

# **Improving Corporate Governance in South Africa**

*Discussion paper submitted for the  
1<sup>st</sup> USB Colloquium on Corporate Governance  
18<sup>th</sup> September 2008  
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## **Executive Summary**

The intention of the paper is to offer perspective and outline some of the issues related to improving corporate governance in South Africa. The paper begins by noting areas of concern: regulatory and bureaucratic strangling, lack of capacity; BEE, lack of respect and trust, corruption and the threat of serious civil unrest. On the other hand it is suggested that we have enough positive experience, potential and resources to counter these concerns.

Initial decisions must be made to decide what to include and what to exclude before thinking strategically about improving standards of corporate governance in SA. It is suggested that the question of how best to improve standards of corporate governance is inextricably linked to governmental policies and behaviours. Another factor is that South Africa is a pluralistic society – some aspects of corporate governance are well advanced, others may still need to be explored and developed.

To stimulate strategic thinking along these lines, questions for consideration have been highlighted throughout the paper to provide food for thought and serve as a basis for effective discussion in the Colloquium.

## 1. Introduction

One of the aims of the Colloquium is to think strategically about improving standards of corporate governance in South Africa. The intention is also to stimulate thinking and to generate practical ideas for going forward. Your perspective and insights, would be most valuable, both in terms of the big picture and also in terms of your own areas of expertise and experience.

The first stage of the Colloquium is to find out what participants would most like to explore. Because of this, when you read the paper, it would be much appreciated if you could keep the following questions in mind:

- What do you think are the right questions?
- What needs to be included and excluded in a strategic overview?
- What do you consider to be the key issues/priorities that need to be addressed?
- In terms of your own experience and expertise, after the first Colloquium has been held, would you like to offer a paper and or lead a discussion on a subject of particular interest to you?

Just as a new independent director can add value by bringing fresh insights, I am in this paper offering my relatively un-informed first impressions on the state of corporate governance in South Africa. In the past I have mainly operated either as a board member, advisor or consultant in the UK, USA, Europe and India and have only recently returned to South Africa after a long absence. Yet it is reassuring to note that some of my impressions are similar to those expressed in the Sunday Times Hill Debate, 17<sup>th</sup> August 2008 (2)

While it is true that the honeymoon period is now over, given that this government is only fourteen years old and that the first years were spent in setting up structures, processes and strategies, we are still very young. Now is indeed a good time to reflect on what is working and not working, and there will inevitably be a mix of achievements and mistakes.

The government in 1994 was mainly peopled by veterans from ‘the struggle’ and intellectuals without experience in the art of government. I believe that it is a waste of time to look back and play ‘blame games’, but rather we must build on what has been achieved and focus on what needs to be done to further improve corporate governance in South Africa to compete successfully within the national and global contexts.

## 2. Corporate governance in SA today

When I first arrived in South Africa and talked about corporate governance, I found a range of responses: ranging from those actively trying to implement the King Reports (1), to those who believed that corporate governance was mainly just a management tool for monitoring executive performance. I also noted a varied response about what people believe is the state of corporate governance across South Africa, depending on the size and maturity of companies.

- Is there a universal understanding of the importance of corporate governance in SA?
- Are the problems of a large quoted company different in quality or just in quantity compared with small and medium sized companies?

If the World Bank is correct, our largest and most successful companies have advanced standards of corporate governance. Those quoted on the London stock exchange are said to be well ahead of global best practice. In 2006 M.Vaughn and L.Ryan suggested that ‘initiatives taken by South Africa can service as models of enhanced corporate governance for the African continent.’(3)

On the other hand, executive chairs of medium sized companies tear their hair out because they cannot find competent directors. Though they understand the need to separate the chair and executive functions, in practice it proves difficult and risky .

- How well are small start-up companies (maybe those in greatest need of support) overseen and supported?
- How good are fund managers in assessing the quality of corporate governance in the companies in which they invest?

Another fundamental question is this: what should a study of corporate governance include? Should it extend to cover corporate governance in government? South Africa has a strong history of interaction between government and business, both at policy and strategic levels and also in terms of business dealings with government. Almost 50% of the South African workforce is employed by national, regional and local government.

- Should governmental organisations be subject to the same corporate governance principles as the private sector?
- Which of the King Report (1) principles and best practice guidelines are core principles to *any* organisation?
- Are the others more appropriate for different kinds of organisations? .

Given that we have a wide range of organisations at different stages of development, it is not easy to get an overall perspective of the standards of corporate governance in this country.

The more open and honest we are in tackling certain issues, even if they may be politically sensitive, the more effective we are likely to be. There are many things that are felt or thought and not said. For example:

- Is BEE working? And how fair is it?
- What are the policies and practices today that might seriously undermine the developmental capacity of South African corporate governance?

### **3. Economic performance as an indicator**

Although the South African economy got onto a good start at the beginning of the ANC government – thanks largely to Trevor Manuel and his colleagues – the current figures show some signs for concern.

