concern. Legally, each company is a separate entity with no automatic rights to the assets of its subsidiaries and no legal obligation to honour the liabilities of its subsidiaries. The fact that an "insolvent" holding company has solvent subsidiaries should be irrelevant (as any party who	In applying the solvency and liquidity test, only the assets and liabilities of the company, itself, should be considered. Companies should not be permitted to consider the assets and liabilities of holding and subsidiary companies in determining whether the solvency and liquidity tests are met, as such subsidiaries and holding companies are separate legal entities and any resulting claims will not be enforceable against these other legal entities.

	the liabilities of the company or,**[if the company is a member of a group of companies]** in the case of a holding company, the **[aggregate]** consolidated liabilities of the company, as fairly valued; and''	has a legal relationship with the insolvent holding company will not benefit from the assets of the solvent subsidiaries). A creditor or shareholder of the holding company will only have a claim against the holding company and therefore allowing a company to take account of solvency/liquidity on a group basis severely erodes the protection to creditors and shareholders. A company will in any event include, in its own assets, the value of its investments in its subsidiaries, being the asset over which that company has legal title. Similarly, to require a company to include liabilities that it has no obligation to settle would lead to unfair results for the company. Fairly valuing liabilities creates the anomaly that the value of liabilities in an insolvent or financially distressed position would be less than the legally recoverable amount. .	The following wording is proposed – *4. Solvency and liquidity test.—* *(1) For any purpose of this Act, a company satisfies the solvency and liquidity test at a particular time if, considering all reasonably foreseeable financial circumstances of the company at that time—* *(a)* *the assets of the company ~~or, if the company is a member of a group of companies, the aggregate assets of the company,~~ as fairly valued, ~~is equal or~~ exceeds the liabilities of the company ~~or, if the company is a member of a group of companies, the aggregate liabilities of the company, as fairly valued~~; and*
	Amendment of section 11 of Act 71 of 2008		
8.	Section 6 *(b)* the substitution in subsection (1) for subparagraph (ii) of the following subparagraph: ''(ii) any of the following	From a technical perspective, punctuation marks and special characters have specific meanings in programming languages and data description. The use of these marks and symbols will cause the programmes to malfunction resulting in failed transactions. This problem extends to the following activities: opening a bank account; printing of	Do not permit the use of the specified symbols. Limit languages permitted to be used to official SA languages.

	symbols: +, &, #, , %, =;''	cheque books; payment of cheques; and issuing of debit and credit cards.	
9.	*(f)* the substitution in subsection (3)*(c)* for subparagraph (ii) of the following subparagraph: ''(ii) The expression **''Proprietary Limited''** or do abbreviation, **''[(Pty) Ltd]** ''Pty'', in the case of a private company.''	The proposal changes a well-established practice of using (Pty) Ltd as the abbreviation for private companies. Enormous cost would be incurred by private companies in changing all documentation and electronic references that currently use the (Pty) Ltd abbreviation.	Delete this amendment. Amendment 9(c)(i) would also need to be changed accordingly.
	Amendment of section 15 of Act 71 of 2008		
10.	Section 10(*b*) ''*(b)* contain any **[special conditions applicable to the company, and any]** <u>restrictive or procedural requirement</u> **[for the amendment of any such condition]** in addition to the requirements set out in section 16, <u>impeding the amendment of any particular provision of the Memorandum of Incorporation;</u> or'';	We understood that the intention of the "RF" company is that the doctrine of constructive notice should apply to these companies. In other words any person intending to do business with the company would be warned that the company has some kind of "special" condition which could affects its ability to enter into third party transactions. The letters "RF" would therefore essentially be a safeguard protecting the company, typically in the case of so-called special purpose vehicles. The proposed amendments remove this useful commercial tool. The proposed amendments only require the use of the letters "RF" in the event that a company has procedural constraints for the amendments of its memorandum of incorporation. In many instances these procedural requirements may be minor and not of interest to third parties.	Retain the original version of this section as contained in the Companies Act No 71 of 2008.
	Amendment of section 29 of Act 71 of 2008		
11.	Section 18	We fully support the adherence to IFRS in light of	**Amend the wording as follows:**

