

Institute of
International
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*The Global Association
of Financial Institutions*

Advisory Group
IIF Equity

Corporate Governance in South Africa

An Investor Perspective

Task Force Report

September 2007

Corporate Governance in South Africa— An Investor Perspective

PREFACE

In view of the importance of portfolio equity flows to emerging markets, the Institute of International Finance (IIF) established in January 2001 the IIF Equity Advisory Group (EAG) consisting of senior executives from leading asset management firms throughout the world. The EAG is seeking implementation of its Code of Corporate Governance (the “IIF Code”) in key emerging market countries that are of particular interest to the Institute’s membership base. The IIF Code, which was first released in February 2002 and revised in May 2003,¹ endeavors to improve the investment climate in emerging markets by establishing practical guidelines for the treatment of minority shareholders, the structure and responsibilities of the board of directors, and the transparency of ownership and control of companies.

The strategy for promoting the implementation of the IIF Code, as the standard by which the company/ shareholder relationship is measured, is country-focused. Country Task Forces have been set up for Brazil, China, India, Indonesia, Lebanon, Malaysia, Mexico, Poland, Russia, South Africa, South Korea, Turkey, and the GCC, and have published 21 reports.

The South Africa Task Force held meetings in Johannesburg and Cape Town with senior officials from the Johannesburg Securities Exchange, Financial Services Board, National Treasury, Department of Trade and Industry, Institute of Directors, Institute of Retirement Funds, asset management groups, consultancies, and other market participants involved in corporate governance in South Africa. Keith Savard, Director of Global Economic Analysis, Institute of International Finance, led the Task Force. Other Task Force members include Mark Rule, Senior Vice President at AllianceBernstein Investment Research (Pty) Limited and Rakhi Kumar, Corporate Governance Advisor at the IIF.

The aim of this report is to offer an assessment as to where South Africa stands relative to the investment environment that members of the IIF Equity Advisory Group would like to see develop in key emerging market countries. This report is not meant to provide an exhaustive due diligence of corporate governance in South Africa and, as with other Task Force Reports, neither the Task Force nor the IIF can in any way attest to or guarantee the accuracy or completeness of the information in the report.

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¹Investors’ poor experience in a generally weak corporate governance environment in many emerging markets led to relatively strict and comprehensive original IIF guidelines. Nevertheless, more detailed standards were considered desirable in a few areas in light of far-reaching new legislation such as the Sarbanes-Oxley Act passed by the U.S. Congress in the summer of 2002. The revised standards offer guidance to

SUMMARY APPRAISAL

South Africa’s corporate governance framework has continued to evolve and strengthen since our first visit in July 2003. Corporate governance reforms are being undertaken in stages:

- √ The Corporate Law Amendment Act (CLAA) was gazetted on April 17, 2007, although the date on which the law takes effect has not yet been set
- √ The draft Companies Bill 2007, which was released for comment on February 12, 2007 by the Department of Trade and Industry (DTI) is expected to be promulgated next year
- √ A new King III Committee will consider amendments to the King II Report on Code of Corporate Practices and Conduct

When it comes into effect, the CLAA will increase the extent of compliance of South Africa’s corporate governance framework with IIF’s corporate governance guidelines from about 70 percent to roughly 80 percent. Significant part of the increased compliance is attributable to the strengthening of Financial Reporting Standards through the creation of a new autonomous statutory body, the Financial Reporting Standards Council (FRSC), which will set accounting standards in the future. Furthermore, the Companies Act has been amended to give legal backing to accounting standards, making it an offence for not preparing financial statements in accordance with prescribed standards. This addresses a key recommendation in the previous Task Force report.

South Africa has a well developed financial market that is comparable to those in many developed economies. Nevertheless, over the past few years a string of corporate scandals, attributed largely to poor corporate governance practices, have plagued South African businesses, highlighting a disconnect between the corporate governance framework of the country and actual corporate governance practices. Historically, South Africa has adopted a comply-or-explain format for compliance with corporate governance guidelines. As a result, companies have a choice of adopting the corporate governance best practices as highlighted in the King Codes, or explain why they do not follow recommended best practices. However, to date, no study has been conducted to assess the level of compliance with corporate governance-related requirements among listed companies or to verify the reasons for non-compliance.

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A common complaint among investors is that companies provide little information about their corporate governance practices and often provide boiler-plate information regarding internal governance. Moreover, South Africa operates under a self-regulation environment (SRO), which has created a weak enforcement culture, a concern highlighted in the previous Task Force report that continues to exist. Nevertheless, changes are expected to the overall regulatory framework through the restructuring of the DTI. The biggest change is the creation of two panels within the DTI – one that will review compliance with financial reporting requirements and another that will approve all mergers and acquisitions and regulate corporate takeovers. Furthermore, the Companies and Intellectual Properties enforcement units of the DTI will merge with the Companies and Intellectual Properties Registration Office (CIPRO) as required in the draft Companies Bill. CIPRO is responsible for the registration of companies and intellectual properties. However, operational and budgetary issues for implementation of these changes have not yet been worked out.

In order to strengthen corporate governance practices at the company level, select best practices such as the appointment of at least two non-executive, independent board members to the audit committee as prescribed in the King II report, and defining duties of directors, have been included in the draft Companies Bill 2007. The Task Force supports the codification of corporate governance best practices into law as it provides much needed legal backing to existing corporate governance guidelines. Furthermore, once the bill is enacted, all companies will have to comply with requirements that would improve corporate governance practices in both listed and unlisted limited liability companies.

However, there is significant push back from companies as well as some market experts against codification of corporate governance requirements, which they claim will change South Africa’s comply-or-explain regime to a rule-based regime. It is argued that the rule-based regime increases compliance costs for smaller companies and introduces rigidities into the system that make it difficult to amend or change requirements. Nevertheless, recent corporate scandals in South Africa are likely to buttress the case for a more rules-based approach to corporate governance.

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Another positive development since the previous Task Force report has been an increase in shareholder activism among international and local asset managers.

The Financial Services Board (FSB) has made a concerted effort to increase awareness of corporate governance through a circular on Good Governance of Retirement Funds that provides guidance to all funds, approved administrators and insurers who underwrite pension funds. The circular calls for every fund to have a code of conduct, an investment policy statement, a communication policy and a performance assessment tool for trustees. By providing guidelines to strengthen governance of pension fund investments, the FSB has indirectly helped to facilitate shareholder activism. For example, pension and fund managers will be required to improve transparency and consider their social responsibility when making investment decisions.

In addition to regulatory and legislative changes the Black Economic Empowerment (BEE) movement continues to shape the corporate governance environment of the country.

Although several industry sectors have diversified their ownership structure by divesting shares according to their charters or in line with the BEE codes, there is still considerable controversy surrounding the policy. Some observers believe that BEE has empowered a fairly small segment of society and more broad-based initiatives are needed if wealth is to be distributed more broadly to include those people disadvantaged by apartheid. The process has been slowed by difficulties in assessing complex shareholder structures. However, diversification goals are being achieved in part by divesting shares to pension funds or BEE investment groups. Similarly, the degree of diversity at the senior management and Board of Directors level is being questioned by the country's financial press, which is playing a greater role in highlighting corporate governance concerns in South African companies.

