

# *The board of directors and committees – a comparison between the new Companies Act and King III*

*A comparison of requirements for boards and committees between the Companies Act, No. 71 of 2008 and King III*

October 2011

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## Introduction

*“There is always a link between good governance and compliance with law. Good governance is not something that exists separately from the law and it is entirely inappropriate to unhinge governance from the law. The starting point of any analysis on this topic is the duty of directors and officers to discharge their legal duties.”*  
*(Introduction and background to King III)*

As King III was drafted using the Companies Act as a baseline, there should theoretically not be conflicting provisions between the Act and King III. However, considering their respective purposes, one regulating a wide range of aspects regarding companies and the other being a code of good governance, it is not surprising that certain topics are expanded on in more detail in either the Act or in King III.

Compliance with the Act therefore does not necessarily result in compliance with King III, and vice versa. Furthermore, King III was released well in advance of the enactment of the Amendment Act and the Regulations and would therefore not have taken provisions in either the Amendment Act or the Regulations into consideration.

In this publication, we compare the provisions of the Act and King III, as they pertain to boards of directors and committees.

### A note on terminology

For the purposes of this publication:

- The third *King Report on Governance for South Africa 2009* is referred to as ‘the King Report’.
- The third *King Code of Governance Principles for South Africa 2009*, in which the principle provisions of the King Report are enshrined, is referred to as ‘the King Code’.
- The King Report and the King Code are collectively referred to as ‘King III’.
- The Companies Act or the Act refers to the Companies Act, No. 71 of 2008 as amended by the Amendment Act, read with the Regulations.
- The Amendment Act refers to the Companies Amendment Act, No. 3 of 2011.
- The Regulations refers to the Regulations to the Companies Act, No.71 of 2008.
- Memorandum of incorporation (MOI) refers to the Memorandum as defined in the Companies Act.
- The Tribunal refers to the Companies Tribunal established in terms of Section 193 of the Act.
- The Commission means the Companies and Intellectual Property Commission established in terms of Section 185 of the Act.
- Although the terms company, boards and directors are used in King III, they refer and apply to the functional responsibility of those charged with governance in any entity even if different terminology is used in other entities, sectors and industries.
- ‘Not addressed’ in our comparison is not indicative of a shortcoming in either the Act or King III. King III, for example, does not repeat all requirements of the Act, as directors are already required to comply with these provisions by law.

### Important

While this publication focuses on what we believe to be the most important issues, it does not represent a complete reproduction of either the relevant sections in the Act or the relevant paragraphs in King III. Although we have compared certain disclosure requirements, the content of this publication is not intended to be used as a checklist for either Companies Act or King III disclosure. In addition, it does not deal with the duties of the company secretary or penalties for non-compliance with the Act.

## Executive summary

### Board of directors

Both the Act and King III acknowledge the importance of appointing a board to govern the company. In contrast to the Act, King III expands extensively on the role and function of the board of directors and states that the board should act as the focal point for, and custodian of, corporate governance. It goes on to say that the board should appreciate that strategy, risk, performance and sustainability are inseparable and that the board should provide effective leadership based on an ethical foundation.

The Act sets out the procedures for the appointment or election of directors, the filling of vacancies and removal of directors. While the Act prescribes which persons are ineligible for appointment or disqualified from serving as a director, King III describes the qualities needed for persons to be appointed to the board. The Act and King III contain similar references to the standards of directors' conduct.

Furthermore, King III addresses matters such as other directorships held by directors, rotation of non-executive directors, tenure of independent non-executive directors, director development, and board, director and committee evaluation. It also provides guidance on the appointment and duties of the CEO and chairman of the board. These matters are not addressed in the Act.

One of the biggest differences between the Act and King III as far as provisions regarding directors are concerned, is that King III categorises (and defines) directors as either executive, non-executive or independent non-executive directors. Since the Act does not use such terminology, this has an impact on the constitution of the board and board committees for companies that aspire to apply the recommendations of King III.

The Act requires the directors to include a report in the annual financial statements with respect to the state of affairs, the business and profit or loss of the company, or of the group of companies if the company is part of a group, including any matter material for the shareholders to appreciate the company's state of affairs and any prescribed information.

King III requires more extensive reporting by the board of directors. This includes, among others, a statement by the board on the effectiveness of the system of internal controls, certain risk management disclosures and disclosure on the nature of the board's dealings with its stakeholders.

### Board committees in general

The board has traditionally appointed any number of committees to assist it in discharging its duties. The Act now specifically permits the board to appoint board committees, but makes it clear that the appointment does not exonerate a director from complying with his or her legal duties. King III contains a similar provision.

While King III recommends that all committees (except the risk committee) should consist only of board members, Section 72 of the Act permits persons who are not directors of the company to be members of committees (except where otherwise legislated). Any such persons must not be ineligible or disqualified from being a director and no such person may vote on a matter to be decided by the committee. Such persons are required to comply with the standards of directors' conduct as set out in Section 76 of the Act and bear the same liability as board members, as set out in Section 77 of the Act.

Committees required to be established by the Act for certain categories of companies:

- Audit committee
- Social and ethics committee

Committees that King III recommends be established as standing committees:

- Audit committee
- Risk committee
- Nomination committee
- Remuneration committee

Examples of other committees that the board could consider constituting in terms of King III:

- Governance committee
- Sustainability committee
- IT committee

### Group boards

King III addresses the responsibilities of directors of holding companies that sit on subsidiary company boards. It emphasises that directors of subsidiary companies have fiduciary duties in relation to the subsidiary and are required to act in the best interests of the subsidiary at all times, regardless of who appointed the director to the subsidiary board. It is for these reasons that a governance framework should be agreed between the group and its subsidiaries' boards. The Act does not specifically address group boards, but Section 76 requires directors to act in the best interests of the company.

## Audit committees

The Act requires certain categories of companies to elect an audit committee at the company's annual general meeting. This includes companies that are only required to constitute an audit committee in terms of their MOIs. King III recommends that all companies constitute audit committees. It advocates that where audit committees are voluntarily constituted, such appointment can be made by the board. It appears that the Act imposes a higher requirement than King III as far as companies that are only required to constitute audit committees in terms of their MOIs are concerned.

King III requires all members of the audit committee to be independent non-executive directors, as defined in King III. As mentioned, the Act does not categorise directors as executive, non-executive or independent non-executive directors. The Act, however, contains requirements for membership of an audit committee with reference to some of the elements contained in King III's definition of independent non-executive directors.

It is interesting to note that the Act requires audit committee members not to have been involved in the day-to-day management of the company 'or to have been so involved at any time during the previous financial year'. The definition of 'non-executive director' in King III only indicates that a non-executive director 'should not be involved in the management of the company'.

The duties of the audit committee in terms of the Act have remained virtually unchanged from those in the Companies Act, 1973, and are focused on the nomination and appointment of the auditor and oversight of financial reporting.

In contrast to the Act, King III recommends that the duties assigned to the audit committee by the board be aligned with King III's forward-looking views on the evolution of corporate reporting. For example, King III recommends that the board should:

- Assign oversight responsibility to the audit committee for the integrated report and specifically, the sustainability disclosure in the integrated report;
- Assign oversight responsibility to the audit committee for IT as it relates to financial reporting;
- Position the audit committee as an integral component of the risk management process; and
- Mandate the audit committee to ensure that a combined assurance model is applied to provide a coordinated approach to all assurance activities.

In view of the recommended functions of the audit committee, King III requires the audit committee, as a whole, to have an understanding of a range of matters

that is more extensive than the minimum qualifications for audit committee members prescribed in the Regulations. This includes fields such as integrated reporting, risk management, sustainability and IT governance as far as it relates to integrated reporting.

Interestingly, the Regulations require at least one third of the members of the committee to have academic qualifications or experience in either economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management. Academic qualifications or experience in any of these fields by a third of the members is sufficient to satisfy the requirements of the Act. The Regulations, therefore, do not require financial literacy as a prerequisite for membership of an audit committee.

King III recommends that the chairman of the audit committee should be present at the annual general meeting to answer questions on the report of the audit committee and matters within the committee's mandate. The Act does not contain a similar requirement.

## Social and ethics committees

While King III recognises that certain companies may be required to appoint a social and ethics committee in terms of the Act, it does not give further details on the functions of such committees. The Act requires that social and ethics committees be appointed by:

- Every state-owned company;
- Every listed public company; and
- Any other company with a public-interest score above 500 points in any two of the previous five years.

A subsidiary company that is required to appoint a social and ethics committee and that is a subsidiary of another company that has a social and ethics committee and where the social and ethics committee of that other company will perform the functions required by the Regulations on behalf of that subsidiary company, is exempt from the requirement to appoint such a committee. The Tribunal can also exempt a company from appointing a social and ethics committee.

The Act legislates the entitlements, membership and functions of such committees, and the consequences should a company fail to appoint a social and ethics committee.

The Regulations require the committee to draw matters within its mandate to the attention of the board as required. Although the Act does not require the committee to report to the shareholders in a report to be included in the annual financial statements (as it does for audit committees), the committee is required to report through one of its members to the shareholders at the company's annual general meeting on the matters within its mandate.



## Risk committees

King III specifically recommends that the board appoint a risk committee to assist the board in the discharge of its duties and responsibilities in respect of risk management. King III allows for the function of the risk committee to be assigned to another committee, such as the audit committee. The board should, however, only assign this responsibility to the audit committee after careful consideration of the resources available to the audit committee to adequately deal with risk governance in addition to its other responsibilities.

While the Act does not require the appointment of a risk committee, Section 72 permits the board to appoint such a committee, except to the extent that the MOI provides otherwise. The general provisions regarding membership of board committees contained in Section 72 apply to risk committees.

## Remuneration committees

King III specifically recommends that the board appoint a remuneration committee to assist the board with its responsibility for setting and administering remuneration policies in the company's long-term interests.

While the Act does not require the appointment of a remuneration committee, Section 72 permits the board to appoint such a committee, except to the extent that the MOI provides otherwise. The general provisions regarding membership of board committees contained in Section 72 apply to remuneration committees.

