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I, Tano Bongers, 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 **33372969**

Signed at **Bloemfontein** this **8** day of **June 2020**

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1. Introduction

Corporate governance is an integral part of the business world today. Big disasters have come to be because of the lack of good governance in companies, for example Enron. I will now discuss eight principles according to King IV and apply these principles to Corpcapital's company and conduct. Here in we will see once again the importance of a strong boards and good oversight by shareholders and directors over companies.

2. Ethical and effective leadership and the establishment of an ethical culture

2.1. Theoretical discussion of the principle

Decisions at any level of the company have ethical implications, from the boardroom to all operational activities. Some of the toughest ethical choices come from deciding between two alternatives, both of which may be right. Seemingly small decisions can have far reaching consequences (Naidoo et al., 2018: 396).

Ethics means character. Ethics has been described as the "science of morals" or uniform guiding principles which determine what is acceptable. Ethics should guide companies' day-to-day business activities. Business ethics is about the right behavior in business. According to King IV, effective and ethical leadership is the foundation of good governance. Ethics is the heart of leadership; therefore, the board must lead ethically and effectively. The board must ensure an ethical culture within the company. The board must put in place structures of ethics within the company, like an ethics policy and code of ethics (Naidoo et al., 2018: 397 - 398).

The board must set the ethical tone at the top. Leaders are already teachers of their culture, therefore setting the right ethical example is critical. To create an ethical culture all employees at all levels of the company, needs to buy into the program (Naidoo et al., 2018: 400). Aspects to help in setting the tone are:

- Talk frequently about the companies' ethical values and commitments.
- Anticipate ethical dilemmas which typically arise in an employee's area of responsibility.
- Recognize ethical issues.
- Companies' ethical behavior must be consistent, and policies and practices must be aligned.

- Question whether the right behavior is being rewarded (Naidoo et al., 2018: 401- 402).

Creating an ethical culture also involves identifying shared values like respect, responsibility, fairness, etc. Employees need a common language of ethics. Commitment at the top is needed, executives who walk the talk. Ethics, lifestyle and culture must become so interwoven that they cannot be separated. Actively managing business ethics can yield many benefits (Naidoo et al., 2018: 403).

2.2. Evaluation of Corpcapital's conduct measured against the principle

The lack of a good ethical code or policy is clear. The ethical code that might me present enjoys no respect from the executives of the board or the CEO. Using intimidation tactics is unethical behavior for a board of directors, let alone a CEO. Good tension on a board is necessary for good governance.

The complacent attitude of the board to act against the executives that did not heed an ethics code is alarming. This led to decisions being made without thorough discussion by the required bored and shareholders. The fact that there are so much disclosure issues is also concerning and points to a board of directors that is not fit to lead.

The top structure of the company was at war with each other at the expense of the shareholders. With top management behaving in this manner, it will be impossible to establish a culture of good governance. The shareholders were also way to passive in my view and should have made their voices heard through their votes.

2.3. Recommendations as to the appropriate conduct where applicable

Ethical leadership starts from the top and is an example for the whole company. I would recommend that a new and independent board is appointed. A new board that has no conflict of interest in the company. I would let them write a new code of ethics and made sure that they enforce it. Build new structures and systems to monitor and oversee the board as well as management. And enforce disclosing important information to the board and shareholders.

3. The governing body as the focal point and custodian of corporate governance in the organization

3.1. Theoretical discussion of the principle

The board should be the heart of the company's system of corporate governance. The board should direct, govern and be in effective control of the company. The board is responsible for the company's strategic direction and therefore ultimately responsible for the company's success. Management is responsible for giving effect to the strategy (Naidoo et al., 2018: 127).

The board must appoint management and set the strategic direction. The board is responsible for risk oversight and oversight of the control environment, drive performance and ensure appropriate remuneration and be accountable to shareholders. Defining the purpose of the company is part of the board's responsibility. Further responsibilities are:

- Being entrepreneurial taking business forward and keeping it under control.
- Being knowledgeable about the workings of the company.
- To remain focused on the commercial needs of the company (Naidoo et al., 2018: 128).