Another noteworthy development is the creation of AltX, the stock exchange for small to medium-sized companies that runs parallel to the main board, but which has separate listing requirements and reduced fees for listing. Since its inception in October 2003, listings on the AltX have grown to about 50 companies and are expected to reach 100 companies by early next year. The AltX requirement of assigning a designated advisor to improve a company's corporate governance structure is a novel way to strengthen the country's equity markets.

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South Africa’s corporate governance framework has improved further and is gradually approaching international best practices. However, concerns regarding the overall quality of enforcement and, therefore, actual corporate governance practices in companies continue to persist. A looming debate among experts is whether the comply-or-explain system is actually improving corporate governance standards in the country or whether some corporate governance best practices should be codified into law, making compliance mandatory for all companies. The Task Force recommends that authorities study the level of compliance with current corporate governance requirements and evaluate corporate governance practices among listed companies; this will help regulators assess if the comply-or-explain system is working as envisaged.

The country’s corporate governance environment is slowly evolving to reflect the changing social structure of society, creating new challenges for regulators and experts. The Task Force recommends the following changes to further improve the corporate governance environment in the country:

- √ Improve enforcement by increasing staff and giving more powers to regulators as well as by allowing class action suits
- √ Abolishing the practice of permitting secret settlements with individuals and companies that do not comply with current legislation; it is important to demonstrate that there are consequences of breaking the law
- √ Strengthen compliance with corporate governance requirements by adopting select best practices into law; do not roll back current corporate governance-related provisions in the Companies Bill 2007
- √ Encourage diversification of board of directors and continue to focus on director training to increase the pool of qualified directors

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KEY CORPORATE GOVERNANCE ISSUES

Changing corporate governance environment

Significant changes have taken place in South Africa’s legislative and regulatory environment since our last visit in July 2004. While the King II Code continues to shape corporate governance in companies, legislative changes in the Corporate Law Amendment Act (CLAA) and proposed in Companies Bill 2007 will have an even greater impact on corporate governance practices going forward. This is primarily due to the legal backing that these laws will have compared to the voluntary nature of the King II Code. Some of the key reforms proposed in the Companies Bill are:

- √ A uniform accounting standard to ensure that any financial information published by a company is calculated in accordance with generally-accepted accounting practices (GAAP), which has to be comparable with the international standards adopted by the International Accounting Standards Board (IAS)
- √ Creation of a companies’ ombud to provide a forum for alternative dispute resolution of company issues
- √ Categorizing companies into public or private companies, which allows for greater scrutiny of public companies and less stringent financial reporting standards for private companies
- √ Codification of directors duties and provisions addressing conflicts of interest and an increase in directors’ liability
- √ Greater protection for minority shareholders in line with best-practice international corporate law, for example:
 - Mandatory audit committees for all PICs
 - Giving opportunity to shareholders to ask auditors questions that are relevant to the audit of PICs
 - Making quorum and minimum voting percentage for both ordinary and special resolutions more flexible

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¹defined by criteria driven by distribution of shareholdings, size or the nature of its activities.

- Giving shareholders wider access to company accounting records and minutes of meetings, including allowing shareholders access to board committee minutes for the past 10 years
- √ Introduction of the concept of business rescue, which will be conducted by an independent supervisor and subject to court intervention
- √ Decriminalization of non-compliance and use of a system of administrative enforcement

The King III Report has been commissioned to assess current corporate governance requirements.

Although the recommendations of the King III report are uncertain the focus will most likely be to update the King II report to bring it in line with international standards, including the statutory duties of directors and other officers of a company and various other provisions in the Companies Bill. Sustainability issues will also be a part of King III. The report is expected to be published shortly after the passage of the new Companies Bill, which is anticipated in 2008. The authorities have also begun a review of all laws, circulars, and gazettes governing financial markets with a view to evaluating the overall impact of past amendments and rationalizing laws if needed.

Increased shareholder activism creates push for better corporate governance

In our previous report published in September 2003, we noted that there was a significant apathy displayed by a wide spectrum of investors towards corporate governance. This was attributed to a small and inexperienced retail investor base, as well as to institutional investors. However, since our last visit, we have found noteworthy growth in the level of shareholder activism in the country. Much of this is due to the increased focus on corporate governance structures of companies under the BEE charter implementation (see Impact of black economic empowerment below). The Barloworld controversy², where a corporate governance transformation battle between the Public Investment Corporation (PIC) and Barloworld

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²Barloworld, an industrial brand management company, appointed its first black chairman in the country's history. The company was severely criticized by the Public Investment Corporation (PIC) for appointing a white deputy-chairman, who PIC contended was appointed to supervise the chairman. The pursuant negative publicity led to the resignation of the deputy-chairman and has also raised the question of the independence of non-executive directors with long tenures.

management is being played out, is an example of increased shareholder activism. Investors, especially pension fund managers, have started pressuring and, in some cases, providing guidelines to their asset managers regarding investment parameters and voting policies. Investigative journalism is also on the rise and has helped bring attention to corporate governance-related concerns and wrong doings in companies.

Stronger enforcement needed to complement good corporate governance framework

Quality of enforcement continues to be a concern of the Task Force. While efforts have been made to update and strengthen laws, the level of enforcement is still questionable. Recent highly publicized corporate governance scandals such as Fidentia and CorpCapital Ltd³ highlight a disconnect between the country's corporate governance framework and actual practices. The combination of a voluntary compliance code, a Self Regulatory Organization (SRO) system of oversight, a fragmented regulatory framework and a secret settlement system weakens the overall compliance and enforcement environment.

The comply-or-explain system of corporate governance requires full transparency from companies, who are required to disclose their level of compliance with recommended best practices. However, only a minority of South African companies fully embrace the spirit of the disclosure required under a voluntary compliance environment. Most companies provide standardized disclosure that is of little use to investors. The SRO system puts the onus of ensuring compliance on industry participants who are required to report wrongdoing to the regulators. With regard to corporate governance disclosures, SROs make limited effort to assess the degree of compliance as a company is said to have complied with listing requirements if it has answered the required questions irrespective of the quality of answers.

Moreover, South Africa's enforcement function is fragmented between the Financial Services Board (FSB) and the Department of Trade and Industry (DTI), which has the effect of weakening authority. The FSB supervises compliance with laws regulating non-banking financial institutions and services and the Department of Trade and Industry (DTI), supervises compliance with companies law.

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³http://www.corporatecodes.co.za/live/content.php?Item_ID=42

There is a general perception among market participants that the enforcement function at the DTI is weaker than other regulators. Much of this is blamed on the non-availability of trained personnel. Furthermore, expenditure as a percent of final appropriation declined from 91 percent for year end 31st March 2003 to 81 percent for year end 31st March 2006, which could indicate that resources are not being fully utilized. However, as required in the Companies Bill, a significant restructuring of the DTI is being planned, which will include merging the DTI enforcement units with CIPRO. Recent revision to the Securities Services Act (2005) has helped strengthen enforcement at the FSB through the creation of an enforcement committee that has tribunal-type powers and can address non-compliance matters.

