THE KING REPORT ON CORPORATE GOVERNANCE

29 NOVEMBER 1994

FOREWORD

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The purpose of the report is to promote the highest standards of corporate governance in South Africa. That ideal will certainly have the support of the whole corporate community.

After the issue of this report there will no doubt be much public debate about the recommendations. This is healthy, as the guidelines of corporate governance cannot be cast in stone because of changing needs and circumstances. Hence, one of our recommendations is for the establishment of an on-going committee on corporate governance.

At times certain points are repeated in this report. This is because we found it necessary to make the same point under different chapter headings and believed it would aid in the application of the recommendations to distil them into a code of governance.

I trust that everyone involved in corporate governance will find the report helpful, instructive and thought provoking.

MERVYN E KING S.C.
Chairman

29 November 1994

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CHAPTER 1

THE BACKGROUND TO CORPORATE GOVERNANCE

1. Public limited liability companies were formed in the nineteenth century. The London and New York Stock Exchanges were established in the late nineteenth century. By this time the concept of the schism between ownership and control, that is, the separation between the shareholders as owners of the enterprise and the board who controlled the business of the company, was established. At a later stage professional managers were appointed by the directors to manage the company pursuant to policies established by the board - "the managerial revolution". The accountability of the directors to the owners was one of the issues that arose out of this separation. Having regard to the interdependence between directors and shareholders and their different functions in the company, a good system of corporate governance is critical to its proper functioning. When the directors and shareholders are one and the same person or persons, the company can be said to be an independent one. When ownership and management are separate the company is a dependent one.

2. Corporate governance is simply the system by which companies are directed and controlled. While it is simple to state the concept, it has become more complicated by virtue of the various interest groups or stakeholders which have an involvement in corporate governance in modern corporations. This occurred because of the change from founders of companies to professional officers managing companies and the controlling shareholding changing from families to institutions. More technically described, the simple pattern of companies which existed post the industrial revolution is no longer descriptive of the typical modern company since:-

   2.1 directors, whilst being responsible for fundamental policy, delegate the management of day-to-day activities to professional managers;

   2.2 the weight of the cash flow of major financial institutions has meant that family control of companies has largely been replaced by identifiable institutional control;

   2.3 employees have become far more involved in decision making;

   2.4 the interests of customers, suppliers and the community are now far more relevant to corporate decision making.

3. Consequently, the concept of corporate governance has grown. Other interested parties or stakeholders have become part of corporate governance in the different systems of corporate governance which prevail in different countries. The different stakeholders include shareholders, employees, bankers, suppliers, customers, environmentalists, the community or country in which it operates and the State. One can appreciate that a corporate governance system which attempts to satisfy the needs of each of these differing interest groups would be complex. It must be remembered, however, that it is the primary duty of a board to act honestly in the best interests of the corporation.

4. There were two reasons for the formation of the Cadbury Committee, which was established in the United Kingdom to investigate and report on the financial aspects of corporate governance. First, the perception was that Anglo-American companies were lagging behind in their global competitiveness. The Far Eastern companies' profits were booming and they were capturing the markets of Anglo-American companies. In consequence the inference was drawn that there must be something defective with the functioning of their corporate governance. Secondly, there was great concern over significant corporate failures arising from fraud, such as the Maxwell and B.C.C.I. scandals, and the question was asked: "Do we have effective board accountability in our corporate governance systems?"

5. Whilst all these uncertainties had concerned shareholders and managers alike, the world entered a deep recession. Chief executives started reducing costs of workforces and consequently they clashed with labour unions and politicians. The stakeholders in Anglo-American companies complained that their chief executives were not serving them and shareholders endeavoured to make management more accountable.

6. The Harvard Business School states that the Anglo-American model is predicated upon shareholder democracy, the prevention of abuse of corporate power, the promotion of allocative efficiency through anti-trust laws that separate

the interests of numerous stakeholders and the maintenance of the accountability of corporate managers to corporate owners through the board of directors.

7. In Germany and Japan the shareholder gets closer to management. The banks and the institutions are major shareholders in most large German and Japanese companies and they are also significant lenders to the companies. There is also significant cross-holding between companies. This is an evolution from family-controlled companies in the 19th century to bank and institutional control. With shareholders in Germany and Japan owning larger stakes in companies, they have taken a closer interest in the management of the businesses. The German banks sought to control the funds which they had invested in corporations. In time they accepted that they could not manage the businesses. This factor, as well as the efforts which were made to resolve the clashes between management and the labour Unions, resulted in the development of the German model of the two-tier board, using the supervisory board and the management board. Employees and shareholders enjoyed and still enjoy representation on the supervisory board.

8. The Japanese system focusses on the concentration of power in the hands of the chief executive and the executive committee. The Japanese board has few outside directors and to the extent that there are outside directors they emanate from the same industry or are associated with that company either through cross-holdings or in business.

9. The global economy is "shrinking" and becoming more competitive and managers are consequently more frequently involved in cross border activities. As a result managers come into contact with different forms of corporate governance. In doing so they become exposed to the advantages and disadvantages of the three systems described above. Inevitably this will result in an evolution of the three systems and the development of a model combining the elements of all three systems. Each country will place a greater or lesser emphasis on each of the elements having regard to its own peculiar circumstances, laws, institutional and other structures.

10. Modern corporations can be described as a link where the interests of the mutual rights and interests of the various stakeholders are brought together, for example, shareholders, creditors, managers, workers, customers, suppliers, and so forth. In their own interests these different groups should co-operate to further the wellbeing of the corporation to which they are tied. For this, and other reasons, countries have developed participative corporate governance systems. The concept of directors' reports being directed solely to shareholders is changing into a report to all stakeholders. Society now expects greater accountability from companies in regard to their non-financial affairs, for example, in relation to their employees and the environment.

11. It must, however, constantly be borne in mind that entrepreneurship and enterprise are among the important factors that drive business. Emerging economies have been driven by entrepreneurs who take business risks and initiatives.

12. If shareholders cannot earn an acceptable return on their funds, they will not invest, and there will be no growth in commercial or industrial activity. It must naturally be pointed out that if there is no profitability in a company, none of the other stakeholders would have any enduring interest. Enterprise and profitability must be among two of the important driving forces. Whilst striving for growth, however, the corporation must deal with its stakeholders fairly. For example, employees have a large interest in the company's operations and activities. Of vital concern to the modern company - and particularly for South African companies - is a well balanced mechanism in which employees can participate in management whilst taking account of the interest differences and coincidences of interests between employees and management.

13. With successful companies one has successful economies. Thus, a country should not have a corporate governance system which focusses on control on the basis that stifles enterprise. This could be the result if one unnecessarily adds to the plethora of existing laws and regulations in regard to the conduct of directors and corporate practice in South Africa.

14. Another important dimension is that without integrity contractual relationships would surely collapse. Also, without enterprise, businesses and thus economies would collapse, as there would be little new investment. What, therefore, has to be evolved is a participative corporate governance system of enterprise with integrity.

15. If the system of corporate governance is made too onerous, and too much emphasis is placed on controls we may well stifle enterpise. The Standing Advisory Committee on Company Law may well be advised to revisit the laws

in South Africa governing the controls of corporations to ensure that they are structured in a manner that encourages enterprise with integrity.

16. In the context of corporate governance, a proper balance needs to be achieved between freedom to manage, accountability and the interests of the different stakeholders.

CHAPTER 2

THE KING COMMITTEE, ITS TASK GROUPS AND TERMS OF REFERENCE

1. The Cadbury Committee in England investigated and made recommendations relating to the financial aspects of Corporate Governance. The report was issued in December 1992. The Cadbury Committee in the context of its terms of reference considered, primarily, financial reporting and accountability, good practice concerning the responsibilities of executive and non-executive directors, the case for audit committees, the principal responsibilities of auditors and the links between shareholders, boards and auditors.

2. The King Committee (as it has become known) was formed at the instance of the Institute of Directors in Southern Africa (IOD). It obtained support from the South African Chamber of Business (SACOB), the Chartered Institute of Secretaries and Administrators (CIS), the South African Institute of Chartered Accountants (SAICA), the Johannesburg Stock Exchange (JSE), and the South African Institute of Business Ethics.

3. The Committee consisted of Roy Andersen, Max Borkum, Elisabeth Bradley, Peter Joubert, Bas Kardol, Michael Katz, Enos Mabuza, Eric Molobi, Cecil Margo, Nthato Motlana, Sam Motsuenyane, Ebrahim Patel, Guy Smith and Peter Wrighton. Unfortunately in March 1994, Bas Kardol had to resign because of his overseas commitments. The secretariat was provided by the IOD though its executive director Richard Wilkinson. In appendix I a description of the committee and task group members is set out.

4. The King Committee's terms of reference were much wider than those of Cadbury as they included the matters investigated by Cadbury as well as a Code of Ethical Practice for business enterprises in South Africa. The Committee was also charged with having to take into account the special circumstances prevailing in South Africa, more particularly the emergence of a new class of entrepreneur being members of the disadvantaged communites. The terms of reference are to be found in appendix II.

5. In an endeavour to fulfil its mission the Committee established five task groups to investigate five areas of corporate governance.

   5.1 The Director task group looked into the responsibilities of executive and non-executive directors and the frequency, substance and form of information to stakeholders. It approached its functions in recognition of the fact that by and large South Africa's philosophy of regulation of companies, in keeping with that of the Anglo-American tradition, is by means of disclosure. Thus it was recognised that information must be prompt and relevant and, to the extent possible, simplied. This task group was chaired by Michael Katz.

   5.2 The Audit task group dealt with the question of the principal role of the auditors, the role of internal auditors, the appointment of audit, remuneration and nomination committees and the interim report. This task group was chaired by Guy Smith.

   5.3 The Stakeholder Links task group investigated the links between the various stakeholders and was chaired by Peter Joubert.

   5.4. The Ethics task group was required to develop a Code of Conduct setting out ethical practices in business enterprises. This task group was chaired by Peter Wrighton.

5.5 The Compliance task group investigated the question of the adoption and compliance by all interested parties of the recommendations. This task group was chaired by Roy Andersen.

6. The Director task group had to consider the special circumstances prevailing in South Africa. In this regard it is pointed out that:-

6.1 In the first instance, for example, the concept of not permitting the same individual to be Chair and Chief Executive, is undoubtedly correct in principle. There are, however, many instances in South Africa where the position of chair and chief executive are combined in the same individual by force of circumstances. There are, for example, "family companies" in South Africa, many of which are listed on the Johannesburg Stock Exchange;

6.2 Secondly, the Cadbury recommendation of three independent non-executive directors of sufficient calibre so as to bring independent judgment to bear is also undoubtedly correct in principle. In South Africa the question arises as to whether there is a sufficient pool of trained and experienced people available to serve as independent non-executive directors. Also as a result of this limited pool of skilled people, conflicts of interest often arise. There are large conglomerates in South Africa with diverse investments and it is sometimes in the interests of shareholders that senior directors of major subsidiaries should serve on the main board of the holding company. The skills shortage has also resulted in retired executive directors continuing to serve on boards as non-executive directors.

7.1 The Audit task group considered, inter alia, the question of internal auditors and internal controls in South Africa. It found that the Cadbury recommendation that all listed companies should have audit committees was correct in principle. However, the query arose as to whether the larger unlisted dependent companies and the larger public entities, as now defined, should also have audit committees?

7.2 The Audit task group also considered the Cadbury recommendation of declaring that the business is a going concern.

8. The Ethics task group did an immense amount of work in endeavouring to define business ethics within the context of the relationships between the various stakeholders of a business enterprise. The list of ethical obligations of each stakeholder to the other forms the basis of the work of this Committee. The Ethics task group in turn divided itself into task groups each charged with the responsibility of analysing the ethical obligations of each stakeholder.

9. The Stakeholder Links task group has asked the question: Who are the stakeholders in the context of linkage? They identified the shareholders as well as those stakeholders linked to the company outside of any contractual relationship. There were many questions considered by this task group. Should the board permit the media to have ready access to senior executives? Should the board be obliged to make public statements concerning any change in direction of the company's business? Should the company include in its annual statements a report relating to value created, the social endeavours of the corporation and the opportunities and benefits available to employees in the corporation?

10. The Compliance task group had to consider recommending whether a statement of the extent of compliance with the recommended code should be adopted legislatively or simply as a JSE listing requirement. Should public entities, as defined in the Public Entities Act and such other specialists organisations such as mutuals and parastatals also be obliged to adopt the recommendations? Should compliance be voluntary, inter alia, through associations to which business entities are members?

11. In its considerations the Committee adopted a consultative and transparent process and consequently consulted interested parties as it progressed with its work.

CHAPTER 3

THE APPLICATION OF THE RECOMMENDATIONS

1. The importance of corporate governance is essentially only relevant where there is a division between the owners of the equity and the directors of the business. With an "independent" company the owner of the equity and the directors are effectively merged. As soon as the owner of capital is dependent on directors to control the business or the directors are dependent on other persons to finance the company, a good system of corporate governance is imperative.

2. The recommendations of the King Committee are directed at all companies ("the affected corporations") listed on the main board of the Johannesburg Stock Exchange, large public entities as defined in the Public Entities Act, banks, financial and insurance entities as defined in the various Financial Services Acts, large unlisted dependent companies, large quasi-state entities such as control boards and co-operatives.

3. The chapter on business ethics is directed at all business enterprises. The ethics task group did an enormous amount of work in developing aspirational ethical guidelines for everyday events that occur in business. This code of ethics is contained in a separate document and can be obtained from the IOD.

4. The Committee is of the view that "large" in the South African context should include companies with shareholders' equity of R50m or more. It may be that companies with an equity base of less than R50m have very large turnovers and/or employ thousands of people and their successful functioning is important to the wider community. These companies should adhere to the recommendations but it is difficult to formulate a definition of such corporations.

5. The Cadbury recommendations involved the financial aspects of corporate governance and focussed on integrity and shareholder dominance. While it is of the utmost importance that companies operate from a base of integrity, we believe that the focus must be on a participative entrepreneurial approach rather than a dominant one. Likewise, the participation process must not become so dominant that it stifles or obstructs the notion of business risk for reward in a free enterprise system.

CHAPTER 4

THE BOARD OF DIRECTORS

1. The main functions of a board are differently described by different analysts and commentators. The undermentioned functions appear to be acceptable to most analysts:-

   1.1 to direct the company both as to strategy and structure;

   1.2 to establish from time to time a strategy for the company, including a determination of the businesses that the company should be in and those that it should not be in;

   1.3 to ensure that the executive management implements the company's strategy as established from time to time;

   1.4 to ensure that the company has adequate systems of internal controls both operational and financial;

   1.5 to monitor the activities of the executive management;

   1.6 to select the chief executive, ensure succession and give guidance on the appointment of senior executives;

   1.7 to provide information on the activities of the company to those entitled to it;

   1.8 to ensure that the company operates ethically;

1.9 to provide for succession of senior management;

1.10 to address the adequacy of retirement and health care benefits and funding.

2. In order to carry out these 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 special circumstances. A board should, however, meet at least once a quarter.

3. The board must be in a position to lead, control and monitor the business of the company. The board has a collective responsibility to provide effective corporate governance. Shareholders should ensure that their boards are constituted in a manner that provides a balance between enterprise and control. Each board member must, of course, have absolute integrity.

4. Enterprise is the disposition to engage in undertakings of risk. Business is the undertaking of risk for reward. The entire board must contribute to that enterprise, failing which the best controls will end up as hollow methodologies - hollow because there will be nothing to control. This occurs on winding up. Control passes from the board to the liquidator who gathers up the assets, translates them to cash and distributes them to the mourning stakeholders of which creditors are usually the only recipients.

5. All directors, both executive and non-executive, are bound by fiduciary duties (i.e. duties of loyalty) and duties of care and skill. Non-executive directors in the discharge of their duties of care and skill will in the determination as to whether they have adequately discharged their duties, obtain recognition for the fact that such duties are only performed on an intermittent basis and that they enjoy lesser access to the books and records of the company than is the case of executive directors.

6. In monitoring the activities of the executive management the checks and balances set up in a company by the board are important. It is one of the means of ensuring that the information which is considered at board meetings is as accurate as possible and not skewed by the wishes of a particular executive and, more importantly, is not false in any respect.

7. Similarly a board should not be dominated by an individual or individuals, so as to ensure that an objective and intellectually honest collective mind is brought to bear on decisions. The skewing effect of an unbalanced board is multiplied if "tainted" information is put before it. One of the ways of attaining accuracy of reporting is to have a senior member of management who is not a board member report on their sphere of operations. The board can then direct questions to them and check the answers against the content, trend or tone of the written reports before the board.

8. Non-executive directors have, as part of their duties, four important functions. They need to bring their special expertise and knowledge to bear on the strategy, enterprise, innovative ideas and business planning of the company. They should be driven by entrepreneurship and enterprise. Secondly, they can monitor and review the performance of the executive management more objectively than can be done by the executive directors. Thirdly, they can play a role in resolving conflict of interest situations, for example, the remuneration of executives, succession and hostile takeovers. Fourthly, they can act as a check and balance against the executive directors.

9. For these reasons a board needs to be balanced with at least an equal number of executive and non-executive directors. Obviously the chair plays a vital role and should be independent and non-executive. Where there is not such a chair, there should be at least two non-executive directors of such calibre that they would carry significant weight in that board's deliberations and resolutions. Whilst it is preferable to balance the board, with an appropriate mix of skills and expertise among the non-executive directors, it must be accepted that it may not always be practical in South Africa because of the present skills shortage.

10. In the Committee's deliberations it was suggested that a two-tier board structure with a supervisory and a management board may be desirable in South Africa. The reasoning was that the two tier structure with employee and shareholder representatives dominating the supervisory board and managers the management board, had succeeded in Germany. The question must be asked whether there is any advantage to be found in a two-tier structure which cannot be attained in a unitary structure. There are, moreover, distinct advantages in a unitary board structure. It is the Committee's view that every objective of the two-tier structure can also be attained in a unitary structure. The significant advantage

of a unitary structure in contradistinction to a two-tier board is that it avoids the artificial compartmentalisation that occurs in a two-tier structure.

11. In South Africa the unitary board structure has always been adopted. With appropriate enterprise, integrity and controls in a company a newcomer learns much in a unitary board structure. Also there are few management tools better than personal interaction. Whether there is a two-tier or a unitary board management inevitably will meet separately. We believe that the interaction present at a unitary board is vital for the progression of corporate governance in the new South Africa.

