

Regulatory Update 01-09-2009	King III Code on Corporate Governance
A <b>Main &amp; sub-category</b>	Corporate governance – King III - published
B <b>Headline</b>	The final version of the Code on Corporate Governance issued by the King Committee (aka King III) and its supporting Report has been published and will substitute the existing King II Code on 1 March 2010. <a href="#">Full bulletin</a>
C <b>Affected areas</b>	Company Secretarial; Audit & Accounting; Risk; Compliance; Investor Relations; Legal; HR
D <b>Regulatory source</b>	Institute of Directors ( <i>copyright acknowledged</i> )
E <b>Overview</b> [high level]	
<ol style="list-style-type: none"> <li>1) Version III of the Code on Corporate Governance issued by the King Committee (aka King III) has been published in its final form. King III will substitute the existing King II Code with effect on 1 March 2010. According to the Institute of Directors (IoD), King III has been aligned with the new Companies Act 71 of 2008 which is scheduled (at this point) to come into effect on 1 July 2010.</li> <li>2) The Code, which deals with the Principles, should be studied with the accompanying Report in which recommendations of the best practices for each principle are provided. The Report is available on the IOD's website (<a href="http://www.iodsa.co.za">www.iodsa.co.za</a>).</li> <li>3) Unlike its predecessors, King III applies to all entities regardless of the manner or form of incorporation or establishment whether public, private or the non-profit sector.</li> <li>4) All entities should apply both the Principles in this Code and the best practice recommendations in the Report. In situations where the board or those charged with governance decide not to apply a specific principle and/or recommendation, this should be explained fully to the entity's stakeholders.</li> <li>5) Where entities have applied the Code and best practice recommendations in the Report, a positive statement to this effect should be made to stakeholders.</li> <li>6) Each principle is of equal importance and together forms a holistic approach to governance. Consequently, 'substantial' application of this Code and the Report does not achieve compliance.</li> <li>7) Detailed implementation guidance and tools will be provided in the Practice Notes which can be obtained from the IoD.</li> <li>8) Material differences with the existing King II Code include: (a) Director's remuneration; (b) the escalated role and responsibilities of the internal audit; (c) the emphasis on reputational risk management; and (d) regulatory monitoring, awareness and compliance.</li> <li>9) In general, the Code can be regarded as the "what?", the Report as the "why?" and the proposed new Practice Notes as the "how?"</li> </ol>	
F <b>Compliance issues</b> [high level overview]	
<p style="text-align: center;"><b>1. <u>ETHICAL LEADERSHIP AND CORPORATE CITIZENSHIP</u></b></p> <p>1.1. <i>Responsible leadership</i>: The board should provide effective leadership based on an ethical foundation. Ethical leaders should:</p> <ol style="list-style-type: none"> <li>1.1.1. direct the strategy and operations to build a sustainable business;</li> <li>1.1.2. consider the short- and long-term impacts of the strategy on the economy, society and the environment;</li> <li>1.1.3. do business ethically;</li> <li>1.1.4. not compromise the natural environment; and</li> <li>1.1.5. take account of the company's impact on internal and external stakeholders.</li> </ol> <p><i>The board's responsibilities</i>: The board should-</p> <ol style="list-style-type: none"> <li>1.1.6. be responsible for the strategic direction of the company and for the control of the company;</li> <li>1.1.7. set the values to which the company will adhere formulated in its code of conduct;</li> <li>1.1.8. ensure that its conduct and that of its management aligns to the values and is adhered to in all respects of its business; and</li> <li>1.1.9. promote the stakeholder-inclusive approach of governance.</li> </ol> <p><i>Ethical foundation</i>: The board should-</p> <ol style="list-style-type: none"> <li>1.1.10. ensure that all deliberations, decisions and actions are based on the four values underpinning good governance; and</li> <li>1.1.11. ensure that each director adheres to the duties of a director.</li> </ol> <p>1.2. <b>The board should ensure that the company is and is seen to be a responsible corporate citizen</b>: the board should-</p> <ol style="list-style-type: none"> <li>1.2.1. consider not only on financial performance but also the impact of the company's operations on society and the environment;</li> <li>1.2.2. protect, enhance and invest in the well-being of the economy, society and the environment;</li> <li>1.2.3. ensure that the company's performance and interaction with its stakeholders is guided by the Constitution and Bill of Rights;</li> <li>1.2.4. ensure that collaborative efforts with stakeholders are embarked on to promote ethical conduct &amp; good corporate citizenship;</li> <li>1.2.5. ensure that measurable corporate citizenship programmes are implemented; and</li> <li>1.2.6. ensure that management develops corporate citizenship policies.</li> </ol> <p>1.3. <b>The board should ensure that the company's ethics are managed effectively</b>: the board should ensure that-</p> <ol style="list-style-type: none"> <li>1.3.1. it builds and sustains an ethical corporate culture in the company;</li> <li>1.3.2. it determines the ethical standards which should be clearly articulated and ensures that the company takes measures to achieve adherence to them in all aspects of the business;</li> <li>1.3.3. adherence to ethical standards is measured;</li> <li>1.3.4. internal and external ethics performance is aligned around the same ethical standards;</li> <li>1.3.5. ethical risks and opportunities are incorporated in the risk management process;</li> <li>1.3.6. a code of conduct and ethics related policies are implemented;</li> <li>1.3.7. compliance with the code of conduct is integrated in the operations of the company; and</li> </ol>	

