BOTSWANA CODE OF CORPORATE GOVERNANCE

SECTION I – INTRODUCTION AND BACKGROUND

1. The Botswana Milieu

Botswana has a small population of approximately two million people, most of whom can read and write English and Setswana. The literacy level is estimated to be approximately 60%.

A key focus of the Botswana government is the economic diversification and empowerment of its citizens. Botswana has the highest credit rating in Africa. The good governance of companies in Botswana is critical in order to continue to attract and retain capital investment, particularly foreign capital investment.

Botswana has no accounting standard of its own and has adopted the International Financial Reporting Standards. Most Companies are economically dependent on South Africa from a trading point of view and many of the larger entities are state owned enterprises. In regard to the latter, the appointments to boards are usually by the relevant minister.

The Botswana Stock Exchange is relatively small, with the largest entities being financial insitutions carrying on business in Botswana.

While the main source of income in the country is the mining of diamonds, tourism is also a huge contributor. Botswana is also dependent, to a large degree, on South Africa for its imports.

There are important governance issues which are debated in Botswana, such as the guidance for responsible investment by trustees of pension funds, transparency, corruption, the appointment of directors, managing conflicts of interests, information technology (IT) governance, the rotation of auditors, terms of appointments for executives and directors, the boards of subsidiaries being appointed by holding companies and owner managed subsidiaries, as well as the level of remuneration for Directors, especially those seating in state owned enterprises.

Botswana's carbon footprint at present is low in comparative terms and large areas have been conserved.

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2. International Governance Trends

While it is true that the world is physically round, Botswana, as all other countries in the world, operates in a flat, borderless electronic world. Capital will flow towards where there is good governance and away from where there is poor governance. It also flows 24/7 with the click of a mouse. Certain governance trends have become universal and are contained in this Code. A large pool of capital today is in the hands of pension funds around the world and pension funds have become a large shareholder of the great multinational companies. The trustees of these pension funds are not swayed by deprivation or hardship in any area, but have an onerous duty to make an informed assessment of the sustainability of the business of a company before acquiring the equity of that company for the benefit of the funds' ultimate beneficiaries – their future pensioners.

3. Global Crises

Companies at present are operating in the context of the following milieu the global financial crisis; the climate change crisis; ecological overshoot, being sustainability speak for the fact that individuals, companies, governments and other entities have all used and continue to use the natural assets of planet earth faster than nature can regenerate them; revolutionary and evolutionary transparency; greater expectations from stakeholders and population growth. Companies have operated for the last 150 years on yesterday's economic model, which was based on two false assumptions. Firstly, that nature had limitless resources. This is false, as nature's assets – land, air, water, coal, oil, wood, etc, are all finite. Secondly, the assumption was that planet earth had an infinite capacity to absorb waste. This, too, was false, as the landfills around the world do not disappear. The matter dumped in them degrades and toxifies the land and fresh waters of planet earth. In consequence, at present, the planet needs at least 20% more of its natural asset capacity to sustain the seven billion people living on it. According to the United Nations, there will be another two billion people on the planet by 2045. There are already food security problems and fresh water is scarce in many countries today. Having regard to all these circumstances, it is clear that business cannot be conducted

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as usual and companies have to learn to make more with less. It is in this context that governance, how companies are directed and managed, strategy, the way companies plan short- and long-term to thrive and the sustainability issues relevant to the business of the company, have become inseparable. For example, access to fresh water has to be an essential element in the long-term strategy of a beverage manufacturer. One of the greater expectations of stakeholders is for companies to be and be seen to be good corporate citizens.

4. Internal Audit

The internal audit profession has changed profoundly over the last 10 years. The internal auditor has become central in the question of good governance. The internal auditor today is a highly professional and skilled individual that is central to the combined assurance of management, internal audit and external audit. These are the three defences of the non-executive director. Otherwise, he/she is at the mercy of management. Further, the board has to certify in the Annual Financial Statements that the internal controls of a company are adequate. Consequently, the international trend is for the internal auditor to give a written assessment of the adequacy and effectiveness of controls to the board and of financial controls to the audit committee, which in turn reports to the board.

5. Remuneration

Remuneration of executives and executive directors has been the matter of intense debate around the world. The international trend is for the board, on obtaining advice and input from the remuneration committee, to set a policy for remuneration. This policy for remuneration is put to the shareholders at the Annual General Meeting for a non-binding vote of approval. This gives the board a sense of the acceptance or otherwise of the policy to remunerate its executives.

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6. IT Governance and IT Security

The information systems of a company are now pervasive. They are no longer used only to enable a company to work more efficiently. They are in the very fabric of the business of a company. The information system has to be aligned with the long-term strategy of the company, otherwise the strategy cannot be achieved. Further, IT security is critical because of the company's confidential information. Therefore, there is a focus worldwide on IT governance and IT security.

7. Dispute Resolution

As a result of the electronic age, contracts are performed with an exchange of e-mails and across borders. When disputes arise, many legal problems such as which substantive law or procedural law should be applied. Further, the judicial systems around the world have not been able to keep pace with the fast electronic conclusion of commercial transactions. Consequently, the international trend is that part of the duty of care of a director is to ensure that when a dispute arises, it is resolved as efficiently, expeditiously and effectively as possible. In consequence, dispute resolution clauses should be contained in employment, customer and supplier contracts.

