**INSTITUTIONAL INTEGRITY**
**CORPORATE GOVERNANCE – THE SANRAL WAY**

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## ABSTRACT: CORPORATE GOVERNANCE: THE SANRAL WAY

It is now universally accepted that 'Corporate Governance' is not a buzzword to impress the audience, but a corner-stone practice within all spheres of the socio-economic arena. The investor populace will pay a premium for the assurance of proper governance. Whether it is building a prestigious freeway or a modest gravel road, proper governance is an imperative.

This has been proven time and again at The South African National Roads Agency Limited (SANRAL). With core objectives such as the management of South Africa's primary road network, ensuring best value for money and the preservation of financial market confidence, it is vital that the organization is a credible custodian of taxpayer and investor funds.

Having recognized that good corporate governance practice is crucial, SANRAL has set up a governance framework for its Board of Directors. Enterprise wide risk management translates into the company's Risk Register. An independently operated toll-free fraud hotline and fraud prevention and response plans are strong deterrents to corruption.

The sustained demonstration of integrity and interpersonal respect underpin individual and organizational behaviour and form the essence of governance and institutional integrity – these are the values that the SANRAL team strives to develop, nurture and uphold for its stakeholders.

## CORPORATE GOVERNANCE: THE SANRAL WAY

## 1. INTRODUCTION

'The 19th Century saw the foundations laid for modern corporations; this was the century of the entrepreneur. The 20th Century became the century of management. The 21st Century promises to be a century of governance, as the focus swings to the legitimacy and the effectiveness of the wielding of power over corporate entities worldwide'. – The South African King Report on Corporate Governance, 2002.

In times gone by, the entrepreneur managed his small scale business and enjoyed the rewards for his hard work. He needed to share the fruits of his endeavours with only his family. As businesses grew bigger and as they began to affect the surrounding community, ownership and management of enterprises gradually separated. With the Industrial Revolution, companies grew to become very large. These companies needed considerable amounts of capital and other resources including employees at all levels: from top management to junior operational staff. Owners came together - now known as shareholders - to pool in resources, but they became somewhat distant onlookers while the managers operated the business. The concept of the stewardship of managers and the role of the auditor as someone who would check that proper stewardship had taken place, emerged from this separation of ownership and management.[1] The number of stakeholders grew: the shareholders, management, employees, lenders, customers, government, affected communities, environment, and so on. There arose a debate that is still ongoing: is the primary responsibility of directors to pursue the interests of their shareholders, or should it include the interests of other affected parties or stakeholders? The ethical values held by a company would, to a large extent, dictate the answer to this question.

Simultaneously, as the size of the enterprise grew and the capital resources available ballooned, the temptation to seize a lucrative slice of the business fraudulently presented itself at regular and seemingly opportune moments. Inevitably, such opportunities were seized upon by dishonest but powerful individuals or groups of individuals, to enrich themselves at the expense of other stakeholders or the public at large. The need to preclude such undesirable conduct necessitated the institution of moral principles and even essential regulatory framework under which organizations operated. Corporate governance embraces such practices and procedures implemented to achieve an organization's objectives.

In this paper, after considering a general overview of the various elements of corporate governance, the practice of good corporate governance in SANRAL will be explored in some detail.

## 2. CORPORATE GOVERNANCE: DEFINITIONS AND INTERNATIONAL INTEREST

As indicated in the introduction, the activities of any business generally affect multiple parties resulting in many stakeholders or interest groups. 'Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals … the aim is to align as nearly as possible the interests of individuals, corporations and society' – Sir Adrian Cadbury, Corporate Governance Overview, 1999, World Bank Report.

'If management is about running the business, governance is about seeing that it is run properly. All companies need governing as well as managing' (Professor R.I. Tricker, 1984). This is a simple but meaningful definition of corporate governance. The Cadbury Report, 1992, a frontrunner in early corporate governance inquiries in the United Kingdom, defined it as 'the system by which companies are directed and controlled', as does the South African King Reports of 1994 and 2002.

