

PRACTICENOTES

King III Chapter 2

Company secretary evaluation questionnaire

July 2011

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Company secretary evaluation questionnaire

In terms of King III, Principle 2.21, "The board should be assisted by a competent, suitably qualified and experienced company secretary."

This questionnaire summarises key legislative and governance principles, and practices. The purpose of the questionnaire is to assess the company secretary as well as the organisational context of the company secretary's position.

The questionnaire takes into account the Companies Act requirements which are applicable to public and state-owned companies. Tailoring of the questionnaire may be required in certain industries where there are additional legislative considerations.

Directions:

- 1) 'Section 1 - Statutory requirements' is to be completed by the company secretary.
- 2) Directors are to add additional comments to Section 1 where they feel necessary.
- 3) Directors are to complete the rest of the questionnaire.

Suggested questionnaire template

1. STATUTORY REQUIREMENTS - declaration by company secretary

The company secretary is to select yes or no for each of the following statutory requirements.

The directors completing the questionnaire may then provide additional comments where they feel necessary.

#	Component	Yes	No	Additional comments by directors, if necessary
	I, the company secretary:			
1.1	have the requisite knowledge of, or experience with, relevant laws;			
1.2	was a permanent resident of the Republic throughout the service period;			
1.3	have provided the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;			

1.4	have made the directors aware of all laws relevant to or affecting the company;			
1.5	have reported to the 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 the Companies Act;			
1.6	have ensured that minutes of all shareholders meetings, board meetings and board committee meetings are properly recorded;			
1.7	have certified in the company's annual financial statements that the company has filed required returns and notices in terms of the Companies Act and that all such notices appear to be true, correct and up to date;			
1.8	have ensured that a copy of the company's annual financial statements was sent to every person who is entitled to it;			
1.9	have maintained the company's statutory registers;.			
1.10	have ensured that all statutory returns have been submitted to the CIPC.			

2. KING III AND BEST PRACTICE REQUIREMENTS

Directors are to select yes or no for each of the following requirements and provide additional comments where necessary.

#	Component	Yes	No	Additional comments
	The company secretary:			
2.1	is not a director of the company;			
2.2	has a direct channel of communication to the chairman of the board;			
2.3	was present at the majority of shareholder, board and committee meetings;			

Directors are to rate the extent to which the following statements apply to the company secretary using the following scale:

- 1 - strongly disagree
- 2 - disagree
- 3 - agree
- 4 - strongly agree

If necessary, provide additional comments to support the ratings.

#	Component	Rating	Additional comments
	The company secretary:		
2.4	has maintained an arms-length relationship, as far as is reasonably possible, with the board and its directors;		
2.5	was adequately available to provide comprehensive practical support and guidance to the directors;		
2.6	has acted well as a confidential sounding board to the chairman, non-executive directors and executive directors on points that may concern them and has taken a lead role in managing difficult inter-personal issues on the board.		
2.7	has timeously and effectively raised matters that may warrant the attention of the board;		
2.8	has obtained appropriate response and feedback to specific agenda items and matters arising from previous meetings;		
2.9	has effectively ensured proper compilation and timely circulation of board papers;		
2.10	has ensured that minutes of meetings, after the approval of the chairman of the board or relevant board committee, were circulated to the directors in a timely manner;		
2.11	has adequately assisted the nomination committee to ensure that procedure for the appointment of directors was properly carried out;		
2.12	has effectively assisted in the proper induction of new members into the business, orientation, ongoing training and education of directors, including assessing their specific training needs;		
2.13	has successfully served as a central source of guidance and advice to the board, and within the company, as regards the company and its activities in order to support the decision making process.		
2.14	has adequately ensured that the board and board committee charters and terms of reference were kept up-to-date;		
2.15	has ensured the smooth running of the board's and board committees' activities by assisted the chairmen to set agendas, draft yearly work plans as well as preparing and presenting papers to the board and board		

	committees.		
2.16	has effectively assisted the board with yearly evaluation of the board, its individual directors and committees of the board;		
2.17	has taken ownership for being the 'gatekeeper' of corporate governance within the entity;		
2.18	Has made arrangements for and managed the annual general meeting, established items to be considered, including resolutions dealing with governance type matters including proxy votes etc.		
2.19	has adequately ensured that the annual general meeting complied with the appropriate procedures of the Companies Act, the Memorandum of Incorporation and, in the case of listed companies, the JSE Listings Requirements;		
2.20	has adequately ensured, for listed companies, compliance with the JSE Listings Requirements and the Securities Regulation code i.e.: <ul style="list-style-type: none"> • Publication and dissemination of reports within the periods laid down by the JSE rules • Dissemination of regulatory news announcements such as trading statements to the market • Proper notification of directors' dealings and acquisition of interests in the company's incentive arrangements; 		
2.21	has effectively ensured compliance with the Companies Act and all other relevant legal requirements;		
2.22	has conducted appropriate and relevant correspondence with shareholders, either directly or through the share registrars, as regards dividends, calls, transfers and other general enquiries in respect of shares;		
2.23	has effectively managed relations with stakeholders with regard to corporate governance issues and the board's practices;		
2.24	has adequately ensured that the concept of stakeholders was on the board's collective mind when important decisions were being taken (particularly integrated reporting);		
2.25	Has acted as the 'conscience' of the		