12. The question of worker participation in the governance of corporations was debated and many submissions were received on the subject.

    12.1 It was contended that the participation by workers in corporate governance cannot be an empowerment in a vacuum. It was suggested that there must be reciprocation and that reciprocal formula should be that labour must share in the risks and rewards of the corporation.

    12.2 The contrary contention was that a company is a nexus of inter-relations between its various stakeholders and the board is really representing these stakeholders. Consequently, the various stakeholders of a corporation are entitled to representation on the board. Logically, this would result in an entitlement to representation on the board for customers, suppliers and the State - with patently unacceptable conflicts of interest.

    12.3 While a company is a nexus of stakeholders' interests it is a separate legal entity. Its assets belong to the company and to no one else. It is, therefore, incorrect to say that the assets belong to the shareholders or any or all of a company's stakeholders. The stakeholders, however, all have an interest in the operation of the company's business and the deployment of its assets.

    12.4 There are, however, three stakeholders who have an identity of interest and they are the shareholders, managers and workers. That identity of interest is to pool resources and skills for the purpose of ensuring that the corporation survives and thrives. It is for this reason that we believe that workers should participate in the governance of corporations.

    12.5 It is argued that with South Africa adopting a more liberal trade policy and its corporations becoming global competitors conflicts may arise between the worker as a participant in governance and the need, for example, to relocate part of the corporation's business. The answer probably is that the basic element of good governance is to make decisions honestly in the best interests of the corporation. A worker representative would have to act with intellectual honesty even if the decision is a hard one for the workers.

    12.6 The question of worker participation is of vital importance in South Africa. This is evidenced by the workshops and projects presently trying to find a home-grown solution in South Africa. No matter the content of these debates, ultimately a system suitable to each corporation will have to be found to permit worker participation in governance of that corporation. It does not necessarily mean that there will be one system. What may be a workable system in one corporation may not be workable in another corporation. This may, for example, be because the corporations are in different industries.

    12.7 The system of worker participation in governance decisions should grow out of the nature of the corporation's business, the culture of the corporation, the culture of management and the workers' organisation.

    12.8 Corporations should evolve their own system of worker participation whether by way of workers' committees or at management, executive committee or board level. Whatever the system it should develop:

        12.8.1 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;

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

        12.8.3 Speedy identification of conflict and its effective and prompt resolution.

12.9 In short, each corporation will have to evolve a system of such participation. Hopefully, in the months to come we will see home-grown solutions developing in coprorations.

13.1 Company law allows the promoters of a company to allocate management and control in the board or in the shareholders or partly in one or the other organ.

13.2 The Committee notes that ironically the Articles of Association of Companies vests management and control in its board of directors.

13.3 The Committee finds no reason to interfere with the flexibility of the Company law referred to in paragraph 13.1 above.

CHAPTER 5

THE DIRECTORS

1. Directors, individually and collectively, are responsible to shareholders. While they are divided in practice into two classes, executive and non-executive, there is no such distinction in the South African Companies Act 1973.

2. There are some general guidelines which can be laid down for all directors.

2.1 Directors should ensure that they have the time to devote to carry out properly their duties and responsibilities to the company.

2.2 Directors should be informed about the financial, social and political milieu in which the company operates.

2.3 Directors must be satisfied that they are in a position to make informed decisions.

2.4 Directors must never permit a conflict of duties and interests.

2.5 Directors must disclose potential conflicts of interest at the earliest opportunity.

2.6 Directors must act independently of any outside fetter or instruction.

2.7 Directors must act with enterprise and always strive to increase shareholders' value while having regard for the interests of all stakeholders.

2.8 Directors must ensure that all interested parties are fully informed of any material matter affecting the company's business with openness and substance over form being their guideline.

2.9 Directors must exercise the utmost good faith, honesty and integrity in all their dealings with or on behalf of the company.

2.10 Directors must exercise the care and skill which can reasonably be expected of a person of their expertise.

2.11 Directors must always act in the best interests of the company and never for any sectoral interest.

2.12 Directors must ensure that the company's strategy and structure has been collectively agreed by the board.

2.13 Directors must insist that board papers and information are given to them timeously so that they have time to study them and make properly informed decisions.

2.14 Confidential matters of the company, learned in their capacity as a director, should be treated as such and not divulged to anyone without the authority of the company.

2.15 If a director is in doubt about any aspect of their duties they should obtain independent professional advice.

2.16 Directors must ensure that the company prepares annual budgets against which the company's performance can be monitored.

2.17 Directors must ensure that procedures and systems are in place to act as checks and balances on the information being received by the board.

2.18 Directors must ensure that the board monitors the performance of executive management against budgets, business plans, industry norms, prior year's peformance, etc.

2.19 Directors must ensure that the company has an affirmative action plan in place to advance members of disadvantaged communities in the business of the company as in most cases it will be necessary for the long term survival of the company.

3.1 As set out above, directors have two categories of duties, viz, the duty of good faith and the duty of care and skill.

3.2 In endeavouring to encourage entrepreneurship and persons of skill and reputation to take appointments in new enterprises the Committee has revisited the duty of care and skill.

3.3 Particularly in the case of non-executive directors, their appointment is onerous in the context of the present tests of a breach of the duty of care and skill.

3.4 It seems to us that a director should not be liable for a breach of the duty of care and skill if they have exercised a business judgment in good faith in a matter in which the undermentioned three criteria are satisfied, viz.:

3.4.1 that the decision is an informed one based on all the facts of the case; and

3.4.2 that the decision is a rational one; and

3.4.3 that there is no self-interest.

3.5 We believe that such an approach would encourage the competitiveness of South African companies and the standing Advisory Committee on Company Law should consider amending the Companies Act to provide that the duty of care and skill should be so limited by statute.

4. The committee believes that there should be a device to monitor the transactions of directors and officers of listed companies in dealing in the company's shares whether directly or indirectly. Consequently, directors of listed companies should have one person in the company (usually the company secretary) whom they must notify of an intention to sell or buy the shares of the company whether directly or indirectly. The director should be obliged after the transaction to lodge immediately with the company secretary a written record of the transaction which will include the name of the director or officer who dealt in the shares, the nature of the transaction, the date thereof and the price. The secretary should be obliged to make these records freely available to authorities on request and they should be tabled by the director concerned at the board meeting immediately subsequent to the transaction. Corporations should also consider a closed period prior to the announcement of their interim and final results in which period a director cannot directly or indirectly deal in the corporation's shares.

5. Executive directors must always manage the conflict between their management interests and their fiduciary duties as a director in the best interests of the company. Non-executive directors have an important role to play in helping to manage this conflict particularly in cases of hostile takeovers or management buy outs.

6. As can be seen from paragraph 2 above, a director's responsibilities are awesome - and the list is not intended to be exhaustive. In consequence the Committee does not support the suggestion contained in the Melamet Commission that there should be a statutory manual of director's duties.

7. Not every stakeholder is aware of the directors' responsibilities and the Committee endorses the view that the report by directors should incorporate statements on the following:

7.1 The financial statements are their responsibility.

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

7.3 The financial statements fairly present the state of affairs of the company.

7.4 Adequate accounting records have been maintained.

7.5 Suitable accounting policies, consistently applied and supported by reasonable and prudent judgments and estimates, have been used in the preparation of the financial statements.

7.6 Applicable accounting standards have been applied, but if there has been any departure in the interests of fair presentation it must be disclosed and explained.

7.7 An effective system of internal control has been maintained.

7.8 If the directors are in any doubt about the ability of the company to continue as a going concern in the year ahead this should be so stated.

8. There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice if necessary at the company's expense. Before doing so a director should discuss the matter with the chair and/or company secretary and if that is not appropriate, then with another director. If all that is inappropriate, then of course they must take a decision on their own but satisfying themselves that their conduct is in the best interests of the company.

9. Directors have to ensure that the business remains a going concern, i.e. that it survives. They have to make the business thrive with enterprise and innovation. In short, directors' duties in relation to their companies are to drive, strive, survive and thrive.

CHAPTER 6

THE NON-EXECUTIVE DIRECTOR

1. Every director has equal responsiblity whether they are an executive or a non-executive director. It is clear that directors have an equal and heavy responsibility when it comes to the question of good faith. It is another question when it comes to care and skill as we have pointed out in the previous chapter.

2. The appointment of executive and non-executive directors to the board results in reports to the board being asymmetrical. They are asymmetrical in the sense that the executive directors have lived through the events reported, be they about income, expenditure, working capital levels, capital expenditure, human resources, or whatever, on a daily on-going basis. The non-executive director does not live through the events reported to the Board and reads about them in board papers or hears about them at the board meeting. In short, the board is not collectively involved in the day to day management of the company whereas the executive directors are individually and collectively involved in the day to day management.

3. The board collectively, and more particularly the non-executive directors individually, are reliant on the information placed before them at board meetings. It is on this information that board decisions are made. It follows as a matter of logic that a board must ensure that there are checks and balances to maintain a level of accurate reporting.

4. If a company is operating with five or six large business divisions and each of the chief executives of those business divisions is reporting to a group chief executive who reports to the board there are built in checks and balances, for example, the chief executive, the financial director and their assistants of each business unit.

5. At the head office level would be a group financial director collecting the information and with the assistants preparing papers for the board.

6. It is, therefore, useful in monitoring management and the accuracy and quality of reports received by a board that at random and in no particular order, a general manager, a financial director and/or a managing director of an operating

division be invited to attend a board meeting in order to comment on matters before the board, the progress of the group, or business unit.

7. It is highly unlikely that a conspiracy to misinform a board would be concluded between the financial directors and chief executives of the operating divisions and the group chief executive.

8. It has, however, happened that a group chief executive, for their own self-interest (probably dishonest), manipulates the information received from business units. The manipulated information then enters the report on which the board makes decisions. For this reason there should always be more than one member of executive management on the board.

9. If the non-executive director has as a member of the board not ensured that checks and balances and monitoring systems are in place then they cannot be heard to complain if they make decisions on false information. Once, however, reasonable checks and balances and monitoring systems are in place the non-executive director is really at the mercy of the executive directors. The non-executive director also cannot be heard to complain if, as a reasonable person, they learn of something which puts them on enquiry and they do not enquire. A supine attitude might amount to concurrence in such circumstances.

10. The extent of a non-executive director's duty of care and skill depends on any particular obligation undertaken by them, the nature of the company's business and the knowledge and expertise which they bring to the board table. Usually a non-executive director does not undertake any particular obligation and they are not bound to give day to day attention to the business unlike their executive colleague. Their duties are intermittent to be performed at board or other meetings. They are not required to be a watchdog - they do not have the duties of an auditor. They must exercise the care which can reasonably be expected of a person with their knowledge and experience. In the absence of grounds to put them on enquiry they are justified in relying on officials in the company to perform their duties properly and honestly. Consequently, they are entitled to rely on the information given to them by their executive colleagues and management, unless there are grounds for them to make enquiry. A non-executive director exercising reasonable care cannot act blindly or indifferently and cannot escape culpable ignorance.

11. As each director on appointment becomes a fiduciary in relation to the company and in their dealings on its behalf it is unhelpful to classify directors as executives or non-executives for the purpose of ascertaining their duties to the company or when any specific or affirmative action is required of them. It, therefore, cannot be said that because someone is a non-executive director of a company that their duties are less onerous than they would have been if they had been an executive director. Whether the enquiry be one in relation to negligence, reckless conduct or fraud, the law is the same for all directors. Thus, in any particular case one of the factors relevant to judging the conduct of a director might be their access to information and the justification for relying upon the reports they receive from others, whether or not they have been classified by the company as an "executive" or "non-executive" director.

12. The aforesaid is an analysis of several judgments in the Courts of the position of a director. Notwithstanding this legal analysis in practice the term "non-executive director" is used to describe a director who is not involved in the day to day affairs or running of the business of the company as an employee of the company. The "executive director" is so involved and is an employee of the company.

13. What should be the priorities of non-executive directors? Their major priority together with that of the executive directors is to ensure that the company survives and thrives. Non-executive directors have four important functions. They need to bring their special expertise and knowledge to bear on the strategy, enterprise, innovative ideas and the business planning of the company. They should be driven by entrepreneurship and enterprise. Secondly, they can monitor and review the performance of the executive management more objectively than the executive director. Thirdly, they can play a role in resolving conflict of interest situations, for example, the remuneration of executives, succession and hostile takeovers. Fourthly, they can act as a check and balance against the executive directors.

14. A non-executive director must develop a working knowledge of the company, be cognisant of the economic, social and political milieu in which the company operates and have an understanding of the availability of finance, staff and technical resources and the level of current and proposed investments. They must use their best endeavours to ensure that the company operates within the law and also ethically.

15. Corporations should not apply "cronyism" or "tokenism" in making non-executive appointments and should only make appointments on merit and the needs of the corporation.

16. A non-executive director should be independent. They should not, therefore, be a member of the company's pension or medical aid fund to which the company makes a contribution. They should be independent of management and where possible free from any business relationship with the company. We say where possible, because we recognise the impracticality of trying to apply that as a principle in South Africa, because of our skills shortage. The classic examples are where directors of operating subsidiaries act as non-executive directors on holding companies boards and vice versa. Another example is the company attorney who acts as a non-executive director of that company. As long as they are independent in the above sense and have no executive responsibility, non-executive directors would comprise directors or managers of a holding company, former executive directors and senior executive directors of major listed subsidiaries or associates.

17. Every affected corporation should have at least two non-executive directors of such calibre that they will carry weight in the board's decisions. This is in addition to the Chair, who by preference, should also be non-executive. The non-executive directors will obviously play a key role on matters of strategy, monitoring executive management, performance of the company, resources, key appointments, standards of conduct and the resolution of disputes between management.

18. The Committee does not believe that non-executive directors should be appointed for a specified term. Affected corporations should, however, consider giving a non-executive director a letter of appointment setting out their duties, responsibilities and remuneration. The non-executive director would have been appointed by the whole board acting impartially and believing that the non-executive director would bring some knowledge and expertise to the board and be of such calibre as to carry weight in the board's decisions. They therefore, by definition would be a person of stature and integrity. It usually takes a year for a non-executive director to become familiar with the business of the company and they usually serve a silent apprenticeship for six months to one year, while they are absorbing all that is happening around them. Consequently, we believe that a three year term is too short, but equally why should a five or ten year term be correct? The answer is that they were appointed to the board to make a contribution on planning, strategy, monitoring management and all the other board functions. If the Chair and the board believe that after a sufficient apprenticeship the appointee is not making a contribution, the Chair has a duty to tell the appointee so and they should resign and if necessary be removed. If on the other hand a non-executive director is making a contribution, why should their term end after three, five or ten years?

19. Executive directors should be encouraged by their companies to take non-executive appointments in other companies, not only in order to increase the pool of non-executive directors, but it is an excellent way of widening the "horizons" of executive management. Of course, the number of non-executive appointments should not adversly impact upon the director's executive responsibilities to their own company.

20. The fees payable to a non-executive director will vary from company to company, but if the non-executive director has additional responsibilities such as being a member of the audit or remuneration committee, they must be remunerated therefor.

21. In conclusion, on the subject of non-executive directors, the Committee believes the following extract from The Director, April 1994 edition, collects its views. "The role of the non-executive or independent director has clearly been a cause for concern. Bringing them in as a quasi-legal paraphernalia will only succeed in arousing the hackles of executive management. Bringing them in as watchdogs begins to create a two-tier board. Used in the right way at the right time, they can have a powerful beneficial effect upon a company. That means they vet strategy, not set it. They help to develop performance criteria - the "soft" measurements such as training as well as critical "hard" financial measurements such as the true cost of capital. They help the board to make the best strategic choices, when sometimes the executives might be tempted to rush in. They are there to ensure accountability and to ensure that absolute power does not corrupt absolutely. And they are there to ensure management development and succession. That is quite a lot for a part-time job, relatively sparsely paid, especially when you are on an equal legal footing with your full-time colleagues should anything go wrong. Suggesting that they should be police officers will only ensure that less, not more, executives will be permitted by their companies to perform the non-executive role elsewhere - which is what is vitally needed at this time. There are still not enough sleeve-rolled-up executives serving as non-executives. Some boards still seem fixated by the status of the prospective non-executive, rather than searching out the individuals who

can make an effective contribution to the entrepreneurial success of the business. A tall order? Yes, it's also called "survival".

CHAPTER 7

THE CHAIRMAN

1. The chairman (chair) should ensure that the board is balanced in the sense discussed in Chapter 4.

2. The chair must be able to be objective from the day-to-day running of the business in order to ensure that all relevant matters are on the agenda and properly prioritised.

3. The chair must also ensure that all board members are as fully informed as possible on any issue on which a decision is to be made. The chair must ensure that executive directors play not only a management role, but fully participate in the governance of the company.

4. Likewise the chair should ensure that the non-executive directors do not exercise only a monitoring role but contribute to the business decisions.

5. It is preferable that the chair's role be separated from that of the chief executive officer. Consequently, the chair should be an independent and non-executive director.

6. In South Africa there have been many successful and credible companies where the role has been combined. This has often occurred where a founding family participates in management as well as having a significant equity stake. As a result of exchange control a number of these companies have become conglomerates in South Africa with diverse investments. Some of these companies have attained and maintain their credibility because a "founding family" member continues as chair although an executive director of the company. Consequently, there may be circumstances where a board may consider it to be in the company's interest for an executive director to continue as chair.

7. There is, of course, a skills shortage in South Africa. To say that every company must have an independent non-executive chair would be impractical. What can be said, however, is that it is desirable and where this is not so, the non-executive directors have a particular responsibility to ensure that the chair encourages proper deliberation of all matters requiring the board's attention, and obtains optimum input from the other executive directors.

CHAPTER 8

REMUNERATION

1. There are three elements of compensation in an executive director's remuneration. They are salary, performance bonus for surpassing the expected, and benefits. There is some debate as to whether share options should be included in a director's emoluments. The benefits themselves can include many things such as a company car, holiday home, pension contributions, telephone accounts, clothing allowances, overseas holidays, club membership fees, etc.

2. What shareholders in dependent companies are entitled to know is that the executive and non-executive directors are being fairly remunerated for the tasks required of them and that the executive directors are further remunerated if they surpass the expected results of properly performing their tasks.

3. It is said that scheme shares and a bonus are a double reward and the payment of a bonus plus shares is merely a carry over of the days before scheme shares were introduced. Management, on occasion does surpass the expected but

because of factors beyond its control the price of the Scheme shares does not move or sometimes falls below the issue price to the management. We consequently do not ascribe to the view that it is a double reward.

