MBAA811 & BLCG511

CORPORATE GOVERNANCE

PORTFOLIO OF EVIDENCE - JUNE 2020

RELEASE DATE:	22 May 2020	
SUBMISSION DATE:	08 June 2020	
EXAMINERS:	MBA:	Mr PJ Greyling
	PGDip:	Dr N Mouton
		Mr S van Rensburg
		Mr H Bronkhorst
MODERATOR:	Mr. D Linde	

INSTRUCTIONS:

Please ensure that you comply with the instructions as set out in the letter of The King Foundation.

ANNEXURES:

1. Letter of instruction: The King Foundation (NPO)
2. Executive Summary of Corpcapital 1996- 2008 (ANNEXURE A)
3. Frango's resignation (ANNEXURE B)
4. Corpcapital's Big Schlenter (ANNEXURE C)

𝒦 The King Foundation (NPO)

THE CHIEF EXECUTIVE OFFICER
EMBEA (Pgd) Ltd
15 DEBENTURE ROAD
DOLLARTON

Dear Sir/Madam

RESEARCH ASSIGNMENT: CORPCAPITAL

1. Our Foundation was established by a number of blue chip companies for the purpose of doing research on the governance and compliance practices of listed, as well as unlisted companies. The purpose of the research is to obtain information about not only the best, but also the bad practices in respect of governance and compliance.

2. The purpose of our research is to feed this information back to our members to enable them to improve their quality of governance. Our usual methodology consists of asking an institution to do research in respect of a particular governance incident or practice. We then require from such an institution to provide us with a report. This report is then forwarded to our clients to be used for training and/or information purposes.

3. It came to our attention that your organisation has a reputation of being knowledgeable in the practical evaluation of corporate compliance with King IV. We therefore wish to appoint you to do in investigation into the affairs of and conduct of a company, Corpcapital Limited. For this purpose we enclose herewith a number of documents illuminating the conduct and interaction of the subject company's executives and directors, and the manner in which governance activities were conducted. Included you will find an:
   - Executive summary of Corpcapital 1996 - 2008;
   - Letter of resignation, NJ Frangos dd 2 December 2002;
   - Newspaper article, "Corpcapital's big schlenter" as published in FINANCE WEEK on 22 January 2003.

4. The information as contained in these three documents should put you in a position to evaluate the conduct of the executives, directors and shareholders against the undermentioned **Principles** as set out and explained in King IV. We appreciate the fact that the events and conduct took place before the introduction of King IV. That should not concern you, the objective of this assignment is to merely evaluate the conduct of Corpcapital against the provisions of King IV. Should you want learn more about Corpcapital you can visit the website www.corporatecodes.co.za or any other resource you deem appropriate.

5. The particular **Principles** as set out in King IV (Parts 4 and 5) we wish you to consider against the conduct of Corpcapital's executives and directors, are the following:
   - Ethical and effective leadership and the establishment of an ethical culture;
   - The governing body as the focal point and custodian of corporate governance in the organisation;
   - The composition of the governing body;
   - The arrangements in respect of delegations within own structure to ensure independent judgement, a balance of power and the discharge of duties;
   - The evaluation of the performance of a governing body;
   - Appointments and delegations to management and role clarity;
   - Remuneration governance of the executives;
   - Role played by institutional investors.

6. With regard to the format, please note that your report should provide in respect of each of the mentioned **Principles** discussed, the following three subheadings:
   - Theoretical discussion of the principle;
   - Evaluation of Corpcapital's conduct measured against the principle;
   - Recommendations as to the appropriate conduct where applicable.

   It will be an added advantage if you, in your evaluation and recommendations can refer to similar incidents and/or events of non-compliance involving other companies.

7. You should also comment and motivate which ethical theory underpins Mr Frangos's thinking in his criticisms of the conduct of Corpcapital.
8. Please take note of the following **very important** technical requirements for the report:
   - The report must be typed;
   - Length: 15 to 25 A4-sized pages excluding the table of contents and the reference list;

- Font : Arial 12, Line Spacing 1.5;
- Margins: 2cm
- Alignment: Justified;
- Bibliographic style: Harvard method
- A reference list must be included but is excluded from the 25 page limit;
- We must receive your report by no later than **08 June 2020**. The report must be submitted on e-Fundi.

9. Upon receipt of your report it will be evaluated and your "return on effort made" will be based on the quality, compliance with the format and technical requirements thereof. If you feel uncertain about anything in the assignment please don't call us. Take note that you are, and should be, on your own. This assignment has been given to a number of research institutions to test their ability and suitability to work with us in future. Everything of the best and we are looking forward to a long and mutually beneficial relationship.

Yours faithfully

DJones

DOW JONES
Company Secretary

EVALUATION: SEE RUBIC ATTACHED

RUBIC TO PORTFOLIO OF EVIDENCE			
Name:			
GRADING	**SCORE**	**TOTAL**	**COMMENTS**
General layout of assignment and technical compliance including correct language use, spelling, punctuation, spacing, font as requested, etc.		/10	
References correctly done in text (5) and in reference list (5) strictly according to the Harvard or APA style		/10	
Critical evaluation of 3 documents provided (nr 4)		/15	
Critical discussion of the 8 principles according to theory (2x8), conduct (2x8) and recommendations (3x8) Note: Marks are not allocated to write or wrong, but according to interpretation, discussion and understanding of the principles as presented by the student + professional report writing style (4)		/60	
Additional motivations and comments		/5	
Plagiarism			
TOTAL SCORE		**/100**	

Note: Title page will not be included. Only content. You will be penalised if you cut and paste, or if you use direct quotations from a text.

