

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

Corporate Governance Country Assessment REPUBLIC OF SOUTH AFRICA

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This Corporate Governance Assessment was completed as part of the joint World Bank-IMF program of Reports on the Observance of Standards and Codes (ROSC). It benchmarks the country's observance of corporate governance against the OECD Principles of Corporate Governance and is based on a template developed by the World Bank. This assessment was undertaken on the basis of the template and report prepared by Philip Armstrong for the World Bank. Acknowledgments are due to the National Treasury, Financial Services Board, JSE Securities Exchange and STRATE, Registrar of Companies, Mervyn King and other members of the King Committee, The South African Institute of Chartered Accountants, The Public Accountants' and Auditors' Board, The Securities Regulation Panel, The Reserve Bank of South Africa, The Development Bank of Southern Africa, leading experts on legal, accounting and auditing issues, academics, state-owned companies, capital market issuers, institutional investors and stakeholder groups. The final report was drafted by Olivier Frémond and Mierta Capaul of the Corporate Governance Unit Private Sector Advisory Services of the World Bank. The ROSC assessment was cleared for publication by the National Treasury on July 1, 2003.

I. EXECUTIVE SUMMARY

This report assesses the corporate governance practices of listed companies in South Africa within the broader context of the institutional capacity needed to ensure compliance and enforcement. The diagnostic reflects the corporate governance framework as of December 2001. In the meantime, further developments have taken place, and the stock exchange is planning to update its listing requirements with respect to corporate governance in 2003. Planned amendments include requiring the separation of chairman and CEO functions, compulsory audit and remuneration committees, and a comply-or-explain requirement of adherence to the King II code.

South Africa has a well developed equity market with a market capitalization of 154 percent of GDP. Listed companies account for half of the corporate sector by value. As of 2001, on average, listed firms used equity financing for 35 percent of total funding. The ownership structure continues to be relatively concentrated, albeit less so than a decade ago. Domestic institutional investors control portfolios equal to 163 percent of GDP and represent 36 percent of total market capitalization. Given capital account restrictions, issuers operate largely in a captive market for domestic institutional investors. Institutional investors, however, take a passive attitude with respect to corporate governance.

The policy recommendations can be grouped under three broad categories: legislative reform, institutional strengthening and voluntary/private initiatives. The legislative and regulatory framework dealing with corporate governance practices is undergoing substantial changes, and it is anticipated that most of the pending legislative and regulatory issues will be resolved. The most serious problems are compliance and enforcement. Hence, one of the key recommendations for policymakers is to strengthen the enforcement powers of the securities regulator.

This report promotes choice. The publications of the King Code of Corporate Practices and Conduct (King I) and the forthcoming King II set out international best practice. They are private sector initiatives and voluntary in nature. They give issuers the choice to implement best practice and investors a benchmark against which to measure corporate governance in South Africa. This allows individual issuers and the country as a whole to distinguish themselves in the competition for equity capital at home and abroad.

II. CAPITAL MARKETS AND INSTITUTIONAL FRAMEWORK

As of December 2001, 537 public companies were listed on the JSE Securities Exchange (JSE). As of October 2001, market capitalization was R1,348 billion (USD 160 billion) or 154 percent of GDP. The turnover ratio was 35 percent. New listings and capital issues averaged R54 billion (USD 9.7 billion) per annum over the last five years, with a sharp drop-off since mid-2000. Free float estimates are not available. Starting in 2002, JSE will publish free float estimates. Between 1997 and 2000, five companies¹ accounting for almost a quarter of market capitalization, shifted their primary listing to the UK.

Historically, the corporate sector has been dominated by mining finance houses. During the last five years, mining houses have ‘unbundled’ their stakes in non-core holdings or bought out minority shareholders. The restructuring has transformed the control structures of South Africa’s largest companies: In 1989, 17 of the 20 largest listed firms were controlled by one shareholder

¹ Billiton, South African Breweries, Anglo American, Old Mutual and Dimension Data Holdings.

block; by October 2001, this number had dropped to nine. The number of companies among the top 20 with dispersed ownership had risen from three to 11, among which were two demutualized life insurance companies.² Among smaller companies, effective control by founding individuals and families remained prevalent, but not universal.

South Africa has a large private pension funds sector and long-term insurance industry. As of 2001, domestic institutional investors dominated the JSE with R580 billion (USD 95 billion) invested in equities, equal to 45 percent of their portfolios. Domestic institutional holdings accounted for 36 percent of the total market capitalization. Since the capital account is not fully liberalized, issuers operate largely in a captive market for domestic institutional investors.

The Companies Act (1973) is inspired by British common law and falls under the supervision of the Ministry of Trade and Industry. All incorporated bodies are required to register with the Registrar of Companies, which administers the Companies Act. The Registrar has limited capacity for enforcement. The legal framework relies heavily on self-regulation. The Stock Exchanges Control Act (as amended in 1995) governs stock exchanges. Implementation falls under the supervision of the Financial Services Board (FSB), which in turn is accountable to the Minister of Finance for execution of its duties and functions. There are plans to replace the Stock Exchange Control Act with a comprehensive Securities Services Bill, which will consolidate four Acts including the Stock Exchanges Control Act. It is expected that the new Bill will be promulgated during the second half of 2003.

The FSB is an independent statutory body created in 1990. It is financed by levies and fees. The board is appointed by the Ministry of Finance for three year terms. The FSB employs 189 people. It regulates the insurance and pension fund industries, the stock and bond exchanges, the central securities depositories, but not issuers of securities. It has formal powers of investigation with criminal conduct being referred to the national director of public prosecution. There are plans to create an integrated (super-) financial markets regulator.

The JSE is a member-owned SRO. It regulates brokerage members, trading, and issuers. The JSE has a 50 percent interest in the clearing and settlement business called STRATE. The board of directors consists of four executive and nine non-executive directors, two of whom are independent. The chairman is a member. JSE plans to demutualize and eventually seek a listing. JSE has the power to issue private or public censures, fines, suspensions and delistings.

