

**Opening Address by**  
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**Conference on the South African Company Law Reform**  
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The Director-General of Trade and Industry, Mr Tshediso Matona, esteemed panel members, colleagues, ladies and gentlemen: it is my pleasant task this morning to welcome you to this conference to discuss and debate the recently published Companies Bill. A special welcome to those who have traveled from afar, both within South Africa, but also from other countries.

Allow me to say at the outset, by way of commenting on our topic for discussion and challenging those who will participate in the discussion, that we are here to consider company law as the basis for the modernization of South African business and business practice for the twenty first century.

The reform of company law in any country is an important task, because of the law's central role in defining the contract between the enterprise, its managers and owners, and broader society. In the reform process, we must ensure that we strike the correct balance between these various interests so that we create an overall environment that is facilitative not only of the conduct of business, but also of investment.

The preparation for this conference afforded me the opportunity to reflect on the reform process and to ponder its implications and achievements to date. With your indulgence, I would like to highlight three points, namely the consultative nature of this process to date, the wealth of experience and expertise it has drawn on, and the objectives of the reform.

A good legislative reform project goes through various stages. It starts with a policy review and engagement, and is followed by the amendment or redrafting of existing law. This conference marks the beginning of the formal consultation process on the new Companies Bill. It initiates the debate and discussion on the legislative proposals that we, as the dti, have put forward to the public. The debate will end when Parliament has adopted the final draft of the Bill in a year's time.

So the next year will consist of intensive engagement with all stakeholders on the new Companies Bill, and will take different forms, including the evaluation of public comments, the redrafting of difficult sections of the law, amendments to correct technical omissions, and the resubmission to key stakeholders of the amended Bill for further input.

In the weeks leading up to the conference, I heard, on a number of occasions, the complaint that we have not allowed sufficient time for the consideration of the Bill and for the preparation of inputs.

Let me state that we certainly appreciate that this is a far reaching and complex piece of legislation. For this reason, a single engagement in the form of public comments cannot be sufficient for a process of this significance. Instead we have planned for a set of engagements, beginning with this conference, allowing for an iterative process for considering all aspects of the proposed legislation.

It is important to recognize that while this conference marks the beginning of the formal engagement on the Companies Bill, it also marks the end of the policy and law development process initiated in 1998, followed by the publication of the Discussion Document on the Reform of Company Law on 23 June 2004, and which finally concluded in mid-2005.

Concurrently with the public consultation process, the dti tabled the document in the National Economic Development and Labour Council (NEDLAC). The NEDLAC Report was endorsed in February 2005 and contains the guiding principles that informed the development of the new legislation. Concurrently with the consultation in NEDLAC, the dti also undertook various stakeholder engagements around the country. Our extensive consultations on the policy process with stakeholders included the social partners, that is, organized labour and organized business, individual businesses, academics, practitioners, government departments, regulators, Parliamentarians and civil society organizations. The inputs gained from these various engagements provided the framework for the legal drafting process that commenced in August 2005.

The Bill that was put out to public comment in February of this year must be seen against this backdrop. However, the Bill itself is already the product of considerable engagement and input. The Bill was tested with local and international experts and has been subjected to focus group inputs. It has therefore already been subjected to expert scrutiny.

The question that remains to be answered is whether the Bill embodies an appropriate balance between competing, but not mutually exclusive objectives, namely the facilitation of business on the one hand and the protection of investors, on the other.

Going forward, then, it is critical that everyone here today plays their part in what is arguably one of the most important law reforms for South Africa in the past 13 years.

I must also note that to date we have received very few written inputs. We will welcome comments until the end of the month, and I urge all of you to submit your comments so that we can take them into account in the first round. We are of course also here today and tomorrow to discuss the core topics of the

legislation. The idea for the conference is that panel members put forward some thoughts on the Bill, which can then form the engagement among panel members and also draw in delegates.

I am especially pleased that we have been able to bring in to this process and to this conference a range of extraordinary intellectual resources, including local and international experts from a range of jurisdictions and disciplines. We were assisted by local and international reference teams, consisting of practitioners, academics and regulators, as well as the members of the Standing Advisory Committee on Company Law. Many of the panel members addressing the conference have played key roles in the elaboration of the bill that we will discuss, and it is to them that we owe a debt of gratitude for helping to create the current draft.

I feel privileged to have had the opportunity to work and learn from our group of experts and specialists, and I would like to take this opportunity to express my appreciation to all who have participated.

Let me conclude by saying a few things about the purpose of the reform.

The dti's 2004 discussion document outlined the following objectives for the law reform process. "Company law should promote the competitiveness and development of the South African economy" by -

1. Encouraging entrepreneurship and enterprise development and consequently employment opportunities, by simplifying the procedures for forming companies; and reducing costs associated with the formalities of forming a company and maintaining its existence.
2. Promoting innovation and investment in South African markets and companies by providing for flexibility in the design and organisation of companies and a predictable and effective regulatory environment.

3. Promoting the efficiency of companies and their management.
4. Encouraging transparency and high standards of corporate governance.
5. Making company law compatible and harmonious with best practice jurisdictions internationally.”

In achieving these objectives, we have sought to develop a new companies law that is simpler, more flexible and compares well to the laws in other jurisdictions. It seems important to stress that 99% of the businesses that will be regulated by this law are privately owned or closely held, and a very significant number are small and medium-sized. We have therefore written the law primarily with these enterprises in mind, and which remains a key feature of the new law. A key question is whether we have succeeded in developing a bill that will make the Close Corporations Act redundant. In achieving this objective, we have done away with many of the formalities and with anything we believed to be unnecessary. It is those unnecessary formalities that have made the creation and registration of shelf companies a lucrative business in South Africa. The Bill is quite radical in its eradication of formalities and will require a total change of mindset, jettisoning the reliance on documents, on signatures, certifications, statements of compliance and all the checking that goes with it. With a truly “modern” company law in place, the shelf company is consigned to history.

But with both flexibility and simplicity, there is a balance that must be struck. And again, I challenge you to give us feedback as to whether we got the balance right.

In order to promote greater investment in companies, we need to be able to give investors confidence that companies are run efficiently and that high standards of corporate governance are applied. One of the primary ways the Bill seeks to achieve this is by making directors duties clearer. Although the basic objective of directors should surely be to promote the success of the company for benefit of its shareholders, it seems sensible to try to foster a greater appreciation of the role of various stakeholders in the long-term prosperity of firms.

An area that I think will still require considerable review and input is the reform of the regulatory environment for the effective enforcement of the law. The success of new legislation is always determined by the ability to implement and enforce it. What is envisaged here is a more proactive enforcement of company law than is currently the case. This will require an enabling legal framework and institutional capacity. Important questions must be asked about the appropriate framework. In addition, the sanctions provided in the draft Bill must be tested to ensure that they are appropriate for the purposes envisaged and whether the balance between criminal, civil and administrative penalties has been correctly struck.

Let me to conclude by saying that I look forward to using this opportunity to engage to create the best corporate regulation in the world.

Allow me now to welcome the Director-General of the Department of Trade and Industry, Mr. Tshediso Matona to address you.

I thank you.