Red flag - 80% or more - -10 up to 0 for PoE (discretion of lecturer)

Red flag - 60-80% minus 5 (-5)

Yellow flag - 40- 59% minus 3 (-3)

Yellow flag - 25-39% minus 2 (-2)

Green flag - ignore plagiarism section

EXECUTIVE SUMMARY OF CORPCAPITAL 1996 – 2008

Why does Corpcapital still matter? And for whom? It matters because the evidence suggests that serious irregularities took place at Corpcapital, and that Jeff Liebesman, the CEO, and certain executives benefited enormously while shareholders were prejudiced. Corpcapital matters because the methods employed by those responsible should not stand as the yardstick in the defence of corporate irregularities. It matters because it highlights the weaknesses in the system at many levels. It matters to those who have an interest in the rule of law, to those who are advocates of good corporate governance, and especially to those who would like to see a society of consequences, one that has the capability of self-correction. It matters to directors everywhere because the next Corpcapital may be just around the corner.

The website www.corporatecodes.co.za publishes the facts which have so far emerged, including all the evidence furnished to the state's investigation of Corpcapital. It is there as a permanent reference site on all relevant issues.

The Corpcapital saga began clandestinely in 1996 with the purchase of a cash shell, Southgo Ltd, from Brett Kebble, by secret offshore entities. The transaction was godfathered by Eric Ellerine to give Jeff Liebesman a second chance – (Liebesman was still embroiled in fraud allegations in the aftermath of the W&A debacle). Southgo was quickly transformed into Corpgro and ultimately, through a series of complex transactions, into Corpcapital. Liebesman joined by a close circle of friends — his W&A legal counsel, lawyer, Benji Liebmann, his advocate, Neil Lazarus, and by Errol Grolman and Martin Sacks. Corpcapital was liquidated in 2007, but, like a phoenix rising from the ashes, the company continues today in a new guise through a novel mirror listing, run by Liebesman's closest associate, Liebmann, with the mastermind nowhere to be seen.

The Liebesman plan was to acquire companies, generate fast growth, and rapidly increase the price at which the Corpgro shares traded. But the true ownership and control was to be hidden from public view in a series of secret offshore companies set up by Liebesman and Liebmann in Caribbean tax havens to hide the extent of their real involvement, leaving the holders of the shares free to trade without restriction. This emerged from direct evidence to the state's investigation from one of the participants, Peter Moss. There was no disclosure to the board of directors or shareholders of true share ownership. Worse was to follow. When the companies later failed to perform to Liebesman's promises to the market he turned to what I view as creative accounting. Regular accounting changes made comparisons of trading results difficult.

When Corpgro listed, the share was quoted on the JSE at 44c on the first day and the offshore companies secret investment had a market value of R185 million, an investment that was to become worth an estimated R3 billion as the share price rose to a peak of 770c.

The Southgo model was repeated in 1998 with the acquisitions of cash shell TPN, renamed Corpcapital, and a cash-flush secondary bank, Fulcrum, to be renamed Corpcapital Bank. The structure was in place with access to the cash needed to pay handsome bonuses and salaries to Liebesman and his associates.
In 2000, Corpcapital, then a subsidiary of Corpgro, faced disaster with falling earnings. An unknown offshore entity called Cytech, in which Corpcapital had a 47.5% interest, was revalued unilaterally by the executives and the revaluation surplus taken as revenue to bolster Corpcapital's profits. This avoided a catastrophe at Corpcapital. Cytech's value soared from zero to almost R500 million in its first two years and then down to almost nothing in the next two. The executives were paid handsome bonuses and other benefits on the back of the Cytech facade. The mechanism could be argued to be a mirror image of the methods used at Enron.

A merger of three entities, Corpgro, Corpcapital and Corpcapital Bank, in 2001 made it difficult to track performance and make comparisons. For a while this bought time. The merger was massively influenced, unbeknown to investors, by the revaluations of Cytech in 2000, which contributed over 60% of Corpcapital's profits, Corpcapital being the company which housed the shares and options of the executives. Until then Corpcapital appeared to be vindicating Liebesman's return to the corporate stage. Reported profits grew and the market had responded positively. Then Liebesman became mired in controversy in a challenge by a minority shareholder over the integrity of the swap ratios used for the merger. The investing public lost confidence and the share price plummeted.

At mid-term in 2002, the accounting policy was changed, in my view, to disguise the inevitable collapse of the contrived valuations of Cytech, and a consequent major decline in earnings. I objected and began my own investigation of the matter, much to the consternation of Liebesman, who placed every obstacle in the way and provided paltry information to me. Unable to obtain proper board action on my complaints I resigned in

December 2002 amidst heightened media interest. This triggered further controversy and led to a series of investigations. The markets, already suspicious of Liebesman, lost confidence and the share price spiralled downwards never to recover again. The executives, with Neil Lazarus as the company spokesperson, lost no time in attacking me personally to undermine my credibility and deflect attention from the real issues. After pressure from the media and shareholders the board appointed its own investigator, Nigel Payne, who cleared the executives in what I consider to be a “whitewash”, with Payne in my view flaunting accepted procedures of investigation. Preliminary evidence came to the fore that my privacy had been invaded by a private investigations company in an apparent effort to find dirt and stop me in my tracks. This matter, and the terms of the settlement between me, Corpcapital, the private investigations company, and others is covered on the website.

Under siege from the media, sagging confidence in the market and a collapsing share price the executives persuaded the board to dismantle the company early in 2003, having laid the base during the previous year. The differential between the falling market capitalization and net asset value seems to have been a tempting challenge to release value. Astonishingly, the board authorized Liebesman and the executives to execute the process of selling the assets. The executives were to receive enormous bonuses for dismantling the edifice in the guise of “realising value for shareholders”.

With no resolution of the issues I authorized my attorneys, Webber Wentzel Bowens to appoint two independent forensic investigators, Brian Abrahams and Collett &Collett/ SAB&T, to examine the evidence and comment. In a landmark study the results confirmed my suspicions, and a submission was made to the Minister of Trade and Industry to investigate Corpcapital in terms of the Companies Act. The Minister appointed and mandated inspectors to commence with an investigation under section 258(2). The mandate called for an investigation of the Corpcapital group of companies from inception, and specifically raised the need to examine the possibility of fraud.