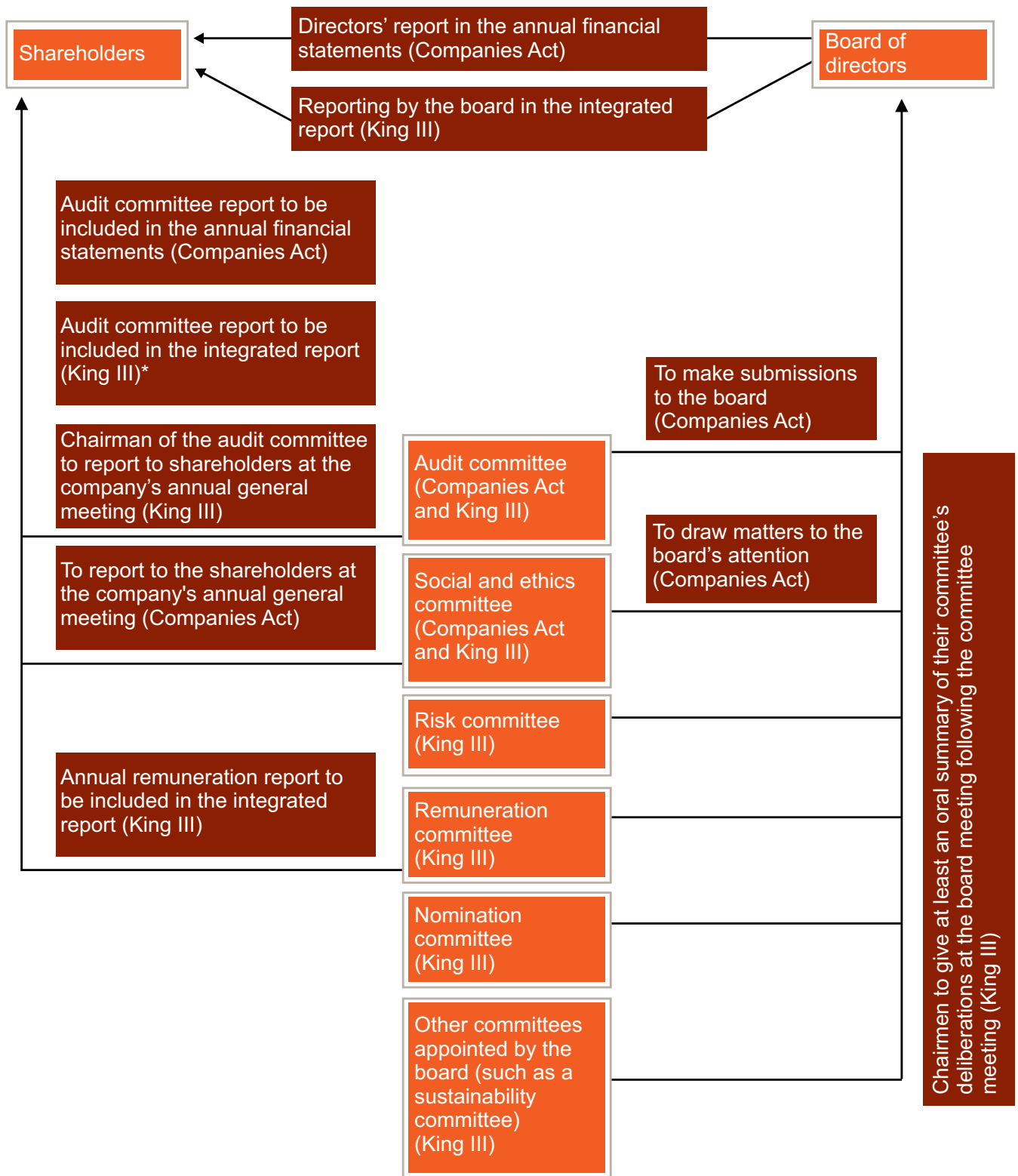
## Nomination committees

King III specifically recommends that the board appoint a nomination committee to assist the board with appointments to the board and to assist with the appointment of audit committee members. While the Act does not require the appointment of a nomination committee, Section 72 permits the board to appoint such a committee, except to the extent that the MOI provides otherwise. The general provisions regarding membership of board committees contained in Section 72 apply to nomination committees.



## Reporting responsibilities

Schematic presentation of reporting responsibilities of the board and committees as reflected in the Act and King III.



\*This recommendation is currently being debated by the King Committee.





## Comparison of provisions

Board of directors	Companies Act	King III
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Requirement to appoint a board</b>	<p>The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that the Act or the company's MOI provides otherwise.</p> <p>[Section 66(1)]</p>	<p>Companies should be headed by a board that directs, governs and is in effective control of the company.</p> <p>[Chapter 2.1]</p>
<b>Board charter</b>	Not addressed.	<p>Every board should have a charter setting out its responsibilities.</p> <p>[Chapter 2.1]</p>
<b>Number of directors to be appointed to the board</b>	<p>The board of a private company or personal liability company must comprise at least one director.</p> <p>The board of a public company, state-owned company or non-profit company must comprise at least three directors.</p> <p>The above minimum requirements are in addition to the minimum number of directors that the company must have to satisfy any requirement, whether in terms of the Act or its MOI, to appoint an audit committee or a social and ethics committee as contemplated in Section 72(4) of the Act.</p> <p>A company's MOI may specify a higher number of directors.</p> <p>When calculating the minimum number of directors required for a company any director who has been appointed to more than one committee must be counted only once.</p> <p>[Section 9(1), 66(2), (3) and (12)]</p>	<p>As a minimum, two executive directors should be appointed to the board, being the chief executive officer (CEO) and the director responsible for the finance function.</p> <p>When determining the number of directors to serve on the board, the collective knowledge, skills, experience and resources required for conducting the business of the board should be considered. Factors determining the number of directors to be appointed are:</p> <ul style="list-style-type: none"> <li>• Evolving circumstances, the needs of the company and the nature of its business;</li> <li>• The need to achieve an appropriate mix of executive and independent non-executive directors;</li> <li>• The need to have sufficient directors to structure board committees appropriately;</li> <li>• Potential difficulties of raising a quorum with a small board;</li> <li>• Regulatory requirements; and</li> <li>• The skills and knowledge needed to make business judgement calls on behalf of the company.</li> </ul> <p>Every board should consider whether its size, diversity and demographics make it effective. Diversity applies to academic qualifications, technical expertise, relevant industry knowledge, experience, nationality, age, race and gender.</p> <p>[Chapter 2.70, 2.71 and 2.73]</p>
<b>Composition of the board</b>	<p>The Act does not use the terms 'executive', 'non-executive' or 'independent non-executive' directors. The Act therefore does not contain provisions for the composition of the board with reference to executive, non-executive or independent non-executive directors.</p>	<p>The board should comprise a balance of power, with a majority of non-executive directors.</p> <p>The majority of non-executive directors should be independent.</p> <p>[Principle 2.18]</p>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Executive director definition</b>	Not addressed.	<p>Involvement in the day-to-day management of the company or being in the full-time salaried employment of the company (or its subsidiary) or both defines the director as executive.</p> <p>[Annex 2.2]</p>
<b>Non-executive director definition</b>	Not addressed.	<p>Not being involved in the management of the company defines the director as non-executive.</p> <p>Non-executive directors are independent of management on all issues including strategy, performance, sustainability, resources, transformation, diversity, employment equity, standards of conduct and evaluation of performance.</p> <p>An individual in the full-time employment of the holding company is also considered a non-executive director of a subsidiary company unless the individual, by conduct or executive authority, is involved in the day-to-day management of the subsidiary.</p> <p>[Annex 2.3]</p>
<b>Independent non-executive director definition</b>	Not addressed.	<p>An independent non-executive director is a non-executive director who:</p> <ul style="list-style-type: none"> <li>• Is not a representative of a shareholder who has the ability to control or significantly influence management or the board;</li> <li>• Does not have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) which exceeds 5% of the group's total number of shares in issue;</li> <li>• Does not have a direct or indirect interest in the company which is less than 5% of the group's total number of shares in issue, but is material to his personal wealth;</li> <li>• Has not been employed by the company or the group of which it currently forms part in any executive capacity, or appointed as the designated auditor or partner in the group's external audit firm, or senior legal advisor for the preceding three financial years;</li> <li>• Is not a member of the immediate family of an individual who is, or has during the preceding three financial years, been employed by the company or the group in an executive capacity;</li> <li>• Is not a professional advisor to the company or the group, other than as a director;</li> </ul>

Board of directors	Companies Act	King III
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Independent non-executive director definition (cont.)</b>		<ul style="list-style-type: none"> <li>• Is free from any business or other relationships (contractual or statutory) which could be seen by an objective outsider to interfere materially with the individual's capacity to act in an independent manner, such as being a director of a material customer or supplier to the company; or</li> <li>• Does not receive remuneration contingent upon the performance of the company.</li> </ul>
<b>Appointment and election of directors</b>	<p>The MOI may provide for:</p> <ul style="list-style-type: none"> <li>• The direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the MOI;</li> <li>• A person to be an ex officio director of the company as a consequence of that person holding some other office, title, designation or similar status; or</li> <li>• The appointment or election of one or more persons as alternate directors of the company.</li> </ul> <p>In the case of a profit company other than a state-owned company, the MOI must provide for the election by shareholders of at least 50% of the directors, and 50% of any alternate directors.</p> <p>[Section 66(4)]</p>	<p>Shareholders are ultimately responsible for the composition of the board and it is in their own interests to ensure that the board is properly constituted from the viewpoint of skill and representivity. Procedures for appointments to the board should be formal and transparent and should be a matter for the board as a whole, assisted by the nomination committee, subject to shareholder approval.</p> <p>Directors of companies are appointed in terms of the constitution of the company and in terms of the Act.</p> <p>[Chapter 2.17 and 2.80]</p>
<b>Election process of directors</b>	<p>Unless a profit company's MOI provides otherwise:</p> <ul style="list-style-type: none"> <li>• The election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time have been filled; and</li> <li>• In each vote to fill a vacancy: <ul style="list-style-type: none"> <li>– Each voting right entitled to be exercised may be exercised once; and</li> <li>– The vacancy is filled only if a majority of the voting rights exercised support the candidate.</li> </ul> </li> </ul> <p>Unless the MOI of a profit company provides otherwise, the board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled by election and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other director of the company.</p> <p>[Section 68 (2) and (3)]</p>	Not addressed.

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Qualifications of directors</b>	<p>The MOI may impose minimum qualifications to be met by directors of that company.</p> <p>The Regulations specify the qualification criteria for audit committee and social and ethics committee members.</p> <p>[Section 69(6) and Regulations 42 and 43]</p>	<p>Directors should be individuals of integrity and courage, and have the relevant knowledge, skills and experience to bring judgement to bear on the business of the company. In situations where directors may lack experience, detailed induction and formal mentoring and support programmes should be implemented.</p> <p>Boards should ascertain whether potential candidates are competent to be appointed as directors and can contribute to the business judgement calls to be made by the board. In looking at the skills and suitability of a proposed candidate director, there are three dimensions that require consideration, namely:</p> <ul style="list-style-type: none"> <li>• The knowledge and experience required to fill the gap on the board;</li> <li>• The apparent integrity of the individual; and</li> <li>• The skills and capacity of the individual to discharge his duties to the board.</li> </ul> <p>The onus is on individual directors to determine whether they have the requisite skills and capacity to make a meaningful contribution and are free from apparent or actual conflicts.</p> <p>[Chapter 2.72, 2.81 and 2.86]</p>
<b>Ineligibility and disqualification of persons to be directors or prescribed officers</b>	<p>A person who has been placed under probation by a court in terms of Section 162 of the Act or in terms of Section 47 of the Close Corporations Act, 1984, must not serve as director except to the extent permitted by the order of probation.</p> <p>The MOI may impose additional grounds of ineligibility or disqualification of directors or minimum qualifications to be met by directors of that company.</p> <p>The following are persons who are ineligible to be a director of a company:</p> <ul style="list-style-type: none"> <li>• A juristic person;</li> <li>• An unemancipated minor or a person who is under similar legal disability; or</li> <li>• A person who does not satisfy any qualification set out in the company's MOI.</li> </ul> <p>A person is disqualified to be a director of a company if:</p> <ul style="list-style-type: none"> <li>• A court has prohibited that person to be a director, or declared the person to be delinquent in terms of Section 162 of the Act or in terms of Section 47 of the Close Corporations Act, 1984;</li> </ul>	<p>Prior to their appointment, the directors' backgrounds should be investigated along the lines of the approach required for listed companies by the JSE Limited. It is also important to ensure that new directors have not been declared delinquent or are serving under probation (Section 162 of the Act). The nomination committee should play a role in this process.</p> <p>[Chapter 2.82]</p>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Ineligibility and disqualification of persons to be directors or prescribed officers (cont.)</b>	<ul style="list-style-type: none"> <li>• The person is an unrehabilitated insolvent;</li> <li>• The person is prohibited in terms of any public regulation to be a director of the company;</li> <li>• The person has been removed from an office of trust on the grounds of misconduct involving dishonesty; or</li> <li>• The person has been convicted in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence: <ul style="list-style-type: none"> <li>– Involving fraud, misrepresentation or dishonesty;</li> <li>– In connection with the promotion, formation or management of a company, or in connection with any act contemplated in Section 69(2) or (5); or</li> <li>– Under the Act, the Insolvency Act, 1936, the Close Corporations Act, 1984, the Competition Act, 1998, the Securities Services Act, 2004, the Financial Intelligence Centre Act, 2001, or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004.</li> </ul> </li> </ul> <p>The Commission must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a director, or who are subject to an order of probation as a director, in terms of an order of a court pursuant to the Act or any other law.</p> <p>[Section 69(5) to (8) and (13)]</p>	
<b>Vacancies on the board</b>	Vacancies on the board and the process for filling thereof are discussed in Section 70.	Not addressed.
<b>Minimum number of meetings of the board</b>	Not addressed.	The board should meet as often as is required to fulfil its duties, preferably at least four times a year. [Chapter 2.1]
<b>Electronic conduct of board meetings</b>	Except to the extent that the Act or a company's MOI provides otherwise, a meeting of the board may be conducted by electronic communication or one or more directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.  [Section 73(3)]	Not addressed.

