



# **Trustee Development Trainee Programme**

NAMAF

August 2019

# Workshop Objectives

- Why Corporate governance
- Fundamental Principles of Corporate Governance
- Insights into King IV and NamCode
- Board Composition
- Board Committees
- Roles and Responsibilities of the Board of Directors
- Conflict of Interest
- Closing remarks



# **Why Corporate Governance?**

# Separation of ownership and controls

“In the early days when directors sat around the a real board, they represented the shareholders because they were the shareholders. As corporations grew in size and complexity, the law tried to develop a standard of performance for directors that would encourage the same sense of duty and care that they would naturally use when they were representing themselves”

Corporate governance is therefore essential when there is a separation of ownership (shareholders) and control (Board of directors/Trustees). The NamCode governance recommended practises can help ensure Transparency, Responsibility, Accountability and Fairness of how the Board and management run an organisations/Funds affairs.

In addition hereto, Corporate Governance practices can:

- Increase access to capital;
- Increase stakeholder accountability;
- Promote agility and innovation;
- Assist in reducing fraud and corruption;

Below cited Namibian corporate scandals could potentially be averted if NamCode recommended practises where adopted by the Board and implemented by management,

**SME Bank  
Collapse**

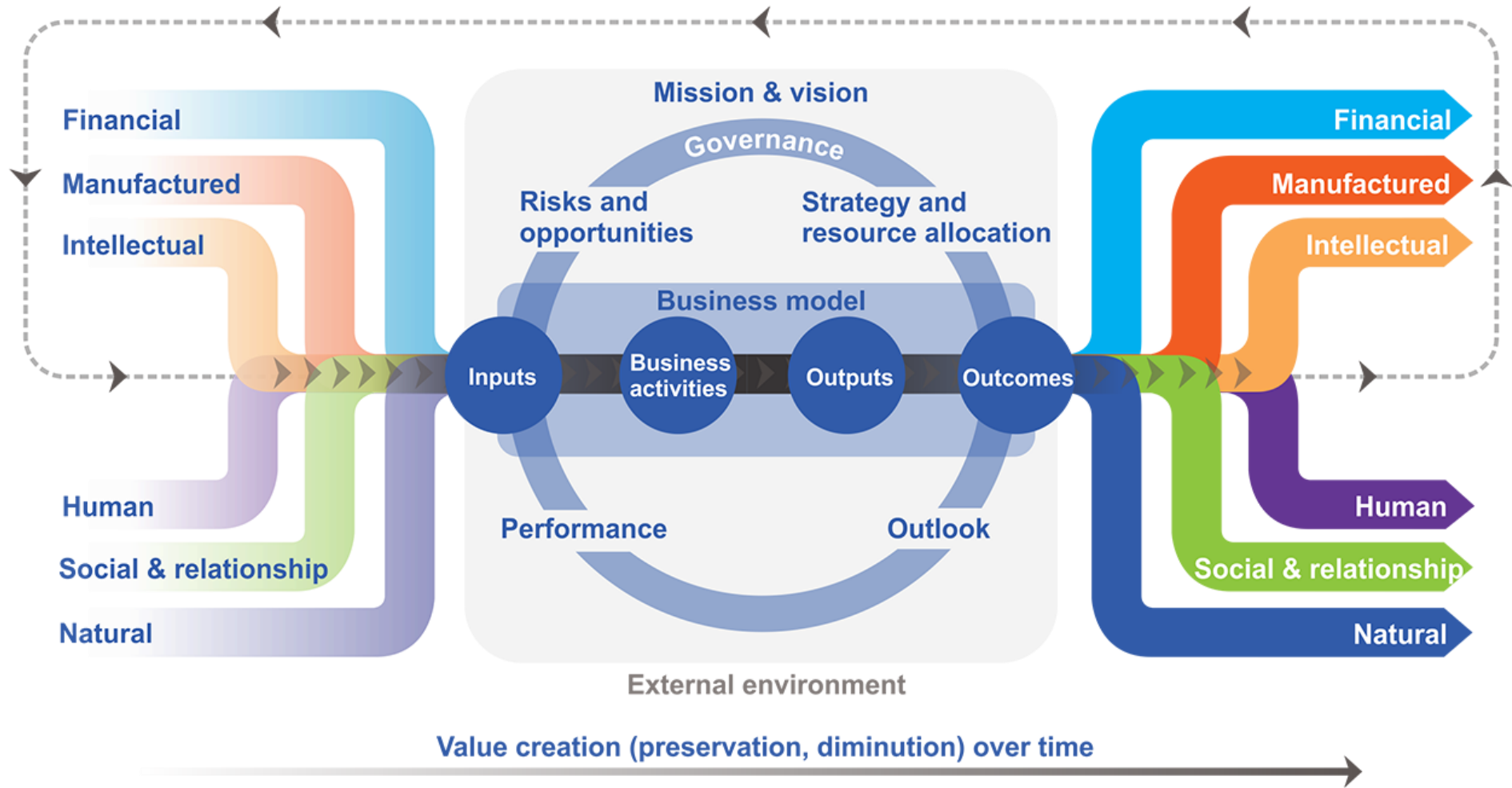
**Avid investments  
fraud case**

**Public sector  
fraud/corruption**

# **Fundamental principles of Corporate Governance**

# Defining Corporate Governance

## An organisations value creation process



# Definition – Corporate Governance

“The system by which corporations are directed and controlled”

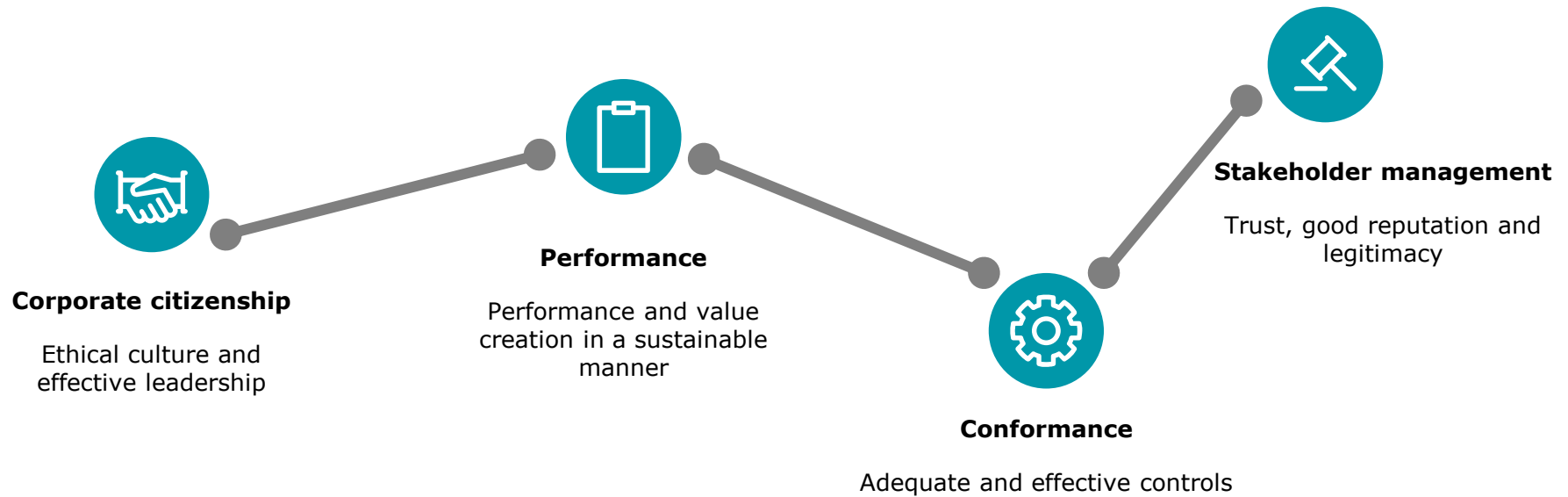
“Corporate governance is all those structures, systems, processes, procedures, and controls within an organisation, at both **board of directors** level and within the **management** structures of the organisation, that are designed to ensure that this organisation achieves its business objectives. That it does so within sensible risk management parameters; and that it does so efficiently, effectively, ethically and equitably”

