SOLEMN DECLARATION - INDIVIDUAL ASSIGNMENT

Solemn declaration by student

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I Narisha Moodley declare herewith that the assignment which I herewith submit to the North-West University as partial completion of the requirements set for the MBA degree, is my own work.

Signature of student   Student Number 37079018

Signed at Vanderbijlpark this 8th day of June 2020

Individual Assignment

Evaluation of Corporate Compliance with King IV: Corpcapital Limited

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1. Introduction

Ethical leadership and sound corporate governance within organisations benefits all stakeholders. Increasing stakeholder confidence through transparency benefits the organisation in multiple ways including reduced cost of capital and improved brand image. It is therefore in the best interests of organisations and their stakeholders that the adoption and compliance to sound governance principles is incorporated into the daily operation of the organisation. It is against this premise that King IV™ is applicable with the last revision (effective from 01 April 2017) updated in-line with international governance codes and best practice. As such, the code takes into account specific corporate governance developments in relation to effective governing bodies, increased compliance requirements, new governance structures (e.g. Social and Ethics Committee), emerging risks and opportunities from new technologies, and new reporting and disclosure requirements (KPMG, 2016).

Codes of best practice are generally recommended practice but in many cases these exists a precondition to a stock exchange listing. In a local context King IV™ compliance is mandatory for JSE listed companies, with King IV™ having evolved into prescribing that best practices must be applied and explained from a material qualitative perspective.

This report provides an evaluation into the affairs and conduct of Corpcapital Limited pertaining to the conduct of the executives, directors and shareholders against eight (8) of the principles as set out and explained in King IV™. Source information is based on the following supplied documentation and where applicable additional supplemental information was sourced online:-

- Executive summary of Corpcapital 1996 – 2008 (Frangos, 2008);
- Letter of resignation, NJ Frangos dated 2 December 2002 (Frangos, 2002);
- Newspaper article, "Corpcapital's big schlenter" as published on 22 January 2003 (Preece, 2003).

2. Applicable King IV™ Principles Used for Evaluation

The achievement of good governance is contained in the code's four governance outcomes of ethical culture, effective control, good performance, and legitimacy (Institute of Directors, 2016, p. 36). These governance outcomes underpin the principles of the King IV™ code which describe "what" organisations should do to achieve good governance. The code adopts an "apply and explain" outcomes based philosophy with a reduction from a previous seventy five (75) to seventeen (17) basic principles which can be applied to any organisation to support good governance (Institute of Directors, 2016). Additional supporting guidance is provided via practices which describe "how" organisations can self-realise these principles. This cascaded approach supports a holistic application to good corporate governance (depicted in Figure 1 below).

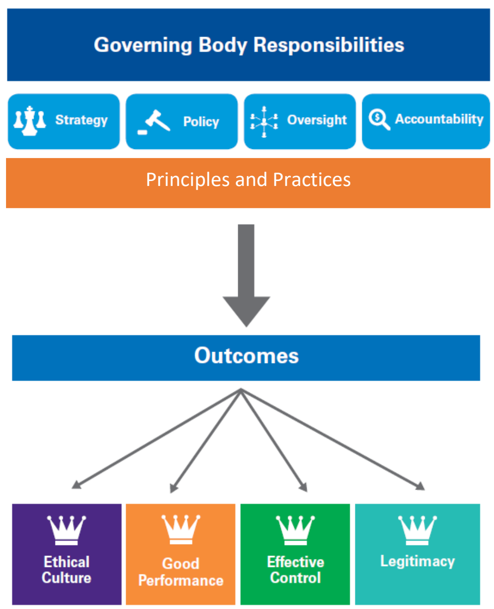

Figure 1: King IV™ Holistic approach to Corporate Governance (KPMG, 2016, p. 9)

Eight (8) principles form the basis for the evaluation of Corpcapital. For the purposes of this report structure each of these principles is succinctly summarised, followed by an evaluation of Corpcapital against the principle, and followed thereafter with recommendations which could have supported appropriate good governance conduct. The following evaluation of Corpcapital utilises descriptors such as "absent", "weak", "acceptable" and "strong" to assess and create a performance profile against good corporate governance practices.

2.1 Ethical & Effective Leadership and the Establishment of an Ethical Culture

2.1.1 Theoretical discussion of the principle

This principle deals with the concepts of ethical leadership and organisational ethics. Ethical leadership relates to the integrity and transparency that the governing body displays and how these values are incorporated into the execution and delegation of its duties. “A company’s ethics are the moral principles and standards that guide it in his day-to-day activities and its relations with internal and external stakeholders” (Naidoo, 2015, p. 398). As such, corporate ethics should not be reduced to compliance as a checklist approach but rather to set and provide clear direction for the management of the organisation’s ethics.

