



The NamCode

THE CORPORATE GOVERNANCE CODE FOR NAMIBIA

Including entities incorporated
by statute
or in terms of the Companies Act (2004)
or registered in terms thereof and
any other legislation applicable in Namibia.

**Prepared by the Namibian Stock Exchange
with the support of FNB Holdings Namibia Limited**

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The Practice Notes supporting King III are available from the Institute of Directors in Southern Africa (IoDSA).

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Introduction and background

1. The need for a Namibian code

The NamCode became necessary because of the Companies Act No 28 of 2004 (Companies Act) and changes in governance internationally, including the release of the King Code on Governance for South Africa, 2009 (King III) and the introduction of the new South African Companies Act which differs significantly from the former 1973 companies acts which applied to both countries and the 2004 Companies Act; as well as King III's reference to parts in the South African Companies Act, the Namibian Stock Exchange (NSX) in particular and Namibia business in general could not adopt the King III Code, as it has done with King II previously. Therefore a need arose to create a code, based on the principles contained in King III and other international best practices, but adapted to suit the Namibian legislative landscape. The NSX in its pursuit of enabling, developing and deepening capital markets in Namibia is endeavouring to create and maintain an effective, regulated environment to facilitate the way issuers of securities and investors communicate and act to transact safely and securely; the NSX will thereby contribute to the integrity of market pricing based on sound governance standards, and protect Namibia's macro-economic interests and build pride in Namibia's sovereignty.

2 Background

This Code is based on the international best practices and the King Code on Governance for South Africa, 2009. We therefore thought it prudent to relate some of the information concerning the King Committee as it is provided in the King Report.

On the advice of Sir Adrian Cadbury, the South African King Committee was retained for the drafting of King III even though only three members of the committee, formed in 1992, remained on the present King Committee. In giving his advice, Sir Adrian Cadbury pointed out the evolutionary nature of corporate governance - various commissions were held in England under people other than Sir Adrian Cadbury after the Cadbury Report was issued. Following the Cadbury Report, the Greenbury, Hampel, Turnbull, Smith and Higgs Reports were issued. These were combined and the UK governance code that was known as the Combined Code is now known as the UK Corporate Governance Code. Following Sir Adrian's advice, the committee in South Africa continued to be known as the King Committee and the King Code had become an internationally recognised brand.

Eleven subcommittees were established for the King III process, namely:

- boards and directors;
- accounting and auditing;
- risk management;
- internal audit;
- integrated sustainability reporting;
- compliance and stakeholder relationships;



- business rescue;
- fundamental and affected transactions;
- IT governance;
- alternative dispute resolution; and
- editing.

Companies listed on the NSX have until now, in terms of the 2004 Listings Requirements, been required to comply with King II or to explain. Due to King II having been replaced by King III the NSX had to take under consideration what governance code it would adopt for NSX Listed Companies. It was recognised that King III was received very favourably internationally and that it was in the interest of business and especially multinational enterprises that there was consistency in the corporate governance standards set for Southern Africa as a region. It was also taken into account that Namibia offers a unique business environment with amongst other legislation that is different from South Africa. As a result it was decided to base the Namibian governance code on best practices where ever prescribed but to adapt it for Namibian purposes and application. The Institute of Directors in Southern Africa (IoDSA) was approached by NSX in order to obtain permission for the use of King III, as well as to request IoDSA to assist NSX to draft a Namibian governance code, principally based on King III's principles.

The drafting process for the NamCode commenced in 2010 and continued with the assistance of the IoDSA, the NSX staff and FNB Holdings Limited. The NSX has acted as the committee tasked with overseeing the final editing process.

3. The governance compliance framework

Legislated basis for governance compliance

The governance of corporations can be on a statutory basis, or as a code of principles and practices, or a combination of the two. The United States of America has chosen to codify a significant part of its governance in an Act of Congress known as the Sarbanes-Oxley Act (SOX). This statutory regime is known as '**comply or else**'. In other words, there are legal sanctions for non-compliance.

There is an important argument against the 'comply or else' regime: a 'one size fits all' approach cannot logically be suitable because the types of business carried out by companies vary to such a large degree. The cost of compliance is burdensome, measured both in terms of time and direct cost. Further, the danger is that the board and management may become focused on compliance at the expense of enterprise. It is the duty of the board of a trading enterprise to undertake a measure of risk for reward and to try to improve the economic value of a company. If the board has a focus on compliance, the attention on its ultimate responsibility, namely performance, may be diluted.



Voluntary basis for governance compliance

The 56 countries in the Commonwealth, including South Africa and the 27 states in the EU including the United Kingdom, **have opted for a code of principles and practices on a voluntary basis**, in addition to certain governance issues that are legislated. In Namibia, legislation on governance matters is limited. Therefore, the NSX which had previously elected to follow King II is instrumental in developing this NamCode as part of its Listing Requirements.

There are indeed examples of dual companies listed on the NSX that have not followed practices recommended on their primary exchanges but have explained the practice adopted and have prospered. In these examples, their board ensured that acting in the best interests of the company was the overriding factor, subject always to proper consideration of the legitimate interests and expectations of all the company's stakeholders.

For all these reasons, the NSX agrees with the King Committee in its belief that there should be a **code of principles and practices on a non-legislated basis**, which will prove persuasive enough to be included in future legislation.

Various approaches to voluntary basis for governance compliance

Internationally, the 'comply or explain' principle has also evolved into different approaches. The 'apply or explain' regime shows an appreciation for the fact that it is often not a case of whether to comply or not, but rather to consider how the principles and recommendations can be applied.

This NamCode like other codes and reports, therefore, is on an 'apply or explain' basis and its practical execution should be addressed as follows:

The NamCode has been drafted on the basis that the practice recommendations are to be applied to achieve the aim of the principle that it relates to. It is the legal duty of directors to act in the best interests of the company. In following the 'apply or explain' approach, the board of directors, in its collective decision-making, could conclude that to follow a practice recommendation as set out in this NamCode would not, in the particular circumstances, be in the best interests of the company. The board could decide to apply the recommendation differently or apply a practice other than the recommended practice and still achieve the objective of the principle that it relates to as well as the overarching corporate governance principles of fairness, accountability, responsibility and transparency. Explaining how the principles and recommendations were applied, or if not applied, the reasons, results in compliance. In reality, the ultimate compliance officer is not the company's compliance officer or a bureaucrat ensuring compliance with statutory provisions, but the stakeholders.

IN NAMIBIA THE APPROACH AS SET OUT ABOVE WILL BE ADOPTED. IT IS THEREFORE RECOMMENDED THAT THE PRINCIPLES OF THIS NAMCODE APPLY TO NAMIBIAN ENTITIES ON A 'APPLY OR EXPLAIN' BASIS AND THAT THE BEST PRACTICE RECOMMENDATIONS ARE PROVIDED AS GUIDANCE FOR THE APPLICATION OF THE PRINCIPLES OF THIS NAMCODE.



4. The link between governance principles and law

There is always a link between good governance and compliance with law. Good governance is not something that exists separately from the law and it is entirely inappropriate to unhinge governance from the law.

The starting point of any analysis on this topic is the duty of directors and officers to discharge their legal duties. These duties are grouped into two categories, namely: the duty of care, skill and diligence, and the fiduciary duties.

5. Introduction and background

As far as the body of legislation that applies to a company is concerned, corporate governance mainly involves the establishment of structures and processes, with appropriate checks and balances that enable directors to discharge their legal responsibilities, and oversee compliance with legislation.

In addition to compliance with legislation, the criteria of good governance, governance codes and guidelines will be relevant to determine what is regarded as an appropriate standard of conduct for directors. The more established certain governance practices become, the more likely a court would regard conduct that conforms with these practices as meeting the required standard of care. Corporate governance practices, codes and guidelines therefore lift the bar of what are regarded as appropriate standards of conduct. Consequently, any failure to meet a documented and recognised standard of governance, albeit not legislated, may render a board or individual director liable in law.

Around the world hybrid systems are developing. In other words, some of the principles of good governance are being legislated in addition to a voluntary code of good governance practice. In an 'apply or explain' approach, principles override specific recommended practices. However, in various countries, such as South Africa, some principles and recommended practices have been legislated and there must be compliance with the letter of the law. This does not leave room for interpretation. Also, what is contained in the common law is being restated in statutes, for instance in South Africa directors duties are partly codified in recent (2008) companies legislation. In direct contrast to this the Companies Act has not incorporated the best practices of governance principles and therefore reliance must be placed on common law and support by recent and appropriate case law. In a recent precedent, based on the Companies Act of 1973, which was applicable in both Namibia and South Africa as was stated by Scott J A, *in Da Silva vs CH Chemicals (Pty) Ltd 2008(6) SA620 (SCA) at paragraph 18* **"it is a well-establish rule of common law that directors have a fiduciary duty to exercise their powers in good faith and in the best interest of the company."** Regarding the duty of care skill and diligence the Directors, both executive and non-executive, are liable for negligence in the performance of their duties and cannot be indemnified by the company for successful claims against them in terms of the 2004 Namibian Companies Act (§255). Nor are the



Namibian directors protected by the Business Judgement Rule, which has been applied in the USA for more than a century and introduced in the South African Companies Act of 2008.

6. The new constitution of commerce

An analysis of the registers of shareholders of the major companies listed on the NSX will show that the larger Namibian shareholders are most likely to be registered in the name of a Namibian nominee company of financial institutions, and not at beneficial owner level such as pension funds. In Namibia the Government Institutions Pension Fund (GIPF) is by far the largest investor on the NSX, with more than 35% of the free-float of shares in Namibian incorporated listed companies registered through its nominees. The GIPF is a defined benefit pension fund, registered under the Pension Fund Act 1956, and administered and controlled by a Board of Trustees, representing the Namibian Government as the employer and the employees.

“A defined benefit scheme entails that the beneficiaries are ensured of minimum but fixed benefits as specified within the fund rules and usually a percentage of final salary multiplied by the number of years of service with the employer (Government) supplementing the employees’ contributions to ensure that the guaranteed employees’ benefits are met.”

The large defined contribution pension funds or holding companies and institutions are ‘trustees’ for the ultimate beneficiaries, who are individuals. The ultimate beneficiaries of these pension funds, which are currently among the largest holders of equities in Namibia, are individuals who have become the new owners of capital and accept the investment risks as opposed to the members of a defined benefit scheme where the employer is at risk to meet the promises made. This is a departure from the share capital being held by a few wealthy families, which was the norm until the end of the first half of the 20th century. This is a worldwide trend.

The company is integral to society, particularly as a creator of wealth and employment. In the world today, companies have the greatest pools of human and monetary capital. These are applied enterprisingly in the expectation of a return greater than a risk-free investment.

Surveys have shown that while the first priority of stakeholders (see chapter 8, Principle 8.1 paragraph 6) of a company is the quality of the company’s products or services, the second priority is the trust and confidence that the stakeholders have in the company.

Although the board of directors is accountable to the members of the company, the board should not ignore the legitimate interests and expectations of its stakeholders. In the board’s decision-making process, the inclusive approach to governance adopted in King II dictate that the board should take account of the legitimate interests and expectations of the company’s stakeholders in making decisions in the best interests of the company.



7. Institutional investors

An 'apply or explain' market-based code of good practice in the context of listed companies, such as King III and previously for listed companies on the NSX, King II, is stronger if its implementation is overseen by those with a vested interest in the market working, i.e. the institutional investor. Recent experience indicates that market failures in relation to governance are, at least in part, due to an absence of active institutional investors.

Institutional investors should be encouraged to vote and engage with companies, or require their agents through mandates to vote and engage. This will ensure that governance best practice principles are more consistently applied.

The King III report was written from the perspective of the board as the focal point of corporate governance. However, the King Committee believes that a code should be drafted to specifically set out the expectations on institutional investors in ensuring companies apply the principles and recommended practices effectively. Any code should encourage action that ensures all role players in the investment chain become aware of their duties. Asset managers and owners that have signed the Principles for Responsible Investment (PRI) are encouraged to vote and disclose their votes. Institutional investors should at the very least follow the guidelines laid down by the International Corporate Governance Network (ICGN) and adopted in the PRI.

The NSX concurs with the suggestion of the Organisation for Economic Cooperation and Development (OECD) that shareholders should be allowed to consult with each other on issues concerning basic shareholder rights. This is subject to exceptions to prevent abuse such as in amalgamations, schemes of arrangement, takeovers, mergers or a change in control and the disposal of the greater part of the assets of a company.

8. Key aspects of the NamCode

The philosophy of the NamCode, like the King III Report, revolves around leadership and corporate citizenship with a sustainability goal. To facilitate an understanding of the thought process, debate and changes, the following key aspects are highlighted:

1. Good governance is essentially about effective *leadership*. Leaders should rise to the challenges of modern governance. Such leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency and based on moral duties that find expression in the concept of Ubuntu or humaneness.

Confucius (551 – 479 BC) defined humaneness in different ways to different people and his concept became the distinction of the cultivated Chinese man and the basis of the future Chinese meritocratic system that replaced hereditary aristocratic rule.

A universal concept which is captured in the expression 'uMuntu ngumuntu ngabantu',



'I am because you are; you are because we are'.

Ubuntu means humaneness and the philosophy of ubuntu includes mutual support and respect, interdependence, unity, collective work and responsibility.

Responsible leaders direct company strategies and operations with a view to achieving sustainable economic, social and environmental performance.

2. The concept of *corporate citizenship* which flows from the fact that the company is a person and should operate in a sustainable manner. The Constitution imposes responsibilities upon individuals and juristic persons for the realisation of the most fundamental rights.
3. *Sustainability* is the primary moral and economic imperative of the 21st century. It is one of the most important sources of both opportunities and risks for businesses. Nature, society, and business are interconnected in complex ways that should be understood by decision-makers. Most importantly, current incremental changes towards sustainability are not sufficient – we need a fundamental shift in the way companies and directors act and organise themselves.

9. Sustainability

International developments

Sustainability issues have gained in importance internationally since the publication of King II and which was adopted by the NSX in the listing requirements.

- The United Nations has published the Global Compact and the Principles for Responsible Investment;
- the European Union Green Paper for Corporate Social Responsibility (CSR);
- the OECD Guidelines for Multinational Companies. While the Swedish government has laid down that its state-owned enterprises must have sustainability reports following the Global Reporting Initiative's (GRI) G3 guidelines;
- In the United Kingdom, the CSR relevant part of the Companies Act came into operation in October 2007. It requires that directors consider in their decision-making, the impacts of the company's operations on the community and the environment. As has been pointed out in 'The Reform of United Kingdom Company Law', the intention of corporate law reform in this area was to:
 - encourage companies to take an appropriate long-term perspective;



- develop productive relationships with employees and those in the supply chain; and
 - to take seriously their ethical, social and environmental responsibilities.
- In Germany, in terms of the German Commercial Code, management reports must include non-financial performance indicators and companies should demonstrate that their decisions have taken CSR into account in an effective way.
 - the Norwegian government launched a national White Paper on CSR and the responsibility of companies in Norway to report on sustainability performance in terms of the GRI G3 guidelines.
 - the Danish parliament passed a law on CSR reporting for its companies, mandating that companies disclose their CSR activities or give reasons for not having any, following the principle of 'comply or explain'. Denmark encourages the use of accepted tools such as the GRI G3 guidelines and the UN Global Compact Communication on Progress.

An earlier survey shows that over 80% of the global Fortune companies now have sustainability performance reports.

In Namibia the State-owned Enterprises Governance Act, Act 2 of 2006 became effective on 1 November 2006; in notice 142 published in the Government Gazette No 5213 on 31 May 2013 this act now covers 72 listed State-owned enterprises and its objectives include the following:

- to make provision for the efficient governance of State-owned enterprises;
- the procedures for appointing board members;
- a written governance agreement with each Board;
- preparation of business and financial plan
- execution of performance agreement of management staff and to monitor their performances;
- determination of the remuneration of Board members and management staff;
- to make provision for the restructuring of State-owned enterprises; and
- to establish the State-owned enterprises Governance Council, define its powers, duties and functions;



The South African 2008 Companies Act describes the standards of directors' duties, namely the fiduciary duties and duty of care, skill and diligence, by reference to the common law principles. In South Africa, a new statutory defence, called '*the Business Judgment Rule*' was introduced in 2011 for the benefit of directors who have allegedly breached their duty of care. This South African defence will be availed of by a director who asserts that he had no financial conflict, was reasonably informed, and made a rational business decision in the circumstances.

Provisions, subject to Section 255(1) of the 2004 Namibian Companies Act, exist for relieving directors of liability in certain circumstances, either by the courts or, if permitted, by the company's articles of association, but not in the case of negligence, default, breach of duty or breach of trust in relation to the company.

Local developments

An important piece of legislation affecting governance in Namibia during the first decade of this century has been the Financial Intelligence Acts (2007 and replaced in 2012) dictating the anti-money laundering procedures to be applied and the amendments to the Banking Institutions Act (No.2 of 1998).

National financial sector strategy

During 2012 the National Financial Sector Strategy was developed and published with various objectives to address the weaknesses in the Namibian financial system which will encourage the country's financial sector to transform in line with national priorities.

Integration of social, environmental and economic issues

The proliferation of initiatives, tools and guidelines on sustainability is evidence of the growing awareness of sustainability issues. Because the company is so integral to society, it is considered as much a citizen of a country as is a natural person who has citizenship. It is expected that the company will be and will be seen to be a responsible citizen. This involves social, environmental and economic issues – the triple context in which companies in fact operate. Boards should no longer make decisions based only on the needs of the present because this may compromise the ability of future generations to meet their own needs and in particular in the mining environment in Namibia, where uranium and phosphates are situated in highly sensitive areas.

'The success of companies in the 21st century is bound up with three interdependent sub-systems – the natural environment, the social and political system and the global economy. Global companies play a role in all three and they need all three to flourish.' This is according to Tomorrow's Company, UK. In short, planet, people and profit are inextricably intertwined.

A key challenge for leadership is to make sustainability issues mainstream. Strategy, risk,



performance and sustainability have become inseparable; hence the phrase ‘integrated reporting’ which is used throughout the NamCode.

The achievement of best practice in sustainability and integrated reporting is only possible if the leadership of a company embraces the notion of integrated sustainability performance and reporting. There are some examples of visionary leadership in this area. Tomorrow’s Company for example, recognises that tomorrow’s global company should *‘expand its view of success and redefine it in terms of lasting positive impacts for business, society and the environment’*.

Sustainability is, however, about more than just reporting on sustainability. It is vital that companies focus on integrated performance. The board’s role is to set the tone at the top so that the company can achieve this integrated performance

10. Background to integrated reports

Sustainability also means that management pay schemes must not create incentives to maximise relatively short-term results at the expense of longer-term performance.

Inclusive stakeholder approach

The NamCode seeks to emphasise the inclusive approach of governance.

It is recognised that in what is referred to as the ‘enlightened shareholder’ model as well as the ‘stakeholder inclusive’ model of corporate governance, the board of directors should also consider the legitimate interests and expectations of stakeholders other than shareholders. The way in which the legitimate interests and expectations of stakeholders are being treated in the two approaches is, however, very different. In the ‘enlightened shareholder’ approach the legitimate interests and expectations of stakeholders only have an instrumental value. Stakeholders are only considered in as far as it would be in the interests of shareholders to do so. In the case of the ‘stakeholder inclusive’ approach, the board of directors considers the legitimate interests and expectations of stakeholders on the basis that this is in the best interests of the company, and not merely as an instrument to serve the interests of the shareholder.

The integration and trade-offs between various stakeholders are then made on a case-by-case basis, to serve the best interests of the company. The shareholder, on the premise of this approach, does not have a predetermined place of precedence over other stakeholders. However, the interests of the shareholder or any other stakeholder may be afforded precedence based on what is believed to serve the best interests of the company at that point.

The best interests of the company should be interpreted within the parameters of the company as a sustainable enterprise and the company as a responsible corporate citizen. This approach gives effect to the notion of redefining success in terms of lasting positive effects for all stakeholders, as explained above.



Integrated reporting

The market capitalisation of any company listed on the NSX equals its economic value and not its book value. The financial report of a company, as seen in its balance sheet and profit and loss statement, is a photograph of a moment in time of its financial position. In buying a share on any stock exchange, the purchaser makes an assessment of the economic value of a company. The assessment considers the value of matters not accounted for, such as future earnings, brand, goodwill, the quality of its board and management, reputation, strategy and other sustainability aspects. The informed investor assesses the quality of the company's risk management and whether it has considered the sustainability issues pertinent to its business.

Individuals today are the indirect providers of capital. They are consumers and, as citizens, they are concerned about the sustainability of our planet. Those who prepare integrated reports should give the readers the forward-looking information they want. Today's stakeholders also want assurance on the quality of this forward looking information.

By issuing integrated reports, a company increases the trust and confidence of its stakeholders and the legitimacy of its operations. It can increase the company's business opportunities and improve its risk management. By issuing an integrated report internally, a company evaluates its ethics, fundamental values, and governance, and externally improves the trust and confidence which stakeholders have in it.

In the NamCode, as in King III, it recommends integrated sustainability performance and integrated reporting to enable stakeholders to make a more informed assessment of the economic value of a company.

The integrated report, which is used throughout the NamCode and is explained in Chapter 9, should have sufficient information to record how the company has both positively and negatively impacted on the economic life of the community in which it operated during the year under review, often categorised as environmental, social and governance issues (ESG). Further, it should report how the board believes that in the coming year it can improve the positive aspects and eradicate or ameliorate the negative aspects, in the coming year.

In summary

- *Inclusivity* of stakeholders is essential to achieving sustainability and the legitimate interests and expectations of stakeholders must be taken into account in decision-making and strategy.
- *Innovation, fairness, and collaboration* are key aspects of any transition to sustainability – innovation provides new ways of doing things, including profitable responses to sustainability; fairness is vital because social injustice is unsustainable; and collaboration is often a prerequisite for large scale change. Collaboration should not, however, amount to anti-competitiveness.



- *Social transformation* and redress from the effects of 'apartheid' are important and should be integrated within the broader transition to sustainability. Namibia, whilst it was administrated by South Africa under, initially the League of Nations and then the United Nations mandate was affected by 'apartheid that existed in South Africa'. As a result measures were taken to reduce the effects of apartheid, such as the introduction of self-rule for Namibia in 1978 and ultimately independence in 1990. Since independence the introduction of various Black Economic Empowerment initiatives; Government programs including and preferential procurement requirements; and the signing of the Financial Sector Charter in 2008. Integrating sustainability and social transformation in a strategic and coherent manner will give rise to greater opportunities, efficiencies, and benefits, for both the company and society.

King II explicitly required companies to implement the practice of *sustainability reporting* as a core aspect of corporate governance. Since 2002, sustainability reporting has become a widely accepted practice. The NamCode supports the notion of sustainability reporting, but makes the case that whereas in the past it was done in addition to financial reporting it now should be integrated with financial reporting.

11. Emerging governance trends incorporated in the NamCode

Alternative dispute resolution (ADR)

Electronic communication has expedited the process of concluding contracts and doing business generally. The world is flat and borderless as far as capital flows are concerned. Capital can easily flow with the click of a mouse to where there is good governance. International bodies such as the International Finance Corporation have started to recognise that alternative dispute resolution (ADR) clauses are needed in contracts. Mediation is being used, not only as a dispute resolution mechanism, but as a management tool.

For example, in the building of a bridge, a mediation expert may be called in when the contracts are being finalised because the expert will know that the formulation of a clause in a certain way could lead to disputes or, conversely, avoid disputes. Further, as disputes arise, the mediator is called in to help the parties to resolve them. The disputants can arrive at novel solutions quickly, efficiently and effectively with a saving in costs. There is an identity of interest to complete the bridge in good time, for example, to earn bonuses. If it is not, there may well be penalties.

It is accepted around the world that ADR is not a reflection on a judicial system of any country, but that it has become an important element of good governance. Directors should preserve business relationships. Consequently, when a dispute arises, in exercising their duty of care, they should endeavour to resolve it expeditiously, efficiently and effectively.



Also, mediation enables novel solutions, which a court may not achieve, as it is constrained to enforce legal rights and obligations. In mediation, the parties' needs are considered, rather than their rights and obligations. It is in this context that the Institute of Directors in Southern Africa (IoDSA) advocates administered mediation and, if it fails, expedited arbitration. Together with the Arbitration Foundation of Southern Africa, the IoDSA has developed an enforceable ADR clause for inclusion in contracts, the precedent of which is to be found in the Practice Notes to the King III report. The King Committee endorsed the approach by the IoDSA. In Chapter 8 Principle 8.6 ADR is dealt with in more detail.

ADR is also in line with the principles of Ubuntu.

Risk-based internal audit

Risk involves issues over the whole spectrum of conducting business and enterprise. Strategy in itself involves risk because one is dealing with future events. King II, IFRS and other such codes require directors to enquire and then, if satisfied, confirm in the annual report the adequacy of internal controls in a company. In Namibia the auditor's opinion includes the statement that *"the Board and management are responsible for such internal control as the directors determine is necessary for the preparation of the financial statements"*.

