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1. INTRODUCTION AND BACKGROUND:

Public finance and particularly the financial management and accounting of government institutions have become fundamentally important. This matter has received global attention and substantial innovation and fiscal reform had been introduced. South Africa, being transformed from a minority government to a majority and democratic government, has also experienced major change in fiscal policy and financial accountability. Greater emphasis must be placed on financial management and the accountability of government departments and compliance with relevant legislation.

1.1 The South African Context: A historical background

South Africa has emerged from an apartheid society, governed by a dominant white regime, where black people were denied their voting rights, to a mostly black dominant government, elected on the basis of universal franchise. The change over occurred between 1991 and 1994 and was finalised by the first democratic election on 27 April 1994. The election and change over was peaceful mostly as a result of the then state president FW de Klerk’s brave peace initiative and the outreach by the then future president Nelson Mandela. As a reward for their brave and significant peace efforts, Nelson Mandela and FW de Klerk were jointly awarded the Nobel peace prize for their work for the peaceful termination of the apartheid regime and for laying the foundations for a new, democratic South Africa in 1993. In the first transitional government and cabinet, Mr Nelson Mandela served as president, whilst Mr FW de Klerk and Mr Thabo Mbeki, served as the two deputy presidents, in terms of the interim Constitution of South Africa.

The last years of the apartheid government and particularly the period before De Klerk’s presidency, under president P.W. Botha, was marked by an intensive military struggle, with several clandestine operations to overcome sanctions and infiltration by freedom fighters from the liberation movements. This escalated to a full scale war, involving most of the neighbouring countries and even international forces, particularly Cuban forces in Angola. During this period South Africa moved gradually to some form of dictatorship and much more state control over the economy, openly admitting massive military and security spending, with secret funding and clandestine projects the order of the day. This was financed by the public sector, obviously from tax payer’s money. The role of the Auditor General and the auditing of the secret funding of clandestine projects, particularly the so-called Civil Co-operation Bureau, became very suspect. The role of political oversight, particularly of the Standing Committee on Public Accounts (S.CO.P.A), as parliament’s watchdog over public finances, was extremely difficult and challenging during these trying and challenging times.

Similarly, from 1994, the newly elected democratic government under the control of the African National Congress, were mostly returning from exile and inexperienced in matters of government. Particularly so with regard to their initial inability, the new role
players did not fully understand public finance and accountability and were thus not in a position to rectify the shortcomings and mal-administration of the previous regime. As a result, a major crisis developed in several of the key delivery departments of most of the provinces and even in the national government itself. This refers specifically to the provincial departments of housing, social development and education. On a national level it refers to the department of agriculture and land affairs and to the defence acquisition, or so called arms deal scandal, which has rocked South Africa and later had major consequences for the ruling government.

Although a significant improvement has taken place with regard to the administration of public finances and the national minister of finance who has made a concerted effort to improve control measures, there still remain problems in terms of implementing legislation and treasury regulations adequately.

1.2 The Interim Government and Government of National Unity and the oversight of public expenditure

The first constitutional Government of National Unity, was formed by the three political parties which could achieve more than 10% support at the first elections. These political parties were the African National Congress under Nelson Mandela with about 63%, the National Party under F.W. De Klerk with about 21% and the Inkatha Freedom Party under Prince Buthelezi, with about 11%. During the interim constitutional period of the government of national unity, formed in 1994 stayed intact, but after the adoption of the Constitution in 1996, the National Party opted resigned and opted to become an opposition party. The I.F.P. however served until the end of the Government of National Unity at the time of the General election in 1999 and thereafter continued to serve at the invitation of the ruling African National Congress in the government until 2004. After the 2004 elections, the IFP opted out of government and became an opposition party, although they for some time continued to remain in the Provincial Legislature of Kwa Zulu Natal.

Prior to the first democratic election in April 1994 and during the transitional period of 1993 until 1994, the different cabinet portfolios had been grouped together in clusters representing the major political parties and replacing the previous cabinet by a Transitional Executive Council. Resulting from this, the Ministries of Finance, State Expenditure and Trade and Industry, collectively replaced the previous cabinet portfolios in forming the Transitional Economic Council. This Transitional Economic Council was headed by five political party representatives, including the former Minister Derek Keys of the National Party (N.P.), the now present Minister of Finance, Mr Trevor Manual from the African National Congress (A.N.C.), myself, Hennie Bekker of the Inkatha Freedom Party (I.F.P.), Dr. Zach de Beer of the Democratic Party (D.P.) and Professor Tshabalala of the Pan African Congress (P.A.C.).

1.3 Significance and Importance of financial management by the State:

Proper and effective financial management of public finances of Government
Departments is of fundamental importance for every citizen of South Africa. Greater accountability by Government Departments and the limitation of irregular and wasteful expenditure would benefit every taxpayer, non tax payers, as well as those individuals who are benefiting from the social structure of the Country. The most important role of Government is to be the trustee of the Nation and to properly administer and to account for the monies it receives and to spend it effectively according to an agreed program within its line function

More investigations and greater oversight of public finances by Government Departments, will assist Government and Provincial Departments to bring greater awareness to civil servants of their fiduciary duties.

Improved control measures can also be of particular help to members of parliament’s finance committees and Standing Committees of Public Accounts (S.C.O.P.A.) in discharging their parliamentary duties and will enhance their abilities to expose financial irregularities. This will collectively bring greater accountability to Government and Provincial Departments. Such clear instructions and control instruments will enable present and future members of parliament, as well as other public representatives in local government and civil society, in their oversight duties and holding departmental officials to account.