1.3.8. the company's ethics performance should be assessed, monitored, reported and disclosed.

## **2. BOARDS AND DIRECTORS**

### **Role and function of the board**

- 2.1. **The board should act as the focal point for and custodian of corporate governance:** the board should-
- 2.1.1. have a charter setting out its responsibilities;
  - 2.1.2. meet at least four time per year;
  - 2.1.3. monitor the relationship between management and the stakeholders of the company; and
  - 2.1.4. ensure the company survives and thrives.
- 2.2. **The board should appreciate that strategy, risk, performance and sustainability are inseparable:** the board should-
- 2.2.1. inform and approve the strategy;
  - 2.2.2. ensure that the strategy is aligned with the purpose of the company, the value drivers of its business and the legitimate interests and expectations of its stakeholders;
  - 2.2.3. satisfy itself that the strategy and business plans are not encumbered by risks that have not been thoroughly examined by management; and
  - 2.2.4. ensure that the strategy will result in sustainable outcomes taking account of people, planet and profit.
- 2.3. **The board should provide effective leadership based on an ethical foundation** (refer to principle 1.1)
- 2.4. **The board should ensure that the company is and is seen to be a responsible corporate citizen** (refer to principle 1.2)
- 2.5. **The board should ensure that the company's ethics are managed effectively** (refer to principle 1.3)
- 2.6. **The board should ensure that the company has an effective and independent audit committee** (refer to chapter 3)
- 2.7. **The board should be responsible for the governance of risk** (refer to chapter 4)
- 2.8. **The board should be responsible for information technology (IT) governance** (refer to chapter 5)
- 2.9. **The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards** (refer to chapter 6)
- 2.10. **The board should ensure that there is an effective risk-based internal audit** (refer to chapter 7)
- 2.11. **The board should appreciate that stakeholders' perceptions affect the company's reputation** (refer to chapter 8)
- 2.12. **The board should ensure the integrity of the company's integrated report** (refer to chapter 9)
- 2.13. **The board should report on the effectiveness of the company's system of internal controls** (refer to chapter 7 and 9)
- 2.14. **The board and its directors should act in the best interests of the company**
- 2.14.1. The board must act in the best interests of the company.
  - 2.14.2. Directors must adhere to the legal standards of conduct.
  - 2.14.3. Directors or the board should be permitted to take independent advice on their duties following an agreed procedure.
  - 2.14.4. Real or perceived conflicts should be disclosed to the board and managed.
  - 2.14.5. Listed companies should have a policy regarding dealing in securities by directors, officers and selected employees.
- 2.15. **The board should consider business rescue proceedings or other turnaround mechanisms as soon as the company is financially distressed as defined in the Act:** The board should ensure that-
- 2.15.1. the solvency and liquidity of the company is continuously monitored;
  - 2.15.2. its consideration is fair to save a financially distressed company either by way of workouts, sale, merger, amalgamation, compromise with creditors or business rescue;
  - 2.15.3. a suitable practitioner is appointed if business rescue is adopted; and
  - 2.15.4. the practitioner furnishes security for the value of the assets of the company.
- 2.16. **The board should elect a chairman of the board who is an independent non-executive director. The CEO of the company should not also fulfil the role of chairman of the board**
- 2.16.1. The members of the board should elect a chairman on an annual basis.
  - 2.16.2. The chairman should be independent and free of conflict upon appointment.
  - 2.16.3. A lead independent director should be appointed in the case where an executive chairman is appointed or where the chairman is not independent or conflicted.
  - 2.16.4. The appointment of a chairman, who is not independent, should be justified in the integrated report.
  - 2.16.5. The role of the chairman should be formalised.
  - 2.16.6. The chairman's ability to add value, and his performance against what is expected of his role and function, should be assessed every year.
  - 2.16.7. The CEO should not become the chairman until 3 years have lapsed.
  - 2.16.8. The chairman together with the board, should consider the number of outside chairmanships held.
  - 2.16.9. The board should ensure a succession plan for the role of the chairman.
- 2.17. **The board should appoint the chief executive officer and establish a framework for the delegation of authority:** the board should
- 2.17.1. appoint the CEO;
  - 2.17.2. provide input regarding senior management appointments;

- 2.17.3. define its own level of materiality and approve a delegation of authority framework;
- 2.17.4. ensure that the role and function of the CEO is formalised and the performance of the CEO is evaluated against the criteria specified; and
- 2.17.5. ensure succession planning for the CEO and other senior executives and officers is in place.

