Corporate Governance in South Africa:

An investigation and comparison of King II with internationally developed systems, specifically Sarbanes Oxley: Their impact on South African based multinationals with specific reference to value added and overall cost

By

Mark Albon
(07995040)
UNISA School of Business Leadership
Masters of Business Leadership
2006

Declaration

I, Mark G. Albon, declare that this research report is my own work, except as indicated in the acknowledgements, the text and the references. It is being submitted in partial fulfillment of the requirements for the degree of Master of Business Leadership at the Graduate School of Business, University of South Africa. It has not been submitted before, in whole or part, for any degree or examination at any university.

Mark G. Albon

Signed on the ....day of 2006

Abstract

Corporate Governance systems are generally designed to meet the specific requirements of businesses operating in a particular country or region. The increasing globalisation of business, and in particular the rise of companies based in developing economies, has resulted in a greater level of integration between different Corporate Governance systems and regimes. This research is a systematic investigation of the interface and integration between the fundamentally insider system of governance prevalent in South Africa and the intrinsically outsider system being implemented in the United States as a result of the promulgation of the Sarbanes-Oxley (SOX) Act.

Through a series of qualitative interviews a conclusion is drawn as to the efficacy of the two different approaches. Specific emphasis is placed on the cost of implementation of SOX versus the value that the regime adds to the governance activities of dual listed South African based multi-national companies registered on U.S. stock exchanges who are legally obligated to report on elements of the SOX legislation. A series of conclusions are drawn from the themes arising from the research and recommendations offered for further consideration of the issue by business and academics. Opportunities for further research are also identified.

Acknowledgements

I wish to acknowledge the contribution towards this research made by the following:

- My academic leader, Professor Vi Makin, for her guidance, and many hours of reviewing the drafts.
- Mrs Elsabe Broodryk for her kindness and willingness to help under all circumstances.
- My wife, Alison Albon, for her unflagging support and endless patience, and my children Matthew and Megan, for being good and keeping quiet while dad was working.
- And finally, my employer, Sappi Limited, for their support in respect of academic studies, and for paying the bill.

Table of Contents

Glossary of terms and abbreviations

For purposes of ease of understanding and in an effort to improve the readability of this document the following abbreviations and definitions have been used.

King I	:	The report compiled in 1994 by the first commission headed by Judge M. King which established the first formalised set of corporate governance guidelines in South Africa.
King II	:	The report compiled in 2002 by the second commission headed by Judge M. King which established an updated set of formalised guidelines of corporate governance in South Africa.
Sarbanes Oxley (SOX)	:	The 2002 legislation passed by the United States Congress implementing corporate governance requirements on public companies trading on the US stock markets.
OECD	:	Organisation for Economic Cooperation and Development
SEC	:	The securities and Exchange Commission,

		based in New York and which exercises legal control over the activities of stock markets in the United States.
JSE	:	Johannesburg Stock Exchange – the only equities market in South Africa where shares in listed companies are traded.
NYSE	:	New York Stock Exchange – The primary equities market in the United States where most large and established companies are registered.
NASDAQ	:	NASDAQ is the largest U.S. electronic stock Market.

Chapter One: Orientation

1.1 Introduction:

The indisputable fact of modern business practice is that corporate governance measures are increasingly considered as fundamental to the ability of the modern corporation to continue to do its business. The application of these measures are in effect the corporations licence to operate within the society in which it exists.

While the detailed implementation of corporate governance follows a variety of different approaches and systems, in broad terms the process can be divided into two distinct philosophies. On the one hand there is the voluntary approach of so called insider governance, while on the other there is the mandated or legislated approach known as outsider governance.

Given the opposing nature of these two approaches, it seems clear that there is an underlying tension between the voluntary practice of insider governance and the mandated and legislated practice of outsider governance.

The well publicised failure of large corporations, particularly those such as Enron and Worldcom in the United States, and the increasing evidence of poor financial management of companies such as Tyco, Global Crossing and even Xerox (Uncle Sam's scandals at a glance, *The Guardian*, 29 July 2002) has led to a renewed focus on the importance of the practice of corporate governance worldwide. When one further takes into account the losses incurred by institutional and private investors in these corporate scandals, it becomes apparent why there is increasing public pressure for the enhancement of corporate governance measures.

Generally, the approach to corporate governance has been to set in place guidelines and codes of practice that are designed to steer companies, through voluntary implementation, to a state of good governance. However, in the United States the public and political reaction to the abovementioned crises has led to the development and implementation of legislative measures, specifically the Sarbanes-Oxley (SOX) Act of 2002, which lays down very specific requirements for the practice of corporate governance for companies registered and trading on US based stock exchanges.

It is apparent that the approach in the United States has been different from the approach taken elsewhere in the world. And while each approach appears honest and genuine in its intent of protecting the ordinary investor, the question of applicability in other, specifically developing economies, arises.

1.2 Purpose:

The purpose of this research project is to examine contemporary corporate governance practice and application in South Africa.

To investigate the various aspects of corporate governance applicable in a developing economy such as South Africa, both the domestically developed measures, and those imposed by foreign legal and business imperatives will be investigated. It will be necessary to establish their impact on multinational dual listed companies in particular, and to compare the internationally developed governance measures against those developed domestically, with specific reference to the costs versus the value derived in terms of the added security for investors and the capacity to access lucrative capital markets.

By this study it is hoped to be able to determine whether or not the application of the Sarbanes-Oxley measures, as imposed on companies registered on United States Stock exchanges, are seen as value adding by companies and the market, or if they are seen simply as an expensive and inescapable adjunct to the existing King II measures. Additionally, its is hoped to be able to determine the perception of companies viz-a-viz the efficacy of King II.

1.3 Research Questions:

Taking into account what has been outlined above, the primary purpose of this research report is to address the following research questions:

- How do the measures of corporate governance developed in South Africa compare with other measures and codes developed in other parts of the world, and specifically the Sarbanes'Oxley requirements?
- Is there confidence among South African based multinational corporations that the South African system of corporate governance provides adequate protection for investors and accountability for managers/companies?
- Is an internal system of guidelines preferable to an external legislated system?

- Are the measures encompassed in the Sarbanes-Oxley (SOX) act necessary and applicable to businesses operating in South Africa?
- Is the cost associated with the implementation of corporate governance measures justified in terms of the value it brings to a company operating in South Africa, specifically when seen in the light of the costs associated with Sarbanes-Oxley?

By investigating these specific issues and obtaining the answers to the broadly stated questions it should be possible to draw conclusions about the value proposition of different corporate governance approaches (insider vs outsider) as measured against the cost of their implementation.

1.4 Delimitation:

Given the particular focus of the research questions identified, it has been decided to specifically exclude those areas of study normally associated with research undertaken regard to Corporate Governance, such as:

- The structure of the Board and the responsibilities of Directors.
- The separation of the roles of Chairpersons of the Board and those of the Chief Executive.
- Remuneration of Directors and the control of the Board over issues related to Executive remuneration.
- The structure of, and control over the reporting of the Company's financial practices.
- Issues regarding ethics and ethical business practices.
- The rights and treatment of Shareholders and other stakeholders.

The issues outlined above are all aspects of Corporate Governance as a discipline. The focus of this study, however, has been to take a step back from the examination of these detailed aspects and to rather examine the different types of approaches to Corporate Governance applicable in different part of the world and in economies in different stages of growth.

Chapter Two: Literature Review

2.1 Introduction:

Given the fundamental objective of this study, that is to say, to examine the existence and nature of corporate governance in developing economies (with specific reference to South Africa) and to consider the impact that measures (specifically Sarbanes-Oxley) imposed from outside the economy, have on the value proposition of Corporate Governance implementation for the company, the review of the literature has been undertaken according to the following themes:

- Background to corporate governance.
- Corporate governance in developing economies.
- Corporate governance in South Africa, King I and II.
- Sarbanes-Oxley (SOX), requirements and impacts.
- A comparison of the requirements of South African governance measures and those applicable in developed economies, specifically the United States and the requirements of Sarbanes-Oxley (SOX), and
- Corporate governance; cost and competitiveness.

2.2 Background to corporate governance:

Corporate governance is a concept that is often referred to in modern business circles as if it is a relatively new field, and in many cases, it is considered to be the product of thought and deliberation by business academics and researchers, as well as professional managers of the last ten to twenty years or so.

2.2.1 Worldcom & Enron – the US scandals:

Good Corporate Governance has seemed particularly relevant since the well publicised failure of large corporations in the United States, such as Enron and Worldcom as a result of suspect corporate governance practices. This issue has been the topic of heated debate in the light of the devastating effects of these failures on the stock markets and in particular the small and medium investors. Many of these individuals were significantly invested in these corporations in particular, and the markets in general, either individually or through institutional investors such as mutual funds.

The failure of companies such as Enron and Worldcom have been blamed primarily on the failure of the managers of these firms to implement and maintain adequate measures of good governance, and thereby protect the interests of the shareholders of the company from whom the capital to operate was derived. Specifically, they are accused of allowing certain improper and illegal practices, particularly in the areas of accounting control, to become the norm of doing business in the company. It is this state of absence of adequate governance which has led to the disastrous failures. (United Sates of America. Restoring Trust: Report to the Honourable Jed. S, Rakoff Unites States District Court for the Southern District of New York. 2003)

2.2.2 The history of Corporate Governance:

Corporate governance, however, and in particular good corporate governance is not a new concept. Indeed, "the concept of corporate governance was born out of the agency problem that arose when the ownership of companies became separated from the control thereof." (Roussouw. G.J, van der Watt. A, Malan D.P, 2002, p289). The first measures of corporate governance were thus implemented in order to ensure that the managers of a particular business always acted in the best interests of the shareholders, who were not necessarily present to protect their interests in person.

By the early 1930's there was a recognition that corporations had become powerful institutions in and of themselves, and it was the investigation of this phenomenon by Adolf Berle and Gardiner Means, in their seminal book in "The Theory of Separation of Ownership and Control", first published in 1932 (Berle & Means, 1967), that set the theoretical basis for the traditional view of corporate governance. So-called Berle and Means firms arose, specifically in the United States, where the separation of ownership from control became the norm and the market became the absolute arbiter of adequate governance.

Because control of a companies' activities were separated from the ownership thereof, professional managers were considered to be much better informed about the inner workings of the company, and therefore better placed to maximise shareholder value by acting on the information to which they were privy. While this system proved to be acceptable in circumstances where shareholders were happy with the management of the enterprise by the professionals, in contrary circumstances, it meant that the only viable course of action to shareholders/owners who were unsatisfied with the governance of the firm was to opt out of their ownership.

The primary driver for these firms was the maximisation of shareholder profits, with a resultant short term view of all impacts on the business and very little consideration for other stakeholders, both internal and external. This specifically narrow view of the role of the corporation meant that many excesses occurred in the name of maximising value. The excesses in the business environment and the ethical difficulties that became apparent as a result led to the development of an alternative approach to governance broadly formulated as the stakeholder theory of corporate management, championed primarily by Howard R. Bowen (1953) in the early 1950's.

2.2.3 Stakeholder Theory:

Stakeholder theory seeks to take a broader view of the responsibility of the corporation and to include workers, the community and the broader society as groups who have an interest in the behaviour of corporate management and in the overall governance of companies. Bowen (1953) drew a direct correlation between the goals of businesses and the goals of the societies within which they operate. He considered it critical for the businessmen to look beyond the interests of the *laissez* faire market and to take into account the goals and aspirations of the community as a whole. Bowen recognised that, over and above the value provided in the form of capital from investors, companies also draw value and resources from other sections of society such as, their workers, governments, credit institutions and the environment. He recognised too that companies also impose many of the risks of their business upon the community/society within which they operate. By definition, therefore, each of these groups have a defined interest in the activities of the company.

The willingness of groups and communities to demand and insist upon their rights, as provided for under modern constitutions and legal systems, has meant that companies have been forced, more and more, to rely upon society for a moral (and in some cases legal) licence to operate. This has seen a shift of power take place from the hands of professional managers to ordinary members of society or their representatives. This shift of power has not been absolute, but it has been sufficient to ensure that companies are forced to take note and react to the demands and needs of society in respect of their business *modus operandi*. The bottom line of stakeholder theory is therefore that businesses, in order to achieve maximum value and efficiency, must take into account the needs of all groups who are directly or indirectly affected by the businesses activities. A failure to follow this approach leads to conflict between the company and its stakeholders, and it is a maxim of good business that conflict is counter productive when it comes to making profits. Therefore, a workable understanding between a company and its stakeholders is the key to achieving a maximisation of profits for shareholders.

The shareholder vs stakeholder view of corporate governance as outlined above, and based on the idea of the typical Berle and Means ownership structure, served as the foundation of the body of knowledge until the mid 1980's and early 1990's. Theorists then began to examine more closely the reality of corporate ownership and to develop different views on the links between ownership and governance practices.

2.2.4 Modern Theory – the need for rules:

La Porta, Lopez-De–Silanes F & Schleifer A (1999) in a paper on corporate ownership around the world, found that in the largest economies in the world, corporate ownership is far more concentrated in the hands of relatively few investors that was previously thought to be the case, and that in fact there is a correlation between good shareholder protection (which equates with good governance) and the spread of ownership of companies. "A comparison of good and poor shareholder protection shows that widely held firms are more common in countries with good protection" (La Porta et al, 1999, p496).

Equally, (La Porta et al, 1999, p511) found that in countries where widely held Berle and Means Companies are in the minority, companies with concentrated shareholding tend to be owned by families or descendants of the original owners. In addition, the influence of these shareholders tends to be well in excess of their cash flow rights within the company.

The consequence of this situation from a corporate governance perspective is that in these concentrated holding companies, where control vests with controlling shareholders rather than professional managers, there is a lesser degree of transparency and accountability for the actions of management and large shareholders. The as yet unresolved debacle surrounding the Parmalat Company in Italy is a clear example of this phenomenon. (Edmondson, G & Cohn, L, *BusinessWeek*, 2004, p1-4)

"This new view of corporate governance has shunned the inside-out arguments, VIZ., that of incentive alignment and better contracting practices to adopt the more radical outside–in strategy, which calls for control mechanisms from the outside to protect investor or shareholder wealth from expropriation by insiders."(Bhasa, Malla Praveen , 2004, p9). This has led directly to the development of corporate governance codes of conduct which range from the so called insider approach, such as the King II guidelines in

South Africa, at the voluntary end of the enforcement spectrum to the proclamation of the Sarbanes-Oxley (SOX) Act of 2002 at the legislated, or outsider, end of the spectrum.

The earlier assumption that the role of professional mangers could be controlled by market forces has proven to be largely invalid. The common theme of the modern approach being the recognition of the need in the market for proactive measures to ensure the protection of the interests of investors.

The insider system of corporate governance relies heavily on the development of codes of practice and rules which dictate on issues such as board role and structure and changes in the capital structure of the business to ensure an adequate degree of control over the role of management. This system is very popular in countries such as Japan and Germany where large institutional investors tend to dominate the market, or where state control of business enterprises is well established. In these circumstances it appears to be possible to control the activities of company managements because there is a high degree of synergy of purpose between management structures and structures that have the interests of the society at large at heart.

The outsider system is more prevalent in countries such as the United States and the United Kingdom, where the capital markets are dominated by stock exchanges and a more diverse (and in most cases smaller individual) investor community. Within this Anglo-Saxon model of governance there appears to be a greater leaning towards a more codified and legislative approach to governance, designed to ensure the protection of the rights of investors as a primary focus and the interests of the society at large as a secondary aspect.

A third group of countries is those described as having transitional systems. Generally these are countries where the structure of corporate ownership has changed from centralised state ownership to privatised ownership. In many cases this is the situation that many South African companies find themselves in. The trend is towards an insider approach to corporate governance with countries seeking to determine an acceptable level of corporate governance through the development of suitable voluntary standards. In cases where other economic factors are perceived to be weak there has been a trend in transitional economies towards a codified system of governance as a means of ensuring investor protection and attracting foreign investment.

