



Institute for Accountability in Southern Africa



The Institute for Accountability in Southern Africa (IFAISA) is devoted to upholding constitutionalism in Southern Africa through the inculcation of the values of accountability and responsiveness to the needs of the people of the region in its governments, parastatal organisations and civil society, including business and industry.

Accountability is the obligation of those with power or authority to explain their performance and justify their decisions.



ACCOUNTABILITY QUARTERLY

MAY 2009

The cornerstone of **IFAISA** is exacting accountability and promoting responsiveness to peoples' needs. The mission of the Institute is to uphold the rule of law and constitutionalism through accountability. The blueprint for **IFAISA** was designed by the founding Directors, Adv Paul Hoffman SC and Daan Groeneveldt in early 2009 and it became a juristic legal entity in March 2009 when the affiliated Trusts were approved by the Master of the High Court. The Board of Trustees was constituted during the same month and since its inception **IFAISA** has been joined by a number of esteemed Fellows and Associates.

IFAISA is focused on a few specific priorities, the leading of which at present include:

1. Saving the Scorpions (*see article below*)
2. The Right to Basic Education
3. Protecting the Independence of the Judiciary
4. Compelling the appointment of a Judicial Commission of Inquiry into the Arms Deal
5. Securing the Freedom of the Media

The Institute is funded via donations from individuals, business and local/foreign organisations. Whilst donations are currently being made via EFT (details on page 5) or cheque, a website donation link will become available during June 2009. A number of fundraising events are planned for the second half of 2009, the details of which will be set out on the website as the events calendar unfolds.

Regular newsletters such as this will be circulated to those on the **IFAISA** contacts list and posted on the website. The aim of the newsletter is to keep interested parties up to date with current events and developments within **IFAISA** and to provide feedback on the various projects, initiatives and action items being addressed by the Institute.

This quarter's newsletter includes three articles as follows:

- a. *The Final Front for Saving the Scorpions*
- b. *An overview of the King III Report on Corporate Governance*
- c. *Accountability 101*



The Final Front for Saving the Scorpions

Most people, and especially those in the media, think that the demise of the Directorate of Special Operations, or Scorpions as they are popularly branded, is a done deal. Not so, says Johannesburg businessman Bob Glenister, who has bravely litigated other aspects of this issue in the past and is now doing so again.

His urgent application aimed at saving the Scorpions is set down for hearing in the Western Cape High Court on 2 June 2009 before a Bench of three judges: Desai, Fourie and Zondi JJ.

At issue this time round is the constitutional validity of the legislation in terms of which the Scorpions are in the process of being scrapped. Glenister repeats the arguments he raised prematurely in the Constitutional Court and has added two new ones with the help of IFAISA. In a nutshell, the case is that it is unconstitutional to disband the Scorpions as no rational justification exists for so doing. Reasonable and accountable governance as well as adherence to the international obligations of the country to maintain an independent corruption fighting unit dictate that the scheme is illegal. Proper public participation in the legislative process has not happened and the structural independence of the National Prosecuting Authority will be undermined by taking away the Scorpions investigative personnel and transferring those who are prepared to go to the SAPS. The SAPS is under political control while the NPA functions without fear, favour or prejudice.

Fair labour practices and sound human resource management both suggest that there is illegality in the dissolution of the Scorpions. Daan Groeneveldt, an IFAISA director, has presented a detailed report to Court in which he analyses the implications of the dissolution from an HR management perspective and finds it wanting. Paul Hoffman, also of IFAISA - but wearing his senior counsel hat, is leading the legal team which will present Mr Glenister's case in Court. All of the lawyers in the case are acting for Glenister on a "no win no pay" basis in view of the fundamental public interest nature of the issues in the case.

In the final analysis the Court will have to decide whether disbanding the Scorpions is consistent with the Constitution, if not, the laws in question will be struck down as invalid and the Constitutional Court is then asked to ratify this if it too is satisfied of the constitutional invalidity of the scheme which involves the dissolution of the Scorpions.



Watch the press during the first week of June 2009 for more details...



An overview of the King III Report on Corporate Governance

Corporate governance was institutionalised in South Africa in 1994 with the publication of the first King Report on Corporate Governance. In 2002, King I was updated and extended by the release of King II. It is generally accepted that the implementation of the principles laid down in King I and King II have led to higher standards of governance. In response to the changes brought about by the new Companies Act and in order to be aligned with international trends, King III was released, for public comment, in February 2009. It is to become effective in March 2010.