#### **Composition of the board**

### **2.18. The board should comprise a balance of power, with a majority of non-executive directors. The majority of non-executive directors should be independent**

- 2.18.1. The majority of board members should be non-executive directors.
- 2.18.2. The majority of the non-executive directors should be independent.
- 2.18.3. When determining the number of directors serving on the board, the knowledge, skills and resources required for conducting the business of the board should be considered.
- 2.18.4. Every board should consider whether its size, diversity and demographics make it effective.
- 2.18.5. Every board should have a minimum of two executive directors of which one should be the CEO and the other the director responsible for finance.
- 2.18.6. At least one third of the non-executive directors should rotate every year.
- 2.18.7. The board, through its nomination committee, should recommend the eligibility of prospective directors.
- 2.18.8. Any independent non-executive directors serving more than 9 years should be subjected to a rigorous review of his independence and performance by the board.
- 2.18.9. The board should include a statement in the integrated report regarding the assessment of the independence of the independent non-executive directors.
- 2.18.10. The board should be permitted to remove any director without shareholder approval.

#### **Board appointment process**

### **2.19. Directors should be appointed through a formal process**

- 2.19.1. A nomination committee should assist with the process of identifying suitable members of the board.
- 2.19.2. Background and reference checks should be performed before the nomination and appointment of directors.
- 2.19.3. The appointment of non-executive directors should be formalised through a letter of appointment.
- 2.19.4. The board should make full disclosure regarding individual directors to enable shareholders to make their own assessment of directors.

#### **Director development**

### **2.20. The induction of and ongoing training and development of directors should be conducted through formal processes:** The board should ensure that:

- 2.20.1. a formal induction programme is established for new directors;
- 2.20.2. inexperienced directors are developed through mentorship programmes;
- 2.20.3. continuing professional development programmes are implemented; and
- 2.20.4. directors receive regular briefings on changes in risks, laws and the environment.

#### **Company secretary**

### **2.21. The board should be assisted by a competent, suitably qualified and experienced company secretary**

- 2.21.1. The board should appoint and remove the company secretary.
- 2.21.2. The board should empower the individual to enable him to properly fulfil his duties

The company secretary should:

- 2.21.3. have an arms-length relationship with the board;
- 2.21.4. not be a director of the company;
- 2.21.5. assist the nominations committee with the appointment of directors;
- 2.21.6. assist with the director induction and training programmes;
- 2.21.7. provide guidance to the board on the duties of the directors and good governance;
- 2.21.8. ensure board and committee charters are kept up to date;
- 2.21.9. prepare and circulate board papers;
- 2.21.10. elicit responses, input, feedback for board and board committee meetings;
- 2.21.11. assist in drafting yearly work plans;
- 2.21.12. ensure preparation and circulation of minutes of board and committee meetings; and
- 2.21.13. assist with the evaluation of the board, committees and individual directors.

#### **Performance assessment**

### **2.22. The evaluation of the board, its committees and the individual directors should be performed every year**

- 2.22.1. The board should determine its own role, functions, duties and performance criteria as well as that for directors on the board and board committees to serve as a benchmark for the performance appraisal.
- 2.22.2. Yearly evaluations should be performed by the chairman or an independent provider.
- 2.22.3. The results of performance evaluations should identify training needs for directors.
- 2.22.4. An overview of the appraisal process, results and action plans should be disclosed in the integrated report.
- 2.22.5. The nomination for the re-appointment of a director should only occur after the evaluation of the performance and attendance of the director.

**Board committees****2.23. The board should delegate certain functions to well-structured committees but without abdicating its own responsibilities**

- 2.23.1. Formal terms of reference should be established and approved for each committee of the board.
- 2.23.2. The committees' terms of reference should be reviewed yearly.
- 2.23.3. The committees should be appropriately constituted and the composition and the terms of reference should be disclosed in the integrated report.
- 2.23.4. Public and state-owned companies must appoint an audit committee.
- 2.23.5. All other companies should establish an audit committee and define its composition, purpose and duties in the memorandum of incorporation.
- 2.23.6. Companies should establish risk, nomination and remuneration committees.
- 2.23.7. Committees, other than the risk committee, should comprise a majority of nonexecutive directors of which the majority should be independent.
- 2.23.8. External advisers and executive directors should attend committee meetings by invitation.
- 2.23.9. Committees should be free to take independent outside professional advice at the cost of the company subject to an approved process being followed.