1.4 The Public Finance Management Act (P.F.M.A.)

The Public Finance Management Act (P.F.M.A.) is an exemplary guideline for effective financial control and it is being lauded by financial experts, with by far the majority of its clauses being noted as practical and of great value for improved public finance administration. Nevertheless, it has certain shortcomings. In its implementation it is sometimes theoretical and is lacking in the proper sanctioning of civil servants who have indeed contravened provisions of the Act. (P.F.M.A.) Consequently, it is essential that legislation controlling the Public Service and Administration be brought in line with the Public Finance Management Act (P.F.M.A.), else the P.F.M.A. would remain toothless with regard to the sanctioning of contravening civil servants.

The Public Finance Act (P.F.M.A.) must be read in conjunction with the South African Treasury Regulations and of course The Public Audit Act. These acts and regulations form the basis in terms of which Public Finance in Government and Provinces should be administered. (The third tier Local Government, or Municipal sector is being guided and controlled by the Municipal Financial Management Act (M.F.M.A.).

2. EXPERT OPINION ABOUT FISCAL CONTROL AND ACCOUNTABILITY

There is a major demand for professional people in the administration and control of State finances and although various courses are available, much more must be done in this regard. I trust that the Institute of Secretaries and Administrators, as well as other institutions could embark on this unexplored terrain.
Students of Public Finance, Control and Accountability, will do well if they could read and study from the available prepared literature reference. This reference contains several books and articles from a range of authors about fiscal control in Southern Africa, as well as relevant publications on issues of fiscal discipline, corporate governance and specifically about financial management and the accountability of government departments.

I will briefly refer to some of these authors that have done valuable research regarding accountability and financial management.

2.1. Accountability in the South African public sector

Karen Miller, in her book “Public Sector Reform, Governance in South Africa (2005), states that the democratic political dispensation of post-apartheid South Africa, inherited a public service which was beset with problems. The impact of apartheid created a public service that lacked legitimacy, professionalism, representation, a democratic and development culture and the capacity to deliver quality services to all South Africans.

The challenge for the democratic dispensation was to change the culture of the public service so that it entrenched the democratic principles indicated in the Constitution of the Republic of South Africa (1996) and instilled a culture of professionalism and prudence in public (civil) servants in their duty of serving all South Africans. Such principles include values such as integrity, accountability, transparency and accessibility (Armstrong, 2005; Fox, Schwella & Wissink, 2000; Senay & Besdziek, 1999).

Constitutionalism in the concept of representative democracy is essential in the controlling of authority. Responsibility and accountability became inseparable from the concept of representative democracy (Ackerman, 2005; Gildenhuys & Knipe, 2000). According to J.S Mill, “democracy” is intrinsic good, but he believed that representative democracy was a mechanism to temper the “mediocre majority” or the aristocracy (Barber, 1985; Bellone & Goerl, 1992). “Liberal democracy” in the nineteenth century was firmly based on the constitutionalist theory, institutionalised democratic practices and which norms became a way of both legitimising and controlling state power.

Niccolo Machiavelli, already in 1935 said that it should be borne in mind that there is nothing more difficult to handle, more doubtful of success and more dangerous to carry through than initiating changes in a state’s constitution. The innovator makes enemies of all those who prospered under the old order and only lukewarm support are forthcoming from those who would prosper under the new. Their support is lukewarm partly from fear for their adversaries... and because people are generally incredulous, never really trusting new things unless they have tested them by experience.

South Africa’s reform process has been complex and not without its problems and challenges (Senay & Besdziek, 1999). The reform process has had an impact on the role of the Director General (as the most important and senior public servant) in implementing reform initiatives as well as being a recipient of those initiatives. The introduction of reform initiatives such as performance agreements has also impacted
upon the role in political-administrative interface. The role of the Director General is of fundamental importance to public administration and public policy, because it is at this echelon that politics, public policy and administration interact (Miller, 2005).

The Director General, as the accounting officer, is primarily and exclusively responsible for the proper financial accounting and execution of the budget of his/her Department. The inter-action with the Auditor General with regard to the annual financial statements of the Department is of paramount importance.

2.2. Government fiscal discipline in South Africa

The African Development Bank in its “Africa Development Report 2005” - Issues of Government fiscal policy- stated that South Africa together with six other African Countries, are setting the norm for Fiscal Policy Management with regard to Public Expenditure on the continent of Africa. The report further mentioned that most other African Countries in the past fell short of the standards of good public expenditure management and budget performance. An improvement has nevertheless been noted during the last ten years, with good progress, when in 2004, the continent recorded for the first time an averaged balanced fiscal outcome. Several Countries have embarked on improving financial performance and introducing new tax regimes, with South Africa, Botswana, Mauritius, Tanzania and Ghana, being on the forefront.

Professor Peet Strydom (2000) states in an article on the effectiveness of South African Fiscal policy, that the period 1970 to 2000 was characterised by major change. Firstly an explicit change from non-market related controls towards market oriented policies. Secondly, a major transformation took place from a siege economy during apartheid, to an economic framework which had to support a democratic political framework after the 1994 elections. Throughout, Prof Strydom (2000) indicates that fiscal policy is narrowly associated with economic growth, which in turn is seen as closely associated with employment.

Fiscal policy appeared to be expansionary and in many instances not supportive of monetary policy during the apartheid period. The phrase fiscal discipline featured prominently in budget speeches, but it would appear that fiscal discipline was achieved by cutting back on investment in infrastructure. In the new political dispensation fiscal policy developed elements that were conducive to economic growth (Du Plessis, Smit & Sturzenegger, 2007) and expansion. It proved to be an effective stabilisation macroeconomic instrument while it contributed towards a more equal income distribution. Unfortunately fiscal policy and public policy in particular, has failed in being conducive to employment creation owing to rigid labour market policies and ineffective human development and skills development policies. Furthermore fiscal policy has inhibited economic growth through its lack of investment in infrastructure and its poor performance in respect of privatisation. According to Strydom (2000), fiscal policy has probably failed to support economic growth over the period under review.

