

CHAPTER 20

THE CODE OF CORPORATE PRACTICES & CONDUCT

1. Introduction

1.1 The Code will apply to the following business enterprises:

1. 1.1 All companies listed on the main board of the Johannesburg Stock Exchange.

1. 1. 2 Large public entities as defined in the Public Entities Act.

1.1.3 Banks, financial and insurance entities as defined in the various Financial Services Acts, and

1.1.4 Large unlisted public companies.

1.2 In the South African context, large companies are those with a total shareholders' equity greater than R50 million.

1.3 All companies should, however, be encouraged to adopt the Code.

1.4 The Code is a set of principles and does not purport to determine the detailed course of conduct of directors on any particular matter.

2. Board of Directors

2.1 The unitary board structure is appropriate in South Africa rather than a management and supervisory- board structure. The unitary board structure provides greater interaction among all board members, when dealing with matters such as strategy, planning, performance, resources, standards of conduct and communication with stakeholders.

2.2 No board should have less than two non-executive directors of sufficient calibre that their views will carry significant weight in board decisions.

2.3 The board must retain full and effective control over the company, monitor the executive management and ensure that the decision of material matters is in the hands of the board.

2.4 The board should have a definition of materiality on matters such as the acquisition and disposal of assets, investments, capital projects, authority levels, etc.

4.1 Non-executive directors should bring an independent judgment to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct.

4.2 Non-executive directors comprise the following categories:

4.2.1 Those who are independent of management and do not have any benefits from the company other than their fee. This is not intended to exclude persons being appointed a non-executive director who have a contractual nexus with the company for reward or to prevent a non-executive director from acquiring shares in the company by means independent from the company;

4.2.2 Directors end managers of the company's holding company, or major investor, who have no executive responsibilities in the company.

4.2.3 Former executive directors who are no longer employed on a full-time basis but nevertheless are capable of giving valuable input to the board arising from their past experience.

4.2.4 Senior executive directors of major listed subsidiaries and associates of the holding company who have no executive responsibilities in the holding company.

4.3 It should be the duty of the chair, with the support of the majority of the board members, to ensure that any non-executive director who is not contributing to the decisions of the board should not be re-elected or should have their services terminated.

5. Appointments

5.1 The selection and appointment of directors should be matters for the board as a whole and as such nomination committees are not recommended.

5.2 An executive director's service contract, if any, should not exceed five years in duration.

6. Directors' Remuneration

6.1 Directors' remuneration, including that of the non-executive directors, should be the subject of recommendations to the board of a Remuneration Committee. Its membership should comprise persons who are competent to determine the appropriate remuneration of senior executives with the majority of its members (including the chair) being non-executive directors.

6.2 There should be a separate full and clear disclosure of the total of executive and non-executive directors earnings. Separate figures should be given for salary fees, benefits, share options and bonuses.

7. Board Meetings

7.1 To carry out its functions the board must meet regularly. How regularly or at what intervals must be determined by each board, having regard to its company's own circumstances. A board should, however, meet at least once a quarter.

substance over form. Reporting should address material matters of significant interest and concern to all stakeholders.

9.2 Reports and communications must be made in the context that society now demands greater transparency and accountability from corporations regarding their non-financial affairs, including for example, their employment policies and environmental issues.

9.3 Reports should present a balance between the positive and negative aspects of the activities of the company.

9.4 In any communication with stakeholders the directors should ask; themselves the following four questions:

9.4.1 Is the communication open and transparent?

9.4.2 Is it relevant and substantial or merely a communication of form?

9.4.3 Is the communication prompt?

9.4.4 Does it fairly set out the position?

9.5 The directors should report on the following matters in their annual report:

9.5.1 The directors' responsibility to prepare financial statements that fairly present the state of affairs of the company as at the end of the financial year and the profit or loss for that period.

9.5.2 The auditor is responsible for reporting on the financial statements.

9.5.3 The maintenance of adequate accounting records and an effective system of internal controls.

9.5.4 The consistent use of appropriate accounting policies supported by reasonable and prudent judgement and estimates.

9.5.5 Adherence with applicable accounting standards or, if there has been any departure in the interests of fair presentation, it must not only be disclosed and explained but quantified.

9.5.6 There is no reason to believe the business will not be a going concern in the year ahead or, an explanation of any reasons otherwise.

9.5.7 The Code of Corporate Practices and Conduct has been adhered to or, if not, in what respects there has not been adherence.

10. Auditing

10.1. Companies should have an effective internal audit function that has the respect and co-operation of both the board of directors and management.

10.2 The highest level of business and professional ethics should be observed by the auditors and, in particular, the independence of the auditor must not be impaired in any way.

The affected corporations should develop systems, whether involving workers' participation on workers committees, executive committees, boards or otherwise, that will assist in developing the following:

11.1 Practices that lead to the effective sharing of relevant information, to enable employees to gain a better understanding of the corporation for which they work;

11.2 Effective consultation by management with the workforce before taking decisions that affect the workers;

11.3 Speedy identification of conflict and its effective resolution.

12. Affirmative Action Programmes

12.1 An affirmative action programme should be part of each company's business plan.

12.2 An affirmative action programme is important for corporations to survive and thrive in the new South Africa and consequently it is an important part of corporate governance.

13. Code of Ethics

13.1 A corporation should implement its Code of Ethics as part of the corporate governance of that corporation.

13.2 A Code of Ethics should:

13.2.1 Commit the corporation to the highest standards of behaviour;

13.2.2 Be developed in such a way as to involve all its stakeholders to infuse its culture;

13.2.3. Receive total commitment from the board and chief executive officer of the corporation.

13.2.4. Be sufficiently detailed as to give a clear guide to the expected behaviour of all employees.