

## Using Corporate Social Responsibility to Improve Employee Participation in a Business

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# Using Corporate Social Responsibility to Improve Employee Participation in a Business.

## Abstract

Workplace forums are intended to promote employee participation in a business but have not been a success in South Africa for a number of reasons. Certain corporate social responsibility principles, particularly those found in the King IV Code, can help improve employee participation in a business and ultimately lead to an improvement of the relationship that employer have with their employees.

### 1. Introduction

The employer and employee relationship is an important one, particularly in the South African context. This relationship is regulated mainly by the Labour Relations Act (LRA), which offers employees extensive rights and aims to harmonize the relationship between these parties.<sup>1</sup> However the LRA is not without its flaws. The following thesis will highlight a flaw in the LRA, workplace forums, which does not help improve the employer-employee relationship and at worst could lead to an erosion of the relationship between employees and employers. This thesis will then argue that corporate governance principles can be used to improve the relationship between employers and employees. This thesis is divided into 4 chapters. The first chapter will look at workplace forums in the LRA, which have been underutilised and this underutilisation has not helped the relationship between employees and employers, which can be strained at times in South Africa.

The second chapter will then look at corporate governance in general and the theoretical underpinnings of corporate social responsibility. This chapter will also introduce the business case for corporate governance which outlines why companies and employers should

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<sup>1</sup> Labour Relations Act 66 of 1995 (Hereafter the LRA).

incorporate corporate social responsibility into their business model. The third chapter will then start looking at the South African corporate governance framework, with a particular focus on King IV Report on Corporate Governance and some of its theoretical underpinnings. The final chapter will then present companies and employers with practical considerations on how they can implement corporate governance principles and corporate social responsibility into their organization in order to strengthen the relationship they have with their employees.

## 2. Lack of use of workplace forums

### 2.1. Introduction to Chapter 1

The issue to be highlighted in the LRA that this paper will focus on are workplace forums which are found in Chapter 5 of the Act.<sup>2</sup> This paper focuses on workplace forums for a number of reasons. Firstly it is because it is one of the mechanism through which the LRA attempts to improve the relationship between employees and employers. While this will be discussed in greater detail below, workplace forums attempt to improve the relationship by incorporating joint-decision making and consultation which should lead to greater employee participation in an organization or company. The second reason that this paper is focusing on workplace forums is that despite the good intentions they have, they are seen as a failure for a number of reasons which will also be discussed in greater detail in this chapter. These factors tie into the core argument of this thesis, which is mainly how law (statutes, common law and corporate governance codes) can help employers engage with their employees and ultimately improve the employee-employer relationship.

### 2.2. Establishment and overview of the functions of workplace forums

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<sup>2</sup> Chapter 5 of LRA.

S79 of the LRA lists the establishment and general functions of workplace forums.<sup>3</sup>

According to this section, workplace forums are established to promote the interests of all employees in a workplace, regardless of their affiliation to a trade union.<sup>4</sup> These forums are also to enhance efficiency in the workplace and aim to enhance joint-decision making about matters related to s86 of the LRA.<sup>5</sup> The ways in which they are to enhance employee efficiency is through consultation with employers on a variety of areas. These areas include retrenchments, mergers or transfers of ownership that impact employees, education and training, production and development plans and restructuring the workplace and introduction of new technology or methods.<sup>6</sup> These forums are thus intended to focus on practical issues at a workplace and address issues that do not fall within the ambit of a normal bargaining council. Joint decision-making areas that the workplace forum should address include disciplinary codes and procedures, measures protecting or advancing those disadvantaged by unfair discrimination and rules related to the regulation of the workplace.<sup>7</sup> Workplace forums are thus there to engage employees of an organization through joint-decision making and a focus on the practical issues in a workplace.

Workplace forums are to be popularly elected by employees and the members are allocated according to the occupational distribution of the workforce to ensure that all members, including those who are not represented by a trade union, are represented in the forum.<sup>8</sup> In order to achieve its goals of promoting the interests of all employees and enhancing workplace efficiency, workplace forums should meet regularly with the employer. The forum

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<sup>3</sup> S79 LRA.

<sup>4</sup> S79(a) of the LRA.

<sup>5</sup> S1(1) of the LRA.

<sup>6</sup> Government Gazette 16861, 1995.

<sup>7</sup> Government Gazette 16861, 1995.

<sup>8</sup> S80 of the LRA.

should then report back to the workplace on the details of the meeting.<sup>9</sup> The employer also has a number of obligations in relation to the workplace forum. These obligations are a report of the financial and employment situation of the business to the forum.<sup>10</sup> This reporting is in addition to any measures contained in a bargaining agreement that the employer must adhere to. Workplace forums have been introduced into the South African labour law regulatory mechanism because it has been noted that there needs to be proper processes that deal with consultation and joint decision-making between employers and employees on issues that related to production in the workplaces.<sup>11</sup>

These production issues are related to areas of concern that affect employees in their daily life as mentioned above. Workplace forums can take four forms in terms of the provisions of the LRA. They can be a bargained workplace forum based on a collective agreement which was entered into between the representative trade union and employer.<sup>12</sup> The second type of work forum that can exist is one with a bargained constitution.<sup>13</sup> This bargaining will take place between the representative trade union and employer and the workplace forums functions will be regulated by the constitution. The third type that can exist is a workplace forum constituted by a Commission for Conciliation, Mediation and Arbitration (CCMA) commissioner.<sup>14</sup> The final type is a workplace forum that is trade-union based.<sup>15</sup> Now it is time to consider the functions of workplace forums in greater detail.

## 2.3. Functions of Workplace Forums

### 2.3.1. Consultation

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<sup>9</sup> Geoffrey Wood and Pralene Mahabir "South Africa's Workplace Forum system: A stillborn experiment in the democratisation of work?" (2001) 32 *Industrial Relations Journal* 3.

<sup>10</sup> S83 of the LRA.

<sup>11</sup> J. A. Slabbert, J. J. Prinsloo, B. J. Swanepoel and W. Backer *Managing Employment Relations in South Africa* (eds.) (2005).

<sup>12</sup> S80(7) of the LRA.

<sup>13</sup> S80(9) of the LRA.

<sup>14</sup> S80(9) of the LRA.

<sup>15</sup> S80(10) of the LRA.

The first function of the workplace forum is to increase employee participation in the workplace through consultation with the employer. Consultation is required on matters that are covered by s84 of the LRA.<sup>16</sup> Some of these matters have been mentioned above and include restructuring the workplace, changes in organisation of work, partial or total plant closures and the dismissal of employees for operational requirements.<sup>17</sup> Consultation in terms of the LRA does not have a set definition and can thus include a wide range of actions. However it is envisaged to be the employer doing more than notifying the forum on a proposal and consider any suggestions it may make and it requires the employer to sit down with the forum and carefully contemplate any input made by the forum, which is there to represent the interests of all employees at the workplace.<sup>18</sup>

In this context, consultation is almost equated to negotiation. This is because the employer is required to obtain more than the opinion of employees on certain issues.<sup>19</sup> Employers are required to reach an agreement with employees on the issues which are to be addressed in s84.<sup>20</sup> Thus the employer must allow the workplace forum to make representation and advance alternate proposals based on the interests of the workers in the workplace. If the employer disagrees, the employer must provide reasons for its disagreements with the proposal put forward by the workplace forum.<sup>21</sup> The definition of consultation entails a good faith aspect on the part of the employer, instead of the employer just dictating demands to the workplace forum and not engaging with the interests of the employees.

In addition to the list of issues on which an employer must consult with the workplace forum on, there are addition matters that the employer and workplace forum may consult on. The

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<sup>16</sup> S84 of the LRA.

<sup>17</sup> S84 of the LRA.

<sup>18</sup> John Grogan *Workplace Law* 11th ed (2014).

<sup>19</sup> S85 of the LRA.

<sup>20</sup> Felicity Steadman "Workplace Forums in South Africa: A Critical Analysis" (2004) 25 *Industrial Law Journal* 3.

<sup>21</sup> Steadman op cit note 20.

first of these additional matters are ones which a bargaining council can confer on a workplace forum, provided they fall within the registered scope of the bargaining council.<sup>22</sup> Further additional matters that an employer and workplace forum may consult on include matters that allow the workplace forum and employer to consult on once a collective agreement has been concluded.<sup>23</sup> Additionally any law may confer on a workplace forum the right to be consulted about other matters related to production in the workplace.<sup>24</sup> Thus consultation between the employer and workplace forum cover a range of issues and could be seen as an extension of collective bargaining at the workplace level. This is because consultation can cover such a wide variety of issues, similar but not the same as collective bargaining, but is focused at the workplace level. Now to consider the next function of the workplace forum, which is joint decision-making between it and the employer.

### 2.3.2. Joint Decision-making

S86 of the LRA states that the employer must enter into joint decision-making once the workplace forum is established.<sup>25</sup> A consequence of joint decision-making is that the employer is required to obtain consensus on matters that are subject to joint decision-making. This places a constraint on what an employer may do in certain matters concerning the workplace. It thus presents a departure from the employer unilaterally dictating to employees on certain matters. It envisages a situation where decision-making is not hierarchical or vertical in nature but is now more horizontal. This is not to say that the employer can never unilaterally introduce conditions in the workplace. Rather it says that whenever a matter requires joint decision-making, then employees are to be consulted and a consensus is to be reached. The following matters require joint decision-making: disciplinary codes and

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<sup>22</sup> S84(2) of the LRA.

<sup>23</sup> S84(3) of the LRA.

<sup>24</sup> S84(4) of the LRA.

<sup>25</sup> S86(1) of the LRA.

procedures, measures designed to protect and advance persons disadvantaged by unfair discrimination, rules for the proper regulation of the workplace other than work-related conduct and changes to the rules of employer-controlled social benefit schemes by the employer or employer-representatives.<sup>26</sup>

Similar to matters that require consultation, a collective agreement can be concluded between a representative trade union and employer which confers upon the workplace forum the right to joint decision-making on additional matters not mentioned in s86.<sup>27</sup> Any law may also confer on the workplace forum the right to participate in joint decision-making matters.<sup>28</sup> Thus there are a wide range of issues that require joint decision-making between the employer and the workplace forum, while additional matters may require joint decision-making if the workplace forum is given the scope to do so either by a collective agreement or any other law. If the employer and workplace forum cannot reach a consensus then the matter must be arbitrated in accordance with the agreed procedure or referred to the (CCMA) if there is no agreed procedure.<sup>29</sup> This ensures that there is an effective dispute resolution mechanism in the instance when consensus cannot be reached. The final function of the workplace forum is to ensure that there is sufficient information sharing between it and the employer.

### 2.3.3. Information sharing

The right to disclosure of information is key when it comes to consultation and joint-decision making. Access to and disclosure of information is key when employees are trying to negotiate for their interests. S89 (1) of the LRA regulates what type of information the

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<sup>26</sup> S86(1) of the LRA.

<sup>27</sup> S86(2) of the LRA.

<sup>28</sup> S86(3) of the LRA.

<sup>29</sup> S86(4) of the LRA.

employer is to disclose to the workplace forum.<sup>30</sup> It is similar to the type of information that is to be disclosed to trade union in terms of s16. The information to be disclosed must be relevant. The employer however is not required to disclose the following type of information: information that is legally privileged, information that if disclosed will be a contravention of a prohibition on the employer imposed by the law or order of court, information that is confidential and if disclosed may cause substantial harm to an employee or employer and information that is private personal information relating to an employee, unless the employee consents to the disclosure of that information.<sup>31</sup> There are thus some ways in which an employer may refuse to disclose certain information to the workplace forum. It should be noted that in terms of this section there is no obligation for the workplace forum to disclose information to the employer. This is there to alleviate the asymmetrical power imbalances that exist between the employer and employees.

#### 2.4. Purposes of workplace forums

Workplace forums are aimed to harmonize the relationship between employers and employees. Employers and employees are sometimes seen as adversaries as they compete for returns from a business.<sup>32</sup> This is because employers are primarily driven by profit (except for non-profit companies or charities) and lowering wages of employees is one way of doing so, while employees are driven by earning the most from their labour in order to support their livelihoods. Thus these competing interests can put these parties against one another. But workplace forums aim to lessen this adversarial stance between employees and employers because cooperation is seen as essential in the workplace because it can make work safe and more satisfying for the employees and also more productive on behalf of the employers.<sup>33</sup>

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<sup>30</sup> S89(1) of the LRA.

<sup>31</sup> S89(2) of the LRA.

<sup>32</sup> Clyde W. Summers "Workplace Forums in South Africa: A Critical Analysis" (1995) *Industrial Law Journal*.

<sup>33</sup> Explanatory Memorandum to the Labour Relations Act.

Workplace forums are not intended to completely remove the conflict between employers and employees as tensions will always exist when the goals of the two are at such opposite ends but aims to remove this conflict as much as possible in order to improve productivity.

However workplace forums have been underutilised and ultimately can be seen as a failure in South Africa for reasons that will be discussed below.

## 2.5. Reasons for the failure of workplace forums in South Africa

### 2.5.1. Trade union opposition

In South Africa it has been shown that these workplace forums are not being used as much as originally forecasted.<sup>34</sup> This is due to a number of reasons. The first reason is due to union opposition of these forums. Workplace forums are there to represent all employees in a workplace, regardless of union membership. This means that non-union members are offered the same protection under a workplace forum as union members, the former of which have not paid a union fee. This has the potential to undermine the strength of union in the workplace as non-union members are now represented. Furthermore this has the potential to see a decline in union membership as workers would prefer to be represented at the workplace forum level and pay no union fees rather than be represented by a union which requires a union fee.<sup>35</sup> This will see a decrease in the importance of the role of unions in the workplace as members will shift away from being part of a union.

This potential decline in union membership and union role in the workplace could have adverse consequences for workers for a number of reasons. The first negative consequence is that in South Africa historically it has been trade unions that are primarily recognised as being the safeguard of workers as they can mobilize workers quickly and effectively for

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<sup>34</sup> MM Botha "In Search of Alternatives or Enhancements to Collective Bargaining in South Africa: Are Workplace Forums a Viable Option" (2015) 18 *Potchefstroom Electronic Journal* 5.

<sup>35</sup> O. Lehulerle "Workplace Forums: Co-Determination and Workers' Struggle" (1995) 19 *South African Labour Bulletin* 2.

industrial action.<sup>36</sup> Trade unions in South Africa also have the fear that increased use of workplace forums will see the significance of shop steward committees decrease.<sup>37</sup> If one follows this argument, then this will further weaken the power position of trade unions in the workplace. Trade unions are against workplace forums for another reason: there is no duty to bargain when it comes to workplace forums. Employers are required to consult, engage in joint decision-making and reach consensus on certain issues with the workplace forum but are under no duty to engage in bargaining, which is still reserved for collective bargaining. Thus trade unions fear that this lack of duty to bargain may erode the existing collective bargaining structures if workplace forums were to be utilised more than the current situation.<sup>38</sup>

This paper does not suggest that workplace forums will replace trade unions but rather that as these workplace forums become stronger and grow in membership, they will be a potential challenge for trade unions and may garner much support. But it should always be remembered that trade unions are also key actors in the role of collective bargaining which is a key theme of labour law in South Africa. They represent a centralized form of collective bargaining as they can represent many workplaces at the same time, unlike a workplace forum which can only represent one workplace at a time. Trade unions have the ability to set the same working standard and conditions across many workplaces in the same sector due their large membership. This large membership allows them to engage in effective collective bargaining with employers.