Corpcapital’s executives responded defiantly to the exposure, using attacks on me as, in my opinion, a smokescreen to hide the real issues from analysts and the media. The stakes rose dramatically. They also used “experts” extensively, but failed to give them a free hand, with a focus only on hyper-technical accounting issues to shift the focus.

The “whitewash” of the events by accountant Nigel Payne, employed and paid for by Corpcapital, was, in hindsight, predictable. The findings of the state’s investigation by Advocate John Myburgh SC and accounting Professor Keith Prinsloo were more difficult to explain because the inspectors decided to clear Corpcapital while, it seems to me, ignoring large tracts of material direct evidence. The Minister of Trade and Industry, who mandated the investigation, appears to have been less than impressed and distanced himself publicly from certain sections of the inspectors report, an unprecedented step. The Minister stated that certain chapters and sections of the report fell outside of the ambit of his mandate (the character attacks), and in regard to Cytech he would have preferred to have my opinion on the reports of certain Corpcapital experts, where Myburgh had not permitted the right of rebuttal.

After the release of the inspectors report my attorneys, WWB, briefed and mandated six separate and independent forensic investigations of the evidence examined by the inspectors. The findings? An emphatic confirmation that there was substance to my allegations, that serial irregularities appear to have taken place, and that the executives had benefited hugely at the expense of shareholders, conclusions which differed materially from those of the state investigation. A final submission containing recommendations was made to the Minister of Trade and Industry by WWB acting on my behalf.

The Corpcapital saga raises many questions. One of the most important is: What should directors and corporate officers do when they encounter irregularities? That they are bound to act by their fiduciary duties is unarguable. But what do these duties require? Directors are legally obliged to report the matters to the board. The board must take whatever steps are necessary to represent and protect the best interests of shareholders. Where serious misconduct is suspected, that means an investigation whose integrity cannot be questioned. The purpose is to reveal the facts. Then the board must act on the findings. Such action must address the basic problem and remedy it. What to do when the board does not act on a complaint? For those interested in where this roadmap may eventually lead its path and effectiveness is carefully traced on the website.

Nic Frangos
Johannesburg July 2008

ANNEXURE B

2 December 2002

Eric Ellerine
Chairman
Corpcapital Limited

Dear Eric

During the past few years, and especially recently, I have enquired into various matters that I have been deeply concerned about and are of vital concern to the company and its shareholders. These enquiries and experiences have not lead to satisfactory outcomes which have resolved the underlying problems. Instead, sustained efforts have been made to deflect my enquiries, shift the agenda, and personalise issues often with the use of intimidatory tactics. I advised you and the Board that I would be considering my position and that I would do so urgently. I also stated that pressure from management would not influence my decision since I do not report to them. The decision I am taking is influenced only by one consideration, and that is my view of the best interests of shareholders. I have come to the conclusion that the differences cannot be resolved in present circumstances and I would like to explain to you why I believe this to be the case.

1. **Relevant principles of listed companies**

1.1 **Ownership and control**

Publicly listed companies operate on the principle that shareholders own the company and appoint the Board of Directors. The Board in turn appoints and controls management to ensure that the interests of shareholders are pursued. It is therefore the Board of Directors who controls the company. Managers are stewards of shareholders' capital, and the best managers have shareholder interests at heart. In exercising their fiduciary duty, Board members have to rely on management and the auditors for the information required. This emphasises the importance of forthrightness and candour in communications by managers to shareholders through the Board. Of vital importance is the definition of the role, functions and responsibilities of non-executive directors, and management's respect for these rights.

Harvard Business Review, July 2002, sums up the situation succinctly: "… Governance starts – and ends – with the Board of Directors. The boards' overarching responsibility is to preserve and build the enterprise.

Some boards don't have the will – or the courage – to challenge a powerful CEO who is reporting good numbers. They let him run roughshod over them, which is apparently what happened at Enron. Too many CEO's use their boards as a rubber stamp and actively discourage input or challenges from their independent directors. I have seen CEOs' orchestrate a show for the board in which they present such detailed strategies, investments, or acquisitions that there is no time left to discuss or question the risks. These CEO's are just seeking rapid approval, and that's a big mistake.

…..The best CEO's respect the need for a strong board and the importance of following sound principles of corporate governance. That is how their companies achieve success.

Numerous ideas are being proposed for new laws to control board governance. But new regulations won't solve the governance problems we're seeing today. Those problems can only be solved if independent directors step up to their legal and fiduciary responsibilities by re-asserting the proper balance of power between boards and management. Directors who aren't prepared to do this should resign

….The first step is to establish a corporate governance committee to draft the governance principles. This committee must be composed entirely of independent directors.
….Good governance requires a balance of power between the board and the CEO, and a healthy tension between them. That requires trust, the free flow of ideas, and a board that is comfortable challenging

management ……It's hard to imagine that the failures at Enron, Swissair, Kmart and other companies would have happened if they'd had robust governance systems in place."

1.2 Checks and balances

Our board situation is the one which is most common, where there is no controlling shareholder. Warren Buffett believes that in these situations "Directors should behave as if there is a single absentee owner, whose long-term interests they should try to further in all proper ways". Thus, the Board is the ultimate check and balance, and its true north is the interests of the "absentee owner". Buffett goes further - "…if able but greedy management over-reach and try to dip too deeply into the shareholders' pockets, Directors must slap their hands". He also believes that a Director who sees something he doesn't like should attempt to persuade the other Directors of his view. If he is successful, the Board will have the muscle to make the appropriate change. If he is not successful, he should feel free to make his views known to the absentee owner. Buffett says that "non-executive Directors should be selected for their business savvy, interest in the job, and orientation towards the absentee owner, and not simply because they are prominent or add diversity to the Board".