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Notice of board meetings</b>	<p>The board of a company may determine the form and time for giving notice of its meetings, but such a determination must comply with any requirements set out in the MOI or rules of the company, and no meeting of a board may be convened without notice to all of the directors.</p> <p>[Section 73(4)]</p>	Not addressed.
<b>Quorum at board meetings</b>	<p>Except to the extent that the company's MOI provides otherwise, a majority of the directors must be present at a meeting before a vote may be called at a meeting of the directors.</p> <p>[Section 73(5)(b)]</p>	Not addressed.
<b>Votes at board meetings</b>	<p>Except to the extent that the company's MOI provides otherwise:</p> <ul style="list-style-type: none"> <li>• Each director has one vote on a matter before the board;</li> <li>• A majority of the votes cast on a resolution is sufficient to approve that resolution; and</li> <li>• In the case of a tied vote, the chair may cast a deciding vote, if the chair did not initially have or cast a vote, or the matter being voted on fails in any other case.</li> </ul> <p>[Section 73(5)(c),(d) and (e)]</p>	Not addressed.
<b>Minutes of board meetings</b>	<p>A company must keep minutes of the meetings of the board, and any of its committees, and include in the minutes:</p> <ul style="list-style-type: none"> <li>• Any declaration given by notice or made by a director as required by Section 75; and</li> <li>• Every resolution adopted by the board.</li> </ul> <p>Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.</p> <p>The company secretary must ensure that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with the Act.</p> <p>[Section 73(6) and (8) and 88(2)(d)]</p>	<p>The company secretary should ensure that the proceeding of board and committee meetings are properly recorded and that minutes of meetings are circulated to the directors in a timely manner, after the approval by the chairman of the board or relevant board committee.</p> <p>[Chapter 2.107]</p>
<b>Resolutions adopted by the board</b>	<p>Resolutions adopted by the board must be dated and sequentially numbered and are effective as of the date of the resolution, unless the resolution states otherwise.</p> <p>[Section 73(7)]</p>	Not addressed.



Board of directors	Companies Act	King III
Reference	Sections 30 and 66 to 78	Chapter 2: Boards and directors
<b>Directors acting other than at the meeting</b>	<p>Except to the extent that the MOI of a company provides otherwise, a decision that could be voted on at a meeting of the board of that company may instead be adopted by written consent of a majority of the directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided.</p> <p>A decision made in the manner contemplated in Section 74 is of the same effect as if it had been approved by voting at a meeting.</p> <p>[Section 74]</p>	Not addressed.
<b>Directors' personal financial interests</b>	<p>If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued securities of the company, that person may not approve or enter into any agreement in which the person or a related person has a personal financial interest. That person may also not, as a director, determine any other matter in which the person or a related person has a personal financial interest. These restrictions do not apply if the agreement or determination is approved by an ordinary resolution of the shareholders after the director has disclosed the nature and extent of that interest to the shareholders.</p> <p>A director may at any time disclose any personal financial interest in advance by delivering to the board, or shareholders (in the case of a company contemplated in Section 75(3)) a notice in writing setting out the nature and extent of that interest.</p> <p>If a director of a company other than a company contemplated in Section 75(2)(b) or (3) has a personal financial interest in respect of a matter to be considered at a meeting of the board, or knows that a related person has a personal financial interest in the matter, the director:</p> <ul style="list-style-type: none"> <li>• Must disclose the interest and its general nature before the matter is considered at the meeting;</li> <li>• Must disclose to the meeting any material information relating to the matter and known to the director*;</li> <li>• May disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors**;</li> <li>• If present at the meeting, must leave the meeting immediately after making any disclosure contemplated in points marked* or ** above</li> <li>• Must not take part in the consideration of the matter, except in disclosing as in points marked * or ** above;</li> </ul>	<p>The personal interests of a director, or of people closely associated with that director, should not take precedence over the interests of the company.</p> <p>Any director who is appointed to the board as the representative of a party with substantial interest in the company, such as a major shareholder or a substantial creditor, should recognise the potential for conflict of interest. However, that director must understand that the duty to act in the best interests of the company remains paramount.</p> <p>Certain conflicts of interest are fundamental and should be avoided. Other conflicts (whether real or perceived) should be disclosed in good time and in full detail to the board and then appropriately managed.</p> <p>[Chapter 2.23 to 2.25]</p>

Board of directors	Companies Act	King III
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Directors' personal financial interests(cont.)</b>	<ul style="list-style-type: none"> <li>• While absent from the meeting: <ul style="list-style-type: none"> <li>– Is to be regarded as being present at the meeting for purposes of determining whether sufficient directors are present to constitute the meeting; and</li> <li>– Is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and</li> </ul> </li> <li>• Must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the board.</li> </ul> <p>If a director acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the company, the director must promptly disclose to the board, or to the shareholders in the case of a company contemplated in Section 75(3), the nature and extent of that interest, and the material circumstances relating to the director or related person's acquisition of that interest.</p> <p>A decision by the board, or a transaction or agreement approved by the board, or by a company as contemplated in Section 75(3) is valid despite any personal financial interest of a director or person related to the director, only if it was approved following disclosure of that interest in the manner contemplated in Section 75 or despite having been approved without disclosure of that interest, it has subsequently been ratified by an ordinary resolution of the shareholders following disclosure of that interest or has been declared to be valid by a court.</p> <p>A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the board, or shareholders, as the case may be, despite the failure of the director to satisfy the disclosure requirements of Section 75.</p> <p>[Section 75(3) to (8)]</p>	<p>The board should elect a chairman of the board who is an independent non-executive director.</p> <p>The CEO of the company should not also fulfil the role of chairman of the board.</p> <p>[Principle 2.16]</p>
<b>Election of a chairman</b>	<p>While the Act refers to a chairman of the board in certain sections (such as Section 73(5)(e), which deals with tied votes), it does not specifically address the election of a chairman of the board.</p>	<p>The board should elect a chairman of the board who is an independent non-executive director.</p> <p>The CEO of the company should not also fulfil the role of chairman of the board.</p> <p>[Principle 2.16]</p>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Retired CEO becoming chairman</b>	Not addressed.	<p>The retired CEO should not become chairman of the board until three complete years have passed since the end of the CEO's tenure as an executive director. After this period, the CEO may be considered for appointment as a non-executive chairman, after an assessment of his independence.</p> <p>[Chapter 2.42]</p>
<b>Lead independent non-executive director(LID)</b>	Not addressed.	<p>The chairman of the board should be independent and free of conflicts of interest at appointment, failing which the board should appoint a lead independent non-executive director (LID).</p> <p>Where the independence of the chairman is questionable or impaired, a LID should be appointed for as long as the situation exists.</p> <p>[Chapter 2.38]</p>
<b>Chairman's role and functions</b>	Not addressed.	<p>The chairman's role and functions should be formalised. These will be influenced by matters such as the lifecycle or circumstances of the company, the complexity of the company's operations, the qualities of the CEO and the management team, as well as the skills and experience of each board member.</p> <p>Core functions to be performed by the chairman are contained in Chapter 2 paragraph 40.1 to 40.17.</p> <p>[Chapter 2.40 and 2.40.1 to 2.40.17]</p>
<b>Evaluation of chairman's performance</b>	Not addressed.	<p>The chairman's ability to add value to the company and the chairman's actual performance against criteria developed from his formalised role and functions should form part of a yearly evaluation by the board.</p> <p>Director evaluation questions should include criteria to evaluate the performance of the chairman.</p> <p>The board should appoint an independent non-executive director from within its ranks, or the LID, to lead the process of the evaluation of the chairman's performance if an independent service provider is not used.</p> <p>The chairman should not be present when his performance is discussed by the board. This discussion and evaluation should be performed by the board as a whole under the guidance of the LID, deputy chairman, another independent non-executive director chosen by the board or an independent service provider.</p> <p>[Chapter 2.41, 2.120 to 2.122]</p>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Outside chairmanships held by the chairman</b>	Not addressed.	<p>The chairman, together with the board, should carefully consider the number of outside chairmanships that he holds. The relative size and complexity of the companies in question should be taken into account. In this regard, chairmen of boards and board committees should apply their minds in an intellectually honest manner, and be satisfied that they have the ability and capacity to discharge their duties.</p> <p>[Chapter 2.43]</p>
<b>Chairman's membership of other committees</b>	Not addressed.	<p>The chairman of the board should not be a member of the audit committee.</p> <p>The chairman of the board should not chair the remuneration committee, but may be a member of the committee.</p> <p>The chairman of the board should be a member of the nomination committee and may also be its chairman.</p> <p>The chairman of the board should not chair the risk committee but may be a member of the committee.</p> <p>[Chapter 2.45.1 to 2.45.4]</p>
<b>Succession plan for chairman</b>	Not addressed.	<p>There should be a succession plan for the position of the chairman.</p> <p>[Chapter 2.46]</p>
<b>CEO</b>	Not addressed.	<p>The board should appoint the chief executive officer and establish a framework for the delegation of authority. This appointment shall be separate from that of the chairman of the board.</p> <p>[Principle 2.17 and 2.59]</p>
<b>Evaluation of CEO's performance</b>	Not addressed.	<p>The CEO plays a critical role in the operations and success of the company's business. The role and functions of the CEO should be formalised and the board should evaluate the performance of the CEO against criteria developed from these.</p> <p>The chairman, or a committee appointed by the board, should evaluate the performance of the CEO and other executive directors at least once a year.</p> <p>The evaluation should assess the performance of the CEO and other executive directors, both as directors and as executives. The results of such an evaluation should also be considered by the remuneration committee to guide it in determining the remuneration of the CEO and other executive directors.</p> <p>[Chapter 2.51, 2.123 and 2.124]</p>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>CEO's membership of other committees</b>	Not addressed.	<p>The CEO should not be a member of the remuneration, audit or nomination committees, but should attend by invitation.</p> <p>CEOs should recuse themselves when conflicts of interest arise, particularly when their performance and remuneration are discussed.</p> <p>[Chapter 2.57]</p>
<b>Functions of the CEO</b>	Not addressed.	Discussed in Chapter 2.60.
<b>CEO's non-executive directorships outside of the company</b>	Not addressed.	<p>The CEO should carefully apply his mind, in consultation with the chairman of the board about the appropriateness of taking on non-executive directorships outside of the company or its group. Time constraints and potential conflicts of interest should be considered. The CEO should not become chairman of a company outside of the group.</p> <p>[Chapter 2.58]</p>
<b>Succession plan for CEO</b>	Not addressed.	<p>The board should also ensure that a succession plan is in place for the CEO, and other members of executive management and officers.</p> <p>[Chapter 2.61]</p>
<b>Other non-executive directorships taken on by executive directors</b>	Not addressed.	<p>An executive director may take on other non-executive directorships, provided these are not detrimental to the immediate responsibilities as an executive director of the company and are in accordance with a board-approved policy. An executive director should, therefore, apply his mind, in consultation with the chairman and CEO, as to whether such directorships would be appropriate.</p> <p>[Chapter 2.85]</p>
<b>Directorships held by non-executive directors</b>	Not addressed.	<p>Non-executive directors should ensure that they have (and take) the time required to attend properly to their duties. It is expected of them to:</p> <ul style="list-style-type: none"> <li>• Attend board and board committee meetings; and</li> <li>• Acquire and maintain a broad knowledge of the economic environment, industry and business of the company.</li> </ul>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Directorships held by non-executive directors (cont.)</b>		<p>In view of the time and dedication required to fulfil their duties properly, it is important that non-executive directors do not hold any more directorships than is reasonable for them to exercise due care, skill and diligence. They should, therefore, honestly apply their minds to their workloads and abilities to discharge their duties. The board should examine the number of significant directorships held by an individual as part of the due diligence process. This should be balanced against the advantages obtained from an individual serving on more than one board or on more than one committee of a board or both.</p> <p>[Chapter 2.83 and 2.84]</p>
<b>Tenure of board members</b>	Not addressed.	<p>A balance should be sought between continuity in board membership, subject to performance and eligibility for re-election, as well as considerations of independence and the sourcing of new ideas through the introduction of new board members.</p> <p>[Chapter 2.69]</p>
<b>Rotation of non-executive directors</b>	Not addressed.	<p>A programme ensuring a staggered rotation of non-executive directors should be put in place by the board to the extent that it is not already regulated by the company's MOI or relevant regulation. Rotation of board members should be structured so as to retain valuable skills, maintain continuity of knowledge and experience and introduce people with new ideas and expertise.</p> <p>At least one-third of non-executive directors should retire by rotation yearly, usually at the company's AGM or other general meetings, unless otherwise prescribed through any applicable legislation. These retiring board members may be re-elected, provided they are eligible. The board, through the nomination committee, should recommend eligibility, considering past performance, contribution and the objectivity of business judgement calls.</p> <p>[Chapter 2.74 and 2.75]</p>