Historically, the development of country specific business practices and corporate governance measures thus remained as an informal understanding among the business community in each country as to what is the best approach for the specific country. The political and legal and cultural systems of individual countries have also proven to be key determinants of what will be acceptable corporate governance practice. Consequently, in the 20th century, corporate governance took on a very strong national identity depending on where, when, how and by whom it was being implemented.

Most countries, including South Africa, have sought to develop a unique and legally, culturally and practically relevant best practices for their own country. In the case of South Africa it was the fundamentally insider approach of the King Reports (I and II) on Corporate Governance which first saw the light of day in 1994 in the case of the first report and in 1999 in the case of the second. In the United Kingdom, the 1992 Cadbury Report fulfilled the same function. Some international organisations such as the Commonwealth and the Organisation for Economic Cooperation and Development (OECD) have also developed codes of corporate governance which are used as guidelines in many countries around the world.

The United States, on the other hand, while for many years following an insider approach to corporate governance, has, in the wake of the Enron and Worldcom scandals, opted for an outsider approach by adopting the Sarbanes-Oxley (SOX) Act of 2002. While this in an of itself presents little difficulty, the problem, however, arises with foreign companies which have operations in the United States, and which trade on US stock exchanges, in that they are required, since the passing in to law of Sarbanes-Oxley (SOX), to comply with the requirements of the Act irrespective of whether their *domicilium executandi* is in the United States or not and whether their own system of corporate governance adequately covers and regulates their business activities or not.

2.3 Corporate governance in developing economies:

The focus on improvements and reforms to governance practices has not been restricted to the economies of the first world in the wake of a number of major financial scandals and malpractices. The conduct of business in the developing world has revealed its share of malpractice and corruption which has led directly to a greater focus upon the need for, and the systems of, good governance. According to Reed (2002) there are two fundamental reasons for the intensification of interest in corporate governance in developing countries.

2.3.1 The rationale for good Corporate Governance in developing economies:

Firstly there is the downturn in economic activity, particularly in countries that have opted for an import substitution industrialisation (ISI) model of economic development. Where the growth of these economies has suffered, there has been a need to look more closely at the conduct of business from the perspective of attracting, particularly foreign, investment into the economy. A focus on better corporate governance in these economies, particularly among the large family owned companies which traditionally have a poorer governance and transparency record, has been designed to attract investment and partnership with companies operating in more developed economies, where expectations of governance is perhaps higher.

The second reason for a greater focus on corporate governance in developing economies, identified by Reed (2002), is the role played by international institutions which are engaged in the process of changing the structure of the international political economy, or globalisation, as it is more commonly referred to. Here specifically there has been a focus on those developing countries where economic development has stalled or failed almost completely for either economic structural reasons, political reasons or as a result of conflict. In these countries institutions such as the United Nations, the World Bank and the International Monetary Fund have stepped in to assist the countries overcome their economic, social and political problems. The assistance provided by the international institutions is not, however, provided unconditionally. Political and economic reforms and a greater level of integration into the global economy (agreement to participate in the General Agreement on Trade and Tariffs (GATT) is one such measure) are fundamental conditions attached to the assistance. This greater integration into the global economy, in turn leads to a more direct focus on the tenets of corporate governance among firms in a developing economy.

2.3.2 The role of the State and International Institutions:

This latter point is one which Ayogu (2001) underscores when indicating that there is a definitive link between the quality of corporate governance in Africa and the quality of State governance. Ayogu (2001) compares the process in Africa with the age old metaphor of the carrot and the stick, where corporate governance is the carrot and the law of the land is the stick which compliments it. "Failures of government invariably affect the quality of corporate governance" (Ayogu, 2001, p18), however, the converse is however also true and that is that as government institutions improve, become more accountable and transparent so does the quality of corporate governance.

The continuing trend towards democracy and economic liberalisation in Africa, characterised to an extent by the establishment of the African Union and its contingent governance structures, has led to a renewed focus on the need for improved corporate governance in Africa, a continent comprised exclusively of under-developed or developing economies.

Rueda-Sabater (2000) has examined corporate governance in developing countries from the perspective of their ability to attract much needed foreign investment, much of which would be separate from the funding and investment provided through international multilateral institutions such as the UN and IMF. He makes a clear connection between the establishment and growth of corporate governance, in combination with other factors, such as, adequate legal protection and the role of controlling owners identified by

Shleifer and Vishney (1996) as the keys to the successful attraction of investment.

The status of governance appears to be growing in developing countries as they see the economic benefits of foreign investment and the reward for sound political and economic management. As the effect of country level good governance trickles down to the business community so standards of corporate governance also consolidate. The reality is that many developing countries are at very diverse stages of their development and as such are also at very different stages of their development in terms of corporate governance. There is a recognition also that while international standards and models of corporate governance provide a useful basis upon which developing countries can build their own governance structures, there is a definite need for countries to incorporate their own legal, economic and cultural norms into their systems in order to ensure that they are relevant and acceptable to the communities. Paredes (2005) specifically indicates that U.S. style corporate governance is not feasible in developing countries, primarily because they lack the formal and informal institutions that make a market based system of corporate governance workable. The alternative presented is one of significant state involvement at the legislative level to enforce corporate governance without interfering in the natural success and failure cycle of business.

2.4 Corporate governance in South Africa:

As the country in Africa with the largest, most sophisticated and the most diversified economy, South Africa can be considered to be somewhat unique in the context of the continent. The first corporation established in South Africa can be traced back to the arrival of the first Dutch settlers. Jan van Riebeek was in fact a professional manager of a firm owned by investors in Holland, and whose performance in terms of the interests of the shareholders was subject to some rather stringent rules of governance.

The establishment of the first modern corporations, however, coincided with the discovery of the mineral wealth of the country and the creation of companies dedicated to the exploitation of the wealth. Given that much of the business acumen and the capital for the these ventures was originated in the United Kingdom and Europe it follows that the governance measures implemented by these companies tended to follow the Anglo-Saxon insider model as it was established in the UK.

2.4.1 <u>The legal basis of Corporate Governance in South Africa:</u>

Over the course of the 20th century a wide variety of legislation and structures have been developed and enacted to regulate the conduct of companies and their directors. Rossouw et-al (2002) have clearly laid out the key elements exercising control over companies on behalf of the State and the Judiciary. The Reserve Bank, the Registrar of Banks, the Financial Services Board and the Registrar of Companies are the corner stones upon which the regulatory system is founded. Among the key pieces of legislation is the South African Company Act (1973), in terms of which "two types of companies can be formed, a company with share capital, or a company without share capital having the liability of its members limited by a memorandum of association (a company limited by guarantee)." (Rossouw et-al, 2002, p290).

In spite of this impressive array of regulatory and legal might there remain, according to Freemantle & Rockey (2004) a number of grey areas of corporate practice in South Africa that are open to abuse or misinterpretation. These in turn have led to dubious and even illegal activities resulting in the collapse of companies such as Saambou, where Directors of the company lied about and failed to disclose the financial status of the Bank to investors (Le Roux, 14 September 2005), and Macmed where Directors committed fraud and negligent trading in company shares (Khuzwayo, January 30, 2004) and Leisurenet to name only a few. Indeed, as late as 2005 the South African business community was rocked by the allegations surrounding the activities of Brett Kebble and the illegal activites at JCI and RandGold.

2.5 The King Reports (I) and (II):

In an effort to overcome some of the shortcomings of the legal and regulatory framework and to provide solutions to the grey areas, the Institute of Directors of Southern Africa commissioned Judge Mervyn King to investigate and make recommendations on the implementation of good financial and ethical corporate governance in South Africa.

2.5.1 King I – first steps:

The report first was published in 1994, and approached the issue of corporate governance from a rather narrow perspective. Drawing on a wide variety of resources, including the work done in the UK by the Cadbury Commission, the report sought to look beyond the confines of the corporation itself and to define the corporations impact on the community within which it operates. Armstrong (1995) and Ryan (1995) clarify and explain the conclusions of the report in respect of role and function of Boards, and the specific recommendations on the separation of the roles of Chief Executive Officers and Chairpersons of Company Boards.

The King Code required full and clear disclosure of aggregate remuneration paid to Directors and required the establishment of a remuneration committee. Clearly also, a great deal of emphasis was placed on the need for full and accurate disclosure during auditing of the company's books, and the establishment of an accounting review panel to ensure the need for full and accurate accounting disclosure. (The Institute of Directors in Southern Africa, 29 November 1994).

From the ethical perspective the King Commission sought to encourage enterprise with integrity and lay down guidelines for the ethical practice of business in South Africa. (The Institute of Directors in Southern Africa, 29 November 1994). Rossouw et al (2002) outline the commitment to the highest standards, the production of a code of ethics by a participatory process to ensure buy-in by all stakeholders, the total commitment of the CEO and the Board and the detailing of the principles so as to provide clear guidance as the four areas identified as being critical for the successful implementation of a code of ethics.

The King Report also outlined recommendations on the incorporation of people from previously disadvantaged communities into the business community. At the time of its publication this aspect of the recommendations elicited much debate among the business community. Armstrong (1995) noted that this aspect clearly elicited substantial discussion and would be an area of ongoing focus into the future.

The original King Report and the recommendations contained therein laid the foundation for a codified internal approach to corporate governance in South Africa, however, the period of the 1990's was one of dramatic change both domestically and internationally, which led to a need for a review of the framework laid down in the King Report. According to Rossouw et al (2002) there were both domestic and international pressures for an update of the King recommendations.

2.5.2 Domestic and International drivers for change:

Domestically the drivers for a review were, the consolidation of the democratic state in South Africa, and the consolidation of the market based macro economic policies of the government. The commitment by the government to a market economy consolidated the position of private capital as a key driver in economic growth, and thus created space for a more intensive look at corporate governance as a measure of ensuring confidence in local companies by investors. The constitutional guarantees around personal freedoms and property rights necessitated a review by the King Commission of its recommendations regarding the management of accountability and the interests of stakeholders by corporations. The development of the philosophy of Ubuntu (humanness), which is at the core of the African Renaissance, has also necessitated a review of some of the ethical aspects of corporate governance in South Africa. The focus on Ubuntu has resulted in a greater emphasis on an African, as opposed to Eurocentric, approach to ethical practice. (The Institute of Directors in Southern Africa, 2002).

International developments also created a need for a review of the corporate governance framework in South Africa. The acceptance of post apartheid South Africa back into the international community led directly to a greater participation in the global economy. South Africa became an acceptable investment destination, and the demands of institutional investors in particular necessitated a review of corporate governance measures to reflect prevailing international trends.

Geo-political factors also had an influence. With the final collapse of the Soviet Union at the end of the 1980's, and the rise of capitalism in Russia, the Commonwealth of Independent States and the countries of Eastern Europe, there arose a need for the development of codes of corporate governance to facilitate and regulate business practice among these new capitalist enterprises. In response to these needs, the Organisation for Economic Cooperation and Development (OECD) (1999) and the Commonwealth (1999) both developed principles for corporate governance which became a benchmark for countries both within and outside the respective organisations. These documents provided companies with guidance on issues related to board responsibilities and appointments, the rights and treatment of shareholders and key ownership functions, the role of stakeholders in corporate governance and disclosure and transparency.

The OECD itself has sought to assist Non-OECD countries to better understand the importance of and need for implementation of sound corporate governance through a process of roundtables which examine each aspect of the principles and their applicability to a specific economy or region (Jessover & Kirkpatrick, 2005). In turn these principles served to influence trends and thinking on issues of corporate governance in other parts of the world, also in South Africa, where increasing participation in the global market by South African companies necessitated compliance with international corporate governance norms and standards.

2.5.3 King II – a more detailed approach:

The revision of the original King code of practice was therefore undertaken against the above background, and became known as the King II report. The recommendations contained in the report sought to address issues related to corporate discipline, transparency, fairness, independence, accountability, responsibility and social justice. Given that the recommendations were also intended to be applicable to the unique characteristics of the South African environment, the latter aspect also sought to include the principles of "ubuntu" or humaneness which is at the core of African culture. (The Institute of Directors in Southern Africa, 2002).

While the above list of areas of focus is indeed wide ranging, the Commission recognised that it was not exhaustive or conclusive. The introduction to the code states that "The Code is a set of principles and does not purport to determine the detailed course of conduct of directors on any particular matter. Clearly, companies and their boards will be required to measure the principles set out in this code against all other statutes, regulations and other authoritative directives regulating their conduct and operation with a view to applying not only the most applicable requirements but also to seek to adhere to the best available practice that may be relevant to a company and its particular circumstances." (The Institute of Directors in Southern Africa, 2002, p20)

Rossouw et al (2002) conclude that corporate governance in South Africa is developing in a highly turbulent and fluid context which makes the ongoing revision of the process an ongoing concern, echoing the view expressed by the Code itself in paragraph 1.6 of its introduction, where it notes the need for updating from time to time to ensure the currency of the principles (The Institute of Directors in Southern Africa, 2002). The development of King II was, however, a response to the increasing need of South African companies to comply with international best practice as they sought foreign capital and foreign markets, as well as, a reaction to the short comings of the first report. As with the national constitution, the King II Code provides South African companies with a world class system that should stand the country's business community in good stead for the future.

2.6 US corporate governance and Sarbanes-Oxley (SOX), requirements and impacts:

The United States has a long and well established history of corporate governance, based primarily on an inside system of rules and behaviours with some legislative aspects. The major elements of US corporate governance until the 1980's were the legal measures of protection of shareholders rights, internal mechanisms of control, the competitive nature of the capital and product markets as a disciplinary mechanism, un-negotiated or hostile takeovers and incentive based compensation contracts for top executives (Aldrighi, 2003).

The famous scandals of Enron and Worldcom that rocked corporate America in the 1990's, however, resulted in a renewed focus on the philosophy and substance of corporate governance in the United States. Given that its is widely agreed that the United States is a society founded on a codified body law as opposed to a series of social conventions, as is the case in the United Kingdom among others, it is hardly surprising that the response of the United States government to the apparent gaps in corporate governance practices was to enact a law determining the parameters and substance of corporate governance compliance in the US.

Among the companies that failed, control deficiencies at the level of the board of directors included, the closing process, non-supported journal entries, booking accounting estimates and recording of expenses and fixed assets. These failures were exacerbated by a lack of integrity among top managers and board members which has been characterised as a poor "tone at the top" (The Institute of Internal Auditors Research Foundation, 2005).

2.6.1 <u>Sarbanes-Oxley – Congress acts to protect investors:</u>

In response to these findings the one hundred and seventh session of the United States Congress enacted H.R. 3763-3, also know as the Sarbanes-Oxley (SOX) Act. The act, which has as its fundamental objective the protection of investors by ensuring the accuracy and reliability of corporate disclosures, covers the following aspects:

- Public Company Accounting Oversight Board
- Auditor Independence
- Corporate Responsibility
- Enhanced Financial Disclosures
- Analyst Conflicts of Interest
- Commission Resources and Authority

- Studies and Reports
- Corporate and Criminal Fraud Accountability
- White Collar Crime Penalty Enhancements
- Corporate tax Returns
- Corporate Fraud and Accountability

The fundamental problem of corporate governance in the US prior to the scandals was that the relationship between corporates and their auditing firms had become blurred and doubt was cast on the independence and accuracy of audit reports published by both parties. The act therefore seeks to ensure the accuracy and independence of auditors and the reports they prepare through the establishment of the Public Company Accounting Oversight Board (PCAOB) which is mandated by the act to oversee the audit of public companies. The Board is mandated to:

- Register public accounting firms
- Establish or adopt auditing quality control, ethics, independence and other standards
- Conduct inspections of public accounting firms
- Conduct investigations and impose sanctions who violate the terms of the act and other applicable laws
- Enforce compliance with the act
- Promote high professional standards among public accounting firms

The act also requires the registration of public accounting firms with the PCAOB and determines that there may be no conflict of interest and that no executive of a public may be and executive of a public accounting firm employed by the corporation. The act also requires that a study be made of making mandatory rotation of audit services a requirement for public companies.