Culture in an organisation is strongly influenced by the leadership spine which in essence can be ascribed to starting with the governing body. As such ethical leadership and the cascading effect of building and inculcating an ethical culture in the organisation is mutually inclusive. With management of the organisation being responsible for “overseeing the implementation of the code of ethics within the company, this was often where things came unstuck” (Naidoo, 2015, p. 400). Management and the rest of the organisation are best influenced and persuaded to adopt good governance when the environment supports this behaviour. This environmental influence is synonymous with the culture of the organisation.

2.1.2 Evaluation of Corpcapital’s conduct measured against the principle

There are two layers of leadership that need to be considered, one of which is the board and the other at the executive management layer and the impact thereof on the culture at Corpcapital.

From a board perspective, it is evident that in general the leadership exhibited by the board can be considered extremely weak in enforcing an ethical leadership stance based on integrity, respect, and honesty. Strong ethical leadership by the board would have restored the balance of power and not allowed the management layer to exert undue power and influence over the board. This view is supported by the following examples or events that is evident in the material:-

- An inability to enforce full disclosure relating to remuneration e.g. restraint of trade payments.
- The inability of the board to extract transparent, accurate, and reliable information relating to the organization from management e.g. Cytech evaluation.
- No mention is made relating to the values of Corpcapital, which either means that these exist merely for the sake thereof or that values like integrity which support ethical leadership wasn't even considered important and enforced by the board.
- Non-executive directors being influenced to adopt management views without questioning or having independent and objective assessments completed e.g. share options discussion where non-executive directors where "coerced" into agreement.
- The sanctioning and support for allowing points of discussion and debate to be become personal e.g. management allowed to adopt an aggressive and offensive approach in their written and verbal communication to members of the board.

At the management layer, ethical leadership can be considered and assessed as absent. There are numerous examples of personal gain being the sole objective for executive directors with little or no consideration to building a sustainable business and generating sustainable shareholder value. Some examples include:-

- Personal enrichment at the expense of transparency (e.g. resistance to disclose remuneration to shareholders to avoid scrutiny from shareholders).
- Infringing on director's rights to take legal advice.
- Behaving in a manner best described as devoid of sound ethics and values by consciously initiating actions supporting individual gain and benefit. As an example, the misrepresentation of asset value (Cytech) to misinform the financial position of the organization.

Given the displayed executive director behavior, it can be deduced that the rest of the organisation at lower management levels assimilated to a similar approach. This does not bode well for the organisational culture given the high levels of correlation between leadership behavior and culture. It is highly probable that the culture at Corpcapital prioritized financial position ahead of ethical behavior when considering specific actions for e.g. accounting policy change mid-2002 to disguise the valuation of Cytech and decline in earnings.

The existence of an unethical culture in an organisation, influenced by negligent leadership or cultivated by unethical leadership, has resulted in many corporate governance blunders. More recently Volkswagen (VW) has admitted to installing engine software over several years to cheat laboratory emission tests when in reality emissions were substantially higher in real world driving conditions. The subsequent cost to VW is billions of euros in fines, lawsuits and recall costs (Financial Times, 2015).

2.1.3 Recommendations as to the appropriate conduct

The following are practices that Corpcapital could have taken:-

- At a board level, the board should have promoted and displayed characteristics of honesty, integrity, respect, fairness and transparency in all dealings and interactions to set the tone and benchmark for management.
- The board should have evaluated its own capability and addressed gaps by including the appropriate skills and knowledge to ensure sustainable business value, and in doing so unearth questionable business practices on the part of management. It is unclear how the board assessed its own leadership performance and how they were being held to account. As such mechanisms should have been instituted by the board to delve deeper into the organisation (sometimes in the absence of management) to ascertain and confirm actual operational practices and to make conclusions with independence and without influence.
- Given the issues being raised by one of the independent directors over a number of years, the board should have prioritised the importance of ethics in the organisation by developing appropriate codes of conduct and ethics policies. These should then be delegated to management layers to implement while maintaining oversight on critical matters for e.g. employee remuneration and supplier selection.
- To ensure employees are able to flag and disclose potential unethical behaviour, mechanisms such as an ethics line could have been created to record and investigate complaints from within the organisation with direct reporting of results into the board. In this way, there would be transparency regarding how ethics were being monitored and addressed.