**Group boards****2.24. A governance framework should be agreed between the group and its subsidiary boards**

- 2.24.1. Listed subsidiaries must comply with the rules of the relevant stock exchange in respect of insider trading.
- 2.24.2. Holding company must respect the fiduciary duties of the director serving in representative capacity on subsidiary's board.
- 2.24.3. The implementation and adoption of policies, processes or procedures of the holding company should be considered and approved by the subsidiary company.
- 2.24.4. Disclosure should be made on adoption of the holding company's policies in the integrated report of the subsidiary company.

**Remuneration of directors and senior executives****2.25. Companies should remunerate directors and executives fairly and responsibly**

- 2.25.1. Companies should adopt remuneration policies aligned with the strategy of the company and linked to individual performance.
- 2.25.2. The remuneration committee should assist the board in setting and administering remuneration policies.
- 2.25.3. The remuneration policy should address base pay and bonuses, employee contracts, severance and retirement benefits and share-based and other long-term incentive schemes.
- 2.25.4. Non-executive fees should comprise a base fee as well as an attendance fee per meeting.

**2.26. Companies should disclose the remuneration of each individual director and certain senior executives:** The remuneration report, included in the integrated report, should include:

- 2.26.1. all benefits paid to directors;
- 2.26.2. the salaries of the three most highly-paid employees who are not directors;
- 2.26.3. the policy on base pay;
- 2.26.4. participation in share incentive schemes;
- 2.26.5. the use of benchmarks;
- 2.26.6. incentive schemes to encourage retention;
- 2.26.7. justification of salaries above the median;
- 2.26.8. material payments that are ex-gratia in nature;
- 2.26.9. policies regarding executive employment; and
- 2.26.10. the maximum expected potential dilution as a result of incentive awards.

**2.27. Shareholders should approve the company's remuneration policy**

- 2.27.1. Shareholders should pass a non-binding advisory vote on the company's yearly remuneration policy.
- 2.27.2. The board should determine the remuneration of executive directors in accordance with the remuneration policy put to shareholder's vote.

**3. AUDIT COMMITTEES****3.1. The board should ensure that the company has an effective and independent audit committee**

- 3.1.1. Listed and state-owned companies must establish an audit committee.
- 3.1.2. All other companies should establish an audit committee and define its composition, purpose and duties in the memorandum of incorporation.
- 3.1.3. The board should approve the terms of reference of the audit committee.
- 3.1.4. The audit committee should meet as often as is necessary to fulfil its functions but at least twice a year.
- 3.1.5. The audit committee should meet with internal and external auditors at least once a year without management being present.

**Membership and resources of the audit committee****3.2. Audit committee members should be suitably skilled and experienced independent non-executive directors**

- 3.2.1. All members of the audit committee should be independent non-executive directors.
- 3.2.2. The audit committee should consist of at least three members.
- 3.2.3. The chairman of the board should not be the chairman or member of the audit committee.

- 3.2.4. The committee collectively should have sufficient qualifications and experience to fulfil its duties.
- 3.2.5. The audit committee members should keep up-to-date with developments affecting the required skill-set.
- 3.2.6. The committee should be permitted to consult with specialists or consultants subject to a board-approved process.
- 3.2.7. The board must fill any vacancies on the audit committee.

**3.3. The audit committee should be chaired by an independent non-executive director**

- 3.3.1. The board should elect the chairman of the audit committee.
- 3.3.2. The chairman of the audit committee should participate in setting and agreeing the agenda of the committee.
- 3.3.3. The chairman of the audit committee should be present at the AGM.

**Responsibilities of the audit committee**

**3.4. The audit committee should oversee integrated reporting:** The Audit committee should-

- 3.4.1. have regard to all factors and risks that may impact on the integrity of the integrated report;
- 3.4.2. review and comment on the financial statements included in the integrated report;
- 3.4.3. review the disclosure of sustainability issues in the integrated report to ensure that it is reliable and does not conflict with the financial information;
- 3.4.4. recommend to the board to engage an external assurance provider on material sustainability issues;
- 3.4.5. consider the need to issue interim results;
- 3.4.6. review the content of the summarised information; and
- 3.4.7. engage the external auditors to provide assurance on the summarised financial information.

**3.5. The audit committee should ensure that a combined assurance model is applied to provide a coordinated approach to all assurance activities**

- 3.5.1. The audit committee should ensure that the combined assurance is received is appropriate to address all the significant risks facing the company.
- 3.5.2. The relationship between the external assurance providers and the company should be monitored by the audit committee.

**Internal assurance providers**

**3.6. The audit committee should satisfy itself of the expertise, resources and experience of the company's finance function**

- 3.6.1. Every year a review of the finance function should be performed by the audit committee.
- 3.6.2. The results of the review should be disclosed in the integrated report.