Lastly, the practice of using secret settlements by regulators to deal with corporate wrongdoings shields companies and individuals from loss of reputation. By entering into secret settlements, which predominately rely on wrongdoers paying a fine or penalty that is not disclosed to the public, regulators fail to test the efficiency and effectiveness of the country's court system.

Impact of black economic empowerment (BEE)

BEE has had a significant impact on the corporate governance of companies. Through the adoption of industry-specific BEE charters, the direct and immediate impact of BEE has been on the ownership structure of companies. Under BEE charters, companies are required to diversify their shareholder base to better represent society at large and to include previously disadvantaged social groups. Much of this diversification has been through the sale of shares to a limited number of individuals or to funds representing previously disadvantaged individuals.

The scorecard system, which tries to quantify achievements by focusing on employment, equity, procurement and skills training, has created a push for diversity on boards and managements of companies to include blacks and women. However, achieving diversification of board of directors is often difficult due to the limited pool of trained directors. As a result, the few well-qualified black directors are in high demand and often sit on multiple boards, sometimes as many as 15 boards. Presently, there are no limits or guidance on how many boards individuals may sit on. There is fear that the lack of qualified directors will give rise to the 'professional director', where a

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director serves on several boards and collects fees to earn a living. However, to deal with the shortage of qualified directors, the country has established an Institute of Directors that provides director training programs. In addition, the stock exchange is attempting to develop a pool of well-qualified directors by requiring compulsory director training for all board members of AltX listed companies (see below).

Although BEE has had some positive impact on the corporate governance of companies, it has also created complications that will need to be dealt with in the near future. For example, there is a growing push towards sustainability issues. In particular, there is a vocal constituency in the country that wants companies to adopt a stakeholder perspective through worker representation on company boards. South Africa currently has a single-tier structure as practiced in the United Kingdom, United States and other commonwealth countries. Worker representation on the board is more reflective of a two-tier system of board governance as practiced in Germany and the Netherlands. The two systems differ widely in their basic philosophy. Accordingly, control mechanisms in the two systems also differ. A single-tier board structure assumes conflicts of interest between principle parties, which are controlled through a system of outside checks and balances. In contrast, a dual-board structure assumes essentially cooperative relationships, which are controlled through a network of internal contacts between the principle parties.

It is widely recognized that the initial purpose of BEE—to integrate previously disadvantaged groups into the economy— was vitally important for the long-term growth and social stability of the country. However, a growing number of people in the country believe that the BEE movement has failed to fully achieve its objectives and has benefited only a small segment of previously disadvantaged individuals. Therefore, the DTI has begun to focus on promoting broad-based black economic empowerment or BBBEE. If worker participation in management becomes part of the BBBEE agenda, authorities need to address the challenges in introducing a dual-tier style of governance in a single-tier system.

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Move to develop and sustain equity markets through the creation of AltX

The Johannesburg Stock Exchange (JSE) established the AltX, the alternative exchange to the JSE to attract small, growth-oriented companies that are not able to list on the JSE Main Board but are looking to access capital. The AltX has been successful in attracting about 50 companies with a combined market capitalization of about R17 billion (~USD 2.4 billion) since its inception in August 2004. It is expected to reach 100 companies by the end of the year. In comparison, the JSE has about 350 listed companies with a combined market capitalized of R3 trillion (~USD 434 billion). Listing requirements for AltX companies are less stringent than JSE listed companies. Charts 1 and 2 show the performance of the JSE and AltX exchanges respectively.

New companies that want an AltX listing have to undergo a strong whetting process and agree to appoint a Designated Advisor, who will advise the company on all its responsibilities during the application process and beyond. A Designated Adviser is the guardian of the listed company's compliance with the JSE listings requirements and other applicable regulations. Since companies listed on AltX are generally small, family-owned businesses, and BEE companies, AltX has created Knowledge Exchange initiatives, which includes collaboration with the Wits Business School (WBS) and the Institute of Directors (IoD) to provide the Directors Induction Program (DIP). DIP is a compulsory education program for all executive and non-executive directors of AltX companies.

Many emerging market countries are struggling to find ways to improve corporate governance in small-and medium-sized companies. By creating the AltX, the JSE has put in place a system by which small-and-medium companies can access financial markets while slowly evolving and improving their corporate governance structures.

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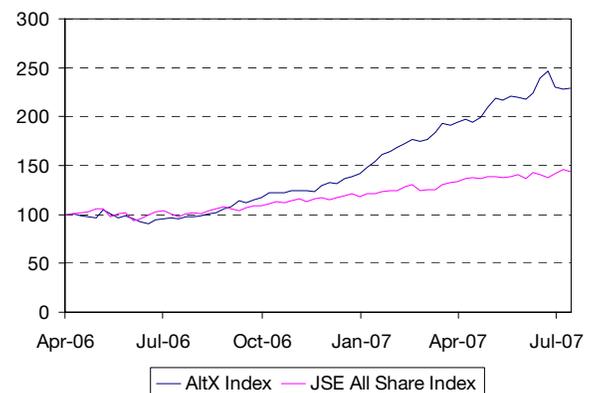
Chart 1: JSE All Share Index

(Jan. 1997 = 100)



Chart 2: JSE All Share Index and AltX Index

(Apr. 2006 = 100)



OUTLOOK AND KEY RECOMMENDATIONS

In our 2003 report on South Africa we predicted that the country’s approach to corporate governance going forward was likely to be as sophisticated as its approach to the development of domestic financial markets. Since that time, the authorities have made significant efforts to further strengthen the corporate governance framework of the country by systematically amending and updating existing laws and guidelines. As a result, South Africa’s corporate governance framework continues to be ranked in the top decile of emerging market countries’ corporate governance frameworks assessed by the IIF.

However, it is difficult to assess if companies have adopted most of the corporate governance guidelines as suggested in the King II report. Recent corporate governance-related controversies indicate that companies and investors have different interpretations of key corporate governance concepts. For example, some of the concepts that need clarification include—what qualifies as independence for board of directors? What is the maximum number of boards a director can sit on and still be effective? Should there be a mandatory retirement age? Authorities need to provide clarification and guidance on these matters.

A cause for concern are calls for rolling back some of the planned corporate governance provisions in the new Companies Bill. Given the poor quality of enforcement in the country, the Task Force strongly believes that some legislation is required with regard to corporate governance. A number of provisions in the new Companies Bill—such as responsibilities of directors—are fundamental concepts that are commonly incorporated in Companies Acts in most countries.

The South Africa Task Force expects corporate governance to remain an important and evolving topic in the coming years, particularly since the country will begin implementing requirements of the new Companies Bill. Moreover, a joint review by the National Treasury, DTI and FSB of all laws, rules and guidelines governing financial markets, could result in new legislation or changes in existing legislation. However, it is necessary that the enforcement function at the regulatory level be strengthened and adequate training provided to staff if new legislation is to have positive effect. The Task Force also recommends that the complaint, investigation and fines/penalty process be made transparent and public. This will help dispel current perceptions that there are no repercussions to non-compliance with rules and regulations.

