

# CORPORATE GOVERNANCE IN SOUTH AFRICA: THE INTRODUCTION OF KING III AND REPORTING PRACTICES AT THE JSE ALT-X

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## Abstract

South Africa has experienced a tremendous growth in its economy since its first free elections in 1994. Politicians, however, consider the transformation of the society and more equally distributed wealth as one of their key goals. Thus, companies often find themselves under scrutiny as regards their contribution. A new corporate governance code (King III) will become effective in March 2010. This reworked code now tries to enhance the reporting practices of companies as to their sustainability and corporate social engagement and tries to link international standards of corporate governance with African values. This paper introduces the novelties of King III and examines the current reporting practices of 68 companies listed on the Alt-X segment of the Johannesburg Stock Exchange. The paper discusses issues like risk, board composition and remuneration and provides valuable insights into the structure of small cap companies in South Africa and analyses which parts are used by companies to enhance their legitimacy.

**Keywords:** corporate governance, South Africa, corporate governance code

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## Introduction

Corporate governance describes the system by which means companies are directed and controlled. Through the separation of the ownership and the use of the capital, director's responsibilities cover the functions of direction, executive action, supervision and accountability (Reinecke, 1996). By its nature, corporate governance covers a set of rules and principals written and enforced by law and professional bodies and is dependent upon good practices and suggestions. Often, many of these practices have their roots in the demands of the market. Yet, corporate governance is also necessarily political (Roe, 2003; Gourevitch and Shinn, 2005). It is dominated by the power-relation at a given point in time and strongly driven by political ideology and interests.

South Africa is the largest economy in Africa. Its historically Anglo-Saxon shaped administration and business values led it to have a very westernized approach to corporate governance, such as the market-based model of corporate governance and its dominant shareholder's view. For example, a single-tiered board structure is standard, without any representation of stakeholders like employees. The steps South Africa decides to make in pursuit of its economic policy are often echoed throughout the rest of Africa. The South African Corporate Governance Code, King II, has been reworked and the new code, King III, will be released in March 2010. King III takes an interesting route and

tries to balance between international developments and African peculiarities. South Africa chose a code of principles and practices on a 'apply or explain' basis. Thereby, so is the explanation, it is intended to guarantee enough freedom to the companies to balance the cost of compliance with their imminent business needs.

In addition to the corporate governance code, there is much demand from politicians for a company to disclose how it is actively engaging in the transformation of the South African society by means, for example, of Black Economic Empowerment (BEE). The Code of Conduct for Broad-based Black Economic Empowerment, which is administered by the Department of Trade and Industry and based on the Black Economic Empowerment Act, 2003, was published in the Government Gazette in February 2007. There is growing pressure, across the economy, for companies to achieve adequate BEE ratings. To get this rating companies wishing to do business with any organ of state, including municipalities, or state-owned enterprises, must have a qualifying score (leaving aside the special considerations applying to exempt micro-enterprises and qualifying small enterprises). A large part of the scorecard is devoted to preferential procurement. An enterprise scores points for acquiring goods and services from other entities which are black-owned, or have a high recognition level. This creates a type of cascade whereby companies, in order to increase their own BEE ratings, are applying pressure on their suppliers to be compliant.

This paper points out key elements of King III and, subsequently, screens the annual reports of the companies listed on the Alt-X index at the Johannesburg Stock Exchange (JSE Ltd). The Alt-X which is comprised of 76 companies commenced in October 2003 in order to replace the failed venture capital and development capital boards established as sub-sets of the main board in the 1980s. The purpose behind its creation was to encourage entrepreneurship, especially among South Africa's emerging black middle class.

For this paper, a focus on the small caps of the Alt-X allows for the elimination of practices adopted from other stock exchanges, like the London Stock Exchange<sup>1</sup> at which plenty of major South African companies are listed alongside the JSE Ltd. It is with the intention of understanding how South African companies with limited foreign interest are reporting on corporate governance issues, that the paper analyses the corporate governance sections of the financial statements of 68 available financial statements from the McGregor database (out of 76 listed companies at the Alt-X). The largely quantitative method used is enriched by giving excerpts of these financial statements. The statements are indicated in italics and are direct quotes out of different financial statements. The names of the companies are indicated in brackets.

