

# CORPORATE GOVERNANCE

The Kumba board of directors is committed to the highest standards of corporate governance contained in the Code of Governance Principles for South Africa 2009 (King III), the Companies Act 71 of 2008, as amended, (the Act), the JSE's Listings Requirements (listings requirements) and other regulations.

**It is the board's role to provide the leadership necessary to promote the application of the principles of good corporate governance throughout the group. The year under review saw the continuation of the implementation of the recommendations of King III, the Act and amendments to the listings requirements, with significant progress achieved.**

## KING III COMPLIANCE

In 2011 and 2012, the board prioritised and reported on progress with the implementation of the compliance framework, processes, controls, management of ethics, and regulatory and legislative compliance as recommended in Chapters 1 and 6 of King III. The board is of the view that the activities of the group should be underpinned by a strong ethical foundation and is satisfied that the company's Business Integrity Policy and management processes are adequate.



For information on the group's management of ethics, refer to pages 23 to 24 of the Sustainable Development Report 2012.

The South African legislative and regulatory environment is very dynamic. The development of the regulatory compliance framework continued in 2012 with a process plan approved by the Risk Committee. The following has been implemented:

- The regulatory universe of national legislation affecting the group was identified.
- A risk rating of the regulatory universe was conducted and key headline risk acts were identified.
- Compliance risk management plans were developed for each of the identified headline risk acts.

In February 2013, the board, through its Risk Committee, reviewed the process and considered the compliance risk report for the MPRDA. The board is satisfied that the group has adequate controls in place to manage compliance

risk regarding this act. The journey to full maturity continues with further compliance risk reports scheduled for development in 2013.

The board is satisfied that the group complies fully with the principles and recommendations of King III, most of which are entrenched in the group's internal controls, policies and procedures, with the following exceptions:

- Principle 2.24: The development of a governance framework between Anglo American plc and Kumba is in progress.
- Principle 2.25: The board believes that it is not necessary to implement an attendance fee per meeting for non-executive directors as the directors consistently attend meetings and where attendance is not possible, they contribute to matters to be considered at meetings.

## COMPANIES ACT

The Act came into effect on 1 May 2011, and provided the board with an opportunity to review a number of areas within the group's corporate governance system and processes. The board conducted a workshop in July 2012 to review the MOI and the treatment of alterable provisions in the Act. The MOI was subsequently approved by the board for adoption by the shareholders. The company secretary consulted with a number of stakeholders regarding the proposed MOI. Meetings were held with some significant South African shareholders and correspondence was entered with a few offshore shareholders after the publication of the MOI circular on 4 December 2012. The first important issue that was discussed extensively by the board at its workshop and with stakeholders was the requirement for the rotation of executive directors. Guidance was sought from the company's sponsors and legal advisors. The board took the view that executive directors are first and foremost, employees of the company and have employment contracts which regulate

their relationship with the company. As such requiring executive directors to rotate every three years would contradict the terms of employment. The board is satisfied that the right of the shareholders to remove a director of the company is entrenched in the Act. The MOI was presented to and adopted by the shareholders on 18 January 2013.

The other important issue that was discussed was that of board tenure and director independence. This is discussed further on page 79.

## JSE LISTINGS REQUIREMENTS

There were a number of amendments and guidance notes issued by the JSE on the listings requirements during 2012. The board is satisfied that the group is fully compliant with the listings requirements, and the annual compliance certificate for the year under review has been submitted to the JSE.

## KUMBA GOVERNANCE STRUCTURE

The Kumba governance process is regulated by applicable corporate governance principles, legislation and the Kumba Delegated Authority Framework (DAF). Kumba's operating entity, SIOC, in which Kumba has a majority shareholding, has in place a fully operational board of directors consisting of executive and non-executive directors. The non-executive directors are drawn from SIOC's minority shareholders. The DAF regulates the authority limits and relationship between the Kumba and SIOC boards to ensure that decisions pertaining to either of the companies are taken by the correct board. Accordingly, SIOC directors retain unfettered discretion with respect to SIOC matters and, in appropriate circumstances, SIOC shareholders, of which Kumba is the majority, make recommendations which are taken into account by the SIOC board. Kumba's governance structure is depicted on page 78.

