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Corporate governance and fraud: an investigation to determine whether the primary recommendations of the king report can assit in preventing management irregularities within an organisation

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1.2.2 INADEQUATE CORPORATE GOVERNANCE

The need for an investigation into corporate governance was demonstrated recently by the resignation of Derek Riley from the Malbak board. Comment on this event by one of South Africa's financial journals was:

> "It is certainly news when a non-executive director of a company with a turnover of R12,6bn and an attributable profit of R414m resigns, citing poor corporate governance. When that director announces the reasons for his resignation after an internal inquiry has found nothing untoward, it becomes a subject which cannot be ignored" (F&T Weekly, 1995:1).

A question which arises from such incidences is whether the recommendations of the King Report are adequate to ensure that their objectives of improving corporate governance and thereby diminishing the risk of fraud and corporate failure can be met. O Kane's opinion (1992:3) is that:

> "The Cadbury Report says exactly what it was expected to say - no more, no less - properly constituted boards, separation of the functions of chairman and chief executive, audit committees, and vigilant shareholders and financial reporting and auditing systems that provide full and timely disclosure. Then why the disappointment? Why the cries of shame? ... no one has addressed the obvious question of whether increased statutory regulation of financial reporting will reduce the number of crooks or the amount of damage they do."

It is the aim of this research report to answer this query, specifically with respect to those recommendations whose objective is, *inter alia*, to ameliorate the risk of management fraud.

The increasing significance of fraud in South Africa is demonstrated by recent research conducted by KPMG (1994:4) into the area which established that seventy nine percent of respondents (covering a multitude of industries and different sized companies) admitted to recently experiencing fraud. Ninety seven percent of respondents considered fraud to be an increasing problem, whilst ninety percent predicted that it would increase in 1995. Appendix 8 identifies common management frauds which occurred in South Africa during 1994.

Respondents to the KPMG research stated that they had already set up a number of initiatives to counteract fraud, but due to the escalating scale of crime in the country they were currently exploring new techniques to combat it. The amount lost as a result of fraud reported by respondents to the KPMG survey amounted to R235 million during the past year alone, and many of those surveyed indicated that the figures reported were conservative. Fraud amounting to R3 717 million was reported during the 1994 year to the South African Police (Mittner, 1995:11). Appendix 1 to this report graphically indicates the increase in reported cases of fraud from 1991 to 1994.

Reasons for the increase in fraud are considered to include the stagnant South African economy which is resulting in declining living standards for members of the population, the inequitable tax system, government corruption, the decline in moral and ethical standards, uncertainty and fears about the future, and the lenient treatment afforded to criminals by the authorities (Wilmot, 1994:4). Since it appears that most of these factors will persist at least for the foreseeable future, it is likely then that the occurrence of fraud will not only remain at its current high level, but will also continue to increase.

These findings justify research into the area of fraud and corporate governance, the topic which this research report addresses.

that the current system of corporate governance is not serving companies or shareholders as well as it could (King Report, 1994:2). The much publicised corporate failures such as BCCI and the Maxwell debacle in the United Kingdom led to corporate governance being re-addressed on an international scale. South Africa has also suffered from its own corporate failures with Masterbond, Supreme and IGI being at the forefront (Techtalk, 1995:1).

Consequently in 1992 the Cadbury Report was released in the United Kingdom detailing recommended procedures and structures for organisations to achieve optimal corporate governance in the management of limited liability companies. In November 1994 the King Report was released in South Africa with objectives similar to those of the Cadbury Report.

1.2 RESEARCHING CORPORATE GOVERNANCE

The increasing prevalence of fraud in South Africa and the inadequacy of current corporate governance indicates a need for an investigation to determine whether the proposed system of corporate governance advocated by the King Report will have an impact upon the occurrence of fraud in this country.

1.2.1 THE PREVALENCE OF FRAUD

Fraud is defined as unlawfully making, with intent to defraud, a misrepresentation which causes actual prejudice, or which is potentially prejudicial to another (Burchell and Milton, 1991:525), and is considered by executive officers of large corporations to be a major problem of business today. The debilitating effects of fraud on the economy are immeasurable and the control of these unlawful activities, and their alarming increase in the past few years, has been a stated objective of government and business alike (KPMG, 1994:1). As indicated in appendix 11, fraud is not restricted to any particular sector and should therefore be a concern for all companies.