2.2 The Governing Body as the focal point & custodian of corporate governance in the Organisation

2.2.1 Theoretical discussion of the principle

The governing body is the mechanism through which the shareholders allow the executives to manage the company. Given its importance, this principle deals with the primary roles and responsibilities of the governing body, essentially positioning the governing body as the apex and the owner of corporate governance in the organisation. The governing body therefore sets the drumbeat and maintains ownership regarding the importance and integrity of policies and behaviour pertaining to sound corporate governance and the application thereof.

Custodianship takes the form of the principles as outlined in King IV™ being applied by the governing body. For example, a company's own founding documents i.e. its memorandum of incorporation may include and stipulate limitations on the "raft of powers with which a company is incorporated" (Naidoo 2015, p.38). In addition compliance against internal policies, which form the basis for day-to-day operations, form an integral component of operational consistency to good corporate governance.

2.2.2 Evaluation of Corpcapital's conduct measured against the principle

The board of Corpcapital can be described as weak when considering overall performance as the custodian of good corporate governance. Given a review of the material, it is evident that on many occasions the board was unable to objectively put in place, and enforce good corporate governance principles. By allowing the executive directors to circumvent and undermine the role and authority of certain committees (e.g. remuneration), the board reinforced and inadvertently (and perhaps unconsciously) supported a climate of non-compliance to good corporate governance.

A core tenet of good corporate governance is full disclosure, examples where the board was unable to enforce disclosure regarding for example earnings (with the exception of 2001) to shareholders and the lack of knowledge relating to restraint of trade payments to executive directors should have raised a red flag internally. This reiterates the boards' apparent lack of control over management of the organisation (executive directors) and supports the premise that management, in essence, controlled Corpcapital.

When assessing the boards' performance, the Chairman's role is one of critical importance. By virtue of the position ultimate accountability resides with this individual. As such, it is apparent that this individual either lacked the strength of character from a leadership perspective to take decisive action, or was preoccupied with Corpcapital's business results (when these results were positive and the share price was increasing) to objectively take note of and act on corporate governance concerns. An inability to maintain a balance of power so essential for a board to operate effectively, by for example not supporting a non-executive director to seek external professional opinion as legally allowed, was a fundamental contributor to corporate governance breaches at Corpcapital.

Questionable board ethics are prevalent in many organisations, a recent example of which is automobile manufacture Nissan. In this case, board members including the chairman (Carlos Ghosn) and former representative director (Greg Kelly) had been found to be under reporting compensation amounts in the Tokyo Stock Exchange securities report to reduce the disclosed amount of compensation paid. Further acts of misconduct have been levelled against the chairman relating to the personal use of company assets (Jaeger, 2018).

2.2.3 Recommendations as to the appropriate conduct

To support good corporate governance, the board of Corpcapital should have exercised its leadership role by first and foremost having a clear charter with clear procedures relating to corporate governance and its application in the organisation.
To ensure that the board is able to function effectively, members of the board should be supported when requiring external professional advice to enable them to exercise their judiciary duties and not as in the case of Corpcapital restrained from doing so.

To ensure control by the board, there should be well defined instruments which allow its various committees the necessary delegation of power (control) to exercise and uphold the committees mandate, thereby removing the ability of members to bypass committees and influence directly at the board level without necessary due diligence being completed.

To support objective assessments, practical engagements with lower tier management layers (in the absence of executive directors) should have occurred to allow non-executive directors the opportunity to verify management feedback.

Finally, a mechanism should exist to assess board performance with respect to it discharging its responsibilities relating to the corporate governance aspects of the charter highlighted above.

2.3 The Composition of the Governing Body

2.3.1 Theoretical discussion of the principle

“The composition of the board is important inasmuch as it determines the ability of the board to collectively provide appropriate leadership to the company” (Naidoo, 2015, p. 130). Consequently, this principle describes what elements need to be considered when constituting the governing body with individual members. In essence the more appropriately populated the governing body is relating to relevant knowledge, skills, experience, diversity, and independence the more effective the governing body will be at exercising its governance role and responsibilities objectively and effectively.

Other factors like board structure and directorship types generally need to confirm the applicable regulations and/or codes. As an example, a requirement to maintain a balance between executive and non-executive directors helps with objectivity, together with having a sufficient number of directors to ensure that a quorum can be met. Given these factors for consideration, substantive effort must be made to appoint governing body members who have the applicable knowledgeable and skills which correspond to that of the organisation’s business to enable proper steer and leadership.

