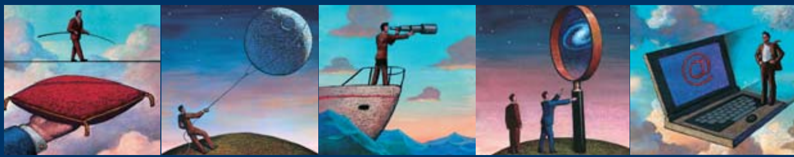
King Report on Corporate Governance for South Africa 2002

What it means to you

CLIFFE DEKKER
Attorneys



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Index

Introduction

In 1994 the King Report on Corporate Governance (King I) was published by the King Committee on Corporate Governance, headed by former High Court judge, Mervyn King S.C. King I, incorporating a Code of Corporate Practices and Conduct, was the first of its kind in the country and was aimed at promoting the highest standards of corporate governance in South Africa.

Over and above the financial and regulatory aspects of corporate governance, King I advocated an integrated approach to good governance in the interests of a wide range of stakeholders. Although groundbreaking at the time, the evolving global economic environment together with recent legislative developments, have necessitated that King I be updated. To this end, the King Committee on Corporate Governance developed the King Report on Corporate Governance for South Africa, 2002 (King II).

King II acknowledges that there is a move away from the single bottom line (that is, profit for shareholders) to a triple bottom line, which embraces the economic, environmental and social aspects of a company's activities. In the words of the King Committee:

"...successful governance in the world in the 21st century requires companies to adopt an inclusive and not exclusive approach. The company must be open to institutional activism and there must be greater emphasis on the sustainable or non-financial aspects of its performance. Boards must apply the test of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company but also responsive and responsible towards the company's identified stakeholders. The correct balance between conformance with governance principles and performance in an entrepreneurial market economy must be found, but this will be specific to each company."

Directors and their Responsibilities

1. Who should be on the Board?

It is recommended that South African companies have a unitary board structure. This should comprise executive and non-executive directors, preferably with a majority of non-executive directors, of whom a sufficient number should be independent of management in order to ensure the protection of minority shareholders' interests.

2. Functions of the Board

2.1 The board must retain full and effective control over the company and be responsible for monitoring management in respect of implementation of board plans and strategies. The board, with the guidance of the company secretary, has the duty of ensuring that the company complies with all the relevant laws, regulations and codes of business practice.

2.2 The board is ultimately responsible for the affairs of the company. The delegation of authority to any committee does not discharge the responsibility of the board in respect of the actions and decisions of a committee.

2.3 The board must give strategic direction to the company.

2.4 The board is responsible for the appointment of the chief executive officer and the succession process.

2.5 It is recommended that the board has an agreed procedure whereby directors are able to seek independent professional advice, should the need arise. The professional services procured should be at the company's expense.

2.6 The board should develop a corporate code of conduct that addresses issues that relate, *inter alia*, to conflicts of interest, particularly relating to directors and management.

2.7 Insofar as it is practical, the board is responsible for assessing and rectifying issues in respect of the size, diversity and demographics of the company.

2.8 The board is responsible for identifying risk areas and performance indicators in respect of the company. The board must regularly monitor these issues.

2.9 The board is also responsible for the monitoring and assessment of the non-financial aspects pertaining to the company.

2.10 The board should aim to conform to the governance constraints while simultaneously performing in an innovative and entrepreneurial way.

3. Is there a distinction between the Chairperson and Chief Executive Officer?

3.1 The chairperson is responsible for the effective functioning of the board and the chief executive officer is responsible for the running of the company's business. There should be a clear distinction between these roles.

3.2 The chairperson's primary function is to preside over meetings of directors and ensure the smooth functioning of the board. The chairperson usually presides over the company shareholders' meetings. The core functions performed by the chairperson include, *inter alia*:
- the overall leadership of the board;
- participating in the selection of board members;
- monitoring and evaluating board and director appraisals;
- formulating an annual work plan for the board;
- acting as the main informal link between the board and management;
- maintaining relations with the company's shareholders.

3.3 The chief executive officer's task is to run the business and to implement the policies and strategies adopted by the board.