A compliance-based approach to internal audit adds little value to the governance of a company as it merely assesses compliance with existing procedures and processes without an evaluation of whether or not the procedure or process is an adequate control. A risk-based approach is more effective as it allows internal audit to determine whether controls are effective in managing the risks which arise from the strategic direction that a company, through its board, has decided to adopt.

Internal audit should be risk-based and every year the internal auditors should furnish an assessment to the board generally on the system of internal controls and to the audit committee specifically on the effectiveness of internal financial controls. The audit committee must report fully to the board on its conclusions arising from the internal audit assessment. This will give substance to the endorsement by directors of the effectiveness of internal controls in a company in the integrated report. Internal audit forms part of the combined assurance model introduced in Chapter 3 Principle 3.5 of the NamCode. Internal audit is discussed in Chapter 7.

Shareholders and remuneration

Although the King III Report and the South African companies follows the trend for a board to put the company's policy of remuneration to a non-binding advisory vote of shareholders in general meeting it is not recommended for Namibia as it has no legal basis. However, within the remuneration policy the board should state the principles for fixing individual remuneration for senior management. *Non-executive directors' remuneration should be fixed for the year and best practice would be for it to be approved by a 75% vote by*



shareholders present in a general meeting. Refer to Chapter 2 Principle C2.25.

Evaluation of board and director performance

The evaluation of boards, board committees and individual directors, including the chairman, is now entrenched internationally. The NamCode deals with evaluations in Chapter 2 Principle 2.22.

Information technology governance

Information systems were used as enablers to business, but have now become pervasive in the sense that they are built into the strategy of the business. The pervasiveness of IT in business today mandates the governance of IT as a corporate imperative.

In most companies, IT has become an integral part of the business and is fundamental to support, sustain and grow the business. Not only is IT an operational enabler for a company, it is an important strategic asset to create opportunities and to gain competitive advantage. Companies have made, and continue to make a significant investment in IT. Virtually all components, aspects and processes of a company include some form of automation. This has resulted in companies relying enormously on IT systems.

Further, the emergence and evolution of the internet (e-commerce, on-line trading and electronic communication) have also enabled companies to conduct business electronically and perform transactions instantly. These developments bring about significant risks and should be well governed and controlled. Therefore King III dealt with IT governance in detail for the first time. Namibia wishes to subscribe to good IT governance and the NamCode contains an IT governance chapter (Chapter 5), which is focused on providing the most salient aspects of IT governance for directors. Due to the broad and ever-evolving nature of the discipline of IT governance, the chapter does not try to be the definitive text on this subject but rather to create a greater degree of awareness at director level.

There is no doubt that the complexity of IT systems does create operational risks and when one outsources IT services, for instance, this has the potential to increase risk because confidential information is stored outside the company and its direct control. Consideration has to be given to the integrity and availability of the functioning of the system; possession of the system; authenticity of system information; and assurance that the system is usable and useful. Concerns include unauthorized use, access, disclosure, disruption or changes to the information system.

In exercising their duty of care, directors should ensure that prudent and reasonable steps have been taken in regard to IT governance. To address this by legislation alone is not the answer. International guidelines have been developed through organisations such as ITGI and ISACA (COBIT and Val IT), the ISO authorities (eg: ISO 38500) and various other organisations such as OECD. These may be used as a framework for audit for the



adequacy of the company's information governance for instance, but it is not possible to have 'one size fits all'. However, companies should keep abreast of the rapidly expanding regulatory requirements pertaining to information.

Business rescue

Namibian insolvency laws are outdated, as the Insolvency Act was initially enacted in 1936, so they do not contain a statutory business rescue mechanism. Business rescue is seen as one of the international best practices that were incorporated into South African company law in 2008. In 2013 the Law Reform commission appointed international consultants to review the Insolvency Act and related legislation and instructed them to draft a best practice replacement.

Clearly, the ability to rescue economically viable companies experiencing financial difficulties is in the best interests of shareholders, creditors, employees and other stakeholders as well as in the interests of the country as a whole because of the high costs to the economy if businesses fail.

12. Language, gender and terminology

Although the terms 'company', 'boards' and 'directors' are used, the NamCode refers and applies to the functional responsibility of those charged with governance in any entity even if different terminology is used in other entities, sectors and industries.

When the NamCode refers to 'he' or 'his' it includes 'she' or 'her'. Likewise, when it refers to 'chairman', it includes 'chairwoman', 'chairperson' and 'chair'. The use of the term 'corporate' (e.g. corporate governance, corporate citizenship, corporate ethics etc.) applies to all entities.

Although certain aspects of governance are legislated in the Companies Act, 2004, and other Namibian legislation, the use of instructive language is important in reading and understanding the NamCode and the King III Report. The word 'must' indicates a legal requirement. In aspects where the application of the NamCode will result in good governance, the word 'should' is used. The word 'may' indicates areas where certain practices are recommended for consideration.

The NamCode is set out in nine chapters with the leadership and corporate citizenship chapter establishing the foundation for the NamCode and the boards and directors chapter as the overarching chapter. The subsequent chapters cover certain aspects of the boards and directors chapter in more detail. Each chapter contains the key principles of governance and then explanations as to how to carry out the principles by means of application of best practice recommendations.



13. Application of the NamCode

IT IS RECOMMEND THAT THE NAMCODE APPLIES TO ALL NAMIBIAN ENTITIES REGARDLESS OF THE MANNER AND FORM OF INCORPORATION OR ESTABLISHMENT AND WHETHER IN THE PUBLIC, PRIVATE SECTORS OR NON-PROFIT SECTORS. THE PRINCIPLES HAVE BEEN DRAFTED SO THAT EVERY ENTITY CAN APPLY THEM AND, IN DOING SO, ACHIEVE GOOD GOVERNANCE.

All Namibian entities should apply the principles in the NamCode and consider the best practice recommendations in the NamCode. All entities should by way of explanation make a positive statement about how the principles have been applied or have not been applied. This level of disclosure will allow stakeholders to comment on and challenge the board on the quality of its governance. The manner of application will differ for each entity and is likely to change as the aspirational nature of the NamCode should drive entities to continually improve governance practices. It is important to understand that the 'apply or explain' approach requires more consideration – application of the mind - and explanation of what has actually been done to implement the principles and best practice recommendations of governance.

Each principle is of equal importance and together forms a holistic approach to governance. Consequently, 'substantial' application of this NamCode does not achieve compliance.

The NamCode applies to entities incorporated in and or resident in Namibia. Foreign subsidiaries of local companies should apply the NamCode in addition to the entity-specific foreign legislation prescribed by the holding company.

The Practice Notes to King III, issued by the IoDSA, provide the necessary guidance to all entities on implementing the Code in South Africa and subsidiaries of these entities in other jurisdictions.

Namibia wishes to be at the forefront of governance internationally, without imposing unnecessary burden and costs on those willing to adopt and apply the NamCode. It is acknowledged that the NamCode is aspirational in nature and entities will require time to master the application of thereof over time.

14. Effective date

The Namibian Code report will be effective for financial years commencing after 1 January 2014 and until then, King II will continue to apply to companies listed on the NSX; early adoption will be encouraged.

15. Appreciation

The Board of Directors of the NSX acknowledges the contribution made during the initial drafting stage by the Institute of Directors of Southern Africa and in particular Ansie Ramalho and Natasha Bouwman and Yamillah Katjirua the Company Secretary of FNB Holdings Namibia Limited; Tiaan Bazuin the CEO of the NSX and John Mandy the recently retired CEO of the NSX in seeing the project through to publication.



Chapter 1

Ethical leadership and corporate citizenship

Principle C1 - 1: The board should provide effective leadership based on an ethical foundation

Responsible leadership

- 1.1. Good corporate governance is essentially about effective, responsible leadership. Responsible leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency.
- 1.2. Responsible leaders *build sustainable businesses* by having regard to the company's economic, social and environmental impact on the community in which it operates. They do this through effective strategy and operations.
- 1.3. Responsible leaders reflect on the role of *business in society*. They consider both the short-term and long-term impact of their personal and institutional decisions on the economy, society and the environment.
- 1.4. Responsible leaders do *business ethically* rather than merely being satisfied with legal or regulatory compliance, uncritically aligning with peer standards, or limiting themselves to current social expectations. They value personal and institutional ethical fitness and practise corporate statesmanship.
- 1.5. Responsible leaders *do not compromise* the natural environment and the livelihood of future generations.
- 1.6. Responsible leaders *embrace a shared future* with all the company's stakeholders. They are sensitive to the impact of their companies on all its internal and external stakeholders. They give direct rather than incidental consideration to the legitimate interests and expectations of their stakeholders.

The board's responsibilities

- 1.7. The board is responsible for corporate governance and has two main functions: first, it is responsible for determining the company's *strategic direction* (and, consequently, its ultimate performance); and second, it is responsible for the *control* of the company. The board requires management to execute strategic decisions effectively and according to laws and the legitimate interests and expectations of stakeholders.
- 1.8. The board is responsible to ensure that management actively cultivates a *culture of ethical conduct* and sets the values to which the company will adhere. These values should be incorporated in a code of conduct.



- 1.9. The board is responsible to ensure that *integrity permeates* all aspects of the company and its operations and that the company's vision, mission and objectives are ethically sound. The manner in which the company conducts its internal and external affairs should be beyond reproach. An ethical corporate culture is more than social philanthropy or charitable donations. Companies are encouraged to establish a social and ethics committee. *Chapter 2.*
- 1.10. The board is responsible to *align its conduct* and the conduct of management with the values that drive the company's business. It also requires that the company takes active measures to ensure that its code of conduct is adhered to in all aspects of its business.
- 1.11. The board is responsible for *considering the legitimate interests and expectations of the company's stakeholders* in its deliberations, decisions and actions. Corporate governance models around the world differ on the question of to *whom* the board is responsible. The NamCode intentionally follows the tradition of opting for an inclusive *stakeholder model of governance*, which considers, weighs and promotes the interests of all the company's stakeholders, thus ensuring the cooperation and support of all stakeholders the company depends on for its sustainable success. In this way, the company creates trust between itself and its internal and external stakeholders, without whom no company can operate sustainably.

Ethical foundation

- 1.12. Ethics (or integrity) is the foundation of, and reason for, corporate governance. The ethics of corporate governance requires the board to ensure that the company is run ethically. As this is achieved, the company earns the necessary approval – its *licence to operate* – from those affected by and affecting its operations.
- 1.13. Corporate governance is, in essence, a company's practical expression of ethical standards. It follows that all the typical aspects of corporate governance (such as the role and responsibilities of the board and directors, internal audit, risk management, stakeholder relations, and so on) should rest on a foundation of ethical values.
- 1.14. The ethics of corporate governance requires all deliberations, decisions and actions of the board and executive management to be based on the following *four ethical values* underpinning good corporate governance:
 - 1.14.1 *Responsibility*: The board should assume responsibility for the assets and actions of the company and be willing to take corrective actions to keep the company on a strategic path that is ethical and sustainable.
 - 1.14.2 *Accountability*: The board should be able to justify its decisions and actions to shareholders and other stakeholders.



- 1.14.3 *Fairness*: The board should ensure that it gives fair consideration to the legitimate interests and expectations of all stakeholders of the company.
- 1.14.4 *Transparency*: The board should disclose information in a manner that enables stakeholders to make an informed analysis of the company's performance, and sustainability.
- 1.15. As a steward of the company, each director should also discharge the following *five moral duties*:
- 1.15.1 *Conscience*: A director should act with intellectual honesty and independence of mind in the best interests of the company and all its stakeholders, in accordance with the inclusive stakeholder approach to corporate governance. Conflicts of interest should be avoided or disclosed timeously and properly managed.
- 1.15.2 *Inclusivity* of stakeholders is essential to achieving sustainability and the legitimate interests and expectations of stakeholders must be taken into account in decision-making and strategy.
- 1.15.3 *Competence*: A director should have the knowledge and skills required for governing a company effectively. This competence should be continually developed and evaluated.
- 1.15.4 *Commitment*: A director should be diligent in performing his duties and devote sufficient time to company affairs. Ensuring company performance and compliance requires unwavering dedication and appropriate effort.
- 1.15.5 *Courage*: A director should have the courage to take the risks associated with directing and controlling a successful, sustainable enterprise, and also the courage to act with integrity in all board decisions and activities.

Fiduciary duties towards company

- 1.16 Statutory and common law duties
- 1.16.1.1 It is generally accepted as common law that a director should exercise his powers and duties bona fide and for the benefit of the company with the requisite care and skill. But, like most common law /sense issues the benchmarks against which directors are measured these are by no means clear or legislated in Namibia
- 1.16.1.2 *Directors in terms of our common law have a legal duties to the company which are twofold:*
- *A fiduciary duty to act in the best interest of the company*
 - *A duty to act with due care, skill and diligence in the in best interest of the company.*



Each of these duties have sub-duties which include amongst others:

- *A Director must keep the discussions of the Board confidential unless the Company makes aspect thereof known to the public,*
- *not to compete with the company and prevention of conflicts of interest – making a profit from his position as a director other than the formal remuneration attached to position. This includes insider trading*
- *not to exceed the limits of power and to act with unfettered discretion.*

It is incumbent on each director to familiarise and have an intimate understanding of their legal duties and to adhere to these.

- 1.16.1.3 A director who acts for his own benefit or to the prejudice of others breaches the trust the shareholders have placed in him by electing him as a director.
- 1.16.1.4 A director must act in good faith towards the company but there is no fiduciary relationship to the individual shareholders who will benefit as such from the company's operations.
- 1.16.1.5 A Director must keep the discussions of the Board confidential unless the Company makes aspect thereof known to the public.
- 1.16.2 There are many examples of breaches of a director's fiduciary duty and examples are:
- 1.16.2.1 Prevention of conflicts of interest – making a profit from his position as a director other than the formal remuneration attached to position. This includes insider trading.
- 1.16.2.1 Exceeding the limitations of power or failing to exercise them for intended purposes
- 1.16.2.2 Failing to maintain unfettered discretion, **including the confidentiality** of company information.
- 1.16.3 It is legal to appoint or have elected a nominee of certain shareholders or other interests as a director but such nominee is obliged to exercise his discretion without being fettered. The appointment of a person who has no idea what he is doing could be alleged to be illegal and punishable as fraud.

Principle C1 - 2: The board should ensure that the company is and is seen to be a responsible corporate citizen

- 2.1. A company is an economic institution. But it is also a corporate citizen. As such it has social and moral standing in society, with all the responsibilities attached to that status. The board is not merely responsible for the company's financial bottom line, but rather for the company's performance within the *triple context* in which it operates: economic, social and environmental. It follows that the board should issue an integrated report on its economic, social and environmental performance.



- 2.2. This triple-context approach enhances the company's potential to create *economic value*. It ensures that the economic, social and environmental resources that the company requires to remain in business are treated responsibly. By looking beyond immediate financial gain, the company protects its reputation – its most significant asset – and builds trust. There is a growing understanding in business that social and environmental issues have financial consequences.
- 2.3. It is *unethical* for companies to expect society and future generations to carry the economic, social and environmental costs and burdens of its operations. This triple-context approach recognises the effect of the modern company on society and the natural environment. It acknowledges that companies should act with economic, social and environmental responsibility. A company itself should ensure that its impact on the economy, society and the natural environment is sustainable.
- 2.4. As a responsible corporate citizen, the company should *protect, enhance and invest* in the wellbeing of the economy, society and the natural environment. Responsible corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates.
- 2.5. Companies should respect and realise universally recognised, fundamental *human rights*. To realise human rights in any society, companies (and other institutions) should respect and recognise the basic interests of individuals and communities by creating and sustaining conditions in which human potential can develop. This entails liberating people from unfair discrimination and empowering them to take control of their own lives through, for example, access to education, health care and other resources.
- 2.6. Internationally these moral duties find expression in the concept of Ubuntu. Simply put, means humaneness (*as defined by Confucius*) and the philosophy include mutual support and respect, interdependence, unity, collective work and responsibility. It involves a common purpose in all human endeavours and is based on service to humanity (servant leadership).
- 2.7. Internationally, there is an increasing expectation that companies will pursue their aims within the limits of the social, political and environmental responsibilities outlined in international conventions on human rights.
- 2.8. Independence brought about a significant shift in society's moral perception of companies. The notion of creating a structure that can pursue profit at the expense of human rights is untenable. Companies are social entities with both rights and responsibilities that go beyond mere financial considerations. The foundational values of dignity, freedom and equality contained in the Namibian Constitution should guide the company in its interaction with every stakeholder.
- 2.9. The expectation that business has an important role to play, not only in the economy, but also in responding to economic, social and environmental challenges, has



become widely accepted. The debate, on the need for either voluntary business action or government regulation, is being superseded by an understanding that an appropriate mix of both approaches is desirable. Governments are learning to encourage voluntary action beyond legal compliance, while at the same time ensuring compliance with minimum standards. The United Nations Global Compact (UNGC) is regarded as the pre-eminent voluntary initiative for aligning companies' strategies and operations with ten universally accepted principles in the areas of human and labour rights, environmental responsibility and anti-corruption. Recent Namibian examples of encouraging voluntary action beyond legal compliance include the financial sector and mining charters.

- 2.10. Companies should also ensure that their constitutional responsibility to respect and contribute to the realisation of human rights extends to operations beyond national borders. In this regard, there are increasing concerns about the role of local companies in the rest of Africa. Many of the countries characterised by the OECD as 'weak governance' zones are in sub-Saharan Africa. Companies operating in these countries face unique ethical challenges, such as becoming unwitting accomplices to human rights abuses. Along with climate change, human rights in weak governance areas are arguably a key corporate citizenship frontier for the next decade. Companies should be encouraged and supported to approach their activities in such weak governance zones with awareness, circumspection, and sensitivity to local contexts, drawing from international best practice.
- 2.11. There is a need to establish mechanisms for decision-makers to engage in *collaborative responses* to sustainability challenges. There has been a shift away from an emphasis – common at the turn of the century – on individual companies' sustainability-related efforts. Although initiatives by individual companies are important, it is increasingly recognised that there are limits to what single companies acting by themselves can achieve. This is particularly true given the systemic character of many socio-environmental challenges, such as climate change, water depletion, informal settlements, corruption, the rise in formal unemployment and educational standards.
- 2.12. Collaboration is one of the natural consequences of the notion of corporate citizenship. This approach can be very effective, especially for ethics, as it strengthens the impact and credibility of individual action and levels the playing field. Companies should consider collaborating with one another to raise practice standards and to reduce corruption and competitive risks on both sectoral and project levels. Collaboration could take the form of integrity pacts, collective codes of conduct, and collective policy initiatives, but not to the elimination of competition of restrictive practices.



- 2.13. Corporate citizenship and sustainability require business decision-makers to *adopt a holistic approach to economic, social and environmental issues* in their core business strategy. Increasingly, companies view corporate social and environmental responsibility, corporate social investment and other social initiatives as central to doing business. Companies should no longer treat these initiatives as merely ad hoc or a nice-to-have, but as integral to their business strategy. This, in turn, supports business growth. Only such a holistic approach will allow for effective management of business opportunities and risks associated with corporate citizenship.
- 2.14. Responsible corporate citizenship should manifest in *tangible and reportable programmes and results*. Corporate citizenship includes, among others, responsibilities outlined in the Bill of Rights of the Constitution, and issues relating to transformation, human capital, human rights, the environment, social capital, safety and health.
- 2.15. There is no uniform or universally applicable approach to responsible citizenship programmes. Pre-conditions for successful programmes include an unwavering leadership commitment and *bona fide* corporate citizenship interventions rather than public relations exercises. As a responsible corporate citizen, each company should develop its own policies to define and guide its activities.
- 2.16. Strategies and policies, designed to achieve responsible corporate citizenship, should be *planned and coordinated across all sections of the company*. The negative consequences of fragmentation include duplication of effort and missed opportunities for synergies. For example, a company may seek to respond to the pressing requirements of the industry's BEE charter and the government's BEE efforts, but fail to integrate these efforts effectively into a broader sustainability framework. This tends to inculcate a short-term emphasis on 'box-ticking' compliance, thereby generating a corporate investment with poor social returns and inefficiencies as corporate policies, targets, and lines of reporting are duplicated or even contradictory.
- 2.17. Currently, the connection between sustainability and BEE is not fully understood. It is, therefore, underdeveloped which leads to a dissociation of the two. There is, however, a significant opportunity to clarify and institutionalise the linkage between sustainability and BEE, namely, the growing movement among international investors – including many of the largest institutional investors – of recognising the role of sustainability considerations in investment. Using this opportunity would, in all likelihood, engender greater confidence among investors in companies' social transformation efforts.



Principle C1 - 3: The board should ensure that the company's ethics are managed effectively

- 3.1. Good corporate governance requires that the board takes responsibility for building and sustaining an *ethical corporate culture* in the company. Such a culture consists of both *formal and informal cultural systems*. Selection and reward systems, for example, are elements of formal culture, whereas 'living' practices and language usage are elements of informal culture. A cultural approach to governing and managing the company's ethics would ensure that ethical standards infuse and align both formal and informal cultural elements.
- 3.2. Building and sustaining an ethical corporate culture requires *ethical leadership*. An ethical leader is a role model for the company's stakeholders by making ethics explicit, legitimising ethics discourse, encouraging ethical conduct in others, and holding others accountable for the ethics of their conduct. It is the responsibility of the board (and executive management) to provide ethical leadership in the company. The board should ensure that the company's ethical standards are clearly articulated and should be seen to support them actively by taking measures to achieve adherence to them in all aspects of the business. In this way, the board would ensure that ethics is an integral part of the way in which a company conducts its business.
- 3.3. The board's commitment to building and sustaining an ethical organisational culture should be reflected in the company's vision, mission, strategies and operations; its decisions and conduct; and the manner in which it treats its internal and external stakeholders. The board's commitment to ethics should also manifest in the company's responsibility towards the communities and natural environment in which it operates. An ethical culture is, therefore, about more than social philanthropy or charitable donations. Internal and external ethics performance should be aligned with the same ethical standards.
- 3.4. Building and sustaining an ethical corporate culture requires active *governance of ethics*. The board assumes ultimate responsibility for the company's ethics performance by delegating to executive management the task of setting up a well-designed and properly implemented ethics management process – or ethics programme – consisting of the following four aspects:

Ethics risk and opportunity profile

- 3.5. The board should ensure that the company's ethics risks and opportunities are assessed and that an ethics risk profile is compiled.
- 3.6. Risk can be positive or negative and positive risk in relation to ethics refers to the opportunities that a strong ethics performance can open up for the company. Companies tend to focus primarily on minimising their negative ethics risks, since



they understand that unethical beliefs, practices or behaviour can expose them to financial loss due to theft, fraud, corruption, sabotage, and so on. It is equally important that companies also focus on the benefits of a strong ethical culture. Evidence shows that, in the longer term, companies with a strong ethical culture have a competitive edge over unethical companies.

- 3.7. Companies with a strong ethical culture are more successful in attracting and retaining the best human talent and also in maintaining strong and lasting relationships with their suppliers, customers and other stakeholders. All of these enhance the company's sustainability. Moreover, these companies enjoy the significant benefits and opportunities of trust and a good reputation.

See Chapter 4 on the governance of risk for more about this point.

Code of conduct

- 3.8. The board should ensure that the ethical standards guiding the company's relationships with internal and external stakeholders are clearly identified.
- 3.9. Ethical standards are usually articulated in a code of conduct. If the primary purpose of a code is to curb negative ethics risks, its focus tends to be on rules and guidelines that can prevent unethical behaviour. But if a code's primary purpose is to take advantage of the opportunities associated with a strong ethical culture, its focus tends to be on promoting core ethical values. Ultimately, a code may seek to balance these two objectives by explicitly linking core ethical values to rules and guidelines, illustrating the behavioural expectations of those values.
- 3.10. The code of conduct should be supplemented by several ethics-related policies that provide detailed guidelines for dealing with specific issues — for example, giving and receiving gifts, supplier relations, and political donations. Alternatively, these may be drawn into the code of conduct, especially if they can be formulated briefly.
- 3.11. A properly institutionalised code of conduct is a powerful instrument for guiding the company's ethics performance.

Integrating ethics

- 3.12. The board should ensure that the company's ethical standards (as stated in the code of conduct and related policies) are integrated into all the company's strategies and operations.
- 3.13. Developing the company's ethical standards and then simply proclaiming the company's commitment to them is not enough. Ethical standards should inform all company practices, procedures, policies and conduct.
- 3.14. Integrating the company's ethical standards requires the company and all who act on its behalf to conduct their business in a manner consistent with the company's



ethical standards. The code of conduct should be a material term of employment and supplier contracts. Integrating ethics requires a company to deal with suppliers that subscribe to similar standards of corporate governance and ethics.

- 3.15 Strategically, integration of ethical standards should be driven from the top by the board, with the chief executive officer (CEO) or a designated executive board member being the visible link between the board and executive management.
- 3.16. Operationally, integration of ethical standards consists of management practices (for example, employment screening, awareness campaigns, training, regular communication, and a consistent disciplinary and reward system) and structures (such as an ethics committee, an ethics function and ethics champions). These structures should be distinguished from, but can be combined with, the compliance function.