4. Service contracts can be over compensatory and the remuneration committee must carefully weigh up the totality of the package including pension contributions, termination and signing-on provisions. We do not favour these provisions because they prescribe future conduct. For this reason we do not favour lengthy service contracts and suggest that none should exceed five years in duration unless the shareholders approve of an extended contract. Generally, corporations should be cautious about concluding extended notice periods and "golden parachute" arrangements with executives.

5. We endorse the appointment of a remuneration committee of which the chair and the majority members should be non-executive directors. The guidelines of how a remuneration committee should operate and suggested terms of reference are set out in Appendix III. We have adopted Proned's approach, guidelines and terms of reference in this appendix.

6. A remuneration committee will not necessarily, however, reflect the view of the shareholders. At the AGM the chair of the remuneration committee should be present to motivate remuneration decisions.

7. In discussing remuneration the committee and shareholders must be mindful of the fact that a director's remuneration is a reward for enterprise so that there should be an incentive for superior enterprising performance but likewise there should not be rewards for failure.

8. The shareholders are entitled to openess and disclosure in regard to directors' earnings so that they can see that the directors are being fairly rewarded. They need consistent reports so that they can compare the year on year remuneration and a breakdown of the earnings. Having said this, it seems to be unnecessary for the needs of stakeholders to disclose and discuss each individual director's remuneration in detail.

9. We consequently recommend that the remuneration of executive and non-executive directors should be separated and that there be a full breakdown of their earnings in total. The breakdown must include salary, or director's fees, pension, bonus, and perquisites. Details as to how the bonus is arrived at and the breakdown of the benefits should also be given. There is some debate in the UK and the USA as to whether share options should or should not be included in director's emoluments. Notwithstanding, this debate the committee concluded that details of directors' share options should be included in the breakdown of their emoluments. Information should be given concerning the option price, the market price at year-end and the price at date of exercise.

CHAPTER 9

NOMINATION COMMITTEES

1. In some countries nomination committees, made up of non-executive directors, nominate new appointments to the board.

2. As a result of the skills shortage in South Africa it is difficult enough to find a non-executive director of calibre to take an appointment to a board. In consequence, to recommend a nomination committee made up of non-executive directors in the majority would be impractical.

3. In any event, we are opposed to nomination committees because we believe that the whole board should be involved in the process of selection of new directors. Nomination Committees will not improve incorrect selection processes.

4. The selection process in the past has been wrong. It is seen as part of an "old boys" network or "cronyism". Usually the board knows of a retiring director and the chair proposes the new appointment. It is usually someone well-known to the chair or a senior board member. There is some discussion about their being a "good chap" and then they are duly appointed. Further, in the past in South Africa, the appointments have mainly been male and white.

5. In the event of there being a nomination committee, the selection process should be tabled and agreed by the whole board and not delegated to the nomination committee which should only make recommendations.

6. In the Business Quarterly of Summer 1993, the authors opine that there are three keys to a good board. The members understand and agree on what are the proper functions of the board; the board is composed of people of integrity who bring a blend of knowledge, skills, attitudes, experience and commitment to the job; and finally the board is led by a capable chair who brings out the best - individually and collectively - in the directors.

7. In order to achieve these three key qualities or whatever one's criteria may be, the crucial matter is having a proper director selection process.

8. The Business Quarterly suggests the following process which we endorse:

   8.1 Plan the composition of your board with strategic considerations and objectives in mind.

   8.2 The specifications for appointment to your board should be developed. For example, a candidate should have integrity and independence of thought; the courage to express their independent thought; a grasp of the realities of business operations; an understanding of the changes taking place regionally, nationally and internationally; an understanding of business and financial "language"; succession must not be overlooked, etc.

   8.3 Search for, screen and select your candidates. The place to look for the new appointment should emerge from the planning stage.

   8.4 A new director needs to visit the company's operations, meet senior executives and generally become familiar with the company. They should be told by the chair what is expected of them and there should be briefings on personal liability, dealing in the company's shares and their responsibilities on any committee on which the director may be required to serve. If they have no board experience they should receive training.

9. In short, as with everything in corporate life, the selection of the board must be managed. It must not be left to the chair to nominate someone with whom the chair feels comfortable and the new director must not be thrown in at the deep end.

CHAPTER 10

TRAINING OF DIRECTORS

1. With affirmative action programmes alive and well in South Africa the topic of the training of directors takes on a new importance.

2. Directors have awesome responsibilities and they must be properly prepared to carry out their duties.

3. Each newly appointed director should have proper internal training, i.e. a proper process of induction into the company's affairs. If a new director has no prior board experience they should undergo some training before taking their seat on the board.

4. There are courses for newly appointed directors run by the Institute of Directors and some business schools.

5. The training and development of directors is important for good governance and needs to be uppermost in the minds of boards in making new appointments.

6. Obviously, the most effective training of a non-executive director comes from being an executive director.

CHAPTER 11

BOARD SUB-COMMITTEES

1. The board of directors might find it useful to establish sub-committees such as an agenda or a chair's committee.

2. An agenda committee may be important in instances where companies for whatever reason have the roles of the chair and chief executive in one person or a dominant board member appointed by the controlling shareholder. It could go some way in ensuring that matters which the minorities or other interested stakeholders would want to raise, are in fact raised on the agenda. In such instances the committee should consist of at least one representative of minority shareholders.

   3.1 Some large corporations find it helpful to form a chair's or executive committee.

   3.2 A chair's or executive committee can meet more often than the whole board and the benefit is that senior management and senior directors can discuss and agree on matters rather than management taking major decisions on their own. The board can delegate some of its functions to a chair's committee. Thus decisions can be taken when necessary without waiting for a board meeting.

   3.3 The authority of such a committee should be in writing from the board setting out the parameters and context within which such powers are conferred. Strictly, this authority should also be incorporated in the corporation's Articles of Association.

CHAPTER 12

STAKEHOLDERS AND STAKEHOLDER COMMUNICATIONS

1. The concept of "stakeholders" is used freely in the business world without analysing their relationship with the company concerned.

2. Generally, it can be said that a stakeholder is any person, entity or interest group that has some association with the company. There are three classes of stakeholders: shareholders, parties who contract with the company and parties who have a non-contractual nexus with the company. An example of a contracting party is the employee and a non-contracting party is the State.

3. The Institute of Directors adopts this constituency approach of dividing the stakeholders into three categories. Directors, with due enterprise and integrity, must ensure that their company survives and thrives as a going concern. By fulfilling that obligation, directors ensure that customers are served, employment is secured, suppliers are paid, shareholders' capital is preserved, profits are made, dividends are distributed, taxes are paid, pollution is controlled, social responsibility programmes are introduced, etc.

4. While distinction between owners and managers is clear, a large company with thousands of shareholders and no controlling shareholder really does not have an owner who can exercise rights of ownership in their discretion. The right of ownership of the company in such a case is diluted by the democracy in the company and the need to call a shareholders meeting to exercise the rights of the owners. With a single or controlling shareholder the right and power of ownership vests in them. It is true that technically they have to act through a shareholders meeting to appoint, for example, a new director but once it is known that they will carry the vote they have the power to nominate and ensure the appointment of that new director.

5. It is also for this reason that Cadbury and others have suggested that the institutional investor has an important role to play. In most cases a single institution does not control a company and cannot exercise the shareholder authority of a single or controlling shareholder. One institution is always reluctant to work with another one to form a power

block of shareholders because being in control might carry some moral obligations and could have adverse effects on the institution.

6. If institutional investors, who are not controlling shareholders and represented on the board, endeavour to play a more proactive role by having regular meetings with management and discussing strategy, performance, etc. two risky situations evolve. Firstly, management runs the danger of being guilty of giving superior information to one shareholder and, secondly, the institution could be guilty of insider trading if it deals in the company's shares. It is a matter that has to be approached with the agility of a trapeze artist. These factors have to be kept in mind if institutional shareholders try to play a more constructive role as owners.

7. There is a strongly held view among pension and provident fund members that they should participate more and more in the governance of corporations in South Africa where the institutions are large shareholders. They also believe that in practice the large mutual societies are in reality controlled by their managers whereas there should be a greater degree of policyholder or pension member participation in the governance of these mutuals. There may be much substance in these views and they should be considered by the committee we recommend should be formed to monitor, debate and update our recommendations as the governance of corporations is a dynamic which constantly needs to be addressed as circumstances change.

8. Perhaps the answer lies in management making public announcements whenever anything untoward, unexpected or relevant to the stakeholder occurs. It must be better to keep a link forged with all stakeholders rather than with one or two institutions.

9. So whilst the shareholders are owners of the company their authority as owners becomes diluted without control and it sometimes takes longer to make or have arrangements confirmed.

10.1 The narrow view is that as it is the shareholders who elect the board, approve the annual financial statements and ratify directors' actions it is to the shareholders only that the directors must account for their stewardship. The dynamic participation approach is that directors reports should be directed at all stakeholders and should consequently address matters of concern and interest to all stakeholders. Society now expects greater accountability from companies in regard to their non-financial affairs, for example, in relation to their employees and to the environment. Statutes compel the stewardship of directors towards the shareholder, but statutory reports aside, the other stakeholders cannot be overlooked.

10.2 In the context of a report to all stakeholders matters such as the following should be addressed:

10.2.1 Employment, such as staffing levels, skills levels, new jobs created, retrenchments, affirmative action policy, unionisation, training programmes, etc.

10.2.2 Environmental matters, such as planned pollution control, the environs of the business itself, etc.

10.2.3 Social responsibility activities or programmes and any large donations.

10.2.4 Customer interest matters.

10.2.5 Supplier interest matters.

11. The AGM must be properly used by shareholders by asking questions on the accounts and reports presented. Forms in annual reports should be provided on which shareholders could send in written questions in advance of the meeting. If matters of importance and substance are raised at the AGM a summary should be sent to shareholders.

12. Communication by the board to stakeholders must be open, understandable and consistent with previous reports. Information which is directed to all stakeholders, and not only shareholders, should be part of the non-statutory section of the financial statements.

13. The institutional shareholder is in a position through its analysts to keep in touch with boards but individual shareholders cannot do so as easily. While it is difficult to retain parity between shareholders, any significant statement, be it positive or negative, must be made available to all shareholders.

14. The narrative of reporting is more important than what to the average investor is a complicated set of accounts and reports. It is even of greater importance in a South Africa of diverse cultures and emerging investors. The narrative must not only be open but must be consistent and simple enough to be understandable to the average investor without sacrificing the quality of the information published.

15. That a consistent and simple narrative is more important to the unsophisticated investor is highlighted by the fact that it is not possible to prepare a set of financial statements which is "correct". The SAICA says in a discussion paper in March 1994: "It is generally agreed among those that are well informed about accounting that financial statements cannot be "right" in the sense that there is only one set of figures that expresses the results of a company's operations and its financial status. The inherent complexity of enterprise operations and uncertainties implicit in management decision-making defeats any attempt to develop a set of financial statements that all informed observers would regard as "right". In view of the many judgments that must be made when preparing annual financial statements, a range of possible outcomes - all coming within the bounds of accepted practice - is expected."

16. This situation is exacerbated when one set of financial statements is not comparable with a prior set because of a change in accounting policy, a merger, an acquisition, a disposal or whatever. Information which is consistent can be comparable. Inconsistent information cannot be comparable.

17. The guidelines of information to stakeholders must be promptness, relevancy, openess, substance over form, truth and fair presentation. The company must constantly strive for transparency. Thus, in the issuing of any communication to stakeholders, if there is any doubt about the content of the communication, the directors, having transported themselves into the shoes of the uninformed shareholders, should ask themselves, debate and answer the following questions:

    17.1 Is the communication open or transparent?

    17.2 Is the communication prompt?

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

    17.4 Does it fairly set out the position?

18. In the context of transparency the question of the disclosure of the beneficial holders of shares held by nominee companies needs to be mentioned. While the nominee company serves a useful administrative purpose it could obfuscate the identity of the beneficial holder of the shares held by the nominee compny. It could be a shield for the inside trader or the hostile bidder. In some jurisdictions the disclosure of the identitity of the beneficial holders of shares held by nominee companies can be enforced. This is a matter that should be considered by the standing Advisory Committee on the Companies Act.

CHAPTER 13

AUDITING

General

1. The audit provides an independent and objective check on the way in which the financial statements have been prepared and presented by the directors exercising their stewardship to the stakeholders. An annual audit is an essential part of the checks and balances required and is one of the cornerstones of corporate governance.

2. The objectivity of the audit function is adversely affected by the framework in which auditors operate.

3. Thus, accounting standards can and do vary and allow significant scope for presenting facts and figures in a variety of ways. The accounting profession is moving to limit the options available, bring our standards in line with international standards as approved by the International Accounting Standards Committee and also to incoporate

accounting standards into the Companies Act. In short, to give 'legal backing' to accounting standards. Those accounting standards should only be departed from in the interests of fair presentation. If they are departed from, the reasons therefor should be stated and the external auditor should furnish an opinion as to whether or not they agree with the departure and the reasons given.

4. Whilst auditors have to work with management they have to do so objectively and consciously aware of their accountability to the shareholders. This objectivity and accountability will be assisted by legalising accounting standards so that alternate accounting treatments are not possible except where a fair presentation will not result. Further, an audit committee chaired by a non-executive director, can maintain the objectivity between the auditors and management and in that committee differences of opinion between the two can be aired, discussed and agreed upon. The external auditors should also be able to turn to the non-executive directors in regard to any concerns they have about the company or its business.

5. A number of other steps are being taken or are proposed by the South African Institute of Chartered Accountants which steps are supported by this committee:

   (a) The setting up of a process of practice reviews to ensure that there is compliance with auditing standards.

   (b) The setting up of a review panel similar to that operated in the United Kingdom whose function would be to examine published financial statements of listed companies for compliance with accounting practices.

6. We would suggest that the review panel should have teeth. The panel should have statutory power to apply to the Supreme Court of South Africa to have the accounts changed if they do not agree with the directors' departure and if they succeed, the directors personally, jointly and severally should be liable for all the expenses and legal costs incurred in the Panel's investigation and the application to court.

   7.1 The proper functioning of auditors is absolutely dependent on the complete independence of the auditors;

   7.2 Insofar as concerns auditors' independence, the Committee wishes to point out that:-

      7.2.1 Companies should only embark upon cutting of auditing fees with caution as this invariably undermines the effectiveness of the auditors' performance, particularly if it results in a diminution in the amount and quality of the work done by the auditor. In bad economic times a reduction of auditors' fees is looked to as a potential cost saving device. It is precisely in bad times that cutting of auditors' fees should not be resorted to; and

      7.2.2 auditors are unfortunately competing with each other for the performance of other functions, such as computer management and corporate finance. This must not have the unfortunate by-product of impairing their effectiveness in the performance of their audit functions.

8. Needless to say, the highest standards of business and professional ethics are to be observed by the external auditors.

9. Directors or officers may by their acts of commission or by omission have contributed to a failed audit. They should be held liable for any such conduct which leads to a failed audit. Damages against external auditors for a failed audit is becoming a matter of grave concern. External auditors should only be held liable for damages on a basis proportional to their contribution to the failed audit. An amendment to section 247 of the Companies Act to cover the payment by the company of additional insurance cover for directors and officers for such conduct contributing to a failed audit may well limit the flood of litigation against external auditors. Of course, there should be no assistance for the director or officer who has acted in a grossly negligent or reckless manner.

10. We refer to the suggestions contained in Appendix IV which are directed at making financial statements more transparent and consistent.

Internal Controls

1. The Committee believes that it is important that directors make a statement in the financial statements in relation to their internal controls.

2. It is important, however, not to give the impression that internal controls are an assurance that nothing can go wrong.

3. The statement should include an indication that to the best of their (the directors) knowledge there has been no major breakdown during the year in the operation the reof. If, indeed, a breakdown had occurred the directors should give full details of what had happened with a comment on what remedial action is being taken.

4. The format of a suggested statement by the directors on their internal controls is set out below:

   "Your directors report that the company's internal controls and systems are designed to provide reasonable assurance as to the integrity and reliability of the financial statements and to adequately safeguard, verify and maintain accountability of its assets. Such controls are based on established written policies and procedures, are implemented by trained, skilled personnel with an appropriate segregation of duties. These are monitored through the company and all employees are required to maintain the highest ethical standards in ensuring that the company's business practices are to be conducted in a manner which in all reasonable circumstances is above reproach. Nothing has come to the attention of your directors to indicate that any material breakdown in the functioning of these controls, procedures and systems have occurred during the year under review. The auditors concur with the above statement by the directors." If the auditors do not concur they should identify the weaknesses in the controls, systems or procedures.

5. SAICA may have to provide guidance to auditors in regard to the work necessary to make the above statement.

6. Internal auditors should have unrestricted access to the Chair of the audit committee.

Audit Committees

1. All the affected corporations should have audit committees. The formation of audit committees and their inter-action with the external auditors is an essential plank in corporate governance.

2. The audit committee should be chaired by a non-executive director. It follows that the committee should consist of at least one non-executive director and preferably the majority should be non-executive directors.

3. The external and internal auditor and the financial director should attend all audit committee meetings.

4. Membership of the committee should be published in the annual report.

5. The board must minute the terms of reference of the audit committee which terms should be distributed to all senior management, the external and internal auditors.

6. The audit committee must be able to communicate freely with the Chair of the board (who should not be a member of the audit committee), the chief executive and the group or financial director.

7. The audit committee must be free to consult independent professional experts at the expense of the company.

8. The audit committee's primary functions should include reviewing:

   * Financial statements with both management and the external auditors prior to their approval by the board.
   * Accounting policies adopted, or any changes made or contemplated.
   * Effectiveness of the annual audit, ensuring emphasis is placed on areas where the committee, management or the auditors believe special attention is necessary.
   * Significant transactions which are not a normal part of the company's business.
   * Effectiveness of the internal audit function.
   * Co-ordination of audit approach between internal and external auditors.
   * Interim financial information.
   * Effectiveness of management information and other systems of internal control.
   * Recommending the quantum of the audit fees.

9. The question of external auditors attending board meetings to consider interim and preliminary reports and financial statements, will become unnecessary where the auditor has participated in the preceding meeting of an audit committee whose terms of reference have been laid down by the board and a written minute of the audit committee is before the board.