The Government announcements in 2006 of massive infrastructure spending by State
Owned Enterprises (S.O.E.’s), like Eskom, Pebble Bed Nuclear reactor and Transnet, together with the massive provision of stadiums and infrastructure for the Soccer World Cup in 2010, will hopefully be stimulating economic growth and act as a multiplier agent, that can assist to overcome the present recessionary tendencies experienced in the Country. Despite massive Government project spending, we will of course not escape the international contraction tendencies, bearing in mind the golden phrase, “when America sneezes, the rest of the world catches pneumonia.”

South Africa has made major strides to endeavour to improve governmental fiscal discipline, by legislation and dedicated parliamentary committees. Treasury regulations, the Public Finance Management Act, 1999 (P.F.M.A.) and the Public Audit Act, 2004 are examples of the legislating framework being introduced. Furthermore the office of the Auditor General and other role players like the Office of the Accountant General and the Accounting Standards Board, are constantly looking at upgrading fiscal control. The Standing Committee on Public Accounts (S.C.O.P.A) acts as public watchdog of Parliament, in order to hold the Executive and State Departments to account.

There are universal principles that govern the public sector and these principles are what the Auditor General tries to evaluate. Internationally the process of public sector accounting is still lagging behind the private sector counterpart. The public sector does not have a simple measurement tool such as profit at its disposal. This makes evaluation and comparative analysis more difficult.

2.3. Corporate Governance in the Public and Private sector

Corporate governance is the international term associated with the trend towards greater corporate responsibility and the conduct of business within acceptable ethical standards. Transparency, accountability and openness in reporting and disclosure of information, both operational and financial, are internationally accepted to be vital to the practice of good corporate governance.

In his paper ‘Good Governance in ensuring sound public financial management, Professor David Fourier, of the University of Pretoria states that effective corporate governance in the public sector means that public officials/ servants must demonstrate compliance with the following six characteristics:

- They are composed of people with the knowledge, ability and commitment to fulfil their responsibilities.
- They understand their purpose and whose interests they represent.
- They understand the objectives and strategies of their Departments.
- They understand what constitutes reasonable information for good government and do everything possible to obtain it.
- Once appropriately informed, they are prepared to ensure that the Department’s objectives are met and that operational performance is never less than satisfactory.
- They fulfil their accountability obligations to those whose interests they do
represent by regularly and adequately reporting on their Department’s activities and effectiveness.

Prof Fourier further argues that good corporate governance seeks to promote the following:

- Efficient, effective and sustainable entities that contribute to the welfare of society by creating wealth, employment and solutions to emerging challenges.
- Responsive and accountable institutions.
- Recognition and protection of stakeholders rights.
- An inclusive approach based on democratic ideals, legitimate representational and participation.

In 1994 the King report on Corporate Governance (King 1) was published by the King Committee on Corporate Governance, headed by former High Court judge, Mervin King. This report incorporated a Code of Corporate practices and conduct, which was the first of its kind in South Africa and was aimed at promoting the highest standards of corporate governance in both the Private and Public Sector.

The evolving global economic environment together with recent legislative developments, have necessitated that King 1 be updated. To this end the King Committee on Corporate Governance developed the King Report on Corporate Governance for South Africa, 2002 (King II).

According to Richard Calland and Guy Dehn, in their book Whistleblowing around the World (2004), King II acknowledges that there is a move away from the single bottom line (i.e. profit for shareholders) to a triple bottom line, which embraces the economic, environmental and social aspects of a company’s activities. In the words of the King Committee:

"... successful governance in the world in the 21st century requires companies to adopt an inclusive and not exclusive approach. The company must be open to institutional activism and there must be greater emphasis on the sustainable or non-financial aspects of its performance. Boards must apply the test of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company but also responsive and responsible towards the company’s identified stakeholders. The correct balance between conformance with governance principles and performance in an entrepreneurial market economy must be found, but this will be specific to each company."

The above statement is of course, just as applicable to the Public Sector and as such to the Government Departments and Ministries.

The third Report on Governance in South Africa (King III) became necessary because of the anticipated new Companies Act and changes in international governance trends. This report was compiled by the King committee with the assistance of the King
subcommittees, Several international and local reports were combined and together with the UK governance code, which have become known as the Combined Code, under the auspices of this third King Committee and the King code has indeed become an internationally recognized brand.

There were nine subcommittees for King III, namely boards and directors; audit committees; risk management; internal audit; integrated sustainability reporting; compliance with laws, regulations, rules and standards; managing stakeholder relationships; fundamental and affected transactions and business rescue. Six researchers worked on King III, together with the subcommittees of 79 people. Lindie Engelbrecht, Chief Executive of the Institute of Directors of Southern Africa, acted as the convener of the chairmen of the subcommittees. Michael Katz checked all the legal aspects contained in the report.

The remits of the subcommittees as well as the names of the chairmen and the members of the subcommittees are given in an attachment to this report.

In the introduction to the Draft Code of Good Governance Principles for South Africa, the following important statements are made about King III.

“The Code has endeavoured, as with King I and King II, to be at the forefront of governance internationally. We believe this has been achieved because of the focus on the importance of reporting annually on:

• how a company has both positively and negatively affected the economic life of the community in which it operated during the year under review; and
• how the company intends to enhance those positive aspects and eradicate or ameliorate the negative aspects on the economic life of the community in which it will operate in the year ahead.

2.4. Separation of powers in South Africa

South Africa primarily follows the international recognised pattern and norm of the separation of governmental powers, as typically can be seen in most western democracies, like Britain, Europe and the United States.