	(b) the substitution in subsection (5) for paragraph *(b)* of the following paragraph: ‘‘*(b)* in the case of financial reporting standards, must be **[consistent]** in accordance with the International Financial Reporting Standards of the International Accounting Standards Board or its successor body; and’’	South Africa having been rated as number 1 in the world in the WEF Global Competitiveness Report 2010 – 2011 for “Strength of auditing and reporting standards” as a direct result of SA’s use of international standards without deviation. However, we believe this should be limited to public companies (including SoEs by definition) and companies deemed to be in the public interest. Applying this proposed principle to all FRS would severely limit the flexibility of the Minister in alleviating the cost of of compliance for private and non-profit companies in terms of section 29(5)(c).	‘‘*(b)* in the case of financial reporting standards applicable to public companies and companies deemed to be in the public interest in terms of the Regulations to the Act, must be **[consistent]** in accordance with the International Financial Reporting Standards of the International Accounting Standards Board or its successor body; and’’
	Amendment of section 30 of Act 71 of 2008		
12.	Section 19 Section 19 amends Section 30 by the inclusion of (2A) “Except to the extent required under any other law or agreement, a private company is exempt from the requirements in this section to have its annual financial statements audited or independently reviewed, and from the requirements of subsection (3)(d), if every person who is a holder of, or has a beneficial interest in, any securities issued by the company is also a director of the company”	**Issue 1** Reducing unnecessary regulation for non-public interest companies and Close Corporations is commendable, provided there is adequate protection for all stakeholders, including minority shareholders, employees, creditors and the general public. The Companies Amendment Bill, 2010 (19 July 2010 Final text) proposes an amendment to Section 30(2) of the Companies Act, 2008 in respect of the requirements for companies to be audited or independently reviewed. Proposed new Section 30 (2A) “(2A) Except to the extent required by any other law or agreement, a private company is exempt from the requirements in this section to have its annual financial statements audited or independently reviewed, and from the requirements of subsection (3) (d), if every person who is a holder of, or has a	**Proposed wording to Section 30 (2A):** (2A) (1) Except to the extent required by the Regulations to the Act determining which companies are deemed to be in the public interest or any other law or agreement, a private company is exempt from the requirements in this section to have its annual financial statements audited or independently reviewed, and from the requirements of subsection (3) (d), if only natural persons, whether directly or through a trust, hold all the shares of, or have all the [**every person who is a holder of, or has a**] beneficial interest in, any securities issued by the company and all such natural persons are [**is**] also [**a**] directors of the company. (2) Private companies that are wholly owned subsidiaries of a private company as contemplated in section 30 (2A) (1), are also exempt from the requirements in this section to have its annual financial statements audited or

		beneficial interest in, any securities issued by the company is also a director of the company." A "person" as defined includes a juristic person that further includes a foreign company and a trust, irrespective of whether or not it was established within or outside the Republic. This would imply that if a juristic person like a company or a trust holds any shares in a private company, such private company would not qualify for the audit and review exemption in terms of S 30 (2A). However, if a company/trust that holds the shares in such private company causes all its shares to be held by the directors of such private company as its nominees, it could utilise the audit and review exemption. If it is the intention of the legislator to restrict the audit and review exemption to private companies where natural persons hold all the shares, or have all the beneficial interest in the shares, and are also the directors, it would be preferable to clarify it. **Issue 2** The Amendment may have the unintended consequence that in the below scenario a holding company (who has to prepare consolidated financial statements) does not need to be audited or reviewed, but that its subsidiary (being consolidated into the group) must be either audited or reviewed. Two natural persons each hold 50% of the securities in a private company B and the two natural persons are the only directors. Company B holds 100% of the securities of Company C (a private company) and one of the natural persons is the only director of Company C.	<u>independently reviewed, and from the requirements of subsection (3) (d), except to the extent required by any other law or agreement</u>.