Tito Mboweni, governor of the Reserve Bank was quoted in the Herald, June 24<sup>th</sup> 2008 (4) saying that ‘reasons for acceleration in inflation were broader than just food and fuel costs.’ He was concerned by the size of electricity prices as one of the factors. When asked whether there was more to come, he said, ‘Yes, and it will be painful’

Productivity SA and the 2007 IMD World Competitiveness Yearbook (6) paints a gloomy picture. According to the Mail and Guardian (5), over 750,000 professional people have moved to London, contributing to South Africa having the worlds biggest brain drain and skills shortages of the 55 countries studied in the IMD yearbook. South Africa lies 52<sup>nd</sup> out of 55 in terms of financial skills and senior management competence, and our overall economic competitiveness rating out of 100 has dropped from a ranking of 38 to 58 (6).

- Can figures like these be dismissed as mere teething troubles for an emerging economy?
- Or do they suggest that major measures must be taken for South Africa to improve its position?
- What is the role for the movers and shakers in corporate governance to make a difference?

## **4. Suggested areas for concern**

In my research and informal discussions around these topics I have identified a number of areas for concern. These can be classified under six key issues:

1. Regulatory and bureaucratic strangling
2. Lack of capacity
3. Black Economic Empowerment (BEE)
4. Lack of respect and trust between parties
5. Corruption
6. Threats of serious outbreaks of civil unrest

### **4.1 Regulatory and bureaucratic strangling**

The King reports (1) advocate voluntary guidelines for good corporate governance. King 3, particularly, is expected to throw light on new regulatory requirements. As one who has had dealings with Sarbannes Oxley and witnessed the effect it has on the quality of corporate governance, I wonder if we are in danger of being ruled by conformity to legislation at the expense of true corporate governance.

Take, for example, the Company Law Amendment Act that stipulates only independent directors may sit on the audit committee and form an independent entity – it raises major conflict with our skills shortage and lack of people to man such committees. For companies that are not highly advanced, just how feasible is the implementation of changing Accounting Standards or meeting IFRS requirements? To reduce a board to a box ticking exercise is bad enough, there is a real risk that directors may drown in details.

Attention has been given to the regulatory requirement of large companies, however unnecessary bureaucracy can also cripple medium and small companies – especially when combined with corrupt practices whereby honest people can be punished because they refuse to pay bribes. The development of small and medium companies is vital to overall economic development, so how can this be regulated?

- In either case, is there a risk that ‘form’ may dominate ‘substance’?
- If a major board function is to add value by rigorous discussion of strategic imperatives and to encourage the CEO and executives to perform competitively, then are we going in the wrong direction?
- Given that the UK Combined Code (7) advocates the importance of board members exercising mind and judgement to provide checks and balances between profit generation and their legal and fiduciary duties – how can the right balance be achieved in South Africa?

If corporate governance is to mean more than conformance, then the composition of the board needs to reflect the necessary skills, experience and expertise for the organisation being governed.

- How good is succession planning, board evaluation, selection and board development? (8)
- To what extent are such factors overlooked or not taken seriously in South Africa today and at what cost?

## **4.2 Lack of capacity**

To perform adequately as a board or oversight director, I suggest it is necessary to have the following competencies in addition to any technical know-how the board member brings to the table:

1. The ability to understand that being a board member means to be transparent and accountable, to provide a balance between conformance and performance and to act within the spirit of governance rather than for self interest. This also includes a conceptual grasp of high level strategic thinking and risk analysis as well as financial literacy as well as an ability to understand and question the key issues arising from written reports etc
2. The ability to add value in board or committee meetings by being able to listen, think independently and to discuss, debate and participate in high-level decision making. Also the ability to interact in a mature and respectful manner
3. There must also be integrity, honesty reliability and a willingness to disclose conflicts of interest.

We have a seriously inadequate number of educated, trained and competent directors. The challenge is to ensure accelerated learning for those currently in positions beyond their levels of competence. A lot of successful work has been done in this area that could provide guidelines for chairs suffering this problem – there are a number of chairs who have successfully coached inexperienced directors and who could pass on their experience. While formal courses are essential, they do not go far enough in terms of how directors should think and behave on boards and committees. It might be useful to discuss whether there is an integrated strategy to coach the next generation.

## **4.3 Black Economic Empowerment (BEE)**

BEE was adopted to enable a wider representation of the population to take leadership roles across the country. Any fundamental change is difficult to predict without hindsight. However, unless some of the more negative consequences are dealt with urgently, we may be left with an intractable threat to the nation's economic sustainability.

In my limited experience of BEE at board and CEO levels, I suggest that the main problems arise out of inexperience and incompetence overlaid with lack of understanding about the true responsibilities of leadership. The problems include behavioural abuse of power and deliberate understanding and or misuse of BEE appointment policies.

