

## Formal recognition of the in-house Corporate Counsel profession in South Africa

By Alison Lee, CEO of CCASA

The Corporate Counsel Association of South Africa (CCASA) was established in 1982 with a view to represent the common interests of the in-house lawyer, or as referred to today, the common interests of Corporate Counsel. This was largely due to the fact that these professionals were not recognized, regulated or represented by the Law Society of South Africa, or any other governmental body or regulator for that matter.

I joined CCASA (or 'ALASA' as it was known at that time) in 1991. I attended many cocktail parties and presentations at the Johannesburg Country Club, where the common and ongoing point of discussion was the lack of recognition of the in-house community and of the CCASA member.

Files housing a plethora of recognition appeals and resultant submissions grew in volume and number, to no avail. Annual visits to the Law Society, right up to 2014, were disappointing to say the least, yielding no positive results.

In 2015, not defeated, CCASA, encouraged by its Board, its members and by three respected mentors, namely Ian Isdale, Nick Swart and Michael Katz, made an application to the South African Qualifications Authority (SAQA) for formal recognition as a professional body.

At the beginning, I admit that I had my doubts regarding the success of the application. I left the SAQA building in Pretoria on more than three occasions in tears, frustrated and confused, realising that it was not to be an easy feat - the SAQA standards were high and it would take time to review and adjust our Association to meet the SAQA criteria and requirements. Being a non-profit voluntary Association, money and related resources such as time and manpower were and still are scarce. Not deterred we tackled the project on an in house basis, using the *sniff of an oil rag* principle as well as one or two consultants along the way to get us onto the right track.

We spoke often with representatives of SAQA when direction was needed, who were obliging but at the same time professional and strict when handing out advice.

Our final submission was lodged at the end of 2015 and 18 months later, on the 14 March 2017, following further consultations with SAQA and adjustments made to our policies and procedures, CCASA received its long awaited SAQA accreditation and recognition.

### **What does this mean for CCASA and the Corporate Counsel profession in South Africa?**

Well, before I elaborate, let me with permission and at this juncture, interrupt myself and provide you all with another significant piece of good news.

### **Recognition of in-house under the Legal Practices Act, Act no 28 of 2014**

Mid-2016, I was called to a meeting by a member of the Legal Forum, an interim body which has been established under the Legal Practices Act, to draft the required regulations and codes which will apply to members making up the legal profession, namely legal practitioners and who will be regulated as a unified body, under and in terms of this Act.

At the meeting I was advised that the legal forum was of the view that Corporate Counsel fell under the definition of a "legal practitioner" and that in line with their mandate, certain codes of practice and regulations were in the process of being drafted, which would apply to a "legal practitioner" including Corporate Counsel.

Astonished by this revelation, I quickly read through the Act. Reading between the lines, I have to agree - admitted attorneys who have left the practicing profession and who have entered an in-house role and who subsequently been placed on the non-practicing roll fall under the definition of a “legal practitioner”.

The significant difference between the current scenario under the Attorneys Act and the situation which will apply once the Legal Practices Act becomes law, is that legal practitioners, including Attorneys, Conveyancers, Paralegals, as well as Corporate Counsel who have been admitted, will be subject to certain codes and regulations (“rules”) developed by the Legal Forum and which will be implemented once the Act becomes law.

Not one to miss this opportunity, I promptly offered up the CCASA Code of Ethics for adaption and inclusion under the Legal Practices Act, which offer was gladly accepted.

Some months later, three Codes of Practice - one for Corporate Counsel which mirrors the CCASA Code of Ethics, one for Attorneys and one for Advocates, was published for comment in the February 2017 Government Gazette, under the Legal Professional Act, indicating:

- a formal acknowledgement and nod in the right direction;
- Corporate Counsel at long last have been recognised as forming part of the legal profession in South Africa;
- a need, ambition, desire, call it what you want, which CCASA and more importantly, its founders and its Board members have pursued relentlessly over the past 35 years.

### **What does this mean for CCASA and the Corporate Counsel profession in South Africa?**

And so, back to the question - what does this all mean for CCASA and the Corporate Counsel profession in South Africa?

Firstly, the SAQA accreditation and recognition programme allows CCASA, in its capacity as the recognised professional body of the Corporate Counsel profession in South Africa, to determine standards and competency frameworks for its members and, following this, to assess and accredit its members who are able to meet these standards under the following four SAQA approved designations:

- Corporate Legal Support Practitioner (CCASA accredited);
- Corporate Legal Counsel (CCASA accredited);
- Corporate Senior Legal Counsel (CCASA accredited); and
- Corporate General Counsel (CCASA accredited).

These designations, being the yardstick for best practices within the Corporate Counsel profession, indicates that the holder of the designation is able to provide, within his/her specific area of practice, sound ethical, credible and professional legal advice – the CCASA / SAQA seal of approval.

Secondly, the Legal Forum has accepted that Corporate Counsel do form part of the legal profession, who will into the future be regulated under the Legal Practice Act. In addition, the Legal Forum has unofficially recognised and accepted that CCASA is the representative body of Corporate Counsel in South Africa, which recognition has now been endorsed and formalised by SAQA.

Following this we will make all efforts to continue our dialogue with the Legal Forum and/or their successor to ensure that whatever is eventually drafted and implemented, be it a rule, code or regulation, do not hamper, impede or conflict with the current activities and practices pursued by the Corporate Counsel profession in South Africa.

The abovementioned recognition marks the beginning of an exciting journey where CCASA, in conjunction with:

- the Legal Forum and its successor, the South African Legal Practice Council;
- its relationship and partnership with SAQA; and
- its association with Corporate Counsel Associations through its membership with the In-House Counsel Worldwide Association (ICW),

can develop and set the standards for the ever growing Corporate Counsel profession in South Africa, ensuring that these trusted legal and business advisors all, without exception, act in a competent, professional, ethical and credible manner at all times when advising, guiding and counseling their employer organizations.

In closing I must thank SAQA for their patience and guidance over the past three years. Their advice was sound and in line with their policies, which was, whilst professionally given, delivered in a deliberate but encouraging manner, right till the end.

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