		In terms of the amended section: • Company B (the holding company)would be exempt from an audit and a review as all the security holders are also directors of the company (section 30(2A); but • Company C(the subsidiary) will not be exempted (and will therefore have to be either audited or independently reviewed depending on how it is affected by the Act, the Regulations or its Memorandum) from an audit / review as its holding company (Company B) cannot be a director of Company C. **Issue 3** In a smaller company situation it may happen that a family trust is the shareholder. The shareholder will not be a director and the amendment may have the effect that this company could be subject to audit and all the other requirements related to the audit such as the audit committee.	
	Amendment of section 34 of Act 71 of 2008		
13.	Section 22 "(2) A private company, personal liability company, or non-profit company is not required to comply with the extended accountability requirements set out in Chapter 3, except to the extent **[that the]** <u>contemplated in section 84(1)*(c)*, or as required by</u>	The amendment of section 84, as proposed in section 50 of the Bill, in effect renders section 34 of the Act superfluous. Section 84, as amended, clearly indicates that all public companies and state owned companies are required to comply with the provisions of Chapter 3 (as per section 34(1)), and the amended section 84(1)(c)(ii) states that the provisions of Chapter 3 will apply to private companies, personal liability companies and non-profit companies only to the extent provided for in the company's Memorandum	It is proposed that section 34(2) be removed from the Act.

	the company's Memorandum of Incorporation **[provides otherwise]**.''	of Incorporation (as per section 34(2)). It may be argued that the references in Chapter 3 to section 34(2) may lead to confusion, as section 34(2) and 84(1)(c)(ii) say exactly the same.	
	Amendment of section 66 of Act 71 of 2008		
14.	Section 41(a): "(*b*) in the case of a public company, or a non-profit company, at least three directors in addition to the minimum number of directors that the company must have to satisfy any requirement, whether in terms of this Act or the Memorandum of Incorporation, to appoint an audit committee, or a social and ethics committee s contemplated in section 72(4)."	Section 66 of the 2008 Act, as amended by section 41 of the Bill requires public companies and non-profit companies to appoint at least three directors in addition to the minimum number of directors that the company must have to satisfy any requirement, whether in terms of this Act or its Memorandum of Incorporation, to appoint an audit committee, or a social and ethics committee as contemplated in section 72(4). Although the 2008 Act is silent on the detail requirements pertaining to the appointment, composition and functions of the social and ethics committee, the draft Regulations indicated that public and state owned companies will be required to appoint such a committee. Also the committee has to comprise three directors. It is unclear how this section should be interpreted: • will a public company be required to appoint at least nine directors (at least three audit committee members, plus at least three social and ethics committee members, plus three members as required in terms of section 66(2)(b), or • will a public company be required to appoint at least six directors (at least three audit committee members, which directors will also	It is proposed that section 66 be redrafted to clarify the intention of the legislature

		serve on the social and ethics committee, plus three members as required in terms of section 66(2)(b)?	
	Amendment of section 84 of Act 71 of 2008		

15.	Section 50
	
	‘‘*(c)* a private company, a personal liability company or a non-profit company **[, only to the extent contemplated in section 34(2) or as otherwise required by this Act to have its financial statements audited]**—
	
	(i) <u>if the company is required by this Act or the regulations to have its annual financial statements audited every year; or</u>
	
	<u>(ii) otherwise, only to the extent that the company's Memorandum of ncorporation so requires, as contemplated in section</u>
	
	<u>34(2).</u>’’
		Section 50 of the Companies Amendment Bill proposes the amendment of section 84 of the principle Act. The effect of this proposed amendment is that Chapter 3 will apply to the following companies:
		
		• public companies
		• state owned companies
		• private companies, personal liability companies or non-profit companies
		    o if the company is required by this Act or the Regulations to have its annual financial statements audited every year, or
		    o otherwise, only to the extent that the company's Memorandum of Incorporation so requires, as contemplated in section 34(2).
		
		The effect of this amendment is that section 92, which regulates the rotation of auditors, will apply to all companies that *must* be audited. This will inevitably include a large number of companies that are currently classified as limited interest companies, and as such are not subject to auditor rotation.
		
