

## King's Counsel\*

King III and related legislative requirements

# Steering point

### Full-text version

Contains the full-text of relevant provisions of applicable legislation.

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‘There is always a link between good governance and compliance with law. Good governance is not something that exists separately from the law and it is entirely inappropriate to unhinge governance from law.’

– King Report on Governance for South Africa 2009

The King Committee on governance issued the King Report on Governance for South Africa – 2009 (the ‘Report’) and the King Code of Governance Principles – 2009 (the ‘Code’), together referred to as ‘King III’, on 1 September 2009.

King III was drafted on the premise that governance matters that had been legislated were accepted as a minimum baseline. To distinguish between legislated and non-legislated recommendations, the following drafting convention was used in the Report:

- Legal requirements are indicated by the word ‘must’;
- In aspects where the King Committee believed the application of the Code will result in good governance, the word ‘should’ is used, and
- The word ‘may’ indicates areas where the King Committee recommends certain practices for consideration.

In this edition of *Steering Point*, we examine all paragraphs in the Report that indicate legislated requirements (in other words, the ‘musts’) or where reference is otherwise made in the Report to an Act of Parliament, and have linked these paragraphs to the related legislation and to the most prevalent relevant sections and subsections thereof.

Please note:

- Extracts from the Report show the paragraph numbering as per the Report.
- The Companies Act, 2008, is currently undergoing a process of rectification. Companies Act, 2008 references in this document were extracted from the Companies Act, 2008 as at 8 April 2009. The effective date of the Companies Act, 2008 is still to be Gazetted.
- Draft regulations to the Companies Act, 2008 were gazetted for public comment on 22 December 2009. This document excludes the draft regulations.
- References in this publication to the JSE Limited Listings Requirements are to the JSE Limited Listings Requirements as amended in February 2010.
- This document is not intended to be a checklist for all legislated governance matters that any particular entity must comply with. Every entity is required to comply with all legislation applicable to it, for which the primary source would be the legislation itself, not the King Report or this examination thereof.

| Extract from the Report   | Relevant legislation | Most prevalent relevant section(s)   |
|---|----------------------|--|
| <b>Chapter 1 Ethical leadership and corporate citizenship</b>   |                      |  |
| <b>The board's responsibilities</b>   |                      |  |
| <p>9. The board is responsible to ensure that <i>integrity permeates</i> all aspects of the company and its operations and that the company's vision, mission and objectives are ethically sound. The manner in which the company conducts its internal and external affairs should be beyond reproach. An ethical corporate culture is more than social philanthropy or charitable donations. Certain categories of companies may be required to establish a social and ethics committee in terms of section 72(4) of the Act.</p> | Companies Act, 2008  | <p><b>72. Board committees</b></p> <p>(4) The Minister may by regulation prescribe that a company or a category of companies must have a social and ethics committee, if it is desirable in the public interest, having regard to—</p> <ul style="list-style-type: none"> <li>(a) its annual turnover;</li> <li>(b) the size of its workforce; or</li> <li>(c) the nature and extent of its activities.</li> </ul>   |
| <b>Ethical foundation</b>   |                      |  |
| <p>15. As a steward of the company, each director should also discharge the following <i>five moral duties</i>:</p> <p>15.2 <i>Inclusivity</i> of stakeholders is essential to achieving sustainability and the legitimate interests and expectations of stakeholders must be taken into account in decision-making and strategy.</p>   | Companies Act, 2008  | <p><b>76. Standards of directors conduct</b></p> <p>(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—</p> <ul style="list-style-type: none"> <li>(a) in good faith and for a proper purpose;</li> <li>(b) in the best interests of the company; and</li> <li>(c) with the degree of care, skill and diligence that may reasonably be expected of a person— <ul style="list-style-type: none"> <li>(i) carrying out the same functions in relation to the company as those carried out by that director; and</li> <li>(ii) having the general knowledge, skill and experience of that director.</li> </ul> </li> </ul> |

| Extract from the Report   | Relevant legislation                                      | Most prevalent relevant section(s)  |
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| <p>23. In South Africa, the Bill of Rights as provided for in the Constitution has brought about a significant shift in society's moral perception of companies. The notion of creating a structure that can pursue profit at the expense of human rights is legally untenable in South Africa. Companies are social entities with both rights and responsibilities, and as such, the Bill of Rights applies to them in a manner that goes beyond mere financial considerations. The responsibilities outlined in the Bill of Rights provide the framework within which companies must legally operate. The foundational values of dignity, freedom and equality should guide the company in its interaction with every stakeholder. The specific rights contained in the Bill of Rights provide important guidance to companies for the sustainability of their strategies and operations.</p> | <p>Constitution of the Republic of South Africa, 1996</p> | <p><b>7. Rights</b></p> <p>(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.</p> <p>(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.</p> <p>(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.</p> <p><b>8. Application</b></p> <p>(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.</p> <p>(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.</p> <p>(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court</p> <p>(a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and</p> <p>(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).</p> <p>(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.</p> |

| Extract from the Report  | Relevant legislation | Most prevalent relevant section(s)  |
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| Chapter 2 Boards and directors   |                      |   |
| Role and function of the board   |                      |   |
| <p>14. The board must always act in the best interests of the company. In terms of our common law, as developed through jurisprudence, the best interests of the company has been interpreted to equate to the best interests of the body of shareholders. The Act states that its purpose is to promote compliance with the Bill of Rights as provided for in the Constitution. This purpose, as stated, constitutes a departure from the traditional narrow interpretation of the best interests of the company.</p> | Companies Act, 2008  | <p><b>7. Purposes of Act</b></p> <p>The purposes of this Act are to—</p> <p>(a) promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law;</p> <p><b>76. Standards of directors conduct</b></p> <p>3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—</p> <p>(b) in the best interests of the company;</p> |

| Extract from the Report  | Relevant legislation       | Most prevalent relevant section(s)   |
|--|----------------------------|--|
| <p>17. Directors of companies are appointed in terms of the constitution of the company and in terms of the Act. Each director of a company has:</p> <p>17.1 a duty to exercise the degree of care, skill and diligence that would be exercised by a reasonably diligent individual who has:</p> <p>17.1.1 the general knowledge, skill and experience that may reasonably be expected of an individual carrying out the same functions as are carried out by a director in relation to the company; and</p> <p>17.1.2 the general knowledge, skill and experience of that director; and</p> <p>17.2 a fiduciary duty to act in good faith and in a manner that the director reasonably believes to be in the best interests of the company.</p> | <p>Companies Act, 2008</p> | <p><b>66. Board, directors and prescribed officers</b></p> <p>(1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.</p> <p><b>76. Standards of directors conduct</b></p> <p>(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—</p> <p>(a) in good faith and for a proper purpose;</p> <p>(b) in the best interests of the company; and</p> <p>(c) with the degree of care, skill and diligence that may reasonably be expected of a person—</p> <p>(i) carrying out the same functions in relation to the company as those carried out by that director; and</p> <p>(ii) having the general knowledge, skill and experience of that director.</p> |
| <p>24. Any director who is appointed to the board as the representative of a party with a substantial interest in the company, such as a major shareholder or a substantial creditor, should recognise the potential for conflict. However, that director must understand that the duty to act in the best interests of the company remains paramount.</p>   | <p>Companies Act, 2008</p> | <p><b>76. Standards of directors conduct</b></p> <p>(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—</p> <p>(b) in the best interests of the company;</p>  |

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| <p>26. Every listed company should have a policy of prohibiting dealing in its securities by directors, officers and other selected employees for a specified period before the announcement of its financial results or in any other period considered sensitive. The company must comply with the listing requirements of the JSE on dealings by directors of listed companies.</p> | <p>JSE Limited Listings Requirements<sup>1</sup></p> | <p><b>Compliance with the Listings Requirements</b></p> <p>3.1 Every issuer whose securities are listed shall comply with the Listings Requirements.</p> <p><b>Dealing in Securities</b></p> <p>3.63 An issuer, via its sponsor, must announce the following information:</p> <p>(a) details of all transactions (including off market transactions) in securities relating to the issuer by or on behalf of:</p> <p>(i) a director and company secretary (held beneficially, whether directly or indirectly) of the issuer;</p> <p>(ii) a director and company secretary (held beneficially whether directly or indirectly) of a major subsidiary company of the issuer; or</p> <p>(iii) any associate of 3.63(a)(i) or (ii) above (collectively referred to for purposes of paragraphs 3.63 to 3.70 as “directors”).</p> <p>(b) such announcement shall contain the following information:</p> <p>(i) the name of the director;</p> <p>(ii) the name of the company of which he/she is a director;</p> <p>(iii) the date on which the transaction was effected;</p> |

<sup>1</sup> 3.63 amended with effect from 1 April 2010.

3.63(a)(i) amended with effect from 15 October 2007 and with effect 15 October 2008.

3.63(a)(ii) amended with effect from 15 October 2007 and with effect 15 October 2008.

| Extract from the Report | Relevant legislation                                 | Most prevalent relevant section(s)   |
|-------------------------|--|--|
|                         | <p>JSE Limited Listings Requirements (continued)</p> | <ul style="list-style-type: none"> <li>(iv) the price, number, total value and class of securities concerned. A deemed value based on the prevailing market price must be included in situations where there is no price attributable to the transaction (e.g. donations). Aggregation and averaging of prices is not allowed and therefore, in instances where there have been various trades at various prices during the course of a day, the volume weighted average price must be shown together with the highest and lowest trading prices for the day;</li> <li>(v) in the case of options or any other similar right or obligation, the option strike price, strike dates and periods of exercise and/or vesting;</li> <li>(vi) the nature of the transaction;</li> <li>(vii) the nature and the extent of the director's interest in the transaction. In the case of dealings by associates it must disclose the name of the associate and the relationship with the director;</li> <li>(viii) confirmation as to whether the trades were done on-market or off-market; and</li> <li>(ix) whether clearance has been given in terms of paragraph 3.66. In the case of dealings by associates, this requirement does not apply.</li> </ul> |

| Extract from the Report | Relevant legislation   | Most prevalent relevant section(s)  |
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|                         | <p>JSE Limited Listings Requirements<sup>1</sup><br/>(continued)</p> | <p>3.64 Transaction includes:</p> <ul style="list-style-type: none"> <li>(a) any sale, purchase or subscription (including in terms of a rights offer, capitalisation award or scrip dividend) of securities relating to the issuer;</li> <li>(b) any agreement to sell, purchase or subscribe for securities relating to the issuer (irrespective of whether shares or cash flows);</li> <li>(c) any donations of securities relating to the issuer;</li> <li>(d) any dealing in warrants, single stock futures, contracts for difference or any other derivatives issued in respect of the issuer's securities. It should be noted that, if shares are sold and the equivalent exposure is purchased through a single stock future or any other derivative, both legs will be deemed to be transactions. The closing out of a single stock future or other derivative is also a transaction. The rolling-over of a single stock future that is merely an extension of an existing position is not a transaction;</li> <li>(e) the acceptance, acquisition, disposal, or exercise of any option (including but not limited to options in terms of a share incentive/ option scheme) to acquire or dispose of securities;</li> <li>(f) any purchase or sale of nil or fully paid letters;</li> <li>(g) the acceptance, acquisition or disposal of any right or obligation, present or future, conditional or unconditional, to acquire or dispose of securities; or</li> <li>(h) any other transaction that will provide direct or indirect exposure to the share price of the issuer. It must be noted that this does not include cash settled share appreciation rights granted to directors by the issuer in the ordinary course of business.</li> </ul> |

<sup>1</sup>3.64 amended with effect from 15 October 2007 and with effect 1 April 2010.

| Extract from the Report | Relevant legislation   | Most prevalent relevant section(s)   |
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|                         | <p>JSE Limited Listings Requirements<sup>1</sup><br/>(continued)</p> | <p>3.65 Directors are required to disclose to the issuer all information that the issuer needs to comply with paragraph 3.63. The issuer shall also advise each of its directors of their obligations to disclose to it all information that the issuer needs in order to comply with paragraph 3.63. Any director who deals in securities relating to the issuer is required to disclose the information required by paragraph 3.63 to the issuer without delay, and in any event by no later than 24 hours after dealing. The issuer must in turn announce such information without delay and in any event by no later than 24 hours after receipt of such information from the director concerned.</p> <p>3.66 A director (excluding any of his/her associates) may not deal in any securities relating to the issuer without first advising the chairman (or one or more other appropriate directors designated for this purpose) in advance and after receiving clearance from same. In his/her own case, the chairman, or other designated director, must advise the board in advance, or advise another designated director, and receive clearance from the board or designated director, as appropriate. The JSE may waive this requirement in situations where the director has no discretion in the transaction. The JSE must be consulted for a ruling in these cases and if a waiver is granted the announcement must clearly explain the reasons why the director had no discretion.</p> <p><b>Circumstances for refusal</b></p> <p>3.67 A director must not be given clearance (as required by paragraph 3.66) to deal in any securities relating to the issuer during a prohibited period. A “prohibited period” means:</p> <p>(a) a closed period;</p> |