3.4 Where the roles of the chairperson and the chief executive officer are combined, there should be an independent non-executive director serving as the deputy chairperson. Alternatively, there should be a strong independent non-executive director element on the board. Any decision to combine roles must be justified each year in the company's annual report.

3.5 The chairperson or sub-committee appointed by the board should appraise the performance of the chief executive officer. Such appraisal should be performed on an annual basis.

4. Directors

4.1 In the company's annual report, the capacity of the directors of the board should be categorised as follows:
- Executive Director: A director involved in the day to day management and/or in the full time employ of the company, and/or any of its subsidiaries;
- Non-Executive Director: A director not involved in the day to day management of the company and not a full time salaried employee of the company or any of its subsidiaries;

- Independent Director: A non-executive director who is not a representative of a shareholder, has not been employed by the company in any executive capacity for the preceding three financial years and has no significant contractual relationship or interest in the company or group.

4.2 Shadow directors are discouraged.

4.3 A formal orientation program is recommended to familiarise new directors with the company's structure, operations and policies.

4.4 Directors should be regularly updated on any new or pending legislation, regulations and codes of best business practice.

4.5 New directors must receive developmental and educational training in respect of their duties and responsibilities to the company.

4.6 An executive director's fixed term service contract should not exceed three years. Should it exceed such period, full disclosure of the reasons pertaining to such decision must be provided to the shareholders, and the shareholders' consent must be obtained.

4.7 A formal and transparent remuneration policy must be developed by the company in respect of director remuneration. A Statement of Remuneration Philosophy published in the annual report must support this policy.

5. Remuneration Committee

5.1 The company should appoint a remuneration committee. This committee should consist mainly of independent non-executive directors.

5.2 The function of this committee should be to make recommendations to the board in respect of remuneration packages for executive directors.

5.3 Membership of the remuneration committee must be disclosed in the annual report.

5.4 Companies should also provide full disclosure of director remuneration on an individual basis in their annual reports.

5.5 Shareholders must approve any granting of share options to non-executive directors having regard to the provisions of the Companies Act. It must be noted that in some global markets the trend is to grant non-executive directors shares as opposed to share options.

6. Allocation of Share Options

6.1 A vesting period should be applied in respect of the allocation of share options to non-executive directors in order to dissuade short-term decision making.

6.2 Boards should have regard to the possibilities and the consequences of the removal or resignation of directors prior to the maturing of the vesting period. The impact on a director's independence must be considered.

6.3 Any re-pricing of share options must be subject to shareholder approval. The shareholders must be provided with all necessary details in respect of the directors, executive or non-executive, that stand to benefit from such proposal.

6.4 In the event that share options are issued at a discount to the ruling share price, a separate vote must be cast by the shareholders in respect of this clause in the trust deed creating the share scheme. Any amendments proposed to the trust deed that would authorise allocations of share options at discounts must be approved by the shareholders.

6.5 Full disclosure by directors on an individual basis must be made in respect of all share schemes and incentive schemes.

7. Committees

7.1 Board committees should be established to aid the board and its directors in giving detailed attention to specific areas of the directors' duties and responsibilities. The board of directors is solely responsible for the actions and decisions of these committees.

7.2 The board of directors should determine a policy for the frequency, purpose, conduct and duration of its meetings and those of the formally established committees, such as the audit committee and the remuneration committee.

7.3 There must be transparency and full disclosure from the committee to the board except where the committee has been mandated otherwise by the board.

7.4 It is recommended that all board committees be chaired by an independent non-executive director.

7.5 Board committees should be empowered to take independent professional advice where circumstances dictate, at the company's expense. This policy must be agreed to at board level.

7.6 The composition of the committees (especially the remuneration, audit and nomination committees) should be detailed in the annual report, together with information containing a description of the committees' responsibilities, the number of meetings held and any other information that may be of relevance to shareholders.

7.7 It is recommended that these committees be subject to regular evaluation and monitoring by the board in order to ensure that the committees' duties and responsibilities are being effectively carried out.

8. Evaluation of the Directors

The nomination committee or a committee appointed for the fulfilment of a similar purpose should regularly review and assess the board, the committees and the individual directors in order to assess the effectiveness of the board and committees as a whole and to evaluate performance on a personal and individual level. It is recommended that these evaluations take place on an annual basis.

