



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Faculty of Law

The effective application of corporate governance in non-profit companies with
specific reference to Milk South Africa NPC

by

Thabelo George Khangale

Student number: 18183493

Submitted in partial fulfilment of the requirements for the degree

LLM (Corporate Law)

in the

FACULTY OF LAW

at the

UNIVERSITY OF PRETORIA

November 2020

Prepared under the supervision of

Prof Monray Marsellus Botha

DECLARATION

1. I fully understand what plagiarism is and also understand the University's policy regarding plagiarism.
2. I hereby affirm that this dissertation is my own original work. Where other people's work has been relied on, this has been duly acknowledged and referenced in line with University's requirements.
3. I did not use work produced by another student before or any other person to submit as my own work.
4. I have not permitted and will not permit, any person to copy my work with the intention of submitting it as their own work.

Thabelo George Khangale

November 2020

ACKNOWLEDGEMENTS

First and foremost, I wish to thank the Almighty God for giving me the courage, strength and energy to initiate and execute this study.

I would like to extend my sincere gratitude to the following people for their assistance; guidance and motivation throughout this study:

- My parents Ratshibvumo Khangale and Tshinyalani Khangale for both their prayers and encouragement.
- My siblings for their support and encouragement, in particular Dr MM Khangale for always encouraging me to study further and most importantly for all the unwavering support and guidance provided during this study.
- I want to express my gratitude to the supervisor of the study, Prof Monray Marsellus Botha for his guidance and patience during this to the very end. Many thanks also to my initial supervisor, Adv Tebogo Morajane for her understanding, patience, guidance and encouraging words.
- To Mr Nico Fouché, the CEO of Milk SA NPC, thanks for accepting my request to conduct this study and for giving me unlimited access to all the documents I needed to conduct this study. Without your cooperation this study would not have been possible.
- I would like to extend my gratitude to my girlfriend Thabelo for not only supporting me but also to understanding my constant absence during this study.
- To my mentor and colleague Walter Bhengu, thanks for all the guidance and for consistently reminding me to finish this study. It is much appreciated.
- To my boss, Marissa Bezuidenhout, thanks for believing in me and for all the support and guidance.
- Lastly, I also want to thank my friends Muvhumbi Maanda, Kgotatso Kgobe and Kem Tumba Diong for their support during this study.

SUMMARY

This study explored the effective application of corporate governance in Milk SA NPC. The study is made up of five chapters, starting with an introductory chapter one. The introductory chapter provides general overview and background on corporate governance in the South African context. It also sets out the research problem as well as the research questions of the study. Chapter two introduces the principles and practices of corporate governance recommended by the King IV report on Corporate Governance in South Africa for the non-profit organisations. Chapter three explores Milk SA's mechanism of ensuring compliance and effective application of corporate governance and also address the research questions of the study. Chapter four compares the corporate governance principles and codes applicable to South African and Australian non-profits companies. Finally chapter five finalises the study findings and concludes the study with recommendations.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION

1.1 Introduction	7
1.2 Background and problem statement	12
1.3 Research questions	16
1.4. Motivation for the study and methodology	17
1.5 Structure of the dissertation	21

CHAPTER 2: CORPORATE GOVERNANCE APPLICABLE TO NON-PROFIT COMPANIES

2.1 Introduction	22
2.2 Recommended principles and practices of corporate governance	23
2.3 Conclusion	29

CHAPTER 3: CURRENT MECHANISMS OF CORPORATE GOVERNANCE AT MILK SA

3.1 Introduction	30
3.2 Milk SA's corporate governance framework/mechanisms	30
3.3 Research questions of the study	36
3.3.1 What governance principles and codes underpin corporate governance within Milk SA and how does it ensure compliance with governance principles and codes?	36
3.3.2 Are current mechanisms in compliance with the King IV Report?	40
3.4 Conclusion	45

CHAPTER 4: COMPARISON BETWEEN SOUTH AFRICAN AND AUSTRALIAN CORPORATE GOVERNANCE PRINCIPLES AND CODES

4.1 Introduction	46
4.2 Brief background on corporate governance in Australia.	46
4.3 Recommended corporate governance principles and Codes for the not for profit corporations	48
4.4 Comparison between South African and Australian governance principles and codes of corporate governance applicable to non-profit companies	52
4.5 Conclusion	54

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction	55
5.2 Conclusions according to chapters	55
5.2.1 Chapter 1	55
5.2.2 Chapter 2	55
5.2.3 Chapter 3	56
5.2.4 Chapter 4	56
5.3 Recommendations	57

BIBLIOGRAPHY

Literature	59
Case law	63
Papers issued	63
Academic dissertations and theses	64
Government Gazette publications	64
Official reports issued	65
Milk SA policies and internet sources	66

CHAPTER 1

INTRODUCTION

1.1 Introduction

The concept of corporate governance was first institutionalised in South Africa with the publication of the first King Report on Corporate Governance in 1994.¹ Although the 1973 Companies Act² had been in effect for more than two decades prior to *King I*, the 1973 Companies Act did not sufficiently address issues of corporate governance.³ However, this was not indicative of the fact that corporate governance was not a concerning matter prior to the publication of King I.⁴ The *King I* was published by the King Committee. The King Committee was established in 1992 under the auspices of the Institute of Directors of Southern Africa. The King Committee was formed with certain objectives of researching and making recommendations into corporate governance in South Africa.⁵ *King I* envisioned upholding the utmost values and standards of corporate governance in South Africa. However, with passage of time and rapid global economic development the need arose to update and modernise the *King I*.⁶ This led to the development of the *King II*.

The *King II* was an improvement from the *King I*. *King II* demonstrated what can be labelled as a change from the single bottom line, that placed emphasis on the shareholders' profit, toward a triple bottom line, that promotes the economic and social aspects of a company's activities. During early 2000s, the government of the Republic of South Africa found that it was necessary to modernise the country's company laws

¹ Naidoo *Corporate Governance: An essential guide for South African Companies* (2018) 2. King I Report on Corporate Governance for South Africa (1994), the full report is available at <https://www.iodsa.co.za/page/king>. Hereafter *King I*.

² Companies Act 61 of 1973.

³ Botha *Employee participation and voice in companies: A legal perspective*, (2015) Unpublished LLD Thesis, North-West University 3.

⁴ Rossouw "Corporate governance in South Africa" 2002 *Journal of Business Ethics* 289.

⁵ Hendricks and Wyngaard "South Africa's King III: Commercial governance code determining standards of conduct for civil society organizations" *International of Not-for-Profit Law* 2010 104.

⁶ King II Report on Corporate Governance for South Africa (2002) 7. The full report is available at <https://www.iodsa.co.za/page/kingIII>, Hereafter *King II*.

in order to meet internationally recognised standards.⁷ This task was led by the Department of Trade and Industry on behalf of the government. The proposal for the modernisation was embedded in a fifty-page policy paper (DTI policy paper) published in the Government Gazette in May 2004. The DTI policy paper established the framework and guidelines for further engagements of technical nature, which served as the foundational basis for the drafting of a new Companies Act. Amongst other things the DTI policy paper promised the review of company laws to encourage transparency, utmost standards of corporate governance and complementing South African company laws with best practice jurisdictions internationally. Furthermore the DTI policy paper supported the *King II's* idea of a change away from a single bottom line that focused on profit for shareholders, to a triple bottom line, incorporating the economic, environmental, and social aspects of a company's activities.⁸

The DTI policy paper paved the way for the 2008 Companies Act.⁹ One of the objectives behind the enactment of the 2008 Companies Act is to promote transparency and utmost standards of corporate governance, in light of the important role of companies within the nation's social and economic life.¹⁰ This objective promotes interaction with the King reports and the 2008 Companies Act.

The enactment of the 2008 Companies Act as well as the developments in the international governance trends triggered the necessity for the King Report on Corporate Governance for South Africa 2009 and the King Code of Governance for South Africa 2009.¹¹ One of the distinguishing factors between *King III* and its predecessors was that it applied to all the entities irrespective of whether the entity is a public entity, private or non-profit entities.¹² The governance framework of *King III* was based on the “apply or explain” approach. In November 2016 the King IV Report

⁷ South African Company Law for the 21st Century – Guidelines for Corporate Law Reform (Government Gazette 26493 of 23 June 2004) 13.

⁸ *Idem* 27.

⁹ Act 71 of 2008. Hereafter, the 2008 Companies Act.

¹⁰ Section 7 (a) (iii) of the 2008 Companies Act.

¹¹ Havenga and Esser *Corporate Governance Review* (2012) 2. King III “Report on Governance for South Africa” (2009), the full report is available at <https://www.iodsa.co.za/page/kingIII>. Hereafter *King III*.

¹² King III “Report on Governance for South Africa” (2009) 17.

on Corporate Governance in South Africa was published and became effective on 1 April 2017.¹³ *King IV* substituted *King III* in its totality.¹⁴

King IV was necessitated by the developments that occurred in the corporate governance space since 2009 when *King III* became operational.¹⁵ The *King IV* comprises of recommended principles, practices and outcomes which act as the standard for South African's corporate governance.¹⁶ The *King IV* is distinguishable from *King III* which adopted the 'apply or explain' approach. It calls for companies to utilise the 'apply and explain' approach as corporate governance principles applies to all kinds of entities. Similar to the previous King reports the legal force of the *King IV* is that of a set of voluntary principles and leading practices.

Having established a brief background on corporate governance in the South African context, it is important to explore what exactly corporate governance entails. Corporate governance is described as the structures and processes associated with management, decision-making and control in the organisations.¹⁷ This concept has become an issue of global importance, but exactly what constitutes corporate governance and precisely where its boundaries lies are still subjects of debate.¹⁸ According to Henochsberg on the Companies Act 71 of 2008, the concept of "corporate governance" defies an exact definition, this is the case because the concept not only refers to what should be done, eg duties and powers of those entrusted with governance but also to the outcomes of such governance.¹⁹ The tendency over the years has been to move from a narrow definition of corporate governance – "*the practice by which companies are managed and controlled*"²⁰ – "*to increasingly broader definitions which encompasses elements of managing long – term risk, overseeing ethical performance and sustainable business practices and taking accountability for company's relationship with multiple stakeholders*".²¹ According to one author,

¹³ King IV Report "Report on Corporate Governance in South Africa" (2016), the full report is available at <https://www.iodsa.co.za/page/kingIII>. Hereafter, *King IV*.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Idem 2.*

¹⁷ Wixley *Corporate Governance* (2015) 1.

¹⁸ Naidoo *Corporate Governance* 3.

¹⁹ Delpont *Henochsberg on the Companies Act 71 of 2008* (2020) 52.

²⁰ *Ibid.*

²¹ *Idem 3.*

corporate governance is described as the structures, processes, cultures and systems that engender the successful operation of companies.²²

According to *King IV* the foremost fundamental codes of corporate governance are as follows firstly is the concept of accountability, members of the board must be willing to account for the execution of their responsibilities, even when these were delegated.²³ Secondly, the concept of integrity, the members of the board must at all-time act ethically beyond mere legal compliance and must observe the fiduciary duties entrusted on them. Lastly, is the concept of transparency, members of the board must be transparent in the way in which they exercise their governance role and responsibilities.²⁴

Corporate governance goes beyond management and the two concepts are quite distinct.²⁵ “*Governance is about vision and organisational direction as opposed to day-to-day management and implementation of policy and programs of the company. Whilst management is about running the company, governance is about ensuring that the company is run properly*”.²⁶ Thus every company requires governing as well as management.

The concept of corporate governance was developed because of the agency problem that came up when there was a separation between the ownership of companies and the control thereof.²⁷ As authors Robert Monks and Nell Minow put it, “in the early days when directors sat around a real board, they represented the shareholders because they were the shareholders. As corporations grew in size and complexity, the law tried to develop a standard of performance for directors that would encourage the same sense of duty and care that they would naturally use when they were representing themselves”.²⁸ When looking into the concept of ownership of a company and control

²² Barac “Governance in the public sector” 2001 *Auditing SA* 30.

²³ *King IV* 43.

²⁴ *Idem* 44.

²⁵ Naidoo *Corporate Governance* 9.

²⁶ Tricker RI “Good practice in corporate governance: international perspectives” (1988).

²⁷ Rossouw 2002 *Journal of Business Ethics* 289.

²⁸ Monks and Minow *Corporate Governance* (2004) 13.

thereof, it is worth mentioning that the concept of agency in a company comes into existence at the incorporation of a company.

This is because a company is a juristic person and therefore “*no soul to be saved or body to be kicked*”.²⁹ As such a company cannot execute any other legal act on its own and this necessitates authorised agents to act on behalf of the company.³⁰ Only authorised agents may act on behalf of a company.³¹ Subject to the memorandum of incorporation, the board of directors has express authority to contract on behalf of the company.³² This is not a delegated authority from the shareholders anymore as implied in the case of *One Stop Financial Services (Pty) Ltd v Neffensaan Ontwikkelings (Pty) Ltd and Another*.³³

In the court case involving *Francis George Hill Family Trust v South African Reserve Bank*,³⁴ the court held “*that membership of a company does not qualify a shareholder to manage the company’s business or bind the company to a contract*”. The board of directors is a central pillar in the management of companies. The courts usually interpreted, very liberally the conferring of managerial powers to the directors as observed in the matter of *Bell Houses Ltd v City Wall Properties Ltd*³⁵ where the court when interpreting whether the conduct of the board of directors was *ultra vires*, held that any trade or business that the directors bona fide believed could be advantageous to the main business of the company was *intra vires*.