The scope of this paper is not limited to the description of the findings in the company's financial statements. Rather, by asking if the political pressure which companies face is represented in their financial statements and if companies which follow really add valuable information for investors or if it is a mere mimicry exercise, it adds to the increasing body of writings about the political aspects of corporate governance. The influx of foreign direct investments and the increasing importance of the Stock Exchange facilitates change (O'Sullivan, 2003), but there is not necessarily cross-national convergence. So far, attempts to combine neo-liberal economic policies and social responsibility in the area of corporate governance have shown unsatisfying results, especially for those hoping for a more equitable global capitalism (Erturk et al., 2004).

The King III report understands companies as being part of a larger environment and it is their duty to act in a sustainable manner. This understanding is echoed by Institutional theory which sees institutions as: "[...] composed of cultural-cognitive, normative, and regulative elements that, together with associated activities and resources, provide stability and meaning to social life. .... Institutions operate at different levels of jurisdiction, from the world system to localized interpersonal relationships. Institutions by definition connote stability but are subject to change processes, both incremental and discontinuous" (Scott, 2001:48). Institutionalization is in turn defined as "the process through which components of formal structure become widely accepted, as both appropriate and necessary, and serve to legitimate

organizations" (Tolbert & Zucker, 1983: 25). To explain the adoption of new practices and their growing similarity within social systems, institutional theorists adopt two approaches: striving for efficiency or legitimacy considerations (DiMaggio & Powell, 1983; Tolbert & Zucker, 1983; Westphal et al., 1997; Strang & Soule, 1998). If organizations adopt practices for efficiency reasons, their actions are rational and are driven by gains in efficiency or effectiveness (Thompson, 1967; Blau & Schoenherr, 1971). Institutionalists argue that the strive for legitimacy and support, on the other hand, can take a predominant position even if the actions and decisions that foster legitimacy go against the efficiency requirements of the firm (DiMaggio & Powell, 1983; Meyer & Rowan, 1977).

In countries like South Africa in which there is considerable pressure on companies to contribute to a more equal society, corporate governance might be used as a tool to enhance the legitimacy of companies. This paper is particularly interested in those elements of corporate governance that are designed to raise the legitimacy of the reporting companies.

### **Corporate governance in South Africa**

The economic situation and the shareholder structure in South Africa have changed since the opening up of the economy. In the early 1990s a few dominant conglomerates controlled the JSE in which high levels of ownerships and cross-shareholding (Sarra, 2004) were exhibited. Previously the majority of shares were held by a few rich families, it is now institutional investors which are the largest holders of shares. Based on commodity producers, South Africa attracted significant foreign direct investment after the opening of the country post-Apartheid and the first democratic elections in 1994. The late 1990s were characterized by neo-liberal policy making, together with a stronger focus on shareholders and macroeconomic stability (Lachman, 2004; Lewis et al, 2004; Andreasson, 2007). There are, however, other players who are not so much in favour of this policy and, in the case of the labour unions and leftists, are more focused on reaching a more equal distribution of wealth in society.

Despite the strong focus on the attraction of foreign direct investments into South Africa and a strongly market-orientated economic system, the tensions in South Africa are evident in the framing of the economic policy. Some players, such as the Congress of South African Trade Unions, lobby for a more 'social' redistribution of wealth or the pursuit of socialist ideologies, such as the South African Communist Party. They reject the free market as the driver of economic growth and have instead proposed strong government interventions to overcome the debilitating legacy of uneven development and extreme socio-economic inequalities (Andreasson, 2007). Some authors have subsequently taken

extreme positions, rejecting the shareholder wealth maximization model as 'incongruent with South Africa's commitment to situating the corporation within civil society (Sarraf, 2004: 21).

The ideologically unpredictable times which followed the first democratic elections were countered by a move of corporations and professional bodies and the drive for guidance and 'best practices' to enhance legitimacy. As a consequence, the Institute of Directors in South Africa established the King Committee on Corporate Governance, chaired by Mervyn King, a retired judge. The two corporate governance codes that were issued in 1994 and 2002 both carried his name and are commonly referred to as the King Report on Corporate Governance (King I) and the King Report on Corporate Governance for South Africa (King II). King II received positive feedback, in particular for its integrated Sustainability Reporting section (e.g. Barrier, 2003). South Africa faced different, sometimes contradictory, influences on the prevailing system of corporate governance. Through the liaison of the JSE with the London Stock Exchange, major companies sought double listing in Johannesburg and London. These companies, thus, had to incorporate in their operations international practices on corporate governance and financial reporting (O'Sullivan, 2003). South African companies whose shares were listed in London were seen as leaders in a South African context, and their practices were soon being seen as best practices. In fact, a diverting regulation in South Africa would have only imposed more cost on these companies. Another movement in the same direction came from supranational organizations like the WTO or the IMF, who demanded a westernized system of accountability. In addition, South Africa rediscovered its own African roots. This 'African renaissance' led to attempts to Africanise the direction of business. African cultures are largely seen as communitarian (Gyekye, 2003; Mbiti, 1989; Mentiki, 1979; Wiredu, 2003).