### 2.5.2. Employer, not workplace forum initiates

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<sup>36</sup> Gay W. Seidman *Manufacturing Militance: Workers' Movements in Brazil and South Africa* (1994).

<sup>37</sup> Darcy Du Toit, Shane Godfrey, Carole Cooper, Graham Giles, Tamara Cohen, Bradley Conradie, Anton J. Steenkamp *Labour Relations Law: A Comprehensive Guide* 6th ed (2015).

<sup>38</sup> Steadman op cit note 20.

The second reason as to why workplace forums are seen as failures in the South African context is because it is up to the employer to begin consultation and joint decision-making on matters that are to be addressed between it and the workplace forum. The workplace forum itself is not given the option to initiate consultation or joint decision-making on matters, based on the wording of Chapter 5.<sup>39</sup> This is a missed opportunity within the LRA because it means the workplace forum and employees will always have to wait on the employer in order to address issues that require consultation or joint decision-making. This results in the workplace forum being underutilised as employers will try to avoid consultation and joint-decision making on issues as this may be time consuming, costly and not directly related to the productivity of the business. It is a shame because in other jurisdictions there mechanism that enable the workplace forums to be the initiator when it comes to issues that require consultation and joint decision-making. For example in Germany workers are able to initiate the consultation and joint-decision making processes in what is known as a workplace council, which is the German equivalent of a workplace forum.<sup>40</sup>

### 2.5.3. Inconsistent working standards and conditions

If there was to be a greater shift towards using workplace forums, there would be decentralized bargaining and this could result in inconsistency in working standards and conditions.<sup>41</sup> This inconsistency would be the result of each workplace forum having its own conditions as per the agreement it would reach with the employer and this may not be standard across all workplaces in a particular industry. It could be argued that workplace forums would not present a material challenge to the power and strength of a trade union in a workplace because workplace forums cannot negotiate on issues that are addressed by

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<sup>39</sup> For example s85 and s86 of the LRA state that "the employer must...". No where in the Chapter does it permit the workplace forum to initiate matters related to joint decision-making or consultation.

<sup>40</sup> Darcy du Toit "Corporatism and Collective Bargaining in a Democratic South Africa" (1995) 16 *Industrial Law Journal* 785.

<sup>41</sup> Lehlere op cit note 35.

collective agreement with the representative trade union.<sup>42</sup> However there are issues which could materially affect a workplace which are not part of a collective agreement and thus the workplace forum could negotiate on these issues. Some of these have been discussed above and include disciplinary codes and advancing the interests of previously disadvantaged groups.

Thus it can be seen that the first disadvantage of these workplace forums is that they have the potential to undermine the role of the trade union in a workplace, as discussed above. Some have even argued that it could lead to parallel forms of collective bargaining in the workplace, one through a trade union and one through the workplace forum.<sup>43</sup> This could create confusion, conflict and competition among a trade union and workplace forum which could ultimately leave workers unprotected on some issues.<sup>44</sup>

#### 2.5.4. Issues Covered

The next problem with workplace forums is with the issues they cover. These forums tend to deal with issues which do not have an impact on workplace democracy, such as soft human resources issues and meaningful production issues cannot be seriously addressed through these forums as these fall outside the ambit of the workplace forum.<sup>45</sup> This means that material issues are to be addressed through the representative union, which leaves non-representative members without representation on these matters. This presents another instance where majority rule wins over general workplace democracy. The issues which workplace forums are allowed to address are also limited when one considers the range of issues that workplace forums or similar worker participation structures can deal with. For

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<sup>42</sup> S84(1) LRA.

<sup>43</sup> Marius Olivier "Workplace Forums: Critical Questions from a Labour Law Perspective" (1996) 17 *Industrial Law Journal* 808.

<sup>44</sup> K. Von Holdt "Workplace Forums: Can they tame Management?" (1995) *South African Labour Bulletin*.

<sup>45</sup> Sivalingam Pather *Workplace Forums in Terms of the Labour Relations Act 66 of 1995 as Amended* (Unpublished LLM thesis, Nelson Mandela Metropolitan University, 2007).

example in Germany work council, which is the German equivalent of workplace forums, can deal with a greater range of issues. These issues include beginning and end of daily working hours including breaks, issues relating to employee overtime and issues related the company wage structure such as bonuses.<sup>46</sup>

The limited scope of application of workplace forums is another weakness that is present in these type of worker participation and engagement structures. The first issue related to this is that one of the ways to establish a workplace forum is by a majority union in the workplace.<sup>47</sup> This raises a number of issues, namely that a workplace forum cannot be established if there is no majority union or majority of workers in the workplace do not belong to a union. This means that workers are excluded from establishing a workplace forum because the dominant trade union in the workplace will not establish one or may veto the decision to establish one.

The fact that workplace forums must be established by a majority trade union is another sign of their inefficiency as a means to engage with employees. One can assume that since workplace forums must be established by a majority trade union, then its composition will be primarily from that trade union. This means that the workers who are not part of that union would be either not represented or underrepresented in the workplace forum. The result of this is those workers will not be included in consultation and joint decision-making processes and this may threaten their rights or interests or leave them vulnerable. Related to the issue of exclusion is the size requirement needed to establish a workplace forum. Workplace forums may only be established in workplaces where there more than 100 employees<sup>48</sup> This has the consequence of excluding workplaces where there are less than 100 employees from establishing a workplace. One would imagine that a result of this is that many employees in

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<sup>46</sup> B Hepple "Comparing Employee Involvement: Divergence, Coherence and Legal Stimulants" in Holand A eta/(eds) *Employee Involvement in a Globalising World: Liber Amicorum Manfred Weiss*.

<sup>47</sup> S80(2) of the LRA.

<sup>48</sup> S80 of the LRA.

small and medium size enterprises are unable to have a workplace forum established to represent the interests of their employees.

#### 2.5.4. Realities of South Africa

Another reason as to why workplace forums are not effective in South Africa is because they do not consider the socio-economic realities of the country. Workplace forums, like many other aspects of labour law legislation in South Africa, impose structures on a liberal market system that are not conducive to that market.<sup>49</sup> This liberal market system is adversarial in nature as workers and employers are always seen to be in conflict with each other. This is due to the manner in which company law and the corporate landscape has developed in South Africa. It has developed in a manner that does not necessarily aim to institutionalize the views of employees into a company.<sup>50</sup> Liberal market systems can be contrasted with coordinated market systems. These are systems where the relationship between the governance of a company and labour law are harmonious as both area aimed at integrating the views and grievances of employees into the company.<sup>51</sup> As long as the views of employers and employees remain as adversaries within the market system, it is difficult to imagine workplace forums becoming effective. This paper will look at how the use of corporate governance principles can help integrate the views of employees into the company and thus offer greater participation to employees.

#### 2.6. Failure to amend workplace forums

It was soon noticed that workplace forums were not popular in South Africa so there was a proposal to amend the LRA in order to make them more popular. In 2000 there was a proposal in the Labour Relations Amendment Bill that hoped to address some of the

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<sup>49</sup> Dennis Davis and Michelle Le Roux "Changing the Role of the Corporation: A Journey Away from Adversarialism" (2012) *Acta Juridica* 306.

<sup>50</sup> Davis and Le Roux op cit note 49.

<sup>51</sup> Davis and Le Roux op cit note 49.

problems with workplace forums which have been highlighted above.<sup>52</sup> The proposed amendments included having majority unions have less power when it comes to the formation and functioning of workplace forums. This was done in hope of increasing the number of workplace forums that could be formed and thus provide additional protection to employees. There was also hope that the minimum 100 employee benchmark could be revised.<sup>53</sup> These would have been positive changes to the LRA. However none of these measures were adopted and the current provisions are the ones that prevailed. The proposed amendments also failed to address a number of issues which we currently see with workplace functions, namely the enforceability of workplace agreements, the overlap in functions and roles that exist between workplace functions and trade unions and the fact that it is up to the employer to initiate consultation and joint decision-making.<sup>54</sup>

### Conclusion of Chapter 2

Therefore it can be seen that workplace forums have great potential if they were to be utilised correctly. This paper contends that if they were utilised properly, they would be able to offer employees a better mechanism through which employees can voice their concerns, engage in effective consultation and joint decision-making, give rise to greater workplace democracy and ultimately offer vulnerable employees protection. All of this would ultimately lead to greater engagement between employees and employers. This paper will later explain how corporate governance principles could be used to address the shortcomings that the South African labour law regime has experienced with workplace forums and thus better the relationship between employee and employer.

### Chapter 3-Corporate Governance and Corporate Social Responsibility

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<sup>52</sup> Labour Relations Amendment Bill, 2000.

<sup>53</sup> Steadman op cit note 20.

<sup>54</sup> Slabbert et al op cit note 11.

### 3.1. Introduction

This chapter will introduce the concept of corporate governance and how it can be in the best interest of companies and employers to adopt various corporate governance principles to benefit their employees and the business as a whole. The chapter will begin with an analysis of what exactly corporate governance means. It will also discuss the concept corporate social responsibility (CSR) which is closely related to corporate governance. Then this chapter will look at the corporate governance regulatory framework in South Africa. This chapter will then outline some theoretical underpinnings on corporate social responsibility and then it will discuss corporate social responsibilities in relation to employees in companies. The purpose of this chapter is to highlight how the theoretical underpinnings of corporate governance and CSR can be used to strengthen the relationship between employees and employer in a manner in which workplace forums cannot.

### 3.2. Defining Corporate Governance

There is no single definition of corporate governance that can encompass all of its different facets. This is because it is a concept that straddles law, economics and politics and thus may have different definitions depending on how one wishes to approach it. The narrow definition of corporate governance would be defined as the process by which companies are managed and controlled.<sup>55</sup> This definition is essentially looking at how shareholders entrust management with the day-to-day control of the company. Corporate governance originates from the agency theory, which namely looks at the relationship between ownership, shareholder (principal) and manager (who is the agent of shareholder).<sup>56</sup> Thus there is a need to separate management (directors) from ownership (shareholders) and the need for management (agent) to act in best interests of shareholders (principal) which is to maximise

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<sup>55</sup> Report of the Committee on the Financial Aspects of Corporate Governance (Sir Adrian Cadbury Chair).

<sup>56</sup> Kathleen M. Eisenhardt 'Agency Theory: An Assessment and Review' (1989) 14 *The Academy of Management Review* 1.

profits. The wider definition of corporate governance would entail the overseeing the conduct of an organization by balancing the interests of internal and external stakeholders in order to ensure responsible behaviour by that organization.<sup>57</sup> This definition states that the corporation should consider the interests of stakeholders other than shareholder, such as employees, debtors, creditors and the environment, which is sometimes referred to the stakeholder inclusivity. Now this paper will consider some of the models of corporate governance.

### 3.2.1. Shareholder Primacy Model of Corporate Governance

This is known as the shareholder primacy model of corporate governance. This model of corporate governance argues that shareholders are to be regarded as the most important stakeholders in relation to the company.<sup>58</sup> There are economic justifications for this line of reasoning. The first economic justification for this model is that shareholders invested their capital in the company and so they are entitled to its profits.<sup>59</sup> While companies are under no obligation to declare dividend even if they make a profit, it is seen that since shareholders have put their money into the company, they should be the first to reap the benefits from the company's activities. The second justification is that shareholders are best positioned to police the efficiency of the company as they are residual claimants of whatever is left over after all other claims have been paid.<sup>60</sup> Shareholders can police the efficiency of companies through powers they possess such as approving fundamental transactions and electing directors to the board.

The third justification is that the survival and economic success of the company will deliver social benefits to other stakeholders and these benefits will not be delivered if the company is

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<sup>57</sup> Jean Jacques du Plessis, Anil Hargovan, Mirko Bagaric and Jason Harris *Principles of Contemporary Corporate Governance* (2011).

<sup>58</sup> D. Gordon Smith 'The Shareholder Primacy Norm' (1998) 23 *Journal of Corporation law*.

<sup>59</sup> *South African Company Law for the 21<sup>st</sup> Century: Guidelines for Corporate Law Reform*.

<sup>60</sup> *South African Company Law for the 21<sup>st</sup> Century: Guidelines for Corporate Law Reform*.

a financial failure.<sup>61</sup> This reasoning flows from the point that a company is an integral part of the economy as it hires employs people, has creditors and debtors. If the company were to fail, then other stakeholders would fail or at least be put in a precarious position. Thus, since shareholders exercise control over the company through some of the powers mentioned above, they are in the best position to ensure the company does not fail financially. The shareholder primacy model was best articulated in the case of *Dodge v Ford Motor Co* where the judge stated “A business is organized and carried on primarily for the profit of stockholders. The powers of the directors are to be employed for that end.”<sup>62</sup> But now in modern times the focus has shifted to include efficiency and the consideration of the interests of other actors such as employees, creditors, suppliers etc.<sup>63</sup> This is the wider definition of corporate governance which will be further expanded upon in this research paper.

Another useful definition of corporate governance that can be considered is from the Organization for Economic Co-operation and Development (OECD). OECD Principles on Corporate Governance defines corporate governance as "The relationship between company's management, board, shareholders and other stakeholders."<sup>64</sup> Essentially it is who controls the company, in whose interests should the company be controlled and how should this be exercised. Corporate governance can be distinguished from corporate social responsibility, which is a similar concept which will appear regularly in this chapter and throughout the research paper.

### 3.3. Corporate Social Responsibility

Corporate social responsibility (CSR) refers to the concept of companies engaging in activities which are not profit seeking only and are seen to provide some type of benefit to

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<sup>61</sup> *South African Company Law for the 21<sup>st</sup> Century: Guidelines for Corporate Law Reform.*

<sup>62</sup> *Dodge v. Ford Motor Company, 204 Mich. 459, 170 N.W. 668 (Mich. 1919).*

<sup>63</sup> Du Plessis, Hargovan, Bagaric and Harris op cit note 57.