2.6.2 <u>Application of SOX to Foreign Private Issuers – South African Companies Listed on U.S. Stock Exchanges:</u>

From the perspective of South African based companies who are listed on US stock exchanges, it is sections 302 and 404 dealing with corporate responsibility for financial reports and management assessment of internal controls, respectively, which are of the most relevance. It is these, and specifically the latter, which "requires each issuer's annual report to include an "internal control report -which shall.. .contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting", and section 404 that requires "each issuer's auditor to attest to and report on management's internal control assessment" (COUSTAN, H. LEINICKE, L.M. PvEXROAD, W.M. OSTROSKY, J.A. THOMAS, A, 2004, P1) that have imposed the greatest cost on corporations. A cost that has raised questions among interviewees in the Coustan et-al (2004) study in the United States.

A further concern raised is that the cost of going public and the requirements contingent upon a decision to go public imposed by the act will discourage smaller firms from taking the decision to do so. This will likely have a long term effect on the competitiveness of American capital markets as there will be fewer and fewer choices for investors.

2.6.3 Criticisms and Alternatives to SOX:

Not all perspectives of Sarbanes-Oxley (SOX) are positive in their consideration. One criticism (Monks, 2005) is that the requirements of Sarbanes-Oxley (SOX) does little to add substance to the call for better and more effective corporate governance. Rather, an argument is offered that focuses on greater shareholder involvement in the nominations of board members, a requirement to enforce (through the implementation of a system of term ownership taxes) long term holdings in public corporations, the creation of an ownership share system which would have contingent rights and responsibilities for particularly large institutional investors to engage actively in the management and governance of the company, independent auditors who are appointed on a bid basis and finally, payment of CEO,s in accordance with the value they add to the company. This approach, it is argued would equate to an honest and far less costly approach to the ills of corporate governance than the measures imposed by Sarbanes-Oxley (SOX) and other similar measures.

Ramirez (2003) poses the question as to whether the Sarbanes-Oxley (SOX) act has not missed an opportunity of using the vehicle of racial diversity as a tool for enhancing the fight against corporate corruption. By focussing the majority of its attention on undermining the grip that senior corporate management has over the business, Sarbanes-Oxley (SOX) proposes a variety of measures already discussed above. This situation, according to Ramirez (2003) has arisen largely as a result of the lack of diversity and the homogeneous approach taken within corporate America to the issue of governance.

Because the corporate environment is not reflective of the reality of the society within which it operates it reflects only one cultural norm, leading to a phenomenon known as 'groupthink' where everyone in the group acts and thinks in the same way. Had the senior corporate environment been more diverse, both from a racial and gender perspective, it seems possible that some of the thinking that led to the Enron type scandals might have been avoided and the necessity of Sarbanes-Oxley (SOX) also avoided. The fact that Sarbanes-Oxley (SOX) has not addressed this issue in anyway would seem to be a missed opportunity and a failure to take into account important cultural and social realities.

2.6.4 SOX Costs and Other Corporate Governance measures:

A final note on the cost associated with Sarbanes-Oxley (SOX). The act does not in and of itself prescribe how companies should achieve the reporting requirements. The reality therefore is that each company required to implement the act must also seek a suitable set of enterprise controls to fulfil its needs.

A number of such frameworks are available and in use around the world, among the most common are the Committee of Sponsoring Organisations of the Treadway Commissions (COSO) 1992 publication 'Internal Control – Integrated Framework, The National Quality Institute (NQI) Canadian Framework for Business Excellence, The UK Combined Code and Turnbull Guidance and the King II code of corporate governance in South Africa (Brune, 2004).

The reality is that the implementation of these frameworks is a costly exercise in terms of the human capital as well as time invested in ensuring compliance.

In addition, the requirement for reporting appears likely to increase rather than decrease, meaning that these costs are to become fixed as the structures put in place become institutionalised.

2.7 A comparison of the requirements of South African governance measures and those applicable in developed economies, specifically the United States and the requirements of Sarbanes-Oxley (SOX):

As has been previously stated, the development of corporate governance tools and models has occurred worldwide and each country, region or organisation has developed models that are unique and suited to their own specific needs. That having been said, however, it is also notable that there is a great deal of commonality between the various approaches as they seek to address the same fundamental problems and challenges. In order to get a clear view of the models under discussion it is necessary, in broad terms at least, to compare the mechanisms contained therein.

In South Africa, and for corporates registered on the US stock markets, the relevant models are King II and the Sarbanes-Oxley (SOX) Act. A particularly useful comparison document of these two models has been created by Price Waterhouse Coopers in South Africa (2003). For purposes of clarity and further comparison relevant and available elements of the United Kingdom and Singaporean codes are also included (Teen, 2004). **See table 1 in Annexure A.**

The comparison of different corporate governance measures seems to confirm a high degree of alignment and commonality among the different approaches in different parts of the World. This would seem to be a logical outcome of each of these systems seeking to address the same or similar issues.

2.8 Corporate governance; cost and competitiveness:

In its natural state the corporation avoids control and regulation of its activities. In the absence of one permanent owner (Berle & Means, 1967) it assumes an independent life, dedicated to its own success, absorbed only in self-interest. Such self-interest, in combination with significant economic means, spawns power and influence, which if left unregulated can only lead to chaos and ultimately destruction.

2.8.1 The need for Governance:

The need for structure and the rule of law is fundamental to the long-term success of the modern corporation. "The law of corporations, accordingly might well be considered as a constitutional law of the new economic state, while business practice is increasingly assuming the aspect of economic statesmanship." (Berle, A. and Means, G.C, 1967, p313). The practice of business referred to above, is of course corporate governance as it is known today. Berle & Means (1967) foresaw the need for a regulated environment which would protect not only shareholders, but indeed, the companies from themselves.

By creating enlightened self interest, which is a cornerstone of corporate governance, modern corporations have ensured that they are and remain competitive. The creation of governance has, however, not been cost free.

The costs must nevertheless be offset against the value of the social and legal licence to operate, which is a direct product of good governance, and the capacity of the corporation to remain competitive in the business environment.

In its modern mantle, corporate governance is designed to assure and protect the interests of investors so that the companies themselves can continue to rely on the investors as a source of capital. The crisis of confidence among the investor community following the corporate scandals in the 1990's in the United States led directly to the promulgation of Sarbanes-Oxley (SOX) which, at its core is designed to ensure that corporate executives conduct the business of the companies they run in a manner acceptable to investors and the community at large. There is evidence that most large international corporations do adhere to good standards of corporate governance, and that the higher such conformance the stronger the firms competitiveness (Ho, 2005).

The self-fulfilling prophecy of corporate governance extends also to the macro-economic level where the ability of a particular country to attract foreign direct investment, which is critical for economic growth, is directly related to the state and quality of corporate governance (Rueda-Sabater, 2000). As the economy grows, and with it the companies within the economy, so their competitiveness also improves.

The protection of the interests of investors, and in particular the interests of small or minority investors, from expropriation by larger investors and professional managers is a key aspect of almost all models of corporate governance. The creation of a level playing field where the influence of investors is as equal as possible is a key factor in driving up corporate valuations (La Porta et al, 2002), this in turn enhances the competitiveness of the company in the marketplace.

The benefits of corporate governance thus are well established when viewed for the perspective of competitiveness. From the perspective of cost, however, the picture presented is perhaps not quite so positive. It is a fact that there is a cost to the introduction of any governance measures.

2.8.2 The cost of SOX:

The introduction of the measures contained in Sarbanes-Oxley is somewhat different from other governance measures in that there is very little room for manoeuvre on the part of the company. The requirements are legislated and there are penalties for non-compliance. Concern has therefore been expressed that the quantifiable costs associated with Sarbanes-Oxley in particular are higher than was estimated would be the case by the Securities and Exchange Commission (SEC) prior to implementation. Initial costs estimated by the SEC indicated an aggregate level of around $91000 per company affected, however, the results of a survey of corporate executives carried out by the Financial Executives International (FEI) indicates that costs are expected to be in the range of between $559000 and $8 million, depending on the size of the firm and the date upon which they were surveyed (Eldridge & Kealy, 2005).

In addition, there are significant non-quantifiable costs arising from the diversion of management time and focus, that must be taken into account (Morgenstern, M. Nealis, P. Kahn K. , 2004). These concerns are particularly applicable to mid size firms that form the bulk of the companies on US stock exchanges and where costs are sometimes squeezed more than is the case in the very large companies.

The question uppermost in the minds of the managers of these firms is whether the cost imposed is proportional to the aggregate benefit. The response has been to try to minimise costs through improved information technology and some have even considered withdrawing from the public market place. The latter response, if it were to take hold would have the effect of making the act self defeating, in that the measures designed to restore confidence and ultimately grow the market would have the effect of actually reducing it.

There is some evidence that much of the cost associated with the implementation of Sarbanes-Oxley arose out of an inadequate evaluation and documentation of system controls required under the act. Once these requirements have been adequately systemised the prognosis is that costs will decrease as the learning curve effect takes hold (The Institute of Internal Auditors Research Foundation, 2005). The concomitant danger is that as the requirements of Sarbanes-Oxley become entrenched and systemisation takes place, a sense of routine will take over and regulators and companies will be lulled into a sense of complacency and comfort (Coustan et-al, 2004). A vigorous effort will have to be made to ensure that as costs are absorbed and accepted and the process of reporting becomes routine there is not an attempt by some to 'get around' the rules by those who find them tiresome, expensive or difficult to implement.

2.9 Conclusions arising from the review:

From the above it would seem apparent that corporate governance is indeed growing in prevalence in the developing economies of the world. As the concepts of democracy and the rule of law become more entrenched in African countries, including South Africa, the precepts of corporate governance are becoming more and more important as an assurance that companies in those countries will be best placed to attract foreign investors and to compete on an equal footing in international markets.

The system of corporate governance in South Africa is well entrenched and highly codified through the widely accepted mechanism of the King II Code on Corporate Governance. The standing of South African corporate governance measures are such that they are widely quoted in various writings on the subject and are held up as an excellent example of the current state of the art.

The credibility and status of the corporate governance measures in South Africa are worthy of the largest and most diversified economy on the continent, which has among its constituents a number of companies with a presence on US stock exchanges. The presence of these companies in the US markets means that they are subject to the applicable corporate governance measures, including the Sarbanes-Oxley Act of 2002 which imposes highly specific responsibilities and reporting requirements, at significant cost upon publicly held companies.

An analysis of Sarbanes-Oxley as compared with the King II Code and similar codes applicable in the United Kingdom and Singapore indicate that in general terms the requirements of each are very similar. The fundamental difference therefore is that the Sarbanes-Oxley has the status of law which must be adhered to. While it is generally accepted that good corporate governance enhances competitiveness because it provides investors with a sense of security regarding the ability of executives to expropriate funds, the involuntary nature of the Sarbanes-Oxley compliance requirements means therefore that companies cannot tailor their governance actions to their needs and size of their company. In addition, the costs associated with compliance may begin to outweigh their value and ultimately begin to affect competitiveness, not only of the companies themselves, but of the capital markets upon which they rely for funding.

2.10 Emerging Propositions:

It is apparent from the research carried out and the sources consulted that the body of knowledge with regard to Corporate Governance, as a broad field, is well established. It is further apparent that the body of knowledge with regard to the specific area of Corporate Governance, which is the focus of this study, is also well established. Accordingly, the development of appropriate propositions designed to test the research questions upon which the study is based is possible. The approach using propositions being made by the researcher, rather than the use of hypotheses is considered appropriate given that the research being undertaken is qualitative in nature and does not lend itself to the development of hypotheses per se. Hypotheses are more appropriate in a quantitative research environment where they can be tested using numerical variables.

With the above in mind it is necessary for the propositions to represent a merger of the issues and questions identified earlier and the issues arising out of the literature review. It is the researcher's view that the application of externally developed measures of Corporate Governance, such as Sarbanes-Oxley, is indeed superfluous in South Africa, that the cost of implementation of these measures represents a significant financial burden of Companies and that this has an impact on the cost effectiveness of these Companies. Accordingly, the propositions are oriented to supporting this perspective.

Each of the research questions is outlined below and an accompanying proposition is also outlined.

2.10.1 Research Question 1:

How do the measures of corporate governance developed in South Africa compare with other measures and codes developed in other parts of the world, and specifically the Sarbanes Oxley requirements?

The literature indicates that there is a strong correlation between the King II measures developed in South Africa and other systems of corporate Governance developed in other parts of the world. With regard to Sarbanes-Oxley specifically, it is apparent that in broad terms the objectives of the measures are similar, and therefore a correlation can be seen.

Proposition 1:

The domestically developed measures of Corporate Governance in South Africa, VIZ: King II are as effective, and compare very favourably, with other internationally developed measures, including Sarbanes-Oxley.

2.10.2 Research Question 2:

Is there confidence among South African based multinational corporations that the South African system of corporate governance provides adequate protection for investors and accountability for managers/companies?

It is apparent from the literature that the King II measures are well known internationally and are well respected among scholars of Corporate Governance as measures that provide strong measures for the protection of not only investors, but also a wider group of stakeholders, such as employees and communities.

Proposition 2:

King II is a strong and well founded system of Corporate Governance measures that inspires confidence among investors and managers in South Africa.

2.10.3 Research Question 3:

Is an internal system of guidelines preferable to an external legislated system?

There is a strong indication from the literature that the nature of the free market system creates a natural tension between the market and the legislature. That the market prefers les regulation and largely that government would prefer more legislative control. Historically the market has been allowed the self regulate, or been given only guidelines, in respect of Corporate Governance. However, there are indications that this may be changing in favour of more legislation.

Proposition 3:

An internal system of guidelines is indeed a preferable approach to the regulation of business activities and the protection of investors and other stakeholders interests.

2.10.4 Research Question 4:

Are the measures encompassed in the Sarbanes-Oxley (SOX) Act necessary and applicable to businesses operating in South Africa?

The research of existing material in this regard would seem to show a high degree of commonality in the purpose and intent of King II and SOX. However, equally there are some fundamental differences. The question thus arises as the applicability of the SOX measures for which there is an existing guideline arising from King.

Proposition 4:

Many of the elements of the SOX ACT are applicable to businesses operation in South Africa, however, these elements are already encompassed in the King II guidelines.

2.10.5 Research Question 5:

Is the cost associated with the implementation of corporate governance measures justified in terms of the value it brings to a company operating in South Africa, specifically when seen in the light of the costs associated with Sarbanes-Oxley?

There is a strong body of opinion that the costs associated with the implementation of SOX may be excessive and that this may result in companies (particularly small market capitalisation companies) reviewing their position in terms of US public listings.

Proposition 5:

The implementation of Corporate Governance is seen as a value adding exercise by Companies, however, the significant additional cost associated with the implementation of SOX is seen as excessive and detracting from the value of the company.

Chapter Three: Research Methodology

3.1 Introduction:

This chapter describes the theoretical approach to the research, research strategy and design. It seeks to ensure that the methods employed are aligned with the purpose and scope of the research, that is, to address the research questions and propositions that have arisen from the literature review.