9. Dealing in Securities

9.1 A listed company must have a policy and practice restricting its directors, officers and other employees from dealing in the company's securities prior to any formal announcement in respect of its financial results or during any other period where such dealings may be considered sensitive.

9.2 A listed company should also have a practice in place where the dealings of directors, as required by the listing requirements of the JSE Securities Exchange South Africa (JSE), are regulated and monitored.

9.3 The policy and practice referred to above, should be established by the board and implemented and monitored by the company secretary.

10. Annual Reports and General Meetings

10.1 Every board should have a charter that sets out the responsibilities and duties of the board. The charter should be disclosed in the company's annual report.

10.2 The board must ensure that each item of special business included in the notice of the annual general meeting or any shareholders' meeting is accompanied by a full explanation of the justification for and the effects of the proposed resolution.

10.3 Shareholders should be encouraged by the board to attend annual general meetings. All directors should be present at the annual general meeting, and particularly the chairpersons of the various committees.

11. Who is the Company Secretary?

11.1 In terms of section 268A of the Companies Act, the appointment of a company secretary in public companies with a share capital is mandatory.

11.2 The Companies Act makes provision for the appointment, removal and duties of the company secretary. The board is responsible for the appointment of the company secretary and should ensure that the company secretary is empowered to enable him or her to perform the duties effectively.

11.3 The company secretary must guide the board in respect of its duties and responsibilities and update the board on all new and pending legislation and regulations that may have an effect on the operation of the company.

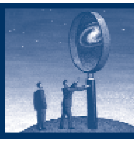
11.4 The company secretary should play a role in the induction of new or inexperienced directors.

11.5 The company secretary assists the chairperson and the chief executive officer in determining the annual board plan.

11.6 The company secretary provides the main source of guidance in respect of matters of ethics and good governance.

11.7 It is recommended that the company secretary be subjected to a fit and proper test and evaluation.

Risk Management



1. What is Risk Management?

1.1 Risk management is the identification and evaluation of actual and potential areas of risk as they pertain to a company, followed by a procedure of termination, transfer, acceptance (tolerance) or mitigation of each risk.

1.2 Risk management is therefore a process that utilises internal controls as a measure to mitigate and control risk.

2. Who is responsible for Risk Management?

2.1 The board is responsible for ensuring that the company has implemented an effective ongoing process to identify risk, measure its potential impact against a set of assumptions, and then activate what it believes is necessary to proactively manage these risks.

2.2 The board should therefore decide on what risk the company is prepared to take and what risks it will not take in pursuance of its goals and objectives.

2.3 The risk management process requires an inclusive team based approach which is effective across the company. A committee comprising of executive directors and members of senior management, who are accountable to the board, are best placed to evaluate risk in the company and report to the board.

3. What should Risk Assessment address?

Risk assessment should address the company's exposure to the following:

- physical and operational risks;
- human resource risks;
- technical risks;
- business continuity and disaster recovery;
- credit and market risks;
- compliance risks.

4. What is the role of the Internal Audit Function in Risk Management?

The internal audit function should be used to provide independent assurance in relation to the board's assertion surrounding the effectiveness of risk management and internal control.

5. Assimilating Risk to the Control Environment

5.1 The board should implement a comprehensive system of controls to ensure that risks are mitigated and that the company's objectives are attained.

5.2 The control environment should set the tone of the company and cover ethical values, management's philosophy and the competence of employees.

5.3 Five essential aspects of control are identified, namely:

- control environment;
- risk assessment;
- control activities;
- information and communications;
- monitoring.

5.4 Any vulnerability in the achievement of the company's objectives, whether caused by internal or external risk factors, should be detected in good time, reported by the systems of control in place and met with appropriate intervention. Not only will this improve the company's risk profile, thereby enhancing the company's attraction as a worthwhile investment, but it will also enhance the positive influences of risk on the business.

5.5 The company should also consider the need for a confidential reporting process (whistle-blowing) covering fraud and other risks.

