Time is ripe to review the calculation of a public interest score

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The call to have a periodic review of the public interest score (PI score) and its associated requirements should not be seen as a call to have a review every two months like how the Reserve Bank has monetary policy meetings to set the interest rate. Walter Bhengu, Saica project director for Legislation and Governance explains why SAICA's call is one that seeks to review the PI score requirements that have been in place since 2011 despite the value of the rand being eroded by inflation over the years and the commercial environment evolving.

Walter Bhengu

Law is not meant to be rigid or stagnant but is meant to adapt to the changes in the society it regulates. Hence as an example, the Constitution has been amended multiple times since 1996. Such changes to the law must also not be haphazard and too frequent but must be well considered while retaining legal certainty. With that in mind, the South African Institute of Chartered Accountants (Saica) has for many years pushed for the updating of the PI score and its requirements. The latest submissions on this have gone to the Specialist Committee on Company Law, chaired by Professor Michael Katz, which advises the Minister of Trade Industry as a statutory body in July 2022 and a submission to the Portfolio Committee on Trade, Industry and Competition in October 2023 as part of the commentary to the Companies Amendment Bill. Other role players such as the Independent Regulatory Board for Auditors (IRBA) have also raised their support for a review of the PI score.

What is a PI score? Every company is required to calculate its PI Score annually. The PI Score helps in ascertaining which financial reporting standards a company must use; whether a company must be audited or independently reviewed, if at all; which persons are appropriate to perform the independent review, and whether a company must appoint a social and ethics committee. In terms of the Companies Regulation the PI Score is calculated by determining:

- A number of points equal to the average number of employees of the company during the financial year
- One point for every R1m (or portion thereof) in third party liability of the company at the financial year end
- One point for every R1m (or portion thereof) in turnover during the financial year
- One point for every individual who, at the end of the financial year, is known by the company to directly or indirectly have a beneficial interest in any of the company's issued securities.

The PI score has remained unchanged since the introduction of the Companies Act in 2011 during which time the turnover of companies has drastically increased as the cost of living has increased causing an imbalance in the PI score. In addition, there needs to be a review of the terms used as indicators for a PI score due to interpretational issues. The current situation has triggered a major cost and challenge for small businesses who operate on a small budget but must put in place measures to comply with the requirements arising from having a PI score within the threshold. This goes against the ease of business initiative government has embarked on to save businesses from overregulation especially for businesses that are of minimal interest to the public.

The parliamentary legal adviser, in response to submissions made on the Companies Amendment Bill recently stated that the comments on the PI score needing to be increased would be addressed in the regulations. As Saica, our proposal is:

- an increase in the PI Score as soon as possible. With subsequent reviews every two years;
- that within the current legal framework, the PI Score of 100 is increased to 350 and the PI Score of 350 increased to 700;
- following the changes to the PI Score that the requirements of when companies require a social and ethics committee in terms of Companies Regulation 43 and the application of the PI Score business rescue as set out in Regulation 127 should similarly be updated; and
- Clarity should be included on how seasonal employees, temporary employees and part-time employees should be treated for purposes of the PI score calculation.

The conversations and consultations on the review of the PI score should gain momentum until the matter is resolved in order to alleviate the issues that have been raised and to move with the times.

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