The South African State consists of the Executive, the Legislature and the Judiciary. The President who heads the Executive (cabinet ministers, deputy ministers and the relevant government departments), whilst the Speaker of the National Assembly and the Chairman of the National Council of Provinces, lead the two Houses that constitute Parliament. Theoretically the Chief Justice heads the Judiciary in South Africa. Clear separation of powers is being provided and in theory each of these governmental arms should be totally independent (Myerson, 2004; Senay & Besdziek, 1999.)

This separation of power is noticeable between the Judiciary and the Executive, but unfortunately the lines between the Executive and the Legislature (Parliament) are
slightly blurred. The Executive through the President and Ministers seem to be firmly in control in South Africa, whilst Parliament and its portfolio and select committees seem to be at the service of the Executive.

The Constitution of the Republic of South Africa ("the Constitution") is the supreme law of the Republic and any law or conduct inconsistent with it is invalid. The South African State has thus been transformed from being a Parliamentary Sovereign state to a Constitutional democracy (Madala, 2003). The balance of power in a Constitutional state shifts slightly from the government directly elected by the people (Parliament) to the government which is removed from direct accountability to the electorate (the Judiciary). *(See Constitution of the Republic of South Africa, 1996.)*

According to Karen Miller (Public Sector Reform 2005: p139), South Africa needs a more sustainable solution to political-administrative interface in order to develop effective policies and reform government institutions so that South Africa can compete in an increasingly changing and complex world. The survival of the present government and perhaps democracy itself in South Africa ultimately depends upon improved public policy and public service delivery.

The exception to the rule of this greater executive influence over parliament and its committees is perhaps developing in the Standing Committee on Public Accounts (S.C.O.P.A.) and the Finance Portfolio Committee (S.C.O.F), which are gradually assuming more authority and has become highly critical of State Departments which does not perform, or which are guilty of inefficient financial control. In this regard the independence of the Auditor General and his firm stance on State Departments has probably played a major encouraging role to the Committee members.

The indirect control of Parliament by the Executive is being underscored by the recent report by the report by the Commission headed by Ms Preggs Govender, where the weakness and interdependence of Parliament was highlighted and the request that greater emphasis must be placed on the separation of powers. Parliament must become more independent of the Executive.

### 2.5. Promoting Fiscal Discipline in South Africa

According to the “African Development Report 2005”, of the African Development Bank, the British system of fiscal control and accountability is substantially better than the French fiscal control system. In contrast to the Afro-Franco language countries, South Africa is following the British system with regard to its Standing Committee on Public Accounts.

In South Africa, the Chairperson of the Standing Committee on Public Accounts (S.C.O.P.A.) is being chaired by a Member of Parliament from one of the minority political parties, but the ruling party, the African National Congress (A.N.C.) still have the majority of the members of the committee. The A.N.C. government through its majority on the committee is thus firmly in control. In this regard, even the appointment
of the Chairperson of the Committee, although from the opposition, is still subject to the approval of the A.N.C. majority of the Standing Committee on Public Accounts (S.C.O.P.A.). This is in contrast to Mauritius, where the opposition members indeed form the majority on their Standing Committee on Public Accounts.

2.6. Financial Management in the Public Sector of South Africa

The acceptance and introduction of the Public Finance Management Act (P.F.M.A.) Act 1 of 1999, was a major positive development in promoting fiscal discipline in South Africa. This moved the South African public sector from a basic cash recording system, to an accrual system, as prescribed by the general accepted accounting principles (G.A.A.P.) which is in accordance with the international norm. The Public Finance Management Act (P.F.M.A.) read together with the treasury regulations, provide a clear guidance for effective financial control, with definite sanctions for non-adherence to the Act and the regulations.

The National Treasury indicated in the “Inter-governmental Fiscal Review 2003”, that although there has been a remarkable improvement in public financial management, there remains a challenge to bring all government departments and provinces to the same standard of budgeting, financial management and reporting and therefore to improve the quality of budgeting and financial management. This positive viewpoint should be welcomed and comparative control measures should be introduced in order to implement this standardisation of budgeting and reporting.

Effective financial management and accountability in government departments should be raised to a higher level. The previous Auditor General, Mr. Shauket Fakie in his 2004/05 general report, has embarked on a phasing in process towards the auditing of performance information. Fakie said: “as the quality of reported performance improves, users will view the performance information provided, as equal or greater value than the financial information that they already expect and receive audit assurance on”. (S Fakie et al, 2004)

The present Auditor General, Mr Terrence Nombembe, has endorsed this position and has taken greater accountability of State Departments even further.

2.7. Reform of the public sector

In her book “Public sector reform –Governance in South Africa (2005), Karen Miller provides a comprehensive review of public sector reform and the impact of these reforms on the management of the political-administrative interface. Miller states that the formulation of policy in South Africa appears to be more centralised, consolidated and top down with the office of the Presidency playing a dominant role in the formulation of policy. The policy role of Directors General is therefore changing and becoming more politicised. Directors General should focus on the outcomes of policy, the administrative feasibility of a policy and must attempt to understand the political direction of the Minister and the political environment.
According to Karen Miller, South Africa is reforming its institutions and consolidating its democracy. It is still attempting to clarify its constitutional and institutional arrangements whether between the executive, legislature, judiciary and/or within the executive branch of government. Within the executive branch of government there exists an uncertainty about the political-administrative interface. However, current trends indicate that the political leadership is playing an increasingly dominant role in this relationship. This supports the argument that there is an increasing convergence between politics and administration with the role of senior public servants becoming more politicised and the political executive gaining more influence in the formulation of policy.

According to Page and Wright (1999), in Bureaucratic Elite’s in Western European States, this trend of politication is consistent with international trends, i.e. there is an increasing political influence over the senior public service which occurs more often during transitions in government. Politicians seek to shape to a greater extent the relationship between politicians and the public service in favour of the politicians. Changes in the public service are inevitably linked to much wider political changes.