**3.7. The audit committee should be responsible for overseeing of internal audit**

- 3.7.1. The audit committee should be responsible for the appointment, performance assessment and/or dismissal of the CAE.
- 3.7.2. The audit committee should approve the internal audit plan.
- 3.7.3. The audit committee should ensure that the internal audit function is subject to an independent quality review as and when the committee determines it appropriate.

**3.8. The audit committee should be an integral component of the risk management process**

- 3.8.1. The charter of the audit committee should set out its responsibilities regarding risk management.
- 3.8.2. The audit committee should specifically have oversight of:
  - 3.8.2.1. financial reporting risks;
  - 3.8.2.2. internal financial controls;
  - 3.8.2.3. fraud risks as it relates to financial reporting; and
  - 3.8.2.4. IT risks as it relates to financial reporting.

**External assurance providers**

**3.9. The audit committee is responsible for recommending the appointment of the external auditor and overseeing the external audit process:** The audit committee-

- 3.9.1. must nominate the external auditor for appointment;
- 3.9.2. must approve the terms of engagement and remuneration for the external audit engagement;
- 3.9.3. must monitor and report on the independence of the external auditor;
- 3.9.4. must define a policy for non-audit services provided by external auditor and must approve contracts for non-audit services;
- 3.9.5. should be informed of any Reportable Irregularities identified and reported by the external auditor; and
- 3.9.6. should review the quality and effectiveness of the external audit process.

**Reporting**

**3.10. The audit committee should report to the board and shareholders on how it has discharged its duties**

- 3.10.1. The audit committee should report internally to the board on its statutory duties and duties assigned to it by the board.
- 3.10.2. The audit committee must report to the shareholders on its statutory duties:
  - 3.10.2.1. how its duties were carried out;
  - 3.10.2.2. if the committee is satisfied with the independence of the external auditor;
  - 3.10.2.3. the committee's view on the financial statements and the accounting practices; and
  - 3.10.2.4. whether the internal financial controls are effective.
- 3.10.3. The audit committee should provide a summary of its role and details of its composition, number of meetings and activities, in the intergrated report.
- 3.10.4. The audit committee should recommend the integrated report for approval by the board.

## **4. THE GOVERNANCE OF RISK**

### **The board's responsibility for risk governance**

#### **4.1. The board should be responsible for the governance of risk**

- 4.1.1. A policy and plan for a system and process of risk management should be developed.
- 4.1.2. The board should comment in the integrated report on the effectiveness of the system and process of risk management.
- 4.1.3. The board's responsibility for risk governance should be expressed in the board charter.
- 4.1.4. The induction and ongoing training programmes of the board should incorporate risk governance.
- 4.1.5. The board's responsibility for risk governance should manifest in a documented risk management policy and plan.
- 4.1.6. The board should approve the risk management policy and plan.
- 4.1.7. The risk management policy should be widely distributed throughout the company.
- 4.1.8. The board should review the implementation of the risk management plan at least once a year.
- 4.1.9. The board should ensure that the implementation of the risk management plan is monitored continually.

#### **4.2. The board should determine the levels of risk tolerance**

- 4.2.1. The board should set the levels of risk tolerance once a year.
- 4.2.2. The board may set limits for the risk appetite.
- 4.2.3. The board should monitor that risks taken are within the tolerance and appetite levels.

#### **4.3. The risk committee or audit committee should assist the board in carrying out its risk responsibilities**

- 4.3.1. The board should appoint a committee responsible for risk.
- 4.3.2. The risk committee should:
  - 4.3.2.1. consider the risk management policy and plan and monitor the risk management process;
  - 4.3.2.2. have as its members executive and non-executive directors, members of senior management and independent Risk management experts to be invited, if necessary;
  - 4.3.2.3. have a minimum of three members; and
  - 4.3.2.4. convene at least twice per year.
- 4.3.3. The performance of the committee should be evaluated once a year by the board.

### **Management's responsibility for risk management:**

#### **4.4. Board should delegate to management the responsibility to design, implement and monitor the risk management plan**

- 4.4.1. The board's risk strategy should be executed by management by means of risk management systems and processes.
- 4.4.2. Management is accountable for integrating risk in the day-to-day activities of the company.
- 4.4.3. The CRO should be a suitably experienced person who should have access and interact regularly on strategic matters with the board and/or appropriate board committee and executive management.