Board of directors	Companies Act	King III
Reference	Sections 30 and 66 to 78	Chapter 2: Boards and directors
<b>Tenure of independent non-executive directors</b>	Not addressed.	<p>Every year, non-executive directors classified as ‘independent’ should undergo an evaluation of their independence by the chairman and the board. If the chairman is not independent, the process should be led by the LID. Independence should be assessed weighing all relevant factors that may impair independence. The classification of directors in the integrated report, as independent or otherwise, should be done on the basis of this assessment.</p> <p>Any term beyond nine years (e.g. three three-year terms) for an independent non-executive director should be subject to a particularly rigorous review by the board, of not only the performance of the director, but also the factors that may impair his independence at that time. The review should also take into account the need for refreshing the board.</p> <p>Independent non-executive directors may serve longer than nine years if, after an independence assessment by the board, there are no relationships or circumstances likely to affect, or appearing to affect, the director’s judgement. The assessment should show that the independent director’s independence of character and judgement is not in any way affected or impaired by the length of service. A statement to this effect should be included in the integrated report.</p> <p>[Chapter 2.76 to 2.78]</p>
<b>Approval of directors’ remuneration</b>	<p>Except to the extent that the MOI of a company provides otherwise, the company may pay remuneration to its directors for their services as directors.</p> <p>The company may pay remuneration to its directors for their services as directors only in accordance with a special resolution, which authorises the basis for compensation, approved by the shareholders within the previous two years.</p> <p>[Section 65(11)(h), 66(8) and (9)]</p>	<p>Shareholders should approve non-executive directors’ fees in advance. The Act requires a special resolution at intervals of not more than two years for this purpose.</p> <p>The company’s remuneration policy should be tabled to shareholders for a non-binding advisory vote at the annual general meeting, every year. This vote enables shareholders to express their views on the remuneration policies adopted and on their implementation.</p> <p>The board should be responsible for determining the remuneration of executive directors in accordance with the remuneration policy put to shareholders’ vote.</p> <p>[Chapter 2.155, 2.186 and 2.187]</p>
<b>Director development</b>	Not addressed.	<p>The induction of and ongoing training and development of directors should be conducted through formal processes.</p> <p>[Principle 2.20]</p>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Removal of directors</b>	<p>Despite anything to the contrary in a company's MOI or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director.</p> <p>Before the shareholders of a company may consider a resolution to remove a director, the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company. The director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.</p> <p>If a company has more than two directors and a shareholder or director has alleged that a director of the company:</p> <ul style="list-style-type: none"> <li>• has become: <ul style="list-style-type: none"> <li>– ineligible or disqualified in terms of Section 69 other than on the grounds contemplated in Section 69(8)(a) or</li> <li>– incapacitated to the extent that the director is unable to perform the functions of a director and is unlikely to regain that capacity within a reasonable time, or</li> </ul> </li> <li>• has neglected, or been derelict in the performance of, the functions of director,</li> </ul> <p>the board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated or negligent or derelict, as the case may be.</p> <p>[Section 71 (1) to (3)]</p>	<p>The MOI should allow the board to remove any director from the board, including executive directors. Shareholder approval is not necessary for these decisions, provided this is included in the MOI.</p> <p>Incompetent or unsuitable directors should be removed, taking relevant legal and other requirements into consideration. The chairman should lead the process.</p> <p>[Chapter 2.79 and 2.94]</p>
<b>Board evaluation</b>	Not addressed.	<p>The evaluation of the board, its committees and the individual directors should be performed every year.</p> <p>[Principle 2.22]</p>

Board of directors	Companies Act	King III
Reference	Sections 30 and 66 to 78	Chapter 2: Boards and directors
<p><b>Disclosure regarding directors (this does not include reporting by the board required by the Act or King III)</b></p>	<p>The annual financial statements of each company that is required in terms of the Act to have its annual financial statements audited, must include particulars showing:</p> <ul style="list-style-type: none"> <li>• The remuneration, as defined in the Act, and benefits received by each director, or individual holding any prescribed office in the company;</li> <li>• The amount of <ul style="list-style-type: none"> <li>– Any pensions paid by the company to or receivable by current or past directors or individuals who hold or have held any prescribed office in the company;</li> <li>– Any amount paid or payable by the company to a pension scheme with respect to current or past directors or individuals who hold or have held any prescribed office in the company;</li> </ul> </li> <li>• The amount of any compensation paid in respect of loss of office to current or past directors or individuals who hold or have held any prescribed office in the company;</li> <li>• The number and class of any securities issued to a director or person holding any prescribed office in the company, or to any person related to any of them, and the consideration received by the company for those securities; and</li> <li>• Details of service contracts of current directors and individuals who hold any prescribed office in the company.</li> </ul> <p>The information disclosed must satisfy the prescribed standards and must show the amount of any remuneration or benefits paid to or receivable by persons in respect of:</p> <ul style="list-style-type: none"> <li>• Services rendered as directors or prescribed officers of the company; or</li> <li>• Services rendered while being directors or prescribed officers of the company: <ul style="list-style-type: none"> <li>– As directors or prescribed officers of any other company within the same group of companies; or</li> <li>– Otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies.</li> </ul> </li> </ul>	<p>The following aspects regarding directors should be disclosed in the integrated report:</p> <ul style="list-style-type: none"> <li>• If relevant, the fact that a chairman of the board has been appointed who is a non-executive director but is not independent or is an executive director, together with the reasons and justifications for the appointment;</li> <li>• The classification of directors as independent or otherwise;</li> <li>• Independent non-executive directors may serve longer than nine years if, after an independence assessment by the board, there are no relationships or circumstances likely to affect, or appearing to affect, the director's judgement. The assessment should show that the independent director's independence of character and judgement is not in any way affected by the length of service. A statement to this effect should be included in the integrated report;</li> <li>• The reasons for the removal, resignation or retirement of directors;</li> <li>• The composition of the board and board committees, including any external advisors who regularly attend or are invited to attend committee meetings;</li> <li>• The number of meetings held, attendance at those meetings and the manner in which the board and its committees have discharged its duties;</li> <li>• The education, qualifications and experience of the directors;</li> <li>• The length of service and age of the directors;</li> <li>• Whether supervising of new management is required in which case retention of board experience would be called for;</li> <li>• Other significant directorships of each board member;</li> <li>• Actual or potential political connections or exposure;</li> <li>• Any other relevant information;</li> <li>• A statement should be included indicating whether appraisals of the board and its committees have been conducted. The report should provide an overview of the results of the performance assessment and the action plans to be implemented, if any; and</li> </ul>
	<p>[Section 30 (4) and (5)]</p>	

Board of directors	Companies Act	King III
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Disclosure regarding directors (this does not include reporting by the board required by the Act or King III) (cont.)</b>		<ul style="list-style-type: none"> <li>Companies should provide full disclosure of each individual executive and non-executive director's remuneration, giving details as required in the Act of base pay, bonuses, share-based payments, granting of options or rights, restraint payments and all other benefits (including present values of existing future awards). Similar information should be provided for the three most highly-paid employees who are not directors in the company.</li> </ul> <p>[Chapter 2.39, 2.76, 2.78, 2.88, 2.114 and 2.180]</p>
<b>Reporting by the directors</b>	<p>The annual financial statements of a company must include a report by the directors with respect to the state of affairs, the business and profit or loss of the company, or of the group of companies, if the company is part of a group, including any matter material for the shareholders to appreciate the company's state of affairs and any prescribed information.</p> <p>[Section 30(3)(b)]</p>	<p><b>Preparation of an integrated report</b></p> <p>The board should report to its shareholders and other stakeholders on the company's economic, social and environmental performance in a transparent manner.</p> <p>The integrated report should describe how the company has made its money; hence the need to contextualise financial results by reporting on the positive and negative impact the company's operations had on its stakeholders.</p> <p>The integrated report should be focused on substance over form and should disclose information that is complete, timely, relevant, accurate, honest, accessible and comparable with past performance of the company. It should also contain forward-looking information.</p> <p><b>Statement of application of King III</b></p> <p>Where entities have applied the Code and best practice recommendations in the Report, a positive statement to this effect should be made to stakeholders.</p> <p>In situations where the board or those charged with governance decide not to apply a specific principle and/or recommendation, this should be explained fully to the entity's stakeholders.</p> <p><b>Going concern</b></p> <p>The board must disclose whether the company is a going concern and whether it will continue to be a going concern in the financial year ahead. If there is concern about the company's going concern status, the board should give the reasons and the steps it is taking to remedy the situation.</p>

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>

**Reporting by the directors (cont.)**

**Statement by the board on internal controls**

The board should report on the effectiveness of the system of internal controls in the integrated report.

The board should disclose details in the integrated report on how it discharged its responsibility to ensure the establishment of an effective compliance framework and processes.

**Statement by the board on risk management**

In its statement in the integrated report, the board should disclose for the period under review any undue, unexpected or unusual risks it has taken in the pursuit of reward as well as any material losses and the causes of the losses. This disclosure should be made with due regard to the company's commercially privileged information. In disclosing the material losses, the board should endeavour to quantify and disclose the impact that these losses have on the company and the responses and interventions implemented by the board and management to prevent recurrence of the losses.

The board should disclose any current, imminent or envisaged risk that may threaten the long-term sustainability of the company.

The board should also disclose its views on the effectiveness of the company's risk management processes in the integrated report.

The board may set limits regarding the company's risk appetite. Where the risk appetite exceeds or deviates materially from the limits of the company's risk tolerance, this should be disclosed in the integrated report.

The company's integrated report should include key sustainability risks and responses to these risks and residual sustainability risks.

**Internal audit**

Where the board, in its discretion, decides not to establish an internal audit function, full reasons should be disclosed in the company's integrated report with an explanation as to how adequate assurance of an effective governance, risk management and internal control environment has been maintained.