3.1.1 Theoretical approach:

The theoretical approach of this research project from a methodology perspective has been to consider the issue under scrutiny from a qualitative perspective rather than from the more commonly followed quantitative research methodology. Qualitative research effectively means "any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification." (Strauss & Corbin, 1990, p17). It is also "multi-method in focus, involving and interpretive, naturalistic approach to its subject matter". (Denzin & Lincoln, 1998. p 3)

The fundamental reasoning behind this decision was twofold. Firstly, the size of the target population. Bearing in mind that the study is seeking to examine the impact and experience of companies in South Africa that are dual listed on US stock markets, and therefore legally obliged to implement SOX as well as comply with the King II regulations in South Africa, the target population is comprised of only nine companies out of fifty seven in total on the Johannesburg Stock Exchange with dual or multiple listings. This in turn is a fraction of the 387 Companies listed on the exchange. The sample is sufficiently small that a quantitative approach was not felt to be appropriate in terms of being able to fully describe the phenomenon being studied. The nine Companies captured by the above criteria are therefore as follows. Anglogold Ashanti Limited, DRDGold Limited, Gold Fields Limited, Harmony Gold Mining Company Limited, Highveld Steel and Vanadium Corporation Limited, Randgold & Exploration Company Limited, Sappi Limited, Sasol Limited and Telkom SA Limited.

The second, and possibly more important reason for adopting a qualitative approach to the study is that, the question being researched is inherently qualitative in nature and requires a qualitative judgement to be made, based on the experience and opinions of corporate officers charged with Corporate Governance implementation within each of the companies that make up the target population. The inherently qualitative nature of the question being researched also made it necessary to approach the research from the perspective of a series of propositions developed by the researcher on the basis of the research questions being posed and the information and issues which arose out of the literature review undertaken. The propositions were designed to serve as a statement or understanding on the part of the researcher based on information gathered and which the study then attempts to prove or disprove, as the case may be.

The essential questions of "is the domestic corporate governance regime sufficient to ensure the honest and ethical conduct of business in South Africa, and, are foreign measures, specifically Sarbanes-Oxley, adding value or is it simply a "costly requirement of being listed on American Exchanges" is at its core a value judgement that would be difficult to quantify accurately. The qualitative approach with its "emphasis on processes and meanings that are not rigorously examined, or measured (if at all), in terms of quantity, amount, intensity, or frequency" (Denzin & Lincoln, 1998. p 9) would therefore seem to lend itself perfectly to the study of this value judgement. The absence of an examination in terms of quantity, amount, intensity or frequency in this qualitative study also serves to explain the absence of graphs and charts providing numerical data in this study.

The study is distinctly emergent in nature and seeks to obtain the views and opinions of companies that have dual listings on the South African and American stock exchanges, a factor that makes them subject to both sets of corporate governance requirements. Further it seeks to establish if these companies see one or both approaches as adding, or detracting, value from their businesses.

According to Henning, van Rensburg & Smit (2004) the distinction between quantitative and qualitative research is that the qualitative approach does not seek to control all of the variables, and respondents are usually free to express data that otherwise would not be able to be captured by the pre-determined instruments. It is important for the respondents in the study to be free and able to express their opinions and to provide their perspective on the comparative value, strengths and weaknesses of the respective corporate governance systems contingent upon their businesses. This kind of flexibility is only achievable through a qualitative approach.

The decision to follow a qualitative approach and to allow respondents the freedom and flexibility to express their views as they see them, does not mean, however, that the research has not been systematic. As has been outlined in the section covering data gathering and analysis below, the process and approach has been standardised across all respondents and has sought to ensure that each has the same experience and opportunity to express their views. This systematic approach to the questions posed will also allow replication of the study by other researchers seeking to determine if the outcome is valid. By creating a systematic structure at the core of the interview process, it should be possible for other researchers to replicate the results achieved in this study. Such replication is a key element in establishing the validity of the research undertaken.

3.2 Research Strategy:

3.2.1 Target population

"As with all research, before deciding what information to collect and about whom, the researcher must clarify the population of interest". (Boyatzis, 1998, p54). In this case the research strategy involved a purposeful sampling approach targeting those South African multinational companies with dual listings on the Johannesburg Stock Exchange and the either the New York or Nasdaq Exchanges in the United States. Of the fifty-seven dual listed companies on the Johannesburg Stock Exchange only nine have dual listings in South Africa and the United States. The population of interest is therefore quite small, a factor which could be considered as a limitation on the study. However, the small size of the population is seen as a positive in that it affords the study the opportunity of engaging a large proportion of, if not, the entire target population rather than having to rely on a small sample of companies and then having to extrapolate the results.

It is notable that these nine companies represent a collective market capitalisation on the Johannesburg Stock Exchange in excess of R470 billion, making them a significant part of the economic landscape of South Africa. Only DRDGold Limited, Highveld Steel and Vanadium Corporation Limited and Randgold & Exploration fall outside of the group of the top forty largest companies on the JSE. While five of the nine companies can be found in the mining and resources sector of the JSE the remaining three are from the industrial sector, and only Telkom falls within the services sector. The companies are therefore considered to be strongly representative of the overall composition of the market in South Africa. It is there fore clear that the target group, although small, is strongly representative of the foremost and most robust engines of the South African economy.

It should be additionally noted, however, that the limited size of the target population does not, however, mean that only nine companies on the Johannesburg Stock Exchange are required to comply with Sarbannes-Oxley. On the contrary, a large number of companies on the JSE are either directly or indirectly connected to US listed companies (without themselves being listed there), or companies with listings elsewhere in the world, but which have subsidiaries in the United States, thus making them eligible to comply or report in terms of Sarbanes-Oxley. The abovementioned factors therefore made a decision to target all nine companies a practical and feasible objective.

All nine companies were targeted, and contact was made with corporate officers in each company to explain the background to the study, as well as, the nature of the research being conducted. Each company was sent an explanatory covering letter (**Annexure C**)and a copy of the outline questions (**Annexure B**) upon which the interview process would be based. It was made clear that the latter documentation was intended to serve as a guideline only and that it was hoped that the interview itself would assume wider and more in-depth proportions as the interview progressed.

Ultimately, however, only five of the nine companies approached finally consented to be interviewed. The remaining four did not respond to requests for interviews despite repeated reminders and attempts to set times for such interviews to take place. Fortunately, it was also possible to interview Justice Mervyn King himself and to obtain his views on the research questions, thus providing a unique, non-corporate, perspective to the responses.

3.3 Data Gathering and Analysis:

The interviews sought to gather an understanding of the experience of companies that have been obliged, by virtue of their listing on US exchanges, to undertake additional measures of corporate governance. To examine specifically whether the measures required to be implemented have proven to be of value to the company in achieving even greater levels of good governance, or if they have simply proven to be a necessary burden associated with doing business in the United States

3.3.1 Data gathering:

The primary data gathering technique used in this study was a standardised, semi-structured interview using a series of pre-determined guideline questions around which the interview was structured. "The standardised interview is still the dominant conception of an interview as a mechanism or a technology, if used methodically according to strict principles of objectivity and neutrality, that will yield information that represents reality more or less "as it is" through the response (and filters) of an interviewee" (Henning et-al, 2004, p53).

Each interviewee was encouraged (without be led in any way) to express views and opinions with regard to the substantive elements of the topic and to provide examples of their experience in the implementation and control of corporate governance measures within their respective organisations. It was emphasised to each interviewee that there were in fact no right or wrong answers to the questions being posed, and that it was important to provide their view and perspectives with this factor in mind.

3.3.2 Data recording:

The recording of the data was undertaken in two ways, firstly by means of tape recording with the permission of the interviewee, and secondly by means of written notes taken by the interviewer during the course of the interview.

The interviewees were also provided with an assurance that no data would be attributed to them specifically or that they or their organisation would be identified specifically in the report. A copy of the list of interviewees and their specific organisations is, however, attached in **Annexure D** for verification purposes. A copy of the correspondence with each interviewee setting in place the arrangements to be interviewed and their agreement to the proposed process, is also available.

3.3.3 Data analysis:

The analysis of the data gathered during the interviews has sought to identify common themes and patterns of experience and implementation across the various companies surveyed based largely around the outline questions provided to interviewees, as well as the propositions drawn from the review of existing material and documentation. Given that all the companies surveyed are at approximately the same stage of their implementation of SOX in particular (it is in its first year of mandated application) it was expected that each company would have had to undergo a very similar experience in terms of its implementation of SOX. In addition, the companies surveyed are also required to implement the same requirements under King II and therefore there is likely to be a strong common experience.

Equally, however, where there are variations of this common experience this will also prove significant in terms of the research. The presence of a differing view and or anomalies in terms of experience will serve to provide depth to the research and offer an alternative perspective for the analysis.

The key in terms of the analysis is therefore to try and draw conclusions based on the common elements in the experiences and opinions of Corporate Governance practitioners in South African based international / global companies.

3.4 Difficulties and limitations:

Aside from the fact that only five of the nine possible target companies consented to be interviewed and therefore the initial proposal to interview the entire target population could not be met, the key limitation of the study has proven to be that the application of SOX is a comparatively new requirement.

The fact that 2005 / 06 was the first year that South African companies dual listed in the US were required to comply with SOX has meant that the experience of the companies and the executives responsible for governance issues is rather new. Many companies are still finding their feet, so to speak, and have not yet drawn on the benefit of the learning curve effect that will inevitably come into play as they become more experienced in the implementation of SOX. It should therefore be borne in mind that as these effects begin to take hold and companies find the mechanics of SOX implementation easier and more familiar, that this may have an impact on the responses of respondents to the questions posed to them.

A further difficulty associated with the comparative newness of the process around SOX was that many respondents were still very much involved in the compilation of the reports required under SOX and were therefore hesitant to express definitive opinions about certain aspects until the process had been fully completed. Once again, future studies on this topic may well not be faced with this limitation as interviewees will be in a position to comment on the topic based on the experience of a number of years of SOX implementation.

Chapter Four: Research Results

4.1 Introduction:

This section of the report seeks to analyse the data gathered during the interview process along thematic lines as described in the previous chapter. There are some brief comments about the interviewees and their potential biases, followed by an analysis that is structured around the propositions developed earlier.

4.2 Biographic background:

The interviewees in this study were all corporate officers from the various companies identified in the target population. Some are the designated Company Secretary of their particular organisation, or alternately they are a manager in the Office of the Company Secretary. In some cases the interviewees are managers in the internal audit department of their specific organisation. The common thread among the interviewees is that they are all responsible for the implementation of corporate governance measures, specifically including measures mandated under the King II Codes as well as the implementation of the requirements of the Sarbanes-Oxley Act.

A key consideration to bear in mind in during the analysis of the data is the social context within which the research has been conducted and the likelihood of an occurrence of so called "natural bias" as a result.

It is important to consider that each of the interviewees is charged, within their specific organisation, with the implementation of corporate governance measures in general, and in some cases SOX and King measures in particular. Given that these responsibilities are the very reason for their continued tenure within the organisation it is to be expected that there would be a natural bias towards favouring corporate governance measures in general. It seems highly unlikely that any of the respondents would characterise corporate governance as a waste of corporate time effort and resources, and this "natural bias" must be borne in mind when evaluating the outcome of the research.

4.3 Analysis of the data:

As has been indicated earlier, and in order to provide a logical framework for the analysis of the results, this has been structured around the proposition that were developed in the course of the review of existing literature and material on the subject of the study.

4.3.1 Proposition 1:

The domestically developed measures of corporate governance in South Africa, VIZ: King II are as effective, and compare very favourably, with other internationally developed measures, including Sarbanes-Oxley.

The analysis of the data collected in this regard reveals a number strong common themes among all of the respondents.

Firstly, it is apparent from the data collected that all of the respondents have a very clear understanding of the differences in fundamental approach to the requirements of corporate governance, and drew a clear distinction between the legislative approach of SOX and the principle based approach of the King II codes of corporate governance.

Secondly, all of the respondents acknowledged that each of the approaches has its merits and virtues which make a positive contribution to the overall cause of strong and effective corporate governance. A number of respondents drew attention to the fact that the application of SOX, particularly by foreign private issuers, is focussed mainly on the implementation of sections 302 and 404 of the SOX act, which focuses primarily on financial reporting and internal audit functions. They noted that this is an area where King II does not make specific recommendations and that as a result there is a high degree of complimentarity between SOX and King II as applied in South Africa.

There was also a strong common opinion among the respondents that notwithstanding the virtues of SOX and the rules based approach, that there is a great deal to be said for the principled approach of the King II Codes. All but one of the respondents indicated that the more flexible principled approach of the King II Codes made it possible for companies to tailor their activities around corporate governance to suit the requirements of their specific business. Additionally, respondents indicated that the effectiveness and international standing of the King II Codes as a system of corporate governance was such that it gives South African based Companies a high degree of credibility with investors and stock markets internationally. Several respondents remarked on the fact that the King II guidelines are used as appoint of reference by corporate governance scholars internationally, and are also used as the basis for good corporate governance practice in other parts of the world.

Conclusions:

From the data it would therefore appear that the King II guidelines, with their more flexible and tailored approach to corporate governance is strongly favoured among the companies surveyed. The data also indicated that there is a strong opinion among those interviewed that the insider approach, as characterised by King II, in South Africa compares very favourably with other systems of corporate governance around the world. The notion that the existence and rigorous implementation of the King II codes by South African companies provides local and international investors with confidence was strongly supported.

Equally, however, there is broad recognition that the King II codes do not provide the same degree of focus on issues of accounting and auditing standards, and that in this regard, the SOX requirements are much more vigorous and provide a far stronger element of control over the governance of these activities in particular.

The overall conclusion that can be drawn therefore is that there is indeed a strong sense of comfort about the validity and applicability of King II, but that there are aspects of SOX that serve to enhance to overall process of corporate governance in South Africa.

4.3.2 Proposition 2:

King II is a strong and well founded system of corporate governance measures that inspires confidence among investors and managers in South Africa.

The response by the interviewees with regard to questions asked in this regard is perhaps best summed up by the comment of one respondent who said,

"*The world may be physically round but electronically and from a capital flow point of view its has become flat. Capital flows easily but it will only flow to where it has been established there is good governance.*" The balance of opinion among the companies surveyed is that King II provides a more than sufficient basis for confidence among investors. The strong performance of South Africa equity markets in recent years was offered as an example of the confidence of investors that South African companies are well governed and managed within a strong governance framework.

All but one of the respondents indicated that in their experience and opinion the King II guidelines have proven to be a widely understood and accepted system of corporate governance and that individual and institutional investors alike have indicated a high degree of comfort knowing that South African listed companies implement these measures.

At least three of the respondents indicated that prior to the implementation of the SOX requirements their corporate governance measures, based on King II were highly regarded in the United States where most of their investors are based. It was noted that both King II and latterly SOX ensure a so called "level playing field" and in doing so enable investors to measure the governance performance of companies on a like for like basis. This ability on the part of investors was seen as being a key factor in inspiring confidence.

Only one of the respondents indicated that they did not agree that the King II Codes inspired confidence among investors, and pointed to the LeisureNet and more recent JCI corporate scandals that have occurred under the regime of King II. The respondent also postulated that in years to come it may be revealed that "a number of significant deals done in the name of empowerment are likely to have unforeseen consequences and undermine confidence levels."

Conclusions:

From the analysis of the data it can be concluded that King II is indeed a confidence building measure for investors and managers in South African companies. This position is prevalent among the interviewees notwithstanding the revelations in recent years regarding corporate scandals and mismanagement by professional managers. The strong body of positive opinion can be considered a strong endorsement of the King II Codes. The single dissenter, however, makes an important point, and that is that the revelations about corporate scandals, and the prediction of more in the years to come, should serve as a warning to be vigilant and to constantly seek to strengthen and improve the governance regime.

4.3.3 Proposition 3:

An internal system of guidelines is indeed a preferable approach to the regulation of business activities and the protection of investors and other stakeholders interests.

In terms of this proposition opinion among the interviewees appears evenly divided. Although, there was a consensus of understanding on the differences between an insider system such as King II and an outsider system such as

SOX, there were comparatively differing views as to which is a more preferable approach overall.