8. Corporate Reporting

Corporate reporting is not what it used to be. Trustees of pension funds and directors of financial institutions have a duty to make an informed assessment of the sustainability of a business before investing their ultimate beneficiaries' money in the equity of a company. This cannot be achieved by reading a financial report only. The trend worldwide is towards integrated reporting, that is, the integration of the non-financial and the financial and *vice versa*. To this end, in July 2010, the International Integrated Reporting Council was formed, one of its purposes being to publish a discussion document on a framework for integrated reporting which was published on 12 September 2011. A draft framework was published on 16 April 2013 and Version 1.0 of the framework will be published on 5 December 2013 and can be accessed at theiirc.org.

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9. Gender

For the word "chairman", one should also read chairperson and chairwoman. For the words "he", "his" and "him", one should also read she, hers and her.

10. Corporate citizenship

Corporate citizenship must be distinguished from corporate social investment, corporate social responsibility and sustainability. Corporate social investment is a matter of philanthropy because it involves a percentage of profit that a company donates to social causes. Corporate social responsibility is in the main concerned with managing a business's impacts on society. Sustainability involves a business approach of embedding sustainability into long term strategic planning to give a company a competitive edge without unduly compromising short term profitability and cashflows.

Corporate citizenship is defined in King III as "Responsible corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates. As responsible corporate citizens of the societies in which they do business, companies have, apart from rights, also legal and moral obligations in respect of their economics, social and natural environments. As a responsible corporate citizen the company should protect, enhance and invest in the well-being of the economy, society and the natural environment."

11. Conclusion

It can be seen that the establishment of a corporate governance code for Botswana is timeous. Governance does evolve, as society changes or there are crises in the world, such as the global financial crisis. Notwithstanding, each country does need to develop its own corporate governance code, because of the special circumstances in each country. It is for this reason that we have endeavoured to set out the special circumstances involving Botswana above. It is the earnest hope of the Committee who has worked on this Code that it is adopted by all companies in Botswana on an apply or explain basis and that the Botswana Stock Exchange adopts the Code as a listing requirement. While it is directed at companies, the main principles of good governance contained in this Report are equally applicable to all other entities, such as universities, government departments, trusts and NGOs.

SECTION II – QUALITY VERSUS QUANTITY

1. Good governance is about quality and not about quantity. It is not a matter of a mindless compliance with a list of rules, resulting in a tick-box approach. It involves the honest application of mind to issues which are clearly understood by the board and decisions made in the best interests of the company in the maximisation of its total value. In the decision-making process, however, consideration must be given to the needs, interests and expectations of the various stakeholder groups linked to the company by its business.

2. Good governance therefore is about leadership. Leadership requires directing a company, certainly long-term, so that it is a sustainable one. Boards should direct companies so that they achieve a positive sustainable economic, social and environmental performance.

3. Sustainability is the primary moral and economic imperative of the 21st century. It involves both opportunities and risks. A board can no longer plan long-term and ignore natural capital such as land, air and water. A board can no longer operate as if natural capital were at no cost. Nature, society, business, financial aspects, technology and manufactured assets are interconnected. This interconnectivity has to be understood by boards today.

4. The concept of corporate citizenship has taken hold around the world. As each individual citizen in Botswana is expected to behave properly and not harm his or her neighbour, so it is expected that the juristic person – the company – operates as a decent corporate citizen. Around the world, integrated reporting is becoming the international trend. Companies are expected to report in clear and understandable language how they have both positively and negatively, through their operations, impacted on a community socially, environmentally and financially. It involves an holistic and integrated representation of the company's performance in terms of both its finance and its sustainability.

5. The pillars of quality governance are firstly, responsibility, which means responsibility for the assets and conduct of the company in an ethical and sustainable manner. Secondly, the board has to be accountable to the company in an understandable manner in regard to its conduct and its decisions. Thirdly, the board should ensure it has taken account fairly of the legitimate and reasonable needs, interests and expectations of all the stakeholder groups linked to the company in its decision-making process. Fourthly, the board should disclose its decisions in a transparent manner, with the positives and the negatives – in short, with balance and substance over form.

6. A board has to demonstrate that it is a good steward of the company's assets and directors have to have courage, because they have a duty to take risk for reward. While the pillars of quality governance are responsibility, accountability, fairness and transparency, they rest on a foundation of intellectual honesty – that honest application of mind in the best interests of the company.

7. Ethics is part of the human character. Directors owe a duty of good faith to the incapacitated juristic person, the company, and therefore it is anticipated that they will act honestly. The way directors and management conduct themselves, however, is a matter that should be set out in a code of conduct by the company. The code of conduct must be operational rather than aspirational. It must be operational in the sense that it becomes a living document by the terms of the code being incorporated into contracts concluded by the company, particularly those of employment and supply.

8. The traceability of a company's products or services is critical. For example, if a product supplied to a company to enable it to make its products is being produced by child labour or contains some deleterious component, it could be ruinous to a company's reputation and its business. Companies, therefore, develop supply chain codes of conduct to which suppliers are required to comply. A detailed example is Walmart's Supply Chain Code, which can be sourced at www.walmartstores.com. Traceability is part of good governance today.

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SECTION III – THE CODE

CHAPTER 1 – BOARDS AND DIRECTORS

The Principles

1. Every company should be headed by a board of Directors which should lead and control the company. In order to do so, the board has to have a mindset that strategy, risk, performance and sustainability have become inseparable. Further, the board should ensure that at all times the company is and is seen to be a responsible corporate citizen and an ethical entity.