Board of directors	Companies Act	King III
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Reporting by the directors (cont.)</b>		<p data-bbox="949 324 1380 358"><b>Assurance on sustainability reporting</b></p> <p data-bbox="949 369 1492 526">To the extent that sustainability reports are subject to assurance, the name of the assurer should be clearly disclosed, together with the period under review, the scope of the assurance exercise and the methodology adopted.</p> <p data-bbox="949 548 1364 582"><b>Managing stakeholder relationships</b></p> <p data-bbox="949 593 1460 784">Companies should consider disclosing in their integrated report the following additional information, subject to such disclosure not detrimentally affecting the company or resulting in breach of confidentiality or any agreement to which it is a party:</p> <ul data-bbox="949 795 1484 1108" style="list-style-type: none"> <li>• The number and reasons for refusals of requests for information that were lodged with the company in terms of the Promotion of Access to Information Act, 2000; or</li> <li>• Any material or immaterial but often repeated regulatory penalties, sanctions and fines for contraventions or non-compliance with statutory obligations that were imposed on the company or any of its directors or officers.</li> </ul> <p data-bbox="949 1120 1492 1220">The board should disclose in its integrated report the nature of its dealings with its stakeholders and the outcomes of these dealings.</p> <p data-bbox="949 1232 1468 1299"><b>Compliance with laws, regulations, rules and standards</b></p> <p data-bbox="949 1310 1484 1411">Companies should disclose the applicable non-binding rules, codes and standards to which they adhere on a voluntary basis.</p> <p data-bbox="949 1422 1181 1456"><b>Ethics performance</b></p> <p data-bbox="949 1467 1444 1534">The company's ethics performance should be disclosed.</p> <p data-bbox="949 1545 1093 1579"><b>IT Reporting</b></p> <p data-bbox="949 1590 1460 1691">IT reporting included in the integrated report by the board should be complete, timely, relevant, accurate and accessible.</p>



<b>Board of directors</b>  <b>Reference</b>	<b>Companies Act</b>  <b>Sections 30 and 66 to 78</b>	<b>King III</b>  <b>Chapter 2: Boards and directors</b>
<b>Reporting by the directors (cont.)</b>		<b>Commentary on financial results</b>  The board should include commentary on the company’s financial results that enables stakeholders to make informed assessments of the company’s economic value, by allowing stakeholders insight into the prospects for future value creation and the board’s assessment of the key risks which may limit those prospects.  [Chapter 1.16, 1.49, 3.24, 4.13, 4.39, 4.54, 4.55, 4.56, 5.9, 6.6, 6.10, 6.22, 7.1, 7.12, 8.22, 8.36, 9.7, 9.9, 9.10, 9.11, 9.13, 9.21, Code of governance principles]
<b>Role and function of the board</b>	The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that the Act or the company’s MOI provides otherwise.  [Section 66(1)]	Companies should be headed by a board that directs, governs and is in effective control of the company. Every board should have a charter setting out its responsibilities.  The King Report underscores the principles that the board should: <ul style="list-style-type: none"> <li>• Act as the focal point for and custodian of corporate governance;</li> <li>• Appreciate that strategy, risk, performance and sustainability are inseparable;</li> <li>• Provide effective leadership based on an ethical foundation;</li> <li>• Ensure that the company is and is seen to be a responsible corporate citizen;</li> <li>• Ensure that the company’s ethics are managed effectively;</li> <li>• Ensure that the company has an effective and independent audit committee;</li> <li>• Be responsible for the governance of risk;</li> <li>• Be responsible for information technology (IT) governance;</li> <li>• Ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards;</li> <li>• Ensure that there is an effective risk-based internal audit;</li> <li>• Appreciate that stakeholders’ perceptions affect the company’s reputation;</li> <li>• Ensure the integrity of the company’s integrated report;</li> <li>• Report on the effectiveness of the company’s system of internal controls;</li> </ul>

Board of directors	Companies Act	King III
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Role and function of the board (cont)</b>		<ul style="list-style-type: none"> <li>• Act in the best interests of the company; and</li> <li>• Consider business rescue proceedings or other turnaround mechanisms as soon as the company is financially distressed as defined in the Act.</li> </ul> <p>[Chapter 2.1, Principles 2.1 to 2.15]</p>
<b>Standards of directors conduct</b>	<p>A director must:</p> <ul style="list-style-type: none"> <li>• Not use the position of director or any information obtained while acting in the capacity of a director: <ul style="list-style-type: none"> <li>– To gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or</li> <li>– To knowingly cause harm to the company or a subsidiary of the company;</li> </ul> </li> <li>• Communicate to the board at the earliest practicable opportunity any information that comes to the director’s attention, unless the director: <ul style="list-style-type: none"> <li>– Reasonably believes that the information is immaterial to the company or generally available to the public, or known to the other directors; or</li> <li>– Is bound not to disclose that information by a legal or ethical obligation of confidentiality.</li> </ul> </li> </ul> <p>When acting in the capacity of director, a director must exercise the powers and perform the functions of director:</p> <ul style="list-style-type: none"> <li>• In good faith and for a proper purpose;</li> <li>• In the best interests of the company; and</li> <li>• With the degree of care, skill and diligence that may reasonably be expected of a person <ul style="list-style-type: none"> <li>– Carrying out the same functions in relation to the company as those carried out by the director; and</li> <li>– Having the general knowledge, skill and experience of that director.</li> </ul> </li> </ul> <p>[Section 76(2) and (3)]</p>	<p>The board must always act in the best interests of the company. In terms of our common law, as developed through jurisprudence, the best interests of the company has been interpreted to equate to the best interests of the body of shareholders. The Act states that its purpose is to promote compliance with the Bill of Rights as provided for in the Constitution. This purpose, as stated, constitutes a departure from the traditional narrow interpretation of the best interests of the company.</p> <p>Directors of a company are appointed in terms of the constitution of the company and in terms of the Act. Each director of a company has:</p> <ul style="list-style-type: none"> <li>• A duty to exercise the degree of care, skill and diligence that would be exercised by a reasonably diligent individual who has <ul style="list-style-type: none"> <li>– The general knowledge, skill and experience that may reasonably be expected of an individual carrying out the same functions as are carried out by a director in relation to the company; and</li> <li>– The general knowledge, skill and experience of that director; and</li> </ul> </li> <li>• A fiduciary duty to act in good faith and in a manner that the director reasonably believes to be in the best interests of the company.</li> </ul> <p>[Chapter 2.14 and 2.17]</p>

Board of directors	Companies Act	King III
Reference	Sections 30 and 66 to 78	Chapter 2: Boards and directors
<p><b>Steps to be taken to satisfy obligations of performing directors' functions</b></p>	<p>Directors will have satisfied the obligations of performing their functions in the best interests of the company and with the required care, skill and diligence if:</p> <ul style="list-style-type: none"> <li>• The director has taken reasonably diligent steps to become informed about the matter;</li> <li>• Either: <ul style="list-style-type: none"> <li>– The director had no material personal financial interest in the subject matter of the decision, and had no reasonable basis to know that any related person had a personal financial interest in the matter; or</li> <li>– The director complied with the requirements of Section 75 with respect to any interest contemplated in the paragraph above; and</li> </ul> </li> <li>• The director made a decision, or supported the decision of a committee or the board, with regard to that matter, and the director had a rational basis for believing, and did believe, that the decision was in the best interests of the company.</li> </ul>	<p>The foundation of each decision should be intellectual honesty, based on all the relevant facts. Objectively speaking, the decision should be a rational one considering all relevant facts at the time.</p> <p>Directors should exercise objective judgement on the affairs of the company independently from management, but with sufficient management information to enable a proper and objective assessment to be made.</p> <p>To be able to fulfil their legal duties, directors should have unrestricted access to all the company's information, records, documents, property, management and staff subject to a process established by the board.</p> <p>Individual directors or the board as a whole should be entitled, at the expense of the company, to take independent professional advice in connection with their duties, if they consider it necessary, but only after following a process agreed by the board.</p> <p>[Chapter 2.15, 2.18, 2.19 and 2.22]</p>
	<p>A director is entitled to rely on:</p> <ul style="list-style-type: none"> <li>• One or more employees of the company whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinion, reports or statements provided;</li> <li>• Legal counsel, accountants or other professional persons retained by the company, the board or a committee as to matters involving skills or expertise that the director reasonably believes are matters: <ul style="list-style-type: none"> <li>– Within the particular person's professional or expert competence; or</li> <li>– As to which the particular person merits confidence; or</li> </ul> </li> <li>• A committee of the board of which the director is not a member, unless the director has reason to believe that the actions of the committee do not merit confidence;</li> <li>• Any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified above; and</li> <li>• Any persons to whom the board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.</li> </ul>	
	<p>[Section 76 (4) and (5)]</p>	

<b>Board of directors</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Sections 30 and 66 to 78</b>	<b>Chapter 2: Boards and directors</b>
<b>Directors' liability</b>	Discussed in detail in Section 77. Director's liability is discussed in another edition of PwC's Companies Act Series.	Failure to perform the duties of a director properly may render a director personally liable. [Chapter 2.21]
<b>Indemnification and directors' insurance</b>	Discussed in detail in Section 78. Indemnification and director's insurance is discussed in another edition of PwC's Companies Act Series.	Not addressed.
<b>Remuneration of directors and senior executives</b>	The Act does not address how directors should be remunerated. The approval and disclosure of directors' remuneration in terms of the Act is dealt with earlier in this publication.	Companies should remunerate directors and executives fairly and responsibly. Paragraphs 2.147 to 2.187 discuss considerations regarding directors and senior executives' remuneration in detail. [Principle 2.25, Chapter 2.147 to 2.187]
<b>Share options for non-executive directors</b>	Section 42 deals with share options. Companies are permitted to issue share options provided that the requirements of Section 42 are complied with.	Although permitted by the Act, the chairman and other non-executive directors should not receive share options or other incentive awards geared to share price or corporate performance, as such incentives align their interests too closely with executives and may be seen to impair their objectivity. [Chapter 2.154]



## Comparison of provisions

Board committees (in general)	Companies Act	King III
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 2: Boards and directors</b>
<b>Authority to appoint board committees</b>	<p>Except to the extent that the MOI provides otherwise, the board may appoint any number of committees of directors.</p> <p>[Section 72(1)(a)]</p>	<p>The board should delegate certain functions to well-structured committees but without abdicating its own responsibilities.</p> <p>[Principle 2.23]</p>
<b>Delegation of authority to board committees</b>	<p>Except to the extent that the MOI provides otherwise, the board may delegate to any committee any of the authority of the board.</p> <p>Except to the extent that the MOI or a resolution establishing a committee provides otherwise, a committee has the full authority of the board in respect of a matter referred to it.</p> <p>[Section 72(1)(b) and (2)(c)]</p>	<p>Board committees constitute an important element in the governance process and should be established with clearly agreed reporting procedures and a written scope of authority.</p> <p>[Chapter 2.125]</p>
<b>Terms of reference of committees</b>	Not addressed.	<p>The terms of reference of committees should be reviewed every year and any changes should be approved by the board.</p> <p>The terms of reference for each committee should, as a minimum, cover:</p> <ul style="list-style-type: none"> <li>• Composition;</li> <li>• Objectives, purpose and functions;</li> <li>• Delegated authorities, including the extent of power to make decisions or recommendations or both;</li> <li>• Tenure; and</li> <li>• Reporting mechanism to the board.</li> </ul> <p>Where subsidiary companies within a group establish their own board committees, the relevant board committees of the holding company should review the terms of reference and the activities of such subsidiary's committees to assess the degree to which the holding company board committees can rely on their work.</p> <p>[Chapter 2.126, 2.134 and 2.135]</p>