The need for good corporate governance practice has been a matter of international concern and discussion during the past 20 – 30 years, albeit to varying degrees in different countries. The Organization for Economic Co-operation and Development (OECD) monitors developments in corporate governance in member countries. In May 2003, the European Union (EU) Commission introduced an action plan designed to lead to greater harmonisation on the corporate governance framework for EU listed companies in all countries of the EU. The Combined Code in the UK has set out corporate governance principles and best practice guidelines. One of the strategic mission statements of the International Corporate Governance Network (ICGN) is to promote high standards of corporate governance worldwide. The Commonwealth Association for Corporate Governance produced fifteen principles of corporate governance to promote good standards in business practice throughout the Commonwealth – for countries with advanced economies as well as ‘emerging market’ countries whose economies are in a relatively early stage of development. [2]

In an article released by the IMF in September 2005 ‘Back to Basics – 10 Myths about Governance and Corruption’, the point was made that governance was not a luxury that only rich countries could afford. A number of emerging economies including the Baltic nations, Botswana, Chile and Slovenia have shown that it is possible to reach high standards of governance without yet having joined the ranks of wealthy nations. [3]

South Africa’s King Reports I and II, especially the latter, which came into force in 2002, are among the most advanced corporate governance guidelines. It emphasises the need for enterprise with integrity in the interest of various stakeholders, the environment and the society at large. In addition, and specifically applicable to the public sector in South Africa, is the Public Finance Management Act of 1999, which legislates important governance practice requirements for state owned enterprises. Arguably, it has been accepted as one of the best pieces of legislation that South Africa’s parliamentarians have produced, to encourage proper custodianship and practices by those organizations that expend taxpayer funds.

In Europe, South Africa and most countries other than the United States (US), the emphasis is mainly on voluntary compliance with corporate governance guidelines. In the US, in the aftermath of a spate of corporate scandals in the early 21$^{st}$ century, the emphasis moved from voluntary compliance to statutory regulation (the Sarbanes-Oxley Act 2002) and the enforcement of rules. There is currently a debate on the merits of voluntary compliance versus legislative directives. Corporations are finding the costs to comply with the requirements of the Sarbanes-Oxley Act to be rather prohibitive. The debate extends to the ability of legislation to provide real value and protection as fraudsters invariably find loopholes. The counter view is whether just a moral guideline, without sanctions, will be given any credence by the business community.

## 3. ETHICS

Most companies appeared to show little concern for good corporate governance until about the turn of the millennium. Then, the situation changed dramatically when the business community was hit by a rush of corporate collapses and governance scandals in the international arena. Concerns about financial reporting in the US emerged with the collapse of the energy giant Enron in 2001, when it filed for bankruptcy. It had been ‘adjusting’ its accounts for a while by grossly inflating its profits and concealing many millions of dollars in debt. When it finally collapsed, the major victims were its investors, and its employees who had invested their pension funds in this seemingly successful company. Losses totalled USD 70 billion. Similarly Worldcom, with a simple accounting manipulation made the company appear more profitable by accounting day-to-day expenses as capital expenditure that could be depreciated periodically. The inevitable question raised is about the role of auditors. In the Worldcom and Enron cases, the auditors Arthur Andersen aided the misrepresentation. Arthur Andersen was one of the big five auditing firms of the time, but the Enron debacle led to its immediate, world-wide disintegration. The fact that such massive debacles occurred in a jurisdiction that prides itself of its corporate governance standards has demonstrated all too clearly that governance is about more than a narrow list of do’s and don’ts. It is about instilling a culture of integrity, transparency and accountability, where deviations from the norm are met with suitable criminal, community and economic sanctions. [4]

South Africa has also had its share of corporate debacles such as Leisurenet and Regal Treasury Bank. In all the cases mentioned here, secret interests and absolute, unbridled power in the hands of a few led to gross financial mismanagement and misappropriation of funds. The total disregard for ethical values, greed and lack of concern for the damage caused to fellow human beings were the root causes of this unethical behaviour.

With indifference to governance causing such business disasters, there was some nervousness among investors. A 2002 McKinsey survey revealed that well governed companies drew large investment premiums, which averaged 30% for East European and African companies and 22% for Asian and Latin American ones. They obtained cheaper debt and outperformed their peers. [5]

This leads to the important question of organizational and individual ethics.