The ownership of a company and control was separated because of the fact that businesses became increasingly larger and more complex to run.³⁶ Another cause of separation was due to modern companies having to move away from family-controlled to public companies, which have to raise capital by allowing members of the public to buy the company’s shares.³⁷

²⁹ Delpont “Companies Act 71 of 2008 and the ‘Turquand’ rule” 2011 *THRHR* 132.

³⁰ Delpont *The new companies Act manual* (2011) 11.

³¹ Cassim *et al Contemporary Company Law* (2011) 40.

³² Delpont *Henochsberg* 97.

³³ *Ibid.*

³⁴ 1992 (3) SA 91 (A) 97.

³⁵ 1996 2 QB 656.

³⁶ Mongalo *Corporate law & Corporate Governance: A global picture of Business Undertakings in South Africa* (2003) 190.

³⁷ Matsaneng 46 *Transactions of the Centre for Business Law* (2010) 52.

It is common cause that there are two main sets of legal rules on the supervision of corporate management: one-tier boards and two-tier boards.³⁸ The main difference between the two is that with a one-tier board structure, only one single board exists and board members, i.e. executive directors as well as non-executive directors, are normally elected by the shareholders.³⁹ Whereas with the two-tier board structure there are two separate boards, management board and a separate supervisory board. The supervisory board members are shareholders or shareholders' representatives and amongst others they are responsible for specific far-reaching important resolutions, appointing the members of the management board and monitoring its performance, while the management board is accountable for all management related issues.⁴⁰ South African companies have a unitary board structure, clearly separating ownership and control.⁴¹ The problem that was created by this situation was that the directors of companies could abuse their control function to their own advantage and to the detriment of the owners.⁴² It is against this background that corporate governance has developed, ensuring that the management of a company do not amongst other things take excessive risks and run the company with due care and skill.⁴³

1.2 Background and problem statement

Studies show that financial crisis in many companies can, to a great extent be attributed to the failures and weakness of corporate governance within companies.⁴⁴ In 2008 the world was astounded by a global economic crisis, amongst other things weaknesses in the governance system was identified as a contributory factor.⁴⁵ Many companies that are plagued by the financial crisis often have boards and other governance structures not functioning properly, this is mainly because boards and governance structures of a company are at the heart of what goes right and wrong

³⁸ Jungmann "The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board System" *European Company and Financial Law Review* 2006 3.

³⁹ *Idem* 5.

⁴⁰ *Ibid.*

⁴¹ Esser "Shareholder Interests and Good Corporate Governance in South Africa" 2014 *THRHR* 38.

⁴² *Ibid.*

⁴³ Ahmad and Alkarim "Separation of Ownership and Control in Corporate Governance" 2019 *Journal of Law, Policy and Globalization* 65.

⁴⁴ Wyngaard *Governance for non-profit boards* (2017) 1.

⁴⁵ The Global Economic Crisis: Systemic Failures and Multilateral Remedies, United Nations (2009) xi.

within the company. When the governance structures are not functioning properly this enables bad decisions and interfaces by stakeholders that often leads to undesirable outcome for the company.

The success of a company depends to a greater extent on its leadership and strategies and also on its systems and structures performance.⁴⁶ This is because in as much as good governance does not on its own guarantee the success of the company, it however tends to channel the company's decisions in the right direction because of the expertise that are often within the governance structures. According to *King IV* sustainability is "*the ultimate long term goal of sustainable development, which is a development that meets the needs of the presence without compromising the ability of future generations from meeting their needs*".⁴⁷ Companies which do not practice good corporate governance are likely to have their sustainability and reputation negatively affected.⁴⁸ For instance in 2002, Worldcom, a United States (U.S) telecommunications giant filed the largest bankruptcy in the U.S history.⁴⁹ The investigations conducted unveil a systematic corporate governance failure.⁵⁰

In South Africa, one of the major corporate collapses was that of Masterbond group of companies in the early 1990s. In its investigation into the collapse of Masterbond, the Nel Commission of Enquiry reported that amongst other things that the auditors and management by issuing false certificates for bond participations, tailoring accounting policies to convert loses into profits and backdating documents for the purpose of misleading the Receiver of Revenue.⁵¹ The management's participation in collusion with the auditors indicates integrity deficiencies amongst other things. Integrity within the members of the management is one of the foremost fundamental concepts of practising good corporate governance. In light of the recent governance failures banks, investors and donors are selective about the companies which they are associated

⁴⁶ Naidoo *Corporate Governance* 14.

⁴⁷ *King IV* 11.

⁴⁸ Wiese *Corporate Governance in South Africa with international comparisons* (2017) 3.

⁴⁹ Ahunwan *Globalization and Corporate Governance in Developing Countries: A micro analysis of global corporate interconnection between developing African countries and developed countries* (2003) 14.

⁵⁰ *Ibid.*

⁵¹ The final report of the commission of inquiry into the affairs of the Masterbond group and investor protection in South Africa, 2001.

with.⁵² The board is seen as the focal point for corporate governance in the organisation, if the board is dysfunctional the organisation and its internal and external stakeholders will feel the effects.⁵³

Having regard to the aforementioned, it is clear without a shred of doubt that practising good corporate governance is essential for any company to achieve its objectives and maintain its sustainability and also a good reputation from a governance perspective. When dealing with the governance of the non-profit companies (NPCs), higher standards of corporate governance ought to be adhered to than in average companies, as they should be examples of excellence in governance.⁵⁴ The reasons being that NPCs do not exist for themselves but for others, in other words they are formed for a public benefit object, social, cultural or group object.⁵⁵ NPCs are more often entrusted with public funds or members' contribution to achieve a certain purpose, which purpose is not always profit-driven.⁵⁶ *King III's* declaration of its applicability to the non-profit sector brought the issue of governance into sharp focus for non-profit organisations.⁵⁷

As the global focus on governance gains momentum, South African NPCs will increasingly be expected to demonstrate and disclose compliance with the governance principles and practices.⁵⁸ This is so because as already indicated the concept of good governance has become of global importance as weaknesses in governance contributed to the 2008 world global economic crisis and further to that because the *King IV* places greater emphasis on transparency with regards to how companies have applied their judgement to the recommended practices.⁵⁹ The benefits of good corporate governance are dealt with hereunder.

This study will analyse the effective application of corporate governance, the current mechanisms that underpin corporate governance within Milk South Africa. Milk South

⁵² Ahunwan *Globalization and Corporate Governance in Developing Countries* 31.

⁵³ *King IV* 88.

⁵⁴ Wyngaard *Governance for non-profit boards* 3.

⁵⁵ Section 1(a) of Schedule 1 of the Companies Act 71 of 2008.

⁵⁶ *Ibid.*

⁵⁷ Wyngaard *Governance for non-profit boards* 1.

⁵⁸ *Idem* 5.

⁵⁹ *King IV* 20.

Africa NPC, a NPC established in accordance with the companies laws of the Republic of South Africa with registration number: M2002032020.⁶⁰ Hereafter referred to as “Milk SA”. Milk SA has two members namely the Milk Producers’ Organisation (MPO) and the South African Milk Processors’ Organisation (Sampro).⁶¹ Beyond the two members Milk SA has 11 (eleven) directors all of whom are board members.⁶² The vision of Milk SA is to promote healthy South African dairy community.⁶³ Milk SA was established with amongst others the following objectives, to promote constructive co-operation amongst role players in the dairy industry in harmony with the Competition Act⁶⁴ and other legal requirements, the empowerment of previously disadvantaged individuals through actions to improve knowledge and skills, to improve of the quality of milk and other dairy products.

The Government of the Republic of South Africa entrusted Milk SA with the obligation to administer statutory regulations in pursuit of its strategic direction to broaden the market for milk and other dairy products, improve the international competitiveness of the dairy industry and empower previously disadvantaged persons.⁶⁵ Some of the statutory obligations of Milk SA are highlighted hereunder. In terms of the Marketing of Agricultural Products Act,⁶⁶ the Minister of Agriculture, Forestry and Fisheries entrusted the implementation, administration and enforcement of the following statutory measures to Milk SA, as published on the National Government Gazette number 37153 of 20 December 2013:

- Government Notice 1218 – Registration of persons involved in the secondary dairy industry;
- Government Notice 1219 Records and returns in respect of milk and other dairy products; and
- Government Notice 1220 – Levies on milk and other dairy products.

⁶⁰ Certificate issued by the Commissioner of Companies & Intellectual Property Commission on 7 August 2019.

⁶¹ The Milk SA Transformation Handbook 2014/2015, 3 (<https://milksa.co.za/transformation-handbook-south-african-dairy-industry-201415>).

⁶² CEO Report to Members at AGM (2017) at page 10 (<https://milksa.co.za/reports>).

⁶³ https://milksa.co.za/about/mission_and_vision (accessed on 1 July 2019).

⁶⁴ Act 89 of 1988.

⁶⁵ Milk South Africa and a profile of the South African Dairy Industry (2017).

⁶⁶ Act 47 of 1996.

The persons subjected to the above statutory measures are persons who sell unprocessed milk to retailers, persons who buy unprocessed milk for the purpose of processing it or to use it to manufacture other products, or to sell it to persons outside the jurisdiction of the Republic of South Africa, or to move it outside the jurisdiction of the Republic of South Africa.⁶⁷

According to paragraph 17 of the Milk SA's Chief Executive Officer's (CEO) report records that "good corporate governance stands central to the success of Milk South Africa".⁶⁸ The report further records that the increased administrative responsibilities and the increased magnitude of the projects necessitated new and refined policies, procedures and systems. Observations on the existing policies, procedures and systems will be made in the subsequent chapters.

Milk SA is the only organisation within the Republic that currently fulfils the statutory obligations referred to above. It is clear from the provided background that Milk SA plays a vital role in the milk and other dairy products industry within the Republic and as such its steadiness is vital for the Country's milk and other dairy products industry. It is against this background and the reasons provided in the research statement and motivation for the study that the study of effective application of corporate governance in Milk SA specifically is necessary.

1.3 Research questions

In order for this study to appropriately analyse the current mechanisms in place to ensure compliance and effective application of the corporate governance principles and codes the following questions will be explored:

1.3.1 What governance principles and codes underpin corporate governance within Milk SA and how does it ensure compliance with governance principles and codes?

1.3.2 Are current mechanisms in compliance with the King IV Report?

⁶⁷ CEO's Report for the financial year 2016.

⁶⁸ CEO's Report to the AGM (2017).

1.4 Motivation for the study and methodology

Good corporate governance is at the heart of what goes right and wrong in a company.⁶⁹ The major advantages of good corporate governance lie in the way properly governed companies are able to attract institutional and foreign investment, to implement sustainable growth and to identify and manage their business and other risks within pre-determined parameters and so increase their chances of longevity and limit their potential liability.⁷⁰ Good governance enhances accountability and performance by the management as well as efficient and effective use of the company's resources. In the context of a NPC, good governance may attract more donations as donors are more likely to donate to a company where there is good governance as good governance plays a key role in ensuring that the company accomplish its objectives.

According to the King IV the particular benefits that could be derived from the good governance of a NPC includes: added credibility, better fraud prevention due to improved controls and the ability to leverage a wider pool of expertise for employment and volunteer work. Properly governed companies with a good reputation are more likely to be able to attract better calibre employees. This is because most individuals with scarce skills and good reputation will most certainly want to associate themselves with companies with good reputation. According to Lipman:

“Good corporate governance helps to prevent corporate scandals, fraud, and potential civil and criminal liability of the organisation. A good corporate governance image enhances the reputation of the organisation and makes it more attractive to customers, investors, suppliers, and in the case of non-profit organisations, contributors.”⁷¹

Section 7(b)(iii) of the 2008 Companies Act provides that one of the purpose of the 2008 Companies Act is to encourage transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation. This purpose encourages interaction with the King reports and the 2008 Companies Act. Section 7 (b) (iii) and (e) in particular bring the 2008 Companies Act within the purview of the constitutional dispensation, and the

⁶⁹ Naidoo *Corporate Governance* 14.