<sup>64</sup> OECD Principles on Corporate Governance.

society at large.<sup>65</sup> It essentially is about a company engaging in a range of activities which highlight the triple bottom line: profits, people and environment.<sup>66</sup> As mentioned above the narrow definition of corporate governance looks at the management of companies. CSR overlaps with corporate governance, especially when one considers the wider definition of corporate governance mentioned above of how companies should consider the interests of other stakeholders when making decisions. But corporate governance is concerned with managing the company (whether in the interest of shareholders or other stakeholders) whereas corporate social responsibility is more concerned with the activities that a company engages in, especially when those activities are to benefit society at large. To illustrate this distinction further we can consider three types of corporate social responsibility: ethical, altruistic and strategic.<sup>67</sup>

### 3.3.1. Types of Corporate Social Responsibility

Ethical corporate social responsibility refers to the moral duties of a company to avoid causing social injury, even if the company may benefit from the social injury.<sup>68</sup> Altruistic corporate social responsibility refers to companies contributing to society at the possible expense of the business.<sup>69</sup> Strategic corporate social responsibility refers to companies contributing to society in hope of receiving some form of financial benefit for the company.<sup>70</sup> A real life example can be used to clearly illustrate these points. Take an oil company for example. An oil company can decide to not create a new oil pipeline as this may cause social harm to the environment. This is ethical corporate social responsibility. An oil company can

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<sup>65</sup> Bryan Horrigan 'Twenty-first century corporate social responsibility trends-an emerging comparative body of law and regulation on corporate social responsibility, governance and sustainability' (2007) 85 *Macquarie Journal of Business Law* 4.

<sup>66</sup> John Elkington *Cannibals with Forks: The Triple Bottom Line of 21<sup>st</sup> Century Business* (1999).

<sup>67</sup> Geoffrey P. Lantos 'The boundaries of strategic corporate social responsibility' (2001) 18 *Journal of Consumer Marketing* 7.

<sup>68</sup> Lantos op cit note 67.

<sup>69</sup> Lantos op cit note 67.

<sup>70</sup> Lantos op cit note 67.

also set up a charity which will take away from its profits. This is altruistic corporate social responsibility. The oil company can also support community education programs with the hope that the recipients of the education programs will one day work for the oil company. This is strategic corporate social responsibility. All of these actions are taken by the management of a company which is corporate governance, but it is the company itself which engages in these actions, not necessarily the management.

The focus of this paper is employees in relation to corporate governance and thus special attention will be paid to these stakeholders. This is not to say that employees are the most important stakeholders in a company. This point will be made evident throughout the paper. But employees are given special recognition due to the precarious nature of employment in South Africa that has been discussed before. The focus on employees and labour law is also highlighted by the Constitution which states that everyone has the right to fair labour practices.<sup>71</sup> Thus, employee rights are crucial in the context of South Africa.

#### 3.4. Theoretical underpinnings of CSR

There are numerous theories that attempt to explain corporate governance or why companies engage in corporate responsibility activities. The following section will highlight some theories surrounding corporate governance and corporate social responsibility. This paper does not prefer one theory over another. Rather it shows some of the justifications of why companies begin to consider various stakeholders when they make decisions. Some scholars argue that since corporations have a wide effect on people's lives (are a source of income for people, provide a particular working environment, manufacture products that people use, may

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<sup>71</sup> S23 of the Constitution of the Republic of South Africa, 1996.

pollute the environment or create environments that are dangerous to people etc.), they owe responsibilities to a wide variety of stakeholders and not just shareholders.<sup>72</sup>

#### 3.4.1. Firm, Stakeholder and Legitimacy Theory

In contrast to this there is the firm theory, which is also known as the classical theory and can be traced back to Adam Smith, argue that the sole reason as to why people engage in business is to pursue their self-interests and maximize profits.<sup>73</sup> Milton Friedman's argument, who is one of the pioneers of the firm theory, argued that once there is a free and open market system protected by private property laws then the only social responsibility of a company is to maximize profits for its shareholders.<sup>74</sup> This is clearly more in line with the shareholder primacy model of corporate governance. The stakeholder theory argues that while the main goal of a corporation is to make profits, but the corporation also owes a responsibility to society.<sup>75</sup> This is based on an understanding that the managers of a corporation (normally the board of directors) are trustees to the company and to society.<sup>76</sup> Another theory on corporate governance is known as the legitimacy theory. This theory argues that corporations are under pressure to carry out CSR related activities.<sup>77</sup> This pressure stems from the fact that if a corporation does not carry out CSR related activities then it will lose its public image which will in turn affect its survival. Thus, in terms of this theory in order for corporations to remain legitimate entities in the eyes of the public and continue to operate, they need to engage in CSR related activities.

#### 3.4.2. Groups of CSR theories

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<sup>72</sup> Saleem Sheikh *Corporate Social Responsibility: Law and Practice* (1996).

<sup>73</sup> Md. Anwar Zahid and Kamal Halili Hassan 'Corporate Social Responsibility to Employees: Considering Common Law Vis-à-vis Islamic Law Principles' (2012) 20 *Pertanika Journal of Social Sciences and Humanities* 1.

<sup>74</sup> Milton Friedman 'The Social Responsibility of Business is to Increase its Profits' (1970) *The New York Times*.

<sup>75</sup> E. Merrick Dodd 'For Whom Are Corporate Managers Trustees' (1932) 45 *Harvard Law Review* 7.

<sup>76</sup> Ibid.

<sup>77</sup> Aysraf Wajdi Dusuki 'What does Islam Say About Corporate Social Responsibility' (2008) 12 *Review of Islamic Economics* 1.

Thus, the many theories on corporate social responsibility can be divided into four main types. These are instrumental theories where a corporation is seen as a wealth creation instrument only. This means that any social exercise by the corporation is accepted if it is consistent with wealth creation. This doesn't mean that the corporation does not engage in social activities or concern themselves with the interests of stakeholders other than shareholders. The corporation is to engage in social activities and consider the interests of other stakeholders in so far as this is able to maximize profits for the corporation.<sup>78</sup> Then there are political theories where the corporation has the power to play in a political arena. There are also integrative theories which look at how corporations can help meet social demands. This is because the corporation is seen as being dependent on society in order to exist and continue to grow. The final group of theories are ethical theories which focus on the ethical responsibilities of corporations and how corporations should focus on ethical considerations above all else.

#### 3.4.2.1. Instrumental Theories

The first Instrumental Theory to consider is maximizing shareholder value and is measured by share price. This theory argues that any investment into social activities which increase shareholder value should be made and any investment which decrease shareholder value should be avoided.<sup>79</sup> The second Instrumental Theory is about achieving a competitive advantage on commercial rivals. This theory argues that the only way to improve the context of competitive advantage of a corporation is through philanthropic investments.<sup>80</sup> This is

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<sup>78</sup> Stuart Ogden and Robert Watson 'Corporate Performance and Stakeholder Management: Balancing Shareholder and Customer Interests in the U.K. Privatized Water Industry' (1999) 42 *Academy of Management Journal* 5.

<sup>79</sup> Elisabet Garriga and Domènec Mele 'Corporate Social Responsibility Theories: Mapping the Territory' (2004) 53 *Journal of Business Ethics*.

<sup>80</sup> Michael E. Porter and Mark R. Kramer 'The Competitive Advantage of Corporate Philanthropy' (2002) 80 *Harvard Business Review* 12.

because according to this theory it is the corporation that has the resources and knowledge to better understand how to achieve its goals.

#### 3.4.2.2. Political Theories

The first political theory on corporate social responsibility is corporate constitutionalism. The theory is defined in the following manner: the constituent groups that are found within a company put pressure on the company and limit its functional power, in a similar manner in which a constitution limits the power of government.<sup>81</sup> These groups thus channel the company's power in a manner that prevents the company from using its power in an unreasonable manner.

#### 3.4.2.3. Integrative Theories

Integrative theories are based on the social contract theory of Locke, where the company and society are tied into a reciprocal relationship.<sup>82</sup> For example the integrative social contract theory, which is one of the integrative theories, suggests that companies have indirect obligations to society as a result of society being crucial to the existence of the company. Proponents of this theory argue that companies would not have the labour force, resources, laws and capital it needs to survive if society were not providing all of these for it.<sup>83</sup> Thus, in turn companies are to provide something in return to society.

#### 3.4.2.4. Ethical Theories

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<sup>81</sup> Keith Davis 'Understanding the Social Responsibility Puzzle' (1967) 10 *Business Horizons* 4.

<sup>82</sup> Thomas Donaldson *Corporations and Morality* 1982.

<sup>83</sup> Thomas Donaldson and Thomas W. Dunfee 'Toward A Unified Conception of Business Ethics: Integrative Social Contracts Theory' (1994) 19 *Academy of Management Review*.

The normative stakeholder theory is an ethical theory that advocates for a core set of ethical principles that show how companies and directors are to act.<sup>84</sup> These ethical considerations should be based on considering the legitimate interests of all appropriate stakeholders and not just the interest of shareholders.<sup>85</sup> This is because stakeholders are people with legitimate interests in the company (employees have a legitimate interest to remain employed) and the interest of stakeholders is of intrinsic value (employees interest to remain employed has its own merits not related to other stakeholders such as shareholders).<sup>86</sup>

#### 3.4.2.5. Conclusion on groups of CSR Theories

All of the above theories attempt to explain the concept of CSR in different ways but are closely related to King IV and relate to topic of this research paper on how companies are to treat their employees better. For example, when one looks at the corporate constitutionalism theory, it is similar to Principle 8 of King IV. This is because when company delegates power to one of its constituent groups, one of factors to keep in mind is the balance of power within the company. This balance of power then pressures the company to act in a reasonable manner.

Thus when a company appoints a social and ethics committee and the social and ethics committee delivers a report to the shareholders at the Annual General Meeting in terms of s72(8), these two constituent groups (social and ethics committee and shareholders) can put pressure on the company to use its power in a particular manner, especially if the shareholders are not happy with the direction the company is taking when it comes to its social and ethical issues. If a company were to not consider the report of the social and ethics committee or shareholders reaction to the report seriously, then the company could be seen as

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<sup>84</sup> R. Edward Freeman 'The Politics of Stakeholder Theory: Some Future Decisions' (1994) 4 *Business Ethics Quarterly* 4.

<sup>85</sup> Garriga and Mele op cit note 79.

<sup>86</sup> Thomas Donaldson and L. E. Preston 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20 *Academy of Management Review* 1.

acting in an unreasonable manner. This is relevant from the employees' perspective because one of the duties of the social and ethics committee is that in the report it delivers to shareholders, a part of the report must include matters related to labour and employment within the company. The normative stakeholder theory advocates for a core of ethical values and this is closely related to King IV Principles 1 and 2 on ethical leadership and ethical culture. As mentioned above these ethics should consider the legitimate interest of stakeholders. This is to be done all while the leaders of the company are putting the interest of all stakeholders above their own and building an ethical culture that should emanate through the entire company.

Thus this part of the research paper has shown how King IV is infused with various theories on corporate governance and corporate social responsibility. It has also shown how this is relevant for how companies are to best treat their employees.

### 3.5. Employees and the business case for Corporate Social Responsibility

A company that wants to be seen as a fully responsible corporate citizen should comply with all legal requirements, voluntarily create own mechanism of managing compliance, observe principles of corporate social responsibility, pay attention to diversity, take care of stakeholders, be involved in community and still make a profit<sup>87</sup>. Employees are one of the eight dimensions of risks that are part of a company: investment, credit, employment, license to operate, purchase, price war, supply and compliance are the other risk dimensions. The key facets related to employees that employers have to pay attention to are decent salary appropriate to employee engagement in the enterprise development, stability of employment, the possibility of development, participation in courses and career development, working

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<sup>87</sup> Katarzyna Turon 'Corporate Social Responsibility to Employees: The Best Labour Practices in Transport and Logistics Companies' (2016) 3 *Journal of Corporate Responsibility and Leadership* 1.

conditions for achieving organisational objectives and outputs.<sup>88</sup> There are 13 actions that are associated with good labour practices: compliance with the principles of diversity; providing voluntary work; fair relationships between co-workers; opportunity to express views and ratings by employees; ensuring safety in the workplace; providing employees with information about any activities that are associated with them; providing medical care; ensuring an appropriate structure for work and fair wages; ensuring satisfactory conditions of employment; encouraging the development of employees; respecting private and family life of employees; supporting employees in unexpected circumstances; implementation of outplacement programs.<sup>89</sup> Employers and companies should consider all of these when attempting to be a responsible corporate citizen.

Diversity is a key aspect that companies should focus on when it comes to employees, especially in a country like South Africa that has such a diverse population. Companies can avoid issues related to diversity if they were to pay careful attention to organisational culture, company policies and procedures, human resources management, internal communication, monitoring and reporting, and external business activities spreading diversity management in the country as mentioned above in the King IV principles.<sup>90</sup> There are numerous advantages of corporate social responsibility for the company in relation to its employees. The one that is most important to the company itself, especially from a shareholder perspective, are economic advantages. Economic advantages can be direct or indirect. Direct economic advantages are those that improve a company's resources and its relationship with the environment in which it operates.<sup>91</sup>

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<sup>88</sup> Turon op cit note 87.

<sup>89</sup> Aleksander Kisil *Management by Responsibility: Basis of Responsible Business* (2013).

<sup>90</sup> Responsible Business Forum, *Responsible Business in Poland* (2013).

<sup>91</sup> Turon op cit note 87.

The direct economic advantages are positive image in the media by an increase in confidence in a company which is fair to its employees, the transparency of the company activities and fulfilling the basic principles of corporate social responsibility.<sup>92</sup> This will lead to an increase in social legitimacy for the enterprise and provides an incentive for potential investors in that the company is responsible and reveals details of its operation.<sup>93</sup> These are direct because their economic impact can be measured immediately in one way or another. For example if there is increased confidence in a company, investors are more likely to put money into the company and suppliers would be more likely to trade with the company.<sup>94</sup> All of this has a positive impact on a company's financial situation.

All of these factors listed above indicate that companies should pay greater attention to CSR as all of these lead to economic benefits for companies. The indirect economic advantages relate to goodwill and loyalty.<sup>95</sup> Goodwill in relation to employees is all about how employees feel that the company is investing in them and loyalty refers to how employees will want to stay with their current employers instead of looking to work for a competitor. These do not have a direct financial or economic effect as their effect is indirect. For example if a company invests time and money on their employees and ensures that there is goodwill between them, then employees are more likely to stay with the company and be loyal. This has the long term economic advantages of companies not having to spend time and money looking for new employees as there will be a low turnover rate. The Responsible Business Forum lists the following practices as good practices when it comes to a company's relationship with its employees: safety in the workplace; dialogue with employees; being friendly to employees who are parents; employees participation; anti-fraud; recruitment and

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<sup>92</sup> Turon op cit note 87.

<sup>93</sup> Turon op cit note 87.

<sup>94</sup> Torun op cit note 87.

