

## The different types of directors



In law there is no real distinction between the different categories of directors. Thus, for purposes of the Act, all directors are required to comply with the relevant provisions, and meet the required standard of conduct when performing their functions and duties.

It is an established practice, however, to classify directors according to their different roles on the board. King III has provided definitions for each type of director.

The classification of directors becomes particularly important when determining the appropriate membership of specialist board committees, and when making disclosures of the directors' remuneration in the company's annual report.

#### **Executive director**

Involvement in the day-to-day management of the company or being in the full-time salaried employment of the company (or its subsidiary) or both, defines the director as executive.

An executive director, through his or her privileged position, has an intimate knowledge of the workings of the company. There can, therefore, be an imbalance in the amount and quality of information regarding the company's affairs possessed by executive and non-executive directors.

Executive directors carry an added responsibility. They are entrusted with ensuring that the information laid before the board by management is an accurate reflection of their understanding of the affairs of the company.

King III highlights the fact that executive directors need to strike a balance between their management of the company, and their fiduciary duties and concomitant independent state of mind required when serving on the board. The executive director needs to ask himself "Is this right for the company?", and not "Is this right for the management of the company?"

#### **Non-executive director**

The non-executive director plays an important role in providing objective judgement independent of management on issues facing the company.

Not being involved in the management of the company defines the director as non-executive.

Non-executive directors are independent of management on all issues including strategy, performance, sustainability, resources, transformation, diversity, employment equity, standards of conduct and evaluation of performance.

The non-executive directors should meet from time to time without the executive directors to consider the performance and actions of executive management.

An individual in the full-time employment of the holding company is also considered a non-executive director of a subsidiary company unless the individual, by conduct or executive authority, is involved in the day-to-day management of the subsidiary.

- King III Report Annex 2.3

### Independent director

An independent director is defined in detail in King III. In essence, an independent director is a non-executive director who:

- is not a representative of a shareholder who has the ability to control or significantly influence management or the board
- does not have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) which exceeds 5% of the group's total number of shares in issue
- does not have a direct or indirect interest in the company which is less than 5% of the group's total number of shares in issue, but is material to his or her personal wealth
- has not been employed by the company or the group of which it currently forms part in any executive capacity, or appointed as the designated auditor or partner in the group's external audit firm, or senior legal adviser for the preceding three financial years
- is not a member of the immediate family of an individual who is, or has during the preceding three financial years, been employed by the company or the group in an executive capacity
- is not a professional adviser to the company or the group, other than as a director
- is free from any business or other relationship (contractual or statutory) which could be seen by an objective outsider to interfere materially with the individual's capacity to act in an independent manner, such as being a director of a material customer of or supplier to the company, or
- does not receive remuneration contingent upon the performance of the company.

King III suggests that it may be useful to appoint a lead independent director who, as a result of his or her senior status, has the authority to facilitate any issues that may arise between executive and non-executive directors of the board. Such a function is noted as being especially relevant where the chairperson is an executive director.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. The more than 200 000 professionals of Deloitte are committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2014 Deloitte & Touche. All rights reserved. Member of Deloitte Touche Tohmatsu Limited

Designed and produced by Creative Services at Deloitte, Johannesburg. (807473/mar)