6. How is Risk Management applied?

6.1 The board is responsible for setting risk tolerance and related strategies and policies. It is also the board's responsibility to review the effectiveness of these policies on a regular basis and in a manner in which its objectives are clearly defined for the benefit of management to guide them in carrying out their responsibilities.

6.2 In reviewing the reports on risk management and internal control in the course of a financial year, the board should:

- consider what the company's risks are and how they have been identified, evaluated and controlled;
- assess the effectiveness of the related process of risk management and particularly reports of significant failings or weaknesses in the process;
- consider if the necessary action is being taken timeously to rectify any significant failings or weaknesses;
- consider whether the results obtained from the review process indicate that more extensive monitoring is required.

7. Where should a Company's Policy on Risk Management be reported?

7.1 The board should disclose how the company has dealt with risk and control in its annual report.

7.2 At a minimum, the board should disclose:

- that it is accountable for the process of risk management and the system of internal control, which is regularly reviewed for effectiveness and for establishing appropriate risk and control policies and communicating these throughout the company;
- that there is an ongoing process for identifying, evaluating and managing the significant risks faced by the company, which has been in place for the year under review and up to the date of approval of the annual report and financial statements;
- that there is an adequate and effective system of internal control in place to mitigate the significant risks faced by the company to an acceptable level;
- that there is a documented and tested process in place that will allow the company to continue its critical business processes in the event of a disastrous incident impacting on its activities;
- where material joint ventures and associates have not been dealt with as part of the group for the purposes of applying these recommendations;
- any additional information in the annual report to assist in the understanding of the company's risk management processes and system of internal control.

7.3 Where the board cannot make any of the disclosures set out above, it should state this fact and provide a suitable explanation.

8. Summary of Risk Management

8.1 The risk management review processes may identify areas of opportunity, such as where effective risk management can be turned into a competitive advantage for the company, and it should therefore not only be viewed from a negative perspective.

8.2 Risk management goes beyond the control of financial risks. Reputation and a company's future survival are also at stake.

8.3 Companies must ensure that the governance surrounding risk management is transparent and disclosed to its stakeholders.

8.4 Risk management is a continuous process of identifying, evaluating and managing risk. Unless companies see risk management as more than just an act of compliance, they are unlikely to reap the benefits it can offer.

Internal Audit

1. What is Internal Audit?

According to the Institute of Internal Auditors:

"Internal Audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes."

2. Is there a need for Internal Audit?

2.1 King II requires that companies have an effective internal audit function that has the respect and co-operation of both the board and management. Where the board decides not to establish an internal audit function, full reasons must be disclosed in the company's annual report, with an explanation as to how assurance of effective internal controls, processes and systems will be obtained. Criteria to be considered in assessing the need for an internal audit function include:

- whether the existing management processes are adequate to identify and monitor the significant risks facing the company, and whether the established internal control system operates effectively;
- whether those who are responsible for managing risks and operating controls take a wholly objective and systematic view of their own performance;
- whether the board receives the right quality of assurance and information from management.

2.2 If the board decides that there is a need for an internal audit function, it must approve an "internal audit charter" which, *inter alia,* formally defines the purposes, authority and responsibility of the internal audit activity.

3. What is the status of Internal Audit?

3.1 The board must ensure that the internal audit team has a standing that commands respect in the company and that the internal audit operates at a level within the company that allows it fully to accomplish its responsibilities. In addition, the head of the internal audit should report administratively to the chief executive officer and should have ready access to the chairperson of the company and the chairperson of the audit committee.

3.2 If the external and internal audit functions are carried out by the same accounting firm, the audit committee and the board should satisfy themselves that there is adequate segregation between the two functions in order to ensure that their independence is not impaired.

4. Can Internal Auditors be Employees of the Company?

4.1 King II recognises that the fact that internal auditors may be employees of the company does not of itself impair their objectivity.

4.2 The internal audit activity should be independent of the activities audited and internal auditors should be objective in performing their work.

5. What is the role and function of Internal Audit?

5.1 The objective of internal audit is to assist members of executive and senior management in the effective discharge of their duties and responsibilities. To this end, internal audit furnishes them with analyses, appraisals, recommendations, counsel and information regarding the activities reviewed.