<sup>95</sup> Torun op cit note 87.

adaptation; courses and development; volunteering; work-life balance; support staff; care about employee health.<sup>96</sup>

### 3.6. Corporate Human Rights Accountability

As has been discussed above employee rights are crucial in the South African context. But we must consider what role, if any, the corporation has in protecting those rights. Labour law is there to protect workers, but we should consider whether corporate law in South Africa can offer protection or improve the relationship between employer and employee. The following part of the paper will highlight whether corporate law in South Africa has a role in protecting human rights and to what extent it does so. Do corporations have duties when it comes to human rights? If so, what are these? *Khumalo v Holomisa* (2002) 3 SA 401 (CC) is where conditions for direct horizontal application of rights in Bill of Rights to corporations was addressed.<sup>97</sup> The court highlighted here that one must look at firstly the nature of the parties involved, secondly the intensity of the constitutional right in question and thirdly the potential invasion of the right in question in order to determine whether there can be direct horizontal application of human rights to corporations.<sup>98</sup> Thus it appears that there are instances when corporations can be seen as duty bearers of certain rights in terms of the Constitution.<sup>99</sup> This duty is further highlighted by s7 of the Companies Act which states how the Companies Act should be interpreted in light of the Constitution.

Thus in terms of the common law and the Companies Act, companies do have duties in protecting human rights due to the horizontal applicability of the Bill of Rights. This duty is in addition to duties identified by the LRA and other labour law legislation. This highlights that companies should not look at labour rights falling within a vacuum of labour law but

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<sup>96</sup> Responsible Business Forum *Responsible Business in Poland* (2013).

<sup>97</sup> *Khumalo v. Holomisa* (2002) 3 SA 401 (CC).

<sup>98</sup> *Khumalo v Holomisa* supra 97.

<sup>99</sup> Abiodun Jacob Osuntogun 'Examination of the Institutional and Regulatory Framework for Corporate Human Rights Accountability in South Africa' (2017) 25 *African Journal of International and Comparative Law* 2.

labour rights transcend into other areas such as company law and the Constitution. With this view point companies would be better able to incorporate labour law principles into their organisation and thus create a more harmonious work environment for their employees. In addition to labour law that provides protection for employees and dictates how companies are to treat their workers, corporate governance is another useful mechanism that informs companies how they are to treat their workers.

#### Chapter 4. South African Corporate Governance Framework

The following section will discuss the current South African corporate governance regulatory framework. It will discuss some of the duties imposed by common law and statute. Special attention will be paid to King IV Code Report on Corporate Governance for South Africa, 2016 (hereafter King IV) as this is seen as the most detailed source of corporate governance in South Africa, despite its voluntary nature. This chapter will expand on the principles of King IV by attempting to highlight what each of the principles are demanding from companies in relation to corporate governance by articulating some of the theoretical underpinnings. Corporate governance in South Africa is regulated by a combination of common law, legislation, codes of best practice and the memorandum of incorporation of a company. Thus, there is no single source of corporate governance in South Africa and each of these sources must be read together in order to get a full picture of what to expect from companies when it comes to corporate governance. It is a mixture of hard law in the form of legislation and common law and soft law in the form of codes of best practice and the memorandum of incorporation of a company.

##### 4.1. The Common Law

The common law shall be the first focus of the discussion on the corporate governance framework in South Africa. It based on legal precedent though previous court decisions. The

South African common law on corporate governance and companies in general draws heavily on the common law from England. This was highlighted by the case of *Fisheries Development Corporation of South Africa Ltd v Jorgensen* 1980 (4) SA 156 (W).<sup>100</sup> In this case the court held that the core principles of company law in South Africa are the same as English law and English law would provide a valuable reference point in cases of confusion or silence when it comes to company law matters in South Africa.<sup>101</sup> At common law directors owe a fiduciary duty to act in the best interests of the company. The case of *Cyberscene Ltd and Others v i-Kiosk Internet and Information (Pty) Ltd* 2000 (3) SA 806 (C) confirmed this principle of corporate governance.<sup>102</sup> This case held that a director stands in a fiduciary relationship to the company of which he or she is a director.<sup>103</sup> It must be noted that this duty is to the company and not shareholders or other stakeholders.<sup>104</sup>

This shows that South African common law did not favour a stakeholder inclusive approach to corporate governance. It is from this fiduciary duty that other common law director's duty flow from. For example, directors must not use their position as director or information obtained as director to gain personal advantage or personal gain.<sup>105</sup> This is due to the fact that if a director uses their position as a director for personal gain, they are putting their own personal interests ahead of the company and thus not acting in the best interests of the company. Legislation has now better informed directors of their duties but the common law remains a source and a good tool for interpretation.

#### 4.2. The Companies Act

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<sup>100</sup> *Fisheries Development Corporation of South Africa Ltd v Jorgensen* 1980 (4) SA 156 (W).

<sup>101</sup> *Fisheries Development Corporation* supra 100.

<sup>102</sup> *Cyberscene Ltd and Others v i-Kiosk Internet and Information (Pty) Ltd* 2000 (3) SA 806 (C).

<sup>103</sup> *Cyberscene* supra 102.

<sup>104</sup> *Cyberscene* supra 102.

<sup>105</sup> *Robinson v Randfontein Estates Gold Mining Co Ltd* 1921 AD 168.

In 2004 the Department of Trade and Industry published the *South African Company Law for the 21<sup>st</sup> Century: Guidelines for Corporate Law Reform* which was an attempt to reshape the corporate law framework in South Africa to ensure that legislation is appropriate to the legal, economic and social context of South Africa as a constitutional democracy and open economy.<sup>106</sup> The aim of these guidelines was to enact a statute that was in consistent with the Bill of Rights and other laws that have been enacted to give effect to the rights contained in the Bill of Rights. The conclusion drawn from the Guidelines was that company law in South Africa is to take into account the interests of shareholders and other stakeholders such as customers, employees, suppliers, environment and society in which the company operates in.<sup>107</sup> This shows one of the first instances where company law in South Africa was beginning to place an emphasis on stakeholders other than shareholders when it comes to decision making of a company.

The Guidelines also made some recommendations such as a unitary board structure which was the situation in the past in South Africa and greater disclosure of information requirements.<sup>108</sup> The result of the Guidelines recommendations was the Companies Act of 2009. The Companies Act introduced some American company law concepts, such as the business judgment rule and business rescue, which were not previously found in the preceding statutes or common law of South Africa.

#### 4.2.1. Interpretation and Governance of Companies under The Companies Act

The Companies Act is considered to be a bit of a radical piece of commercial legislation, due to the manner in which it is to be interpreted. S7 of the Companies Act lists out the purposes which include reaffirming the company as a means of achieving economic and social benefits, balancing the rights and obligations of shareholders and directors and encouraging

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<sup>106</sup> *South African Company Law for the 21<sup>st</sup> Century: Guidelines for Corporate Law Reform.*

<sup>107</sup> *South African Company Law for the 21<sup>st</sup> Century: Guidelines for Corporate Law Reform.*

<sup>108</sup> *South African Company Law for the 21<sup>st</sup> Century: Guidelines for Corporate Law Reform.*

the efficient and responsible management of companies.<sup>109</sup> All of these indicate that there is to be a shift in company law in South Africa from only looking to interests of shareholders to considering other stakeholders in society when companies make decisions. The Companies Act now explicitly deals with the governance of companies. It is now stated that the board of directors are to manage the business and affairs of a company.<sup>110</sup> The Act has also greatly increased transparency and accountability requirements through provisions such as public companies being required to appoint a company secretary who has certain defined duties.

#### 4.3. The King IV Report on Corporate Governance for South Africa, 2016.

In South Africa the King IV Code forms a reliable source of corporate governance codes and standards that companies can use.<sup>111</sup> It applies to all organisations, regardless of their form but is only mandatory for publicly listed companies as per the requirements of the Johannesburg Stock Exchange Listing Requirements. A key focus of King IV is to create value in a sustainable manner.<sup>112</sup> This entails companies looking to an outcome-based approach as companies aim to achieve a number of goals. These goals are an ethical culture, good performance, effective control and legitimacy. King IV advocates that companies use corporate citizenship, sustainable development, stakeholder inclusivity and integrated reporting and thinking in order to achieve these goals.<sup>113</sup> Corporate citizenship is the notion that there is an interdependence between companies and the community in which they operate. This means that a company has obligations towards the community, in addition to the rights they ordinarily possess and must balance the use of its resources with the needs of the community.<sup>114</sup>

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<sup>109</sup> S7 of the Companies Act 71 of 2009.

<sup>110</sup> S66(1) of the Companies Act 71 of 2009.

<sup>111</sup> King IV Report on Corporate Governance for South Africa, 2016 (Hereafter King IV).

<sup>112</sup> King IV at 3.

<sup>113</sup> King IV at 3.

<sup>114</sup> Tobie Wiese *Corporate Governance in South Africa with International Comparisons* (2017) ch 2.

Sustainable development refers to the use of a company's resources. In terms of this concept companies are to utilize their resources in a manner in which the current needs of a company are met without compromising its ability to meet future needs.<sup>115</sup> This means that companies should always have a long term vision of their organisation and broader society.<sup>116</sup>

Stakeholder inclusivity is key when it comes to achieving good corporate governance in terms of King IV.

Stakeholder inclusivity refers to how the board of directors, who are the structure that is responsible for the decisions that a company makes, should take into account the legitimate and reasonable interests, needs and expectations of all material stakeholders of the company.<sup>117</sup> This means that the interest of shareholders should not always be preferable to the interests of other stakeholders, particularly in instances where the interests of other stakeholders are more aligned with the long term best interests of the company. The final way in which King IV envisages good corporate governance is through integrated thinking and reporting. This entails giving consideration of the interdependence and connectivity between all the stakeholders of the company.<sup>118</sup> This is similar to the concept of stakeholder inclusivity but goes one step further by requiring the company to integrate risk and sustainable development into its long-term strategy when making, implementing and reporting on its activities.

#### 4.3.1. The structure of King IV

King IV has 17 corporate governance principles. These principles are all connected and thus should not be read in isolation. They are also intended to be complimentary to any existing laws and regulation on corporate governance, such as those contained in the Companies Act

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<sup>115</sup> Ibid at 10.

<sup>116</sup> Ibid at 10.

<sup>117</sup> Ibid at 10.

<sup>118</sup> Ibid at 10.

and the common law. Each of these 17 principles will be discussed in greater detail below as each principle can be used in relation to improving the relationship between employer and employee.

Principle 1: The governing body should lead ethically and effectively.<sup>119</sup>

Ethical leadership refers to how the governing body of a company, which is mainly the board of directors, should put the interests of relevant stakeholders such as shareholders and employees ahead of their own.<sup>120</sup> Ethical leaders are to handle the affairs of the company and manage it in a manner that has integrity and conscience. It is a way of envisaging trust and fairness as being crucial to the financial success of the company.<sup>121</sup> This trust and fairness should extend to all relevant stakeholders of the company such as the employees, creditors, suppliers, shareholders, environment and society at large. It also emphasised that when companies engage in ethical leadership they should not just focus on complying with the letter of the law.<sup>122</sup> Rather that there should also be compliance with the spirit of the law, in addition to what the law requires of the company. This means that the governing body of an organisation should consider what the law is actually asking them to do and not just approaching issues as a mere box-ticking exercise.

Effective leadership refers to the successful influence and facilitation of individual and collective efforts to achieve a shared goal.<sup>123</sup> This entails how the governing body of a company should be able to have a positive impact on the behaviour of employees

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<sup>119</sup> King IV at 40.

<sup>120</sup> Jim C. Collins *Good to Great: Why Some Companies Make the Leap...and Others Don't* (2001).

<sup>121</sup> John Byrne 'How to Fix Corporate Governance' (2002) *Business Week*.

<sup>122</sup> Andreas Georg Scherer and Guido Palazzo 'The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for the Firm, Governance, and Democracy' (2011) 48 *Journal of Management Studies* 4.

<sup>123</sup> Gary Yukl 'Effective Leadership Behaviour: What we Know and What Questions Need More Attention' (2012) 26 *Academy of Management Perspectives* 4.

of the company and use this collective power and accomplish the company's objectives. This means that the board should be getting the best performance out their employees and this should translate to overall success for the company. Getting the best performance out of employees can be accomplished in a variety of ways such as positively influencing the processes that determine performance.<sup>124</sup> Thus when one speaks of ethical and effective leadership of a company, it is essentially about how the board of directors are to get the best out of their employees for a successful performance all the while ensuring that there is fairness, integrity and trust among all relevant stakeholders.

Principle 2: The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.<sup>125</sup>

Establishing an ethical culture is key to the success of a company and the failure to do so may have a seriously negative impact on the company. It has been argued that if an ethical culture is present, there is greater chance that illegal or unethical activities can be minimized within the company.<sup>126</sup> Studies have shown that in companies that have an ethical culture there are fewer employees who feel pressure to commit misconduct, observed misconduct is lower, employees who observe misconduct are more likely to report it and those who report misconduct are less likely to experience adverse consequences as a result of reporting on it.<sup>127</sup> Thus it can be seen that an ethical culture refers to always doing the right thing when it comes to an individual or company's behaviour. It also can refer to emotions, especially when one considers pressures to act in certain ways. It is not always clear what this exactly entails as it

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<sup>124</sup> Yukl op cit note 123.

<sup>125</sup> King IV at 40.

<sup>126</sup> Daniel J. Brass, Kenneth D. Butterfield and Bruce C. Skaggs 'Relationship and unethical behaviour: A social network perspective' (1998) 23 *The Academy of Management Review* 1.

<sup>127</sup> 2009 National Business Ethics Survey by US Resources Centre 2010.

will from company to company and across different industries but there are elements that if adopted, an ethical culture will be established within the company.

The first of these elements are a set of core ethical values infused throughout the company's policies, processes and practices.<sup>128</sup> This refers to the central ethos of an organization and they need to be universal in nature so that everyone who is part of the organisation can believe in them. Core ethical values of organisations should include aspects such as trustworthiness, respect, responsibility, fairness, caring and citizenship.<sup>129</sup> If these elements were to be incorporated into the core ethical values of a company, it would help establish an ethical corporate culture. The second element is establishing a formal code of ethics. This refers to establishing some kind of formal document that is the physical embodiment. This document should be the first aspect of the company that employees see and should be released in the firm's annual reports.<sup>130</sup>

This should be accompanied with a formal ethics program to ensure that all members of the company, from the lowest level employees right to the directors and executives, are adhering to the core ethical values that are inscribed in the formal code of ethics. The third and final element is the continuous presence ethical leadership.<sup>131</sup> Ethical leadership refers to “the demonstration of normatively appropriate conduct through personal actions and interpersonal relationships and the promotion of such conduct to followers through two-way communication, reinforcement, and ethical decision making.”<sup>132</sup> Research has shown that employees are more likely to have positive

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<sup>128</sup> Mark S. Schwartz 'Developing and sustaining an ethical corporate culture: The core elements' (2013) 56 *Academy of Management Perspectives*.

<sup>129</sup> Schwartz op cit note 128.

<sup>130</sup> Schwartz op cit note 128.

<sup>131</sup> Schwartz op cit note 128.

