

Define good corporate governance and briefly explain in your own words why it is important to society that companies operate within a framework of good corporate governance.

Corporate governance is the system or process whereby companies are directed or controlled. It is about companies being good corporate citizens and all that this entails. Companies are an integral part of modern society and it therefore follows that healthy, honest, open, competently and responsibly controlled companies will improve the quality of modern society.

Explain in your own words what the term “apply or explain” means. Do you think that this allows directors to avoid adhering to principles of good corporate governance?

“Apply or explain” means that King III follows a non-legislated approach allowing for companies to explain if they choose not to apply the principles of King III if they believe that it would be in the best interest of the company.

Directors can't avoid adhering to principles of good corporate governance, because there is a link between good governance and compliance with the law. The directors themselves have legal duties stipulated in the Companies Act, No 71 of 2008.

Standards of Directors Conduct:

A director must:

- not use his position to gain advantage for himself/knowingly cause harm to the company.
- communicate information obtained to the board immediately unless it is immaterial, publicly available, or he is unable to do so due to legal obligations.
- exercise his powers in good faith and in the best interest of the company.

To ensure that a director complies with the above he:

- should take steps to be informed about any matter
- should have a rational basis for making decisions
- is entitled to rely on the performance of employees, accountants, legal council and board committees.
- is entitled to rely on any information presented by the above.

Liability of directors/prescribed officers

A director may be held liable when:

- failing to disclose personal financial interest
- using his position to gain advantage for himself
- failing to act in good faith
- failing to act in best interest of the company
- a breach in duty to act with degree of care
- breach in any provision of the MOI
- acting for the company while knowingly lacking the knowledge to do so
- agreeing to carry on business recklessly
- being party to a fraudulent act
- consented to any publication of fraudulent documents
- failing to vote against the issuing of unauthorized shares, issuing of shares inconsistent with the Act, provision of financial assistance inconsistent with the Act, approving a distribution inconsistent with the Act, acquisition of own shares in contravention to the Act, allotment of securities inconsistent with the Act.

Indemnification of Directors

- any provision of agreement is void if it seeks to relieve the director of any duties of personal financial interest, standards of director's conduct or a liability from above.
- company may not pay any fine imposed on a director
- a company may advance expenses to a director
- a company may protect a director except in circumstances mentioned above (liabilities)

Four ethical values a director's decisions and actions must be based on (RAFT)

- Responsibility
- Accountability
- Fairness
- Transparency

Five moral duties of directors (CICCC)

- Conscience
- Inclusivity
- Competence
- Commitment
- Courage

Requirements of the Audit Committee

A member **must**:

- be director of the company
- satisfy any minimum qualifications

A member **must not be**:

- involved in day to day management of the company
- a prescribed officer or full time employee
- a material supplier or customer
- a related person to any person above

Duties of the audit committee

- to nominate a registered auditor for appointment as auditor
- determine fees to be paid to the auditor
- ensure appointment of auditor complies with the provision of the Act
- determine the nature of any non-audit services the auditor will provide
- pre-approve proposed agreement with the auditor
- prepare the audit committee report to be included in the AFS
- receive and deal with concerns and compliments
- make submissions to the board concerning the company's accounting records, controls etc.
- perform other functions determined by the board

Three principles to responsible leadership, the board's responsibilities

- The board should provide effective leadership based on an ethical foundation
- The board should ensure that the company is, and is seen to be a good corporate citizen
- The board should ensure that the company's ethics are managed effectively

The board should provide effective leadership based on an ethical foundation

- must direct strategy and operations towards building a sustainable business
- strategy should take into account the economy, society and environment
- should set ethical values in a code of conduct
- King III adopted stakeholder approach, board is accountable to all stakeholders
- four ethical values to base decisions and actions on: (RAFT)
 - Responsibility
 - Accountability
 - Fairness
 - Transparency
- The director also has the following moral duties: (C5)
 - Conscience - act with intellectual honesty
 - Care
 - Competence
 - Commitment
 - Courage

The board should ensure that the company is, and is seen to be a good corporate citizen

- success of company should also be judged on the impact on economy, society, environment
- protect and enhance the well being of the society, economy and environment
- be guided by the Constitution and Bill of Rights
- promote ethical conduct
- develop corporate citizenship programmes
- establish ethical relationships between company and society
- infuse good governance into all aspects of business
- Triple Bottom Line: Economy, Society, Environment
- tangible programmes which focus on the needs of the country
- results should be measurable
- genuine commitment and leadership