Given the fundamentally different nature of SOX and King II it appeared difficult for respondents to draw a clear cut comparison or indicate a specific preference for an insider or outsider system. If a common theme could be detected among the responses it was rather that each approach has its particular value and merit and given the specific requirements of implementation of SOX in particular for foreign private issuers (as all South African Companies listed in the US are) there is a high degree of complimentarity between the two approaches. This view was best encapsulated in the comment of one respondent who said, "*The weakness of SOX however is that it only requires a company to account correctly for its activities. It does not necessarily prevent a company from doing bad business or taking bad decisions*".

Conversely King II was seen as a set of guidelines focussed on ensuring that business decisions are taken with the best interests of all stakeholders in mind. The need to explain non-compliance under King and the enforcement of sound accounting practices under SOX are seen as complimentary.

Conclusions:

The revelations of corporate malpractice and poor management in recent years has highlighted some of the weaknesses in the King II approach of self regulation and guidelines for management to follow in its implementation of good corporate governance. The attraction of a sanctions based regime such as SOX is finding greater traction among practitioners as it becomes apparent that there are always going to be some people in the system who will use the flexible nature of the insider system to facilitate their criminal or fraudulent acts. While the flexibility of the insider system remains attractive, there is room for the implementation of some aspects in the domestic South African regime which may carry legal sanction in the mould of SOX. The promulgation of suitably tempered and adapted "SOX like" regulations in South Africa will be a welcome adjunct to the current insider regime under King II.

4.3.4 Proposition 4:

Many of the elements of the SOX ACT are applicable to businesses operation in South Africa, however, these elements are already encompassed in the King II guidelines.

In response to questions aimed at testing this proposition two identifiable issues emerged.

Firstly, it is clear from the data collected that corporate governance professionals in South African multinational companies recognise the need for the implementation of stricter and more enforceable rules governing the roles of internal auditors and the application of accounting standards. There is a very high degree of agreement among the companies surveyed that the King II guidelines do not provide sufficient enforcement around these types of activities. In addition, the requirements of SOX in this regard (particularly the requirements of Section 404 of the Act) do provide a basis for companies to pursue a stricter measure of compliance in terms of audit and accounting standards.

Some interviewees went so far as to suggest that the South African government may even be well advised to consider the implementation of legal requirements, possibly under a revised Companies Act, upon South African companies to report regularly on their audit and accounting practices. The opinion was repeatedly expressed that, while it is indeed not possible to legislate honesty among corporate officers, the existence of such legislation in South Africa may have gone some way to preventing corporate scandals such as the alleged Kebble fraud at JCI and others such as Saambou or LeisureNet. It is key to note however, that all of those who expressed these views were unanimous that such legislation should not be a restrictive or demanding as the SOX regulations.

A universal theme among those interviewed was that while King II provides many useful and valuable guidelines for companies in terms of their corporate governance, it does fall short of providing the kind of scrutiny of internal audit and accounting practices that SOX does. Equally, as mentioned above, the demanding and restrictive nature of the SOX regulations was seen as being too restrictive by those surveyed. The hope was expressed that as time passes, and a baseline for compliance is set by companies, the practical application of SOX may be curtailed extensively, at which point it will become a useful frame of reference for the creation of similar domestic legislation.

The second issue to emerge from among those surveyed was that the implementation of the requirements of SOX has resulted in a significant increase in administration within the companies surveyed. Some companies have sought to offset this increased administration by incorporating many of the controls required under SOX and King II into their internal enterprise risk management systems and thus to perceive the process as one of internal control rather than an external add on to their overall compliance regime. The major criticism of SOX therefore, is that while there are certainly benefits derived from the additional control and scrutiny it engenders, it comes at a cost of increased administration and structural inflexibility. Conversely, the King II requirements are seen as being much more flexible and allow discretion to be exercised by companies as to the amount of effort put into compliance and that the flexibility is seen as a very desirable trait. There are concerns however, that the absence of a formal legal sanction over financial controls under King II is too easily exploited by the unscrupulous.

Conclusions:

While there is agreement that there is a high degree of commonality between King II and SOX, it is apparent that in the critical area of reporting on accounting and audit practice, SOX is seen as having a distinct benefit over the King II codes. While aspects of SOX, outside of the two areas mentioned above, are seen as exceeding the needs of the business community (because they are already adequately covered under King), there is a strong sense that as time passes and as both businesses and regulators become more comfortable with SOX and its implementation, there will be a tendency towards moderation and practicality. The efficiency arising from the learning curve effect and the more relaxed approach will serve to make the working interface between the SOX and King requirements less severe and assist companies to achieve better, as opposed to specifically correct, compliance.

As noted earlier, there is a strong sense that the indigenous system of corporate governance (King II) could be usefully augmented by the promulgation of appropriate legislation (with legal sanctions incorporated) regarding the practices around internal accounting and auditing.

4.3.5 Proposition 5:

The implementation of corporate governance is seen as a value adding exercise by companies, however, the significant additional cost associated with the implementation of SOX is seen as excessive and detracting from the value of the company.

Undoubtedly, from the data gathered during the surveys, there is unanimity that strong and sound corporate governance is seen as a value adding exercise for companies operating in South Africa. All of the respondents indicated that the implementation of universally accepted and credible corporate governance measures provided all stakeholders, and in particular investors and shareholders, with the necessary confidence that the administration of the enterprise is being undertaken in an open, honest and transparent manner. The reference to the creation of a level playing field, upon which companies could compete equally for financial, physical and human resources, was made on numerous occasions.

On the issue of cost the overwhelming body of opinion was that the costs associated with the implementation of SOX were indeed significant. Given that all of the companies surveyed fell within the top 40 companies listed on the Johannesburg Stock Exchange, and can all be considered to be of a similar size in terms of market capitalisation and physical structure, it is worth noting that on average costs for the implementation of SOX were estimated at R20 million, with staff time costs being estimated as being significantly higher. It was also noted that that these costs are incurred in addition to costs already incurred in terms of the implementation of existing (and largely adequate) governance measures. When compared with the cost of implementation with King II, respondents felt that the costs were indeed significant.

In addition, one respondent noted that a largely unconsidered cost was the cost of the loss of professionals in the governance field. As SOX becomes a basic business imperative for companies throughout the world, many skilled South African professionals are being drawn to other countries because of their expertise in governance in general (developed in the course of the implementation of King) and latterly in SOX in particular. This is apparently a notable phenomenon among the so-called big four accounting and auditing firms in South Africa.

As to whether these costs were ultimately excessive and whether or not the costs ultimately detracted from the value added by the compliance measures, opinion was more divided. Only one respondent indicated that the costs were not justifiable and that the value added by the compliance measures was very low, particularly when measured as a factor of the costs incurred. The other respondents indicated that while the costs were high they would have to be measured against the value accrued by the company from having access to US capital markets, which after all is the reason for having to comply with SOX in the first place. And when seen from this perspective, as well as from the perspective of the annual production costs for each company (some running as high as R15 billion) the cost of compliance is in reality a rather small component of the overall costs of the company.

Conclusions:

This final proposition really lies at the heart of the research being undertaken. In essence, there is a very strong sense that the costs associated with the implementation of SOX are significant. They are significant in monetary terms, in terms of the hours spent by highly skilled and highly paid management level staff in implementing the requirements for reporting and in comparison with the costs of achieving largely the same outcome under King II. The cost in terms of diminishing human resources, as mentioned by one respondent, is also a cause for some concern. It seems clear that most companies do not see a correlation between the additional costs to be incurred as a result of having to implement SOX and an improvement in their ability to effectively implement good corporate governance. The benefits that do accrue from SOX, specifically in terms of better control over internal accounting and audit practices, are considered valuable, but could most likely be achieved at much lower financial and human cost if suitably adapted.

What is apparent, however, is that in spite of the significant financial and human resource costs, global companies based in South Africa are willing to absorb those costs in order to secure access to the lucrative U.S. investment market. Many of the companies concerned have found innovative ways to incorporate the SOX requirements into existing management and enterprise risk structures, thus to some extent offsetting the costs by absorbing into existing cost centres.

The final analysis therefore appears to be that the cost is high, in fact very high, and the value added in terms of better governance is not that high, but the benefit in terms of access to crucial investment outweighs both the cost and the low added value.

Chapter Five: Discussion, Conclusions and Recommendations

5.1 Discussion:

The purpose of this chapter is to summarise the report, discuss the research findings and draw together the findings of the analysis with recommendations.

5.1.1 Background:

The study arose out of an awareness of the impact that corporate governance requirements have on South African based multinational companies, in particular in terms of the requirements incumbent upon such companies who are dual listed in South Africa and the United States. The fact that these companies are subject to two distinct corporate governance regimes that approach the issue of governance and control of the activities of companies from two very different angles made an analysis of the impact of the regimes on the operations of the companies all the more compelling.

Modern multi-national corporations, by definition, operate in many different legal, social, moral and financial environments. The market exerts tremendous pressure on such companies to deliver consistent growth and profitability for shareholders, and in such a diverse, complex and often confusing environments it is easy to see how executive managers can lose their way in ensuring that the activities of the company are above reproach. In fact, each of the corporate officers brought to trial as a result of the collapse of Enron, Worldcom and others has protested his or her innocence of wrongdoing and has always maintained that their actions were in the best interest of shareholders.

In such difficult operational environments it is imperative for companies to have a clear set of rules and or guidelines against which they can measure their activities to ensure that they are compliant with the legal strictures of the countries in which they operate. It is also necessary for such rules and guidelines to exist in order to ensure that all the players in the market are subject to a so called 'level playing field' and that no one is advantaged above another unfairly. These requirements have led to the development of a variety of different measures for ensuring good corporate governance in different parts of the world, each designed and adapted to take cognisance of the unique needs and circumstances facing companies in that country or region.

Globalisation has however, led to the creation of a class of companies that transcend national and economic boundaries and as such, if they wish to retain their licence to operate in these diverse regions, are required to comply with more than one corporate governance regime. For South African companies operating globally, this means a necessity to comply with King II and Sarbanes Oxley (SOX) if they are registered in the United States. This situation would normally not present too much of a problem for companies, except for the fact that the legal sanction based approach of SOX is very different from the domestically developed King II guidelines and is also far more costly in terms of its implementation requirements than King II. It was the comparison of these two regimes, with a specific investigation into the cost of SOX and the comparative value that it adds to South African multi-national companies that was the fundamental question being explored in this report.

5.1.2 The literature review:

The review of the literature that forms the basis of this report highlighted the philosophical and practical differences between the insider and outsider approach to corporate governance, represented by King II and SOX respectively. The review also considered the role that corporate governance plays in the development and management of companies based primarily in developing economies, as is the case for the South African multi-nationals being researched. In addition the literature explored the current thinking in respect of the impact of SOX as it became a legal requirement to implement for those companies registered on United States Stock exchanges.

In the course of the review of the literature and the consideration by the researcher of the implications of the various aspects of the two regimes under specific consideration, a series of propositions emerged which formed the basis of the research as it was carried forward. Each proposition, when answered from the perspective of South African based multi-national companies implementing SOX, would allow conclusions to be reached in respect of the fundamental question of whether or not the value added by the implementation of SOX could be offset against the costs associated with its implementation, and if the domestic insider regime (King II guidelines) was not sufficient to protect the interest of shareholders.

5.2 Conclusions

From the analysis of the data derived from the interviews conducted, it possible to draw a series of conclusions with regard to each of the propositions or research questions that arose out of the review of the literature and have formed the basis of this study.

In respect of the question, how do the measures of corporate governance developed in South Africa compare with other measures and codes developed in other parts of the world, and specifically the Sarbanes-Oxley requirements? It can be concluded that the King II Codes of corporate governance compare very favourably indeed with other international systems of corporate governance, including Sarbanes-Oxley. The strong acceptance of King, both in South Africa and internationally as a benchmark system of governance would seem to underscore this view.

The question, is there confidence among South African based multinational corporations that the South African system of corporate governance provides adequate protection for investors and accountability for managers/companies? , can be answered strongly in the affirmative. Indeed, there is strong evidence to show that prior to the requirement to implement SOX, South African companies trading on international, and specifically U.S. stock markets were considered to be stable and well governed and therefore a worthwhile and safe investment destination. The strong capital inflows over the past five years has underscored this point.

Evaluating whether an internal system of guidelines preferable to an external legislated system, drew mixed responses. It is clear that companies appreciate the flexible nature of the insider based system under King II codes and the ability to tailor the requirements of good corporate governance to meet their specific needs. Equally, however, companies have recognised that there is merit to the outsider, and specifically legal sanctions based approach, of SOX. The conclusion is thus that there is merit in elements of both systems and that in careful and considered combination they can in fact be complimentary.

The applicability of the measures encompassed in the Sarbanes-Oxley (SOX) act to businesses operating in South Africa would also seem to be an area where the answer is neither definitively one nor the other. There is certainly a great deal of commonality and overlap in the measures of SOX and of King II. The one area where SOX does seem to have a greater appeal to governance professionals is in the area of reporting on internal accounting and audit practices. In this area King II does not have the same capacity for enforcement and discipline that seems to be highly favoured among companies. The answer, once again, is that by drawing on the strengths of both approaches (SOX and King II) it is possible to achieve better corporate governance that covers all the critical aspects of the business.

And finally, the issue of cost. The question, is the cost associated with the implementation of corporate governance measures justified in terms of the value it brings to a company operating in South Africa, specifically when seen in the light of the costs associated with Sarbanes-Oxley, is what lies at the very heart of this study. Can the costs of SOX be justified. The answer is that these costs must be seen in two distinct contexts.

Firstly, in the context of the value added to companies in terms of their ability to effectively manage and implement internationally sound and acceptable corporate governance. Here the answer is strong in the negative. The costs associated for South African companies when taken from this perspective are significant in monetary and human resource terms. The value added by the measures required by SOX are negligible, with the notable exceptions of the requirements related to internal accounting and audit standards.

Secondly, in the context of the ability of South African multi-national companies to access lucrative U.S. capital markets. From this perspective it is clear that the costs of SOX, while still seen as significant, are considered to be an acceptable cost to bear in return for the access to capital. The access to these capital markets is so lucrative that in spite of the costs the value proposition remains positive and therefore companies are prepared to absorb the costs required. Nevertheless, there remains a hope that as time passes even these costs will be able to be reduced as learning curve factors and moderation of requirements occurs over time.

In the final analysis there seems to be a strong sense of commitment and support for the indigenous, insider based, King II regulations that are the foundation of corporate governance in South Africa. Equally, there is a recognition that there are areas in the King II Codes that do lack specificity and adequate enforcement, particularly the areas of internal accounting and audit standards. It is in these areas in particular that the SOX regulation has a particularly strong standing, and there is recognition, despite doubts about the associated costs, that SOX adds to the already strong base of King II, particularly in this regard. In general terms, however, SOX is not seen as adding significant value to the governance efforts of companies. King II is a strong, vibrant and widely accepted system of corporate governance, and the preferred option for businesses operating in South Africa. It is widely agreed that the system can be improved and strengthened by the addition of elements of the SOX regulations, but at a much more moderate cost if implemented judiciously.

The value of SOX is the access it provides to American capital markets, where investors seem less risk averse than elsewhere in the world and appear willing to take a stake in companies based in developing economies. This access is valuable enough that companies are prepared to absorb the high cost of SOX to retain it.

5.3 Recommendations and possibilities for further research

The review of the literature and the conclusions reached as a result of the research carried out have made it possible to formulate a series of recommendations to be considered by corporate governance practitioners and academics who have an interest in further developing the field of corporate governance in South Africa. Consideration of these recommendations may clearly lead to direct action, or where appropriate, further research.

5.3.1 Accounting and Auditing standards:

Firstly, a recurring theme throughout this study has been the identification of a key shortcoming in the King II codes. It is abundantly apparent that there is a sense among governance practitioners that the King II codes do not provide a sufficiently rigorous regime of control over the standards applicable to the internal accounting and auditing practices which lie at the heart of section 404 of the Sarbanes-Oxley Act.