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Issues surrounding BEE and now BBBEE will continue to shape the socio-economic landscape of the country. The Broad-Based Black Economic Empowerment Act provides codes of good practices for companies by the DTI and identifies failures of the BEE, including lack of participation by black women in BEE consortia and the reversion of black equity into the hands of original owners, following the collapse of BEE deals owing to onerous structuring and repayment terms. The act also outlines a methodology for increasing participation of previously disadvantaged individuals in all levels of management. BEE is still a sensitive issue and there is some fear that an aggressive push by the authorities to compel companies to change their governance structures at an accelerated pace will have disastrous consequences especially in terms of a possible brain-drain in the country.

Finally, the Task Force appreciates the efforts on the part of authorities to update and strengthen regulations. However, for its part, the Task Force would like to see the following specific actions taken:

- √ Allow cumulative voting in director elections
- √ A majority vote by all shareholders to dilute voting or ownership rights
- √ Introduce mechanism through which minority shareholders can formally present a view to the board if they own some predefined minimum threshold of outstanding shares
- √ Introduce quorum for board meetings to include a mix of executive, non-executive and independent board members
- √ Establish term limits for non-executive directors
- √ Tighten disclosure and monitoring of related-party and off-balance sheet transactions
- √ Modify procedures to allow for a more liberal use of class action lawsuits
- √ Mandate through law the approval by shareholders of anti-takeover devices
- √ Encourage shareholder activism by requiring disclosure of voting records by institutional investors

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APPENDIX

SOUTH AFRICA CORPORATE GOVERNANCE FRAMEWORK

Since our first visit to South Africa in the summer of 2003, many improvements have been made in corporate governance. In 2004, the Department of Trade and Industry (DTI) determined that the Companies Act (CA) be completely revised in order to bring it up to date with other international standards in part by improving minority shareholder protection, transparency and accountability in South Africa. It released the first draft copy of the Companies Bill (CB) in July 2006, however, its adoption has been delayed several times and it isn't expected to become law until 2009. For this reason, in 2006 the Corporate Laws Amendment Act (CLAA) was promulgated to immediately codify certain provisions of the King II Code. The CLAA will make several important changes, highlighted under *Summary Appraisal* in the report. The CLAA is expected to come into operation in July or August 2007.

The analysis below compares the IIF Code with the current South African corporate governance framework as prescribed by the CA, CLAA, JSE listing requirements and anticipates the changes that are scheduled to be adopted in coming years.

Minority Shareholder Protection

The South Africa corporate governance framework currently addresses a little less than three-fourths of the minority shareholder protection guidelines contained in the IIF Code, up from about one-half four years ago. The Companies Bill will further increase compliance in this area. Scope for further improvement exists in the area shareholder meetings.

Voting Rights

The IIF Code states that firms should allow proxy voting and as a best practice proxy systems should be universally available to all shareholders. South Africa's corporate governance framework permits proxy voting. In addition, JSE listing requirements allow for the electronic transmission of proxies. The Companies Bill will also allow electronic voting by shareholders and directors and the electronic transmission of proxies.

The IIF Code suggests that each share should equal one vote and that the "one-share, one-vote" principle should be a threshold requirement for all new issues. The Companies Act stipulates that, "every member of a company having a share capital shall have a right to vote at meetings of that company in respect of each share held." JSE listing requirements no longer allow shares with low/no voting rights (referred to as N-shares) to be listed on the exchange. However, N-shares listed before 2000 can continue to be traded. As a best practice, the IIF Code recommends that companies reduce and eventually eliminate all nonvoting shares.

Cumulative voting in director elections is encouraged in the IIF Code as a means of fully reflecting the opinions of minority shareholders. Cumulative voting is not addressed in South Africa's corporate governance framework or in the anticipated Companies Bill. The adoption of this provision would greatly improve the rights of minority shareholders in South Africa.

Company Capital Structure

The IIF Code recommends that companies require shareholder or board approval to change the capital structure of the company through takeovers/buyouts/mergers and anti-takeover measures, capital increases, dilution of voting or ownership rights, IPOs, and significant share buybacks. Both the Securities Regulation Code in the Companies Act and the proposed Companies Bill stipulate that shareholders should be provided with sufficient information and time to make informed judgments about a takeover/merger proposal. In addition, the CLAA requires share buybacks to be approved by special resolution.

Furthermore, the Companies Act and Companies Bill both state that any offer from a person who will acquire 35 percent or more of a company's voting rights should trigger a mandatory offer. This complies fully with the IIF Code's recommendations.

The IIF Code also states that any anti-takeover measure including poison pills and golden parachutes should be approved by shareholders. Neither the Companies Act nor the Companies Bill requires an affirmative vote by shareholders.

Shareholder Meetings/Other Rights

The guidelines of the IIF Code call for notices and agendas to be sent within a reasonable amount of time in advance of meetings. The best practice suggested by the IIF Code encourages meeting notices and agendas to be sent at least one month prior to the meeting. According to the Companies Act, a general shareholder meeting for the purpose of a special resolution may be called with not less than 21 days' prior notice. All other general shareholder meetings may be called with not less than 14 days' prior notice, and must include the date, time and location of the meeting. Notices can be published or mailed. The adoption of the Companies Bill would further strengthen this area by requiring that the notice of the meeting also include an agenda.

The Companies Act also stipulates that a general shareholder meeting can be called when two or more shareholders holding ten percent of issued share capital request one. Moreover, 100 members of the company or a member holding at least 5 percent of the company's share capital may also call a meeting. This will be revised with the adoption of the Companies Bill, which requires a special meeting when shareholders representing 25 percent or more of the company's voting shares demand one.

Under the Companies Act, a quorum is constituted with 3 shareholders, unless the company's articles provide otherwise. The IIF Code, in comparison, suggests a quorum level of around 30 percent and recommends that some independent non-majority owning shareholders be required to be present. The Companies Bill would improve shareholder meetings by requiring that 25 percent of shareholders be present to form a quorum. Further improvement could be made by requiring a percentage of them to be independent.

The IIF Code also recommends that a mechanism exist to trigger arbitration procedures in cases where a conflict arises between minority and controlling shareholders. It states that minority shareholders should have the right to formally present a view to the board if they own some predefined minimum threshold of outstanding shares. Neither of these provisions is included in South Africa's corporate governance framework. However, the Companies Bill creates a Companies' Ombud to "facilitate alternative dispute resolutions and to review decisions of the Commission and Takeover Regulation Panel", which administer the requirements of the Companies Bill.

Structure and Responsibilities of the Board of Directors

South Africa’s corporate governance framework encompasses over three-quarters of the guidelines pertaining to the Board of Directors in the IIF Code. Almost all the key aspects regarding the structure and functioning of the board are outlined. The Companies Bill will strengthen this area, but scope for further improvement includes requiring executives, non-executives and independent non-executives to be present at director meetings to form quorum.

Board Structure

The IIF Code encourages the participation of independent and non-executive directors on company boards. It defines independent directors as those who do not have a business or personal relation with management or the company and who have not been employed by the company in the past three years. Both King II and JSE listing requirements comply with these guidelines, outlining several qualifications for an independent director including being a non-executive director who is “free from any business or other relationship which could be seen to materially interfere with the individual’s capacity to act in an independent manner.”

