King III

Implications for Records Managers

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Agenda

- What is King III
- Principles and proposed usage
- Implications for records management

What is King III

KING CODE OF GOVERNANCE FOR SOUTH AFRICA - 2009

KING COMMITTEE ON GOVERNANCE

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All text is from the code – commentary is from COR Concepts

Background

- King II has been widely accepted as principles of good corporate governance
- The JSE Limited (JSE) requires listed companies to comply with King II
- King III must be read in conjunction with the New Companies Act 71 of 2009
- Act will be effective on 1 July 2010.
- King III will be effective from 1 March 2010.

We have only highlighted areas of interest for information governance – King III is far more comprehensive than discussed here.

The Governance framework

- The governance of corporations can be on a statutory basis, as a code of principles and practices, or a combination of the two.
- King III adopts a "recommendation for a course of conduct".
- Thus, if a board believes it to be in the best interests of the company, it can adopt a practice different from that recommended in the code, but must explain it.
- King III = "Apply or explain"

The Governance framework

- Boards have a legal responsibility to act in good faith. They also must apply good governance principles by acting in the best interests of the company.
- If the best interests of the company mean deviating from King III, then the Board must "explain".
- The board has a duty to establish structures and processes, with appropriate checks and balances that enable directors to discharge their legal responsibilities

Principles

- Good governance is essentially about effective leadership.
- Sustainability is the primary moral and economic imperative for the 21st Century
- Innovation, fairness, and collaboration are key aspects of any transition to sustainability
- Governance, sustainability and strategy are seen as inseparable – hence the term "integrated performance and reporting"

King III (and the Act) require many reports. Accurate, timeous access to information is critical to fulfil this requirement.

Principles

- Sustainability includes taking the environment into account. Ultimately this will be written into law (*Minister of Environmental affairs – Marinus van Schalkwyk*)
- It is likely that Companies may use digitisation as one of the means to achieve their environmental obligations. Organisations should identify whether scanning will assist in meeting environmental obligations.
- This will require less printing, and more use of the original digital records.

Going green will become increasingly fashionable and legislated.

Principles

- Internal audits should be Risk-based
- Risk of loss of information should be one of the components of the audit.
- IT Governance is critical. "The risks involved in IT governance have become significant". Whilst document and records managers aren't IT specialists the information they manage requires governance.
- IT may take ownership of scanning and archiving projects, but business and records managers should be involved.

It is our belief that the term IT governance is too narrow and needs to be expanded to "Information Governance".

IT Governance

- “There is no doubt that there are operational risks when one has a service provider because confidential information leaves the company. In IT governance, one seeks confidentiality; integrity and availability of the functioning of the system; possession of the system, authenticity of system information; and assurance that the system is usable and useful. Concerns are unauthorised use, access, disclosure, disruption or changes to the information system.”
- Directors must implement reasonable steps …

Ensure that any service provider meets these requirements.

Principles

- The board should appreciate that strategy, risk, performance and sustainability are inseparable
- The board should consider sustainability as a business opportunity. *Think how digitisation or other practices could assist.*
- The board should exercise objective judgment on the affairs of the company independently from the management, but with sufficient *management information* to enable a proper and objective assessment to be made.
- Through a process established by the board, directors should have unrestricted access to all entity information, records, documents, property and staff.

Principles

- The board and its directors should act in the best interests of the company
- The board should always act in the best interests of the company and the foundation of each decision should be <u>intellectual honesty, based on all the relevant facts</u>
- The board should ensure that the company makes <u>full and timely disclosure</u> of material matters concerning the company

Principles

- The board should ensure that the company implements an effective compliance framework and effective processes
  - without contravention of any laws and regulations (*regulatory universe and retention requirements become important)*
- …directors have a wider responsibility to familiarise themselves with the relevant laws, regulations and codes applicable to the company and to ensure that appropriate processes are in place to address compliance. (*This includes record retention processes*)

Principles

- The role of the CEO includes:
  - ensuring that the company complies with all relevant laws and regulations.
- The board will look to the company secretary for guidance on their responsibilities and their duties and how such responsibilities and duties should be properly discharged in the best interests of the company

Unfortunately many company secretaries do not have the requisite knowledge .

