

# CORPORATE GOVERNANCE

---

Tongaat Hulett is committed to sound corporate governance in all its business practices. It continues to uphold and endorse the application of the principles recommended in the Code of Corporate Practices and Conduct embodied in the King II Report. The company recognises the need to add value to all stakeholders, conduct business with openness, integrity and accountability, and provide timely, relevant and meaningful reporting. The board of directors believes that it has complied, in all material respects, with the provisions of the King II Code and the related Listings Requirements of the JSE Limited (JSE), during the year under review.

The terms of reference of the board and committees, roles and responsibilities of the directors, as well as the company's code of ethics for directors and employees, are detailed in a Corporate Governance Manual. This, together with established policies on matters such as safety, health and environment, social investment, broad based black economic empowerment and employment equity, provide a sound framework for sustainable corporate governance within Tongaat Hulett.

## BOARD OF DIRECTORS

The board has adopted a Charter, which forms part of the Corporate Governance Manual and records the board's continued objective to provide responsible business leadership with due regard to the interest of shareholders and other stakeholders, including present and future customers, suppliers, employees, as well as the community and the environment within which the company operates. The Board Charter regulates and deals, inter alia, with the fiduciary duties and responsibilities of individual directors toward the company, the approval of strategy and policies, risk management and control, orientation of new directors and conflict of interest.

Tongaat Hulett has a unitary board structure comprising of thirteen non-executive and three executive directors, drawn from a broad spectrum of the business community. The directors represent a wide range of skills, knowledge and experience, and bring independent judgement to the board deliberations and decisions. The majority of the non-executive directors are independent, with no one individual having unfettered powers of decision-making.

The roles of the independent Non-Executive Chairman, Mr C M L Savage, and the Chief Executive Officer,

Mr P H Staude, are separate with a clear division of responsibilities. In accordance with the company's articles of association, directors are subject to retirement either by rotation at intervals of three years or at the close of business of the next annual general meeting after a director attains the age of seventy years. Directors retiring by rotation may be re-elected at the annual general meeting at which they retire. New directors may only hold office until the next annual general meeting, at which they will be required to retire and offer themselves for re-election. On appointment, new directors have the benefit of induction activities aimed at broadening their understanding of the company and markets in which the company operates. There are no term contracts of service between any of the directors and the company or any of its operations.

In assisting the board to discharge its duties, board committees have been established which provide, through transparency, disclosure and review, the assurance that operational performance and risk management are monitored. In this regard there is also a record of matters specifically reserved for the board's decision. A formal self-evaluation of the board, committees and the Chairman, aimed at improving the board's effectiveness, is carried out annually and areas of improvement or concern are identified and addressed.

The board of directors is responsible to shareholders for the performance and the affairs of the company, retaining effective control over the company and giving strategic direction to management. The board has delegated to the Chief Executive Officer and other senior management authority to run the day-to-day affairs of the company. In addition to written board resolutions, levels of authority and materiality delegated to management are approved by the board and are clearly recorded in the Authorities Framework contained in the Corporate Governance Manual, which is utilised by all operations within Tongaat Hulett.

The board normally meets at least six times a year, with special or additional meetings convened as circumstances dictate. Comprehensive board documentation is prepared and distributed in advance of each meeting, with an opportunity to propose additional matters for discussion at meetings. All directors have access to appropriate information and to the advice and services of the Company Secretary. Independent professional advice is available to directors in appropriate circumstances at the company's expense.

### Attendance of directors at board and committee meetings during the year ended 31 December 2008

Director	Board		Audit and Compliance Committee		Remuneration Committee		Nomination Committee	
	A	B	A	B	A	B	A	B
P M Baum	6	5			4	4	4	4
E le R Bradley	6	4	3	3	4	4	4	4
B G Dunlop	6	6						
F Jakoet <sup>1</sup>	2	1						
J John	6	5	3	3				
J B Magwaza	6	5						
T V Maphai <sup>1</sup>	2	1						
M Mia	6	6	3	3	4	4	4	4
N Mjoli-Mncube <sup>1</sup>	2	1						
M H Munro	6	6						
T H Nyasulu	6	5						
C M L Savage	6	6			4	4	4	4
C B Sibisi	6	6						
P H Staude	6	6						
R H J Stevens	6	5						
J G Williams	6	6						

A: Indicates the number of meetings held during the year while the director was a member of the board and/or committee.

B: Indicates the number of meetings attended during the year while the director was a member of the board and/or committee.

1: Appointed to the board with effect from 1 October 2008.