The behavioural abuses of power include:

- Covering up incompetencies – e.g. inaccurate financial reporting, lying, or unjustly accusing others of things they did not do
- Bullying or character assassination of people they want to get rid of
- Providing false information or imposing impossible workloads so directors cannot fulfil their roles,
- Political – e.g. ‘anti colonial’ – posturing as a form of disrespect for non black board members
- Nepotism or ‘cronyism’ towards their chosen people. Typically other board members find out too late and, if they challenge the chair/CEO, are accused of being ‘disloyal’.
- I have also found the attitude ‘my turn now’, or ‘pay back time’ from people who have not yet learnt that leadership has to be earned, not given – and being a senior executive or board member is highly skilled work.

The deliberate misunderstanding of BEE appointments means that sometimes appointments are rigged to ensure proportionately more black members than other members. This goes against the original principle of choosing the best person for the job and only tipping the balance to favour a black candidate when choosing between those of equal merit. A less balanced selection leads to resentment and racial tension that is not in the company’s long term interest.

Even worse, such covert racialism becomes a significant driver for South Africa’s brain drain mentioned in section 3. It is unfortunate that the contributions of many well-meaning, educated and experienced directors and senior managers have been disregarded. Although the excuse is often that they ‘come from the old school’, in terms of capacity building, this resource could have been better used both from an individual and collective perspective.

- How to determine how widespread are these abuses, whether a significant concern, or merely an adjustment phase?
- If it is a problem, at what level does it need to be addressed?
- How can it be effectively governed?
- Is misuse of BEE, coupled with resentment about the past by vociferous leaders, merely substituting the old racism for another?

Perhaps it is time for the Private Sector to consciously encourage a culture where everyone pulls together for the common good. Perhaps it is time for those who deny that good leadership and directorship requires experience and learning, to take responsibility for finding ways of accelerating their own levels of competence.

#### 4.3.1 BEE Partnerships

This also applies in terms of BEE partnerships. How many of these are real? Non-black business owners say that they are held up because it is difficult to find suitable partners. It might be interesting to explore why this is and how it could be addressed.

#### 4.3.2 The time scale for affirmative action

Acts like the Financial Services Act, where preferences were made for black ownership to address the racial imbalance, were originally intended to apply for a limited period. If that timeline is extended, or made permanent, it will erode multi-racial principles, go against the spirit of the Constitution and potentially lead to considerable division in the business community. It may be one of the reasons why a number of previously South African corporations are no longer listed in South Africa.

#### 4.4 Lack of respect and trust between parties

Co-operation, consultation and discussion have enabled a high level of thinking and the development of leading-edge processes. However, I wonder to what extent people really do work together. Are organisations still more or less segregated into racial groups rather than working together to pool experience and creatively help to resolve key challenges?

Lack of respect and trust between institutions and groups leads to breakdown and can undermine the quality of networking needed for good business. Unless we put the past to bed and consciously co-operate in saving this country, we may miss the window of opportunity provided by the 1994 change of government.

Poor relationships between different institutions coupled with poor corporate governance can be very costly to business and the community. The ESKOM crisis provides a clear example, in which the Government failed to respond to forecasts and warnings given by ESKOM. It is possible that the Government Oversight Committee lacked the capacity and expertise necessary for this level of corporate governance. Nor is the board of ESKOM free of blame, for it is their duty not just to inform Government but also to take every measure to make sure they are heard.

An example of lack of constructive working relationships between government and other institutions is the recent refusal of the DG of Home Affairs to work with his Government Oversight Committee because he suspected the integrity of some of its members. Although Home Affairs is a government institution, many companies rely on its smooth and efficient running. The integrity and competency of the SA Government's Oversight Committees significantly effects industry and commerce.

- Who oversees the quality of Oversight Committees?
- Do we need a major mind shift to encourage co-operation in order to raise overall standards of corporate governance?

This does not mean that there is no room for adversarial style relationships between bodies. There can be serious conflicts of interest between profitability and social responsibility, especially if there is a culture where many directors are motivated by greed, status and self interest.

Given a highly developed union structure, it could be argued that our trade unions could provide a healthy check and balance against poverty and misuse of labour. In South Africa, the role of trade unions is directly linked to corporate governance so, hopefully, these unions will be as concerned about the threat of corruption as the corporate and government sectors in South Africa.

## **4.5 Corruption**

A culture of greed and self interest is a culture that encourages corruption and is counter to the spirit of 'Ubuntu'. Widespread corruption is one of the greatest inhibitors to good corporate governance. It spreads across the globe (9), across governments, cultures and companies like a contagious virus. I believe that combating corruption and instilling an environment of integrity is one of the greatest challenges for corporate governance in South Africa.

“Fighting corruption has become more urgent than ever... Corruption impoverishes national economies, undermines democratic institutions and the rule of law, and facilitates the emergence of other threats to human security, such as organized crime ... [Corruption creates] economic chaos, depriving citizens of education, health services, basic infrastructure and functioning public services. Even when good governance is restored or attained, officials can spend years or even decades attempting to retrieve funds that are often critically needed to repair the social and economic damage done by their corrupt predecessors.” (10)

In 2003, it was argued that white collar crime in both business and government, accounts for 30% of all business failures and costs the economy up to R150 billion a year (15). There is little evidence that the situation is better now.