10. A discussion on audit committees and suggested terms of reference for an audit committee are set out in Appendix V.

Interim Report

Interim reports at present do not have to be reviewed or audited by the external auditors. We recommend that the external interim report should be subject to audit review. The audit committee report commenting on the interim report should be tabled at the board meeting.

Going Concern

1. The South African Companies Act already requires directors to include in their report every fact or circumstance which is material to an appreciation of the company's affairs.

2. This clearly covers going concern problems which a company might be facing and it is incumbent on the directors (and the auditors) under these circumstances to make a suitable reference to the situation in the directors report. For example, if a company has substantially over-borrowed and is facing present or future losses there must be some doubt as to whether the bankers might or might not renew facilities for a further year and if there is some major uncertainty the directors to the satisfaction of the auditors should make an appropriate comment.

3. We recommend that in the directors' report it should be stated that there is no reason to believe that the business will not continue as a going concern in the ensuing financial year and if there is reason to believe that it might not, the reasons should be disclosed and explained. The external auditor should comment on the directors' report.

Fraud and Illegal Acts

1. In South Africa there has existed for many years in the Public Accountants' and Auditors' Act a requirement of auditors to report on material irregularities. Further, there is an audit statement on fraud and - unlike the situation in other countries - we do not believe that any further steps in regard to fraud and material irregularites need be taken.

2. We do, however, believe that it should become a specific statutory offence for any company official deliberately to falsify financial statements or purposely to mislead auditors.

The auditing recommendations

The recommendations above should apply to all the affected corporations.

CHAPTER 14

INTERNAL AUDITORS

1. The internal audit function is an important part of corporate governance and one of the mechanisms for necessary checks and balances in a company. Consequently, we recommend that affected corporations shall have an internal audit function.

2. The internal audit team must be given a standing in the company that commands respect and they must be seen as colleagues who aid the senior executives of any business unit to control their businesses. It is the board who must

ensure that the internal audit team has the necessary standing and this can, inter alia, be achieved by the head of internal audit reporting to the Chair of the Audit Committee and having direct access to the Chair of the board.

3. The S.A. Institute of Internal Auditors has succinctly set out the role and function of the internal auditor and we adopt its approach with approval.

4. The internal audit function is an independent appraisal function established within a company to examine and evaluate the company's activities. The objective of internal auditing is to assist members of executive management in the effective discharge of their responsibilities. To this end, internal auditing furnishes them with analyses, appraisals, recommendations, counsel, and information concerning the activities reviewed.

5. Both the board and management are assisted by the internal audit function in carrying out their duties. Internal auditors owe a responsibility to both the board and management, providing them with information about the adequacy and effectiveness of the company's system of internal control and the quality of performance. The information furnished to each may differ in format and detail, depending on the requirements and requests of management and the board.

6. The internal auditing department is an integral part of the company and functions under the policies established by management and the board. The terms of reference for the internal auditing department should be approved by management and the board.

7. The scope of an internal audit should include the following:

   7.1 Review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information.

   7.2 Review the systems established to ensure compliance with those policies, plans, procedures, laws, and regulations which could have a significant impact on operations and reports.

   7.3 Review the means of safeguarding assets and, where appropriate, verify the existence of such assets.

   7.4 Appraise the economics and efficient management of the company's financial, human and other resources, and the effective conduct of its operations.

   7.5 Review operations or programmes to ascertain whether or not results are consistent with established objectives and goals and whether or not the operations are being carried out as planned.

CHAPTER 15

THE COMPANY SECRETARY

1. The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed.

2. The chair and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how those responsibilities should be discharged.

3. All directors should have access to the advice and services of the company secretary and should recognise that the chair is entitled to the strong and positive support of the company secretary in ensuring the effective functioning of the board.

4. It should be standard practice for the company secretary to administer, attend and prepare minutes of board proceedings.

5. The responsibility for ensuring that the secretary remains capable, and any question of the secretary's removal, should be a matter for the board as a whole.

6. The company secretary should be the source of advice to the chair and to the board on the implementation of The Code of Corporate Practices and Conduct.

7. There is no requirement in the Company's Act for the board to appoint a company secretary. This anomaly should be corrected.

CHAPTER 16

STAKEHOLDER LINKS

The links between stakeholders of a corporation should aid the principle of transparency and assist a good working relationship. We divide stakeholders into three classes: Shareholders, those with contractual relationship with the company and those with links with the company that do not arise out of contracts.

1. SHAREHOLDER

1.1 The Annual Report, Interim Report and AGM are the main links between the company and shareholders. Reports should be as clear as possible and detailed enough to give a meaningful overview of the company's activities.

1.2 Companies should be encouraged to keep shareholders informed of major developments and material deviations from projections. Outside of normal reporting this should be done through circulars and the media.

1.3 Shareholders should be welcomed at Annual General Meetings and ecouraged to ask questions. A form could be included in the Annual Report for written questions to be sent to the company secretary.

2. CONTRACTUAL STAKEHOLDERS

These include for instance, customers, employees, suppliers and sub-contractors.

2.1 Employees in particular should be entitled to be not only motivated and led, but to be as fully informed as possible about the company for which they work. Communication should be on a regular basis and include written information on employee rights, benefits and obligations as well as on company plans, targets and policies. Obviously, no communication to any stakeholder should be prejudicial to other stakeholders or amount to a breach of any statute or requirement of the Johannesburg Stock Exchange in the case of a listed company.

2.2 Links between the company and suppliers and sub-contractors should be strengthened by regular communication and should lead to honest assessment and understanding of a company's capacity and limitations.

2.3 Customers should be entitled not only to products that conform to description and agreed standards of quality, but also to clearly worded and reliable warranties. Links between company and customer should facilitate exchange of information on future needs and future developments.

3. NON-CONTRACTUAL STAKEHOLDERS

These would of course include neighbours, local authorities, the government of the day and representative bodies.

3.1 Companies should be encouraged to view themselves as residents in a particular area, to act in a spirit of good neighbourliness and to reach out to and be sensitive to the needs of their local communities.

3.2 Linkage with the government, particularly through organised business and industry bodies, are important and should be encouraged.

CHAPTER 17

AFFIRMATIVE ACTION

1. For historical and political reasons discrimination against black South Africans, women and the physically handicapped has resulted in their not being fairly represented in the business world or in corporate governance.

2. Corporations in South Africa need financially viable affirmative action programmes to overcome the legacy resulting from privileged access to business opportunities based on race and sex. The views of persons in the business world in South Africa involving affirmative action are disparate. Tokenism is not the answer.

3. As with the transitional period in our politics or any other matter regarding substantial change, there has to be a transition period in which affirmative action can be carried out meaningfully and successfully.

4. One matter, however, is clear. Affirmative action has to become part of business planning and corporate governance in South Africa because the development of black business skills is important for corporations to survive and thrive in the future.

5. Further, affirmative action within corporations will in itself be a training ground for the creation of new businesses.

6. Part of affirmative action programmes in South Africa must be a focused drive to subcontract non-core business activities to small or medium sized businesses. Such a drive by corporations as part of their business plan will generate employment, be a breeding ground for enterprise and will ultimately create more consumers for the corporation's product.

7. An affirmative action approach should also be adopted in regard to the profile of the shareholding of corporations. This is a matter which is already in the public eye in South Africa and schemes of arrangement have already been carried out by some corporations to change the shareholder profile of subsidiary or associated corporations.

8. The South African Chamber of Business (SACOB) has carried out an investigation based on a substantial amount of evidence which it collected in regard to affirmative action programmes. An abbreviated form of the SACOB model on affirmative action guidelines can be obtained from the IOD or the complete document from SACOB.

CHAPTER 18

ETHICS

1. Most contracts concluded by companies involve mutual rights and obligations. This involves trust and the responsibility of management to ensure that the company should do unto others as the company would want to have done unto itself.

2. The essence of corporate governance is based on enterprise and integrity. The fiduciary duty of directors is paramount. The duty to act in good faith in the interests of the company does not stop with the board. All stakeholders should deal with the company in good faith. After all the company is the link between the stakeholders. The relationships between the stakeholders require honesty, openness and fairness.

3. There should, in short, be a partnership approach in contractual relationships.

4. In a discussion document the Institute of Directors has stated: "It is the responsibility of the directors to determine the moral and ethical climate of the business. In larger companies this can be done by publishing policy statements and business conduct guidelines and making sure that they are acted upon. Where companies aspire to partnership relationships with the "contractual" stakeholders such guidelines will ensure that customers are served not bribed, that employees are trained and motivated not hired and fired and that suppliers are developed not beaten down and

are also paid on time. As a guide to practice, 'doing as you would be done by' is a good maxim to follow". The issue for directors is to make sure that everyone in the whole organisation follows this precept.

5. The ethical committee has tackled the question of ethics between the various stakeholders of a business enterprise with vigour and hard work. They looked at the relationships between the various stakeholders and the impact of unethical behaviour by one stakeholder on the other on these stakeholders. The ethical obligation of each stakeholder to the other formed the basis of their work.

6. The task group eventually developed aspirational ethical guidelines for everyday events that may occur in business. This code of ethics is contained in a separate document and can be obtained from the IOD.

7. Directors have a responsibility as part of corporate governance to create and to lay down guidelines for the moral and ethical conduct of the business of the company. It is management's responsibility to ensure that the guidelines are embraced by all in the company - every stakeholder must become a party to the guidelines.

8. Companies should develop, publish and enforce codes of ethics.

   8.1 Such a code should:

   * commit the company to the highest standards of behaviour;
   * be developed in such a way as to involve all employees from union management down so that the ethical culture is infused into the organisation;
   * receive total commitment from the board and chief executive officer of the company;
   * be embraced by all the stakeholders;
   * be sufficiently detailed as to give a clear guide to the behaviour of all employees.

   8.2 In practice there is a great variation in the needs of different types of businesses. No strict model should be laid down. However, the following elements are usually found in existing codes and will give a guide to companies developing their own codes.

   * Responsibilities to shareholders and financial community; disclosure, accounting practices, insider trading and conflicts of interest etc.
   * Relations with customers and suppliers; marketing issues, use of market power, pricing practices, description of goods and services, quality and safety of goods, recall and related practices, etc.
   * Employment practices, equality of employment opportunity, occupational health and safety, and other principles relating to employees and employment.
   * Responsibilities to the community, including support for community activities, and attention to neighbourhood impacts.

9. Boards in South Africa have to create a culture in the South African business world where any stakeholder can without fear of retribution expose any immoral or unethical conduct by any other stakeholder. Further, all stakeholders must understand and appreciate that although the company is the nexus for their relationships it has a human side viz. the people involved. An immoral act by one stakeholder impacts not only on the stakeholder of the same class but on others. An employee who steals from a company a part involved in a process of manufacture impoverishes the company which puts not only other stakeholders but friends and colleagues of the same class at risk. Colleagues' jobs become threatened. All stakeholders are affected by the unethical conduct of one person of a class of stakeholders. If the part is stolen, the delivery of the product to the customer could be delayed, the company's profits are diminished, the customer's customer suffers and so on.

10. Companies contribute to the tax revenue of a country. The tax is used for the benefit of the country at large. Business creates not only income tax but value added tax and excise duties. Government, therefore, has a duty not only to improve the business climate but to improve the morals and ethics of business. This it does by incorporating certain standards of behaviour into laws and enforcing them and by itself acting ethically and morally.

11. Generally, corporations need to be decent citizens to those who do not have contractual relationships with the company. A decent corporation complies with the law, fulfils its contractual obligations and acts ethically and morally with all interested parties. Non-contractual interests such as delictual wrongs create duties for directors as they are covered by common law and statutory provisions.

12. It must be remembered that one of the stakeholders is the State. The government is often a large contractor with the private sector and as such it has a significant role to play in creating an ethical business environment.

13. In short, it is the responsibility of all stakeholders to ensure that the company operates in a moral and ethical manner. The company can only do so if all its stakeholders operate ethically and morally as it has no mind of its own.

CHAPTER 19

THE RECOMMENDATIONS

1. **Introduction and Title**

   Our recommendations can never be the final word on corporate governance in South Africa and that is why in the next chapter we recommend a new but permanent committee to monitor and update the recommendations.

2. **Accountability**

   2.1 The code will apply to all the affected corporations.

   2.2 The recommendations should become a listing requirement for companies on the main board of the Johannesburg Stock Exchange.

   2.3 Associations should endorse the Code to ensure that their members comply with the Code.

3. **Principles**

   It must be remembered that the Code is a set of principles and does not purport to determine the detailed course of conduct of directors on any particular matter.

4. **Endorsement**

   The affected corporations should include in their annual reports a statement by the directors or officers as the case may be, that the company or entity supports and has applied the principles of "The Code of Corporate Practices and Conduct". Any departures from the Code should be disclosed and the reasons therefor stated.

5. **Chairman (Chair)**
   (See Chapter 7)

   It is preferable that the chair should be a non-executive director of the company and the roles of chair and chief executive should be separate.

6. **Board Structure**
   (See Chapter 4)

   6.1 The unitary board structure is appropriate in South Africa especially with affirmative action programmes as the unitary board results in new board members interacting with experienced board members dealing with matters such as enterprise, intellectual honesty, strategy, planning, communicating with stakeholders, etc., rather than having a monitoring function only as supervisory board members.

   6.2 The unitary board should have a balance of executive and non-executive directors.

6.3 Whilst recognising the shortage of trained and experienced people to be appointed directors in South Africa and even if the chair is an independent non-executive director, no board should have less than two non-executive directors of sufficient calibre that their views will carry significant weight in board decisions.

6.4 There should never be less than two executive directors on the board.

7. **Board meetings**
(See Chapter 4)

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 special circumstances. A board should, however, meet at least once a quarter.

8. **Worker participation**
(See Chapter 4)

Workers - as distinct from management - should participate in the governance of the affected corporations.

9. **The Board**
(See Chapter 4)

9.1 The board must retain full and effective control over the company, monitor the executive management and ensure that decisions on material matters are in the hands of the board.

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

9.3 The level or definition of materiality is a matter for each company to decide. Further, there may be matters of such a technical nature that a technical or executive sub-committee of the board may have to be appointed to investigate the matter.

9.4 The viability and feasibility of material matters or projects should, however, be approved by the board.

10. **The Company Secretary and Professional advice**
(See Chapters 5 & 15)

10.1 All affected corporations should either employ a competent and qualified company secretary or contract with a professional organisation to render company secretarial services, in order to ensure compliance with the Code and legislation impacting on the governance of such corporations. The board should, therefore, have access to the advice and services of the company secretary and be entitled at the affected corporation's expense to seek independent professional advice about the affairs of such corporation.

10.2 Before seeking such professional advice, however, the directors should discuss and clear the matter with the company chair or company secretary and, if to approach either of them is inappropriate in the circumstances, they must act with the best interests of the company being their guideline.

11. **Directors dealing in the shares of a listed company**
(See Chapter 5)

11.1 When any director or officer of a listed company sells, buys or takes any position in shares in the company of which they are a director, whether directly or indirectly, they should notify the company's secretary of their intentions and record in writing immediately after the transaction the date thereof, the price, the number of shares involved and the nature of the transaction and deliver such written record to the company secretary. Such written record should be tabled by the director concerned at the board meeting immediately subsequent to such transactions. Corporations should also consider a closed period prior to the announcement of their interim and final results in which period a director cannot directly or indirectly deal in the corporation's shares.

12. **Directors' Duty of Care & Skill**
(See Chapter 5)

In order to encourage entrepreneurship and the acceptance of appointments as non-executive directors, a director should not incur liability for a breach of duty of care and skill where they have exercised a business judgment in good faith in a matter in which the decision is an informed and rational one and there is no self-interest.

13. **Directors' Report**
(See Chapter 5)

13.1 In the Directors' Report, directors should incorporate statements on the following:

13.1.1 The financial statements are their responsiblity.

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

13.1.3 The financial statements fairly present the state of affairs of the company.

13.1.4 Adequate accounting records have been maintained.

13.1.5 Suitable accounting policies consistently applied and supported by reasonable and prudent judgments and estimates have been used in the preparation of the financial statements.

13.1.6 Applicable accounting standards have been applied, but if there has been any departure in the interests of fair presentation, it must not only be disclosed and explained but quantified.

13.1.7 An effective system of internal controls is being maintained.

13.1.8 There is no reason to believe that the business will not be a going concern in the year ahead and if there is reason to so believe it must be disclosed and explained.

13.1.9 That the Code of Corporate Practice and Conduct has been adhered to and if not in what respects there has not been adherence.

13.2 The directors should report to all stakeholders and consequently should provide additional information of interest and concern to all stakeholders. This information should fall outside the statutory annual financial statements.

14. **The Non-Executive Director**
(See Chapter 6)

14.1 A non-executive director should be independent in the sense that they 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.

14.2 A non-executive director who is independent in the above sense, would comprise:

14.2.1 A director or manager of the company's holding company, or major investor, who has no executive responsibilities in the company;

14.2.2 A former executive director who is no longer employed on a full time basis but nevertheless is capable of giving valuable input to the board arising from his past experience;

14.2.3 A senior executive director of major listed subsidiaries and associates of the holding company, who has no executive responsibility in the holding company.

14.3 The term served by a non-executive director should be determined by the board and it should be the duty of the chair to ensure that any non-executive director who is not contributing to the decisions of the board, should not be re-elected and if necessary, should be requested to resign and if they refuse, to remove them from the board.

15. **Appointments**
(See Chapter 9)

15.1 The selection of directors should be planned, agreed on and managed by the board. There should be no element of "tokenism" or "cronyism" in appointments.

15.2 Each appointment should be a matter for the board as a whole and as such nomination committees are not recommended.

15.3 New appointees should go through a period of induction as regards the company's business, resources, systems and management structure. If the appointee has not had any previous board experience, they should participate in a training course for directors.

16. **Service Contracts for Executive Directors**
(See Chapter 8)

An executive director's service contract should not exceed five years in duration and if a longer period is required it should be subject to the approval of the shareholders.

17. **Directors' Remuneration**
(See Chapter 8)

There should be a separate full and clear disclosure of the total of executive directors and non-executive directors earnings broken down into headings such as, fees, salary, share options, benefits, bonuses. etc. Directors' remuneration, including that of the non-executive directors, should be the subject of recommendations to the board by a Remuneration Committee with the majority of its members (including the chair) being non-executive directors.

18. **Remuneration Committees**
(See Chapters 8 & Appendix III)

The affected corporations should have remuneration committees.