Corpcapital has six executive Directors and four non-executive Directors. I have come to the view that the orientation of the six managers is to favour their own interests rather than that of the "absentee owner. I do not identify with the way in which they politic to attain their way, and the relentless manner in which they dominate debate until they get their way. When they are opposed they wear down opposition, and if the opposition persists they have shown no reluctance to adopt aggressive tactics. These tactics are not suited to, and have no place in, a proper functioning corporate environment. It may be coincidental that amongst management there is not a single executive Director, with the possible exception of Barry Kalkhoven, who has long experience in the type of environments referred to by the Harvard Business School and Warren Buffett.

1.3 Directors' Rights

It is a fundamental right of Directors to seek independent legal advice when they deem it appropriate, and particularly when it relates to the discharge of their fiduciary duties to that company. Responsible Boards of Directors will uphold this right, and even encourage their Directors to exercise it when such Directors themselves deem it appropriate. I have made no secret of the fact that I am taking independent legal advice, and I would have thought in current circumstances the Board would have supported this action. However, on the contrary, I was cross-examined by Benji Liebmann at the meeting at the Saxon Hotel on Friday, 25 October 2002. Benji demanded to know not only who I had spoken to, but what I had disclosed, and that in his view I had no right to take such actions.

On my return from overseas I received a phone call from Wim Trengove wherein he told me that management had again raised the matter and requested him to take it up with me. I then received an extraordinary letter from the company, dated 14 November 2002 with an illegible signature and which did not identify the author. This letter demanded, in aggressive terms, a comprehensive explanation from me of a number of issues in relation to which I had taken legal advice. Accordingly I wrote to the company requesting that the author be identified so that I could respond. Subsequently Benji Liebmann confirmed that he was the author and stated that his letter had been written "on behalf of and with the full consensus of the Board". In my letter to the Chairman replying to Benji Liebmann's letter, I did not dignify the letter with any response other than to assert my right to brief counsel of my choice. Benji's letter is a further example of the intimidatory tactics that have been employed against me in recent times to dissuade me from pursuing my rights. In that climate it is hardly surprising that I exercised my right to look outside of Company and Board structures for independent advice.

At the Board meeting on Tuesday, 26 November 2002, I asked you whether the statement by Mr Liebmann that his letter had the full support of the Board was true or not. You confirmed that it was and that a meeting of Directors had taken place the previous Thursday to discuss this matter. You further confirmed that copy of the letter had been personally vetted by Wim Trengove. My response was that I was sorry to hear what you had said and that the Directors of the company had made a serious mistake. Mr Liebmann's retraction, stating that the Board had always upheld Director's rights to take external legal advice, but that there are other issues they do not agree with, is a hollow statement in the light of the previous accusations, intimidatory tactics, and clear interpretation of his letter. I have taken further advice on this matter from a Judge of the High Court and it is appropriate that I advise you of his view:

"Is a non executive director of a public company entitled to seek independent legal advice on issues concerning the company where he feels he needs such advice in order to execute his or her fiduciary responsibilities?

Most certainly. He seeks advice in his personal capacity in order to do his duty. He is personally liable if he simply acquiesces when he knows or ought to know better. He must be encouraged to act at all times in the best interest of the Company. He is also obliged to take reasonable steps to ascertain the true facts.

Is he under any obligation to request the company's permission and/or to disclose to the company the identity of his legal advisor?

No and No.

Is such consultation covered by the normal lawyer/client confidentiality?

Very definitely.

If you would prefer not to deal with this, I will certainly understand.

I appreciate your concern but have no problem with general as opposed to specific advice to identified recipients. The answers are general and apply in all circumstances. I have no idea who may need the advice and offer it as general advice."

1.4 Co-option

As I have pursued my various enquiries I have periodically been told by management that they do not understand why I pursue these enquiries because I have previously approved the issues at the Board, was a member of a Committee which did, and have full access to the information had I required it. These are nothing more than attempts to co-opt me so that I can drop the enquiries, and contain an implied threat that if I persist my complicity will be held against me. I want to make it clear, as I have done on previous occasions, that any Director has the right to pursue any matter which is of concern to him regardless of the history of the matter. I am sure that it would not be necessary to take legal advice on this matter.

2. The Issues

2.1 Overview

After the formation of Corpgro, we had a two-year honeymoon period. I was excited about the prospects and the management team communicated extremely well. However, immediately on the formation of Corpcapital out of the TPN cash shell, problems arose which evolved over a period of time into the present boardroom disagreement about principles of disclosure and corporate governance. This disagreement started with the proposed award by management of a significant shareholding to themselves in Corpcapital, on its formation some three years ago. You were furious, and a meeting took place with management, which became heated and emotional. It was the first indication that management were not going to come to terms with accepted methods of managing conflicts of interest. Since then the disagreements have broadened to cover other aspects.

As I see it, the way in which the company now operates is far removed from the principles set out in 1. above. The accumulated evidence of the past three years points to the uncomfortable fact that it is management who de facto control the company. Given the inherent conflict in such a situation, there are obvious risks that the interests of the various stakeholders are no longer aligned. It seems to me that the company faces two very different future outcomes. At one end of the spectrum is a company controlled by management, and persuing their agenda, at the other is a programme of significant reform which reasserts the supremacy of the board, rectifies those elements of corporate governance referred to, and re-aligns all stakeholder interests.