2. The board is responsible for the governance of risk and in this regard, should ensure that it appoints an effective and competent Board Audit Committee and, if necessary, a separate Board Risk Committee. Generally, it should ensure that all its sub-committees which it appoints have the appropriate skills to give advice to the board and add value to its decision-making process.

3. The board should adopt an inclusive approach in its decision-making process, taking account of the legitimate needs, interests and expectations of all the stakeholder groups linked to the company, but its decisions must be guided by the best interests of the company to which the board is accountable.
4. The board should be responsible for the governance of information technology and information technology security.
5. The board has to report and acknowledge the adequacy of internal controls and therefore should ensure that the internal auditor is skilled and has developed an adequate risk-based internal audit plan.
6. The board must always act on an intellectually honest basis in the best interests of the company, with a view to the maximisation of the company's total value. In this regard, the board should appreciate that its ultimate compliance officers are its stakeholders.

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7. The board should elect a chairman who should be an independent non-executive director.
8. The board should identify levels of materiality over matters which they want to have control so that the paradigms in which management can manage are clear. What is material will depend on the business of each company. Some boards may maintain control over dealing with immoveable property, or others, control over expenditure levels by management.
9. The board should be made up of a preponderance of non-executive directors and the majority of those non-executive directors should be independent. The CEO and the Chief Financial Officer are usually also directors of the company.
10. While directors are appointed by shareholders, the board should recommend to shareholders what skills and/or representivity is required on the board and any new board member should undergo a thorough induction programme in regard to the business of the company. This should be overseen by the company secretary.
11. The board should set up procedures whereby any director can have access to management, but only on going through the requisite procedure. Likewise, a board member should be entitled to obtain outside professional advice on any issue concerning the company, but again, only after going through an agreed procedure, which usually is with the consent of the chairman.
12. The board should ensure that a competent company secretary is appointed and that the company secretary can only be removed by a majority decision of the board. Guidance can be found in the Companies Act in this regard.
13. The board should ensure that there is an annual evaluation of its performance, both collectively and individually.
14. The board must annually review the performance of the chief executive officer who leads management in implementing the decisions of the board.
15. The board should appreciate that it can delegate various functions to sub-committees but cannot abdicate its responsibilities. The board must ensure that these sub-committees are appropriately skilled.
16. A governance framework should be agreed between the group and its subsidiary boards. If deemed sufficient for the purposes of complying with financial reporting

standards, the audit committee of the holding company can act as the audit committee of subsidiary companies. Likewise, this is so for other sub-committees of the holding company's board.

17. In regard to the remuneration of executives, the board should develop a policy of remuneration after receiving input and advice from the remuneration committee, which would have benchmarked the remuneration. The policy should be put as a non-binding vote to shareholders in general meeting.

18. Share options should not be granted to non-executive directors and great care must be taken in the pricing of share options to executives or executive directors.

19. To avoid conflicts of interest, a board should set up a remuneration committee of independent non-executive directors to make recommendations to the board, within the committee's terms of reference on the company's policy of executive remuneration. After the non-binding vote of approval by shareholders, the board can determine specific remuneration packages for each of the executive directors and senior executives, including pension rights and any compensation payments. The remuneration committee should consult with the chairman and chief executive officer and have access to professional advice outside the company in regard to the remuneration of executives.

20. Members of the remuneration committee and all other sub-committees should be listed each year in the board's annual report to shareholders.

21. The fees paid to non-executive directors should be determined by shareholders at the annual general meeting for the year ahead.

22. In the annual report, the company should disclose the components of the total remuneration of each individual executive director and at least the three top remunerated executives who are not directors.

21.1. An executive director is an individual who is involved in the day-to-day management and/or is in the full-time employment of the company and/or any of its subsidiaries.

21.2. A non-executive director is an individual not involved in the day-to-day management and not a full-time salaried employee of the company or its subsidiaries. An individual in the full-time employment of the holding company or subsidiaries other than the company concerned would also be considered a non-executive director unless such

individual, by his or her conduct, or executive authority, could be construed to be directing the day-to-day management of the company and its subsidiaries.

21.3. An independent director is a non-executive director who :

21.3.1. is not a representative of a shareholder who has the ability to significantly influence management;

21.3.2. has not been employed by the company or its subsidiaries in any executive capacity for the preceding three financial years;

21.3.3. is not a member of the immediate family of an individual who is or has been in the past three years employed by the company or the group as an executive;

21.3.4. is not a professional adviser to the company or its group other than in his capacity as a director;

21.3.5. is not a significant customer of or supplier to the company and its group;

21.3.6. has no significant contractual relationship with the company and its group;

21.3.7. is free from any business either related to the company or its group;

21.3.8. is free from any other business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner.

22. At every board meeting, directors should record in writing their direct or indirect financial/business interests outside the company and if there is any interest which might be in conflict with an issue before the board, financially or otherwise, a director should declare it. The director must then decide whether or not to continue in the meeting, to participate in the decision being made by the board and/or to participate in the execution of the decision.

23. The board should meet regularly, but at least once every quarter of a financial year.

24. The board should at each meeting monitor management's implementation of the business plans and strategy approved by the board, and ensure that the CEO and his management team are competently giving effect to the board's decisions. The board should agree on key performance indicators and monitor them at each board meeting.

25. The board should ensure it is adequately informed about control and audit systems in the company and ensure that the company is complying with all legal and other requirements.