To raise capital and become listed, public companies³ must file a prospectus, the contents of which are governed by the Companies Act. The JSE Listing Rules are more demanding than the public company requirements. In 2000, the Listing Rules affecting corporate governance issues were amended; the changes covered five aspects: (i) New pyramid companies and differential-voting shares may not be listed; (ii) Financial statements must comply with South African GAAP, which is in compliance with International Accounting Standards (IAS); (iii) Governance disclosure requirements were strengthened, requiring disclosure on directors' qualifications, interests and remuneration, as well as the company's policy with respect to self-dealing; (iv) A free-float shareholder base of 20 percent was required; (v) A "Code of Corporate Practices and Conduct" was included as a non-mandatory listing recommendation in Schedule 22. Companies

² Old Mutual and Sanlam (Malherbe and Segal (2001)

³ Only public companies are allowed to offer shares to the public.

must disclose the extent of compliance with the code and provide an explanation where they do not comply in their annual reports.

The King Code of Corporate Practices and Conduct (King I) was released in 1994 and raised public awareness. King I is recognized internationally for its treatment of stakeholder and corporate responsibility issues. King II was released in 2001 for public comment. Both are voluntary codes. The South African Institute of Directors (IoD) was created over 40 years ago. Through its center for directorship and corporate governance, it organizes training programs for directors and senior managers. It also runs graduate diploma programs together with universities. As of 2002, over 90 percent of listed firms had at least one director who was a member.

III. REVIEW OF CORPORATE GOVERNANCE PRINCIPLES

This review assesses South Africa's compliance with each OECD Principle of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed.⁴

Section I: The Rights of Shareholders

Principle IA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to: (1) secure methods of ownership registration; (2) convey or transfer shares; (3) obtain relevant information on the corporation on a timely and regular basis; (4) participate and vote in general shareholder meetings; (5) elect members of the board; and (6) share in the profits of the corporation.

Assessment: Observed

Description of practice: Companies may keep the share register⁵ themselves or subcontract registration to the central depository STRATE for scripless shares and to one of three transfer secretaries for scrips. According to market participants, registration process is slow. Since March 2001 shares are automatically dematerialized and transferred to STRATE, when they trade. Clearance and settlement is also performed by STRATE. Rolling settlement takes place on a DVP basis on T+5. It is in compliance with the ISSA G30 recommendations. The majority of listed firms settle through STRATE, with the remaining companies to be incorporated in 2002.

Filings required by the Companies Act are available at the Registrar in Pretoria for public inspection and copying for a small fee. Upon payment of a nominal amount, companies send a copy of their memorandum and articles to shareholders. The company must send the annual financial statements and a semi-annual interim report to shareholders.

Every holder of ordinary shares is entitled to attend and vote at general meetings. According to market analysts, this right is often not exercised, as shareholders are passive. Shareholders have the right to vote on the appointment and removal of directors and auditors. Cumulative voting does not exist. The declaration of dividends falls within the powers of the board. The standard articles provide that dividends declared at the AGM should not exceed the amount recommended by the board. Once dividends are declared, the right to receive payment accrues immediately.

⁴ **Observed** means that all essential criteria are met without significant deficiencies. **Largely observed** means only minor shortcomings are observed, which do not raise questions about the authorities' ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the Principle, practices, and enforcement diverge. **Materially not observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

⁵ Companies Act S105

Principle IB: Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes, such as: (1) amendments to the governing documents of the company; (2) the authorization of additional shares; and (3) extraordinary transactions that in effect result in the sale of the company.

Assessment: Largely observed

Description of practice: Shareholders vote on amendments to the articles and any additions or alterations of the memorandum. They also vote on the authorization and issuance of share capital. The right to issue shares up to the existing authorized capital can be delegated to the board, but must be renewed annually. The Companies Act provides that the approval of a general meeting is required to dispose of the whole or substantially the whole of the company's undertaking, or the whole or the greater part of the company's assets. Decisions are taken by simple majority, and the quorum is three shareholders personally present. Similarly, shareholders vote in respect of a compromise and arrangement between the company, its shareholders and creditors. This requires a 75 percent majority and a quorum of 25 percent of capital. It must be sanctioned by the High Court to take effect. The JSE Listings Rules require shareholder approval for extraordinary transactions, for example: (i) any agreement effecting a category 1 transaction, where the size of the transaction is equal or greater than 30 percent of its market capitalization, or an acquisition in the case of a reverse takeover; (ii) related party transactions; (iii) de-listings; (iv) when an unlisted subsidiary issues shares for cash that would materially dilute the listed company's percentage interest in the equity of that subsidiary; (v) when an unlisted subsidiary makes a rights offer where the listed holding company does not intend to exercise its rights, which would materially dilute its percentage interest in the equity of that subsidiary.

Policy recommendations: The Companies Act should be amended to require a higher quorum of share capital and voting rights for all fundamental corporate changes.

Principle IC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general them. (1) Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. (2) Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations. (3) Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

Assessment: Partially observed

Description of practice: According to the Companies Act, the AGM must take place no later than nine months after the end of the financial year and within 15 months of the previous AGM. The meeting is convened by the board. Unless otherwise stipulated in the articles, two or more shareholders holding ten percent of capital may also call a meeting. Further, the Companies Act gives 100 shareholders or shareholders holding at least five percent of capital the power to requisition a meeting or, if the company fails to respond, to call it themselves. The courts and the Registrar of Companies also have the power to call a meeting. The notice must be served at least 21 days before the AGM and include the date, time and place of the meeting. Notices may be published or mailed. The board sets the agenda, although the Companies Act prescribes certain matters that must be discussed. When shareholders requisition a meeting, it is they who determine what items are on the agenda. Otherwise, they cannot put items forward.

Unless company articles provide otherwise, the quorum is three shareholders, and a resolution put to vote is decided on a show of hands. Shareholders have one vote on a show of hands, regardless of the number of shares they hold or represent. A poll can be demanded by the chairman or shareholders owning at least ten percent of share capital. On a poll, shareholders

may exercise all their voting rights. Shareholders may ask questions, and the chairman should provide a reasonable time for discussion. The Companies Act provides that shareholders may appoint proxies to attend and speak at company meetings. Unless the articles provide otherwise, a proxy is not entitled to vote by show of hands. Postal and electronic voting are not permitted.