### BOARD COMMITTEE STRUCTURES AND RESPONSIBILITY

In accordance with the Board Charter, the board has approved and delegated authority for specific matters to various committees, all of which have formal terms of reference. Through regular reporting by the committees, the board is able to monitor, inter alia, key risk areas, and financial and non-financial aspects relevant to the company's various businesses. The formal terms of reference and the delegated authority regarding each committee are set out in the Corporate Governance Manual.

#### Audit and Compliance Committee

The Audit and Compliance Committee is appointed by the board each financial year and comprises three non-executive directors of the company, all of whom are independent. The members possess the necessary expertise to direct the committee constructively in the execution of its responsibilities. The current members are E le R Bradley (Chairman), J John and M Mia. The Chief Executive Officer, P H Staude; the Chief Financial Officer, M H Munro; the Internal Audit Manager, M M Jean-Louis and representatives

of the internal and external auditors attend by invitation. The Company Secretary, D McIlrath, is the secretary for this committee. The committee normally meets three times a year.

The Audit and Compliance Committee's terms of reference, which have been approved by the board, include financial reporting and operational matters such as the monitoring of controls, loss prevention, litigation, reputational issues and JSE, statutory and regulatory compliance matters. The Audit and Compliance Committee's terms of reference and internal audit charter were updated to reflect the changes in terms of the Corporate Laws Amendment Act, No 24 of 2006.

In addition, the committee is responsible for ensuring that there is an effective risk management process and regularly reviews the effectiveness of risk management activities and receives confirmation of the various ongoing risk management activities relevant to each operation. Each major operational area has its own audit and compliance committee, which subscribes to the same company audit philosophies and reports to the Tongaat Hulett Audit and Compliance Committee.

The committee provides a forum through which the external and internal auditors report to the board. It is responsible for the consideration for appointment and review of internal and independent external auditors, the maintenance of a professional relationship with them, reviewing accounting principles, policies and practices adopted in the preparation of public financial information and examining documentation relating to the interim and annual financial statements. In addition, it reviews procedures and policies of internal control, including internal financial control and internal audit reports. The adequacy and capability of Tongaat Hulett's external and internal audit functions are also subject to continuous review. The committee further considers the independence and objectivity of external auditors.

Management is focused on continuous improvements to systems of internal control. An external quality assurance review of the internal audit function was performed during 2007, which concluded that the Tongaat Hulett internal audit function "generally conforms" to the standards recommended by the Institute of Internal Auditors, which is the highest rating in terms of the standards of the Institute of Internal Auditors. The status of "generally conforms" continues to be applicable for a period of five years from the date of validation in terms of the standards of the Institute of Internal Auditors.

The external and internal auditors have unrestricted access to members of the Audit and Compliance Committee and its Chairman at all times, ensuring that their independence is in no way impaired. Both the internal and external auditors have the opportunity, at each of the meetings, of addressing the committee and its Chairman without management being present.

The Audit and Compliance Committee determines the purpose, authority and responsibility of the internal audit function in an Internal Audit Charter, which has been approved by the committee and the board. The charter sets out the terms of reference of Tongaat Hulett's internal audit function, its reporting line to the Chairman of the committee and the fact that the internal auditors have unrestricted company wide access to all functions, records, property and personnel. The committee reviews the scope and coverage of the internal audit function and has approved its coverage and work plan for 2009. While the internal audit function has been outsourced to a professional firm of registered accountants and auditors, co-ordinated by the Internal Audit Manager, the company's independent external auditors do not assist in the performance of any internal audit assignments.

The nature and extent of all non-audit services provided by the independent external auditors are approved and reviewed by the committee, to ensure compliance with the company's policy.

In accordance with the Corporate Laws Amendment Act, the committee confirms that during 2008 it carried out its functions responsibly and in accordance with its terms of reference. The committee is also satisfied that the designated auditors of the company are independent of the company. The committee has also considered the expertise and experience of the Tongaat Hulett financial director in terms of the JSE Listings Requirements and concluded that the financial director's expertise and experience meet the appropriate requirements.

The committee's attention to regulatory compliance is ongoing in line with the amendments to the regulatory environment. The framework of high priority laws and regulations applicable to Tongaat Hulett's operations has continued to be refined during the year with the aim of strengthening the culture of legal awareness and compliance. Management continuously assesses and

reviews statutory and regulatory requirements and risks, and identifies appropriate processes and interventions to enhance compliance with applicable legislation. Nothing material has come to management's attention during 2008 that indicates non-compliance with applicable legislation and codes of good practice.

