



# The Board and Committees – Their Functions, Duties and Liabilities

The “Board” refers to the collective word used to designate directors when they act together as a group.

The Board should act as the focal point for and custodian of corporate governance in the company. Every Board should have a charter setting out its responsibilities, and it should meet as often as is required to fulfil its duties. The King I Report recommends that this should be at least four times a year.

The fact that the Board has collective decision-making authority does not mean that individual directors cannot be held personally liable for their actions or take on individual responsibility for their conduct.

Each individual director has a duty to act in good faith and for proper purpose and in the best interest of the company and is subject to a duty to exercise a degree of care, skill and diligence as would reasonably be expected of a person with general knowledge and skill when carrying out the functions of a director. He must not use the position of director to gain advantage for himself or any other person. Failure to perform these duties properly may cause him/her to be personally liable.

## BOARD MEETINGS

The Act states that any director may call a Board meeting at any time, however it is obligatory if it is called for by at least two directors, or where there are twelve or more directors on a Board, by 25% of them. No meeting may be convened without notice to all the directors. Each director has one vote on a matter before the board, and a majority of votes cast on a resolution is sufficient to approve it. Meetings may be conducted by electronic communication (“EC”) as long as the EC facility enables all those participating to communicate concurrently without an intermediary and to participate effectively in the meeting. For example, a virtual meeting by way of Skype will be acceptable as long as these criteria are met.

The Board may appoint any number of committees to deal with matters on the Board’s behalf, or may consult



with or receive advice from any person. The King III Report recommends that the Board should appoint risk, remuneration and nomination committees as standing committees. The Board should also consider appointing governance, IT steering and sustainability committees. However the creation of a committee does not mean that the Board is exonerated from its legal responsibilities.

A person who is not a director may be appointed to a committee - however such a person shall not have a vote, but is subject to the same duties and standards of conduct as a director. He/she may incur equal liability for failure to meet the standards as if he/she was a director. King III therefore recommends that only directors be appointed to committees, and that experts should attend as independent contractors and not as members of a committee.

The terms of reference of committees should be reviewed every year and any changes approved by the Board. The terms of reference should broadly encompass aspects such as the composition, object and purpose of the committee, delegated authority and the extent of power to make decisions or recommendations to the Board, the tenure of the committee and its reporting mechanism to the Board.

In addition, an evaluation of the Board, its committees and each individual director should be performed every year, so as to promote improved performance and effectiveness.

*“Individual commitment to a group effort - that is what makes a team work, a company work, a society work, a civilization work”. - Vince Lombardi*