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The International Comparative Legal Guide to:

Corporate Governance 2019

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A practical cross-border insight into corporate governance

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EDITORIAL

Welcome to the twelfth edition of The International Comparative Legal Guide to: Corporate Governance.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

It is divided into two main sections:

Seven general chapters. These are designed to provide an overview of key issues affecting corporate governance law, particularly from a multi-jurisdictional perspective.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 33 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Sabastian V. Niles & Adam O. Emmerich of Wachtell, Lipton, Rosen & Katz for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The two main corporate entities in South Africa are private companies and public companies (typically listed on South Africa's main exchange, the stock exchange operated by the JSE Limited ("JSE")). This article primarily focusses on the latter, which are subject to a more demanding corporate governance, disclosure and transparency regime than private companies.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

All companies are subject to the corporate law requirements set out in the main source of company law in South Africa, being the Companies Act, 2008 (the "Companies Act"). The Companies Act governs, amongst other things, the powers and legal obligations of directors, annual disclosure requirements and the core company rules that must appear in the memorandum of incorporation ("MOI") (a company's primary constitutional document). All directors must adhere to prescribed fiduciary duties and rules of general conduct, as codified in the Companies Act and enshrined in the common law.

A company's MOI must comply with governance rules prescribed in the Companies Act regulating the fiduciary duties and general conduct of directors, protecting shareholders and creditors alike. Other rules are default rules that apply unless the MOI specifically alters them. Examples of the latter include quorum and notice requirements for board and shareholder meetings.

A public listed company and its MOI must additionally comply with the rules of the relevant exchange, which, in the case of the JSE, are the JSE Listings Requirements (the "Listings Requirements"). The Listings Requirements mandate that specific corporate governance practices be implemented, and that compliance therewith be disclosed in the company's annual report. These practices include, amongst other things, rules regulating: (i) the composition of the board; (ii) the composition and functions of various mandatory board committees; (iii) directors' emoluments; and (iv) the adoption of specific policies, including on the promotion of gender and racial diversity at board level. Several of these practices are discussed below.

In addition, the Listings Requirements obligate companies to comply with the fourth King Report on Corporate Governance for South Africa ("King IV Report"), which contains a Code of Corporate Practices and Conduct (the "Code") (collectively, "King IV"). The King IV Report deals with a number of governance principles, whilst the Code provides best practice recommendations on how to implement each principle. Listed companies are required to take measures to implement the principles of the Code, explaining such measures and their results in their annual reports, in accordance with the so-called "apply and explain" regime. King IV aims to enhance corporate governance by, amongst other things, encouraging broader stakeholder accountability and enhanced disclosure by companies. Although King IV serves as a recommended code of best practices for all business entities, compliance with King IV for unlisted entities is ultimately voluntary.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

In contrast to historic shareholder apathy, there is a discernible growing trend of South African shareholders demanding greater levels of accountability and transparency. A major trigger for this change of attitude has been a recent number of corporate scandals that have occurred in the South African market – most notably, the highly publicised corporate scandal surrounding Steinhoff International Holdings NV, stemming from accounting irregularities that sent the share price of the company spiralling in December 2017. See also question 2.8.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

King IV has recognised the importance of encouraging boards to avoid prioritising narrow, short-term objectives at the expense of the company's prospects for growth and profitability over the long term. This approach is largely inspired by the belief that the 2008 financial crisis was, in no small measure, fuelled by such ill-conceived prioritisation, which failed to adequately protect not only the company's future within the economy as a whole, but also other valuable stakeholders besides shareholders, such as employees and the community at large. This new focus has placed the unintended consequences of performances incentives under the spotlight, and emphasised the need to reshape the capital market system to encourage and reward long-term decision-making. This trend is most notable in the financial services sector.