### **Remuneration Committee**

The Remuneration Committee, which meets at least three times a year, is chaired by an independent non-executive director and comprises only non-executive directors. The current members are M Mia (Chairman), P M Baum, E le R Bradley and C M L Savage. P H Staude attends by invitation and M Serfontein is the secretary.

The reward philosophy, which has been approved by the board, is formulated to attract, motivate and retain directors, executives and employees needed to manage and run the company successfully. The Remuneration Committee is responsible for considering and making recommendations to the board on the policy and on the quantum, structure and composition of remuneration packages of executive directors and senior executives. In addition, it reviews general salary increases for management and the operation of the company's incentive schemes. Rewards are linked to both individual performance and the performance of the company. Independent external studies and comparisons are used to ensure that compensation is market related.

### **Nomination Committee**

The Nomination Committee, which comprises only non-executive directors, the majority of whom are independent, is chaired by an independent non-executive director and meets as required. Its members are M Mia (Chairman), P M Baum, E le R Bradley and C M L Savage. P H Staude attends by invitation and M Serfontein is the secretary. This committee's terms of reference ensure that, for board appointments, a rigorous, fair and open nomination and appointment process is established which will provide a balance of appropriate skills, knowledge and experience in the boardroom and support strong corporate performance. The committee makes recommendations to the board on the size, composition and demographics of the board, particularly in relation to the balance between executive, non-executive and independent directors, ensuring that there is a diversity of experience and backgrounds to create a cohesive and effective board. The committee also gives consideration to succession planning, and ensures that

processes and plans are in place for orderly succession and for appointments to the board and to senior management.

### **EXECUTIVE MANAGEMENT COMMITTEE**

The Executive Management Committee consists of senior Tongaat Hulett executives and deliberates on matters of strategy, business planning and the effective operation of the business, to provide leadership on key issues. The committee's focus is on the alignment of activities and initiatives throughout the company's operations.

The current members are P H Staude (Chairman), J D Bhana, R D S Cumbi, M Deighton, N P Dingaan, B G Dunlop, B R Gumede, C Gwala, M M Jean-Louis, G P N Kruger, V C Macu, M N Mohale, S D Mtsambiwa, M H Munro, S J Saunders and M Serfontein. The Company Secretary is the secretary of this committee.

### **Risk Committee**

Risk management continues to be dynamic, evolving and integrated into the core of running the company. This has become increasingly important in light of the many changing elements, particularly in the context of the volatile global economy and specific localised dynamics. While the board is ultimately accountable for risk management, company management has implemented various processes throughout its operations to ensure that risk management has become part of the day-to-day activities of the business. This seeks to address risk and opportunity areas and incorporates the nature of Tongaat Hulett as it moves forward.

The risk management review process seeks to achieve the correct balance between the issues that are specific to, and appropriately managed in, an operational area and those issues that are significant enough or cross cutting enough to be considered, and managed in an appropriate way, on a Tongaat Hulett basis. The approach to risk management includes being able to identify and describe or analyse risks at all levels throughout the organisation, with mitigating actions being implemented at the appropriate point of activity. The very significant, high impact risk areas and the related mitigating action plans are monitored at a Tongaat Hulett Risk Committee level. Risks and mitigating actions are given relevant visibility at various appropriate forums throughout the organisation.

The Risk Committee composition is as follows: M H Munro (Chairman), M Deighton, B G Dunlop, M M Jean-Louis,

G P N Kruger, M N Mohale, S J Saunders, P H Staude and the Company Secretary.

Appropriate plans and resources have been identified in order to ensure the implementation of recovery procedures, where potential risks have been identified as having the possibility of constituting a disaster.

Company wide systems of internal control exist in all key operations to manage significant risks. This system supports the board in discharging its responsibility of ensuring that the risks associated with the operations are effectively managed. Regular management reporting, which provides a balanced assessment of key risks and controls, is an important component of board assurance and regular reports are presented to the board.

The company's internal audit function provides independent assurance to the Risk Committee and the board on the effectiveness of the appropriate internal control processes throughout the company. The board also receives assurance from the Audit and Compliance Committee, which derives its information in part from regular external and internal audit reports throughout the company on risk and internal control.

### **Safety, Health and Environment Committee**

The overall objective of this committee is to assist in the implementation of the company's Safety, Health and Environment (SHE) policy and principles and to provide overall guidance on SHE matters. The SHE Committee normally meets at least twice a year. Its members are P H Staude (Chairman), R D S Cumbi, M E Deighton, B G Dunlop, G P N Kruger, V C Macu, M N Mohale, S Mtsambiwa, M Serfontein, W G Streek and R Wilkinson.