As a rule, business is not legally bound by a set of ethical rules. The entrepreneur does not make a formal pledge of integrity or professional values, as, for example, a medical doctor does. Even if one starts out with high personal ethical standards, it is easy to wander off the moral radar, because professional standards are a voluntary, vocational option, not a legal part of the territory. Ethics has been explained by William Greider as: 'Everyone's ethics are defined by what they will tolerate when it is done to others'. There are, without question, business people who act professionally, who feel obligated to serve their customers, employees and communities with integrity. Organizations also voluntarily take on corporate social responsibility to ensure that their activities have positive influences and contributions towards all stakeholders. But there generally are no penalties if they elect not to. [6].

The company thus has a choice in setting its ethical compass, but there are complexities. An organisation is made up of individuals. There would be tensions between the moral choices of the individual and those of the organization. The ethical values upheld by individuals forming the composite whole of an organization will dictate to a large extent the moral standing and the extent of good governance practiced by the organization. Moreover, the tone is set at the top. There is a greater responsibility on the policy setters and decision makers to lead and direct with integrity and transparency. In the final analysis, as proven by all the corporate disasters, the people, especially corporate leaders, make or break the practice of good governance.

## 4. THE REPUBLIC OF SOUTH AFRICA

South Africa's first democratic elections were held in 1994, when the country emerged from a history of colonization, suppression and racial social engineering or apartheid. The imbalances in resource allocation during the apartheid times resulted in infrastructural development that mainly served the white minority. Good roads were built in selected areas with the primary motive of facilitating the movement of troops around the country. This did not benefit the majority of South Africans who lived in rural and inaccessible areas. In 1994, the priorities changed to redressing the inequalities of the past and providing equal opportunities and facilities to all, within the constraints of resource availability in the changed environment.

Now the country can celebrate more than a decade of democracy and its successes in improving the overall quality of life. South Africa is the 'engine' of the African economy and enjoys a gross domestic product (GDP) four times that of its Southern African neighbours, with the GDP growing at 4.8% per year. It produces 40% of the total output of the continent. The Johannesburg Stock Exchange is the 18$^{th}$ largest in the world and the country enjoys a well developed banking system. Government's development initiatives extend to critical areas such as health, education and infrastructure, thus striving to empower communities and reduce poverty, unemployment, crime and corruption. South Africa faces challenges in the societal and economic context but there is a growing awakening towards the need to move beyond the bitterness and inequalities of the country's past. As the country forges ahead in the second decade of its maturing democracy there is optimism and a continued drive towards growth. This is accelerated by catalysts such as the 2010 FIFA World Cup. Given this backdrop, SANRAL acknowledges its responsibilities to not only create a world-class primary road network for the nation, but to play a pivotal role in forming meaningful partnerships with civil society to spur economic growth and to provide opportunities for all.

## 5. THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED (SANRAL): ITS ROLE AND STAKEHOLDERS

SANRAL was established in 1998 to take responsibility for the primary roads of the country. Its mandate includes the financing, management, control and development of South Africa's national road system. It is an independent statutory company operating along commercial lines, but at arms length from the South African government. It was established as a public entity by an Act of Parliament – The South African National Roads Agency Limited and the National Roads Act, No 7 of 1998 (The SANRAL Act) – and is governed by various pieces of legislation and guidelines, including those in the area of governance. SANRAL is registered as a public company with the Registrar of Companies in terms of the Companies Act of 1961. The Public Finance Management Act of 1999, the Companies Act of 1961, and the Prevention and Combating of Corrupt Activities Act of 2004 stipulate governance related legal requirements. The Protocol on Corporate Governance in the Public Sector, 2002 and the King II Report on Corporate Governance for South Africa, 2002 provide governance guidelines for the organization.

SANRAL is primarily responsible and accountable to its shareholder, the Republic of South Africa, represented by the Minister of Transport, for the optimal performance of its mandate. SANRAL employs its resources to create a safely engineered and effective road network to improve the overall quality of life for its customer, the road user, and for the communities affected by the road, who are important stakeholders of the company. To execute its mandate, SANRAL manages and administers very large projects employing substantial resources. SANRAL uses government grants, toll fees collected from the public and investments from South African capital markets. With additional core objectives such as ensuring best value for money and retaining financial market confidence, it is vital that the organization builds up a track record of being a credible custodian of taxpayer and investor funds. Triple bottom-line accountability in the areas of economic, social and environmental considerations, leading to organizational transparency is a non-negotiable deliverable. Its ethics and value systems encompassing vital components such as the avoidance and disclosure of conflicts of interest, declaration of gifts received on account of being a SANRAL director or an employee, segregation of duties and management of risk must be proven to be uncompromising. Any slip – and the damage to institutional credibility and reputation could well be irreversible.