Policy recommendations: Shareholders should be able to put resolutions forward; the threshold needed should be minimal. The quorum should be increased. Large companies should hire outsiders to collect and organize proxy procedures. Proxies should be permitted to vote on a show of hands. Voting should be done by ballot, except when all shareholders and proxies present agree that it be done by a show of hands. Companies should introduce postal voting and new information and communication technology for secure absentee voting (encryption). The use of corporate websites should be encouraged.

Principle ID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Assessment: Observed

Description of practice: If securities are registered in the name of a nominee (“registered shareholder”), the registered shareholder must, at the end of a three month period, disclose to the issuer the identity of each person on whose behalf he holds securities and the number and class of securities held on behalf of such person. Issuers of securities are required to maintain a register of such disclosures, which is open to public inspection.

N-shares are a class of shares with a right to dividends and payout upon liquidation, but low voting rights, usually 1/100 of ordinary shares. The average percentage of cash-flow rights required to control a company with N-shares is 17.1 percent, compared to the “fifty plus one” percent share level required in companies with ordinary shares. N-shares were popular in the early 1990s, when they were used to foster black empowerment. This was followed by market disillusionment and prohibition of new N-share listings in 2000. The number of N-shares traded fell from 26 to 14 between 1996-2000. Share class information is disclosed in the annual report.

Principle IE: Markets for corporate control should be allowed to function in an efficient and transparent manner.

Assessment: Largely observed

Description of practice: Takeovers and mergers are called “affected transactions” and are regulated by the Securities Regulation Code contained in the Companies Act (SR). The SR Code contains general principles and rules. The general principles provide, for example, that all holders of the same class shall be treated equitably by an offeror and that shareholders must be given sufficient information, advice and time to enable them to reach a properly informed decision. The rules set requirements for the information to be provided to shareholders, the conduct of the offeror, the offeree company and its directors, the nature of the consideration to be offered, as well as the requirements regarding the revision of an offer. Rule 8 of the SR Code establishes the principle of equality among shareholders. It requires that if an affected transaction occurs, the person(s) who acquire(s) control of the company must make the same or a comparable offer to the other holders of equity securities or voting non-equity securities. The SR Code prescribes mandatory offers from any person: (i) who, with the purchase of additional securities, will own at least 35 percent or more of a company’s voting rights; or (ii) who, together with persons acting in concert with him, holds between 35 and 50 percent of the voting rights of a company, when he (or any person acting in concert with him) acquires, in any period

of 12 months, additional securities carrying more than five percent of voting rights. The Securities Regulation Panel (SRP) regulates mergers and takeovers. The SRP is a statutory body under the Ministry of Trade and Industry. It is self-regulatory in nature, and its decisions are legally-binding. The SRP has the discretion to grant exemptions from SR Code compliance.

The SR Code provides that directors may not, before or during the course of the takeover offer, take actions designed to frustrate the offer - unless shareholder approval is obtained. According to market analysts, some companies include golden parachute provisions and/or poison pill provisions in their articles of associations.

Policy recommendations: The Companies Act should mandate the approval of anti-takeover devices by shareholders.

Principle IF: Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights
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Assessment: *Not observed*

Description of practice: The behavior of institutional investors is characterized by apathy with respect to voting. It is not common practice to disclose voting policies. Few institutional investors attend the AGM. They consider the costs of pursuing remedies to be disproportionately high in relation to potential benefits. Trustees choose asset managers on the basis of asset allocation alone. They do not consider how the underlying shares are voted. In practice, asset managers prefer indirect ways of influencing company behavior. During private, semi-annual meetings with senior management of companies they invest in, they tell them what the market, (i.e. institutional investors), expects from them.

Policy recommendations: FSB should issue a rule that pension funds have a fiduciary duty to disclose their voting policy. Awareness of successful international experiences of shareholder activism could be raised, in particular investor advisors on proxy issues and websites that allow investors to communicate and rally.

Section II: The Equitable Treatment of Shareholders

Principle IIA: The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. All shareholders of the same class should be treated equally. (1) Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. (2) Votes should be cast by custodians or nominees in a manner agreed upon with the share's beneficial owner.
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Assessment: *Partially observed*

Description of practice: The use of nominees or custodians is extensive. Circumstantial evidence suggests that nominees and custodians do not always ensure the dissemination of information and documentation to their clients in which instructions might be required – particularly in relation to shareholder meeting notices. With STRATE, communication between nominees and custodians and their clients will be enhanced.

The JSE Listings Requirements provide that companies must ensure that all holders of any class of securities are in the same position, receive fair and equal treatment and that a listed company may not issue any securities with a voting right different from other securities of the same class. The standard articles provide that holders of 3/4 of the issued share capital of that class must

consent for the rights to be varied. According to market analysts, in practice there are violations of the fair treatment principle in holding company structures with listed subsidiaries.

Where a shareholder's rights are violated, he/she may have a right to personal action. This is the case where there is a breach of the rights derived from the memorandum or articles directly, where there has been illegal conduct or conduct in breach of common law which relates to his/her rights and which cannot be ratified by an ordinary resolution, or where "fraud on the minority" has been committed. There are no clear guidelines, however, to determine whether a particular act constitutes a "fraud on the minority". According to the Companies Act, a shareholder can approach the High Court for redress, if the affairs of the company are being conducted in a manner that is prejudicial, unjust or inequitable to him/her or to a percentage of shareholders.⁶ Shareholders may initiate derivative action on behalf of the company under common law. There is also a statutory derivative action provided for in the Companies Act.⁷ The action may be brought forward if a company has suffered damages or loss or has been deprived of a benefit as a result of a wrong, or breach of trust or faith committed by any current or past director or officer of the company and if the company has not instituted proceedings for redress. While class action is provided for in the constitution, there are no rules and procedures, and no suit has taken place to date. The introduction of contingency (success) fees could encourage minority shareholder to initiate class action suits.

Policy recommendations: The notion of beneficial owner should be clarified and better defined. Procedures which ensure that beneficial owners can instruct nominees how to exercise their voting rights (pass through procedures) should be developed. This applies also to ADR/GDR issues. The Custody and Administration of Securities Act should regulate the issue of voting by custodians or nominees in agreement with the beneficial owner.