Assessment, monitoring, reporting and disclosure

- 3.17. The board should ensure that the company's ethics performance is assessed, monitored, reported and disclosed.
- 3.18. Specifically, ethics performance assessment, monitoring, reporting and disclosure should be located within a generally accepted wider practice of assurance. International practice for assessment, reporting and disclosure requires independent verification against specific ethical criteria and standards that may result in providing formal assurance in the form of an assurance statement.
- 3.19. *Internal assessment* of the company's ethics performance as well as internal reporting on its ethics performance are necessary to provide the board and management with relevant and reliable information about the achievement of ethics objectives, the outcomes of ethics initiatives and the quality of the company's ethics performance.
- 3.20. *External assessment* and disclosure of the company's ethics performance are necessary to provide *internal and external stakeholders* with relevant and reliable information about the quality of the company's ethics performance. The *independent assurance* of the company's ethics performance, supported by an *assurance statement* (as part of the integrated report) enhances the credibility of the information provided to stakeholders.
- 3.21 The ultimate objective of assessment, reporting and disclosure is to improve the company's ethical culture by enhancing its ethical performance. Assessing, reporting and disclosure of ethics performance should enable users of ethics reports to form opinions and make decisions based on disclosed and verified information.



Chapter 2

Boards and directors

Role and function of the board

Principle C2 - 1: The board should act as the focal point for and custodian of corporate governance

- 1.1. Companies should be headed by a board that directs, governs and is in effective control of the company. Every board should have a charter setting out its responsibilities and it should meet as often as is required to fulfil its duties, preferably at least four times per year.
- 1.2. The board should collectively provide effective corporate governance that involves monitoring the relationships between the board and management of the company, and between the company and its stakeholders.
- 1.3. The board's paramount responsibility is the positive performance of the company in creating value. In doing so, it should appropriately consider the legitimate interests and expectations of all its stakeholders.
- 1.4. The board should exercise leadership, enterprise, integrity and judgement in directing the business of the company so that it can survive and thrive.

Principle C2 - 2: The board should appreciate that strategy, risk, performance and sustainability are inseparable

- 2.1. The board should play a prominent role in the strategy-development process and not be the mere recipient of strategy as proposed by management. The board should balance its role of promoting the performance of the company and that of maintaining prudent control of how this performance is achieved.
- 2.2. The board should be involved in the determination of and approval of the long-term and short-term strategies for the business of the company and monitor their implementation by management.
- 2.3. Before approving the strategy, the board should ensure that the strategy is aligned with the purpose of the company, the value drivers of the company's business and the legitimate interests and expectations of the company's stakeholders.
- 2.4. The board should satisfy itself that the strategy and business plans are not being encumbered by risks that management has not thoroughly examined.
- 2.5. The board should identify key performance and risk areas as well as the associated performance and risk indicators and measures. This would include areas such as finance, ethics, conduct, compliance and sustainability. The objectives that are set as part of the strategy should be clear, measurable, profitable and sustainable.



- 2.6. The board should ensure that its long-term planning will result in sustainable outcomes. Strategy involves an assessment of risks and opportunities, and the strategy should establish a framework for action by the board and management. The strategy-development process should take account of the dynamics of the changing external environment and be responsive to changing market conditions.
- 2.7. The primary reason for the existence of business enterprise is to create value. Traditionally, the notion of value was viewed narrowly as financial value for shareholders. This has evolved into the notion of value in terms of the triple bottom line: social, economic and environmental performance. Today, commentators talk of the triple context in which companies operate or simply the 'context', which embraces all three aspects – people, profit and planet.
- 2.8. Sustainable business practices require that the needs of the present are met without compromising the ability of future generations to meet their needs. This approach recognises that a business cannot operate in an economically viable manner over a prolonged period without due regard for long-term sustainability issues.
- 2.9. The board should consider sustainability as a business opportunity, where long-term sustainability is linked to creating business opportunities. In making these decisions, the board should be aware of the impact the company has on the economic life of the community in which it operates - both positive and negative. Efforts should be made to enhance these positive impacts and eradicate or ameliorate the negative ones. The opportunities that the company is presented with, through the management of risk, should be examined, understood and exploited as a guiding factor in formulating strategy.

Principle C2 - 3: The board should provide effective leadership based on an ethical foundation

Refer to Chapter 1 Principle C1.1 for more detail.

Principle C2 - 4: The board should ensure that the company is and is seen to be a responsible corporate citizen

Refer to Chapter 1 Principle C1.2 for more detail.

Principle C2 - 5: The board should ensure that the company's ethics are managed effectively

Refer to Chapter 1 Principle C1.3 for more detail.

Principle C2 - 6: The board should ensure that the company has an effective and independent audit committee

Refer to Chapter 3 for more detail.



Principle C2 - 7: The board should be responsible for the governance of risk

Refer to Chapter 4 for more detail.

Principle C2 - 8: The board should be responsible for information technology (IT) governance

Refer to Chapter 5 for more detail.

Principle C2 - 9: The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards

Refer to Chapter 6 for more detail.

Principle C2 - 10: The board should ensure that there is an effective risk-based internal audit

Refer to Chapter 7 for more detail.

Principle C2 - 11: The board should appreciate that stakeholders' perceptions affect the company's reputation

Refer to Chapter 8 for more detail.

Principle C2 - 12: The board should ensure the integrity of the company's integrated report

Refer to Chapter 9 for more detail.

Principle C2 - 13: The board should report on the effectiveness of the company's system of internal controls

Refer to Chapters 7 and 9 for more detail.

Principle C2 - 14: The board and its directors should act in the best interests of the company and not to those of the nominating stakeholder(s)

- 14.1 The board and its directors must always act in the best interests of the company. Legally this holds true even if a director has been elected or nominated to represent specific interests. In terms of our common law, as developed through jurisprudence, the best interests of the company have traditionally been interpreted to equate to the best interests of the body of shareholders. There are indications that a departure from this narrow interpretation of the interest of the company to a more stakeholder inclusive approach is developing.
- 14.2. The foundation of each decision should be intellectual honesty, based on all the relevant facts. Objectively speaking, the decision should be a rational one considering all relevant facts at the time.
- 14.3. The board has a reflective role with collective authority and decision-making as a board, but directors carry individual responsibility.



- 14.4. Directors of companies are appointed in terms of the constitution (articles of association) of the company and in terms of the Act and including the common law, each director of a company has:
 - 14.4.1. a duty to exercise the degree of care, skill and diligence that would be exercised by a reasonably diligent individual who has:
 - 14.4.1.1. the general knowledge, skill and experience that may reasonably be expected of an individual carrying out the same functions as are carried out by a director in relation to the company; and
 - 14.4.1.2. the general knowledge, skill and experience of that director; and
 - 14.4.2. a fiduciary duty to act in good faith and in a manner that the director reasonably believes to be in the best interests of the company.
- 14.5. The minimum fundamental duties described in paragraph 14 above, should apply to all entities, regardless of the framework under which these entities have been established, subject to any specific standards required.
- 14.6. Directors should exercise objective judgement on the affairs of the company independently from executive management, but with sufficient management information to enable a proper and objective assessment to be made.
- 14.7. To be able to fulfil their legal duties directors should have unrestricted access to all the company's information, records, documents, property, management and staff subject to a process established by the board.
- 14.8. Failure to perform these duties properly may render a director personally liable.
- 14.9. Individual directors or the board as a whole should be entitled, at the expense of the company, to take independent professional advice in connection with their duties, if they consider it necessary, but only after following a process agreed by the board.
- 14.10. The personal interests of a director, or of people closely associated with that director, must not take precedence over the interests of the company.
- 14.11. Any director who is appointed to the board as the representative of a party with a substantial interest in the company, such as a major shareholder or a substantial creditor, should recognise the potential for conflict. However, that director must understand that the duty to act in the best interests of the company remains paramount.
- 14.12. Certain conflicts of interest are fundamental, cannot be managed and should therefore be avoided. All other conflicts (whether real or perceived) should be disclosed in good time and in full detail to the board and then appropriately



managed. Direct or indirect material interests of directors and officers in contracts must be dealt with as required by the Companies Act (2004)

- 14.13 Every listed company must have a policy of prohibiting direct or indirect dealing in its securities by directors, officers and other persons for a specified period before the public announcement of its financial results or in any other period considered sensitive.

Principle C2 - 15: The board should consider turnaround mechanisms as soon as the company is financially distressed

- 15.1. One of the measures that should be taken is to assist directors to avoid personal liability for carrying on the business of the company recklessly, with the intent to defraud creditors or for any fraudulent purpose is that the company's board should on a continuous basis monitor:
- 15.1.1 whether the company is able to pay all of its debts as they fall due and payable, and is solvent; and
 - 15.1.2 whether the company is financially distressed i.e. if it appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable, or it appears to be reasonably likely that the company will become insolvent.
- 15.2. The board should with due consideration of their respective advantages and disadvantages determine the appropriate action to be taken which would reasonably likely avoid or overcome financial distress. This could include a workout, sale, merger, compromise with creditors or other turnaround mechanism.
- 15.3 If the company is currently insolvent it should evaluate its options including to stop trading until solvent regardless of the action taken under 15.2 above.
- 15.4. If it appears reasonably likely that the company is in financial distress despite the actions listed in 15.2 above to avoid or overcome financial distress, the board ensure that the company stops trading and lodge an application to put the company in liquidation.

Kept blank until Namibia legislates a formal business rescue procedure.

Principle C2 - 16: The board should elect a chairman of the board who is an independent non-executive director. The CEO of the company should not also fulfil the role of chairman of the board

- 16.1. The board should elect a chairman who can provide the direction necessary for an effective board. The chairman should be appointed by the board every year after carefully monitoring his independence and factors that may impair his independence as discussed in this Chapter. Any factor affecting the independence



of the chairman should be weighed against the positive factor of continuity of the chairman.

- 16.2. The chairman of the board should be independent and free of conflicts of interest at appointment or election, **failing which**, the board should appoint a lead independent non-executive director (LID) (refer to Annex 2.1). In situations where the independence of the chairman is questionable or impaired, a LID should be appointed for as long as the situation exists.
- 16.3. If the board appoints a chairman who is a non-executive director but is not independent or is an executive director, this should be disclosed in the integrated report, together with the reasons and justifications for the appointment.
- 16.4. The chairman's role and functions should be formalised. These will be influenced by matters such as the lifecycle or circumstances of the company, the complexity of the company's operations, the qualities of the CEO and the management team, as well as the skills and experience of each board member. Core functions performed by the chairman should include the following:
 - 16.4.1 setting the ethical tone for the board and the company;
 - 16.4.2 providing overall leadership to the board without limiting the principle of collective responsibility for board decisions, while at the same time being aware of the individual duties of board members;
 - 16.4.3 identifying and participating in selecting board members (via a nomination committee), and overseeing a formal succession plan for the board, CEO and certain senior management appointments such as the chief financial officer (CFO);
 - 16.4.4 formulating (with the CEO and company secretary) the yearly work plan for the board against agreed objectives, and playing an active part in setting the agenda for board meetings;
 - 16.4.5 presiding over board meetings and ensuring that time in meetings is used productively. The chairman should encourage collegiality among board members without inhibiting candid debate and creative tension among board members;
 - 16.4.6 managing conflicts of interest. It is not sufficient merely to table a register of interests. All internal and external legal requirements must be met. The chairman must ask affected directors to recuse themselves from discussions and decisions in which they have a conflict, unless they are requested to provide specific input, in which event they should not be party to the decision. *An example of good practice as to the extent of disclosure and disclosure procedure that could be followed can be found in the South*



African Companies Act (No 71 of 2008). The South African Companies Act requires all directors, alternate directors, prescribed officers and members of board committees to disclose any personal financial interest that they have, or know related persons to have, in matters to be considered by the board, or in agreements or matters in which the company has a material interest. The South African Companies Act sets out a detailed disclosure procedure to follow and defines prescribed officer as well as related persons;

- 16.4.7 acting as the link between the board and management and particularly between the board and the CEO;
- 16.4.8 being collegial with board members and management while at the same time maintaining an arm's length relationship;
- 16.4.9 ensuring that directors play a full and constructive role in the affairs of the company and taking a lead role in the process for removing non-performing or unsuitable directors from the board;
- 16.4.10 ensuring that complete, timely, relevant, accurate, honest and accessible information is placed before the board to enable directors to reach an informed decision;
- 16.4.11 monitoring how the board works together and how individual directors perform and interact at meetings. The chairman should meet with individual directors once a year about evaluating their performance. The chairman should know board members' strengths and weaknesses;
- 16.4.12 mentoring to develop skill and enhance directors' confidence (especially those new to the role) and encouraging them to speak up and make an active contribution at meetings. The mentoring role is encouraged to maximise the potential of the board;
- 16.4.13 ensuring that all directors are appropriately made aware of their responsibilities through a tailored induction programme, and ensuring that a formal programme of continuing professional education is adopted at board level;
- 16.4.14 ensuring that good relations are maintained with the company's major shareholders and its strategic stakeholders, and presiding over shareholders' meetings;
- 16.4.15 building and maintaining stakeholders' trust and confidence in the company;
- 16.4.16 upholding rigorous standards of preparation for meetings by for example, meeting with the CEO before meetings and studying of the meeting information packs distributed; and



- 16.4.17 ensuring that decisions by the board are executed.
- 16.5. The chairman's ability to add value to the company, and the chairman's actual performance against criteria developed from his formalised role and functions should form part of a yearly evaluation by the board.
- 16.6. The retired CEO should not become the chairman of the board until three complete years have passed since the end of the CEO's tenure as an executive director. After this period, the CEO may be considered for appointment as a non-executive chairman, after an assessment of his independence.
- 16.7. The chairman, together with the board, should carefully consider the number of outside chairmanships that he holds. The relative size and complexity of the companies in question should be taken into account. In this regard, chairmen of boards and board committees should apply their minds, in an intellectually honest manner, and be satisfied that they have the ability and capacity to discharge their duties.
- 16.8. The chairman should meet with the CEO or the CFO or the company secretary or all three before a board meeting to discuss important issues and agree on the agenda.
- 16.9. With regard to the chairman serving on other committees:
- 16.9.1 the chairman may be a member of the audit committee but not chair this committee;
- 16.9.2 the chairman should not chair the remuneration committee, but may be a member of it;
- 16.9.3 the chairman should be a member of the nomination committee and may also be its chairman; and
- 16.9.4 the chairman should not chair the risk committee but may be a member of it.
- 16.10. There should be a succession plan for the position of the chairman.

Principle C2 - 17: The board should appoint the chief executive officer and establish a framework for the delegation of authority

- 17.1. The board should appoint the chief executive officer (CEO) and provide input on senior management appointments, such as the chief financial officer (CFO) and chief operating officer (COO).
- 17.2. The collective responsibilities of management vest in the CEO and as such the CEO bears ultimate responsibility for all management functions. The board delegates to management via the CEO, who will in turn delegate to those reporting to him.



- 17.3. The board may delegate authority to management but, in doing so; the board and its directors do not abdicate their duties and responsibilities. In delegating authority, the board should establish benchmarks and performance indicators to hold management accountable for decisions and actions delegated to them.
- 17.4. The board should define its own levels of materiality, reserving specific powers to it and delegating other matters to management. Such delegation by the board should have regard to directors' statutory and fiduciary responsibilities to the company, while considering strategic and operational effectiveness and efficiencies.
- 17.5. The CEO plays a critical role in the operations and success of the company's business. The role and functions of the CEO should be formalised and the board should evaluate the performance of the CEO against criteria developed from these.
- 17.6. The CEO should consistently strive to achieve the company's financial and operating goals and objectives, and ensure that the day-to-day business affairs of the company are properly managed within the approved framework of delegated authority.
- 17.7. The CEO should endeavour to ensure that a long-term strategy of the company is developed and recommended to the board to create added value for and positive relations with stakeholders.
- 17.8. The CEO should ensure that a positive and constructive work climate conducive to attracting, retaining and motivating employees at all levels in the company is maintained.
- 17.9. The CEO should foster a corporate culture that promotes sustainable ethical practices, encourages individual integrity and fulfils social responsibility objectives and imperatives.
- 17.10. The CEO should serve as the chief representative of the company.
- 17.11. The CEO, CFO and other executive directors should not be members of the remuneration, audit or nomination committees, but should attend by invitation. CEOs and any executive directors should recuse themselves when conflicts of interest arise, particularly when their performance and remuneration are discussed.
- 17.12. The CEO should carefully apply his mind, in consultation with the chairman of the board about the appropriateness of taking on non-executive directorships outside of the company or its group. Time constraints and potential conflicts of interests should be considered. The CEO should not become chairman of a company outside of the group due to the anticipated time demands.
- 17.13. Given the strategic and operational role of the CEO, and to prevent too much power vesting in one person, this appointment should be separate from that of the chairman of the board.



17.14 The functions of the CEO include:

- 17.14.1 recommending or appointing the executive team and ensuring proper succession planning and performance appraisals;
 - 17.14.2 developing the company's strategy for consideration and approval by the board;
 - 17.14.3 developing and recommending to the board yearly business plans and budgets that support the company's long-term strategy;
 - 17.14.4 monitoring and reporting to the board the performance of the company and its conformance with compliance imperatives;
 - 17.14.5 establishing an organisational structure for the company which is necessary to enable execution of its strategic planning;
 - 17.14.6 setting the tone in providing ethical leadership and creating an ethical environment;
 - 17.14.7 ensuring that the company complies with all relevant laws and corporate governance principles; and
 - 17.14.8 ensuring that the company applies all recommended best practices and, should they not be applied, that the failure to do so is justifiably explained.
- 17.15. The board should also ensure that a succession plan is in place for the CEO, and other members of executive management and officers.

Composition of the board

Principle C2 - 18: The board should comprise a balance of power, with a majority of non-executive directors. The majority of non-executive directors should be independent

- 18.1. Given the positive interaction and diversity of views that occur between individuals of different skills, experience and backgrounds, the unitary board structure with executive directors (refer to Annex 2.2) and non-executive directors (refer to Annex 2.3) interacting in a working group remains appropriate for Namibian companies. The unitary system has been well established in Southern Africa.
- 18.2. The board should ensure that there is an appropriate balance of power and authority on the board. No one individual or block of individuals should be able to dominate the board's decision-making.
- 18.3. The board should comprise a majority of non-executive directors. The majority of non-executive directors should be independent as this reduces the possibility of conflicts of interest and promotes objectivity.



- 18.4. Independent non-executive directors should be independent in fact and in the perception of a reasonably informed outsider. Although independence of mind is essential, perceptions of independence are important.
- 18.5. An independent director should be independent in character and judgement and there should be no relationships or circumstances which are likely to affect, or could appear to affect this independence. Independence is the absence of undue influence and bias which can be affected by the intensity of the relationship between the director and the company rather than any particular fact such as length of service or age.
- 18.6. An independent non-executive director is a non-executive director who:
- 18.6.1 is not a representative of a shareholder who has the ability to control or significantly influence management or the board;
 - 18.6.2 does not have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) which exceeds 5% of the group's total number of shares in issue.
 - 18.6.3 does not have a direct or indirect interest in the company which is less than 5% of the group's total number of shares in issue, but is material to his personal wealth;
 - 18.6.4 has not been employed by the company or the group of which it currently forms part in any executive capacity, or partner in the group's external audit firm, or senior legal adviser for the preceding three financial years;
 - 18.6.5 is not a member of the immediate family of an individual who is, or has during the preceding three financial years, been employed by the company or the group in an executive capacity;
 - 18.6.6 is not a professional adviser to the company or the group, other than as a director;
 - 18.6.7 is free from any business or other relationship (contractual or statutory) which could be seen by an objective outsider to interfere materially with the individual's capacity to act in an independent manner, such as being a director of a material customer of or supplier to the company; or
 - 18.6.8 does not receive remuneration contingent upon the performance of the company.
- 18.7. While the availability or otherwise of sufficiently experienced directors may be a challenge, shareholders should strive to constitute their boards with a majority of independent directors among their non-executive directors.



- 18.8. A balance should be sought between continuity in board membership, subject to performance and eligibility for re-election as well as considerations of independence and the sourcing of new ideas through introducing new board members.
- 18.9. When determining the number of directors to serve on the board, the collective knowledge, skills, experience and resources required for conducting the business of the board should be considered. Factors determining the number of directors to be appointed are:
 - 18.9.1 evolving circumstances, the needs of the company and the nature of its business;
 - 18.9.2 the need to achieve an appropriate mix of executive and independent non-executive directors;
 - 18.9.3 the need to have sufficient directors to structure board committees appropriately;
 - 18.9.4 potential difficulties of raising a quorum with a small board;
 - 18.9.5 regulatory requirements; and
 - 18.9.6 the skills and knowledge needed to make business judgement calls on behalf of the company.
- 18.10. Every board should consider whether its size, diversity and demographics make it effective. Diversity applies to academic qualifications, technical expertise, relevant industry knowledge, experience, nationality, age, race and gender.
- 18.11. Directors should be individuals of integrity and courage, and have the relevant knowledge, skills and experience to bring judgement to bear on the business of the company. In situations where directors may lack experience, detailed induction and formal mentoring and support programmes should be implemented.
- 18.12. As a minimum, **two executive directors should be appointed to the board**, being the chief executive officer (**CEO**), who would then be the Managing Director, and the director responsible for the finance function (**CFO**). This will ensure that there is more than one point of contact between the board and the management.
- 18.13. A programme ensuring a staggered rotation of non-executive directors should be put in place by the board to the extent that it is not already regulated by the company's articles of association or relevant regulation. Rotation of board members should be structured so as to retain valuable skills, maintain continuity of knowledge and experience and introduce people with new ideas and expertise.
- 18.14. At least one-third of non-executive directors should retire by rotation yearly, usually at the company's AGM or other general meetings, unless otherwise prescribed through any applicable legislation. These retiring board members may be re-



elected, provided they are eligible. The board, through the nomination committee, should recommend eligibility, considering past performance, contribution, the objectivity of business judgement calls and succession planning.

- 18.15. Every year, non-executive directors classified as 'independent' should undergo an evaluation of their independence by the chairman and the board. If the chairman is not independent, the process should be led by the LID. Independence should be assessed by weighing all relevant factors that may impair independence. The classification of directors in the integrated report, as independent or otherwise, should be done on the basis of this assessment.
- 18.16. Any term beyond nine years (e.g. three three-year terms) for an independent non-executive director should be subject to a particularly rigorous review by the board, of not only the performance of the director, but also the factors that may impair his independence at that time. The review should also take into account the need for refreshing the board.
- 18.17. Independent non-executive directors may serve longer than nine years if, after an independence assessment by the board, there are no relationships or circumstances likely to affect, or appearing to affect, the director's judgement. The assessment should show that the independent director's independence of character and judgment is not in any way affected or impaired by the length of service. A statement to this effect should be included in the integrated report.
- 18.18. The articles of association of the company should allow the board to remove any director from the board, including executive directors. Shareholder approval is not necessary for these decisions, provided this is included in the articles of association.

Board appointment processes

Principle C2 - 19: Directors should be appointed through a formal process

- 19.1. Shareholders are ultimately responsible for the composition of the board and it is in their own interests to ensure that the board is properly constituted from the viewpoint of skill and representation. Procedures for appointments to the board should be formal and transparent and should be a matter for the board as a whole, assisted by the nomination committee, subject to shareholder approval.
- 19.2. Boards should ascertain whether potential candidates are competent to be appointed as directors and can contribute to the business judgement calls to be made by the board. In looking at the skills and suitability of a proposed candidate director, there are three dimensions that require consideration, namely:
 - 19.2.1 the knowledge and experience required to fill the gap on the board;
 - 19.2.2 the apparent integrity of the individual; and



- 19.2.3 the skills and capacity of the individual to discharge his duties to the board.
- 19.3. Prior to their appointment or reappointment, the directors' backgrounds should be investigated along the lines of the approach required for listed companies on a licensed exchange. It is also important to ensure that new directors are not disqualified in terms of the Companies Act. The nomination committee should play a role in this process. A brief curriculum vitae / resume of each candidate standing for election or re-election as director should be circulated with the notice of the annual general meeting.
- 19.4. Non-executive directors should ensure that they have (and take) the time required to attend properly to their duties. It is expected of them to:
- 19.4.1 prepare for and attend board and board committee meetings;
 - 19.4.2 acquire and maintain a broad knowledge of the economic environment, industry and business of the company; and
 - 19.4.3 not have material conflicts of interest.
- 19.5. In view of the time and dedication required to fulfil the above duties properly, it is important that non-executive directors do not hold any more directorships than is reasonable for them to exercise due care, skill and diligence. They should, therefore, honestly apply their minds to their workloads and abilities to discharge their duties. The board should examine the number of significant directorships held by an individual as part of the due diligence process. This should be balanced against the advantages obtained from an individual serving on more than one board or on more than one committee of a board or both.
- 19.6. An executive director may take on other non-executive directorships, provided these are not detrimental to the immediate responsibilities as an executive director of the company and are in accordance with a board-approved policy. An executive director should, therefore, apply his mind, in consultation with the chairman and CEO, as to whether such directorships would be appropriate.
- 19.7. The onus is on individual directors to determine whether they have the requisite skills and capacity to make a meaningful contribution and are free from apparent or actual conflicts.
- 19.8. The appointment of a non-executive director should be formalised in an agreement between the company and the director. The agreement should include a director's code of conduct to be complied with and the contribution that is expected from the specific individual. The agreement should also set out the remuneration for holding office as director and the terms of directors' and officers' liability insurance to be provided. The Companies Act (§255) sets out the ambit within which companies are allowed to indemnify and insure directors for the costs of defending claims against them.