1. INTRODUCTION

Since the industrial revolution in the eighteenth century the world has been characterised by increasingly sophisticated and more complex financial activities. One of the most important consequences of this commercial progress has been the advent of the limited liability company. The formation of companies has enabled a large body of investors to jointly finance substantial ventures. However this innovation has not been without its costs.

The multiplicity of investors and their investments in a myriad of companies has resulted in a divorce of ownership (vesting in shareholders) from control (the management/directors) of the company. These circumstances have required shareholders to entrust the daily operations of the business to directors. The way in which directors fulfil their responsibility to run the company and the structures they establish to assist them in doing so, are what is referred to as corporate governance (King Report, 1994:1). Due to its pervasive influence corporate governance has a fundamental impact upon the performance of each entity, and thereby upon the economic welfare of a country as a whole.

1.1 THE CHANGE IN CORPORATE GOVERNANCE

The directors of a company are the stewards of its shareholders who have entrusted their resources to them with the implicit understanding that they will safeguard and increase those assets. Historically corporate governance has depended strongly upon one aspect of the directors' responsibilities, namely the report of the directors on the results of their stewardship in the form of the annual financial statements. These statements enabled the shareholders who appointed them to assess their performance. To prevent bias and misrepresentation in the annual report an independent auditor was appointed to express an opinion as to its fairness. This system of corporate governance operated reasonably well until the start of the 1980's (King Report, 1994:2).

A global spate of corporate failures and management frauds in the 1980's which continued into the 1990's has caused widespread dissatisfaction among the financial community and general public, whose perception is

APPENDICES

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4	The Group Structures of the Two Groups Prior to Merger
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7	Controls Advocated by the King Report Compared to Controls Advocated by Business
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also been resorted to. This approach is justified by the fact that the topic is current and because the use of such sources will be limited.

A restriction to the disclosure in this research report which should be noted is that it was necessary at the request of the Attorney General (who is in the process of prosecuting the frauds) and the new management of the entity which experienced the frauds (who for various reasons wish to remain anonymous) to use fictitious names (e.g. A Ltd, Mr K etc.) for all the companies and the management of the entities involved in this research. The acceptance of this limitation was a prerequisite for the use of the company selected as the case study.

In preparing this Report the author wishes to acknowledge the invaluable assistance which has been received from:

- Mrs B Jackson, my Supervisor, a Senior Tutor in the Department of Accounting at the University of the Witwatersrand.
- Mr M. King, the Chairman of the King Report on Corporate Governance.
- Mr R. Anderson, Chairman of the Johannesburg Stock Exchange.
- Mr J. van der Walt, Director of the Johannesburg KPMG Forensic Accounting Division.
- Advocate H. de Beer, of the Attorney General's Office for the Witwatersrand.
- The personnel at the company which was the subject of the case study in this report, who, due to the requirement of confidentiality, cannot be named.
- Professor M. Steele, Head of the Department of Accounting at the University of the Witwatersrand.

PREFACE

The King Committee on Corporate Governance published in 1994 (the King Report) has advocated fundamental changes to current corporate governance in South Africa. The query which arises from a review of the Report's recommendations is whether the objectives of the Report can be achieved through adherence to its proposals. The importance of the investigation is emphasised by the fact that the Report's proposals have been challenged by professionals and academics on the grounds that they will not achieve their stated objectives.

The purpose of this research report is to establish via the investigation of a case study, personal interviews, and a review of literature relevant to the topic whether the proposals of the King Report can assist in reducing the risk of management fraud within an entity, which is one of the Report's objectives. An investigation into the King Report is of importance for three primary reasons:

1. The cost of the implementation of its proposals should be matched by related benefits.
2. It is possible that the requirements of the King Report could become mandatory for all companies (the Johannesburg Stock Exchange has already begun to require compliance by listed companies with certain of the King Report's proposals). Establishing the benefits to be derived from adherence to the Report's recommendations before imposing it on the financial community is a necessity.
3. If the King Report cannot achieve its objectives then other avenues must be sought to counter the problems which the King Committee was established to address.