<sup>1</sup>3.66 amended with effect from 1 April 2010.

| Extract from the Report | Relevant legislation   | Most prevalent relevant section(s)  |
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|                         | <p>JSE Limited Listings Requirements<sup>1</sup><br/>(continued)</p> | <p>(b) any period when there exists any matter, which constitutes unpublished price sensitive information in relation to the issuer's securities (whether or not the director has knowledge of such matter).</p> <p>3.68 A written record must be maintained by the issuer of the receipt of any advice received from a director pursuant to paragraph 3.66 and of any clearance given. Written confirmation from the issuer that such advice and clearance, if any, have been recorded must be given to the director concerned.</p> <p><b>Dealing in prohibited periods</b></p> <p>3.69 A director may not deal in any securities relating to the issuer</p> <p>(a) during a closed period as defined; and</p> <p>(b) at any time when he/she is in possession of unpublished price sensitive information in relation to those securities, or otherwise where clearance to deal is not given in terms of paragraph 3.66.</p> <p>3.70 The JSE may waive compliance with paragraph 3.69 in situations where the director has no discretion in the transaction. The JSE must be consulted for a ruling in these cases and if a waiver is granted the announcement must clearly explain the reasons why the director had no discretion.</p> <p><b>Dealings by associates of directors and investment managers</b></p> <p>3.71 A director must advise the following parties of the name(s) of the issuer(s) of which he/she is a director:</p> <p>(a) any associate of his/hers; and/or</p> |

<sup>1</sup>3.69 amended with effect from 1 April 2010.  
3.70 amended with effect from 1 April 2010.  
3.71 amended with effect from 1 April 2010.

| Extract from the Report   | Relevant legislation  | Most prevalent relevant section(s)   |
|---|---|--|
|   | JSE Limited Listings Requirements <sup>1</sup><br>(continued) | <p>(b) any investment manager dealing on his/her behalf or on behalf of any person associated with him/her where either he/she or any person associated with him/her has funds under management with that investment manager, whether or not on a discretionary basis.</p> <p>3.72 A director must advise all of his/her associates in writing that they must notify him/her immediately after they have dealt in securities relating to the issuer(s) in order for him/her to comply with paragraph 3.65.</p> <p>3.73 A director must advise his/her investment manager in writing that they may not deal in any securities relating to issuer(s) of which he/she is a director unless they obtain his/her express consent in writing.</p> <p>3.74 Paragraphs 3.63 to 3.73 do not override the provisions of SSA and should not be construed as additional defences or exclusions from having to comply with SSA. Issuers may impose more rigorous restrictions upon dealings by directors if they so wish, or if it is appropriate in certain circumstances.</p> |
| Principle 2.15: The board should consider business rescue proceedings or other turnaround mechanisms as soon as the company is financially distressed as defined in the Act | Companies Act, 2008   | <p><b>128. Application and definitions applicable to Chapter</b></p> <p>(1) In this Chapter –</p> <p>(f) “<b>financially distressed</b>”, in reference to a particular company at any particular time, means that –</p> <p>(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months; or</p> <p>(ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months;</p>  |

<sup>1</sup> 3.71 amended with effect from 1 April 2010.  
3.72 amended with effect from 1 April 2010.  
3.73 amended with effect from 1 April 2010.  
3.74 amended with effect from 15 October 2007.

| Extract from the Report   | Relevant legislation       | Most prevalent relevant section(s)  |
|---|----------------------------|---|
| <p>27. The company’s board must on a continuous basis monitor:</p> <p>27.1 whether the company is able to pay all of its debts as they fall due and payable, and is solvent; and</p> <p>27.2 whether the company is financially distressed i.e. if it appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months, or it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months.</p> | <p>Companies Act, 2008</p> | <p><b>22. Reckless trading prohibited</b></p> <p>(1) A company must not—</p> <p>(a) carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose; or</p> <p>(b) trade under insolvent circumstances.</p> <p>(2) If the Commission has reasonable grounds to believe that a company is engaging in conduct prohibited by subsection (1), the Commission may issue a notice to the company to show cause why the company should be permitted to continue carrying on its business, or to trade, as the case may be.</p> <p>(3) If a company to whom a notice has been issued in terms of subsection (2) fails within 20 business days to satisfy the Commission that it is not engaging in conduct prohibited by subsection (1), the Commission may issue a compliance notice to the company requiring it to cease carrying on its business or trading, as the case may be.</p> <p><b>128. Application and definitions applicable to Chapter</b></p> <p>(1) In this Chapter—</p> <p>(f) “<b>financially distressed</b>”, in reference to a particular company at any particular time, means that—</p> <p>(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months; or</p> <p>(ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months;</p> |

| Extract from the Report   | Relevant legislation            | Most prevalent relevant section(s)   |
|---|---------------------------------|--|
|   | Companies Act, 2008 (continued) | <p><b>129. Company resolution to begin business rescue proceedings</b></p> <p>(1) Subject to subsection (2)(a), the board of a company may resolve that the company voluntarily begin business rescue proceedings and place the company under supervision, if the board has reasonable grounds to believe that—</p> <ul style="list-style-type: none"> <li>(a) the company is financially distressed; and</li> <li>(b) there appears to be a reasonable prospect of rescuing the company.</li> </ul> <p>(2) A resolution contemplated in subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) may not be adopted if liquidation proceedings have been initiated by or against the company; and</li> <li>(b) has no force or effect until it has been filed.</li> </ul> |
| <p>30. If it appears reasonably likely that the company is in financial distress despite the actions listed in 28 above to avoid or overcome financial distress, the board must ensure that the company stops trading and lodge an application to put the company in liquidation.</p> | Companies Act, 2008             | <p><b>22. Reckless trading prohibited</b></p> <p>(1) A company must not—</p> <ul style="list-style-type: none"> <li>(a) carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose; or</li> <li>(b) trade under insolvent circumstances.</li> </ul> <p>(2) If the Commission has reasonable grounds to believe that a company is engaging in conduct prohibited by subsection (1), the Commission may issue a notice to the company to show cause why the company should be permitted to continue carrying on its business, or to trade, as the case may be.</p>   |

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|                         | Companies Act, 2008 (continued) | <p>(3) If a company to whom a notice has been issued in terms of subsection (2) fails within 20 business days to satisfy the Commission that it is not engaging in conduct prohibited by subsection (1), the Commission may issue a compliance notice to the company requiring it to cease carrying on its business or trading, as the case may be.</p> <p><b>128. Application and definitions applicable to Chapter</b></p> <p>(1) In this Chapter—</p> <p>(f) “<b>financially distressed</b>”, in reference to a particular company at any particular time, means that—</p> <p>(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months; or</p> <p>(ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months;</p> <p><b>129. Company resolution to begin business rescue proceedings</b></p> <p>(1) Subject to subsection (2)(a), the board of a company may resolve that the company voluntarily begin business rescue proceedings and place the company under supervision, if the board has reasonable grounds to believe that—</p> <p>(a) the company is financially distressed; and</p> <p>(b) there appears to be a reasonable prospect of rescuing the company.</p> <p>(2) A resolution contemplated in subsection (1)—</p> <p>(a) may not be adopted if liquidation proceedings have been initiated by or against the company; and</p> <p>(b) has no force or effect until it has been filed.</p> |

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|---|----------------------------|---|
| <p>31. In all situations, having considered possible action to avoid or overcome financial distress, if applicable, if the board has reasonable grounds to believe that the company is financially distressed, but the board has not placed the company under business rescue, the board must send a written notice to affected persons setting out the nature of financial distress, and the board's reason for not placing the company under supervision.</p> | <p>Companies Act, 2008</p> | <p><b>128. Application and definitions applicable to Chapter</b></p> <p>(1) In this Chapter—</p> <p>(a) <b>“affected person”</b>, in relation to a company, means—</p> <ul style="list-style-type: none"> <li>(i) a shareholder or creditor of the company;</li> <li>(ii) any registered trade union representing employees of the company; and</li> <li>(iii) if any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives;</li> </ul> <p>(b) <b>“business rescue”</b> means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for—</p> <ul style="list-style-type: none"> <li>(i) the temporary supervision of the company, and of the management of its affairs, business and property;</li> <li>(ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and</li> <li>(iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company;</li> </ul> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
|-------------------------|---------------------------------|---|
|                         | Companies Act, 2008 (continued) | <p>(f) <b>“financially distressed”</b>, in reference to a particular company at any particular time, means that—</p> <ul style="list-style-type: none"> <li>(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months; or</li> <li>(ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months;</li> </ul> <p><b>129. Company resolution to begin business rescue proceedings</b></p> <p>(7) If the board of a company has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution contemplated in this section, the board must deliver a written notice to each affected person, setting out the criteria referred to in section 128(1)(e) that are applicable to the company, and its reasons for not adopting a resolution contemplated in this section.</p> |

| Extract from the Report   | Relevant legislation       | Most prevalent relevant section(s)  |
|---|----------------------------|---|
| <p>32. The board must ensure that the company maintains a list of contact details of all effected persons for purposes of notifying affected persons when required, thereby inter alia avoiding voluntary commencement of business rescue to be challenged on procedural grounds.</p> | <p>Companies Act, 2008</p> | <p><b>128. Application and definitions applicable to Chapter</b></p> <p>(1) In this Chapter—</p> <p>(a) “<b>affected person</b>”, in relation to a company, means—</p> <p>(i) a shareholder or creditor of the company;</p> <p>(ii) any registered trade union representing employees of the company; and</p> <p>(iii) if any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives;</p> <p><b>129. Company resolution to begin business rescue proceedings</b></p> <p>(3) Within five business days after a company has adopted and filed a resolution, as contemplated in subsection (1), or such longer time as the Commission, on application by the company, may allow, the company must—</p> <p>(a) publish a notice of the resolution, and its effective date, in the prescribed manner to every affected person, including with the notice a sworn statement of the facts relevant to the grounds on which the board resolution was founded; and</p> <p>(b) appoint a business rescue practitioner who satisfies the requirements of section 138, and who has consented in writing to accept the appointment.</p> <p>(4) After appointing a practitioner as required by subsection (3)(b), a company must—</p> <p>(a) file a notice of the appointment of a practitioner within two business days after making the appointment; and</p> <p>(b) publish a copy of the notice of appointment to each affected person within five business days after the notice was filed.</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
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|                         | Companies Act, 2008 (continued) | <p>(5) If a company fails to comply with any provision of subsection (3) or (4)—</p> <p>(a) its resolution to begin business rescue proceedings and place the company under supervision lapses and is a nullity; and</p> <p>(b) the company may not file a further resolution contemplated in subsection (1) for a period of three months after the date on which the lapsed resolution was adopted, unless a court, on good cause shown on an <i>ex parte</i> application, approves the company filing a further resolution.</p> <p>(6) A company that has adopted a resolution contemplated in this section may not adopt a resolution to begin liquidation proceedings, unless the resolution has lapsed in terms of subsection (5), or until the business rescue proceedings have ended as determined in accordance with section 132(2).</p> |

| Extract from the Report  | Relevant legislation       | Most prevalent relevant section(s)   |
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| <p>34. The board must appoint a suitably qualified and independent business rescue practitioner. It is recommended that directors do not appoint a business rescue practitioner that is seen to be ‘friendly’ to their cause or to avoid the credibility of the business rescue plan prepared by the practitioner.</p> | <p>Companies Act, 2008</p> | <p><b>128. Application and definitions applicable to Chapter</b></p> <p>(1) In this Chapter—</p> <p>(c) “<b>business rescue plan</b>” means a plan contemplated in section 150;</p> <p>(d) “<b>business rescue practitioner</b>” means a person appointed, or two or more persons appointed jointly, in terms of this Chapter to oversee a company during business rescue proceedings and ‘practitioner’ has a corresponding meaning;</p> <p><b>129. Company resolution to begin business rescue proceedings</b></p> <p>(3) Within five business days after a company has adopted and filed a resolution, as contemplated in subsection (1), or such longer time as the Commission, on application by the company, may allow, the company must—</p> <p>(b) appoint a business rescue practitioner who satisfies the requirements of section 138, and who has consented in writing to accept the appointment.</p> <p><b>138. Qualifications of practitioners</b></p> <p>(1) A person may be appointed as the practitioner of a company only if the person—</p> <p>(a) is a member in good standing of a profession subject to regulation by a regulatory authority prescribed by the Minister in terms of subsection (2);</p> <p>(b) is not subject to an order of probation in terms of section 162(7);</p> <p>(c) would not be disqualified from acting as a director of the company in terms of section 69(8);</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
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|                         | Companies Act, 2008 (continued) | <p>(d) does not have any other relationship with the company such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship; and</p> <p>(e) is not related to a person who has a relationship contemplated in paragraph (d).</p> <p>(2) The Minister may designate one person or association within the Republic to regulate the practice of persons as practitioners in terms of this Act, if that person or association—</p> <p>(a) is committed to achieving the purposes of this Chapter;</p> <p>(b) functions predominantly to promote sound principles and good practice of business turnaround or rescue; and</p> <p>(c) has sufficient human, financial and operational resources, and adequate administrative procedures and safeguards, to enable it to function efficiently and to effectively carry out its functions in terms of this Chapter, or presents to the Minister a credible plan to acquire or develop those resources.</p> <p>(3) The Minister may—</p> <p>(a) impose reasonable conditions upon a person or association designated by the Minister in terms of subsection (2) with respect to the carrying out of its functions and powers in terms of this Chapter; and</p> <p>(b) make regulations prescribing—</p> <p>(i) minimum qualifications for admission of a person to the practice of a business rescue practitioner; and</p> <p>(ii) procedures to be followed by a person or association designated by the Minister in terms of subsection (2) in carrying out its functions and powers in terms of this Chapter</p> |