<sup>132</sup> Michael K. Brown, Linda K. Trevino and David A. Harrison 'Ethical leadership: A social learning perspective for construct development and testing' (2005) 97 *Organizational Behaviour and Human Decision Processes* 2.

outcomes when they perceive their leaders as engaging in ethical behaviour and caring about ethics as much as the financial bottom line.<sup>133</sup> Thus once leadership is engaging in ethical behaviour and doing so in a consistent basis, this will set the tone for other members of the company to do the same.

Principle 3: The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.<sup>134</sup>

In terms of King IV corporate citizenship refers to a company having rights, obligations, and responsibilities in relation to the society it operates in and the environment.<sup>135</sup> It can be either viewed in a limited or extended manner. The limited view of corporate citizenship focuses on the philanthropic responsibility of companies.<sup>136</sup> It emphasises how companies are to engage in philanthropic activities for a strategic purpose. The extended view of corporate citizenship is more general and overlaps with the concept of corporate social responsibility. This definition is wider in scope than the limited view of corporate citizenship and includes aspects such as economic, legal and ethical rights and responsibilities to society.<sup>137</sup>

The overlap with corporate social responsibility comes from the notion that if a company is to fulfil its economic, legal and ethical responsibilities to society, the company will have achieved corporate citizenship. In addition to identifying the responsibilities that companies owe to society there is also an emphasis on fulfilling

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<sup>133</sup> Linda K. Trevino, Gary R. Weaver, David G. Gibson and Barbara L. Toffler 'Managing Ethics and Legal Compliance: What Works and What Hurts' (1999) 41 *California Management Review* 2.

<sup>134</sup> King IV at 40.

<sup>135</sup> King IV at 25 and Principle 3.

<sup>136</sup> Dirk Matten and Andrew Crane 'Corporate Citizenship: Toward an Extended Theoretical Conceptualization' (2005) 30 *The Academy of Management Review* 1.

<sup>137</sup> Archie B. Carroll 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38 *Business and Society* 3.

those responsibilities.<sup>138</sup> This wider definition should be preferred when interpreting King IV as it better encompasses the ethos of what King IV is attempting to achieve.

Principle 4: The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance, and sustainable development are all inseparable elements of the value creation process.<sup>139</sup>

Key to Principle 4 is the concept of the triple bottom line. This refers to how companies should look beyond traditional measures of success such as return of shareholder investments and begin to consider environmental and social impact.<sup>140</sup> This refers to looking at the interconnectedness between profits, people and the planet and the role of the company in all of this. It stresses that the sole purpose of companies is not to make profit whatever the expense to people and society. Rather companies should look at how their activities are impacting society and incorporate that into their long-term business model. Companies should thus interrogate the manner in which they treat their employees and assess how treatment of employees could affect risk, opportunities, strategy, performance and sustainable development.

Principle 5: The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisations performance and its short, medium and long-term prospects.<sup>141</sup>

The Companies Act requires companies to prepare annual financial statements within six months after the end of the financial year.<sup>142</sup> In addition to the annual financial statement that a company must report there must also be an auditor's report if the

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<sup>138</sup> Isabelle Maignan and O. C. Ferrell 'Measuring Corporate Citizenship in Two Countries: The Case of the United States and France' (2000) 23 *Journal of Business Ethics* 3.

<sup>139</sup> King IV at 40.

<sup>140</sup> John Elkington "Enter the Triple Bottom Line" in Henriques, Adrian and Richardson, Julie (eds.) *The Triple Bottom Line: Does it All Add Up* 2004.

<sup>141</sup> King IV at 40.

<sup>142</sup> S30(1) of Companies Act of 2009.

statements are audited, a report by the directors that is signed and approved by an authorised director and must be presented to the first shareholders meeting once the statements have been approved by the board.<sup>143</sup> This shows that the Companies Act already has stringent disclosure requirements on companies. However, Principle 5 of King IV goes further in the disclosure requirement as it advocates for disclosure to other stakeholders and not just shareholders.

This disclosure to other stakeholders has shown to improve the relationship that the company has with those stakeholders as it improves transparency and allows stakeholders to make informed decisions about the company.<sup>144</sup> There is also evidence to show that pressure for greater disclosure from customers, clients and employees has led to an improvement of the quality of transparency reporting that is required.<sup>145</sup> Thus a conclusion can be drawn from Principle 5. This is that disclosure to stakeholders increases transparency and improves the relationship a company has with its stakeholders. This is important for employees as this can improve the relationship between employee and employer.

Principle 6: The governing body should serve as the focal point and custodian of corporate governance in the organisation.<sup>146</sup>

As mentioned above the Companies Act makes the role of the board of directors in relation to managing the company clear as they are the ones who are responsible for managing the affairs and business of the company.<sup>147</sup> Principle 6 goes a bit further and advocates that in addition to managing the affairs of the company, the role of

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<sup>143</sup> S30(3) of Companies Act of 2009.

<sup>144</sup> Lizet Quaak, Theo Aalbers and John Goedee 'Transparency of Corporate Social Responsibility in Dutch Breweries' (2007) 76 *Journal of Business Ethics* 3.

<sup>145</sup> Belen Fernandez-Feijoo, Silvia Romero and Silvia Ruiz 'Effect of Stakeholders' Pressure on Transparency of Sustainability Reports within GRI Framework' (2013) 122 *Journal of Business Ethics*.

<sup>146</sup> King IV at 40.

<sup>147</sup> S66(1) of the Companies Act of 2009.

corporate governance falls on the directors. This means that they cannot delegate the responsibility of corporate governance. This is despite that a company is allowed to have various committees. This can help improve the relationship between employer and employee because good corporate governance led by the employer would be perceived in a positive manner by employees

Principle 7: The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.<sup>148</sup>

Principle 7 refers mainly to diversity within the board of directors. This diversity is across a number of categories such as knowledge, skill, and experience. The reason that Principle 7 advocates for board diversity is because of the positive effects that are associated with group diversity. It has been shown that groups that are more diverse generate a greater variety of <sup>149</sup>viewpoints and solutions to problems. Diverse boards also enable companies to gain access to a wider variety of resources.<sup>150</sup> These resources could refer to specific investors if a director has a good status in a particular industry or help a company secure government procurement contracts if a director has access to political resources. Diversity may also help directors better relate to employees.

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<sup>148</sup> King IV at 40.

<sup>149</sup> Warren E. Watson, Kamallesh Kumar and Larry K. Michaelsen 'Cultural diversity's impact on interaction process and performance: Comparing homogenous and diverse task groups' (1993) 36 *Academy of Management Journal* 3.

<sup>150</sup> Daniel Ferreira "Board Diversity" in Anderson, H and Baker, H. K. (eds.) *Corporate Governance: A Synthesis of Theory, Research and Practice* 2010.

Principle 8: The governing body should ensure that its arrangements for delegation within its own structures promote independent judgment and assist with balance of power and the effective discharge of its duties.<sup>151</sup>

In terms of s72 of the Companies Act a board of directors may appoint and delegate powers to a board committee, to the extent that it is not inconsistent with the Memorandum of Incorporation of the company. One of the board committees that is relevant for our current discussion is the social and ethics committee. The social and ethics committee is regulated by s72 and Companies Regulation 43. The independence of the social and ethics committee is what is relevant for the purposes of Principle 8. In terms of Companies Regulation 43(4) the social and ethics committee of a company must comprise of a minimum of three directors or prescribed officers and one of them must be a non-executive director.<sup>152</sup> It could be argued that the social and ethics committee is a crucial function in a company as it is one of the ways that can contribute to the corporate social responsibility of a company. There are instances other than a social and ethics committee where independence is envisaged when a board delegates authority and Principle 8 serves a guide to ensure that these delegations is done effectively in those instances.

Principle 9: The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.

Self-evaluation is critical to the effective running of a board of directors as it determines certain aspects where the board and its members can improve their performance and thus improve the company's performance. If a board member is

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<sup>151</sup> King IV at 40.

<sup>152</sup> Companies Regulations 43(3).

found to not be performing at optimal levels, then there is always the option of development practices that can lead to improved performance. There has been evidence to show that board development practices tend to result in more competent board members.<sup>153</sup> Competent boards of directors perform better in terms of fiscal performance and perceptions of organizational effectiveness.<sup>154</sup> This aids the overall performance of the company and leads to its overall sustainable growth. This is important for employees because sustainable growth should lead to sustained employment for current employees.

Principle 10: The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibility.<sup>155</sup>

Principle 10 is closely related to Principle 8 as they both relate to delegation of authority within the board. As mentioned above the board of directors may delegate certain authority but the corporate governance responsibility of the company always lies with the board. The appointment practices of management or other structures the board will delegate authority to is always a key factor to consider. If appointment practices are to be utilised effectively, then they can improve the management structures and ultimately improve board members who serve the company.<sup>156</sup> Key to appointment is having clarity when it comes to selection criteria. Whenever a management appointment is considered the selection criteria should be based on a specific role the individual will fulfil within the company. Roles will vary across different company types and depend on what the company requires at that particular

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<sup>153</sup> William A. Brown 'Board Development Practices and Competent Board Members: Implications for Performance' (2007) 17 *Nonprofit Management and Leadership* 3.

<sup>154</sup> William A. Brown 'Exploring the Association Between Board and Organizational Performance' (2005) 15 *Nonprofit Management and Leadership* 3.

<sup>155</sup> King IV at 40.

<sup>156</sup> Brown op cit note 154.

time, but appointment practices should always relate back to roles that are to be filled within the company.

Principle 11: The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.<sup>157</sup>

The aim of effective risk management is to integrate risk management structures and processes into the long-term strategy and sustainability of the business.<sup>158</sup> Key to risk management is the comprehension of the various risks that a company may face. Four principles have been identified to form the foundations of effective risk management. The first of these principles is the ability to identify and define the risk.<sup>159</sup> This refers mainly to recognizing the strategic risk that the company is facing, and these risks could be physical technological or market-related to name a few. Identification of risks<sup>160</sup> should be incorporated into the entire company's strategic objectives so that management and other employees are also in a position to identify risk. Determining the ability of the company to deal with the identified risk is the second principle to effective risk management.<sup>161</sup> In determining the ability of the company to deal with the risk, there should be four options that the company should consider.

The first option is to terminate the risk and this means ceasing with the activity that is generating the risk. The second option is then to accept the risk as some types of risk cannot be terminated. The third option is reducing the risk if it is accepted. This entails taking necessary measures to ameliorate the effects of the risk or reduce the risk itself. The final option that companies can do once they have determined their

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<sup>157</sup> King IV at 40.

<sup>158</sup> Ibid.

<sup>159</sup> Tom Wixley and Geoff Everingham *Corporate Governance* 4 ed (2010).

<sup>160</sup> Ramani Naidoo *Corporate Governance: An Essential Guide for South African Companies* 2 ed (2009).

<sup>161</sup> Ibid.

ability to deal with the risk would be to transfer the risk.<sup>162</sup> This entails shifting the risk to another party such as implementing an insurance scheme. Insurance is essentially a transfer of risk from one party to another for a premium and is a manner through which companies can manage risk. The third principle for effective risk management would be to develop internal controls that can mitigate and counter risks. This is seen as more pre-emptive measures where a company can put in a number of controls in their business operations that can be used to handle the risk once it is identified.<sup>163</sup> The final principle would be about continuously monitoring the performance of the risk control measures to ensure that they are functioning at optimal levels. This entails an adequate flow of information between management and operational level employees to ensure that both are well equipped to identify and deal with any risks that may arise.<sup>164</sup> If these four principles were to be implemented in the risk management responsibilities of companies, then they would be practicing responsible corporate governance.

Principle 12: The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.<sup>165</sup>

Technology is becoming a more important when it comes to companies and how they set and achieve their strategic goals. This is likely to continue or perhaps increase in the future when markets are becoming more and more connected. Thus, it is key for the board of directors to be able utilise technology and the information derived from it to run the company more effectively. When the board of directors have information available, they are in a better position to make well-informed decisions. It has also

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<sup>162</sup> Ibid.

<sup>163</sup> Wixley and Everingham op cit note 159.

<sup>164</sup> Ibid.

<sup>165</sup> King IV at 41.

been shown that when more relevant information is available to board of directors, there is better control and ability to make rational decisions as there are more choices and alternatives that are available to the board of directors.<sup>166</sup>

Principle 13: The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes, and standards in a way that supports the organisation being ethical and a good corporate citizen.<sup>167</sup>

Principle 13 is closely related to Principles 1 and 3 as it mentions ethics and corporate citizenship. It expands on these principles as it advocates how the board of directors should ensure that the company is not only acting ethically in managing the affairs of the company, they should be aiming to comply with applicable laws and non-binding rules and codes. Examples of non-binding codes that companies could comply with are the Draft Regulations on Exploitation of Mineral Resources in the Area.<sup>168</sup> This would apply specifically to companies that wish to conduct marine mining but it has specific ethics and codes that are applicable in that industry. While this is just an example, there are numerous non-binding codes and standards across a variety of industries that companies can use to ensure ethical behaviour and being a good corporate citizen.

Principle 14: The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.<sup>169</sup>

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<sup>166</sup> Charles L. Citroen 'The role of information in strategic decision-making' (2011) 31 *International Journal of Information Management*.

<sup>167</sup> King IV at 41.

<sup>168</sup> International Seabed Authority *Draft Regulations on Exploitation of Mineral Resources in the Area* (2017).

<sup>169</sup> King IV at 41.

Director's remuneration is an area of corporate law that is receiving more and more attention in recent times. This is mainly due to the increase in the remuneration of directors in relation to the remuneration of the average employee in modern history. For example, in South Africa it has been shown that the average annual earnings of employees in the formal non-agricultural sector was roughly R238300.<sup>170</sup> Contrast this with a CEO at a JSE listed company whose annual salary can reach an average of R8.75 million per year.<sup>171</sup> This shows the gap between employee and CEO pay. Now there has been evidence to show that the remuneration that a CEO receives can have a positive effect on a company's financial performance when measured by return on equity.<sup>172</sup> But there are also negative perceptions among consumers and employees about companies that have a high CEO-to-worker pay ratio.<sup>173</sup> It was shown that consumers are less likely to purchase from companies that have a high CEO-to-worker pay ratio.<sup>174</sup> It was also shown that prospective employees would also less likely want to work for a company that has a high worker-to-pay ratio.<sup>175</sup> Considering that King IV advocates for a stakeholder-inclusive approach to corporate governance, the board of directors should ensure that the CEO-to-worker is not excessively high so as to consider the interests of all relevant stakeholders.

Principle 15: The governing body should ensure that the assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation's external reports.<sup>176</sup>

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<sup>170</sup> Statistics South Africa 'Quarterly Employment Statistics' 2018 *Statistical Release PO277*.

<sup>171</sup> PWC Executives Directors: Practices and Remuneration Trends Report 10<sup>th</sup> ed (2018).

