Section 4
Corporate Governance

**Scope of section**

This section sets out the provisions relating to corporate governance for Main Board and AltX applicant issuers.

General

4.1 The effect of incorporating certain practices from the King Code in the Requirements is to make their implementation mandatory.

4.2 The capacity of each director must be classified as executive, non-executive or independent non-executive, using the following measures:[[1]](#footnote-1)

 (a) executive directors are involved in the management or in full-time salaried employment of the applicant issuer and/or its subsidiaries;

 (b) non-executive directors are not involved in the day-to-day management or full-time salaried employment of the applicant issuer and/or its subsidiaries; and

 (c) independent non-executive directors must be assessed holistically, and on a substance over form basis taking into account Section 94(4)(a) and (b) of the Act and Practice 28 of the King Code. Any director that participates in a share incentive/option scheme, will not be recognised as independent.[[2]](#footnote-2)

4.3 In a new company, all the non-executive directors must retire at the first annual general meeting. A third of all non-executive directors must retire at each annual general meeting. In determining the one-third, the longest serving non-executive directors must retire first. The retiring directors may be re-elected, provided they are eligible. The nomination committee should recommend eligibility, taking into account past performance and contribution made.

4.4 Once listed, all directors must be appointed by shareholders in general/annual general meeting. A brief CV and capacity for each director standing for election or re-election must be included in the notice of general/annual general meeting. The meeting may not be conducted in terms of Section 60 of the Act for Main Board issuers. The appointment of a director, to fill a casual vacancy or as an addition to the board, must be approved by shareholders at the next general/annual general meeting.

Corporate governance

Applicant issuers must comply with the following corporate governance provisions in terms of the Corporate Governance Table.

Main Board

4.5 Applications for the Main Board must comply with the following:

 (a) confirmation of application of the King Code through the application of the King Code disclosure and application regime, which may be incorporated via a weblink;

 (b) a brief CV and capacity must be included for each director;

 (c) the directors must collectively have appropriate expertise and experience for the governance and management of the applicant issuer and the business;

 (d) have a chief executive officer (“CEO”) and a chair, and these positions must not be held by the same person. The chair cannot be an executive director, and must either be an independent non-executive director, or the applicant issuer must appoint a lead independent director in accordance with the King Code;[[3]](#footnote-3)

 (e) have an audit, remuneration and social and ethics committee. The composition of such committees:

 (i) must comply with the Companies Act (as applicable);

 (ii) should comply with the recommended practices in the King Code, on an apply and explain basis; and

 (iii) must comprise of at least three members;

 A description of the committee mandates above, the number of meetings held;[[4]](#footnote-4)

 (f) the audit committee must, in addition to its duties in terms of Section 94 of the Act:[[5]](#footnote-5)

 (i) on an annual basis satisfy itself of the competence, qualifications and experience of the financial director;[[6]](#footnote-6)

 (ii) ensure that the issuer has established appropriate financial reporting procedures and that those procedures are operating, which should include consideration of all entities included in the consolidated group IFRS financial statements, to ensure that it has access to all the financial information of the issuer to allow the issuer to effectively prepare and report on the financial statements of the issuer;

 (iii) consider, the following information provided by the audit firm and individual auditor, in the assessment of the suitability of appointment or reappointment of the auditor:

 (aa) the latest inspection results (including related remedial action plan) of an inspection performed by its regulator. The audit committee may accept reports with the identity of specific entities redacted provided that such redaction does not limit the understanding of their content;

 (bb) any new inspection result of an inspection performed by its regulator, between the date of appointment of the auditor and the date of signature of the audit report on the annual financial statements;

 (cc) a summary, of the ongoing communication related to monitoring and remediation referred to in paragraph 46 of International Standard on Quality Management 1 (ISQM 1); and

 (dd) a summary of any legal or disciplinary proceedings completed or pending, as determined by the audit firm’s head of risk (or a similar senior person within the firm tasked with the responsibility of risk management) within the past five years. Legal or disciplinary proceedings include those instituted through any legislation or by any regulatory/professional body;

 (iv) ensure that the appointment of the auditor is presented and included as a resolution at the annual general meeting of the issuer;

 The issuer must confirm, by reporting to shareholders in its annual report, that the audit committee has executed the responsibilities set out in (f) above.

 (g) have an executive financial director. The JSE may, at its discretion, on request, allow the financial director to be appointed on a part time basis or not at all. This request must include a motivation from the audit committee of the applicant issuer;[[7]](#footnote-7)

 (h) have a company secretary appointed in terms of the Act and the recommended practices in the King Code. The directors must satisfy themselves on the competence, qualifications and experience of the company secretary on listing, and on an annual basis.