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26. The board is the ultimate arbiter in the governance of risk, although the management of risk is a function for management. The board should agree on the key risk indicators, develop a risk matrix and monitor it at each board meeting.

27. The board must also ensure that there is an adequate succession plan in place for the chief executive and for board members.

28. All directors should have access to the advice and services of the company secretary.

29. All directors must come to a board meeting unfettered with an open mind in regard to the issues to be decided at the board meeting.

30. Each director should satisfy himself/herself before accepting an appointment that he/she can dedicate adequate time and effort to the matters of the board and company, in order to ensure that the duties and responsibilities owed by him/her to the company are satisfactorily discharged.

31. The chairman is the leader of the board and as such he should conduct proceedings to ensure, *inter alia*, that :

31.1. there is effective participation of both executive and non-executive directors and a common understanding of the issues before the board;

31.2. all directors are encouraged to make an effective contribution within their respective capabilities for the benefit of the company;

31.3. the balance of power in the board is maintained;

31.4. there is no domination by one section of the board or a director over the rest of the board;

31.5. the sense or decision of directions and issues under consideration is ascertained;

31.6. the board is in complete control of the company's affairs;

31.7. the directors have the same understanding of the purpose of the business of the company, its value drivers, its stakeholder groups and their needs, interests and expectations.

32. One of the sub-committees should be a nominations committee, chaired by the chairman of the board, to make recommendations for new appointments to the board where it is felt there is a lack of certain skills or representivity. Where there is no nominations committee, the board as a whole should assume this responsibility and make recommendations to shareholders in general meeting. In this regard, the board

should prepare a brief resumé of each director and the nature of his or her expertise in relevant functional areas and the names and registered addresses of directorships or memberships in board committees or other company boards.

33. All directors must carry out their duties with good faith, care, skill and diligence. In this regard, directors must act in terms of sections 130 and 158 of the Botswana Companies Act and be aware of the limitations on delegations of its powers as provided for in section 129.

34. Each sub-committee of the board must have written terms of references setting out its membership, resources, duties, authority, how meetings are to be minuted and how the committee will account to the board. The chairman of each sub-committee should be appropriately skilled, not the Chairman of the board and should be present at the Annual General Meeting of the company to report on its activities and to answer any questions pertinent to the activities of the committee. A sub-committee should be chaired by an independent non-executive director and, but for the risk committee (if one is established in addition to the audit committee), should consist of non-executive directors. As a minimum there should be an audit and a remuneration sub-committee. Specimen terms of references as guidance on usual terms in such committees can be found in the King II Report and the Practice Notes to the King III Report, but each board must develop terms appropriate for the business of the company. Visit the King Reports at www.iodsa.co.za.

35. The board should have as regular agenda items the company's relationship with its identified stakeholder groups and the company's IT governance and security.

36. The board should develop a charter setting out details on its meetings, the timing and receipt of board papers, the purpose of the company, its value drivers and its major stakeholders as well as the matters set out above in regard to sub committees.

37. The board must ensure that the company complies with all laws, regulations, standards or codes relevant to its business and must set the tone at the top in regard to ethical behaviour. The board should develop a code of conduct for the company which must be operational by incorporating it by reference into employee and supplier contracts.

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38. The board should report annually on a going concern basis and should record in a minute the facts and assumptions on which it relies for concluding that the company will continue as a going concern in the new financial year.

Commentary

1. The board should monitor the relationships between the board and management and between the company and its stakeholders. The board must constantly remember that its ultimate responsibility on behalf of the company is to ensure performance by the company to maximise its total value. It must ensure that it has identified the values that drive the business and also the legitimate needs, interests and expectations of its stakeholder groups.
2. The board must always carry out its duties as the leader of the company, but with enterprise, integrity and application of mind to give a rational business judgment calls on issues before the board.
3. The board should ensure that there are adequate long- and short-term strategies developed for the business of the company. The board's other important duty is the appointment of the chief executive and sometimes the chief financial officer. Some companies, of course, might not have the luxury of doing so because of a statutory provision or shareholders' agreement which entitles a single or dominant shareholder to appoint the chief executive. In this regard, good governance dictates that authority should always be aligned with responsibility and a board not appointing the leader of the management team who is to carry out its decisions results in a misalignment of authority and responsibility.
4. The board must know the risks involved in carrying on the business and should have key performance indicators and key risk areas clearly agreed to and which should be monitored at each board meeting.
5. The board must ensure that all the sustainability issues relevant to the business have been considered and incorporated into its long-term strategic planning. In this regard, reference is made to the long-term strategic planning which the great multinational

companies are now doing, which is a clear indication of this principle. These can be seen, for example, at the following websites: www.unilever.com and www.pg.com.