- 19.9. The board should recognise that high levels of timely disclosure and transparency enable shareholders to make their own informed assessment of directors, be it in regard to independence, remuneration or other issues. The following aspects regarding directors should be disclosed in the integrated report:
- 19.9.1 the reasons for the removal, resignation or retirement of directors. The purpose of this is to enable shareholders to fulfil their role as the ultimate arbiters of who should sit on the board. Complete, timely, relevant, accurate, accessible and honest disclosure will reduce speculation and uncertainty;
 - 19.9.2 the composition of the board and board committees and the number of meetings held, attendance at those meetings and the manner in which the board and its committees have discharged its duties;
 - 19.9.3 the education, qualifications and experience of the directors;
 - 19.9.4 the length of service and age of the directors;
 - 19.9.5 whether supervising of new management is required in which case retention of board experience would be called for;
 - 19.9.6 other significant directorships of each board member;
 - 19.9.7 actual or potential political connections or exposure; and
 - 19.9.8 any other relevant information.

Director development

Principle C2 - 20: The induction of, and on-going training and development of, directors should be conducted through formal processes

- 20.1. The board should establish a formal induction programme to familiarise incoming directors with the company's operations, its business environment, and the sustainability issues relevant to its business. It should also introduce them to members of senior management and their respective duties and responsibilities.
- 20.2. An appropriate induction programme should meet the specific needs of both the company and the individual and should enable any new director to make the maximum contribution as quickly as possible.
- 20.3. New directors with no or limited board experience should be developed and receive education about their duties, responsibilities, powers and potential liabilities. Mentorship by experienced directors is encouraged. The development of the skills of inexperienced directors is vital in alleviating the shortage in the pool of directors available for appointment.



- 20.4. On-going director development should be encouraged in the same manner as continuing professional development is for certain other professions. This will help to enhance governance practices within the board itself and be in the best interests of the company.
- 20.5. Directors should receive regular briefings on matters relevant to the business of the company, changes in risks and laws applicable to the business of the company, including accounting standards and policies, and the environment in which it operates.
- 20.6. Incompetent or unsuitable directors should be removed, taking relevant legal and other requirements into consideration. The chairman should lead the process.

Company secretary

Principle C2 - 21: The board should be assisted by a competent, suitably qualified and experienced company secretary

- 21.1. The appointment of a company secretary in listed companies is required under the NSX listing requirements. Also, a company secretary should be seen as an officer although not required under the Companies Act similar to the listing requirements which contain various provisions regarding the appointment, removal and duties of the company secretary. The company secretary has a pivotal role to play in the corporate governance of a company, and it is advisable that companies delegate or outsource this responsibility to an appropriate person, or organisation if a company secretary is not employed.
- 21.2. The appointment and removal of a company secretary is a matter for the board.
- 21.3. The board should be aware of the company secretary's duties and should empower the company secretary to properly fulfil those duties. As gatekeeper of good governance, it is important for the company secretary to maintain an arms-length relationship with the board and its directors, as far as reasonably possible.
- 21.4. The company secretary should ideally not be a director of the company.
- 21.5. The company secretary should assist the nomination committee and ensure that the procedure for the appointment of directors is properly carried out.
- 21.6. The company secretary should assist in the proper induction, orientation, on-going training and education of directors, including assessing the specific training needs of directors and executive management in their fiduciary and other governance responsibilities.
- 21.7. The individual directors and the board collectively, should look to the company secretary for guidance on their responsibilities and duties and how such responsibilities and duties should be properly discharged in the best interests of the company.



- 21.8. The company secretary should provide a central source of guidance and advice to the board, and within the company, on matters of good governance and of changes in legislation.
- 21.9. The company secretary should have a direct channel of communication to the chairman and should be available to provide comprehensive practical support and guidance to directors, with particular emphasis on supporting the non-executive directors, the chairman of the board and the chairman of committees and the audit committee.
- 21.10. The company secretary should ensure that the board and board committee charters and terms of reference are kept up to date.
- 21.11. The company secretary should be responsible for ensuring the proper compilation and timely circulation of board papers and for assisting the chairman of the board and committees with drafting of yearly work plans.
- 21.12. The company secretary should have the duty to obtain appropriate responses and feedback to specific agenda items and matters arising from earlier meetings in board and board committee deliberations. The company secretary's role should also be to raise matters that may warrant the attention of the board.
- 21.13. The company secretary should ensure that the proceedings of board and committee meetings are properly recorded and that minutes of meetings are circulated to the directors in a timely manner, after the approval of the chairman of the board or relevant board committee.
- 21.14. The company secretary should assist the board with the yearly evaluation of the board, its individual directors and senior management.

Performance assessment

Principle C2 - 22: The evaluation of the board, its committees and the individual directors should be performed every year

Board and committee evaluation

- 22.1. Improved board performance and effectiveness can be achieved through regular and timely appraisals of the board.
- 22.2. Effective and meaningful evaluation is only possible once the board has determined its own role, functions, duties and performance criteria as well as those for directors on the board and on board committees.
- 22.3. The board should carefully consider whether the evaluations of performance and independence should be done in-house or conducted by independent service providers, subject to legislative requirements. Evaluation procedures and results should be reviewed by the nomination committee or such similar committee of the board.



- 22.4. The chairman, through the nominations committee, may lead the overall performance evaluation of the board and board committees with the assistance of company secretary. However, independent performance appraisals should be considered in the interest of eliciting candid responses. The board should discuss the board evaluation results at least once a year.
- 22.5. Yearly performance appraisals of individual directors, the board, board committees and the chairman, can provide the basis for identifying future training needs and, where necessary, explain why a re-appointment may or may not be appropriate.
- 22.6. The board should state in the integrated report whether the appraisals of the board, its committees have been conducted. The integrated report should provide an overview of the results of the performance assessment and the action plans to be implemented, if any.

Individual director evaluation

- 22.7. The same principles adopted in the evaluation of the board should be applied when evaluating the board committees' chairmen and individual directors.
- 22.8. A director's contribution to the board should be measured against his duties. The nomination for re-appointment of a director at the AGM should not be an automatic process and should only occur after the proper evaluation of the performance and attendance of the director in question.
- 22.9. Evaluations should be led by the chairman through the nominations committee, or by an independent service provider. The chairman should ensure that directors know that they will be subject to evaluation, and understand the criteria used for evaluation, and the evaluation procedures that will be followed. A series of evaluation questions should be distributed in time for directors to complete before any meeting with the chairman or the independent service provider.
- 22.10. Should a deficiency in a director's performance be identified, a plan should be developed and implemented for the director to acquire the necessary skills or to develop appropriate behavioural patterns. The director evaluation should be approached in an open, constructive and non-confrontational manner.
- 22.11. The action plan arising out of the evaluation should be reported to and discussed by the board and a consolidated summary of the whole process should be reported to the full board.
- 22.12. Evaluation questions should include criteria to evaluate the performance of the chairman.
- 22.13. The board should appoint an independent non-executive director from within its ranks, or the LID, to lead the process of the evaluation of the chairman's performance if an independent service provider is not used.



- 22.14. The chairman should not be present when his performance is discussed by the board. This discussion and evaluation should be performed by the board as a whole under the guidance of the LID, deputy chairman, another independent non-executive director chosen by the board or an independent service provider.

CEO and executive director evaluation

- 22.15. The chairman, or a committee appointed by the board, should evaluate the performance of the CEO and other executive directors at least once a year.
- 22.16. The evaluation should assess the performance of the CEO and other executive directors, both as directors and as executives. The results of such an evaluation should also be considered by the remuneration committee to guide it in determining the remuneration of the CEO and other executive directors.

Board committees

Principle C2 - 23: The board should delegate certain functions to well-structured committees but without abdicating its own responsibilities

- 23.1. Board committees constitute an important element of the governance process and should be established with clearly agreed reporting procedures and a written scope of authority. By doing so, the board is not exonerated of complying with its legal responsibilities.
- 23.2. The terms of reference of committees should be reviewed every year and any changes should be approved by the board.
- 23.3. Committees should be appropriately constituted, considering any relevant legislation and the objectives of the company.
- 23.4. The composition of board committees should be disclosed in the integrated report, including any external advisers who regularly attend or are invited to attend committee meetings. The integrated report should disclose the terms of reference of each committee, as approved by the board.
- 23.5. The board should define the audit committee's composition, purpose and duties either in the articles of association or a board charter.
- 23.6. Unless legislated otherwise, the board should appoint the audit, risk, remuneration and nomination committees as standing committees annually. The board may also consider establishing governance, IT steering and sustainability committees. Smaller companies need not establish formal committees to perform these functions, but should ensure that these functions are appropriately addressed by the board.



- 23.7. Board committees, should preferably comprise members of the board unless otherwise provided by applicable legislation and should have a majority of non-executive directors. The majority of the non-executive directors serving on these committees should be independent. Committees should be chaired by independent non-executive directors, other than the executive committee (EXCO) which is ordinarily chaired by the CEO.
- 23.8. External parties, such as paid advisers, may be present at committee meetings by invitation but will have no vote on the committee. Experts should attend as independent contractors and not as members of the committee.
- 23.9. Executive directors and senior management may be invited to attend committee meetings if the chairman of the committee considers their input and contribution to be of value to the decision-making process.
- 23.10. The terms of reference for each committee should, as a minimum, cover:
 - 23.10.1 composition;
 - 23.10.2 objectives, purpose and functions;
 - 23.10.3 delegated authorities, including the extent of power to make decisions or recommendations or both;
 - 23.10.4 tenure; and
 - 23.10.5 reporting mechanism to the board.
- 23.11. Where subsidiary companies within a group establish their own board committees, the relevant board committees of the holding company should review the terms of reference and the activities of such subsidiary's committees to assess the degree to which the holding company board committees can rely on their work.
- 23.12. The respective committees' chairmen should give at least an oral summary of their committees' deliberations at the board meeting following the committee meeting. The minutes of committee meeting proceedings should be included in the board pack for the board's information as soon as they have been approved.
- 23.13. The board should critically apply its collective mind to recommendations and reports of all its committees before approving such recommendations.
- 23.14. Board committees should be free to take independent, outside professional advice within the scope of their terms of reference, at the cost of the company, subject to a proper process being followed.
- 23.15. Every director will normally be entitled to attend committee meetings for the purpose of gaining information relating to the company and its business. However, unless the director is a member of the committee, the director will not be entitled



to participate in the proceedings without the consent of the chairman and will not have a vote. Directors who wish to attend the meetings in these circumstances should follow the process established by the board.

Group boards

Principle C2 - 24: A governance framework should be agreed between the group and its subsidiary boards

- 24.1. In cases where the subsidiary company is listed, special attention must be paid to the rules of the relevant stock exchange and the requirement that all shareholders must be treated equally. This is of specific relevance to the subsidiary company in establishing the flow of information between the subsidiary company and the holding company. Particular attention should be given to the need to comply with relevant rules in respect of inside information.
- 24.2. Depending on the jurisdiction in which the holding company and subsidiary company operate, different legal and regulatory requirements may apply from those that apply to the holding company. The holding company should recognise these requirements and may have to compel the subsidiary company to adhere to the holding company's requirements in addition to the local legislation.
- 24.3. The holding company must recognise the fiduciary duties of the subsidiary company's directors and particularly their duty to act in the best interests of the subsidiary company at all times whether or not the director is nominated to the board of the subsidiary company by the holding company. In the case of a conflict between the duties of a nominee director to a company on whose board he sits and the interests of his principal, the duties of the director to the company of which he is a director must prevail.
- 24.4. The holding company should consult the chairman of the board of the listed subsidiary company, and its nominations committee, where there is one, before nominating a director or directors to the subsidiary company board. This is to ensure that any candidates to be nominated meet the minimum requirements of the board of the subsidiary company as to skills, experience, background and other relevant attributes.
- 24.5. In many situations, the chairman or CEO of a subsidiary company is appointed as a director on the holding company board. These situations are acceptable but present a potential for conflicts of interest which must be appropriately managed. It is, also, important to note that the fiduciary duties of the director are to the company to which he has been appointed
- 24.6. Adopting and implementing policies and procedures of the holding company in the operations of the subsidiary company should be a matter for the board of the listed subsidiary company to consider and approve, if the subsidiary company's board



considers it appropriate. The subsidiary company should disclose this adoption and implementation in its integrated report.

- 24.7. Where the holding company of a local subsidiary is listed on another exchange, the principles contained in the NamCode should be applied by the subsidiary as a minimum.

Remuneration as directors and senior executives

Principle C2 - 25: Companies should remunerate directors fairly and responsibly

- 25.1. Companies should adopt remuneration policies and practices for executives that create value for the company over the long term. The policies and practices should be aligned with the company's strategy, should be reviewed regularly and should be linked to the executive's contribution to company performance.
- 25.2. Companies should take into account any statutory or regulatory requirements in relation to remuneration, for example the 'Directives in relation to the remuneration levels of CEOs and senior managers of SOEs and annual fees and sitting allowances for board members: State-Owned Enterprises Governance Act, 2006' and the fees established in terms thereof.
- 25.3. Factors affecting company performance, but outside the control of senior executives, and to which they have made no contribution should only be considered to a limited extent.
- 25.4. The board should promote a culture that supports enterprise and innovation with appropriate short-term and long-term performance-related rewards that are fair and achievable.
- 25.5. The remuneration committee should assist the board in its responsibility for setting and administering remuneration policies in the company's long-term interests. The committee considers and recommends remuneration policies for all levels in the company, but should be especially concerned with the remuneration of senior executives, including executive directors, and should also advise on the remuneration of non-executive directors.
- 25.6. In proposing the remuneration policy, the remuneration committee should ensure that the mix of fixed and variable pay, in cash, shares and other elements, meets the company's needs and strategic objectives. Incentives should be based on targets that are stretching, verifiable and relevant. The remuneration committee should satisfy itself as to the accuracy of recorded performance measures that govern vesting of incentives. Risk-based monitoring of bonus pools and long-term incentives should be exercised to ensure that remuneration policies do not encourage behaviour contrary to the company's risk management strategy.



- 25.7. The remuneration committee should scrutinise all benefits including pension contributions, benefits in kind and other financial arrangements to ensure they are justified, correctly valued and suitably disclosed.
- 25.8. Non-executive director fees, including committee fees, should recognise the responsibilities borne by directors throughout the year and not only during meetings. Fees should comprise a base fee which may vary according to factors including the level of expertise of each director, as well as an attendance fee per meeting.
- 25.9. Although permitted to a limited extent by the Companies Act, the chairman and other non-executive directors should not receive share options or other incentive awards geared to share price or corporate performance, as such incentives align their interests too closely with executives and may be seen to impair their objectivity.
- 25.10. Guidelines for non-executive directors' fees for their service as directors (as opposed to employee salaries) should be approved by shareholders in advance.
- 25.11. The proceedings of the remuneration committee should be governed by a terms of reference approved by the board.

Base pay and bonuses

- 25.12. In setting remuneration policies, the remuneration committee should ensure that remuneration levels reflect the contribution of senior executives and executive directors and should be rigorous in selecting an appropriate comparative group when comparing remuneration levels. There should be a balance between the fixed components and the bonus component of total remuneration of executives so as to allow for a fully flexible bonus scheme.
- 25.13. Yearly bonuses should clearly relate to performance against yearly objectives consistent with long-term value for shareholders. Individual and corporate performance targets, both financial and sustainability related should be tailored to the needs of the business and reviewed regularly to ensure they remain appropriate.
- 25.14. Depending on the nature of the business it may be appropriate to have overriding conditions for the award of bonuses (often termed 'gatekeepers'), such as achieving safety goals or minimum levels of financial performance. Targets for threshold, expected and stretch targets for performance should be robustly set and monitored and the main performance parameters should be disclosed.
- 25.15. Incentives may be given for both long-term and short-term goals. However, the performance drivers should not be duplicated, and a balance should be struck with the need to reward success over the long term. Multiple performance measures should be used to avoid manipulation of results or poor business decisions. Targets may be linked to bonuses.



Employment contracts, severance and retirement benefits

- 25.16. Contracts should not commit companies to pay on termination arising from the executive's failure.
- 25.17. Balloon payments on termination do not generally meet the requirements of a balanced and fair remuneration policy.
- 25.18. For bonuses, there should be a contractual link between variable pay and performance. In the event of early termination there should be no automatic entitlement to bonuses or share-based payments.
- 25.19. Contracts should make it clear that if a director or senior executive is dismissed because of a disciplinary procedure, a shorter notice period than that given in the contract would apply without entitlement for compensation for the shorter notice period.
- 25.20. Contracts should not compensate executives for severance because of change of control; however this does not preclude payments for retaining key executives during a period of uncertainty.

Share-based and other long-term incentive schemes

- 25.21. The remuneration committee should regularly review incentive schemes to ensure their continued contribution to shareholder value. The committee should guard against unjustified windfalls and inappropriate gains from the operation of share-based incentives.
- 25.22. Participation in share incentive schemes should be restricted to employees and executive directors, and should have appropriate limits for individual participation, which should be disclosed.
- 25.23. All share-based incentives, including options and restricted or conditional shares, whether settled in cash or in shares, should align the interests of executives with those of shareholders and should link reward to performance over the longer term. Vesting of rights should therefore be based on performance conditions measured over a period appropriate to the strategic objectives of the company.
- 25.24. Highly leveraged incentive schemes should be used with care as they may result in excessive cost or risk for the company.
- 25.25. The regular and consistent granting of share incentive awards and options, generally yearly, is desirable as it reduces the risk of unanticipated outcomes that arise out of share price volatility and cyclical factors, allows the adoption of a single performance measurement period and lessens the possibility and impact of 'underwater' options or excessive windfall gains.



- 25.26. The price at which shares are issued under a scheme should not be less than the mid-market price or volume-weighted average price (or similar formula) immediately preceding the grant of the shares under the scheme. There should be no re-pricing or surrender and re-grant of awards on 'underwater' share options.
- 25.27. The rules of a scheme should provide that share or option awards should not be granted within a closed period. No backdating of awards should be allowed.
- 25.28. Options must only be granted in compliance with the provisions of the Companies Act. Options or other conditional share awards are normally granted for the year in question and in expectation of service over a performance measurement period of not less than three years. Accordingly, shares and options should not vest or be exercisable within three years from the date of grant. In addition, options should not be exercisable more than 10 years from the date of grant. For new schemes it is best practice to restrict the exercise period to less than seven years.
- 25.29. To align shareholders' and executives' interests, vesting of share incentive awards should be conditional on achieving performance conditions. Such performance measures and the reasons for selecting them should be fully disclosed. They should be linked to factors enhancing shareholder value, and require strong levels of overall corporate performance, measured against an appropriately defined peer group or other relevant benchmark where yearly awards are made. If performance conditions for share-based incentive schemes are not met, they should not be re-tested in subsequent periods. Where performance measures are based on a comparative group of companies, there should be disclosure of the names of the companies chosen.
- 25.30. Vesting of awards should be made on a sliding scale to avoid an 'all or nothing' vesting profile and should start at a level that is not significant compared with base pay. Awards with high potential value should be linked to commensurately high levels of performance. Full vesting should require significant value creation.
- 25.31. When companies face the risk of losing key employees, remuneration policies to retain them may be adopted. Incentive schemes to encourage retention should be established separately, or should be clearly distinguished, from those relating to reward performance and should be disclosed in the annual remuneration report **preferably be** voted on by shareholders.
- 25.32. There should be no automatic waiving of performance conditions in any of these situations:
- 25.32.1 a change of control;
 - 25.32.2 a 'roll over' of options and awards for a capital reconstruction; and
 - 25.32.3 early termination of the participant's employment.



Depending on the circumstances, it may be appropriate to pro rate the benefit both on time and performance, or to create new instruments to preserve the value of the outstanding awards. In the case of change of control, it may be appropriate to allow pro rata early vesting, to the extent that performance conditions have been satisfied, and the time for vesting periods has been served.

- 25.33. Where individuals leave voluntarily before the end of the service period, or are dismissed for good cause, any unvested share-based awards should lapse.
- 25.34. In other cases of the end of employment, where the remuneration committee decides that early vesting is appropriate, the extent of vesting should depend on performance criteria over the period to date as well as the time served of vesting periods.

Principle C2 - 26: Companies should disclose the remuneration of each individual director

- 26.1. Companies should provide full individual disclosure of each individual executive and non-executive director's remuneration, giving details of base pay, bonuses, share-based payments, granting of options or rights, restraint payments and all other benefits (including present values of existing future awards).
- 26.2. In its annual remuneration report, to be included in the integrated report, the company should explain the remuneration policies followed throughout the company with a special focus on executive management, and the strategic objectives that it seeks to achieve, and should provide clear disclosure of the implementation of those policies.
- 26.3. The remuneration report should explain the policy on base pay, including the use of appropriate benchmarks. A policy to pay salaries on average at above median requires special justification. It should also explain and justify any material payments that may be viewed as being ex gratia in nature.

Contracts and severance

- 26.4. Policies regarding executive employment contracts should be set out in the annual remuneration report.
- 26.5. These policies normally include at least the following:
 - 26.5.1 the period of the contract and the period of notice of termination; and
 - 26.5.2 the nature and period of any restraint.
- 26.6. The annual remuneration report should disclose the maximum and the expected potential dilution that may result from the incentive awards granted in the current year.



Principle C2 - 27: Shareholders should approve the company's remuneration policy

- 27.1. Every year, the company's remuneration policy should be tabled to shareholders for a non-binding advisory vote at the annual general meeting. This vote enables shareholders to express their views on the remuneration policies adopted and on their implementation.
- 27.2. The board should be responsible for determining the remuneration of executive directors in accordance with the remuneration policy put to shareholders' vote.



Annex 2.1: Lead independent non-executive director (LID)

1. A company may have sound reasons for appointing a chairman who does not meet all the criteria for independence or being non-executive and should be prepared to justify its decision. Appointing an LID can assist the board to deal with any actual or perceived conflicts of interest that arise in these or future circumstances.
2. The main function of a LID is to provide leadership and advice to the board, without detracting from the authority of the chairman, when the chairman has a conflict of interest. Such assistance may be provided:
 - 2.1 at any board meeting (including meetings of committees of the board) or at any other meeting of the company;
 - 2.2 at any meeting the chairman might initiate with the LID;
 - 2.3 in any consultations that any other director or executive of the company might initiate with the LID;
 - 2.4 in any consultation that the LID might initiate.
3. The LID should at all times be aware that the role is that of support to the chairman and board and not in any way to undermine the authority of the chairman.
4. The LID should also chair the board meetings which deal with the succession of the chairman and the chairman's performance appraisal.
5. The term of the LID's appointment will depend on the circumstances of the company and could either be an on-going appointment or one of limited duration for so long as the actual or perceived lack of independence or conflict of interest of the chairman endures.
6. The role of the LID and deputy chairman, if one is appointed, may be combined.

Annex 2.2: Executive director

1. Involvement in the day-to-day management of the company or being in the full-time salaried employment of the company (or its subsidiary) or both defines the director as executive.
2. Executive directors should carefully manage the conflict between their management responsibilities and their fiduciary duties as directors in the best interests of the company.

Annex 2.3: Non-executive director

1. The non-executive director plays an important role in providing objective judgement independent of management on issues facing the company.
2. Not being involved in the management of the company defines the director as non-executive.
3. Non-executive directors are independent of management on all issues including strategy, performance, sustainability, resources, transformation, diversity, employment, equity, standards of conduct and evaluation of performance.
4. The non-executive directors should meet from time to time without the executive directors to consider the performance and actions of executive management.
5. An individual in the full-time employment of the holding company is also considered a non-executive director of a subsidiary company unless the individual, by conduct or executive authority, is involved in the day-to-day management of the subsidiary.



Chapter 3

Audit committees

Principle C3 - 1: The board should ensure that the company has an effective and independent audit committee

- 1.1. An independent audit committee fulfils a vital role in corporate governance. The audit committee is vital to, among other things, ensure the integrity of integrated reporting and internal financial controls and identify and manage financial risks.
- 1.2. The recommendations in this chapter may be subject to specific legislation and regulations applicable to a company.
- 1.3. Each company should either elect or appoint an audit committee.

(In South Africa, shareholders of a public company and a state-owned company are required by company legislation to elect the members of an audit committee at each AGM. This legislative does not apply where a company is a subsidiary company of another company that has an audit committee and the audit committee of the holding or parent company will perform the functions required by Section 94 of the South African Companies Act on behalf of that subsidiary).
- 1.4. The board should appoint an audit committee every year.
- 1.5. The board and management of any company, regardless of size, should be fully committed to the goal of supporting and maintaining an effective audit committee.
- 1.6. The board should approve a written terms of reference for the audit committee which should inform its agenda and work plan to ensure that all the audit committee's responsibilities are addressed in each financial year. The board may include risk oversight in the audit committee's mandate.
- 1.7. The audit committee chairman should, in consultation with the company secretary, decide the frequency and timing of its meetings. The audit committee should meet as frequently as is necessary to perform its functions, but should meet at least twice a year. Reasonable time should be allocated for all audit committee meetings.
- 1.8. The audit committee should meet at least once a year with the external and internal auditors without management being present. These may be separate meetings or meetings held before or after a scheduled audit committee meeting.