### **Risk assessment**

#### **4.5. The board should ensure that risk assessments are performed on a continual basis**

- 4.5.1. The board should ensure effective and ongoing risk assessments are performed.
- 4.5.2. A systematic, documented, formal risk assessment should be conducted at least once a year.
- 4.5.3. Risks should be prioritised and ranked to focus responses and interventions.
- 4.5.4. The risk assessment process should involve the risks affecting the various income streams of the company, the critical dependencies of the business, the sustainability and the legitimate interests and expectations of stakeholders.
- 4.5.5. Risk assessments should adopt a top-down approach.
- 4.5.6. The board should regularly receive and review a register of the company's key risks.
- 4.5.7. The board should ensure that key risks are quantified where practicable

#### **4.6. The board should ensure that frameworks and methodologies are implemented to increase the probability of anticipating unpredictable risks**

- 4.6.1. The board should ensure that a framework and processes are in place to anticipate unpredictable risks.

### **Risk response**

#### **4.7. The board should ensure that management considers and implements appropriate risk responses**

- 4.7.1. Management should identify and note in the risk register the risk responses decided upon.
- 4.7.2. Management should demonstrate to the board that the risk response provides for the identification and exploitation of opportunities to improve the performance of the company.

### **Risk monitoring**

#### **4.8. The board should ensure continual risk monitoring by management**

- 4.8.1. The board should ensure that effective and continual monitoring of risk management takes place.
- 4.8.2. The responsibility for monitoring should be defined in the risk management plan.

### **Risk assurance**

#### **4.9. The board should receive assurance regarding the effectiveness of the risk management process**

- 4.9.1. Management should provide assurance to the board that the risk management plan is integrated in the daily activities of the company.
- 4.9.2. Internal audit should provide a written assessment of the effectiveness of the system of internal controls and risk management to the board.

### **Risk disclosure**

**4.10. The board should ensure that there are processes in place enabling complete, timely, relevant, accurate and accessible risk disclosure to stakeholders**

- 4.10.1. Undue, unexpected or unusual risks should be disclosed in the integrated report.
- 4.10.2. The board should disclose its view on the effectiveness of the risk management process in the integrated report.

**5. THE GOVERNANCE OF INFORMATION TECHNOLOGY**

**5.1. The board should be responsible for information technology (IT) governance**

- 5.1.1. The board should assume the responsibility for the governance of IT and place it on the board agenda.
- 5.1.2. The board should ensure that an IT charter and policies are established and implemented.
- 5.1.3. The board should ensure promotion of an ethical IT governance culture and awareness and of a common IT language.
- 5.1.4. The board should ensure that an IT internal control framework is adopted and implemented .
- 5.1.5. The board should receive independent assurance on the effectiveness of the IT internal controls.

**5.2. IT should be aligned with the performance and sustainability objectives of the company**

- 5.2.1. The board should ensure that the IT strategy is integrated with the company's strategic and business processes.
- 5.2.2. The board should ensure that there is a process in place to identify and exploit opportunities to improve the performance and sustainability of the company through the use of IT.

**5.3. The board should delegate to management the responsibility for the implementation of an IT governance framework**

- 5.3.1. Management should be responsible for the implementation of the structures, processes and mechanisms for the IT governance framework.
- 5.3.2. The board may appoint an IT steering committee of similar function to assist with its governance of IT.
- 5.3.3. The CEO should appoint a Chief Information Officer responsible for the management of IT.
- 5.3.4. The CIO should be a suitably qualified and experienced person who should have access and interact regularly on strategic IT matters with the board and/or appropriate board committee and executive management.

**5.4. The board should monitor and evaluate significant IT investments and expenditure**

- 5.4.1. The board should oversee the value delivery of IT and monitor the return on investment from significant IT projects.
- 5.4.2. The board should ensure that intellectual property contained in information systems are protected.
- 5.4.3. The board should obtain independent assurance on the IT governance and controls supporting outsourced IT services.

**5.5. IT should form an intergral part of the company's risk management**

- 5.5.1. Management should regularly demonstrate to the board that the company has adequate business resilience arrangements in place for disaster recovery.
- 5.5.2. Board should ensure that the company complies with IT laws and that IT related rules, codes and standards are considered

**5.6. The board should ensure that information assets are managed effectively**

- 5.6.1. Board should ensure that there are systems in place for the management of information which should include information security, information management and information privacy.
- 5.6.2. Board should ensure that all personal information is treated by the company as an important business asset and is identified.
- 5.6.3. Board should ensure that an Information Security Management System is developed and implemented.
- 5.6.4. Board should approve the information security strategy and delegate and empower management to implement the strategy.

**5.7. A risk committee and audit committee should assist the board in carrying out its IT responsibilities**

- 5.7.1. The risk committee should ensure that IT risks are adequately addressed.
- 5.7.2. The risk committee should obtain appropriate assurance that controls are in place and effective in addressing IT risks.
- 5.7.3. The audit committee should consider IT as it relates to financial reporting and the going concern of the company.
- 5.7.4. The audit committee should consider the use of technology to improve audit coverage and efficiency.