The Board also recognises its responsibilities to other stakeholders. SANRAL's contribution in terms of corporate social investment is primarily in the area of socio-economic development through its community development projects. This contributes to the equitable redistribution of wealth to create public value among previously disadvantaged communities. Job creation, training and skills transfer result in the alleviation of poverty leading to social and economic transformation. Another area of involvement is in skills development and capacity building. South Africa is experiencing a shortage in civil engineering professional skills. SANRAL promotes education in mathematics, science and technology at secondary school level and also sponsors a chair in pavement engineering in one of the local universities.

Having recognised that good corporate governance practice is critical, SANRAL has put in place a governance framework for its Board of Directors, as the Board is the driving force of the organization. Enterprise wide risk management is an ongoing, organization-wide exercise, with every employee given the opportunity to identify risks and to contribute to the Risk Register. An independently operated toll-free fraud hotline and whistle-blowing facility, and fraud prevention and response plans are in place as strong deterrents to corruption.

## 6. CORPORATE GOVERNANCE: KEY ISSUES

### 6.1 Board Of Directors

The board of directors has the critical role of directing and controlling the company, providing strategic direction and monitoring operational performance in the best interests of the company. Not many shareholders including institutional investors have the power to decide or influence actions of the company. They generally rely on the directors to make decisions that are in their interests and are beneficial to them. A major concern is the potential for conflict of interests between these stakeholders and directors, and it is this conflict that creates many corporate governance related problems.

Directors or management have greater access to company information and are in a position to control and manipulate the information released to shareholders. Shareholders rely on the honesty of the directors and the assertion of auditors in respect of the accuracy of the published accounts and the information supplied, to be a true and fair reflection of the company's profitability and financial position.

This tension has been explained well by the OECD. It explains that the interests of those who have effective control over a firm – the agent, can differ from the interests of those who supply the firm with external finance – the principal. This is commonly referred to as the principal-agent problem. It grows out of the separation of ownership and control and of corporate outsiders and insiders. In the absence of the protection that good governance provides, asymmetries of information and difficulties of monitoring will put the capital providers, who lack operational control over the firm, at an extremely disadvantageous position to protect themselves from the opportunistic behaviour of managers and directors or even controlling shareholders. [7]

#### 6.1.1 *SANRAL's Board of Directors*

The SANRAL Act stipulates that SANRAL will have a Board of eight members, including one executive member: the Chief Executive Officer (CEO). The remaining are non-executive members of whom the majority are independent and include business leaders from the private sector. The Board is appointed for a three year term by the Minister of Transport. Board appointments are made after an open process of recruitment including advertisements and interviews. The positions of Chairperson of the Board and the CEO are held by two individuals – this is recognized as good governance practice to avoid concentration of power.

SANRAL's Board has subscribed to the governance guidelines as per the King Report II, 2002 and the Protocol on Corporate Governance in the Public Sector, 2002. In addition, it also abides by the Public Finance Management Act of 1999 directives which call for transparency, accountability and sound management of revenue, expenditure, assets and liabilities. The Board is guided by an internally developed Board Charter which sets out the mission, duties and responsibilities of the Board.

The Board is ultimately accountable and responsible to the shareholder for the affairs and performance of SANRAL and for corporate governance. The Shareholder's Compact and its addendum, the Performance Agreement, signed between the Minister of Transport and the Chairperson of the Board spells out the principles, performance indicators and targets based on which SANRAL's performance is measured.

The Board's functions include those of retaining full and effective control over the company and to give direction regarding policy matters to the management. It is also responsible for monitoring organizational performance, communications and sustainability.

A minimum of four Board Meetings are held annually. In an effort to ensure optimal oversight, four Board Committees have been established:

- the Contracts Committee to protect the integrity of the tender process;
- the Assets and Liabilities Committee to oversee the proper management of SANRAL's assets and liabilities: both financial and physical;
- the Audit Committee to ensure reliable financial accounting and reporting; and
- the Human Resources and Remuneration Committee to monitor human resource management.

