

A practical corporate governance framework is essential to the successful running of a company. It is the system of rules, practices, and processes by which a company is run.

Corporate governance epitomizes the principles of responsibility, accountability, fairness, and transparency. With various corporate governance theories that are practised throughout the world, your corporate governance framework is dependent on your chosen theory/approach. When implementing your corporate governance framework, you must identify who the role players are, who is responsible for the corporate governance, and to whom this responsibility is owed.

Shareholders and directors both have a role to play in ensuring there are adequate corporate governance practices within the company.

### **Roles of Shareholders in corporate governance**

As the ultimate controllers of the company, shareholders have a vital role and are responsible for the regulation of actions and transactions of the company at large. The Companies Act provides for certain transactions requiring the approval of the shareholders before implementation by the board of directors. Shareholders additionally have the capability and responsibility to remove the director(s) should they resolve that the director(s) is not fulfilling their role adequately and in the best interests of the company.

### **Roles of Directors in corporate governance**

Section 66(1) of the Companies Act grants powers and functions to the board of directors as the controlling members of the company. The exercise of the powers and functions are to the extent that they are limited by the Companies Act or the company's Memorandum of Incorporation. The board of directors must ensure that they have applied their mind to every scenario faced, including that of the financial position of the company and undertaking the correct due diligence processes – see *The Importance of Due Diligence*. However, statutory liability is imposed on the directors in terms of Section 77 of the Companies Act. Should a director breach their fiduciary duties and or the duties as set by the Act, an interested party may make an application to the court to declare the director(s) delinquent on any ground as contemplated in section 162 of the Act. It is thus imperative that director(s) act within their mandate and that an adequate corporate governance framework is in place to identify any errant conduct.

### **Conclusion**

A useful framework that is implemented in a company will cover a range of policies and procedures that deal with decision-making, day-to-day activities and the conduct that is expected from management. We recommend that your company implement a customized Memorandum of Incorporation containing eligibility and accountability measures, board policies and service level agreements underpinned by the King IV Report on Corporate Governance.

Contact an expert at SchoemanLaw for any of your compliance, or corporate governance needs today.