Principles

- The board should ensure that the company acts as and is seen to be a responsible corporate citizen.
  - Triple bottom line reporting – economic, social and environmental.
  - managing the enterprise - how effectively and ethically the company governs, controls and manages its operations;
  - workplace practices - how it manages its employees, workplace conditions and employment practices
  - environment - how it controls its impact on the environment;

Good document, records and information management practices can assist here… (make it easier for staff to do their jobs, reduce costs and environmental impact)

Principles

- The <u>ethics</u> of governance*:*
- <u>Responsibility</u>: …. for the assets and actions of the company (*information is an asset*)
- <u>Accountability</u>: The board should be able to justify its decisions and actions *(documented in records)*
- <u>Fairness</u>
- <u>Transparency</u>: The board should disclose information in a manner……..

Principles

- **Moral duty of care:**
  - Relevant information required for exercising effective control and providing innovative direction to the company needs to be acquired.
- **Audit committee:**
  - members: ...should keep themselves current with key developments in financial reporting and relevant legal and regulatory developments.
  - Scrutiny ... should not be confined to the financial statements and should extend to all relevant narrative information which should present a balanced view of the company's performance.
- Must ensure there is a balance between a company's approach to risk management and the nature of the company's legal, operational and financial environment.

This committee is very important from a risk perspective.

IT Risks

- Audit committees should consider IT risk as a crucial element of the effective oversight of risk management of the company, including:
  - IT risks and controls;
  - business continuity and data recovery related to IT; and
  - information security and privacy.

Risk management

- Risk management is a very critical aspect of corporate governance and a risk plan must be documented.
  - *IT, Records and information managers need to understand the organisation's*
    1. *Appetite for risk;*
    2. *Risk philosophy*
    3. *Risk strategies*
        1. Including - compliance risk in relation to legislation
    - *and help them understand the risks attached to information.*

Risk management

- Risk assessments will include:
  - risk probability or likelihood;
  - potential effect of risk;
  - Effectiveness of risk responses;
  - capital adequacy;
  - solvency, liquidity;
  - sustainability of strategy;
  - going concern;
  - financial performance;
  - values at risk;
  - risk bearing capacity;
  - mitigation of risk; and
  - transference of risk.

Risk management

- Risk responses could include:
  - avoiding the risk
  - treating, reducing or mitigating the risk
  - transferring the risk exposure, (to a third party)
  - accepting the risk,
  - exploiting the risk,
  - terminating the activity…
- Reputational risk is specifically mentioned.

Principles

- **The board should ensure that IT is aligned with business objectives and sustainability:**
- IT governance is a "framework that supports the effective and efficient management of information resources (for example people, funding and information) to facilitate the achievement of corporate objectives."
- Records managers should be an integral part of Information Governance.

Information security

- confidentiality: *ensuring that information is accessible only to those authorised* to have access;
- integrity: *safeguarding the accuracy and completeness of information and processing methods; and*
- availability: *ensuring that authorised users have access to information and associated assets when required.*

Information Security

- Information security deals with the protection of information, in its electronic and paper-based forms, as it progresses through the information lifecycle for capture, processing, use, storage, and destruction. For this reason, information security has to address people-, process- and technology-related dimensions in order to be truly effective.

This is a board responsiblility!

Information Security

- Contributes to:
  - *enabling the business strategy:*
  - *sustaining normal business operations:*
  - *managing risk:*
  - *avoiding unnecessary costs:*
  - *reduced chance of litigation due to legal liability:*
  - *meeting compliance requirements:*
  - *investing for success:*

Integrated sustainability reporting

- Reporting runs throughout all the requirements discussed. In particular, reporting should be:
- focused on substance over form and should transparently disclose information that is material, relevant, accessible, understandable and comparable with past performance of the company.

Compliance with the regulatory environment

- Companies must comply with applicable laws and regulations.
  - *Including the retention requirements!!*
- The board and each individual director should be aware of the laws, regulations, rules and standards applicable to the company.
  - *This is onerous, and most don't know the retention laws.*
- The board:
  - has a duty to identify the laws, regulations and non-binding rules and standards applicable to the company.
  - Should ensure that the company implements an effective compliance framework and processes

Final thoughts

- All organisations need to implement some form of corporate governance
- Most will adopt King III (most will have to)
- It is closely aligned to the new Companies Act
- Good corporate governance is dependent upon good information governance
- Most directors don't know, (and aren't really interested) in the information requirements
- IT and records managers can assist.

Questions