2.3.2 Evaluation of Corpcapital's conduct measured against the principle

In terms of the composition of the board it is clear that there are clear structural concerns with how the board was constituted and therefore the composition of the board is assessed as weak. A retrospective assessment indicates significant deviations to the recommendations on board composition in King IV™.

In the case of Corpcapital one of the significant barriers the board faced was enabling a balance of power. With six (6) executive directors and four (4) non-executive directors the scale was always going to be tipped in favour of management with an advantage to inappropriately influence. Particularly so when in Corpcapital's case the majority of executive members shared close friendships. This climate was rife for management to prioritise their own personal interests (and gain) above that of shareholders. As such the independence of the board, and its ability to act in the best interests of the shareholders, was severely compromised from the outset.

The lack of diversity in the composition of the board is clearly evident from a gender and race perspective. The lack of diversity perpetuates the environment for homogenous and group think which can result in reduced challenging of the status quo and objective questioning. The occurrence of this phenomena is almost certain in the board of Corpcapital.
Further, it was also materially evident that the specific experience of the board relative to Corpcapital's business was questionable in that arguably only one of the executive directors (B. Kalkhoven) had relevant experience applicable to the environment (Frangos, 2003).

Taking all of these factors into consideration it can be concluded that the composition of the board was largely non-ideal (performance therefore considered weak) and was unable to maintain an independence in its role.

2.3.3 Recommendations as to the appropriate conduct

The recommended practices that Corpcapital's board could have taken can be summarised as follows:

- Composition of the governing body
    - Frequent self and critical evaluations of the board's composition, by independent specialists, to enable necessary changes to attain a correct balance in composition. This evaluation should have considered the size and mix of skills, experience, diversity, and independence taking into consideration requirements for committees etc.
    - Critically the board should have targeted and comprised of a majority of non-executive members to enable a balance of power and objectivity in decision making.
    - Transparently disclosed on a frequent basis to shareholders the evaluation of the composition of the board (experience, skills, diversity, categorization of each director etc.) and the steps taken to address any shortcomings.
- Independence and conflicts
    - It is evident that conflicts of interest existed given the structural relationship between Corpgro and Corpcapital and share allocations to members in both entities. It would have therefore been prudent to obtain declarations from each member regarding any conflict of interest and thereafter to proactively manage these while disclosing these ownership conflict of interests to shareholders.
    - It is also clear that the independence of the non-executive directors was an issue in Corpcapital (SAB&T, 2007). Specifically in relation to the non-executive directors being entitled to remuneration that was linked to Corpgro's performance given their ownership stake in Corpgro. Again this should have been transparently disclosed to shareholders to enable corrective actions to the composition of the board.
- Chair of the governing body
    - A critical aspect to the independence of the board resides with the chairperson selected and appointed. The intention is to always elect an independent member as chair and a lead independent non-executive member (KPMG, 2016). In this case it can be confidently stated that the chairperson was not independent given his ownership stake in Corpgro (SAB&T, 2007). It is therefore highly probable, even if the chairperson was committed to good corporate governance, that a range of other factors affected the objectivity of the chairperson to exercise his duties to the

shareholders, and by implication negatively impacted the application of good corporate governance in Corpcapital.

- Given the above, full disclosure as to whether the chair was considered independent should have occurred. In such a case, the appointment of a lead independent non-executive director should have been considered.

2.4 The Arrangements in respect of Delegations within its own Structure to ensure Independent Judgement, a Balance of Power and the Discharge of Duties

2.4.1 Theoretical discussion of the principle

This principle relates to committees of the governing body and its importance. Committees can be considered an extension of the governing body from the perspective of assisting the governing body in discharging its role and duties and therefore play a critical role in the operation of the organisation.

Given the time constraints that boards are generally faced with, the benefit of committees to support the board are numerous. Appropriate delegation of authority to committees enables focus on specific and complex areas without being distracted by routine board matters. As such, committees provide a platform for boards to deal with specific areas that require focus using appropriate knowledge and skills of individual directors. With dedicated time for addressing specific issues, boards expect committees to conduct due diligence in a thorough independent manner which results in comprehensive information that committees can present to help inform votes on specific issues. Committees with suitable expertise and the correct delegation of authority, enable a decentralisation of power (balance of power) from individuals and allows the governing body to effectively discharge its wide range of duties.

2.4.2 Evaluation of Corpcapital’s conduct measured against the principle

It is evident that Corpcapital had appropriate committees in place to support the board. However, the effective functioning of these committees (remuneration and audit) are cast in serious doubt given the governance issues the organisation faced. There many examples of governance concerns related to remuneration (remuneration pre and during the merger, conflict of interests based on excessive share awards, excessive restraint of trade payments) and governance issues related to the audit functionality (over-evaluation of Cytech).