With regard to the composition of the board, the IIF Code recommends that at least one-third of the board be non-executive, a majority of which should be independent. Both King Code II and the JSE listing requirements recommend that the board be comprised of a balance of executive and non-executive directors, preferably with a majority of non-executive directors, of whom a sufficient number should be independent of the management.

As to the frequency of board meetings, King Code II requires that they be held at least once a quarter. In addition, the Companies Act requires minutes of each meeting to be kept at the registered office or the office where the meetings take place. Together these provisions comply fully with the IIF Code.

Both the JSE listing requirements and King Code II stipulates that the nomination of directors is a matter for the entire board, assisted where necessary by the nomination committee. In addition, they recommend that the nomination committee be composed of only non-executive directors, of whom the majority should be independent. The IIF Code endorses the creation of a nomination committee, chaired by an independent non-executive to nominate new board members. It also requires minority shareholders to have a mechanism for putting forward directors at the Annual General Meeting or Extraordinary General Meeting. This type of mechanism is not mentioned in South Africa’s corporate governance framework.

Additionally, King Code II states that an executive director’s fixed service contract should not exceed three years. This provision will be codified by the adoption of the Companies Bill. However, there is no explicit mention of term limits for non-executive directors. The IIF Code recommends that independent directors be re-elected every three years for no more than three terms as a best practice.

Board Committees

The King II Report states that, at a minimum, boards should create audit and remuneration committees. Additionally, a company may create other committees for specific issues related to that company. Further, with the adoption of the Companies Bill, companies will be required to have an audit committee consisting of independent

directors. The IIF Code also supports the establishment of a nomination committee to enhance the board's efficiency. King II also suggests that an independent non-executive director should chair all board committees and that non-executive directors must play a central role in the activities of committees. This complies fully with the IIF Code.

Disclosure

The IIF Code stresses the importance of disclosing all material information to the public. This includes earnings results, the acquisition or disposal of assets, board changes, related-party transaction, shareholdings of directors, and changes to ownership. King II requires that a company's annual report provide information on responsibilities of directors, financial condition and business performance, risk management and internal control, accounting policies, membership of the remuneration committee and individual director remunerations including stock options. Further, all listed companies in South Africa are subject under JSE listing requirements to disclose the extent to which they comply with the recommendations in King Code II.

In addition, JSE listing requirements, King Code II and the Companies Bill all require the disclosure of director remunerations including salary, bonus, benefits and contributions under pensions. This fully complies with IIF Code guidelines.

Moreover, the IIF Code encourages the disclosure of information released via the approved stock exchange system for company announcements, as well as through the company's website and annual reports. King II recommends that companies make every effort to ensure that information is distributed via a broad range of communication channels, including the Internet.

Other Responsibilities

In the case of a conflict of interest the IIF Code recommends that the director or senior executive involved should fully disclose all information regarding the conflict and board members must abstain from voting on issues pertaining to the conflict. While the JSE listing requirements stipulate that conflicts of interest must be disclosed, the Companies Bill includes provisions which would comply fully with the IIF Code.

The IIF Code states that internal control and risk management should be a function of the audit committee. King II encourages the creation of a board committee to assist the board in reviewing the risk management process. It requires the board to develop risk strategy policies, set the company's risk tolerance level, and assess the company's risk profile on the basis of various risk categories, such as credit, market, operational, human resources, and legal risks. It also suggests that the board consider the need for a confidential reporting process (whistle-blowing) to guard against possible fraud and corporate malfeasance.

Regarding investor relations, King II recommends that companies enter into constructive dialogues with institutional investors. The IIF Code suggests that companies develop an investor relations program that reaches out to all shareholders and fully informs them of corporate activities. In addition, the IIF Code encourages companies to include a social responsibility policy in the company's reports and accounts. King II complies fully with this recommendation by requiring every company to report at least annually on the nature and extent of its societal, transformation, ethical, safety, health and environmental management policies and practices.

Accounting/Auditing

South Africa's corporate governance framework fulfills nearly all of the IIF guidelines in this area. However, improvements could be made by requiring off-balance sheet transactions to be disclosed

Standards

The JSE listing requirements, as well as, the CLAA require all listed companies to comply with the Generally Accepted Accounting Practice (GAAP), as defined by the South African Institute of Chartered Accountants (SAICA), which are in line with International Accounting Standards (IAS). Previously, the South African GAAP lacked legal backing. However, the CLAA has resolved this issue by making it an offence and prescribing punitive penalties for failing to prepare financial statements in accordance with GAAP. In addition, the Companies Bill will require financial statements to be consistent with the International Financial Reporting Standards (IFRS) of the International Standards Board.

As for audit quality, King II fully endorses the Standards for the Professional Practice of Internal Auditing promulgated by the Institute of Internal Auditors (IIA). Auditors must obtain authorization from the Public Accountants and Auditors Board (PAAB) to serve as audit companies. The PAAB also has its own code regarding auditors' professional independence and integrity. Furthermore, the CLAA will require auditors to be registered under the Auditing Profession Act (APA).

As for the frequency of reporting and auditing, the IIF Code requires reports to be released at least every six months, with a best practice of every quarter. While King II and the Companies Bill require an audited report every year, King II only suggests that the audit committee consider whether or not an interim report should be subject to an independent review by the external auditor.

In addition, the IIF Code requires a statement from the audit committee addressing business risks should be included in all reports. These statements should also be reviewed by the auditors. The King II Report suggests that directors make a statement in their annual reports stating that adequate accounting records and an effective system of internal controls and risk management have been maintained. The IIF Code also encourages off-balance sheet transactions to be included in annual reports. Unfortunately, there is no provision regarding off-balance sheets in South Africa's corporate governance framework.

Audit Committee

King II outlines the role of the audit committee in great detail. It promotes due diligence by requiring audit committees to approve the work plan of internal auditors and by requiring auditors to report back to the committee. The audit committee must be chaired by an independent, non-executive director and be comprised of a majority of non-executive directors. Importantly, the CLAA will require that audit committees consist only of non-executive directors of the company who must act independently. In addition, King II requires the majority of audit committee members to be "financially literate." This complies with the IIF Code's stipulation that at least one independent director should have a financial background.

The King Code recommends that where there is a departure from relevant accounting standards, the board of directors must not only disclose and explain but also quantify the magnitude of the departure. The IIF Code states that any departure from accounting standards should be explained in the annual report.

The IIF Code stipulates that the audit committee should approve services provided by the external auditor and provide a breakdown in the annual report of the proportion of fees paid for each service. As a best practice, communication with auditors should be without executives present and reports of the external auditor should be sent directly to the committee. King II promotes the use of both internal and external auditors to establish an efficient audit process. Both King II and the Companies Act require companies to provide separate disclosure in their annual statement of the amount paid for non-audit services of external auditors.

Transparency of Ownership and Control

South Africa's corporate governance framework covers all of the IIF guidelines in the area of firm ownership and control. This has improved since our 2004 report when it complied with about three-fourths of IIF guidelines.