<sup>172</sup> Kevin J. Sigler 'CEO Compensation and Company Performance' (2011) 31 *Business and Economics Journal* 1.

<sup>173</sup> Arianna H. Benedetti and Serena Chen 'High CEO-to-worker pay ratios negatively impact consumer and employee perceptions of companies' (2018) 79 *Journal of Experimental Social Psychology*.

<sup>174</sup> Benedetti and Chen op cit note 173.

<sup>175</sup> Benedetti and Chen op cit note 173.

<sup>176</sup> King IV at 41.

Assurance services can be defined as independent professional services that improve the quality of information for decision makers in a company and are usually drawn from auditing or accounting firms. The reason assurance services are important for the internal functioning of a company are that it allows key decision makers such as the board of directors to make informed decisions about the company's strategy. But assurance services serve a key function to the externalities of a company. This is because companies that aim to have their credibility enhanced will aim to have their reports assured.<sup>177</sup> This shows that companies are considering the impact that assurance services will have on stakeholders who are not internal of the company structure.

Principle 16: In execution of its governance role and responsibilities, the governing body should adopt a stakeholder inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.

The stakeholder inclusive model on corporate governance has been discussed above. It mainly refers to how the board of directors should consider the legitimate interests of all material stakeholders when they are making a decision.<sup>178</sup> This means that shareholders and other stakeholders are seen to be on equal footing in the eyes of the company. The legitimate interest of shareholders would relate to the capital they have invested in the company. The legitimate interest that creditors have in a company would be to be repaid and have future clients that they can do business with.

Customers are another group of stakeholders that the company should consider. The interest that customers have in a company would be the continued use of the company's product or service. The interest that the community has in companies

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<sup>177</sup> Roger Simnett, Ann Vanstraelen and Wai Fong Chua 'Assurance on Sustainability Reports: An International Comparison' (2009) 84 *The Accounting Review* 3.

<sup>178</sup> *Ibid.*

could vary depending on the company and community. The company could be a provider of employment to members of the community or could even attract other businesses to the community. Just consider the numerous towns that developed around mines and mining companies in the history of South Africa. Government is another stakeholder that has an interest in a company. As mentioned above companies supply services or goods to populations, they provide employment and may even have an effect on the environment. All of these factors are interests of the government as government is tasked with protecting each of these.

Principle 17: The governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests.<sup>179</sup>

This principle applies only to institutional investor organisations and thus has a more limited scope than the other principles. This principle advocates for how institutional investor organisations are to assess the social and environmental consequences of their investment by conducting accurate financial analyses.<sup>180</sup> This means that these organisations are to be aware of the social impacts of where their money is going and are to pay greater attention to this. It is similar to corporate social responsibility in that institutional investors are to have due regard to the triple bottom line and not just profits or highest investment return. They should aim to create value in the long-term.

Now that this paper has considered King IV, which is a crucial source of corporate governance in South Africa, it shall demonstrate how it operates in reality through the Johannesburg Stock Exchange.

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<sup>179</sup> King IV at 41.

<sup>180</sup> Aurelija Žėkienė and Juozas Ružėvičius 'Socially Responsible Investment as a Part of Corporate Social Responsibility' (2011) 16 *Economics and Management*.

#### 4.4. Johannesburg Stock Exchange

The Johannesburg Stock Exchange (JSE) is licensed to operate an exchange under the Securities Services Act 36 of 2004 and grants listings subject to compliance with its Listing Requirements.<sup>181</sup> It has various sanctions for companies which are listed but do not comply with its Listing Requirements such as imposing a fine, suspending or terminating a listing.<sup>182</sup> Companies which are listed on the JSE are required to disclose in their annual report and annual financial statements how they applied the principles set out in King IV.<sup>183</sup> If there is non-compliance with the principles of King IV, companies would need to disclose the reasons for non-compliance.<sup>184</sup>

In addition to the application of King IV, the JSE sets out other corporate governance mechanisms that listed companies are required to disclose. These mechanisms are procedures for the appointment of directors to the board, a policy of a balance of power that highlights that no one director has unfettered discretion when it comes to decision making, appointment of board and remuneration committees, appointment of a competent and qualified secretary and a policy of gender diversity.<sup>185</sup> Now that there is a clear understanding of the corporate governance regulatory framework in South Africa, this paper will begin to consider some practical steps that companies and employees can take in implementing the CSR and corporate governance principles.

### 5. Chapter 4-Implementing King IV and CSR for employee participation

#### 5.1. Introduction of Chapter 4.

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<sup>181</sup> Johannesburg Stock Exchange Listing Requirement 1.2.

<sup>182</sup> Johannesburg Stock Exchange Listing Requirements 1.11-1.20

<sup>183</sup> Johannesburg Stock Exchange Listing Requirements 8.63 (a)(i).

<sup>184</sup> Johannesburg Stock Exchange Listing Requirements 8.63 (a)(ii)

<sup>185</sup> Johannesburg Stock Exchange Listing Requirements 8.63.

Getting employees to be engaged in the workplace is key to strengthening the relationship between employees and employers. The following chapter will outline and discuss how and why the implementation of King IV principles in relation to employee engagement within an organization will be positive for employers and employees. The positives of this will lead to better relations in the workplace between employees and employers and ultimately address some of the problems that the LRA fails to address, such as workplace forums which were discussed in previous chapters. The first section will discuss the important role CSR plays for employees, focusing on psychological factors for engaging with employees through CSR. The second part will then discuss different approaches that a company can take when attempting to engage with employees through CSR. The final part will discuss some practical considerations for companies when it comes to engaging with employees through CSR.

## 5.2. Employees Attitudes towards CSR Programs

A few scholars have looked at employees' attitude towards CSR programs. They found that the attitudes of employees towards CSR programs are broken down into attitudes towards organization and attitude towards society.<sup>186</sup> They are further broken down into four categories: 1) acceptance of new role of organization 2) identification with organization 3) importance attached to work performed and 4) a sense of social justice.<sup>187</sup> Rodrigo and Arenas wanted to observe how these attitudes play out in real-life scenarios. To do this they looked at a previous study that looked at different companies implementing various CSR programs.<sup>188</sup> The first company implemented an initiative intended to improve quality of working life of its employees. The company implemented many different activities like the "solidarity fund" to assist employees primarily in health and educational matters; and the

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<sup>186</sup> Pablo Rodrigo and Daniel Arenas 'Do Employees Care about CSR Programs? A Typology of Employees According to their Attitudes' (2008) 83 *Journal of Business Ethics*.

<sup>187</sup> Rodrigo and Arenas op cit note 186.

<sup>188</sup> Rodrigo and Arenas op cit note 186.

“values’ promotion campaign” to spread values like solidarity, justice, and tolerance among its employees.<sup>189</sup> Once these programs were implemented there was an improvement for permanent staff on aspects such as internal communication, employees’ perception of benefits, importance attached to work and the relationship with management. The second company implemented programs such as “community development” initiatives, such as a foundation which provided ambulatory surgery to the poorest people, a scholarship fund for outstanding but poor high school students who wish to study engineering, and many cultural activities (i.e., conferences, workshops, seminars) for employees.<sup>190</sup>

With the introduction of CSR programs, employees established different behaviours, emotions, and cognitions about the new role that the company undertakes as a satisfier of social needs beyond the delivery of high-quality products or services, or as merely an employer. There are however some differences noted between full-time and part-time employment. It has been shown that part-time workers were more dissident with their attitude towards the CSR programs that were initiated.<sup>191</sup> This was likely due to them being dismissed once a construction project was completed and had low wage. A few points can be taken away from this. The first is that CSR appears to have a positive impact on full time employees in relation to their behaviours, emotions and cognitions with the company they work for. As reported above employees felt that the company they work for was actually a satisfier of social needs and viewed the company as more than just an employer. These positives will be further expanded upon below when this paper discusses how the changes in attitude from CSR programs that companies implement result in further positives for employees and employers.

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<sup>189</sup> Rodrigo and Arenas op cit note 186.

<sup>190</sup> Rodrigo and Arenas op cit note 186.

<sup>191</sup> Rodrigo and Arenas op cit note 186.

The second point to note is that part-time employees did not have such a positive view towards CSR programs that their employers implemented. This does not mean that they view the programs as negative but did not view them as being positive as full-time employees. As mentioned above this may be due part-time employees being dismissed once a project is completed. This is relevant for the South African context due to the different types of employment relationships that exist. South Africa has different types of employment relationships which could not be considered full-time. There is part-time employment which refers to someone who is permanently employed but works part of a working day or week.<sup>192</sup> There are temporary employees who are not permanently employed and work for a specific amount of time or until a particular project is completed.<sup>193</sup> A casual employee is an individual who is employed on a short-term basis and works part of a working week only.<sup>194</sup> There are also independent contractors which have been discussed in previous chapters and refer to individuals who are explicitly excluded from the definition of an employee in terms of the LRA.<sup>195</sup>

All of this shows that there are different types of employment relationships in South Africa which means that different workers may respond differently to CSR programs. For example a part-time construction worker may not have the same positive attitudes that a full-time construction worker will have towards a company that participates in CSR programs. This is a point to consider for South African employees, whether they employ full-time employees or the other types of non-standard employment which has been discussed above. With that being said it appears that full-time employees have a positive attitude towards companies that engage in CSR, as discussed above. Now to consider how CSR may impact on an employee's identification with an organization.

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<sup>192</sup> South African Paralegal Manual 2015 (hereafter the Paralegal Manual).

<sup>193</sup> Paralegal Manual 2015.

<sup>194</sup> Paralegal Manual 2015.

<sup>195</sup> S213 of the LRA.

### 5.3. Employees Identification with an Organization

Several scholars have looked at how internal and external CSR effects employees' identification with the organization. Internal CSR refers to the policies and practices of an organization that are related to the psychological and physiological well-being of its employees.<sup>196</sup> External CSR relates to environmental and social practices that help to strengthen the firm's legitimacy and reputation among its external stakeholders.<sup>197</sup> Employees identify themselves greatly with their organization when the organization is involved in social welfare activities such as CSR programs.<sup>198</sup> Identification with an organization is derived from social identity theory and is a specific form of social identification.<sup>199</sup> It refers to how an individual perceives their relationship with an organization and whether they think the organization's accomplishments and failures as their own.<sup>200</sup>

Organizational identification is important as it has several impacts on a company. These impacts include job satisfaction, organizational citizenship behaviour and turnover retention.<sup>201</sup> Thus companies should look to engage in CSR activities that have a positive aspect on an employee's organizational identification. This paper also found that if

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<sup>196</sup> Stephen Brammer, Andrew Millington and Bruce Rayton 'The Contribution of Corporate Social Responsibility to Organizational Commitment' (2007) 18 *International Journal of Human Resource Management* 10.

<sup>197</sup> Brammer, Millington and Rayton op cit note 196.

<sup>198</sup> Ante Glavas and Lindsey N. Goodwin 'Is the Perception of 'Goodness' Good Enough? Exploring the Relationship Between Perceived Corporate Social Responsibility and Employee Organizational Identification' (2013) 1 *Journal of Business Ethics* 114.

<sup>199</sup> Blake E. Ashforth 'Social Identity Theory and the Organization' (1989) 14 *The Academy of Management Review* 1.

<sup>200</sup> Fred Mael and Blake E. Ashforth 'Alumni and their alma mater: A partial test of the reformulated model of organizational identification' (1992) 13 *Journal of Organizational Behaviour* 2.

<sup>201</sup> Rolf van Dick, Oliver Christ, Jost Stellmacher, Ulrich Wagner, Oliver Ahlswede, Cornelia Grubba, Martin Hauptmeier, Corinna Hohfeld, Kai Moltzen and Patrick A. Tisington 'Should I Stay or Should I Go? Explaining Turnover Intentions with Organizational Identification and Job Satisfaction' (2004) 15 *British Journal of Management* 4; Tom R. Tyler and Steven L. Bader 'The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior' (2003) 7 *Personality and Social Psychology Review* 4; and Fred Mael and Blake Ashforth 'Loyal From Day One: Biodata, Organizational Identification, and Turnover Among Newcomers' (1995) 48 *Personnel Psychology* 4.

employees are treated well in the workplace with internal CSR activities such as training opportunities, respect for human rights, good work-life balance and a healthy and safe working environment then it is likely to enhance employee's self-esteem and employees are more likely to identify with the organization. This is noteworthy from an employer's perspective because if employers want employees to be satisfied with their work, develop better organizational citizenship behaviour and stay with the company instead of looking for other work, they should seriously consider incorporating internal and external CSR programs in their business model.

#### 5.4. CSR and Employee Satisfaction

Some scholars argue that CSR may present an opportunity to influence employees' impression of a company. This is because people view organisations as having morals and are goal-seeking in addition to being an organisation. Thus employees view organisations such as companies as having human traits. They also identify four psychological needs that CSR can satisfy for a company's employees. These are 1) security, 2) self-esteem, 3) belongingness and 4) a meaningful existence. Security in this context refers to knowing that one's material needs will be met. Key to security is the notion of trust. Employees are assured security through contracts of employment, but trust is an integral part of any relationship between parties that may go beyond a written contract.<sup>202</sup> With regards to security CSR may help to satisfy the need for security and safety because companies with a strong reputation for CSR generally exhibit cooperative rather than opportunistic behaviour. An example of a good trust indicator would be companies that promote from within rather than hiring outside candidates.

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<sup>202</sup> Jeffrey Pfeffer *Competitive Advantage Through People: Unleashing the Power of the Workforce* (1994).

This shows that a company is trustworthy and not opportunistic. Self-esteem refers to the image that one has about themselves.<sup>203</sup> As mentioned above if companies are engaged in CSR, it has the effect of employees being able to identify better with the company and ultimately have a positive impact on job satisfaction, organizational citizenship behaviour and turnover retention. This is closely tied to the concept of belongingness because if one can identify with an organization, then they may feel that they belong in that organization. The converse is also true, namely that if one doesn't identify with an organization, then that sense of belonging may not be present. This can have an adverse effect on some of the factors mentioned above, namely job satisfaction, organizational citizenship behaviour and turnover retention. For example, if an employee does not identify with a company, then they are more likely to leave that employment and seek another company that they identify with if possible.<sup>204</sup>

### 5.5. Approaches of using CSR to engage employees into the company

Now to consider the different theoretical approaches that companies can use when attempting to engage with their employees through CSR. These are through transactional, relational and developmental approaches.<sup>205</sup> There is strong evidence to show that many employees around the world do not feel engaged in their job.<sup>206</sup> The authors argue that how companies are seen to treat their employees is the number one factor when it comes to assessing a company's corporate citizenship. This is above factors such as philanthropy, community involvement

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<sup>203</sup> Ibid.

<sup>204</sup> Christopher W. Bauman and Linda J. Satika 'Corporate social responsibility as a source of employee satisfaction' (2012) 32 *Research in Organizational Behaviour*.