The Tongaat Hulett SHE Committee reviews the major risks identified by the various committees at Tongaat Hulett's operations and the progress against SHE targets, thus providing a facility for the development of an overall perspective on SHE matters and for the sharing of information and experiences across the company. It is also a forum for considering and, where appropriate, responding to material national and international regulatory and technical developments in the fields of SHE management.

### **Employment Equity Committee**

The Employment Equity Committee normally meets at least twice a year. Its current members are P H Staude (Chairman),

J D Bhana, M E Deighton, N P Dingaan, R Govender, B R Gumede, M M Jean-Louis, G P N Kruger, C Macu, M Mia, M N Mohale and M Serfontein.

The broad composition of this committee ensures that it benefits from company wide experience and expertise in achieving its objectives. Its main objective is to set targets and review progress on all employment equity related matters and where necessary, to make recommendations to the board on the implementation of employment equity policies. These policies are based on equal opportunity for all within a diverse workforce with a substantial number of members of designated groups at all levels. The implementation of these policies is facilitated by appropriate performance and talent management processes, recruitment targets, development and training programmes, coaching and mentoring and innovative management development practices.

These programmes, targets and practices enjoy priority as a key business objective and constitute an integral part of management's performance assessment.

### **ACCOUNTABILITY AND CONTROL**

The directors are required by the Companies Act to maintain records and prepare financial statements, which fairly present the state of affairs of the company as at the end of the financial year and the results of its operations for that year, in conformity with International Financial Reporting Standards. The financial statements are the responsibility of the directors and it is the responsibility of the independent auditors to report thereon.

To enable the directors to meet these responsibilities, standards have been set and systems of internal control implemented to reduce the risk of error or loss in a cost effective manner. These controls include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties. They are monitored throughout the company and all employees are required to maintain the highest ethical standards in ensuring that the company's business practices are conducted in an appropriate manner, which is above reproach.

The company's internal audit function operates independently in all operations to appraise and evaluate the effectiveness of the operational activities and the attendant business risks. Where necessary, recommendations are

made for improvements in the systems of internal control and accounting practice based on internal audit plans and reports which take cognisance of relative degrees of risk of each function or aspect of business.

Comprehensive management reporting disciplines are in place, which include the preparation of annual budgets by all operating entities. The operating boards approve individual operational budgets, while the company budget is reviewed and approved by the Tongaat Hulett board. Monthly results and the financial status of the operations are reported against budgets and forecasts and compared to the results of the prior year. Profit projections and cash flow forecasts are regularly updated, taking into account various economic scenarios and working capital and borrowing levels are monitored on an ongoing basis.

### **CODE OF ETHICS**

The company operates within a Code of Ethics, which supports its commitment to a policy of fair dealing, honesty and integrity in the conduct of its business. The Code of Ethics has been actively endorsed by the board and distributed to all employees across all levels in the company. The Code is based on a fundamental belief that business should be conducted honestly, fairly and legally. Any violation of the law or unethical business dealing by any employee, including bribery and money laundering is not condoned. The Code also addresses conflict of interest situations and encourages employees to report on any conflict or perceived conflict of interest situation. This may arise due to employees being offered and receiving gifts in return for favours, employees not being independent from business organisations having a contractual relationship or providing goods or services to Tongaat Hulett, and employees' personal investments taking priority over transactions for the company and its clients.

Compliance by all employees to the high moral, ethical and legal standards of the Code is mandatory, and if employees become aware of, or suspect, a contravention of the Code, they must promptly and confidentially report it to the Company Secretary or senior officials at management level. Tongaat Hulett has engaged the services of an independent whistleblowing service provider to provide mechanisms to report on unethical behaviour or non-compliance with the Code of Ethics. Appropriate action is taken in respect of all reported instances of non-compliance with the Code by employees.



## EXECUTIVE REMUNERATION

The remuneration of senior management is determined by taking into consideration market comparisons and an assessment of performance related to the achievement of documented measurable performance targets. Strategic and business objectives, which are reviewed periodically, as well as a general assessment of performance are taken into account.

### Basic Salary

The cash package of senior management is subject to annual review by the Remuneration Committee and the board and is set with reference to relevant external market data.

### Annual Executive Bonus Scheme

The annual executive bonus scheme is based on a combination of the achievement of targets and a general assessment of the individual's overall performance. These targets include measures of corporate and, where applicable, operational performance as well as the achievement of individual performance objectives related to key business strategies and requirements. Overall safety performance is an important factor in bonus determination.

### Share Incentive Schemes

The objective of the share incentive schemes is to strengthen the alignment of shareholder and management interests and assist in the attraction, retention and appropriate reward of management.