**6. COMPLIANCE WITH LAWS, RULES, CODES AND STANDARDS**

**6.1. The board should ensure that the company complies with applicable laws and considers adherence to nonbinding rules, codes and standards**

- 6.1.1. Companies must comply with all applicable laws.
- 6.1.2. Exceptions permitted in law, shortcomings and proposed changes expected should be handled ethically.
- 6.1.3. Compliance should be an ethical imperative.
- 6.1.4. Compliance with applicable laws should be understood not only in terms of the obligations that they create, but also for the rights and protection that they afford.
- 6.1.5. The board should understand the context of the law, and how other applicable laws interact with it.
- 6.1.6. The board should monitor the company's compliance with applicable laws, rules, codes and standards.
- 6.1.7. Compliance should be a regular item on the agenda of the board.
- 6.1.8. The board should disclose details in the integrated report on how it discharged its responsibility to establish an effective compliance framework and processes.

**6.2. The board and each individual director should have a working understanding of the effect of the applicable laws, rules, codes and standards on the company and its business**

- 6.2.1. The induction and ongoing training programmes of directors should incorporate an overview of and any changes to applicable laws, rules, codes and standards.
- 6.2.2. Directors should sufficiently familiarize themselves with the general content of applicable laws, rules, codes and standards to discharge their legal duties.

**6.3. Compliance risk should form an integral part of the company's risk management process**

6.3.1. The risk of non-compliance should be identified, assessed and responded to through the risk management processes.

6.3.2. Companies should consider establishing a compliance function.

**6.4. The board should delegate to management the implementation of an effective compliance framework and processes**

6.4.1. Board should ensure that a legal compliance policy, approved by the board, has been implemented by management.

6.4.2. Board should receive assurance on effectiveness of the controls around compliance with laws, rules, codes and standards.

6.4.3. Compliance with laws, rules, codes and standards should be incorporated in the code of conduct of the company.

6.4.4. Management should establish the appropriate structures, educate and train, and communicate and measure key performance indicators relevant to compliance.

6.4.5. The integrated report should include details of material or often repeated instances of non-compliance by either the company or its directors in their capacity as such.

6.4.6. An independent, suitably skilled compliance officer may be appointed.

6.4.7. The compliance officer should be a suitably skilled and experienced person who should have access and interact regularly on strategic compliance matters with the board and/or appropriate board committee and executive management.

6.4.8. The structuring of the compliance function, its role and its position in terms of reporting lines should be a reflection of the company's decision on how compliance is to be integrated with its ethics and risk management.

6.4.9. The compliance function should have adequate resources to fulfil its function.

## **7. INTERNAL AUDIT**

### **The need for and role of internal audit**

**7.1. The board should ensure that there is an effective risk based internal audit**

7.1.1. Companies should establish an internal audit function.

7.1.2. Internal audit should perform the following functions:

7.1.2.1. evaluate the company's governance processes;

7.1.2.2. perform an objective assessment of the effectiveness of risk management and the internal control framework;

7.1.2.3. systematically analyse and evaluating business processes and associated controls; and

7.1.2.4. provide a source of information as appropriate, regarding instances of fraud, corruption, unethical behaviour and irregularities.

7.1.3. An internal audit charter should be defined and approved by the board.

7.1.4. The internal audit function should adhere to the IIA Standards and code of ethics.

### **Internal audit's approach and plan**

**7.2. Internal audit should follow a risk based approach to its plan**

7.2.1. The internal audit plan and approach should be informed by the strategy and risks of the company.

7.2.2. Internal audit should be independent from management.

7.2.3. Internal audit should be an objective provider of assurance that considers:

7.2.3.1. the risks that may prevent or slow down the realisation of strategic goals;

7.2.3.2. whether controls are in place and functioning effectively to mitigate these; and

7.2.3.3. the opportunities that will promote the realisation of strategic goals that are identified, assessed and effectively managed by the company's management team.

**7.3. Internal audit should provide a written assessment of the effectiveness of the company's system of internal controls and risk management**

7.3.1. Internal audit should form an integral part of the combined assurance model as internal assurance provider.

7.3.2. Internal controls should be established not only over financial matters, but also operational, compliance and sustainability issues.

7.3.3. Companies should maintain an effective governance, risk management and internal control framework.

7.3.4. Management should specify the elements of the control framework.

7.3.5. Internal audit should provide a written assessment of the system of internal controls and risk management to the board.