The board should ensure that the company's ethics are managed effectively

- ethical practice is non-negotiable
- sound moral values are propagated
- business activities are directed by people with integrity and fairness
- interest of all stakeholders must be considered
- four aspects of good ethics management process: (DICE)
 - Development of Code of Ethics
 - Integration of ethics
 - Compilation of an ethics, risks and opportunity profile
 - Ethics performance reporting and disclosure

Five responsibilities of the board with regard to ethical leadership

- Mutual support and respect
- Interdependence
- Unity
- Collective work
- Responsibility
- Ubuntu

Board of directors

Chairman	<ul style="list-style-type: none"> - Independent non-executive director - CEO of company should not also be chairman - role of chairman should be formalized - chairman's ability to add value and performance should be assessed yearly
Membership	<ul style="list-style-type: none"> - majority of non-executive directors that are independent - board should recommend eligibility of prospective directors
Members	<ul style="list-style-type: none"> - minimum of 2 executive directors, one should be CEO and other responsible for finance - at least 1/3 of directors should rotate every year
Meetings	<ul style="list-style-type: none"> - Meet at least four times a year
Functions	<ul style="list-style-type: none"> - should act as focal point for corporate governance - should see that strategy, risk and performance are inseparable - should provide effective leadership - should ensure that company is and is seen as good corporate citizen - should ensure ethics are managed effectively - should ensure company has effective, independent audit committee - should be responsible for governance of risk - should be responsible for IT governance - should ensure company complies with applicable laws - should ensure there is an effective internal audit - should know that stakeholder's perceptions affect reputation - should ensure integrity of company's integrated report - should report on effectiveness of internal controls - should act in the best interest of the company - should consider business rescue proceedings when needed - should elect independent chairman of the board - should appoint CEO and establish framework for delegation of auth.

Board committees

	Remuneration Committee	Nomination Committee	Risk Committee
Chairman	Independent, non-executive director	Independent, non-executive director	Independent, non-executive director
Membership	Majority should be non-executive and independent	Majority should be non-executive and independent	Executive and non-executive directors
Members	Not specified in King III report	Not specified in King III report	Minimum of 3 members
Meetings	Not specified in King III report	Not specified in King III report	Meet at least twice a year
Functions	Assist the board in setting and administering remuneration policies	Assist with identifying suitable members of the board	Consider the risk management policy and monitor the risk management process

Explain what an independent and non-executive director is:

He should be independent in character and judgment and there should be no circumstances that could or appear to affect his independence. Independence is the absence of undue influence and bias.

- He is not a representative of a shareholder
- Does not have a direct/indirect interest in the company (materiality = 5 %)
- has not been employed by the company or the group to which the company belongs
- is not a family member of employee/past employee for three financial years
- is not a professional advisor to the company/group
- does not receive remuneration for any other duties performed

The CEO's main functions:

- recommending/appointing the executive team
- developing the company's strategy for approval by the board
- developing and recommending to the board yearly business plans
- monitoring and reporting to the board on the performance of the company
- establishing and organizational structure for the company
- setting the tone for providing ethical leadership
- ensuring that the company complies with relevant laws
- ensuring that the company applies all recommended best practices

Why should the CEO not also be chairman of the board

- to prevent too much power vesting in one person
- the CEO already has a strategic and operational role
- the CEO is an executive director, the chairman can't be an executive director

The composition and functions of the audit committee:

Audit Committee

Chairman	- Independent, non-executive director - Should not be the same as chairman of the board
Membership	- All member should be independent, non-executive directors
Members	- Minimum of three members
Meetings	- Meet at least twice a year - Should meet with internal + external auditors at least once a year without presence of management
Functions	- should oversee integrated reporting - should ensure that combined assurance model is applied - should be satisfied with expertise, resources and experience of finance function - should oversee internal audit - should be integrated component of risk management process - should recommend external auditor and oversee process - should report to board and shareholders how it performed its duties

The board's responsibility for risk governance

- The board should be responsible for the governance of risk
- The board should determine the levels of risk tolerance
- The risk committee/audit committee should assist the board in carrying out its risk responsibilities
- The board should delegate to management to design and implement the risk management plan
- The board should ensure that risk assessments are performed continually
- The board should ensure that frameworks are in place to increase the probability of anticipating unpredictable risks
- The board should ensure that management implements appropriate risk responses
- The board should ensure continual risk monitoring by management
- The board should receive assurance regarding the effectiveness of the risk management process
- The board should ensure that there are procedures in place to enable complete and relevant risk disclosure to stakeholders