Under the Share Appreciation Right Scheme 2005 (SARS), Long Term Incentive Plan 2005 (LTIP) and Deferred Bonus Plan 2005 (DBP) schemes, senior management and employees of the company are awarded rights to receive shares in the company based on the value of these awards (after the deduction of employees' tax) when performance conditions have been met, the awards have vested and, in the case of the SARS, when the share appreciation rights have been exercised.

The accounting charges to the income statement required by IFRS 2 Share-based Payment are accounted for as equity-settled instruments. The costs associated with the settlement of awards under the 2005 share schemes qualify for a tax deduction by the company.

Details of the schemes and awards made from 2005 to 2008, after approval by the Remuneration Committee and

the board, are detailed in the notes to the annual financial statements. The share incentive scheme in operation prior to 2005 was discontinued in 2005, with the previous awards continuing to run their course and no new awards being made.

Performance conditions governing the vesting of the scheme instruments are related to growth in earnings per share, share price, total shareholder return and return on capital employed, relative to targets that are intended to be challenging but achievable. Targets are linked, where applicable, to the company's medium term business plan, over three year performance periods, with actual grants being set each year considering the job level of the participating employee, their individual performance, and appropriate benchmarks of the expected combined value of the awards.

As a result of the unbundling of Hulammin and as detailed in the circular to shareholders in 2007, SARS and LTIP grants of 2005 and 2006 partially vested, based on the attainment of the performance conditions and with reference to the proportion of the performance period that had been served. The DBP awards of 2005 and 2006 vested upon the unbundling. Tongaat Hulett is obliged to settle all benefits under these share schemes and the original share options for its own employees using Tongaat Hulett shares. It will settle the outstanding share scheme benefits that arise after the award modifications for its own employees, by purchasing Tongaat Hulett shares in the market, or issuing Tongaat Hulett shares. The benefits related to the Hulammin component will be determined with reference to the Hulammin share price, and the Tongaat Hulett component with reference to the Tongaat Hulett share price. The benefits arising from the Hulammin component will be settled using Tongaat Hulett shares. Participants in the original, pre-2005 share option schemes, who had not exercised their options at the unbundling date converted their existing Tongaat-Hulett Group Limited options into two components, a Tongaat Hulett Limited component and a Hulammin Limited component. Tongaat Hulett will settle the benefits of both components for its employees with Tongaat Hulett shares.

### Other Benefits

Membership of The Tongaat-Hulett Pension Fund is compulsory for all senior management and pension and life insurance benefits are provided. Other benefits constitute the provision of medical aid, gratuity at retirement and death and disability insurance.

### **NON-EXECUTIVE DIRECTORS' REMUNERATION**

Non-executive directors receive fees for their services on the company board and board committees. Directors' fees are recommended by the Remuneration Committee and submitted to both the board and the shareholders for approval at each Annual General Meeting.

### **THIRD-PARTY MANAGEMENT**

No part of the company's business was managed during the year by any third party in which any director had an interest.

### **RELATED PARTY TRANSACTIONS**

The company has a process in place whereby the directors and key management have confirmed that, to the best of their knowledge, the information disclosed in Tongaat Hulett Limited's annual financial statements fairly represents their shareholding in the company, both beneficial and indirect, interest in share options of the company and the compensation earned from the company for the financial year. In addition, the directors and key management have confirmed that all interests have been declared.

### **INSIDER TRADING**

No director, officer or employee may deal either directly or indirectly in the company's shares on the basis of unpublished price-sensitive information regarding its business or affairs. In addition, no director, officer or employee may trade in the company's shares during closed periods. Closed periods are from the end of the interim and annual reporting periods to the announcement of financial and operating results for the respective periods, and while the company is under a cautionary announcement.

### **GOING CONCERN ASSERTION**

The directors confirm that they are satisfied that the company has adequate resources to continue in business for the foreseeable future. Financial gearing, cash flows and access to equity and loan capital are considered to be sufficient to fund any chosen opportunities to expand or restructure the business cost effectively.

The directors also believe that the depth of human and other intellectual capital is adequate to protect and drive the future value creation of the business. In addition to its tangible assets, the brands and reputation of the organisation remain intact, while the product mix is seen as competitive

in the markets and regions in which the company continues to operate or has determined to enter. The company has implemented an effective risk management process that is designed to maximise strategic opportunity within tolerable levels of residual business, process and dependency risks.

The assumptions upon which this assessment is made are recorded at the time of approval of the annual financial statements by the board. For this reason, it continues to adopt the going concern basis for preparing the financial statements.