<sup>205</sup> Lise M. Saari and Timothy A. Judge 'Employee Attitudes and Job Satisfaction' (2004) 43 *Human Resource Management* 4; Grace Reuben Etuk and Eko Thomas Aloba 'Determinants of job dissatisfaction among employees in formal organizations in Nigeria' (2004) 4 *International Journal of Development and Sustainability* 5.

<sup>206</sup> Philip Mirvis 'Employee Engagement and CSR: Transactional, Relational and Developmental Approaches' (2012) 54 *California Management Review* 4.

and impact on the environment.<sup>207</sup> This highlights the importance of the relationship that companies have with their employees. Before the discussion of the different approaches begins this paper wishes to clarify a few points. Firstly, while three different approaches will be presented below, these different approaches should not be read in isolation. That is to say the approaches may overlap with one another, especially in practice. However, with that being said this paper will attempt to illustrate the differences between the approaches.

Secondly, this paper also wishes to clarify that it does not prefer one approach to another.

This is because each approach has various strengths and weakness. Each of the strength and weaknesses of an approach will ultimately depend on the type of company, type of employees, size of the company, type of industry, financial position of the company and ultimately what CSR goals the company wishes to achieve. Thus, since the focus of this paper is employees, companies that wish to prioritize stakeholders other than employees may not be able to find the purpose of each approach. For example, consider an oil producing company who one could argue that its environmental impact is a big focus for CSR. Thus, if the environment is the priority focus, paying great attention to employees may not be practical. That is not to say companies cannot focus on more than one stakeholder but it will ultimately depend on the factors mentioned above. Before this paper discusses the different approaches, it will consider the concept that underpins them.

#### 5.5.1. The psychological contract between employees and employers.

All of these three different approaches are based on a concept known as the psychological contract between employer and employees.<sup>208</sup> This concept refers to employees perceptions

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<sup>207</sup> Golin Harris surveys, "Doing Well by Doing Good (2006-2010)," at <golinharris.com>.

<sup>208</sup> Sandra L. Robinson 'Trust and Breach of Psychological Contract' (1996) 41 *Administrative Science Quarterly* 4.

of what they to their employees and what their employers owe to them.<sup>209</sup> It looks at a series of mutual obligations between the employer and employee that has a significant impact on the relationship between the parties, even though both parties may not be explicitly aware of these mutual obligations.<sup>210</sup> Employee-employer relationship expectations are usually governed by a written or unwritten contract of employment but the concept of the psychological contract looks at what both parties expect of each other in terms that are unwritten and perhaps not even consistent with each other.<sup>211</sup>

For example, an employee may sign an employment contract with an employer with the belief that if they are to work hard enough and show loyalty to the company, the employer will be obligated to let them progress up the company structure. Conversely the same employer signs the same contract with the employee with no thought of an obligation of the progression of the employee in the company structure. Both of these expectations may not be written into the formal contract of employment but will impact the attitudes and behaviours of both parties. Thus, both of these unexpressed obligations will have a major impact on the relationship between the two. Now to consider the first approach that employers can use to engage employees through CSR.

### 5.5.2. The Transactional Approach

The transactional approach of engaging employees through CSR refers to policies and programs of an organization that are undertaken to meet the needs and interests of employees who want to take part in the CSR of a company.<sup>212</sup> This refers to a type of internal CSR as the company is engaging with its internal stakeholders (employees in this instance) and

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<sup>209</sup> Robinson op cit note 208.

<sup>210</sup> Denise M. Rousseau 'Psychological and Implied Contracts in Organizations' (1989) 2 *Employee Responsibilities and Rights Journal* 2.

<sup>211</sup> Jackie Coyle-Shapiro and Ian Kessler 'Consequences of the Psychological Contract for the Employment Relationship: A Large Scale Survey' (2000) 37 *Journal of Management Studies* 7.

<sup>212</sup> Mirvis op cit note 206.

ensuring that the needs and interests are satisfied. The needs and interest of employees in this context refers to salary, benefit packages and job responsibilities.<sup>213</sup> Companies should aim to fulfil these needs and interests by maximizing them through CSR policies and programs. The fulfilment of these interests and needs through maximization of them can greatly contribute to job satisfaction, employee retention and productivity.<sup>214</sup> Thus, this type of approach to engaging employees through CSR has the potential to satisfy the needs of the employees, who would want more attractive salaries and benefits, and employers, who would want to employees to be happy and retained within the organization. This approach is highly driven by the employer as they aim to fulfil the needs and interests of each employee. In this approach employees engage with the company through CSR as their needs and interests are satisfied.

### 5.5.3. The Relational Approach

The relational approach of engaging employees through CSR refers to instances where the organization and its employees together make a commitment to CSR.<sup>215</sup> This is in contrast to the transactional approach as in this approach it is the employer and employee who work together to embrace a shared vision and mission, which has CSR as its core.<sup>216</sup> The key strength of the relational model is that since employees and companies are working together towards CSR, it embeds the notions of CSR into the company itself.<sup>217</sup> According to this approach companies are not necessarily fulfilling the needs of employees by offering them employee benefits but are working side by side with employees in fulfilling the goals of CSR that the company has set. In this approach employees engage in the company by mutually

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<sup>213</sup> C. B. Bhattacharya, Sankar Sen and Daniel Korschun 'Using Corporate Social Responsibility to Win the War for Talent' (2008) 49 *MIT Sloan Management Review* 2.

<sup>214</sup> C. B. Bhattacharya, Sen and Korschun op cit note 213.

<sup>215</sup> Mirvis op cit note 206.

<sup>216</sup> Philip Mirvis, Bradley Googins and Sylvia Kinnicutt 'Vision, Mission, Values: Guideposts to sustainability' (2010) 39 *Organizational Dynamics*.

<sup>217</sup> Mirvin op cit note 206.

outlining and fulfilling CSR goals along with the company. The main reason that this type of CSR approach to employee engagement would be favoured is because it allows employees to incorporate their own ideals and beliefs of what CSR should be into the company's beliefs of what CSR should be. In this sense employees feel a greater sense of identity and belonging with the company and bring about the benefits of this belonging as mentioned above.

#### 5.5.4. The Developmental Approach

The developmental approach of engaging employees through CSR refers to instances where an organization invests in the skills and capacities of its employees in order to produce greater value for the company and society.<sup>218</sup> It has been shown that training improves the performance of an organization as it creates a workforce that has extensive knowledge and skills.<sup>219</sup> From a company's perspective this offers numerous advantages, namely it increases the company's human capital and organizational knowledge.<sup>220</sup> The human capital aspect means that the more skilled the employees of the company, the more they put out and produce and the organizational knowledge aspect means that the employees know how to function better as a cohesive unit as a result of the training.<sup>221</sup> Thus the developmental approach poses benefits for employers and employees and companies should consider this approach in attempting to engage with their employees through CSR.

#### 5.6. The Different Approaches in Practice

The following part of the paper will begin to look at different types of practical CSR programs that companies can implement. A possible type of CSR program that companies

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<sup>218</sup> Mirvin op cit note 206.

<sup>219</sup> Phylis Tharenou, Alan M. Saks and Ceila Moore 'A Review and Critique of Research on Training and Organizational-Level Outcomes' (2007) 17 *Human Resource Management Review* 3.

<sup>220</sup> Alvaro Lopez-Cabrales, Ramon Valle and Ines Herrero 'The Contribution of Core Employees to Organizational Capabilities and Efficiency' (2006) 45 *Human Resource Management* 1.

<sup>221</sup> Maria Isabel Barba Aragon, Daniel Jimenez Jimenez and Raquel Sanz Valle 'Training and Performance: The Mediating Role of Organizational Learning' (2014) 17 *Business Research Quarterly*.

can implement is a volunteerism program, where employees get paid time off to volunteer in the community. Another type of CSR policy that companies can consider should be ones that contribute to judgments of fairness and attributions of corporate morality, build trust between employee and employer and reduce fears of exploitation.<sup>222</sup>

Examples of such company policies and programs could be ones that address areas relating to employee benefits, working conditions and development programs for employees.<sup>223</sup> These type of CSR policies are aimed at addressing an employee's need for security as it shows that companies are willing to invest resources into the employee-employer relationship. This investment in turn builds trust which alleviates any concerns that the employee will behave in an opportunistic way.<sup>224</sup> For example companies could contribute financial resources for an employee to attend a short course, further their studies or develop a particular skill. This shows that the company views the employee as being part of the company structure who can grow and develop with the organisation and not just another worker. These will be explored in greater detail below.

### 5.6.1. Transactional approach

#### 5.6.1.1. Cafeteria-style benefits plan

A practical example of the transactional approach to engaging employees through CSR is the use of employee cafeteria benefit plans. Employee cafeteria benefit plans refer to a benefit system where employees choose the benefits and rewards that will accrue to them as a result of their work, based on their particular needs.<sup>225</sup> Typically employees are awarded a base salary as a reward for their services to a business. Additionally to this there are benefits such

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<sup>222</sup> Deborah E. Rupp 'An Employee-centred Model of Organizational Justice and Social Responsibility' (2011) 1 *Organizational Psychology Review* 1.

<sup>223</sup> Rupp op cit note 223.

<sup>224</sup> Rupp op cit note 223.

<sup>225</sup> Gayle White 'Diversity in Workplace Causes Rise in Unique Employee Benefits and Changes in Cafeteria Plans' (2010) *Journal of Management and Marketing Research*.

as health insurance, sick leave and vacation.<sup>226</sup> Certain authors have found that the different types of benefits can play a significant role in influencing an employee's attitude and perception of work.<sup>227</sup> Benefit packages that are tailored to meet the preferences and characteristics of employees can result in improved enthusiasm and performance for the company.<sup>228</sup> This is because it allows employees to adjust their rewards to fit their own personal beliefs, interests and long-term career.

In South Africa the different employee benefits are regulated by a variety of statutes and policies, some of which are beyond the scope of this research paper and thus will not be fully covered. Some of these will however be covered by this paper. For example in terms of the Basic Conditions of Employment Act (BCEA) employees in South Africa are entitled to an annual leave of 21 consecutive days a year with full remuneration.<sup>229</sup> This is one type of employee benefit that could be used in an employee cafeteria-style benefit plans. The main premise behind employee cafeteria benefit plans is that employees may now decide for themselves how they wish to use any additional benefits that the company bestows on their employees. Employees may choose their own benefits for a number of reasons. Consider for example how younger employees may want a company to contribute less for their health coverage and rather allocate money that would have accrued to that benefit to rather go towards vacation or travel expenses.

## 5.6.2. Relational Approach

### 5.6.2.1. Corporate Volunteer Programs

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<sup>226</sup> George Bohlander and Scott Snell *Managing Human Resources* (2007) p473.

<sup>227</sup> George Milkovich, Jerry Newman and Barry Gerhart *Compensation* (2011).

<sup>228</sup> Katie E. Lawton and Oleksandr S. Chernyshenko 'Examining determinants of employee benefit preferences: Joint effects of personality, work values, and demographics' (2008) 46 *Asia Pacific Journal of Human Resources* 2.

<sup>229</sup> S20 of the Basic Conditions of Employment Act 75 of 1997.

A practical example of the Relational Approach to engaging employees through CSR would be corporate volunteer programs. These are programs where an organization (such as a company) provides support to its employees who wish to volunteer their time and expertise in service to the community.<sup>230</sup> Corporate volunteer programs can vary in terms of their target market. Thus, there may be corporate volunteer programs that target education, healthcare, environmental concerns or vulnerable youth groups.

Corporate volunteer programs are intended to be a joint venture between the employees and the company that is to operate in the following manner: employees (usually led by management but is to include all employees in the process) identify a social issue that they wish to address and the company provides some form of support to employees when addressing the social issue.<sup>231</sup> The type of support provided by the company will vary accordingly but includes support such as organizing team projects, provide matching funds for employees who participate in the programs, recognizing the volunteer efforts of employees when there is a job evaluation or providing employees with paid time off work to participate in the programs.<sup>232</sup> There has also been evidence to suggest that corporate volunteer programs play a positive role when it comes to recruitment and retention of employees.<sup>233</sup>

It has also been shown that corporate volunteer programs improve brand recognition, add media exposure and increase customer loyalty.<sup>234</sup> They have been shown to improve brand recognition as companies that engage in corporate volunteer programs are seen to be in a better standing in terms of fulfilling CSR obligations and thus receive more of the spotlight

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<sup>230</sup> Cathleen Wild 'Corporate Volunteer Programs: Benefits to Business' (1993) *Report No. 1029, The Conference Board, New York.*

<sup>231</sup> Shaan Shahabuddin, Zubaida Qamar and Noor Mobeen 'Corporate Volunteer Programs' (2015) 51 *The International Journal of Volunteer Administration* 1.

<sup>232</sup> Wild op cit note 230.

<sup>233</sup> Kristin B. Backhaus, Brett A. Stone and Karl Heiner 'Exploring the Relationship between Corporate Social Performance and Employer Attractiveness' (2002) 41 *Business and Society* 3.

<sup>234</sup> Brammer, Milington and Rayton op cit note 196.

than companies which do not engage in corporate volunteer programs.<sup>235</sup> Similarly consumers are more likely to stay loyal to a company or product if the company that produces the product has corporate volunteer programs that are similar to their own values and beliefs.<sup>236</sup> These are some of the positives of corporate volunteer programs from an employer's perspective.

From an employee's perspective there are numerous reasons as to why employees would want to participate in corporate volunteer programs but two will be discussed in this research paper. Firstly, it has been shown that involvement in corporate volunteer programs provides employees with the prospect of improving job-related skills.<sup>237</sup> It can improve job-related skills because the type of volunteering that employees do may incorporate skills that they would use in their actual employment and can thus practice these skills without the stress and pressure of an actual working environment. This is advantageous for employees because it means they will be better equipped to complete their work-related responsibilities. Secondly corporate volunteer programs have been found to have a positive impact on individual work attitudes, with morale being three times higher in employees in companies that were actively involved in volunteer programs. This shows that corporate volunteer programs have the possible effect of increasing morale and thus contribute to creating an overall harmonious working environment for employees. This high morale is also associated with organizational commitment and job satisfaction.<sup>238</sup>

Thus, these programs present an excellent opportunity for both employees and employers.

Employees are more likely to feel part of the organisation and are more committed to it and

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<sup>235</sup> Brammer, Millington, & Rayton op cit note 196.

<sup>236</sup> Shahabuddin, Qamar and Mobeen op cit note 230.

<sup>237</sup> J.J. Laabs 'Community Service Helps UPS Develop Managers' (1993) *Personnel Journal*.

<sup>238</sup> Dane K. Peterson 'Recruitment Strategies for Encouraging Participation in Corporate Volunteer Programs' (2004) 49 *The Journal of Business Ethics* 4.

employers gain a competitive advantage over their rivals as they are able to attract and retain highly qualified employees.