It would seem that there is merit in a detailed review of the requirements of the King II codes in this regard with a view to aligning them with the requirements under SOX. Such a review would serve to ensure that the practices of South African companies are on par with international best practice. Additionally, it would best if a review of this specific aspect of the King Codes were based on further detailed research. This research should specifically focus on the issue of the development of appropriate accounting standards that serve the best interests of sound corporate governance.

A comment made by one of the respondents in this report VIZ: that the focus of SOX accounting standards requirements is to ensure only that the activities of the company are correctly accounted for, serves to highlight the need for a more considered approach. The point being made by the respondent was that under the SOX approach there is no latitude for determining the value of a decision from a business perspective. In the respondents view, the SOX approach would allow a bad business decision to be made, as long as it is accounted for correctly according to the rules. In order to ensure that a review of the King codes results in a more considered approach to the issue of accounting standards, research will need to be undertaken. This research should seek to determine from companies and governance practitioners themselves what the best methodology would be to ensure that accounting standards not only reflect each transaction accurately, but also ensure that the best possible business decision that protects the interests of all stakeholders is taken by executive managers.

It is worth noting that the costs associated with this aspect of SOX have been identified as being significant, and it is in this regard that new research may prove particularly valuable. While the implementation of improved reporting on internal accounting and auditing standards is desirable, it must be achieved at a lower cost than is the case under SOX. The achievement of such a cost effective regime for South Africa would serve as an ideal arena for further research. Once again, this study has revealed that a number of companies have already identified innovative strategies to offset the significant costs of SOX compliance. Some have sought to incorporate SOX requirements into existing governance activities rather than implementing SOX as a separate regime as others have done.

Possible research could seek to identify the optimum approach for the implementation of SOX by foreign private issuers and outline a standardised set of guidelines for companies to follow. Such research would be invaluable to South African companies seeking to list on U.S. markets and who would want to determine accurately the potential downstream costs associated with such a listing. In addition, such research could also prove useful to companies in other developing economies seeking to access the U.S. market and who would seek to build on the experiences of companies in similar stages of development as themselves.

Another issue to be considered in respect of further research arises from one of the key difficulties encountered in the research process. One of the key weaknesses in this research is that the comparative newness of the requirement to implement SOX among the companies of the target population (a period of only one year in most cases) has meant that there is little experience and learning for respondents to draw upon in their consideration of the questions asked of them. Clearly as time passes, the learning curve effect takes hold, and companies become more adept at the process of SOX compliance it is possible that their perception of the process may change. A comparative study in three of four years time, targeting the same companies and individuals within those companies (assuming they are still there) may well reveal significantly different experiences and views as practitioners and organisations learn to do SOX better, faster and most significantly cheaper.

5.3.2 SOX for South Africa:

In the course of the research process a number of interviewees made reference to rumours and discussions circulating in the market regarding SOX style changes to the Companies Act of South Africa in the wake of recent corporate financial scandals in the country. The desire of politicians to involve themselves in such issues can often lead to unintended consequences. One of the key criticisms of SOX in the United States is that the costs associated with it will drive small cap companies in particular out of the market. If a similar regime were to be implemented in South Africa, with similar associated costs it can be expected that the effect will also be similar. The question however arises whether the South African stock market can absorb such impacts as well as the much larger, more diversified and much more robust American markets.

There is no doubt that a robust and flourishing stock market is one of the key drivers of economic development, all the more so in developing economies where opportunities exist to build and develop businesses from the ground up so to speak. It is also true that one of the key success factors of modern developing economies is their ability to attract foreign investment on the basis of sound principles of corporate governance. The balance between good governance and robust and flourishing markets is one that must be carefully maintained and nurtured. Any action which will serve to diminish the attractiveness of the market in a developing country may have devastating consequences on the economic health of that country.

It is with the above in mind that there is merit in recommending caution to policymakers contemplating such actions, and further merit in recommending that any such action should be carefully researched before implementation. Such research should fully explore the often unseen and unconsidered cost and consequences of over regulation and seek to show how the delicate balance of a need for strong and effective governance can be achieved while maintaining a degree of freedom and flexibility upon which free markets thrive.

Chapter Six: Article for publication

6.1 Introduction

Corporate governance is in effect the modern corporation's licence to operate within the society in which it exists. Without adherence to legally, politically, ethically and socially acceptable rules companies cannot hope to compete successfully and achieve progress and profit.

Corporate governance can broadly be divided into two distinct philosophies, the voluntary approach of so called 'insider governance', and the mandated or legislated approach known as 'outsider governance'.

The well publicised failure of large corporations, particularly those such as Enron and Worldcom in the United States, and the increasing evidence of poor financial management of companies such as Tyco, Global Crossing and even Xerox (Uncle Sam's scandals at a glance, *The Guardian*, 29 July 2002) has led to a renewed focus on the importance of the practice of corporate governance worldwide. When one takes into account the losses incurred by institutional and private investors in these corporate scandals, it becomes apparent why there is increasing public pressure for the enhancement of corporate governance measures.

In the United States, the public and political reaction to the abovementioned crises has led to the development and implementation of legislative measures, specifically the Sarbanes-Oxley (SOX) Act of 2002, which lays down very specific requirements for the practice of corporate governance for companies registered and trading on US based stock exchanges.

The outsider approach adopted in the United States is different from the insider approach taken elsewhere in the world. And while each approach appears honest and genuine in its intent of protecting the ordinary investor, the question of applicability in other, specifically developing economies, arises.

The focus of this paper is to examine the issue of insider and outsider approaches to corporate governance; to examine the practice and importance of corporate governance in developing countries; and to draw a comparison between the requirements of the insider system of King II and outsider system of Sarbanes-Oxley as applied to South African based companies, dual-registered on American and South African stock exchanges.

The review and examination of existing literature allowed the development of a series of propositions, which form the basis of a qualitative research process undertaken among South African based dual-listed Companies who are required to comply with the strictures of both King II and SOX. The core focus of this investigation is to try and determine if the value added by the implementation of SOX in particular is commensurate with the costs incurred in its implementation.

This investigation intends to add to the body of knowledge by drawing conclusions about the experience of South African dual-listed companies in complying with the different approaches to corporate governance; the degree of additional value derived from the implementation of such governance; and to identify areas where further research may be of value.

6.2 Research Methodology

The theoretical approach of this research project has been to consider the issue under scrutiny from a qualitative perspective rather than from the more commonly followed quantitative research methodology. Qualitative research effectively means "any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification" (Strauss & Corbin, 1990, p17). It is also "multi-method in focus, involving and interpretive, naturalistic approach to its subject matter" (Denzin & Lincoln, 1998. p 3)

The rationale for this approach rests on two factors, the first being the size of the target population. Only nine companies out of fifty seven are dual-listed in the United States, and this in turn is a fraction of the 387 companies registered on the Johannesburg Stock Exchange. The population is sufficiently small that a quantative approach would not seem to be appropriate to fully describe the phenomenon being studied.

The second and possibly more important reason is that, the question being researched is inherently qualitative in nature. The questions being examined require a qualitative judgement to be made, based on the experience and opinions of corporate officers charged with corporate governance implementation within each of the companies that make up the target population.

The nine companies captured by the above criteria are therefore as follows. Anglogold Ashanti Limited, DRDGold Limited, Gold Fields Limited, Harmony Gold Mining Company Limited, Highveld Steel and Vanadium Corporation Limited, Randgold & Exploration Company Limited, Sappi Limited, Sasol Limited and Telkom SA Limited. It is notable that these nine companies represent a collective market capitalisation on the Johannesburg Stock Exchange in excess of R470 billion, making them a significant part of the economic landscape of South Africa.

The study is distinctly emergent in nature and seeks to obtain the views and opinions of companies that have dual-listings on the South African and American stock exchanges, a factor that makes them subject to both sets of corporate governance requirements. Further it seeks to establish if they see one or both approaches as adding, or detracting, value from their businesses.

The decision to follow a qualitative approach and to allow respondents the freedom and flexibility to express their views as they see them, does not, however, mean that the research has not been systematic. The process and approach applied has been standardised across all respondents and has sought to ensure that each has the same experience and opportunity to express their views. This systematic approach to the questions posed will also allow replication of the study by other researchers seeking to determine if the outcome is valid.

The research strategy involved a purposeful sampling approach targeting the nine companies mentioned above. All nine companies were targeted, and contact was made with corporate officers in each company to explain the background to the study, as well as the nature of the research being conducted.

Ultimately, however, only five of the nine companies approached finally consented to be interviewed. The remaining four did not respond to requests for interviews.

Fortunately, it was also possible to interview the Chairman of the King Commission, Justice Mervyn King, and to obtain his views on the research questions, thus providing a unique, non-corporate, perspective to the responses.

The primary data gathering technique used in this study was a standardised, semi-structured interview which according to (Henning et-al, 2004, p53) "is still the dominant conception of an interview as a mechanism or a technology, if used methodically according to strict principles of objectivity and neutrality, that will yield information that represents reality more or less "as it is" through the response (and filters) of an interviewee".

Each interviewee was encouraged (without being led in any way) to express views and opinions with regard to the substantive elements of the topic and to provide examples of their experience in the implementation and control of corporate governance measures within their respective organisations.

The recording of the data was undertaken by means of tape recording with the permission of the interviewee, and by means of written notes taken by the interviewer during the course of the interview.

The analysis of the data gathered during the interviews has sought to identify common themes and patterns of experience and implementation across the various companies. Given that all the companies surveyed are at approximately the same stage of their implementation of SOX in particular (it is in its first year of mandated application) it was expected that each company would have had to undergo a very similar experience in terms of its implementation of SOX and King II.

Equally, however, where there are variations of this common experience this will also prove significant in terms of the research. The presence of a differing view and or anomalies in terms of experience will serve to provide depth to the research and offer an alternative perspective for the analysis.

6.3 Literature Review

Corporate governance and in particular good corporate governance is not a new concept. Indeed, "the concept of corporate governance was born out of the agency problem that arose when the ownership of companies became separated from the control thereof." (Roussouw. G.J, van der Watt. A & Malan D.P, 2002, p289)' The first measures of corporate governance were thus implemented in order to ensure that the managers of a particular business always acted in the best interests of the shareholders, who were not necessarily present to protect their interests in person.

6.3.1 <u>The history:</u>

In 1932, Adolf Berte and Gardiner Means, in their seminal book in *The Theory of Separation of Ownership and Control*, (Berte & Means, 1967), set the theoretical basis for the traditional view of corporate governance. So-called Berle and Means firms arose, specifically in the United States, where the separation of ownership from control became the norm and the market became the absolute arbiter of adequate governance.

The primary driver for these firms was the maximisation of shareholder profits, with a resultant short term view of all impacts on the business and very little consideration for other stakeholders, both internal and external. This specifically narrow view of the role of the corporation meant that many excesses occurred in the name of maximising value.

The excesses in the business environment, and the ethical difficulties that became apparent as a result, led to the development of an alternative approach to governance broadly formulated as the stakeholder theory of corporate management, championed primarily by Howard R. Bowen (1953) in the early 1950's. Stakeholder theory seeks to take a broader view of the responsibility of the corporation and to include workers, the community and the broader society as groups who have an interest in the behaviour of corporate management and in the overall governance of companies. In terms of the theory, the interests of shareholders and stakeholders need to find equilibrium in order to ensure that there is equity and balance in the system.

The 1980's and early 1990's revealed that reliance on market forces and the interests of stakeholders was insufficient to ensure that good governance was practiced in large corporations. The obvious shortcomings of a self-regulating process led to a recognition of a need for the development of a set of principles or regulations that would serve as guidelines for companies in terms of their governance. This has led directly to the development of a variety of corporate governance codes of conduct which range from the so called insider approach, such as the King II guidelines in South Africa, and the Cadbury Report in the United Kingdom, at the voluntary end of the enforcement spectrum to the proclamation of the Sarbanes-Oxley (SOX) Act of 2002, at the legislated, or outsider end of the spectrum.

Some international organisations such as the Commonwealth and the Organisation for Economic Cooperation and Development (OECD) have also developed codes of corporate governance, based mainly on the insider voluntary approach, which are used as guidelines in many countries around the world.

The codified approach to corporate governance (either insider or outsider systems) is the dominant approach in the global economy today.

6.3.2 Corporate governance in South Africa and other developing countries:

As the global political paradigm has shifted with the demise of the bipolar superpower system and developing countries are increasingly forced to compete in the global economy on their own merits, the importance of corporate governance has become apparent in these economies. According to Reed (2002) there are two fundamental reasons for the intensification of interest in corporate governance in developing countries.

Firstly there is the downturn in economic activity, particularly in countries that have opted for an Import Substitution Industrialisation (ISI) model of economic development. A focus on better corporate governance in these economies has been designed to attract investment and partnership with companies operating in more developed economies, where expectations of governance are higher. The second reason for a greater focus on corporate governance in developing economies is the role played by international institutions (International Monetary Fund, The World Bank and the United Nations) which are engaged in the process of integrating developing economies into the global market.

In South Africa, the transformation of the political landscape after 1994, and the move from a siege economy to a liberalised economy having to compete globally on its own merits has meant that sound corporate governance has become a key requirement for South African companies. These factors combined with the reality that South Africa has the largest and most diversified economy in Africa has made corporate governance a central feature of the economy in the last 15 years.

Historically corporate governance in South Africa was implemented as part of the Companies Act (1973), The Reserve Bank Regulations, The Registrar of Banks and the Financial Services Board. This approach, however, left some grey areas and loopholes and it was recognised that a comprehensive and dedicated system of governance was required. Accordingly, in the early 1990's the Institute of Directors of Southern Africa commissioned Judge Mervyn King to investigate and make recommendations on the implementation of good financial and ethical corporate governance in South Africa.

6.3.3 King I and II:

Drawing on a wide variety of resources, including the work done in the UK by the Cadbury Commission, the report sought to look beyond the confines of the corporation itself and to define the corporation's impact on the community within which it operates. Armstrong (1995) and Ryan (1995) have clarified and explained the conclusions of the report in respect of role and function of Boards, and the specific recommendations on the separation of the roles of Chief Executive Officers and Chairpersons of Company Boards. The King Code also addressed issues of remuneration paid to Directors, disclosure on auditing practices, a code of ethical practice of business in South Africa and the importance of bringing formerly disadvantaged South Africans into the business world.

By the mid 1990's it was apparent that many of the framework considerations in place during the first King Commission had changed - specifically South Africa's transformation to democracy and the shift to a unipolar world dominated by the United States. The development of the African Renaissance and embracing of concepts such as Ubuntu, highlighted the need to review the broad foundations of corporate governance in South Africa. The second King Report therefore sought to address issues related to corporate discipline, transparency, fairness, independence, accountability, responsibility and social justice. Given that the recommendations were also intended to be applicable to the unique characteristics of the South African environment, the latter aspect also sought to include the principles of 'ubuntu' or humaneness which is at the core of African culture. (The Institute of Directors in Southern Africa, 2002).

The development of King II was a response to the increasing need of South African companies to comply with international best practice as they sought foreign capital and foreign markets, as well as a reaction to the shortcomings of the first report. The King II Code provides South African companies with a world class system that should stand the country's business community in good stead for the future.

6.3.4 Sarbanes-Oxley

According to Aldrighi (2003), the major elements of US corporate governance until the 1980's were the legal measures of protection of shareholders rights, internal mechanisms of control, the competitive nature of the capital and product markets as a disciplinary mechanism, un-negotiated or hostile takeovers and incentive based compensation contracts for top executives. However, the failure of Enron and Worldcom prompted significant official and popular outcries for greater control over the activities of corporate officers. The response was the enactment of H.R. 3763-3, also know as the Sarbanes-Oxley (SOX) Act, by the United States Congress.