6. It must be remembered that the board's role is a reflective one and it must not involve itself in management. Management's role is to implement the decisions of the board. As set out in the Principles, directors, although entitled to information, must go through an agreed procedure. If not, one develops a grey zone between the outside non-executive director and the inside executive, who is also a director.
7. If the company is listed, it should have a procedure for directors and managers not to deal in the equity of a company listed on an exchange during certain periods, such as during the time of the interim and final results.
8. The board should discuss with management in great detail the levels of materiality of reserving specific powers and authority to itself. It must not restrict management's ability to act, however, and needs to delegate to management sufficient authority to enable management to implement the strategic direction agreed to by the board.
9. The board should ensure it has a balance of power between coalface knowledge and outside skills which are relevant to the business of the company. The probability is that with this balance, better rational business judgment calls will be made. This has now become critical, because of the development of the business judgment rule as a defence to an allegation that a director has breached his or her duty of care.
10. The question of Directors and Officers Insurance should be carefully considered. It is only a matter of fairness that the company ensures that there is adequate cover for directors who act in good faith but, with the wisdom of hindsight, it is found that the decisions they made were not in the best interests of the company.
11. Being a director is a constant learning experience and directors should constantly have training on the changes in accounting standards, any changes in regard to governance and particularly the laws relevant to the business of the company.
12. Directors should turn to the company secretary for guidance on governance issues and if that fails, to an outside adviser. The latter should only occur after going through an agreed process which is usually with the agreement of the chairman.

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13. The board should ensure that its subcommittees have the necessary skills to enable them to carry out their remits. It must be on the basis that these committees are advisory ones and with their advice can add value to a board in its decision-making.
14. Boards should consider asking shareholders to amend Articles of Association so that the board can actually remove a director. Failing this, the company has to call an extraordinary general meeting to remove the director, which could be costly if it is a listed company and could result in the board becoming dysfunctional if the shareholders vote by majority to retain the director. More particularly is this so if the director was an executive whose employment has been terminated by the company.
15. Before a director is appointed the shareholders should ensure that he or she has the capacity and abilities to effectively carry out his or her duties on the board. Likewise, the proposed directors should honestly assess whether or not he or she has the necessary capacity and abilities for the appointment. These criteria are not achieved by laying down the maximum number of board appointments that a person can undertake.

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CHAPTER 2 – INTERNAL AUDIT

The Principles

1. The board should ensure that a competent corporate audit executive should be appointed to head the internal audit team. If there is no internal audit team, the board should appoint an outsourced internal auditor to carry out the internal audit function.
2. The board should ensure that a risk-based internal audit plan is developed, which can dovetail with a risk-based external audit plan.
3. The internal auditor should be present when long-term strategy is being developed in order to satisfy him or herself that controls of the strategy will be adequate and effective and that his or her function is adequately resourced.
4. The internal auditor should give a written assessment to the board at least twice a year on the adequacy and effectiveness of the internal controls. He/she should give a written assessment to the audit committee of the adequacy and effectiveness of internal financial controls. The audit committee, in turn, should give its assessment of the financial controls to the board.
5. In the context of these two assessments, the board is then better placed to make the statement that the internal controls of the company are adequate and effective.
6. The internal auditor should provide to the audit committee (or the risk committee if one is established) a written assessment of the risk management in the company.
7. The audit committee has oversight over internal audit and the corporate audit executive should have an open door policy to the chairman of the audit committee and the chairman of the board.
8. The board should at least annually conduct a review of the effectiveness of the group's internal controls and in this regard, should review all controls, including financial, operational, compliance and risk management.
9. Directors should appreciate that the internal auditor is effectively the right arm of the board, because it is a check and balance on the veracity and quality of the information in the board pack.

10. An internal audit charter should be established suitable to the business of the company. Precedents can be sourced in the King Reports.
11. The head of internal audit must be appointed by the Audit Committee, report to the Chairman of the Audit Committee and administratively to the CEO. He should have an open door to the Chairman of the Board and can only be dismissed by the Audit Committee. These factors safeguard his independence.

Commentary

1. A good internal audit function is critical to the non-executive director. This is the one check and balance that he or she has during the year as to the veracity and quality of the management information, which is furnished to the director in the board pack.
2. The board must ensure that the corporate audit executive (CAE) has access to the chairman of the audit committee and chairman of the board.
3. The board should ensure that the internal audit function is independent from management and is objective in its provision of assurance of financial and other controls.
4. The board should ensure that the standards applied comply with those set out by the Institute of Internal Auditors (IIA) and also that the CAE and his staff comply with the provisions of the IIA's Code of Conduct.
5. The board must give due consideration to the CAE's assessment on the adequacy and effectiveness of internal controls and the audit committee's report on the adequacy and effectiveness of financial controls before signing the statement in the Annual Report that the controls in the company are adequate and effective.
6. The board should ensure that the CAE attends all audit committee meetings by way of invitation and that the CAE has the necessary attributes to challenge management on the question of complying with controls.

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CHAPTER 3 – AUDIT COMMITTEE AND AUDITORS

The Principles

1. The board should appoint independent non-executive directors as members of the audit committee. There should be an audit committee charter setting out its duties and responsibilities and it should be chaired by an independent non-executive director and its members must be suitably skilled to fulfil its function.
2. The audit committee should ensure that it has oversight over the internal audit process and assess the internal auditor's report on the adequacy and effectiveness of controls, financial and otherwise, and should ensure that a combined assurance model is applied, namely the defences of management, internal audit and external audit.
3. The audit committee should have oversight over the risk management process, or if there is a separate risk committee, work closely with the risk committee.
4. The audit committee should ensure the expertise, resources and experience of the company's financial functions.
5. The audit committee is responsible for assessing the continued independence of the external auditor and should recommend to shareholders the appointment of the external auditor. The audit committee should also oversee the rotation of the lead auditor of the external auditor at least every five years.
6. The chairman of the audit committee should be present at the Annual General Meeting and should report to shareholders on how it has discharged its duties.
7. The audit committee should meet at least twice a year and at least once a year with only the external and internal auditors.
8. In order to fulfil its functions and carry out its duties in advising the board, it must consider and evaluate :

8.1. the quality of the governance of the company;

8.2. the financial report

8.3. the sustainability report

8.4. the external and internal audit processes;

8.5. the internal financial controls;

8.6. the risk management;

8.7. the IT governance and security;

8.8. the sustainability issues pertinent to the business of the company.