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2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

The business and affairs of a company are managed by or under the direction of the board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that the Companies Act or the company's MOI provides otherwise. However, certain matters do require shareholder approval, by way of an ordinary resolution (simple majority threshold) or a special resolution (75% approval threshold). Examples of matters requiring ordinary resolutions include appointment/removal of directors and appointment of auditors. Examples of matters requiring special resolutions include: (i) amending the MOI; (ii) approving issues/buy-backs of shares to/from directors, prescribed officers (i.e. senior members of management) or related persons; (iii) authorising the provision of financial assistance in certain instances; (iv) authorising payment of remuneration to directors; (v) authorising the issue of more than 30% of a company's shares; (vi) approving the winding-up of the company; and (vii) fundamental transactions (i.e. sale of business, a merger or a scheme of arrangement).

In addition, in terms of the Listings Requirements, a company must obtain a special shareholders' resolution in certain circumstances, including in order to enter into a Category 1 transaction (being principally substantial acquisitions and disposals entered into by a listed company), to issue shares for cash, repurchase shares or implement certain related party transactions.

In certain cases, such as related party transactions, only the votes of disinterested shareholders are taken into account.

See also question 4.2.

2.2 What responsibilities, if any, do shareholders have as regards to the corporate governance of the corporate entity/entities in which they are invested?

Shareholders bear no responsibilities to the company or to other shareholders regarding corporate governance.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have as regards to such meetings?

In terms of the Companies Act, public companies must hold an annual general meeting ("AGM") at which the following minimum business must be conducted: (i) presentation of a directors' report, annual financial statements ("AFS") and audit committee report; (ii) director elections; (iii) appointment of an auditor and audit committee; and (iv) any matters raised by shareholders.

As discussed in question 2.1, certain corporate actions require shareholder approval prior to adoption, which may be approved at a meeting (or in most cases, via consent in writing, where certain formalities have been met).

The board, or any other person specified in the company's MOI or rules, may convene a shareholders' meeting at any time. Shareholders may requisition a meeting where shareholders holding 10% of applicable voting rights submit a demand therefore, unless a court finds the demand frivolous or vexatious. Any two shareholders may propose a resolution be submitted to shareholders for consideration concerning any matter in respect of which they are each entitled to exercise voting rights.

A resolution may not be taken at a shareholders' meeting on a matter unless a 25% quorum of all applicable voting rights is met. Special quorum requirements apply to private companies.

A company must provide advance notice of each shareholders' meeting in a prescribed manner and form that contains certain information, including the general purpose of the meeting, a copy of any proposed resolution and the percentage of voting rights required for its adoption. The board has the power to set a record date for determining which shareholders are entitled to receive notice of, participate and vote at a meeting. Shareholders are not obliged to personally attend a shareholders' meeting and vote on a resolution, but may instead appoint a proxy to act in their stead.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

Shareholders, be they controlling or otherwise, do not owe fiduciary or statutory duties to the company or other shareholders. Based on the principle of separate legal personality, shareholders are not liable for the company's acts or omissions. Only under exceptional circumstances may a court attribute personal liability to one who has abused the principle of corporate personality under the common law, or rely on the statutory mechanism in the Companies Act to "pierce the corporate veil" where an "unconscionable abuse" of a company's separate juristic personality has transpired.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

The Companies Act contains a range of shareholder remedies and protective mechanisms for shareholders. In terms of Section 165, a shareholder may bring proceedings in the name of and on behalf of the company to protect the legal interests of the company (the so-called "derivative action").

Under Section 161, a shareholder may apply to court for an order necessary to protect any right or rectify any harm done to it by the company or any of its directors in certain prescribed instances.

Section 163 empowers a shareholder to apply to court for relief from oppressive or prejudicial conduct of the company, a related person or a director. The court has a wide range of remedies at its disposal in such circumstances, including restraining the impugned conduct, declaring a director delinquent, or setting aside the tainted transaction.

Shareholders have additional rights under Section 20, including the power to bring a claim for damages against any other person who intentionally, fraudulently or due to gross negligence causes the company to do anything inconsistent with the Companies Act.

Section 164 provides for appraisal rights, whereby dissenting minority shareholders, in the context of fundamental transactions or material prejudicial amendments to the MOI, may require the company to purchase their shares at fair value, provided certain procedural formalities are met. Also, in accordance with the provisions of Section 115, if 15% or more of shareholders vote against a resolution proposed for implementing a fundamental transaction, any dissenting shareholder may require the company, at its expense, to obtain court approval before implementing the

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resolution. A single dissenting shareholder may also apply to court, at its expense, to have a resolution set aside. A court may only set aside the resolution if it is satisfied that there is manifest unfairness to shareholders or a material procedural irregularity.