<b>Board committees (in general)</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 2: Boards and directors</b>
<b>Membership of committees</b>	<p>Except to the extent that the MOI or a resolution establishing a committee provides otherwise, the committee may include persons who are not directors of the company. However:</p> <ul style="list-style-type: none"> <li>• Any such person must not be ineligible or disqualified to be a director in terms of Section 69; and</li> <li>• No such person has a vote on a matter to be decided by the committee.</li> </ul> <p>[Section 72(2)(a)]</p>	<p>Committees should be appropriately constituted, considering any relevant legislation and the objectives of the company.</p> <p>Board committees, other than the risk committee, should only comprise members of the board and should have a majority of non-executive directors. The majority of the non-executive directors serving on these committees should be independent.</p> <p>External parties, such as paid advisors, may be present at committee meetings by invitation, but will have no vote on the committee. Non-directors serving as members on committees of the board should be aware of Section 76 of the Act, which places the same standards of conduct and liability on such individuals as if they were directors. Experts should attend as independent contractors and not as members of the committee.</p> <p>Executive directors and senior management may be invited to attend committee meetings if the chairman of the committee considers their input and contribution to be of value to the decision-making process.</p> <p>Every director will normally be entitled to attend committee meetings for the purpose of gaining information relating to the company and its business. However, unless the director is a member of the committee, the director will not be entitled to participate in the proceedings without the consent of the chairman and will not have a vote. Directors who wish to attend the meetings in these circumstances should follow the process established by the board.</p> <p>[Chapter 2.127, 2.131, 2.132, 2.133, 2.139]</p>
<b>Committee chairman</b>	Not addressed.	<p>Committees should be chaired by independent non-executive directors, other than the executive committee, which is ordinarily chaired by the CEO.</p> <p>[Chapter 2.131]</p>
<b>Consultation by the committee</b>	<p>Except to the extent that the MOI or a resolution establishing a committee provides otherwise, the committee may consult with or receive advice from any person.</p> <p>[Section 72(2)(b)]</p>	<p>Board committees should be free to take independent, outside professional advice within the scope of their terms of reference, at the cost of the company, subject to a proper process being followed.</p> <p>[Chapter 2.138]</p>
<b>Effect of the establishment of a committee on the duties of directors</b>	<p>The creation of a committee, delegation of any power of a committee or action taken by a committee does not alone satisfy or constitute compliance by a director with the required duty of a director to the company as set out in Section 76.</p> <p>[Section 72(3)]</p>	<p>The Act recognises the right of a board to establish board committees, but by so doing, the board is not exonerated of complying with its legal responsibilities.</p> <p>[Chapter 2.125]</p>



<b>Board committees (in general)</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 2: Boards and directors</b>
<b>Committees for smaller companies</b>	Section 72 applies to all companies, irrespective of the size of the company.	Smaller companies need not establish formal committees to perform these functions, but should ensure that these functions are appropriately addressed by the board.  [Chapter 2.130]
<b>Reporting of committees at board meetings</b>	Audit committees and social and ethics committees are required to make submissions to the board as prescribed.  [Section 94(7)(h) and Regulation 43(5)(b)]	The respective committees' chairmen should give at least an oral summary of their committees' deliberations at the board meeting following the committee meeting. The minutes of committee meeting proceedings should be included in the board pack for the board's information as soon as they have been approved.  The board should critically apply its collective mind to recommendations and reports of all its committees before approving such recommendations.  [Chapter 2.136 and 2.137]
<b>Disclosure regarding committees</b>	Not addressed.	The composition of board committees should be disclosed in the integrated report, including any external advisors who regularly attend or are invited to attend committee meetings.  The integrated report should disclose the terms of the terms of reference of the committee, as approved by the board.  [Chapter 2.127]

## Comparison of provisions

Group boards	Companies Act, 2008	King III
Reference	Not addressed	<b>Chapter 2: Boards and directors</b>
Relationship between subsidiary and holding company boards	Not addressed.	A governance framework should be agreed between the group and its subsidiary boards. [Principle 2.24]



## Comparison of provisions

Audit committees	Companies Act	King III
<b>Reference</b>	<b>Section 94 and Regulation 42</b>	<b>Chapter 3: Audit committees</b>
<b>Election of an audit committee</b>	<p>A public company, state-owned company or other company that is required only by its MOI to have an audit committee must elect an audit committee at each annual general meeting.</p> <p>Section 94 applies concurrently with Section 64 of the Banks Act, 1990, but Section 94(2), (3) and (4) of the Act do not apply to the appointment of an audit committee by a company that is subject to Section 64 of the Banks Act, 1990.</p> <p>[Section 94(1) and (2)]</p>	<p>The shareholders of a public company and a state-owned company must elect the members of an audit committee at each annual general meeting.</p> <p>Private companies, non-profit companies and personal liability companies should voluntarily appoint an audit committee.</p> <p>The MOI of these companies should be carefully considered and drafted, setting out the composition and duties of the audit committee.</p> <p>[Chapter 3.3 and 3.4]</p>
<b>Exemption from election of an audit committee</b>	<p>A company is exempted from electing an audit committee if it is a subsidiary of another company that has an audit committee and the audit committee of that other company will perform the functions required under Section 94 on behalf of the subsidiary company.</p> <p>Section 94 does not apply to a company that has been granted an exemption in terms of Section 64(4) of the Banks Act, 1990.</p> <p>[Section 94(1) and (2)]</p>	<p>The requirement to elect an audit committee does not apply where a company is a subsidiary company of another company that has an audit committee and the audit committee of the holding or parent company will perform the functions required by Section 94 of the Act on behalf of the subsidiary.</p> <p>[Chapter 3.3]</p>
<b>Number of members</b>	<p>At least three members.</p> <p>[Section 94(2)]</p>	<p>At least three members.</p> <p>[Chapter 3.10]</p>
<b>Membership</b>	<p>Each member of an audit committee must be a director of the company and must satisfy any applicable requirements prescribed by the Minister. These requirements are contained in Regulation 42.</p> <p>Each member of an audit committee must not be, and must not be related to any person who meets the following criteria:</p> <ul style="list-style-type: none"> <li>Involved in the day-to-day management of the company's business or have been so involved at any time during the previous financial year;</li> <li>A prescribed officer or full-time employee of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or</li> </ul>	<p>All members of the audit committee of a public company and state-owned company must be independent non-executive directors.</p> <p>An audit committee member must not:</p> <ul style="list-style-type: none"> <li>Be involved in the management of the company;</li> <li>Be a representative of a shareholder who has the ability to control or significantly influence management or the board;</li> <li>Have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) that exceeds 5% of the group's total number of shares in issue;</li> <li>Have a direct or indirect interest in the company which is less than 5% of the group's total number of shares in issue, but is material to his personal wealth;</li> </ul>

Audit committees	Companies Act	King III
Reference	Section 94 and Regulation 42	Chapter 3: Audit committees
<b>Membership (cont.)</b>	<ul style="list-style-type: none"> <li>A material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship.</li> </ul> <p>[Section 94(4)]</p>	<ul style="list-style-type: none"> <li>Have been employed by the company or the group of which it currently forms part in any executive capacity, or have been appointed as the designated auditor or partner in the group's external audit firm, or senior legal advisor for the preceding three financial years;</li> <li>Be a member of the immediate family of an individual who is, or has during the preceding three financial years, been employed by the company or the group in an executive capacity;</li> <li>Be a professional advisor to the company or the group, other than as a director;</li> <li>Have any business or other relationships (contractual or statutory) that could be seen by an objective outsider to interfere materially with the individual's capacity to act in an independent manner, such as being a director of a material customer of or supplier to the company; or</li> <li>Receive remuneration contingent upon the performance of the company.</li> </ul> <p>Where an audit committee is appointed at subsidiary level and the holding company has an audit committee that will perform the functions required in terms of Section 94 of the Act on behalf of that subsidiary, executive directors within the group may be appointed as audit committee members of the subsidiary. However, the directors must be non-executive in relation to the specific subsidiary.</p> <p>The chairman of the board should not be a member of the audit committee.</p> <p>The CEO should not be a member of the audit committee, but should attend meetings by invitation.</p> <p>The nomination committee (or other board committee tasked with this) should present shareholders with suitable candidates for election or re-election as audit committee members.</p> <p>[Chapter 2.45.1, 2.57, 2.67, 3.3, 3.9 and Annex 2.3]</p>
<b>Chairman</b>	Not addressed.	<p>The audit committee should be chaired by an independent non-executive director.</p> <p>[Principle 3.3]</p>

Audit committees	Companies Act	King III
Reference	Section 94 and Regulation 42	Chapter 3: Audit committees
<b>Minimum qualifications</b>	<p>Regulation 42 requires that at least one third of the members of a company’s audit committee at any particular time have academic qualifications or experience in either:</p> <ul style="list-style-type: none"> <li>• Economics;</li> <li>• Law;</li> <li>• Corporate governance;</li> <li>• Finance;</li> <li>• Accounting;</li> <li>• Commerce;</li> <li>• Industry;</li> <li>• Public affairs; or</li> <li>• Human resource management.</li> </ul> <p>[Section 94(5) read with Regulation 42]</p>	<p>There should be a basic level of qualification and experience for audit committee membership, even though the members may have been appointed by the shareholders.</p> <p>The nomination committee (or other board committee tasked with this) and the board should evaluate whether collectively (but not necessarily individually) the audit committee has an understanding of:</p> <ul style="list-style-type: none"> <li>• Integrated reporting, which includes financial reporting;</li> <li>• Internal financial controls;</li> <li>• External audit process;</li> <li>• Internal audit process;</li> <li>• Corporate law;</li> <li>• Risk management;</li> <li>• Sustainability issues;</li> <li>• Information technology governance as it relates to integrated reporting; and</li> <li>• The governance processes within the company.</li> </ul> <p>The collective skills of the members of the audit committee should be appropriate to the company’s size and circumstances, as well as its industry.</p> <p>Because of the audit committee’s responsibility to oversee integrated reporting, there is a clear need for this committee, collectively, to have an understanding of International Financial Reporting Standards, South African Statements of Generally Accepted Accounting Practice, the guidelines of the Global Reporting Initiative and any other financial or sustainability reporting standards, regulations or guidelines applicable to the company.</p> <p>Audit committee members collectively should keep up to date with key developments affecting their required skills set.</p> <p>[Chapter 3.12 to 3.14 and 3.16]</p>

<b>Audit committees</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Section 94 and Regulation 42</b>	<b>Chapter 3: Audit committees</b>
<b>Number of meetings</b>	Not addressed.	<p>The audit committee chairman should, in consultation with the company secretary, decide the frequency and timing of its meetings. The audit committee should meet as frequently as is necessary to perform its functions, but should meet at least twice a year.</p> <p>Reasonable time should be allocated for all audit committee meetings.</p> <p>The audit committee should meet at least once a year with the external and internal auditors without management being present. These may be separate meetings or meetings held before or after a scheduled audit committee meeting.</p> <p>[Chapter 3.7 and 3.8]</p>
<b>Filling of vacancies</b>	<p>The board of a company contemplated in Section 84(1) must appoint a person to fill any vacancy on the audit committee within 40 business days after the vacancy arises.</p> <p>[Section 94(6)]</p>	<p>The board must appoint a person to fill a vacancy on the audit committee should such vacancy arise. Such an appointment must be ratified by the shareholders at the subsequent annual general meeting.</p> <p>[Chapter 3.17]</p>
<b>Duties</b>	<p>The duties are:</p> <ul style="list-style-type: none"> <li>• To nominate, for appointment as auditor of the company under Section 90, a registered auditor who, in the opinion of the audit committee, is independent of the company;</li> <li>• To determine the fees to be paid to the auditor and the auditor's terms of engagement;</li> <li>• To ensure that the appointment of the auditor complies with the provisions of the Act and any other legislation relating to the appointment of auditors;</li> <li>• To determine, subject to the provisions of Chapter 3 of the Act, the nature and extent of any non-audit services that the auditor may provide to the company, or that the auditor must not provide to the company, or a related company;</li> <li>• To pre-approve any proposed agreement with the auditor for the provision of non-audit services to the company;</li> <li>• To prepare a report, to be included in the annual financial statements for that financial year, inter alia, describing how the audit committee carried out its functions (more fully discussed later on);</li> </ul>	<p>In addition to the statutory responsibilities of audit committees laid down by the Act, the audit committee has the following responsibilities:</p> <ul style="list-style-type: none"> <li>• To oversee integrated reporting;</li> <li>• To ensure that a combined assurance model is applied to provide a coordinated approach to all assurance activities;</li> <li>• To satisfy itself of the expertise, resources and experience of the company's finance function;</li> <li>• To oversee internal audit;</li> <li>• The audit committee should be an integral component of the risk management process;</li> <li>• To oversee the external audit process; and</li> <li>• To report to the board and shareholders on how it has discharged its duties.</li> </ul> <p>Legal opinion indicates that the audit committee takes primary responsibility for and has the ultimate decision-making ability regarding its statutory duties. If differences of opinion should arise between the board and the audit committee where the audit committee's statutory functions are concerned, the audit committee's decision will prevail.</p>