| Extract from the Report  | Relevant legislation       | Most prevalent relevant section(s)   |
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| <p>40. The chairman’s role and functions should be formalised. These will be influenced by matters such as the lifecycle or circumstances of the company, the complexity of the company’s operations, the qualities of the CEO and the management team, as well as the skills and experience of each board member. Core functions performed by the chairman should include the following:</p> <p>40.6 managing conflicts of interest. It is not sufficient merely to table a register of interests. All internal and external legal requirements must be met. The chairman must ask affected directors to recuse themselves from discussions and decisions in which they have a conflict, unless they are requested to provide specific input, in which event they should not be party to the decision. See section 75 of the Act;</p> | <p>Companies Act, 2008</p> | <p><b>75. Director’s personal financial interests</b></p> <p>(5) If a director of a company, other than a company contemplated in subsection (2)(b) or (3), has a personal financial interest in respect of a matter to be considered at a meeting of the board, or knows that a related person has a personal financial interest in the matter, the director—</p> <ul style="list-style-type: none"> <li>(a) must disclose the interest and its general nature before the matter is considered at the meeting;</li> <li>(b) must disclose to the meeting any material information relating to the matter, and known to the director;</li> <li>(c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;</li> <li>(d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c);</li> <li>(e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c);</li> <li>(f) while absent from the meeting in terms of this subsection— <ul style="list-style-type: none"> <li>(i) is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors are present to constitute the meeting; and</li> <li>(ii) is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and</li> </ul> </li> </ul> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
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|                         | Companies Act, 2008 (continued) | <p>(g) must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the board.</p> <p>(6) If a director of a company acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the company, the director must promptly disclose to the board, or to the shareholders in the case of a company contemplated in subsection (3), the nature and extent of that interest, and the material circumstances relating to the director or related person's acquisition of that interest.</p> <p>(7) A decision by the board, or a transaction or agreement approved by the board, or by a company as contemplated in subsection (3), is valid despite any personal financial interest of a director or person related to the director, if it—</p> <p>(a) was approved in the manner contemplated in this section; or</p> <p>(b) has been ratified by an ordinary resolution of the shareholders.</p> <p>(8) A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the board, or shareholders as the case may be, despite the failure of the director to satisfy the requirements of this section.</p> |

| Extract from the Report   | Relevant legislation                                 | Most prevalent relevant section(s)  |
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| <b>Composition of the board</b>   |  |   |
| <p>73. As a minimum, two executive directors should be appointed to the board, being the chief executive officer (CEO) and the director responsible for the finance function. This will ensure that there is more than one point of contact between the board and the management. From June 2009, listed companies must appoint a financial director to the board.</p>  | <p>JSE Limited Listings Requirements<sup>1</sup></p> | <p><b>Corporate Governance</b></p> <p>3.84 In addition to complying with paragraph 8.63(a), issuers must comply with the following specific requirements concerning corporate governance and must disclose their compliance therewith in their annual report:</p> <p>(h) all issuers must have an executive financial director. The JSE may, at its discretion, when requested to do so by the issuer, and due to the existence of special circumstances allow the financial director to be employed on a part time basis only. This request must be accompanied by a detailed motivation by the issuer and the audit committee.</p>  |
| <b>Board appointment processes</b>  |  |   |
| <p>82. Prior to their appointment, the directors' backgrounds should be investigated along the lines of the approach required for listed companies by the JSE. It is also important to ensure that new directors have not been declared delinquent nor are serving probation (section 162 of the Act). The nomination committee should play a role in this process.</p> | <p>Companies Act, 2008</p>                           | <p><b>162. Application to declare director delinquent or under probation</b></p> <p>(1) In this section, "legislation" means any national or provincial legislation—</p> <p>(a) relating to the promotion, formation or management of a juristic person;</p> <p>(b) regulating an industry or sector of an industry; or</p> <p>(c) imposing obligations on, prohibiting any conduct by, or otherwise regulating the activities of, a juristic person.</p> <p>(2) A company, a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to a court for an order declaring a person delinquent or under probation if—</p> |

<sup>1</sup>3.84(h) introduced with effect from 1 September 2008 and amended with effect from 1 April 2010.

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
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|                         | Companies Act, 2008 (continued) | <p>(a) the person is a director of that company or, within the 24 months immediately preceding the application, was a director of that company; and</p> <p>(b) any of the circumstances contemplated in—</p> <p>(i) subsection (5)(a) to (c) apply, in the case of an application for a declaration of delinquency; or</p> <p>(ii) subsections (7)(a) and (8) apply, in the case of an application for probation.</p> <p>(3) The Commission or the Panel may apply to a court for an order declaring a person delinquent or under probation if—</p> <p>(a) the person is a director of a company or, within the 24 months immediately preceding the application, was a director of a company; and</p> <p>(b) any of the circumstances contemplated in—</p> <p>(i) subsection (5) apply, in the case of an application for a declaration of delinquency; or</p> <p>(ii) subsections (7) and (8) apply, in the case of an application for probation.</p> <p>(4) Any organ of state responsible for the administration of any legislation may apply to a court for an order declaring a person delinquent if—</p> <p>(a) the person is a director of a company or, within the 24 months immediately preceding the application, was a director of a company; and</p> <p>(b) any of the circumstances contemplated in subsection (5)(d) to ( f ) apply with respect to any legislation administered by that organ of state.</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
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|                         | Companies Act, 2008 (continued) | <p>(5) A court must make an order declaring a person to be a delinquent director if the person—</p> <ul style="list-style-type: none"> <li>(a) consented to serve as a director, or acted in the capacity of a director or prescribed officer, while ineligible or disqualified in terms of section 69, unless the person was acting— <ul style="list-style-type: none"> <li>(i) under the protection of a court order contemplated in section 69(11); or</li> <li>(ii) as a director as contemplated in section 69(12);</li> </ul> </li> <li>(b) while under an order of probation in terms of this section or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984), acted as a director in a manner that contravened that order;</li> <li>(c) while a director— <ul style="list-style-type: none"> <li>(i) grossly abused the position of director;</li> <li>(ii) took personal advantage of information or an opportunity, contrary to section 76(2)(a);</li> <li>(iii) intentionally, or by gross negligence, inflicted harm upon the company or a subsidiary of the company, contrary to section 76(2)(a);</li> <li>(iv) acted in a manner— <ul style="list-style-type: none"> <li>(aa) that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director’s functions within, and duties to, the company; or</li> <li>(bb) contemplated in section 77(3)(a), (b) or (c);</li> </ul> </li> </ul> </li> <li>(d) has repeatedly been personally subject to a compliance notice or similar enforcement mechanism, for substantially similar conduct, in terms of any legislation;</li> </ul> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
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|                         | Companies Act, 2008 (continued) | <p>(e) has at least twice been personally convicted of an offence, or subjected to an administrative fine or similar penalty, in terms of any legislation; or</p> <p>(f) within a period of five years, was a director of one or more companies or a managing member of one or more close corporations, or controlled or participated in the control of a juristic person, irrespective whether concurrently, sequentially or at unrelated times, that were convicted of an offence, or subjected to an administrative fine or similar penalty, in terms of any legislation, and—</p> <p>(i) the person was a director of each such company, or a managing member of each such close corporation or was responsible for the management of each such juristic person, at the time of the contravention that resulted in the conviction, administrative fine or other penalty; and</p> <p>(ii) the court is satisfied that the declaration of delinquency is justified, having regard to the nature of the contraventions, and the person's conduct in relation to the management, business or property of any company, close corporation or juristic person at the time.</p> <p>(6) A declaration of delinquency in terms of—</p> <p>(a) subsection (5)(a) or (b) is unconditional, and subsists for the lifetime of the person declared delinquent; or</p> <p>(b) subsection (5)(c) to ( f )—</p> <p>(i) may be made subject to any conditions the court considers appropriate, including conditions limiting the application of the declaration to one or more particular categories of companies; and</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
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|                         | Companies Act, 2008 (continued) | <p>(ii) subsists for seven years from the date of the order, or such longer period as determined by the court at the time of making the declaration, subject to subsections (11) and (12);</p> <p>(7) A court may make an order placing a person under probation, if—</p> <p>(a) while serving as a director, the person—</p> <p>(i) was present at a meeting and failed to vote against a resolution despite the inability of the company to satisfy the solvency and liquidity test, contrary to this Act;</p> <p>(ii) otherwise acted in a manner materially inconsistent with the duties of a director; or</p> <p>(iii) acted in, or supported a decision of the company to act in, a manner contemplated in section 163(1); or</p> <p>(b) within any period of 10 years after the effective date—</p> <p>(i) the person has been a director of more than one company, or a managing member of more than one close corporation, irrespective whether concurrently, sequentially or at unrelated times; and</p> <p>(ii) during the time that the person was a director of each such company or managing member of each such close corporation, two or more of those companies or close corporations each failed to fully pay all of its creditors or meet all of its obligations, except in terms of—</p> <p>(aa) a business rescue plan resulting from a resolution of the board in terms of section 129; or</p> <p>(bb) a compromise with creditors in terms of section 155.</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
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|                         | Companies Act, 2008 (continued) | <p>(8) The court may declare a person under probation in the circumstances contemplated in—</p> <p>(a) subsection (7)(a)(iii), only if the court is satisfied that the declaration is justified having regard to the circumstances of the company's or close corporation's conduct, if applicable, and the person's conduct in relation to the management, business or property of the company or close corporation at the time; or</p> <p>(b) subsection (7)(b), only if the court is satisfied that—</p> <p>(i) the manner in which the company or close corporation was managed was wholly or partly responsible for it failing to meet its obligations; and</p> <p>(ii) the declaration is justified, having regard to the circumstances of the company's or close corporation's failure, and the person's conduct in relation to the management, business or property of the company or close corporation at the time.</p> <p>(9) A declaration placing a person under probation—</p> <p>(a) may be made subject to any conditions the court considers appropriate, including conditions limiting the application of the declaration to one or more particular categories of companies; and</p> <p>(b) subsists for a period not exceeding five years, as determined by the court at the time it makes the declaration, subject to subsections (11) and (12).</p> <p>(10) Without limiting the powers of the court, a court may order, as conditions applicable or ancillary to a declaration of delinquency or probation, that the person concerned—</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
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|                         | Companies Act, 2008 (continued) | <p>(a) undertake a designated programme of remedial education relevant to the nature of the person's conduct as director;</p> <p>(b) carry out a designated programme of community service;</p> <p>(c) pay compensation to any person adversely affected by the person's conduct as a director, to the extent that such a victim does not otherwise have a legal basis to claim compensation; or</p> <p>(d) in the case of an order of probation—</p> <p>(i) be supervised by a mentor in any future participation as a director while the order remains in force; or</p> <p>(ii) be limited to serving as a director of a private company, or of a company of which that person is the sole shareholder.</p> <p>(11) A person who has been declared delinquent, other than as contemplated in subsection (6)(a), or is subject to an order of probation, may apply to a court—</p> <p>(a) to suspend the order of delinquency, and substitute an order of probation, with or without conditions, at any time more than three years after the order of delinquency was made; or</p> <p>(b) to set aside an order of—</p> <p>(i) delinquency at any time more than two years after it was suspended as contemplated in paragraph (a); or</p> <p>(ii) of probation, at any time more than two years after it was made.</p> <p>(12) On considering an application contemplated in subsection (11), the court may—</p> <p>(a) not grant the order applied for unless the applicant has satisfied any conditions that were attached to the original order, or imposed in terms of subsection (11)(a); and</p> |

| Extract from the Report | Relevant legislation                           | Most prevalent relevant section(s)  |
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|                         | Companies Act, 2008 (continued)                | <p>(b) grant an order if, having regard to the circumstances leading to the original order, and the conduct of the applicant in the ensuing period, the court is satisfied that—</p> <ul style="list-style-type: none"> <li>(i) the applicant has demonstrated satisfactory progress towards rehabilitation, and</li> <li>(ii) there is a reasonable prospect that the applicant would be able to serve successfully as a director of a company in the future.</li> </ul> <p>(13) An applicant in terms of subsection (4) must serve the Commission with a copy of the application.</p> |
|                         | JSE Limited Listings Requirements <sup>1</sup> | <p><b>Directors</b></p> <p>3.60 An issuer must submit to the JSE and its sponsor, the relevant director's declaration in respect of each of its appointed directors within 14 days of their appointment in the form specified in Schedule 21. In the case of an appointment of a new company secretary the information as contained in Schedule 27 must be submitted to the JSE within 14 days. The issuer must ensure that each of the appointed directors is free of any conflict of interest between the duties he owes to the company and his private interest.</p>                 |