Membership and resources of the audit committee

Principle 3.2: Audit committee members should be suitably skilled and experienced independent non-executive directors

- 2.1. All members of the audit committee should be independent non-executive directors (refer to Annex 2.3 to Chapter 2 for the definition of an independent non-executive director).
- 2.2. The audit committee should consist of at least three members.
- 2.3. The chairman of the board has a strategic and comprehensive role to play in guiding the board and cannot simultaneously lead and participate objectively in the audit committee. **The chairman of the board should therefore not be eligible for appointment as an audit committee chairman** but may be appointed as a member of the audit committee or attend by invitation.
- 2.4. There should be a basic level of qualification and experience for audit committee membership. The nomination committee (or other board committee tasked with this) and the board should evaluate whether collectively (but not necessarily individually) the audit committee has an understanding of:
 - 2.4.1 integrated reporting, which includes financial reporting;
 - 2.4.2 internal financial controls;
 - 2.4.3 external audit process;
 - 2.4.4 internal audit process;
 - 2.4.5 corporate law;
 - 2.4.6 risk management;
 - 2.4.7 sustainability issues;
 - 2.4.8 information technology governance as it relates to integrated reporting; and
 - 2.4.9 the governance processes within the company.
- 2.5. The collective skills of the members of the audit committee should be appropriate to the company's size and circumstances, as well as its industry.
- 2.6. Because of the audit committee's responsibility to oversee integrated reporting, there is a clear need for this committee, collectively, to have an understanding of International Financial Reporting Standards, the guidelines of the Global Reporting Initiative and any other financial or sustainability reporting standards, regulations or guidelines applicable to the company.
- 2.7. All audit committee members should meet predetermined skills, competency and



experience requirements to collectively be proficient in asking probing questions on the topics listed in paragraph 12. The audit committee is, however, allowed to consult with specialists or consultants engaged by the audit committee to assist it with the performance of its functions, subject to a board-approved process. Such specialists or consultants should not be considered to be members of the committee and should not be entitled to vote on any matters.

- 2.8. Audit committee members collectively should keep up to date with key developments affecting their required skills set.
- 2.9. The board should appoint a person to fill a vacancy on the audit committee should such vacancy arise. It is recommended that such an appointment be ratified by the shareholders at the subsequent AGM if required by legislation.

Principle C3 - 3: The audit committee should be chaired by an independent non-executive director

- 3.1. The board should appoint the chairman of the audit committee.
- 3.2. The chairman of the audit committee should understand the function of the audit committee and be able to lead constructive dialogue with the management, the internal and external auditors, other external assurance providers and the board. The chairman should be afforded sufficient times to participate in and agree the audit committee agenda before meetings are convened.
- 3.3. The chairman of the audit committee should be present at the AGM to answer questions, through the chairman of the board, on the report on the audit committee's activities and matters within the scope of the audit committee's responsibilities.

Responsibilities of the audit committee

- 3.4. The audit committee serves as a committee of the board for duties assigned to it by the board over and above any statutory duties. The board retains the ultimate decision making ability on such matters.

Principle C3 - 4: The audit committee should oversee integrated reporting

Integrated reports - are now considered a best practice and therefore applicable to Namibian entities.

- 4.1. Every year all companies should prepare an integrated report that conveys adequate information about the social, economic and environmental impact of the company on the community in which it operates. (Refer to Chapter 9 for more information on integrated reporting.)



- 4.2. In its consideration of the integrated report, the audit committee should consider any factors that may predispose the management to present an incomplete or misleading picture of the company's position, performance or sustainability. Such factors may include, for example, a perceived need to counter adverse market sentiment or to report the achievement of performance targets on which bonus payments depend.
- 4.3. The audit committee should be responsible for evaluating the significant judgments and reporting decisions affecting the integrated report made by management, including changes in accounting policies, decisions requiring a major element of judgement and the clarity and completeness of the proposed financial and sustainability disclosures. It should require explanations from management on the accounting of significant or unusual transactions and should consider the views of the external auditor's in these instances. The audit committee should understand how the board and the external auditor (and any other relevant external assurance provider) evaluate materiality for integrated reporting purposes.
- 4.4. The audit committee should be informed of any monitoring or enforcement actions against the company, for example by a regulatory agency, on a timely basis, to allow the audit committee to be involved in the company's response to such monitoring or actions.
- 4.5. The audit committee should consider any evidence that comes to its attention that brings into question any previously published financial or sustainability information, including complaints about this information. Where necessary, the audit committee should take steps to recommend that the company publicly correct the previously published financial or sustainability information if it is materially incorrect.
- 4.6. The audit committee should carefully review forward-looking statements of financial or sustainability information to ensure that the information provides a proper appreciation of the key drivers that will enable the company to achieve these forward-looking goals.

Financial statements

- 4.7. The audit committee should review and comment on the financial statements, the accounting practices and the internal financial control of the company and as such the audit committee, should keep the board up-to-date on these matters.
- 4.8. The audit committee's review of financial reports should encompass the annual financial statements, interim reports, preliminary or provisional result announcements, summarised integrated information, any other intended release of price-sensitive financial information and prospectuses, trading statements, circulars and similar documents. Scrutiny by the audit committee should not be confined to the primary financial statements and should extend to all relevant



narrative information which should present a balanced view of the company's performance.

- 4.9. The audit committee should be informed when there is a disagreement on auditing or accounting matters between the management and the external auditors and approve the proposed resolution of the disagreement. Where an accounting opinion has been requested from a person other than the external auditor of the company, the reasoning for the accounting treatment adopted should be obtained and should be approved by the audit committee before the committee's recommendation is made to the board. The audit committee should also be satisfied with the credentials of the person providing such an opinion.
- 4.10. For the audit committee to assist the board to make a statement on the going concern status of the company, it should review a documented assessment prepared by management of the going concern status of the company. To enable the audit committee to conduct a thorough discussion, management should document the key assumptions in reaching their conclusions.

Sustainability

- 4.11. The board is responsible for the integrity of integrated reporting. The audit committee should be tasked by the board to assist by overseeing the integrity of the integrated report. As part of this assigned responsibility, the audit committee should recommend the annual financial statements for approval by the board. The overseeing of sustainability issues in the integrated report should be delegated to the audit committee by the board.
- 4.12. The audit committee should assist the board in approving the disclosure of sustainability issues in the integrated report by ensuring that the information is reliable and that no conflicts or differences arise when compared with the financial results.
- 4.13. The audit committee should recommend to the board whether or not to engage an external assurance provider to provide assurance over material elements (such elements should be determined by the relevant committee responsible for overseeing the sustainability reporting) of the sustainability part of the integrated report. The audit committee should evaluate the independence and credentials of the external assurance provider.

Interim results

- 4.14. The board should periodically review the needs of users of financial information of the company and, based on that review, determine whether interim information should be provided every six months or more frequently, for example quarterly.
- 4.15. The audit committee should consider whether the external auditor should perform assurance procedures on interim results and should make a recommendation to



the board in this regard. Considerations could include modifying the audit report on the last set of annual financial statements or identifying issues regarding the previously issued interim results.

- 4.16. Where the external auditor is engaged to perform a review of the interim results, the audit committee should review the results of such engagement.
- 4.17. Where the external auditor is appointed to perform a publicly reported review of the interim results, the *review opinion* of the external auditor should be made available to users of the interim results and need not be summarised in the interim results, but may be made available on the website.

Summarised information

- 4.18. Due to the volume and complexity of information conveyed in the integrated report, users benefit from a summary of the integrated report. The company should therefore prepare a summarised integrated report in addition to the complete integrated report.
- 4.19. The objective of the summarised integrated report is to give a concise but balanced view of the company's integrated information. In preparing the summarised integrated report, companies should give due consideration to:
 - 4.19.1 providing key financial information. The International Financial Reporting Standard on Interim Reporting (IAS 34) provides useful guidance as to which financial information and notes should be included;
 - 4.19.2 providing sufficient commentary by the company to ensure an unbiased, succinct overview of the company's financial information; and
 - 4.19.3 providing the company's key performance measures regarding sustainability information.
- 4.20. Summarised integrated information should be derived from the underlying integrated report and should include a statement to this effect.
- 4.21. Both the complete and summarised integrated reports should be made available to stakeholders electronically and should be placed on the company's website. Hard copies of the summarised integrated report should be made available to all the stakeholders on written request to the company's secretary or directed to the company's registered office.

Principle C3 - 5: The audit committee should ensure that a combined assurance model is applied to provide a coordinated approach to all assurance activities

- 5.1. A combined assurance model aims to optimise the assurance coverage obtained from management, internal assurance providers and external assurance providers on the risk areas affecting the company.



- 5.2. The audit committee should be responsible for monitoring the appropriateness of the company's combined assurance model and ensuring that significant risks facing the company are adequately addressed.
- 5.3. The combined assurance provided by internal and external assurance providers and management should be sufficient to satisfy the audit committee that significant risk areas within the company have been adequately addressed and suitable controls exist to mitigate and reduce these risks.
- 5.4. External assurance providers may include the external auditor, regulators (inspectorate) or any other external assurance providers such as sustainability assurance providers, actuaries and geologists. The relationship between the external assurance providers and the company should be monitored by the audit committee.
- 5.5. By providing an effective counterbalance to the executive management, audit committees uphold the independence of internal and external assurance providers, thus helping to ensure that these functions are carried out effectively.

Internal assurance providers

Principle C3 - 6: The audit committee should satisfy itself of the expertise, resources and experience of the company's finance function

- 6.1. Every year, the audit committee should consider and satisfy itself of the appropriateness of the expertise and adequacy of resources of the finance function and experience of the senior members of management responsible for the financial function. The results of the review should be disclosed in the integrated report.
- 6.2. Listed companies should have a finance director and the audit committee must evaluate the suitability of the expertise and experience of the person performing the duties of the finance director and recommend to the board if any changes are necessary. *See Principle 2.18 #73.*

Principle C3 - 7: The audit committee should be responsible for overseeing any internal audit function

- 7.1. The audit committee should play a key role in determining if an internal audit function is appropriate to the company and or group and document this decision in the annual financial statements. **If the audit committee requires an internal audit function** it must ensure that the company's internal audit function is independent and has the necessary resources, budget, standing and authority within the company to enable it to discharge its functions.
- 7.2. The audit committee should be responsible for the appointment, performance assessment and dismissal of the chief audit executive (CAE).



- 7.3. The audit committee should approve the internal audit plan, as well as oversee staffing and objectives of the internal audit function.
- 7.4. The audit committee should encourage cooperation between external and internal audit. The internal and external audit functions, however, have different scopes and purposes. The area of assurance overlap between internal and external audit should be such that it optimises the combined assurance obtained from these assurance providers.
- 7.5. The audit committee should ensure that the internal audit function is subjected to an independent quality review, either in line with Institute of Internal Auditors' standards or when the audit committee determines it appropriate, as a measure to ensure the function remains effective.

Principle C3 - 8: The audit committee should be an integral component of the risk management process

- 8.1. The responsibility for a company's risk management function, specifically implementing risk management processes, is that of management.
- 8.2. The board should assign oversight of the company's risk management function to an appropriate board committee (for example a risk committee, the audit committee or a combined audit and risk committee). Smaller companies need not establish formal committees to perform these functions but should ensure that these functions are appropriately addressed by the board.
- 8.3. The audit committee's charter should be clear on the scope of the audit committee's responsibilities for risk management.
- 8.4. Where the board assigns the oversight of the risk management function to the audit committee, the audit committee's responsibility for overseeing the risk management function should be identical to that of a risk committee in a company where a risk committee is separately established.
- 8.5. The board should ensure that there is effective communication and coordination of its oversight activities to ensure that the audit committee is informed of all significant actual or potential financial and non-financial risks (such as operational, strategic, regulatory risks) that may have implications on the integrated report.
- 8.6. Regardless of the board's method and framework of assignment of overseeing the risk management function, the audit committee should have an understanding of, and have an adequate level of comfort regarding, the company's process for identifying, managing and reporting on risk.
- 8.7. The audit committee should satisfy itself that the following areas have been appropriately addressed by it, failing specific assignment by the board:



- 8.7.1 financial reporting risks;
- 8.7.2 internal financial controls;
- 8.7.3 fraud risk as it relates to financial reporting; and
- 8.7.4 IT risks as it relates to financial reporting.

Financial reporting risks

- 8.8. The audit committee should be responsible for overseeing financial risk management and controls and ensuring that the controls:
 - 8.8.1 provide guidance that embeds internal financial control in the business processes and evolves to remain relevant over time;
 - 8.8.2 follow a risk-based approach; and
 - 8.8.3 weigh up not only the likelihood of financial risks materialising but also the costs of operating certain controls relative to the benefit gained in managing these related financial risks i.e. the cost-benefit analysis.

Internal financial controls

- 8.9. The internal audit function should at least once a year conduct a formal documented review of the design, implementation and effectiveness of the company's system of internal financial controls by conducting suitable testing and report back to the audit committee. This enables the audit committee to perform its responsibilities to monitor the integrity of the company's financial information and comment on the effectiveness of internal financial controls.
- 8.10. The audit committee should evaluate the nature and extent of the formal documented review of internal financial controls to be performed by internal audit on behalf of the board every year. Internal audit's review should cover all significant areas of financial reporting to enable the audit committee to perform its responsibilities to oversee the integrity of the integrated report, specifically financial information published by the company. The audit committee should ensure that internal audit has adequate capacity to perform such formal documented review. Management may assist internal audit to perform the review.
- 8.11. It is not required that the internal audit report be made available publicly. External auditor attestation on internal financial controls is not a requirement.
- 8.12. The audit committee conclude and report yearly to the stakeholders and the board on the effectiveness of the company's internal financial controls. Before the audit committee concludes and reports to the board on the effectiveness of internal financial controls, it should holistically consider all information brought to its attention from all sources, including communications with, and reports from,



internal audit, other assurance providers and the management, as well as the external auditors.

- 8.13. Weaknesses in financial control, whether from design, implementation or execution, that are considered material (individually or in combination with other weaknesses) and that resulted in actual material financial loss, fraud or material errors, should be reported to the board and the stakeholders. It is not intended that this disclosure be made in the form of an exhaustive list, but rather an acknowledgement of the nature and extent of material weaknesses and the corrective action, if any, that has been taken to date of the report.

Fraud risks

- 8.14. The audit committee should review arrangements made by the company to enable employees and outside whistle-blowers (including customers and suppliers) to report in confidence their concerns about possible improprieties in matters of financial and sustainability reporting, or non-compliance with laws and regulations that may have a direct or indirect effect on integrated reporting.
- 8.15. The audit committee should be aware of and approve any amendments to the company's code of conduct as it applies to integrated reporting and should satisfy itself that the management monitors compliance with the code of conduct.
- 8.16. The audit committee should consider matters that may result in material misstatements in the integrated report due to fraud.
- 8.17. The audit committee receive and deal appropriately with any concerns or complaints (whether from within or outside the company) or on its own initiative, relating either to the accounting practices and internal audit of the company or to the content or auditing of its financial statements, the internal financial controls of the company or to any related matter.

Information technology (IT) risks as it relates to financial reporting

Refer to Chapter 5 Principle C5 - 7 for more detail on the audit committee's role in IT.

External assurance providers

Principle C3 - 9: The audit committee is responsible for recommending the appointment of the external auditor and overseeing the external audit process

- 9.1. The audit committee must via the board recommend to shareholders the appointment, reappointment and removal of the external auditor. Where the audit committee recommends to shareholders that the incumbent auditing firm should be appointed as the external auditor, its recommendation should be based on



an assessment of the auditing firms, expertise and resources, effectiveness and independence.

- 9.2. The audit committee should recommend approval by the shareholders of the external auditor's terms of appointment, engagement and remuneration. In doing so, it should engage with the auditor to satisfy itself that the level of remuneration is appropriate to enable an effective audit to be conducted.
- 9.3. The audit committee should review, monitor and report on the external auditor's independence and objectivity, and should assess the effectiveness of the audit process every year. For listed companies it is recommended that, the IFAC rotation requirements at an individual engagement partner level enhances actual and perceived independence.
- 9.4. The audit committee should define a policy for board approval, addressing the nature, extent and terms under which the external auditor may perform non-audit services.
- 9.5. The annual financial statements should include a description of non-audit services rendered by the external auditor, including the nature and quantity thereof. The audit committee can pre-authorise services proposed for a future date within the policy framework set by the audit committee.
- 9.6. The audit committee should review concerns identified as a result of the internal or external audit and should ensure that these are appropriately dealt with by management.
- 9.7. The board should develop a process to ensure that the audit committee receives notice of material irregularities (that have been reported by the external auditor to the Public Accountants and Auditors Board). Where the auditor's report is modified, the audit committee should review the completeness and accuracy of the disclosure of such matters in the financial statements.
- 9.8. At the end of each annual audit, the audit committee should review the quality and effectiveness of the audit process. It should assess whether the external auditors have performed the audit as planned and establish the reasons for any changes, obtaining feedback as necessary about the conduct of the audit from key members of the company's management, including the finance director and the chief audit executive.



Reporting

Principle C3 - 10: The audit committee should report to the board and shareholders (in the Integrated Report) on how it has discharged its duties

- 10.1. The audit committee should report internally to the board on how it has discharged its duties, statutory as well as those assigned to it by the board, during the financial year.
- 10.2. The audit committee should report to the shareholders at the AGM on how it has fulfilled its duties during the financial year. The audit committee's report at the AGM should:
 - 10.2.1 describe how the audit committee carried out its functions;
 - 10.2.2 state whether the audit committee is satisfied that the external auditor was independent of the company; and
 - 10.2.3 contain comment in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company.
- 10.3. As a minimum, the audit committee should provide the following information in the integrated report:
 - 10.3.1 a summary of the role of the audit committee;
 - 10.3.2 a statement on whether or not the audit committee has adopted a formal terms of reference that have been approved by the board and if so, whether the committee satisfied its responsibilities for the year in compliance with its terms of reference;
 - 10.3.3 the names and qualifications of all members of the audit committee during the period under review, and the period for which they served on the committee;
 - 10.3.4 the number of audit committee meetings held during the period under review and members' attendance at these meetings;
 - 10.3.5 a statement on whether or not the audit committee considered and recommended an internal audit charter for approval by the board;
 - 10.3.6 a description of the working relationship with the chief audit executive;
 - 10.3.7 information about any other responsibilities assigned to the audit committee by the board;
 - 10.3.8 a statement on whether the audit committee complied with its legal, regulatory or other responsibilities; and



- 10.3.9 a statement on whether or not the audit committee recommended the integrated report to the board for approval.

Public sector perspective

- 10.4. Audit committee members of all government institutions, including public entities and state-owned companies, must comply with the minimum qualification criteria if established by their respective executive authority.
- 10.5. The State Owned Governance Council Secretariat should agree with any premature termination (potential whistle blower) of the services of a person serving on an SOE audit committee.
- 10.6. For government institutions, including departments, public entities, municipalities, municipal entities and constitutional institutions in the public sector, the report of the audit committee should also include comments on the quality of the management and monthly or quarterly reports submitted under the SOE Governance Council requirements.
- 10.7. Should a report to an audit committee, whether from the internal audit function or any other source, implicate the accounting officer, any member of the accounting authority, or any official in financial misconduct, including fraud, corruption or negligence, the chairman of the audit committee must promptly report this to the relevant executive authority and the Auditor-General or authorised auditor.
- 10.8. The audit committee may communicate any concerns it considers necessary to the executive authority (as defined in the relevant acts), the relevant line ministry (if applicable), the Auditor-General and, if appropriate, to the Anti-Corruption Commission.



NOTES



Chapter 4

The governance of risk

The board's responsibility for risk governance

Principle C4 - 1: The board is responsible for the governance of risk

- 1.1. The board should exercise leadership to prevent risk management from becoming a series of activities that are detached from the realities of the company's business.
- 1.2. The board is responsible for the governance of risk through formal processes, which include the total system and process of risk management. The board should show leadership in guiding the efforts aimed at meeting risk management expectations and requirements.
- 1.3. The board should be able to demonstrate that it has dealt with the governance of risk comprehensively. This should include the development and implementation of a policy and plan for a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, as well as the related internal control, compliance and governance processes within the company.
- 1.4. The board should be able to disclose how it has satisfied it that risk assessments, responses and interventions are effective.
- 1.5. The board's scope of responsibility for risk governance should be expressed in its board charter and supported by induction of new board members and training processes for all board members. Where the board has delegated its responsibility for risk management to a board committee, such board committee's terms of reference should reflect this responsibility and should be approved by the board.
- 1.6. The board's responsibility for risk governance should manifest into a documented risk management policy and plan. Management should develop both the risk management policy and the plan for approval by the board.
- 1.7. The risk management policy should set the tone for risk management in the company and should indicate how risk management will support the company's strategy. The risk management policy should include the company's definitions of risk and risk management, the risk management objectives, the risk approach and philosophy, as well as the various responsibilities and ownership for risk management within the company.
- 1.8. The risk management policy should be widely distributed throughout the company.
- 1.9. The risk management plan should consider the maturity of the risk management of the company and should be tailored to the specific circumstances of the company. The risk management plan should include:



- 1.9.1 the company's risk management structure;
 - 1.9.2 the risk management framework i.e. the approach followed, for instance, COSO, ISO, IRMSA ERM Code of Practice, IRM (UK), etc;
 - 1.9.3 the standards and methodology adopted – this refers to the measurable milestones such as tolerances, intervals, frequencies, frequency rates, etc;
 - 1.9.4 risk management guidelines;
 - 1.9.5 reference to integration through, for instance, training and awareness programmes; and
 - 1.9.6 details of the assurance and review of the risk management process.
- 1.10. The board should review its risk management plan regularly but at least once a year. The board should ensure that the implementation of the risk management plan is monitored continually.

Principle C4 - 2: The board should determine the levels of risk tolerance

- 2.1. Risk is often defined as the taking of risk for reward. At least once a year, the board should set specific limits for the levels of risk the company is able to tolerate in the pursuit of its objectives. The board should also review these limits during periods of increased uncertainty or adverse changes in the business environment.
- 2.2. In setting these risk tolerance levels, the board should consider risk factors in both the external and internal business environments. These levels could be measured quantitatively, qualitatively, or both, and should be specific to each of the relevant business activities. These levels should also be used to set the parameters for the development of the business strategy.
- 2.3. The board may set limits regarding the company's risk appetite i.e. the risk limits that the board desires, or is willing, to take. Where the risk appetite exceeds, or deviates materially from the limits of the company's risk tolerance (the company's ability to tolerate), this should be disclosed in the integrated report.
- 2.4. Management should implement specific limits or tolerance levels that are aligned with those overall limits set by the board at departmental or functional, activity and operational risk levels.
- 2.5. The board should continually monitor significant risk taken by management, and should satisfy itself that management decisions balance performance with the defined tolerance limits. The board should ensure that it understands the implications of risks taken by management in pursuit of returns, as well as the potential impact of risk-taking on shareholders and other stakeholders.



Principle C4 - 3: The risk committee or audit committee should assist the board in carrying out its risk responsibilities

- 3.1. To assist it in the discharge of its duties and responsibilities in respect of risk management, the board should appoint a risk committee to review the risk management progress and maturity of the company, the effectiveness of risk management activities, the key risks facing the company, and the responses to address these key risks.
- 3.2. The board may assign this responsibility to the audit committee. However, this should be done with careful consideration to the resources available to the audit committee to adequately deal with risk governance in addition to its audit responsibilities.
- 3.3. The risk committee's (or audit committee's) responsibility for risk management should be expressed in its terms of reference.
- 3.4. The risk committee (or audit committee) should consider the risk management policy and plan, and should monitor the whole risk management process.
- 3.5. Membership of the risk committee should include executive and non-executive directors. Those members of senior management responsible for the various areas of risk management should attend its meetings. Members of the risk committee, taken as a whole, should comprise people with adequate risk management skills and experience to equip the committee to perform its functions. To supplement its risk management skills and experience, the risk committee may invite independent risk management experts to attend its meetings.
- 3.6. The risk committee should have a minimum of three members.
- 3.7. The risk committee should convene at least twice per year and individuals reporting to the committee should provide it with sufficient information to effectively discharge its responsibility.
- 3.8. Each year, the board should evaluate the risk committee's performance in terms of its composition, mandate and effectiveness.

Management's responsibility for risk management

Principle C4 - 4: The board should delegate to management the responsibility to design, implement and monitor the risk management plan

- 4.1. The board's risk strategy should be executed by management in accordance with the board-approved risk management policy and plan. The roles and responsibilities for risk management in the company should be addressed in the policy and plan.