King II focused strongly on the South African situation and attempted to incorporate the local business culture. The King Committee on Corporate Governance launched the King Report on Corporate Governance for South Africa – 2002 (King II Report) at an Institute of Directors (IoD, 2009) Conference at the Sandton Convention Centre, 26 March 2002. Due to changes in legislation, particularly the introduction of the new Companies Act No. 71 of 2008 and to keep up with international developments, King II had to be adapted. The new code named King III will come into effect on March 2010. As already visible in King I and II, the Committee for King III was focused on 'the importance of conducting business reporting annually in an integrated manner i.e. putting the financial results in perspective by also reporting on:

□ 'how a company has, both positively and negatively, impacted on the economic life of the community in which it operated during the year under review; and

□ how the company intends to enhance those positive aspects and eradicate or ameliorate the negative aspects in the year ahead' (IoD, 2009).

The Institute of Directors (2009) in its pre-statement to the King Report critically reflects on US-driven incentive-based solutions such as the Sarbanes-Oxley Act. It cites Prof. Romano of Yale Law School:

*'SOX's corporate governance provisions were ill-conceived. Other nations, such as the members of the European Union who have been revising their corporation codes, would be well advised to avoid Congress' policy blunder'*

or Prof. Ribstein of Illinois Law School comment that

*'once set in motion, regulation is almost impossible to eliminate. In short, the first three years of SOX was, at best, an overreaction to Enron and related problems and, at worst, ineffective and unnecessary'* (IoD, 2009).

Despite the repetitive mention of international developments the similarity to the regime in the UK is visible. When studying the evolution of the King report, one cannot help but acknowledge the influence of Sir Adrian Cadbury, of the same-named Cadbury Report. He was even consulted on the naming of the committee, as is shown here: '[f]ollowing Sir Adrian's advice, the committee in South Africa continues to be known as the King Committee and the King Code has become an internationally recognised brand' (IoD, 2009).

The King III Report focuses on three pillars: leadership, sustainability and corporate citizenship. Effective leadership is seen as the key to good governance and is facilitated through ethical values, in particular responsibility, accountability, fairness and transparency. King III's interpretation of these values shows its denial of a one-size-fits-all approach and its focus on two South African issues: the changes in the economic situation and the principle of *ubuntu*.

*Ubuntu* is largely translated as 'I am, because we are; and since we are, therefore I am' (Mbiti, 1989, p.110). Every individual is an extension of others and, therefore, reaching the fullness of one's potential without the concrete act of relating to another individual person is impossible. *Ubuntu* pinpoints the importance of community to individual identity and hence to human dignity (MEC for Education, 2006). In African cultures, effective leadership is based on moral duties. Despite these interesting insights, little is known about how to crystallize these African values into the operations of corporations. One possibility is the decision-making by consensus (Nash, 2002; Wiredu, 1977), discussing matters with everybody concerned. For businesses in a global economy, this approach would be hard to achieve. Sustainability, according to the opinion of the Commission, 'is the primary moral and economic imperative of the 21st century. It is one of the most important sources of both opportunities and risks for businesses'. It is about interconnecting nature, society

and business and the need for a fundamental shift of corporate governance in this regard. The requirement to report on sustainability issues was already incorporated into King II, which explicitly required companies to implement and to report on sustainability. Whereas in King II it was an adjunct to financial reporting, King III would like to see it becoming an integrative part of the financial reporting process. The concept of corporate citizenship, on the other hand, sees the company as a 'person' which should operate in a sustainable manner.

