

The importance of transparency and accountability as per the Companies Act



The Companies Act seeks to promote transparency and accountability in the South African corporate sector. Corporate governance looks at the processes, structures and decision-making within the organisation.

What is corporate governance?

Corporate governance is the system by which companies are directed and controlled. This system requires looking at the various stakeholders in the company, such as the shareholders, directors, debtors, creditors and customers.

When looking specifically at corporate governance, there are two major topics that need to be discussed, namely accountability and transparency. The concept of *corporate governance* is concerned with the separation of powers between the company's board of directors and its stakeholders (mainly the interests of its shareholders). Corporate governance entails a system of checks and balances and is intended to prohibit directors from promoting the short-term interests of shareholders by maximising the profits payable to them to the possible detriment of the long-term sustainability of the company.

In addition to statutory legislation (Companies Act) there is a corporate governance approach that can be followed on a voluntary basis, namely the King Code of Governance. However, although the King Code is not enforceable, it should not be dismissed. The court has ruled that it will still take corporate governance matters into account. Directors have a fiduciary duty to the companies in which they are appointed, meaning a duty of trust and loyalty and a duty to always act in the best interest of the company. Corporate governance is seen as central to this common law and statutory duty of good faith and best interest.



Transparency

Transparency has a wide meaning but essentially entails the availability of reliable and relevant information about the financial performance, investment opportunities, periodic performance, governance, risk and value of the company. This enables the company to be evaluated and the board to perform more efficiently. The principle of transparency is embedded in the constitutional principles and values of an open and democratic society, which is also the apex of the corporate governance approach.



Accountability

Accountability involves establishing a regime and accompanying provisions relating to transparency to ensure that those making the disclosures are motivated to do so properly and accurately.

Section 76(3) of the Companies Act determines that directors, as a standard conduct, must always act in good faith and for proper purposes.

A lack of accountability can create a situation of abuse of power. The regime looks at the following key features:

- Who is accountable to whom?
- What are they liable for?
- What processes are followed to ensure accountability?
- By what standards will putatively accountable behaviour be judged? (For what behaviour should they be held accountable?)
- What are the effects of failing to adhere to those standards?

Companies are accountable for their human participants (directors, shareholders, creditors and customers), their financial conditions and their corporate governance structures. With regard to creditors and customers, companies are accountable to the public as potential investors.

What is corporate ethical leadership and corporate citizenship?

The King report makes provision for ethical leadership and a concept referred to as 'corporate citizenship'. The King report requires the board of directors to ensure effective ethical leadership based on good ethics. The importance of ethical leadership in corporate governance is that when a company is run ethically, it will earn the approval of its stakeholders who are affected by its daily operations. The board of directors must set the values of the company and a code of conduct and ensure that these are adhered to. The values that underpin corporate governance in an organisation are responsibility, accountability, fairness and transparency.

Besides ethical corporate leadership, the board of directors of the company should be – and be seen to be – a good corporate citizen. This means that the company is responsible for the ethical relationship between the company and the society within which it operates. As a responsible corporate citizen, the company should protect and invest in the interests of the economy, environment and society.

What other legislation promotes transparency and accountability?

- o Various other legislation also promotes the principles of accountability and transparency in the commercial environment, impacting on the way companies are managed. The Companies Act provides for access to company information by the shareholders and other stakeholders and protects whistle-blowers (section 159).
- o The *Promotion of Access to Information Act (Act 2 of 2000)* also provides for access to company documents and information where the requesters can prove that they want to protect a right established under law. *The Consumer Protection Act (Act 68 of 2008)* has similar provisions for a customer seeking access to information to protect his/her interests. All the above are intended to promote openness, transparency and accountability.

Conclusion:

The Companies Act provides that the affairs of the business must be managed by or under the authority and direction of the board of directors. Transparency and accountability allow the directors of the company to perform properly, which in turn will allow the company to perform efficiently.

To facilitate transparency and accountability, the company must be managed in a manner that gives effect to the values of an open society and so-doing promote social justice and protect the interests of the company, its stakeholders as well as citizens, the community and society at large.

SERR Synergy assists businesses with corporate governance by helping them to develop a sustainable business profile within the ambit of the Companies Act.

About the author: Keira-lea Sandilands completed her B.Com law degree at Pearsons Institute of Higher Education where she graduated cum laude and was named as the top student on campus. She is in the process of completing the Board level for the Corporate Governance Qualification.

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