

Governance Matters

Q4 of 2014



Better directors. Better boards. Better business.



INSTITUTE OF DIRECTORS
SOUTHERN AFRICA



Content

Welcome to the IoDSA's fourth quarterly technical publication. We have identified the need to develop this publication to promote and enhance governance awareness amongst our members.

1. The Company Secretary	3
• Companies Act	
• King III	
• JSE listings requirements	
• King III practice note	
• Relevant IoDSA training courses and events	
• International guidance	
2. IoDSA recent media releases and articles	7
3. Legal updates.....	8
4. IoDSA technical team.....	9



1. The Company Secretary

The responsibilities of the company secretary have evolved from largely that of an administrative role to one which encompasses acting as governance gatekeeper to the company and advisor to the board. Boards rely heavily on the company secretary to advise them on their statutory duties and other governance obligations. This evolved role of the company secretary has heightened their importance and positioned them as one of the key governance role-players within the company. What follows is a compilation of various sources of guidance for boards and company secretaries on the role of the company secretary.

The Companies Act

Chapter 3, Part B of the **Companies Act** contains the legal requirements regarding the appointment and duties of the Company Secretary in sections 86 to 89, including the following:

- Every public company and state-owned company must appoint a company secretary;
- Every company secretary must have the requisite knowledge of, or experience in, relevant laws, and be a permanent resident in the Republic, and remain so while serving in that capacity;
- A company secretary is accountable to the company's board;
- Legislated duties include, amongst others, providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers; making the directors aware of any law relevant to or affecting the company and reporting to the company's board any failure on the part of the company or a director to comply with its Memorandum of Incorporation or rules of the company or the Act.



1. The Company Secretary

King III

Principle 2.21: The board should be assisted by a competent, suitably qualified and experienced company secretary

The board should be aware of the company secretary's duties and should empower the company secretary to properly fulfil those duties. As gatekeeper of good governance, it is important for the company secretary to maintain an arms-length relationship with the board and its directors, as far as reasonably possible.

Individual directors and the board collectively should look to the company secretary for guidance on their responsibilities and duties and how such responsibilities and duties should be discharged in the best interests of the company.

Reference should be made to **King III** for further specific duties of the company secretary.



1. The Company Secretary

JSE listings requirements

In terms of the Corporate Governance section 3.84 of the **JSE listings requirements**, the board of directors must consider and satisfy itself, on an annual basis, on the competence, qualifications and experience of the company secretary. The issuer must confirm this by reporting to shareholders in its annual report that the board of directors has executed this responsibility.

The section further requires the following - the recommended practice of the King Report on Governance for South Africa highlights, inter alia, that the company secretary should maintain an arms-length relationship with the board of directors and that the company secretary should ideally not be a director. The board of directors must specifically consider these two points and provide an explanation in the annual report as to why it believes that there is an arms-length relationship between itself and the company secretary.

King III practice note

In order to assist boards with evaluating their company secretary's performance, the King Committee released, as one of its King III practice notes, a template **company secretary evaluation questionnaire**.

Relevant IoDSA training courses and events

Effective company secretaries programme

This course provides a comprehensive overview of the extensive administrative and statutory duties of the company secretary. It is presented by a seasoned company secretary, and will equip company secretaries with tools and techniques to improve their effectiveness and understanding of their roles as value adding members of their organizations.

1. The Company Secretary

Company secretary breakfast

During August the IoDSA hosted a company secretary breakfast focussing on the strategic position of the company secretary. The guest speaker Annamarie van der Merwe shared her insight on the development of the role of the company secretary, with the important question of “where are company secretaries heading?”

The IoDSA is planning to host the company secretary breakfast quarterly in 2015.



Company secretary mentoring

The IoDSA's **Directors' Circles** provide an opportunity for less experienced individuals to engage with seasoned individuals and experts in different areas of corporate governance. During 2015, we plan to extend this offering to cater specifically for the needs of company secretaries.

International guidance

The company secretary, building trust through governance – Henley Business School and ICSA

Rise of the company secretary – the Law Society Gazette

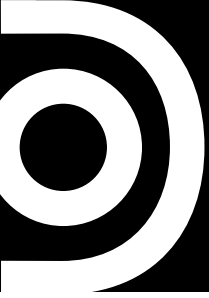
The role of the company secretary – IoDUK

The changing role of the company secretary - Deloitte

Procedures guide for company secretaries – PwC

An enhanced role for company secretaries - KPMG

The new role of the company secretary - EY



2. IoDSA recent media releases and articles

- *Consensus on boards vital for executive appointments*
- *IoDSA Executive Leadership Changes*
- *Strengthening audit committees in local government is key*
- *Development of women must turn from an August flash in the pan to a conveyor belt of new talent*
- *Strong corporate governance holds the key to African economic growth*
- *New IoDSA executive has it all*
- *Recent CIPC warnings to state-owned companies raises the spotlight on public sector governance*

3. Legal updates

[Click here](#) to view the below-mentioned editions of the Contemporary Gazette

Pertinent Legislation	Snapshot	Contemporary Gazette Reference
1. Prescribed Rate of Interest Act (Amendment Act)	The Amendment changes the Prescribed Rate of Interest from 15.5% to 9%. The Amendment came into effect on 1 August 2014.	Volume 9, Issue 13, 28 July 2014
2. Employment Equity Act (Amendment Act)	Both the Act and its Regulations have been amended by this Amendment Act which came into effect on 1 August 2014. Directors should understand the impact thereof on their organisations.	Volume 9, Issue 13, 28 July 2014 and Volume 9, Issue 14, 11 August 2014
3. Financial Intelligence Centre Act (Directive Issued)	On 12 September 2014 a directive was issued and gazetted which requires practical follow up and notification by requisite organisations in instances where there has been a failure to report to the Centre. This directive applies to all accountable and reporting institutions and to other persons who have an obligation to file a report with the Centre in terms of the provisions of the Act.	Volume 9, Issue 16, 15 September 2014
4. Basic Conditions of Employment Act (Amendment Act)	The Amendment Act came into effect on 1 September 2014 and provides for extensive amendments to several sections of the Act as well as the introductions of a new section 55 to the Act.	Volume 9, Issue 16, 15 September 2014
5. Long-term Insurance Act and Short-term Insurance Act	Both Acts provide that insurers must be managed in accordance with a prescribed governance and risk management framework. There is currently a draft compliance-risk framework and it is open for comments before 7 November 2014.	Volume 9, Issue 17, 29 September 2014

4. IoDSA technical team



Parmi Natesan

Executive:

Centre of Corporate Governance

Parmi@iodsa.co.za



Ansie Ramalho

King IV Project Lead

Ansier@iodsa.co.za

The information contained in Governance Matters is disseminated by the IoDSA is of a general nature and is not intended to address the circumstances of any particular individual or entity. The views and opinions of the document do not necessarily represent the views and opinions of the Institute of directors and/or individual members. These guidelines are for discussion purposes only and in considering these issues, the culture of each entity should be taken into account. Although every endeavour is made to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No reliance should be placed on this document, nor should any action be taken without first obtaining appropriate professional advice. The IoDSA shall not be liable for any loss or damage, whether direct, indirect, consequential or otherwise which may be suffered, arising from any cause.