⁷⁰ *Ibid.*

⁷¹ Lipman & Lipman *Corporate Governance Best Practices: Strategies for Public, Private, and Not-for-Profit Organizations* (2006) 3.

scope of the 2008 Companies Act was significantly broadened and enhanced to ensure that it passes constitutional muster.⁷² When interpreting the provisions of the 2008 Companies Act, the courts (and any institution administering the Act) must promote the spirit, purpose and objects of the Act and if any provision of the Act, or other document in terms of the Act, read in its context, can be reasonably construed to have more than one meaning, the meaning that best promotes the spirit and purpose of the Act must be preferred.⁷³

The South African courts have in various instances pronounced on governance related issues. In the case of *South African Broadcasting Corporation Ltd v Mpofo*⁷⁴ the court stressed that “*integrity is a key principle supporting good governance and that good governance is based on a clear code of ethical behaviour and personal integrity exercised by the board, where communications are shared openly*”.⁷⁵ In the case of *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Co*⁷⁶ the court stressed that practising sound corporate governance is essential for the wellbeing of a company and is in the best interests of the growth of this country’s economy especially in attracting new investments.⁷⁷ In the recent case of *Organisation Undoing Tax Abuse NPC and Another v Myeni and Another*⁷⁸ the court stated that: “*The special obligations of the chairperson of a Board are detailed in the so-called "King Codes". An expert witness testified during the trial that these Codes, which are commissioned by the Institute of Directors in South Africa, provide recommendations on sound corporate governance. Four sets of King reports together with the King Codes have been issued over the years. King III, which was issued in 2009, was applicable during the relevant events that are covered in this case.*”⁷⁹

⁷² Delpont *Henochsberg* 52.

⁷³ *Ibid.*

⁷⁴ 2009 (4) All SA 169.

⁷⁵ *Idem*, Para 64 of the judgment.

⁷⁶ 2006 5 SA 333 (W).

⁷⁷ *Ibid*, para 16.7 of the judgment.

⁷⁸ (15996/2017) [2019] ZAGPPHC 957.

⁷⁹ *Idem*, para 33 of the judgment.

Failure to adhere to governance principles can have undesirable results for any company. This was seen recently in the case of the South African Broadcasting Corporation (SABC) wherein the office of the Public Protector of South Africa issued a report in respect of the SABC titled “when governance and ethics fail”.⁸⁰ In the report the Public Protector amongst others concluded the following in so far as governance of the SABC is concerned:

- *“All the findings are symptomatic of pathological corporate governance deficiencies at the SABC, including failure by the SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report”*.⁸¹
- *“The Board was dysfunctional and on its watch, allowed Dr Ngubane to effectively perform the function of an Executive Chairperson by authorising numerous salary increments for Mr Motsoeneng”*.⁸² and
- *“Mr Motsoeneng has been allowed by successive Boards to operate above the law, undermining the Group CEO among others, and causing the staff, particularly in the human resources and financial departments to engage in unlawful conduct”*.⁸³

According to the SABC’s annual report of 2018 it is recorded that its current liabilities exceeded current assets by R291 643 000 and the entity was therefore commercially insolvent because it was not able to pay its debts as and when they were due.⁸⁴ Further to that according to the 2017/2018 audit report issued by the Auditor General of South Africa, it was found that there was a lack of appropriate risk management activities to ensure that threats affecting the entity were effectively identified, monitored and responded to on a strategic level.⁸⁵ There is no doubt that the deficiencies of corporate governance within the SABC contributed to state in which the SABC finds itself.

⁸⁰ Report no 23 of 2013/2014.

⁸¹ *Idem* 21.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ Annual Report 2018 86.

⁸⁵ Para 61 of the Audit Report on the SABC 2018/2017.

As briefly discussed in the background herein it is clear from its objectives, Milk SA plays a massive role in the production of milk and other dairy products in the Republic. To ensure its continuity and to achieve its objectives good corporate governance ought to be observed at all times and effective governance mechanism ought to be implemented. It is for this reason and the issues highlighted above that this study is significant. Further to that this study will be beneficial to Milk SA as and when the company conducts reviews of its existing structures of corporate governance.

The study will analyse the current mechanisms to ensure compliance with selected corporate governance principles. The assessment will be done against the *King IV* Report. With regards to the *King IV*, it is not the aim of this study to compressively discuss all the *King IV* principles applicable to non-profits companies in greater details or repeat all the principles herein. However in order to achieve a basic comprehension of some of the applicable principles so as to assess the current mechanisms in place at Milk SA to ensure compliance and effective application of the corporate governance principles and practices, a brief discussion of some of the principles is essential.

The method of this study will be a non-empirical one. The desktop method of study will be followed. This will entail reading and analysis of the relevant literature available, i.e. books, case law, journal articles, legislation, internet sources, official reports, dissertations, theses and policy documents from Milk SA. The study will also undertake a comparison with the governance principles and codes applicable to non-profits companies in a selected international comparable jurisdiction.

The selected international comparable jurisdiction for this study is Australian law. The Australian legal system was founded upon the English law and developed with the English system very much in mind, it is not unusual to find that in many areas of the law there are great similarities, both in terms of procedure and substance.⁸⁶ The incorporated company in South African law is modelled after its English counterpart, obviously English law has therefore been influential, and many English company-law rules have been readily accepted in our law.⁸⁷ Therefore, Australian law is an

⁸⁶ Key "Transactional avoidance: Critical aspects of English and Australian law" 2000 *International Insolvency Review* 5.

⁸⁷ Havenga "The business judgment rule - should we follow the Australian example" 2000 *SA Merc LJ* 25.

appropriate comparable jurisdiction as the both the South African and Australian companies laws were influenced by the English law.

1.5 Structure of the dissertation

This mini dissertation will have 5 Chapters:

- Chapter 1 will be the introduction, overview and background laying down the foundation for the study.
- Chapter 2 will focus on the principles and codes of corporate governance regulatory framework applicable to non-profit companies. The focus will be limited to the *King IV* report.
- Chapter 3 will be focusing on existing corporate governance mechanisms in Milk SA to ensure compliance with governance principles and codes of the *King IV* Report. This chapter will also address the key research questions of this study.
- Chapter 4 will focus on governance principles and codes applicable to non-profit companies in comparable international jurisdiction: Australia.
- Chapter 5 which is the final chapter will provide concluding remarks and recommendations.

CHAPTER 2

CORPORATE GOVERNANCE APPLICABLE TO NON-PROFIT COMPANIES

2.1 Introduction

In South Africa the corporate governance framework consist of the 2008 Companies Act, the *King IV* report, Johannesburg Stock Exchange (JSE) listing requirements and other applicable legislations and regulations.⁸⁸ The 2008 Companies Act has a chapter on accountability and transparency and includes setting out the director's duties of good faith, care, skill and diligence. Company law sets the structure in which the company operates and the recommended practices set out in King Reports provide guidance for directors as to how they should direct the business of the company and make decisions on behalf of the company. In this sense, the 2008 Companies Act and King Reports complement each other.⁸⁹ For instance, *King IV* goes further than the 2008 Companies Act by dealing with aspects such as sustainability, corporate citizenship and risk management.⁹⁰ There are instances where compliance with the *King IV* results in compliance with the 2008 Companies Act, but compliance with the Act does not necessarily result in compliance with the *King IV*.

However, the focus of this study will be on the *King IV* with particular focus on the principles and practices of corporate governance applicable to NPCs. When assessing effective application of principles and recommended practices of corporate governance in terms of the *King IV*, it is important to point out that the report does not contemplate mindless compliance and a quantitative approach to its recommended practices, instead the report strives to instil a qualitative approach in which the recommended practices are implemented to achieve the principles and realise the intended governance outcome.⁹¹ The principles are drafted on the basis that, if they are adhered to, any entity would have practiced good governance. Further to that

⁸⁸ Wiese *Corporate Governance in South Africa with international comparisons* 15.

⁸⁹ King "The synergies and interaction between king iii and the companies Act 61 of 2008" 2010 *Acta Juridica* 446.

⁹⁰ Wiese *Corporate Governance in South Africa with international comparisons* 22.

⁹¹ *King IV* 27.

entities are thus encouraged to tailor the principles of the Code as appropriate to the size, nature and complexity of their organization.⁹²

2.2 Recommended principles and practices of corporate governance

The *King IV* comprises of 16 principles of corporate governance together with the recommended practices applicable to NPCs. As alluded to above it is not the aim of this study to discuss comprehensively all the *King IV* principles applicable to NPCs in greater details or repeat all the principles herein. Some of the selected *King IV* principles and practices applicable to NPCs are as follows:

(a) *The board must lead ethically and effectively*

Ethical and effective leadership is demonstrated by the following: integrity, competency, responsibility, answerability, fairness and transparency.⁹³ Board members must individually and collectively nurture these characteristics and show them in their conduct as set out in the practices under this principle.⁹⁴ Included in the ethical duties of the board are its legal duties. The fiduciary duties of the members of the board of a NPC are, as a matter of law, owed to the company itself and not the party or constituency by which the member is appointed.⁹⁵ Our common law has long held directors to a standard of care and fiduciary duty. In the matter of *Barlows Manufacturing CO Ltd v RN Barrie (Pty) Ltd*⁹⁶ the court stated that a director owes a fiduciary duty to his company he cannot, while he is a director divest himself of that duty. It is something which is inextricably tied to the office.⁹⁷ This principle requires that the board provides effective leadership based on ethical foundation.

⁹² *Ibid.*

⁹³ *King IV*, Supplement for NPO, principle 1, 89.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ 1990(4) SA 608 (C).

⁹⁷ *Ibid* para 610-611 of the Judgment.

The principle further requires that the members of the board who are appointed as representatives of constituents, donors or other stakeholder should be proactive in managing potential and actual conflict of interest.⁹⁸ Good governance requires that all actual and potential conflict of interest of board members be disclosed and documented.⁹⁹ Therefore the board needs to manage all conflicts of interest whether actual or potential, in order to achieve this, the board should adopt a suitable conflict of interest policy.¹⁰⁰ One of the recommended practices for this principle is that the arrangements by which the members of the board are being held to account for ethical and effective leadership should be disclosed.

(b) The board must manage the ethics of the organisation in a way that supports the establishment of an ethical culture

In addition to assuming responsibility for its own character and conduct, in accordance with this principle, the board must govern the ethics of the NPC.¹⁰¹ Amongst others this can be achieved by maintaining a code of conduct or ethics in order to ensure that the board complies and achieve the objective of this principle. The board should ensure that the company's ethical performance is assessed, monitored and reported. The 2008 Companies Act also highlights the importance of maintaining an ethical manner in corporate governance in that it stipulates that the Minister may by regulations prescribe that certain companies put social and ethics committee in place.¹⁰²

(c) The board must ensure that the organisation is and is seen to be a responsible corporate citizen

By virtue of advocating for and fulfilling social and environmental needs, acting as a collective voice and holding others responsible, NPCs are an integral part of the

⁹⁸ *King IV* 89.

⁹⁹ Wyngaard *Governance for non-profit boards* 33.

¹⁰⁰ *Ibid.*

¹⁰¹ *King IV*, Supplement for NPO, principle 2, 89.

¹⁰² Section 72(4).

societal dynamic and are thus corporate citizens and should apply the recommended practices pertaining to responsible corporate citizenship under this principle.¹⁰³ One of the recommended practices is that the board should ensure that the organisation complies with the Constitution of South Africa (including the Bill of Rights), the law, leading standards and adherence to its own codes of conduct and policies. Further to that the company should advocate for and fulfil environmental and social needs such as employment equity at a workplace economic transformation.¹⁰⁴

The *King IV* defines “*corporate citizenship as the recognition that the organisation is an integral part of the broader society in which it operates, affording the organisation standing as a juristic person in the society with rights but also responsibilities and obligations*”.¹⁰⁵ The 2008 Companies Act also contemplate companies having obligations to the society, this is found in section 7 which outlines the purpose of the Act, amongst other things this section provides that one of the purpose of the Act is to promote compliance with the Bill of Rights as contained in the Constitution and also to support the growth of the South African economy. Further to that the Act also in certain circumstances makes it compulsory for the company to establish a social and ethics committees to advance this purpose.

(d) *The board must appreciate that the organisation's fundamental purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all intimate elements of the value creation process.*

This principle address the development and approval of the organisation's strategy and execution thereof and organisational performance. The board of a NPC should balance its priorities so as to both remain financially viable and deliver on environmental or social objectives as per its constitution.¹⁰⁶ Amongst others, some of the recommended principles are that the board should delegate to management the formulation and development of the organisation's short, medium and long term

¹⁰³ *King IV*, Supplement for NPO, Principle 3, 89.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Idem* 7.

¹⁰⁶ *King IV*, Supplement for NPO, principle 4, 90.

strategy. The strategy as developed by management should be approved by the board.¹⁰⁷ These should include the key performance measures and targets for assessing the achievement of strategic objectives. The board should exercise on-going oversight of the implementation of the strategy and operational plans by management.