The IIF Code encourages companies to disclose directors' and senior executives' shareholdings, and to disclose all insider dealings by directors and senior executives. In addition, senior executives' and directors' share transactions should also be disclosed within three days of execution. As a best practice, total share ownership of connected parties must be disclosed if it is greater than 5-10 percent of outstanding shares. The Insider Trading Act provides for supervision and monitoring of insider trading. In addition, the JSE requires that insider dealings of both directors and senior management be disclosed.

The IIF Code also requires minimally significant shareholders, defined as any shareholder holding 3-10 percent of a company's share capital, to disclose their holdings. JSE listing requirements comply full with this recommendation by calling for the public disclosure of holdings of any shareholder who owns 5 percent or more of a company's share capital.

Regulatory Environment and Enforcement

Progress has been made to upgrade the regulatory environment in South Africa and more reforms are planned to strengthen enforcement.

South Africa's regulatory responsibilities are divided between three institutions—the Financial Services Board (FSB), the Department of Trade and Industry (DTI) and the Companies and Intellectual Properties Office (CIPRO). The FSB oversees South Africa's non-banking financial services industry, including the JSE. It is separate from government and is financed by the financial services industry itself. It also acts in an advisory capacity to the Ministry of Finance. The Executive Officer of the FSB has formal powers of investigation with

criminal sanctions in the event of obstruction, and can apply to court for an interdict or a mandamus of financial institutions.

In February 2005, the FSB adopted the Securities Services Act 36 of 2004 (the “SSA”). This Act consolidates the Stock Exchanges Control Act, the Financial Markets Control Act, the Custody and Administration of Securities Act, and the Insider Trading Act, in addition to introducing new and more effective provisions. These provisions include the establishment of an enforcement committee which is empowered to impose an administrative penalty, to be paid to the FSB, on a person who has failed to comply with the SSA. This has helped to strengthen the enforcement powers of the FSB.

The DTI monitors company compliance with the Companies Act. It is viewed as having weaker enforcement powers compared to other regulatory institutions. With the adoption of the Companies Bill, dti’s enforcement unit will be merged with CIPRO.

Also see *Stronger enforcement needed to compliment good corporate governance framework* on page 6 of this report.

**Comparison of IIF Code and
King Code II (King), JSE Listing Requirements (JSE), Companies Act of 1973 (CA), Corporate Laws
Amendment Act (CLAA) and Companies Bill (CB)**

	IIF	King Code II (King), JSE Listing Requirements, Companies Act (CA), Corporate Laws Amendment Act (CLAA) and Companies Bill (CB)
Minority Shareholder Protection		
Voting Rights		
Proxy voting	Firms are encouraged to allow proxy voting.	<p>Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend, speak and vote in his place at any meeting of the company.</p> <p><i>(CA Chapter VII.189 (1))</i></p> <p>Issuers and their agents should make appropriate arrangements for the receipt of online proxy returns.</p> <p><i>(JSE listing requirements Schedule 23.11)</i></p>
Multiple voting classes	One-share, one-vote should be a threshold requirement for new issues.	<p>Every Shareholder of a company shall have a right to vote those holdings at meetings of the company.</p> <p><i>(CA Chapter VII.193-197)</i></p> <p>An issuer shall not issue any securities with voting rights differing from other securities of the same class.</p> <p><i>(JSE listing requirements 3.28)</i></p> <p>The JSE does not:</p> <ul style="list-style-type: none"> (a) grant a listing to a company with different voting rights; or (b) allow an existing listed company to issue securities with different voting rights. <p>However, where a company currently has listed securities with different voting rights, the JSE will grant a listing of additional securities of that class.</p> <p><i>(JSE listing requirements 4.18)</i></p>
Cumulative voting	Cumulative voting should be permitted.	No provision.

Firm/Capital Structure		
<p>Takeover/buyout/merger - Procedures on major corporate changes</p>	<p>Shareholder approval of mergers and major asset transactions should be required.</p> <p>If an offer is made above a reasonable minimum threshold of outstanding stock, a significant portion of that purchase must be through a public offer.</p> <p>Ownership exceeding 35% triggers a public offer in which all shareholders are treated equally.</p> <p>Under a merger or takeover, minority shareholders should have a legal right to sell shares at appraised value.</p>	<p>Under the principle of equal treatment of shareholders, all shareholders should be provided with sufficient information and time to make informed judgment about a takeover/merger proposal. <i>(CA, Securities Regulation Code on Takeovers and Merger)</i></p> <p>A mandatory offer is required when a person or persons, holding not less than 35% but not more than 50% of the voting rights of a company, makes an offer to acquire in any 12 month period securities carrying more than 5% of the voting rights. <i>(CA, Securities Regulation Code on Takeovers and Mergers, Section F -Rule 8)</i></p> <p>Under a mandatory offer the acquirer shall extend offers to the holders of any class of equity capital, whether voting or non-voting to acquire their securities for the same or comparable consideration. <i>(CA, Securities Regulation Code on Takeovers and Mergers, Section F -Rule 8)</i></p>
<p>Anti-dilution measures</p>	<p>Dilution of voting or ownership rights should not be permitted without a majority vote by all shareholders. If agreed upon by shareholders, any dilutive activity should apply pro rata across all shareholders.</p> <p>Shareholder approval should be required beyond legally defined thresholds.</p>	<p>No provision.</p>
<p>Capital Increases (pre-emptive rights)</p>	<p>Shareholder approval is required. Any capital increase over a period of one year and above a minimum threshold must first be offered to all existing shareholders.</p>	<p>A special shareholder resolution is required if a company wishes to increase its share capital by new shares of such amount, or increase the number of its shares having no par value. <i>(CA, Chapter V Clause 75)</i></p>
<p>Share buybacks</p>	<p>Details of share buybacks should be fully disclosed to shareholders.</p>	<p>A company may, by special resolution of the company, approve the acquisition of shares issued by the company. The approval by special resolution may be general approval or a specific approval for a particular acquisition. <i>(CA, Chapter V Clause 85)</i></p>

Shareholder Meeting/Other Rights		
Meeting notice and agenda	Meeting notice and agenda should be sent to shareholders within a reasonable amount of time prior to meetings.	A general meeting for the purpose of a special resolution may be called with not less than 21 days' notice in writing. Any other general meeting may be called with not less than 14 days' notice in writing. <i>(CA Chapter VII.186(1))</i>
Special meetings	Minority shareholders should be able to call special meetings with some minimum threshold of the outstanding shares.	Any general meeting may be called by 2 or more shareholders holding not less than 10 percent of issued share capital. <i>(CA Chapter VII.180)</i> One hundred members of the company or members representing not less than 5% of share capital may request a general meeting. <i>(CA Chapter VII 181)</i>
Treatment of foreign shareholders	Foreign shareholders should be treated equally with domestic shareholders.	Foreign shareholders have equal rights to domestic shareholders.
Conflicts between shareholders	Should have mechanisms whereby a majority of minority shareholders can trigger an arbitration procedure to resolve conflicts between minority and controlling shareholders.	Currently no provision, however the Companies Bill creates a companies' ombud to provide a forum for alternative dispute resolution on company issues.
Quorum	Should not be set too high or too low. Suggested level would be about 30% and should include some independent non-majority-owning shareholders.	Currently no provision, but will be addressed by the Companies Bill.
Petition rules/objection to majority shareholder actions	Minority shareholders should have the right to formally present a view to the board if they own some predefined minimum threshold of outstanding shares.	No provision.