	company, with an additional enquiring voice in relation to board decisions, drawing on his/her experience and knowledge of the practical aspects;		
2.26	Has kept under close review all legislative, regulatory and corporate governance developments that may affect the company's operations, and ensured that the board was fully briefed on these and that it has regard to them when taking decisions;		
2.27	Has ensured that the standards and/or disclosures required by the King Code annexed to the JSE Listing Rules are observed and correctly reflected in the annual/integrated report;		
2.28	Has effectively managed relations with investors, particularly institutional investors, with regard to corporate governance issues and the board's practices in relation to corporate governance;		
2.29	Has kept in touch with the debate on corporate social responsibility and monitoring all developments in this area and advised the board in relation to its policies and practices with regard to corporate social responsibility and its reporting on the matter.		

3. ORGANISATIONAL FORMALITIES

Select yes or no for each of the following statements and provide additional comments where necessary.

#	Component	Yes	No	Additional comments
3.1	The board has passed a resolution confirming that it has applied its collective mind to satisfying itself as to the appropriateness of the company secretary's requisite knowledge of, or experience in relevant laws;			
3.2	The charters of the board and all board committees stipulate that the company secretary, or nominee, will act as secretary to the board and all board committees;			

3.3	The company secretary's letter of appointment demarcates between his or her statutory/governance responsibilities and reporting lines, and any administrative responsibilities attributable to the position;			
3.4	There is a written policy and/or procedure for the formal evaluation of the company secretary by the chairman of the board in respect of statutory/governance responsibilities;			
3.5	There is a written policy and/or procedure for the formal evaluation of the company secretary by the CEO/CFO in respect of administrative responsibilities;			
3.6	The remuneration package of the company secretary is approved by the remuneration committee or equivalent (or if no such committee, by the board itself);			
3.7	The board has provided the company secretary's department with the appropriate resources to fulfil the required responsibilities;			
3.8	The company secretary has also been appointed the compliance officer of any employee share schemes.			

4. GENERAL COMMENTS

In relation to the overall performance of the company secretary, do you have any comments to add which have not been covered above? Please provide details.

Resources:

This practice note was compiled with the assistance of Chartered Secretaries Southern Africa.

Appendix AExtract from Companies Act, 2008

Company secretary

86. Mandatory appointment of company secretary

- (1) A public company or state-owned company must appoint a company secretary.
- (2) Every company secretary, irrespective of whether the appointment is made as required by subsection (1) or in terms of a requirement in a company's Memorandum of Incorporation, as contemplated in sections 34(2) and 84(1)(c)(ii), must -
 - (a) have the requisite knowledge of, or experience in, relevant laws; and
 - (b) be a permanent resident of the Republic, and remain so while serving in that capacity.
- (3) The first company secretary of a public company or state-owned company may be appointed by-
 - (a) the incorporators of the company; or
 - (b) within 40 business days after the incorporation of the company, by either-
 - (i) the directors of the company; or
 - (ii) an ordinary resolution of the holders of the company's securities.
- (3A) The first company secretary of a company that is required only in terms of its Memorandum of Incorporation to appoint a company secretary as contemplated in sections 34(2) and 84(1)(c)(ii), must be appointed -
 - (a) in accordance with subsection (3), if the requirement to appoint a company secretary applies to that company when it is incorporated; or
 - (b) within 40 business days after the date on which the requirement first applies to the company, by either -
 - (i) the directors of the company; or

(ii) an ordinary resolution of the holders of the company's securities.

- (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.

87. Juristic person or partnership may be appointed company secretary

- (1) A juristic person or partnership may be appointed to hold the office of company secretary, provided that-
- (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
 - (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.
- (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).
- (3) If at any time a juristic person or partnership holds office as company secretary of a particular company-
- (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;
 - (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
 - (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 subsection (1) at the time of that action.

88. Duties of company secretary

- (1) A company's secretary is accountable to the company's board.
- (2) A company secretary's duties include, but are not restricted to-

- (a) providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;
 - (b) making the directors aware of any law relevant to or affecting the company;
 - (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;
 - (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;
 - (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;
 - (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
 - (g) carrying out the functions of a person designated in terms of section 33(3).
89. **Resignation or removal of company secretary**
- (1) A company secretary may resign from office by giving the company-
 - (a) one month written notice; or
 - (b) less than one month written notice, with the approval of the board.
 - (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.
 - (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).
 - (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.