- (e) *The board must ensure that reports issued by the organisation empower stakeholders to arrive at informed valuations of the organisation's performance and its short, medium and long-term prospects.*

On this principle, the *King IV* records that reports are a powerful means for a NPC to ensure meaningful communication with the interested parties, among others, beneficiaries, donors and regulators.¹⁰⁸ Reports that are supported by integrated thinking and that present information about the resources and relationships on which the NPC depend on, its activities, outputs and results in an integrated manner, are an effective way of informing stakeholders about the NPC's performance.¹⁰⁹ It also demonstrates accountability. One of the recommended practice for this principle is that the board must oversee that information pertaining corporate governance disclosures, integrated reports, annual financial statements and other external reports is published on the organisation's website or on other platforms or through other media as is appropriate for access by stakeholders.¹¹⁰

- (f) *The board must function as the focal point and guardian of corporate governance in the organisation*

The *King IV* recommends that the primary leadership role of any board is expressed as encompassing the following: steering the organisation and setting its strategic direction, approving policy and planning that give effect to the direction provided, overseeing and monitoring of implementation and execution by management and

¹⁰⁷ *Ibid.*

¹⁰⁸ *King IV* Report, Supplement for NPO, principle 5, 90.

¹⁰⁹ *Ibid.*

¹¹⁰ *Idem* 91.

lastly ensuring accountability for organisational performance by means of, among others, reporting and disclosure.¹¹¹ This principle is in line with section 66 of the 2008 Companies Act provides that the business and affairs of a company must be managed by or under the direction of its board. Unless the qualifications of Section 66 are complied with, the board of directors is the “ultimate” organ of the company.¹¹² The board is now “the company” and if the Companies Act provides that the company must or may take certain actions, the default organ is the board and not the shareholders.¹¹³ This principle is also in line with common law fiduciary duties entrusted on the directors of the company. One of the recommended practices for this principle is that in its reporting the company should disclose the number of meetings held by the board during the reporting period and the attendance at those meetings. Further to that the company should disclose whether the board is satisfied that it has fulfilled its responsibility in accordance with its charter for the reporting period.

(g) *The board must consist of the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively*

On this principle, the *King IV* noted that where members of the board of a NPC are appointed as representatives of constituents, donors or other stakeholders, it is challenging to achieve the balance of knowledge, skills, experience, diversity and independence needed.¹¹⁴ The *King IV* recommends that a “*formal process for the nomination, election and ultimately appointment of members of the board will help to ensure that the knowledge, skills, experience, diversity and independence requirements of the board are identified, that the requirements are communicated to those who are responsible for nomination and election, and that candidates are properly vetted*”.¹¹⁵ It is also recommended that the board of directors should

¹¹¹ *King IV*, Supplement for NPO, principle 6, 91.

¹¹² Delpont *Henochsberg* 250.

¹¹³ *Ibid.*

¹¹⁴ *King IV*, Supplement for NPO, principle 7, 92.

¹¹⁵ *Ibid.*

compromise of a majority of non-executive directors, most of whom should be independent.¹¹⁶

(h) The board should make sure that the provisions for delegation endorse independent judgement, and support with balance of power and the effective discharge of its duties

The concept of delegation by the board is also found in section 72 of the 2008 Companies Act, which entitles companies to appoint board committees and delegate to any committee any authority of the board. On this principle the *King IV* recommends that the formation and delegation to committees of the board should be reflected on together with codes and guidance, applicable legislation and proportionality considerations.¹¹⁷ Important to note is that the *King IV* provides that one of the fundamental codes of good governance is that the board members must be willing to account for the implementation of their responsibilities, even when these were delegated.¹¹⁸ A director cannot avoid responsibility by hiding behind a committee.¹¹⁹ In accepting appointment as such a director assumes a position involving duties which cannot be shirked by leaving everything to others and which cannot be abdicated.¹²⁰ One of the recommended practices on the committees of the board is that the board should ensure that each committee as a whole has the necessary knowledge, skills, experience and capacity to execute its duties effectively.¹²¹

(i) The board should guarantee that the assessment of its own performance and that of its committees, its chair and its members, support continued development in its performance and effectiveness.

One of the recommended practices for this principle is that the board of directors should assume the responsibility for the assessment of its own performance and that

¹¹⁶ *Ibid.*

¹¹⁷ *King IV*, Supplement for NPO, principle 9, 93.

¹¹⁸ *Ibid.*

¹¹⁹ Delport *Henochsberg* 208.

¹²⁰ *Ibid.*

¹²¹ *King IV*, Supplement for NPO, principle 9, 93

of its committees, chairperson and its individual members. Further to that, this principle does not only recommend a mechanism to ensure performance evaluation, it also recommend that the outcomes of the performance assessments should be addressed to by the board so as to attain sustained development in its performance and effectiveness as per the principle.¹²² Therefore it can be said that there should be a mechanism to ensure that performance is duly evaluated and in the event that gaps or shortcomings are identified there should be a way to address them.

2.3 Conclusion

The concept of corporate governance was developed because of the agency problem that came up when the ownership of companies became separated from the control thereof.¹²³ It was therefore essential to have the board of directors accountable for the business and affairs of a company. It is clear from the highlighted provisions, principles and codes that in the context in which companies are governed and regulated in South Africa the board of directors is ultimately accountable. Without going into the finer details of the administration of the board of directors it can be said that corporate governance is the responsibility of the board of directors. The corporate governance principles and codes have continually aimed to hold the board more accountable and notably the principles and codes of the *King IV* link well with the purpose and some of the provisions of the 2008 Companies Act. However, the question of effective application of the recommended principles, practices and codes of corporate governance remains a challenge for a number of companies. The next chapter of this study will explore the mechanism in place within Milk SA to ensure effective application of corporate governance.

¹²² *Ibid.*

¹²³ Rossouw 2002 *Journal of Business Ethics* 289.

CHAPTER 3

CURRENT MECHANISMS OF CORPORATE GOVERNANCE AT MILK SA

3.1 Introduction

Good governance is about adhering to the laws, regulations, codes of governance, complying with international standards, company policies and industry benchmarks.¹²⁴ It is considered to be a critical function of the board of directors to guarantee that there is a collective understanding of the governance structures of the company and that the significant information is availed to enable the risk management and decision-making across the company.¹²⁵ In order to achieve this, the board of directors should put in place the mechanisms of corporate governance within the company. An effective corporate compliance programme is the basis of proper and effective corporate governance, as compliance is the “what”, with corporate governance the “how”.¹²⁶

This chapter is core to this study and it will focus on the current corporate governance mechanisms within Milk SA to ensure compliance with the recommended principles, practices and codes of corporate governance applicable and recommended for NPCs, observations will be made on whether the mechanisms are in line with the recommended principles and practices as per the *King IV*. The policy documentation and any other relevant instruments relating to Milk SA’s corporate governance framework that will be employed herein were availed by Milk SA for the purpose of this study. The Milk SA’s reports as discussed below are made available by Milk SA and are all available on Milk SA’s website.¹²⁷

3.2 Milk SA’s corporate governance framework/mechanisms

Policies, procedures and systems are at the centre of Milk SA’s corporate governance framework. A policy within the context of administrative law, and in the context of the

¹²⁴ Naidoo *Corporate Governance* 413.

¹²⁵ *Idem* 415.

¹²⁶ Delpont *Henochsberg* 54.

¹²⁷ <https://milk.co.za/reports> (accessed on 1 July 2019)

functioning of statutory bodies, is generally regarded as the guideline to the managers and the public.¹²⁸ Milk SA has various policies approved by the board of directors that are currently being utilised. These policies deal with extensive issues affecting the core functions, governance and the operations of Milk SA. For the purpose of this study, the focus will be placed on the policies that were approved by the board of directors for corporate governance purposes and also the policies that further recognised good corporate governance practices. Only key and relevant issues will be highlighted from the policies. At the time of this study the active policies within Milk SA were as follows:

3.2.1 The Corporate Governance and Directors' duties policy

This policy was approved by the board of directors on 14 November 2013 and has been regularly updated. The purpose of the policy is to assist and advise the directors individually and the board of directors on their duties and responsibilities in terms of the 2008 Companies Act, the King Report on corporate governance and common law.¹²⁹ The key subjects of this policy are briefly discussed below.

3.2.1.1 *Fiduciary duties of the directors*

The policy provides that a director stands individually, from the date of his appointment to the company and each director owes his fiduciary duty individually and directed to the company as a separate legal entity and may be held personally responsible for a breach of the fiduciary duties.¹³⁰ Furthermore it is recorded that a director can never divest himself or herself of his or her fiduciary duty to the company nor can he or she be relieved thereof contractually or by provisions on the company's memorandum of incorporation.¹³¹ The policy extensively deals with the fiduciary duties of the directors as codified in the 2008 Companies Act in an explanatory manner. The liability of directors in the event of breach of their fiduciary duty is also extensively dealt with.

¹²⁸ Cassim "The legal status of policies and delegations of authority" 2020 1.

¹²⁹ Corporate Governance and Directors' duties Policy, para 1.

¹³⁰ Corporate Governance and Directors' duties policy, para 2.

¹³¹ *Ibid.*

3.2.1.2 *Conflict of interest by the director(s)*

On this concept, the policy provides that in a governance sense, a conflict of interests means any financial or other interest which actually or potentially impairs a director's objectivity and his ability to act independently or which creates an unfair advantage for, or in favour of, any third party (including any member MPO or SAMPRO) by virtue of an existing relationship with the conflicted director.¹³² In the sub-paragraphs, this part of the policy further sets out broadly what constitute conflict of interests, duty to avoid conflict of interests, the management of conflict of interest by the board as well as the process to be followed by a director when disclosing the conflict of interest. Noteworthy, the policy records that once a director disclose conflict of interests, he or she must be excused from the meeting and the voting or execution of any of the documents related to the transaction which the director is conflicted.

3.2.1.3 *Functions of the board of directors*

The policy records that it is the function of the board to develop and overseeing the execution of strategy, managing risk and driving performance and sustainability.¹³³ It is also the function of the board to direct the company by formulating and reviewing the company's policies and strategies and major plans of action. The board further controls the company by putting in place a code of conduct, overseeing the process of disclosure and communications. The board also evaluates the performance of management and the directors themselves and providing checks and balances to reduce the potential conflicts between the interests of management and the wider interests of the company and members. Furthermore the board also appoints the CEO and the company secretary and also provide input on the appointment of other senior management. The board delegates the necessary authority to the management for the day-to-day running of the company and monitor the exercise of that authority on an on-going basis.¹³⁴

¹³² *Idem* para 5.2.

¹³³ Corporate Governance and Directors' duties policy, para 7.1.

¹³⁴ *Idem* para 8.1.8.

3.2.1.4 *Board committees*

Board committees must be established with a specific mandates and authorities and either be standing committees appointed to perform a continuing function such as the audit committee or ad hoc committees constituted with a specific task.¹³⁵ It is recorded that the board committees may include persons who are not directors of the company as long as they would not be disqualified from acting as full directors in terms of the 2008 Companies Act. Lastly, the policy records that even though a board may delegate responsibility to the board committees, the board remains responsible for the company's performance and the control of its affairs.¹³⁶

3.2.2 Risk Policy for Milk SA

The risk policy was approved by the board of directors on 23 August 2016. The purpose of the policy is to define Milk SA's approach to risk and risk management and the involvement of the relevant stakeholders in order to mitigate risks and potential risks.¹³⁷ The policy defines the types of risks that the company may face and also provides for the classifications of the risks, risk management and responsible person or institution to address the risk. The high risks identified in the policy at the time of this study were integrity risk, financial, business and market risk. The CEO and the board of directors were identified as the functionaries responsible for the management of these risks.¹³⁸

3.2.3 Policy for advisory committees of Milk SA

The advisory committee's policy was approved by the board of directors on 14 July 2010 and it deals with matters of the advisory committees within Milk SA. The policy outlines the composition of advisory committees, criteria for the composition, mandate and responsibilities of the advisory committees. The committees are appointed by the board of directors and consist of board members and or other persons to advise the

¹³⁵ Corporate Governance and Directors' duties policy, para 9.

¹³⁶ *Idem* para 9.3.

¹³⁷ Risk policy for Milk SA, para 1.

¹³⁸ *Ibid*, para 4.

board on the basis of objective information and expert knowledge.¹³⁹ The advisory committee is amongst others responsible for evaluation of current projects and advising the board of directors on the strategic approach in terms of the particular discipline.¹⁴⁰

3.2.4 Financial Policy of Milk SA

The financial policy is the main policy on financial related matters of Milk SA. Amongst other things it provides for the responsibilities and the appointment of the audit committee. The audit committee is an instrument of the board, members of the committee are appointed for three-year periods each with a maximum of three years.¹⁴¹ The policy also sets the responsibilities of the internal auditor.

The remuneration committee is also recognised in terms of this policy. The remuneration committee is responsible for all elements (policies and contracts) of the remuneration of directors and staff members of Milk SA, including pension rights and compensation payments (E.g. damages) and shall monitor the level and structure of remuneration for the staff members and executive directors.¹⁴² The policy also deals with the audits of Milk SA and it sets out the duties and responsibilities of the various role-players in the process. The CEO takes all reasonable steps to ensure that the annual statements are prepared by the accountants and made available to the audit committee, board of directors and the members of the annual general meeting in time.¹⁴³ The audit committee scrutinises the first draft annual financial statements whereas the board of directors approves the annual financial statements before they are submitted for auditing. Lastly, the policy also deals with the preparation, compiling of budgets and financial reporting within Milk SA.