The article outlines the fundamentals of corporate governance before distilling the essential principles and features of King III. These essential features include an emphasis on sustainability: underpinning the Code is an appreciation of the interdependence of all things. King III encourages entities to broaden and expand their view, both temporally and in respect to the environment they perceive themselves to impact on and be impacted by. King III exhorts companies to commit to integrated reporting and requires them to produce an annual, integrated sustainability report. The report is to include a statement by the board on the effectiveness of the entity's financial controls. King III tightens the rules around remuneration policy and places far greater emphasis on the leadership, integrity and responsibility of the board than was the case in its earlier versions. IT governance is explored for the first time in King III. Consistent with its emphasis on the enhancement of trust through collaboration and longer-term thinking, King III requires that boards consider alternative dispute resolution before resorting to litigation.

Unlike its predecessors, King III applies not just to companies but to all corporate entities, regardless of their form of incorporation. King III remains a recommended course of action rather than enforced legislation. Why this self-regulatory approach is appropriate to the South African environment is explored. The article concludes with how it believes King III offers more than the potential of improved standards of corporate governance. It can encourage shareholder activism and promote a wider sense of agency. It can enable a deepening of trust and a strengthening of confidence between entities and their stakeholders.



A full analysis of King III by Steven Good, will published in the August 2009 edition of de Rebus. Steven is an Associate of IFAISA.



Accountability 101

What is this 'thing' accountability that all the politicians keep promising but doesn't seem to change anything? How and when does it occur? Is it something worth worrying about?

Accountability is not a 'thing' - it is a life-skill we should practice – and we are best advised to find out what we need to know and do to fulfil our unique accountability requirements.

Responsibility and accountability are often confused and used to have the same meaning. This is wrong. Being responsible means that you may be called to account for circumstances that have arisen within your sphere of influence, but when accountable, you must give the reasons for making decisions and justify the resulting outcomes.

Throughout life we are at the mercy of individuals who make decisions that will have an impact on our lives and well-being. Being at the receiving end of the impact of decisions made is one side of the coin and the easier one to assess, but knowing 'how' others will be affected by our decisions and actions is the other. Accountability is not the 'illusive state' that all who are guilty of poor decision making and actions try to create, but rather a 'self-audit' that we all should do from time-to-time to see whether we are actually stacking up to the expectations that others legitimately have of us.

Accountability is a direct requirement of the various roles we take on in life and the duties we must perform to satisfy the purpose of those roles. These roles vary from informal and instinctive through to formal and structured. Regardless of the level of formality of a role, the consequences of a role-player who does not take the associated accountability seriously, may be devastating for individuals affected by such inattention.

The more formal and structured the role, the easier it becomes to exact accountability. This is the purpose of IFAISA as described in our mission statement

Accountability is the obligation of those with power or authority to explain their performance and justify their decisions.

Power and the process of empowerment is the means of defining and assigning roles to individuals within a formal organisation and the delegation of the required level of authority and the 'freedom to take action'.

Whether a private or public sector organisation, the structure of delegated authority is also, the definition of status, roles and duties attached to jobs, not simply the pay of individuals.

In traditional organisational practices pay determination is the last step in the overall process of structuring organisations, as it was generally accepted that pay was the reward to individuals for contributing to the success of the organisation. Unfortunately, this is no longer the case, and pay has become the core driver of differentials and consequently job levels and organisation.

So powerful is this 'myth' that one of our largest insurance companies, in a television advertisement actually used the statement – *'people measure their worth by what they are paid'*. With this kind of impression being created by one of the larger employers, why strive to focus on the 'business end' of explaining performance and justifying decisions, when a simple threat to defect to the opposition can unlock a whole lot more money and personal financial worth?

However, as with all life circumstances, 'the wheel turns' and when the financial worth of individuals is not matched by an equivalent level of value creation, the risk of job cuts to balance the books becomes the reality. The ultimate worth of any job is the employer's ability to pay for it.

Consequently, what better motivation could there be to understanding accountability than that of knowing how to add enough value to the organisation, to ensure that you will be able to take some back as the reward for a long time into the future.



In the newsletters to follow, we will be unpacking all the elements that need to exist to create a culture of accountability.

Please visit our website on www.ifaisa.org for more information about the Institute for Accountability in Southern Africa or contact the Operations Manager, Elise Burns-Hoffman via eburns-hoffman@ifaisa.org for more information.

Donations may be made via EFT directly to **IFAISA** as per the banking details below:

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Bank: Standard Bank

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Account number: 081477082

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