19. **Stakeholder communications**
(See Chapter 12)

19.1 It is the board's duty to present as simple a report as possible to stakeholders, but the quality of the information must be based on the guidelines of, promptness, relevance, openness and substance over form.

19.2 Reports and communications must be made in the context that society now demands transparency and greater accountability from corporations in regard to their non-financial affairs, for example, their workers and enviromental issues.

19.3 Reports supported by figures should have a balance between the positive and negative aspects of the activities of the company for the period or event under review.

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

19.4.1 Is the communication open or transparent?

19.4.2 Is the communication prompt?

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

19.4.4 Does it fairly set out the position?

19.5 If the answer to any of the above four questions is in the negative, the directors must amend the communication appropriately.

20. **The External Audit**
(See Chapter 13 & Appendices IV and V.)

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

20.2 There should be legal backing for accounting standards which may only be departed from in the interests of fair presentation. If there is a departure the reasons therefor must be stated and the external auditor should express an opinion as to whether or not they agree with the departure and the reasons stated.

20.3 Accounting standards should be brought in line with international standards as approved by the International Accounting Standards Committee.

20.4 There should be an Accounting Review Panel which can examine material departures from benchmark accounting standards.

20.5 The Panel should have the power to order the re-issuing of accounts according to the legally backed standards by way of an application to the Supreme Court of South Africa and if the Panel succeeds the directors should be jointly and severally liable for the expenses of the Panel and all costs.

20.6 The Companies Act should be amended to entitle a company to pay for additional insurance cover for directors and officers to cover conduct on their part which may have contributed to a failed audit, save for gross negligence or recklessness on their part.

20.7 The board should establish an Audit Committee with the majority of its members (including the chair) being non-executive directors with written terms of reference confirmed by the board. The head of internal audit, the external auditor or audit partner and the financial director should be invited to attend audit committee meetings.

20.8 The Companies Act should be amended to require that interim reports should be subject to audit review.

21. **The Internal Audit**
(See Chapter 14 & Appendix VI)

21.1 The affected corporations should have an internal audit system.

21.2 The head of internal audit should have unrestricted access to the chair of the audit committee.

21.3 Internal auditors must have the respect and co-operation of their colleagues and work together with their colleagues as part of the management team, and the board should ensure that this takes place.

21.4 All internal audit reports should be reviewed by the external auditors who should discuss their findings with the audit committee and the latter should report to the board any matter which they regard to be of importance, having regard to all the circumstances.

22. **Affirmative Action Programmes**
(See Chapter 12)

22.1 All affected corporations should have an affirmative action programme as part of their business plan.

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

23. **Code of Ethics**
(See Chapter 18)

23.1 Every affected corporation should have its own Code of Ethics which should be implemented as part of the corporate governance of the company.

23.2 A Code of Ethics should:

23.2.1 commit the corporation to the highest standards of behaviour;

23.2.2 be developed in such a way as to involve management, and all its stakeholders to infuse its culture;

23.2.3 receive total commitment from the board and chief executive officer of the corporation;

23.2.4 be sufficiently detailed as to give a clear guide to the expected behaviour of all employees.

24. **Recommended Statutory Amendments**

The recommendation is made to the Standing Advisory Committee on Company Law to consider the following amendments to the Companies Act:

24.1 The Act should provide legal backing to Accounting Standards which should be brought in line with the International Accounting Standards Committee.

24.2 The Act should empower an accounting review panel which should be authorised to examine material departures from accounting standards (similar to those in the UK) and have the power to require the affected corporation to republish the accounts and to recover expenses and costs from the directors personally, jointly and severally;

24.3 There should be a provision for additional insurance cover for directors and officers at the company's expense to cover any conduct on their part which contributed to a failed audit, save for gross negligence or recklessness.

24.4 There should be a provision similar to that in the UK Companies Act in terms of which the disclosure of the beneficial holders of the shares held by a nominee company can be compelled.

24.5 Interim reports should be subject to audit review.

24.6 A director should not incur liability for a breach of the duty of care and skill where they have exercised a business judgement in good faith in a matter in which their decision is an informed and rational one and there is no self-interest.

24.7 Because of the onerous duties placed on directors the question of companies indemnifying directors, which is negated by Section 247 of the Companies Act, should be revisited.

24.8 To provide for the office of company secretary to be mandatory and to make it a responsibility of the board to ensure that the position is either occupied by a suitably qualified person or the function of a company secretary is carried out by a suitable professional organisation.

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.

2.5 The level or definition of materiality is a matter for each company to decide. Further, the board may have to appoint a technical sub-committee to investigate technical matters or projects.

3. Chairman (Chair)

3.1 The chair should, unless it is considered by the board not to be in the company's interests, be a non-executive director of the company and should not also be the chief executive. The non-executive directors have a particular responsibility to ensure that when the chair is an executive director that the chair encourages proper deliberation of all matters requiring the board's attention, and obtains optimum input from the other executive directors.

4. Non-Executive Directors

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 and 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.

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 judgements 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.

10.3 The board should establish an Audit Committee with written terms of reference confirmed by the board. It should consist of at least two non-executive directors, of whom one should act as chair. The committee meetings should be attended by the head of internal audit, the external audit partner and the financial director.

10.4 The head of internal audit and the external audit partner should have unrestricted access to the chair of the audit committee.

10.5 The head of internal audit and the external audit partners should bring all significant findings arising from audit activities to the attention of the audit committee and, if necessary, to the board.

11. **Worker Participation**

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 coporation 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;

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.

8. **Professional Advice**

8.1 All directors should have access to the advice and services of the company secretary and be entitled to seek independent professional advice about the affairs of the company and at the company's expense.

8.2 Before seeking such professional advice, however, the director concerned should discuss and clear the matter with the chair or company secretary. If to approach either of them is inappropriate in the circumstances of the matter, the director must act with the best interests of the company being the guideline.

9. **Stakeholder Communications**

9.1 It is the board's duty to present a balanced and understandable assessment of the company's position in reporting to stakeholders. The quality of the information must be based on the guidelines of openness and 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.

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.

CHAPTER 21

IMPLEMENTATION AND KEEPING THE CODE UP-TO-DATE

1. It will take some time for the Code of Corporate Practices and Conduct to take effect and for affected corporations to prepare themselves for compliance. Consequently, we recommend that the affected corporations reporting in respect of years commencing after 30 June 1995, should state in the report whether they comply with the Code and identify and give reasons for any areas of non-compliance.

2. The Code of Corporate Practices and Conduct is a living document and is not intended as the law of the Medes and the Persians. It will always be a moving target with socio-political and economic circumstances changing as they do from time to time.

3. The world in the 21st century is going to be a different one from the one in which we live today. Consequently, the Code must be constantly addressed and modified to meet changing circumstances - and change they will, particularly with the explosive advance of technology.

4. A permanent body should, therefore, be appointed to monitor The Code of Corporate Practices and Conduct and keep it up-to-date.

5. Further, that committee must monitor how compliance with the code is progressing.

6. A new committee should, therefore, be formed to review the implementation of the recommendations, debate and update them. It is suggested that a permanent on-going committee be formed, representing shareholders, management, workers and professional bodies. The committee should have representatives from a shareholders body, SAICA, the ALS, the CIS, Business South Africa, COSATU, the NEDLAC, the Government, the South African Institute of Business Ethics, the Financial Services Board and the Registrar of Companies. As consensus develops on issues the Code can be added to or amended. The Institute of Directors should take the initiative to form the on-going committee to examine how far compliance with the Code has progressed and the updating of the Code because of emerging issues.

7. The question of adequate staffing and infrastructure of monitoring bodies such as the Financial Services Board and the Registrar of Companies office should be investigated by the on-going committee and necessary recommendations should be made to Government.

CHAPTER 22

COMPLIANCE

1. Recommendations for the Code of Corporate Practices and Conduct are valueless unless they are implemented.

2. All stakeholders have an interest in ensuring that the corporation with which they are involved has a good system of corporate governance. The media have an important role in drawing public attention to examples of poor and good corporate governance.

3. In regard to all companies listed on the main board of the Johannesburg Stock Exchange, there should be a statement in their annual financial statements of the extent of compliance with the Code by the board. The Johannesburg Stock Exchange should make such a statement a listing requirement for companies listed on the main board of the Johannesburg Stock Exchange.

4. It is recommended that the Code should be adopted by all the affected corporations. It follows that large mutual societies, parastatals and public entities should also comply with the Code.

5. Associations should endorse the Code and obtain undertakings from their members to adopt the Code. The support of certain associations has already been obtained.

6. It is proposed that the adoption of the Code be achieved mainly via the support of prominent associations, which should bind their members to comply with the Code, by incorporating the principles in the listing requirements for main board companies on the Johannesburg Stock Exchange and by peer pressure.

7. All corporations should, however, be encouraged to adopt the Code

8. Annexed as Appendix VI is a summary of the key overseas initiatives in obtaining compliance with corporate governance recommendations. The list illustrates the intensity of the debate on corporate governance and the determination to have better corporate governance.

9. The following would be an appropriate statement in the annual financial statements:

   "The directors endorse, and during the period under review, have applied the Code of Corporate Practices and Conduct as set out in the King Report. By supporting the Code the directors have recognised the need to conduct the enterprise with integrity and in accordance with generally accepted corporate practices".

CHAPTER 23

ACKNOWLEDGEMENTS AND APPRECIATION

1. The following published documents were found to be helpful in our deliberations and with the permission of the publishers we have adopted some of the theories, suggestions, guidelines, practices and conduct set out in these publications.

2. We acknowledge our appreciation for such permission.

3. The publications are:

   * The Cadbury Report published by Burgess Science Press.
   * Corporate Practices & Conduct published by Business Council of Australia, 1991.
   * Pro Neds Remuneration Committee published by Pro Ned Limited.
   * The Institute of Directors' publications.
   * The South African Institute of Chartered Accountants' publications.
   * South African Chamber of Business' publications.
   * The South African Institute of Internal Auditors' publications.
   * The Director, April 1994, published by Director Publications - London.
   * The Economist, 29 January 1994, published by The Economist Publications - London.
   * The Business Quarterly Summer 1993.
   * Harvard Business School Publication on Corporate Governance. N9-292-012
   * SA Institute of Business Ethics publications.

4.1 The Cadbury Report on the Financial Aspects of Corporate Governance has become the "discussion document" for many subsequent reports, theses and consultative documents on corporate governance.

4.2 Realising this, we requested permission to use the Cadbury Report as the format of our report. This permission was readily granted by Sir Adrian and the publishers Burgess Science Press. We acknowledge this and express our gratitude for the permission.

4.3 We also wanted to use the Cadbury format because so many directors, businessmen, lawyers, accountants and other professional advisers have read and studied the Cadbury Report that our report would be easier to follow and to compare if the format was the same.

4.4 There are many aspects of the Cadbury report with which we agree and there are some aspects with which we do not agree. There are also recommendations which, while one might agree with them in principle, cannot practically be implemented in South Africa.

4.5 In addition, our terms of reference were wider than those of Cadbury.

4.6 Consequently, our Code of Corporate Practices and Conduct differs somewhat from Cadbury's Code of Best Conduct.

4.7 In the report we do not point in every instance to the respects in which we agree or disagree with the Cadbury recommendations.

5. We found the Australian Corporate Practices and Conduct paper to be succinct and informative. It was most helpful in our deliberations. With the permission of the publishers we have adopted parts of the paper. We acknowledge the permission of the publishers and express our gratitude to them and the Chair of their working group, Mr Henry Bosch.

6. Several directors of listed companies sent written comments to the committee which were also helpful in our deliberations. We record our appreciation to:

B P Connellan - Chairman - Nampak Limited.

M W King - Financial Director - Anglo American Corporation of S A Limited.

M F Levett - Chairman - Old Mutual

A T Moolman - Managing Director - Transnet.

B J Swart - Managing Director - First National Bank of South Africa Limited.

W P Venter - Chairman - Allied Electronics Corporation Limited.

7. We record our appreciation for the input given by Ebrahim Patel, especially on worker participation. Unfortunately, as a result of pressure of work, he was not able to endorse the final draft, but he recorded that there were aspects of the report with which he did not agree. I hope that he will be a member of the on-going committee.

8. We also record our appreciation for the extramural typing done by the chairman's secretary, Mrs Esmé Grobler and to our editor, Mrs Bronwyn Littleton.

NOTES

APPENDICES

APPENDICES

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APPENDIX I

THE KING COMMITTEE MEMBERS

1. **Chairman - Mervyn E King S.C.**

   Former judge of the Supreme Court of South Africa; Senior Advocate of the Supreme Court of South Africa;
   Chairman of the Frame Group of Companies;
   Director of First National Bank of South Africa and other listed companies;
   President of the Johannesburg Chamber of Commerce and Industry;
   President of the Textile Federation of South Africa; Member of the International Court of Arbitration; Sunday Times Top Five Businessmen of the Year Award - 1987.

2. **Roy Andersen**

   Chartered Accountant of S.A.
   Certified Public Accountant (Texas), 1974.
   Former Executive Chairman of Ernst & Young, South Africa.
   Member Standing Advisory Committee on Company Law.
   Member of the Financial Markets Advisory Board.
   Member, Policy Board for Financial Services and Regulations.
   Executive President of the Johannesburg Stock Exchange.

3. **Max M Borkum J.P.**

   Member of the Johannesburg Stock Exchange.
   Chairman of Davis Borkum Hare & Co. Inc. which firm he joined in 1946 after demobilisation from the Army.
   Director of companies.
   Past President of The Johannesburg Stock Exchange.
   Founder member of the Permanent Standing Advisory Committee on Company Law.
   Sunday Times Top Five Businessman of the Year Award - 1987.
   Member of the Special Income Tax Court

4. **Mrs Elisabeth Bradley**

   Chairman of Wesco Investments Limited.
   Vice Chairman Toyota S.A. Limited.
   Director of Standard Bank Investment Corporation Ltd and other companies.
   Bachelor of Science (OFS) and Master of Science (London).
   A deputy President of the S A Foundation.

5. **Peter G Joubert**

   Former Chairman of AFROX.
   Chairman Delta Motor Corporation (Pty) Ltd and NEI Ltd.
   Director Malbak Ltd, Murray & Roberts Holdings Ltd, UAL Merchant Bank Ltd and other listed and unlisted companies.
   Chairman of Roedean School; Council Medunsa; Chancellor Order of St. John and other voluntary organisations.
   Graduate of Rhodes University and post graduate studies at Rhodes and Harvard.
   Sunday Times Top Five Businessmen Award - 1991.

6. **Bas Kardol**

   Executive Chairman Investec Limited and Chairman of Investec Holdings Limited.
   Chairman - Reichmans Limited; The Corporate Consulting Group (Pty) Limited; Intergro Holdings Limited; Allied Trust Bank Limited in London.
   Chairman of the Netherlands - South African Chamber of Commerce.
   Trustee of S A Foundation.
   Director - Fedsure Holdings Limited; Barlow Rand Limited; CG Smith Limited; Nampak Limited; Delta Motor Corporation; Small Business Development Corporation.

7. **Michael M Katz**

   B.Com.LlB (Witwatersrand University) LlM (Harvard Law School; Member of the Faculty of Law of the University of Witwatersrand;
   Honorary Professor of Company Law, University of Witwatersrand;
   Course Director Higher Diploma in Company Law, and Master of Company Law, University of Witwatersrand;
   Part-time lecturer at the Graduate School of Business Administration, University of Witwatersrand;
   Practising Attorney;
   Member of the Standing Advisory Committee on Company Law in terms of the Companies Act;
   Was a member of the Margo Commission of Enquiry appointed to investigate the taxation structure of South Africa;
   Chairman - Tax Advisory Committee to the Minister of Finance;
   Director of numerous companies;
   Immediate past President of the South African Jewish Board of Deputies;
   Member of the State President's Economic Advisory Council;
   Member of the Pensions Advisory Committee;
   Member of the Short-term Insurance Advisory Committee;
   Member of the Securities Regulation Panel;
   Member of the National Advisory Board of the Department of Correctional Services.

8. **Enos Mabuza**

   Former chief minister of KaNgwane.
   Teacher by profession.
   Has a keen interest in conservation and has addressed world bodies such as the Second World Wilderness Congress in Australia.
   Executive director of a socio-political consultancy based in Johannesburg.
   Deputy chairman of Metropolitan Life Holdings.
   Non-executive director on various boards, namely, Anglovaal, Corporate Africa Holdings, Deloitt & Touche - Chartered Accountants, Premier Pharmaceuticals, Shell South Africa, South African Broadcasting Corporation, South African Breweries, Southern Africa Fund Inc., Standard Bank Investment Corporation and Volkswagen of South Africa.
   Serves on a number of educational and conservation bodies.

9. **Eric Molobi**

Chief Executive Officer - Kasigo Trust.
Chairman: Southern Life Association Limited; African Life Insurance Company.
Advisor to the Board of Trustees of the Joint Education Trust (JET); Urban Foundation Housing Company;
Director: First National Bank of S Limited; Mvula Trust.

10. **Mr Justice Cecil S Margo QC, LL.D (h.c.).**

Retired Judge of the Supreme Court;
Chairman - Margo Commission on Tax Reform;
Formerly Chairman and present member Standing Advisory Committee on Company Law;
Chairman Securities Regulation Panel, Timeshare Institute of SA and Regulatory Committee for Airports Company and Air Traffic and Nagivation Services Company.

11. **Nthato Motlana**

Chairman - Soweto Civic Association (Housing); Centre for Black Economic Development; Population Development Council, Methold Investment Corporation; Metropolitan Life; Mobile Telephone Networks (MTN); Corporate Africa Holdings.
Director - Rand Water Board; PUTCO; Adcock-Ingrams Pharmaceuticals; Development Bank of South Africa; Small Business Development Corporation; Medunsa Trust; Loop de Loors Commission (Housing);
Member of the Governing Council of the Witwaterrand University; Member of the Technikon College of Nothern Transvaal; Sasol Limited.
Sunday Times Top Five Businessmen Award - 1993.

12. **Sam Motsuenyane**

Former Executive President of NAFCOC.
Chairman - The African Bank of South Africa; African Development & Construction Holdings Limited; Director - Barlow Rand Limited; Urban Foundation; Black Chain Limited; Small Business Development Corporation; Transnet Limited.