<sup>1</sup>3.60 amended with effect from 15 October 2007 and amended with effect from 1 April 2010.

| Extract from the Report  | Relevant legislation       | Most prevalent relevant section(s)  |
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| <b>Company secretary</b>   |                            |   |
| <p>95. The appointment of a company secretary in public companies and state-owned companies is mandatory under the Act. Furthermore, the Act contains various provisions regarding the appointment, removal and duties of the company secretary. The company secretary has a pivotal role to play in the corporate governance of a company, and it is advisable that companies delegate or outsource this responsibility to an appropriate person, or organisation if a company secretary is not employed.</p> | <p>Companies Act, 2008</p> | <p><b>86. Mandatory appointment of company secretary</b></p> <p>(1) A public company or state-owned company must appoint a person knowledgeable or experienced in relevant laws as a company secretary.</p> <p>(2) Every company secretary must be a permanent resident of the Republic, and must remain so while serving in that capacity, irrespective of whether the appointment is made as required by subsection (1), or voluntarily as contemplated in section 34(2).</p> <p>(3) The first company secretary of a public company or state-owned company may be appointed by—</p> <ul style="list-style-type: none"> <li>(a) the incorporators of the company; or</li> <li>(b) within 40 business days after the incorporation of the company, by either— <ul style="list-style-type: none"> <li>(i) the directors of the company; or</li> <li>(ii) an ordinary resolution of the holders of the company's securities.</li> </ul> </li> </ul> <p>(4) Within 60 business days after a vacancy arises in the office of company secretary, the board must fill the vacancy by appointing a person whom the directors consider to have the requisite knowledge and experience.</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
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|                         | Companies Act, 2008 (continued) | <p><b>87. Juristic person or partnership may be appointed company secretary</b></p> <p>(1) A juristic person or partnership may be appointed to hold the office of company secretary, provided that—</p> <ul style="list-style-type: none"> <li>(a) every employee of that juristic person who provides company secretary services, or partner and employee of that partnership, as the case may be, satisfies the requirements contemplated in section 84(5); and</li> <li>(b) at least one employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements contemplated in section 86.</li> </ul> <p>(2) A change in the membership of a juristic person or partnership that holds office as company secretary does not constitute a casual vacancy in the office of company secretary, if the juristic person or partnership continues to satisfy the requirements of subsection (1).</p> <p>(3) If at any time a juristic person or partnership holds office as company secretary of a particular company—</p> <ul style="list-style-type: none"> <li>(a) the juristic person or partnership must immediately notify the directors of the company if the juristic person or partnership no longer satisfies the requirements of subsection (1), and is regarded to have resigned as company secretary upon giving that notice to the company;</li> <li>(b) the company is entitled to assume that the juristic person or partnership satisfies the requirements of subsection (1), until the company has received a notice contemplated in paragraph (a); and</li> <li>(c) any action taken by the juristic person or partnership in performance of its functions as company secretary is not invalidated merely because the juristic person or partnership had ceased to satisfy the requirements of section (1) at the time of that action.</li> </ul> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
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|                         | Companies Act, 2008 (continued) | <p><b>88. Duties of company secretary</b></p> <p>(1) A company's secretary is accountable to the company's board.</p> <p>(2) A company secretary's duties include, but are not restricted to—</p> <ul style="list-style-type: none"> <li>(a) providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;</li> <li>(b) making the directors aware of any law relevant to or affecting the company;</li> <li>(c) reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or this Act;</li> <li>(d) ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with this Act;</li> <li>(e) certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, and whether all such returns and notices appear to be true, correct and up to date;</li> <li>(f) ensuring that a copy of the company's annual financial statements is sent, in accordance with this Act, to every person who is entitled to it; and</li> <li>(g) carrying out the functions of a person designated in terms of section 33(3).</li> </ul> <p><b>89. Resignation or removal of company secretary</b></p> <p>(1) A company secretary may resign from office by giving the company—</p> <ul style="list-style-type: none"> <li>(a) one month written notice; or</li> <li>(b) less than one month written notice, with the approval of the board.</li> </ul> |

| Extract from the Report  | Relevant legislation            | Most prevalent relevant section(s)   |
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|  | Companies Act, 2008 (continued) | <p>(2) If the company secretary is removed from office by the board, the company secretary may require the company to include a statement in its annual financial statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal.</p> <p>(3) If the company secretary wishes to exercise the power referred to in subsection (2), the company secretary must give written notice to that effect to the company by not later than the end of the financial year in which the removal took place and that notice must include the statement referred to in subsection (2).</p> <p>(4) The statement of the company secretary referred to in subsection (2) must be included in the directors' report in the company's annual financial statements.</p> |
| <b>Board committees</b>  |                                 |  |
| <p>125. Board committees constitute an important element of the governance process and should be established with clearly agreed reporting procedures and a written scope of authority. The Act recognises the right of a board to establish board committees but by doing so, the board is not exonerated of complying with its legal responsibilities.</p> | Companies Act, 2008             | <p><b>72. Board committees</b></p> <p>(1) Except to the extent that the Memorandum of Incorporation of a company provides otherwise, the board of a company may—</p> <ul style="list-style-type: none"> <li>(a) appoint any number of committees of directors; and</li> <li>(b) delegate to any committee any of the authority of the board.</li> </ul> <p>(3) The creation of a committee, delegation of any power to a committee, or action taken by a committee, does not alone satisfy or constitute compliance by a director with the required duty of a director to the company, as set out in section 76.</p>   |

| Extract from the Report   | Relevant legislation       | Most prevalent relevant section(s)   |
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| <p>128. The shareholders of public and state-owned companies must appoint an audit committee comprising three independent non-executive directors of the company at the AGM. (Refer to Chapter 3 for more detail on the audit committee). The audit committee for these companies is a statutory committee of the company with statutory responsibilities regarding the relationship between the company and the external auditor. It operates as a committee of the board for all duties, other than statutory duties, delegated to it by the board.</p> | <p>Companies Act, 2008</p> | <p><b>94. Audit committees</b></p> <p>(1) This section—</p> <ul style="list-style-type: none"> <li>(a) applies concurrently with section 64 of the Banks Act, to any company that is subject to that section of that Act, but subsections (2), (3) and (4) of this section do not apply to the appointment of an audit committee by any such company; and</li> <li>(b) does not apply to a company that has been granted an exemption in terms of section 64(4) of the Banks Act.</li> </ul> <p>(2) At each annual general meeting, a public company or state-owned company, or other company that has voluntarily determined to have an audit committee as contemplated in section 34(2), must elect an audit committee comprising at least three members, unless—</p> <ul style="list-style-type: none"> <li>(a) the company is a subsidiary of another company that has an audit committee; and</li> <li>(b) the audit committee of that other company will perform the functions required under this section on behalf of that subsidiary company.</li> </ul> <p>4) Each member of an audit committee of a company must—</p> <ul style="list-style-type: none"> <li>(a) be a director of the company, who satisfies any applicable requirements prescribed in terms of subsection (5);</li> <li>(b) not be— <ul style="list-style-type: none"> <li>(i) involved in the day-to-day management of the company's business or have been so involved at any time during the previous financial year;</li> <li>(ii) a prescribed officer, or full-time employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or</li> </ul> </li> </ul> |

| Extract from the Report   | Relevant legislation            | Most prevalent relevant section(s)   |
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|   | Companies Act, 2008 (continued) | <p>(iii) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and</p> <p>(c) not be related to any person who falls within any of the criteria set out in paragraph (b).</p>              |
| <p>130. Unless legislated otherwise, the board should appoint the risk, remuneration and nomination committees as standing committees. Establishing a social and ethics committee maybe required for certain categories of companies (section 72(4) of the Act). The board may also consider establishing governance, IT steering and sustainability committees. Smaller companies need not establish formal committees to perform these functions, but should ensure that these functions are appropriately addressed by the board.</p>  | Companies Act, 2008             | <p><b>72. Board committees</b></p> <p>(4) The Minister may by regulation prescribe that a company or a category of companies must have a social and ethics committee, if it is desirable in the public interest, having regard to—</p> <p>(a) its annual turnover;</p> <p>(b) the size of its workforce; or</p> <p>(c) the nature and extent of its activities.</p>            |
| <p>132. External parties, such as paid advisers, may be present at committee meetings by invitation but will have no vote on the committee. Non-directors serving as members on committees of the board should be aware of section 76 of the Act which places the same standards of conduct and liability on such individuals as if they were directors. Experts should attend as independent contractors and not as members of the committee.</p>  | Companies Act, 2008             | <p><b>76. Standards of directors conduct</b></p> <p>(1) In this section, “director” includes an alternate director, and—</p> <p>(a) a prescribed officer; or</p> <p>(b) a person who is a member of a committee of a board of a company, or of the audit committee of a company,</p> <p>irrespective of whether or not the person is also a member of the company’s board.</p> |
| <b>Group boards</b>   |                                 |  |
| <p>140. In cases where the subsidiary company is listed, special attention must be paid to the rules of the relevant stock exchange and the requirement that all shareholders must be treated equally. This is of specific relevance to the subsidiary company in establishing the flow of information between the subsidiary company and the holding company in so far as the Securities Services Act is concerned. Particular attention should be given to the need to comply with relevant rules in respect of inside information.</p> | Companies Act, 2008             | <p><b>37. Preferences, rights, limitations and other share terms</b></p> <p>(1) All of the shares of any particular class authorised by a company have preferences, rights, limitations and other terms that are identical to those of other shares of the same class, except to the extent that the company’s Memorandum of Incorporation provides otherwise.</p>             |

| Extract from the Report | Relevant legislation              | Most prevalent relevant section(s)  |
|-------------------------|-----------------------------------|---|
|                         | JSE Limited Listings Requirements | <p><b>Rights between holders of securities</b></p> <p><b>Equality of treatment</b></p> <p>3.27 An issuer must ensure that all holders of any class of its securities that are in the same position, receive fair and equal treatment.</p> <p><b>Voting rights</b></p> <p>3.28 An issuer shall not issue any securities with voting rights differing from other securities of the same class.</p> <p><b>Pre-emptive rights</b></p> <p>3.29 Securities in each class for which listing is applied must rank <i>pari passu</i> in respect of all rights. It should be noted that a statement that “securities in each class rank <i>pari passu</i>” is understood to mean that:</p> <ul style="list-style-type: none"> <li>(a) they are in all respects identical;</li> <li>(b) they are of the same nominal value, and that the same amount per share has been paid up;</li> <li>(c) they carry the same rights as to unrestricted transfer, attendance and voting at general/annual general meetings, and in all other respects; and</li> <li>(d) they are entitled to dividends at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will be the same amount.</li> </ul> <p>3.30 Subject to paragraphs 3.32 and 3.33, an issuer proposing to issue equity securities for cash must first offer those securities, effected by way of rights offer, to existing holders of equity securities in proportion to their existing holdings. Only to the extent that such securities are not taken up by holders of equity securities under the offer may they then be issued for cash to other persons or otherwise than in the proportion mentioned above.</p> |

| Extract from the Report | Relevant legislation  | Most prevalent relevant section(s)  |
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|                         | JSE Limited Listings Requirements <sup>1</sup><br>(continued) | <p>3.31 To the extent permitted by the Registrar of Companies and subject to the prior approval of the JSE, an issuer need not comply with paragraph 3.30 with respect to securities that the directors of the issuer consider necessary or expedient to be excluded from the offer because of legal impediments or compliance with the requirements of any regulatory body of any territory recognised as having import on the offer.</p> <p><b>Waiver of pre-emptive rights</b></p> <p>3.32 To the extent that holders of securities of an issuer provide their authorisation by way of ordinary resolution (determined in accordance with paragraph 5.51(g) or 5.52(e)), the issue by an issuer of equity securities for cash made otherwise than to existing holders of securities in proportion to their existing holdings will be permitted in respect of a specific issue of equity securities for cash for such equity securities issue, and in respect of a general issue of equity securities for cash, for a fixed period of time thereafter in accordance with such general authority.</p> <p>3.33 The JSE may waive some or all of the requirements contained in paragraph 3.32 if it is satisfied that the conditions as stipulated in Schedule 13 exist.</p> |
|                         | Securities Services Act, 2004                                 | <p><b>72. Definitions</b></p> <p>In this Chapter, unless the context indicates otherwise—</p> <p><b>“inside information”</b> means specific or precise information, which has not been made public and which—</p> <ul style="list-style-type: none"> <li>(a) is obtained or learned as an insider; and</li> <li>(b) if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market;</li> </ul>   |