2.8. The rise to power and governance of the A.N.C.

Richard Calland in “Anatomy of South Africa: Who holds power? (2006)”, clearly describes the African National Congress’s (ANC) accent to power and firm control of Government, whilst also reflecting on the weakness of opposition. He further emphasises that the ANC is primarily responsible for a rethink on fiscal control and that a definite effort is being made for greater transparency and control of corruption. The independence of the Auditor General is being emphasised as well as the specific role of Minister Trevor Manual, as Minister of Finance, to promote fiscal prudence and budgetary control.

Calland (2006) also observes that the Executive, through the President and the Ministers, through their relevant State Departments is firmly in control of public expenditure and fiscal control. In contrast it is found that the Legislatures are mere extensions of the will of the Executive and that the separation of powers is slightly blurred. This has resulted in the inability of Legislatures and Members of Parliament, to alter the will of the Executive and particularly with regard to their lack of power to alter budgets of State Departments.

Despite the clear and unambiguous Constitution of South Africa, 1996, which provide for definite separation of the different arms of Government, the President and Cabinet of South Africa is in control and continues to improve and consolidate its grip over the different arms of Government. Even the overwhelming majority of the African National Congress in the Parliament of South Africa seems to be strengthening this notion, rather then curtailing the powers of the presidency.

Andrew Feinstein, well known financial commentator and once a committed loyal ANC member of parliament became totally disillusioned by the cover-up by the governing
party of the suspect activities with regard to the arms deal. (Strategic defence packages for the acquisition of armaments at the Department of Defence, RP 161/2000). In his book “After the Party – A Personal and Political Journey inside the ANC (2007)”, Andrew Feinstein reveals the explosive details of what according to him, has really happened in the arms deal, the personalities involved, the scheming, the cover-up and the corruption. This book also provides insight into the current South African politics and battles within the African National Congress. Feinstein’s disillusionment grew as he sought unsuccessfully to investigate the corruption surrounding the infamous arms deal. The book also focuses on how Feinstein became isolated from his former comrades, some of them senior cabinet members of the South African government and how he was ultimately forced to choose between his principles and the political party he had so admired. (“Jonathan Ball Publishers, Johannesburg & Cape Town”).

The separation between the African National Congress (ANC) as government and the A.N.C. as a political party has become more blurred over the last years, even to such an extend that it may even have an effect on the separation of powers. Speaker of the National Assembly in Parliament of South Africa says that Members of Parliament would in future help government departments to improve delivery, instead of merely finding weaknesses in their performance. The recent A.N.C. election at Polokwane of the Hon. Speaker Baleka Mabete, to the position of Chairperson of the African National Congress, is a further eroding of the separation of powers and the independence of the post of the Speaker. The Chief Whip of the opposition Democratic Alliance (D.A.), Mr Ian Davidson M.P. said while his political party supported initiatives to restore Parliament’s integrity, the D.A. was concerned about the executive’s disrespect of Parliament and Mbete’s decision to accept powerful roles within the African National Congress. (See Hansard of Parliamentary debates, National Assembly, Cape Town 10 June 2008).

The first real political tensions and signs of division in the A.N.C came about after the palace revolution at Polokwane at the end of 2007, when Mr Jacob Zuma was elected President of the A.N.C and when President Mbeki and several of his close confidants lost their positions on the National Executive Committee (N.E.C.) of the A.N.C. After Judge Nicholson’s judgement in the Zuma case and his criticism of President Mbeki, the Minister of Justice and the Scorpions, the National Executive Committee requested the President to resign. When President Mbeki indeed complied with the request of the N.E.C., several Ministers and Deputy Ministers resigned as well as the then Deputy President Mlambo Ngcuca. The new incoming President, Montlante, however persuaded and convinced some of the Ministers and Deputy Ministers to reconsider, most important of course Finance Minister Trevor Manual.

The subsequent reversal of Judge Nicholson’s judgement, by the full bench and delivered by Judge Louis Harmse, did really put the cat amongst the pigeons, forcing the A.N.C. to opt for a political settlement, rather than a judicial solution, with regard to Mr Jacob Zuma. The turmoil amongst the ruling A.N.C. however was bad news for South Africa, both politically and economically.
Much to the credit of the National Executive of the A.N.C. and President Montlane, at that time was that the political uncertainty, was speedily and efficiently resolved. The subsequent rise of M/s Baleka Mbete from Speaker to the powerful position of Deputy President of South Africa, though for a relative short period, however clearly underscored the phenomenon and vagueness of State and the Political Party in power and control of Government.

The uncertainty, schism and intolerance between the two camps in the A.N.C., primarily led to the formation of a splinter group headed by Mosiou Lekota and previous Premier Mbazima Shilowa, which ultimately lead to the inauguration of a new opposition party, The Congress of the People (C.O.P.E). The final election results in April 2009, however re-endorsed the A.N.C as the dominant political force, with practically a two third support base. The Democratic Alliance, slightly improved their previous position as the official opposition, whilst the Congress of the People (C.O.P.E.), replaced the Inkatha Freedom Party, as the third largest political party. Inkatha and the other minority parties fared dismally and we could probably see a realignment of the opposition parties in a future political dispensation. A stronger combined opposition, that can withstand and call the Government to order, can only benefit public accountability and should be welcomed. Commentators, however feel that a future opposition, may still come from within the governing A.N.C. alliance.

2.9. Improved financial management and performance

Professor David Fourier (2006) of the University of Pretoria says that the absence of the profit measure in the public sector makes analysis and evaluation of management performance more difficult than in profit orientated firms.

The aim of financial management in the public sector is to manage limited financial resources with the purpose to ensure economy and efficiency in the delivery of outputs required to achieve desired outcomes (effectiveness) that will serve the needs of the community (appropriateness).