13. **Ebrahim Patel**

Bachelor of Social Science degree.
Former researcher at the University of Cape Town. Currently deputy General Secretary of South Africa's third largest trade union, The Southern African Clothing and Textile Workers' Union (SACTWU).
Ten years experience in trade union movement.
Member, Executive Committee of the Congress of South African Trade Unions (COSATU) and the Labour Chairman of Trade and Industry committee of the National Economic Forum.
Author of articles on socio-development and labour matters, and editor of books on the National Economic Forum, and on the role of organised labour in the new South Africa.

14. **R G H Guy Smith**

Currently Chief Executive of KPMG in South Africa and member ofthe Management Board and Executive Committee of KPMG International.
Has served as Chairman of the Auditing Standards Committee of the South African Institute of Chartered Accountants and as a member of that body's Accounting Practices Committee.
Has also served as President of the Transvaal Society of Chartered Accountants and on the Executive Committee of the South African Institute of Chartered Accountants.

15. **Peter G A Wrighton**

Chartered Accountant of S.A.
Chairman Premier Group of Companies.
Director First National Bank Ltd., Liberty Life Ltd. and other listed companies.
Sunday Times Top Five Businessmen Award - 1991.

VARIOUS TASK GROUPS OF KING COMMITTEE

1. **Task Group 1 - Directors**
   Convenor Michael Katz
   Cecil Margo, Sam Motsuenyane and Roy Andersen.

2. **Task Group 2 - Audit**
   Convenor Guy Smith
   Monica Singer, Des Arnold, Ken Mockler and Henri de Villiers.

3. **Task Group 3 - Stakeholder Links**
   Convenor Peter Joubert
   Elisabeth Bradley, Bas Kardol and Ebrahim Patel.

4. **Task Group 4 - Ethics**
   Convenor Peter Wrighton
   Enos Mabuza, Louise Tager, David Lappin, Eric Molobi, Max Borkum, Dawn Mokhobo and Nthato Motlana.

5. **Task Group 5 - Conformance**
   Convenor Roy Andersen
   Michael Katz and Ronnie Bowker.

6. **Secretariat**
   IOD - Richard Wilkinson

APPENDIX II

TERMS OF REFERENCE

1.1 The committee is requested to consider and make recommendations on a Code of Practice on the financial aspects of corporate governance in South Africa.

1.2 The committee should strive to recommend simpler reporting without sacrificing the quality of information.

1.3 The committee should lay down guidelines for ethical practices in business enterprises in South Africa.

1.4 In applying its terms of reference the committee should have regard to the special circumstances existing in South Africa, more particularly the entrance into the business community of members of disadvantaged communities.

2. In an endeavour to fulfil its mission, it is suggested that the committee should consider and make recommendations on the following:

   2.1.1 The responsibilities of executive and non-executive directors as regards the requirements to review and report on performance and viability to shareholders and other interested parties.

   2.1.2 The monitoring and quality of information received by a board.

   2.1.3 The frequency, substance and form of information to shareholders, stakeholders and the community at large to be given in as simple a manner as possible without sacrificing the quality of the information.

2.2.1 The question of the appointment of audit, remuneration and nomination committees of a board, their composition and their role.

2.2.2 The principal role of the auditors, their responsibilities and the extent and value of the audit in the special circumstances existing in South Africa.

2.2.3 The role of internal auditors and the reliance on their work by the external auditors.

2.2.4 The presence of the external auditors at half-yearly and annual results board meetings, and whether or not the external auditors should review interim results.

2.3 To establish, forge and maintain links between shareholders, board of directors, auditors and other stakeholders.

2.4 A Code of Conduct setting out best business practices, including ethical practices in all business enterprises which should include the internal relationships in enterprises so as to enhance the standards of ethics in business.

2.5 The adoption and adherence of all interested parties of the recommendations and appropriate sanction for non compliance.

APPENDIX III

REMUNERATION COMMITTEES

1. **The purpose of the Remuneration Committee:**

All the affected corporations should have a Remuneration Committee the purpose being:

1.1 to ensure that the company's directors and senior executives are fairly rewarded for their individual contributions to the company's overall performance.

1.2 to demonstrate to all the stakeholders in the business that the remuneration of the senior executive members of the company is set by a committee of board members who have no personal interest in the outcome of their decisions and who will give due regard to the interests of the shareholders and to the financial and commercial health of the company.

2. **The composition of the Committee:**

2.1 The chair and the majority of the members of the committee should be non-executive directors.

2.2 Preferably decisions on remuneration should be made by those who do not benefit personally from their recommendations.

2.3 The chief executive is sometimes a key witness in determining remuneration for directors, but no director should be present when his or her own salary or fee is discussed.

3. **The remit of the Committee**

3.1 The Remuneration Committee should have written terms of reference which, inter alia, sets out its authority as a committee of the board and records the scope of its activities.

3.2 A company can make provision for a Remuneration Committee as a standing committee of the board in its Articles of Association or by detailing the membership and responsibilities of the committee in a board minute.

3.3 All members of the board should be clear as to who the members of the committee are and what they are there to do. The agreement of the composition and terms of reference of the committee presents an opportunity for the board as a whole to decide on its policy with regard to remuneration and to consider such questions as:

3.3.1 where, in terms of executive remuneration, does the company aim to stand in relation to similar companies in that industry sector?

3.3.2 what relationship does the company wish to see between the remuneration of its directors and that of other employees?

3.3.3 in the case of companies operating internationally, what adjustments would they make for directors and senior executives based outside South Africa to reflect local conditions and living costs?

3.3.4 how should they remunerate those senior executives whose skills have a scarcity value and make them internationally transferable?

3.4 The board must also consider the range of executives whose remuneration should be considered and approved by the committee and what other considerations, if any, should come within the committee's authority.

3.5 The primary role of the committee must be the recommendations of the remuneration of the chair, chief executive and executive directors of the main board. Some companies widen this to include the managing directors of key subsidiaries or operating divisions, and even if the committee is not itself responsible for deciding the remuneration of senior executives below board level, a thorough knowledge of the policies and practices applied below this level is desirable so that internal relativities are seen to be sensible and that a fair differential between the remuneration of board members and other levels of management is maintained.

3.6 An objective judgment of appropriate remuneration levels for directors must involve members of the committee in the assessment of individual directors so that the remuneration is directly related to performance over time. Here too, information provided by the chief executive and others on which to base those judgments is important if the committee is not to be seen as a rubber stamp for the approval of executive directors' salaries.

4. **Sources of information.**

4.1 The Remuneration Committee must be provided with all the information it needs to make its recommendations. It is the responsibility of the chair of the committee to decide what data they consider necessary and to see that it is circulated to the other members.

4.2 The committee needs to make external comparisons between the rewards currently earned by the company's own executive directors and those paid to directors of other companies of a similar size in a comparable industry sector both in South Africa and, if relevant, internationally. It also needs information on the remuneration of other senior executives within the company in order to preserve sensible internal relativities between different levels of the company's workforce.

4.3 **External Comparisons**

Information is generally obtained from three major sources:

4.3.1 published surveys;

4.3.2 independent consultants specialising in remuneration; and

4.3.3 from the industry in which the company conducts its business.

4.4 **Internal Relativities**

4.4.1 Information on wages and salaries within the company will be provided by the personnel, remuneration or company secretary departments.

4.4.2 The judgment of individual members of the committee, particularly those who have experience of the policy and practices of other companies on which to draw, has an important part to play in achieving

the right balance of these internal and external considerations and reconciling them with the company's own culture, past practices and future needs.

5. How the Committee operates

5.1 The combination of formal meetings and informal consultation by which the Remuneration Committee discharges its responsibilities depends on the circumstances of the company and the preferred approach of the chair of the committee. Larger companies, where the task is more complex, may have more formal meetings, probably three or four per annum. The essential factor is that the committee should be given sufficient time to study relevant documentation and adequate opportunity for discussion, both formal and informal.

5.2 A Remuneration Committee should be constituted as a sub-committee of the board. The committee should have written terms of reference which deal with the committee's membership, authority and duties. These three considerations should be borne in mind when the terms of reference of the committee are approved by the board. If disputes on the subject of remuneration occur frequently there is something wrong either with the company's remuneration policy or the committee's methods of working and sources of information. Clear terms of reference are the best method of minimising the risk of disputes arising between the committee and the board.

6. The remuneration package

6.1 The committee should be responsible for all elements of directors' remuneration.

6.2 The package can consist of a combination of the following elements:

6.2.1 basic salary;

6.2.2 performance related element, including profit-sharing schemes;

6.2.3 share options; and

6.2.4 other benefits.

6.3 The structuring of these elements, including the pension entitlement, into a suitable package is largely determined by the size, financial circumstances and market position of the company concerned.

6.4 It is the committee's task, with the help of the information provided both from external sources and from sources within the company

6.4.1 to satisfy themselves that the basic salary element is competitive, but fair, and to resist the temptation to give large salary increases in a year where the bonus element in the package is less readily achievable;

6.4.2 to advise on, and monitor, a suitable performance related formula. To the executive this element should represent an achievable and motivating reward for outstanding performance, not an essential complement to an inadequate basic salary. Whether the formula is based on individual performance, company profit performance, earnings per share or a combination of these factors over a given period, the rewards thus earned must be justifiable, and seen to be justifiable in terms of the company's own performance and the corresponding returns on the shareholders' investment over the same period. Another formula is to use the economic value added system by measuring profitability against the total cost of the operation's capital;

6.4.3 to see that the awards under the company's share option schemes, ESOPs etc., while complying with the statutory and listing requirements, are consistent with the company's overall performance to provide an additional incentive to management. These are a form of long term, performance related emolument and their notional value should be taken into account by the committee when reviewing remuneration;

6.4.4 to provide an objective and independent assessment of the benefits granted to directors;

6.4.5 to ensure that there are adequate pension arrangements for the executive members of the board. Changes to pension terms for all directors, or an individual director, are a matter for the board acting with the advice of the committee. The committee must also consider the pension implications of its remuneration recommendations because of the future liabilities they represent, and it should leave no doubt about which elements of the package are pensionable;

6.5 Two other aspects should be mentioned.

6.5.1 **Service Contracts**

It is widely accepted that service contracts should not be entered into for a term of more than three to five years and all service contracts should be approved by the Remuneration Committee. The inclusion in service contracts of long notice periods and "golden parachute" clauses should be approached with caution.

6.5.2 **The Pension Fund**

The operation of the company's pension arrangements is a separate function, demanding different disciplines and with its own legal and fiduciary responsibilties. For this reason, it is desirable that the chair of the Remuneration Committee should not also be chair of the Trustees of the company's pension fund.

6.6 **Non-executive Directors' Fees**

6.6.1 Non-executive directors are generally remunerated by fees. These fees should not represent the principal element in the individual director's total income. In the case of non-executive directors who are also executive directors of another company the fees are frequently paid not to the individuals, but to the employing companies.

6.6.2 The chair of the board will wish to consult with executive colleagues and independent sources and make recommendations on non-executive fee levels to the board. Limits may be imposed on directors' fees by the Articles of Association and these need to be reviewed from time to time.

6.6.3 Whatever the frequency with which non-executive fees are reviewed, the review should take place at a different time of year from the review of executive directors' salaries and should be, and be seen to be, a completely separate process.

6.6.4 The fees paid to individual non-executive directors should be a fair reflection of the contribution which they make to the company and the time they give to the company's affairs, for example, as members of Board Committees. In order to preserve their independence non-executive directors should not participate in any company performance related, profit sharing scheme any pension fund or medical aid.

7. Explaining the process

7.1 The names of the members of the Remuneration Committee should be published in the company's annual report and Accounts.

7.2 The company chair should refer questions on the subject of remuneration, both from within the company and in public at the Annual General Meeting, to the chair of the Remuneration Committee.

7.3 It is recommended that the annual report should include:

7.3.1 the separation of reported total emoluments into salary, performance related elements, benefits and any shares from any company share scheme;

7.3.2 an explanation of the broad criteria on which the performance-related elements are based and a clear indication of the trading period to which they apply; and

7.3.3 the total remuneration of executive directors or non-executive directors be reported separately.

8. Separate disclosure of the figures for executive and non-executive directors' remuneration with a clear explanation of the basis on which they were arrived at is the way to avoid misunderstanding between the board and the shareholders on this issue. However, the board is responsible to the shareholders for explaining the financial performance of the company and the remuneration of its officers is part of that responsibility. The chair of the Remuneration Committee should not be called upon to defend the indefensible, at the AGM or anywhere else. This should not arise if the members of the committee observe the following principle: only to make recommendations the details of which they are prepared to see published and which they are prepared to jusify in public.

APPENDIX IV

INFORMATION FOR USERS OF FINANCIAL STATEMENTS AND THE AUDITORS

1. Information and the quality of that information is critical for the successful operation of markets and to fulfil the principle of transparancy in corporate governance. Financial reports of companies, therefore, play a vital role. If the financial reporting has the necessary information the risks and uncertainties that investors and creditors have in their dealings with the company would be reduced.

2. The aim must be to provide consistent information in as understandable form as possible, so that comparatives can easily be made. Accounting standards need to be revised from time to time in order to take into account the financial reporting needs of users of financial statements.

3. SAICA has produced a discussion document on meeting the financial reporting needs of users of financial statements in South Africa and a list of recommendations from SAICA's Expectation Gap Ad-hoc Committee. The SAICA committee is still considering that committee's recommendations. What follows flows from that document and recommendations.

4. The American Institute of Certified Professional Accountants did a study on what information users believed they needed to make informed investment and credit decisions. Their findings were:

   4.1 Although the current historical cost based accounting model is acceptable, consideration should be given to providing fair value information in regard to certain assets and liabilities.

   4.2 Investors and creditors place a high value on reporting which gives information as to each segment of the company's business or separate business unit. This information helps them to predict the company's future earnings and cashflows.

   4.3 To be useful to investors and creditors, information can be given about a company's earnings that are stable and/or recurring as it provides a basis for estimating sustainable earnings.

   4.4 Companies should disclose information about the estimates and assumptions used in determining the value of material asset and liability amounts.

   4.5 Users should receive information about any off balance sheet financing.

   4.6 Non-financial business information needs to be given in clear, unambiguous and simple language so that the average reader can understand how the activities being reported are related to the company's financial statements.

   4.7 Investors and creditors want forward looking information. Information about opportunities and risks resulting from concentrations in assets, customers or suppliers, should be apparent.

4.8 Information about a company that is consistent over time is valued more highly than information that is comparable between two or more companies.

4.9 The negative aspects of the year's events should get equal treatment with the positive aspects of the year's events. No report should tend to reflect the company's performance in the best possible light, but a balanced report should be furnished.

5. The standard setting bodies in South Africa should consider these findings when examining their disclosure requirements and accounting standards which is an on-going matter.

6.1 Legal backing for accounting standards should be put in place and a review panel should be formed to monitor and enforce compliance with accounting standards.

6.2 The flexibility allowed by current accounting standards diminishes the usefulness of financial reporting. Accounting standards in South Africa should be redrafted so as to reduce the options and to bring them in line with international standards. The standards should have benchmarks which will result in a consistent treatment for similar transactions and events. Bringing our standards in line with international standards is important in the context of our industrial policy to be export orientated and outward looking.

6.3 Companies should be allowed to depart from these accounting standards only if the directors can justify that compliance with these standards would not achieve a fair presentation of the company's business.

6.4 Section 300(i) of the Companies Act should be amended to require the external auditors to state in their report whether or not they agree with the directors decision to depart from the requirements contained in the accounting standards on the basis that such a report would not give a fair presentation to the interested stakeholders.

6.5 For the amendments to be effective, they must be monitored and enforced. In this regard, a Review Panel should be formed similar to the one which exists in the United Kingdom. The Panel will review financial statements that are brought to its attention and after discussing the departures from the accounting standards with the directors and auditors of the company concerned, the findings can be made public. The objective is to ensure that the public is fully informed and made aware of financial statments which are not in compliance with the accounting standards.

7.1 Accounting standards should be aimed to meet the needs of a wide users group.

7.2 In this context it should be remembered that the activities of companies, particularly dependent listed companies, are of interest to a wide community of stakeholders which can be divided into the shareholders, those stakeholders with contractual links with the company and those who have links with the company, but not through contract.

7.3 The notion of directors and auditors reports being directed and addressed to the shareholders or members only has to change into the statutory report to shareholders and, if necessary, a non-statutory report to include matters of concern to other stakeholders.

7.4 Reports to secondary or tertiary stakeholders should fall outside the statutory annual financial statements.

8. In regard to the role of the auditor, the following recommendations are made:

8.1 The principle of differential reporting, for example, of short form annual financial statements for independent, owner managed and small companies should be considered. The definition of small companies can be formulated.

8.2 Users of financial statements often do not distinguish between audited and unaudited information contained in the annual reports. Thus the value added statements and ratio analysis, for example, are outside the ambit of the audited annual financial statements. Perhaps they should be recorded as unaudited information.

8.3 The public has expressed concern about the effectiveness of the regulation of the auditing arm of the accountancy profession. In this regard it is recommended that if an auditor has satisfied the Public Accountants

and Auditors Board as to commpetence, experience and training that expression of satisfaction should be subject to a review every five years. The findings of the Board should be a matter of public knowledge.

8.4 The present objective of an audit is expressed as being an opinion on the fair presentation of the financial position at a given date and the results of operations for the period and cashflow information. A matter which requires further debate is whether the purpose of an audit should be redefined as being "the provision of an independent opinion to the users of the financial statements, whether or not the directors have fairly presented in the financial statements:

* the proper conduct of the company's affairs;
* the company's financial performance, position and cashflow information;
* and the future risks taken by the company that can be foreseen".

8.5 Directors should report on the effectiveness of their system of internal control and auditors should report on the directors assessment.

8.6 The professional requirements regarding the auditors responsibility for the detection and reporting of fraud, are adequate and appropriate. Management, directors, lawyers to the company, other advisors and regulators should inform auditors of suspected illegal acts or other irregularities to assist the auditor in discharging his responsibilities in terms of current auditing standards.

9. The auditing standard AU005 on the auditor's responsibility to detect and report illegal acts, other irregularities and errors, is sufficient to meet the needs of users and no additional legislation is required.

10. Society expects greater accountability from companies in regard to their non-financial affairs, for example, in relation to their employees and to the environment. This will result in more non-financial company regulation and heightened consideration of the auditor's role in relation to illegal or irregular acts. It is not realistic to expect the audit function to be the sole means of implementing regulations in specialised fields. Auditors can support the regulatory function but cannot take the place of the regulators themselves. However, it is realistic to expect auditors to respond to regulators requests and to take on a role in relation to a potentially growing demand for monitoring basic ethical standards of corporate behaviour and to be remunerated accordingly.