King II chose an 'inclusive' approach to corporate governance (West, 2004). Instead of the prevailing focus on shareholders, King II demands that all stakeholders be considered. Furthermore, the director's responsibility is to serve the company as a whole, rejecting a primarily shareholder-driven point of view. In addition, many recommendations take on non-financial reporting issues like transformation progress, human capital development policies, safety and health concerns, etc. (West, 2004). This means that what looks so much like stakeholder logic is not a stakeholder concept. Why? It has been ruled out by King II. 'The stakeholder concept of being accountable to all legitimate stakeholders must be rejected for the simple reason that to ask boards to be accountable to everyone would result in their being accountable to no one' (King II). As West (2004) has stated, the logic is interesting but unclear.

King III includes two models of corporate governance: 'stakeholder inclusive' and 'enlightened shareholder'. The first model means an inclusion of 'legitimate interests' and expectations of stakeholders. In an enlightened shareholder model these interests and expectations would only be considered if they were in the interest of the shareholders. It is probable, in any event, that the directors would have done that anyway in their attempt to maximize profits. The 'stakeholder inclusive' approach demands the inclusion of the interests and expectations of all stakeholders if in the best interest of the company. Whether this separation of the interests of shareholders vs. interests of the company will survive the test of time might well be open for debate.

One of the preconditions of a market-based model is a functioning stock exchange and a working market for mergers and acquisitions. The JSE has developed from a small trading place dominated by a couple of conglomerates with high levels of ownership concentration and cross-shareholding (Sarra, 2004) to one of the most important stock exchanges in the emerging markets. A major drive for this development came from the pursuit of neo-liberal economic policymaking of the early years of ANC rule backed by macroeconomic stability and the huge interest of foreign investors shown in the country's main companies (Lachman, 2004; Lewis et al., 2004; Andreasson, 2007). Although South Africa has a relatively active stock exchange based in Johannesburg, it is not very well capitalized and economic insecurities can quickly trigger a sudden

outflow of capital. As the market is dominated by a group of institutional investors, the report urges these institutional investors to make use of their control rights and to enforce good government practices.

### **The reporting of Alt-X companies**

Corporate governance statements follow a certain pattern. Although there is no fixed prescription as to how these statements should look, the statements of the companies investigated follow a certain pattern. Companies listed on the JSE report on the extent to which they comply with the principles incorporated in King II as well as the requirements of the Corporate Laws Amendment Act, 2006.

### **Leadership**

The reports mention the meetings held throughout the past financial year and the attendance at these of the directors. What is interesting is that many companies change their directors quite frequently. Many companies follow this suggestion and require that one third of their directors would retire annually. Others decide that their directors should stand annually for re-election, viz:

*Thereafter one third of the directors (or if their number is not a multiple of three then the number nearest to, but not less than one third) shall retire from office at the annual general meeting. Retiring directors shall be eligible for re-election (ideco).*

To ensure that directors are fully conversant with their corporate responsibilities, Wits Business School offers a programme which is endorsed by the Institute of Directors. Quite a number of the companies studied reported that they had made use of the program. In case of other companies, the non-executive directors have no fixed term of office. Another reason for the frequent change might be found in the shortage of skills in South Africa. Finding people qualified for a directorship in South Africa is anything but easy. Those who do qualify are in strong demand, viz:

*'[t]he directors acknowledge the need for an independent non-executive chairman to be appointed and this will be done once the company has identified a person suitably qualified for the position (sanyati).*

What is remarkable, particularly for the European reader, is the age structure of the directors. A substantial number of directors (both executive and non-executive) are either under the age of 30 or slightly above it. This is reflected in population figures. Nearly 31,4% (one third) of the population is aged less than 15 years and approximately 7,5% (3,7 million) is 60 years or older (Statistics SA, 2009).

The code also suggests that the board agrees on a board charter which mentions the responsibilities of the board:

The Board has adopted a board charter which confers among others the following responsibilities to the Board:

- Retain full and effective control of the company;
- Give strategic direction to the company;
- Monitor management in implementing plans and strategies;
- Identify and regularly monitor key risk areas and key performance indicators of the business;
- Ensure that the company complies with relevant laws, regulations and codes of business practice;
- Ensure that the company communicates with shareowners and relevant stakeholders openly and promptly; and
- Regularly review processes and procedures to ensure effectiveness of internal systems of control and accept responsibility for the total process of risk management (rare).