Principle IIB: Insider trading and abusive self-dealing should be prohibited.

Assessment: Observed

Description of practice: According to the Insider Trading Act 135 of 1998, any individual who has inside information and deals directly or indirectly for his/her own account or for any other person in the securities to which such information relates (or which is likely to be affected by it) or encourages or causes another person to deal or discourages another person from dealing in such securities, is guilty of a criminal or civil offence. In its first 29 months, the Insider Trading Directorate, a sub-committee of the FSB, investigated 124 cases. Ten of these cases led to a settlement with payment of a fine, six cases to civil proceedings and one case was forwarded for criminal prosecution. When individuals settle for a fine, their names are made public. This has led to adverse publicity, and market sentiment has strongly turned against insider trading.

Principle IIC: Board members and managers should be required to disclose material interests in transactions or matters affecting the corporation.

Assessment: Partially observed

Description of practice: Any director who is, directly or indirectly, materially interested in a contract or proposed contract, must declare details of his interest. Furthermore, a director who is directly or indirectly materially interested in any proposed contract to be entered into by him on behalf of the company must, before entering into such contract, declare his interest at a board

⁶ S252.

⁷ S266.

meeting. This declaration must be recorded in the minutes of the board meeting and a register of interests in contracts of directors is to be kept. Whenever a transaction is proposed between a listed company (or any subsidiary) and a related party (which includes a director of the company), a circular to shareholders and the approval of the shareholders is required. Circulars sent to shareholders on a related party transaction must provide sufficient information to enable the recipients to evaluate the effects of the transaction on the company. Anecdotal evidence suggests that while the law is adequate, compliance and enforcement are lax, because the Registrar does not have the resources necessary to monitor compliance and enforce the law.

Policy recommendations: Given that the Registrar does not have the resources to monitor compliance, expanding the powers of the securities regulator FSB to oversee issuers should be considered.

Section III: Role of Stakeholders in Corporate Governance

Principle IIIA: The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.

Assessment: Observed

Description of practice: Employees and trade unions are granted a number of rights under the Constitution, Labor Relations Act, and the Basic Conditions of Employment Act. Under the Labor Relations Act, companies are obliged to consult with trade unions and/or employees prior to a restructuring process. Other rights include not to be unfairly dismissed (Labor Relations Act); to have a safe and healthy working environment (Constitution); and for employees who disclose information regarding unlawful or irregular conduct, not to be subject to occupational detriment (Protected Disclosures Act). Also, the Employment Equity Act promotes affirmative action; the Skills Development Act obliges companies to enable its employees to develop their skills; the Promotion of Equality and Prevention of Unfair Discrimination Act sets out measures to prevent discrimination and harassment, to promote equality and eliminate hate speech.

Principle IIIB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment: Observed

Description of practice: Any person whose rights under the Bill of Rights have been violated, may approach the Constitutional or High Courts or South African Human Rights Commission for redress. Employees may seek redress for violation of their rights under the Constitution, Labor Relations Act and Basic Conditions of Employment Act. Where an employee is unfairly dismissed or his basic terms of employment have been violated, s/he may seek redress from the Labor Court or the Commission for Conciliation, Mediation and Arbitration. In case of discrimination, the employee may approach the Labor Court for recourse. If an employee who has made a disclosure is subjected to occupational detriment, s/he may seek relief from the Labor Court or any other Court. If an employee's right to a safe and healthy working environment has been violated or if a company does not comply with the provisions of the Occupational Health and Safety Act or Mines Health and Safety Act, the employee may approach the Department of Labor for redress. The National Environmental Management Act provides for prosecution for violation of the right to a safe and healthy environment. An employee who has been injured or contracted a job-related illness may appeal to the Compensation Commissioner.

Principle IIIC: The corporate governance framework should permit performance-enhancement mechanisms for stakeholder participation.

Assessment: Largely observed

Description of practice: Most companies have mechanisms to allow employees to participate in company profits through share incentive schemes, share option plans, share purchase schemes, the deferred delivery version of the share purchase scheme, redeemable preference share schemes and convertible debenture schemes. These incentives are provided at the company's discretion and are usually subject to shareholder approval. There are concerns regarding the issuance of options at a discount to the market price and the re-pricing of stock options.

Policy recommendations: The accounting treatment and effect on capital structures, including dilution of existing shareholders, should be transparent. Any re-pricing and discounting of stock options should be subject to AGM approval with separate votes for employees and each director. Stock options must be directly related to performance for which the managers are responsible.

Principle III D: Where stakeholders participate in the corporate governance process, they should have access to relevant information.

Assessment: Observed

Description of practice: The Constitution gives every citizen the right to access all information held by another that is required for the exercise or protection of any right. The Promotion of Access to Information Act provides that a requestor of information must be given access to any record, if that record is required for the exercise or protection of any rights. Under the Labor Relations Act, employees and trade unions have the statutory right to access information. Accordingly, an employer must disclose to a trade union representative all relevant information necessary to perform his or her function within the company's work place. Under the JSE Listing Rules annual reports, interim financial statements and prospectuses are in the public domain.

Section IV: Disclosure and Transparency

Principle IVA: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and the governance of the company. Disclosure should include, but not be limited to, material information on: (1) The financial and operating results of the company. (2) Company objectives. (3) Major share ownership and voting rights. (4) Members of the board and key executives, and their remuneration. (5) Material foreseeable risk factors. (6) Material issues regarding employees and other stakeholders. (7) Governance structures and policies.

Assessment: Partially observed

Description of practice: The Companies Act sets disclosure requirements for public companies, and the Listings Rules require additional information from listed companies. Public companies must disclose founding documents, prospectuses, interim financial statements and audited annual financial statements. Annual financial statements consist of a balance sheet, income statement, cash flow statement, directors' report and auditors' report. Companies are obliged to disclose to the market all events and circumstances that have, or are likely to have, a material effect on the financial results, financial position or cash flow of the issuer; all information necessary to avoid the creation of a false market in its listed securities; and developments in its sphere of activities that are not public knowledge and that may lead to material movements in the share price. The Listings Rules define "material" as information that, if omitted or misstated, could influence the economic decisions of users. While there is no specific Listing Requirement to disclose material foreseeable risk factors, King II recommends that the board undertake an annual formal risk assessment for the purpose of making a public statement on risk management.