Due to the current nature of the King Report (it was released in November 1994) there has been a limited number of papers which have been prepared on the Report in accredited journals. Consequently alternative avenues have been adopted to ensure that an adequate volume of literature has been surveyed for the purposes of this research report. Literature relating to The Financial Aspects of Corporate Governance (the Cadbury Report) published in 1992 in the United Kingdom which had similar objectives (but more restricted terms of reference) to the King Report has been scrutinised and used in the research. On occasion the popular press has

DECLARATION

I declare that this research report is my own, unaided work. It is being submitted for the degree of Master of Commerce in the University of the Witwatersrand, Johannesburg. It has not been submitted for any degree or examination in any other University.

Dirk Benade

6th Day of November, 1995

ABSTRACT

The King Report released in South Africa in 1994 has the potential to revolutionise the country's existing form of Corporate Governance. The objective of the Report is to improve the system by which companies in South Africa are directed and controlled (King Report, 1994:1). This objective encompasses decreasing the risk of management fraud within entities. The question which this research report addresses is whether a reduction in the risk of management irregularities in an organisation can be achieved through adherence to the King Report's proposals. To obtain this answer a South African company which experienced significant management frauds was selected for examination as a case study, and a determination was made as to whether the proposals of the King Report, had they been implemented, could have prevented the irregularities which occurred in the organisation. The finding of the research is that diligent compliance with the King Report's recommendations can assist significantly in both preventing and detecting management fraud, but is unlikely to prevent all management irregularities within an organisation.

CORPORATE GOVERNANCE AND FRAUD

AN INVESTIGATION TO DETERMINE WHETHER THE PRIMARY RECOMMENDATIONS OF THE KING REPORT CAN ASSIST IN PREVENTING MANAGEMENT IRREGULARITIES WITHIN AN ORGANISATION

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A Research Report Submitted to the Faculty of Commerce
University of the Witwatersrand, Johannesburg
in partial fulfilment of the requirements for the degree of Master of Commerce
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Cr Loan to Mr K R4.5 million

The effect of the transaction was the Mr K is guilty of theft amounting to R4.5 million, this being the asset of *M*. Mr K also obtained confirmation of the fictitious asset from HPA (Pty) Ltd, claiming that it represented a deposit held by it on Mr K's behalf for the purposes of the year end audit. This constituted a further fraud (because the fictitious confirmation was actually or potentially prejudicial to, *inter alia*, *Q* and *U*'s auditors). Both the theft and the fraud are being prosecuted by the attorney general.

3.2.3 CASH WITHDRAWN

A cash cheque was issued for an amount of R200 000 and debited to the loan account of Mr K. No minute authorising the loan was made, nor was the loan disclosed in the financial statements. The amount was not subsequently repaid. The withdrawal thus represents a theft of that amount from *M* by Mr K.

3.2.4 LOAN ADVANCE

Mr K wished to acquire an interest in a certain company. To do so he effected a payment of R2.035 million from *M* to an agent, who then acquired an interest in the company on behalf of Mr K. This investment was registered in the name of Mr K, and thus represents a theft of R2.035 million by Mr K from *M*.

When the auditors investigated the amount a fictitious loan agreement was provided to them to satisfy their inquiries, which has resulted in another count of fraud being charged against the accused.

3.2.5 ASSET REVALUATION

The assets of *M* were revalued by R4.3 million at the date of the merger by Mr K and Mr S without giving due consideration to the actual market value of such assets. Whilst generally accepted

Cr. Loan to H R3.595 million

By replacing the inter-group loan with an amount in respect of a non-existent asst, the *Q* group effectively paid R3.595 million more than the value of the company. This misrepresentation of the rental guarantee as an asset represents a fraud by Mr K and Mr S.

To provide audit confirmation of the rental guarantee deposit amount for the 1994 statutory audit a series of transactions was executed to obtain a certificate of confirmation. At this point the merger had been completed and the rental guarantee deposit had been transferred to the books of *U*. At the direction of Mr K and Mr S a payment of R3.595 million was made by *U* on 17 May 1994 (a date after the financial year end of the company) to B (Pty) Ltd (a subsidiary of *U*) who then supplied the necessary confirmation.