In 2005, Business Against Crime estimated that corruption cost the country around R48 billion per annum, or 3% of SA's gross domestic produce. They found that 3-5% of losses in most companies can be put down to crooked employees: “with the largest losses attributed to top management crooks... (Companies) give golden handshakes to directors who've lifted millions from them.” (11).

A good example of corporate corruption at the top was the story of Danisa Baloyi, found guilty of stealing up to R1 billion while on the board of Fidentia and also a trustee of Living Hands, a trust fund set up for widows and orphans of mineworkers. She and the CEO were responsible for criminal deals to line their own pockets (12). A recent PriceWaterhouseCoopers report (13) on the management of South African retirement funds found that “three in five funds do not have formal processes for managing conflicts

of interest”. Baloyi’s dual role meant she “was not able to exercise her discretion in a manner that would be to the best interest and general welfare of the beneficiaries.” Only two out of five funds have formal processes for managing conflicts of interest and trustee training is not common in SA About 40% of retirement funds had no formal assessment of whether their funds’ trustees had the knowledge to function effectively on behalf of their members. “It highlights the challenge of rapid transformation in the country. A limited pool of “suitable” candidates is spread across too many key positions. This is dangerous for shareholders and other stakeholders.’ (13)

Corporate crime is dangerous for the country and should be high on board agendas. It has been argued that “countries with weak corporate governance have worse economic prospects which result in more expropriation by managers and thus a larger fall in asset prices. This could affect the extent of exchange rate depreciation and stock market decline” (14).

#### 4.5.1 Corruption within government

The crucial interdependency between many businesses and government means it is also important to explore the extent to which corruption or potential corruption within government is likely to effect business.

Corruption can only be fought if there is a serious independent legal and judiciary system where judges with integrity have the power to implement the law. At present there seems to be a lobby to place the judiciary under government control, and this could have a devastating effect.

Government attempts to undermine the independence of the judiciary are by no means uncommon: in the USA in recent times selection processes were put in place to recruit potentially corrupt staff and get rid of high ranking judicial officers with integrity (16).

#### 4.5.2 A culture of corruption – who are our role models?

Attitudes, beliefs and values about integrity determine to what extent a nation’s majority accepts or even supports corruption. In a nation with such a variety of beliefs and values, the challenge is to ensure that everyone understands, agrees to and conforms to the same underlying moral principles.

Andrew West (17) believes there is “an incompatibility between the current corporate environment in South Africa and some traditional African Values”. One of the most typical is that the traditional responsibility is primarily to the tribe and extended family. This becomes a reason for recruiting ‘my people’ to posts and getting rid of others of equal or greater merit. What would be considered nepotism in the West is seen as a matter of family honour.

#### 4.5.3 Questions concerning corruption

Using the metaphor of the apple, how can we stop the worm getting into the apple, and what do we do to protect those apples that are not rotten?

- How do we stop or prevent a culture of corruption that could undermine the whole basis in which business is done?
- What is the responsibility of the chair, of the board and of those involved in governance at different levels and in different sectors?
- What is the role of business leaders? Can they influence the key decision makers?
- How can we instill counter-corrupt values, beliefs and practices across corporate governance in South Africa?

#### 4.5.4 Issues to consider

The King Reports (1) embed certain corporate governance principles relating to the social and environmental responsibilities, including advocating the triple bottom line. This implies an implicit assumption of what business is about. Whether this is lived in practice is another matter, particularly if there is a conflict of interest between profitability and environmental sustainability.

Another issue is the extent to which politicians play the ‘colonialism’ or ‘Western imperialism’ card. This can be too easily dismissed as out-dated rhetoric, but evidence is mounting – for example in books like ‘The Confessions of an Economic Hit Man’ (9) – of how ‘First World’ economic interests manipulate emerging economies by exaggerating their growth potential in order to encourage them into unsustainable debts, and then exploit the resulting economic meltdown to extract unfair advantage from the country in terms of stripping resources or crippling contractual obligations. This often means that emerging local companies are squeezed out of large tender processes that favour dominant global and international corporations.

#### 4.6 Threats of serious outbreaks of civil unrest

One of the key issues being discussed worldwide is the wealth differentiation between the rich and the poor. Some directors believe that it is none of their business but rather the responsibility of government. Others believe that they have a social responsibility to do what they can to uplift the poor. Others see it as sound long-term strategy to raise the lowest incomes and thereby grow the consumer base. Given the current riots across the globe about food and fuel prices, this ceases to be a mere academic issue or posturing platform between right or left wing political convictions.