		Section 92 of the Act determines that the same individual may not serve as the auditor or designated auditor of a company for more than five consecutive financial years. In view of the
			It is proposed that Parliament adopts an approach similar to the approach of the Corporate Laws Amendment Act, 2006 with respect to auditor rotation for private companies, personal liability companies and non-profit companies that are required in terms of the 2008 Act or Regulations to be audited. In terms of this approach the term of service of an auditor or designated auditor is to be measured from the date of the auditor's first appointment or re-appointment after the date on which the 2008 Act takes effect.
			
			It is further proposed that clarity be provided in Schedule 5 on the application of section 92 in respect of widely held companies – should the auditor's term of service be determined from the date of appointment after the Corporate Laws Amendment Act took effect, or only from the auditor's first appointment or re-appointment after the date on which the Companies Act, 2008 takes effect.

		presumption against retrospective application, may it be assumed that the term of service of the auditor or designated auditor will be determined from the date of first appointment after the effective date? If a private company (which is required to have its financial statements audited in terms of the 2008 Act) had the same auditor for a number of years (exceeding five years), would section 92 require that company to replace the auditor on the effective date? If this is indeed the case, the practical implications will be severe as it would mean that many private companies will be required to appoint a new auditor. Will companies that are currently classified as widely held companies in terms of the 1973 Act be required to account for the number of years of service of the auditor under the 1973 Act, or will the term of service of the auditor or designated auditor will be determined from the date of first appointment after the effective date of the 2008 Act?	
	Amendment of section 136 of Act 71 of 2008		
16.	Section 136(2)	We are of the view that suppliers who are obliged by the business rescue practitioner to continue to supply goods or services during business rescue proceedings should at least be entitled to remuneration of the goods and services supplied during that time.	Despite the provision of section 135 we believe that section 136 should specifically provide that supplies during business rescue proceeding would be paid for on a "cash on delivery" basis.
	Amendment of section 218 of Act 71 of 2008		
17.	Section 113 amends section	The entire section 218(1) is problematic. In the interest of certainty, a contravention of the Act	Section 218(1) should be deleted.

	218(1). ''(1) Nothing in this Act renders void an agreement, resolution or provision of an agreement, resolution, Memorandum of Incorporation or rules of a company <u>that</u> is prohibited, **[void,]** voidable or that may be declared unlawful in terms of this Act, unless a court **[declares]** <u>has made a declaration to that effect regarding</u> that agreement, resolution or provision **[to be void]**.''.	should have the result that the transaction is void (as is currently the position in terms of our common law), unless the specific section contemplates a different outcome or remedy. Apart from the fact that section 218(1) leads to uncertainty, it also requires the involvement of a court, even if all parties to the action acknowledge that a specific action contravened the Act. The requirement to apply to court will potentially be costly and time consuming. For example it may take several years for a court to "declare" a transaction void, even though the transaction clearly and intentionally contravened the Act. Under the circumstances it may be not be practical or affordable for a party who suffers as a result of the contravention to take the matter to court and wait years for the outcome of the case. In other words a person may intentionally decide to contravene the Act with the knowledge that any counterparties will be powerless to prevent such abuse for a number of years.	

ADDITIONAL COMMENTS

1.	Section 4(2)	The interaction between section 4(2)(a) and 4(2)(b)(ii). The effect of section 4(2)(a)(ii) is that a company will generally be obliged to apply IFRS standards for valuation purposes. Although section 4(2)(b)(ii) provides the opportunity to "consider any other valuation of the company's assets and liabilities that is reasonable in the circumstances", the flexibility of this approach is severely affected by the requirement that the information to be considered must in the first instance "satisfy the financial reporting standards". For instance, IFRS does not allow companies to reflect goodwill on their financial statements. However, goodwill may have an actual quantifiable and commercial value that will, typically during the restructure of a company, make sense to take into account when considering the financial position of the company.	Clarify the interaction between section 4(2)(a) and 4(2)(b)(ii). For example consider added at the end of clause 4(2)(b)(ii): "*, even if the financial information considered does not meet all the requirements of section 4(2)(a), but subject to section 29(1)(b)*"
2.	Section 22	Section 22 of the Act determines that companies may not trade under insolvent circumstances. A company that trades under insolvent circumstances may be required to cease trading. 'Insolvent circumstances' is not defined. Although the criminal sanction has been removed in section 214, directors acquiescing to trading under insolvent circumstances still face personal liability against which they cannot be indemnified. Furthermore, the section lends itself to abuse by	It is proposed that section 22(1)(b) be removed, as it may lead to unintended consequences. As our law recognises that commercial insolvency is included under the concept of reckless trading, section 22(1)(b) can only refer to factual insolvency.