3.2.5 Executive Committee terms of reference

Although this document is not titled as a policy, the terms of reference of the executive committee were approved by the board of directors on 25 November 2015. The terms

¹³⁹ Policy for Advisory committees of Milk SA, para 1.1.

¹⁴⁰ *Ibid*, para 1.3.

¹⁴¹ Financial Policy of Milk SA, para 1.1.

¹⁴² *Ibid*, para 3.

¹⁴³ Financial Policy of Milk SA, para 4.1.1.

of reference sets out the status and members of the committee. The executive committee is a committee of and accountable to the board of directors.¹⁴⁴ Amongst others it is the committee's powers and duties to deal with matters delegated by the board, overseeing the financial, operational elements of Milk SA and ensuring that corporate governance arrangements as approved by the board are implemented.¹⁴⁵

3.2.6 Audit and Risk Committee terms of reference

The terms of reference of the Audit and Risk committee are also not titled as a policy but they were approved by the board of directors. The terms of reference sets out the status of the committee, roles, appointment and composition of the committee. The primary role of the committee is to assist the board of directors with its obligations of: safeguarding the assets of the company, keeping sufficient accounting records, developing and maintaining an effective control system.¹⁴⁶ The committee serves an advisory to the board and its composition consists of members appointed by the board and notably one independent expert, who is the chairperson of the committee.¹⁴⁷

3.2.7 Internal Audit Charter

The Internal Audit Charter sets out the Internal Audit Function's authority, responsibilities and scope of activities.¹⁴⁸ The charter also provides for the independence of the internal audit function, objective assurance and consulting activity aimed at adding value and improving operations of the organisation.¹⁴⁹ Further to that internal audit supports Milk SA accomplish its objectives by taking an approach which is systematic and disciplined to assess and develop the competence and efficiency of risk management, control and governance processes.¹⁵⁰ On the reporting function of the internal audit the charter provides that Internal Auditor reports administratively to the CEO of the company and reports functionally to the Audit and Risk Committee.

¹⁴⁴ Executive Committee terms of reference, para 1 and 2.

¹⁴⁵ *Ibid*, para 3.

¹⁴⁶ Audit and Risk Committee terms of reference, para 1 and 2.

¹⁴⁷ *Ibid*, para 3.

¹⁴⁸ Internal Audit Charter, Para 1.

¹⁴⁹ *Ibid*, Para 1.

¹⁵⁰ *Idem*, para 1.

3.2.8 Charter for the Board of Directors

According to its preamble, the charter outlines the key values and practices for Milk SA as they apply to the activities of the board of the company. Amongst other things the charter outlines the role of the board of directors, the director election and attributes, the director evaluation, compensation and training. The criteria for board membership are that qualifications are the ability to make sensible business decisions and recommendations; demonstration of an entrepreneurial talent for contributing to the furtherance of the company's objective and high ethical standards.¹⁵¹ Board performance assessment is done by the members of Milk SA in the context of the performance of the company. The board also annually considers its performance and report to the members of its performance, through the annual report and at the annual meeting of members.¹⁵² The charter also includes a code of conduct for the directors and it is reviewed annually and all the directors are required to sign it.

3.2.9 Communication policy

The communication policy provides that communication within Milk SA must be in harmony with the objectives of the statutory measures (legal responsibilities) and its strategic direction.¹⁵³ Amongst other things the policy provides for the targeted stakeholders for communications, what to be communicated means of communication and the approver of the communication.

3.3 Research questions of the study

3.3.1 *What governance principles and codes underpin corporate governance within Milk SA and how does it ensure compliance with governance principles and codes?*

This question will be address in two parts. The first part will address the governance principles and codes which underpin Milk SA's corporate governance and the second part will deal with how Milk SA ensures compliance with its governance principles. Given the selected methodology of this study, the governance principles and codes

¹⁵¹ Charter for the board of directors, para 2.1.

¹⁵² *Ibid*, para 3.4.

¹⁵³ Communication policy, para 1.

that underpin corporate governance within Milk SA were deducted from the analysis of the provided policy documentations and the official reports published. It has already been highlighted that the Corporate Governance and Directors 'duties policy records that Milk SA pledges adherence to the governance codes of the King Report on corporate governance.¹⁵⁴ From the analysis of the policies highlighted above the following were noted as Milk SA's core governance principles:

3.3.1.1 *Accountability*

The concept of accountability of directors as individuals is stressed in the Corporate Governance and Directors 'duties policy that a director stands individually from the date of his appointment and owes his/her fiduciary duty individually to the company as a separate legal entity, should the director breach his/her fiduciary duty he/she may be held personally liable.¹⁵⁵The policy further provides that liability may be civil or criminal liability. Directors are further required to disclose both actual and potential conflicts of interest.

The accountability of the directors as a board was observed, the policy provides that the board is accountable to the members for protecting and enhancing the wealth and resources of the company and reporting to them on the company's performance in a timely and transparent manner and it is also accountable to stakeholders to ensure that the Company acts as an ethical, responsible corporate citizen.¹⁵⁶In the latest Milk SA's annual report¹⁵⁷, the board of directors reported extensively on the performance of its responsibility and the projects undertaken by the board on behalf of Milk SA. The accountability reporting by the board of directors was observed on all the annual reports available on Milk SA's website at the time of this study.

¹⁵⁴ Corporate Governance and Directors' duties Policy, para 1.

¹⁵⁵ *Ibid*, para 2.

¹⁵⁶ Corporate Governance and Directors' duties Policy, para 7.5.

¹⁵⁷ Milk SA's annual report of 2018 for the year ended 31 December 2018.

3.3.1.2 *Transparency*

This principle requires the company to report accurately on information pertaining the material facts relating to the following: financial situation, activities, performance, ownership structure and governance of the company. There should also be free access to the reported information for all the interested party. Financial reporting within Milk SA is extensively dealt with in the Financial Policy. The information pertaining to Milk SA's financial situation, performance, ownership structure and its governance instruments is contained in all the annual reports from the period of year 2015 to year 2018. All these reports were available on the Milk SA's website.

3.3.1.3 *Separation of board of directors and management responsibilities*

The philosophy of corporate governance is that the board and management are entrusted with different functions in the governance of the company.¹⁵⁸ The board is answerable for make sure that the company performs in the best interests of its stakeholders whereas the management, under the leadership of the CEO exercises the authority delegated to it by the board is answerable for implementing the directions by the board.¹⁵⁹ In the context of Milk SA, this principle is stressed in the Corporate Governance and Directors 'duties policy. The policy sets out the functions, duties and responsibilities of the board of directors separate from those of the management.¹⁶⁰ The policy provides that the necessary authority for the day-to-day running of the Milk SA is delegated by the board to and the board monitors the exercise of the delegated authority on an on-going basis.¹⁶¹

3.3.1.4 *Effective communication with all directly affected parties*

Communication policy ensures that there is open, accessible, and responsive organisational communication, furthermore it warrants that information is dispersed via right or established networks, in a manner which is timeous and to the correct stakeholders. Effective communication builds confidence in the company's stakeholders. Communication within Milk SA is regulated by the Communications

¹⁵⁸ Naidoo *Corporate Governance* 9.

¹⁵⁹ *Ibid.*

¹⁶⁰ Corporate Governance and Directors 'duties policy, para 7&8.

¹⁶¹ *Idem Paragraph 8.1.8.*

policy. This policy ensures that communication is duly approved and is timely and properly directed to the relevant stakeholder using the correct means. There is no doubt that when the implementation of operational corporate governance is joined with cultural awareness and cross border communication is functional at the business level, and then the income and market share would increase together with augmenting the image of the corporation.¹⁶²

The second part of the first research question is how Milk SA ensures compliance with its governance principles and the codes within the King Report IV. According to the 2017 financial year board of directors' report, chairman of the board of directors reported that: *"the successes of the company are heavily reliant on good corporate governance and the board decided last year to review and update all policies, while new policies were adopted in respect of debt management, risk management, ministerial inspections and internal audits"*.¹⁶³ In the CEO report of 2017 financial year, it is reported that: *"Good Corporate Governance is pivotal to the success of Milk South Africa. Increased administrative responsibilities and magnitude of the projects necessitate continuous refinement of policies, procedures and systems"*.¹⁶⁴ From the two extracts taken from the reports by chairman of the board and CEO it is apparent that policies, procedures and systems are at the centre of ensuring compliance with Milk SA's governance principles and systems.

The analysis of the policy documentation and other relevant instruments relating to Milk SA's corporate governance framework revealed that governance related issues are dealt with at a policies and procedures documents level. As a measure to ensure compliance with its corporate governance framework, it was also observed that internal auditors perform a crucial role in ensuring compliance with the governance process within the structures of Milk SA. The Internal Audit Charter provides that the processes of internal audits are aimed at achieving reasonable assurance about the realisation of various objectives such as compliance with relevant policies, procedures, laws and regulations.¹⁶⁵ Further to that the internal auditors evaluate and report at the

¹⁶² Nalina and Panchanatham *"Corporate Governance – The Importance of Communication and Culture"* 2014 *Indian Journal of Science and Technology* 33.

¹⁶³ Milk SA annual report of 2017 for the year ended 31 December 2017, page 2.

¹⁶⁴ *Idem* 17.

¹⁶⁵ Internal Audit Charter, para1.

end of each audit to CEO, Executive Committee and Audit and Risk Committee on the adequacy and effectiveness of risk management, control and compliance with governance processes and policies within Milk SA. The reports of internal audit are also shared with the external auditors of Milk SA for their consideration during the annual audits.

The advisory committees appointed in terms of the advisory committees' policy also perform a major role to ensure compliance in that, they advise the board on the basis of objective information and expert knowledge and evaluation of current projects underway. This is done against Milk SA policies and any application legislation and regulatory frameworks. The Audit and Risk committee also assist the board with the developing and maintaining an effective internal control system. Effective internal control system ensures that the company's compliance with its policies and the laws of the land. The performance management and reporting was also observed as one of the tools to ensure compliance with the governance principles. The charter of the board of directors provides that the board's performance is assessed by the members of Milk SA annually and the board must annually report on its performance in the annual report. It was observed that the when reporting on its performance the board also reports on its governance instruments specifically. The observation was made from the annual reports from the period of year 2015 to year 2018. In terms of the Corporate Governance and Directors' duties policy the board monitors and assess the performance of the CEO.¹⁶⁶

3.3.2 *Are current mechanisms in compliance with the King IV Report?*

The assessment to address the second research question will be done by considering the mechanisms discussed above which underpin Milk SA's corporate governance against the principles, codes and practices recommended in the King IV as briefly discussed in the second chapter of the study. Official reports by Milk SA were also observed to determine whether they are in line with the recommended reporting practices by the King IV report. Noteworthy when assessing the governance principles contained in the corporate governance mechanism in place within Milk SA, the

¹⁶⁶ Corporate Governance and Directors' duties policy, para 10.1.

underlying purpose, objectives and intended results for which the principles were established or adopted for is an important consideration for the purpose of the assessment. Certain principles and practices from the King IV will be combined for discussion purposes.

3.3.2.1 *Effective and ethical leadership by the board of directors.*

King IV recommends that the members of the board should individual and collectively cultivate the following characteristics integrity, competence, responsibility, accountability, fairness and transparency and exhibit them in their conduct.¹⁶⁷ Effective and ethical leadership is exemplified by these characteristics. In the context of Milk SA, the Corporate Governance and directors' duties policy and the Charter for the board of directors addresses the fiduciary duties, competence, integrity, responsibility, accountability and transparency expected, required and committed by the directors of the company both as individual directors and collectively as a board of directors. In line with principle of effective and ethical leadership, the Corporate Governance and directors' duties policy address the issue of conflict of interest by the directors and the proactive management of actual conflict and perceived conflict of interest by the board of directors.¹⁶⁸ Although Milk SA doesn't seem have a standalone policy on conflict of interest as recommended, the concept of conflict of interest is dealt with sufficiently within the Corporate Governance and directors' duties policy.¹⁶⁹

3.3.2.2 *Organisational ethics and ensuring that the company is seen to be a responsible corporate citizen.*

King IV recommends that the board should govern the ethics of the company and this may be achieved by maintenance of the code of conduct or ethics to ensure that the board complies and achieve the objective of this principle.¹⁷⁰ In line with the recommended practice, within Milk SA the code of conduct is incorporated in the Charter for the board of directors¹⁷¹. The code of conduct commits the signatories to *inter alia* act in harmony with the Charter and not to engage in any activity that harms

¹⁶⁷ King IV, Supplement for NPO, Principle 1, 89.

¹⁶⁸ Corporate Governance and directors' duties policy, para 5.

¹⁶⁹ Ibid.

¹⁷⁰ King IV, Supplement for NPO, Principle 1. 89.