Regardless of beliefs and attitudes, in South Africa wealth differentiation is a serious issue and it remains so after the change in Government. According to the Economic Policy Institute’s Economic Snapshot April 19 2006 (18) the wealth inequality of apartheid days has actually increased since change of government. Whereas the government’s initial Reconstruction and Development Program (RDP) addressed this inequality, it was superseded in 1996 by the Growth, Employment, and Redistribution Program (GEAR) that improved the country’s fiscal deficit but has seen rising unemployment, lower growth and greater inequality in its wake (18)

If the changes in SA have mainly enriched a small number of black people doing major financial deals, rather than increasing productivity, the extent to which the majority of the population have benefited is questionable. The emergence of a small but highly publicised super-wealthy black elite group has not helped. Many of these are former struggle heroes – the less well-off people I have spoken to either want to emulate them or feel betrayed by such inequality among ANC supporters. This has contributed to the loss of credibility and trust in the ANC. An example was Mandela’s 90<sup>th</sup> birthday: in the past this would have been celebrated on the day by the whole population and used as a morale boosting and unifying exercise for South Africa. Instead the day was marked by an exclusive group of 500, and the media showed scenes of old and respected comrades being sent away from the gates. Such visible inequality and high unemployment provides a fertile environment for serious civil unrest.

Our government strategies on poverty alleviation are some of the best in the world but implementing these strategies remains a real challenge. While the living conditions for many have improved with the provision of electricity, water and houses, there are too many who cannot afford to pay school fees, and such educational deprivation simply perpetuates inequality to the next generation..

Poor people are angry: this is not what they were promised. Outbreaks of xenophobia, and or orchestrated criminal activities, caused the deaths of over 5000 people. If the plight of the very poor is desperate, these will not be one-off events, particularly with the rise of food and fuel prices. Unless it is really tackled and results can be seen by the poor, the problem will not go away.

- Is the issue of wealth differentiation relevant to corporate governance?
- Individual corporations and companies have done their best to increase employment, but is it enough?

So far the picture painted in this paper appears gloomy yet will be familiar to most South African board members. However, I still believe we have the capacity, the will and the resources to overcome our blockages and limitations, even though it may take longer than we hoped.

## 5 Good practice and strong potential to build upon

In spite of huge difficulties and challenges, South Africa is not starting from scratch. We have made a good beginning and I believe we have untapped resources and potential.

In many cases, the groundwork has already been done, for there exists a firm conceptual basis for corporate governance in the King Reports (1). At policy and regulatory levels, there are processes for those committed to good corporate governance to dialogue with and influence government policy and regulations.

Although South Africa is limited by the shortage of experienced directors, their numbers are growing. Experienced and wise chairs are successfully coaching and mentoring directors on the ground – which is one of the best ways of improving director performance.

I list fourteen positive factors to justify my optimism, and I feel confident that there are others I have overlooked:

1. Steady economic growth, investment and a robust stock exchange, until recently. It is possible that we have a sound basis for weathering any unpleasant global or national surprises.
2. Legislative reform.
3. Experienced high level legal expertise – directors knowledgeable about national and international regulations – King 3 (1).
4. Highly developed understanding about the relationship of business to democracy – business people have a history of influencing change in SA.
5. Respected constitution. Hopefully sustainable legislature and judiciary that is able to enforce the law – at least better than many other developing countries.
6. Integrated government strategy for poverty alleviation and concern about implementation.
7. Hopefully sustainable and successful anti-corruption agencies.
8. Abundance of good will and expertise.
9. Potential access to a growing number of wise and experienced chairs and directors who are coaching and mentoring the less experienced. This includes global world leaders as well as chairs from different types of organisations.
10. Well established institutions promoting corporate governance and offering education and training – e.g. IOD and university business schools
11. High levels of thinking and discussion about corporate governance, e.g. The King Reports (1), consulting companies and some investment analysts.
12. BEE successes – both in terms of companies, individual directors and “Black Diamonds” (19)
13. A motivated, hungry to learn and intelligent younger generation who do not carry the baggage of the past (20).
14. Openness to creative and innovatory thinking – South Africans love being inspired

## 6 A way forward

In ‘The Human Face of Corporate Governance’ (8), I suggested that there were four main levels of corporate governance – systemic, inter-group, interpersonal and personal. These might serve as a useful framework in discussing what Colloquium members would like to take further.

### 6.1 Systemic Governance

Meaning those global and national systems and processes that affect us and which we may or may not be able to influence.

We have a wonderful country with considerable potential. In 2005 Mondlie Makhanya reminded us: “We have built something unique on the southern tip of the African Continent. Out of the ruins of a despotic, corrupt state... we have, in less than a decade, constructed a nation with institutions and values that took other peoples decades and centuries to mould. The trick is to make these institutions and values work, and not let them buckle under any pressure.” (21)

- To what extent should those committed to ensuring standards of corporate governance be involved in influencing government and other key policy decision makers?
- Is this already working well, or is there room for improvement?
- Can knowledge and understanding be improved about how the global, international and national context impacts on different sectors?
- Would it be useful to have a general overview of standards of all levels of corporate governance?
- How can different sectors access information relevant to them?
- How can boards be better helped at a basic practical level to deal with increasing numbers and complexities of regulations, both South Africa and also internationally?
- How can King 3 be effectively implemented?