Each of these committees is chaired by a non-executive director and consists of two or more directors as members. In addition, executive managers are appointed as committee members for better operational oversight. Should the need arise, independent specialists from the private sector are appointed to serve on the committees to provide further expertise. All the committees have their own charters which specify their functions and powers as delegated by the Board.

An annual, collective assessment to evaluate Board performance and contribution is facilitated by specialist service providers. Corporate governance practice within the organization as well as by the Board and management is measured during the assessment.

All of the above ensures that SANRAL has a Board structure that is robust and effective. However, one needs to remember that the inexplicable part of the Enron story is that the presence of an acceptable board structure and procedural rules did not prevent the meltdown. SANRAL recognises that the Board needs to be a strong, high-functioning work group whose members trust and constructively challenge one another and engage with senior managers on critical issues. To facilitate this engagement, SANRAL's Board endeavours to create a climate of trust and openness, encourages a culture of open dissent, insists on individual accountability and undergoes regular board performance evaluations. [8]

### 6.1.2 *Ethics in SANRAL: Director's Code of Conduct*

In addition to exercising due prudence and skill, directors must conduct their fiduciary duties loyally and in the best interests of the company. These standards form the foundation of the Board's Code of Conduct.

In the Code, 12 principles, grouped into two standards of diligence and good faith, govern directors' conduct as listed in Table 1 below:

Table 1 - SANRAL's Board of Directors' Code of Conduct

| **SANRAL's Board of Directors' Code of Conduct** | |
|---|---|
| **Diligence (Duties of Skill and Care)** | **Good Faith (Fiduciary Duties)** |
| Principles:<br>1. Induction and training<br>2. Regulatory compliance<br>3. Meetings: preparation, attendance<br>4. Access to information and advice<br>5. Disciplined, proactive participation<br>6. Performance evaluation | Principles:<br>1. Integrity<br>2. Personal transactions<br>3. Payments, gifts, entertainment, travel<br>4. Disclosure of interests<br>5. Confidentiality of information<br>6. Protection of assets and reputation |

The Board is required to maintain an independent and dispassionate interest in the affairs of the company. This is to avoid the conflict of interests that could so easily arise. These standards form the foundation of the code of conduct. Moreover, integrity and service excellence have been adopted by the Board as the core values that must underline all of SANRAL's dealings.

SANRAL is a member of the Ethics Institute of South Africa. This is a public reinforcement of its commitment to promoting a culture of integrity within the organization and in all its stakeholder dealings.

## 6.2 Financial Reporting And Auditing

Communication of reliable and factual information between the Board and the stakeholders is vital. Shareholders, large and small, should be able to voice their concerns, expect to be heard and the issues raised by them to be acted upon. Reciprocally, directors generally use the annual report and general meetings to report on a range of issues from financial performance to organizational sustainability.

All organizations are expected to publish accurate financial information – to reflect true performance and the 'going-concern' status. During the past decade, the business world has been shocked by various companies issuing misleading published accounts. 'Window-dressed' accounts make it difficult for investors to make sound investment decisions. Accounting irregularities have led to the tightening of accounting standards. The role of independent auditors is recognised to be crucial in providing assertion about the fairness and reliability of financial reports. Corporate governance calls for the rotation of auditors to prevent the development of cosy relationships with the management. In addition, there needs to be assurance that the amount of consulting fees earned by the auditing firm does not compromise the integrity of the audit.

### 6.2.1 *Financial Reporting and Auditing in SANRAL*

SANRAL's primary tool of communication is its Annual Report, which is a key aspect of good corporate governance as it provides an independently audited, objective report on financial performance. The Auditor-General of the country is SANRAL's external auditor, with the internal audit function being outsourced to one of the big four auditing firms for a term of three years. The Board of Directors is the accounting authority of the company.

SANRAL understands that its shareholder, investors and other stakeholders rely on honest and clear financial reporting. Audits are not limited to financial aspects only, but also to technical issues relating to project engineering and to the integrity of internal controls and procedures. The internal auditors are rotated at regular intervals to encourage greater auditor independence. Auditors are expected to observe the highest standards of business and professional ethics. There are restrictions on the quantum of non-audit or consulting work that may be undertaken.