<sup>1</sup>3.33 amended with effect from 15 October 2007.

| Extract from the Report | Relevant legislation                      | Most prevalent relevant section(s)   |
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|                         | Securities Services Act, 2004 (continued) | <p><b>“insider”</b> means a person who has inside information—</p> <p>(a) through—</p> <ul style="list-style-type: none"> <li>(i) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates; or</li> <li>(ii) having access to such information by virtue of employment, office or profession; or</li> </ul> <p>(b) where such person knows that the direct or indirect source of the information was a person contemplated in paragraph (a);</p> <p><b>73. Insider trading</b></p> <p>(1)(a) An insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.</p> <p>(b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—</p> <ul style="list-style-type: none"> <li>(i) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act;</li> <li>(ii) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.</li> </ul> <p>(2)(a) An insider who knows that he or she has inside information and who deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.</p> |

| Extract from the Report | Relevant legislation                      | Most prevalent relevant section(s)   |
|-------------------------|---|--|
|                         | Securities Services Act, 2004 (continued) | <p>(b)An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—</p> <ul style="list-style-type: none"> <li>(i) is an authorised user and was acting on specific instructions from a client, save where the inside information was disclosed to him or her by that client;</li> <li>(ii) was acting on behalf of a public sector body in pursuit of monetary policy, policies in respect of exchange rates, the management of public debt or external exchange reserves; or</li> <li>(iii) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act;</li> <li>(iv) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.</li> </ul> <p>(3)(a) An insider who knows that he or she has inside information and who discloses the inside information to another person commits an offence.</p> <p>(b)An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that he or she at the same time disclosed that the information was inside information.</p> |

| Extract from the Report  | Relevant legislation                      | Most prevalent relevant section(s)   |
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|  | Securities Services Act, 2004 (continued) | (4) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.   |
| <p>142. The holding company must recognise the fiduciary duties of the subsidiary company's directors and particularly their duty to act in the best interests of the subsidiary company at all times whether or not the director is nominated to the board of the subsidiary company by the holding company. In the case of a conflict between the duties of a nominee director to a company on whose board he sits and the interests of his principal, the duties of the director to the company of which he is a director must prevail.</p> | Companies Act, 2008                       | <p><b>76. Standards of directors conduct</b></p> <p>(2) A director of a company must—</p> <ul style="list-style-type: none"> <li>(a) not use the position of director, or any information obtained while acting in the capacity of a director— <ul style="list-style-type: none"> <li>(i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or</li> <li>(ii) to knowingly cause harm to the company or a subsidiary of the company;</li> </ul> </li> </ul> <p>(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—</p> <ul style="list-style-type: none"> <li>(a) in good faith and for a proper purpose;</li> <li>(b) in the best interests of the company;</li> </ul> |
| <b>Remuneration of directors and senior executives</b>   |   |  |
| <p>154. Although permitted by the Act, the chairman and other non-executive directors should not receive share options or other incentive awards geared to share price or corporate performance, as such incentives align their interests too closely with executives and may be seen to impair their objectivity.</p>   | Companies Act, 2008                       | <p><b>30. Annual financial statements</b></p> <p>(4) The annual financial statements of each company that is required in terms of this Act to have its annual financial statements audited, must include particulars showing—</p> <ul style="list-style-type: none"> <li>(a) the remuneration, as defined in subsection (6), and benefits received by each director, or individual holding any prescribed office in the company;</li> </ul> <p>(6) For the purposes of subsections (4) and (5), 'remuneration' includes—</p> <ul style="list-style-type: none"> <li>(e) the value of any option or right given directly or indirectly to a director, past director or future director, or person related to any of them, as contemplated in section 42;</li> </ul>   |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
|-------------------------|---------------------------------|--|
|                         | Companies Act, 2008 (continued) | <p><b>42. Options for subscription of securities</b></p> <p>(1) A company may issue options for the allotment or subscription of authorised shares or other securities of the company.</p> <p>(2) The board of a company must determine the consideration or other benefit for which, and the terms upon which—</p> <ul style="list-style-type: none"> <li>(a) any options are issued; and</li> <li>(b) the related shares or other securities are to be issued.</li> </ul> <p>(3) A decision by the board that the company may issue—</p> <ul style="list-style-type: none"> <li>(a) any options, constitutes also the decision of the board to issue any authorised shares or other securities for which the options may be exercised; or</li> <li>(b) any securities convertible into shares of any class, constitutes also the decision of the board to issue the authorised shares into which the securities may be converted.</li> </ul> <p>(4) A director of a company is liable to the extent set out in section 77(3)(e)(iii) if the director—</p> <ul style="list-style-type: none"> <li>(a) was present at a meeting when the board approved the granting of an option or a right as contemplated in this section, or participated in the making of such a decision in terms of section 74; and</li> <li>(b) failed to vote against the granting of the option or right, despite knowing that any shares— <ul style="list-style-type: none"> <li>(i) for which the options could be exercised; or</li> <li>(ii) into which any securities could be converted,</li> </ul> </li> </ul> <p>had not been authorised in terms of section 36.</p> |

| Extract from the Report   | Relevant legislation       | Most prevalent relevant section(s)   |
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| <p>155. Non-executive directors' fees should be approved by shareholders in advance. The Act requires a special resolution at intervals of not more than two years for this purpose.</p>  | <p>Companies Act, 2008</p> | <p><b>66. Board, directors and prescribed officers</b></p> <p>(8) Except to the extent that the Memorandum of Incorporation of a company provides otherwise, the company may pay remuneration to its directors for their service as directors, subject to subsection (9).</p> <p>(9) Remuneration contemplated in subsection (8) may be paid only in accordance with a special resolution approved by the shareholders within the previous two years.</p>  |
| <p>180. Companies should provide full disclosure of each individual executive and non-executive director's remuneration, giving details as required in the Act of base pay, bonuses, share-based payments, granting of options or rights, restraint payments and all other benefits (including present values of existing future awards). Similar information should be provided for the three most highly-paid employees who are not directors in the company.</p> | <p>Companies Act, 2008</p> | <p><b>30. Annual financial statements</b></p> <p>(4) The annual financial statements of each company that is required in terms of this Act to have its annual financial statements audited, must include particulars showing—</p> <p>(a) the remuneration, as defined in subsection (6), and benefits received by each director, or individual holding any prescribed office in the company;</p> <p>(b) the amount of—</p> <p>(i) any pensions paid by the company to or receivable by current or past directors or individuals who hold or have held any prescribed office in the company;</p> <p>(ii) any amount paid or payable by the company to a pension scheme with respect to current or past directors or individuals who hold or have held any prescribed office in the company;</p> <p>(c) the amount of any compensation paid in respect of loss of office to current or past directors or individuals who hold or have held any prescribed office in the company;</p> <p>(d) the number and class of any securities issued to a director or person holding any prescribed office in the company, or to any person related to any of them, and the consideration received by the company for those securities; and</p> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
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|                         | Companies Act, 2008 (continued) | <p>(e) details of service contracts of current directors and individuals who hold any prescribed office in the company.</p> <p>(5) The information to be disclosed under subsection (4) must satisfy the prescribed standards, and must show the amount of any remuneration or benefits paid to or receivable by persons in respect of—</p> <p>(a) services rendered as directors or prescribed officers of the company; or</p> <p>(b) services rendered while being directors or prescribed officers of the company—</p> <p>(i) as directors or prescribed officers of any other company within the same group of companies; or</p> <p>(ii) otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies.</p> <p>(6) For the purposes of subsections (4) and (5), ‘remuneration’ includes—</p> <p>(a) fees paid to directors for services rendered by them to or on behalf of the company, including any amount paid to a person in respect of the person’s accepting the office of director;</p> <p>(b) salary, bonuses and performance-related payments;</p> <p>(c) expense allowances, to the extent that the director is not required to account for the allowance;</p> <p>(d) contributions paid under any pension scheme not otherwise required to be disclosed in terms of subsection (4)(b);</p> <p>(e) the value of any option or right given directly or indirectly to a director, past director or future director, or person related to any of them, as contemplated in section 42;</p> |

| Extract from the Report  | Relevant legislation            | Most prevalent relevant section(s)  |
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|  | Companies Act, 2008 (continued) | <p>(f) financial assistance to a director, past director or future director, or person related to any of them, for the subscription of shares, as contemplated in section 44; and</p> <p>(g) with respect to any loan or other financial assistance by the company to a director, past director or future director, or a person related to any of them, or any loan made by a third party to any such person, as contemplated in section 45, if the company is a guarantor of that loan, the value of—</p> <p>(i) any interest deferred, waived or forgiven; or</p> <p>(ii) the difference in value between—</p> <p>(aa) the interest that would reasonably be charged in comparable circumstances at fair market rates in an arm's length transaction; and</p> <p>(bb) the interest actually charged to the borrower, if less.</p> |
| <b>Chapter 3 Audit committees</b>  |                                 |   |
| <p>3. The shareholders of a public company and a state-owned company must elect the members of an audit committee at each AGM. This does not apply where a company is a subsidiary company of another company that has an audit committee and the audit committee of the holding or parent company will perform the functions required by Section 94 of the Act on behalf of that subsidiary. (Section 94 is included in the Annex to this chapter.) The nomination committee (or other board committee tasked with this) should present shareholders with suitable candidates for election or re-election as audit committee members.</p> | Companies Act, 2008             | <p><b>94. Audit committees</b></p> <p>(1) This section—</p> <p>(a) applies concurrently with section 64 of the Banks Act, to any company that is subject to that section of that Act, but subsections (2), (3) and (4) of this section do not apply to the appointment of an audit committee by any such company; and</p> <p>(b) does not apply to a company that has been granted an exemption in terms of section 64(4) of the Banks Act.</p> <p>(2) At each annual general meeting, a public company or state-owned company, or other company that has voluntarily determined to have an audit committee as contemplated in section 34(2), must elect an audit committee comprising at least three members, unless—</p>  |

| Extract from the Report   | Relevant legislation            | Most prevalent relevant section(s)  |
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|   | Companies Act, 2008 (continued) | <p>(a) the company is a subsidiary of another company that has an audit committee; and</p> <p>(b) the audit committee of that other company will perform the functions required under this section on behalf of that subsidiary company.</p>  |
| <b>Membership and resources of the audit committee</b>  |                                 |   |
| <p>9. All members of the audit committee of a public company and state owned company must be independent non-executive directors (refer to Chapter 2 for the definition of an independent non-executive director). Where an audit committee is appointed at subsidiary level and the holding company has an audit committee that will perform the functions required in terms of Section 94 of the Act on behalf of that subsidiary, executive directors within the group may be appointed as audit committee members of the subsidiary. However, the directors must be non-executive in relation to the specific subsidiary.</p> | Companies Act, 2008             | <p><b>94. Audit committees</b></p> <p>(4) Each member of an audit committee of a company must—</p> <p>(a) be a director of the company, who satisfies any applicable requirements prescribed in terms of subsection (5);</p> <p>(b) not be—</p> <p>(i) involved in the day-to-day management of the company's business or have been so involved at any time during the previous financial year;</p> <p>(ii) a prescribed officer, or full-time employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or</p> <p>(iii) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and</p> <p>(c) not be related to any person who falls within any of the criteria set out in paragraph (b).</p> |
| <p>17. The board must appoint a person to fill a vacancy on the audit committee should such vacancy arise. Such an appointment must be ratified by the shareholders at the subsequent AGM.</p>  | Companies Act, 2008             | <p><b>94. Audit committees</b></p> <p>(6) The board of a company contemplated in section 84(1) must appoint a person to fill any vacancy on the audit committee within 40 business days after the vacancy arises.</p>   |

| Extract from the Report  | Relevant legislation                                 | Most prevalent relevant section(s)  |
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| <b>Responsibilities of the audit committee</b>   |  |   |
| <p>21. The Act has transformed the audit committee of listed companies and state owned companies from being a committee of the board to a separate statutory committee that is appointed by the shareholders. However, as indicated by Section 94(10) of the Act, the audit committee still forms part of a unitary board even though it has specific statutory responsibilities over and above responsibilities assigned to it by the board.</p>  | <p>Companies Act, 2008</p>                           | <p><b>94. Audit committees</b></p> <p>(10) Neither the appointment nor the duties of an audit committee reduce the functions and duties of the board or the directors of the company, except with respect to the appointment, fees and terms of engagement of the auditor.</p>  |
| <b>Internal assurance providers</b>  |  |   |
| <p>52. Listed companies must have a finance director and the audit committee must evaluate the suitability of the expertise and experience of the finance director and recommend to the board if any changes are necessary.</p>  | <p>JSE Limited Listings Requirements<sup>1</sup></p> | <p><b>Corporate Governance</b></p> <p>3.84 In addition to complying with paragraph 8.63(a), issuers must comply with the following specific requirements concerning corporate governance and must disclose their compliance therewith in their annual report:</p> <p>(h) all issuers must have an executive financial director. The JSE may, at its discretion, when requested to do so by the issuer, and due to the existence of special circumstances allow the financial director to be employed on a part time basis only. This request must be accompanied by a detailed motivation by the issuer and the audit committee.</p> <p>(i) the audit committee must consider, on an annual basis, and satisfy itself of the appropriateness of the expertise and experience of the financial director. The issuer must confirm this by reporting to shareholders in its annual report that the audit committee has executed this responsibility.</p> |
| <p>69. The audit committee must conclude and report yearly to the stakeholders and the board on the effectiveness of the company's internal financial controls. Before the audit committee concludes and reports to the board on the effectiveness of internal financial controls, it should holistically consider all information brought to its attention from all sources, including communications with, and reports from, internal audit, other assurance providers and the management, as well as the external auditors.</p> | <p>Companies Act, 2008</p>                           | <p><b>94. Audit committees</b></p> <p>(7) An audit committee of a company has the following duties:</p> <p>(f) to prepare a report, to be included in the annual financial statements for that financial year—</p> <p>(i) describing how the audit committee carried out its functions;</p>   |