		third parties that could use this section to create an unnecessary burden for the Commission or even the Courts. Our courts have dealt extensively with the meaning of 'reckless trading'. It is confirmed case law that trading when not able to pay its debts (commercial insolvency) will amount to reckless trading. Thus, a company that carries on business when it is commercially insolvent is regarded as trading recklessly. The only other meaning that can be attributed to section 22(1)(b) would be a situation where a company's liabilities exceed its assets (factual insolvency). It is common practice for companies to find themselves is a position where, although liabilities may exceed assets, the company is still able to pay its debts. Factual insolvency does not necessarily mean that a going concern problem exists but commercial insolvency is likely to indicate that a going concern problem does exist. If section 22(1)(b) remains on the statute book, it may mean that a large number of companies may be expected to cease trading or place themselves under Business Rescue. New companies inevitably trade under technically insolvent circumstances for the first two to three years of their existence. The unintended consequences may be severe – for example, where the gold price falls suddenly a mining company may be required to cease trading. In turn this may impact the thousands of employees employed by such company.	

3.	Section 90 (2)(b)	In the case of private companies auditors often perform bookkeeping and secretarial services for the company. The restrictions in section 90(2)(b) would immediately disqualify many auditors from being appointed to perform voluntary audits of private companies.	The Act should include a provision that only section 90(2)(b)(i) should apply as a disqualification for the appointment of an auditor where a company opts to be audited voluntarily.
4.	Section 94 (7)(f)	Section 94(7)(*f*) requires that the audit committee has to include a report in the Annual Financial Statements discussing how the audit committee carried out its functions and on the auditor independence. The Annual Financial Statements of the company has to be audited by the auditor, and in this case it would lead to the auditor auditing the report written on his independence.	The report must be included in the annual report and not necessarily the annual financial statements.
5.	Appointment of reviewer	The Act contains no provisions as to the appointment of a reviewer. As a result, it could be deemed that section 90 would apply equally to the appointment of an independent reviewer.	A specific section dealing with the appointment of an independent accounting professional to perform the review should be introduced in the Act.
6.	Transitional arrangements regarding audit requirements	The Companies Act, 2008 (the 2008 Act) determines that not all companies need to have their financial statements audited. In addition, the 2008 Act provides for different provisions pertaining to the approval of annual financial statements, disclosure requirements and the presentation of such statements to shareholders. There seems to be uncertainty as to the transitional provisions as it applies to different scenarios: • With respect to companies that are currently	In order to provide guidance, four possible options are proposed which may assist in trying to clarify this for companies. **Option 1** a) All companies with a financial year end before or on 31 March 2011 are required to comply with all the provisions of the 1973 Companies Act, and continue to apply such provisions until conclusion of the audit and approval of the financial statements by the board, and