The confirmation did not refer to any particular period and was accepted by the external auditors as evidence. One week after the payment was made it was refunded by B (Pty) Ltd to *U* so that the effect of the transaction was a deposit existing for one week after year end only. This transaction represents an additional fraud for providing false evidence that the asset existed to the actual or potential detriment of *U*, *Q* and the external auditors of *U*.

3.2.2 PROVISION FOR EQUIPMENT

M was invoiced during 1994 for a "provision for equipment" of R4.5 million by HPA (Pty) Ltd. HPA (Pty) Ltd was a company owned by Mr K and acted at his instance. The invoices were paid for without any asset being received by *M*. HPA (Pty) Ltd forwarded the amount received by it to a Johannesburg stockbroker (Z Stockbrokers), who then paid the amount into the account of *H* held by the company at the stockbroking firm. *H* passed the following journal entry for the receipt:

Dr Z Stockbrokers (debtor) R4.5 million

resulted in a loss to *Q* amounting to approximately R431 million in unrecoverable loans through the mismanagement of *U* by Mr K. It was through the investigation of this loss by the directors of the *Q* group that the frauds perpetrated by Mr K and Mr S (the financial director) were eventually discovered.

These borrowings and the total finance provided which resulted in a loss to *Q* of R341 million are a contravention of Section 424 (s424) of the Companies Act by Mr K and Mr S which makes it an offence for directors of a company to trade recklessly. There is a misconception that s424 involves exclusively "directors liability for trading in insolvent circumstances", a definition which is incorrect in every material respect according to van Staden (1995:3). Section 424 applies to any person (including trading parties of a company) who knowingly participates in the reckless conduct of any business (not necessarily an insolvent business). It is apparent that the conduct of Mr K and his pricing policies fall within the ambit of this section. The attorney general has included this charge in the indictments against the accused.

3.2 ANCILLARY FRAUDS

When *Q* commissioned its auditors to perform a due diligence review in *M* (the joint holding company of *U* with W Ltd), Mr K was aware that the company's net asset value was not R25 million as he had represented. Consequently after the date of the merger he set about creating fictitious assets in *M* to provide the purchasers with a balance sheet which more closely approximated his asserted values provided to the *Q* group.

3.2.1 RENTAL GUARANTEE DEPOSITS

In order to increase *M*'s net asset value a debtor asset was raised of R3.595 million in the books of *M* by Mr S at the instance of Mr K, and the inter-group loan account, owed by *H* to *M*, was reduced by the same amount; i.e. the journal entry entailed:

Dr Rental guarantee deposit R3.595 million

after the merger refer to appendices 4 and 5.) After the merger *U* controlled all the subsidiaries of *M* and W Ltd.

Fraud was perpetrated by Mr K at the outset of the merger. Mr K represented to the directors of W Ltd, *inter alia*, that the net assets of *M* were R25 million, and that anticipated profit for the company for the coming year was R20 million. The directors of the *Q* group concluded the agreement before verifying Mr K's representations.

Approximately 3 months after the merger had been formalised *Q* commissioned their auditors, one of the big six accounting firms in South Africa, to perform a due diligence review on the company taken over. The result of the review was a finding that the net asset value of *M* was significantly less than had been represented by Mr K. The true magnitude of the understatement was not shown by the auditors however, due to frauds described further on, which had the effect increasing the asset value of *M* fictitiously. (The true net asset value of the company at the date of the merger was actually negative R2.3 million.)

3.1.5 RECKLESS TRADING

After the merger Mr K became the managing director of *U* after *M* and W Ltd transferred all their assets and liabilities to *U* (*M* and W Ltd effectively became non-operating holding companies). Q Ltd provided all the financing for *U* and settled all its liabilities. Included in these liabilities paid by *Q* was the amount due by the group to C (Pty) Ltd for the funds provided in the attempt to regularise the s38 contravention. This funding eventually resulted in a substantial loss to the *Q* group through not being able to recover its loans made to *U*.

From the date of the merger in 1993 to the time when the frauds were discovered in 1994 the *Q* group funded the operations of *U* under the management of Mr K who continued using the same pricing policies as were adopted for *M*. During that period financing was regularly provided to *U* from *Q* and ultimately

employees of *H* and its subsidiaries. *H* and the subsidiaries would lend money to the trust to enable it to purchase 40% of the shares held by Mr K. Mr K would apply the proceeds to settle his liability to *M* who would then repay C (Pty) Ltd the amount owed to it.