5.2 An effective internal audit function should provide:

- assurance that the management processes are adequate to identify and monitor significant risks;
- confirmation of the effective operation of the established internal control systems;
- credible processes for feedback on risk management and assurance;
- objective confirmation that the board receives the right quality of assurance and information from management and that this information is reliable.

5.3 Adherence to the standards proposed will ensure a common framework and understanding of the requirements for internal auditing.

6. What should the scope of Internal Audit be?

6.1 Internal audit should consider relevant strategic, business and operational risks and their significance, taking account of the board's, senior management's and its own professional judgement.

6.2 The internal audit plan, which should be approved by the audit committee, should be based on risk assessment as well as issues highlighted by the audit committee and senior management. The risk assessment process should be of a continuous nature so as to identify not only residual or existing risks but also emerging risks.

6.3 The internal audit function should co-ordinate with other internal and external providers of assurance to ensure proper coverage of financial, operational and compliance controls and to minimise duplication of effort.

7. How often should Internal Audits be conducted?

Internal audits should be conducted formally at least annually but more often in complex organisations.

Integrated Sustainability Reporting

1. What is Integrated Sustainability Reporting?

1.1 The concept of sustainability has recently been recognised and adopted in a business context to mean the achievement of balanced and integrated economic, social and environmental performance ("triple bottom line").

1.2 King II seeks to provide indicative, aspirational guidelines to South African companies who are seeking to improve on their disclosure practices and recognise the importance of the relationship between an enterprise and the community in which it exists.

2. How is Integrated Sustainability Reporting achieved?

2.1 Every company should report at least annually on the nature and extent of its social, transformation, ethical, safety, health and environmental management policies and practices.

2.2 The board of directors should, in determining what is relevant for disclosure, take into account the environment in which the company operates.

2.3 A South African board should disclose:

- the HIV/Aids strategy plan and policies the company has in place to address and manage the potential impact of HIV/Aids on the company;
- the company's formal procurement policies that take into account black economic empowerment;
- whether it has developed and implemented a definitive set of standards and practices in the company based on a clearly articulated code of ethics.

2.4 Principles of reliability, relevance, clarity, comparability, timeliness and verifiability should govern a company's public disclosure of non-financial information.

3. What is meant by Organisational Integrity/Code of Ethics?

3.1 A company should demonstrate its commitment to organisational integrity by qualifying its standards in a code of ethics.

3.2 Each company should demonstrate its commitment to its code of ethics by:

- creating systems and procedures to introduce, monitor and enforce its ethical code;
- assigning high level individuals to oversee compliance with the ethical code;
- assessing the integrity of new appointees in selection and promotion procedures;
- exercising due care in delegating discretionary authority;
- communicating with and training all employees regarding enterprise values, standards and compliance procedures;
- providing, monitoring and auditing safe systems for reporting of unethical or risky behaviour;

- consistently enforcing appropriate discipline;
- responding to offences and preventing reoccurrences.

3.3 The disclosure of the code of ethics should include a statement of the extent to which the directors believe the ethical standards and above criteria are being met.

4. What is “SHE”?

SHE stands for Safety, Health and Environment. King II has recognised that companies should have, as part of their objectives, the integration of SHE issues into their sustainability policies and procedures. This assists companies in achieving the triple bottom line goals.

5. Society and Transformation Requirements

5.1 Companies should value the diversity of approach, values and contribution which women and black people bring to the table and should develop mechanisms positively to reinforce the richness of diversity.

5.2 Companies should disclose the nature of policies and practices in place to promote equal opportunities for the previously disadvantaged in terms of realising their full potential and reaching executive levels in the company.

6. Human Capital and what is required by King II?

6.1 Human capital indicates the latent or potential value that employees at all levels represent for a company. It has been recognised that the development of human capital serves not only the economic interests of the company itself, but also the requirements of the society within which the company operates.

6.2 Companies should disclose in their annual reports the criteria by which they propose to measure human capital developments and their performance in terms of such criteria.

6.3 Good corporate governance requires that business practice should reflect human capital development in areas such as the number of staff, with a particular focus on demographics (race, gender, people with disabilities), age, corporate training initiatives, employee development etc.