The Audit Committee, comprising mainly of independent non-executive board members, is responsible for monitoring and providing assurance on the effectiveness of the audit process and the reliability of the financial reports. It reports to the Board on financial standing and advises on the 'going-concern' or sustainability status of the company. The Public Finance Management Act of 1999 underlines the fact that taking on the responsible stewardship of public funds is a serious matter, with the Board members being individually and jointly liable for any financial misconduct.

The Annual Report is presented to the Minister of Transport who tables it in the South African Parliament every year. The Parliamentary Portfolio Committee for Transport and SCOPA (Standing Committee of Public Accounts of Parliament) scrutinise the report. SANRAL may be called to discuss or respond to any questions that may be raised. The Annual Report is also registered with the Registrar of Companies and distributed to financial institutions. Any interested party may also refer to it on SANRAL's website. From the above it is evident that SANRAL takes prides in its transparency and honesty in the matter of performance reporting.

## 6.3 Risk Management

As a general rule, investors expect good returns on all their investments. But decisions aimed at providing high returns generally result in greater than usual risks being taken. Often, corporate collapse may be a consequence of well-intentioned managers failing to be aware of all the strengths, weaknesses, opportunities and threats resulting from particular decisions being made. This awareness is enhanced by an operative and effective system of risk management.

The Committee of Sponsoring Organizations of the Treadway Commission (COSO), has defined Enterprise Risk Management as 'a process, effected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives'.

COSO has also established a direct relationship between objectives of an organization and enterprise risk management components. It has depicted the relationship in a three dimensional matrix – in the form of a cube as in Figure 1 below:

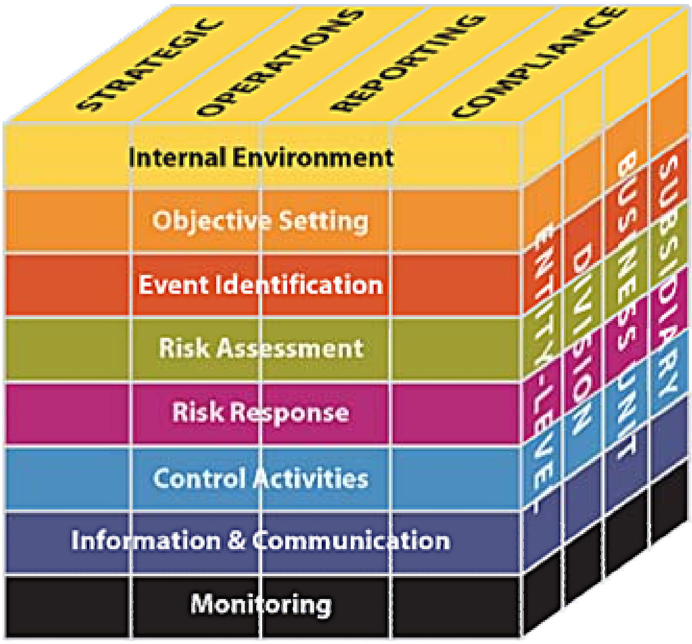


Figure 1 - COSO's Enterprise Risk Management Framework

The objectives of an organization are categorized generally as strategic, operational, reporting and compliance and are represented by the vertical columns. The eight interrelated components of risk management are represented by the horizontal lines. The internal environment sets the basis for the entity's existence, risk policy and risk appetite. This environment would also set objectives consistent with the risk appetite. Internal and external events – risks and opportunities – that would affect achievement of objectives are identified. Risks are then assessed based on the probability of occurrence and the severity of impact. Subsequently, responses such as accepting, sharing, reducing or avoiding risk are considered. Control activities are put in place to ensure effective risk response. This is followed by communication to affected parties and ongoing monitoring. These influence operations at various levels as represented by the third dimension. [9]

It is the ultimate responsibility of the Board of a company to assume stewardship of the assets of the company and to protect the value of shareholder investments. The Board needs to take measures to prevent losses through error, omission, fraud and corruption. Control measures need to be set up through a system of internal controls. The South African King Report 2002 requires the Board to use generally recognized risk management and internal control frameworks and models to provide reasonable assurance regarding the efficiency and effectiveness of operations, safeguarding of company assets, legislative compliance, business sustainability, reliable reporting and reasonable upholding of stakeholder interests.