- 4.2. Management is accountable to the board for designing, implementing and monitoring the system and process of risk management and integrating it into the day-to-day activities of the company. The board should ensure that organisational structures and resources provide for appropriate execution of risk management processes. The board should also provide management with other necessary support to enable it to execute its duties and responsibilities as outlined in the risk policy and plan.
- 4.3. The board's delegation of authority to management should incorporate risk management requirements. Management should give effect to risk management in operations in substance and form.
- 4.4. Although the CEO may appoint a chief risk officer (CRO) to assist with the execution of the risk management process, the accountability to the board remains with the CEO. There should be an appreciation that execution of risk management does not reside in one individual but requires an inclusive team-based approach for effective application across the company.
- 4.5. The CRO should be a suitably experienced person who should have access to, and interact regularly on, strategic risk matters with the board and appropriate board committee and executive management.
- 4.6. The board should satisfy itself that insurance, indemnification and remuneration practices do not prejudice risk management decision-making.
- 4.7. Risk management should be intrusive: its methodology and techniques should be embedded within strategy setting, planning, and business processes to safeguard performance and sustainability. The rigours of risk management should provide responses and interventions that strive to create an appropriate balance between risk and reward within the company.

Risk assessment

Principle C4 - 5: The board should ensure that risk assessments are performed on a continual basis

- 5.1. The board should ensure that the company has and maintains an effective on-going risk assessment process, consisting of risk identification, risk quantification and risk evaluation. This risk assessment process (using a generally recognised methodology) should identify risks and opportunities, and measure their potential impact and likelihood.
- 5.2. A systematic, documented, formal risk assessment should be conducted at least once a year; and be continually reviewed, updated and applied. The outputs of risk assessments should provide the board and management with a realistic perspective of key risks and other material risks that the company faces.



- 5.3. Following the risk evaluation process, risks should be prioritised and ranked to focus the responses and interventions on those risks outside the board's risk tolerance limits.
- 5.4. Risk assessments produce the required information for the ensuing risk management responses and interventions. Therefore, it is critical that the risk assessment process is comprehensive, accurate, thorough and complete. Risk assessments should not rely only on the perceptions of a group of managers. Risk assessments should include the use of data analysis, business indicators, market information, loss data, scenario planning and portfolio analysis.
- 5.5. Risk assessments should not adopt a conceptual view or limit itself to a fixed list of risk categories. Risk assessment is most effective when it is directed towards a strategic or business objective. In order to achieve this, the risk assessment process should involve the consideration of risks affecting the various income streams, the critical business processes, critical dependencies of the business, the sustainability dimensions of the business, and the legitimate interests and expectations of stakeholders.
- 5.6. Risk assessments should adopt a top-down approach, but should not be limited to strategic and high-end risks only. Operational risk management should be part of the risk management plan. Therefore, the risk assessment process should impact all operational levels.
- 5.7. The board should regularly receive and review a register of the company's key risks. It is important that the risk information presented to the board includes a profile of aggregated risks, correlated risks and risk concentrations.
- 5.8. The board should ensure that particular attention is focussed on those risks that may negatively impact the long-term sustainability of the company.
- 5.9. To ensure timely and adequate responses to the company's sustainability risks, the board should regularly receive and review a risk register on the company's sustainability risks. The company's integrated report should include key sustainability risks, and responses to these risks and residual sustainability risks.
- 5.10. The board should ensure that key risks are quantified where practicable.

Principle C4 - 6: The board should ensure that frameworks and methodologies are implemented to increase the probability of anticipating unpredictable risks

- 6.1. Failure to anticipate and react to risks can have a catastrophic impact on the company. This includes risks that are systemic (whether local, regional or global), for example, the global credit crunch of 2008 and 2009, as well as risks that are normally considered to be unpredictable. The board should ensure that the frameworks and processes in place to assist in anticipating these risks have the following characteristics:



- 6.1.1 *Insight*: the ability to identify the cause of the risk, where there are multiple causes or root causes that are not immediately obvious.
- 6.1.2 *Information*: comprehensive information about all aspects of risks and risk sources, especially of financial risks.
- 6.1.3 *Incentives*: the ability to separate risk origination and risk ownership ensuring proper due diligence and accountability.
- 6.1.4. *nstinct*: the ability to avoid 'following the herd' when there are systemic and pervasive risks.
- 6.1.5 *Independence*: the ability to view the company independently from its environment.
- 6.1.6 *Interconnectivity*: the ability to identify and understand how risks are related, especially when their relatedness might exacerbate the risk.

Risk response

Principle C4 - 7: The board should ensure that management considers and implements appropriate risk responses

- 7.1. Management should identify and consider different ways that the company can respond to the risks identified during the risk assessment process. These responses opted for should be noted in the risk register. The options for responses should include:
 - 7.1.1 *avoiding* the risk by not starting the activity that creates exposure to the risk;
 - 7.1.2 *treating, reducing or mitigating* the risk, through improvements to the control environment such as the development of contingencies and business continuity plans. Risk treatment may include methods, procedures, applications, managements systems and the use of appropriate resources that reduce the probability or possible severity of the risk;
 - 7.1.3 *transferring* the risk exposure, usually to a third party better able to manage the risk, for example, through insurance or outsourcing;
 - 7.1.4 *tolerating or accepting* the risk, where the level of exposure is as low as reasonably practicable or where there are exceptional circumstances;
 - 7.1.5 *exploiting* the risk, where the risk exposure represents a potential missed or poorly- realised opportunity;
 - 7.1.6 *terminating* the activity that gives rise to the intolerable risk; and
 - 7.1.7 *ntegrating* some or all of the risk responses outlined above.



- 7.2. Management should demonstrate to the board that the risk management plan provides for the identification and exploitation of opportunities to improve the performance of the company.
- 7.3. In identifying major risk events, management should not only identify the potential negative impact, but should actively identify the positive business opportunities that these risks may give rise to. Where traditionally, risk focus was on the peril side of the risk and trying to minimise it, the focus should also be on the opportunities that are often concealed within defensive risk responses.
- 7.4. Enterprise is often described as risk for reward but it may be possible to reduce risk while improving returns. Risk and reward could also have a converse relationship as opposed to the view that reward is in proportion to the measure of risk assumed. To enable the exploitation of the upside of risks (opportunities), the risk management plan should not concentrate only on de-risking responses and interventions.

Risk monitoring

Principle C4 - 8: The board should ensure continual risk monitoring by management

- 8.1. The board should ensure that management monitors the risk management plan effectively and continually. In fulfilling its responsibility, the board should ensure that management, among others, performs the following monitoring measures:
 - 8.1.1 measuring risk management performance against risk indicators; the risk indicators should be periodically reviewed for appropriateness;
 - 8.1.2 periodically measuring progress against and deviation from the risk management plan;
 - 8.1.3 monitoring changes in the external and internal environment;
 - 8.1.4 determining the impact of environment changes on the strategic risk profile of the company;
 - 8.1.5 ensuring that risk responses are effective and efficient in both design and operation;
 - 8.1.6 tracking the implementation of risk responses;
 - 8.1.7 analysing and learning lessons from changes, trends, successes, failures and events (including near-misses); and
 - 8.1.8 identifying emerging risks.
- 8.2. Responsibilities for monitoring should be clearly defined in the risk management plan.



Risk assurance

Principle C4 - 9: The board should receive assurance regarding the effectiveness of the risk management process

- 9.1. Management is accountable to provide the board with assurance that it has implemented and monitored the risk management plan and that it is integrated in the day-to-day activities of the company.
- 9.2. Reports from management to the board should provide a balanced assessment of the key risks facing the company and the effectiveness of the ensuing risk responses and interventions. The board should satisfy itself of management's appropriate application of risk management processes and their compliance to risk management policies and procedures. Any significant risk response failings or weaknesses should be disclosed in management's reports to the board, including the impact that they may have had, or may have on the company, and the resultant corrective responses and interventions taken.
- 9.3. Management reports to the board should also disclose the processes in place to improve the risk management maturity of the company, as well as the degree to which risk management has been embedded throughout the company.
- 9.4. The internal audit function should provide independent assurance in relation to risk management. Internal audit does not assume the functions, systems and processes of risk management, but provides independent assurance to the board on the integrity and robustness of the risk management process.
- 9.5. Each year, internal audit should provide a written assessment of the effectiveness of the system of internal controls and risk management to the audit committee or if no internal audit function an explanation for the lack thereof and a report by the audit committee to the board on the effectiveness of the effectiveness of internal controls.
- 9.6. External audit may consult with the board risk committee, internal audit and the CRO for an understanding of the company's risk management activities to determine the extent that the external audit process may rely on the integrity of internal financial controls.



Risk disclosure

Principle C4 - 10: The board should ensure that there are processes in place enabling complete, timely, relevant, accurate and accessible risk disclosure to stakeholders

- 10.1. In its statement in the integrated report, the board should disclose for the period under review any undue, unexpected or unusual risks it has taken in the pursuit of reward as well as any material losses and the causes of the losses. This disclosure should be made with due regard to the company's commercially privileged information. In disclosing the material losses, the board should endeavour to quantify and disclose the impact that these losses have on the company and the responses and interventions implemented by the board and management to prevent recurrence of the losses.
- 10.2. The board should disclose any current, imminent or envisaged risk that may threaten the long-term sustainability of the company.
- 10.3. The board should also disclose its views on the effectiveness of the company's risk management processes in the integrated report.



NOTES



Chapter 5

The governance of information technology (IT)

Principle C5 - 1: The board should be responsible for information technology (IT) governance

- 1.1. IT is essential to manage the transactions, information and knowledge necessary to initiate and sustain a company. In most companies, IT has become pervasive because it is an integral part of the business and is fundamental to support, sustain and grow the business. Companies should understand and manage the risks, benefits and constraints of IT. As a consequence, the board should understand the strategic importance of IT, assume responsibility for the governance of IT and place IT governance on the board agenda.
- 1.2. IT management can be considered as a framework that supports effective and efficient management of IT resources to facilitate the achievement of a company's strategic objectives. IT governance is the responsibility of the board.
- 1.3. The IT management framework should include relevant structures, processes and mechanisms to enable IT to deliver value to the business and mitigate IT risk. The IT management framework should be appropriate and applicable to the company. It should facilitate and enhance the company's ability to reach its objectives by making the most appropriate decisions about incorporating IT into its operations, programmes and services on a secure and sustainable basis.
- 1.4. As part of the IT management framework, the board should ensure that an IT charter and policies are established and implemented. This charter and policies should outline the decision-making rights and accountability framework for IT governance that will enable the desirable culture in the use of IT within the company.
- 1.5. The board should oversee the cultivation and promotion of an ethical IT governance and management culture and awareness (measured through levels of governance and management skills and competencies) and of a common IT language.
- 1.6. The board should provide the required leadership and direction to ensure that the company's IT achieves, sustains and enhances the company's strategic objectives. IT governance is not an isolated discipline but is an integral part of overall corporate governance.
- 1.7. IT governance should focus on the governance of the information as well as the governance of technology.
- 1.8. The board should ensure that an IT internal control framework is adopted and implemented and that the board receives independent assurance on the effectiveness thereof.



- 1.9. The board should take the necessary steps to ensure that there are processes in place to ensure complete, timely, relevant, accurate and accessible IT reporting, firstly from management to the board, and secondly by the board in the integrated report.

Principle C5 - 2: IT should be aligned with the performance and sustainability objectives of the company

- 2.1. The board should ensure that the IT strategy is integrated with the company's strategic and business processes. IT should be seen to add value by enabling the improvement of the company's performance and sustainability.
- 2.2. The alignment between IT and strategic and business processes involves: ensuring that business and IT plans are integrated; defining, maintaining and validating the IT value proposition; and aligning IT operations with overall business operations.
- 2.3. The IT alignment process is essential during the development of any business plans (whether at strategic, management or operational levels) and plays a key role in determining and executing the business arrangements supporting the company's strategic objectives.
- 2.4. As companies should view environmental sustainability to be good corporate citizenship, the negative impact that IT could have on the environment should be considered.
- 2.5. The board should ensure that there is a robust process in place to identify, and exploit where appropriate, opportunities to improve the performance and sustainability of the company in the triple context through effective and efficient IT use.

Principle C5 - 3: The board should delegate to management the responsibility for the implementation of an IT governance framework

- 3.1. Management is responsible for the implementation of all the structures, processes and mechanisms to execute the IT governance framework which it may delegate to management.
- 3.2. Effective IT frameworks and policies, as well as the processes, procedures and standards that these involve, should be implemented with the view to minimise IT risk, deliver value, ensure business continuity, and assist the company to manage its IT resources efficiently and cost effectively.
- 3.3. In particular, management should inform the board about whether the company's IT function is:
 - 3.3.1 on track to achieve its objectives;
 - 3.3.2 resilient and agile enough to adapt to strategic needs;
 - 3.3.3 adequately protected from the risks it faces; and
 - 3.3.4 such that opportunities can be pro-actively recognised and acted on.



- 3.4. The board may appoint an IT steering committee or similar forum or function to assist with its governance of IT. There should be relevant representation from business and IT in this structure.
- 3.5. Each company should consider the suitable strategy, structure and size of its IT function, considering what is appropriate for the adequate management of the IT function and associated risk of the particular company and having regard to any legislative requirements that apply to the IT function. The structure of the IT function, its role and its position in terms of reporting lines, should reflect the company's decision on how IT is integrated with its operations.

The CEO should appoint an individual responsible for the management of IT, often referred to as a Chief Information Officer (CIO). If outsourced a detailed service level agreement must be executed and services adequately supervised to comply with the CIO requirements.
- 3.6. The CIO should be a suitably qualified and experienced person who should have access to, and interact regularly on, IT governance matters with the board or appropriate board committee or both, as well as with executive management.
- 3.7. The CIO should serve as a bridge between IT and the business and therefore, should:
 - 3.7.1 understand the accountability and responsibility for IT;
 - 3.7.2 be business-orientated, understand business requirements, the long-term strategy for the business of the company and translate this into efficient and effective IT solutions;
 - 3.7.3 have a strategic approach and facilitate the integration of IT into business strategic thinking and development; and
 - 3.7.4 exercise care and skill to design, develop, implement and maintain sustainable IT solutions to enable the achievement of strategic objectives.

Principle C5 - 4: The board should monitor and evaluate significant IT investments and expenditure

- 4.1. The company should ensure that it acquires and uses the appropriate technology, processes and people to support its business and governance requirements in a timely manner and accurately.
- 4.2. The level of investment in IT is significant and continues to increase and few companies would survive without appropriate IT. While there are many examples of companies generating value from investing in IT, many executives are questioning whether the business value is in proportion to the level of investment.
- 4.3. The board should oversee the proper value delivery of IT and should ensure that the expected return on investment from significant IT investments and projects



is delivered and that the information and intellectual property contained in the information systems are protected. This can be achieved by:

- 4.3.1 clarifying business strategies and objectives and the role of IT in achieving them;
 - 4.3.2 measuring and managing the amount spent on and the value received from IT;
 - 4.3.3 assigning accountability for organisational changes required to benefit IT capabilities; and
 - 4.3.4 learning from each implementation and becoming more adept at sharing and re-using IT assets.
- 4.4. Good governance principles should apply to all parties in the supply chain or channel for the acquisition and disposal of IT goods or services. This applies equally to a division within a company, subsidiary or a third party.
 - 4.4. Where the responsibility for the provision of IT goods or services has been delegated to another party (or division), all parties (including the board) remain accountable for enforcing and monitoring effective IT governance.
 - 4.5. The company should obtain independent assurance on the IT governance and controls supporting outsourced IT services. This assurance should be aligned to the company's normal assurance activities under the auspices of the audit committee.
 - 4.6. IT management should ensure that all the basic elements of appropriate project management principles are applied to all IT projects. Effective review processes by independent experts are recommended.

Principle C5 - 5: IT should form an integral part of the company's risk management

Refer to Chapter 4 for more detail on risk management.

- 5.1. IT risks should form part of the company's risk management activities and considerations as defined in Chapter 4.
- 5.2. Management should regularly demonstrate to the board that the company has adequate business resilience arrangements in place for disaster recovery.
- 5.3. IT legal risk arises from the possession, ownership and operational use of technology that may result in the company becoming a party to legal proceedings.
- 5.4. When considering the company's compliance with applicable laws, rules, codes and standards, the board should ensure that IT related laws, rules, codes and standards are considered. Companies must comply with applicable IT laws and consider adherence to applicable IT rules, codes and standards, guidelines and leading practices.
- 5.5. The board should consider how IT could be used to aid the company in its managing of risk and its compliance with laws, rules, codes and standards.



Principle C5 - 6: The board should ensure that information assets are managed effectively

- 6.1. Information management initiatives are often driven by external regulations, requirements and concerns about data privacy, information security and legal compliance. To achieve compliance with external regulations, formal processes should be in place to manage information. Information management encompasses:
- 6.1.1 the protection of information (**information security**);
 - 6.1.2 the management of information (**information management**); and
 - 6.1.3 the protection of personal information processed by companies (**information privacy**).

Information management

- 6.2. Information records are the most important information assets as they are evidence of business activities.
- 6.3. The board should ensure that there are systems in place for the management of information assets and the performance of data functions including the following:
- 6.3.1 ensuring the availability of information and information systems in a timely manner;
 - 6.3.2 implementing a suitable information security management programme;
 - 6.3.3 ensuring that all sensitive information is identified, classified and assigned appropriate handling criteria. Regarding information 'sensitivity', more and more countries are imposing obligations on companies to treat certain types of information as 'sensitive'. 'Sensitivity' includes all references to information which is personal, private, confidential, secret or unable to be disclosed. Many of the laws provide for offences and penalties where there has not been compliance with sensitivity requirements;
 - 6.3.4 the management of the risks associated with information and information systems;
 - 6.3.5 establishing processes to ensure continuous monitoring of all the aspects of information;
 - 6.3.6 establishing processes to ensure the maintenance and monitoring of data quality; and
 - 6.3.7 establishing a business continuity programme addressing the company's information and recovery requirements, and ensuring the programme is still aligned with the successful execution of the business' activities.



Information privacy

- 6.4. The board should ensure that there are systems in place for personal information to be treated by the company as an important business asset and that all 'personal information' that is processed by the company is identified.
- 6.5. Personal information should be processed according to applicable laws.

Information security

- 6.6. The board should ensure that an Information Security Management System (ISMS) is developed, implemented and recorded in an appropriate and applicable information security framework.
- 6.7. The board should oversee the information security strategy and delegate and empower management to implement the strategy.
- 6.8. IT management is responsible for the implementation of the ISMS. The ISMS should include the following high-level information security principles:
 - 6.8.1 ensuring the confidentiality of information;
 - 6.8.2 ensuring the integrity of information; and
 - 6.8.3 ensuring the availability of information and information systems in a timely manner.

Principle C5 - 7: A risk committee and audit committee should assist the board in carrying out its IT responsibilities

- 7.1. The risk committee should ensure that IT risks are adequately addressed through its risk management, monitoring and assurance processes.
- 7.2. The risk committee should consider IT risk as a crucial element of the effective oversight of risk management of the company. In many cases the risk committee may need to rely on expert advice from within or outside the company.
- 7.3. In understanding and measuring IT risks, the members of the risk committee should understand the company's overall exposure to IT risks from a strategic and business perspective, including the areas of the business that are most dependent on IT for effective and continual operation.
- 7.4. Areas that are highly dependent on IT are more exposed if IT risks are not appropriately governed. The risk committee should obtain appropriate assurance that controls in place are effective in addressing these risks.
- 7.5. IT as it relates to financial reporting and the going concern of the company should be the responsibility of the audit committee. The risk committee has the responsibility to oversee the broader risk implications of IT.
- 7.6. The audit committee should also consider the use of technology and related techniques to improve audit coverage and audit efficiency.



Chapter 6

Compliance with laws, rules, codes and standards

Principle C6 - 1: The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards

- 1.1. Companies must comply with all applicable laws. In order to achieve this, companies should maintain a register of applicable laws and compliance therewith
- 1.2. Exceptions permitted in law and shortcomings in the law that present an opportunity for abuse which is contrary to the spirit, intent and purpose of the law, as well as proposed changes expected in legislation and regulation, should be handled in an ethical and responsible manner.
- 1.3. Corporate governance is the expression of ethical values and standards. As such, compliance should also be understood to be an ethical imperative for the governance of companies. Consequently, in some countries, as in the United States, the offices of ethics and compliance are combined.
- 1.4. Compliance with applicable laws should be understood not only in terms of the obligations that they create, but also for the rights and protection that they afford. Companies should always aim to achieve a balanced approach in their outlook on compliance. Simply complying with laws, without consideration of the rights available in the circumstances, cannot be deemed to be acting in the best interests of the company. The duty to act in the best interests of the company includes considering the rights of the company when dealing with compliance.
- 1.5. Companies should also understand the context of the law, and how other applicable laws interact with it, as no law operates in a vacuum.
- 1.6. The board should consider adherence to applicable non-binding rules, codes and standards if it would constitute good governance and practice. The board should disclose in the integrated report the applicable non-binding rules, codes and standards to which the company adheres on a voluntary basis.
- 1.7. The board is responsible for the company's compliance with applicable laws and with those non-binding rules, codes and standards with which the company elected to comply. One of the important responsibilities of the board is therefore to monitor the company's compliance with all applicable laws, rules, codes and standards.
- 1.8. Compliance with applicable laws, rules, codes and standards should be proactively and systematically managed by companies and compliance should be a regular



item on the agenda of the board even if this responsibility is delegated to a separate committee or function within the organisational structure.

- 1.9. The extent of reliance placed by the board on these delegated committees or functions depends on the board's assessment of knowledge, effectiveness and experience of the committee or function.
- 1.10. The board should disclose details in the integrated report on how it has discharged its responsibility to ensure the establishment of an effective compliance framework and processes.

Principle C6 - 2: The board, each individual director and the company secretary should have a working understanding of the effect of the applicable laws, rules, codes and standards on the company and its business

- 2.1. The board has a duty to take the necessary steps to ensure the identification of the laws, rules, codes and standards applicable to the company.
- 2.2. Processes should be in place to ensure that the board is continually informed of relevant laws, rules, codes and standards, including changes to them, as part of their induction and on-going training and education referred to in Chapter 2, Principle 2.20.
- 2.3. Directors should sufficiently familiarise themselves with the general content of applicable laws, rules, codes and standards to be able to adequately discharge their fiduciary duties in the best interests of the company and their duty of care, skill and diligence. Included in this duty is to make use of the rights and protection that the law presents in the best interests of the company.

Principle C6 - 3: Compliance risk should form an integral part of the company's risk management process

- 3.1. Compliance risk can be described as the risk of damage, arising from non-adherence to the law and regulations, to the company's business model, objectives, reputation, going concern, stakeholder relationships or sustainability.
- 3.2. The risks of non-compliance should be identified, assessed and responded to through the company's risk management processes as described in Chapter 4. Although a systematic risk management approach to compliance is advised, this does not imply that compliance is optional depending on whether the risk assessment warrants it. Compliance is compulsory in keeping with Principle 6.1, while the risk management framework provides an appropriate system for the management, monitoring and reporting thereof.



- 3.3. As part of the broader risk management structure, a compliance function provides assistance to the board and management in complying with applicable laws, rules, codes and standards.

Principle C6 - 4: The board should delegate to management the implementation of an effective compliance framework and processes

- 4.1. Management should develop the compliance policy and the board should approve it. Management should be responsible for implementing this policy and reporting to the board regarding compliance with it.
- 4.2. Management should integrate and align the compliance policy with other business efforts and objectives to avoid duplication of effort and missed opportunities for synergies.
- 4.3. A company's procedures and control framework should incorporate compliance with relevant laws, rules, codes and standards and the board should receive assurance on the effectiveness of the procedures and control framework.
- 4.4. Compliance with laws, rules, codes and standards should be incorporated in the code of conduct of the company to entrench a culture of compliance. Employees should be encouraged to understand and implement these codes.
- 4.5. A compliance culture should be encouraged through leadership, establishing the appropriate structures, education and training, communication, and measurement of key performance indicators relevant to compliance.
- 4.6. A company should consider disclosing in its integrated report any material - or immaterial but often repeated - regulatory penalties, sanctions and fines for contraventions or non-compliance with statutory obligations that were imposed on the company or any of its directors or officers. Disclosure should be considered having regard to whether divulging the information that the disclosure will necessitate, would negatively affect the company, breach confidentiality, or breach any agreement to which it is a party.
- 4.7. Although the CEO may appoint a compliance officer to assist in the execution of the compliance function, the accountability to the board remains with the CEO. The compliance officer should be a suitably experienced person who should have access to, and interact regularly on, strategic compliance matters with the board or appropriate board committee or both, as well as with executive management.
- 4.8. The compliance function should have adequate resources to discharge its responsibilities.
- 4.9. Each company should consider the suitable structure and size of its compliance function, considering what is appropriate for the adequate management of the



compliance risk of the particular company and having regard to the legislative requirements that apply to the compliance function. The structure of the compliance function, its role and its position in terms of reporting lines, should reflect the company's decision on how compliance is integrated with its ethics and risk management.

- 4.10. Where the role of in-house legal adviser or counsel is combined with that of compliance officer, company secretary or other similar position, companies should exercise due care that the common law right of privilege is not compromised when the officer acts in a capacity other than legal adviser. The common law right of privilege is available to a client when approaching a legal adviser for legal advice about a court matter.