¹⁷¹ Charter for the board of directors, para 9.

the image or integrity of Milk SA. The code of conduct for management and the rest of the staff are dealt with in the human resources management policy. On compliance with the principles of a company being a responsible corporate citizen, King IV provides that the board should ensure that the company complies with the Constitution of South Africa, the law, leading standards and adherence to its own codes of conduct and policies. The policies provided for the study were observed to be within the ambit of the applicable laws of the country. Furthermore it was observed that Milk SA ensures that some of its policies are reviewed by its external panel attorneys to ensure compliance with the applicable laws.

One of the measures recommended by King IV to measure the company's adherence to responsible corporate citizenship is the company's performance on areas such as economic transformation and community development. One of the objectives in terms of the Milk SA's Memorandum of Incorporation is the empowerment of previously disadvantaged individuals active in the South African dairy industry through facilitation of the transfer of knowledge and skills.¹⁷² In the 2018 financial year annual report, the transformation manager reported on black dairy enterprise development, facilitation and coordination by Milk SA.¹⁷³ From this report it emanates that Milk SA spent an amount of R 9 886 460 on enterprise development, skills development in the primary industry sector and the secondary sector industry.¹⁷⁴ During financial year 2014/2015 Milk SA issued and publicised a Transformation Handbook for the South African Dairy Industry.¹⁷⁵ The main objective of the handbook is to empower previously disadvantaged entrepreneurs and organisations in the dairy production with information and guidelines in the process of transformation, and serve as a reference for dairy transformation initiatives of Milk South Africa, its members and other institutions.¹⁷⁶

¹⁷² Milk SA Memorandum of Incorporation, page 11.

¹⁷³ Milk SA's annual report of 2018, page 38.

¹⁷⁴ *Idem* 21.

¹⁷⁵ <https://milksa.co.za/reports> (accessed 10 March 2020).

¹⁷⁶ Transformation Handbook for the South African Dairy Industry, page 4.

3.3.2.3 *The company's risks, opportunities, strategy, performance and reporting.*

King IV recommends that the board of directors develop and approve the organisational strategy, organisational performance and exercise on-going oversight over the implementation of the strategy and operational plans by management. In line with this principle, the Corporate Governance and directors' duties policy provides that it is the function of the board to develop and overseeing the execution of strategy, managing risk and driving performance.¹⁷⁷ To implement the management of risk, the board approved the risk policy which serves to define Milk SA's approach to risk and risk management and the involvement of the relevant stakeholders in order to mitigate risks and potential risks.¹⁷⁸

The strategic principles and objectives developed by the board are available on the company's website. In order to monitor performance of company on certain projects, the board approved a monitoring of statutory projects framework. The Corporate Governance and directors' duties policy further provides that the board is responsible for regular review of management's performance. To ensure compliance with the recommended practices of informative reporting to stakeholders, the company's reports must inform the stakeholders of its performance and demonstrate accountability. The annual reports for the financial year end of 2017 and 2018 were examined for this determination. The 2017 and 2018 financial year end reports were selected for this purpose due to effective date of the *King IV*. From the said reports, it was observed that the reports contains detailed reports by the chairman of the board, CEO, board of directors, audit and risk committee report and the audited financial statements. An observation was also made that Milk SA avails its industry information reports, projects reports and annual reports on its website.¹⁷⁹

¹⁷⁷ Corporate Governance and directors' duties policy, para 7.

¹⁷⁸ Risk Policy for Milk SA, para 2.

¹⁷⁹ <https://milk.co.za/reports> (accessed 10 March 2020).

3.3.2.4 *The board of directors as a focal point and custodian of corporate governance.*

The Corporate Governance and Directors' duties policy under duties and responsibility of the board makes it clear that the board of directors act as Milk SA's focal point of corporate governance.¹⁸⁰ Further to that it provides that the board of directors must provide strategic direction to Milk SA and ensure compliance by Milk SA with all the applicable laws and regulations and consider adherence to applicable codes and standards.¹⁸¹ These policy statements are in line with the recommendations of the *King IV* on this concept. It was observed that all the active policies at Milk SA were approved by the board of directors as recommended by the *King IV* report. It was also observed that the board of directors reports annually in the annual reports *inter alia* on the board and general meetings held, project committees and the achievement of the goals of the board for the year under review.¹⁸²

3.3.2.5 *The committees of the board of directors and the evaluation of the board's performance, committees, its chair and individual members.*

Within Milk SA the board's delegations of roles and responsibilities to the committees is dealt with in the Corporate Governance and Directors' duties policy. In terms of this policy board committees must be established with specific mandates and authorities either as standing committees or ad hoc committees.¹⁸³ The composition, mandate and responsibilities of certain committees are outlined in the Policy for advisory committees. Members of the committees within Milk SA are required to have thorough knowledge in their respective fields.¹⁸⁴ Additionally, committees are encouraged to make use of advice from an independent expert.¹⁸⁵ These policy statements are in line with the recommended practice that the board should ensure that each committee as a whole has the necessary knowledge, skills, experience and capacity to execute its duties effectively.

¹⁸⁰ Corporate Governance and Directors' duties policy, para 8.

¹⁸¹ *Ibid.*

¹⁸² Milk SA's annual report of 2018, page 18.

¹⁸³ Corporate Governance and Directors' duties policy, para 9.

¹⁸⁴ Policy for advisory committees for Milk SA, para 1.1.

¹⁸⁵ *Ibid.*

On the evaluation of the board's performance, *King IV* recommends the board of directors should assume the responsibility for the evaluation of its own performance and that of its committees, chairperson and its individual members. The Charter for the Board of Directors provides that the board annually considers its performance and report to the members of its performance, through the annual report and at the annual meeting of members.¹⁸⁶ This is in line with the abovementioned recommended practice.

3.4 Conclusion

As alluded to in chapter one, it is said that corporate governance is at the heart of what goes right and what goes wrong in a business.¹⁸⁷ Corporate governance principles and practices are there to among others ensure that boards of directors are effective and transparent in conducting their functions, accountable and that committees of the board are able to operate effectively. Flowing from discussion in this chapter was observed that Milk SA has in place various active policies approved by the board of directors containing principles and guidelines that reinforces key corporate governance principles and practices.

From the literal reading and analysis active policies and practices it was observed that, if implemented, the policies will reinforce amongst others the following principles: (a) clear separation of the function and responsibility of the board and management, (b) accountability of directors as individuals and as a board, (c) informative and transparent reporting of the company's activities and performance, and (d) effective communication with the stakeholders. It was also observed that to ensure compliance with the governance principles within its policies and applicable laws, Milk SA places reliance on the function of internal auditors and advisory committees. From the analysis above, the active policies and practices within Milk SA were to a greater extent observed to be in line with the recommended principles and practices by *King IV*.

¹⁸⁶ Charter for the Board of Directors, para 2.3.

¹⁸⁷ Naidoo *Corporate Governance* 14.

CHAPTER 4

COMPARISON BETWEEN SOUTH AFRICAN AND AUSTRALIAN CORPORATE GOVERNANCE PRINCIPLES AND CODES

4.1 Introduction

In order to keep up-to-date with the evolvments in the world and the moving commercial environment the development of corporate governance is ever necessary.¹⁸⁸ For this reason, it is of great significance that when a nation develop its legislation it ensures that it is harmonious with recognised international best practice.¹⁸⁹ To establish the extent to which South African corporate governance principles harmonises with other international comparable jurisdictions, this chapter compares the selected governance principles and codes applicable to South African and Australian non-profits companies. As already indicated in the Chapter one, Australian Law is an appropriate comparable jurisdiction for South Africa as the Company law of both jurisdictions were influenced by the same source, being English law. It is important to point out that the aim of the study is not to set out and analyse broadly all the corporate governance principles and practices in South Africa and Australia.

4.2 Brief background on corporate governance in Australia.

In nearly every ten years of the past hundred years Australia has undergone waves of corporate failures.¹⁹⁰ Between 1986 and 1995 some 500 listed corporations failed, this ultimately set in motion across-the-board development of corporate, securities, banking and accounting regulation.¹⁹¹ However, in the late 1990s, corporate

¹⁸⁸ Leong Ho Khai "Reforming corporate governance in Southeast Asia: economics, politics and regulations" 2005 *ISEAS Publications* 38.

¹⁸⁹ Moyo *South African principles of corporate governance: legal and regulatory restraints on powers and remuneration of executive directors*, (2010) Master's degree dissertation, University of South Africa 107.

¹⁹⁰ Dignam "The role of competition in determining corporate governance outcomes: lessons from Australia's corporate governance system" 2005 *Modern Law Review* 765.

¹⁹¹ *Ibid.*

governance was practically considered to be a pointless inconvenience upon Australian businesses.¹⁹² The firm regulations of corporate governance have been seen as the cause for the under-performance of Australian companies.¹⁹³

During the early 2000s the failures of various corporations brought the concept of corporate governance back in the media spotlight and in the minds of the directors and regulatory bodies in Australia.¹⁹⁴ The corporate failures that occurred between 2000 and 2003 marked a rather unexpected stop to complacency which triumphed about corporate governance in Australia after a long period of constant progression and notable survival of the Asian financial crisis by Australia.¹⁹⁵ The answers for the poor state of corporate governance were sought along a broad and varied front, including continuous disclosure; disqualification of auditors; codes of good practice and the role and functions of the audit committees and both independent and non-executive directors.¹⁹⁶

The Australian's system of corporate governance is often said to fall within the Anglo-Saxon 'outsider' system of ownership and control.¹⁹⁷ This is informed by the view that the Australian system has an ownership and control system comparable to the systems of the United Kingdom and the United States.¹⁹⁸ These systems are symbolised by a securities market with dispersed shareholding, where shareholders and companies interact on an arm's length basis, largely determined by market forces.¹⁹⁹ A securities market, a securities regulator, a takeovers panel, a disclosure regime and outsider corporate governance codes further symbolises these systems.

Presently, Australia's corporate governance is primarily regulated by the Corporations Act 2001, the Australian Securities and Investment Commission and the Australian Securities Exchange Ltd, Australian Standard Good governance principles (2003).²⁰⁰

¹⁹² Du Plessis *et al Principles of Contemporary Corporate Governance* (2005) 90.

¹⁹³ *Ibid.*

¹⁹⁴ *Idem* 91.

¹⁹⁵ *Ibid.*

¹⁹⁶ Barrett: Corporate Governance – More than a Passing Fad, Attorney-General's Luncheon (2002).

¹⁹⁷ Dignam and Galanis "Australia inside-out: the corporate governance system of the Australian Listed Market" 2004 *Melbourne University Law Review* 623.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Idem* 624.

²⁰⁰ Wiese *Corporate Governance in South Africa with international comparisons* 183.

The Australian Securities Exchange established the Corporate Governance Council in 2002, which approved the *principles of good corporate governance and best practise recommendation* in 2003.²⁰¹ These principles are however only applicable to companies listed with the Australian Securities Exchange whether they are established in Australia or elsewhere, and whether they are internally or externally managed.²⁰² Should a listed company not follow all recommendations, it must identify those that were not followed and provide reasons for not adhering them, thus the principle of the 'if not, why not' is applicable.²⁰³ There are several codes of corporate governance recommended to the not for profit sector such as: Good Governance Principles (known as the Standards Australia 2003), Code of Governance for the Australian Community Sector of 2008, and Good Governance: A code for the Voluntary and Community Sector of 2010.²⁰⁴

4.3 Recommended corporate governance principles and Codes for the not for profit corporations

Notwithstanding the fact that there are several codes and guidance applicable to the not for profit sector, for the purpose of this study, the Not-for-Profit Governance Principles, second edition, 2019 by the Australian Institute of Company Directors will be used for comparison purposes. These recommended principles were developed by the Australian Institute of Company Directors to further its undertaking to advance good governance within the not-for-profit sector.²⁰⁵ In 2013, the very first version of the principles was published. The Standards Australia 2003 was not used for the purposes of this study because the studies shows that the Standards seem lost to posterity, inexplicably not having received any updating, except for a minor amendment in 2004.²⁰⁶ The Good Governance: A code for the Voluntary and

²⁰¹ *Idem* 184.

²⁰² Corporate Governance Principles and Recommendations 2019, 2.

²⁰³ *Ibid.*

²⁰⁴ Reynolds *Effective Corporate Governance in Not-for-profit Organisations*, (2014) degree of Doctor of Business Administration thesis, Victoria University 65.

²⁰⁵ Not-for-Profit Governance Principles, 2019 4.

²⁰⁶ Reynolds *Effective Corporate Governance in Not-for-profit Organisations*,(2014) degree of Doctor of Business Administration thesis, Victoria University 65.