Committees are essentially a mechanism by which detailed, thorough, and robust evaluations can occur before being tabled at board meetings for ratification. It is evident that when it came to remuneration at Corpcapital that a conscious effort was made on the part of management to avoid and disempower these committees and in doing so remove any obstacles to management achieving their objectives. These committees were essentially rendered ineffective, and their functioning to support good corporate governance subverted. This was further supported by the approach of the board to “entertain” this behaviour on the part of management.

Given the concerns highlighted above in the first principle relating to ethical leadership and culture, the need for a social and ethics committee in Corpcapital can be retrospectively considered as a critical part of supporting good corporate governance that was missed. Holistically, the evaluation of Corpcapital’s performance against this principle is considered weak.

A recent example of delegation and discharge of duties failure is the case of Wells Fargo. In short a sales incentive programme resulted in employees creating nearly two million fake accounts to meet sales targets (Volkov, 2018). This was a new remuneration offering that fundamentally impacted the remuneration policy which the board of directors’ arguably should have approved. If the board was unaware then there is an issue with the delegation of authority to senior management given the associated risk exposure level.

2.4.3 Recommendations as to the appropriate conduct

Corpcapital’s board could have instilled the following general practices to support good governance at the committee level. There should have been clarity with respect of delegation of power to committees, ensuring (in a similar manner to the board) that the composition of committees were appropriate given the committees area of focus, and subsequently enforcing the terms of reference for the committees. Thereafter the board should still evaluate the information and results provided by its committees to make an appropriate informed decision.

There are possibly two other (over and above the audit and remuneration) committees that should have been functional at Corpcapital. The first of which is possibly a social and ethics committee and the other a committee responsible for nominations of members to the board. A social and ethics committee could have been instrumental in positively directing the culture of the board and that of the organisation relating to ethics and values and the impact thereof on good corporate governance.

Given the lack of independence of the board (SAB&T, 2007), and as highlighted in section 2.3.2 and 2.3.3 above, the establishment of a committee responsible for nominations of members to the board would have potentially mitigated (over a period of time) the lack of independence prevalent in the Corpcapital board given the current batch of non-executive directors (inclusive of the chairperson) involvement in Corpgro.

2.5 The Evaluation of the Performance of a Governing Body

2.5.1 Theoretical discussion of the principle

Employees in organisations (as a whole) are subject to continuous performance processes, assessments and activities to achieve key performance areas and in doing so enable business sustainability and profitability. As such the governing body and its members are no different and should also be subject to the evaluation of its own performance and that of its committees to support continued improvement in its performance and effectiveness.

According to King IV™ the performance of the board should be assessed at least once every two years, with other schools of thought recommending that the performance of the board be assessed at least annually (Naidoo, 2015, p. 193). Performance should be assessed against the key performance areas contained in the board charter and the terms of reference for the various sub-committees. The appraisal process should be scheduled in the board calendar, and if conducted in a well thought through manner the process can add value in terms of feedback to directors and the board as a whole. Importantly, King IV™ recommends that the re-appointment of directors should be subject to the results of the annual performance evaluation and directors replaced in the event of substandard delivery.

2.5.2 Evaluation of Corpcapital's conduct measured against the principle

It is unclear from the documents reviewed and the referenced material (The Corporate Codes, 2008) that there was any form of performance assessments completed to assess the board's performance over the years. As such, it is assumed that these types of assessments did not take place. Adopting this view would then inform the evaluation that Corpcapital's adherence to this principle can be considered as absent.

Given the underlying view in King IV™ that good corporate governance starts with defining an approach to corporate governance, then instituting mechanisms to achieve that approach, thereafter assessing conformance to the approach taking due consideration of the effectiveness of the mechanisms, and finally improving on performance by address the gaps. Given this logic, and in the case of Corpcapital, it can be stated that there was an approach to corporate governance by having certain mechanisms in place (e.g. remuneration and audit committees). However, there was no follow through to assess the effectiveness of the approach and consequently there was no practical manner to effect continuous improvement to corporate governance practices within the organisation.

It can also be stated that individual assessments of board members did not occur and therefore the value add or contribution of that board member remains questionable. If an assessment process had been in place, perhaps underperforming members would have been identified and replaced with better equipped more suitable candidates.