In the public sector the following are used to measure performance:

- Economy is to be measured by the relationship between quantity and quality of resources inputs and its related costs.
- Efficiency is to be measured by the relationship between resource inputs and outputs.
- Effectiveness is to be measured by the extent that outputs accomplish set outcomes.
- Appropriateness is to be measured by the extent that outcomes of a programme are the priority of Government and addresses the real needs of the community.

(See Fourier D Prof. 2006 -Good Governance in ensuring sound public financial management. University Pretoria. Lecture paper.)
Dr. Dirk Brand, in his book Financial Constitutional Law A comparison between Germany and South Africa (2006) -, is of the opinion that the Public Finance Management Act (P.F.M.A.) has contributed significantly to better and more regular reporting, improved financial management and more detailed and informative reports on the spending of public funds within the national and provincial spheres of government. Brand believes that the Public Finance Management Act (P.F.M.A.) is performance and output oriented, since in terms of this Act, accounting officers are required to submit measurable objectives for each main division within a departmental vote, of which they must then give account in an annual report.

2.10 Political and public sector accountability

The reports of the Economic Commission and African Development Bank of 2002 and 1999, respectively endorse the general definition of accountability. “Accountability”, is universally and generally defined as holding responsible elected or appointed individuals and organisations charged with a public mandate to account for specific actions, activities or decisions to the public, from which they derive their authority. Accountability focuses on the ability to account for the allocation, use and control of public expenditure and resources in accordance with legally accepted standards, regarding budgeting, accounting and auditing, (African Development Bank, 1999). Political accountability refers to the constraints placed on the behaviour of public officials by organisations and constituencies which have the power to apply sanctions to them.

According to the Economic Commission for Africa (ECA Study, 2002) the fundamental objectives of a sound Public Expenditure Management System include:

- Securing aggregate financial discipline. Especially ensuring that budget deficits and aggregate expenditures are fairly close to budget projections.
- Allocating resources to sectoral programs.
- Efficient use of resources in line with the expenditure program.

These objectives should be characterised by several institutionalised arrangements, of which the following is very important:

- A powerful ministry of finance to ensure budget discipline.
- Adequate technical capacity and conscientiousness in responsible parliamentary committees, ministries and other government agencies.
- An effective accounting system that produces timely and quality fiscal reports.
- Functioning audit arrangements to ensure compliance with financial regulations and effective accountability by ministries and agencies.

Of particular importance is the compliance with financial regulations and accountability by the relevant State Departments and institutions.
2.10.1 Accountability demands by Civil Society

Organised Civil Society is also demanding greater transparency and accountability from the State and specifically from officials, ministers and members of parliament. The sensitivity about the lack of accountability and integrity of ministers and members of parliament can be seen in the following proposed “new” and cynical oath suggested for Ministers and Members of Parliament. This oath featured in “Fast Facts”, the March 2008 edition of the South African Institute of Race Relations, [http://www.sair.org.za](http://www.sair.org.za). According to the Institute, this moral and binding oath should be the following:

“We the representatives of the people hereby recognise that the money we are about to appropriate does not belong to us, neither has it been earned by us. It is instead the fruits of the labour of others, poor as well as rich. We honour all those who have worked to earn the money we are about to take away from them. We acknowledge that many of those from whom we will take money will struggle to make ends meet on what is left to them.

‘We pledge that the money thus received by us will be held by us in solemn trust. We promise that it will be used only in the public interest and in accordance with law. This promise embraces all money appropriated by us, including income tax, customs and excise and import duties, fuel levies, estate duty, Seta levies and all other taxes, duties, dues and levies in whatsoever guise, shape, or form.

‘We further pledge that we will exercise proper oversight over all expenditure of the money so appropriated. We will require each and every minister, and every other organ of state, to account for all the funds allocated to them. We will scrutinise all accounts to ensure that funds are spent only for the purposes determined by Parliament, that they are spent timeously and that budgetary allocations are not exceeded. We will ensure that all accounts are open for public inspection.

‘We solemnly swear to be especially vigilant against the unethical or dishonest use of moneys entrusted to our care. We will never abuse our privileged position for our own personal financial gain. Nor will we allow monies appropriated by us to be diverted for party-political gain or for the personal enrichment of ministers or officials.’

The invaluable role of Civil Society and the pressures they can exert is of paramount importance for accountability of the public sector in South Africa and this “conscience of society” could probably be the reason that South Africa is still relatively less corrupt than many other Countries, particularly those Countries in the rest of Africa. (See Corruption Perception Index (C.P.I.) of Transparency International, also referred to in item 2.11 below.)

2.11 Combating corruption in South Africa and Africa

As a new democracy, South Africa faced several fiscal controlling challenges, including the challenge of grand corruption, emanating from mega expenditure projects, such as
the Armaments acquisition and particularly from the essential affirmative policies, in terms of which previous disadvantaged groups, had to be brought into the economic mainstream. The challenges to structure major Black Economic Empowerment (B.E.E.) deals, in such a way that grand corruption be avoided and limited, are absolutely essential.

The Public Service Commission in its Annual report for 2006/07 reported that a total of 771 cases of financial misconduct of public (civil) servants for the 2005/06 financial year, which has cost the taxpayer about R45 million. (This report however excluded amounts below R100 000 and not all Departments had reported on the costs of financial misconduct.)

The highest number of fraud and corruption cases occurred in the Department of Justice and Constitutional Affairs, followed by the Department of Defence as well as the South African Police Services. The number of cases of financial misconduct was higher than in the previous financial year, but this might have been due to better reporting and greater and improved control measures that have been introduced, which trapped misconduct, that previously might have gone unnoticed.

The cost of corruption, dishonest civil servants and wasteful expenditure in South Africa is relatively high and despite some improvement, concerted steps should be introduced to further curtail corruption in the Civil Service.