# CORPORATE GOVERNANCE CONTINUED

## KUMBA GOVERNANCE STRUCTURE



### THE BOARD

#### Board composition

Kumba has a unitary board which is led by an independent non-executive chairman. The board consists of two executive directors and nine non-executive directors, six of whom are independent, as outlined in the table. The non-executive directors have the necessary skills, qualifications and experience to provide judgement that is independent of management on issues material to the group.

Biographical details of each director are provided on page 12.

#### Role of the board

The role of the board is to exercise leadership, enterprise, integrity and judgement to ensure continued delivery of value to stakeholders, and to provide strategic direction to the company; identifying key risk areas and key performance indicators and to maintain performance against agreed objectives.

#### Board charter

The Kumba board charter deals with the following:

- regulates the parameters within which the board operates;
- sets out specific responsibilities to be discharged by the board members; and
- requires directors to adhere to the provisions of the MOI.

The board charter also addresses board governance and key issues which the board considers in the course of its

DIRECTOR	DESIGNATION	APPOINTMENT DATE
Zarina BM Bassa	Independent non-executive director	02 December 2008
Gert S Gouws	Non-executive director	09 February 2006
Frederick (Frikkie) T Kotzee	Executive director (chief financial officer)	01 June 2012
Khanyisile T Kweyama	Non-executive director	15 October 2012
Norman B Mbazima*	Executive director (chief executive)	01 September 2012
Dolly D Mokgatle	Independent non-executive director	07 April 2006
Allen J Morgan	Lead independent non-executive director	09 February 2006
Litha M Nyhonyha	Independent non-executive director	14 June 2011
Buyelwa P Sonjica	Independent non-executive director	01 June 2012
Fani Titi	Independent non-executive director (chairman)	01 October 2012
David M Weston†	Non-executive director	10 February 2010

\*Zambian  
†British

direction of the company, including the following matters which are specifically reserved for the board:

- Reviewing the strategic direction of the company and adopting business plans proposed to achieve the company's objectives.
- Approving specific financial objectives, including budgets, and non-financial objectives and policies proposed by management.
- Overseeing the company's performance against agreed targets and objectives.
- Reviewing the process for management of business risk and ensure there is an effective risk-based internal audit.

- Reviewing the regulatory compliance framework and processes to ensure the company complies with the relevant laws, regulations and codes of best business practice.
- Delegating appropriate authority to the chief executive for capital expenditure and reviewing investment, capital and funding proposals reserved for board approval in terms of the DAF.
- Appointing the chief executive and executive and non-executive directors on recommendation from the Human Resources, Remuneration and Nomination Committee (Remco).
- Approving succession planning for the board and key positions within the group.

- Ensuring the integrity of financial reporting and the full and timely disclosure of material matters concerning the group.

### Changes to the board during the year

A formal procedure exists for the appointment of directors to the board. This procedure is transparent and a matter for the board as a whole. The Remco applies identified criteria in conducting the search for a director and takes into account the balance of skills, experience and diversity before making a recommendation to the board.

There were a number of changes to the board to both executive and non-executive directors during the year under review. Peter Matlare resigned as a non-executive director on 31 March 2012. On 1 June 2012, Frikkie Kotzee was appointed as an executive director and chief financial officer, following the resignation of Vincent Uren at the end of 2011, and Buyelwa Sonjica was appointed as a non-executive director. On 1 September 2012, Chris Griffith resigned as executive director and chief executive and was replaced by Norman Mbazima. On 1 October 2012, Fani Titi was appointed to the board as the non-executive chairman. He took over from Allen Morgan who had been the interim chairman since 14 December 2010.

On 15 October 2012, Godfrey Gomwe resigned from the board and Khanyisile Kweyama was appointed to the board.

### Board meetings and attendance during the year

The board met four times for normal business and twice for special business during the year under review. The special meetings were convened at short notice on 5 and 11 October 2012 to discuss the Sishen unprotected strike. The board held its annual strategy workshop on 24 and 25 May 2012. The board also held a risk and corporate governance workshop on 12 July 2012. See table above for attendance details.

### Conflict of interest

Kumba has a conflict of interest policy in place which is designed to assist directors in identifying situations that could present potential conflict of interest and to provide a procedure, such as recusal, which can be followed in the case of a conflict of interest. The policy is intended to comply with the procedures prescribed in the Act as well as the listings requirements. A comprehensive register of directors' interests is maintained and updated and signed by each director individually. The register is circulated at each board meeting and formally noted by the board. The directors are called upon to apply their minds to situations where a perception of conflict could arise and appropriate action is recommended.