2.2. **Conflicts of Interest**

2.2.1 **Remuneration, pre-merger**

On the formation of Corpcapital four managers, namely Jeff Liebesman, Benji Liebmann, Martin Sacks and Errol Grolman, presented you and I with a schedule containing shares that they proposed allocating to themselves in the company. The volume of shares and the potential conflicts of interest as between Corpgro and Corpcapital caused you and I tremendous concern. The meeting to discuss this matter was highly emotional because of the aggressive way in which management pursued their interests. Eventually you and I approved the allocation on the explicit understanding that "inequalities of the past" would never be raised again, and that no further shares in Corpcapital would be allocated to these four members. Shortly thereafter Errol requested a meeting with you, attended by Jeff, and a proposal was tabled for a significant increase in the shareholdings of the four managers in Corpcapital. At this meeting Errol also raised the question of bonuses and share options. You expressed strong opposition to the proposal and your disappointment that the core group had evolved into two camps, asserting that both you and I had been sidelined. At a follow-up meeting Errol was reminded of the undertaking given regarding shares in Corpcapital. His response was "the rules have changed". In order to obtain clarity on a clearly divided issue, we agreed that I should seek outside counsel. I did so with Michael Katz and Doug Doel of the JSE, who both documented their views to us for incorporation in our deliberations.

I then wrote to Jeff on 10 May 1999 suggesting that we evolve a set of policies and principles and set up a proper Remuneration Committee. At a Board Meeting on 24 May 1999, I tabled a document on remuneration principles. Input was given by management and it was duly approved. You were appointed to the Corpgro Remuneration Committee, and both you and I were appointed to the Remuneration Committee of Corpcapital. During the next two years, neither you nor I were invited to a single Corpcapital Remuneration Committee meeting. If we look back at what happened during this period, the remuneration of management increased significantly and substantial restraint payments were made. In most cases the details were not disclosed to the holding company even though they were material.

Events of the early days are fully documented.

2.2.2 **Remuneration at the time of the Merger**

You will recall the events last year, which led to a new Remuneration Committee being appointed under my Chairmanship, following the merger of Corpgro, Corpcapital and Corpcapital Bank. You will also remember the request of the CEO, that notwithstanding the appointment of the new committee, the old committee should meet to consider a double bonus for himself, since he had missed out the year before, and also to back-date and re-price his share options. My opposition to this is fully documented. I would like to draw your attention to my letter to you of 12 September 2001which is highly relevant, especially as I requested that it be attached to the minutes of the Board meeting. The issues at that time of the merger are fundamentally the same as they were in 1999, and not materially different to what they are today. The pattern is the same and I do not feel that we have made much progress on these governance issues.
At the Remuneration Committee meeting, which approved executive remuneration for the year ended 31 August 2001, Wim Trengove and I favoured a full disclosure of executive remuneration to shareholders. Management were vociferous and aggressive in their opposition to the full disclosure, both during the discussions and on many occasions subsequently, the latest being in Benji Liebmann's fax to me dated 6 November 2002.

Following the disclosure of remuneration, Jeanine Van Zyl of Old Mutual contacted the CEO with queries related to the remuneration disclosure. The CEO's reply contained misrepresentations and outright departures from the facts. I took this matter up with the CEO both in writing and face to face. Whenever the matter has subsequently been raised, the approach of the CEO has been that I have my opinion and he has a different opinion of the event. However, the facts speak for themselves and they are fully documented. There is no grey area. This incident illustrates management's evasive and opaque approach to disclosure regarding remuneration.

Events during this period are fully documented.

2.2.3 **Remuneration for the 2002 year**

Turning to the series of meetings one year later, the situation worsened. The company did not perform well, but management's demands were as aggressive as ever. We were told that management no longer supported the remuneration policy and the formula for bonuses. While it is true that they have periodically made this assertion, they have never put up alternatives as they were invited to do. The policies and procedures had been through a long and arduous process and had been approved by both the Remuneration Committee and Board of Directors. The Chief Executive had been invited on many occasions to bring his management team to the presentation and involve them. This invitation was never taken up.

At the conclusion of a meeting to approve bonuses, I was called by the CEO, thanked and complimented on the way in which I had facilitated the meeting. Barely two weeks later at a meeting of the Remuneration Committee, I was asked to stand down as Chairman of the Remuneration Committee on the grounds that management had no confidence in me. The purpose of that meeting was to consider a share option proposal from management. It was well known that I was insistent that the proposal should be approved by shareholders. I also had reservations about certain aspects of the scheme itself. I am not sure whether you have read Benji Liebmann's extraordinary letter to me of 6 November 2002. If you haven't, you should because point 5 in particular contradicts the entire remuneration process and policies which were approved by the Committee and Board of Directors. Evidence of management's selective use of information can clearly be seen if we compare Mr Liebmann's statements with those of the CEO when he wrote his reply to Old Mutual on 22 January 2002. In this letter he went to pains to point out that matters were handled properly, and that there was a formula for determining bonuses and the process was determined by the Remuneration Committee after extensive consultation with PE Corporate Services. It was this approach by Benji Liebmann which finally persuaded me that my efforts at reform were not going to be successful. It was the straw that broke the camel's back. Fifteen months of significant effort by the Remuneration Committee were summarily negated. The pattern seems to be pretty clear. When you agree with management, you do a good job, when you don't agree with them, you are chastised and isolated, as though Directors report to management and not the other way around.

All events at this time are fully documented.

2.2.4 **Restraints of Trade**

The remuneration policies manual defines remuneration as including basic salary, bonuses, share options and restraints of trade/sign-on fees. All of these issues fall within the ambit of the Committee's deliberations and fiduciary responsibilities. No Remuneration Committee meeting that I had previously attended had been presented with information on restraints of trade. It was for this reason that I commenced an enquiry to the Company Secretary requesting him to ensure that we were provided with a schedule of restraint payments over the previous three years. I am sure you were as shocked as I was to discover that some R37 million had been paid to management in the form of restraints of trade. This information had not been previously disclosed to the holding company Board, and no agreements had been seen by the Remuneration Committee, even though they were requested. While it could be argued that this was a

Corpcapital rather than a Corpgro issue, the materiality and potential conflict of interest indicates to me that there should have been a disclosure to the holding company Board, and indeed to shareholders.