According to the 2007 Corruption Perception Index (C.P.I.) of Transparency International, South Africa has been ranked as the second-least corrupt Country in Africa and 43rd out of 180 countries worldwide. South Africa shares that international spot with South Korea and Malaysia, an improvement of South Africa of eight places. On the African continent, South Africa is only bettered by Botswana in the 38th position and followed by Cape Verde 49th worldwide and Mauritius (53rd) and Namibia (57th).

This corruption survey also indicated that South Africa fares much better than other major emerging economies, such as China, India, Mexico and Brazil. The study also noted an improvement in the score rating of several African countries in comparison with previous years and that these results indicate the positive progress of anti-corruption efforts in Africa and show that genuine political will and reform can lower perceived levels of corruption.

The index also shows a strong correlation between corruption and poverty. 40% of the low scoring countries and where corruption is perceived to be rampant, are classified by the World Bank as low-income countries.
3. ACCOUNTABILITY of STATE DEPARTMENTS in S.A.

3.1 Role of Auditor General in identifying problems

The inability of financial accountability by some line function ministries and departments to properly account for the monies they receive and spend, needs urgent attention. The Auditor General frequently reports on financial irregularities, lack of keeping proper records and filing, wrong allocation of funding and fiscal or budget dumping at the end of the financial year. Despite the annual budgeting process and the medium term budgetary framework, the spending patterns of several Government Departments indicate that they spend on average only 60% of their budgets, emphasising their inability to discharge their financial commitments in terms of their committed budgets. From this it is clear that some Government Departments still do not understand, or are not prepared to embark fully on the necessity of delivery issues.

3.2 Role of Parliament Standing Committees on Public Accounts (S.C.O.P.A)

Parliament must be more critical of the Executive and should play a greater oversight role with regard to the different state and provincial departments. The various Standing Committees on Public Accounts (.S.CO.P.A) are doing sterling work and in co-operation of the Auditor General’s offices are continuously raising the bar of compliance for the departments and by embarking on performance auditing of State Departments. An important shift came through the introduction of the Public Finance Management Act (P.F.M.A) and the insistence that State Departments must use the Accrual system of Accounting according to the General Accepted Accounting Practice (G.A.A.P.) instead of the Cash Accounting basis of the previous dispensation.

3.3 The Association of Public Accounts Committees (A.P.A.C.)

The Public Accounts Committees of the South African Parliament and the nine provinces formed the Association of Public Accounts Committees in 2000, following the international trends and specifically the Australian and New Zealand example with their Australasian Council of Public Accounts Committees. Through A.P.A.C. South African legislatures has managed to shift the focus of Public Account Committees to the effective implementation of policies, laws and overseeing delivery on the ground.

Institutions of Learning, Universities and Training Centres must also focus on the improvement of financial management and accountability in the government departments of South Africa. Much research should be directed to this field and special curricula and financial courses should be designed to further the capabilities of Civil Servants and the training of prospective candidates in a career of Public Finance Accounting. South Africa’s future Chief Financial Officers of the various Departments, should emerge from this training pool.
CONCLUSION

South Africa and other African Countries desperately need people with accounting skills and qualifications, but even more so with regard to public finance accountability. Through improved collective oversight and specifically training and education, financial public accountability will be enhanced and particularly the spending patterns of Government Departments.

The way forward should be planned together by the Private and Public Institutions and the Treasury Department to improve public accountability and its image, in order to improve the status of the South African financial governance, locally and internationally

DR HENNIE J BEKKER M.P.  July 2009

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4. ANNEXURES:

4.1 Media comments about KING III

Below are various newspaper articles outlining the benefits of King 3:

King 3 codes strengthen sustainability but dilute compliance

By INGI SALGADO

Companies will be urged to integrate sustainability into financial reports, establish a framework for executive pay and incorporate risk management into a beefed-up internal audit system if the proposed King 3 report on corporate governance is adopted as it stands.

The draft code, released yesterday, comes after a committee of 108 members led by Mervyn King substantially reworked the 2002 King 2 code of conduct. The final version is set for release in September 2009 after public input.

While its authors proclaimed King 3 a forward looking, aspirational code, critics were less convinced.

Shareholder activist Theo Botha labelled the code "a damp squib". He was most concerned that while King 2 required companies to comply with the code or explain why they did not the new version simply required them to "apply" or explain.

"It's a watered-down word and makes compliance more wishy-washy," he said. "It puts rules and regulations out there that directors don't have to comply with. There is no censure."

King said the term "comply" connoted regulation, but there was no method of enforcing the code. He believed the term "apply" was the correct route, as it better explained that the code was not a set of regulations.

King said stakeholders such as shareholders and suppliers would act as a company's ultimate compliance officers.

Self-regulation was better than legislation, which led to administrative outcomes and dilution of enterprise, he said.

A key change is that the new codes will apply to businesses of any size. But, as in the past, it is only entities listed on the JSE that will have to adhere to the code or face suspension.

Institute of Directors chief executive Lindie Engelbrecht, who convened the report, said
small businesses would differ from large enterprises in the way they adhered to the codes. For example, listed entities would have a risk committee, where a one-man concern might "jot down 10 points" on risk management in his car.

The codes build on the King 2 recommendation that firms issue sustainability reports.

The new version proposes incorporating sustainability reporting into financial reports. King said this would allow shareholders to make a more informed assessment of the company's economic value rather than simply its book value.

Firms could no longer ignore sustainability issues, he said.

King 3 recommends enhancing the status of internal auditors to incorporate risk-centric long-term planning.

On executive pay, the codes advocate that no external market influences be considered when setting packages, while salaries above the median need to be justified. Annual remuneration reports should measure executive performance against multiple indicators.