6.4 Reporting on the development of human capital is important because it provides both a public account of past performance and, more importantly, an indication of future prospects of the company.

Accounting and Auditing

1. How important is an External Audit?

In addition to being a statutory requirement, an external audit provides an independent and objective check on the way in which the financial statements have been prepared and presented by the directors. An annual audit is an essential part of the checks and balances required and is one of the cornerstones of corporate governance.

2. What qualities should the External Auditors have?

The external auditors should:

- observe the highest level of business and professional ethics and, in particular, their independence should not be impaired in any way;
- be objective and consciously aware of their accountability to the shareholders.

3. Can the External Auditors also perform non-audit services for the Company?

3.1 The audit committee should set the principles for recommending use of the accounting firm of the external auditors for non-audit services, such as management consultancy and corporate finance services.

3.2 Audit committees should have the necessary business acumen to address external auditor independence on a case-by-case basis, thereby preserving the company's ability to select its external auditor for non-audit services if that is in the best interests of the company and its investors.

3.3 In considering the external auditors' independence, the board should consider, *inter alia*, the structure and ownership of the accounting firm. Management should encourage consultation between the internal and external auditors.

3.4 In addition to the Companies Act requirements, there should be separate disclosure of the amount paid for non-audit services with a detailed description in the notes to the annual financial statements of the nature thereof, together with the amounts paid for each of the services described.

4. Must Interim Reports be independently reviewed?

4.1 This is not mandatory, although the audit committee should consider whether an independent review of the interim reports is in the best interests of the company.

4.2 King II recommends that, at a minimum, the audit committee should request that an independent review of the interim report is performed if the auditors have qualified or disclaimed their opinion, or produced an adverse opinion, in the latest annual financial statements.

4.3 Where an independent review is conducted, the audit committee's report commenting on the independent report, together with the auditor's review report, should be tabled at the board meeting to adopt the interim report.

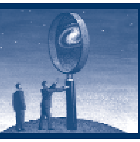
4.4 Where an independent review was not conducted, a comprehensive statement of the reasons why the audit committee concluded that a review was not required should be tabled at the board meeting.

4.5 Where an independent review was not conducted, any publication of the interim results should be labelled "unaudited".

5. What is the Board's responsibility regarding Going Concern Statements?

5.1 South African Statements of Generally Accepted Accounting Practice (GAAP) state that, when preparing financial statements, management should make an assessment of the company's ability to continue as a going concern. In addition, these statements of GAAP require that, in assessing going concern, management should take into consideration all available information for the foreseeable future. This should be at least, but not limited to, 12 months from the balance sheet date.

5.2 Financial statements should be prepared on a going concern basis, unless management either intends to liquidate the company or to cease trading, or has no realistic alternative but to do so. When management is aware of material uncertainties relating to events or conditions that may cast doubt upon the company's ability to continue as a going concern, those uncertainties should be disclosed.



5.3 When the financial statements are not prepared on a going concern basis, that fact should be disclosed, together with the basis on which the financial statements are prepared and the reason why the company is not considered to be a going concern.

5.4 Directors should consider the position at the previous year end, and determine whether any of the significant factors identified at that time have changed in a way that affects the going concern assumption at the interim reporting stage.

6. Who should be on the Audit Committee?

6.1 King II does not specify the size of the audit committee. The board should appoint an audit committee that has a majority of independent non-executive directors. The majority of the members of the audit committee should be financially literate.

6.2 The chairperson should be an independent non-executive director and not the chairperson of the board. The chairperson should have the requisite business, financial and leadership skills and should be a good communicator. King II recommends that the board chairperson should not be a member of the audit committee and that the board should consider if it is desirable for the chief executive officer to be a member or to attend only by invitation.

6.3 Membership of the audit committee should be disclosed in the annual report and the chairperson of the committee should be available to answer questions at the annual general meeting.

7. What is the role and function of the Audit Committee?

7.1 The appointment of the audit committee gives the board a means to monitor an effective internal control system. In addition, the audit committee reinforces both the internal control system and the internal audit function.