Chapter 7

Internal audit

The need for and role of internal audit

Principle C7 - 1: The board should ensure that there is an effective risk based internal audit

1. Continual and rapid changes as well as the complexity of business, organisational dynamics and the regulatory environment often require companies to establish and maintain an effective internal audit function to assist with their risk management processes. If the board, in its discretion, decides not to establish an internal audit function, full reasons should be disclosed in the company's integrated report, with an explanation of how adequate assurance of an effective governance, risk management and internal control environment has been maintained.
2. The key responsibility of internal audit is to the board, its committees, or both, in discharging its governance responsibilities and as a minimum to perform the following functions:
 - 2.1 evaluating the company's governance processes including ethics, especially the 'tone at the top';
 - 2.2 performing an objective assessment of the effectiveness of risk management and the internal control framework;
 - 2.3 systematically analysing and evaluating business processes and associated controls; and
 - 2.4 providing a source of information, as appropriate, regarding instances of fraud, corruption, unethical behaviour and irregularities.
3. In cases where total outsourcing is selected as the method for obtaining internal audit services, a senior executive or director should be responsible for internal audit, with the responsibility to oversee, manage, inform and take accountability for the effective functioning of the outsourced internal audit activity. This responsibility extends to reporting to the audit committee and complying with the independence requirements of an in-house internal audit function.
4. Internal audit's processes should be flexible and dynamic in addressing emerging business, organisational, operational and assurance needs.
5. An internal audit charter should be formally defined and approved by the board (generally through its audit committee).
6. The internal audit function should adhere to the Institute of Internal Auditors' Standards for the Professional Practice of Internal Auditing and Code of Ethics at a minimum.



Internal audit's approach and plan

Principle C7 - 2: Internal audit should follow a risk based approach to its plan

- 2.1. Internal audit should pursue a risk based approach to planning as opposed to a compliance approach that is limited to evaluation of adherence to procedures. A risk-based internal audit approach has the benefit of assessing whether the process intended to serve as a control is an appropriate risk measure.
- 2.2. An effective internal audit function's planning and approach should be informed by the strategy of the company and should attempt to align with business performance. Internal audit, as a significant role player in the governance process, should contribute to the effort to achieve strategic objectives and should provide effective challenge to all aspects of the governance, risk management and internal control environment.
- 2.3. An internal audit function should be independent from management who instituted the controls and should be an objective provider of assurance that considers:
 - 2.3.1 the risks that may prevent or slow down the realisation of strategic goals;
 - 2.3.2 whether controls are in place and functioning effectively to mitigate these; and
 - 2.3.3 the opportunities that will promote the realisation of strategic goals that are identified in good time, assessed timely, adequately and managed effectively by the company's management team.
- 2.4. Internal audit should ensure that the internal audit reporting meets management and audit committee requirements.
- 2.5. The chief audit executive's (CAE's) internal audit planning should take the form of an assessment of risks and opportunities facing the company and should:
 - 2.5.1 align with the company's risk assessment process (considering the risk maturity of the company);
 - 2.5.2 focus on providing an assessment of the company's control environment;
 - 2.5.3 consider the company's risks and opportunities identified by management and other key stakeholders;
 - 2.5.4 take cognisance of industry relevant emerging issues; and
 - 2.5.5 discuss the adequacy of resources and skills available to the CAE to execute the plan with the audit committee.



Principle C7 - 3: Internal audit should provide a written assessment of the effectiveness of the company's system of internal control and risk management

- 3.1. Internal audit plays an important role in providing assurance to the board regarding the effectiveness of the system of internal controls and risk management of the company. The board should report on the effectiveness of the system of internal controls in the integrated report.
- 3.2. Internal controls should be established not only over financial matters, but also operational, compliance and sustainability issues in order to manage the risks facing the company.
- 3.3. A company should maintain an effective risk management and internal control framework that should include:
 - 3.3.1 clear accountability and responsibility between the roles of the board, its board committees, management and internal audit as well as other assurance providers;
 - 3.3.2 a clear understanding of the risk management framework and risk management processes among all role players;
 - 3.3.3 the manner in which risk management and internal controls contribute to and improve business performance; and
 - 3.3.4 clarification regarding the value added by the respective role players in business performance.
- 3.4. Management should specify the elements of a control framework according to which the company's control environment can be measured. Such a control framework should contain a clear link between the company's risk management and independent assurance processes.
- 3.5. Internal audit should provide a written assessment of the effectiveness of the system of internal controls and risk management to the board. The assessment regarding internal financial controls should be reported specifically to the audit committee.
- 3.6. The internal audit function should possess the appropriate competencies to allow it to focus its attention across the risk and internal control spectrum.



Principle C7 - 4: The audit committee should be responsible for overseeing internal audit

- 4.1. A risk based internal audit plan should be agreed with the audit committee for its approval.
- 4.2. The internal audit function should provide independent and objective assurance to the audit committee that the risk management and internal control considerations of the company are adequately contemplated and responded to by relevant personnel and that the level of management oversight and risk management is appropriate, relevant and reliable.
- 4.3. Internal audit should play a pivotal role in the combined assurance model by providing independent assurance on risk management and systems of internal control. Contributors to combined assurance include predominantly: internal audit, risk management, quality assurers, environmental and occupational health and safety auditors, external audit, other external assurance providers and management. The combined assurance framework is described in Chapter 3, Principle 3.5.
- 4.4. The internal audit function, generally through the audit committee, should assure the board that the combined assurance model embedded within the company is coordinated so as to best optimise costs, avoid duplication, and prevent assurance overload and assessment fatigue.
- 4.5. The audit committee should evaluate the performance of the internal audit function every year to ensure that internal audit is fulfilling its responsibility to assist and advise the audit committee and the board. To ensure that internal audit maintains appropriate independence its pay, bonus and other benefits should be determined separately to that undertaken for the business.
- 4.6. The audit committee should ensure that the internal audit function is subjected to an independent quality review, either in line with IIA standards or as and when the audit committee determines it appropriate, as a measure to ensure the function remains effective.
- 4.7. Internal audit should establish and maintain a strong working relationship with the audit committee. The CAE should report functionally to the audit committee chairman.
- 4.8. The audit committee should be ultimately responsible for the appointment, performance assessment and dismissal of a CAE or outsourced internal audit service provider.
- 4.9. The audit committee should ensure that the internal audit function is sufficiently resourced and has the appropriate budget to meet the company's expectations.



- 4.10. The CAE should develop a sound working relationship with the audit committee by:
 - 4.10.1 providing an objective set of eyes and ears across the company;
 - 4.10.2 providing assurance and awareness on risks and controls specific to the company and its industry and geographic sector;
 - 4.10.3 positioning internal audit as a trusted strategic adviser to the audit committee;
 - 4.10.4 confirming to the audit committee, at least once a year, the independence of the internal audit function; and
 - 4.10.5 communicating regularly with the audit committee chairman.
- 4.11. Internal audit should report at all audit committee meetings and consider meeting with the audit committee chairman before and immediately after each audit committee meeting.
- 4.12. The CAE should attend all audit committee meetings and provide the meeting with a written assessment of the effectiveness of the governance, risk and control environment. The CAE should report on how management has or will repair or mitigate any deficiencies. The CAE should assure the audit committee that sufficient work has been done, using a risk based approach, to support the assessment.
- 4.13. The CAE's assessment of the effectiveness of the governance, risk and control environment should not necessarily relate to a particular financial year but should be based on audits completed by the internal audit function since the previous reporting period. Therefore, the rolling of assessments is recommended. However, there should also be recognition of the requirements of integrated reporting. The audit committee should provide comment on the state of the internal financial control environment in the company's integrated report.
- 4.14. The CAE's assessment should consider the scope, nature and extent of audit work performed, and evaluate what the evidence from the audit means concerning the adequacy and effectiveness of the governance, risk and control environment (refer to Chapter 4). Such an assessment should express:
 - 4.14.1 the evaluation criteria and approach used;
 - 4.14.2 the scope and period over which the assessment applies;
 - 4.14.3 who has responsibility for the establishment and maintenance of internal controls; and
 - 4.14.4 the measure of degree of assurance provided.



- 4.15. The quality of the internal audit team should bear directly on its ability to service complex areas of the business and provide greater value to the company and audit committee.

Internal audit's status in the company

Principle C7 - 5: Internal audit should be strategically positioned to achieve its objectives

- 5.1. Companies should have an effective internal audit function that is independent and objective. Internal audit should report functionally to the audit committee to assure this and should have the respect and cooperation of both the board and management.
- 5.2. The CAE should have a standing invitation to attend as an invitee any of the executive committee or other committee meetings. The position as 'invitee' is to protect the independence of internal audit. The CAE should be apprised formally of the company's strategy and performance through meetings with the chairman, the CEO, or both.
- 5.3. With the focus on corporate governance, scrutiny of risk management and direct audit committee oversight of internal audit, the degree of interaction between the audit and risk committees with internal audit should ensure that an optimum level of control oversight is maintained.
- 5.4. The internal audit function should be skilled and resourced to the extent that their tools and audit techniques keep pace with the complexity and volume of risk and assurance needs.
- 5.5. Internal auditors should have the appropriate technical and business skills to ensure that they are connected to the realities of the business and organisational dynamics of the company and are able to effectively challenge issues relating to all facets of a company.
- 5.6. The CAE should develop and maintain a quality assurance and improvement programme that covers all aspects of the internal audit function.



Chapter 8

Governing stakeholder relationships

Principle C8 - 1: The board should appreciate that stakeholders' perceptions affect a company's reputation

- 1.1. Stakeholders' overall assessments (and therefore aggregate perceptions) of companies, result in the formation of corporate reputations. Reputation is based on how well a company performs compared with the legitimate interests and expectations of stakeholders. There is growing awareness of how important the contribution of reputation is to the economic value of the company.
- 1.2. The gap between stakeholder perceptions and the performance of the company should be managed and measured to enhance or protect corporate reputation and to avoid damage or destruction by company actions. What the company does, and not only what it communicates, ultimately shapes the perceptions of stakeholders. However, communication assists in bridging actual and perceived gaps that may occur and it facilitates a balanced assessment of the company.
- 1.3. In light of the impact that stakeholder perceptions may have on reputation, companies should realise that stakeholder interests and expectations, even if not considered warranted or legitimate, should be dealt with and cannot be ignored.
- 1.4. The board should be the ultimate custodian of the corporate reputation and stakeholder relationships. The company's reputation and its linkage with stakeholder relationships should therefore be a regular board agenda item. The board should take account of and respond to the legitimate interests and expectations of stakeholders linked to the company in its decision-making.
- 1.5. An interest or expectation of a stakeholder is, considered to be legitimate if a reasonable and informed outsider would conclude it to be valid and justifiable on a legal, moral or ethical basis in the circumstances.
- 1.6. A stakeholder-inclusive corporate governance approach recognises that a company has many stakeholders that can affect the company in the achievement of its strategy and long-term sustained growth. Stakeholders can be considered to be any group that can affect the company's operations, or be affected by the company's operations. Stakeholders include shareholders, institutional investors, creditors, lenders, suppliers, customers, regulators, employees, unions, the media, analysts, consumers, society in general, communities, auditors and potential investors. This list is not exhaustive.
- 1.7. The board should from time to time identify important stakeholder groupings, as well as their legitimate interests and expectations, relevant to the company's strategic objectives and long-term sustainability.



- 1.8. Stakeholders that could materially affect the operations of the company should be identified, assessed and be dealt with as part of the risk management process (refer to Chapter 4). These stakeholders should include not only stakeholders who could negatively impact on a company, but also stakeholders who could add value to the company by enhancing the wellbeing and sustainability of the company or positively impact on the reputation of the company. For instance, a local community may not affect the operations of the company itself, but the way in which the company impacts the community could affect its reputation.
- 1.9. Companies should take account of the fact that stakeholders' interests in the company are dynamic and subject to change. It is therefore necessary to review the process for identification and responding to the legitimate interests and expectations at least once a year.

Principle C8 - 2: The board should delegate to management to proactively deal with stakeholder relationships

- 2.1. Management should develop for adoption by the board, a strategy and suitable policies for the management of its relations with all stakeholder groupings.
- 2.2. The board should consider from time to time whether it is appropriate to publish its stakeholder policies. If the board decides that it is in its best interests not to publish its stakeholder policies, it should consider whether, apart from any legal requirements, it would be willing to disclose all or any of these to any stakeholders on request.
- 2.3. The board should consider whether it is appropriate to publish a list of its stakeholder groupings (not the names of individual members of any stakeholder grouping) which it intends to deal with on a proactive basis, and the method of engagement.
- 2.4. The board should oversee the establishment of mechanisms and processes that support stakeholders in constructive engagement with the company and the board. These mechanisms and processes should be incorporated in the stakeholder policies.
- 2.5. Constructive engagement is aimed at ultimately promoting enhanced levels of corporate governance. It enables the company and the stakeholders to share their perspectives on the interests of the company. Constructive engagement should not amount to second-guessing the board or management of the company or permitting interference or undue influence in the running of the company.
- 2.6. Constructive engagement with stakeholders could provide companies with valuable information about stakeholders' views, external events, market conditions, technological advances, and trends or issues. This can assist companies anticipate, understand, and respond to external changes more efficiently, thereby enabling the company to deal with challenges more effectively.



- 2.7. The board should guard against using legal or other processes to frustrate or block constructive engagement by stakeholders, for instance, by continually compelling stakeholders to resort to courts. This should not prevent the board from resorting to litigation or other dispute resolution mechanisms where appropriate to protect the company's legal interests.
- 2.8. A structured process of engagement between a company and its stakeholders, cognisant of uniform disclosure of information and insider trading restraints imposed by law, has many potential benefits. Structured engagement could be particularly useful when, for instance, preparing for an annual general meeting. It could reduce the risk of confrontation, could prevent the board having to spend unnecessary time in constant interventions with stakeholders, and could mitigate against mischievous action by competitors.
- 2.9. The board should encourage shareholders to attend AGMs and other company meetings, at which all the directors should be present. The chairmen of each of the board committees should be present at the AGM.
- 2.10. The board should consider not only formal processes such as the AGM for interaction with its stakeholders. It should also consider informal processes such as direct contact, websites, advertising, or press releases. The formation of stakeholder associations should be encouraged where appropriate.
- 2.11. Stakeholders should consider their responsibilities as stakeholders in the company. Stakeholders should, for instance, be circumspect about making public statements that can damage the interests of the company. Stakeholders should clearly and in a constructive manner communicate to the board about the steps they would contemplate if dialogue is considered to have failed. Litigation should be a last resort.
- 2.12. If the board is willing to engage directly with any stakeholder groupings, the representatives of the company and stakeholders must be careful how they deal with information that could be share price sensitive. It is incumbent upon both the company and the stakeholders to familiarise themselves with insider trading laws. Even taking this into account, stakeholders should encourage the company to share information with all stakeholders as soon as possible. Use of the applicable Stock Exchange News Services (SENS) ensures that instances of unequal disclosure are minimised. A stakeholder liaison forum, electronic or otherwise, that all stakeholders can access with relative ease can prevent or reduce the problem of only certain stakeholders being in possession of inside information.
- 2.13. The board should disclose in its integrated report the nature of its dealings with its stakeholders and the outcomes of these dealings.



Principle C8 - 3: The board should strive to achieve the appropriate balance between its various stakeholder groupings, in the best interests of the company

- 3.1. The law directs the board to act in the best interests of the company and the board should, within these confines, strive to achieve an appropriate balance between the interests of various stakeholders. In doing so, the board should take account, as far as possible, of the legitimate interests and expectations of its stakeholders in its decision-making.
- 3.2. Board decisions on *how* to balance interests of stakeholders should be guided by the aim of ultimately advancing the best interests of the company. This applies equally to the achievement of the 'triple context' and the notion of good corporate citizenship as described in Chapter 1. This does not mean that a company should and could always treat all stakeholders fairly. Some may be more significant to the company in particular circumstances and it is not always possible to promote the interests of all stakeholders in all corporate decisions. It is important, however, that stakeholders have confidence that the board will consider their legitimate interests and expectations in an appropriate manner and guided by what is in the best interests of the company.
- 3.3. Although the company has the primary governance duty of managing the relationships with its stakeholders, the stakeholders should also, where possible, accommodate the process. The board cannot achieve successful interaction with the company's stakeholders unilaterally.
- 3.4. Engagement is more likely to succeed in achieving a satisfactory result when stakeholders actively support constructive engagement and the principles of good governance (including that of good corporate citizenship), appreciate the legal duties of the board, consider the best interests of the company, take a longer term view and are not solely focused on advancing their own interests.

Principle C8 - 4: Companies should ensure the equitable treatment of shareholders

- 4.1. There must be equitable treatment of all holders of the same class of shares issued by the company as regards those shares, including minorities, and between holders of different classes of shares in the company, except where it is necessary to protect the interests of the shareholders of those classes that have a priority in ranking.
- 4.2. Minority shareholders should be protected from abusive actions by or in the interests of the controlling shareholder.



Principle C8 - 5: Transparent and effective communication with stakeholders is essential for building and maintaining their trust and confidence

- 5.1. The stakeholder-inclusive approach aims, among other things, to stimulate appropriate dialogue between the company and its stakeholders. Such dialogue can enhance or restore stakeholder confidence, remove tensions, relieve pressure on company reputation, and offer opportunities to align expectations, ideas and opinions on issues.
- 5.2. Relationships with stakeholders can only be built and maintained if the company provides complete, timely, relevant, accurate, honest and accessible information.
- 5.3. The degree of corporate transparency and communication should, however, be considered with reference to the company's stakeholder policies, any relevant legal requirements and the maintenance of the company's competitive advantage. The decision on the level of disclosure of information and its timing is a strategic one.
- 5.4. The company should implement processes to promote appropriate disclosure. However, the board should take account of its duty to protect the long term sustainability of the company when it considers communications about potentially adverse situations facing the company that may reasonably be corrected in the short term.
- 5.5. All communication to stakeholders should use clear and simple language and should set out all relevant facts, both positive and negative. It should be structured to enable its target market to understand the implications of the communication. Companies should use communication channels that are accessible to its stakeholders.
- 5.6. The board should, as part of the company's stakeholder policies, adopt communication guidelines that support a responsible communication programme. These guidelines should define the respective responsibilities of the board and management in regard to stakeholder communication.
- 5.7. The board should be concerned that the stakeholder communication programme provide that: all who have a right to know are properly informed; that effective feedback systems exist; that the board is alerted in a timely fashion to matters that should be communicated to stakeholders; and that processes exist to deal rapidly and sensitively with any crisis.



Dispute resolution

Principle C8 - 6: The board should ensure disputes are resolved as effectively, efficiently and expeditiously as possible

- 6.1. Disputes (or conflict) involving companies are an inevitable part of doing business and provide an opportunity not only to resolve the dispute at hand but also to address and solve business problems and to avoid their recurrence.
- 6.2. It is incumbent upon directors and executives, in carrying out their duty of care to a company, to ensure that disputes are resolved effectively, expeditiously and efficiently. This means that the needs, interests and rights of the disputants must be taken into account. Further, dispute resolution should be cost effective and not be a drain on the finances and resources of the company.
- 6.3. Alternative dispute resolution (ADR) has been a most effective and efficient methodology to address the costly and time consuming features associated with more formal litigation. Statistics related to success range from a low of 50%, for those situations in which the courts have handed down a case for ADR, to an average of 85% - 90% where both parties are willing participants.
- 6.4. ADR has become the intervention of choice in many instances and so it is appropriate for specialists to improve the overall rate of intake and success. Clearly the best outcome would be to increase the overall satisfaction with the process and outcome of successful resolution.
- 6.5. Disputes may arise either within a company (internal disputes) or between the company and outside entities or individuals (external disputes). The board should adopt formal dispute resolution processes for internal and external disputes.
- 6.6. Internal disputes may be addressed by recourse to the provisions of the Act and by ensuring that internal dispute resolution systems are in place and function effectively.
- 6.7. External disputes may be referred to arbitration or a court. However these are not always the appropriate or most effective means of resolving such disputes. Mediation is often more appropriate where interests of the disputing parties need to be addressed and where commercial relationships need to be preserved and even enhanced.
- 6.8. A distinction should be drawn between processes of dispute resolution (litigation, arbitration, mediation and others) and the institutions that provide dispute resolution services.
- 6.9. In respect of all dispute resolution institutions and regardless of the dispute resolution process or processes adopted by each, an indispensable requirement is its independence and impartiality in relation to the parties in dispute.



- 6.10. The courts, independent mediation and arbitration services (not attached to any disputing parties) and formal dispute resolution institutions created by statute are empowered to resolve disputes by mediation or conciliation and by adjudication. Their effective use should be ensured by companies.
- 6.11. Successful resolution of disputes entails selecting a dispute resolution method that best serves the interests of the company. This would, in turn, entail giving consideration to such issues as the preservation of business relationships and costs, both in money and time, especially executive time.
- 6.12. Mediation is often suggested as an ADR method with the assumption that the parties are willing to engage fully in the process. A process of screening is undertaken by many mediators, which excludes those who fall short of the criteria of will and capacity.
- 6.13. It is also important to recognise that the use of mediation allows the parties to create options for resolution that are generally not available to the parties in a court process or in arbitration.
- 6.14. Mediation is not defined in the Namibian Companies Act. The concept has an accepted meaning in practice in Southern Africa. Mediation may be defined as a process where parties in dispute involve the services of an acceptable, impartial and neutral third party to assist them in negotiating a resolution to their dispute, by way of a settlement agreement. The mediator has no independent authority and does not render a decision. All decision-making powers in regard to the dispute remain with the parties. Mediation is a voluntary process both in its initiation, its continuation and its conclusion.
- 6.15. Similarly conciliation is not defined in the Companies Act. Conciliation is, like mediation, a structured negotiation process involving the services of an impartial third party. The conciliator will, in addition to playing the role of a mediator, make a formal recommendation to the parties as to how the dispute can be resolved.
- 6.16. Once again, adjudication is not defined in the Companies Act but the process will not differ significantly from arbitration.
- 6.17. In selecting a dispute resolution process, there is no universal set of rules that would dictate which is the most appropriate method. Each case should be carefully considered on its merits and, at least, the following factors should be taken into account:
 - 6.17.1 *Time available for the resolution of the dispute.* Formal proceedings, and in particular court proceedings, often entail procedures lasting many years. By contrast, alternative dispute resolution (ADR) methods, and particularly mediation, can be concluded within a limited period of time, sometimes within a day.



- 6.17.2 *Principle and precedent.* Where the issue in dispute involves a matter of principle and where the company desires a resolution that will be binding in relation to similar disputes in the future, ADR may not be suitable. In such cases court proceedings may be more appropriate.
- 6.17.3 *Business relationships.* Litigation and processes involving an outcome imposed on both parties can destroy business relationships. By contrast mediation, where the process is designed to produce a solution most satisfactory to both parties (a win-win resolution), relationships may be preserved. Where relationships and particularly continuing business relationships are concerned, therefore, mediation or conciliation may be preferable.
- 6.17.4 *Expert recommendation.* Where the parties wish to negotiate a settlement to their dispute but lack the technical or other expertise necessary to devise a solution, a recommendation from an expert who has assisted the parties in their negotiations may be appropriate. This process would be termed conciliation.
- 6.17.5 *Confidentiality.* Private dispute resolution proceedings may be conducted in confidence. Further, it is recommended that alternative dispute resolution processes be conducted in private.
- 6.17.6 *Rights and interests.* It is important in selecting a dispute resolution process to understand a fundamental difference they have to adjudicative methods of dispute resolution (court proceedings, arbitration and adjudication). The adjudicative process involves the decision-maker imposing a resolution of the dispute on the parties after having considered the past conduct of the parties in relation to the legal principles and rights applicable to the dispute. This inevitably results in a narrow range of possible outcomes based on fundamental considerations of right and wrong. By contrast, mediation and conciliation allow the parties, in fashioning a settlement of their dispute, to consider their respective needs and interests, both current and future. Accordingly, where creative and forward-looking solutions are required in relation to a particular dispute and particularly where the dispute involves a continuing relationship between the parties, mediation and conciliation are to be preferred. For example, a contract can be amended or materially rewritten.
- 6.18. Mediation and conciliation require the participation and presence of persons empowered and mandated to resolve the dispute.



- 6.19. The board should select the appropriate individual(s) to represent the company in alternative dispute resolution (ADR) processes.
- 6.20. The Courts will enforce an ADR clause to resolve a dispute providing all are subject to an agreed set of rules and practices such as the place and language of the process.
- 6.21. Contracting parties who are attuned to the fact that a dispute will be administered and resolved by a third party are naturally inclined to resolve it themselves. If, for example, the ADR processes are made subject to the rules of AFSA, it will be administered by a regional body. If the ADR processes are arbitrary, a recalcitrant party in bad faith may be able to frustrate the process.