The act, which has as its fundamental objective the protection of investors by ensuring the accuracy and reliability of corporate disclosures, covers, public company accounting oversight board, auditor independence, corporate responsibility, enhanced financial disclosures, analyst conflicts of interest, commission resources and authority, studies and reports, corporate and criminal fraud accountability, white collar crime penalty enhancements, corporate tax returns, corporate fraud and accountability

Prior to the introduction of SOX the relationship between corporates and their auditing firms had become blurred and doubt was cast on the independence and accuracy of audit reports published by both parties. The act therefore seeks to ensure the accuracy and independence of auditors and the reports they prepare through the establishment of the Public Company Accounting Oversight Board (PCAOB) which is mandated by the act to oversee the audit of public companies. The act also requires the registration of public accounting firms with the PCAOB and determines that there may be no conflict of interest and that no executive of a public company may be an executive of a public accounting firm employed by the corporation.

6.3.5 SOX for South African Companies:

For South African companies registered on U.S. exchanges, sections 302 and 404 dealing with corporate responsibility for financial reports and management assessment of internal controls, respectively, are of the most relevance. It is these sections that have imposed the greatest cost on corporations, a cost that has raised questions among interviewees in the (Coustan H., Leinicke, L.M., Pvexroad, W.M., Ostrosky, J.A. & Thomas, A, 2004,) study in the United States.

The introduction of SOX has reignited the debate as to the most effective mechanisms of corporate governance with scholars such as Monks (2005) calling for greater levels of shareholder involvement in board appointments and the appointment of independent auditors on a bid basis. Ramirez (2003) questions whether or not SOX has taken sufficient cognisance of the necessity of racial and gender diversity within corporate America, and as a result reflects only one cultural norm resulting in a phenomenon known as 'groupthink' - a cycle of behaviour where every one thinks and acts in the same way and which might have contributed to the actions that resulted in the Enron and Worldcom scandals - an area which SOX has failed to adequately address.

6.3.6 Comparing King and SOX:

The development of corporate governance tools and models has occurred worldwide, and each country, region or organisation has developed models that are unique and suited to their own specific needs. That having been said, however, it is also notable that there is a great deal of commonality between the various approaches as they seek to address the same fundamental problems and challenges. This phenomenon would seem to hold true for a comparison between King II and SOX as well. While the approach and philosophy is different in some cases there is also a high degree of alignment and commonality between the two as each of these systems are seeking to address the same or similar issues.

6.3.7 Cost and Competitiveness:

Berle & Means (1967) noted that in its natural state the corporation avoids control and regulation of its activities, it assumes an independent life, dedicated to its own success, absorbed only in self-interest, which if left unregulated can only lead to chaos and ultimately destruction. The need for structure and the rule of law is fundamental to the long term success of the modern corporation. Berle & Means foresaw the need for a regulated environment which would protect not only shareholders, but indeed, the companies from themselves.

The creation of enlightened self interest, which is a cornerstone of corporate governance, has allowed modern corporations to remain competitive in a demanding and regulated environment. The creation of good governance has been costly; however, the costs must nevertheless be offset against the value of the social and legal licence to operate, and the capacity of the corporation to remain competitive in the business environment.

Protection of the interests of investors, and in particular the interests of small or minority investors, from expropriation by larger investors and professional managers is a key aspect of almost all models of corporate governance. The creation of a level playing field where the influence of investors is as equal as possible, is a key factor in driving up corporate valuations (La Porta et al, 2002). This in turn enhances the competitiveness of the company in the marketplace.

The self-fulfilling prophecy of corporate governance extends also to the macro-economic level where the ability of a particular country to attract foreign direct investment, which is critical for economic growth, is directly related to the state and quality of corporate governance (Rueda-Sabater, 2000). As the economy grows - and along with it, the companies within the economy grow - so their competitiveness also improves.

The introduction of the measures contained in Sarbanes-Oxley is somewhat different from other governance measures in that there is very little room for manoeuvre on the part of the company. The requirements are legislated and there are penalties for non-compliance. Concern has therefore been expressed that the quantifiable costs associated with Sarbanes-Oxley in particular, are higher than was estimated would be the case by the Securities and Exchange Commission (SEC) prior to implementation. There has also been concern expressed that the cost of the implementation of SOX may also negatively impact US stock exchanges themselves as the costs of Initial Public Offerings and the associated SOX costs become prohibitive, particularly for small market capital companies who make up the majority of registered firms.

It should be noted with regard to the costs of SOX that there is some evidence that much of the cost associated with the implementation of Sarbanes-Oxley arose out of an inadequate evaluation and documentation of system controls required under the act. Once these requirements have been adequately systemised the prognosis is that costs will decrease as the learning curve effect takes hold (The Institute of Internal Auditors Research Foundation, 2005).

6.3.8 Conclusions from the review and emerging propositions:

A review of the material would seem to show that corporate governance is indeed growing in prevalence in the developing economies of the world, including South Africa and that the system of corporate governance in South Africa is well entrenched and highly codified through the widely accepted mechanism of the King II Code on Corporate Governance, and is highly regarded in other parts of the world.

An analysis of Sarbanes-Oxley as compared with the King II Code and similar codes applicable in the United Kingdom and Singapore, indicates that in general terms the requirements of each are very similar. The fundamental difference therefore is that the Sarbanes-Oxley has the status of law which must be adhered to. While it is generally accepted that good corporate governance enhances competitiveness because it provides investors with a sense of security regarding the ability of executives to expropriate funds, the involuntary nature of the Sarbanes-Oxley compliance requirements means that companies cannot tailor their governance actions to their needs and size of their company. In addition, the costs associated with compliance may begin to outweigh their value and ultimately begin to affect competitiveness, not only of the companies themselves, but of the capital markets upon which they rely for funding.

On the basis of the material reviewed it was possible to develop a series of five propositions which would form the core of the research to be undertaken. The approach using propositions being made by the researcher, rather than the use of hypotheses is considered appropriate given that the research being undertaken is qualitative in nature and does not lend itself to the development of hypotheses per se. Hypotheses are more appropriate in a quantitative research environment where they can be tested using numerical variables.

The study has sought to explore the following propositions:

Proposition 1:

The domestically developed measures of corporate governance in South Africa, VIZ: King II are as effective, and compare very favourably, with other internationally developed measures, including Sarbanes-Oxley

Proposition 2:

King II is a strong and well founded system of corporate governance measures that inspires confidence among investors and managers in South Africa.

Proposition 3:

An internal system of guidelines is indeed a preferable approach to the regulation of business activities and the protection of investors and other stakeholders' interests.

Proposition 4:

Many of the elements of the SOX ACT are applicable to business operations in South Africa; however, these elements are already encompassed in the King II guidelines.

Proposition 5:

The implementation of corporate governance is seen as a value-adding exercise by companies, however, the significant additional cost associated with the implementation of SOX is seen as excessive and detracting from the value of the company.

6.4 Analysis of Results

All of the interviewees in the study are corporate officers charged with the responsibility for the implementation of corporate governance measures within their particular organisation, specifically including measures mandated under the King II Codes as well as the implementation of the requirements of the Sarbanes-Oxley Act.

A key consideration to bear in mind in during the analysis of the data is the social context within which the research has been conducted and the likelihood of an occurrence of so called 'natural bias' arising from the fact that the responsibilities of the interviewees are the very reason for their continued tenure within the organisation and therefore it is to be expected that there would be a natural bias towards favouring corporate governance measures in general. It seems highly unlikely that any of the respondents would characterise corporate governance as a waste of corporate time, effort and resources, and this 'natural bias' must be borne in mind when evaluating the outcome of the research.

With regard to Proposition 1it is apparent from the data collected that all of the respondents have a very clear understanding of the differences in fundamental approach to the requirements of corporate governance, and drew a clear distinction between the legislative approach of SOX and the principle based approach of the King II Codes of Corporate Governance. Respondents also noted with regard to internal audit and accounting functions that King II does not make specific recommendations and that as a result there is a high degree of complementarity between SOX and King II as applied in South Africa. There was also a strong common opinion among the respondents that notwithstanding the virtues of SOX and the rules based approach, that there is a great deal to be said for the principled approach of the King II Codes. The overall conclusion that can be drawn therefore is that there is indeed a strong sense of comfort about the validity and applicability of King II, but that there are aspects of SOX that serve to enhance the overall process of corporate governance in South Africa.

With regard to Proposition 2, the balance of opinion among the companies surveyed is that King II provides a more than sufficient basis for confidence among investors. The strong performance of South Africa equity markets in recent years was offered as an example of the confidence of investors that South African companies are well governed and managed within a strong governance framework. Respondents felt that King II also provided confidence in key investor markets such as the United States and thus enabled South African companies to compete for capital funding with confidence. From the analysis of the data it can be concluded that King II is indeed a confidence building measure for investors and managers in South African companies. This position is prevalent among the interviewees notwithstanding the revelations in recent years regarding corporate scandals and mismanagement by professional managers. The strong body of positive opinion can be considered a strong endorsement of the King II Codes.

Regarding Proposition 3, opinion among the interviewees appears evenly divided. Although, there was a consensus of understanding on the differences between an insider system such as King II and an outsider system such as SOX, there were comparatively differing views as to which is a more preferable approach overall. If a common theme could be detected among the responses it was rather that each approach has its particular value and merit and given the specific requirements of implementation of SOX, in particular for foreign private issuers (as all South African companies listed in the US are), there is a high degree of complementarity between the two approaches. While the flexibility of the insider system remains attractive, there is room for the implementation of some aspects in the domestic South African regime which may carry legal sanction in the mould of SOX. The promulgation of suitably tempered and adapted 'SOX like' regulations in South Africa will be a welcome adjunct to the current insider regime under King II.

In terms of Proposition 4, it is clear from the data collected that corporate governance professionals in South African multinational companies recognise the need for the implementation of stricter and more enforceable rules governing the roles of internal auditors and the application of accounting standards. Some interviewees went so far as to suggest that the South African government may even be well advised to consider the implementation of legal requirements, possibly under a revised Companies Act, upon South

African companies to report regularly on their audit and accounting practices. A universal theme among those interviewed was that while King II provides many useful and valuable guidelines for companies in terms of their corporate governance, it does fall short of providing the kind of scrutiny of internal audit and accounting practices that SOX does. While there is agreement that there is a high degree of commonality between King II and SOX, it is apparent that in the critical area of reporting on accounting and audit practice, SOX is seen as having a distinct benefit over the King II Codes. Equally, aspects of SOX, outside of those mentioned above, are seen as exceeding the needs of the business community (because they are already adequately covered under King), there is a strong sense that as time passes and as both businesses and regulators become more comfortable with SOX and its implementation, there will be a tendency towards moderation and practicality.

Proposition 5, addressing the fundamental issue of cost, garnered unanimity among respondents that strong and sound corporate governance is seen as a value adding exercise for companies operating in South Africa. All of the respondents indicated that the implementation of universally accepted and credible corporate governance measures provided all stakeholders, and in particular investors and shareholders, with the necessary confidence that the administration of the enterprise is being undertaken in an open, honest and transparent manner. On the issue of cost of SOX measures specifically, the overwhelming body of opinion was that the costs associated with the implementation of SOX were indeed significant. It is worth noting that on average costs for the implementation of SOX were estimated at R20 million, with staff time costs being estimated as being significantly higher. It was also noted that these costs are incurred in addition to costs already incurred in terms of the implementation of existing (and largely adequate) governance measures. When compared with the cost of implementation with King II, respondents felt that the costs were indeed significant. As to whether these costs were ultimately excessive and whether or not the costs ultimately detracted from the value added by the compliance measures, opinion was more divided. Respondents indicated that while the costs were high they would have to be measured against the value accrued by the company from having access to US capital markets, which after all is the reason for having to comply with SOX in the first place. The final analysis therefore appears to be that the cost is high, in fact very high, and the value added in terms of better governance is not that high, but the benefit in terms of access to crucial investment outweighs both the cost and the low added value.

6.5 Conclusions and Recommendations

From the analysis of the data derived from the interviews conducted, it is possible to draw a series of conclusions with regard to each of the propositions or research questions that arose out of the review of the literature and have formed the basis of this study.

6.5.1 Conclusions:

It can be concluded that the King II Codes of Corporate Governance compare very favourably indeed with other international systems of corporate governance, including Sarbanes-Oxley. The strong acceptance of King, both in South Africa and internationally as a benchmark system of governance would seem to underscore this view.

There is indeed confidence among South African based multinational corporations that the South African system of corporate governance provides adequate protection for investors and accountability for managers/companies. There is strong evidence to show that prior to the requirement to implement SOX, South African companies trading on international, and specifically U.S. stock markets were considered to be stable and well governed and therefore a worthwhile and safe investment destination. The strong capital inflow over the past five years has underscored this point.

It is clear that companies appreciate the flexible nature of the insider based system under the King II Codes and the ability to tailor the requirements of good corporate governance to meet their specific needs. Equally, however, companies have recognised that there is merit to the outsider, and the specifically legal sanctions based approach, of SOX.

The commonalities between King II and SOX are widely recognised, however, the one area where SOX does seem to have a greater appeal to governance professionals is in the area of reporting on internal accounting and audit practices. In this area, King II does not have the same capacity for enforcement and discipline that seems to be highly favoured among companies. There is a strong view that by drawing on the strengths of both approaches (SOX and King II) it is possible to achieve better corporate governance that covers all the critical aspects of the business.

And finally, the issue of costs must be seen in two distinct contexts. Firstly, in the context of the value added to companies in terms of their ability to effectively manage and implement internationally sound and acceptable corporate governance. Here the answer is strongly in the negative, the value added by the measures required by SOX is negligible, with the notable exceptions of the requirements related to internal accounting and audit standards. Secondly, from the perspective of the ability of South African multi-national companies to access lucrative U.S. capital markets, it is clear that the costs of SOX, while still seen as significant, are considered to be an acceptable cost to bear in return for the access to capital.

In the final analysis there seems to be a strong sense of commitment and support for the indigenous, insider based, King II regulations, but it appears that the system can be improved and strengthened by the addition of elements of the SOX regulations, but at a much more moderate cost if implemented judiciously.

6.5.2 Recommendations:

From the research and the conclusions, it would seem that there is merit in a detailed review of the requirements of the King II Codes with regard to the standards for the implementation and regulation of internal auditing and accounting controls, with a view to aligning them with the requirements under SOX. Additionally, it would be best if a review of this specific aspect of the King Codes were based on further detailed research. This research should specifically focus on the issue of the development of appropriate accounting standards that serve the best interests of sound corporate governance.

While the implementation of improved reporting on internal accounting and auditing standards is desirable, it must be achieved at a lower cost than is the case under SOX. The achievement of such a cost effective regime for South Africa would serve as an ideal arena for further research which should seek to draw on the experiences of South African companies that have already found innovative ways of mitigating the costs by incorporating many of the measures of SOX into their internal reporting systems.

One of the key weaknesses in this research is that the comparative newness of the requirement to implement SOX among the companies of the target population (a period of only one year in most cases) has meant that there is little experience and learning for respondents to draw upon in their consideration of the questions asked of them. A comparative study in three of four years time, targeting the same companies and individuals within those companies may well reveal significantly different experiences and views, as practitioners and organisations learn to do SOX better, faster and most significantly - cheaper.

In the course of the research process a number of interviewees made reference to rumours and discussions circulating in the market regarding SOX style changes to the Companies Act of South Africa in the wake of recent corporate financial scandals in the country. If a similar regime were to be implemented in South Africa, with similar associated costs it can be expected that the effect will also be similar.

The question however arises whether the South African stock market can absorb such impacts. If such a course of action were to be contemplated in South Africa, a recommendation of caution to policymakers would not be misplaced, and there is further merit in recommending that any such action should be carefully researched before implementation.