7.2 The audit committee should have written terms of reference dealing adequately with its membership, authority and duties. The terms of reference of the audit committee should be confirmed by the board and

reviewed every year. Companies should disclose in their annual reports whether or not the audit committee has adopted formal terms of reference and, if so, whether or not the committee has satisfied its responsibilities for the year, in compliance with its terms of reference.

7.3 The audit committee should review:

- the functioning of the internal control system;
- the functioning of the internal audit department;
- the risk areas of the company's operations to be covered in the scope of the external and internal audits;
- the reliability and accuracy of the financial information provided to management and other users of financial information, and whether the company should continue to use the services of the current internal and external auditors;
- any accounting or auditing concerns identified as a result of the internal or external audits;
- the company's compliance with legal and regulatory provisions, its articles of association, code of conduct, by-laws and the rules established by the board.

7.4 The audit committee should, *inter alia,* also:

- encourage communication between members of the board, senior executive management, the internal audit department and the external auditors;
- confirm the internal audit department's charter and internal audit plan;
- develop a direct, strong and candid relationship with the external auditors;
- review the scope and results of the external audit, its cost effectiveness and the independence and objectivity of the external auditors (and in so doing should review the nature and extent of any non-audit services provided to the company by the external auditors);
- place the minutes of its meetings before the board at the next board meeting;
- consider the rotation policy of the external auditors and whether there is a need to change the audit partner or senior staff engaged in the audit;
- draw up a recommendation to the board for the appointment and removal of the external auditors;
- investigate any matters within its terms of reference and safeguard all information supplied to it.

Compliance and Enforcement

1. How will King II be enforced?

1.1 The legal mechanisms to be relied on for enforcement of King II and the Code of Corporate Practices and Conduct (the Code) are:

- existing legal remedies, principally under the Companies Act (such as section 424, dealing with liability of directors and others for the fraudulent or reckless conduct of a company's business) and the common law;
- the provisions of the amended listing requirements of the JSE.

1.2 In order to prevent the Code from becoming too burdensome and because King II is largely non-prescriptive in nature, compliance is for the most part treated as a matter between boards and the stakeholders of companies. King II encourages greater activism by shareholders, business and the financial press and relies heavily on disclosure as a regulatory mechanism.

1.3 In this regard it is important to note that King II recommends a number of changes and developments to existing legislation and enforcement processes so as to ensure that role-players do not merely pay lip service to the Code and the provisions of King II. Boards should implement effective measures to achieve compliance with the Code and the provisions of King II and should monitor corporate governance issues closely in order to ensure that they are not caught unawares by changes and developments.

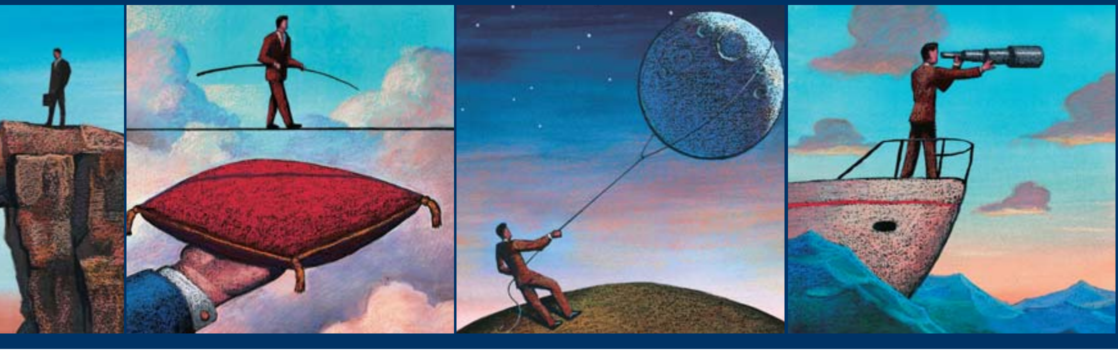
2. To whom will King II apply?

2.1 King II, including the Code, applies to the following business enterprises:

- all companies with securities listed on the JSE;
- banks, financial and insurance entities;
- certain public sector enterprises and agencies.

2.2 King II recommends that all companies, in addition to those falling within the prescribed categories, give due consideration to the application of King II.

2.3 King II is effective in respect of the specified business enterprises whose financial years commence on or after 1 March 2002.



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