NOTES



Chapter 9

Integrated reporting and disclosure

Transparency and accountability

Principle C9 - 1: The board should ensure the integrity of the company's integrated report

- 1.1. Integrated reporting means a holistic and integrated representation of the company's performance in terms of both its finances and its sustainability. The emphasis is on substance over form and integration should not be reduced merely to the manifestation in physical terms of one or more documents. A truly integrated report should be presented in one document.
- 1.2. A company should have controls to enable it to verify and safeguard the integrity of its integrated report. In this regard the board should ensure that the company has implemented a structure of review and authorisation designed to ensure the truthful and factual presentation of the company's financial position. The structure should include:
 - 1.2.1 review and consideration of the financial statements by the audit committee; and
 - 1.2.2 a process to ensure the independence and competence of the company's external auditor(s). Please refer to Chapter 3 Principle 3.4 for more detail on the audit committee's role in integrated reporting.
- 1.3. The audit committee's role in sustainability reporting should be to assist the board in approving the disclosure of sustainability issues in the integrated report by ensuring that the information is reliable and that no conflicts or differences arise when compared to the financial results. Concerning its reliability, the audit committee should recommend independent assurance over the sustainability reporting to the board.
- 1.4. A structure as described above does not diminish the ultimate responsibility of the board to ensure the integrity of the company's integrated report.
- 1.5. The integrated report should be prepared every year and should convey adequate information about the operations of the company, the sustainability issues pertinent to its business, the financial results, and the results of its operations and cash flows.
- 1.6. Reporting effectively about the goals and strategies of the company, as well as its performance with regard to economic, social and environmental issues, also serves to align the company with the legitimate interests and expectations of its stakeholders, and at the same time, obtain stakeholder buy in and support for the



objectives that the company is pursuing. This support can prove to be invaluable during difficult times, for instance when the company needs certain approvals or authority, or when it needs and relies on the confidence and loyalty of customers.

- 1.7. Integrated reporting should be focused on substance over form and should disclose information that is complete, timely, relevant, accurate, honest and accessible and comparable with past performance of the company. It should also contain forward-looking information.

Principle C9 - 2: Sustainability reporting and disclosure should be integrated with the company's financial reporting

Financial disclosure

- 2.1. The annual financial statements should be included in the integrated report.
- 2.2. The board should include commentary on the company's financial results. This commentary should include information to enable a stakeholder to make an informed assessment of the company's economic value, by allowing stakeholders insight into the prospects for future value creation and the board's assessment of the key risks which may limit those prospects.
- 2.3. The board should disclose whether the company is a going concern and whether it will continue to be a going concern in the financial year ahead. If there is concern about the company's going concern status, the board should give the reasons and the steps it is taking to remedy the situation.

Sustainability disclosure

- 2.4. The integrated report should describe how the company has made its money; hence the need to contextualise financial results by reporting on the positive and negative impact the company's operations had on its stakeholders. It is important for sustainability reporting and disclosure to highlight the company's plans to improve the positives and eradicate or mitigate the negatives in the financial year ahead. This will enable stakeholders to make an informed assessment of the economic value and sustainability of the company.
- 2.5. Reporting should be integrated across all areas of performance, reflecting the choices made in the strategic decisions adopted by the board, and should include reporting in the triple context of economic, social and environmental issues.
- 2.6. Companies should recognise that the principle of transparency in reporting sustainability (commonly but incorrectly referred to as 'non-financial') information is a critical element of effective reporting. The key consideration is whether the information provided has allowed stakeholders to understand the key issues affecting the company as well as the effect the company's operation has had on the economic, social and environmental wellbeing of the community, both positive and negative.



- 2.7. Sustainability reporting is becoming increasingly formalised and sophisticated, which is evident in the Global Reporting Initiative G3 guidelines which include a much greater emphasis on the principle of materiality, which links sustainability issues more closely to strategy, as well as the principle of considering a company's broader sustainability context. The formalisation of sustainability reporting is also evident in the development of an ISO standard on social responsibility.
- 2.8. As with financial reporting, there is a need for credible sustainability reporting to both internal as well as external stakeholders. Sustainability reporting parameters are not standardised as is the case with financial reporting, and the performance indicators reported on should be explained in terms of their implications and also having regard to available benchmarks. Excellent guidance is to be found in the third generation Global Reporting Initiative (GRI) guidelines of 2007 (G3 guidelines) NSX.
- 2.9. The GRI guidelines have become the accepted international standard for sustainability reporting. Although having a global standard in place assists in providing common parameters and facilitating benchmarking and comparability across companies, these should be incorporated into the company's systems based on its specific practical and strategic needs, relevant areas of operation and stakeholder concerns. Therefore, sustainability reporting cannot be a matter of collating information and reporting at year end, but should be integrated with other aspects of the business process and managed throughout the year.

Principle C9 - 3: Sustainability reporting and disclosure should be independently assured

- 3.1. Assurance over the financial disclosure in the integrated report should be obtained. A formal process of assurance with regard to sustainability reporting should be established. Refer to Chapter 3, Principle 3.4.
- 3.2. Providing assurance is different from verification. The process of verification confirms the existence of stated facts – it confirms data. Assurance is a broader term that refers to the integrity of certain processes and systems. The verification of certain information may therefore be necessary to provide assurance. The assurance regarding sustainability performance and reporting is more complex as the information is not always subject to clear standards as is the case with financial reporting.

Globally, two complementary standards have emerged in sustainability assurance: Accountability's AA 1000 Assurance Standard (AA1000AS) and the International Accounting and Auditing Standard Board's International Standard on Assurance Engagements (ISAE 3000).

All auditing professionals must comply with ISAE 3000. While AA1000AS usually aligns the assurance process to the material concerns of stakeholders in terms



of the NamCode as a whole, ISAE 3000 concentrates on the accuracy and completeness of information through a process of verification of data, systems performance assessment and evaluating compliance within the company's defined scope. It is therefore recommended that:

- 3.2.1 'sustainability' assurance is an on-going, integral part of the integrated reporting cycle; and
- 3.2.2 ISAE3000 and AA1000AS methodologies are used in combination to ensure the needs of the stakeholders and those of the company are met in a single process.
- 3.3. The subject matter of an assurance engagement can take various forms. For example, performance information, internal controls, claims regarding specific management practices, extent to which the NamCode accords with certain international standards such as the GRI, and behaviour in terms of compliance. Directing the scope and rigour of the assurance engagement, is the level of assurance agreed upfront with the company. This results in an expression of either a reasonable-to-high or limited-to-moderate assurance conclusion.
- 3.4. In obtaining assurance, the company should be clear on the scope of the assurance to be provided and this should also be disclosed.
- 3.5. To the extent that reports are subject to assurance, the name of the assurer should be clearly disclosed, together with the period under review, the scope of the assurance exercise, and the methodology adopted.
- 3.6. General oversight and reporting disclosure should be delegated by the board to the audit committee.
- 3.7. The audit committee should assist the board in reviewing the integrated report to ensure that the information is reliable and that it does not contradict the financial aspects of the NamCode. The audit committee should also oversee the provision of assurance over sustainability issues in the same way that it would do with financial matters. For example, it would consider whether appropriate policies and processes are in place, whether they are adhered to, and whether the information about performance is reliable. This role of the audit committee is still necessary with regard to sustainability performance and reporting, even if there is a separate sustainability committee, or if sustainability matters are addressed by another board committee.
- 3.8. The board should be responsible for the accuracy and completeness of the sustainability reporting and disclosure but may rely on the opinion of a credible, independent assurance provider.



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Glossary of Terms

- ADR** Alternative Dispute Resolution
- AFSA** - Arbitration Foundation of Southern Africa
- '**Conciliation**' and '**Mediation**' are often used interchangeably and indiscriminately
- Conciliation** - A structured negotiation process involving the services of an impartial third party.
- A **conciliator** (neutral) will, in addition to playing the role of a mediator, make a formal recommendation to the parties as to how the dispute can be resolved
- Mediation** - A process where parties in dispute involve the services of an acceptable, impartial and neutral third party to assist them in negotiating a resolution to their dispute, by way of a settlement agreement. Mediators do not make formal recommendations about resolution of the dispute.
- Negotiation** - The process of working out an agreement by direct communication
- Neutral** - Independent third party who acts as mediator, conciliator or chairman in various ADR procedures
- Arbitration** – See Chapter 8 Principle 6 for more examples

Accountable - Being responsible and able to justify and explain decisions and actions

AGM Annual General Meeting

BEE Black Economic Empowerment

CAE Chief Audit Executive

CEO Chief Executive Officer

CFO Chief Financial Officer

CIO Chief Information Officer

Combined assurance - Integrating and aligning assurance processes in a company to maximise risk and governance oversight and control efficiencies, and optimise overall assurance to the audit and risk committee, considering the company's risk appetite

Companies Act or Companies Act 2004– means the Companies Act, Act 28 of 2004 – effective from 1 November 2010 – also referred to as the Namibian Companies Act 2004. This act repealed the 1973 Companies Act.

South African Companies Act – means the Companies Act, Act 71 of 2008 as promulgated in South Africa – also referred to as the 2008 South African Companies Act

Corporate Citizenship - Responsible corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates. As responsible corporate citizens of the societies in which they do business, companies have, apart from rights, also legal and moral obligations in respect of their economic, social and natural environments. As a responsible corporate citizen, the company should protect, enhance and invest in the wellbeing of the economy, society and the natural environment

CSR **Corporate Social Responsibility/ Corporate Responsibility** - Is an important and critical component of the broader notion of corporate citizenship. One is a good corporate citizen, inter alia, by being socially responsible.

Corporate responsibility is the responsibility of the company for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that: contributes to sustainable development, including health and the welfare of society; takes into account the legitimate interests and expectations of



stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the company and practiced in its relationships.

- **Activities** include products, services and processes
- **Relationships** refer to a company's activities within its sphere of influence

CSI

Corporate Social Investment/ Responsible Investment - Is one manifestation of Corporate Responsibility. In the narrow sense it refers to donations and other kinds of financial assistance (made for an altruistic purpose), and in the broader sense, includes other kinds of contributions beyond just financial assistance. Whilst Responsible Investment is an important aspect of Corporate Responsibility, it should be an integral component of a broader economic, social and environmental (sustainability) strategy

COO

Chief Operating Officer

COSO

Committee of Sponsoring Organisations

CRO

Chief Risk Officer

CSR

Corporate Social Responsibility

ERM

Enterprise Risk Management is defined as comprehensive risk management that allows companies to identify, prioritise, and effectively manage their crucial risks. An ERM approach integrates risk solutions into all aspects of business practices and decision making processes

ESG

Environmental, social and governance issues.

Ethics 'Ethics' and 'morality' (these terms can be used interchangeably) refer to that which is good or right in human interaction. Ethics involves three key, interlinked concepts – 'self', 'good', and 'other'. Thus, one's conduct is ethical if it gives due consideration not only to that which is good for oneself, but also good for others.

- **Business ethics** - 'Business ethics' refers to the ethical values that determine the interaction between a company and its stakeholders
- **Ethical values and ethical principles** - Ethical values translate into behavioural commitments (principles) or behavioural directives (standards, norms, and guidelines). For example, the ethical value of honesty generates the principle "We should be honest". This means that we have an ethical duty not to deceive, but to tell the truth. In specific circumstances, the principle of honesty may clash with another ethical principle, such as the principle of respect – "We should respect the dignity of others". A clash of ethical principles results in an ethical dilemma. We need to employ ethical reasoning and deliberation to resolve ethical dilemmas.
- **Values** - Describing conduct as 'good' or 'right' means measuring it against standards, called 'values'.
- **Ethical values** are convictions we hold about what is important in our character and interactions with others.
- Examples of ethical values are integrity, respect, honesty (truthfulness), responsibility, accountability, fairness, transparency, and loyalty

Fairness

Free from discrimination or dishonesty and in conformity with rules and standards

FIA

Financial Intelligence Act 2012

GIPF

Government Institutions Pension Fund

GRI

Global Reporting Initiative - a network-based organization

G3 guidelines - GRI guidelines of 2007

ICGN

International Corporate Governance Network



IIA Institute of Internal Auditors

Independence - Independence is the absence of undue influence and bias which can be affected by the intensity of the relationship between the director and the company

Information - Raw data that has been verified to be accurate and timely, is specific and organised for a purpose, is presented within a context that gives it meaning and relevance and which leads to increase in understanding and decrease in uncertainty

IT governance - IT governance can be considered as a framework that supports effective and efficient management of IT resources to facilitate the achievement of a company's strategic objectives.

- **Application Service Provider (ASP)** - Is a business that provides computer-based services to customers over a network
- **Availability** - The property of being accessible and usable upon demand by an authorised entity
- **Business continuity** - Is the activity performed by a company to ensure that critical business functions will be available to customers, suppliers, regulators, and other entities that must have access to those functions
- **Preventing, mitigating and recovering from disruption** - The terms 'business resumption planning', 'disaster recovery planning' and 'contingency planning' also may be used in this context; they all concentrate on the recovery aspects of continuity
- **Classified information systems** - Refers to a system of people, data records and activities that process the data and information in a company, and it includes the company's manual and automated processes. In a narrow sense, the term information system (or computer-based information system) refers to the specific application software that is used to store data records in a computer system and automates some of the information-processing activities of the company
- **Cloud-computing** - Is a style of computing in which dynamically scalable and often virtualized resources are provided as a service over the Internet
- **Confidentiality** - The property that information is not made available or disclosed to unauthorised individuals, entities, or processes
- **Control framework** - A control framework is a set of fundamental controls that must be in place to prevent financial or information loss in a company
- **Data functions** - Data functions are all functions and activities that pertain to the creation, modification, application, management and extermination of data within a company. These include, but are not limited to the following:
 - Architectural design;
 - Data integrity;
 - Storage;
 - Reporting;
 - Master data management;
 - Data quality; and
 - Legal compliance.
- **Data privacy** - Is the relationship between collection and dissemination of data, technology, the public expectation of privacy, and the legal and political issues surrounding them
- **Data quality** - Refers to the degree of excellence exhibited by the data in relation to the portrayal of the actual phenomena
- **Information governance** - Is an emerging discipline with an evolving definition. The discipline embodies a convergence of data quality, data management, business



process management, and risk management surrounding the handling of data in a company. Also defined as data governance

- **Information management program** - A comprehensive information management program will improve the information-handling and administrative processes, the security of private information
- **Information security** - Information security is the protection of information from a wide range of threats in order to ensure business continuity, minimise business risk, and maximise return on investments and business opportunities
- **Information security management program** - The part of the overall management system, based on a business risk approach, to establish, implement, operate, monitor, review, maintain and improve information security. The management system includes organisational structure, policies, planning activities, responsibilities, practices, procedures, processes and resources
- **Information security principles** - Information security principles are the means of protecting information and information systems from unauthorised access, use, disclosure, disruption, modification or destruction
- **Integrity** - The property of safeguarding the accuracy and completeness of assets
- **On-demand computing** - Is a computing and communications infrastructure that facilitates flexible business service delivery
- **Peripherals** - Is a device attached to a host computer behind the chipset whose primary functionality is dependent upon the host, and can therefore be considered as expanding the host's capabilities, while not forming part of the system's core architecture. These include printers, faxes etc
- **Platform as a Service (PaaS)** - Is the delivery of a computing platform and solution stack as a service. It facilitates deployment of applications without the cost and complexity of buying and managing the underlying hardware and software layers providing all of the facilities required to support the complete life cycle of building and delivering web applications and services entirely available from the Internet, with no software downloads or installation for developers, IT managers or end-users. It's also known as cloud-ware
- **Project management** - Is the discipline of planning, organising and managing resources to bring about the successful completion of specific project goals and objectives. It is often closely related to and sometimes conflated with program management
- **Security incident management program** - Security incident management program is the monitoring and detection of security events on a computer or computer network, and the execution of proper responses to those events. It defines and implements a process that a company may adopt to promote its own welfare and the security of the public
- **Software as a Service (SaaS)** - Is a model of software deployment whereby a provider licenses an application to customers for use as a service on demand
- **Software licensing** - Is a contract between a producer and a purchaser of computer software that is included with software

ITGI IT Governance Institute

Integrated reporting - Means a holistic and integrated representation of the company's performance in terms of both its finance and its sustainability

IoDSA Institute of Directors in southern Africa

IRMSA Institute of Risk Management South Africa

IRM (UK) Institute of Risk Management United Kingdom



ISACA	Information Systems Audit and Control Association
ISMS	Information Security Management System
ISO	International Standards Organisation
IT	Information technology
King I	Report on Corporate Governance issued in 1994
King II	Report on Corporate Governance issued in 2002
King III	Report on Corporate Governance issued in 2009
Laws	Acts promulgated by Parliament, regulation, subordinate legislation, international legislation, applicable binding industry codes and rules such as NSX Listings requirements and contractual obligations
Legitimate interests and expectations	- The interest and expectation could be concluded to be valid and justifiable on a legal, moral or ethical basis in the circumstances by a reasonable and informed party
LID	Lead Independent Director
Not for Profit Company	- A company formed in terms of Section 21 of the Companies Act
NSX	Namibian Stock Exchange
OECD	Organisation for Economic Cooperation and Development
Practitioner	- A person appointed, or two or more persons appointed jointly, to oversee a company during business rescue proceedings
PRI	Principles for Responsible Investment: An investor initiative in partnership with UNEP Finance Initiative and the UN Global Compact
Private company	- A limited liability company with less than 50 shareholders and at least 1 director
Public company	- A limited liability company, generally with more than 7 shareholders and at least 2 directors
Responsibility	- The state or position of having control or authority and being accountable for ones actions and decisions

Risk	<p>Risk can be defined as uncertain future events that could influence, both in a negative and a positive manner, the achievement of the company's objectives</p> <p>It is the combination of the probability of an event and its consequence</p> <p>Risk is a condition in which the possibility of loss exists</p> <p>In some situations risk arises from the possibility of deviation from the expected outcome or event</p> <p>Risk arises as much from failing to capture business opportunities when pursuing strategic and operational objectives as it does from a threat that something bad will happen</p> <ul style="list-style-type: none">• Event - Occurrence of a particular set of circumstances<ul style="list-style-type: none">• The event can be certain or uncertain• The event can be a single occurrence or a series of occurrences• The probability associated with the event can be estimated for a given period of time• Probability - Extent to which the event is likely to occur<ul style="list-style-type: none">• Frequency (the property of an event occurring at intervals) rather than probability (the relative likelihood of an event happening) may be used in describing risk• Degrees of believe about probability can be chosen as classes or ranks, such as rare/unlikely/moderate/likely/ almost certain, or incredible/improbable/remote/occasional/ probable/frequent
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Risk management - Risk management is the identification and evaluation of actual and potential risk areas as they pertain to the company as a total entity, followed by a process of either avoidance, termination, transfer, tolerance (acceptance), exploitation, or mitigation (treatment) of each risk, or a response that is a combination or integration

Risk management process- The Risk Management Process entails the planning, arranging and controlling of activities and resources to minimise the negative impacts of all risks to levels that can be tolerated by stakeholders whom the board has identified as relevant to the business of the company, as well as to optimise the opportunities, or positive impacts, of all risks

Cost of risk - Costs associated with:

- Insurance premiums;
- Self-retained losses (incurred loss);
- Uninsured losses;
- Risk control expenses including safety, security, property conservation, and quality control programs, etc.;
- Maintenance costs;
- Machinery breakdown costs;
- Consulting charges;
- Training;
- Environmental costs; and
- Administrative costs (internal and external) including risk management department, internal claims staff, fees paid to brokers, risk management consultants, outside claims and loss control services

Criteria - Terms of reference by which the significance of risk is assessed

- Risk criteria can include associated cost and benefits, legal and statutory requirements, socio economic and environmental aspects, the concern of stakeholders, priorities and other inputs to the assessment

Key risks- Risks which the company perceives to be its most significant risks

Key risk indicators - A metric that can be monitored and that has a correlation with one of the risk factors

- Indicators by which key risks can be easily identified

Mitigation - Limitation of any negative consequence of a particular event

Residual risk - The level of Risk remaining after risk treatment

Risk acceptance - Decision to accept a risk

- The verb 'to accept' is chosen to convey the idea that acceptance has its basic dictionary meaning
- Risk acceptance depends on risk criteria

Risk analysis - Systematic use of information to identify sources and to estimate the risk

- Risk analysis provides a basis for risk evaluation, risk treatment and risk acceptance
- Information can include historical data, theoretical analysis, informed opinions, and the concerns of stakeholders

Risk appetite - The level of residual risk that the company is prepared or willing to accept without further mitigation action being put in place, or the amount of risk a company is willing to accept in pursuit of value

- A company's risk appetite will vary from risk to risk
- Risk appetite is different from risk bearing capacity



Risk assessment - Overall process of risk identification, risk quantification and risk evaluation in order to identify potential opportunities or minimise loss

Risk avoidance - Decision not to become involved in, or action to withdraw from, a risk situation

- The decision may be taken based on the result of risk evaluation

Risk bearing capacity - RBC is a prediction of the company's ability to endure losses and the effect such losses may have on the company's value and /or its ability to continue with its activities

- RBC is a monetary value which is used as a yardstick, measuring the maximum loss the company can endure, without exposing it to the point where its existence and survival is under threat, given an equivalent loss

Risk communication - Exchange or sharing of information about risk between the decision-maker and other stakeholders

- The information can relate to the existence, nature, form, probability, severity, acceptability, treatment or other aspects of risk

Risk control - Actions implementing physical risk management decisions

- Risk control may involve monitoring, re-evaluation, and compliance with decisions

Risk estimation - Process used to assign values to the probability and consequences of a risk

- Risk estimation can consider cost, benefits, the concerns of stakeholders and other variables, as appropriate for risk evaluation

Risk evaluation - Process of comparing the estimated risk against given risk criteria to determine the significance of the risk

- Risk evaluation may be used to assist in the decision to accept or to treat a risk

Risk driver - The technical, programmatic and supportability facets of risk

Risk financing - Provision of funds to meet the cost of implementing risk treatment and related costs

- In some instances, risk financing refers to funding only the financial consequences related to the risk

Risk identification - Process to find, list and characterise elements of risk

- Elements can include source or hazard, event, consequence and probability
- Risk identification can also reflect the concerns of stakeholders

Risk Manager / Group Risk Management / Risk Champion - An employee of who has the primary responsibility for advising on, formulating, overseeing and managing all aspects of a company's risk management system and monitors the company's entire risk profile, ensuring that major risks are identified and reported upwards

Risk matrix - The structure of numbers of levels of probability and consequences chosen against which to measure risk

Risk optimisation - Process, related to a risk to exploit the risk opportunities, minimise the negative and to maximise the positive consequences and their respective probabilities

Risk perception - Way in which a stakeholder views a risk based on a set of values or concerns

- Risk perception depends on the stakeholder's needs, issues and knowledge
- Risk perception can differ from objective data

Risk profile - The company and its regions and functional areas, has an inherent and residual risk profile. These are all the risks faced by the company, ranked according to a risk matrix and indicated graphically on a matrix. The Risk Score may be determined by multiplying the frequency and severity of the risks, where these are indicated



Risk reduction - Actions taken to lessen the probability negative consequences or both, associated with a risk

Risk register - A formal listing of risks identified, together with the results of the risk analysis, risk evaluation procedures together with details of risk treatment, risk control, risk reduction plans

Risk response - Process of selection and implementation of measures to modify risk

- The term "risk treatment" is sometimes used for the measures themselves
- Risk response measures can include treating, avoiding, optimising, transferring, terminating or retaining risk

Risk retention Acceptance of the burden of loss, or benefit of gain, from a particular risk

- Risk retention includes the acceptance of risks that have not been identified
- Risk retention does not include treatments involving insurance, or transfer by other means.
- There can be variability in the degree of acceptance and dependence on risk criteria

Risk tracking - The monitoring of key risks over time to determine whether the level of risk is changing

Risk transfer - Sharing with another party the burden of loss or benefit of gain, for a risk

- Legal or statutory requirements can limit, prohibit or mandate the transfer of certain risk
- Risk transfer can be carried out through insurance or other agreements
- Risk transfer can create new risks or modify existing risk
- Relocation of the source is not risk transfer

Source identification - Process to find, list and characterise sources or root causes

- In the context of safety, source identification is called hazard identification

SENS Stock Exchange New Service – includes the Namibian Exchange News Service

Share-based incentive scheme - A share-based incentive scheme is a form of remuneration which rewards employees according to the appreciation in value of real or notional equity holdings in the company. It may take a variety of forms, including that of an option or a conditional grant of shares subject to performance or other conditions. It is generally granted over a period of three or more years and may be settled by cash or by the issue of shares.

SOX Sarbanes-Oxley Act, 2000

SRI Socially Responsible Investments

Stakeholders - Any group affected by and affecting the company's operations

SOE State owned enterprise / company

Sustainability - Sustainability of a company means conducting operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs. It means having regard to the impact that the business operations have on the economic life of the community in which it operates. Sustainability includes environmental, social and governance issues.

Transparent - Easy to understand or recognise; obvious; candid; open; frank

Triple context - The context in which companies operate - people, profit and planet

Ubuntu A concept which is captured in the expression 'uMuntu ngumuntu ngabantu', '*I am because you are; you are because we are*'. Ubuntu means humaneness and the philosophy of Ubuntu includes mutual support and respect, interdependence, unity, collective work and responsibility

UN United Nations

UNGC United Nations Global Compact