2.2.5 **Share Options**

Discussions on the cash distribution to shareholders illustrate the unacceptable way in which not only conflicts are managed but also how matters are debated. I was invited to a meeting at the CEO's office to discuss the matter before it was put to the Board. At this meeting management proposed a cash distribution to shareholders and linked it to a restructuring of their share options. Share options are significantly under water. I advised the CEO that the cash distribution was a matter for the Board of Directors and that the share option scheme should be taken to the Remuneration Committee, who would be sitting the next week. The Remuneration Committee would decide in terms of its mandate whether to recommend the new scheme to the Board. Notwithstanding my recommendation to the CEO, he nonetheless placed both matters before the Board without taking the share option matter to the Remuneration Committee. When discussions at the Board commenced, all four non-executive directors opposed the cash distribution for very good reasons, including quoting the reasons previously put forward by the Chief Executive in favour of the retention of cash. The six management board members relentlessly applied pressure on the issue until one non-executive after the other capitulated. The way in which the debate took place made it difficult for non-executive directors to maintain a view different to that of management. It was the intention of management to obtain an approval in principle by the Board to the share option scheme. Effectively, this would circumvent the process of going through the Remuneration Committee and simply instruct the Remuneration Committee to implement the new proposal.

The latest development, a memorandum of 13 November by the Executives to the Board, is quite breathtaking. Management apparently now no longer support the share option scheme devised by themselves, and approved by the Board, but since "it impairs the ability to incentivise key executives…. this shortcoming will have to be addressed by the Board in some other way". Amongst the reasons given, is a likely media attack which would detract from the special distribution. If management believe that what they are doing is right and in the best interest of shareholders, they should be willing to defend it. I do not understand why their view of the reaction from the media should determine the outcome.

2.3 **Disclosure**

As you know I am unhappy with the general level of disclosure to non-executive directors and with the time taken to make information available. I sense a general unwillingness on the part of management to have some of their proposals scrutinised by non-executive directors. I have felt resented when pursuing enquiries, even when my persistence has been vindicated, as was recently proven by the independent valuer on Cytech. As a non-executive director, I do not report to, and nor am I accountable to the executive management team. I am entitled to expect full and timeous management support and active management co-operation in satisfying my queries, irrespective of management's attitude towards those queries.

The Cytech story is not only a disclosure issue, but is perhaps the clearest indication of a value system with which I cannot identify. Having initiated the inquiry some two years ago in a proper way through the Board, little effort was made to satisfy my initial inquiries. Nonetheless, I still followed proper procedures by meeting with you and the CEO, and even followed the process suggested by the CEO. Notwithstanding my following the process I did not receive information timeously, but received aggressive and personal letters from the CEO to boot. Eventually, when the facts were out, both you and Tom Wixley confirmed at our meeting on 29 June 2002 that none of the facts had previously been disclosed either to the Audit Committee or to the Board of Directors. What could possibly speak stronger to the lack of commitment to transparency by management? Management must take full and sole responsibility for the unnecessary trauma that they have caused, both for me and for the company, in the way that this matter has been handled, even after my actions had been fully vindicated by the independent valuer. This matter could have been, and should have been, handled in a much different and more professional manner, as I have pointed out on many occasions.

At the conclusion of the recent Audit Committee meeting, I proposed that, having dealt with the symptom, namely the Cytech valuation, we should also deal with the real problem, namely the underlying behaviour pattern which gave rise to the issue. Wim suggested that we have a separate meeting, and this subsequently took place at the Saxon Hotel. The meeting which was intended to discuss the underlying problems was turned on its head by management who adopted an aggressive and offensive approach. The night before the meeting, management submitted a 120- page response to my memorandum to the Board. This gave me insufficient time to read through before the meeting. In the time that has since elapsed I have gone through the document thoroughly. However I do not think that the document warrants detailed comment. It appears to me that the report was prepared in haste and contains many factual inaccuracies and distortions. Despite having been vindicated by the independent valuer on my enquiry into Cytech, management still say that I am 100% wrong and that they are 100% right.

Based on my experiences there is clearly a different approach between my attitude towards disclosure to shareholders of matters I regard as material and that of management. The differences of opinion, in summary relate to the following:

- A lack of disclosure to shareholders of a company which made a material contribution to profits.
- Frustrating the efforts of a non-executive to obtain information.
- No full audit of the entity.
- No independent valuation, despite the potential conflict of interest. A valuation took place in a different context at the time of the merger, and at the time of the audit for August 2002, at my instigation.
- Management given a significant role during the “independent valuation”.
- Use of intimidatory tactics by management against me.

3. **Guidelines**

Erwin J Robinson, an imminent New York lawyer, said the following, writing in the September 2002 issue of International Business Lawyer:

“The fact is that the management of many corporations regard the business of the corporation as their private domain and do not, in most cases, want outside directors to question or meddle in what they are doing or to know fully what they are doing, even if it is material for the directors to know.”

Robinson says the following is desirable:

“An agreement to permit any director of the corporation who has questions concerning the financial or business operations or conditions of the corporation which the director cannot satisfy by internal investigations to seek at the expense of the corporation independent outside legal or accounting advice and any other professional assistance as is required to determine if the director’s lack of satisfaction or doubt is justified.”

“An agreement that the independent board members may meet periodically with key personnel of the corporation, without management present, to discuss with them the operations of the corporation and its business and financial condition.
“An agreement that any meetings requested by the audit committee, or by any other committee of the board with the independent auditors or with the outside and inside legal counsel be held without the presence of any management persons if the inquiring committee so elects.”
“Always question and not trust absolutely any information provided to directors by management and/or released to the public by management irrespective of how long or how well they may have known each other.”

"Never forget that the corporation does not belong to management, but to the shareholders, and remember at all times that the directors' ultimate responsibilities are to the shareholders, creditors and the public, and not to management."

"The tragedy which has befallen millions of shareholders of public corporations both within and without the United States might have been avoided had the independent board members remained independent and exercised the fiduciary duties and responsibilities imposed on them by federal and state law."