Who is responsible for what:

What	Who
Governance of risk	The board
Design, implementing and monitoring the risk assessment plan	The board should delegate to management
Monitor the risk management process	The board, risk committee, audit committee
Performing an objective assessment of the effectiveness of risk management	Internal audit

Explain the responsibility of management and the CEO in the risk management process:

The board's risk strategy should be executed by management. Management must design and implement the risk assessment process. The board should provide management with the support it needs in order to do this. The CEO remains accountable to the board for the execution of the risk assessment process. The CEO may appoint a chief risk officer, who must have access to and interact with strategic risk matters. The board should be sure that nothing prejudices the decision making in risk management. (Remuneration etc)

The governance of Information Technology

- The board should be responsible for IT governance
- The board should ensure that IT is aligned with the performance of the company
- The board should delegate to management the responsibility for the implementation of an IT governance framework
- The board should monitor and evaluate significant IT investments and expenditures
- IT should form an integral part of the company's risk management
- The board should ensure that information assets are managed effectively
- The risk and audit committee should assist the board in carrying out its IT responsibilities

Explain the role that IT plays in the company's risk management

IT should form part of the company's risk management activities. When considering whether the company complies with all applicable laws, IT related laws should also be considered. The board should also consider how IT can be used to help the company in managing of risks and compliance with laws. The risk committee should always ensure that IT risks are adequately addressed in risk management. Areas of the company that rely more on the use of IT are more exposed to risks. IT should be more the responsibility of the audit committee, the risk committee should be more concerned with the overall risk. The audit committee should also consider the use of IT to improve audit efficiency.

Compliance with laws, rules, codes and standards

- The board should ensure that the company complies with all the applicable laws
- The board and each director should have a working understanding of the effect of applicable laws
- Compliance risk should form an important part of the risk management process
- The board should delegate to management the implementation of an effective compliance framework

Functions of the board with regard to compliance with the laws, rules, codes and standards

- The board should consider adherence to applicable non-binding rules, and disclose this in the integrated report
- The board is responsible for the company's compliance with applicable laws etc
- The board should identify the laws and rules applicable to the company
- The board should stay continually informed on the laws, rules etc

Functions of management with regard to compliance with the laws, rules, codes etc

- Management should develop a compliance policy which the board must approve
- They should align the compliance policy with other efforts to avoid duplication of effort

Functions of compliance officer with regard to compliance with the laws, rules, codes etc

- Should be a suitably experienced person
- Must have access to and integrate regularly with strategic compliance matters
- should have enough resources to delegate responsibilities
- care should be exercised when the compliance officer acts in capacity other than former that no law or privilege is compromised

The need for and role of internal audit

- board should ensure that there is an effective risk based internal audit
- internal audit should follow a risk based approach to its plan
- internal audit should provide a written report about effectiveness of internal control
- audit committee should be responsible for oversight of internal audit
- internal audit should be strategic to achieve its goals

Explain what the term "risk based audit approach" means:

It places emphasis on internal audit understanding the risks associated with the strategic direction of the company and determining whether internal controls and procedures adequately address these risks.

Governance stakeholder relationships

- the board should appreciate the fact that stakeholders' views on the company affects its reputation
- the company should actively manage its relationships with its stakeholders
- the board should strive to achieve balance between its various stakeholder groupings
- companies should ensure the equitable treatment of stakeholders
- transparent and effective communication with stakeholders is important for building trust
- the board should ensure that disputes are resolved effectively and efficiently

Define the term "stakeholder" according to the King III report:

Any group that can affect the company's operations, or be affected by the company's operations. This includes: investors, creditors, debtors, shareholders, consumers, society in general etc.

Integrated reporting and disclosure:

- the board should ensure the integrity of the company's integrated report
- sustainability reporting and disclosure should be integrated with the company's financial reporting
- sustainability reporting and disclosure should be independently assured

Note:

- the King III's integrated reporting is referred to as "triple bottom line" reporting
- **Triple Bottom Line:** Company should report on its performance with regard to **economic**, **social** and **environmental** issues.

Sarbanes-Oxley Act

- sets a number on non-negotiable deadlines for all US public company boards, management and public accounting firms
- top management must individually certify the accuracy of information
- penalties for fraudulent activities are much more severe

What is the main purpose of the Sarbanes-Oxley Act (SOX)

To protect shareholders from fraudulent representations in corporate financial statements. Investors need to know that the financial they rely on is truthful, and that it was verified by and independent third party.