**“Corporate governance is concerned with holding the balance between economic 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]**

# The four elements of Corporate Governance

## Defining Corporate Governance





# Corporate Governance Pillars

## Primary characteristics to be embedded:

**Discipline** – universally accepted behaviour

**Transparency** – candid, accurate, timely information

**Independence** – no board/committee conflicts of interest)

**Accountability** – by law/statute

**Responsibility** – to relevant stakeholders

**Fairness** – current & future interests/minorities

**Social responsibility** – not discriminatory or exploitive environmentally and personally



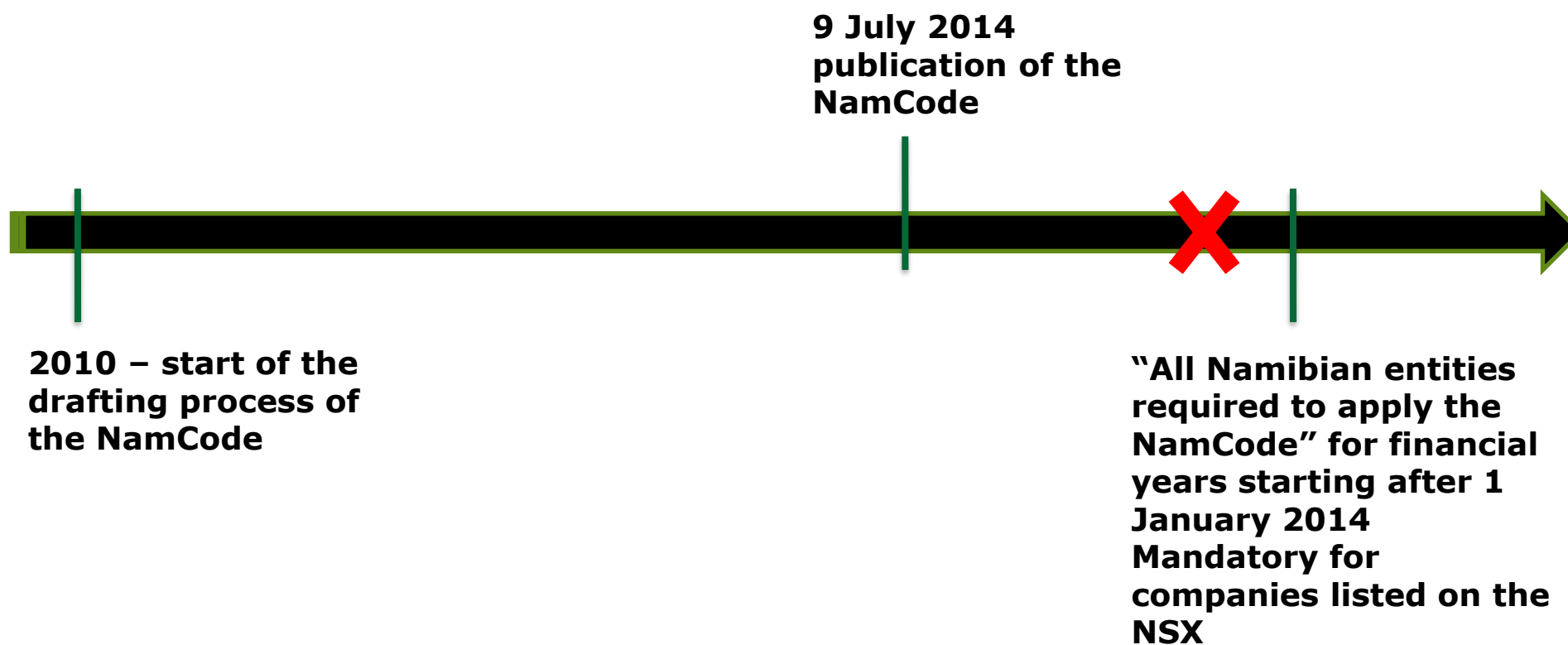
# Insights into King IV and NamCode

# NamCode Background

- Own, Namibian code became necessary, as King III is not suitable for the Namibian legislative environment
- Based on international best practices
- Integrated reporting: The interdependent nature of strategy, risk, sustainability and performance. Economic value vs Book value.
- Business sustainability: The triple context within which businesses operate (economic, social, environmental)



## Effective date and applicability



# Aspects of governance

The NamCode is divided into the following chapters:

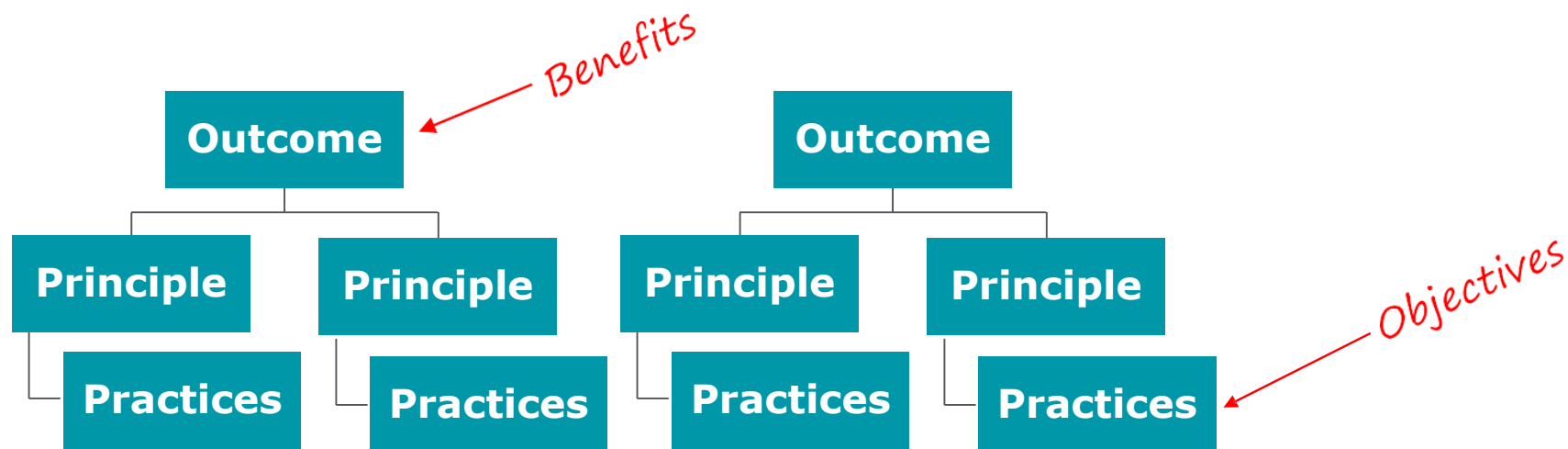


# NamCode

## Integrated reporting and disclosure

- Allows all stakeholders to assess the value added by the Organisation/Fund/Association
- Integration of the Organisation/Fund financial reporting with sustainability reporting and disclosure
- The Board should ensure the integrity of Organisation/Fund's integrated report
- The Board may delegate oversight of the integrated report to the management committee
- The management committee should oversee the provision of independent assurance
- The management committee should assist the council by reviewing the integrated reporting and disclosure to ensure that it does not contradict financial reporting

- Principle and outcome based approach
- 75 principles to 17 principles
- Applicable to all organisations, not just large companies
  - Practices should be adapted accordingly to achieve principles



*Recommendation on how to achieve objectives and realise benefits*

# Outcomes

- Ethical culture
- Good performance
- Effective control
- Legitimacy





Apply **AND** explain

***Application of all the principles is assumed*** and companies should explain the practices that have been implemented to give effect to each principle

***Disclosures*** are far more onerous than NamCode

Emphasis on the role of disclosure in managing ***stakeholder Relationships***

***Disclosures require careful consideration*** from management and an intimate understanding of the business

- e.g. the additional disclosure required with regards to the implementation of the remuneration policy

**What's New?**

# Approach and application of the Code

- Focus on fundamental principles and outcomes
- Strategy, oversight, policy, disclosure
- Sector supplements to allow for broader adoption and application
- Practice and guidance notes will be issued with detail
- Outcomes-based reporting in application register
- Effective for year end starting on or after April 2019



# Remuneration policy implementation and disclosure

- Minimum requirements for remuneration policy
- Shareholder non-binding advisory vote on policy and implementation (compulsory engagement if >25% vote against policy of implementation report)
- Disclosure: statement, policy, implementation, shareholder engagement - clear link: strategy, value creation, performance and reward
- Board to ensure fairness and reasonableness



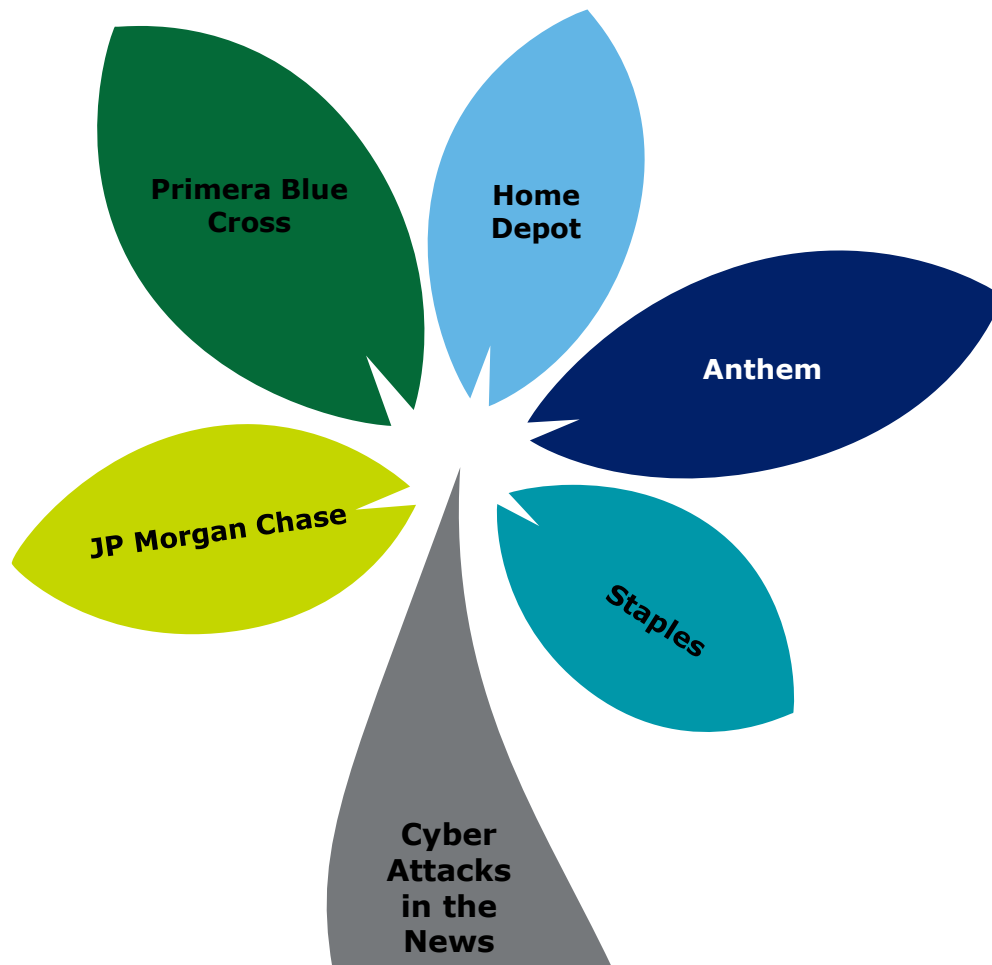
“The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the creation of value in a sustainable manner.”

# Deliberate separation of technology and information

- Fourth Industrial Revolution
- Information is a corporate asset on its own
- Technology is a manner through which to access, protect and manage information – business resilience
- Recommended disclosure based on the guiding practices over both technology and information
- Assurance over both including outsourced services