<sup>1</sup>3.84 (h) introduced with effect from 1 September 2008.  
3.84 (h) and (i) amended with effect from 1 April 2010.

| Extract from the Report  | Relevant legislation            | Most prevalent relevant section(s)  |
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|  | Companies Act, 2008 (continued) | <ul style="list-style-type: none"> <li>(ii) stating whether the audit committee is satisfied that the auditor was independent of the company; and</li> <li>(iii) commenting in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company;</li> </ul>  |
| <p>74. The audit committee must receive and deal appropriately with any concerns or complaints (whether from within or outside the company) or on its own initiative, relating either to the accounting practices and internal audit of the company or to the content or auditing of its financial statements, the internal financial controls of the company or to any related matter.</p>  | Companies Act, 2008             | <p><b>94. Audit committees</b></p> <p>(7) An audit committee of a company has the following duties:</p> <ul style="list-style-type: none"> <li>(g) to receive and deal appropriately with any concerns or complaints, whether from within or outside the company, or on its own initiative, relating to— <ul style="list-style-type: none"> <li>(i) the accounting practices and internal audit of the company;</li> <li>(ii) the content or auditing of the company's financial statements;</li> <li>(iii) the internal financial controls of the company; or</li> <li>(iv) any related matter;</li> </ul> </li> </ul> |
| <b>External assurance providers</b>  |                                 |   |
| <p>75. The audit committee must recommend to shareholders the appointment, reappointment and removal of the external auditor. Where the audit committee recommends to shareholders that the incumbent auditing firm and designated auditor (a statutory responsibility for public companies and state-owned companies in terms of the Act) should be appointed as the external auditor, its recommendation should be based on an assessment of the auditing firm and the individuals' qualifications, expertise and resources, effectiveness and independence. The audit committee should ensure that the external auditor that is recommended for appointment is approved by the JSE (applicable only to listed companies).</p> | Companies Act, 2008             | <p><b>94. Audit committees</b></p> <p>(7) An audit committee of a company has the following duties:</p> <ul style="list-style-type: none"> <li>(a) To nominate, for appointment as auditor of the company under section 90, a registered auditor who, in the opinion of the audit committee, is independent of the company;</li> <li>(c) to ensure that the appointment of the auditor complies with the provisions of this Act and any other legislation relating to the appointment of auditors;</li> </ul>   |

| Extract from the Report  | Relevant legislation                           | Most prevalent relevant section(s)   |
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|  | JSE Limited Listings Requirements <sup>1</sup> | <p><b>Appointment of auditors and reporting accounts</b></p> <p>3.86 An applicant issuer may only appoint as its auditor and reporting accountant an audit firm, individual auditor and reporting accountant who is accredited as such on the JSE list of Auditors and their advisors, as set out in Section 22. This requirement must be considered by the audit committee when recommending an auditor for appointment at the annual general meeting.</p>  |
| <p>76. The audit committee must approve the external auditor's terms of engagement and remuneration. In doing so, it should engage with the auditor to satisfy itself that the level of remuneration is appropriate to enable an effective audit to be conducted.</p>  | Companies Act, 2008                            | <p><b>94. Audit committees</b></p> <p>(7) An audit committee of a company has the following duties:</p> <p>(b) to determine the fees to be paid to the auditor and the auditor's terms of engagement;</p>  |
| <p>77. The audit committee must review, monitor and report on the external auditor's independence and objectivity, and should assess the effectiveness of the audit process every year. At least five yearly, rotation at an individual engagement partner or designated partner level enhances actual and perceived independence.</p> | Companies Act, 2008                            | <p><b>92. Rotation of auditors</b></p> <p>(1) The same individual may not serve as the auditor or designated auditor of a company for more than five consecutive financial years.</p> <p>(2) If an individual has served as the auditor or designated auditor of a company for two or more consecutive financial years and then ceases to be the auditor or designated auditor, the individual may not be appointed again as the auditor or designated auditor of that company until after the expiry of at least two further financial years.</p> <p>(3) If a company has appointed two or more persons as joint auditors, the company must manage the rotation required by this section in such a manner that all of the joint auditors do not relinquish office in the same year.</p> |

<sup>1</sup>3.86 introduced with effect from 2008 and amended with effect from 1 April 2010.

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)  |
|-------------------------|---------------------------------|---|
|                         | Companies Act, 2008 (continued) | <p><b>94. Audit committees</b></p> <p>(7) An audit committee of a company has the following duties:</p> <ul style="list-style-type: none"> <li>(a) To nominate, for appointment as auditor of the company under section 90, a registered auditor who, in the opinion of the audit committee, is independent of the company;</li> <li>(f) to prepare a report, to be included in the annual financial statements for that financial year— <ul style="list-style-type: none"> <li>(ii) stating whether the audit committee is satisfied that the auditor was independent of the company;</li> </ul> </li> </ul> <p>(8) In considering whether, for the purposes of this Part, a registered auditor is independent of a company, the audit committee of that company must—</p> <ul style="list-style-type: none"> <li>(a) ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the company, except— <ul style="list-style-type: none"> <li>(i) as auditor; or</li> <li>(ii) for rendering other services to the company, to the extent permitted in terms of subsection (6)(d);</li> </ul> </li> <li>(b) consider whether the auditor's independence may have been prejudiced— <ul style="list-style-type: none"> <li>(i) as a result of any previous appointment as auditor; or</li> <li>(ii) having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the company; and</li> </ul> </li> </ul> |

| Extract from the Report   | Relevant legislation                           | Most prevalent relevant section(s)  |
|---|--|---|
|   | Companies Act, 2008 (continued)                | <p>(c) consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,</p> <p>in relation to the company, and if the company is a member of a group of companies, any other company within that group.</p>  |
| 78. The audit committee must define a policy for board approval, addressing the nature, extent and terms under which the external auditor may perform non-audit services. | Companies Act, 2008                            | <p><b>94. Audit committees</b></p> <p>(7) An audit committee of a company has the following duties:</p> <p>(d) to determine, subject to the provisions of this Chapter, the nature and extent of any non-audit services that the auditor may provide to the company, or that the auditor must not provide to the company, or a related company;</p> <p>(e) to pre-approve any proposed agreement with the auditor for the provision of non-audit services to the company;</p> |
|   | JSE Limited Listings Requirements <sup>1</sup> | <p><b>Corporate Governance</b></p> <p>3.84 In addition to complying with paragraph 8.63(a), issuers must comply with the following specific requirements concerning corporate governance and must disclose their compliance therewith in their annual report:</p> <p>(g) the audit committee must set a policy with regard to non-audit services provided by the external auditor;</p>  |

<sup>1</sup>3.84 (g) amended with effect from 1 April 2010.

| Extract from the Report   | Relevant legislation                 | Most prevalent relevant section(s)  |
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| <p>81. The board should develop a process to ensure that the audit committee receives notice of reportable irregularities (as defined in the Auditing Profession Act, 2005) that have been reported by the external auditor to the Independent Regulatory Board for Auditors. Where the auditor's report is modified as a result of a reportable irregularity, the audit committee should review the completeness and accuracy of the disclosure of such matters in the financial statements.</p>   | <p>Auditing Profession Act, 2005</p> | <p><b>1. Definitions</b></p> <p>In this Act, unless the context indicates otherwise—</p> <p><b>“reportable irregularity”</b> means any unlawful act or omission committed by any person responsible for the management of an entity, which—</p> <ul style="list-style-type: none"> <li>(a) has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity; or</li> <li>(b) is fraudulent or amounts to theft; or</li> <li>(c) represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity or the conduct or management thereof;</li> </ul> |
| <b>Reporting</b>  |                                      |   |
| <p>84. The audit committee must also report to the shareholders at the AGM on how it has fulfilled its duties in terms of the Act during the financial year. The audit committee's report at the AGM must:</p> <p>84.1 describe how the audit committee carried out its functions in terms of the Act;</p> <p>84.2 state whether the audit committee is satisfied that the external auditor was independent of the company; and</p> <p>84.3 contain comment in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company.</p> | <p>Companies Act, 2008</p>           | <p><b>94. Audit committees</b></p> <p>(7) An audit committee of a company has the following duties:</p> <ul style="list-style-type: none"> <li>(f) to prepare a report, to be included in the annual financial statements for that financial year— <ul style="list-style-type: none"> <li>(i) describing how the audit committee carried out its functions;</li> <li>(ii) stating whether the audit committee is satisfied that the auditor was independent of the company; and</li> <li>(iii) commenting in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company;</li> </ul> </li> </ul>  |

| Extract from the Report   | Relevant legislation                       | Most prevalent relevant section(s)  |
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| <b>Public sector perspective</b>  |  |   |
| <p>86. Audit committee members of all government institutions, including public entities and state-owned companies, must comply with the minimum qualification criteria established by the executive authority.</p> | <p>Companies Act, 2008</p>                 | <p><b>94. Audit committees</b></p> <p>(5) The Minister may prescribe minimum qualification requirements for members of an audit committee as necessary to ensure that any such committee, taken as a whole, comprises persons with adequate relevant knowledge and experience to equip the committee to perform its functions.</p>  |
|   | <p>Public Finance Management Act, 1999</p> | <p><b>1. Definitions</b></p> <p>In this Act, unless the context otherwise indicates—</p> <p><b>“executive authority”</b></p> <p>(a) in relation to a national department, means the Cabinet member who is accountable to Parliament for that department;</p> <p>(b) in relation to a provincial department, means the member of the Executive Council of a province who is accountable to the provincial legislature for that department;</p> <p>(c) in relation to national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls; and</p> <p>(d) in relation to a provincial public entity, means the member of the provincial Executive Council who is accountable to the provincial legislature for that public entity or in whose portfolio it falls;</p> |

| Extract from the Report | Relevant legislation                            | Most prevalent relevant section(s)   |
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|                         | Public Finance Management Act, 1999 (continued) | <p><b>51. General responsibilities of accounting authorities</b></p> <p>(1) An accounting authority for a public entity—</p> <p>(a) must ensure that that public entity has and maintains—</p> <p>(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;</p> <p><b>76. Treasury regulations and instructions</b></p> <p>(4) The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning—</p> <p>(d) audit committees, their appointment and their functioning;</p> |

| Extract from the Report | Relevant legislation                            | Most prevalent relevant section(s)  |
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|                         | Public Finance Management Act, 1999 (continued) | <p><b>77. Audit committees</b></p> <p>An audit committee</p> <p>(a) must consist of at least three persons of whom, in the case of a department—</p> <p>(i) one must be from outside the public service;</p> <p>(ii) the majority may not be persons in the employ of the department, except with the approval of the relevant treasury; and</p> <p>(iii) the chairperson may not be in the employ of the department;</p> <p><b>Treasury Regulations</b></p> <p><b>27. Internal control and corporate management</b></p> <p><b>27.1 Audit committees</b><br/>[Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]</p> <p>27.1.3 The chairperson of the audit committee must be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the accounting authority or a person who fulfils an executive function in the public entity.</p> <p>27.1.4 The majority of the members of an audit committee shall consist of non-executive members appointed by the accounting authority, although committee members need not all be members of the accounting authority. The majority of persons serving on an audit committee must be financially literate.</p> |
|                         | Municipal Finance Management Act, 2003          | <p><b>166. Audit committees</b></p> <p>(4) An audit committee must-</p> <p>(a) consist of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity, as the case may be;</p>  |