 (i) have a policy evidencing a clear balance of power and authority at board level, to ensure that no one director has unfettered powers of decision-making;[[8]](#footnote-8)

 (j) have a policy on the promotion of broader diversity at board level, focusing on the promotion of the diversity attributes of gender, race, culture, age, field of knowledge, skills and experience. The policy may include diversity targets. A statement on how the directors applied the policy of broader diversity at board level. If applicable, the directors must explain why any of the diversity indicators have not been applied and report progress on agreed voluntary targets;[[9]](#footnote-9) and

 (k) the remuneration policy and the implementation report must be tabled every year for separate non-binding advisory votes at the annual general meeting. The remuneration policy must record the measures that the directors of the issuer commit to take in the event that either the remuneration policy or the implementation report, or both, are voted against by 25% or more of the votes exercised. In compliance with the King Code, in the event that either the remuneration policy or the implementation report are voted against by shareholders exercising 25% or more of the voting rights exercised, the issuer must in its voting results announcement in terms of [3.91] provide for the following:

 (a) an invitation to dissenting shareholders to engage with the issuer; and

 (b) the manner and timing of such engagement;

 If applicable, provide confirmation of engagement with shareholders dealing with who the issuer engaged with and the manner and form of engagement and the nature and steps taken to address objections.

**AltX**

4.6 Applications for AltX must comply with the following:[[10]](#footnote-10)

(a) confirmation of adoption of Part 5.3, Governing Structures and Delegation the King Code, through the disclosure and application regime of the King Code; and

 (b) the provisions of 4.6(f) [*audit com*], (g) [*FD*], (h), [*cosec*], (j) [*board diversity policy*], (k) [*non-binding vote on remuneration*]

 [*text added for ease of reference*];

 (c) the DA must attend all audit committee meetings and must advise the audit committee on the Requirements for a period equal to:

 (i) the first anniversary of listing; or

 (ii) the date of the publication of the applicant issuer’s annual financial statements post listing,

 whichever is the longer.

The DA must be allowed to attend audit committee meeting, as an observer and not a member.

**Responsibility Statement - Annual Financial Statements**

4.7 The following responsibility statement must be made, after due, careful and proper consideration by the CEO and the financial director of Main Board and AltX issuers in the annual financial statements:[[11]](#footnote-11)

 “*Each of the directors, whose names are stated below, hereby confirm that–[[12]](#footnote-12)*

 *(a) the annual financial statements set out on pages [...] to […], fairly present in all material respects the financial position, financial performance and cash flows of the issuer in terms of IFRS;*

 *(b) to the best of our knowledge and belief, no facts have been omitted or untrue statements made that would make the annual financial statements false or misleading;[[13]](#footnote-13)*

 *(c) internal financial controls have been put in place to ensure that material information relating to the issuer and its consolidated subsidiaries have been provided to effectively prepare the financial statements of the issuer;[[14]](#footnote-14)*

 *(d) the internal financial controls are adequate and effective and can be relied upon in compiling the annual financial statements, having fulfilled our role and function as executive directors with primary responsibility for implementation and execution of controls;[[15]](#footnote-15)*

 *(e) where we are not satisfied, we have disclosed to the audit committee and the auditors any deficiencies in design and operational effectiveness of the internal financial controls, and have\* remediated the deficiencies / taken steps to remedy the deficiencies; and[[16]](#footnote-16)*

 *\*Delete as applicable.*

 *(f) Any fraud that involves directors was reported to the audit committee/We are not aware of any fraud involving directors.[[17]](#footnote-17)*

 *\*Delete as applicable.*

 *Signed by the CEO and the financial director*.”

**Secondary Listings**

4.8 Applicant issuers seeking a secondary listing on the JSE, with a primary listing on an approved or accredited exchange, are not required to comply with Section 4, provided a positive confirmation is made to the JSE that the applicant issuer complies with the corporate governance provisions of the primary exchange and an overview of the corporate governance regime is disclosed in the PLS.

4.9 If the applicant issuer does not have a primary listing on an approved or accredited exchange, the JSE must be satisfied with the corporate governance regime of the primary exchange and an overview of the corporate governance regime must be disclosed in the PLS.

**Corporate Governance Table**

The corporate governance provisions must be applied and disclosed as follows:

|  |  |
| --- | --- |
| **Main Board** | √ |
| **AltX** | X |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Listing Condition** | **Continuing Obligation** | **Disclosure in PLS or Prospectus** | **Disclosure in Annual Report** | **Disclosure in Annual Financial Statements** | **Notice of annual / general meeting** |
| 4.5(a)King Code | √ | √ | √ | √ |  |  |
| 4.6(a)King Code | X | X | X | X |  |  |
| 4.5(b)CV & capacity of directors | √ | √ | √ | √ |  | √Re-election |
| 4.5(c)Experience and expertise of directors | √ |  | √ |  |  |  |
| 4.5(d)CEO & Chair | √ | √ | √ | √ |  |  |
| 4.5(e)Board committees | √ | √ | √ | √ |  |  |
| 4.5(f)Audit committee responsibilities | √X | √X | √X | √X |  |  |
| 4.5(g) Financial Director | √X | √X | √X | √X |  |  |
| 4.5(h)Company Secretary  | √X | √X | √X | √X |  |  |
| 4.5(i)Policy on balance of powers | √ | √ | √ | √ |  |  |
| 4.5(j)Policy on board diversity  | √X | √X | √X | √X |  |  |
| 4.5(k)Non-binding vote on remuneration |  | √X |  | √X |  | √X |
| 4.7Responsibility Statement |  | √X |  |  | √X |  |

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)
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15. [↑](#footnote-ref-15)
16. [↑](#footnote-ref-16)
17. [↑](#footnote-ref-17)