Community Sector of 2010 was also not used as there is not much evidence of usage.²⁰⁷

The Not-for-Profit Governance Principles standard recommends the ten governance principles for the not for profit sector. Each of the principles includes a number of recommended practices which further define activities of organisations that are expected to achieve the objectives of the principles.²⁰⁸ The purpose is to aid users of the Principles appreciate them better and apply them in practice. It goes without saying that, it will be up each company to cautiously consider how best to apply and implement the Principles to their environment.²⁰⁹ While it is not the purpose of this study to explore all the ten principles in greater details, a brief discussion of some of principle is essential in order to achieve the purpose of this chapter. Some of the principles recommended for the not for profit sector are as follows:

(a) Purpose and strategy

To be successful, the organisation's purpose and strategy must be clear and it must explicitly set out how the organisation will strive to attain its objectives.²¹⁰ Some of the recommended practices for this principle are that the organisation's purpose is clearly articulated, documented in its governing documents and by the board and that the board approves a strategy to carry out the organisation's purpose.²¹¹ It is also recommended that the board must conduct regular reviews of the strategy.

(b) Roles and responsibilities of the board

The individuals within the organisation must appreciate their roles and their relationships to each other must be perfectly understood in order to attain good governance. ²¹² It is the ultimate obligation of the board to control the manner in which the organisation is run, however, the board may delegate some of its obligations to the others. To implement this principle it is recommended that the board appreciates and

²⁰⁷ *Ibid.*

²⁰⁸ Not-for-Profit Governance Principles, 11.

²⁰⁹ Not-for-Profit Governance Principles, foreword.

²¹⁰ Not-for-Profit Governance Principles, principle 1, 21.

²¹¹ *Ibid.*

²¹² Not-for-Profit Governance Principles, principle 2, 29.

meet its duties in law, meet any eligibility requirements relevant to their position and that the delegations of the board's authority are recorded and periodically reviewed.²¹³

(c) *The structure and composition of the board empowers it to achieve its role successfully*

Under this principle it is recorded that the board comprising of the right individuals is of great importance to its effectiveness.²¹⁴ Boards should look critically at whom their directors are and the manner in which they are appointed. There is no standardised ideal structure and composition for boards.²¹⁵ Some of the recommended principles are that the directors are appointed based on merit, through a transparent process, and in alignment with the purpose and strategy as well as that the board assesses and records its members' skills and experience, and this is disclosed to stakeholders.²¹⁶

(d) *The board is run effectively and its performance is periodically evaluated*

This principle records that for a board to be successful, it must approach its functions in a considerate, orderly and professional approach.²¹⁷ Forward planning of board's affairs, efficient operation of board meetings, systematic performance assessments and effective chair arrangements is a way in which the objectives of this principle can be achieved.²¹⁸ Some of the practices recommended are that the directors seek and are provided with the information they need to perform their functions and they are appropriately inducted and undertake on-going education to perform their functions. It is also recommended that there must be constant performance evaluation of the performance of the board and that of its chairperson.²¹⁹

²¹³ *Ibid.*

²¹⁴ Not-for-Profit Governance Principles, principle 3, 39.

²¹⁵ *Ibid.*

²¹⁶ *Idem* 40.

²¹⁷ Not-for-Profit Governance Principles, principle 4, 47.

²¹⁸ *Ibid.*

²¹⁹ *Idem* 48.

(e) *Risk management by the board of directors*

This principle recognises that risk is inherent in all human endeavours including in the activities of organisations.²²⁰ Against this principle it is the role of the board to appreciate the risks of the organisation in order to run the organisation on the basis of this appreciation and to exercise oversight over a framework that manages risk regularly.

In order to successfully implement this principle it is recommended that board oversees the risk management framework that is aligned to the purpose and strategy of the organisation and reviews the framework periodically.²²¹ A risk management committee is recommended to assist the board in exercising due care, diligence and skill in relation to risk management. Amongst others this committee is responsible for observing and reviewing safety systems in the organisation, guiding the board on the usefulness of the risk management framework and supporting provision of accurate, relevant and timely information about risk.

(f) *Organisational performance*

With regards to this principle, the code provides that to ensure that it accomplishes its objectives, the organisation must ensure that firstly its objectives are clearly defined with timelines within which they are to be accomplished and secondly there must be a method in place to measure its progress in accomplishing the objectives.²²² It is the responsibility of the board to work with organisation's staff, to recognise these objectives, avail resources to accomplish them and oversee the appropriate use of these resources.²²³ Some of the recommended practices by the code are that the board approves an annual budget for the organisation and board receives and considers measures which evaluate performance against the strategy as well as the performance of the CEO.²²⁴

²²⁰ Not-for-Profit Governance Principles, principle 5, 55.

²²¹ *Ibid.*

²²² Not-for-Profit Governance Principles, principle 6, 63.

²²³ *Ibid.*

²²⁴ *Idem* 64.

(g) *Accountability and transparency by the board*

The code provides that the ultimate accountability for the activities and performance of the organisation rest with the board.²²⁵ The meaning of this is that the board must present a fair representation of the organisation's activity be accountable its actions and the organisation's performance. The selected recommended practices for this study are that the organisation's governing documents and policies relevant to its governance are available to stakeholders as well as board oversees appropriate reporting to stakeholders about the organisation's performance and financial position.²²⁶

(h) *Stakeholder engagement*

The boards must have an appreciation of the stakeholders' expectations and the environment in which they operate and understand the underlying needs and interests of these stakeholders, this will further effective governance. Some of the recommended practices are that the board understands who the organisation's stakeholders are, their needs and their expectations and that the board oversees a framework for the meaningful engagement of stakeholders.

4.4 Comparison between South African and Australian governance principles and codes of corporate governance applicable to non-profit companies.

Corporate governance principles and codes in Australia have similarities and differences with corporate governance principles and codes in South Africa. One of the similarities is that, the approach to the corporate governance for the NPCs by both jurisdictions is that the principles and codes of corporate governance are voluntary, save for the principles of governance that are legislated in the South African 2008 Companies Act and Australian Corporations Act 2001. The South African corporate governance code requires the NPCs to use apply and explain approach. Whereas the Australian code only requires companies listed with Australian Securities Exchange to apply and if not explain why approach. However, this is not applicable to the not for profit corporations as they are not listed. This presents a key difference between the

²²⁵ Not-for-Profit Governance Principles, principle 7, 73.

²²⁶ *Ibid.*

two jurisdictions. Additionally unlike South Africa where the *King IV* applies to all organisations including companies, Australia does not have a general corporate governance code that all companies should apply.²²⁷

The corporate governance codes of both countries are similar in that they both recognise that no one size fits all approach to implementing the recommended principles of corporate governance. Both codes does not contemplate mindless compliance and a quantitative approach, instead NPCs are encouraged to carefully consider how best to apply the recommended principles and practices to their own circumstances. On the recommended principles and practices the codes are similar in that they both recognise the following: (a) clear separation of responsibilities of the board of directors and the management, (b) that the board is the focal point of corporate governance and organisational ethics and as such it is ultimately accountable for the running and performance of the company, but the board may delegate some of its responsibilities, (c) that the board prepares, approves and periodically review the company strategy and the risk management framework, (d) that the board should comprise of appropriate skills, experience and independence, and (e) transparency and informative and reporting by the board to the stakeholders of the company.

The codes are different on the recommended principles and practices in that the South African code recommends that the board of a NPC should ensure that the company is and is seen to be a responsible corporate citizen.²²⁸ It was observed that the Australian code is silent in this respect. Another difference observed was that on the principle of accountability and transparency, the Australian code recommends that the directors' remuneration and other benefits be disclosed to the stakeholder. The South African code is silent on the disclosure of the directors' remuneration to the stakeholders. The South African code recommends that if applicable the board should establish committees such as the audit committee, risk governance committee, remuneration committee and the social and ethics committee.²²⁹

²²⁷ Johnson and Brady "Corporate governance and directors' duties in Australia: overview" Country Q&A (2019).

²²⁸ *King IV*, Supplement for NPO, Principle 3, 89.

²²⁹ *King IV*, Supplement for NPO, Principle 8. 92.

These committees are specialized committees that exist to perform many of the board's most critical functions, such as setting executive compensation, overseeing financial reporting, monitoring the company's activities having regard to any relevant legislation. Furthermore, the committees can increase the accountability of the board to the company by reducing individual free-riding and enabling outside directors to perform their monitoring duties more effectively through greater separation from management.²³⁰ These makes the committees important to the board and promotes good corporate governance. The Australian code does not expressly recommend these committees except for the risk management committee.

4.5 Conclusion

A number of lessons can be derived by developing and emerging economies in the way corporate governance has been practiced in developed economies. The purpose of this chapter was to do a comparative study between South African and Australian corporate governance principles recommended for NPCs. It appears at first glance that the corporate governance principles and practices are similar in many respects than they are different. It was observed that the corporate governance principles and practices recommend for both jurisdiction are voluntary and not compulsory. It was also observed that the bodies that drafted the recommended principles and practices are not regulatory bodies or are they part of the government of the respective countries. The next chapter of this study will provide conclusions and recommendations.

²³⁰ Chen and Wu "The Structure of Board Committees" Harvard Business School Working Paper 17-032 (2016).

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

The primary purpose of this study was to study the effective application of corporate governance in Milk SA. This was done by analysing the existing mechanism put in place by the board of Milk SA to ensure compliance and effective application of corporate governance principles and codes. Observations were made on whether Milk SA's existing mechanism of corporate governance are in line with the principles and practices recommended for the NPCs by the *King IV* report. The study also undertook a comparison between South African and Australian governance principles and codes of corporate governance applicable to non-profit companies. This is the final chapter of the study and it will provide of the findings, conclusion and recommendations.

5.2 Conclusions according to chapters

5.2.1 Chapter 1

Chapter 1 provided a general overview and background on corporate governance in the South African context, it also set out the motivation for carrying out the study, the research questions to be addressed and the methodology to be followed.²³¹ The definition of the term corporate governance was provided and the importance was dealt with. It was highlighted that good governance plays an important role in ensuring that the company accomplishes its objectives and have sustainable development.

5.2.2 Chapter 2

Chapter 2 the principles and practices of corporate governance recommended by the *King IV* report for the NPCs were briefly discussed. Although various principles and practices were discussed, it was noted that the recommended principles and practices

²³¹ Chapter 1 para 1.1, 1.3 and 1.4.

place emphasis on strategic direction, ethical leadership, competence, transparency, fairness, responsibility, independence and accountability of the board of directors. Furthermore, it was noted that *King IV* principles corresponds with the purpose of the 2008 Companies Act in that they promotes transparency, accountability and utmost standards of corporate governance for NPCs. It was also highlighted that *King IV* does not contemplate mindless compliance and a quantitative approach to its recommended practices, instead the report strives to instil as qualitative approach when implementing its recommended principles.

5.2.3 Chapter 3

In chapter 3, Milk SA's mechanism of ensuring compliance and effective application of corporate governance were explored. In addressing the first research question of what governance principles and codes underpins corporate governance at Milk SA, the study revealed that the core governance principles were: accountability of the directors as individuals and as a board, transparency and accurate reporting of performance of the company, separation of board and management responsibilities and effective communication with the stakeholders. It was noted that the policies, procedures and systems approved by the board are at the centre of Milk SA's corporate governance mechanisms. To ensure effective compliance with the mechanisms the board of director places reliance on the function of internal auditors and advisory committees.

In addressing the second research question of whether the current corporate governance mechanism were in line with the *King IV* report. An assessment of the mechanisms and official reports against the recommended principles, codes and practices was conducted. The assessment found that to a greater extend the governance principles and objectives established and adopted by the board of directors in the policies, procedures and systems of Milk SA were line with the *King IV* recommended principles and practices.

5.2.4 Chapter 4

Chapter 4 provided a brief background on the Australian's corporate governance and a brief discussion of the corporate governance principles and Codes recommended for the not for profit corporations. Although various principles and practices were discussed, it was noted that the recommended principles and practices place emphasis on organisational purpose and strategy, functions of the board, risk management, organisational performance, accountability and transparency by the board. A comparison of the Australian and South African corporate governance principles and practices recommended for NPCs reveals that they are similar in material respects in that the codes of corporate governance are voluntary for NPCs in both jurisdictions, the recommended principles and practices are similar, both codes of corporate governance do not contemplate mindless compliance and quantitative approach, instead they both encourage NPCs to consider how best to apply the recommended principles and practices to their own circumstances. The major difference noted was that the South African code recommends that where applicable the board of NPCs should establish board committees such as the audit committee, risk governance committee and the social and ethics committee. Whereas the Australian code do not specifically recommend these committees for the NPCs except for the risk management committee.

5.3 Recommendations

This study has revealed that the active policies and practices within Milk SA were to a greater extent in line with the recommended principles and practices by *King IV*. The study also observed activities undertaken and reported by Milk SA to further economic transformation and community development, this is in line with the *King IV* recommended practices on corporate citizenship. Notwithstanding that the social and ethics committee is not compulsory for Milk SA, it is recommended that Milk SA considers to establish a committee to strengthen this area and improve monitoring and oversight of corporate citizenship activities. *King IV* encourages companies that are not as a matter of law obliged to form the social and ethics committee, nevertheless consider

forming a structure that would accomplish the objectives of the committee.²³² Enhancing its corporate citizenship activities will further Milk SA's stakeholder relations and engagements. Stakeholder engagement was noted as essential to good corporate governance by the Australian Not-for-Profit Governance Principles standard.