The terms of the agreement were to apply as follows. C (Pty) Ltd would lend a further R7.5 million to the borrowers (H, M and others, thereby increasing the group's liability to C (Pty) Ltd to R15 million). The borrowers would then loan this money to H Share Trust. The trust would pay the amount to Mr K for 40% of his shares in *H*. Mr K would then apply this money to repay his debt to E (Pty) Ltd. E (Pty) Ltd then repays *M* who partially repays C (Pty) Ltd the amount owing to it (thereby reducing the loan from C (Pty) Ltd from R15 million back to R7.5 million). The effect of the transactions is that the loan is rolled and now simply borne by all the members of the *H* group and not just by *M* (the scheme is shown diagrammatically in appendix 3).

However at a later date *M* merged with the Q Group Ltd who unknowingly settled this debt to C (Pty) Ltd on behalf of *M*. This results in the above scheme being a fraud and is included in the indictments against the accused, as the R7.5 million liability to C (Pty) Ltd was repaid by the Q Group Ltd, the latter being unaware that the liability was in respect of shares purchased in *H*.

3.1.4 THE MERGER OF *H* AND W LTD

The success of *M* in selling its products attracted the attention of its primary competitor in the industry in which *M* operated. The company, W Ltd, is a subsidiary of the Q group (*Q*) one of South Africa's top 100 companies. *Q* approached Mr K to consider a merger between *M* and W Ltd.

Discussions commenced in January and were finalised in March 1993. It was agreed that the interests of both W Ltd and *M* were to be merged, and that a new company U Ltd (*U*), was to be formed. (For a schematic representation of the group structures before and

acquisition involved receiving finance from *M* for the acquisition of its shares. The process by which the funds were obtained from the company was through a sequence of transactions described the attorney general as "very similar to money laundering".

During June 1991 *M* borrowed R7.5 million from C (Pty) Ltd, a finance company, whose business included the factoring of *M*'s debtors. The R7.5 million was a direct loan from C (Pty) Ltd to *M* on which a high rate of interest was charged. The money was then advanced to E (Pty) Ltd, a dormant company whose sole shareholder was Mr K. Whilst dormant, E (Pty) Ltd still maintained bank accounts through which the R7.5 million passed. E (Pty) Ltd then advanced this money to Mr K, who used it to pay Mr H and Mr E for their shares (see appendix 2(i) for a diagrammatic depiction of the scheme).

There was no indication in the minutes of the directors' meeting or that of the shareholders' meeting for *M* that the transactions were authorised. In the financial statements of both *M* and E (Pty) Ltd no disclosure of the loans was made. It appears that the loan assets and liabilities were simply offset against each other. The result of the scheme was effectively that *M* paid for Mr K's acquisition of its shares and that Mr K defrauded *M* of R7.5 million.

During August 1991 Mr K established a holding company, H Ltd (*H*) of which he was the sole shareholder, to acquire all his shares in *M*. The new group structure is reflected in the diagram in appendix 2(ii). As a result of these transactions Mr K controlled *M* through *H*.

3.1.3 THE CONCEALMENT OF THE S38 CONTRAVENTION

During December 1992 Mr K attempted to regularise his contravention of s38 by establish the H Ltd Share Trust. On 11 December 1992 an agreement was entered into between C (Pty) Ltd, *H*, *M* and four subsidiaries of *M*. In terms of the agreement *H* would establish the H Share Trust for the benefit of the

3.1.1 BACKGROUND TO M (PTY) LTD

M (Pty) Ltd (*M*) was an operating company established in 1989 which within a few years grew into a corporation with a multi-million rand turnover. The group structure of *M* is shown in appendix 4 (Group B). The method by which it achieved its phenomenal growth was through operating on an extremely small gross margin of 2% in an industry where the average margin ranged from 10% to 17%. The truth was that *M* was badly managed and its sales policy unsustainable in the long run, but had the appearance of being profitable. As a result of its price cutting the company was able to achieve high sales at the expense of profitability. To continue in business *M* was forced to borrow excessively and had a gearing ratio which by its industry standards was extremely high.