Where an offer for a target company has been accepted by 90% of the target company's disinterested shareholders, the Companies Act allows a buyer to initiate a minority "squeeze out", by compulsorily purchasing the remaining shares held by non-accepting shareholders. Section 124 provides a measure of protection to minority shareholders in such instances, by not only empowering them to compel the buyer to take up their shares, but also allowing them to apply to court for an order prohibiting the "squeeze-out" or imposing conditions thereon (usually on the basis that the offer is unfair).

Moreover, any person is entitled to initiate a complaint with the relevant regulator for any conduct that is inconsistent with the Companies Act or a company's MOI. The regulator in question may be the Companies and Intellectual Property Commission ("CIPC"), or alternatively, the Takeover Regulation Panel ("TRP"), which regulates takeovers and other material transactions involving regulated (primarily public) companies. The regulator is empowered to excuse the conduct, refer the matter to the Companies Tribunal, a court or the National Prosecuting Authority, or issue a compliance notice. A court may, on application by the CIPC or the TRP, impose certain fines.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

In terms of the Companies Act, a person who acquires a beneficial interest in securities of a regulated company, such that the person holds 5% or any further multiple of 5% of that particular class of securities, is required to notify the company concerned within three days of such acquisition. Similarly, a person must notify the company concerned within three days of a disposal of securities that results in the person dropping below a threshold that is a multiple of 5%. Upon receipt of notification, the target company must disclose such acquisitions or disposals to the TRP and through a public announcement.

In addition, a listed company must disclose shareholdings of 5% or more in its annual report and its circulars. Nominee shareholders of a listed company must disclose to the company the identity of the beneficial shareholder every month, or at any other time if the company so requests.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Shareholders are not required to make such disclosures.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Historically, shareholder activism has not been an important force in South Africa. More recently, following global trends attributable to an increasingly internationalised shareholder base, shareholder activism has been on the rise and the market has started to take note of the influence shareholders can wield. Much of the publicised shareholder activism in South Africa has focused on aspects of corporate governance, unlocking shareholder value through corporation action and executive remuneration.

In terms of the regulatory framework, which has created a somewhat enabling environment for shareholder activism, the Companies Act contains the majority of provisions relating to shareholder rights, activism and engagement, as discussed above. The Listings Requirements provide for the fair and equal treatment of shareholders and access to information, amongst other things. King IV contains various principles which deal with shareholder rights and engagement, such as obliging boards to encourage shareholders to attend AGMs and to engage with shareholders through various means such as websites, advertising and press releases. Although not intended as a means for shareholder activism, certain other regulatory avenues indirectly create platforms for shareholder engagement and the enforcement of shareholder rights (such as the public interest concerns factored in by the competition/antitrust authorities in considering a proposed merger).

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

As discussed in question 2.1, the business and affairs of a company are managed by or under the direction of the board. The board typically delegates the operational management of the company to an executive team, led by a CEO.

The Listings Requirements state that a company must have an appointed CEO and a chairman, and these positions must not be held by the same person. The chairman must be an independent non-executive director; if not, the company must appoint a lead independent director, in accordance with the Code.

King IV recommends that half the members of the board should be independent, and emphasises that the board should comprise the appropriate balance of knowledge, skill, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

The Companies Act provides that, except to the extent that the company's MOI provides otherwise, the board may appoint any number of committees and may delegate to such committees any of its authority, although the directors retain ultimate responsibility for the committees' decisions and actions. In terms of the Companies Act, all public companies must elect an audit committee at their AGM, and all public companies and certain state-owned and private companies must appoint a social and ethics committee (as discussed in question 4.3). King IV recommends that boards establish a variety of committees to aid in the management of the company. This is supported by the Listings Requirements, which provides that companies must appoint: (i) an audit committee; (ii) a remuneration committee; (iii) a nomination committee; and (iv) a social and ethics committee.