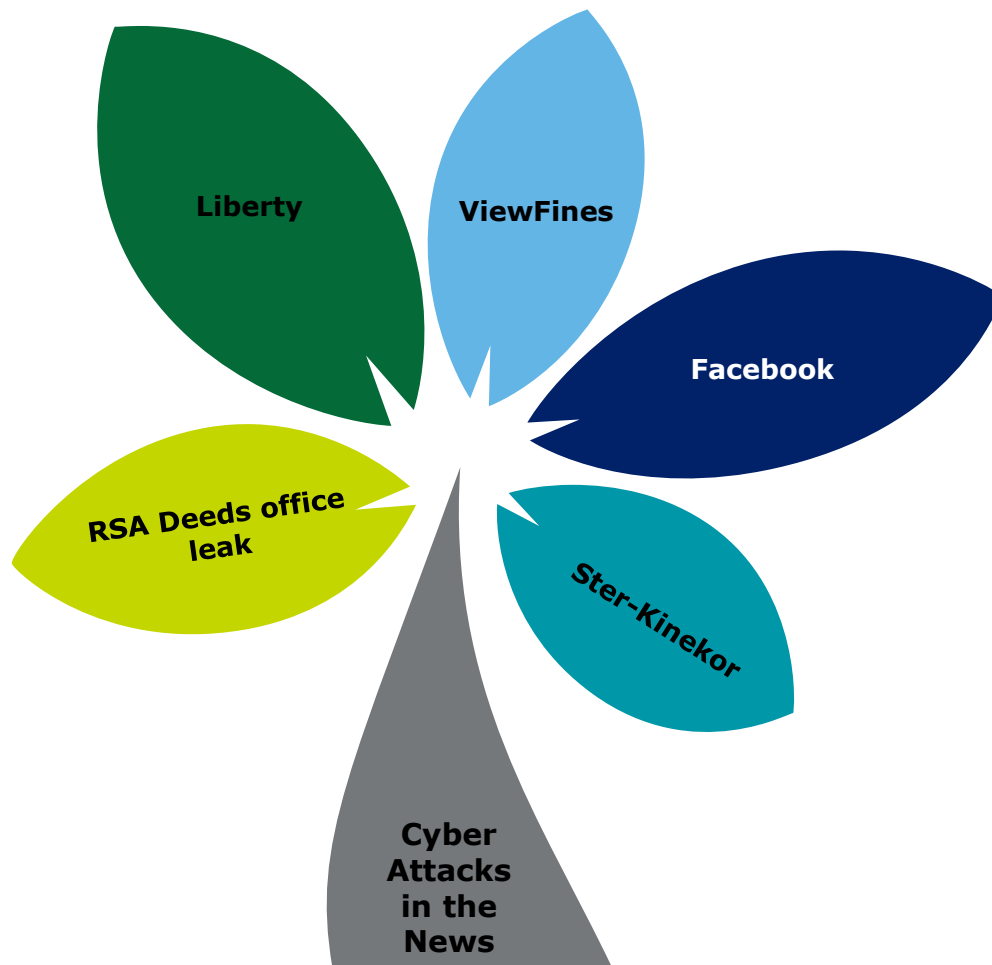
# The Threat Landscape



- JP Morgan Chase (2014, with a conviction in September 2018)**  
Contact and customer information of over 83 million households were stolen in a few minutes
- Premera Blue Cross (January 2015, with court proceedings in September 2018)**  
Over 11 million users were affected in a cyber-attack planned out by a team of hackers. Interestingly, the breach was not even discovered for about 8 months
- Home Depot (2014, settlement in 2016)**  
The information of over 56 million payment cards were leaked and compromised in a comprehensive attack that lasted for 6 months without the organization finding out. Settlement with claimants amounted to nearly USD 20million.
- Anthem (2015, remediation efforts still ongoing)**  
Hackers tapped into approximately 80 million records of both old and current customers and also Anthem employees. Social security numbers, income data and contact information were stolen. USD 115 million in damages were paid in 2017.
- Staples (2014)**  
Hackers used sophisticated methods to break into the information of over 1.16 million credit cards making it one of the most dangerous attacks in recent times.

# The Threat Landscape

Not just abroad



- RSA Deeds office leak (October 2017)**  
More than 30- million records and 2.2-million emails were published online
- Liberty (June 2018)**  
The hackers only accessed their email servers and had mostly obtained emails.
- ViewFines (May 2018)**  
The personal data of nearly a million South Africans who used the website ViewFines to check for traffic fines was leaked in May this year.
- Facebook (July 2017. September 2018)**  
While Facebook founder and CEO Mark Zuckerberg had to face angry lawmakers in the US and European Union, it was reported that the data breach involving Cambridge Analytica affected almost 60 000 South African users. 50 million records were exposed in a new hack in September 2018
- Ster-Kinekor (March 2017)**  
Movie theatre chain Ster-Kinekor was responsible for up to 7 million South Africans falling victim to a data leak in March 2017.



# 10 questions Boards and CEO's should be asking

- Is the cybersecurity programme aligned with the business strategy?
- Do you have the capabilities to identify and advise on strategic threats and adversaries targeting us?
- Can we explain our cybersecurity strategy to our stakeholders? Our investors? Our regulators? Our ecosystem partners?
- Do we know what information is most valuable to the business?
- Do we know what our adversaries are after/what they would target?
- Do we have an insider threat programme? Is it inter-departmental?
- Are we actively involved in relevant public-private partnerships?
- How was our last major event identified? In-house or externally?
- Who leads our incident and crisis management programme? Is our programme cross functional/inter-dependent?
- How often are we briefed on cyber initiatives? Do we understand the cyber risks associated with certain business decisions and related activities?

# Social and ethics committee as a prescribed Board committee

- Establishing a S&E committee is recommended as best practice
- Composition and function are aligned to the requirements of the Companies Act, but goes further to include ethics
- S&E committee should oversee the socially responsible element of executive remuneration
- Executive and non-executive membership



# Stakeholder responsibilities

- King IV emphasises the critical role of stakeholders in the governance process. Board should consider the legitimate and reasonable needs, interests and expectations of all stakeholders – stakeholder inclusive model
- Stakeholders should hold the Board and the company accountable for their actions and disclosures in furtherance of the Code



# Risk (and opportunity)

- Focus on risks, as well as the opportunities associated with those risks
- Upside and down side risk
- Suggestion to overlap risk committee with audit committee
- King IV recognises that opportunities do not always originate from current risks. This is particularly true for strategic opportunities which is typically considered when setting the organisational strategy at Board level
- Majority non-executive members



## Let's define Risk:

- Risk is an **uncertain event** which, should it occur, would have an effect on achieving the project's/teams/ individuals objectives
- Alternatively risk simply defined as the possibility that an event will occur and affect the achievement of objectives.

Risk can either have a positive or negative effect



### **Threat**

A risk that will adversely affect the organisation/project e.g. affordability of medical aids which may affect the sustainability of those funds.