King 3 draft a good foundation for BEE initiatives

By Vuyo Jack

What is interesting about King 3 is that it applies to all types of entities, from state-owned enterprises to non-profit organisations. They all need some governance framework. The draft document encourages companies to have executive and non-executive directors, with the majority being non-executive.

It also gives guidance on the balance of the board: "Every board should consider whether its size, diversity and demographics make it effective. Diversity applies to academic qualifications, technical expertise, relevant industry knowledge, experience, nationality, age, race and sex."

Furthermore the board should appoint the audit, risk, remuneration and nomination committees as standing committees.

The general trend is limited black non-executives participation in board sub-committees. For example, research conducted by EmpowerDex in 2007 showed that white men account for 79 percent of the membership of the top 40 company committees. Black men have 13.6 percent representation, black women 4 percent, and white women 3.5 percent. Companies need to ensure the diversity sought by King 3 is balanced with business continuity and retention of experience within their board.
The most controversial and yet principled recommendations in King 3 are related to
directors’ remuneration. The Code says: "Non-executive directors should not receive
incentive awards geared to share price or corporate performance. Non-executive
directors should not receive share options." Furthermore, "Non-executive directors
should limit their shareholdings to a level which will not impair their independence."

Now on first reading, this could mean non-executive directors should not be involved in
BEE deals in their companies. However, on deeper reading of the different provisions
there is a materiality test that can be applied. A holding of 5 percent or more is
considered material. The direct or indirect shareholding in the company, or within the
group, can be material to either the director or to the company.

In most BEE deals the shareholding allocated to non-executive directors will not be
above 5 percent, or material from the company's point of view.

However, they may be material to the director concerned. So the question of the
director’s independence may arise.

Independence must be both in fact and appearance. It is clear that a non-executive
director who receives share options is not independent but can the black non-executive
who receive BEE shares still retain their independence? On the other hand, will their
exclusion from the BEE share scheme enhance their independence? What will the
impact of the King 3 provisions be on the existing BEE deals that have non-executives
as shareholders?

The far-reaching impact of King 3 is around the "the triple bottom-line performance
approach", which acknowledges that companies need to act with economic, social and
environmental responsibility. This approach would help to improve the reporting of
sustainability issues such as environment, BEE and human capital development.

The Code makes it mandatory for the audit committee to deal with this issue as part of
their work.

The Code also goes a long way in eradicating the "tick-box" approach to sustainability
issues. By adopting the "apply or explain" approach rather than "comply or explain", one
hopes the substance of the sustainability and its reporting will improve. The current draft
of King 3 provides a good, yet challenging foundation for the robust implementation of
BEE initiatives.


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Corporate governance
March 13, 2009
Governance ‘has to be flexible’
Sanchia Temkin
Business Day

Governance is not a “one-size-fits-all” set of rules and standards, says Lindie Engelbrecht, CE of the Institute of Directors (IoD) and convener of the chairmen of committees of the third King report on governance.

What is considered good governance for one sort of company may not be considered in a such a positive light at another.

Engelbrecht said this yesterday in response to recent reports claiming that the third draft of the King code did not favour legislating on governance. While the King committee and the IoD would continue to maintain that one should not legislate for governance, it was for reasons other than those cited in those reports, Engelbrecht said.

“The US SarbanesOxley Act is a very good example of the consequences of legislating or trying to implement governance with broad brush strokes,” she said.

“Originally, the act was applicable to all companies listed in the US as well as their respective subsidiaries and associates across the globe.

“In many instances, the rules could be applied at the main company, but often the cost of applying these rules at insignificant subsidiaries in remote regions outside of the US resulted in very little measurable benefit,” she said.

This led to many changes with regard to the affected companies under the act, which some would even call “embarrassing backtracking”, Engelbrecht said.

This was one of the reasons why the third King code was drafted with an “apply or explain” approach to allow for the necessary flexibility when applying the principles of governance, she said.

The report recommends that all entities disclose which principles or practices they have decided not to apply and why.

Engelbrecht said it was also important to note that the report was drafted with the Companies Act as the baseline for governance.

“The legislation in all instances was considered as the minimum governance requirements. This would imply that where directors and companies comply with King 3 they should also comply with the Companies Act.” This should, however, be a “letter of the law approach”, she said.

CORPORATE GOVERNANCE
March 01, 2009
SHAREHOLDERS BUILD MUSCLE WITH KING 3
Adele Shevel
Sunday Times

Shareholder activism has received a boost from the King 3 report, with its emphasis on enhancing the responsibility of boards of directors. A draft of the report on enhancing SA’s corporate governance was released this week. Shareholders have effectively become “the ultimate compliance officer”, according to Lindie Engelbrecht, CEO of the Institute of Directors and convenor of King 3.

Shareholders now have to agree on each board’s remuneration policy. They need to vote in directors individually, rather than in a bloc. And they will have the responsibility to appoint an audit committee.

Further details will be included in “practice notes” when the broad strokes of King 3 have been agreed.

King 3 says independent non-executive directors should not grant share options, and if shareholders approve this, the company must explain why. This change is prospective and not retrospective and comes into effect on March 1 2010, as does the code.

The role of the internal audit is set to take a more prominent position. Internal controls are set to be aligned with the long-term strategic direction of the company.

Mervyn King, chairman of the King Committee, said “governance, strategy and sustainability have become inseparable.

“We are concerned how companies behave and want to see companies we invest in being good corporate citizens,” said King. “Annual reports must show how the business has impacted both positively and negatively on the community in which it operates, and how they intend to enhance the positive or ameliorate or eradicate the negative.”

King does not believe in legislating governance. “You cannot legislate honesty and competence. And you cannot have one-size-fits-all.”

Johan Erasmus, analyst at Deloitte, said directors can be held personally liable for non-compliance with the Companies Bill, so must take decisions with care.