Bibliography:

African Development Bank. Ayogu. Melvin D. 2001. *'Corporate Governance in Africa': 2001. The Record and Policies for Good Governance'.* Abidjan, Cote d'Ivoire. African Development Bank, Economic Research Papers.

Aldrighi. D. M. 2003. The Mechanisms of Corporate Governance in the United States: an Assessment. *RBE Rio de Janeiro.* 57 (3) Jul / Set 2003. p 469 – 513

Armstrong. P 1995. 'The King Report on Corporate Governance'. *Boardroom.* I/95. p 16 - 25

Berle, A. and Means, G.C. 1967. *'The Modern Corporation and Private Property'.* Revised Edition. New York: Harcourt, Brace & World INC.

Bhasa, Malla Praveen: 2004. 'Global Corporate Governanance: Debates and Challenges'. *Corporate Governance*, vol 4, no 2. p 5-17

Bowen, Howard. R. 1953. *'Social Responsibilities of the Businessman':* New York NY: Harper and Brothers.

Boyatzis, Richard. E. 1998. *'Transforming Qualitative Information'.* Thousand Oaks, California. Sage Publications.

Brune. Christina. 2004. 'Embracing International Controls'. *Internal Auditor, June 2004.* p 75 - 81

Coustan, H. Leinicke, I.M. Pvexroad, W.M. Ostrosky, J.A. Thomas, February 2004. ' 'Sarbanes-Oxley (SOX);What it Means to the Marketplace' *American Institute of Certified Public Accountants.*

Denzin. N. K & Lincoln. Y. S. 1998. *'The Landscape of Qualitative Research'.* Thousand Oaks California. Sage Publications

Edmondson, G and Cohn, L. 2004. 'How Parmalat Went Sour', *BusinessWeek Online*, 12 January.

Eldridge. S. W. Kealy. B. T. 2005. SOX Costs: Auditor Attestation under Section 404. College of Business Administration, University of Nebraska at Omaha, June 2005

Henning, E. van Rensburg, W. Smit, B. 2004. *'Finding your way in qualitative research'.* First Edition. Pretoria: Van Schaik.

Ho. Chi-Kun. March 2005. 'Corporate Governance and Corporate Competitiveness: an International Analysis'. *Corporate Governance.* Volume 13. Number 2. p 211-253

Jessover. F. Kirkpatrick. G. March 2005. 'The Revised OECD Principles of Corporate Governance and their Relevance to non-OECD Countries'. *Corporate Governance.* Volume 13. Number 2. p 127 - 136

Khuzwayo, W. 2004. 'Macmed accountant failed to check books', *Business Report.* 30 January

La Porta R. Lopez-De –Silanes F and Schleifer A: April 1999. 'Corporate Ownership Around the World'. *The Journal of Finance.* Vol. LIV, No. 2. p 471 – 517

La Porta. R. Lopez-De –Silanes F. Schleifer. A and Vishney. R. June 2002. 'Investor Protection and Corporate Valuation'. *The Journal of Finance.* Vol. LVII, No 3. p 1147 - 1170

Le Roux. M. 2005. 'Senior Saambou officials granted bail' *Mail & Gardian online.* 14 September

Monks. Robert. A. G. 2005. 'Corporate Governance – USA – Fall 2004 Reform – The Wrong Way and the Right Way'. *Corporate Governance.* Volume 13. Number 2. March 2005. p 108 – 113.

Morgenstern. M. Nealis. P. Kahn. K. 2004. The Impact of Sarbanes-Oxley on Mid-Cap Issuers. *SEC Small Business.* KO494081.DOC1

Organisation for Economic Cooperation and Development (OECD). 2004. '*OECD Principles of Corporate Governance'.* Paris, France. OECD Publications.

Paredes. Troy. A. 2005. 'Corporate Governance and Economic Development'. *Regulation,* Spring 2005. 28. 1. p 34 – 39

Price-Waterhouse-Coopers. 2003. *A comparison of the King Report 2002 and the Sarbanes-Oxley Act of 2002.'* Johannesburg. 30 June 2003. Institute of Directors.

Ramirez. Steven. A. 2003. 'A Flaw in the Sarbanes-Oxley Reform: Can Diversity in the Boardroom Quell Corporate Corruption.' *St John's Law Review.* Fall 2003. Vol. 77. No. 4. p 837 - 866

Reed. Darryl. May 2002. 'Corporate Governance Reforms in Developing Countries'. *Journal of Business Ethics*, 37, 3: p223 – 247

Roussouw. G.J, van der Watt. A, Malan D.P. May 2002. 'Corporate Governance in South Africa'. *Journal of Business Ethics.* 37, 3; p 289 -302

Rueda-Sabater. Enrique.J. April 2000. 'Corporate Governance and the Bargaining Power of Developing Countries to Attract Foreign Investment'. *Conference Papers.* Volume 8, Number 2, p 117 - 124

Ryan. C. 1995. 'The King Report an outline'. *People Dynamics*'. July 1995. p 15 -18

Shleifer. Andrei. Vishney. Robert. W. April 1996. 'A survey of Corporate Governance' *National Bureau of Economic Research; Working Paper Series.* Working Paper 5554.

Strauss, A. Corbin, J. 1990. '*Basics of Qualitative Research: Grounded Theory Procedures and Techniques'.* Newbury Park, California: Sage Publications.

Teen. Ma. Yuen. 2004. A comparison of Singapore Corporate Governance Standards Against International Standards. Unpublished

The Institute of Directors in Southern Africa. 1994, 29 November. '*The King Report on Corporate Governance'.* Johannesburg, South Africa. The Institute of Directors of Southern Africa.

The Institute of Directors in Southern Africa. 2002, March. '*The King Report on Corporate Governance for South Africa – 2002 (King II Report)* '. Johannesburg, South Africa. The Institute of Directors of Southern Africa.

The Institute of Internal Auditors Research Foundation, January 2005. '*Sarbanes-Oxley Section 404; Looking at the Benefits*'. Altamonte Springs, Florida. The Institute of Internal Auditors Research Foundation.

'Uncle Sam's scandals at a glance'. 2002. *The Guardian,* 29 July: p1-2

United Kingdom of Great Britain and Northern Ireland. The Committee on the Financial Aspects of Corporate Governance. 1992. '*Committee Report*'. GEE and Co. Ltd

United Sates of America. Restoring Trust: Report to the Honourable Jed. S, Rakoff Unites States District Court for the Southern District of New York. 2003. *Corporate Governance for the Future of MCI Inc.* Richard. C. Breeden. August 2003

United States of America. One Hundred Seventh Congress of the United States of America, at the Second Session. 2002. *Sarbanes-Oxley Act of 2002.* H.R. 3763-3

Annexure A:

Table 1: Comparison of Corporate Governance Measures between King II, Sarbanes-Oxley (SOX), United Kingdom (UK) and Singapore.

Board of Directors and Audit Committee	
Composition:	
King II	Must be of sufficient size and comprise both executive and non executive directors of who at least some must be independent. The Chairperson should also be independent.
SOX	Does not separately address the issue.
UK	At least half the members should be independent non executive directors. Chairman should also be independent.
Singapore	At least a third of the members should be independent.
Responsibility:	
King II	The Board is ultimately accountable for the affairs of the company. It should adopt a charter and make provision to deal with the issues of whistle blowing.
SOX	No specific reference is made. Although whistle blowing is made the responsibility of the Audit Committee
UK	Provides entrepreneurial leadership within a framework of effective control. It sets company values and ensures obligations to shareholders are understood and met.
Singapore	Must set out internal guidelines setting out matters that require Board approval and the material transaction requiring Board

	approval.
Audit Committee to Board:	
King II	Majority of members must be independent and financially literate. Outlines various responsibilities
SOX	All members must be independent and at least one must be a financial expert. Various responsibilities outlined.
UK	Must consist of at least three members all of whom should be independent directors. At least one member must have financial / accounting expertise.
Singapore	Must consist of at least three members the majority of whom, including the chair should be independent. At least two members are expected to have accounting or financial expertise.
	Financial Reporting and Internal Control:
Financial reporting responsibility:	
King II	Board must report certain items annually and regarding preparation of financial statements and implementation of internal controls.
SOX	Quarterly certifications by the CEO and CFO regarding compliance with the exchange act.
UK	No current requirements.
Singapore	No current requirements.
Financial Disclosures:	
King II	No specific requirements
SOX	Required disclosure of all material off balance sheet transactions

	and other defined relationships in the quarterly reports. All correcting adjustments to the financial statements must be made. Prohibition of certain non-GAAP info.
UK	No specific requirements
Singapore	No specific requirements
Internal Controls:	
King II	Part of the risk management process. Board must maintain recognised systems and make disclosures about risk management process.
SOX	CEO and CFO must certify quarterly regarding their responsibility over disclosure and control procedures. Annual internal control report must be prepared and included with annual SEC filings.
UK	Board responsible for maintaining a system of internal control and for reporting to shareholders at least annually. Controls must cover, material, finance, operational, compliance and risk controls.
Singapore	Management required to maintain a control system under Board supervision. Financial, operational and compliance controls are specifically cited. The Audit Committee is charged with reviewing materials and risk controls on an annual basis. The Board is required to comment on the adequacy of the controls.
Accounting and Auditing:	
Independence:	
King II	External auditors should uphold the highest personal and

	professional ethics and maintain an awareness of their responsibility to shareholders.
SOX	Prohibits defined activities by the external auditor. Limits employment of former external auditors, and prohibits fess to be earned for non-audit functions. Stricter rotation rules.
UK	No specific reference
Singapore	No specific reference
Interaction with companies:	
King II	Requires an effective internal audit function with formal audit charter.
SOX	Requires mandatory communications between external auditor and the audit committee.
UK	No specific internal audit function required, however, the Audit Committee should consider the need on an annual basis.
Singapore	Internal auditor must report to the Audit Committee Chair. The internal auditor must maintain the highest possible standards.
New Attestation Report:	
King II	Not separately addressed
SOX	External auditor must issue an attestation on managements internal controls.
UK	Not separately addressed
Singapore	Not separately addressed
Disclosure:	
King II	Requires separate disclosure of fees paid to the external auditor for non audit services and a detailed description of the services.
SOX	Requires disclosure paid to the external auditor for the two most recent years and a description of the services.

UK	Not separately addressed
Singapore	Not separately addressed
Organisational Ethics and Remuneration:	
Code of Ethics:	
King II	Standards of ethical behaviours should codified in a code of ethics and adherence disclosed.
SOX	Disclose whether code of ethics applicable to senior management has been adopted. Must make code publicly available and disclose changes or waivers.
UK	Requires that the highest ethical standards be maintained at all times and that the requirements be contained in a defined document.
Singapore	Not yet specifically addressed.
Compensation:	
King II	Performance related elements of compensation should form a substantial portion of the package. Vesting periods, re-pricing of options must be approved by shareholders.
SOX	Illegal to extend loans to directors or executive officers. Requires reimbursement of some compensation by CEO and CFO if financial statements are restated.
UK	Requires remuneration to be performance related, and performance criteria should be challenging. Recommends vesting periods of up to three years and longer.
Singapore	Remuneration should take into account industry norms, the relative performance of the company and the performance of

	individuals. Long term, share based, incentive based schemes are encouraged so as to align the interests of shareholders and directors.

Annexure B:

Research Questionare:

Purpose:

The purpose of this questionnaire is to provide a structure around which an interview will be conducted.

The key purpose of this interview is to investigate the various aspects of corporate governance applicable in a developing economy such as South Africa. Both the domestically developed measures and those imposed by foreign legal and business imperatives will be investigated. To establish their impact on multinational dual listed companies in particular, and to compare the internationally developed governance measures against those developed domestically, with specific reference to the costs versus the value derived.

Your views and knowledge with regard to the above issues, and specifically on the issues outlined below will assist in determining an answer to the key research questions.

Instructions:

Please note that the specific questions outlined below are intended to serve only as a guideline. There are no right or wrong answers to the questions, rather, the objective is to obtain the views of the interviewee from which some conclusions will be drawn.

The interviewer will ask each question and then seek to develop ideas and themes arising from the initial response. This will allow a more in depth and detailed exploration of the issues under discussion.

QUESTION 1.

In your opinion, how do the measures of corporate governance developed in South Africa compare with other voluntary measures and codes developed in other parts of the world, and specifically the Sarbanes Oxley requirements?

QUESTION 2.

Do you think there is there confidence among South African based multinational corporations that the South African system of corporate governance provides adequate protection for investors and accountability for managers/companies?

QUESTION 3.

Do you understand the difference between an insider system of corporate governance and an outsider system, and can you elaborate.

QUESTION 4.

From your perspective and experience is an internal system of guidelines preferable to an external legislated system? Can you elaborate on you answer and provide examples where possible.

QUESTION 5.

From your experience are the measures encompassed in the Sarbanes-Oxley (SOX) act necessary and applicable to businesses operating in South Africa?

QUESTION 6.

Given your experience following the first full year of SOX implementation in 2005, is the cost associated with the implementation of corporate governance measures justified in terms of the value it brings to the company, specifically when seen in the light of the costs associated with Sarbanes-Oxley?

Annexure C.

Letter to interviewees.

Dear ....

I refer to our telephone conversation of .... July 2006 with regard to the Research Thesis I am conducting in partial fulfillment of the requirements for the degree of Master of Business Leadership at the Graduate School of Business, University of South Africa.

As mentioned in our discussion, the purpose of the research is to investigate the various aspects of corporate governance applicable in a developing economy such as South Africa.

Both the domestically developed measures and those imposed by foreign legal and business imperatives will be investigated. To establish their impact on multinational dual listed companies in particular, and to compare the internationally developed governance measures against those developed domestically, with specific reference to the costs versus the value derived.

I wish to assure you that neither your name nor that of your company will be listed in the body of the research report in order to protect the confidentiality of the information you provide. You should note, however, that in order to verify the validity of the research being conducted, these details will be provided to the UNISA School of Business Leadership in a separate document.

In order to provide initial impetus to our interview I am attaching a copy of some guideline questions which I would ask you to review prior to the start of our interview. Please note, however, that these questions are intended to serve only as a guideline, that there are no right or wrong answers to these questions. I am interested in your views and opinions arising from the questions posed, and I am also hopeful that our discussion will assume a much wider context as we proceed.

I expect that our interview will last in the region of one to one and a half hours. I sincerely appreciate your willingness to share your valuable time with me for the purposes of conducting an interview.

I look forward to speaking with you.

Kind regards.

Mark Albon

Annexure D.

List of interviewees and dates of interviews undertaken. NOTE that all interviewees were asked the same basic questions as contained in the questionnaire in Annexure B. Further questions and discussion were prompted by the responses of each interviewee.

1. AngloGold Ashanti Limited

   Interview with with Chris Bull, Company Secretary, and Bobby Barua, Manager SOX

   Telephone interview on 7 September 2006

   cbull@anglogoldashanti.com

   011 6376000

2. Harmony Gold Limited

   Interview with Ansie Malan SOX manager, Harmony Gold

   Telephone interview on 14 September 2006

   Ansie.Malan@Harmony.co.za

   011 411 2329

3. Sappi Limited

   Interview with Craig Mcleary, , SOX manager, Sappi Limited

   Interview in person on 22 August 2006, and written responses

   craig.mcleary@sappi.com

   011 407 8111

4. Goldfields Limited

   Interview with Johan van der Berg, Company Secretary, Goldfields Limited johan.vandenberg@goldfields.co.za

011 6442566

Telephone interview on 11 August 2006

5. Justice Mervyn King

   Chairman of the King Commission on Corporate Governance in South Africa

   mking@brait.com

   011 5071318

   Telephone interview on 8 August 2006

6. SASOL Limited

   Interview with Michele du Toit, Deputy Company Secretary, SASOL Limited

   Michelle.duToit@sasol.com

   011 441 3359

   Interview in person in Johannesburg on 30 August 2006