Companies are obliged to keep a register of directors in which personal details of each director and the names of all other company where he/she is a director are disclosed. The JSE Listing

Rules regulate the disclosure of the direct and indirect interests of each director in the share capital of a listed company (distinguishing between beneficial and non-beneficial interests), as well as disclosure of the interest of any shareholder who is directly or indirectly beneficially interested in five percent or more of any class of the listed company's capital. In practice, the accuracy of the ultimate beneficial ownership information is difficult to verify.

The Companies Act and JSE Listings Rules require disclosure of director emoluments. The Act requires disclosure of a range of emoluments, with amounts shown for executive directors as a group and non-executive directors as a group. Starting in 2002, the JSE Listings Rules requires disclosure of individual remuneration, including fees, basic salary, bonuses, expense allowances, details of share options and "other material benefits received." A listed company must also provide the JSE with details of transactions in its securities by or on behalf of a director (whether held directly or indirectly, beneficially or non-beneficially, or by an immediate family member). The JSE publishes such information upon receipt. A "fit and proper" declaration prepared by each director indicating the absence of a conflict of interest must be disclosed in the prospectus and updated whenever there is a change on the board. Under the Companies Act, directors must issue an annual declaration regarding conflicts of interest. Enforcement, however, is lax.

Policy recommendations: The Companies Act should provide for withholding of dividends or disenfranchise voting rights for failure to disclose ultimate beneficial ownership. JSE should adopt as Listing Rules King I's recommendations on disclosure of material foreseeable risk factors.⁸

Principle IVB: Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure, and audit.
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Assessment: Partially observed

Description of practice: A key difference between the financial statement disclosure requirement of the Companies Act, which applies to all public companies, and that of the JSE Listings Requirements, which apply to listed companies, lies in the accounting standards prescribed in each case. According to the Companies Act, the statements must comply with 'generally accepted accounting standards' (known as 'little gaap'). 'Little gaap' is based on general usage, rather than on formal statements issued by the accounting profession. By contrast, since October 2000, the JSE Listings Requirements specify that financial statements comply with the 'Statements of Generally Accepted Accounting Practice' issued by the Accounting Practices Board (APB). This standard is known as 'big GAAP' and is in line with IAS, with some minor exceptions.

Given that the Companies Act requires only 'little gaap,' 'big GAAP' lacks legal backing. Some experts propose that the Companies Act be modified to mandate 'big GAAP,' while others suggest that accounting issues be treated in a separate Accounting and Financial Reporting Bill. It is proposed that FSB be in charge of monitoring compliance. In the meantime, JSE's Listings Division monitors compliance. If financials do not comply, the company is given comments and a deadline for re-submission. Failure to re-submit satisfactorily and on time may result in trading suspension. Suspensions have increased from three companies a year in the mid-1990s to over 80 in 2001 with about half of all suspensions due to non-compliance, especially the non-filing of statements. JSE, however, does not have the capacity and know-how to monitor substance over

⁸ According to the JSE, this recommendation has been adopted in the meantime.

form. For this reason, the South Africa Institute of Chartered Accountants (SAICA) is collaborating with JSE to set up an interim oversight body to enforce compliance with GAAP.

Policy recommendations: Ensure the legal backing of ‘big GAAP’ and the legal and institutional framework necessary for enforcing compliance. See the Accounting and Auditing ROSC for a comprehensive diagnostic of accounting and auditing issues.

Principle IVC: An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.

Assessment: Partially observed

Description of practice: Annual financial statements must be audited by an external auditor. The Companies Act sets out the duties of the auditor⁹ and specifies that the s/he be appointed by the AGM annually. There is no statutory definition of independence. Qualifications in auditors’ opinions are announced through the JSE’s news release system, SENS, and the company’s listing is annotated with an E. The Companies Act requires that the audit fee be disclosed separately from the fee received for “other services.” Some companies outsource the internal audit. Reportedly, in some instances, the same auditor performs internal and external audit functions for the same company.

Only auditors registered with the Public Accountants’ and Auditors’ Board (PAAB) are authorized to audit companies. PAAB is empowered by legislation to review the practice of auditors and to apply disciplinary rules. The PAAB has issued a Code of Professional Conduct dealing with auditor independence and conflict of interest. Violation of the Code constitutes improper conduct and may lead to disciplinary action. Complaints are investigated, and the target of the complaint is given a right of reply. The next step is mediation at the Investigation Committee of the PAAB. If the issue is unresolved, a formal hearing by the Disciplinary Committee is called, which may lead to the deregistration of an auditor. Concern has been expressed about the adequacy of rules of independence at some audit firms. It is generally held that auditors have sometimes paid large settlements outside court, but details are not known. In a recent case that went to court, auditors were subsequently held liable on appeal.¹⁰

Policy recommendations: Clarify the definition of independence and take appropriate regulatory action to ensure the external auditor’s independence. The regulation and oversight of accountants and auditors should not be based on self-regulation. External auditors should not serve as consultants or internal auditors to the company they audit. Require more detailed disclosure of audit fees and a description of practice of non-audit services provided in the annual report. See Accounting and Auditing ROSC for comprehensive treatment of accounting and auditing issues.

Principle IVD: Channels for disseminating information should provide for fair, timely, and cost-effective access to relevant information by users.

Assessment: Largely observed

Description of practice: The company must send the annual financial statements, including the audit report, to all shareholders no later than 21 days before the AGM and the interim report no later than three months after the first semester. The Companies Act has been amended to permit electronic distribution of the full annual statements, when shareholders consent to it.

⁹ S300

¹⁰ Thoroughbred Breeders Association of South Africa v PriceWaterhouse (as yet unreported, case number: 4/6/2001 delivered on 1 June 2001).

Policy recommendations: JSE and issuers need to review the effectiveness of the channels for dissemination in accordance with the new provisions of the Companies Act.

