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King III reporting in terms of the JSE Listings Requirements

Purpose

The purpose of this Practice Note is to provide guidance for entities listed on the Johannesburg Stock Exchange (JSE) on how to report on the application of the King Report and Code on Corporate Governance, 2009 (King III), as required by section 8.63 of the JSE Listings Requirements.

King III on application

King III follows an “apply or explain” approach. In this regard, King III further explains its application regime by making the following comments in its introduction:

- All entities should apply the principles in the Code and consider the best practice recommendations in the Report.
- All entities should, by way of explanation, make a positive statement about how the principles have been applied or have not been applied. This level of disclosure will allow stakeholders to comment on and challenge the board on the quality of its governance.
- The manner of application will differ for each entity and is likely to change as the aspirational nature of the Code should drive entities to continually improve governance practices.
- It is important to understand that the “apply or explain” approach requires more consideration - application of the mind - and explanation of what has actually been done to implement the principles and best practice recommendations of governance.
- Each principle is of equal importance and together forms a holistic approach to governance. Consequently, “substantial” application of this Code and the Report does not achieve compliance.

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The JSE Listings Requirements on King III application

Section 8.63 of the Listings Requirements requires issuers to disclose the following information in the annual report regarding the King Code:

- A narrative statement of how it has applied the principles set out in the King Code, providing explanations that enable its shareholders to evaluate how the principles have been applied; and
- A statement addressing the extent of the issuer’s application of the King Code and the reasons for non-application of any of the principles in the King Code, specifying whether or not the issuer has applied the individual principles throughout the accounting period and indicating for what part of the period any non-application occurred.

The JSE Listings Requirements has mandatory corporate governance requirements. In addition listed companies must adopt King III on an "apply or explain" basis.

In addition, the JSE has set further mandatory corporate governance requirements, as set out in section 3.84 of the Listings Requirements. For these requirements, compliance is non-negotiable and explanation is not an option. Section 3.84 matters are not further addressed in this Practice Note.

The question arises as to the manner of reporting (how to report) as well as the placement of the section 8.63 narrative statement relating to the application of King III (where to report).

King Committee recommendations on how to report

In order to facilitate transparency and more detailed information by the board to stakeholders, more comprehensive disclosure by issuers is proposed. As application of King III and the disclosure thereof requires judgement, definitive prescription is not possible. The following serves to guide companies in their approach to disclosure and is not intended to add compliance hurdles.

In order to implement King III, entities need to consider and assess the application of every one of the principles in King III. It is recommended that this assessment be documented and reported, for example in the form of a register. The register should cover all 75 King III principles and should include detail on how each principle is applied. This register should be a living document and be kept updated on an ongoing basis.

There is the danger that such a register will become tantamount to a checklist. It is the strong view of the King Committee that a mere checklist pronouncing that a King III principle is applied does not meet the spirit of the "apply or explain" approach. An application register that is done on a "yes/no" basis deals with the quantitative aspects of governance only, i.e. whether a particular recommended governance structure, process or procedure is in place, is thus not advocated. It is proposed that meaningful reporting that informs users of the report should also contain qualitative information, i.e. how effectively that particular governance structure, process or procedure is applied.

It is, for instance, not sufficient to disclose that the board indeed appoints the chief executive officer and establishes a framework for the delegation of authority. There should also be disclosure on factors such as whether this process is mature and embedded and whether its outcome has been beneficial to the company.

Some principles intrinsically have a qualitative component, such as the principle that the board should ensure that the company has an effective and independent audit committee. If the company has an audit committee that has not proved to be effective, there is clearly not application of the principle. The principle that the board should act in the best interests of

the company is another case on point where application implies the value statement and therefore further explanation would not be necessary.

If a principle is not applied, a clear explanation should be provided that enables the users of the information to "*comment on and challenge the board on the quality of its governance*". To this end the explanation should cover the following:

- Background information and context taken into consideration when the decision was made not to apply or to apply differently.
- Reason for not applying the principle or applying it differently.
- Mitigating factors introduced to manage the risk emanating from a limited application or non-application of the specific principle.

King Committee recommendations on where to report

The philosophy of integrated reporting is that material information should be provided that presents a holistic picture of how the company is creating value now and will continue into the future. Comprehensive disclosure on all of the principles of King III, as set out above, will add significantly to the length of the integrated report which goes against this philosophy.

Key information should be included in the integrated report and more comprehensive reporting should be accessible on the company's website.

Section 8.63 of the Listings Requirements specifically refers to the annual report as the primary reporting platform. The King Committee, after having consulted with the JSE, recommends that JSE issuers publish their complete King III application register on their websites.

The integrated/annual report should contain a summary of the issuer's application of all of the principles contained in **Chapter 2** of King III as those principles link to the other chapters of King III. This approach is not compulsory but limits the quantum of reporting in the integrated report to 27 principles, as opposed to the 75 principles in total, whilst providing users with a holistic view and the ability to access the complete report on the website.

In the integrated report, the issuer should make reference to the fact that the King III application register is available on its website.