3.2 How are members of the management body appointed and removed?

The Company's Act requires that at least half of the company's directors (and alternate directors) must be elected by shareholders. The MOI may provide for the appointment and removal of directors by any person who is named in, or determined in terms of, the MOI (such as the board or outsiders), and may make provision for *ex officio* and alternate directors.

A director may be removed by shareholders by ordinary resolution adopted at a shareholders' meeting by those entitled to exercise

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voting rights in such director's election, for any reason, although the director must be afforded the opportunity to make representations at the relevant meeting. The Companies Act states that this ability prevails despite anything to the contrary contained in a company's MOI or rules, or in any other agreement, thereby removing the possibility of a director being entrenched in any such document. The board is also empowered to remove directors by way of resolution in specific instances, including where a director has become ineligible, disqualified, incapacitated or has neglected or been derelict in the performance of his or her functions.

Members of the management/executive team, typically led by a CEO, are appointed and dismissed at the behest of the board. A board member who is simultaneously employed as an executive director holds two distinct positions, and as such, dismissal as an employee does not automatically result in loss of office as a director, and *vice versa*.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

The Companies Act provides that, except to the extent that the company's MOI provides otherwise, the company may pay remuneration to its directors for their service as directors; however, this may be paid only in accordance with a special resolution approved by the shareholders within the previous two years, based on the recommendation of an independent remuneration committee of the board.

As discussed in question 3.1, listed entities are required to have a remuneration committee, which plays an integral role in determining director and executive compensation.

In terms of executive remuneration, King IV provides that the governing body should ensure that remuneration of the executive management is fair and responsible in the context of overall employee remuneration. Further, an account should be provided of the performance measures and targets used as a basis for awarding variable remuneration.

To encourage transparency, the Companies Act provides that the AFS of any company that is required to be audited (as discussed in question 5.1) must include particulars showing the emoluments received by directors and prescribed officers and their beneficial interests in company shares. King IV imposes additional disclosure and accountability requirements in this regard, stating that remuneration should be disclosed in a detailed remuneration report to be tabled at the AGM for a separate non-binding advisory vote by shareholders. In the event that 25% or more of shareholders vote against the report, the company must make best reasonable efforts to engage with dissenting voters and address concerns raised. The final remuneration report should disclose this process of engagement, the concerns raised and steps taken by the company to address them.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

The Companies Act provides that a company's AFS must disclose the number and class of any securities issued to a director or prescribed officer in the company, or to any related persons, and the consideration received for those securities. The Listings Requirements prohibit trading without board/chairman sign-off by directors during certain closed periods, including whilst the company is trading under a cautionary or during the period from the end of a financial period until the publication of the relevant results. The Financial Markets Act, 2012 prohibits insider trading by directors in possession of non-public price-sensitive information.

3.5 What is the process for meetings of members of the management body?

A director authorised by the board may call a board meeting at any time, and must call a meeting if required to do so by at least 25% of directors where there are 12 or more directors, or two directors in any other instance. Unless the company's MOI provides otherwise, a majority of directors must be present at a meeting before a vote may be called, each director holds one vote on a matter before the board, and meetings may be conducted by way of electronic communication. A resolution is passed by way of a simple majority of the votes cast, either at a meeting or via written consent. The form of notice and notice period may be determined by the board, in compliance with the MOI and company rules.

3.6 What are the principal general legal duties and liabilities of members of the management body?

In carrying out their functions, directors must comply with certain fiduciary duties, as derived from the Companies Act and the common law. The Companies Act prescribes the standards of directors' conduct, which apply to all directors, including alternate directors, prescribed officers and members of board committees (irrespective of whether or not they are directors). A director must exercise their powers and functions in good faith and for a proper purpose, and in the best interests of the company. At common law, the duty to act in good faith and in the best interests of the company is the paramount and overarching fiduciary duty of directors from which all the other fiduciary duties flow, being to avoid conflicts of interest, act within their powers, and maintain and exercise unfettered discretion and independent judgment.

Further, the Companies Act requires that a director should at all times act with the degree of care, skill and diligence that may reasonably be expected of a person: (i) carrying out the same functions; and (ii) having the general knowledge, skill and experience of that director. The common law imposes similar duties on directors to exercise reasonable care and skill in the performance of their functions.