Director	Scheduled board meetings				Special board meetings*		Board strategy workshop	Governance and risk workshop
	7 Feb	18 May	18 Jul	16 Nov	5 Oct	11 Oct	24 and 25 May	12 Jul
ZBM Bassa	✓	✓	✓	✓	✓	✗	✓	✓
CI Griffith	✓	✓	✓	n/a	n/a	n/a	✓	✓
GG Gomwe	✗	✓	✓	n/a	✗	✓	✓	✗
GS Gouws	✓	✓	✓	✓	✗	✓	✓	✓
FT Kotzee	n/a	n/a	✓	✓	✓	✓	n/a	✗
KT Kweyama	n/a	n/a	n/a	✓	n/a	n/a	n/a	n/a
PB Matlare	✓	n/a	n/a	✓	n/a	n/a	n/a	n/a
NB Mbazima	n/a	n/a	n/a	✓	✓	✓	n/a	n/a
DD Mokgatle	✓	✓	✓	✓	✓	✗	✓	✓
AJ Morgan	✓	✓	✓	✓	✗	✗	✓	✓
LM Nyhonyha	✓	✓	✓	✓	✗	✓	✓	✓
BP Sonjica	n/a	n/a	✓	✓	✗	✗	n/a	✓
F Titi	n/a	n/a	n/a	✓	✓	✓	n/a	n/a
DM Weston	✓	✓	✓	✓	✓	✗	✓	✓

✓ indicates attendance

✗ indicates absence with an apology

n/a indicates individual was not a director of the company at date of meeting

\* Special board meetings were called on short notice

### Independence

The company secretary and lead independent director assessed the independence of the non-executive directors against the criteria set out in King III, the listings requirements and the Act. The assessment confirmed that six non-executive directors were independent. During the stakeholder engagement in the development of the MOI, the issue of length of term and independence of non-executive directors was discussed. The board is of the view that tenure on its own is not an indicator of independence. The Remco will develop a policy to evaluate independence on any director that has been on the board for more than nine years.

### Responsibilities of chairman and chief executive

A clear separation is maintained between the responsibilities of the chairman and the chief executive to also ensure that no one person or a block of persons has unfettered power and that there is and remains an appropriate balance of power and authority on the board. This is documented in the board charter. The chairman is responsible for leadership of the board and ensuring the integrity and overall effectiveness of the board and its committees. The chief executive's responsibility is to focus on the operation of the business, ensuring it is run efficiently and effectively in accordance with the strategy that is approved by the board.

### Election and rotation of directors

Directors are subject to rotation in accordance with the provisions of the MOI of the company and the Act. At least one third of directors in office retire and can offer themselves for re-election at every AGM. Zarina Bassa, Dolly Mokgatle and Allen Morgan will retire by rotation at the AGM to be held on

10 May 2013 and offer themselves for re-election. Directors appointed by the board after the AGM are elected at the next AGM following their appointment. Khanyisile Kweyama, Buyelwa Sonjica and Fani Titi will offer themselves for election at the AGM to be held on 10 May 2013. The board is satisfied that all the directors are eligible for election or re-election.

### Director induction and on-going training

All newly appointed directors attend both formal and informal inductions related to the company and their duties as directors.

The company secretary discusses a tailor-made board induction process with newly appointed directors. The induction process covers, as a minimum, the following areas:

- an overview of the operations;
- one-on-one discussions with executive and operational management;
- site visits to all operations and logistics facilities;
- corporate governance training;
- statutory and common law obligations of directors' training; and
- full briefing by the company's sponsor on directors' continuing obligations in terms of the listings requirements.

Non-executive directors can, where necessary, obtain independent professional advice at the expense of the company. Ongoing director training is a key focus area to ensure that directors are informed of the changes in the governance landscape. A governance and risk workshop was held on 12 July 2012 at which the directors were trained on the Competition Amendment Act, the Prevention and Combating of Corrupt Activities Act, the Companies Act and latest amendments to the listings requirements. The directors also

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re-evaluated the group's strategic risk areas and reviewed the group's headline risk matrix.

## Board and committee performance evaluation

The board evaluates its performance, processes, and procedures on an annual basis. The board carries out an external assessment every two years in which one-on-one interviews with each of the directors is conducted. A comprehensive report of the issues highlighted for focus to improve board performance is presented to the board.