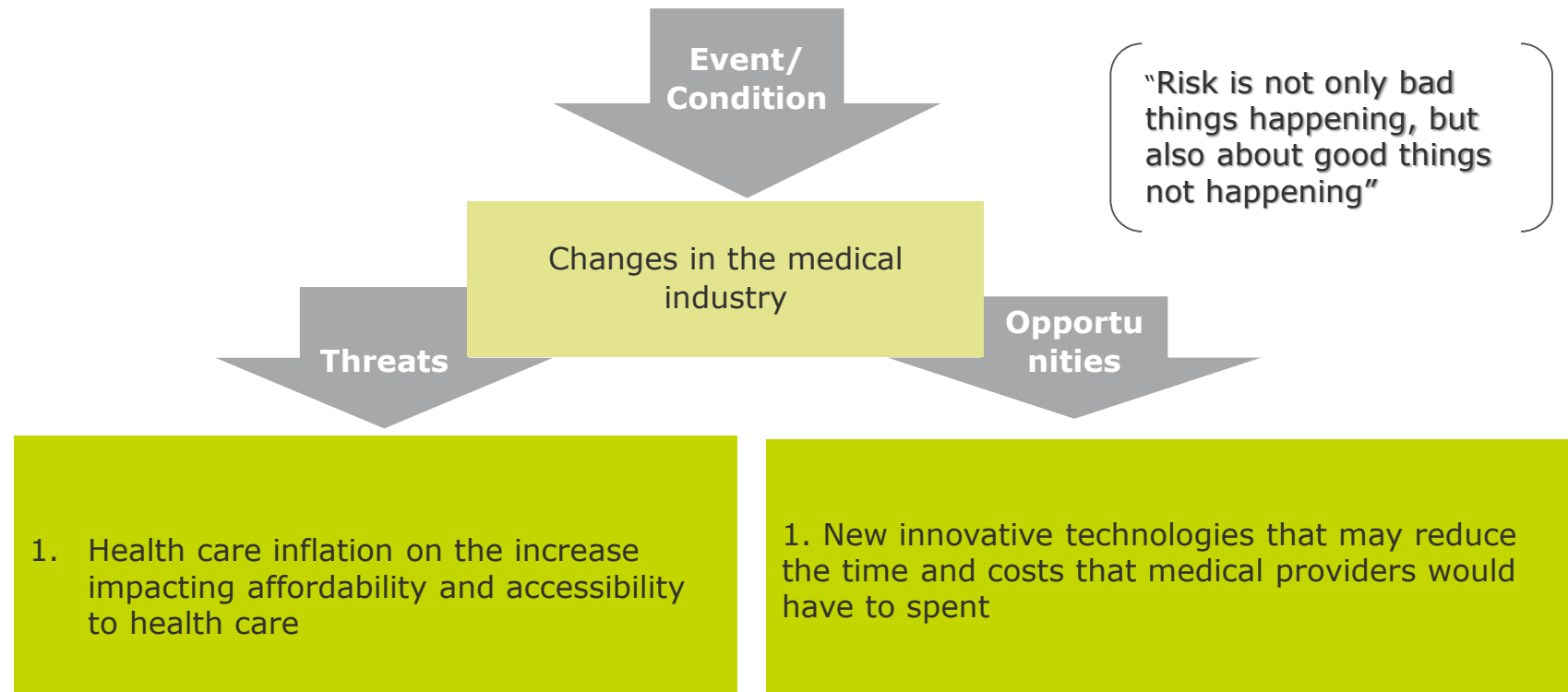
### **Uncertainty**

### **Opportunity**

A risk that positively affect the organization/project such as new medical innovations. Artificial Intelligence used to diagnose patients can be an opportunity to reduce costs and accuracy of diagnosis .

# The concept of Threat and Opportunity

- The potential for **threat** caused by factors that can adversely affect the achievement of a company's objectives
- Risks can also create **Opportunities** for organisations to exploit.



# What is Enterprise Risk Management?

What exactly is risk management and what does it mean to NAMA/ Medical aid funds?

“... a process, effected by the management committee, management and other personnel, applied in **strategy setting** and across the enterprise, designed to **identify potential events** that may affect the entity, and **manage risks** to be within its **risk appetite**, to provide reasonable assurance regarding the achievement of entity objectives.” (COSO)



# The objectives of Risk Management (cont..)

## Benefits of Risk Management

- ✓ Create a **no surprise** environment.
- ✓ Create a culture of being **proactive rather than reactive**.  
(Not to be fire-fighting)
- ✓ **Eliminate duplication of efforts**
- ✓ **Minimise the cost** of managing risks before they materialise
- ✓ Enable a Association to **achieve its strategic objectives** whilst containing the risks
- ✓ **Early warning system:** Increased visibility and reporting of significant risks
- ✓ Ensure effective reporting and improve compliance with **laws, regulatory requirements and international best practices**
- ✓ **Reasonable assurance** to the Management Committee and executive management that strategic objectives will be achieved
- ✓ **Increase Business Confidence**





# Risk Management Framework

**Risk Management Framework** - set of components that provide the foundations and organisational arrangements for designing, implementing, monitoring, reviewing and continually improving risk management throughout the organisation

- Enables application of the risk management process at varying levels
- Ensures that information about the risk derived from the risk management process is adequately reported and used as a basis for decision making and accountability at all relevant organisational levels
- Assists organisations in integrating risk management into overall management system
- Should be adapted to organisations' specific needs



**Risk Management Framework determines success of risk!**

# Responsibility and Accountability of Risk Management

**The management committee** is accountable for the enterprise risk management process



## **Accountability**

- Applies to those who own the required resources and have the authority to approve the execution and / or accept the outcome of an activity