South African companies are governed by a unified board with a Chief Executive Officer and a separate chairman (following the King report preferably chaired by an independent non-executive director). The Code actually suggests blocking the executive directors from becoming chairman within three years after he had resigned as CEO. One company explains why they did not follow this requirement:

*X has a unitary Board with a Chairman who is elected from the Board. The roles of Chairman and the Chief Executive Officer (CEO) have been combined due to the decision to keep the Board small with the majority of the Board members involved in the Company's operations on a daily basis. Despite the convergence of the two roles into one, a balance of power and authority exists which ensures that no one individual has unfettered powers of decision making. This divergence from the King II Report's recommendation is in line with the rules of the JSE for Alt X listed companies, which due to their size have smaller boards, and where full compliance is impractical (Telemasters).*

Yet, there is no guideline on how many directors a company should have or how the ratio of executive directors to non-executive directors should look like. Most companies have 8 directors (Median 7). The company with the highest number of directors comprised 12, the company with the smallest number 3. The Code mentions that the board should comprise a 'balance of power', with a majority of non-executive directors, preferably independent non-executive directors. The ratio of executive to non-executive directors also varies greatly. The median and mode for this ratio in the studied group was 1, stating that for each executive director there was one non-executive director. The highest ratio was 3, meaning that for six executive directors there were two non-executive directors in office. Another company had nine non-executives to two executive directors. The median for the ratio

executive directors to independent non-executive directors in the sample studied came up to 0.5, indicating that for every two executive directors there is one independent non-executive director in place.

Many companies indicated that they had changed their structure from the previous year to the next. Some simply stated that they 'streamlined' their board and management structure to meet the challenges they faced. Others gave more detailed accounts, e.g.:

*During the year, we strengthened our corporate governance infrastructure through appropriate senior management appointments:*

- Appointment of an additional independent non-executive director
- Changes to the composition of the audit and remuneration committees
- Adoption of a board charter and audit committee charter
- Drafting of a comprehensive set of policies for the Group
- Suitable remuneration was put in place for all non-executive directors.

*In 2008, the composition of the Board was enhanced by the addition of two experienced independent non-executive directors with strong financial backgrounds (rba).*

Based on its recognition of risks, the Code demands a strong focus on the adequacy of the internal controls in place. For the directors to keep up with the system of internal controls, the code suggests the use of internal audit services. The internal audit function should report directly to the audit committee. In King III, the internal audit moves from a compliance based internal audit to a risk based internal audit. 15 companies identified shareholders as their prime target for communication. Ten identified no prime targets. 31 companies focused on stakeholders. Eight companies identified shareholders and stakeholders; four others formulated their focus as being on 'stakeholders and shareholders'.

King II requires companies to establish an audit committee, together with risk, nomination and remuneration committees. 53 companies have audit committees in place, 12 companies have audit and risk committees. 13 companies reported to have special risk committees in place. 53 companies had remuneration (and nomination) committees in use. One company named this committee 'remuneration and transformation'. Four companies ran separate nomination committees; five companies had their own investment committees. One company had an investment and transformation committee, one a committee for corporate governance, one for acquisition and one for employment equity. Three companies did not have any committees at all. They justified that on the grounds of the size of the board or the limited nature of the business activities, namely:

*Due to the limited nature of the company's activities all board members are responsible for the following:*

- all issues regarding corporate governance;
- to maintain adequate accounting records and functionally effective financial reporting and internal control systems, ensure compliance of published financial reports with relevant legislation, regulation, accounting practice and safeguard group assets; and
- to ensure that the group's remuneration policies are appropriate (wooltru ltd).

King III suggests that companies should remunerate directors and executives in a fair and responsible manner. Although most companies have remuneration committees, it is often not easy to understand what they are really doing – particularly in a country with a notorious shortage of skills. There is little opportunity but to pay market-related compensation for key personnel, including directors. In one example there was evidence that the committee as regards the board also acts against the advice of their consultants, as shown below:

*The remuneration specialists consulted by management for input on current salary surveys, namely ..., recommended a 6% increase in directors' fees, but the Board decided not to implement any increases in view of the present economic downturn.*

#### *Short Term Incentive Scheme*

##### *Annual bonus:*

*The annual bonus is determined each year and paid after the audited annual financial statements for the year ended 30 June 2009 have been completed. The payment of the bonus is based on the performance against budget of the subsidiary companies (divisions) and of the group. ...To recognize and reward the performance of the staff in this difficult economic environment, the Board of Directors approved an after tax bonus of R1 008 000 which is equivalent to 3,4% of net profit for the year before deduction of the bonus paid with effect from 30 June 2009.*