The issues in the report form part of the board affairs agenda for the year under the stewardship of the lead independent director. The results of the 2011 assessment were presented to the board on February 2012. The following areas were highlighted in the process:

- board composition and independence;
- director development;
- succession planning;
- board committee performance; and
- performance of the chairman.

The chairman holds one-on-one meetings with individual directors to deal with any issues that they have raised in their respective responses.

## Mechanisms for shareholder communication with the board

The formal mechanisms in place for communication with shareholders include one-on-one meetings with investors, presentations, the AGMs, press announcements of the interim and year-end results, the company's website, its Integrated Report to shareholders and the proxy form shareholders use to exercise their voting rights. Furthermore, in 2013, the chairman and the chairmen of the various board committees will engage directly with the investment community.

## COMPANY SECRETARY

All directors have full and timely access to all information that may be relevant to the proper discharge of their duties and obligations. This includes information such as agenda items for board meetings, corporate announcements, investor communications and any other developments, which may affect Kumba or its operations. They have direct access to the company secretary who provides guidance and assistance in line with the requirements outlined in King III and the listings requirements. Kumba's

company secretary is not a director of the company or its subsidiaries and therefore, maintains an arms length relationship with the board of directors. It is the responsibility of the company secretary to provide the board as a whole, and directors individually, with guidance as to how their responsibilities should be properly discharged in the best interests of the group.

The company secretary is also responsible for ensuring that the proceedings and affairs of the board, the company itself and, where appropriate, owners of securities in the company are properly administered in accordance with the relevant laws. The board is satisfied that the company secretary has the competence, qualification and experience required.

Biographical details of the company secretary, Vusani Malie, are provided on page 23.

## DEALING IN SECURITIES

In accordance with the listings requirements, the group has adopted a code of conduct for dealing in the company's securities. During a closed period, as defined in the listings requirements, directors, their associates and designated employees are prohibited from dealing in the company's securities. Subsequent to the commencement of each closed period, a formal notification is circulated to all directors and employees advising of the closed period which specifies dates of prohibited dealings in the company's securities.

## THE EXECUTIVE COMMITTEE

The Executive Committee, chaired by the chief executive, consists of the executive directors, executive function heads, the mine general managers and the company secretary. It is responsible for implementing the strategies and policies determined by the board, managing the business and affairs of the company, prioritising the allocation of capital, technical and human resources, and establishing best management practices. The Executive Committee is also responsible for senior management appointments and monitoring their performance.

## BOARD COMMITTEES

The board has established four standing committees through which it executes some of its duties. The committees are the Audit Committee, Risk Committee,

Social and Ethics Committee, and Human Resources, Remuneration and Nomination Committee. The terms of reference and composition of the committees are determined and approved by the board. The respective chairmen of the committees report back to the board on the deliberations of the committees and the minutes of the committee meetings are circulated to the board. Further information on the committees is contained in the subsequent pages.

## RISK COMMITTEE

### Introduction

The Risk Committee was established to assist the board with its responsibilities for the governance of risk. The committee's broad mandate is the monitoring, development and communication of the processes for managing risks across the group.

The committee has terms of reference in place and its mandate includes:

- overseeing the development and annual review of a policy and plan for risk management;
- reviewing and assessing the effectiveness of the integrated risk management system including the group's risk philosophy;
- assessing whether information management risks are adequately managed;
- reviewing the regulatory compliance framework and whether the regulatory compliance risks are adequately managed;
- assessing whether the combined assurance model on risk is appropriate and that assurance received is adequate; and
- reviewing the adequacy of the group insurance programme.

### Composition

The committee is constituted of all the members of the Audit Committee and two additional non-executive directors. The committee comprises the following members:

- LM Nyhonyha (chairman)
- ZBM Bassa
- GS Gouws
- DD Mokgatle
- AJ Morgan
- BP Sonjica

Zarina Bassa was chairman of the committee until 30 June 2012.