### 6.3.1 *Risk Management in SANRAL*

Though every decision made in SANRAL has routinely been subjected to risk analysis in the past, 2003 saw the introduction of a formal and Board mandated enterprise-wide risk management system in the company. The risk management policy and framework were adopted. A commitment to the optimal management of risk to attain SANRAL's vision, achieve key objectives and to protect its core values was formally made. The aim was the continuous awareness and management of risk, to achieve a better understanding of the risk–reward balance and to reduce the likelihood and consequences of adverse circumstances to acceptable levels. Internal audit is risk based. The intention is for risk management to become embedded into all the critical systems and processes within SANRAL and to be an integral part of good management practice.

As required by the Public Finance Management Act of 1999, the Board of Directors has accepted ultimate responsibility and accountability for risk management within SANRAL. A Risk Management Cluster serves as a dedicated management team constituted to assist the Board in this area. The delegated responsibility is to design, implement and monitor the process of enterprise-wide risk management and to integrate it into SANRAL's day-to-day activities. Risks, both current and potential, are identified and recorded in the Risk Register, after being assessed for severity and probability of occurrence. Each risk is assigned to a risk owner who has the responsibility of managing it within a particular time frame. Risk management is a standing item on the agenda of all board and committee meetings.

The Risk Register is communicated to all employees with opportunities open to all to contribute to the Register. The effort and emphasis has been toward instilling and embedding the importance of risk management within the culture of the entire organization at all levels, and not only at board or management level. Every employee is expected to be responsible for the management of risks in his or her area of contribution.

## 6.4 Fraud And Corruption

Fraud is the crime of stealing value and/or obtaining money or some other benefit by deliberate deception, dishonesty or other unethical behaviour. Corruption is the offering/giving/soliciting or accepting of an inducement or reward for certain improper actions. Corruption differs from fraud in that more than one party is involved, and all of them benefit in some way from the action.

An avoidable misuse and abuse of public funds results from fraud and corruption. Corruption in public contracting, which generally is an enormous and lucrative area of business, leads to distortion of fair competition, the waste of scarce resources and the neglect of basic needs, perpetuating poverty. It is estimated that systemic corruption can add 20-25% to the cost of government procurement, and frequently results in inferior quality goods and services and unnecessary purchases. [10]

The organization, 'Transparency International' annually releases its Corruption Perceptions Index (CPI) which has been credited with putting the issue of corruption on the international policy agenda. Its 2006 Bribe Payers' Index (BPI) survey analysed the propensity of companies from 30 leading exporting countries to bribe potential customers.

Companies from the wealthiest countries emerged with the best results, but were found to routinely pay bribes. Companies from the emerging export powers ranked among the biggest bribe payers.

The BPI survey of 2002 indicated that the most flagrant corruption was seen in the public works / construction and defence sectors. The best performing sectors were the fishery, light manufacturing and agriculture with a score of 5.9, which was not particularly impressive given that the clean score is 10. Table 2 below indicates the scores achieved:

Table 2 - BPI per Sector (only selected sectors have been listed) [10]

Clean score = 10

| **Business Sector** | **Score** |
|---|---|
| Public works/construction | 1.3 |
| Arms and defence | 1.9 |
| Oil and gas | 2.7 |
| Power generation/transmission | 3.7 |
| Mining | 4.0 |
| Heavy manufacturing | 4.5 |
| Banking and finance | 4.7 |
| Light manufacturing | 5.9 |
| Agriculture | 5.9 |

### 6.4.1 *The Control of Fraud and Corruption in SANRAL*

SANRAL is in the public works and construction industry, handling very large projects and transacting in millions, even billions of Rands and therefore needs to be particularly aware of and alert to the possibility of fraud and corruption affecting its business. The Transparency International Study showed that this was an area where corruption was rife as revealed by the Bribe Payers' Index survey.

South African public sector companies are required to proactively combat fraud and corruption. These entities have to comply with a range of anti-corruption legislation including the Public Finance Management Act of 1999, the Prevention and Combating of Corrupt Activities Act of 2004 and the Protected Disclosures Act of 2000.