### 6.2 Inter-group governance

Meaning governance interactions between boards and executive, between boards and fund managers/investors, between business and government, between boards and stakeholders.

- How useful is it to have a more integrated approach to corporate governance between business groups, organisations and associations?
- Could greater co-operation between different entities accelerate improvements of standards of corporate governance across South Africa? Is a new mindset needed?

- To what extent is training needed for investors and fund managers about corporate governance?
- To what extent could improved board evaluations help companies communicate their value?
- Are the systems and processes for confrontational conflicts of interest – e.g. management and union – effective enough? How could they be improved?
- At board level, to what extent can mutual understanding of the value of corporate governance be improved?
- How can the board add greater value to the executive, shareholders and stakeholders?

### **6.3 Interpersonal governance**

Refers to the relationship between the chair and MD/CEO, relationship of chair with board members and committee members, and relationships between all board members.

Every board member knows that good corporate governance comes from the quality of people on the board and how they interact together. The same applies to committees. One of the most important roles of the chair is to manage these dynamics.

### **6.4 Personal governance**

Meaning self-awareness and development for chairs and directors. The need for building both capacity and self-confidence by coaching and mentoring individual directors or high flyers

### **6.5 Strategic considerations for corporate governance across South Africa**

Given that this Colloquium is an invitation to think strategically about how standards of corporate governance could be improved across South Africa, I put forward some strategic questions for consideration. It is up to the reader and Colloquium discussion to determine whether these are the most important questions.

- Business leaders in SA had a large role to play in the change over from Apartheid. Do they still have as large a role to play today in helping to sustain democracy and ensuring fair business practices?
- What are the best ways to bridge the gap between policy, strategy and implementation?
- How can those who have not yet got the message about the importance of good governance be inspired and motivated to build capacity?
- How can the wisdom and expertise of successful chairs and board members be more effectively harnessed for the good of more directors and emergent directors?

- What key moral and ethical issues need to be explored and discussed more deeply?
- How can corruption be dealt with and a culture of integrity be developed? (22)

## 7 Summary and conclusions

The intention of the paper has been to give perspective and outline some of the issues related to improving corporate governance in South Africa.

The current South Africa is a very young country that has inherited both good and bad habits. The importance of sound good quality corporate governance is not fully understood by many boards and board members, many of whom are inexperienced and not well educated or trained. There is no doubt that development of better standards of corporate governance could significantly improve South Africa's chances of success (23). The key question is how could this be accelerated so that we do not lag behind? The potential is there and I believe the will is there – the question is how can we go about it in the most effective ways? How much time do we have?

The paper began with a number of concerns. These include, regulatory and bureaucratic strangling; lack of capacity; BEE; lack of respect and trust between different parties; corruption and threats of serious outbreaks of civil unrest. I then suggested that we have enough positive experience, potential and resources to counter these concerns.

In order to think strategically about improving standards of corporate governance in SA, it might be useful to decide what to include and what to exclude. It was also suggested that the question of how best to improve standards of corporate governance is inextricably linked to governmental policies and behaviours. Another factor is that South Africa is a pluralistic society – some aspects of corporate governance are well advanced, others may still need to be explored and developed. For example how can more effective ways be found to bridge the gap between policy formulation, regulatory changes and consultation as to whether these are feasible and what time scale needs to be taken into account?

At the beginning of the paper one of the key purposes mentioned was to stimulate strategic thinking in terms of improving standards of corporate governance across South Africa. Hopefully this paper will offer food for thought and serve as a basis for effective discussion.

To repeat my opening questions:

- What do you think are the right questions?
- What needs to be included and excluded in a strategic overview?
- What do you consider to be the key issues/priorities that need to be addressed?
- In terms of your own experience and expertise, after the first Colloquium has been held, would you like to offer a paper and or lead a discussion on a subject of particular interest to you?