**Everyone** within NAMA/Fund is responsible for risk management



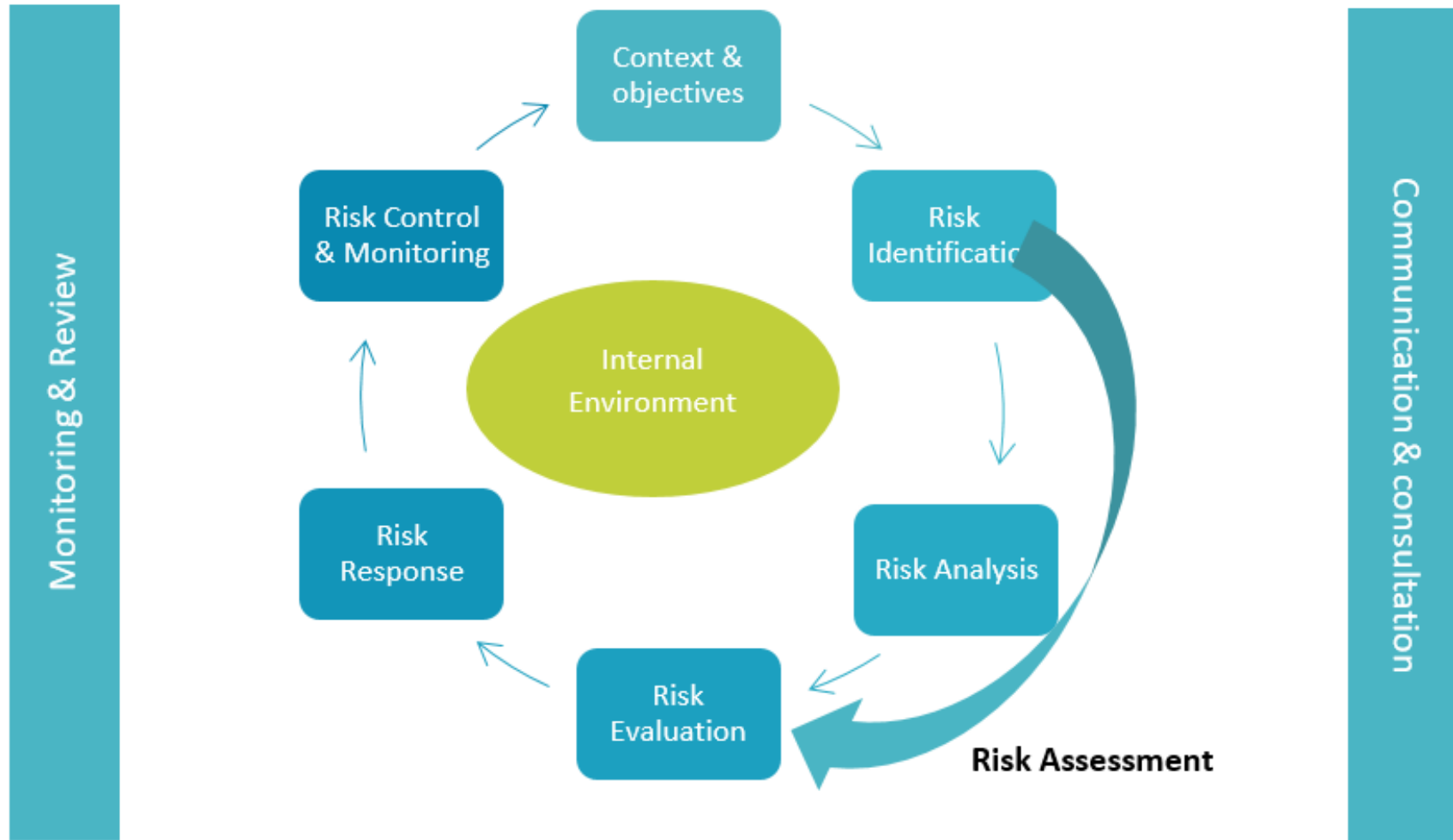
## **Responsibility**

- Belongs to those who must ensure that various risk management activities are completed successfully

**So** if everyone is responsible for risk management..**then**..who owns it?

**Simply put...if you have an objective to achieve.....you own the risks associated with that objective!!**

# ERM process



# Board Composition

- Lead independent director should always be appointed. Functions includes leading in the absence of the chairman, serve as a sounding board to the chairman, strengthen independence of the governing body if the chairman is not independent and lead the performance appraisal of the chairman
- Clear disclosure of race and gender targets from a board composition point of view
- Diversity has been emphasised in the consideration of Board composition



“Risks are evolving; they interact and are becoming more systemic due to globalisation and increased connectivity.”

# External Auditor rotation and related disclosure

- Auditor independence to be considered by AC in light of non-audit services audit partner rotation and auditor tenure
- Audit committee report should respond to key audit matters raised by auditor and how these were addressed

# Group Governance

- Holding company Board is responsible for implementation of a group governance framework
- Group governance framework should be approved and adopted by each subsidiary Board

**What's Different?**

# Combined Assurance Model

- Board to ensure that a combined assurance model is designed and implemented to cover adequately the organisation's significant risks and material matters
- Assurance over internal controls, internal decision making and external reports
- Various assurance statements including Board statement on the integrity of reports
- Combination of assurance services and functions (no more 'three lines of defense')
- Audit Committee to provide oversight and comment on the effectiveness





# Internal Audit

- Focus remains on areas of risk management, governance and control
- Skills and resources to be assessed to ensure ability to address complexity and volume of risk
- Role of the CAE
- Annual statement as well as conformance to ethics standards



# Definition of independence of directors

- NamCode: List of disqualifications (factual independence)
- King IV: Independence is a state of mind (perceptual independence)
- Substance-over-form approach to independence



# Strategy and performance

- NamCode: Unclear on the Board's role in the strategy-development process
- King IV: Specifically requires the Board to approve the formal strategy by which the organisation's core purpose and longer-term direction is set, and then provide oversight over the policies and plans that are developed from the approved strategy



# Compliance

- Compliance policy and oversight
- Continual compliance monitoring
- Consider the need to receive periodic independent assurance on the effectiveness of compliance management
- Disclosure requirements including inspections, findings of non-compliance, and sanctions



# Integrated thinking

- NamCode III: Focus on reporting on triple bottom line (people, planet, profit)
- King IV: Focus on integrated thinking primarily
- Board to make statement over the integrity of the report and the basis for this statement – reference to assurance applied



# Institutional investors

- Board to set the direction for responsible investment and approve the policy
- Board should ensure service providers are held accountable for complying with formal mandates
- Responsible investment code adopted by institutional investor and application principles and practice to be disclosed



# Board Composition

# Board/Trustee Composition





# Board/Trustee Composition

## Independent directors can bring a range of benefits to board decision-making

- adding **new skills, knowledge and experience** that may not otherwise be available on the board or within the company, with positive impact on strategy development and oversight;
- bringing an **independent and objective view** distinct from that of shareholders and management;
- acting as a **balancing element in boardroom discussions between different shareholder representatives**;
- **managing conflicts of interest** affecting board members;
- **safeguarding the interests of minority shareholders** and other stakeholders who may not be represented on the board and who may be unable to speak with a strong voice at shareholder meetings
- benefiting from their business connections and other contacts;
- undertaking the bulk of the work of **board committees**; and
- **ultimately**, providing reassurance to external shareholders, stakeholders and wider society that the company is being run in an effective manner and in pursuit of its overall mission.

# Board Committees

# Board Committees

- **Audit committee**
- **Risk, nominations and remuneration committees**
- **Social and ethics committee**
  - Certain companies (King IV)
- **Governance, sustainability, IT steering committees** ... To be considered
- **Composition**
  - Audit committee:
    - 3 independent non-executive directors appointed by shareholders
  - All other committees:
    - should comprise directors only (except risk committee)
    - Majority non-executive, of which the majority should be independent
  - Chaired by an independent non-executive chairman



“Governance framework should be agreed between the group and its subsidiary boards”



## Board Committees (cont.)

### Audit committee



Should consist of at least 3 members – independent member

Review the finance function annually

Have adequate skills mix – external / internal audit, financial controls, corporate law, risk management, sustainability, IT governance, fraud risk and overall governance

Integrated reporting – both financial (judgments in particular) and sustainability (full and timely disclosure of material matters)

Take responsibility for risk management / sustainability where no separate committees is in place

Appointment of external auditor / oversee internal audit

Combined assurance model which follows a “three lines of defence” approach suggested (1st Management, 2nd Risk Experts, 3rd Assurance Providers)

Audit Committee to assess the annual written assessment of internal financial controls by internal audit

# Board Committees (cont.)

## Remuneration committee

- Fair and responsible remuneration for directors and executives
- Disclosure of remuneration of each directors and certain senior executives
- Policy approved by shareholders, exec and non-exec remuneration determined in terms of the policy
- EU Directive



# Board Committees (cont.)

## Governance of Risk

Risk management intrinsically linked to company's strategy, performance and sustainability ... Board responsible for governance of risk

The Board:

- consider the risk policy and plan
- determination of the company's risk appetite and risk tolerance
- ensure risk assessments performed
- monitor the whole risk management process
- receive assurance (combined and the three lines of defence) regarding the effectiveness of the risk management process

Management:

design, implementation and effectiveness of risk management  
continual risk monitoring

The Board may assign its responsibility for risk management to the risk committee, or audit committee, but consider carefully

# Board Committees (cont.)

## IT governance

Board to ensure:

- proper IT governance
- proper alignment of IT with the strategy, performance and sustainability objectives of the company
- responsibility for implementation of IT governance framework, management of operational IT risk, including security, delegated to management
- Information assets managed effectively, monitor and evaluate significant investments and expenditure

IT risks an integral part of company's risk management

The risk committee may be assigned responsibility to oversee the management of IT risk



# **Board's/Trustees Role and Responsibilities**



# Board/Trustee Composition and Selection

- Companies Act prescribe that organisations should have a Memorandum of Association/Articles of Association the regulate the following:
  - Number of directors;
  - Appointments or elections of directors; executive vs non-executive;Regard should also be had to the Listing requirements/Prospectus
  - Statutory responsibilities;
- NamCode provides recommended practises on
  - Director nominations;
  - Importance of independence non- executive directors and rotation; role of the chairman of the board;
  - Board committees recommended include
    - Audit; Risk; Nomination; Remuneration, IT
- Key issues to note are as follows:
  - ❖ Consultation with shareholders on appointment and removal of Board members
  - ❖ Appointment letters with the shareholders
  - ❖ Performance agreements for each Board member as specified by Articles
  - ❖ Mix and balance of skills, knowledge, experience, industry expertise, etc.
- Representivity, vs representation
  - ❖ Board members should make decisions in the best interest of the Organisation/Fund



**Worker's  
Committee  
Member Case**

## Duties of directors (cont.)

A person, acting in the capacity of director, must exercise his powers and perform his functions:

- in good faith and for a proper purpose
- in the best interest of the company
- with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions and having the general knowledge, skill and experience of that director

256. (1) If in any proceedings for negligence, default, breach of duty or breach of trust against any director, officer or auditor of a company it appears to the Court that the person concerned is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he or she has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him or her, either wholly or partly, from his or her liability on terms which the Court considers appropriate.



**Fiduciary duty**

**Duty of care and skill**

**Personal Liability**

# Directors attributes

- Independent of management and free of business relationship
- Strategy, enterprise and business plans
- Monitor and review performance of management
- Resolve executive conflicts of interest
- Check and balance
- Sufficient calibre to carry weight
- Not a watchdog, lapdog or bloodhound
- Role versus chief executive officer



# Directors duties

- **Agent of the Organisation/Fund**
- **Represent Organisation/Fund, not individual parties etc**
- **Independence and objectivity**
- **Avoid/manage conflicts of interest, else independent judgment impaired**
- **Ensure Organisation/Fund drives its service delivery objectives**

## ***Fiduciary Duties include:***

- ❖ Duty of good faith/loyalty
- ❖ Duty of care and skill
- ❖ Duty of attention
- ❖ Statutory obligations

## **IN ESSENCE**

- ❖ Drive, Strive, Survive and Thrive
- ❖ The Buck Stops Here !

***If management is about running a business properly, then ...  
Governance is about ensuring the business is run properly***

# Accountability Structures



## **Oversight accountability**

Direction, leadership, guidance, independence, objectivity, external experience, policy, strategy, review, monitor, oversee



## **Practical Realities and Challenges**

- Role of Employees
- Role of Executive Management
- Role of Chief Executive Officer/Principal Officer
- Role of the Board of Directors/Trustees



## **Management accountability**

Execute, do, deliver, manage, evaluate, implement, run operations, performance, output, results

# Directors' Liability

Companies Act of 2004 codifies the standard of conduct for "directors"

Director defined as ...

"director" includes any person occupying the position of director or alternate director of a company, by whatever name that person may be designated

The Court may now prohibit a person from acting as a director for a period of time if a person who, as director carried on the business of the company recklessly or with the intent to defraud creditors.

Director of a Namibian Company may be excluded by court from liability if he acted honestly and reasonably, and that, having regard to all the circumstances of the case. This always subject to the director's fiduciary duty to act in the best interest of the company of which he is a director.



# Duties of directors (cont.)

Business judgment rule codified

Defence against claim for not meeting the standard

A director will not be liable if he:

- Took reasonable steps to become informed about the matter
- Declared any conflict of interest
- Believes that the decision was in the best interests of the company



# Duties of directors (cont.)

## Australian “Centro” case

Australian Federal Court case of Australian Securities and Investments Commission v Healey [2011] FCA 717 (“the Centro judgment”)



**Duty of care  
and skill**

## So what’s this case about?

The non-executive Chairman and six other directors plus the Chief Financial Officer of the Centro Property Group (“Centro”) faced allegations from the Australian Securities and Investments Commission (“ASIC”) that they had contravened sections of the Corporations Act 2001 arising from their approval of the consolidated financial statements of Centro, which incorrectly reflected substantial short-term borrowings as “non-current liabilities”.

The 2007 annual reports of Centro Properties Group failed to disclose significant matters. The report failed to disclose some \$1.5 billion of short-term liabilities by classifying them as non-current liabilities, and failed to disclose guarantees of short-term liabilities of an associated company of about US\$1.75 billion that had been given after the balance sheet date.