Structure and Responsibilities of the Board of Directors		
Board Structure		
<p>Definition of independence</p>	<p>Cannot have a business or personal relationship with the management or company, and cannot be a controlling shareholder such that independence, or appearance of independence, is jeopardized.</p>	<p>Independent director is a non-executive director who:</p> <ul style="list-style-type: none"> √ Is not a representative of a shareowner who has the ability to control or significantly influence management √ Has not been employed by the company or the group of which it currently forms part, in any executive capacity for the preceding three financial years; √ Is not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by the company or the group in an executive capacity √ Is not a professional advisor to the company or the group, other than in a director capacity √ Is not a significant supplier to, or customer of the company or group; √ Has no significant contractual relationship with the company or group; and √ Is free from any business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner. <p><i>(King, Code of Corporate Practices and Conduct 2.4.3) Also in (JSE 3.84(f)(iii))</i></p>
<p>Share of independent directors</p>	<p>At least one-third of the board should be non-executive, a majority of who should be independent.</p>	<p>The board should comprise a balance of executive and non-executive directors, preferably with a majority of non-executive directors, of whom a sufficient number should be independent of the management.</p> <p><i>(King, Code of Corporate Practices and Conduct 2.2.1 and JSE listing requirements 3.84)</i></p>
<p>Frequency and meeting record</p>	<p>For large companies, board meetings should be held every quarter. Minutes should be a part of public record.</p>	<p>The board should meet regularly, at least once a quarter, and should disclose in the annual report the number of board and committee meetings held in the year and the details of attendance of each director.</p> <p><i>(King, Code of Corporate Practices and Conduct 2.6.1)</i></p> <p>The directors of a company should take minutes of all meetings of directors or managers in one of the official languages of the Republic. The minutes should be entered in one or more books and kept at the registered office of the company or at the office where such minutes are made up.</p> <p><i>(CA Chapter VIII.242)</i></p>

Quorum	Should consist of executive, non-executive, and independent non-executive members.	No provision.
Nomination of directors	Should be done by nomination committee chaired by an independent director. Minority shareholders should have mechanism for putting forward directors at Annual General Meeting (AGM) and Extraordinary General Meeting (EGM).	Procedures for appointments to the board must be formal and transparent, and a matter for the board as a whole, assisted where appropriate by a nomination committee. The nomination committee must constitute only non-executive directors, of whom the majority must be independent, and should be chaired by the board chairperson. <i>(JSE listing requirements 3.84 (a)). Also in (King, Code of Corporate Practices and Conduct 2.2.2).</i>
Term limits for independent Directors	For large companies, re-election should be every 3 years with specified term limits.	Executive director's fixed service contract should not exceed 3 years. <i>(King, Code of Corporate Practices and Conduct 2.5.9)</i>
Board committees	The Board should set up 3 essential committees: nomination, compensation and audit.	All board committees should be chaired by an independent non-executive director. <i>(King, Code of Corporate Practices and Conduct 2.7.7)</i> At a minimum, each board should have an audit and a remuneration committee. Industry and company specific issues will dictate the requirement for other committees. <i>(King, Code of Corporate Practices and Conduct 2.7.5)</i> All issuers must appoint an audit committee and remuneration committee and if required, given the nature of their business and composition of their board, a risk committee and nomination committee. <i>(JSE listing requirements 3.84 (d))</i>
Evaluation of Board members	A nomination committee should review directors ahead of formal re-election at the AGM.	Annually, the board, through its nomination committee should regularly review its required mix of skills and experience and other qualities such as its demographics and diversity in order to assess the effectiveness of the board. This should be by means of a self-evaluation of the board as a whole, its committees and the contribution of each individual director. <i>(King, Code of Corporate Practices and Conduct 2.8.1)</i>

Disclosure		
Immediate disclosure of information that affects share prices, including major asset sales or pledges	Any material information that could affect share prices should be disclosed through stock exchange. Material information includes acquisition/disposal of assets, board changes, related-party deals, ownership changes, directors' shareholdings, etc.	Limited provisions. An issuer must notify the JSE of any change to the Board of Directors. <i>(JSE requirements 3.59)</i>
Procedures for information release	Through local exchanges, and as best practice, through company website.	Companies should make every effort to ensure that information is distributed via a broad range of communication channels, including the Internet. <i>(King, Code of Corporate Practices and Conduct 6.2.6)</i>
Remuneration of directors	Should be disclosed in annual report. All major compensation schemes, including stock options, should be fully disclosed and subject to shareholder approval.	Companies should provide full disclosure of director remuneration on an individual basis, giving details of earnings, share options, restraint payments and all other benefits. <i>(King, Code of Corporate Practices and Conduct 2.5.4)</i> Issuers are required to disclose individual director's emoluments including an analysis in aggregate and by director, of emoluments paid in respect of each current FY and the preceding FY, or receivables by directors, in their capacity as director or in any other capacity, distinguishing separately between executive and non-executive directors; fees for services as director, basic salary, bonuses, expense allowance, material benefits, contributions under pension, etc. <i>(JSE listing requirements 8.63 (l))</i>

Other		
Conflict of interest	Any potential or actual conflicts of interest on the part of directors should be disclosed. Board members should abstain from voting if they have a conflict of interest pertaining to that matter.	<p>Before listing, an applicant must ensure that each of the directors is free of any conflict of interest between the director's duties to the company and his/her private interests.</p> <p><i>(JSE listing requirements 4.9)</i></p> <p>Full and timely disclosure of any conflict, or potential conflict, by a director must be made known to the board. If an actual or potential conflict does arise, the director involved can participate in the debate and/or vote on the matter but must give careful consideration to their own integrity in such circumstances and potential consequences it may have for the board, company and themselves personally.</p> <p><i>(King, Section 1, Chapter 1.6)</i></p>
Integrity of internal control and risk management system	Should be a function of the audit committee.	<p>The board should regularly review the processes and procedures to ensure the effectiveness of the company's internal systems of control.</p> <p><i>(King, Code of Corporate Practices and Conduct 2.6.4)</i></p> <p>A board committee should be appointed to assist the board in reviewing the risk management process and the significant risks facing the company.</p> <p><i>(King, Code of Corporate Practices and Conduct 3.1.6)</i></p> <p>Board should consider the need for a confidential whistle-blowing process.</p> <p><i>(King, Section 2 Chapter 3.8)</i></p>
Investor relations	Should have an investor relations program.	<p>Companies should be ready where practicable, to enter into dialogue with institutional investors based on constructive engagement and the mutual understanding of objectives.</p> <p><i>(King, Code of Corporate Practices and Conduct 7.1)</i></p>
Social responsibility and ethics	Make a statement on policy concerning environmental issues and social responsibility.	<p>Every company should report at least annually on the nature and extent of its societal, transformation, ethical, safety, health and environmental management policies and practices.</p> <p><i>(King, Code of Corporate Practices and Conduct 5.1.1)</i></p>

