

Delegation of authority in the context of corporate governance

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Delegation of authority is an important element of effective corporate governance for companies. It involves the process of the board of the company conferring certain powers to other persons and subcommittees, with the goal of optimising role clarity and efficiency within the company.

Assessing and improving the delegation of authority within a company is one of the ways in which a new private equity investor can, through its board representatives, help to bring about organisational efficiencies as the company grows its business operations.

This article briefly explores this concept and established best practice principles within the South African corporate environment.

Delegating authority in the South African corporate environment

In the context of our Companies Act 71 of 2008 (“**Act**”), section 66(1) states that the business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that the Act or the company’s memorandum of incorporation provides otherwise.

It is not practical and efficient (if not impossible) for all aspects of the day-to-day business and affairs of a company to be managed by the board itself, which is why section 66(1) contemplates that these can be managed under the direction of the board i.e. where it delegates powers, functions, roles and responsibilities to subcommittees of the board, members of management, employees and even third party service providers.

In *Huth v Clarke* (1890) 25 QBD 391 395; 1886–90 All ER Rep 542 544 Wills J said: “Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself.”[1]

When considering the existing delegation of authority framework within a company, it is recommended that it be measured against established best practice principles and recommended practices.

In this regard, it is useful to consider the Code of Governance Principles for South Africa King IV of 2016 (“**King IV Report™**”)[2] as documented and amended from time to time, which sets out principles and recommended practices in relation to various corporate governance topics including delegation of authority.

Effective delegation within a company’s structures

It is highly beneficial for the boards of companies (whether they are private, public or listed) to, from time to time, review and look to improve their delegation of authority framework and the terms of reference of their subcommittees to ensure that these are keeping pace with best practice and are resulting in the benefits for the company which flow from an effective delegation of authority framework.

When developing a framework, companies will often use a so-called “RACI”-matrix in terms of which persons and/or committees are allocated different roles, depending on their expertise, in relation to various types of matters which are dealt with by the company, in order to achieve an effective delegation of authority framework.

Each of the letters of represents a different role. For example, persons allocated as “Responsible” are responsible for performing the task/activity. Persons allocated as “Accountable” are the decision-makers in relation to the task/activity.

Persons who are to be “Consulted” will be consulted by the Responsible person to obtain their recommendations/insight in respect of the task/activity. Lastly, persons who are to be “Informed” are kept informed on the progress or outcome of the task/activity and may not necessarily have direct involvement in the task/activity.

In relation to different types of matters, different persons or committees may perform the abovementioned roles.

When allocating these roles to persons and/or committees, such allocation should be tested against best practice principles to ensure that the envisaged delegation is effective. Effective delegation of authority allows for quick decision-making, empowers employees to do their job, reduces red tape within the organisation and it increases organisational efficiency and performance.[3]

As mentioned above, a company’s board cannot practically complete every single task that needs to be executed for the proper functioning of the company – instead, powers are often delegated to other persons, such as management to attend to tasks within their area of expertise.

Best practice principles state that powers should be delegated to management in a manner which promotes “*role clarity and the effective exercise of authority and responsibilities*.”[4]

The role of the chief executive officer (“**CEO**”) is particularly important when considering effective delegation. In *Kaimowitz v Delahunt and Others*[5], the court confirms that the office of a director does not intrinsically involve participation in the day-to-day running of the company and that a managing director (i.e. the CEO) is often vested by the board of directors with all, or of a substantial part, of its general powers and control of the affairs of the company on a day-to-day basis.

The King Report on Governance for South Africa 2009™ states that the CEO acts as a chief public representative of a company.[6] According to the King IV Report™, the CEO –

*“should be responsible for leading the implementation and execution of approved strategy, policy and operational planning and should serve as the chief **link** between management and the governing body; and should be accountable, and report to the governing body.”[7]*

The King IV Report™ provides that a governing body should determine if and when to delegate particular powers and authority to a particular position – i.e. to the CEO, or to the chief financial officer or other members of management or to a committee,[8] and that “*the governing body should set the **direction and parameters** for the powers which are to be reserved for itself, and those that are to be delegated to **management via the CEO***”.[9]

It states further that the allocation of roles and associated responsibilities should be considered holistically to avoid duplication or fragmented functioning.[10]

The King IV Report™ provides that a governing body should ensure that delegation within its structures promotes independent judgment and assists with a balance of power in the effective discharge of duties.[11]

It is important to note, however, that delegating authority does not mean that the board divests themselves of all responsibility, as they are required to continue to exercise proper supervision over the matters which they have delegated to others because they remain ultimately responsible for the outcome of such delegations.[12]

For this reason, it is important that the board has in place appropriate reporting mechanisms to enable them to exercise oversight in respect of the matters delegated.