11. Directors should report their view that there is no reason to believe that the business of the company will not be a going concern for the twelve months from the date of the directors approval of the financial statement. The auditor should comment on the directors' assessment. Where there are reservations about the company's ability to continue as a going concern, the fact should be disclosed and the auditor should comment on it.

12. The auditors independence is a matter of vital concern to dependent companies. The following matters in this regard are recommended:

12.1 The affected corporations should have an audit committee with at least the chairman thereof being a non-executive director and if possible, with a majority of non-executive directors to ensure the independence of the audit function, to fix the audit fee, etc.

12.2 Investigation has revealed that the compulsory rotation of auditors does not add to the auditors' independence.

12.3 Companies should avoid opinion shopping in regard to auditors opinions. An audit committee can prevent opinion shopping by acting as arbitrators between management and auditors when there is disagreement over accounting policies or disclosures in financial statements. The Code of Professional Conduct of auditors should be altered so that members can be censured where there is evidence that opinion shopping has taken place.

12.4 The provision of non-auditing services to audit clients by auditors, does not, in the view of the committee impinge on the auditors independence.

12.5 The professional body should, in its Code of Conduct, point out the dangers of fee dependancy on a single client.

12.6 The professional body should prevent the recovery of the cost of an audit in any one period from the expectation of recovery from fees of future audits or other services to be provided to the client. Such practices could affect the quality of an audit. Audit services should not be provided at less than the direct labour cost of providing them.

12.7 The South African Law Commission should investigate the establishment of an amendment to Section 247 of the Companies Act 1973 in regard to directors' and officers' insurance so that they can be held liable for any contribution their conduct might have made to any act arising out of a failed audit. In short, auditors should only be liable for damages on a basis proportional to the responsibilities of parties to the financial statements. The aim of any amendment to the Companies Act should be to limit the field of litigation against the auditor. An amendment to Section 247 of the Companies Act in regard to Directors and Officers insurance and the question of proportionate liability could limit litigation against auditors.

12.8 The Committee finds the escalation of litigation against auditors worldwide, not to be healthy nor will it aid the supply of information to interested stakeholders.

12.9 Perhaps the most effective defence or strategy for an auditor is to select and decide more carefully which clients to retain. Increasingly the audit arm of the profession is being urged to bear future liability in mind when accepting audit assignments. The main consequence of applying this strategy is the likely discrimination against those companies which are perceived to be high risk such as growth companies and companies which are subject to takeover bids.

13. An effective auditing arm is a critical part of sound corporate governance. Ways and means should be found of meeting the financial reporting needs of the users of financial statements. Endeavouring to fulfil those needs can never be a destination and will always be a journey. The challenges of today might not be the challenges of tomorrow. However, transparency will always be necessary.

APPENDIX V

AUDIT COMMITTEES

1. Audit Committees have been a listing requirement of the New York Stock Exchange since 1978. In Canada companies are obliged to have audit committees. In South Africa many of the listed companies and larger entities already have audit committees. Properly run audit committees definitely improve the standards of corporate governance.

2. The role of the audit committee is to assist the board of directors with discharging its responsibility to:

   * safeguard the company's assets.
   * maintain adequate accounting records, and
   * develop and maintain effective systems of internal control.

The audit committee provides a channel of communication between the board of directors, management, internal auditors and the external auditor.

3. The overall objective of an audit committee is to see that management has created and maintained an effective control environment in the organisation, and that management demonstrates and stimulates the necessary respect of the interal control structure amongst all parties.

4. The responsibility of the audit committee falls into five main areas, namely:

   * review of the internal control structure including financial control, accounting systems and reporting,
   * review of the internal audit functions,

* liaison with external auditors,
* monitoring the compliance of the entity with legal requirements, and
* monitoring compliance with the entity's code of conduct.

5. Potential benefits are:
    * Improving communication between directors, auditors and management.
    * Improving the quality of the accounting and internal control functions.
    * Helping directors to fulfil their legal responsibilities.
    * Strengthening the objectivity and credibility of financial reporting.
    * Strengthening the independence of the external audit function.
    * Strengthening the independence of the internal audit function.
    * Creating a climate of discipline and control which will reduce the opportunity for fraud.
    * Creating a forum where the financial director and the external and internal auditor can raise matters of concern and have them debated.

6. The audit committee cannot replace the board's responsibility to review and approve the financial statements. What an audit committee's report does, however, is to give the board the comfort of an informed check and balance and adds credibility and objectivity to the financial statements.

7. An audit committee should not be under the influence of any dominant figure on the board. The chair should be an independent non-executive director who has the trust and confidence of the board, the financial director, the external and internal auditors. The majority of the members (including the chair) should be non-executive director.

8. Audit committees shall be constituted as a sub-committee of the board and have written terms of reference which deal adequately with their membership, authority and duties. They should meet as often as is necessary.

9. There should be a minimum of three members of which at least two should be non-executive directors. The financial director, the external auditor or audit partner and the head of the internal audit should be invited to attend all meetings.

10. The audit committee must have access to any information it needs, the right to seek independent advice and the power to investigate any matter within the ambit of its authority.

11. Membership of the audit committee should be contained in the annual report and the chair of the committee should be available at Annual General Meetings to answer questions.

12. There are many specimen terms of reference for an audit committee. They are merely a guide and will need alteration to fit the needs of a particular company.

13. The following, for guidance only, is a specimen terms of reference for Audit Committees:

Constitution

13.1 The board hereby resolves to establish a committee of the board to be known as the Audit Committee.

Membership

13.2 The committee shall be appointed by the board and shall consist of at least two non-executive directors of the company and be not less than three members. A quorum shall be two members.

13.3 The chairman of the committee shall be appointed by the board and must be a non-executive director.

Attendance at meetings

13.4 The financial director, the head of internal audit, and a representative of the external auditors should attend the meetings. Other board members shall also have the right of attendance. However, at least once a year the committee shall meet with the external external auditors without other board members, the financial director or the head of internal audit being present. Likewise the committee should meet at least once a year with the head of internal audit and members of his team without the external auditor, other board members or the financial director being present.

13.5 The company secretary shall be the secretary of the committee.

Frequency of Meetings

13.6 Meetings shall be held not less than twice a year but preferably three times a year. These meetings should be prior to the commencement of the annual external audit; prior to the board's approval of the interim results; and after the completion of the annual external audit. The external auditors or the head of internal audit may request a meeting if they consider that one is necessary.

Authority

13.7 The committee is authorised by the board to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any employee and all employees are directed to co-operate with any request made by the committee.

13.8 The committee is authorised by the board to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary.

Duties

13.9 The duties of the committee shall be:

13.9.1 to consider the appointment of the external auditor, the audit fee, and any questions of resignation or dismissal;

13.9.2 to discuss with the external auditor before the audit commences the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved;

13.9.3 to review the half-year and annual financial statements before submission to the board, focusing particularly on:

(i) any changes in accounting policies and practices.

(ii) major judgmental areas.

(iii) significant adjustments resulting from the audit.

(iv) the going concern statement.

(v) compliance with accounting standards.

(vi) compliance with stock exchange and statutory requirements.

13.9.4 to discuss problems and reservations arising from the interim and final audits, and any matters the auditor may wish to discuss (in the absence of management where necessary);

13.9.5 to review the external auditor's management letter and management's response;

13.9.6 to review the company' statement on interal control systems prior to endorsement by the board;

13.9.7 to review the internal audit programme, ensure co-ordination between the internal and external auditors, and ensure that the internal audit function is adequately resourced and has appropriate standing within the company;

13.9.8 to consider the major findings of internal investigations and management's reponse.

13.9.9 to monitor compliance with the company's code of conduct, to review it and any significant breaches of such a code;

13.9.10 to consider other topics, as defined by the board.

Reporting Procedure

13.10 The secretary shall circulate the minutes of meetings of the committee to all members of the board.

APPENDIX VI

KEY OVERSEAS COMPLIANCE INITIATIVES

Cadbury Report (UK)

* voluntary code coupled with disclosure - more effective than a statutory code
* if this does not work, it might be necessary to legislate certain minimum standards
* LSE requires all listed companies registered in UK to state whether they are complying with the Code of Best Practice and to give reasons for any areas of non-compliance - these compliance statements must be reviewed by the auditors
* institutional shareholders (particularly through the Institutional Shareholders Committee) should influence companies in which they are investing to comply with the Code.

Financial Reporting Council (FRC) and Accounting Standards Board (ASB) (UK)

* independent FRC established (decides on policy issues) (company limited by guarantee)
* FRC appoints ASB (sets accounting standards and issues them on its own authority) (members must be independent) (result - improved standards)

Financial Reporting Review Panel (UK)

* authorised to examine departures from the requirements of the Companies Act and, if necessary, to seek a court order to remedy them
* focussed on material departures from accounting standards which affect the true and fair view
* attempt to get voluntary compliance by companies before getting court order
* will report to auditors' professional bodies where appropriate

Public Oversight Board recommendations to Congress (US)

* recommends that the SEC requires registrants inter alia to:
* include in the AFS a statement by the audit committee that describes its responsibilities and how they were discharged

* include in the AFS a report by management on the effectiveness of the entity's internal control system and a similar report from the entity's auditor
* recommends that the AICPA adopts a Statement of Position providing guidance on and disclosure of information about the nature of risks and uncertainties associated with the entity's operations and financial condition
* recommends that the Auditing Standards Board and SEC provide guidelines to assist auditors in the area of management of fraud
* recommends that legislation be drafted to require reporting of suspected illegalities to appropriate authorities by the auditors.

Federal Deposit Insurance Corporation Improvement Act (1991) (US)

* requires management of federal financial institutions meeting certain size criteria to report on the effectiveness of internal controls over financial reporting and compliance with certain laws and regulations.

Audit committees (US and Canada)

* listing requirements of the NYSE since 1978
* a legal requirement in Canada

Corporate Practices and Conduct paper (Australia)

* proposes that AFS of all listed companies include a statement by the directors that the company supports and has adhered to the principles set out in the paper
* Australian Investment Managers' Group will use influence to encourage compliance

Corporate Governance - Directors' Responsibilities for Financial Statements (Institute of CA's of Scotland)

* recommends that consideration be given to changing the law to require directors to take steps to satisfy themselves that the going concern assumption is reasonable in preparing the AFS
* the law should be explicit that the directors are required to maintain an internal control system (large companies only initially)
* document suggests combination of legislation and LSE endorsement

Australian Accounting Standards Board

* federal statutory board - drafts standards
* new standards finally approved by both houses of parliament - result - government dominated process
* Pearson report proposes an accounting standard setting board, independent of the profession, business and government (looking at 1995)

Accounting Practices Group (Australia)

* reviews AFS for compliance with accounting standards on a "complaints" basis.
* APG takes a hard line

Legal backing to accounting standards/Accounting Review Panel (SA)

* proposal to give legal backing to accounting standards, with a "fairly presents" override
* proposal to establish an Accounting Review Panel - will operate in similar manner to Financial Reporting Review Panel in UK.

NOTES

CODE OF ETHICS FOR ENTERPRISES AND ALL WHO DEAL WITH ENTERPRISES

29 NOVEMBER 1994

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PURPOSE OF THIS CODE

Identifying human needs, and responding by producing goods and services, is a worthwhile activity deserving of material reward. Working in business is ethical in that it gives opportunities to men and women to use their unique qualities and skills creatively in the positive development of society.

The way in which business conducts itself should be as ethical as its contribution to society. Business behaviour should be measured by standards comparable to those applied to any individual.

The ethical standards of business enterprises should reflect the values of the new South Africa and its diverse society.

This Code is intended for use to raise ethical awareness, and as a guide in day-to-day decisions. It contains aspirational ethical guidelines for everyday events that occur in business. It can also be used in training programmes, and to help assure customers, suppliers and competitors of the integrity of the business enterprises with which they deal. Reference to a document containing a Code of Ethics should not, of course, replace reliance on ethical values that form part of the human character.

CHAPTER 1

CHAPTERS AND INTERPRETATION

Division of Code into chapters.

1. This Code of Ethics is divided into eight chapters dealing with the following matters:

   Chapter 1: Chapters and interpretation (clauses 1 to 3).

   Chapter 2: Application and general obligation (clauses 3 and 4).

   Chapter 3: Managers (clauses 5 - 11).

   Chapter 4: Employees other than managers (clauses 12 to 16).

   Chapter 5: Owners (clauses 17 to 20).

   Chapter 6: Suppliers and lenders (clauses 21 to 23).

   Chapter 7: Customers (clauses 24 and 25)

   Chapter 8: Society at large (clause 26).

Interpretation

2. In this Code of Ethics:

   2.1 "Enterprise" means any person, including a company or close corporation or other corporate entity, who carries on business for gain, and includes an enterprise owned by the state.

   2.2 "Products" means the goods and services produced or rendered by enterprises.

CHAPTER 2

APPLICATION AND GENERAL OBLIGATION

Application of Code

3. This Code of Ethics shall apply to:-

   3.1 the managers and directors of an enterprise, including non-executive directors;

   3.2 the owners and shareholders of an enterprise, where they are different persons from its managers or directors;

3.3 the other employees and an enterprise or their representatives;

3.4 suppliers and lenders to an enterprise;

3.5 the customers of an enterprise;

3.6 competitors of an enterprise;

3.7 the people of South Africa and its government.

General obligation to avoid harm

4. All people to whom this Code of Ethics applies shall observe their ethical obligations in such a way as to carry on business without causing harm other than by fair commercial competitive practices.

CHAPTER 3

MANAGERS

Managers are responsible for obligations of the enterprise.

5.1 The managers of an enterprise shall, by reason of their being in control of the carrying on of the business of the enterprise-

5.1.1 be responsible to communicate this code and to ensure its understanding by all the employees of the enterprise;

5.1.2 be responsible for the observance of the ethical obligations of the enterprise; and

5.1.3 take the necessary steps for compliance within the enterprise with the provisions of this Code of Ethics.

5.2 For the purpose of this chapter, a manager includes a director, and also a non-executive director with due regard to the extent to which they are engaged in the affairs of the enterprise.

Obligations of managers to customers.

6.1 A manager shall:

6.1.1 market the products of the enterprise accurately;

6.1.2 disclose all relevant information regarding the products which customers cannot reasonably learn for themselves;

6.1.3 charge the agreed price or, where no price was agreed, a fair price;

6.1.4 if applicable, package the products in a manner which not misleading and at least meets the customer's reasonable expectations;

6.1.5 supply the products with a promptness that at least meets the reasonable expectations of the customer and, where supply will be delayed, inform the customer of this before expiry of the comtemplated delivery period.

6.2 A manager has a responsibility to customers of the enterprise to fix and maintain quality standards, and in particular, shall:-

6.2.1 determine minimum quality standards for the products of the enterprise, ensure that the products conform to these standards;

6.2.2 make known any standard of quality which is higher than the customary standard, and any price premium justified by such higher standard;

6.2.3 provide customers with a ready means of lodging complaints about the quality of the enterprise's products;

6.2.4 provide a reasonable guarantee that its products conform to the standards of the enteprise, and replace any product which is below standard;

6.2.5 not knowingly supply a defective or dangerous product.

6.3 A manager shall manage the enterprise with a view to achieving the greatest possible savings and other benefits for customers, and in particular shall:-

6.3.1 strive to reduce inefficiencies in the enterprise, and establish standards of efficiency in consultation with the other employees of the enterprise;

6.3.2 introduce and maintain in the enterprise an awareness by all employees that the resources of the enterprise, including time resources, are in limited supply;

6.3.3 keep the costs of the enterprise at the lowest reasonable level;

6.3.4 not abuse a position of market dominance or engage in a restrictive trade practice.

6.3.5 not permit any acts of bribery.

6.4 A manager shall respect the confidentiality of sensitive customer information.

Obligations of managers to owners and shareholders of the enterprise.

7.1 The managers of an enterprise have the obligations set out in this clause where they are not also owners of the enterprise.

7.2 A manager shall in relation to the enterprise act honestly and in good faith, and in particular shall:-

7.2.1 act within their powers, and in the interests and for the benefit of the enterprise;

7.2.2 carry out their duties with the skill and care to be expected from a person of their knowledge and experience, and exercise their own judgement;

7.2.3 not permit wastage of the assets of the enterprise;

7.2.4 report accurately to the owners on the performance and prospects of the enterprise, and justify the confidence reposed in them;

7.2.5 furnish to an auditor of the enterprise all information and explanations which the auditor requires for the performance of their functions.

7.2.6 not carry on the business of the enterprise negligently or recklessly.

7.3 Managers shall not place themselves in a position where their personal interests could conflict with their duties to the enterprise, and in particular they shall:-

7.3.1 not divulge confidential information of the enterprise to its competitors or otherwise make improper use of such information;

7.3.2 not carry on business on their own account when this is forbidden by the owners;

7.3.3 not accept secret profits, bribes or any other corrupt, or unconscionable benefits;

7.3.4 acquire for the benefit of the enterprise any economic opportunity which is in the same line of business as the enterprise he represents;

7.3.5 not use information which is not yet available to the public for their own gain.

Obligations of managers to suppliers and lenders to the enterprise.

8.1 A manager shall ensure good buying practices with suppliers of the enterprise, and in particular he shall:-

8.1.1 inform a supplier of any bribe or attempted bribe by the supplier's personnel of an employee of the enterprise.

8.1.2 terminate dealings with any supplier which bribes employees of the enterprise;

8.1.3 ensure that no bribe is paid to personnel of a supplier of the enterprise.

8.2 The managers of an enterprise shall ensure compliance by the enterprise with its debt obligations to suppliers to the enterprise on credit, including lenders of money, and in particular a manager shall:-

8.2.1 not apply funds acquired from a lender to a purpose which is contrary to any agreement with the lender;

8.2.2 manage the enterprise in a way which does not unjustifiably increase the risk to creditors of the enterprise;

8.2.3 report honestly on the financial position of the enterprise to its creditors;

8.2.4 have regard to the interests of its creditors when requesting an extention of time in which to pay;

8.2.5 inform the creditor concerned of any inability by the enterprise to meet any such obligations.

Obligations of managers to employees of the enterprise.