Accounting/Auditing		
Standards		
National/International GAAP	Identify accounting standard used. Comply with local practices and use consolidated accounting (annually) for all subsidiaries in which sizable ownership exists.	<p>South African GAAP, which amounts to, or even exceeds the IAS, is required for all listed companies. <i>(JSE listing requirements 8.63)</i></p> <p>Consolidated annual financial statements must be made. <i>(CA Chapter XI.280)</i></p> <p>Financial reporting standards must be statements of GAAP. <i>(CLAA Section 1.B)</i></p>
Frequency	Semi-annually audited report at end-FY.	<p>The audit committee should consider whether or not an interim report should be subject to an independent review by the external auditor. <i>(King, Code of Corporate Practices and Conduct 6.2.1)</i></p>
Audit quality	Independent public accountant. As a best practice, auditors should adhere to the global standards devised by the International Forum on Accountancy Development (IFAD).	<p>No person or firm may be appointed as auditor of a company unless that person or firm is a registered auditor under the Auditing Profession Act (APA). <i>(CLAA, Amendment of Section 269)</i></p>
Off-balance sheet transactions	Listing requirements should specify disclosure of off-balance-sheet transactions in the annual report with materiality level for disclosure.	No provision.
Risk factors/ monitoring procedures	Should be statement from audit committee in reports and accounts addressing business risks. Need a mechanism for review by auditors.	<p>The directors should report in their annual report that adequate accounting records and an effective system of internal controls and risk management have been maintained. <i>(King, Code of Corporate Practices and Conduct 8.4)</i></p>

Audit Committee		
Audit committee	For large firms, must be chaired by qualified independent director.	<p>The audit committee should be comprised of a majority of independent non-executive directors. The chairperson should be an independent non-executive director and not the chairperson of the board. Preferably, the board chairperson should not be a member of the audit committee at all, but could be invited to attend meetings as necessary by the chairperson of that committee. The board should consider whether or not it desirable for the chief executive officer to be a member of the audit committee, or to attend only by invitation.</p> <p><i>(King, Code of Corporate Practices and Conduct 6.3.1-2)</i></p> <p>An audit committee must have at least two members and consist only of non-executive directors of the company who must act independently.</p> <p><i>(CLAA, Amendment of Section 269A)</i></p>
Financial background	At least one independent director should have a financial background.	<p>The majority of committee members should be “financially literate”.</p> <p><i>(King, Code of Corporate Practices and Conduct 6.3.1)</i></p>
Due diligence	Board must have an audit process and must approve the audit.	<p>The internal audit plan should be based on risk assessment as well as on issues highlighted by the audit committee and senior management.</p> <p><i>(King, Code of Corporate Practices and Conduct 4.2.3)</i></p>
Explanation/quantification of departures from accounting standards	Any departures from accounting standards must be explained in the annual report.	<p>The directors should report that applicable accounting standards have been adhered to or, if there has been any departure from the standards, this must not only be disclosed and explained but quantified.</p> <p><i>(King, Code of Corporate Practices and Conduct 8.4.5)</i></p>
Relationship with auditors	Audit committee should approve services provided by external auditor. Breakdown of proportion of fees paid for each service should be made available in annual report.	<p>The annual report must include all payments made or to be made to its auditor, specifying the remuneration for the audit, the remuneration for other specified services, the auditor’s expenses and payments in respect to the audit and any other matters.</p> <p><i>(CA Chapter X.283)</i></p> <p>In addition to the related Companies Act requirement, there should be separate disclosure of the amount paid for non-audit services with a detailed description in the notes in the annual financial statements of the nature thereof, together with amounts paid for each of the services described. <i>(King, Code of Corporate Practices and Conduct 6.1.5)</i></p>

Transparency of Ownership and Control		
Majority ownership	Significant ownership (20-50% including cross-holdings) is deemed to be control.	<p>A material shareholder is any person who is, or within the 12 months preceding the date of the transaction was, entitled to exercise or control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general/annual general meetings of the listed company, or any other company that is its subsidiary or holding company or is a fellow subsidiary of its holding company.</p> <p><i>(JSE listing requirements definitions)</i></p> <p>The Companies Act states that 35% or more of the voting rights of a company deems it to be in control.</p> <p><i>(CA, Securities Regulation Code on Takeovers and Mergers, Section B-Rule5)</i></p>
Buyout offer to minority shareholders	<i>Best Practice:</i> Ownership exceeding 35% triggers a buyout offer in which all shareholders are treated equally.	<p>A mandatory offer is required when a person or persons, holding not less than 35% but not more than 50% of the voting rights of a company, makes an offer to acquire in any 12 month period securities carrying more than 5% of the voting rights.</p> <p><i>(CA, Securities Regulation Code on Takeovers and Mergers, Section F -Rule 8)</i></p>
Related-party ownership	Companies should disclose directors' and senior executives' shareholdings, and all insider dealings by directors and senior executives should be disclosed.	<p>Supervision of insider trading is detailed. <i>(Insider Trading Act)</i></p> <p>Disclosure of related-party transactions in corporate financial statement is required. <i>(JSE listing requirements Section 10)</i></p>
Minimally significant shareholders	Shareholders with minimally significant ownership (greater than 3-10%) of outstanding shares must disclose their holdings.	<p>The holdings of any shareholder, which amount to 5% or more of a company's capital, should be publicly disclosed.</p> <p><i>(JSE listing requirements Section 7.A.27)</i></p>

Regulatory Environment		
<p>Enforcement powers</p>	<p>The supervisory authority and the exchange must have adequate enforcement powers. Exchanges should have the power to grant, review, suspend, or terminate the listing of securities. Enforcement authorities should have adequate training and an understanding of the judicial process.</p>	<p>Oversight and regulatory responsibilities are essentially concentrated in three institutions—Ministry of Trade and Industry, Financial Services Board and JSE Securities Exchange. The Ministry of Trade and Industry is responsible for monitoring adherence to the Companies Act. All incorporated firms are required to register with the Companies and Intellectual Properties Registration Office (CIPRO).</p> <p>The JSE Securities Exchange is the main stock exchange in South Africa. The JSE is a listed company and regulates brokerage members, issuers, and trading. It is authorized to issue private or public censures and impose fines, suspensions and delistings. In 2003, the JSE established the AltX, an alternate exchange to encourage listings of small and medium firms in South Africa.</p>
<p>Independence of supervisory body and of exchange</p>	<p>The supervisory body and the exchange should be independent from government and industry.</p>	<p>The Financial Services Board is a self-financed independent statutory body created in 1990. Oversight of the Stock Exchanges Control Act, which governs stock exchanges, is the responsibility of the FSB. In addition, the FSB regulates the insurance and pension fund industries and the central securities depositories. It has formal powers of investigation. When criminal conduct is discovered, cases are referred to the national director of public prosecution. The FSB has been working on a plan to replace the Stock Exchanges Control Act and three other acts with a Securities Services Bill in order to streamline the legal framework. The Bill would establish an Enforcement Committee at the FSB that would be authorized to impose administrative sanctions on offenders. The Bill is expected to become law in the near-term according to FSB officials.</p>

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