3.2. Evaluation of Corpcapital's conduct measured against the principle

The majority of the other directors and shareholders did not know with whom they are sharing ownership of the company, since Liebesman and his associates have kept it a secret. The board was complacent and did not act on complaints from a non-executive director. Instead the CEO made it difficult for this non-executive director to enquire on the problems that he has identified.

In the case of Corpcapital, the board of directors was at the mercy of the CEO and his associates. They did what they pleased and hid information from the board and especially the shareholders. With the merger at hand, the potential clash of interests, should have been disclosed to the shareholders or Corpgro's board.

The board was complacent and did not know all the workings in the company. The board is responsible for the appointment of management. In this case the board appointed a management team that they could not control. The ethical policies were not good or in place.

They did not for fill their duties when it came to oversight and management steamrolled over them. At the merger they did not adequately analyze the owners of the company that they were merging with, hence a huge conflict of interest came into being.

After the merger and acknowledgment of executives that there had been irregularities, the matter was swept under the rug to never be talked about again. Here the board again lack conviction to act in the best interest of the shareholders.

3.3. Recommendations as to the appropriate conduct where applicable

A Stronger board of directors is needed that can govern the company in an ethical way. A board that cannot be bullied by the executives and management. The board must take their appointments more serious and uphold the ethical code of the company. The board is the stewards of the shareholders’ money and must act in the best interest of the shareholders.

The board is also responsible for the CEO the appoint. In this case they should hire or appoint a CEO that is ethical and has a good record when it comes to governance. In their overseeing role the board must give direction and purpose to the company. The board must always have control over the company. It is also the boards responsibility to see that management and executives are remunerated fairly in context of the performance of the company.

4. The composition of the governing body

4.1. Theoretical discussion of the principle

The preferred governance model requires the board to consist of more non-executive than executive directors, with no conflicts of interest, to govern the company in the best interest of the shareholders (Naidoo et al., 2018: 126).

Board composition should therefore take account of the need to successfully lead the company, the board should spend time thinking on the ideal board size and the balance of executive and non-executive directors. Thought must also be put into the skillset needed by directors to govern the company well (Naidoo et al., 2018: 128).

The board is responsible for choosing competent, committed, and independent directors, who understands their fiduciary responsibilities. The directors individually and the board collectively must possess qualities like independence, integrity , competency, diligence and courage and must be informed about the company (Naidoo et al., 2018: 128).

The board's composition determines their ability to provide leadership. Boards must possess a range of skills and knowledge. When composing a board, King IV recommends that boards consider the evolving needs as well as the immediate needs of the company. Factors to keep in mind when composing a board:

- Balance of skills.
- Diversity and experience.
- Balance between executive and non-executive directors.
- Enough directors to reach a quorum.
- Enough directors to man all the necessary committees.

There is no optimum size for a board that fits all companies. Every company has unique circumstances (Naidoo et al., 2018: 130). For the board to have a competitive advantage, it’s composition must be relevant to the times and needs of the company (Naidoo et al., 2018: 150).

4.2. Evaluation of Corpcapital's conduct measured against the principle

One of the biggest flaws on this Corpcaptal's board was the imbalance of power. Six Executives and four non-executive directors. This made it possible for the six executives to steamroller over the 4 non-executives when it came to decisions and renumerations. The board failed in keeping the board of directors free of conflict of interest issues and as such payed a price for it. The conflict of interest issues was just one more issue that was ignored in the process of governance. The directors and executives on the board must be skilled persons with a good reputation, not someone who is in the middle of a scandal, like Liebesman was.

4.3. Recommendations as to the appropriate conduct where applicable

I would recommend that a new independent board be appointed. A board where the shareholders can be sure has no conflict of interest in the company. The board must be balanced better. With more non-executive directors than executive directors, that good governance can be in the hands of the board and not in that of management. There must be sufficient number of directors for a quorum and to man all the necessary committees. The appointed directors and executives must be aligned in their view on the shareholders' interests and issues of disclosure.