Section V: The Responsibility of the Board

Principle VA: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

Assessment: **Partially observed**

Description of practice: Directors owe their duties to the company. These originate in common law, statutes, the memorandum and articles of the company, service agreements, resolutions passed at the AGM and board meetings, and the rules of regulatory bodies. They include (i) the duty of care; (ii) reasonable skill; (iii) diligence; (iv) the exercise of powers independently in the best interests of the company and for the purpose for which they were conferred; (v) acting within the limits of authority as determined by common law, the Companies Act and the company's memorandum and articles; (vi) acting within the powers of the company and *bona fide*; (vii) reporting to the company any profit made by reason of their office; (viii) not misappropriating a corporate opportunity; (ix) not competing improperly with the company; (x) not carrying on the business of the company recklessly or fraudulently. There is concern in the market that directors in small and mid-sized companies do not always fully understand their duties and obligations.

“Shadow directors” are controlling shareholders who exert influence over the board without being *de facto* directors. King II attempts to highlight this problem and subject shadow directors to their statutory duties by declaring them directors.

Policy recommendations: The issue of “shadow directors” should be introduced into Companies Law. Policy makers should investigate whether there is a need to formulate a business judgment rule.

Principle VB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Assessment: **Largely observed**

Description of practice: It is common practice for major shareholders to appoint their own representatives to the board. According to market analysts, the fair treatment principle is most likely to be violated in holding company structures with listed subsidiaries.

Policy recommendations: Disseminate the concept of independence as recommended by King II.

Principle VC: The board should ensure compliance with applicable law and take into account the interests of stakeholders.

Assessment: **Observed**

Description of practice: According to the Companies Act, directors are held civilly or criminally liable for failure by the company or themselves to comply with its/their obligations. According to the Criminal Procedure Act, where a company commits an offense, any person who at the time of the offense was a director may be deemed guilty unless s/he fulfills certain requirements. Directors may further incur liability under other legislation, such as the National Environmental Management Act and the Occupational Health and Safety Act. The stakeholder issue, especially black empowerment and corporate social responsibility, however, are well known concepts, and directors are generally aware that they should take into account stakeholder interests.

Principle VD: The board should fulfill certain key functions, including (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance and overseeing major capital expenditures, acquisitions and divestitures. (2) Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. (3) Reviewing key executive and board remunerations, and ensuring a formal and transparent board nomination process. (4) Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. (5) Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. (6) Monitoring the effectiveness of the governance practices under which it operates and making changes as needed. (7) Overseeing the process of disclosure and communications.

Assessment: Partially observed

Description of practice: A listed company must have at least four directors. Under the voluntary Schedule 22 of the Listing Rules, board nomination procedures should be transparent and a matter for the whole board, assisted where appropriate by a nomination committee. In practice, nominations usually emanate from the chairman or CEO. The standard articles provide for the retirement of 1/3 of the board at each AGM. The Registrar of Companies must maintain a register of directors of companies unable to pay their debts – the so-called “delinquent directors.” In practice this register does not exist, and some delinquent directors go on to other boards.

According to the Companies Act, directors are obliged to present the annual financial statements before the AGM. Directors must further prepare a report with respect to the state of affairs, the business and the profit or loss of the company. Schedule 22 of the Listing Rules specifies the strategic functions of boards in detail and recommends that directors retain full and effective control over the company and monitor management in implementing board strategies. It recommends that boards reserve specific powers to themselves and delegate others to management, while monitoring implementation on a regular basis. Due to the preponderance of executive directors, there is often no clear distinction between board and management.

Under common law, a director may not directly or indirectly (unless the articles provide otherwise) have an interest in a contract with the company, unless the AGM approves the contract. Furthermore, the Companies Act requires directors to declare their interest in full where they are directly or indirectly materially interested. In practice, conglomerate structures can result in conflicts of interests for directors of subsidiaries who are appointed by the holding company. In this case, they lack sufficient appreciation of the fact that they are accountable to all shareholders rather than just those who appointed them. While both IAS and JSE rules require disclosure, there is generally incomplete understanding of the issue of related party transactions.

Policy recommendations: Disseminate the recommendations of King II. Tighten the disclosure and monitoring of related party transactions. Amend Companies Act so that the board has a shared liability proportionate to its contribution to a corporate failure. Put in place rules and procedures for the establishment of a register of delinquent directors.

Principle VE: The board should be able to exercise objective judgment on corporate affairs independent, in particular, from management: (1) boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination, and executive and board remuneration. (2) board members should devote sufficient time to their responsibilities.

Assessment: Partially observed

Description of practice: A survey of large listed companies indicates that 46 out of 50 companies have audit committees. Many also have remuneration committees. While non-executive directors play an important role in these committees, the concept of independence is not well known. Schedule 22 of the Listing Rules recommends that the board shall include a balance of executive

and non-executive directors, preferably with a majority of non-executive directors of whom a sufficient number should be independent of management for minority interests to be protected. King II goes further by recommending that committees should have a majority of independent non-executive directors. Membership should be disclosed in the annual report, and the chairman should be present to answer questions at the AGM. King II further recommends that in the event of a corporate failure, the directors should be liable for their part in the failure.

People “accumulate” board seats. The few qualified directors are spread across too many boards. In practice, many issues are decided informally outside board meetings and then simply ratified at the scheduled meeting. Market participants report low levels of attendance at board meetings by non-executive directors, raising the question of whether they can devote sufficient time to their obligations. Unless shareholders start scrutinizing board meetings attendance registers, this might even worsen in the short run with the introduction of the concept of independent directors.

Policy recommendations: There is a growing consensus that the independence of directors is critical to ensuring equitable treatment of all shareholders and oversight of management. Policymakers should consider including the definition of independence in the Listing Rules. There should be a limit on the number of board seats for any one person.

Principle VF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

Assessment: Largely observed

Description of practice: Directors may inspect company accounting records and are entitled to information necessary to formulate well-informed decisions. According to King II, the board should have unrestricted access to all company information, records, documents and property. Directors may seek independent professional advice at the company’s expense. Reportedly, there is some disparity in practice between large caps and small caps.

Policy recommendations: Disseminate King II.