SANRAL's fraud and corruption policy applies to any actual or suspected fraud, corruption or an irregularity of a similar nature and covers all SANRAL employees and members of its governing structures. The policy also extends to its service providers such as consultants, contractors, suppliers and their employees.

The central focus of SANRAL's fraud prevention plan is to create within SANRAL a culture of zero tolerance to fraud, a high level of awareness and a management and control environment that makes it as difficult as reasonably possible to misappropriate assets or to succumb to bribery. SANRAL pledges swift and efficient reaction to a known or suspected fraudulent act.

SANRAL has subscribed to a toll-free, fraud hotline number which provides a whistle blowing service for anyone to anonymously and without fear of victimisation report on suspected wrongdoing or any kind of fraudulent or corrupt activity, which could harm SANRAL's sustainability or reputation. The fraud hotline is operated independent of SANRAL, thus safeguarding the identity of the caller, should the caller wish to remain anonymous. The Protected Disclosures Act of 2000 makes provision for the protection of any individual who reports unethical behaviour.

All substantive allegations undergo a forensic investigation process for which expert investigators may be engaged. All investigations are conducted in a transparent, fair and objective manner respecting the rights of the individuals implicated. SANRAL then takes the necessary action, such as suspension or termination of the contract, should the finding justify such action. The implicated company may even be blacklisted. In the case of employees, due disciplinary procedures are followed. The intention is that the message of SANRAL's zero tolerance to malpractice be communicated in no uncertain terms within the contracting community.

SANRAL's procurement or tender procedures are very strictly set out and monitored. The primary role of the Board's Contract Committee is to ensure the integrity of SANRAL's tender process. It also authorizes contract expenditure in accordance with established, delegated powers approved by the Board. The point to note is that should any party want to manipulate the tender process and the award of contracts, he or she would have to influence numerous individuals who are involved in the assessment and award of tenders. These include the tender evaluators (consultants and in-house engineers), the adjudicators (management) and the final signatories on the award – the Contracts Committee of the Board.

Being in the business of construction and maintenance of roads, SANRAL is very aware of falling prey to corrupt practices by unscrupulous elements within the industry during the various stages of the contract life-cycle. All of the above measures contribute towards reducing the occurrence of fraud, increasing awareness and therefore vigilance.

## 7. IN THE FINAL ANALYSIS ……..

Good governance has, in a short time-frame, become an issue of global importance, but exactly what constitutes corporate governance and precisely where its boundaries lie are still objects of discussion. It remains an emerging discipline. Even in countries where corporate governance principles seem to be reasonably well entrenched and accepted, there is no denying that until individuals making up organizations decide to make a conscious effort to individually and collectively have an attitude of no tolerance to white collar crime and mismanagement at the top echelons of organizational control, there will be more horrifying stories of corporate betrayal and failure. It is now universally accepted that 'Corporate Governance' is no longer a buzzword to impress the audience, but a corner-stone, must-have practice within all spheres of the business world.

Corporate governance and the management of risk including that of fraud and corruption lie at the heart of SANRAL's conduct of its business. The organization has now established a track record of its willingness to embrace a culture of visible practice of good governance in the achievement of its economic, social and environmental objectives. This acceptance has been well entrenched at Board level and has filtered through the rank and file of the organization. The Board formally acknowledges that the values of integrity and service excellence be pursued in all its decisions and activities.

SANRAL's directors, management and staff recognise that corporate governance and the management of risk are critical to the effective provision of strategic direction and the achievement of objectives, while ensuring that the organization's resources are employed responsibly towards creating growth and opportunities for society.

In SANRAL, governance is not viewed as a restrictive or defensive inhibitor, but is embraced as a positive catalyst to performance: to aid its efforts towards fulfilling its role in the economy with dignity. The irrefutable fact is that there can be no law or preventive measure to cover every possible incident of wrongdoing. It is therefore important that quality governance becomes an integral part of SANRAL's organizational culture – with every employee and director being a custodian of the core values of service excellence and integrity.

In the final analysis, it is not about rules and regulations, but about people and their guiding values. The sustained demonstration of trust, integrity and interpersonal respect are the values that underpin individual behaviour and form the essence of governance and institutional integrity. These are the values that SANRAL strives to nurture and uphold for all its stakeholders.

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