9.1 The manager shall:-

9.1.1 deal courteously with employees, having regard to cultural sensitivities and individual dignity;

9.1.2 give due attention to the training and development of employees;

9.1.3 provide safe working conditions, including adequate machinery and equipment and competent supervisiion;

9.1.4 not unreasonably forbid an employee from carrying on other occupations in enterprises which are not competitive with it;

9.1.5 in the appointment, treatment or promotion of employees of the enterprise:-

9.1.5.1 not discriminate on any ground which does not affect the carrying out of the duties of the employee;

9.1.5.2 provide opportunities for individuals whose potential has been restricted by unethical legislation or social discrimination in the past;

9.1.6 recognise employees' efforts by fair and adequate remuneration and other means;

9.1.7 protect employees against physical, mental or emotional harassment;

9.1.8 comply with the laws governing labour relations and conditions of employment;

9.1.9 make this Code of Ethics and the reasons for it known to employees.

9.1.10 deal openly and fairly when involved in collective bargaining processes with representatives of the employees of the enterprise;

9.1.11 manage the enterprise in such a way as not to unreasonably jeopardize job security of employees.

Obligations for managers of competitors.

10. The managers of an enterprise shall not:-

10.1 make dishonest allegations concerning competitors of the enterprise or concerning their products;

10.2 damage their competitors other than by accepted commercial competitive practice;

10.3 acquire confidential information of a competitor by espionage, the subordinating of the competitor's employees or any other improper means.

Obligations of managers to society at large.

11. The managers shall in the carrying on of the business of the enterprise:-

11.1 pay due regard to environmental and public health considerations;

11.2 not retrench employees without taking due consideration of the well-being of society at large;

11.3 participate within the means of the enterprise in projects which will uplift the community in which the enterprise operates.

CHAPTER 4

EMPLOYEES OTHER THAN MANAGERS

Obligations of employees to customers.

12. An employee of an enterprise, other than a manager, shall:-

    12.1 support and assist management to fulfil its commercial and ethical obligations as set out in this code;

    12.2 avoid any waste of the enterprise's resources, including time;

    12.3 respect the confidentiality of sensitive customer information;

    12.4 help fellow employees meet their obligations.

Obligations of employees to owners of the enterprise.

13. An employee shall:-

    13.1 avoid unreasonable disruption of production;

    13.2 use their capabilities and develop their potential as much as possible, particularly in return for training received;

    13.3 not divulge any confidential information of the enterprise to its competitors or otherwise make improper use of such information.

    13.4 act honestly at all times and report any harmful activity they may observe or come across at the workplace;

    13.5 commit to honouring their agreed terms and conditions of employment and;

    13.6 not act in any way that may jeopardize the shareholders' rights to a reasonable return on investment.

Obligations of employees to managers.

14. An employee shall perform their duties diligently and efficiently, and in particular shall:-

    14.1 support and assist management to fulfil its commercial and ethical obligations as set out in this code;

    14.2 avoid any waste of the enterprise's resources, including time;

    14.3 refuse any bribe, and report attempted bribery to a manager;

    14.4 report any harmful activity observed at the workplace;

    14.5 not abuse a strong collective bargaining position or engage in unreasonable industrial action;

    14.6 join management in a commitment to improve productivity.

Obligations of employees to fellow employees.

15. An employee shall :-

    15.1 not make a false accusation against a fellow employee;

    15.2 not intimidate a fellow employee;

    15.3 recognise fellow employees' rights to freedom of association.

Obligations of employees to society at large.

16. An employee shall pay due regard to environmental and public health considerations in and around the workplace.

CHAPTER 5

OWNERS

General obligations of owners concerning managers.

17. Where the owners of an enterprise are not also the managers or directors of the enterprise, the owners shall appoint managers or directors who will in the opinion of the owners be capable of fulfilling the obligations of the enterprise which in terms of this Code are the responsibility of a manager. The owners will support managers to communicate this code and ensure its observance in terms of paragraph 5 above.

Obligations of owners to managers of the enterprise.

18. The owners shall:-

    18.1 not unreasonably forbid a manager, whilst employed by the enterprise, from carrying on other occupations in an enterprise which is not in competition with it. Such occupations should no detract from their ability to competently carry out their duties as a manager;

    18.2 confer on the managers of the enterprise sufficient authority to carry out the responsibilities imposed on the managers;

    18.3 not insist on unreasonably short-term performance results that could compel the managers to act injudiciously or unethically.

Obligations of owners/shareholders to other others.

19. An owner/shareholder shall not:-

    19.1 dishonestly manipulate the price of shares or interests in the enterprise to the prejudice of other existing or prospective owners.

    19.2 use information which is not yet available to the public for their own gain.

Obligations of owners to the enterprise's employees and society at large.

20. In winding up an enterprise or a part of it, an owner shall take due cognizance of the impact thereof on all stakeholders and the community in which it operates.

CHAPTER 6

SUPPLIERS AND LENDERS

Obligations of suppliers to an enterprise's owners.

21.1 A supplier of any product to an enterprise shall strive to provide products of good quality which comply with agreed standards at a competitive price within the agreed delivery period, which obligations are described more fully in Clause 6 in relation to the obligations of an enterprise to its customers.

21.2 A supplier to an enterprise on credit, including a lender of money, shall not:-

  21.2.1 unjustifiably charge interest for extending credit at a usurous rate;

  21.2.2 shall assist the enterprise within reason to meet its obligations to avoid it having to realise assets of the enterprise on terms which are unfavourable to it.

21.3 A supplier of any product to an enterprise shall not abuse a position of market dominance to engage in a restrictive trade practice.

Obligations of suppliers to an enterprise's customers.

22. A supplier to the enterprise shall:-

    22.1 ensure that they provide a sound and safe product;

    22.2 have regard to the expectations of that enterprise's customers to receive products of good quality at a competitive price within the contemplated delivery period.

Obligations of suppliers to an enterprise's managers.

23. A supplier to an enterprise on credit, including a lender of money, shall not:-

    23.1 withdraw credit facilities from the enterprise unjustifiably;

    23.2 take advantage of a dominant market position to enforce unfair conditions or obligations upon the enterprise through the threat of a withdrawal of credit facilities.

CHAPTER 7

CUSTOMERS

Obligations of customers to an enterprise.

24. A customer shall:-

    24.1 pay the enterprise for products received, in accordance with the agreement between the parties;

    24.2 not abuse a position of market dominance or engage in a restrictive trade practice.

Obligations of customers to an enterprise and its suppliers.

25. A customer of an enterprise shall not:-

    25.1 make false allegations concerning defects in products supplied to them by or through an enterprise; and

    25.2 claim a full refund for goods supplied to them which they return, if they were damaged while in their possession and control.

CHAPTER 8

SOCIETY AT LARGE

Obligations of the people of South Africa and its government to enterprise.

26. The people of South Africa and its government shall:-

    26.1 provide an adequate physical infrastructure for enterprises;

    26.2 provide sufficient officials to maintain public order, prevent crime and investigate offences;

    26.3 not impose unjustifiable restrictions on enterprises in the name of protecting environmental or other interests.

AFFIRMATIVE ACTION GUIDELINES

A SUMMARY OF THE SACOB PROPOSALS ON AFFIRMATIVE ACTION

29 NOVEMBER 1994

1. Introduction

1.1 Workplace discrimination on the basis of gender, class, race or ethnic distinctions has no place whatsoever in a democratic society.

1.2 The historical patterns of disadvantage must be very firmly and actively redressed. Furthermore, on the basis of overwhelming international evidence, these critical problems can be most effectively addressed under conditions which allow business leadership the freedom to seek optimal growth and returns on investment.

1.3 In this policy document "black" refers to Africans, those persons previously categorised as Coloured and Indians.

1.4 Most analyses of skills availability under conditions of growth in the future indicate that the supply of management, professional and technical skills will be a constraint on growth and productivity in the future, as they have been during upswings in the business cycle in the past. Affirmative action which broadens the base of such skills to all persons in our society is an imperative for business in the future. It follows that an affirmative action programme must be part of the good governance of a company in South Africa.

1.5 A fear is sometimes expressed that affirmative action will lead to the "displacement" or "replacement" of white males with blacks or women. Even under current circumstances there is a shortage of white male management skills, contributing in large part to the low levels of productivity in South Africa. As the economy grows this shortage will become even more critical so that scope for advancement and career development will be created by natural means. There will be room for everyone.

1.6 The government of national unity will apply pressure on South African business to demonstrate a change in the composition of higher level personnel. These pressures will come from the new government itself, from various lobbies operating in the field of business, from some labour organisations, trade unions, black and women's organisations and from black and female employees within companies. The composition of higher level personnel in the public sector and parastatal organisations is likely to change fairly rapidly, and comparisons will be made with business.

1.7 Inevitably businesses require a range of functional inter-connections with officialdom. Such connections and interactions are likely to be facilitated if personnel other than whites are prominent at the interface with public service institutions.

1.8 There are, thus, compelling moral, business and strategic reasons for business to adopt policies which will diversify the composition of the middle and upper levels of its personnel. This approach is already well established as a trend. Hence corporations which do not aim at diversifying middle and upper level personnel will increasingly be out of step with trends in the business community. Affirmative action must become part of the daily activity to survive and thrive and as such part of strategy and consequently part of corporate governance in South Africa.

2. Aspects of affirmative action to be avoided

The affirmative action programme adopted should:

2.1 Minimise undermining productivity and efficiency in the private sector.

2.2 Endeavour to avoid undermining the morale and confidence of existing managerial and professional staff. Every year South Africa's economy experiences substantial losses of highly qualified people through emigration as a result of political and economic uncertainty. Affirmative action policies which are not sensitive to this danger will obviously not benefit the private sector and hence not benefit the beneficiaries of policies of affirmative action either.

2.3 Endeavour not to create hostility and resentment among the would-be beneficiaries as a result of ineffective implementation. Policies should be carefully formulated and implemented with determination.

3. Choice of policy

In the variants of affirmative action a progression of forms of corrective policy has been identified. From these distinctions six "levels" of affirmative action policy can be identified, namely:

3.1 Comprehensive equal opportunity policies - the elimination of all forms of overt, indirect or covert discrimination.

3.2 Input-based policies - the enhancement of skills and capacities in the target groups.

3.3 Initial preferential policies - the recruitment or promotion of members of a target group in preference to others of equal ability or potential, and non-preferential treatment thereafter.

3.4 Ongoing preferential policies - recruitment or promotion in preference to others, with the preferential evaluations maintained even if equality of performance is not achieved.

3.5 Output-based policies - the adoption of rigid timetables for the appointment of predetermined numbers of a target group in order to achieve fixed quotas, although such quotas may not represent the population mix in the surrounding community. The setting of constructively achievable timetables as a spurt to progress is not what is referred to here. Timetables which are based on scope or capacity for progress, and which are not primarily based on the achievement of given outcomes irrespective of their effects, belong in a different category of policy.

3.6 Representative quota-based affirmative action - the setting of quotas to mirror or approximate closely to the population composition of the country or a region of the country.

4. **Policy on affirmation action**

4.1 Programmes of employee advancement or affirmative action should be based on "input" criteria and not "output" criteria. Although the setting of targets is considered an important element of any employee advancement or affirmation action programme, strategies should not be aimed at achieving fixed proportions or quantities of different kinds of higher level employees, but on rapidly improving the resources of disadvantaged groups to achieve success on merit or potential merit.

4.2 Such input-based strategies should be based on active commitment by companies to a range of strategies which will be described later.

4.3 The need to emphasise "input" strategies should also be mirrored in the social investment strategies which the private sector adopts. Support for education and particularly for non-academic vocational, technical or business-orientated training initiatives appear to be critical needs.

4.4 It is often suggested that high level employee advancement schemes should be negotiated with, or introduced in consultation with, trade unions. Whilst there can be consultation, organised labour should not be called upon to define or to veto strategies. Management development programmes are the concern of management wishing to positively influence its own composition. Just as unions would justifiably resent management interference in the appointment of union secretaries or the election of shop stewards, so management is entitled to take responsibility for its own composition as part of its prerogatives.

5. **Policy guidelines for companies**

5.1 Many of the following suggestions are more appropriate for larger corporations than smaller businesses. The suggestions, therefore, are aimed at larger undertakings and at smaller undertakings only to the extent that they have the resources to implement them without imposing a high risk burden on management and on operating efficiency.

5.2 Once the company has reviewed the policy options and selected an approach, it should make this policy fit in with the particular company or organisation.

5.3 Such a policy should be formally adopted by the board of a company and it should be printed and distributed within the organisation to the extent that the organisation deems necessary for the promotion of the policy. This formalisation of policy will facilitate the implementation at all levels.

5.4 Programmes must be well planned, thorough and implemented with company-wide commitment. The negative reactions of black personnel to many existing programmes must serve as a warning against half-measures, tokenism and inconsistency in the implementation of programmes.

6. On the basis of expert opinion and evidence, both local and international, the following recommendations are made in regard to implementing an affirmative action programme:

6.1 Employee development should be part of the business plan:

Employee recruitment and development aimed at improving the composition of higher level personnel should be integrated into the business plan of the company. It must therefore be implemented with the same enthusiasm as all other

aspects of the business plan. In particular, it is important that the formulation, implementation and control of any employee development programme be supervised by the chief executive officer of the company himself or herself.

Line managers should be evaluated in terms of their performance in achieving the goals of employee development in the same way as they are evaluated in terms of the achievement of operating results.

6.2 Review all current recruiting and promotion practices for overt, subtle or inadvertent discrimination

Obvious discrimination should be eliminated immediately. Other forms of discrimation require more systematic corrective action, for example:

* Perceptions that a particular task can only be performed by men, or by a particular category of people, must be challenged on the basis of fairness. In other words it must be assumed that all people are able to perform a particular kind of work until it is objectively proved otherwise.
* Selection criteria which have the effect of indirectly discriminating against particular categories of people and which are not essential for the performance of the work should be eliminated.
* Similarly, selection tests which in part reflect educational achievement and exposure to urban industrial culture should be abandoned in favour of culture-free tests which measure basic potential.
* Ability to socialise with all-male (white) staff teams should be eliminated as a criterion of employee evaluation. The long-established criterion of "getting on well with colleagues" must be critically examined for its hidden discriminatory implications.
* Employee evaluation should be based on reports by panels of colleagues and it should be asked whether negative reports consistently reflect a particular failing identified by all or most members of the panel before acting on it.

6.3 Resistance to employee advancement schemes should be anticipated and dealt with in discussion forums

Such forums should include senior line managers able to fully explain the strategic reasons for affirmative action.

6.4 Job categories for employees advancement must be specifically targeted

Recruitment planning must be undertaken with specific jobs in mind. Existing employees should be reassured that the advancement programme will not threaten their positions in the company or their future career paths. Line managers with suitable attributes should be placed in charge of the targeted job categories. Review of performance should take place in terms of accepted norms of performance management.

6.5 Employee advancement schemes should as soon as possible be based on pools of internal human resources

Where affirmative action is implemented at senior levels and few appropriate individuals are available for promotion into such categories, "poaching" from other companies inevitably takes place. For obvious reasons this leads to inefficiencies and inappropriate motivation. The economy as a whole will suffer the effects of high staff turnover. Companies should implement recruiting and training policies to create "pipelines" of black and female staff for promotion into senior categories.

6.6 Staff functions should act in consultative roles

Human Resource Managers/Executives in the company should undergo special training in employee advancement programmes. They should act in initiating, facilitating, consultative, support and advisory capacities, however, since the major responsibility for advancement programmes must lie with responsible line management.

6.7 Career-path planning is a useful adjunct to employee advancement programmes

Individual career path planning can assist new categories of staff in adapting to the company policy with positive motivation. The human resource manager in the organisation should spend time with the targeted employees to work out feasible career paths.

6.8 Training and bridging programmes are an essential part of addressing employee advancement goals

Companies which adopt advancement programmes must be prepared to spend more than the average on training, either in-house or extra-murally. Training should not only include the targeted categories of staff - it should be non-racial, non-gender based but with appropriate numbers of trainees in targeted categories.

6.9 Newly advanced employees should have an effective support system

In some cases a mentoring system may be adopted. In other cases a system of coaching will be more suitable. Experienced colleagues should be involved in order to convey their experience. Success in mentoring depends on the commitment and suitability of managers available for appointment as mentors. Intensive early coaching can be more effective where the quality and motivation of mentors is in doubt.

6.10 Detailed job descriptions and work objectives should be provided for newly advanced employees and they should be counselled on the content of the job descriptions and work objectives

Job descriptions and an explanation of what is required from the employee in question should be provided in greater detail than is usually the case in employment. Frequently it will be necessary for a special study to be undertaken in order to write the job descriptions. Criteria of performance should be spelled out in detail. This may require normally informed and unwritten criteria to be identified and specified in the job descriptions.

6.11 Establish a formal monitoring and evaluation system

Once an employee advancement scheme is adopted it should be strictly monitored on a regular basis with full evaluation reports submitted up the line to the chief executive and to any responsible committee.

6.12 Criteria of merit and performance

If the above guidelines are adopted, a company should then apply normal criteria of performance in evaluating the targeted employees. Provided the inputs to the system of affirmative action are adequate, no "reverse discrimination" is necessary. Indeed, it will be undesirable since it will weaken the effect of the inputs.

7. The role of small business

7.1 Small business may not have the resources to implement all the measures suggested in paragraph 6. Its ability to make a contribution should, however, not be underestimated. The close and direct working relationships that exist in a small business provide an ideal setting for in-service training.

7.2 Work, management and entrepreneurial skills can be taught on-the-job in a non-threatening and practical environment which does not require a formal and expensive training infrastructure. Business opportunities in the new South Africa should provide the incentive for small businesses to train and develop black staff capable of serving the needs of the increasingly black consuming public.

7.3 Small businesses are encouraged to make use of the network of advisory services provided by various universities and business chambers.

8. Tertiary Education

8.1 It is essential that institutions of tertiary education play an important and constructive role in the balanced development of the country's human resources.

8.2 The ratio of students at universities on the one hand, and at technikons on the other hand, should be reversed.

8.3 Appropriate forms of education and training can be provided by technical and commercial colleges, yet these institutions are expensive and underutilised.

8.4 Government must play a role in facilitating the establishment of special colleges, for both full-time and part-time study, to which companies may send employees for preparation for advancement within companies.

9. Conclusion

It is vital that future policy makers recognise that strategies to reduce inequality must be based on the commercial reason that the strategies are necessary to survive and thrive in the new South Africa. It is also necessary to recognise that the enhancement of the quality of basic education for all South Africans is vital to the sustained economic development of the country.