## Notes

1. *The King Report on Corporate Governance*. King 1 Report (1994) and King 2 Report (2002) available from <http://www.iodsa.co.za/king.asp?ShowWhat=CodeBlock>. King 3 Report expected January 2009.
2. The Sunday Times, August 17<sup>th</sup> 2008, *The Hill Debate: The State of the Nation*
3. A. Vaughn and L. Ryan *Corporate Governance in South Africa: A Bellwether for the Continent*. *Corporate Governance: An International Review*, Vol. 14, No. 5, pp. 504-512, September 2006
4. TheHerald, June 24<sup>th</sup> 2008.
5. Mail and Guardian, 18<sup>th</sup> April 2008.  
According to the Mail and Guardian, in 2007/2008. 12-13,000 professional people immigrated to Australia and 750, 000 located to London.
6. IMD *World Competitiveness Yearbook*. 2007  
SA's world rating dropped from 50 to 38. SA has the world's highest brain drain and the worst skills shortages of 55 countries studied and it productively is plummeting. A lot of the fall of productivity was partially due to electricity cuts. More importantly, overstretched staff, a lack of training and poor management saw productivity ratings plunge after a decade of sustained growth. SA is 52<sup>nd</sup> out of 55 for shortages of those with financial skills and 51<sup>st</sup> out of 55 in terms of lack of senior management competence. Overall, according the IMD, in 2007, South Africa showed a drop in SA rankings from 38<sup>th</sup> to 50<sup>th</sup> out of 55 countries. Economic performance competitiveness dropped from 40<sup>th</sup> in 2006 to 54<sup>th</sup> in 2007 in terms of high unemployment and low GDP. South Africa was ranked last in terms of infrastructure, internet costs, health problems, availability of engineers and life expectancy.
7. *The UK Combined Code on Corporate Governance*.  
[www.fsa.gov.uk/pubs/ukla/lr\\_comcode2003.pdf](http://www.fsa.gov.uk/pubs/ukla/lr_comcode2003.pdf)
8. McGregor L. *The Human Face of Corporate Governance*, Palgrave 2000
9. Perkins J. *Confessions of An Economic Hit Man*, Ebury Press, UK 2006. Page ix  
'Economic hit men are highly paid professionals who cheat countries around the globe out of trillions of dollars. They funnel money from the World bank; the U.S. Agency for international Development.. and other foreign "aid" organisations into the coffers of huge corporations and the pockets of a few wealthy families who control the planets natural resources. Their tools include fraudulent financial reports, rigged elections, payoffs, extortion, sex and murder.'

They play a game as old as empire, but one that has taken on new and terrifying dimensions during this time of globalization.’

10. Antonio Maria Costa, Executive Director, UN Office on Drugs and Crime.pv  
Corruption. *Compendium of International Legal Instruments on Corruption*  
UNO Office on Drugs and Crime, 2<sup>nd</sup> edition 2005

11. “Business Against Crime, *Compendium of International Legal Instruments on Corruption*, UNO Office on Drugs and Crime, 2<sup>nd</sup> edition 2005, pg 384

12. Markus Reichardt, *Danisa Baloyi no longer trusted*, Johannesburg, EC Newsdesk. 3<sup>rd</sup> May 2007

A good example of corruption at director level is the story of Danisa Baloyi who held more than 70 public offices. She was both director of Fidentia, (one of S.A’s greatest fraud scandals) and a trustee of Living Hands, the Trust Fund set up by the Mineworkers Provident Fund, whose beneficiaries are the widows and orphans of deceased miners.

Fidentia was found guilty of stealing up to one billion rands from investors including the Living Hands Trust. Baloyi was a key deal maker. She was also a member of the Mineworkers Provident Fund and a Trustee of Living Hands. In 2004 Baloyi oversaw the transfer of R1.6 bil of Living Hands Assets to Fidentia. Fidentia then gave her an interest-free loan of R8mil with no repayment terms. She was also asked to leave the board of ABSA when it was found that she had not declared all her interests and that some of her references were dubious.

13. Price Waterhouse Coopers report on *The Management of South African Retirement Funds*. Page 1 of 2 [http://www.ethicalcorp.com/content\\_print.asp?ContentID=5044](http://www.ethicalcorp.com/content_print.asp?ContentID=5044)

A recent PriceWaterhouseCoopers report on the management of South African retirement funds found three in five funds do not have formal processes for managing conflicts of interest. Baloyi’s dual roles ‘placed her in an untenable position relating to the performance of her fiduciary duty as a trustee ... not able to exercise her discretion in a manner that will be to the best interest and general welfare of the beneficiaries.’ The report also discovered that Trustee Training is not common in SA

About 40% of retirement funds in SA made no formal assessment of whether their funds’ trustees had the knowledge to function effectively on behalf of their members. “It highlights the challenge of rapid transformation in the country. A limited pool of “suitable” candidates is spread across too many key positions. This is dangerous for shareholders and other stakeholders.”

14. Simon Johnson, Peter Boone, Alasdair Breach and Eric Friedman, *Corporate governance in the Asian financial crisis*\*1 2000. Available on line

On a macro level it is argued that the emergence of the Asian market affects emerging markets that are open to capitol flow. ‘Measures of corporate governance, particularly the effectiveness of protection for minority shareholders,

explain the extent of exchange rate depreciation and stock market decline better than do standard macroeconomic measures. A possible explanation is that in countries with weak corporate governance, worse economic prospects result in more expropriation by managers and thus a larger fall in asset prices.’

15. Justice Maduna, *Cape Times* 22 Nov 2003.

16. Dan Froomkin, *A Culture of Corruption*, Special to [washingtonpost.com](http://washingtonpost.com), Tuesday, July 29, 2008; 11:26

An example of this is the Dept of Justice in the USA. Dan Froomkin asks, ‘Who twisted the Justice Department, designed to operate with a large degree of independence, into a political adjunct of the White House (through political and ‘moral’ hiring?’ He quotes a report out in June 2008, where it was found that the liaison officers over a five year period were responsible for making sure that key judicial posts were systematically filled with Republicans who espoused conservative attitudes to ‘god, guns and gays’. They were also responsible for systematically getting rid of high ranking judicial officials who did not conform to their principles, e.g. Vetting and recruiting Attorney Generals in the White House and all over the States and not extending tenure to people in critical jobs because they had the ‘wrong’ beliefs. In 2006, nine attorneys were fired. This had implications for the handling of cases and the extent to which officials have covered up what was going on.