9. The audit committee should consider and evaluate the integrated report on the basis that it in substance is an holistic and integrated representation of the company's performance in terms of both its finance, sustainability and its ability to create value, short, medium and long term.

Commentary

1. The board should ensure that the audit committee meets at least twice a year and that it in fact adds value to the board's deliberations on furnishing a fair presentation of the performance of the company. The board should also ensure that the committee collectively has the necessary skills to understand issues of financial reporting, internal financial controls, external audit process, internal audit process, corporate law, risk management, sustainability issues, IT governance and the governance process generally within the company. Today, of course, an understanding of integrated reporting by the audit committee is critical.
2. It should have the necessary skills to have an understanding of international financial reporting standards, the GRI G3 Guidelines and if it is a multinational company, the OECD's MNE Guidelines.
3. The board should ensure that the audit committee is applying the combined assurance model which is graphically set out hereunder.

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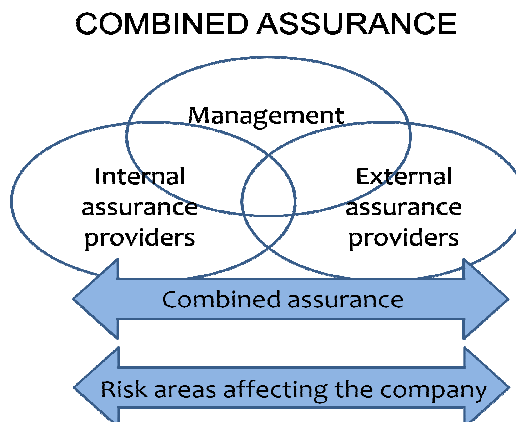

4. If there is no risk committee, the audit committee should satisfy itself that the areas of risk, financial controls, IT, sustainability, strategic and operational risks are all considered.
5. The independence of the external auditor should be considered by the audit committee and the audit committee should agree on issues which they must consider before recommending the company's financial statements for approval by the board.
6. The chairman of the audit committee should endeavour to have meetings with the internal and external auditors, as well as the chief financial officer before the audit committee meeting.
7. The audit committee must carefully assess the value and quality of non-audit services and if they in any way impact on the independence of the external auditor or might be a breach of the external auditor's own code of conduct.
8. The audit committee should also review procedures to protect whistle blowers in the company and be aware that there might be irregularities which need to be reported in the Annual Report.
9. The audit committee must have oversight over the internal audit function and evaluate its effectiveness It must also evaluate the external auditor's audit.

BOTSWANA CODE OF CORPORATE GOVERNANCE

CHAPTER 4 – THE GOVERNANCE OF RISK

The Principles

1. Whilst the board is responsible for the governance of risk, it is management which must implement and monitor the risk management plan approved by the board.
2. The board must determine the levels of risk tolerance or mitigation of risk.
3. The risk committee, if there is not one, the audit committee should act as an advisory body to the board to assist the board in carrying out its duties in the governance of risk.
4. The board is to ensure that a matrix of the key risk indicators has been developed, setting out the risks involved in carrying on the business of the company and have a process for anticipating unpredictable risks.
5. The board should assess the question of risk at each board meeting and must monitor how management is implementing the risk mitigation and other mechanisms to reduce risk in the business of the company.
6. Management is accountable to the board for assurance that it has implemented and monitored the risk management plan agreed with the board and that it has been integrated into the day-to-day activities of the company.
7. As part of the company's risk, the board should ensure that the company complies with all rules, codes, standards and applicable laws relevant to the business of the company. It is management's task to ensure that this is done and should regularly report on compliance to the board.

Commentary

1. The board is to exercise leadership in regard to risk management and as such is responsible for the governance of risk.
2. The company can appoint a separate risk committee to evaluate risk in the company or it can charge the audit committee to do so in an advisory capacity to the board.
3. The risk management policy must be known throughout the company and implemented by management on an on-going basis.

4. The board should, of course, determine the levels of risk tolerance, both positively and negatively. By this is meant that when a business opportunity arises, if the risks are clearly understood, the company can take that decision in regard to the business opportunity with greater comfort.
5. Whilst the board is responsible for the governance of risk, it is management's responsibility to manage risk. Consequently, management is accountable to the board for designing, implementing and monitoring the risk management policies and integrating it into the operational activities of the company.
6. The board should, at each meeting, monitor the key risk areas and the risk matrix which should be developed.
7. The board should also consider the issues of anticipating unpredictable risks, the avoidance of risk, the mitigation of risk, the transferring of risk, the tolerance of risk, exploiting risk and terminating an activity creating risk.
8. The board should be aware that the company is operating in the context of crises which create risks. The global financial crisis, the crisis of climate change, that the natural assets of planet earth are being used faster than nature's capacity to regenerate them and population explosion. Add to this radial transparency and greater expectations from stakeholders and it will be seen that a business cannot be carried on as usual. Companies have to plan to make more with less. The long-term strategic plans of some of the world's great MNEs reflect a change of mindset by carrying on business as unusual.