| Extract from the Report   | Relevant legislation                       | Most prevalent relevant section(s)   |
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| <p>87. The relevant executive authority in the public sector must agree with any premature termination of the services of a person serving on an audit committee.</p>   | <p>Public Finance Management Act, 1999</p> | <p><b>51. General responsibilities of accounting authorities</b></p> <p>(1) An accounting authority for a public entity—</p> <p>(a) must ensure that that public entity has and maintains—</p> <p>(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;</p> <p><b>76. Treasury regulations and instructions</b></p> <p>(4) The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning—</p> <p>(d) audit committees, their appointment and their functioning;</p> <p><b>Treasury Regulations</b></p> <p><b>27. Internal control and corporate management</b></p> <p><b>27.1 Audit committees</b><br/>[Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]</p> <p>27.1.5 The relevant executive authority must concur with any premature termination of services of a member of the audit committee.</p> |
| <p>88. For government institutions, including departments, public entities, municipalities, municipal entities and constitutional institutions in the public sector, the report of the audit committee must also include comments on the quality of the management and monthly or quarterly reports submitted under the PFMA, the MFMA and the Division of Revenue Act.</p> | <p>Public Finance Management Act, 1999</p> | <p><b>51. General responsibilities of accounting authorities</b></p> <p>(1) An accounting authority for a public entity—</p> <p>(a) must ensure that that public entity has and maintains—</p> <p>(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;</p>  |

| Extract from the Report | Relevant legislation                            | Most prevalent relevant section(s)  |
|-------------------------|---|---|
|                         | Public Finance Management Act, 1999 (continued) | <p><b>76. Treasury regulations and instructions</b></p> <p>(4) The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning—</p> <p>(d) audit committees, their appointment and their functioning;</p> <p><b>Treasury Regulations</b></p> <p><b>27. Internal control and corporate management</b></p> <p><b>27.1 Audit committees</b><br/>[Sections 51(1) (a)(ii) and 76(4)(d) of the PFMA]</p> <p>27.1.8 The audit committee must, amongst others, review the following:</p> <p>(d) the adequacy, reliability and accuracy of financial information provided to management and other users of such information;</p> <p>27.1.10 The audit committee must—</p> <p>(a) report and make recommendations to the accounting authority;</p> <p>(b) report on the effectiveness of internal controls in the annual report of the institution; and</p> <p>(c) comment on its evaluation of the financial statements in the annual report.</p> |
|                         | Municipal Finance Management Act, 2003          | <p><b>166. Audit committees</b></p> <p>(2) An audit committee is an independent advisory body which must</p> <p>(a) advise the municipal council, the political office-bearers, the accounting officer and the management staff of the municipality, or the board of directors, the accounting officer and the management staff of the municipal entity, on matters relating to-</p>  |

| Extract from the Report   | Relevant legislation                               | Most prevalent relevant section(s)   |
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|   | Municipal Finance Management Act, 2003 (continued) | <ul style="list-style-type: none"> <li>(i) internal financial control and internal audits;</li> <li>(ii) risk management;</li> <li>(iii) accounting policies;</li> <li>(iv) the adequacy, reliability and accuracy of financial reporting and information;</li> <li>(v) performance management;</li> <li>(vi) effective governance;</li> <li>(vii) compliance with this Act, the annual Division of Revenue Act and any other applicable legislation;</li> <li>(viii) performance evaluation; and</li> <li>(ix) any other issues referred to it by the municipality or municipal entity:</li> </ul> <p>(b) review the annual financial statements to provide the council of the municipality or, in the case of a municipal entity, the council of the parent municipality and the board of directors of the entity, with an authoritative and credible view of the financial position of the municipality or municipal entity, its efficiency and effectiveness and its overall level of compliance with this Act, the annual Division of Revenue Act and any other applicable legislation.</p> |
| 89. Should a report to an audit committee, whether from the internal audit function or any other source, implicate the accounting officer, any member of the accounting authority, or any official in financial misconduct, including fraud, corruption or negligence, the chairman of the audit committee must promptly report this to the relevant executive authority and the Auditor-General or authorised auditor. | Public Finance Management Act, 1999                | <p><b>51. General responsibilities of accounting authorities</b></p> <p>(1) An accounting authority for a public entity—</p> <ul style="list-style-type: none"> <li>(a) must ensure that that public entity has and maintains— <ul style="list-style-type: none"> <li>(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;</li> </ul> </li> </ul>   |

| Extract from the Report  | Relevant legislation                                 | Most prevalent relevant section(s)  |
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|  | Public Finance Management Act, 1999 (continued)      | <p><b>76. Treasury regulations and instructions</b></p> <p>(4) The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning—</p> <p>(d) audit committees, their appointment and their functioning;</p> <p><b>Treasury Regulations</b></p> <p><b>27. Internal control and corporate management</b></p> <p><b>27.1 Audit committees</b><br/>[Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]</p> <p>27.1.11 Should a report from internal audit (or any other source) to the audit committee implicate any member(s) of the accounting authority in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority and the Auditor-General.</p> <p>27.1.12 The audit committee must communicate any concerns it deems necessary to the executive authority, the Auditor-General and if appropriate, to the external auditor.</p> |
| <b>Chapter 5 The governance of information technology</b>  |  |   |
| 33. When considering the company's compliance with applicable laws, rules, codes and standards, the board should ensure that IT related laws, rules, codes and standards are considered. Companies must comply with applicable IT laws and consider adherence to applicable IT rules, codes and standards, guidelines and leading practices. | All IT related legislation applicable to the company | This is a general statement regarding the requirement for a company to comply with all IT related laws applicable to that company and does not refer to any particular Act.   |
| <b>Chapter 6 Compliance with laws, rules, codes and standards</b>  |  |   |
| 1. Companies must comply with all applicable laws.   | All legislation applicable to the company            | This is a general statement regarding the requirement for a company to comply with all laws applicable to that company and does not refer to any particular Act.  |

| Extract from the Report  | Relevant legislation                 | Most prevalent relevant section(s)  |
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| Chapter 8 Governing stakeholder relationships  |                                      |   |
| Governing stakeholder relationships  |                                      |   |
| <p>21. If the board is willing to engage directly with any stakeholder groupings, the representatives of the company and stakeholders must be careful how they deal with information that could be share price sensitive. It is incumbent upon both the company and the stakeholders to familiarise themselves with insider trading laws. Even taking this into account, stakeholders should encourage the company to share information with all stakeholders as soon as possible. Use of SENS, the JSE news service, can ensure that instances of unequal disclosure are minimised. A stakeholder liaison forum, electronic or otherwise, that all stakeholders can access with relative ease can prevent or reduce the problem of only certain stakeholders being in possession of inside information.</p> | <p>Securities Services Act, 2004</p> | <p><b>72. Definitions</b></p> <p>In this Chapter, unless the context indicates otherwise—</p> <p><b>“inside information”</b> means specific or precise information, which has not been made public and which—</p> <ul style="list-style-type: none"> <li>(a) is obtained or learned as an insider; and</li> <li>(b) if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market;</li> </ul> <p><b>“insider”</b> means a person who has inside information—</p> <ul style="list-style-type: none"> <li>(a) through— <ul style="list-style-type: none"> <li>(i) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates; or</li> <li>(ii) having access to such information by virtue of employment, office or profession; or</li> </ul> </li> <li>(b) where such person knows that the direct or indirect source of the information was a person contemplated in paragraph (a);</li> </ul> |

| Extract from the Report | Relevant legislation                      | Most prevalent relevant section(s)   |
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|                         | Securities Services Act, 2004 (continued) | <p><b>73. Insider trading</b></p> <p>(1)(a) An insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.</p> <p>(b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—</p> <ul style="list-style-type: none"> <li>(i) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act;</li> <li>(ii) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.</li> </ul> <p>(2)(a) An insider who knows that he or she has inside information and who deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.</p> <p>(b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—</p> <ul style="list-style-type: none"> <li>(i) is an authorised user and was acting on specific instructions from a client, save where the inside information was disclosed to him or her by that client;</li> </ul> |

| Extract from the Report | Relevant legislation                      | Most prevalent relevant section(s)   |
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|                         | Securities Services Act, 2004 (continued) | <p>(ii) was acting on behalf of a public sector body in pursuit of monetary policy, policies in respect of exchange rates, the management of public debt or external exchange reserves; or</p> <p>(iii) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act;</p> <p>(iv) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.</p> <p>(3)(a) An insider who knows that he or she has inside information and who discloses the inside information to another person commits an offence.</p> <p>(b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that he or she at the same time disclosed that the information was inside information.</p> <p>(4) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.</p> |

| Extract from the Report  | Relevant legislation                     | Most prevalent relevant section(s)  |
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| <p>23. The law directs the board to act in the best interests of the company and the board should, within these confines, strive to achieve an appropriate balance between the interests of various stakeholders. In doing so, the board should take account, as far as possible, of the legitimate interests and expectations of its stakeholders in its decision-making.</p> | <p>Companies Act, 2008</p>               | <p><b>76. Standards of directors conduct</b></p> <p>(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—</p> <p>(b) in the best interests of the company;</p>   |
| <p>27. There must be equitable treatment of all holders of the same class of shares issued by the company as regards those shares, including minorities, and between holders of different classes of shares in the company, except where it is necessary to protect the interests of the shareholders of those classes that have a priority in ranking.</p>                    | <p>Companies Act, 2008</p>               | <p><b>37. Preferences, rights, limitations and other share terms</b></p> <p>(1) All of the shares of any particular class authorised by a company have preferences, rights, limitations and other terms that are identical to those of other shares of the same class, except to the extent that the company’s Memorandum of Incorporation provides otherwise.</p>  |
|  | <p>JSE Limited Listings Requirements</p> | <p><b>Rights between holders of securities</b></p> <p><b>Equality of treatment</b></p> <p>3.27 An issuer must ensure that all holders of any class of its securities that are in the same position, receive fair and equal treatment.</p> <p><b>Voting rights</b></p> <p>3.28 An issuer shall not issue any securities with voting rights differing from other securities of the same class.</p> <p><b>Pre-emptive rights</b></p> <p>3.29 Securities in each class for which listing is applied must rank <i>pari passu</i> in respect of all rights. It should be noted that a statement that “securities in each class rank <i>pari passu</i>” is understood to mean that:</p> <p>(a) they are in all respects identical;</p> <p>(b) they are of the same nominal value, and that the same amount per share has been paid up;</p> |

| Extract from the Report | Relevant legislation                                 | Most prevalent relevant section(s)  |
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|                         | <p>JSE Limited Listings Requirements (continued)</p> | <p>(c) they carry the same rights as to unrestricted transfer, attendance and voting at general/annual general meetings, and in all other respects; and</p> <p>(d) they are entitled to dividends at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will be the same amount.</p> <p>3.30 Subject to paragraphs 3.32 and 3.33, an issuer proposing to issue equity securities for cash must first offer those securities, effected by way of rights offer, to existing holders of equity securities in proportion to their existing holdings. Only to the extent that such securities are not taken up by holders of equity securities under the offer may they then be issued for cash to other persons or otherwise than in the proportion mentioned above.</p> <p>3.31 To the extent permitted by the Registrar of Companies and subject to the prior approval of the JSE, an issuer need not comply with paragraph 3.30 with respect to securities that the directors of the issuer consider necessary or expedient to be excluded from the offer because of legal impediments or compliance with the requirements of any regulatory body of any territory recognised as having import on the offer.</p> <p><b>Waiver of pre-emptive rights</b></p> <p>3.32 To the extent that holders of securities of an issuer provide their authorisation by way of ordinary resolution (determined in accordance with paragraph 5.51(g) or 5.52(e)), the issue by an issuer of equity securities for cash made otherwise than to existing holders of securities in proportion to their existing holdings will be permitted in respect of a specific issue of equity securities for cash for such equity securities issue, and in respect of a general issue of equity securities for cash, for a fixed period of time thereafter in accordance with such general authority.</p> |

| Extract from the Report  | Relevant legislation                                       | Most prevalent relevant section(s)   |
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|  | JSE Limited Listings Requirements (continued) <sup>1</sup> | 3.33 The JSE may waive some or all of the requirements contained in paragraph 3.32 if it is satisfied that the conditions as stipulated in Schedule 13 exist.  |
| 36. A company should consider disclosing in its integrated report the number and reasons for refusals of requests for information that were lodged with the company in terms of the Promotion of Access to Information Act, 2000. Disclosure must be considered having regard to whether divulging the information that the disclosure will necessitate will detrimentally affect the company or breach confidentiality or any agreement to which it is a party. | Promotion of Access to Information Act, 2000               | <p><b>1. Definitions</b></p> <p>In this Act, unless the context otherwise indicates—</p> <p><b>“request for access”</b>, in relation to—</p> <p>(a) a public body, means a request for access to a record of a public body in terms of section 11; or</p> <p>(b) a private body, means a request for access to a record of a private body in terms of section 50;</p> <p><b>11. Right of access to records of public bodies</b></p> <p>(1) A requester must be given access to a record of a public body if—</p> <p>(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and</p> <p>(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.</p> <p>(2) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.</p> <p>(3) A requester’s right of access contemplated in subsection (1) is, subject to this Act, not affected by—</p> <p>(a) any reasons the requester gives for requesting access; or</p> <p>(b) the information officer’s belief as to what the requester’s reasons are for requesting access.</p> |