### Frequency and attendance of committee meetings

The committee met four times during the period under review. In addition, the committee facilitated the board risk workshop in which the board identified headline risks to be mitigated and managed. The committee will convene further risk workshops in 2013 to assist the board in reviewing the group strategy and determining the risks attendant to the strategy and to set the group's risk appetite. In addition to the committee members, the chief executive, chief financial officer, head of internal audit and the risk managers attend meetings of the committee. Attendance of meetings held during the year under review is presented below:

Member	3 Feb	10 May	12 Jul	8 Nov
LM Nyhonyha	n/a	n/a	✓	✓
ZBM Bassa	✓	✓	✓	✓
DD Mokgatle	✓	✓	✓	✓
AJ Morgan	✓	✓	✓	✓
GS Gouws	✓	✓	✓	✓
GG Gomwe	✓	n/a	n/a	n/a
BP Sonjica	n/a	n/a	✓	✓

✓ indicates attendance  
n/a indicates individual was not a member of the committee at date of meeting

The risk management report on page 24 provides further detail on the governance of risk in the group.

### SOCIAL AND ETHICS COMMITTEE Introduction

The Social and Ethics Committee is constituted as a statutory committee in terms of the Act, as well as a board committee approved by the board.

The committee is responsible for developing policies and guidelines to manage social, economic and sustainable development, safety, health and environmental matters. The committee normally meets three times every year which includes a visit to a community project supported by Kumba. The committee has terms of reference in place and its mandate includes both statutory and board delegated duties which include monitoring the company's activities, having regard to any relevant legislation, regulator, best practice and codes with respect to:

- social and economic development;
- good corporate citizenship;
- environmental management, safety and health of employees and communities in which the company operates; and
- labour and employment practices.

The committee performs the following duties on behalf of the board:

- reviews recommendations of group

standards and national and international regulation on safety, sustainable development, health and environmental management; and

- ensures that the group Business Integrity Policy and performance standards are managed effectively through the leadership of the audit committee.

### Composition

The committee comprises the following non-executive directors:

- DD Mokgatle (chairman)
- KT Kweyama
- AJ Morgan
- BP Sonjica

### Frequency and attendance of committee meetings

In addition to the committee members, the chief executive, the executive head of Safety and Sustainable Development, the executive head of Public Affairs and the executive head of Human Resources attend meetings of the committee.

During the review period, the committee met four times. Attendance of meetings held during the year under review is presented below:

Member	6 Feb	14 Mar	10 May	8 Nov
DD Mokgatle	✓	✓	✓	✓
AJ Morgan	✓	✓	✓	✓
BP Sonjica	n/a	n/a	n/a	✓
KT Kweyama	n/a	n/a	n/a	✓
GG Gomwe	✓	✗	✓	n/a
PB Matlare	✓	✗	n/a	n/a

✓ indicates attendance  
✗ indicates absence with an apology  
n/a indicates individual was not a member of the committee at date of meeting

The Sustainable Development Report contains further information on the activities of the company that the committee oversees.

### HUMAN RESOURCES, REMUNERATION AND NOMINATION COMMITTEE (REMCO)

#### Introduction

The Remco is responsible for making recommendations to the board on the appointment, remuneration policies and practices of the chief executive, Executive Committee members and senior management. The committee makes recommendations to the board on the composition of the board and board committees and ensures that the board comprises suitably qualified individuals. It consults other directors in its evaluation of the chairman of the board, the chief executive and individual directors.

The committee has terms of reference in place and its mandate includes:

- ensuring alignment of the remuneration and human resource practices with the group's business strategy;
- approving the group's remuneration and benefits policy;
- monitoring the succession plan for the board and senior management;
- regularly reviewing board composition and diversity;
- nominating candidates for appointment to the board as and when vacancies arise;
- recommending adjustments to non-executive directors remuneration to the board for approval by the shareholders; and
- reviewing the performance of the board and its committees and senior management.

### Composition

The committee comprises the following non-executive directors:

- AJ Morgan (chairman)
- GS Gouws
- KT Kweyama
- F Titi

### Frequency and attendance of committee meetings

In addition to the committee members, the chief executive and the executive head of human resources attend meetings of the committee. The committee met four times. Attendance of meetings held during the year under review is presented below:

Member	2 Feb	16 Mar	8 May	6 Nov
AJ Morgan	✓	✓	✓	✓
F Titi	n/a	n/a	n/a	n/a
GS Gouws	n/a	✓	✓	✓
KT Kweyama	n/a	n/a	n/a	n/a
GG Gomwe	n/a	n/a	✓	n/a
PB Matlare	✓	✓	n/a	n/a

✓ indicates attendance  
n/a indicates individual was not a member of the committee at date of meeting



Detail of the activities of the committee for the period under review are provided in the remuneration report on pages 20 to 26 of the Annual Financial Statements 2012.