2.5.3 Recommendations as to the appropriate conduct

The recommended practices that the board could have implemented follow from the previous section describing the findings and evaluation of Corpcapital. As such, the board could have assumed full responsibility for performance evaluations of the board itself including the chairperson, any committees, and individual directors (executive and non-executive). To accomplish this an independent party external to the organisation could have been contracted to evaluate internal performance.

Given the underlying tenet to act in a transparent manner, these evaluations should then be disclosed with an overview of results and remedial actions, and with a view as to whether the board was satisfied that it was improving its performance and effectiveness.

2.6 Appointments and Delegations to Management and Role Clarity

2.6.1 Theoretical discussion of the principle

“The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities” (Institute of Directors, 2016, p. 58). This principle speaks to the reality that the board cannot practicality be involved in the day to day operations of the organisation. As such, the board “delegates responsibility for the day-to-day running of the business to management……with the strategic direction determined by the board (Naidoo, 2015, p. 191). These delegations (in formal documents) is relative to the authority required to enable business operations on a daily basis, and therefore the board should define which transactions the management or committees of the organisation can handle and which are reserved for the board. Delegations must be specific and include for example limitations on the authority delegated and maximum value of delegation (Naidoo, 2015, p. 191).

Delegation does not abdicate the board from ultimate control and accountability to the shareholders. The implication is that the board is still required to monitor and oversee transactions of delegated authority to ensure compliance with the conditions of delegation.

2.6.2 Evaluation of Corpcapital’s conduct measured against the principle

Since the CEO is the link between the board and management of the organisation, it is imperative that the CEO understands that he/she is accountable and reports to the board. Given this responsibility the CEO should in no manner attempt to subvert another director of the board which was the case at Corpcapital. Subversion in this case took the form of not disclosing material information timeously to non-executive directors, and a general unwillingness by management to support the requests of non-executive directors and to be challenged to objective discussion (Frangos, 2003).

The restraints of trade payments falls under the ambit of the remuneration committee yet at Corpcapital the management team had initiated and approved payments to the order of R37m (Frangos, 2003) without support from the committee and approval from the board. These actions would have fallen outside of the delegation of authority of management, yet no disciplinary action was initiated against management.

"The governing body should ensure that it has access to professional and independent guidance on corporate governance and its legal duties, and also that it has support to coordinate the functioning of the governing body and its committees" (Institute of Directors, 2016). In the case at Corpcapital, the ability of non-executive directors to seek legal support relating to governance issues was questioned and challenged (Frangos, 2003) with support of the board. The actions of the board can therefore be considered illegal as it is considered an infringement on the rights of directors to seek independent advice to support them in the execution of their duties.

It is also evident that the suitability of executive directors and their experience relevant to Corpcapital's business model was questionable. As such, the board failed to provide proper oversight to ensure that key management functions were led by competent individuals.

Given these examples and evaluation thereof, it was evident that with relation to delegations to management and role clarity, that Corpcapital performed poorly and is therefore assessed as having weak controls in place for this principle.

2.6.3 Recommendations as to the appropriate conduct

Conduct to improve on this principle could include practices were the CEO appointment, role and performance was periodically reviewed. Non-performance relating to business results and corporate governance issues should then be flagged and acted upon based on the seriousness thereof.

In terms of delegation the board should have been clear on which powers were reserved for the board, which delegated to committees, and which to the management team. Any non-conformance to this delegation should have been assessed and dealt with appropriately. In the case of Corpcapital management over reached and acted outside of its delegation with little to no consequences.

The ability of directors to perform their judiciary duties requires that they have the necessary access to professional corporate governance services. As such the board should have supported fully any director who sought independent professional advice. While there was a company secretary at Corpcapital it is unclear as to the power bestowed to such an individual to guide and support good corporate governance practices.

2.7 Remuneration Governance of the Executives

2.7.1 Theoretical discussion of the principle

The governing body has the accountability to ensure that remuneration occurs in a fair and transparent manner across the organisation. Part of this process includes that remuneration must take into account the actual business performance of the organisation (short term), and the achievement of strategic objectives (mid to long term) of the organisation. It is imperative that remuneration structures take into account a number of other applicable factors when determining actual remuneration like the balance between skills, performance and reward.

The remuneration levels throughout the organisation is generally delegated to the appropriate management structures in the organisation, with the governing body focussing more specifically on the remuneration of the executives. Therefore the approval and disclosure of directors' remuneration are key duties from a governance perspective. When determining executive level remuneration factors like incentive based remuneration and its effects on independence, and the benchmarking of executive level remuneration with other organisations, is critical to determine the appropriate reward system.