Audit committees	Companies Act	King III
Reference	Section 94 and Regulation 42	Chapter 3: Audit committees
<p><b>Duties (cont.)</b></p>	<ul style="list-style-type: none"> <li>• To receive and deal appropriately with any concerns or complaints, whether from within or outside the company, or on its own initiative, relating to:               <ul style="list-style-type: none"> <li>– The accounting practices and internal audit of the company;</li> <li>– The content or auditing of the company’s financial statements;</li> <li>– The internal financial controls of the company; or</li> <li>– Any related matter;</li> </ul> </li> <li>• To make submissions to the board on any matter concerning the company’s accounting policies, financial control, records and reporting; and</li> <li>• To perform such other oversight functions as may be determined by the board.</li> </ul> <p>The appointment of an auditor at its annual general meeting, other than the auditor nominated by the audit committee, is not precluded, but if such an auditor is appointed, the appointment is valid only if the audit committee is satisfied that the proposed auditor is independent of the company.</p> <p>Neither the appointment nor the duties of an audit committee reduce the functions and duties of the board or the directors of the company, except with respect to the appointment, fees and terms of engagement of the auditor.</p> <p>[Section 94(7), (9) and (10)]</p>	<p>The audit committee serves as a committee of the board for duties assigned to it by the board over and above its statutory duties. The board retains the ultimate decision-making authority on such matters.</p> <p>[Principle 3.4 to 3.10, Chapter 3.22 and 3.23]</p>



<b>Audit committees</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Section 94 and Regulation 42</b>	<b>Chapter 3: Audit committees</b>
<b>Responsibility regarding sustainability reporting</b>	Not addressed.	<p>The board is responsible for the integrity of integrated reporting. The audit committee should be tasked by the board to assist by overseeing the integrity of the integrated report.</p> <p>The overseeing of sustainability issues in the integrated report should be delegated to the audit committee by the board.</p> <p>The audit committee should assist the board in approving the disclosure of sustainability issues in the integrated report by ensuring that the information is reliable and that no conflicts or differences arise when compared with the financial results.</p> <p>The audit committee should recommend to the board to engage an external assurance provider to provide assurance over material elements (such elements should be determined by the relevant committee responsible for overseeing the sustainability reporting) of the sustainability part of the integrated report. The audit committee should evaluate the independence and credentials of the external assurance provider.</p> <p>[Chapter 3.34 to 3.36]</p>
<b>Consulting specialists</b>	<p>A company must pay all expenses reasonably incurred by its audit committee, including if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.</p> <p>[Section 94(11)]</p>	<p>All audit committee members should meet predetermined skills, competency and experience requirements to collectively be proficient in asking probing questions on:</p> <ul style="list-style-type: none"> <li>• Integrated reporting, which includes financial reporting;</li> <li>• Internal financial controls;</li> <li>• External audit process;</li> <li>• Internal audit process;</li> <li>• Corporate law;</li> <li>• Risk management;</li> <li>• Sustainability issues;</li> <li>• Information technology governance as it relates to integrated reporting; and</li> <li>• The governance processes within the company.</li> </ul> <p>The audit committee is, however, allowed to consult with specialists or consultants engaged by the audit committee to assist it with the performance of its functions, subject to a board-approved process. Such specialists or consultants should not be considered to be members of the committee and should not be entitled to vote on any matters.</p> <p>[Chapter 3.15]</p>

Audit committees	Companies Act	King III
Reference	Section 94 and Regulation 42	Chapter 3: Audit committees
<b>Report of the audit committee</b>	<p>The audit committee is required to prepare a report, which is to be included in the annual financial statements for that financial year:</p> <ul style="list-style-type: none"> <li>• Describing how the audit committee carried out its functions;</li> <li>• Stating whether the audit committee is satisfied that the auditor was independent of the company; and</li> <li>• Commenting in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company.</li> </ul> <p>[Section 94(7)(f)]</p>	<p>The audit committee should report internally to the board on how it has discharged its statutory duties, as well as those assigned to it by the board, during the financial year.</p> <p>In addition to its statutory reporting responsibilities, the audit committee should provide the following information in the integrated report*, as a minimum:</p> <ul style="list-style-type: none"> <li>• A summary of the role of the audit committee;</li> <li>• A statement on whether or not the audit committee has adopted a formal terms of reference that has been approved by the board and, if so, whether the committee satisfied its responsibilities for the year in compliance with its terms of reference;</li> <li>• The names and qualifications of all members of the audit committee during the period under review, and the period for which they served on the committee;</li> <li>• The number of audit committee meetings held during the period under review and members' attendance at those meetings;</li> <li>• A statement on whether or not the audit committee considered and recommended the internal audit charter for approval by the board;</li> <li>• A description of the working relationship with the chief audit executive;</li> <li>• Information about any other responsibilities assigned to the audit committee by the board;</li> <li>• A statement on whether the audit committee complied with its legal, regulatory or other responsibilities;</li> <li>• A statement on whether or not the audit committee recommended the integrated report to the board for approval;</li> <li>• Comment on the state of the internal financial control environment;</li> <li>• The results of the review by the audit committee of the appropriateness of the expertise and adequacy of resources of the finance function and experience of the senior members of management responsible for the financial function;</li> <li>• Conclude and report yearly to the stakeholders and the board on the effectiveness of the company's internal financial controls; and</li> </ul>

\*This recommendation is currently being debated by the King Committee.

Audit committees	Companies Act	King III
<b>Reference</b>	<b>Section 94 and Regulation 42</b>	<b>Chapter 3: Audit committees</b>
<b>Report of the audit committee (cont.)</b>		<ul style="list-style-type: none"> <li>• Weaknesses in financial control, whether from design, implementation or execution, that are considered material and that resulted in actual material financial loss, fraud or material errors, should be reported to the board and stakeholders, in the form of an acknowledgement of the nature and extent of material weaknesses and the corrective action, if any, taken to date of the report.</li> </ul> <p>For government institutions, including departments, public entities, municipalities, municipal entities and constitutional institutions in the public sector, the report of the audit committee must also include comments on the quality of the management and monthly or quarterly reports submitted under the Public Finance Management Act, 1999, the Municipal Finance Management Act, 2003, and the annual Division of Revenue Act.</p> <p>[Chapter 3.51, 3.69, 3.70, 3.83, 3.85, 3.88 and 7.30]</p>
<b>Reporting to shareholders at the annual general meeting</b>	Not addressed.	<p>The chairman of the audit committee should be present at the annual general meeting to answer questions, through the chairman of the board, on the report on the audit committee's activities and matters within the scope of the audit committee's responsibilities.</p> <p>[Chapter 3.20]</p>

## Comparison of provisions

Social and ethics committees	Companies Act	King III
<b>Reference</b>	<b>Section 72, 84 and Regulation 43</b>	<b>Chapter 2: Boards and directors</b>
<b>Requirement to appoint a social and ethics committee</b>	<p>The Act requires that social and ethics committees be appointed by:</p> <ul style="list-style-type: none"> <li>• Every state-owned company;</li> <li>• Every listed public company; and</li> <li>• Any other company with a public-interest score above 500 points in any two of the previous five years.</li> </ul> <p>[Section 72(4) and Regulation 43(1)]</p>	<p>Establishing a social and ethics committee may be required for certain categories of companies.</p> <p>[Chapter 2.130]</p>
<b>Exemption from appointment (where a company is required to appoint a social and ethics committee)</b>	<p>The following exemptions apply to the requirement to appointment a social and ethics committee:</p> <ul style="list-style-type: none"> <li>• A subsidiary of another company that has a social and ethics committee, and whose social and ethics committee will perform the functions required by Regulation 43 on behalf of the subsidiary company; or</li> <li>• Where a company has been exempted by the Tribunal (see below).</li> </ul> <p>[Section 72(5) and Regulation 43(2)]</p>	Not addressed.
<b>Exemption from appointment by the Tribunal</b>	<p>A company that is required to appoint a social and ethics committee may apply to the Tribunal for an exemption from this requirement.</p> <p>The Tribunal may grant exemption if it is satisfied that:</p> <ul style="list-style-type: none"> <li>• The company is required in terms of other legislation to have, and does have, some form of formal mechanism within its structures that substantially performs the functions that would otherwise be performed by the social and ethics committee in terms of the Act; or</li> <li>• It is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company.</li> </ul> <p>[Section 72(5)]</p>	Not addressed.
<b>Number of members</b>	<p>A minimum of three members is required.</p> <p>[Regulation 43(4)]</p>	Not addressed.

<b>Social and ethics committees</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Section 72, 84 and Regulation 43</b>	<b>Chapter 2: Boards and directors</b>
<b>Composition</b>	<p>Directors or prescribed officers of the company.</p> <p>At least one of the members must be a director who is not involved in the day-to-day management of the company's business and must not have been so involved within the previous three financial years.</p> <p>[Regulation 43(4)]</p>	<p>The committee should be made up only of board members.</p> <p>The majority of members should be non-executive directors.</p> <p>The majority of non-executive directors should be independent.</p> <p>[Chapter 2.131]</p>
<b>Chairman</b>	Not addressed.	<p>The chairman should be an independent non-executive director.</p> <p>[ Chapter 2.131]</p>
<b>Entitlement of the committee</b>	<p>A social and ethics committee is entitled to:</p> <ul style="list-style-type: none"> <li>• Require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee's functions;</li> <li>• Request from any employee of the company any information or explanation necessary for the performance of the committee's functions;</li> <li>• Attend any general shareholders meeting;</li> <li>• Receive all notices of and other communications relating to any general shareholders meeting; and</li> <li>• Be heard at any general shareholders meeting on any part of the business of the meeting that concerns the committee's functions.</li> </ul> <p>[Section 72(8)]</p>	Not addressed.

Social and ethics committees	Companies Act	King III
Reference	Section 72, 84 and Regulation 43	Chapter 2: Boards and directors
<b>Functions</b>	<p>The committee is required to monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to:</p> <ul style="list-style-type: none"> <li>• Social and economic development, including the company's standing in terms of the goals and purposes of: <ul style="list-style-type: none"> <li>– The ten principles set out in the United Nations Global Compact Principles;</li> <li>– The Organization for Economic Cooperation and Development (OECD) recommendations regarding corruption;</li> <li>– The Employment Equity Act, 1998; and</li> <li>– The Broad-Based Black Economic Empowerment Act, 2003;</li> </ul> </li> <li>• Good corporate citizenship, including the company's: <ul style="list-style-type: none"> <li>– Promotion of equality, prevention of unfair discrimination and reduction of corruption;</li> <li>– Contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and</li> <li>– Record of sponsorship, donations and charitable giving;</li> </ul> </li> <li>• The environment, health and public safety, including the impact of the company's activities and of its products and services;</li> <li>• Consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and</li> <li>• Labour and employment, including: <ul style="list-style-type: none"> <li>– The company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and</li> <li>– The company's employment relationships and its contribution toward the educational development of its employees.</li> </ul> </li> </ul> <p>Also refer to the committee's reporting obligations later in this section.</p> <p>[Regulation 43(5)]</p>	Not addressed.