# Duties of directors (cont.)

## Australian "Centro" case

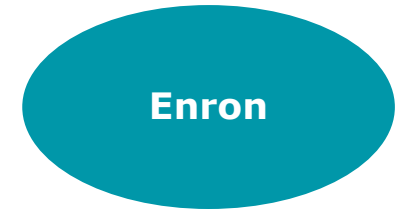
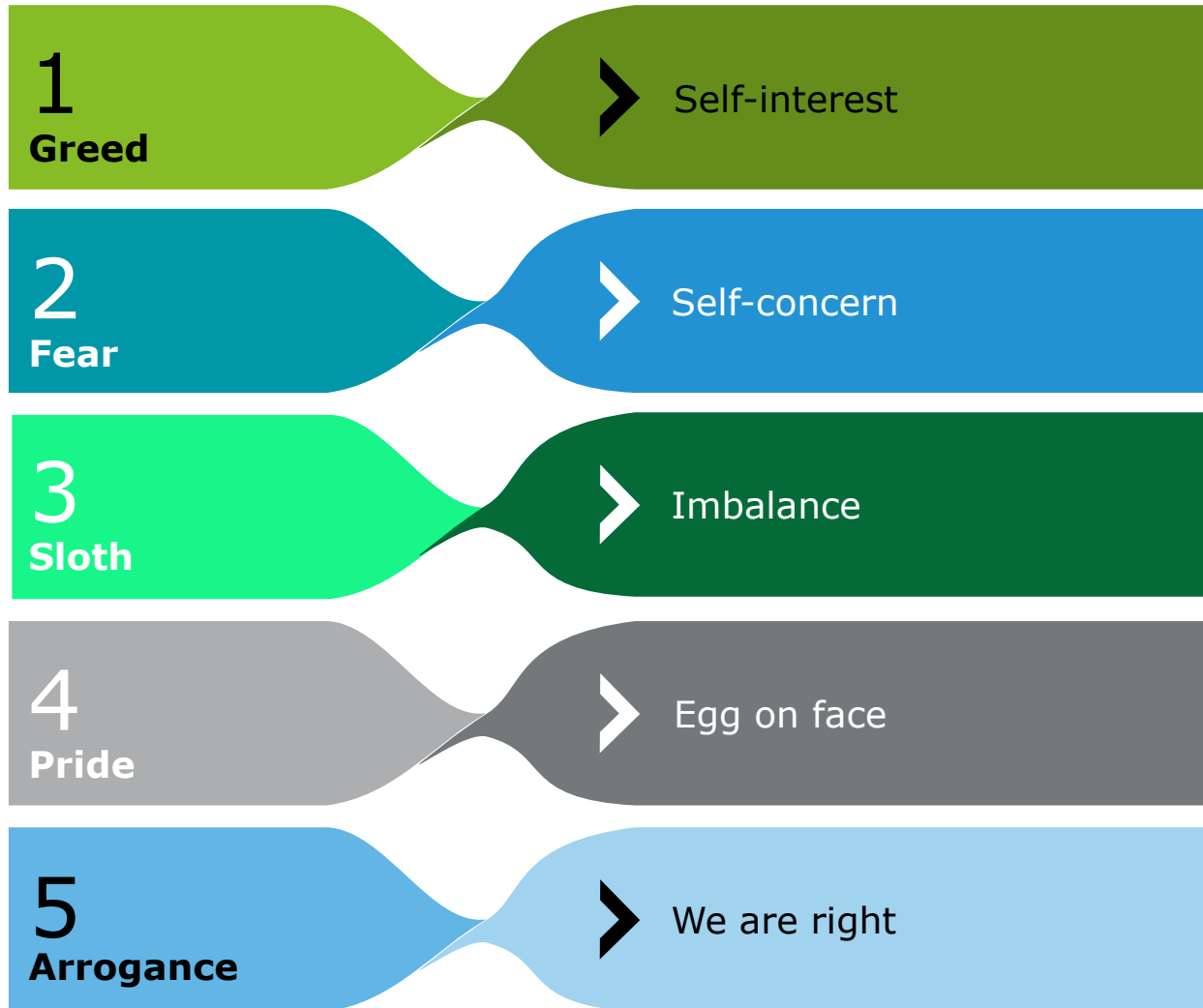
**All directors must carefully read and understand financial statements before they form an opinion ...** Such a reading and understanding would require the director to consider whether the financial statements were consistent with his or her own knowledge of the company's financial position.

Responsibilities of a director include the following:

- a director should **acquire at least a rudimentary understanding of the business** of the corporation and become familiar with the fundamentals of the business in which the corporation is engaged
- a director should **keep informed about the activities of the corporation** whilst not required to have a detailed awareness of day-to-day activities
- a director should **monitor the corporate affairs and policies**
- a director should **maintain familiarity with the financial status of the corporation** by a **regular review and understanding of financial statements**
- a director, whilst not an auditor, **should still have a questioning mind.**

# Corporate Devil

## The five corporate sins



# Qualitative Governance Questions

- 1. Is there any conflict?**
  - Duty of good faith
  
- 2. Do I have all the facts to enable me to make decision?**
  - Duty of care
  - Duty of skill
  - Duty of diligence
  
- 3. Is this a rational business decision based on all the facts?**
  - Duty of care
  - Duty of skill
  - Duty of diligence
  
- 4. Is the decision in the best interests of the company?**
  - Duty of good faith
  - Duty of care
  - Duty of skill
  
- 5. Is the communication to stakeholders transparent?**
  - Duty of good faith
  - Duty of care
  - Duty of skill
  
- 6. Will the company be seen to be a good corporate citizen?**
  - Duty of care
  - Duty of skill
  - Duty of diligence
  
- 7. Am I acting as a good steward of the company's assets?**
  - Duty of care
  - Duty of skill
  - Duty of diligence
  
- 8. Have we defined the purpose of the company, identified the value drivers of its business, its significant stakeholders, sustainability issues material to its business?**
  - Duty of care
  
- 9. Does the long term strategy have the sustainability issues pertinent to the business of the company embedded in it?**
  - Duty of care
  
- 10. Does our business strategy fit in the digital world?**
  - Duty of care

# Stakeholder management

# Stakeholder management

- Stakeholder perceptions affect the company's reputation and performance
- Board should delegate to management to proactively manage stakeholder relations
- Strive to achieve balance between the interest of various stakeholders, the best interest of the company
- Board should ensure disputes are resolved effectively, efficiently and expeditiously
- Alternative dispute resolution – conciliation, mediation, negotiation and arbitration
- ADR clauses in contracts



# Stakeholder activism

Shareholder activism is a range of activities conducted by shareholders directed at an organisation designed to institute change.

Purpose is to keep Directors of the organisation accountable in certain instances has resulted in them being removed from their positions.

- Disclosure of not just “what” but “why” in terms of remuneration



**Coca-Cola**



**Nestle**



**#Fees must Fall  
– Namibia & SA**

**Conflict of interest**

# Conflict of interest

## Directors' personal financial interests

### ***Directors' conflict of interest***

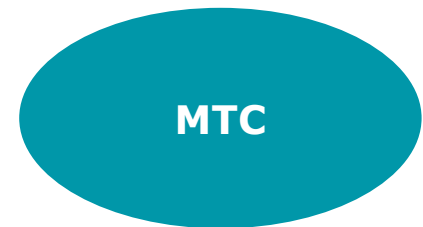
#### **242 Duty of director or officer to disclose interest in contracts**

A director of a company who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract referred to in subsection (2), which has been or is to be entered into by the company or who so becomes interested in that contract after it has been entered into, must declare his or her interest and full particulars of his or her interest as provided in this Act.

#### **249 Duty of auditor as to register of interests in contracts**

The auditor of any company must satisfy himself or herself that the register of interests in contracts has been kept as required by section 248 and that every declaration of interest recorded in that register has been minuted as required by section 247.

Conradie – failed to disclose to MTC interest in advertising contract





# Conflict of interest (cont.)

## How is the best interest of the company determined?

- Balance of interests of all key stakeholders (emphasis on shareholder)
- Enlightened shareholder value approach
- Stakeholder engagement – duties of shareholders

## Responsible corporate citizenship

- Companies need to develop a social conscience
- Ethical leadership
- Management of the ethics performance of the company



# Conflict of interest (cont.)

## **How is the independence of the Board affected where**

- Shareholder prescribes to directors what to do
- Government prescribes to company how to do business
- Holding company prescribes to subsidiary board how to behave/act



## **Can outside interference affect the liability of directors/Prescribed officers?**

**Closing remarks....**

# Awesome responsibilities

- Business is an ethical enterprise
- Profit with intellectual honesty is the essence of good governance
- Good governance can be practised by being aware of your four common law duties, by asking oneself the suggested questions, being aware of the five corporate sins while remembering one's ultimate responsibility
- Not a paid lunch
- Especially for non-executive
- Duty of good faith, care and skill
- Strength of Hercules, wisdom of Solomon, agility of Trapeze artist



# Regulatory and Governance | Key contacts

Further information and thought leadership articles are available on Technical Library and the Deloitte Centre for Corporate Governance <http://www.corpgov.deloitte.co.za/>



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