##### *Long Term Incentive Scheme (SAR's)*

*The Long Term Incentive Scheme consists of two elements: Share Appreciation Rights (SAR's) and Performance Units (PUs). The SAR's that were recommended by ... and approved by the Board to key management with effect from 1 December 2008 and implemented with effect from 1 September 2008 (rare).*

## **Sustainability and corporate citizenship**

Sustainability has been identified as one of the three pillars of King III. King II had already demanded sustainability reports, but King III requires considerably more. Out of the population studied, only few issued a sustainability report. Many built in the same information content into other sections of their reporting. The reports were scanned to see if they included key words like 'Corporate Social Investment' to establish whether the companies engaged in corporate citizenship. Corporate social investment includes donations and other financial assistance given for an altruistic purpose. In sum, 15

companies reported on their corporate social investments.

*In the 2009 financial year, the various entities within the Group made 103 donations to 49 different charities, many of which were in the form of monthly donations. Portable blood donor clinics have been held on site periodically throughout the year at the Durban and Port Elizabeth offices and were well supported by a significant number of staff in those regions – so much so that the Johannesburg branch are looking to follow suit in aiding this worthwhile endeavour (santova).*

There are some central topics in the South African context that have social impacts. Therefore the list also included HIV-Aids, Broad-based Black Economic Empowerment, health and safety, environmental issues, employment equity and skills development.

*...appreciate the serious impact of the HIV/AIDS pandemic, alongside the threat of other diseases which could cause significant risk. Healthcare promotion therefore concentrates on the preventative and corrective mitigation measures are being implemented to eliminate the underlying causes and hazards of all health risks. The Group promotes voluntary testing, non-discrimination and awareness about preventing the spread of the disease and mitigating its effects (rolfes technology holding).*

The sections on employment equity are by and large the most informative and indicate a compliance with the applicable laws and regulations.

*The Group's approach has been to encourage all staff to reach their maximum potential irrespective of gender, race or creed. While this focus remains in place, the Group is committed to increasing the participation of historically disadvantaged staff in its structures as per legislative and regulatory requirements. The requisite employment equity reports have been submitted to the Department of Labour (foneworkx).*

The paragraphs on Black Economic Empowerment speak largely about the rating the company and its subsidiaries received, e.g. 'The Group's operating subsidiaries are either level 2 or level 3' (dth).

To prevent reckless and short-sighted behaviour King II recommends a written code of ethics. 21 of the studied companies reported that they had a code of ethics in place. 13 others reported that ethical principles had been agreed on but not formalised. Two companies had a code of conduct in place while four others use a combined code. 41 companies addressed employment equity policies, 35 disclosed how they complied with Broad-based Black Economic Empowerment. 26 companies raise health and safety issues, 11 of them specifically speak about HIV-Aids. 18 companies specifically address the shortage of skills. Despite this, the paragraphs addressing these topics are not very insightful and address the company's awareness of the issue.

## Political aspects of Corporate Governance

One of the key issues in the South African context is the transformation of its society. Since the first free election after the fall of apartheid in 1994, it is intended that the wealth of the country is distributed in a way that reflects the population of South Africa. The goal of transformation is largely advocated by politicians, and companies often find themselves under scrutiny for not doing enough to contribute to transformation. One of the most prominent issues in the area of transformation is BEE deals, designed to allow 'historically disadvantaged groups' to own shares of companies and to participate in its wealth creation. A detailed discussion of such BEE deals is not within the scope of this paper.

The paper is interested in how companies use corporate governance reports to demonstrate their will to comply with political goals and in the ways in which they account for their contribution to transformation. Three companies offer outstanding, very detailed descriptions about their actions regarding transformation, while the details given in the reports of other companies as to broad-based black economic empowerment, is very sparse.

The first company operates within the sector of computer supplies. It strongly stresses that it is in excess of the required black ownership threshold and points out a 50% direct BEE shareholding.

*Notwithstanding this achievement, continued emphasis is placed on promoting and marketing ... shareholding with historically disadvantaged individuals. ... strong empowerment platform extends across all employment levels within the group – 62% of group executives is black, as is at least 90% of the board of ... of which 27% comprises black females (simeka business group).*

This strong focus on BEE is not often visible in the high tech sector. It becomes clearer when reading the CEO's vision of the company, in which he highlights the strong importance of the public sector for the group's income generation.