4. **Summary**

A healthy relationship between the company and its shareholders requires a wide range of disclosures. The way in which such disclosures are made is a function of the culture and values of the management team and the CEO in particular. I believe that management have been less than frank and transparent on many issues of critical importance. As stated by examples in this letter, I have repeatedly found myself completely at odds with management on issues of principle. The accusation has been made frequently, no doubt, instigated by management that my issues are personal in nature, are conflict issues, or issues of a lack of trust. These are attempts to deflect the main issues. I have outlined what these are, and it is obvious that they are matters which affect the very principles and foundations of business. Issues of trust, personality conflicts etc are no more than symptoms of the real causes, but nonetheless do present themselves as by-products. It has also become increasingly clear to me that I am at odds not only with the Executive Directors, but also with all non-executive Directors, as evidenced by the letter sent to me on the 14 November 2002 by Benji. He then wrote to me on 18 November 2002, advising that the letter of the 14 November 2002 "was written on behalf and with the full consensus of the Board." At the Board meeting on 26 November 2002, you confirmed this.

I can no longer support a management team where I regard their agenda as not being in the interests of all shareholders. It seems to me that the company would probably be de-listed as Errol Grolman openly stated at a recent Board meeting. In the present climate, and given that certain non-executive Directors are not supportive of the positions I have taken I see no chance of the critically required reform taking place. As a result the reasons that I became involved in Corpgro and Corpcapital in the first place no longer apply.

I have come to the considered conclusion that it is impossible for me to exercise my fiduciary duty in the present regime and that there is no reasonable prospect for the required reform within the foreseeable future. For these reasons, I now tender my resignation from the Board of Directors of Corpcapital. While I enjoyed the first few years, I unfortunately no longer believe that my hopes for an outstanding and respected public company will be realised.

Yours sincerely

N J FRANGOS

Copies to: Wim Trengove
Tom Wixley
Jeff Liebesman
Martin Sacks
Errol Grolman
Neil Lazarus
Benji Liebmann
Barry Kalkhoven

ANNEXURE C

FINANCE WEEK - 22 January 2003

Corpcapital's big schlenter

By Howard Preece - *Associate editor*

hpreece@media24.com

IN THEORY, fine-sounding phrases are uttered about corporate governance. In practice, Corpcapital is a company where the three non-executive directors were pushed to the fore by its six executive directors to justify their exorbitant remuneration packages.

Although not in so many words, this is in essence the underlying message in Nic Frangos's letter of resignation of 2 December to Corpcapital chairman Eric Ellerine.

Frangos makes shocking claims about restraint of trade payments totalling R37m handed to the top management in the past three years. Other sources say the amount could top R50m.

Frangos chaired the remuneration committee until he resigned his directorship. According to his letter – which Corpcapital does not believe is in the company's interests to share with shareholders – restraint payments were part of remuneration and should have been brought to the committee's attention.

Frangos alleges no information about such payments was ever disclosed to a meeting of the remuneration committee at which he was present. He was forced to ask the company secretary to provide him with a summary of payments for the past three years. "I am sure you (Ellerine) were as shocked as I was to discover that R37m had been paid to management in the form of restraints of trade."

In 2001, the three listed entities – Corpgro, Corpcapital and Corpcapital Bank – merged to form the current Corpcapital. Frangos says information about the restraints was not disclosed to the old Corpgro board, nor were agreements to pay the executive management huge sums disclosed to the remuneration committee, despite requests.

Frangos says it can be argued this was a matter for Corpcapital rather than for Corpgro. Nonetheless, he still believed it was a pertinent issue and the potential clash of interests should have motivated full disclosure to Corpgro's board and shareholders. Any remuneration a director receives must be disclosed as such. This includes restraint of trade payments.

The 2000 annual report of the then Corpcapital reflects a R9,1m restraint of trade payment. For Corpgro, an amount of R3,7m was disclosed for a subsidiary. The full R9,1m was not reflected in Corpgro's financial statements, and it is not clear whether the smaller amount was included in the R9,1m.

In 2000, executive director pay almost trebled, from R6,6m to R17,6m. This was also the financial year when the group's controversial investment in Cytech was announced. The British Virgin Islands-registered company was revalued from R2,7m to R150m. In the same year, Corpgro's consolidated headline earnings were R151,7m, and Corpcapital's R133,4m.

Cytech's revaluation made a substantial contribution to profits in 2000. At the annual meeting, audit committee chairman Tom Wixley was vague about whether the Cytech revaluation was considered when directors' bonuses were calculated. Executive directors shook their heads, but there was no outright denial.

In his letter, Frangos goes into much detail about his drawn-out battle with Corpcapital's executive directors over implementing a sound remuneration policy. Shortly after the 2001 merger, a new remuneration committee was appointed with Frangos as the chairman.

CEO Jeff Liebesman wanted the old remuneration committee to meet to consider a double bonus for him on the grounds that he did not get a bonus the year before. Liebesman also wanted his share options backdated and revalued. Frangos objected.

At a remuneration committee meeting, Frangos also stated that director remuneration for the 2001 financial year should be fully disclosed. He claimed, in his letter to Ellerine, that the six executive directors had responded aggressively to his request.

Frangos insisted, and won this round. Jeanine van Zyl, an analyst from Old Mutual (which holds 8,2% of Corpcapital), contacted Liebesman shortly afterward with queries about remuneration.

Frangos maintains that Liebesman's reply did not agree with the facts. On questioning Liebesman about it, Frangos was told they obviously saw things differently. "The incident shows management's evasive and non-transparent approach to remuneration," he says.

Frangos was careful to repeat in his letter to Ellerine that several of the incidents and issues to which he refers are supported by documentation to which shareholders, such as Old Mutual, would be entitled access. Old Mutual did not attend last week's AGM but voted, by proxy, against several of the proposals raised.