Social and ethics committees	Companies Act	King III
<b>Reference</b>	<b>Section 72, 84 and Regulation 43</b>	<b>Chapter 2: Boards and directors</b>
<b>Reporting to the board</b>	<p>The committee is required to draw matters within its mandate to the attention of the board as occasion requires.</p> <p>[Regulation 43(5)(b)]</p>	<p>The chairman of each committee should give at least an oral summary of his or her committee's deliberations at the board meeting following the committee meeting.</p> <p>The minutes of committee meeting proceedings should be included in the board pack for the board's information as soon as they have been approved.</p> <p>[Chapter 2.136]</p>
<b>Reporting to the shareholders at the annual general meeting</b>	<p>The committee is required to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.</p> <p>[Regulation 43(5)(c)]</p>	Not addressed.
<b>Effect on a company that fails to appoint a social and ethics committee</b>	<p>If the board of a company fails to appoint a social and ethics committee, the Commission may issue a notice to that company to show cause as to why the Commission should not proceed to convene a shareholders meeting for the purpose of making that appointment.</p> <p>If the company fails to respond to a notice contemplated above or, in responding, fails to satisfy the Commission that the board will make the appointment, or convene a shareholders meeting to make the appointment within an acceptable period, the Commission may:</p> <ul style="list-style-type: none"> <li>• Give notice to the holders of the company's securities of a general meeting and convene such a meeting to make that appointment; and</li> <li>• Assess a pro-rata share of the cost of convening the general meeting to each director of the company who knowingly permitted the company to fail to make the appointment in accordance with Section 72.</li> </ul> <p>A company that has been given notice contemplated above, or a director who has been assessed any portion of the costs of a meeting, as contemplated above, may apply to the Tribunal to set aside the notice, or the assessment, in whole or in part.</p> <p>[Section 72(10), 84(6) and 84(7)]</p>	Not addressed.



## Comparison of provisions

Risk committees	Companies Act	King III
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 4: The governance of risk</b>  <b>Chapter 5: The governance of information technology</b>
<b>Requirement to appoint a risk committee</b>	The Act does not address the appointment of a risk committee, but it is permitted in terms of Section 72.	Unless legislated otherwise, the board should appoint risk, remuneration and nomination committees as standing committees.  The function of a risk committee may also be assigned to another committee, such as the audit committee.  Where the board assigns the oversight of the risk management function to the audit committee, the audit committee's responsibility for overseeing the risk management function should be identical to that of a risk committee in a company where a separate risk committee is established.  The board should only assign this responsibility to the audit committee after careful consideration of the resources available to the audit committee to adequately deal with risk governance in addition to its audit responsibilities.  [Chapter 2.130, 3.59, 3.61 and 4.17]
<b>Number of members</b>	Not addressed.	The committee should have a minimum of three members.  [Chapter 4.21]
<b>Membership</b>	Except to the extent that the MOI or a resolution establishing a committee provides otherwise, the committee may include persons who are not directors of the company, but: <ul style="list-style-type: none"> <li>Any such persons must not be ineligible or disqualified to be a director in terms of Section 69; and</li> <li>No such person has a vote on a matter to be decided by the committee.</li> </ul> [Section 72(2)(a)]	Board committees other than the risk committee should only comprise members of the board and should have a majority of non-executive directors. The majority of the non-executive directors serving on these committees should be independent.  Membership of the risk committee should include executive and non-executive directors.  The chairman of the board may be a member of the risk committee.  Those members of senior management responsible for the various areas of risk management should attend its meetings.  Members of the risk committee, taken as a whole, should comprise people with adequate risk management skills and experience to equip the committee to perform its functions. To supplement its risk management skills and experience, the risk committee may invite independent risk management experts to attend its meetings.  [Chapter 2.131, 2.45.4 and 4.20]
<b>Chairman</b>	Not addressed.	The chairman should be an independent non-executive director. The chairman of the board should not chair the risk committee.  [Chapter 2.131 and 2.45.4]

<b>Risk committees</b>	<b>Companies Act</b>	<b>King III</b>
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 4: The governance of risk</b>  <b>Chapter 5: The governance of information technology</b>
<b>Number of meetings</b>	Not addressed.	The risk committee should convene at least twice per year and individuals reporting to the committee should provide it with sufficient information to effectively discharge its responsibilities.  [Chapter 4.22]
<b>Duties</b>	Not addressed.	To assist the board in the discharge of its duties and responsibilities in respect of risk management, the board should appoint a risk committee to review: <ul style="list-style-type: none"> <li>• The risk management progress and maturity of the company;</li> <li>• The effectiveness of risk management activities;</li> <li>• The key risks facing the company; and</li> <li>• The responses to address these key risks.</li> </ul> <p>The risk committee (or audit committee) should consider the risk management policy and plan, and should monitor the whole risk management process.</p> <p>A risk committee and audit committee should assist the board in carrying out its IT responsibilities.</p> <p>The risk committee should ensure that IT risks are adequately addressed through its risk management, monitoring and assurance processes.</p> <p>Areas that are highly dependent on IT are more exposed if IT risks are not appropriately governed. The risk committee should obtain appropriate assurance that controls in place are effective in addressing these risks.</p> <p>IT as it relates to financial reporting and the going concern of the company should be the responsibility of the audit committee. The risk committee has the responsibility to oversee the broader risk implications of IT.</p> <p>[Chapter 4.16, 4.19, 5.43, 5.46, 5.47 and Principle 5.7]</p>

## Comparison of provisions

Remuneration committees	Companies Act	King III
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 2: Boards and directors</b>
<b>Requirement to appoint a remuneration committee</b>	The Act does not address the appointment of a remuneration committee, but such appointment is permitted in terms of Section 72.	Unless legislated otherwise, the board should appoint the risk, remuneration and nomination committees as standing committees.  [Chapter 2.130]
<b>Number of members</b>	Not addressed.	Not addressed.
<b>Membership</b>	Except to the extent that the MOI or a resolution establishing a committee provides otherwise, the committee may include persons who are not directors of the company, but: <ul style="list-style-type: none"> <li>Any such persons must not be ineligible or disqualified to be a director in terms of Section 69; and</li> <li>No such person has a vote on a matter to be decided by the committee.</li> </ul> [Section 72(2)(a)]	All members must be board members.  The majority of members should be non-executive directors.  The majority of non-executive directors should be independent.  The chairman of the board may be a member of the remuneration committee. The CEO should not be a member of the remuneration committee, but should attend meetings by invitation.  [Chapter 2.131, 2.45.2 and 2.57]
<b>Chairman</b>	Not addressed.	The chairman should be an independent non-executive director.  The chairman of the board should not chair the remuneration committee.  [Chapter 2.131 and 2.45.2]
<b>Duties</b>	Not addressed.	The remuneration committee should assist the board in its responsibility for setting and administering remuneration policies in the company's long-term interests.  The committee considers and recommends remuneration policies for all levels in the company, but should be especially concerned with the remuneration of senior executives, including executive directors, and should also advise on the remuneration of non-executive directors.  Chapter 2.147 to 2.187 contains recommendations regarding remuneration of directors and senior executives.  [Chapter 2.150 and 2.147 to 2.187]
<b>Disclosure in the annual remuneration report</b>	Reporting by the remuneration committee is not addressed in the Act. Disclosure of directors' and prescribed officers' remuneration is dealt with earlier in this publication.	The remuneration committee should scrutinise all benefits, including pensions, benefits in kind and other financial arrangements to ensure they are justified, correctly valued and suitably disclosed.  Targets for threshold, expected and stretch targets for performance should be robustly set and monitored and the main performance parameters should be disclosed.

Remuneration committees	Companies Act	King III
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 2: Boards and directors</b>
<b>Disclosure in the annual remuneration report (cont.)</b>		<p>In its annual remuneration report, to be included in the integrated report, the company should explain the remuneration policies followed throughout the company with a special focus on executive management and the strategic objectives that it seeks to achieve, and should provide clear disclosure of the implementation of these policies.</p> <p>The remuneration report should explain the policy on base pay, including the use of appropriate benchmarks. A policy to pay salaries on average at above median requires special justification. It should also explain and justify any material payments that may be viewed as being ex gratia in nature.</p> <p>Policies regarding executive employment contracts should be set out in the annual remuneration report.</p> <p>These policies normally include at least the following:</p> <ul style="list-style-type: none"> <li>• The period of the contract and the period of notice of termination (after the initial period, contracts should normally be renewable yearly); and</li> <li>• The nature and period of any restraint.</li> </ul> <p>The annual remuneration report should disclose the maximum and the expected potential dilution that may result from the incentive awards granted in the current year.</p> <p>Limits for individual participation in share incentive schemes should be disclosed.</p> <p>Vesting of share incentive awards should be conditional on the achievement of performance conditions. Such performance measures and the reasons for selecting them should be fully disclosed.</p> <p>Where performance measures are based on a comparative group of companies, the names of the companies chosen should be disclosed.</p> <p>Incentive schemes to encourage retention should be established separately, or should be clearly distinguished from those relating to reward performance and should be disclosed in the annual remuneration report.</p> <p>[Chapter 2.152, 2.159, 2.167, 2.174, 2.176 and 2.181 to 2.185]</p>

## Comparison of provisions

Nomination committees	Companies Act	King III
<b>Reference</b>	<b>Section 72</b>	<b>Chapter 2: Boards and directors</b> <b>Chapter 3: Audit committees</b>
<b>Requirement to appoint a nomination committee</b>	The Act does not address the appointment of a nomination committee, but it is permitted in terms of Section 72.	Unless legislated otherwise, the board should appoint the risk, remuneration and nomination committees as standing committees.  [Chapter 2.130]
<b>Number of members</b>	Not addressed.	Not addressed.
<b>Membership</b>	Except to the extent that the MOI or a resolution establishing a committee provides otherwise the committee may include persons who are not directors of the company, but <ul style="list-style-type: none"> <li>• Any such persons must not be ineligible or disqualified to be a director in terms of Section 69; and</li> <li>• No such person has a vote on a matter to be decided by the committee.</li> </ul> [Section 72(2)(a)]	All members must be board members.  The majority of members should be non-executive directors.  The majority of non-executive directors should be independent.  The board chairman should be a member of the nomination committee.  The CEO should not be a member of the nomination committee, but should attend meetings by invitation.  [Chapter 2.131, 2.45.3 and 2.57]
<b>Chairman</b>	Not addressed.	The chairman should be an independent non-executive director.  The chairman of the board may also chair the nomination committee.  [Chapter 2.131 and 2.45.3]
<b>Duties</b>	Not addressed.	The duties of the committee are to: <ul style="list-style-type: none"> <li>• Assist the board with appointments to the board; and</li> <li>• Assist with the appointment of audit committee members.</li> </ul> [Chapter 2.80 and 3.12]

## How PwC can help you

PwC has significant experience in assisting clients with the changing terrain of regulatory compliance. We take a structured approach to enable clients to achieve and sustain compliance in an efficient and cost-effective manner.

Our solutions help companies to assess the impact of the new Companies Act and other legislation on their business as well as designing and implementing the changes required to ensure ongoing compliance.

Our understanding of the specific requirements of the Companies Act, together with our blend of regulatory compliance, auditing, tax, risk management, information technology, process consulting and industry-specific expertise, allows us to provide an end-to-end compliance solution.

Services with which we can assist you include:

- Statutory audits and independent reviews, including specific management reports on all significant internal control weaknesses identified;
- Voluntary audits and independent reviews, tailored to the specific needs and focus areas of the directors;
- Assistance with the calculation of the public interest score;
- Performing a gap analysis on the requirements of audit and board committees to ensure compliance with the requirements of the Act;
- Guidance for directors and company secretaries regarding eligibility requirements;
- Performing a regulatory compliance risk assessment;
- Compiling a Companies Act risk management and monitoring plan;
- Aligning and redesigning the accounting records of a company to comply with the new requirements of the Act;
- Assisting with the development of record retention policies and procedures in compliance with the requirements of the Act;
- Maintenance of accounting records for a company and compiling of financial statements in compliance with the applicable accounting framework, where permitted;
- Incorporation of new companies;
- Aligning and redrafting memorandums of incorporation tailored in terms of the alterable provisions of the Act;
- Reviewing existing shareholders' agreements for any conflicting clauses with the Act or memorandum of incorporation;
- Setting up records of directors, notices, minutes and a securities register that comply with the standards for company records in the Act;
- Maintenance of all secretarial records and lodging all forms, where permitted; and
- Training for affected persons in the company, such as directors.

This list is not exhaustive and has been provided to assist you to identify critical issues that should be dealt with promptly to minimise the risk of potential non-compliance with the Act.

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