The Companies Act introduces a US-style "business judgment rule", which guards against court interference in directors' honest errors of judgment. In essence, the rule provides that a director is deemed to have satisfied his or her duties if such director made an informed decision, with no "personal financial interest" in the matter, and had a rational basis for believing, and did believe, that the decision was in the best interests of the company.

The Companies Act makes provision for holding directors, prescribed officers and board committee members jointly and severally liable, in terms of the common law, for any loss, damages or costs sustained by the company as a consequence of having breached any of the duties discussed above, or for having breached a provision of the Companies Act or the company's MOI. The Companies Act also imposes liability on directors in specific instances listed in Section 77, including where such director: (i) knowingly acted without authority on behalf of the company; (ii) acquiesced in the fraudulent or reckless conduct of the company's business; (iii) knowingly conducted an act calculated to defraud a creditor, employee or shareholder of the company; (iv) engaged in wilful misconduct or wilful breach of trust; or (v) attended a

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meeting and failed to vote against a resolution proposed in respect of certain enumerated company actions in violation of the Companies Act.

A director may also be convicted of a number of offences under the Companies Act, including where a director was party to the falsification of any accounting records or an act of the company calculated to defraud a creditor, employee or shareholder. In order to improve corporate accountability, severe penalties (i.e. imprisonment of up to 10 years) may be imposed for offences relating to false statements.

See also questions 2.5, 3.8 and 5.1.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

King IV suggests that the board should serve as the focal point and custodian of corporate governance in the company, including with regard to setting the company's strategic direction and policy, overseeing its implementation by management, and ensuring accountability by means of, among other things, reporting and disclosure.

See also questions 3.1 and 3.6.

With regard to current challenges, directors, when abiding by their duty to act in the best interests of the company, must grapple with finding the right balance between abiding by the shareholder-centric "enlightened shareholder value" approach promoted by the Companies Act and common law (whereby directors may only take broader stakeholder interests into account to the extent that doing so does not interfere with the essential goal of maximising shareholder wealth), whilst also paying heed to the "stakeholder inclusive" approach endorsed by King IV. See also question 4.1.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

The Companies Act renders void any provision (whether in an agreement, MOI or resolution) that attempts to relieve a director of any of his or her duties or any liability contemplated in Section 77 (discussed in question 3.6), or negate, limit or restrict any legal consequences arising from wilful misconduct or breach of trust.

Further, a company is prohibited from indemnifying directors against liability arising under certain circumstances, including most instances identified in Section 77, or wilful misconduct or breach of trust. Outside of these exceptions, a company may indemnify directors for liability incurred, such as for liability arising from negligent conduct.

These provisions extend to former directors, prescribed officers and board committee members.

In order to protect its directors and prescribed officers against liability incurred while acting in such capacities, a company may purchase and maintain insurance on behalf of such persons. However, these insurance policies can only provide cover for those matters which are permissible under the Companies Act. A company may advance expenses to directors to defend legal proceedings arising from their service to the company, and may indemnify them from any costs arising from such litigation in certain limited instances. However, a company may not pay any fine imposed on a director who has been convicted of an offence, unless such conviction is based on strict liability.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

See questions 2.1 and 3.7.

4 Other Stakeholders

4.1 What, if any, is the role of employees in corporate governance?

Under the Companies Act and common law, directors are not legally required to take any interests other than those of shareholders, primarily, into account when complying with their fiduciary duty to act in the best interests of the company. However, see question 4.2 regarding King IV's contrasting "stakeholder inclusive" approach.

In the M&A context, except where a workplace forum (as defined in relevant employment law legislation) exists, or to the extent provided for in a collective bargaining agreement, there is no statutory obligation to inform or consult with the employees, trade unions or employee representatives in a share sale, asset sale (unless retrenchments are contemplated) or sale of a business as a going concern. However, it is recommended, from a good industrial relations perspective, to keep employees and their representatives informed of any anticipated change in ownership. This is especially important given that employees can rely on certain regulatory procedures (such as the public interest considerations that regulators take into consideration for merger approvals from a competition/anti-trust perspective or other regulatory approval processes) to delay or thwart the implementation of a transaction.