		required to be audited, but will only require an independent review in terms of the 2008 Act: How will this requirement impact a company with a financial year end of 31 March 2011? Will such a company be required to have an audit (as required in terms of the Companies Act, 1973 (the 1973 Act) which applied at the time of the year end), or may it have its financial statements independently reviewed (as per the 2008 Act, which will be applicable at the time of the audit/independent review)? Similarly, may a company with a financial year end of 28 February 2011, or 31 January 2011 or even 31 December 2010, postpone the audit for a few months until the effective date, and then proceed to have an independent review (as permitted in terms of the 2008 Act), rather than an audit (as required by the 1973 Act)? • Would companies with a year end after 1 April 2011 be required to be audited for the period running up to the effective date (thus only that part of the financial year where an audit was required in terms of the 1973 Act)? • With respect to companies that will be required to have an audit in terms of the 2008 Act: When companies with a financial year end *prior* to the effective date (but an annual general meeting *after* the effective date) prepare, approve and present annual financial statements to shareholders, would the requirements of the 1973 Act apply, or should such companies prepare, approve and audit	presentation of such statements to shareholders at the annual general meeting. This means that the repeal of certain provisions of the 1973 Act will be delayed. b) All companies with financial year end that falls on or after 1 April 2011 must comply with the provisions of the 2008 Act. **Option 2** (Provides for a transitional period). a) All companies with a financial year end before or on 31 December 2010 are requires to comply with all the relevant provisions of the 1973 Companies Act, and continue to apply such provisions until the conclusion of the audit and approval of the financial statements by the board, and presentation of such statements to shareholders at the annual general meeting. This means that the repeal of certain provisions of the 1973 Act will be delayed. b) All companies with a financial year end between 1 October 2010 and 31 March 2011 have a choice to either: i. comply with the all provisions of the 1973 Act (until conclusion of conclusion of audit and approval of the financial statements by the Board, and presentation of such statements to shareholders at the annual general meeting), or ii. comply with the relevant provisions of the 2008 Act.

		the financial statements in terms of the 2008 Act? The complexity of this question is highlighted by the following specific requirements: o Financial reporting standards – In terms of the 1973 Act, widely held companies are required to apply IFRS, while *all* companies that must be audited in terms of the 2008 Act are required to apply IFRS. This category may include limited interest companies (which were permitted to apply IFRS for SME's under the 1973 Act). o Disclosure requirements and content of annual financial statements - e.g. the 1973 Act requires disclosure of director emoluments in aggregate, while the 2008 Act requires disclosure of director and prescribed officer remuneration on an individual basis. o Audit committee – In terms of the 1973 Act only widely held companies are required to have an audit committee, comprising two independent non-executive directors. The 2008 Act requires all public companies and state owned companies to have an audit committee, comprising three directors which meet certain requirements. o Approval of the financial statements – The 1973 Act requires two directors to sign the financial statements, while the 2008 Act requires the signature of only one director. o Annual general meeting – The 2008 Act requires only public companies to have an annual general meeting. Does this imply that other companies (than public companies) may present their financial	(As an alternative the transitional period may run between 1 January 2011 and 30 June 2011). c) All companies with a financial year end after the end of the transitional period must comply with all the relevant provisions of the 2008 Act. Options 1 and 2 require that the repeal of the relevant sections of the 1973 Act be delayed to the extent that a company is required to, or has a choice to comply with the relevant provisions of the 1973 Act. **Option 3** The 1973 Act is repealed *in toto* with effect of the effective date. The result is that regardless of year end, a company must ensure that it complies with the provisions of the 2008 Act. **Option 4** All requirements of the 2008 Act pertaining to financial reporting standards, the audit requirement, financial statements and the approval of the financial statements by the board will only be applicable for financial years commencing on or after 1 April 2011. Thus, the relevant provisions of the 1973 Act will remain in force until the company has concluded the process to have its financial statements approved by the board, and presented such statements to shareholders at the annual general meeting. It is respectfully submitted that Option 2 (with a transitional period of 1 January 2011 to 31 March

		statement to a normal shareholders meeting (thus, not at the annual general meeting as required by the 1973 Act)? This also raises the question whether appointment of the auditor and audit committee by shareholders may be done at such a shareholders meeting. o Item 7(5)(b) and (c) of Schedule 5 of the 2008 Act provides clarity with respect to otices for meetings. It determines that, as of the effective date, the provisions of the 2008 Act must be applied with respect to notices for shareholder meetings, shareholder and board meetings, as well as the adoption of resolutions. o The distribution of summarised financial statements – The 1973 Act requires that the company send a copy of the annual financial statements to every shareholder, while the 2008 Act only requires a summary of such statements to be sent to every shareholder.	2011) is the preferred option. This Option supports the underlying principles of the 2008 Act to make it easier for companies to do business in South Africa while adhering to accountability and transparency standards. It further allows for the phasing of the 2008 Act over a specific time period, and provides clarity as to which Act should be applied at any given time.