COMPLIANCE AND ETHICS

COMPANY SECRETARY AND COMPLIANCE

The Companies Act, No 71 of 2008 (the Act) prescribes that all public and state-owned companies are required to have a company secretary. A company secretary is defined in the Act simply as "an officer of the company".

The duties of a company secretary is set out in section 88 of the Act -

"88. (1) A company's secretary is accountable to the company's board.

(2) A company secretary's duties include, but are not restricted to—

(a) providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;

(b) making the directors aware of any law relevant to or affecting the company;…"

According to the Institute of Directors: "The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how these responsibilities should be discharged. All directors should have access to the advice and services of the company secretary and should recognise that the chairman is entitled to strong support from the company secretary in ensuring the effective functioning of the board."

In terms of King IV, principle 10, a governing body should ensure that it has access to professional and independent guidance on corporate governance and the legal duties of the governing body, and also that it has support to coordinate the functioning of the governing body and its committees. For companies, this role is fulfilled by a company secretary.

Furthermore, in terms of principle 13, King IV states that a governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.

In order to understand the intricate relationship between governance and compliance, it's useful to pull them apart for a second and unpack the motivations and intentions that underpin these initiatives.

GOVERNANCE

1. Governance is the overall management approach board members and senior executives use to control and direct a company.
2. Governance integrates information gleaned from reporting with management control structures.
3. Governance ensures that important information is communicated to appropriate organisational levels in a complete, accurate and timely fashion.
4. Governance instills control mechanisms to make sure strategies, directives and instructions from management are carried out systematically and effectively.
5. Governance attempts to balance the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government and the community at large. Corporate governance is intended to increase accountability and to facilitate prudent management.

COMPLIANCE

1. Compliance is the process through which companies demonstrate that they have conformed to specific requirements in laws, regulations, contracts, strategies and policies.
2. Compliance assessments determine the present state of compliance and measure the projected cost of implementing compliance against the potential cost of non-compliance.
3. Compliance initiatives prioritise, fund and implement any corrective actions deemed necessary.

But in reality, the risks they are designed to protect against are often interdependent, and the controls that modulate a company's behavior are often shared. Governance sets the tone for the entire company's attitude to risk, ethics and business practices. Compliance embodies that attitude in relation to specific laws and regulations.

If you're interested in learning more about how FluidRock Compliance and Ethics can enhance your governance and compliance initiatives, please contact us on hello@fluidrockgovernance.com.