CHAPTER 5 – THE GOVERNANCE OF INFORMATION TECHNOLOGY AND INFORMATION SECURITY

The Principles

1. IT has become pervasive in the sense that the information system of the company is in the very fabric of the business of the company. As such, the board should develop an IT governance charter and should monitor compliance by management of this charter.
2. The board should ensure that the information system is aligned with the long-term strategic direction of the company. If the two are not aligned, this will prejudice the achievement of the long-term strategy of the company.
3. Management has the responsibility for implementing the IT governance framework and to ensure that there is security to prevent unauthorised use, access, disclosure, disruption or elimination and changes to the information system of the company.
4. Management has to also ensure that it protects the confidential information of the company, including personal information, of internal stakeholders which is on the IT system.
5. The board should regularly monitor and evaluate whether or not IT investments are adding value, the traceability and source of products such as software are duly authorised, the technology is appropriate and resilient enough to adapt to the long-term strategy of the company.
6. The question of IT governance and IT security is an integral part of the company's risk management and as such should be dealt with by the risk committee and if there is none, then by the audit committee, with reports to the board. These committees should ensure that an information security management system has been developed which deals with the confidentiality, integrity and availability of information.

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Commentary

1. The purpose of information security is to prevent the unauthorised use, access, disclosure, disruption, elimination or changes to a company's information system.
2. The board must ensure that prudent and reasonable steps have been taken to protect the company's information.
3. The board should also ensure that management has developed and implements an information security management system. Such a system includes ensuring the confidentiality of information, the integrity of information, the availability of information and the availability of information systems in a timely manner.
4. A company's information systems must be aligned with the long-term strategy of the company. This is absolutely critical because without it, the long-term strategy will not be achieved.
5. The information system should be on track to achieve the company's long-term objectives and should be resilient enough to adapt to the long-term strategy which the board has agreed to and which management has to implement.
6. The board must enquire as to whether the company is generating value from its IT investment and whether the amounts spent on IT is being measured and managed.
7. The board should also, from time to time, ensure that there is independent assurance and the quality of outsourced IT.
8. IT risk forms part of the company's risk and therefore should be dealt with by the risk committee and if there is not one, by the audit committee.
9. Personal information must be secured, as in certain countries such as South Africa, the publication of personal information could amount to a criminal offence.

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CHAPTER 6 – STAKEHOLDER RELATIONSHIPS

The Principles

1. The board should ensure that management has an interactive relationship with the various stakeholder groups linked to the company. The board should not be satisfied with only proactive relationships in an endeavour to enhance the reputation of the company and should certainly not be satisfied with only reactive relationships.
2. Management should constantly be seeking to understand the legitimate and reasonable needs, interests and expectations of the various stakeholder groups and advise the board thereof, which must, if necessary, make changes to the long-term strategic direction of the company or the way in which the company is being managed.
3. This interactive relationship is critical for the understanding of the needs, interests and expectations of stakeholders, so account can be taken of them in the decision-making process.
4. The communication with stakeholders must be transparent, with substance over form being the criterion.
5. The management of the company and directors spend their time building relationships with stakeholders and if any dispute arises, this can be destructive of that relationship. It is generally regarded as part of the duty of care of a director to ensure that disputes are resolved as effectively, efficiently and as expeditiously as possible. In this regard, the board should ensure that there is an adequate alternative dispute resolution clause contained in employment, customer and supply contracts. A precedent of an acceptable dispute resolution clause is Annex A to this Code.

Commentary

1. All companies today operate on the basis of the inclusive approach to governance. In short, this means the board identifies the stakeholder groups linked to the business of the company and what their legitimate needs, interests and expectations are. These are then taken into account in the board's decision-making process. It is to be noted

that the board is not accountable to these stakeholder groups, but takes account of their needs, interests and expectations in the decision-making process.

2. The guide for the board must always be, however, to make a decision in the best interests of the company, for the purpose of the maximisation of the total economic value of the company.
3. The company must ensure that management has an interactive relationship with its various stakeholder groups. It is by this means that management learns of the needs, interests and expectations of stakeholders and can adjust the way the business is being managed to maximise the benefits from that relationship.
4. Further, the board might have to steer the strategic direction of the company differently when it learns of these legitimate needs of the various stakeholder groups.
5. It is critical to have this interactive relationship because companies do not always perform increasingly successful. Performance goes through peaks and valleys. When the performance of a company is in a valley, it is critical to have the support of the company's stakeholders in order to resurrect the company and return it to a successful organisation.

BOTSWANA CODE OF CORPORATE GOVERNANCE

CHAPTER 7 – CORPORATE REPORTING

The Principles

1. Corporate reporting is not what it used to be. The major providers of capital today are financial institutions and pension funds and in order for the directors and trustees to discharge their obligations, they need to make an informed assessment of the sustainability of the business of a company before investing the funds' beneficiaries' money in the equity of that company.
2. They cannot make this assessment merely from the financial reports following international financial reporting standards.
3. It is for this reason that many companies around the world are voluntarily filing integrated reports, which give an holistic and integrated representation of the company's performance in terms of both its finance and its sustainability.
4. Responsibility, accountability, fairness and transparency demands that the impacts which the company's operations have on society and the environment should be told to the stakeholder groups linked to the company in clear and understandable language.
5. Corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates. Corporate social investment is just one manifestation of corporate responsibility.
6. Historic information in the integrated report should be independently assured.
7. Integrated Reporting is the international trend as witnessed by the issue of the international IR framework on 12 September 2011 and the draft framework of 16 April 2013. The annual financial statement and a company's sustainability report can be online. The IR will highlight the material financial and non-financial aspects of the company and show how the collective mind of the board has been applied to the long term sustainability of the business of the company. The IR should be written in clear and understandable language so that users can make an informed assessment of whether or not the company is going to sustain value creation.