*Public sector remains an important growth avenue for the group. A number of large government contracts secured (through SUHL) vindicate the benefits of this strategy and have laid the platform for continued growth in this area (semeka).*

Another company which is working in heavy construction offers a similar insight into its employee structure. Here, the company benefits from considerable government procurement and orders to build for the public space.

A third company which has an outstanding sustainability section is one that offers micro-finance to rural areas.

Interestingly, many mining companies do not engage in excessive accounting for transformation – despite the rhetoric to nationalize them. Their corporate governance sections are quite lean and do not engage with these topics apart from the necessary minimal statements of compliance. One reason for

this might be found in the absence of government procurement.

## Conclusion

South Africa is a society in transition, and so is its economic landscape. What has been seen so far was UK-oriented principle-based corporate governance with an African touch. With King III, this road is followed further. The paper has outlined some of the key issues of the King III report which will come into effect after March 2010.

With King III, South Africa seems to walk the line between various positions: its international harmonization and recognition of cultural peculiarities, a market-based control model with a call for a stronger influence of institutional investors on the companies in which they invest or a liberal economic environment in which companies are supposed to commit to social activities. This will be an interesting process to follow. King III will, even more forcefully, try to incorporate African values into the financial reporting of companies. Yet, the wisdom of using a written code or law to change corporate practices is still open to debate.

How many of these ambitious innovations will change financial reporting remains to be seen. As the paper has demonstrated, many parts of the corporate governance sections are addressing pressing social issues like employment equity, HIV/Aids or environmental issues. The information content on these issues is very limited and one wonders if anyone really benefits from its disclosure. With an increasing pressure on companies to report on these social issues, best practices will emerge. It is likely that these sections start to look very similar throughout the reports of companies due to copy-and-paste exercises. The information value provided is probably not worth the effort.

The most extended reports on social issues were seen at companies which do business with government or are working closely with government agencies. Thereby, these companies seem to use the corporate governance section to show their alignment with the goals of the political elite.

The small cap companies studied in this paper show differences in the information content they provide in their corporate governance section. Some of the companies made excessive use of these sections to report on non-financial issues whereas others followed the minimal requirement. Rather, it seems that these companies which benefit from detailed reporting would do so – even in the absence of a code. From the viewpoint of small listed companies a strict code with excessive reporting requirements would add little value.

Racial and gender profile	2006	% of total	2008	% of total
Non-designated group	54	5,2	47	4,3
Other males	4	0,4	3	0,3
White females	7	0,7	7	0,6
Indian males	64	6,1	39	3,5
Indian females	11	1,1	4	0,4
Coloured males	34	3,3	25	2,3
Coloured females	3	0,3	1	0,1
Other females	-	-	-	-
African males	827	79,4	928	84,9
African females	37	3,4	39	3,6
Total number of employees	1 041	100,0	1 093	100,0

(erbacon)

	Female				Female Total	Male				Male Total	Grand Total	% Black	% Female
	African	Coloured	Indian	White		African	Coloured	Indian	White				
1. Top Management	0	1	1	0	2	1	0	3	1	5	7	85,7	28,6
2. Senior Management	0	1	1	7	9	0	2	16	25	36	44	43,2	17,3
3. Middle Management	13	4	3	13	33	10	4	19	21	35	98	67	39,1
4. Skilled and professionally qualified	40	10	11	56	107	41	11	32	106	190	297	45,5	36,0
5. Junior Management	37	26	13	58	134	29	10	17	46	102	236	56	56,8
6. Semi-Skilled	33	15	4	14	66	36	10	10	10	66	132	82	50
7. Unskilled	20	11	0	1	32	3	3	0	1	38	70	95	45,7
Grand Total	143	68	33	149	383	120	50	96	210	497	880	59,2	43,5

\*Permanent employees only, excludes contractors.