### 5.6.3. Developmental Approach

#### 5.6.3.1. Human Resource Development

Human resource development is a practical example of engaging employees through CSR from the developmental approach. This refers to the fusion between individual work-related and organizational development roles in order to achieve maximum productivity for the organization.<sup>239</sup> It is essentially about determining which skills or expertise the company requires as an organisation (holistically and not just from a business perspective) and developing current employees to address the lack those expertise or skills. This is similar to training, but training refers to the actual activity that employees engage in when they are developing their human resources.<sup>240</sup>

Human resources development would be the overall strategy and not just the training activity the employees would undergo. Thus the human resources development strategy that an organization wishes to use must be aligned with the organizations strategy. Organizations should analyse the organization as a whole, identify specific job characteristics and the current abilities of employees when designing a training model for human resources development.<sup>241</sup> There are however some negative perceptions about human resource development. The main negative perception is that employers view it as being a financial

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<sup>239</sup> R. Wayne Pace, Phillip C. Smith and Gordon E. Mills *Human Resource Development: The Field* (1991).

<sup>240</sup> Gordon Betcherman 'Are Canadian Firms Underinvesting in Training?' (1992) 1 *Canadian Business Economics* 1.

<sup>241</sup> Lloyd Baird and Ilan Meshoulam 'Managing Two Fits of Strategic Human Resource Management?' (1988) 13 *The Academy of Management Review* 1.

burden on the organization due to some of the high costs associated with training employees.<sup>242</sup>

This is mainly due to the high costs that an organization bears before, during and after a human resource development program. For example human resource development requires top level managers to collaborate with human resources personnel to construct a human resources development program. Then there is the implementation of the program itself and the training that takes place. There is analysis and feedback that needs to occur once the human resource development program is complete. This entire process could consume much time and money from the organization and may not be directly related to the core purpose of the organization. But this should not be the case. If human resource development programs are conducted to achieve a specific organizational goal, then the amount of money and time spent in achieving that goals should be seen as a long-term investment for the organization.<sup>243</sup> This is consistent with the concept of sustainable development that King IV advocates for, which emphasises growing an organization with regards to the future of the organization and society.<sup>244</sup> It is true that not all human resource development programs are not successful and some do have more costs than benefits to companies.

However, the approach of seeing human resource development as an investment in the long-term success of an organization means that organizations would be more willing to invest in the skills and competencies of their employees. Even when human resource development programs are seen to not be successful, they provide a learning point for organizations. If feedback is done properly, an organization should be able to identify why a particular human

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<sup>242</sup> Surbhi Jain 'Cost-effectiveness of Training Programmes in Insurance Sector of India' (2015) 3 *Management Dynamics in the Knowledge Economy* 3.

<sup>243</sup> Jelena Vemic 'Employee Training and Development and the Learning Organization' (2007) 4 *Economics and Organization* 2.

<sup>244</sup> King IV on Sustainable Development.

resources development program did not work and adjust the program accordingly so that future programs will be able to achieve their goals.

Human resource development has a number of benefits from an employee and employer perspective. First, we shall consider the benefits from an employer's perspective. The first benefit of human resource development is that it can help a company achieve its core objectives. The core objective of profit companies is namely having more finances for production and growth. This can be achieved through a variety of ways such as developing innovative ideas for the business, making effective business strategies and having loyal, competent and motivated employees.<sup>245</sup> All of this can be enhanced through the proper type of training and human resource development.<sup>246</sup>

The second benefit of human resources development is closely tied to the first benefit and it is that human resources development can help alleviate various problems that companies encounter with regards to their employees. These problems are absenteeism among employees, lack of commitment, motivation, skills, knowledge and capabilities.<sup>247</sup> These problems can arise for a number of reasons and depend on the type of company, the demands of the company and the type of employee but ultimately lead to less productivity from employees which can have a negative effect on an organization's performance. Human resource development has been shown to address these problems that many companies and organizations encounter.<sup>248</sup>

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<sup>245</sup>Sadaf Zahra, Amna Iram and Hummayoun Naeem 'Employee Training and Its Effect on Employees' Job Motivation and Commitment: Developing and Proposing a Conceptual Model' (2014) 16 *Journal of Business and Management* 9.

<sup>246</sup>J. Stacy Adams 'Toward an Understanding of Inequity' (1963) 67 *Journal of Abnormal and Social Psychology* 5.

<sup>247</sup> Zahra, Iram and Naeem op cit note 245.

<sup>248</sup> Zahra, Iram and Naeem op cit note 245.

From an employee's perspective the benefits of human resource development are numerous. Firstly, it helps employees develop leadership and communication skills.<sup>249</sup> This is crucial for professional and personal development as people who can develop these skills will be more competent in their professional and personal lives. Secondly human resource development has the ability to decrease an employee's fear when attempting a new task at work and enables them to better handle pressure, frustration and conflict in the workplace.<sup>250</sup> These are vital skills to develop as workplaces are filled with different types of individuals who have different personalities and characteristics which could lead to pressure, frustration and eventually conflict.

This is not necessarily conflict between employer and employee and could include conflict among employees themselves. Thus, developing skills that enable employees to deal with pressure, frustration and conflict is key in having a harmonious work environment. The third benefit of human resources development programs from an employee's perspective is related to employee turnover. Employees who have undergone human resources development program reported lower levels of intention to leave their current work.<sup>251</sup> This shows that employees appreciate employers and organizations that are willing to invest time and money in improving the employee's skills and competencies and are thus more likely to be committed to their current work.

The following section will identify and outline numerous training models that employers can use when wanting to develop the human resources of their employees. This paper identifies a number of different training models because there is no one-size-fits all model and each organization will have different training requirements for their employees.

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<sup>249</sup> Zahra, Iram and Naeem op cit note 245.

<sup>250</sup> Zahra, Iram and Naeem op cit note 245.

<sup>251</sup> Patrick L. Owens Jr. 'One More Reason Not to Cut Your Training Budget: The Relationship Between Training and Organizational Outcomes' (2006) 35 *Public Personnel Management* 2.

### 5.6.3.1.1. Various Training Models

#### 1. Simulations

The first type of training model that this paper shall consider for developing employees is learning through simulations. Simulation is a good method of developing an employee's skills because it can allow one to move from knowledge or comprehension about a particular skill towards application and understanding of that skill.<sup>252</sup> Simulation focuses on enhancing a particular skill through practice, which is important in a workplace where skills are more important than knowledge acquired. This can be contrasted with other forms of developing employees such as lectures. Lectures tend to focus on acquiring knowledge about a particular area and transferring this knowledge to practice is limited.<sup>253</sup>

Simulation allows a greater transfer of knowledge to practice as individuals are going through a real-life scenario in a simulation. This is because simulation often presents an individual with an experience of an event, which has been shown to drive learning.<sup>254</sup> This is not to say that training through lectures should be discarded by employers who wish to develop their employees, but rather that if employers wish for their employees to develop and enhance a particular skill set, then simulation would be good option. Key to development through simulation is the analysis and feedback that occurs once the simulation has been completed. This is key because this is when the actual learning occurs.<sup>255</sup>

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<sup>252</sup> Benjamin S. Bloom *Taxonomy of Educational Objectives: Volume One Cognitive Domain* (1956).

<sup>253</sup> Jason J. Zigmont, Liana J. Kappus and Stephanie N. Sudikoff 'Theoretical Foundations of Learning Through Simulation' (2011) 35 *Seminars in Perinatology* 2.

<sup>254</sup> Zigmont, Kappus and Sudikoff op cit note 253.

<sup>255</sup> Zigmont, Kappus and Sudikoff op cit note 253.

Analysis and feedback once a simulation has occurred allows individuals to evaluate and improve their current skills. It is essentially about an individual learning what they did correctly and incorrectly during the simulation and using that experience to improve performance on future simulations or work-related tasks. It is key that the analysis and feedback is completed with a facilitator who knows the objectives of the simulation.<sup>256</sup> This ensures that the individual who is participating in the simulation can be guided on the purpose of the simulation and can thus make quicker connections between the task performed in the simulation and the goal that is to be achieved through the simulation. Development through simulation can best be summarized by Kolb's Experiential Learning Cycle. This learning model states that people can learn from having an experience (simulated or real) by reflecting on that experience, developing mental models to use in subsequent similar experience and ultimately test those mental models (either through subsequent simulations or real-life work-related activities).<sup>257</sup> Simulations are effective development strategies because they are emotionally charged, challenging and put an individual under stress which causes an individual to reflect on their experience once the simulation is completed.<sup>258</sup>

## 2. Behaviour modelling

Development through behavioural modelling refers to individuals (employees for our purposes) who observe a sequence of events in which models exhibit examples of the desired target behaviour.<sup>259</sup> It is then up to the individuals who observed the sequence of events to then either try to replicate the desired target behaviour, either through a

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<sup>256</sup> Zigmont, Kappus and Sudikoff op cit note 253.

<sup>257</sup> David A. Kolb *Experiential Learning: Experience as The Source of Learning and Development* (1984).

<sup>258</sup> Antonio Damasio *The Feeling of What Happens: Body, Emotion and the Making of Consciousness* (1997).

<sup>259</sup> Ivan T. Roberts 'Behaviour Modelling: Its Record and Potential in Training and Development' (1990) 1 *British Journal of Management*.

simulation or in their real-life work environment.<sup>260</sup> Key to this development method, as other methods, is feedback from facilitators. Aspects of behavioural modelling can be similar to simulation learning but differs from simulation it as modelling requires individuals to observe a particular behaviour, whereas simulation does not necessarily require a particular behaviour to be observed.

There is evidence to show that behavioural modelling is an effective developmental method<sup>261</sup>. An effective behavioural model training program has a few key characteristics that employers should pay close attention to when they are trying to get employees to engage through CSR. The first key characteristic is presenting the desired behaviour or skill in the form of rule codes.<sup>262</sup> It has been shown that presenting the desired behaviour or skill in this form had a positive effect on the development of procedural knowledge skills.<sup>263</sup> The second key characteristic is that behavioural model training should incorporate a mixture of positive and negative models instead of positive only models when they are implemented.<sup>264</sup> Mixing positive and negative models refers to individuals observing the desired behaviour or skill (positive) and an undesired behaviour or skill (negative) in the same training program.<sup>265</sup>

### 3. Hours spent on training

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<sup>260</sup> Robertson op cit note 259.

<sup>261</sup> Daniel W. L. Chan 'A Meta-Analytic Review of Behavior Modeling Training' (2005) 90 *Journal of Applied Psychology* 4.

<sup>262</sup> Chan op cit note 261.

<sup>263</sup> Chan op cit note 261.

<sup>264</sup> Timothy T. Baldwin 'Effects of Alternative Modeling Strategies on Outcomes of Interpersonal-Skills Training' (1992) 77 *Journal of Applied Psychology* 2.

<sup>265</sup> Baldwin, op cit note 264.

The number of training hours is the third key characteristic of a successful behavioural model training program. The greater the number of hours spent in behavioural model training, the greater the positive effects for procedural-knowledge skills.<sup>266</sup> This should come as no surprise as the greater practice there is most skills, then the greater chance that skill will be enhanced. The final characteristic that makes a behavioural model training program successful are posttraining transfer enhancers. These refer to strategies that individuals use to transfer knowledge acquired in training to the work-environment.<sup>267</sup>

Having individuals set goals of how they will use their recently learnt skills, training of the trainers conducting the development and the reward or sanction for individuals who use or don't use their recently learnt skills acquired are the posttraining transfer enhancers that have been identified as having a positive impact on the transfer to the workplace of skills acquired.<sup>268</sup> Goal-setting refers to individuals setting objectives for themselves on how they will apply their learnt skills and has been found to be an effective posttraining strategy.<sup>269</sup> Training the trainers has shown to have a positive effect as it can provide social reinforcement when individuals use their newly learnt skills in their actual workplace.<sup>270</sup> Providing an incentive for using newly acquired skills or a deterrent for not using newly acquired skills has been shown to have a positive impact on the transfer of training for individuals.<sup>271</sup> These can take many forms and will depend on the training provided, the company, the employee and industry among a number of other variables. All of the above factors indicate that

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<sup>266</sup> Chan op cit note 261.

<sup>267</sup> Chan op cit note 261.

<sup>268</sup> Chan op cit note 261.

<sup>269</sup> Jon M. Werner, Anne M. O'Leary-Kelly and Timothy T. Baldwin 'Augmenting Behavior-Modeling Training: Testing the Effects of Pre- and Post-Training Interventions' (1994) 5 *Human Resource Development Quarterly* 2.

<sup>270</sup> Elwood F. Holton, Reid A. Bates and Wendy E. A. Ruona 'Development of a Generalized Learning Transfer System Inventory' (2000) 11 *Human Resource Development Quarterly* 4.

<sup>271</sup> Chan op cit note 261.

there are numerous positives that are associated with training and developing employees. This section has also provided strategies and methods that companies can use in order to maximize the benefits from training, both from their own perspective and for the employee who participates in the training.

#### 5.7. Conclusion of Chapter 4.

This chapter has shown that if employees use the corporate governance values that are infused in King IV code discussed in the previous chapter, then one is likely to achieve greater employee participation in a company. This would result in less employer-employee problems and disharmony and would address some of the problems that mechanisms, such as workplace forums in the LRA, do not address. The first section discussed the important role CSR plays for employees, focusing on psychological factors for engaging with employees through CSR. The second part then discussed different approaches that a company can take when attempting to engage with employees through CSR. The final part discussed some practical considerations for companies when it comes to engaging with employees through CSR.

#### 6. Conclusion

The relationship between employers and employees is one that can be tense but also has the potential to benefit both parties. While this relationship is mainly governed by the LRA in South Africa, this piece of legislation does not always harmonize the relationship between employer and employee. The following thesis has highlighted a flaw in the LRA, namely workplace forums, which for various reasons do not help improve the employer-employee relationship. This thesis then argued that corporate governance principles can be used to improve the relationship between employers and employees. This thesis was divided into four chapters. The first chapter looked at workplace forums in the LRA, which have been fully

used as a result of range of reasons, such as union opposition and issues that workplace forums cover. This lack of use of workplace forums has not helped the relationship between employees and employers. The second chapter then looked at corporate governance in general and the theoretical underpinnings of corporate social responsibility. This chapter also introduced the business case for corporate governance which outlines why companies and employers should incorporate corporate social responsibility into their business model.

The third chapter then started looking at the South African corporate governance framework, with a particular focus on King IV Report on Corporate Governance and some of its theoretical underpinnings. Special attention was paid to this regulatory code because it gives a more detailed outline of what is expected from companies and employers when it comes to corporate governance. Its wide applicability is another reason it was considered in great detail. The final chapter then presented companies and employers with practical considerations on how they can implement corporate governance principles and corporate social responsibility into their organization in order to strengthen the relationship they have with their employees. Throughout its course this thesis has been arguing that employers and companies should greatly consider using corporate governance and corporate governance in order to improve the relationship they have with their employees.

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