5. The arrangements in respect of delegations within own structure to ensure independent judgement, a balance of power and the discharge of duties

5.1. Theoretical discussion of the principle.

To ensure that there is a balance of knowledge, skill, experience, diversity and independence in the company, king IV suggests that the composition of the board needs to be diverse. This will help with help with better decision making. Aspect to consider:

- The diversity in skills, knowledge and experience should be comprised of relevant business.
- The composition should include non-executives, executives and independent non-executive members.
- The representation of numbers should be enough to man all necessary committees.

- All meetings conducted should form a quorum.
- Diversity targets should be set during the composition of a board.

Rotation of members are important for new perspectives. The board must consist of more non-executives than executives to ensure independence. The CEO must form part of the board to represent management.

The nomination process of governing body candidates should be done in a formal and transparent manner. These nominations should be approved by the governing body; It is mandatory for all governing body members to annually declare financial and any other conflict of interest as the law requires. Declarations also take place in all meetings for members to disclose if there any matters that conflict them in the agenda of the day. The appointed chairman elected by the governing body should be independent and should serve in an objective and effective manner, to ensure that the governance role and responsibilities are successfully fulfilled.

5.2. Evaluation of Corpcapital's conduct measured against the principle

The biggest problem at Corpcapital was the fact that the board was unbalanced. Therefore, the six executives could easily overrule the objections of the four non-executives and appoint and nominate who they wanted.

5.3. Recommendations as to the appropriate conduct where applicable

That the candidates be screened better and that people who are nominated are respected business people who does not have business irregularities in their past.

6. The evaluation of the performance of a governing body

6.1. Theoretical discussion of the principle

The board's performance must be assessed at least annually or according to King IV, not less than once in two years. The key delivery areas of the board must be specified clearly that it can be evaluated against the set targets. Evaluations include some of the following:

- Interviews.
- written questionnaires.
- Individual feedback sessions.

Companies should evaluate the performance of the board as a whole and the performance of each committee and the directors individually, against the duties set by the board. Re-appointment of directors must be made based on the outcome of the evaluations, that only worthy board members be reappointed and the poor performers be replaced (Naidoo et al., 2018: 193).

6.2. Evaluation of Corpcapital's conduct measured against the principle

There does not seem to be any evaluation by the board of directors to see whether the CEO and other executives are performing ethically. There were numerous times that the performance of the company did not go as planned, and yet nothing was done about the performance of the company. Even at the end of the company the CEO and his associates got huge bonusses for failing in my view.

6.3. Recommendations as to the appropriate conduct where applicable

Evaluations must definitely be done more regularly. Each member of top management and the board of directors must be evaluated individually and as a whole. Discrepancies and failures must be addressed, and success should be praised an or rewarded. Directors and management that did not live up to expectations should be replaced. Performance checks must be done to see if the company is on track and for the sake of the shareholders.

7. Appointments and delegations to management and role clarity

7.1. Theoretical discussion of the principle

The board has all the necessary authority to run the affairs of the company. The board appoints management and delegates daily responsibilities. Management must be granted sufficient authority by the board to run the daily business in a relatively unconstrained fashion. The board must retain sufficient authority to stay in control. The board can do so by reserving specific powers for itself. Matters delegated to the CEO should be handled by the CEO so that he or she could be held accountable. Powers assigned to committees or senior management should be delegated in written documents (Naidoo et al., 2018: 191).

The board is responsible for monitoring delegated authority and should make sure that they receive regular reports. Directors might not act on behalf of the company since their powers are conferred on them as a board. The director's power to delegate authority is a fiduciary power that must be exercised in good faith and best interests of the company (Naidoo et al., 2018: 192).

7.2. Evaluation of Corpcapital's conduct measured against the principle

The board lost control of the company by delegating to much authority to management. The board did not succeed in its responsibility to monitor their delegated authority. The reports that they received was incomplete and sometimes even lacking important information that had to be disclosed to the board and the shareholders.