7.3.6. Internal audit should provide a written assessment of internal financial controls to the audit committee.

**7.4. The audit committee should be responsible for overseeing internal audit**

7.4.1. The internal audit plan should be agreed and approved by the audit committee.

7.4.2. The audit committee should evaluate the performance of the internal audit function.

7.4.3. The audit committee should ensure that the internal audit function is subjected to an independent quality review.

7.4.4. The CAE should report functionally to the audit committee chairman.

7.4.5. The audit committee should be responsible for the appointment, performance assessment and dismissal of the CAE.

7.4.6. The audit committee should ensure that the internal audit function is appropriately resourced and has appropriate budget allocated to the function.

7.4.7. Internal audit should report at all audit committee meetings.

### **Internal audit's status in the company**

**7.5. Internal audit should be strategically positioned to achieve its objectives**

7.5.1. The internal audit function should be independent and objective.

7.5.2. The internal audit function should report functionally to the audit committee.

7.5.3. The CAE should have a standing invitation to attend executive committee meetings.

- 7.5.4. The internal audit function should be skilled and resourced as is appropriate for the complexity and volume of risk and assurance needs.
- 7.5.5. The CAE should develop and maintain a quality assurance and improvement programme.

## **8. GOVERNING STAKEHOLDER RELATIONSHIPS**

### **8.1. The board should appreciate that stakeholders' perceptions affect a company's reputation**

- 8.1.1. The gap between stakeholder perceptions and the performance of the company should be managed and measured to enhance or protect the company's reputation.
- 8.1.2. The company's reputation and its linkage with stakeholder relationships should be a regular board agenda item.
- 8.1.3. The board should identify important stakeholder groupings

### **8.2. The board should delegate to management to proactively deal with stakeholder relationships**

- 8.2.1. Management should develop a strategy and formulate policies for the management of relationships with each stakeholder grouping.
- 8.2.2. The board should consider whether it is appropriate to publish its stakeholder policies.
- 8.2.3. The board should oversee the establishment of mechanisms and processes that support stakeholders in constructive engagement with the company.
- 8.2.4. The board should encourage shareholders to attend AGM's.
- 8.2.5. The board should consider not only formal, but also informal, processes for interaction with the company's stakeholders.
- 8.2.6. The board should disclose in its integrated report the nature of the company's dealings with stakeholders and the outcomes of these dealings.

### **8.3. The board should strive to achieve the appropriate balance between its various stakeholder groupings, in the best interests of the company**

- 8.3.1. The board should take account of the legitimate interests and expectations of its stakeholders in its decision-making in the best interests of the company.

### **8.4. Companies should ensure the equitable treatment of shareholders**

- 8.4.1. There must be equitable treatment of all holders of the same class of shares issued.
- 8.4.2. The board should ensure that minority shareholders are protected.

### **8.5. Transparent and effective communication with stakeholders is essential for building and maintaining their trust and confidence**

- 8.5.1. Complete, timely, relevant, accurate, honest and accessible information should be provided by the company to its stakeholders whilst having regard to legal and strategic considerations.
- 8.5.2. Communication with stakeholders should be in clear and understandable language.
- 8.5.3. The board should adopt communication guidelines that support a responsible communication programme.
- 8.5.4. The board should consider disclosing in the integrated report the number and reasons for refusals of requests of information that were lodged with the company in terms of the Promotion of Access to Information Act, 2000.

#### **Dispute resolution**

### **8.6. The board should ensure that disputes are resolved as effectively, efficiently and expeditiously as possible**

- 8.6.1. The board should adopt formal dispute resolution processes for internal and external disputes.
- 8.6.2. The board should select the appropriate individuals to represent the company in ADR.

## **9. INTEGRATED REPORTING AND DISCLOSURE**

#### **Transparency and accountability**

### **9.1. The board should ensure the integrity of the company's integrated report**

- 9.1.1. A company should have controls to enable it to verify and safeguard the integrity of its integrated report.
- 9.1.2. The board should delegate to the audit committee to evaluate sustainability disclosures.
- The integrated report should:
- 9.1.3. be prepared every year;
- 9.1.4. convey adequate information regarding the company's financial and sustainability performance; and
- 9.1.5. focus on substance over form.

### **9.2. Sustainability reporting and disclosure should be integrated with the company's financial reporting**

- 9.2.1. The board should include commentary on the company's financial results.
- 9.2.2. The board must disclose if the company is a going concern.
- 9.2.3. The integrated report should describe how the company has made its money.
- 9.2.4. The board should ensure that the positive and negative impacts of the company's operations and plans to improve the positives and eradicate or ameliorate the negatives in the financial year ahead are conveyed in the integrated report.

### **9.3. Sustainability reporting and disclosure should be independently assured**

- 9.3.1. General oversight and reporting of sustainability should be delegated by the board to the audit committee.
- 9.3.2. The audit committee should assist the board by reviewing the integrated report to ensure that the information contained in it is reliable and that it does not contradict the financial aspects of the report.
- 9.3.3. The audit committee should oversee the provision of assurance over sustainability issues.