IV. SUMMARY OF POLICY RECOMMENDATIONS

This section sets out policy recommendations to improve the compliance of listed companies with the OECD Principles of Corporate Governance. The next step is the development of a detailed action plan, to be formulated in close cooperation with South African authorities and in consultation with the private sector and other stakeholders. Also, in order to be most effective, corporate governance reforms should be coordinated with the action plans resulting from the Accounting and Auditing and Insolvency and Creditor Rights ROSCs conducted in 2001/02.

The detailed policy recommendations made in the Principle-by-Principle review for the less than fully observed Principles can be grouped under the following broad categories: legislative reform, institutional strengthening and voluntary/private initiatives.

Legislative reform: The legislative and regulatory framework dealing with corporate governance issues is already underway. The introduction of a comprehensive Securities Services Bill¹¹ and the reform of the Companies Act and related Acts will provide greater clarity, responsibility,

¹¹ This bill, expected to be promulgated in 2003, includes e.g. tougher provisions on insider trading and market manipulation. It makes provision for FSB to assume certain JSE functions in case of demutualization.

accountability, and transparency for listed companies. Detailed legislative issues are proposed in the policy recommendations of the Principle-by-Principle review section above. *Priority: high*

Policymakers are considering the creation of an integrated financial sector regulatory agency. A study should be undertaken to carefully weigh the costs and benefits of such an integration. The overriding principle should be to ensure independent oversight and strengthen enforcement powers of financial markets' supervision. *Priority: medium*

Institutional strengthening: The most important challenge is enforcement of existing laws, rules and regulations. In this context, policymakers should consider broadening the role of the securities regulator to include the regulation and oversight of issuers, STRATE, and the Securities Regulation Panel. FSB's sanction and enforcement powers should be strengthened, and the possibility of appeal should be restricted to constitutional law and process. Procedures to safeguard due process inside the securities regulator should be put in place. This approach would alleviate the strain on a judicial system that is not equipped to deal with a large number of commercial cases. *Priority: high*

Countries with self-regulatory systems rely on them to monitor the conduct of business, while the regulator is in charge of prudential regulations. The boundaries of these two regulatory aspects have become increasingly blurred. The result is duplication of regulation on the one hand and undesirable loopholes on the other. This is why the SROs are coming under increasing scrutiny worldwide. South Africa should consider the costs and benefits of putting SROs under greater scrutiny of regulators. *Priority: high*

Voluntary/private initiatives: The King Code of Corporate Governance Practices and Conduct and its forthcoming revision (King II) are private sector initiatives. The objective is to disseminate the benefits of good corporate governance to the private sector and attract the attention of government so that these measures of conduct will be implemented in state owned companies as well. King I and II are voluntary and give issuers the choice to implement best practices and investors a benchmark against which to measure corporate governance in South Africa. A number of King I recommendations have been adopted in Schedule 22 of the JSE Listing Requirements; companies must disclose in the annual report whether they comply or explain why not. The same approach should be adopted for King II. *Priority: high*

The implementation of King II could contribute to a change in public perception of privatization. A company complying with King II would be an example of South African best practice with respect to corporate governance, which would help attract investors. If a state-owned enterprise were privatized through the capital markets, the process of transfer to the private sector could be structured to address such issues as black empowerment. King II provides a framework through which this process can take place with adequate safeguards. In this context, particular attention should be paid to the governance of black empowerment funds. *Priority: medium*

The World Bank would be pleased to play the role of a facilitator to convene South African stakeholders to discuss the findings of this report so that a broad consensus of ownership and a detailed action plan can be derived.

Annex A: Summary of Observance of OECD Corporate Governance Principles

Principle	O	LO	PO	MO	NO	Comment
I. THE RIGHTS OF SHAREHOLDERS						
IA Basic shareholder rights	X					<ul style="list-style-type: none"> Registration process is slow. Holders of ordinary shares may attend/vote at AGM, but often are passive and do not.
IB Rights to participate in fundamental decisions.		X				<ul style="list-style-type: none"> Companies Act provides that approval of general meeting required to dispose of all or substantially of company assets. Decisions taken by simple majority, three shareholder quorum.
IC Shareholders AGM rights			X			<ul style="list-style-type: none"> Quorum is usually three shareholders and a resolution put to vote is decided on show of hands, with one vote per person. CA provides that shareholders may appoint proxies. Unless articles provide, proxy cannot vote by show of hands. Postal or electronic voting are not permitted.
ID Disproportionate control disclosure	X					<ul style="list-style-type: none"> Share class information disclosed in the annual report.
IE Control arrangements should be allowed to function.		X				<ul style="list-style-type: none"> Directors may not frustrate offer without shareholder approval. Some companies have golden parachutes/poison pill provisions.
IF Cost/benefit to voting					X	<ul style="list-style-type: none"> Institutional investors tend not to vote, attend AGM, or disclose voting policies. Trustees choose asset managers based on asset allocation alone and do not consider how they vote underlying shares.
II. EQUITABLE TREATMENT OF SHAREHOLDERS						
IIA All shareholders should be treated equally			X			<ul style="list-style-type: none"> Nominees, custodians used extensively; not always ensure dissemination of relevant information/documentation to clients. Derivative action and class actions permitted, no class actions brought to date.
IIB Prohibit insider trading	X					<ul style="list-style-type: none"> Criminalized according to Insider Trading Act 135 of 1998.
IIC Board/Mgrs. disclose interests			X			<ul style="list-style-type: none"> Anecdotal evidence suggests that compliance and enforcement are lax, because Registrar lacks resources.
III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE						
IIIA Stakeholder rights respected	X					<ul style="list-style-type: none"> Laws provide for affirmative action, employee skill development prevention of discrimination/harassment.
IIIB Redress for violation of rights	X					<ul style="list-style-type: none"> Laws provide for redress in court, and appeal to Compensation Commissioner.
IIIC Performance enhancement		X				<ul style="list-style-type: none"> Most employees participate in share incentive schemes, etc provided at firm's discretion and usually subject to shareholder approval.
IIID Access to information	X					<ul style="list-style-type: none"> Laws and listing rules provide the right to access information.
IV. DISCLOSURE AND TRANSPARENCY						
IVA Disclosure standards			X			<ul style="list-style-type: none"> No specific Listing Requirement to disclose material foreseeable risk factors, but King II recommends that board undertake annual formal risk assessment. Accuracy of ultimate beneficial ownership info hard to verify. Under CA, directors must issue a declaration regarding conflict of interest every year, but enforcement is lax.
IVB Standards of accounting & audit			X			<ul style="list-style-type: none"> Accounting statements comply with 'little gaap,' issued by accounting profession. JSE Listings Requirements specify compliance with 'big GAAP' but lacks legal backing. Interim oversight body being set up to enforce compliance with GAAP.
IVC Independent audit annually			X			<ul style="list-style-type: none"> No statutory definition of independence. Same auditor sometimes performs internal and external audit functions for same company.
IVD Fair & timely dissemination		X				<ul style="list-style-type: none"> CA has been amended to permit electronic distribution of full annual statements, where shareholders consent.
V. RESPONSIBILITIES OF THE BOARD						