The board appointed Nigel Payne who might not be qualified for the job if you look at how his methods are being described. Appointing Payne was also unethical because he was paid to investigate his employer (Conflict of interest).

The board had a remuneration committee whose authority was not respected by the CEO and associates. There had been restraint payments made to these executives without the knowledge of the remuneration committee.

7.3. Recommendations as to the appropriate conduct where applicable

The authority must be given back to the board. Strick policies and delegation of authority must be written for each committee and person of top management. The board in this instance must reserve much more power for itself to remain in control of the company. Management must be granted just enough authority to be able to do daily business. Appointments of directors, executives and management must be done where there is no conflict of interest.

8. Remuneration governance of the executives

8.1. Theoretical discussion of the principle

Shareholders have long complained that CEO's are overpaid by boards, irrespective of how the company performs. Independent boards of directors seldomly act in the interest of the shareholder when determining executive renumeration. According to Nell Minow the reason for this is because the directors are generally "too cosy" with the executives and cannot always oversee them adequately. According to a study by Corporate Library, executives receives huge pay packages because they exert excessive influence over their boards of directors(Naidoo et al., 2018: 256).

Initiatives like "Say on Pay" require companies to put executive-pay issues to a shareholder vote. The key problem in executive renumeration is how to set it. What will the criteria be? The idea is to find the appropriate balance between rewarding good executives fairly by paying them a properly structured, market related remuneration (Naidoo et al., 2018: 256 - 259).

The overall remuneration policy must be approved by the shareholders, except for the remuneration of executive directors and prescribed officers', which is the responsibility of the board. The remuneration structure must try encouraging the right behavior. The board of directors must ensure a link between pay and performance (Naidoo et al., 2018: 260).

The board of directors and renumeration committee must decide on the executive renumeration package. Decisions like the package must be tied to the company performance or share price, the balance between cash and shared incentives etc. The board must also be on the lookout for unintended consequences when structuring the executive's pay package, that it for example does not encourage excessive risk-taking or manipulating accounts etc. (Naidoo et al., 2018: 262).

King IV introduces an expectancy of fair remuneration packages in the context of overall employee renumeration's in the company, to address the gap between executive renumeration's and that of lower pay levels. Experience, productivity and qualifications must all be factors to consider in the determining remuneration levels (Naidoo et al., 2018: 262).

8.2. Evaluation of Corpcapital's conduct measured against the principle

The CEO and certain executives benefited enormously at the cost of the shareholders. Huge bonusses were paid even in the midst of the company failing.

The company is going down and its assets are being sold. Still the CEO and his associates are getting payed huge bonuses. Their restraint payments has also not been disclosed to the remuneration committee. The remuneration committee was sidestepped a lot of the times, where meetings of the committee has been held without all the necessary people present. Renumeration packages was force fully negotiated and the goalposts ever shifting in favor of management at the cost of the shareholders. Large restraint payments were payed without any knowledge of it by the remuneration committee, again at the cost of the shareholders.

8.3. Recommendations as to the appropriate conduct where applicable

An independent new remunerations committee must be established. One which keeps the interest of the shareholders. Fair remuneration policies must be drawn up and tied to the performance of the company. King IV also expects that the gap between top management and lower level personnel be handled more fairly. Experience, productivity and qualifications must all be factors to consider in the determining remuneration levels.

9. Role played by institutional investors

9.1. Theoretical discussion of the principle

Professional investment managers who act on behalf of beneficiaries or usually called institutional investors. Institutional investors may be collective investment vehicles such as corporate pension and retirement funds, for example Hermes. Institutional investment is characterized by separation of the ultimate beneficiaries, for whom the investment is made and who own the underlying economic interest in the investment. Regulating the conduct of institutional investors has its origins in the view expressed by the international corporate governance network (ICGN) and other similar organizations that the ownership of equity carriers imported responsibilities(Naidoo et al., 2018: 121).