<sup>1</sup>3.33 amended with effect from 15 October 2007.

| Extract from the Report  | Relevant legislation                                     | Most prevalent relevant section(s)   |
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|  | Promotion of Access to Information Act, 2000 (continued) | <p><b>50. Right of access to records of private bodies</b></p> <p>(1) A requester must be given access to any record of a private body if—</p> <p>(a) that record is required for the exercise or protection of any rights;</p> <p>(b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and</p> <p>(c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.</p> <p>(2) In addition to the requirements referred to in subsection (1), when a public body, referred to in paragraph (a) or (b)(i) of the definition of “public body” in section 1, requests access to a record of a private body for the exercise or protection of any rights, other than its rights, it must be acting in the public interest.</p> <p>(3) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester or the person on whose behalf the request is made.</p> |
| <b>Dispute resolution</b>  |  |  |
| 38. It is incumbent upon directors and executives, in carrying out their duty of care to a company, to ensure that disputes are resolved effectively, expeditiously and efficiently. This means that the needs, interests and rights of the disputants must be taken into account. Further, dispute resolution should be cost effective and not be a drain on the finances and resources of the company. | Companies Act, 2008                                      | <p><b>76. Standards of directors conduct</b></p> <p>(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—</p> <p>(a) in good faith and for a proper purpose;</p> <p>(b) in the best interests of the company; and</p>   |

| Extract from the Report  | Relevant legislation            | Most prevalent relevant section(s)  |
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|  | Companies Act, 2008 (continued) | <p>(c) with the degree of care, skill and diligence that may reasonably be expected of a person—</p> <ul style="list-style-type: none"> <li>(i) carrying out the same functions in relation to the company as those carried out by that director; and</li> <li>(ii) having the general knowledge, skill and experience of that director.</li> </ul>   |
| <p>42. Internal disputes may be addressed by recourse to the provisions of the Act and by ensuring that internal dispute resolution systems are in place and function effectively.</p> | Companies Act, 2008             | <p><b>166. Alternative dispute resolution</b></p> <p>(1) As an alternative to applying for relief to a court, or filing a complaint with the Commission in terms of Part D, a person who would be entitled to apply for relief, or file a complaint in terms of this Act, may refer a matter that could be the subject of such an application or complaint to—</p> <ul style="list-style-type: none"> <li>(a) the Companies Tribunal; or</li> <li>(b) an accredited entity, as defined in subsection (3), for resolution by mediation, conciliation or arbitration.</li> </ul> <p>(2) If the Companies Tribunal, or an accredited entity, to whom a matter is referred for alternative dispute resolution concludes that either party to the conciliation, mediation or arbitration is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the Companies Tribunal or accredited entity must issue a certificate in the prescribed form stating that the process has failed.</p> <p>(3) In this section, “<b>accredited entity</b>” means—</p> <ul style="list-style-type: none"> <li>(a) a juristic person or an association of persons accredited by the Commission in terms of subsection (4); or</li> <li>(b) an organ of state, or entity established by or in terms of a public regulation that—</li> </ul> |

| Extract from the Report | Relevant legislation            | Most prevalent relevant section(s)   |
|-------------------------|---------------------------------|--|
|                         | Companies Act, 2008 (continued) | <ul style="list-style-type: none"> <li>(i) is mandated, among other things, to perform mediation, conciliation or arbitration; and</li> <li>(ii) has been designated by the Minister in terms of subsection (5) as an accredited entity for the purposes of this Part.</li> </ul> <p>(4) For the purposes of this Part, the Commission—</p> <ul style="list-style-type: none"> <li>(a) may accredit, with or without conditions, a juristic person or an association that— <ul style="list-style-type: none"> <li>(i) functions predominantly to provide conciliation, mediation or arbitration services;</li> <li>(ii) has the demonstrated capacity to perform such services within the context of company law; and</li> <li>(iii) satisfies the prescribed requirements for accreditation;</li> </ul> </li> <li>(b) must monitor the effectiveness of any accredited person or an association relative to the purposes and policies of this Act; and</li> <li>(c) may— <ul style="list-style-type: none"> <li>(i) reasonably require any person or association accredited by it to provide information necessary for the purpose of monitoring in terms of paragraph (b); and</li> <li>(ii) with reasonable notice, withdraw any accreditation granted by it in terms of this section if the person or association no longer satisfies the criteria set out in paragraph (a).</li> </ul> </li> </ul> <p>(5) The Minister, after consulting the Commission—</p> <ul style="list-style-type: none"> <li>(a) may designate any organ of state or other entity contemplated in subsection (3)(b) as an accredited entity for the purposes of this Part; and</li> <li>(b) must prescribe criteria for the Commission to follow in assessing whether an applicant for accreditation in terms of subsection (4) meets the requirements of this section.</li> </ul> |

| Extract from the Report  | Relevant legislation       | Most prevalent relevant section(s)   |
|--|----------------------------|--|
| <p>49. It is also important to recognise that the use of mediation allows the parties to create options for resolution that are generally not available to the parties in a court process or in arbitration. Further, the Act makes provision for alternative dispute resolution processes to be conducted in private.</p>   | <p>Companies Act, 2008</p> | <p>Section 166 of the Companies Act, 2008 does not specifically address the conduct of alternative dispute resolution in either public or private. It does not, however, <i>prohibit</i> the conduct of alternative dispute resolution processes in private.</p> |
| <p>53. In selecting a dispute resolution process, there is no universal set of rules that would dictate which is the most appropriate method. Each case should be carefully considered on its merits and, at least, the following factors should be taken into account:</p> <p><i>53.5 Confidentiality.</i> Private dispute resolution proceedings may be conducted in confidence. Further, the Act makes provision for alternative dispute resolution processes to be conducted in private.</p> | <p>Companies Act, 2008</p> | <p>Section 166 of the Companies Act, 2008 does not specifically address the conduct of alternative dispute resolution in either public or private. It does not, however, <i>prohibit</i> the conduct of alternative dispute resolution processes in private.</p> |

## Chapter 9 Integrated reporting and disclosure

### Financial disclosure

|   |                            |  |
|---|----------------------------|--|
| <p>10. The board must disclose whether the company is a going concern and whether it will continue to be a going concern in the financial year ahead. If there is concern about the company's going concern status, the board should give the reasons and the steps it is taking to remedy the situation.</p> | <p>Companies Act, 2008</p> | <p><b>1. Definitions</b></p> <p>In this Act, unless the context indicates otherwise-</p> <p><b>“financial reporting standards”</b>, with respect to any particular company's financial statements, means the standards applicable to that company, as prescribed in terms of section 29(4) and (5);</p> <p><b>29. Financial statements</b></p> <p>(1) If a company provides any financial statements, including any annual financial statements, to any person for any reason, those statements must—</p> <p>(a) satisfy the financial reporting standards as to form and content, if any such standards are prescribed;</p> <p>(4) Subject to subsection (5), the Minister, after consulting the Council, may make regulations prescribing—</p> <p>(a) financial reporting standards contemplated in this Part; or</p> <p>(b) form and content requirements for summaries contemplated in subsection (3).</p> |
|---|----------------------------|--|

| Extract from the Report | Relevant legislation  | Most prevalent relevant section(s)  |
|-------------------------|---|---|
|                         | Companies Act, 2008 (continued)   | <p>(5) Any regulations contemplated in subsection (4)—</p> <ul style="list-style-type: none"> <li>(a) must promote sound and consistent accounting practices;</li> <li>(b) in the case of financial reporting standards, must be consistent with the International Financial Reporting Standards of the International Accounting Standards Board or its successor body; and</li> <li>(c) may establish different standards applicable to— <ul style="list-style-type: none"> <li>(i) profit and non-profit companies; and</li> <li>(ii) different categories of profit companies.</li> </ul> </li> </ul>  |
|                         | <p>International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board as at 1 July 2009</p> <p>(Authors: In the absence of regulated financial reporting standards, we have presumed for the purposes of this document, that IFRS would satisfy ‘financial reporting standards’ as defined in the Companies Act, 2008)</p> | <p><b>International Accounting Standard (IAS) 1, Presentation of Financial Statements</b></p> <p><b>Going concern</b></p> <p>25. When preparing financial statements, management shall make an assessment of an entity’s ability to continue as a going concern. An entity shall prepare financial statements on a going concern basis unless management either intends to liquidate the entity or to cease trading, or has no realistic alternative but to do so. When management is aware, in making its assessment, of material uncertainties related to events or conditions that may cast significant doubt upon the entity’s ability to continue as a going concern, the entity shall disclose those uncertainties. When an entity does not prepare financial statements on a going concern basis, it shall disclose that fact, together with the basis on which it prepared the financial statements and the reason why the entity is not regarded as a going concern.</p> |

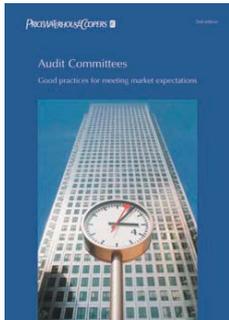
| Extract from the Report   | Relevant legislation                 | Most prevalent relevant section(s)   |
|---|--------------------------------------|--|
| <b>Sustainability disclosure</b>  |                                      |  |
| <p>18. Providing assurance is different from verification. The process of verification confirms the existence of stated facts – it confirms data. Assurance is a broader term that refers to the integrity of certain processes and systems. The verification of certain information may therefore be necessary to provide assurance. The assurance regarding sustainability performance and reporting is more complex as the information is not always subject to clear standards as is the case with financial reporting. Globally, two complementary standards have emerged in sustainability assurance: AccountAbility’s AA 1000 Assurance Standard (AA1000AS) and the International Accounting and Auditing Standard Board’s International Standard on Assurance Engagements (ISAE 3000). All auditing professionals in South Africa must comply with ISAE 3000. While AA1000AS usually aligns the assurance process to the material concerns of stakeholders in terms of the report as a whole, ISAE 3000 concentrates on the accuracy and completeness of information through a process of verification of data, systems performance assessment and evaluating compliance within the company’s defined scope. It is therefore recommended that:</p> <p>18.1 ‘sustainability’ assurance is an ongoing, integral part of the integrated reporting cycle; and</p> <p>18.2 ISAE3000 and AA1000AS methodologies are used in combination to ensure the needs of the stakeholders and those of the company are met in a single process.</p> | <p>Auditing Profession Act, 2005</p> | <p><b>Definitions</b></p> <p>(1) In this Act, unless the context indicates otherwise—</p> <p>“<b>audit</b>” means the examination of, in accordance with prescribed or applicable auditing standards—</p> <p>(b) financial and other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on the financial and other information;</p> <p>“<b>auditing pronouncements</b>” means those standards, practice statements, guidelines and circulars developed, adopted, issued or prescribed by the Regulatory Board which a registered auditor must comply with in the performance of an audit;</p> <p><b>41. Practice</b></p> <p>(6) A registered auditor may not—</p> <p>(b) sign any account, statement, report or other document which purports to represent an audit performed by that registered auditor, unless the audit were performed by that registered auditor, under the personal supervision or direction of that registered auditor or by or under the personal supervision or directions of that registered auditor and one or more of the partners, co-directors or co-members of the registered auditor, as the case may be, in accordance with prescribed auditing standards;</p> <p>(Authors: The Independent Regulatory Board for Auditors’ adoption of the entire suite of international auditing, review, assurance (which includes ISAE 3000) and related services pronouncements of the International Auditing and Assurance Standards Board is contained in Board Notice 128 of 2009)</p> |

## Our services

Competitive advantage is increasingly being conferred on businesses that create and maintain a culture of integrity-driven performance. However, managing the shift to a higher level of principled business practice raises a number of new challenges. PricewaterhouseCoopers has made a considerable investment in compliance solutions on a global and local scale to help organisations meet these challenges. Our experience and know-how ensures that our investment can be practically applied for the maximum benefit of our clients.

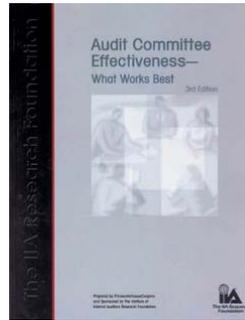
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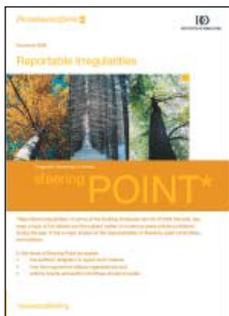
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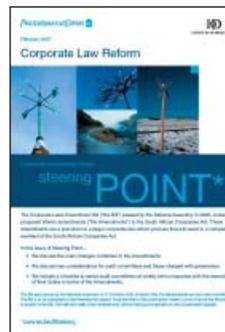
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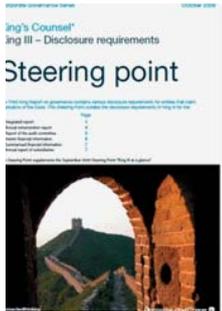
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