Disclosure (transparency) on remuneration should be contained in a remuneration report which documents the remuneration philosophy and policy, and the actual values of remuneration earned per director (Naidoo, 2015, p. 254).

2.7.2 Evaluation of Corpcapital's conduct measured against the principle

One of the major factors which lead to the demise of Corpcapital is concerned with executive remuneration and the associated behaviour by individuals to prioritise maximum individual gain at the expense of building long term shareholder value. It was clearly evident that Corpcapital lacked the first layer of governance which was an appropriate remuneration philosophy which (in turn) would have guided a well-defined and enforceable remuneration policy applicable at the board and subsequent management layers in the organisation. In the absence of such a framework, executive directors were able to propose incentive schemes (e.g. share option awards) based on insider knowledge of forthcoming business events which resulted in excessive pay-outs to these certain individuals.

Given a lack of independence by executive and non-executive directors due to the nature of the complex legal and ownership structure between Corpcapital, which commenced with the purchase of Werner and Pfleiderer Industrielle Backtechnik GmbH and Werner and Pfleiderer (SA) (Pty) Ltd and finally culminated with the purchase of Southgo, later to become Corpgro which owned Corpcapital (SAB&T, 2007), it was inevitable that individual interests would become a priority with incentive based remuneration.

It is also evident that the second layer of governance, the remuneration committee, failed to oversee and enforce appropriate remuneration policy and quantum for the organisation. The reasons for this failure are numerous, though weak leadership and a lack of independence in the board structure are important factors. A review of changes in equity by Preece (2008) indicated that executive director remuneration as a percentage of value added by management was an astonishing 21%. It is also evident that the benchmarking of executive level remuneration against other organisations was absent.

The third layer of governance that was circumvented relates to disclosure and the transparency test – would the board fully disclose the earnings of the executive directors based on their contribution to the business? The answer to the above was generally “no” with the shareholders left unaware as to the level of rewards being allocated (with the exception of 2001.

Given the above reasoning, it can be argued from an evaluation perspective that governance relating to controlling executive remuneration at Corpcapital was weak.

2.7.3 Recommendations as to the appropriate conduct

To support appropriate conduct the board of Corpcapital could have initiated the following practices in relation to the remuneration policy:-

- Defined an approach to remuneration with a policy that adopts fairness, and transparency to attract and retain key skills and experience, and importantly to promote the achievement of strategic objectives.
- Address executive management and subsequent organisational wide remuneration which supports the approach above.
- As part of the process, ensure that adequate benchmarking occurs to ensure industry norms are taken into account.
- Ensures that the remuneration committee oversees policy implementation to ensure achievement of the remuneration objectives.

In terms of transparency and disclosure, a remuneration report should be issued highlighting the main policy provisions, how these have been implemented, and the quantum of remuneration paid to individual executive managers. The remuneration of the executive team is then apparent and available for comparison against the financial value add of these individuals to the business.

From a shareholder perspective, shareholders should have been allowed the opportunity to understand the remuneration quantum and be involved in voting and approving the details surrounding remuneration at Corpcapital (Naidoo, 2015, p. 256). Shareholders should have no issue or concern with approving remuneration if the profitably of the business is evident and if the executive team is considered effective in building a sustainable business into the future.

2.8 Role played by Institutional Investors

2.8.1 Theoretical discussion of the principle

Institutional investment organisations are subject to the same expected level of good corporate governance as any other organisation. However, since the core business model is investment based, the associated risk is significantly high and therefore responsible investment must be practiced to create sustainable value for members. Responsible investment is in essence considered a fiduciary duty of the institutional investment organisation to act in the best interests of its clients/members.

Given that institutional investors are more exposed when poor or sub-standard corporate governance in the companies invested in occurs, institutional investment organisations have a vested interest to protect its investment in other organisations and must mitigate the higher exposure level (and risks) through appropriate and continuous due diligence activities to self-assure regarding the level of corporate governance being practiced in organisations being invested in.

2.8.2 Evaluation of Corpcapital's conduct measured against the principle

Corpcapital Limited was the holding company for a group of companies operating in the financial sector and banking industry. With a banking license, Corpcapital was active in investment banking, corporate finance, asset management, specialised finance, micro-lending, and securities trading (Bloomberg, 2001). Corpcapital therefore qualified as an Institutional Investor as referred to and described by King IV™.

Given the above, there are therefore two main exposure levels to be considered from a corporate governance perspective regarding Corpcapital. The first of which is the level of corporate governance within Corpcapital itself which has been discussed in detail in the preceding sections of this report, and the second the level of corporate governance practiced by Corpcapital relating to its business model (investment banking, financial services, micro-lending etc.).