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Commentary

1. On 12 October 2010, leading accountants in the world met in Geneva under the auspices of UNCTAD (United Nations Committee on Trade and Development). One of the important conclusions drawn by the world's leading accounting bodies and accountants was that financial reporting in the new world in which we find ourselves, does not give the stakeholders a fair representation of what is happening in a company.
2. At the World Congress of Accountants in Kuala Lumpur, from 9 – 11 November 2010, 6,043 accountants from 139 countries drew the conclusion that integrated thinking was the way forward. By this is meant that a company should incorporate the resources used by it, its relationship with its stakeholders, its business model, its output and the latter's impact on the stakeholders and society, the environment and the economy in its long term strategy. In preparing an integrated report, the material financial and non-financial factors which have impacted and will impact on society, the environment and the economy should be set out in clear, concise and understandable language. In this regard, attention is directed to the Global Reporting Initiative's G4 Guidelines, where materiality is a critical factor. Materiality is also critical in the IIRC's framework.
3. Further, major companies today have supply chain codes of conduct and these will require small and medium sized enterprises to furnish integrated reports in order to comply with the supply code and thereby remain a supplier to these major companies. The major companies themselves have to ensure that they satisfy the requirements of their investors who are mainly financial institutions and pension funds, who have to make responsible investments on behalf of their ultimate beneficiaries. They can only make an informed assessment of the sustainability of the business of the company if it has this integrated information.
4. In short, the world is moving towards integrated reporting and financial reporting alone is generally accepted as not furnishing sufficient information for stakeholders to make an informed assessment about the sustainability of the business of a company.

CHAPTER 8 – BOARD APPRAISAL

The Principles

1. Boards should periodically appraise their own performance in order to ensure that board responsibilities are satisfactorily discharged.
2. The board should annually appraise itself in the key responsibilities, inter-alia, of :
2.1. reviewing/formulating and monitoring Implementation of a sound short- and long-term business strategy which includes the sustainability issues pertinent to the business;
2.2. ensuring that the CEO and management team are competent and that there is an effective CEO and senior management succession plan;
2.3. securing effective information, control and audit systems;
2.4. ensuring compliance with legal/ethical standards and with this Code;
2.5. ensuring the governance of risks and that the prevention mitigation and tolerance of risk is adequately and efficiently dealt with by management; and
2.6. fulfilling such other board functions as are vital, given the scale, nature and complexity of the business concerned.
3. There are Board Appraisal forms which may be utilised for this purpose.

Commentary

1. When a company's board does its first appraisal, it can do it internally and aggregate the answers. Where the board finds a low score on a question, greater attention needs to be applied to that area during the next financial year.
2. After the first appraisal, it is beneficial to have an experienced outside facilitator to do board and director appraisals.
3. The appraisals should be treated seriously and effect should be given to the answers coming out of these appraisals, in the long-term better interests of the board's governance of the company.

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CHAPTER 9 – APPLICATION OF THE CODE

1. Compliance with the Code will be on an apply or explain basis. In other words, the recommendations should be applied, but if a company decides it is in its best interests to adopt another practice, it is entitled to do so, but then must explain to its stakeholders why it has adopted another practice and why it believes it is better than the recommended one in the interests of the company. An explanations register should be maintained by the company.
2. It is also recommended that guidelines for responsible investment by financial institutions, including pension funds, in the equity of companies should be developed, so that these institutional shareowners can assess whether a company has or has not complied with this code. One of the factors they should take into account in making their investment decisions is whether or not the Code has been applied and if not, justifiably explained. They will also be evaluating the traceability of input products and the implementation of the company's supply chain code of conduct.
3. These two market forces, responsible investment and traceability, will be more effective in ensuring compliance with the Code than legislating about governance principles and practices.
4. In addition the Botswana Stock Exchange should give consideration to making the application of the Code a listing requirement.

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ANNEX A

DISPUTE RESOLUTION CLAUSE

AFSA – IOD DISPUTE RESOLUTION CLAUSE

If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration. The reference to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.

A dispute within the meaning of this clause exists once one party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.

Within 10 (ten) business days following such notification, the parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.

In the event of the negotiation between the designated representatives not resulting in an agreement signed by the parties resolving the dispute within 15 (fifteen) business days thereafter, the parties must refer the dispute for resolution by way of mediation in accordance with the then current rules of the Arbitration Foundation of Southern Africa ("AFSA").

In the event of the mediation envisaged above failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) business days thereafter, be referred to arbitration as envisaged in the clauses below.

The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties.

Each party agrees that the arbitration will be held as an expedited arbitration in Gaborone in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the parties, including any appeal against the arbitrator's decision. If the parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA, who shall administer and manage the arbitration proceedings.

The above mediation and arbitration procedures and proceedings shall be administered by AFSA.

The provisions of this clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending finalisation of this dispute resolution process for which purpose the parties irrevocably submit to the jurisdiction of the High Court of Botswana.

The references to AFSA shall include its successor or body nominated in writing by it in its stead.

This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

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