

Media release:

SA DIRECTORS CAN FACE JAIL TIME FOR POOR RECORD KEEPING

20 September 2011: Directors of South African businesses need to ensure that they are fully compliant with the latest record keeping regulations in terms of the new Companies Act, in order to avoid potential legal fees and in some cases, imprisonment and business closure.

This is according to Richard Buttle, Chief Financial Officer of Metrofile Holdings, the JSE listed information and records storage management business, who says that the new Companies Act now clearly stipulates that local businesses need to securely store and manage select key company records for up to seven years, highlighting the importance of good records management practises.

“In terms of the Act, companies are required to keep the following key records, among others, reports presented at annual general meetings, annual financial statements, accounting records, notices, minutes and resolutions of all shareholder meetings, as well as any documents that were made available by the company to the holders of the securities in relation to such resolutions.

“Furthermore, the Act requires that records must be kept in written form or a format in which they can be easily retrieved and converted into written form within a reasonable time.”

Buttle advises that the Act requires that a company must notify the Companies Commission of a change in the location of any company record no longer located at its registered office. “In addition, a securities register in electronic form must provide adequate precautions against loss of the records due to damage to the storage medium or failure of the medium on which the records are kept.”

Natasha Bouwman, Legal Specialist at the Institute of Directors in Southern Africa, says that it is vitally important for all directors to ensure that they are compliant with the Act by conducting a detailed compliance review, as well as seeking expert advice from internal or external legal advisors. “Compliance software programs can also be utilised to measure compliance with the new Companies Act, but care should be taken that these programs sufficiently covers the entire Act’s provisions.”

Bouwman adds that the company’s memorandum of incorporation, registration certificate, register of directors and securities register must be kept for an indefinite period of time.

She warns that the Companies Commission can initiate its own investigation into non-compliance and may after conclusion of its investigation refer the matter to the Companies Tribunal, commence court proceedings, issue a compliance notice or, if an offence has been committed, refer the issue to the National



Prosecutions Authority for prosecution. An example of an offence under the Act is unreasonable refusal to access of records.

“Non-compliance with compliance notices issued by the Companies Commission is an offence and can potentially result in an administrative fine. Further non-compliance with the Act may result in loss of productivity due to business disruption, reputational damage and financial losses from legal costs. Repeat offenders could also be legally ordered to dissolve.”

Buttle advises that the Act requires that certain company records are accessible to shareholders or members and must be open to inspection at all times. “Due to the complexity of retention periods paired with the need for instant accessibility, storage space and data back-up requirements, an effective record management system must be implemented to ensure that compliance with the new Act’s regulations are met.

“Businesses need to realise that company information and records are assets and should begin to treat these documents as such. It is advisable for business to employ the expertise of a specialist records management business to ensure compliance with record keeping regulations, as well as appoint a dedicated records manager if the size of the business dictates for one,” concludes Buttle.

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About Metrofile

Metrofile is the market leader in information and records storage management in Africa and is represented in the 6 major provinces of South Africa, Mozambique and through the CSX brand has contracts in numerous other African countries. Metrofile operates from 26 facilities covering more than 73,000 square metres of warehousing space and manages more than 21 billion records on behalf of its customers.

Services include Active Records Management, Image Processing, Hosting, Data backup (both vault and online), Archive Storage & Management, File plan development, Confidential Records Destruction, Paper Recycling as well the sale and maintenance of a wide range of business equipment, including scanners, library security systems, mailing and packaging machines.

Metrofile has been listed on the JSE Limited (“JSE”) since 1995 and its ordinary shares are quoted in the Support Services sector of the JSE. Its largest shareholder is its empowerment partner, Mineworkers Investment Company (Pty) Ltd (“MIC”) which owns 32,4% of Metrofile’s equity. Visit www.metrofile.com for further information.

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