The way a company is governed can be influenced by the institutional investors in particular through the voting rights associated with controlling a large trance of a company's share (Naidoo et al., 2018: 121). Traditional governance thinking demanded no active involvement from shareholders except for the occasional voting at shareholders meetings and appointing of new directors. There was no difference between shareholders of a company and institutional investors who invests for other people or companies. Today the thinking has changed, and modern governance demands that the institutional investor plays an active role in ensuring good corporate governance in the companies they own shares in (Naidoo et al., 2018: 122).

The shareholder bill of rights (SBR) was created in the USA 2009. The main purpose was to prioritize the long-term health of companies and their shareholders, so to create more stability as well. The SBR gave the shareholders a greater voice in the management of the company. The SBR amended the SEC act to include provisions that the shareholders must vote on the executive remuneration and allow greater involvement in the nominating of directors, who must be re-elected annually (Naidoo et al., 2018: 122).

In a similar vein as the SBR, the Code for Responsible Investing in SA (CRISA) was launched in 2011. CRISA gave specific guidelines to institutional investor, as set out in King IV, to contribute on a higher level of involvement in the companies they invest. CRISA sets out five principles on what is expected of institutional investors and how they should oversee the companies in which they have investments to ensure appropriate governance (Naidoo et al., 2018: 122 - 123). These five principles are:

1. The incorporation of sustainability considerations into their analysis of an investment.

2. The development of investment strategies to include an acceptance of their ownership rights as institutional shareholders to actively oversee the governance of investments.
3. Transparency on policies.
4. Regular engagements with stakeholders.
5. Actively being aware of and managing potential conflicts of interest.

According to CRISA, institutional investors have fiduciary duties to their investors and that they can positively influence the investee companies to apply good governance principles. Clear standards for governance for an investee company should be developed. Institutional investors are expected to develop and publish voting policies that both beneficiaries and investee companies understand the criteria which influences their voting. Voting records should be publicly disclosed and indicate whether they voted for or against the recommendation tabled by management(Naidoo et al., 2018: 123).

9.2. Evaluation of Corpcapital's conduct measured against the principle

Corpcapital's institutional investors' hands were tied because of the lack of important information that should have been disclosed. Even when there was a shareholder vote at a meeting, Old Mutual's vote was not disclosed as it should have been. There was no sound renumeration policy in place. Investors lost as management gained. The packages that the executives received, clearly shows that they do not act in the best interest of the shareholders.

9.3. Recommendations as to the appropriate conduct where applicable

Shareholders are the owners of the company. Investors can positively influence the company to apply good governance principles because of their large vote. The company would do well to enforce the five principles of CRISA. Shareholders must play a more active role in the governance of the company and keep a closer eye on their investment. Investors must make a point of it to have a say in the remuneration of top management, to make sure that the right behavior is encouraged. Investors must keep boards and management accountable for their actions and performance of the company.

10. Conclusion

The SBR started from the premise that the failure of corporate governance was amongst the central causes of the 2008/9 financial crisis. The SBR argued that the lack of accountability of company boards to their shareholders were a key contribution(Naidoo et al., 2018: 122). Through this document we can see the importance of good governance. Everybody is responsible at some level or another. From shareholders to the lowest activity workers in a company. Therefore, the company must establish a ethical culture. To establish a ethical culture, you will need good effective and ethical leadership, who walks the talk. Who leads ethically by example.

Boards need to compile ethical codes and policies and ensure that they are enforced. Boards must also be carefully appointed. A good balance is needed. Ethical leadership and the interest of the shareholders must be looked after. The shareholders own the company and delegates authority to the board which further delegate authority to be able to do daily business. Fair remuneration policies and packages must me decided on by shareholders and the board. And these packages must be tied in someway to the performance of the company. Investors must play a more active role in the company and keep a closer eye on their investments. Overall, it is the responsibility of the board to oversee the risks and operations of daily business.

In conclusion Frangos stood for the principle that the shareholders interest must be the priority of the company.

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