Delegation of authority to committees of the board

It is important for the board to ensure that the roles of different committees is clear. For example, a company may have several subcommittees including, amongst others, a financial committee, an audit and risk committee, a social and ethics committee, and a remuneration committee.

Certain financial matters could arguably fall within the responsibility of both the financial committee and the audit and risk committee, which can lead to confusion, duplication of work and inefficiency.

Therefore, in accordance with the King IV Report™, it is suggested that a written terms of reference be prepared when delegating powers to each committee of the board, and that such terms of reference should deal with, amongst others, the following:

- a committee's specific role and the associated responsibilities and functions it is required to perform;
- the extent of the delegated authority which the committee has with respect to decision-making; and
- when and how the committee should report to the governing body and to members of management.[13]

The King IV Report™ further provides that a governing body should consider allocating roles and responsibilities and committee-composition holistically so as to achieve, *inter alia*, effective collaboration through cross-membership between committees, where required; coordinated timing of meetings; and avoidance of duplication or fragmented functioning in so far as possible.[14]

Conclusion

This article briefly summarises the purpose of delegation of authority within a corporate structure and refers to some of the established principles and recommended practices which should be considered and applied when developing or reviewing a company's delegation of authority framework and terms of reference for its committees.

These principles and recommended practices cannot however be considered in a vacuum, and the boards of companies need to consider their company's specific circumstances, operational needs, human resources at various levels and the nature of its business and the industry within which it operates, when reviewing and developing a company's delegation of authority framework.

Moreover, it is imperative to obtain corporate governance and legal advice from the right specialists who can help to assess the adequacy of existing delegation of authority frameworks and committees' terms of reference, and to identify where changes, refinement and clarification are needed.

Footnotes

[1] [The Law of South Africa \(LAWSA\) / Companies Part 1: Volume 6\(1\) – Third Edition / Governance of Companies / Section 141 Delegation of powers](#) H H Stoop at footnote 15.

[2] Copyright and trade marks are owned by the Institute of Directors in Southern Africa NPC and all of its rights are reserved.

[3] Outcomes-Based Governance A modern Approach to Corporate Governance – Mervyn King & Fabian Ajogwu, page 73.

[4] Institute of Directors in South Africa, The King IV Report on Corporate Governance for South Africa 2016, page 100 – [“The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa”](#).

[5] *Kaimowitz v Delahunt and Others* 2017 (3) SA 201 (WCC), page 206.

[6] Institute of Directors in South Africa, The King III Report on Corporate Governance for South Africa 2009, page 37 – [“The King III Report on Corporate Governance for South Africa 2009, Copyright and trade marks are owned by the Institute of Directors in South Africa”](#).

[7] Institute of Directors in South Africa, The King IV Report on Corporate Governance for South Africa 2016, page 58 – [“The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa”](#).

[8] Institute of Directors in South Africa, The King IV Report on Corporate Governance for South Africa 2016, page 54 – [“The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa”](#).

[9] Institute of Directors in South Africa, The King IV Report on Corporate Governance for South Africa 2016, page 59 – [“The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa”](#).

[10] Institute of Directors in South Africa, The King IV Report on Corporate Governance for South Africa 2016, page 54 – [“The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa”](#).

[11] Institute of Directors in South Africa, The King IV Report on Corporate Governance for South Africa 2016, page 54 – [“The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa”](#).

[12] [The Law of South Africa \(LAWSA\)/ Companies Part 1: Volume 6\(1\) – Third Edition/ Governance of Companies / Section 141 Delegation of powers](#), H H Stoop; Corporate Governance The Director's Guide – Tom Wixley, Geoff Everingham, Karen Louw, page 105.

[13] Institute of Directors in South Africa, The King IV Report on Corporate Governance for South Africa 2016, page 54 – [“The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa”](#).



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