

BNG5111P – Business Management

Corporate Governance



Short Overview – Justin Venables

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Definition

Governance

- From the Greek to “Steer”
- To Govern or Control

Corporate Governance

- The system by which business organisations are managed and controlled
- The leadership of an organisation

Corporate Governance

Governance Issues

- In 1494 the Medici Bank in Italy went bust because of Governance issues
- Since then there were many others, but in the past 15 years we have seen a large number of highly publicised Governance & Accounting Scandals.

Lehman Brothers

Enron

Kmart

One.Tel

Chiquita Brands International

Dynegy

Parmalat

AIG

Nortel

Anglo Irish Bank

Corporate Governance Laws and Regulations

- KING III Report on Corporate Governance
- Companies Act
- POPI
- Consumer Protection Act
- Sarbanes-Oxley (SOX)

All Corporates need to be more proactive in preventing conflict of interest, the appearance of conflict of interest, wrongful acts, abuse and errors.

Secondly is the detection of control failures that include security breaches, information theft, and circumvention of internal controls.

Corporate Governance

King III

- King III requires corporate institutions to '**apply or explain**' – Code of governance principles for corporate institutions (not only companies)
 - King II provided for 'comply or explain'
 - King III does not follow the Sarbanes-Oxley approach of 'comply or else'
 - Directors need to **apply** the best practice principles, or **explain** to shareholders why they opted not to
 - 'Must' and 'Should'

Corporate Governance

King III

King III provides guidance to all corporate entities on various governance related aspects, including different **chapters** on:

- Ethical leadership and corporate citizenship **(3 Principles)**
- Boards and directors **(27)**
- Audit committees **(10)**
- The governance of risk **(10)**
- The governance of information technology (IT) **(7)**
- Compliance with laws, rules, codes and standards **(4)**
- Internal audit **(5)**
- Governing stakeholder relationships **(6)**
- Integrated reporting and disclosure **(3)**

Corporate Governance

King III

- King III is based on a set of primary principles:
 - Discipline
 - Transparency
 - Interdependence
 - Accountability
 - Responsibility
 - Fairness
 - Social Responsibility

Corporate Governance Leadership

Governance element	Principle(s)	Recommended Practice
1. Ethical leadership and corporate citizenship		
Responsible leadership	1.1 The board should provide effective leadership based on an ethical foundation	Ethical leaders should: <ul style="list-style-type: none"> 1.1.1. direct the strategy and operations to build a sustainable business; 1.1.2. consider the short- and long-term impacts of the strategy on the economy, society and the environment; 1.1.3. do business ethically; 1.1.4. do not compromise the natural environment; and 1.1.5. take account of the company's impact on internal and external stakeholders.

Corporate Governance

Directors

Roles and Responsibilities

- The Chairman of the Board
 - Responsible for running the Board
- The Board of Directors
 - Fiduciary responsibility to run the organisation in the best interests of its stakeholders
- Executive and Non-Executive Directors
 - Executive members form part of the management team, non-executives are separated and independent from management
- The Chief Executive Officer
 - Responsible for running the organisation

Corporate Governance

Directors

- Companies Act codifies **standard of directors' conduct** (Section 76)

A person, acting in the capacity of director, must exercise his powers and perform his functions:

- in good faith and for a proper purpose
- in the best interest of the company and
- with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions and having the general knowledge, skill and experience of that director

- **Business judgment rule** codified

A director will not be liable if he:

- Took reasonable steps to become informed about the matter
- Declared any conflict of interest and
- Believes that the decision was in the best interests of the company

- **Personal liability** for directors if the standard of conduct is not met