VALUE ADDED BY EXECUTIVE DIRECTORS VS EXECUTIVE DIRECTOR REMUNERATION

	Rm
Ordinary shareholders' equity – 31 August 2002	1 237
Less: Ordinary shareholders' equity – 31 August 1999	-607
Increase in ordinary shareholders' equity	630
Less: Shares issued – 2001	-434
Plus: Dividends – 2001	26
2002	53
Value added by management (A)	275
Headline earnings declared, 2000-2002, (B)	434
(B) – (A)	159
Executive director remuneration, 2000-2002 (C)	58
(C) as % of (A)	21%
(C) as % of (B)	13%

Sources: Corpcapital, Statement of changes in equity, 2000-2002. Compiled by Deon Basson Research

Ellerine did not inform share and proxy holders at the meeting that any investor, particularly one as influential as Old Mutual, had voted against a number of the company's proposed resolutions. In fact, those present at the meeting did not hesitate to agree to voting conducted by a show of hands.

In Corpcapital's case, shareholders – who have apparently now asked to see Frangos's letter – will be curious to know how and where the management had added value, in relation to the rewards they received.

In the three years to 31 August 2002, ordinary shareholders' equity rose from R630m to R1 237m. Deduct the R434m from an issue of new shares and add dividends of R79m. This leaves R275m of added value.

But this figure should be compared to headline earnings of R434m declared in the same period, apparently the basis for the bonuses paid.

There is a difference of R159m between the two figures, which shows that the income statement is not always a true reflection of added value. In the three years, executive director remuneration amounted to R58m, equal to 21% of the added value.

The minorities of the former Corpcapital Bank who objected strongly to the exchange ratios when the three companies merged in 2001 now have further reason to feel aggrieved about that transaction.

According to Frangos, who does not mince his words in his letter to Ellerine, Corpcapital's executive directors looked at their own remuneration first and forgot about their fiduciary duty to shareholders.

Frangos's letter is not likely to be the last word on the subject; it's probably just the first salvo in what could turn into a heated debate about corporate governance.

The Frangos letter

SELECTED excerpts from Nic Frangos's letter to Corpcapital chairman Eric Ellerine, 2 December 2002:

• ". . . Immediately on the formation of Corpcapital out of the TPN cash shell, problems arose which evolved over a period to the present boardroom disagreement about principles of disclosure and corporate governance. This disagreement started with the proposed award by management of a significant shareholding to themselves in Corpcapital, on its formation three years ago. You (Ellerine) were furious and a meeting took place with management, which became heated and emotional. It was the first indication that management was not going to come to terms with accepted methods of managing conflicts of interest. Since then, the disagreements have broadened to cover other aspects."

• ". . . You (Ellerine) were appointed to the Corpgro remuneration committee, and both you and I were appointed to the remuneration committee of Corpcapital. During the next two years (from May 1999), neither you nor I were invited to a single Corpcapital remuneration committee meeting. If we look back at what happened during this period, the remuneration of management increased significantly and substantial restraint payments were made. In most cases, the details were not disclosed to the holding company even though they were material."

• ". . . Jeanine van Zyl of Old Mutual contacted the CEO (Jeff Liebesman) with queries related to the remuneration disclosure. The CEO's reply contained misrepresentations and outright departures from the facts."

• "Fifteen months of significant effort by the remuneration committee were summarily negated. The pattern seems to be clear. When you agree with management, you do a good job; when you don't agree with them, you are chastised and isolated, as though directors report to management and not the other way around."

• "No remuneration committee meeting that I had previously attended had been presented with information on restraints of trade. It was for this reason that I instigated an inquiry to the company secretary requesting him to ensure that we were provided with a schedule of restraint payments over the previous three years. I am sure you were as shocked as I was to discover that R37m had been paid to management in the form of restraints of trade. This information had not been previously disclosed to the holding company board and no agreements had been seen by the remuneration committee, even though they were requested."

• "The Cytech story is not only a disclosure issue but is perhaps the clearest indication of a value system with which I cannot identify. Having initiated the inquiry two years ago in a proper way through the board, little effort was made to satisfy my initial inquiries . . . notwithstanding my following the process, I did not receive information timeously but received aggressive and personal letters from the CEO to boot. Eventually, when the facts were out, both you and Tom Wixley confirmed at our meeting on 29 June 2002 that none of the facts had previously been disclosed either to the audit committee or to the board of directors. What could possibly speak stronger on the lack of commitment to transparency by management?"

• "The differences of opinion (relate to) a lack of disclosure to shareholders of a company which made a material contribution to profits, frustrating the efforts of a non-executive to obtain information, no full audit of (Cytech), no independent valuation despite the potential conflict of interest, management given a significant role during the "independent valuation" and use of intimidating tactics by management against me."

• ". . . sustained efforts have been made to deflect my inquiries, shift the agenda and personalise issues, often with the use of intimidating tactics."

• ". . . new regulations won't solve the governance problems we're seeing today. Those problems can be solved only if (Corpcapital's) independent directors step up to their legal and fiduciary responsibilities. . ."

• ". . . I have come to the view that the orientation of the six (executive directors) is to favour their own interests rather than that of (shareholders). When they are opposed, they wear down opposition; and if the opposition persists, they have shown no reluctance to adopt aggressive tactics."

• “. . . Benji (Liebmann’s) letter is a further example of the intimidating tactics that have been employed against me in recent times to dissuade me from pursuing my rights. . . You (Ellerine) further confirmed that copy of the letter had been personally vetted by Wim Trengove (non-executive director and human rights lawyer).”

• “I can no longer support a management team where I regard their agenda as not being in the interests of all shareholders.”

Corpcapital’s directors

Executive
Jeff Liebesman (CEO) Martin Sacks Errol Grolman Neil Lazarus Benji Liebmann Barry Kalkoven
Non-executive
Eric Ellerine (chairman) Wim Trengove Tom Wixley
By **Deon Basson** *deonbass@mweb.co.za*