This study observed that Milk SA has in place a risk policy which serves to define Milk SA's approach to risk and risk management and the involvement of the relevant stakeholders in order to mitigate risks and potential risks. It is however, recommended that the risk policy also be reflective of risks such as climate changes as this has the potential to undermine viability of the milk production. Adequate mitigation measures against this risk should be considered in the risk policy such as putting in place strategies developed to manage year-to-year climate variability as well as regular analysis of climate risks and assessment of climate impacts. The Australian Not-for-Profit Governance Principles standard also recognises that the board should appreciate the risks of the organisation in order to run the organisation on the basis of this appreciation and to exercise oversight over a framework that manages risk regularly. In order to ensure effective risk management the Australian standard endorses establishment of a risk management committee which advises the board on the effectiveness of the risk management framework and regularly monitor and review safety systems throughout the organisation. The risk management committee is not specifically recommended for the South African non-profit companies, risk management committee is one of the committee that should be adopted and incorporated in the corporate governance framework applicable to South African non-profit companies.

²³² *King IV*, fundamental concepts.

BIBLIOGRAPHY

Literature

Books

Wyngaard R (2017) *Governance for non-profit boards* 2nd ed Claremont: Jute and Company (Pty) Ltd.

Cassim M F *et al* (2011) *Contemporary Company Law* 2nd ed Claremont: Jute and Company (Pty) Ltd.

Naidoo R (2009) *Corporate Governance: An essential guide for South African Companies* 2nd ed LexisNexis

Naidoo R (2018) *Corporate Governance: An essential guide for South African Companies* 3rd ed LexisNexis

Wixley T (2015) *Corporate Governance* 4th ed Cape Town: Siber Ink CC

Cilliers HS and Benade ML (1982) *Corporate Law* 4th ed Durban Butterworths

M Monks R and Minow N (2004) *Corporate Governance* 3rd ed : John Wiley & Sons

Havenga and I Esser (2012) *Corporate Governance Review 2012* LexisNexis

Delport P (2011) *The new companies Act manual* 2nd ed Lexis Nexis

Delport P (2020) *Henochsberg on the Companies Act 71 of 2008* Lexis Nexis

Mongalo T (2003) *Corporate law & Corporate Governance: A global picture of Business Undertakings in South Africa* Claremont: New Africa Books

Matsaneng M (2010) *46 Transactions of the Centre for Business Law* Bloemfontein

Wiese T (2017) *Corporate Governance in South Africa with international comparisons* 2nd Claremont: Jute and Company

Ahunwan B (2003) *Globalization and Corporate Governance in Developing Countries: A micro analysis of global corporate interconnection between developing African countries and developed countries* Ardsley Park: Transnational Publishers, Inc

FD Lipman and LK Lipman (2006) *Corporate Governance Best Practices: Strategies for Public, Private, and Not-for-Profit Organizations* New Jersey: John Wiley & Sons

Du Plessis J *et al* (2005) *Principles of contemporary corporate governance*: Cambridge University Press

Journal Articles:

Barac K “Governance in the public sector” (2001) issue 24 Auditing SA 30.

Rossouw G “Corporate Governance in South Africa” (2002) 37 Journal of Business Ethics 289.

Bekink M “An historical overview of the director’s duty of care and skill: from the nineteenth century to the Companies Bill of 2007” (2008) 20 SA Merc LJ 95.

Phago K “Governance of Government System in South Africa” (2017) Journal of Public Administration 503

Mongalo T “The emergence of corporate governance as fundamental research topic in South Africa” (2003) 120 South African Law Journal 173.

Mongalo T “Supervision of the use of corporate power as the ultimate purpose of directorial duties and the advisability of corporate law enforcement in the public interest” (2017) 1 JCCL&P 17

Mongalo T “Self-Regulation versus Statutory Codification: Should the New Regime of Corporate Governance Be Accorded Statutory Backing” (2004) THRHR 264

Mongalo T “The myth of director appointment by shareholders and shareholder activism in listed companies”. Journal of South African Law, 2004(1), 96-114.

Brody E “The board of Non-profit Organisations: Puzzling through the gaps between law and practice” (2007) 76 Fordham L Rev 521.

Botha MM “The role and duties of directors in the promotion of corporate governance: A South African perspective” (2009) *Obiter* 702.

Botha MM “Evaluating the social and ethics committee: Is labour the missing link? (1)” (2016) *THRHR* 580.

Botha MM “Evaluating the social and ethics committee: Is labour the missing link? (2)” (2017) *THRHR* 1.

Ncube C “Transparency and accountability under the new company law” (2010) *Acta Juridica* 43.

Hiram S “Core corporate governance dilemmas facing boards: A South African perspective” (2009) *SAJEMS* 194.

Cassim FHI “The Companies Act 2008: An overview of a few of its core provisions” (2010) *22 SA Merc LJ* 157.

Esser I “Shareholder Interests and Good Corporate Governance in South Africa” (2014) *77 THRHR* 38

Padayachee V “King IV is here: Corporate Governance in South Africa revisited” (2017) *66 New Agenda* 17.

Mans-Kemp N “Measuring corporate governance in South Africa: Developments, concerns and suggestions” (2016) *18 Southern African Journal of Accountability and Auditing Research*. 93

Havenga M “The Business Judgment Rule - Should We Follow the Australian Example” *12 South African. Mercantile Law. Journal*. 25, 37 (2000)

Key A “Transactional avoidance: Critical aspects of English and Australian law. *International Insolvency Review*” (2000) *9(1)*, 5

Delport P “Companies Act 71 of 2008 and the ‘Turquand’ rule” (2011) *THRHR* 132

Delport P “offers” and the Companies Act 71 of 2008) (2011) *THRHR* 280

Delport P and Esser I “The protection of stakeholders: The South African social and ethics committee and the United Kingdom’s enlightened shareholder value approach: Part 1” (2017) *De Jure* 97

Delport P and Esser I “The protection of stakeholders: The South African social and ethics committee and the United Kingdom’s enlightened shareholder value approach: Part 2” (2017) *De Jure* 221

Ahmad A and Abed Alkarim A “Separation of Ownership and Control in Corporate Governance” 84 *Journal of Law, Policy and Globalization* 65 (2019)

De la Harpe S and Rijken, C. “Good governance” *Potchefstroom Electronic Law Journal*, 11(2), 1-15 (2008)

Croucher R and Miles L "Corporate Governance and Employees in South Africa" (2010) 10:2 *J of Corporate L Studies* 367

Olson J "South Africa Moves to a Global Model of Corporate Governance but with Important Variations" *Acta Juridica* 2010, no. 1 (2010): 219-247

Hendricks P and RG Wyngaard “South Africa's king iii: commercial governance code determining standards of conduct for civil society organizations” *International of Not-for-Profit Law* (2010) 104-2.

Van Der Linde K. “The personal liability of directors for corporate fault an exploration.” *South African Mercantile Law Journal* (2008) 20(4), 439-461.

Katz MM "Governance under the Companies Act 71 of 2008: Flexibility is the Keyword" (2010) *Acta Juridica* 248.

King ME “The Synergies and Interaction between King III and the Companies Act 71 of 2008”, *Acta Juridica* (2010) 446

A Dignam and M Galanis “Australia inside-out: The Corporate Governance System of the Australian Listed Market” *Melbourne University Law Review* (2004) 623

A Dignam "The Role of Competition in Determining Corporate Governance Outcomes: Lessons from Australia's Corporate Governance System" *Modern Law Review*. (2005) 765

J L. Barney, "Corporate Scandals, Executive Compensation, and International Corporate Governance Convergence: A U.S.-Australia Case Study," *Temple International & Comparative Law Journal* 23, no. 2 (2009): 231

Case law:

South African Broadcasting Corporation Ltd v Mpofu 2009 (4) All SA 169

Minister of Water Affairs and Forestry v Stilfontein Gold Mining Co 2006 5 SA 333 (W)

Francis George Hill Family Trust v South African Reserve Bank 1992 (3) SA 91 (A) 97

Barlows Manufacturing CO Ltd v RN Barrie (Pty) Ltd 1990(4) SA 608 (C) 1990(4) SA 608 (C)

Bell Houses Ltd v City Wall Properties Ltd 1996 2 QB 656

Francis George Hill Family Trust v South African Reserve Bank 1992 (3) SA 91 (A) 97

One Stop Financial Services (Pty) Ltd v Neffensaan Ontwikkelings (Pty) Ltd and Another 2015 (4) SA 623 (WCC)

Organisation Undoing Tax Abuse NPC and Another v Myeni and Another (15996/2017) [2019] ZAGPPHC 957.

Papers issued:

Member of the paper F4 examining team "Corporate Governance: a South African perspective" (2019).

Tricker RI "Good practice in corporate governance: international perspectives" (1988).

Barnes L & Howson K " Governance in the not-profit-profit sector : International perspective (2014) Paper presented at the American Accounting Association Government and Non-profit Section Midyear meeting, Norwalk, CT.

K Chen A Wu “The Structure of Board Committees” Harvard Business School Working Paper 17-032 (2016)

Academic dissertations and theses:

Botha MM (2015) *Employee participation and voice in companies: A legal perspective*, LLD Thesis, University of North-West.

Moyo NJ (2016) *Corporate Governance - a critical analysis of the effectiveness of boards of directors in public entities in Zimbabwe*, LLD Thesis, University of South Africa.

Harris R (2016) *Corporate governance law reform in South Africa*, LLM mini-dissertation, University of Pretoria.

Kondlo M (2016) *The importance of corporate governance in South African family-owned companies: effects of ownership and board composition on performance*, M.Phil degree mini thesis, University of Western Cape

Moyo J (2010) *South African principles of corporate governance: legal and regulatory restraints on powers and remuneration of executive directors*, Master’s degree dissertation, University of South Africa.

Reynolds S T (2014) *Effective Corporate Governance in Not-for-profit Organisations*, degree of Doctor of Business Administration thesis, Victoria University

Government Gazette publications:

South African Company Law for the 21st Century – Guidelines for Corporate Law Reform (Government Gazette 26493 of 23 June 2004) 13

Government Notice 1218 – Registration of persons involved in the secondary dairy industry (20 December 2013)

Government Notice 1219 Records and returns in respect of milk and other dairy products (20 December 2013)

Government Notice 1220 – Levies on milk and other dairy products (20 December 2013)

Official Reports issued:

The King IV Report on Corporate Governance in South Africa (2016)

The King III Report on Corporate Governance in South Africa (2009)

Not-for-Profit Governance Principles, second edition, the Australian Institute of Company Directors (2019)

Public Protector of South Africa's report on the SABC, February 2014
<http://www.pprotect.org/?q=node/1729> (accessed 1 July 2019)

Public Protector of South Africa's report on the Passenger Rail Agency of South Africa, August 2015
<http://www.pprotect.org/?q=node/1729> (accessed 1 July 2019)

Auditor General of South Africa's audit report on the SABC 2017/2018
http://intranet.agsa.co.za/AGSADocuments/AuditReports/SitePages/PFMA_2017-18.aspx (accessed 1 July 2019)

Milk SA annual report of 2015 financial year <https://milksa.co.za/reports> (accessed 1 July 2019)

Milk SA annual report of 2016 financial year <https://milksa.co.za/reports> (accessed 1 July 2019)

Milk SA annual report of 2017 financial year <https://milksa.co.za/reports> (accessed 1 July 2019)

Milk SA annual report of 2018 financial year <https://milksa.co.za/reports> (accessed 1 July 2019)

Milk SA Transformation Handbook 2014/2015 <https://milksa.co.za/reports> (accessed 1 July 2019)

Milk SA's CEO Report to Members at AGM (2017) <https://milksa.co.za/reports> (accessed 1 July 2019)

Milk SA's CEO's Report for the financial year (2016) <https://milksa.co.za/reports> (accessed 1 July 2019)

The Global Economic Crisis: Systemic Failures and Multilateral Remedies, United Nations (2009).

Tommie van Zyl, Erik Holm and Org Ehlers "ZZ2 farming: Adapting to change for sustainable value creation" (2013) The Corporate Report 26.

Judim M "The King Report and Code: An integral and important part of South Africa's common law" (2016) The Corporate Report 27.

Report to G20 on the implementation of the G20/OECD Principles of Corporate Governance, 8-9 June, 2019 – Fukuoka, Japan

The final report of the commission of inquiry into the affairs of the Masterbond group and investor protection in South Africa, Volume 1, Cape Town 2001

Milk SA policies:

Charter for the Board of Directors

Corporate Governance and Directors' duties policy

Communication policy

Financial Policy

Internal Audit Charter

Risk Policy

Policy for advisory committees

Internet sources:

<https://milksa.co.za/objectives/statutory> (accessed 6 May 2019)

<https://milksa.co.za/reports> (accessed on 6 May 2019)



<https://eservices.cipc.co.za/Search.aspx> (accessed on 1 July 2019)

[https://www.iodsa.co.za/page/king\(1\)](https://www.iodsa.co.za/page/king(1)) (accessed on 1 July 2019)