VA	Acts with due diligence, care			X		<ul style="list-style-type: none"> • Market concern that directors in small and mid-sized companies do not always understand duties and obligations. • "Shadow directors" issue highlighted in King II
VB	Treat all shareholders fairly		X			<ul style="list-style-type: none"> • Major shareholders commonly appoint own board reps. • Fair treatment principle most often violated in holding company structures with listed subsidiaries
VC	Ensure compliance w/ law	X				<ul style="list-style-type: none"> • Directors can be civilly or criminally liable for company or own failure to comply with obligations. • Stakeholder issues like black empowerment and corporate social responsibility well known, and directors generally aware that they must take stakeholder interests into account.
VD	The board should fulfill certain key functions			X		<ul style="list-style-type: none"> • In practice, "delinquent director" register does not exist, and some delinquent directors are known to move to other boards. • While IAS and JSE rules require disclosure, there is general lack of full understanding of related party transactions.
VE	The board should be able to exercise objective judgment			X		<ul style="list-style-type: none"> • Concept of independence not well known, though addressed in Listing Rules and King II. • Too few qualified directors spread across too many boards. • In practice, many issues are decided informally outside board meetings then ratified at scheduled meeting.
VF	Access to information		X			<ul style="list-style-type: none"> • Under King II, board should have unrestricted access to all company information, records, documents and property.

Annex B: Summary of Policy Recommendations

I. THE RIGHTS OF SHAREHOLDERS		
IA	Basic shareholder rights	NA
IB	Rights to participate in fundamental decisions.	Companies Act (CA) should be amended to require a higher quorum of share capital and voting rights for all fundamental corporate changes.
IC	Shareholders AGM rights	Shareholders should be able to put resolutions forward; threshold should be minimal. Quorum should be increased. Large companies should hire outsiders to collect/organize proxy procedures. Proxies should be permitted to vote on show of hands. Voting should be by ballot, except when all shareholders/proxies present agree on show of hands. Postal voting should be allowed and new information/communication technology for secure absentee voting introduced. Use of corporate websites should be encouraged.
ID	Disproportionate control disclosure	NA
IE	Control arrangements should be allowed to function.	CA should mandate approval of anti-takeover devices by shareholders.
IF	Cost/benefit to voting	FSB should issue a rule that pension funds have fiduciary duty to disclose their voting policy. Raise awareness of successful international experiences of shareholder activism, in particular investor advisors on proxy issues and websites that allow investors to communicate and rally.
II. EQUITABLE TREATMENT OF SHAREHOLDERS		
IIA	All shareholders should be treated equally	Notion of beneficial owner should be clarified, better defined. Procedures that ensure beneficial owners can instruct nominees on how to exercise voting rights (pass through procedures) should be developed (also for ADR/GDRs). Custody and Administration of Securities Act should regulate issue of voting by custodians or nominees in agreement with beneficial owner.
IIB	Prohibit insider trading	NA
IIC	Board/Mgrs. disclose interests	Given that the Registrar does not have resources to monitor compliance, expanding the powers of the securities regulator FSB to oversee issuers should be considered.
III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE		
IIIA	Stakeholder rights respected	NA
IIIB	Redress for violation of rights	NA
IIIC	Performance enhancement	Accounting treatment and effect on capital structures, including dilution of existing shareholders, should be transparent. Any re-pricing and discounting of stock options should be subject to AGM approval with separate votes for employees and each director. Stock options must be directly related to performance of the company for which the managers are responsible.
IIID	Access to information	NA
IV. DISCLOSURE AND TRANSPARENCY		
IVA	Disclosure standards	CA should provide for means to withhold dividends or disenfranchise voting rights for failure to disclose ultimate beneficial ownership. JSE should adopt as Listing Rules King II's recommendations on disclosure of material foreseeable risk factors.
IVB	Standards of accounting & audit	Ensure legal backing of GAAP and legal and institutional framework for enforcing compliance. See Accounting and Auditing ROSC for complete diagnostic of accounting/auditing issues.
IVC	Independent audit annually	Clarify definition of independence, ensure external auditor's independence. Regulation/oversight of accountants and auditors should not be based on self-regulation. External auditors should not serve as consultants/internal auditors to companies they audit. Require more detailed disclosure of audit fees and description of practice of non-audit services in the annual report. See A&A ROSC.
IVD	Fair & timely dissemination	JSE and issuers need to review effectiveness of dissemination channels as per new CA provisions.
V. RESPONSIBILITIES OF THE BOARD		
VA	Acts with due diligence, care	Issue of "shadow directors" should be introduced into Companies Law. Policymakers should investigate whether there is a need to formulate a business judgment rule.
VB	Treat all shareholders fairly	Disseminate the concept of independence as recommended by King II.
VC	Ensure compliance w/ law	NA
VD	The board should fulfill certain	Disseminate King II recommendations. Tighten disclosure/monitoring of related party transactions. Amend CA so that board has liability proportionate to contribution to corporate

	key functions	failure. Set up rules and procedures for establishing register of delinquent directors.
VE	The board should be able to exercise objective judgment	Inclusion of definition of independence in Listing Rules should be considered. Number of board seats for any individual should be limited.
VF	Access to information	Disseminate King II.