(simeka business group)



## References

1. Andreasson, S. (2007), The Political Economy of Corporate Governance in South Africa, The Selected Works of Stefan Andreasson. Available at: [http://works.bepress.com/stefan\\_andreasson/9](http://works.bepress.com/stefan_andreasson/9)
2. Barrier, M. (2003), Principles not Rules, *Internal Auditor* 60(4): 68-73.
3. Blau, P. M. and Schoenherr, R. A. (1971), *The Structure of Organizations*, Basic Books, New York.
4. DiMaggio, P.J. and Powell, W. (1983), "The iron cage revisited: institutional isomorphism and collective rationality in organizational fields", *American Sociological Review*, Vol. 48, pp. 147-160.
5. Erturk I., J. Fround, S. Johal and K. Williams (2004), Corporate Governance and disappointment Review of international Political Economy 11, 4: 677-713.
6. Gourevitch P.A. and Shinn, J.J. (2005), Political power and corporate control: The new global politics of corporate governance. Princeton: Princeton University Press.
7. Gyekye, K. (2003), Person and Community in African Thought, in P.H. Coetzee and A.P.J. Roux (eds.), *The African Philosophy Reader* 3rd edition (Routledge, London).
8. Institute of Directors (2009), King Code of Governance for South Africa 2009 (Institute of Directors, Johannesburg).
9. Lewis D., K. Reed and El. Teljeur (2004), South Africa: Economic Policy-Making and Implementation in Africa: A Study on Strategic Trade and Selective Industrial Policies, in C. Soludo, O. Ogbu and H.-J. Chang (eds.) *The Politics of Trade and Industrial Policy in Africa: Forced Consensus?*, Africa World Press.
10. Mbiti, J.S. (1989), *African Religions and Philosophy* 2nd edition (Heinemann, Oxford).
11. MEC for Education: KwaZulu-Natal and Others v Pillay and Others (2006), 10 BCLR 1237 N at para 53.
12. Mentiki, I.A. (1979), Person and Community in African Thought, in R.A. Wright (eds.), *African Philosophy: An Introduction* (University Press of America, Lanham).
13. Meyer, J. W. and Rowan, B. (1977), "Institutionalized organizations: formal structure as myth and ceremony", *American Journal of Sociology*, Vol. 83, pp. 340-363.
14. Nash, A. (2002), Mandela's Democracy, in S. Jacobs and R. Calland (eds.), *Thabo Mbeki's World* (University of Natal Press, Scottsville).
15. O'Sullivan, M. (2003), The political economy of comparative corporate governance, *Review of International Political Economy* 10, 1: 23-72.
16. Reinecke, M.P.A. (1996), *Effective Corporate Governance – A South African Perspective* (Rand Afrikaans University, Johannesburg) (Unpublished M.Com dissertation).
17. Roe, M.J. (2003), *Political determinants of corporate governance: Political context, corporate impact*. Oxford: Oxford University Press.
18. Sarra, J.P. (2004), Strengthening domestic corporate activity in global capital markets: a Canadian perspective on South Africa's corporate governance. The George Washington University Law School Public Law and Legal Theory Working Paper No 118, Institute for International Corporate Governance and Accountability, 29 October.
19. Scott, W. R. (2001), *Institutions and Organizations*, Sage Publications, Thousand Oaks.
20. Statistics SA (2009), Statistical release P0302 Mid-year population estimates 2009, available at <http://www.statssa.gov.za/PublicationsHTML/P03022009/html/P03022009.html>.
21. Strang, D. and Soule, S. A. (1998), "Diffusion in Organizations and Social Movements: From Hybrid Corn to Poison Pills", *Annual Review of Sociology*, Vol. 24, pp. 265-290.
22. Thompson, J. D. (1967), *Organizations in Action: Social Science Bases of Administration Theory*, McGraw-Hill, New York.
23. Tolbert, P. S. and Zucker, L. G. (1983), "Institutional sources of change in the formal structure of organizations: The diffusion of civil service reforms. 1880-1935", *Administrative Science Quarterly*, Vol. 23, pp. 22-39.
24. West, A. (2006) Theorising South Africa's Corporate Governance, *Journal of Business Ethics*, 68:433-448.
25. Westphal, J. D., Gulati, R. and Shortell, S. M. (1997), "Customization or conformity? An institutional and network perspective on the content and consequences of TQM adoption", *Administrative Science Quarterly*, Vol. 42, pp. 366 - 394.
26. Wiredu, K. (1997), Democracy and Consensus in African Traditional Politics: A Plea for a Non-party Polity, in E.C. Eze (eds.) *Postcolonial African Philosophy: A Critical Reader* (Blackwell, Cambridge).
27. Wiredu, K. (2003), The moral foundations of an African Culture, in P. H. Coetzee and A. P. J. Roux (eds.), *The African Philosophy Reader* 3rd edition, (Routledge, London).