17. Andrew West. *Theorising South Africa's Corporate Governance*, in *Journal of Business Ethics* ISSN 0167-4544, 2006, vol. 68, n<sup>o</sup>4, pp. 433-448 [16 page(s) (article)]

18. Economic Policy Institute, *Snapshot for April 19, 2006*.

South Africa and Brazil are among the countries in the world with the greatest degree of economic inequality. Both have people with enormous wealth who stand in sharp contrast to a large part of the population living in poverty and extreme poverty.

In the GINI co-efficient, an economic formula that expresses income inequality, South Africa and Brazil historically have "competed" for the highest index (most unequal) economy in the world. But in 1995, South Africa surpassed Brazil, which had, for decades, held the dubious title of the country with the greatest inequality. In the past 10 years, South Africa's economy has become steadily more unequal while Brazil's economy has become steadily more equal, although Brazil's inequality is still high (Figure A ). While South Africa (.63) and Brazil (.55) had high GINI numbers (or more inequality) in 2002, by comparison Gemany, Sweden, and Finland all had relatively low (.25) GINIs in 2000.....

In South Africa, the economic and social inequality that was inherent in the Apartheid regime has continued, and even increased, since majority rule was instituted in 1994. The first economic plan, the Reconstruction and Development Program (RDP) addressed inequality, but was superseded by the government's unilateral implementation of the neo-liberal Growth, Employment, and

Redistribution Program (GEAR). The result has been a sharp increase in unemployment (42% by unofficial definition) as workers lost salaried jobs and were dumped into the informal economy. The government's redistribution programs have focused on a few black entrepreneurs who have become millionaires and billionaires overnight, thus contributing to inequality.

19. University of Cape Town, Unilever Institute of Strategic Marketing and TNS Research Survey, *Black Diamond 2007: On the Move*

“Black Diamond 2007: On the Move” paints a more promising picture with 12% of South Africa's black population accounting for over half (54%) of all black buying power, compared with 10% accounting for 43% of black buying power in 2005. But in that same period the number of black diamonds moving leaving the townships and moving to the suburbs increased sharply from 23% to 47%, and such figures suggest more a “creaming off” than a “trickle down” economic impact. Meanwhile South Africa still suffers high unemployment, falling to a low of 23% in September 2007 according to Stats SA, but still including a large number of “discouraged job seekers”.

20. “A motivated, hungry to learn and intelligent younger generation”

A USB Roundtable discussion on corporate Governance was held for the next generation corporate governors in Johannesburg in May 2008. One of the key messages was that many directors did not really understand what ‘governance’ meant and that they would prefer that boards were run ‘in the spirit of good governance’ rather than in terms of conformance or self interest of directors. What was positive was the enthusiasm, intelligence and understanding of the next level down.

Weekend Argus Business, *Youth Get Down to Business*, Report on the Global Entrepreneurship Monitor by Melanie Peters.24.5.08

In terms of very young people, a study was conducted about the readiness and attitudes of the youth towards opportunity oriented business activities. Director Mike Herrington at UCT said that youth between 18 -34 ‘have a more ‘positive attitude towards opportunity-oriented business activities and a willingness to work with others in achieving their objectives.’. He listed six positive trends:- More young people were opportunity seizers, more women were entering the market, there was an increase of students completing secondary school and a small positive trend in tertiary graduation. ‘More young people have confidence in their ability to create new businesses. Fear of failure has decreased. There was a positive mindset among youth regarding the possible creation of new jobs in the future.’

Herrington reminded us that, ‘The youth constitutes the majority percentage of the population and their importance in the current and future environment cannot be underestimated. With creative energy and willingness from South Africa’s key players, youth entrepreneurship development can be accelerated to bring renewed

social-economic growth in SA' He recommended that 'A national support system should be developed, addressing the specific needs of youth entrepreneurs and focussing on the constraints that are unique to youth businesses'

21. Mondlie Makhaya, quoted in *National Integrity Systems*. Transparency International Country Study Report on SA, 2005

In 2000 Frene Ginwale, Former Speaker of the SA Parliament, argued for the need for a National Integrity system

22. H van Vuuren, *National Integrity Systems*. Transparency International Country Study Report on SA, 2005

23. *Report on the Observance of Standards and Codes (ROSC) Corporate Governance Assessment*, Republic of South Africa. (Based on report prepared for World Bank by Phillip Armstrong, 2003

Deutsche Bank in 2005 found that there was a high correlation between good corporate governance and financial results and that was reflected in the valuation of listed companies. They found that the best corporate governance is found in large corporations. Those listed in London particularly, have been found to have world class corporate governance.