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DECODING KING III & THE COMPANIES ACT: 10 THINGS COMPANY SECRETARIES SHOULD KNOW

Calling all company secretaries: Does the thought of wading through reams of information to find out which bits apply to you give you that sinking feeling? Then read on for a quick guide to your responsibilities in term of the new Companies Act and the King Code on Corporate Governance.

The Institute of Directors' (IoDSA) King Code of Governance Principles (King III) launched last year reminds public and state-owned companies of the statutory requirement to appoint a company secretary. However, in the interests of better corporate governance, organisations that aren't required to appoint a company secretary may still do so. King III deals with the duties of company secretaries in Principle 2.21 of Chapter 2. Here's a summary:

1. Boards should be assisted by a suitably qualified and experienced company secretary who should not be a director of the company. Company secretaries have a pivotal role to play in corporate governance and this responsibility should be delegated or outsourced to an appropriate person or organisation if a company secretary is not employed. The company secretary's appointment and removal is a matter for the board.
2. The board should be aware of the company secretary's duties and should empower the company secretary to properly fulfill those duties. As gatekeeper of good governance, the company secretary should maintain an arms-length relationship with the board and its directors, as far as reasonably possible.
3. The company secretary should assist the nomination committee and ensure that the procedure for the appointment of directors is properly carried out.
4. The company secretary should assist in the proper induction, orientation, ongoing training and education of directors, including assessing the specific training needs of directors and executive management in their fiduciary and other governance responsibilities. Individual directors and the board should look to the company secretary for guidance on their responsibilities and duties and how to properly discharge them. The company secretary should provide guidance and advice on good governance and changes in legislation to the board and within the company.
5. The company secretary should communicate directly with the chairman and provide comprehensive practical support and guidance to directors, with particular emphasis on non-executive directors, the chairman, as well as the chairs of the audit and other committees.
6. The company secretary should ensure that the board and committee charters and terms of reference are kept up to date.

7. The company secretary should ensure the proper compilation and timely circulation of board papers and for assisting the chairman and committees with drafting of yearly work plans.
8. The company secretary should obtain appropriate responses and feedback to specific agenda items and matters arising from earlier meetings in board and board committee deliberations. The company secretary should also raise matters that may warrant the attention of the board.
9. The company secretary should ensure that the proceedings 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 of the chairman of the board or relevant board committee.
10. The company secretary should assist the board with the yearly evaluation of the board, its individual directors and senior management.

In a nutshell: Company Secretaries & the Companies Act

Sections 86 to 89 of the Companies Act 71 of 2008 deal with the appointment, removal and specific duties of the company secretary. Company secretaries:

1. Are accountable to the board (s88)
2. Must guide directors as to their duties, responsibilities and powers (s88)
3. Must make directors aware of laws that affect them and the company (s88)
4. Must report failures of the company or directors to comply with the Memorandum of Incorporation, company rules or the Act to the board (s88)
5. Must ensure that minutes are recorded for all shareholders meetings, board meetings, audit committee meetings and other board committee meetings (s88)
6. Must certify in the annual financial statements whether the company has filed returns and notices required and whether those documents appear to be correct and up to date (s88)
7. Must ensure copies of annual financial statements are sent to all entitled persons (s88)
8. Must carry out the functions of the 'designated person' (in terms of section 33(3)) and are responsible for the company's compliance with the requirements of Part C of Chapter 2 (dealing with transparency, accountability and integrity of companies) and Chapter 3 (dealing with enhanced accountability and transparency), insofar that these parts apply to the company (s88)
9. The protection afforded to whistle-blowers applies to disclosures made by those (specified in section 159(4)) that disclose information in good faith to the company secretary while reasonably believing that the information shows a contravention of laws or other misconduct. The Act also protects company secretaries if disclosures are made in accordance with section 159 (s159)
10. In addition to becoming familiar with the provisions contained in the Act, company secretaries should familiarise themselves with the provisions contained in schedules to the Act and any regulations published in terms of the Act as far as they may apply to them and their duties.

Sections 86 to 89 of the Act are applicable to company secretaries of public companies and state-owned companies. Other companies may still choose to apply these provisions.

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