Moreover, in specific instances, the Companies Act does confer powers on employees to intervene in the affairs of the company: a primary example being Section 165, in terms of which any stakeholder, including a trade union or employee representative, may bring proceedings in the name of and on behalf of a company to protect the legal interests of the company.

4.2 What, if any, is the role of other stakeholders in corporate governance?

As discussed in question 4.1, broader stakeholder interests, outside of shareholder interests, have not received formal legal recognition in the Companies Act (except indirectly, as discussed in question 4.3). In contrast, King IV emphasises the integral role in society that an organisation plays, and thus, its duties as a corporate citizen to act with economic, social and environmental responsibility. The "stakeholder-inclusive" approach to which King IV subscribes recognises that a company has many stakeholders, not just providers of financial capital, who contribute value and impact the company's long-term success. As such, a board must, when acting in the best interests of the company, take into account the legitimate interests and expectations of *all* material stakeholders, not just shareholders. This includes employees, consumers, creditors, suppliers and the community at large.

With regard to shareholder relationships, King IV provides that the board should oversee that the company encourages proactive engagement with shareholders, especially at the AGM, at which all directors should be available to respond to shareholders' queries on how the board executed its governance duties. King IV requires that a governing body should exercise ongoing oversight of stakeholder relationship management, and set up formal procedures in this regard.

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4.3 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Whilst King IV encourages all companies to establish a social and ethics committee, the Companies Act makes doing so mandatory for certain categories of companies, including listed and state owned companies and any company that has a certain "public interest score" based on a number of factors, including annual turnover, workforce size and the nature and extent of its activities. Its primary function is to monitor the company's activities, regarding, amongst other things: (i) social and economic development; (ii) good corporate citizenship (including issues of equality, discrimination and corruption, and development of local communities); (iii) the environment, health and public safety (including the impact of the company's activities and its products or services); (iv) consumer relationships; and (v) labour and employment. This monitoring must be done with regard to applicable legislation and prevailing codes of best practice, such as the UN Global Compact Principles and the recommendations of the OECD on corruption. The committee must draw matters within its mandate to the attention of the board where necessary, and must report to shareholders at the AGM. In essence, the committee acts as the guiding social conscience of the organisation in order to ensure that it behaves like a responsible corporate citizen.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The ultimate responsibility for all reporting obligations and for the preparation of the AFS lies with the board.

While all companies must prepare AFS, only public companies and state owned companies are required by the Companies Act to have their AFS audited. For most private companies, an independent review suffices, unless it is deemed in the public interest for the company to have its AFS audited (such as where, for instance, the company has a certain "public interest score"). The AFS of any company that is required to be audited must, amongst other things: (i) contain an auditor's report and directors' report; (ii) be approved by the board; and (iii) be presented to shareholders.

Although directors are entitled to rely on experts, including auditors, directors must read and understand the contents of a company's AFS before approving them. To this end, the Companies Act provides that a director will be liable for any loss sustained by the company as a direct or indirect consequence of the director having knowingly signed, consented to or authorised the publication of any financial statements that were false or misleading in a material respect.

The Companies Act mandates all public companies and state owned companies to appoint a company secretary, auditor and an audit committee (as do the Listings Requirements in respect of listed companies) in order to promote enhanced accountability and transparency.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

In addition to what is provided in questions 1.2, 3.4 and 5.1, the disclosure requirements introduced by King IV are very broad, and include, amongst other things, detailed disclosures regarding: (i) each board committee; (ii) the CEO; (iii) risk management and governance; (iv) stakeholder arrangements; and (v) inspections by environmental regulators and any related findings of non-compliance or criminal sanctions.

Further, King IV requires that the following information be published on the company's website (or through other media platforms, as is appropriate in order to facilitate access by stakeholders): (i) all corporate governance disclosures required under King IV; (ii) integrated reports; (iii) AFS and other external reports; and (iv) the company's code of conduct and ethics policies.

5.3 What is the role of audit and auditors in such disclosures?

See question 5.1.

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