One of the major concerns with Corpcapital from an institutional investment perspective relates to its re-evaluation of Cytech in 2000. This re-evaluation saw Cytech's value increase from zero to R500m in its first two years and thereafter back to almost zero with an initial cost price of R2.7m (Frangos, 2008). The steep increase in Cytech's evaluation occurred at a time when Corpcapital's earnings were falling and the re-evaluation surplus was used to artificially inflate Corpcapital's profits. Given the contribution of Cytech to Corpcapital's financial performance, it would have been prudent for the audit committee to verify the basis for this contribution, and to make this contribution visible to the shareholders in the financial statement of Corpcapital (SAB&T, 2007). This example is representative of a clear lack of governance (from an institutional investment perspective). The commissioning of an independent due diligence review on Cytech's valuation, given its impact on the financials of Corpcapital, would have been prudent by the board.

Day to day operational institutional investment transactions related to Corpcapital's business model can in a similar vein be called into question. It is possible that the flaunting of good corporate governance practices (apparent in the Cytech debacle) could have manifested in other less visible low profile transactions. Since the leadership culture and therefore the culture of the organisation is cast in doubt from an ethical perspective it could be possible that other irresponsible operational transactions relating to investment banking and micro-lending were occurring at lower operational layers in the organisation.

In light of the above, adherence to the principle of institutional investment can be considered weak which is retrospectively supported by the ultimate collapse and failure of Corpcapital.

2.8.3 Recommendations as to the appropriate conduct

Corpcapital's board could of enacted mechanisms to improve the integrity of its institutional investment practices. Practices include providing direction as to how responsible investing would occur via an approved policy. This policy would have included the necessary delegation of authority to management based on the associated risk profiles of the investments being considered. The board could then have a follow-up mechanism in place to ensure accountability for complying with the mandate, and finally able to disclose to shareholders how the board has adopted and applied its responsible investment practice.

In the case of Corpcapital it is also recommended that a committee for investments was established considering the nature of its core business and the associated risk exposure to creating a sustainable business. This investment committee would have had the mandate to enforce the responsible investment practice, which would include critically investigating, reviewing, and recommending investment decisions to the board for final approval.

There have been many examples of institutional investment failures in the recent past. Critically, the role of credit rating agencies (CRAs) and their specific contribution to influencing the investment decisions of institutional investors is highly relevant. Table 1 below highlights recent examples in South Africa where enforcement has been ineffective given the inability of CRAs to proactively identify risk associated with corporate governance irregularities subsequently supporting an inaccurate basis for investment.

Entity	CRA Rating	Impact	Reference
Steinhoff	Moody's stable (Aug 2016)	Near-total financial collapse due to corporate governance failures. Severe irregularities with 2017 financial statements.	(Moody's Investors Service, 2016)
Sasol	S&P stable (Dec 2018)	Corporate governance (project controls) failures on the LCCP project resulting in project overspend by 45% (~R4bn). Severe negative impact on share price.	(Sasol, 2020)

Table 1: Examples of CRA failures in South Africa

3. Conclusion

The evaluation of Corpcapital utilised descriptors such as “absent”, “weak”, “acceptable” and “strong” to assess performance against good corporate governance principles. Given the available and referenced information, Corpcapital’s performance for the eight (8) assessed principles are summarised in Table 2 below.

King IV™ Principle	Evaluation against Principle
Ethical & Effective Leadership & the establishment of an Ethical Culture	Absent to weak
The Governing Body as the focal point & custodian of corporate governance in the Organisation	Weak
The Composition of the Governing Body	Weak
The Arrangements in respect of Delegations within its own Structure to ensure Independent Judgement, a Balance of Power and the Discharge of Duties	Weak
The Evaluation of the Performance of a Governing Body	Absent
Appointments and Delegations to Management and Role Clarity	Weak
Remuneration Governance of the Executives	Weak
Role played by Institutional Investors	Weak

Table 2: Summary of Corpcapital evaluation

It is evident from this report that when assessing against the individual principles of good corporate governance the practices prevalent at Corpcapital can be considered weak and in some cases absent. From a holistic perspective it can therefore be concluded that corporate governance practices at Corpcapital were relatively ineffective to support and achieve good corporate governance in the organisation. It is a major finding in this report that most critically the inability of the leadership to establish and enforce an ethical culture subsequently resulted in a lack of control from a good corporate governance perspective. This lack of control was further exacerbated by a lack of independence present in the board and management of the organisation.

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