The owners of M were Messieurs K, H and E. Mr K, who held 50% of the share capital of the company, was also the managing director and the person responsible for the company's sales policy. Mr H and Mr E's involvement in the company was limited to their capital contribution. Each held 25% of the shares in the company.

Mr K and Mr S (*M*'s managing and financial directors respectively) are the two individuals being prosecuted for by the attorney general for the frauds described in this research report. The attorney general is of the opinion that both the accused will be convicted, and that a prison sentence of approximately fifteen years for each of the accused is likely.

3.1.2 CONTRAVENTION OF S38 OF THE COMPANIES ACT

Mr K decided to purchase the shareholding of Mr H and Mr E. His method of doing so involved a contravention of s38 of the Companies Act, since the means he employed to fund the

3. CASE STUDY

The facts of the case study were established by the following methods:

- Discussions with the KPMG Forensic Accounting Division (Johannesburg) director who has investigated the frauds;
- Review of the KPMG working papers (*State versus Mr K and Others*, 1994);
- Discussion with the attorney general of the Witwatersrand Attorney General's office responsible for prosecuting the frauds;
- Review of documents at the Attorney General (e.g. financial statements of the companies concerned, charges brought against the accused and other evidence which will be used by the State in the prosecution).
- Discussion with senior personnel at the company where the frauds occurred.

It should be noted at the outset that some of the frauds which occurred are very complex. This was occasionally due to the nature of the transactions, and in other instances due to efforts by the guilty parties at concealing the irregularities which had been committed. Consequently attempts at simplification of the issues have been made, which includes the use of diagrams to assist in understanding the frauds where these are considered useful. The reader is referred to the relevant appendices in such instances. The frauds which have been selected for research are the following:

3.1 THE PRIMARY FRAUDS

The 'primary frauds' comprise the most complex of the frauds in this investigation. The first element of these frauds was a contravention of Section 38 (s38) of the Companies Act by a company, M (Pty) Ltd ("*M*"). The second element was a merger, whereby *M* merged with another company in its industry, that company being W Ltd. The price paid for *M* by W Ltd was far in excess of *M*'s real value due to misrepresentations made by *M*'s owner prior to the merger. Subsequent to the merger additional frauds were perpetrated by *M*'s directors to prevent W Ltd discovering the original irregularities.

relevant to the case study examined have been dealt with. Consequently no reference to the following proposals contained within the Report has been made:

1. Worker participation.
2. The company secretary and professional advice.
3. Remuneration committees.
4. Affirmative action programmes.
5. Directors' dealings in shares.

Secondly, because the frauds which are being investigated in this case study are in the process of persecution by the State, actual names of the companies and individuals involved have not been used.

The final limitation is that not all the frauds which occurred in the case study under examination have been investigated. This is due sometimes to the fact that some of the frauds are very similar and no additional benefit will be gained from coverage of these, and on other occasions because the attorney general has declined to prosecute certain frauds due to lack of evidence, or difficulty in obtaining such evidence. In such instances of uncertainty the author has decided not to investigate these frauds.

2.6.2 ASSUMPTIONS OF THE RESEARCH

It is assumed for the purposes of this research report that the cases being prosecuted by the attorney general will result in the conviction of the accused parties on each count (i.e. it is assumed that the matters investigated constitute "fraud" as defined) and therefore that the King Report's proposals which may reduce the risk of fraud apply to this case study.

The next chapter explains the frauds which occurred in the company selected for investigation.

- recommendations of the King Report which were already complied with by the company at the time the irregularities occurred.

By applying the primary recommendations of the King Report to the company under investigation it will be determined by interpretative analysis whether those recommendations of the King Report which had not been implemented in the company at the time the frauds were committed could have reduced the risk of the irregularities which took place from occurring. The findings will support or refute the validity of the King Report's stated benefits which it is expected will arise from the implementation of its proposals. The reasons why the recommendations of the King Report already in existence at the company failed to prevent the irregularities which occurred will be established, as such instances would indicate that the King Report's proposals cannot achieve their stated objectives.

2.5 THE RESEARCH QUESTION

The research question about which the research report is to be conducted is:

- *Had the primary recommendations of the King Report been implemented at the company under investigation, would they have assisted in preventing the management irregularities which occurred within that enterprise?*

The determination of the answer to this question is of importance for the reasons outlined in the preface to this research report.

2.6 LIMITATIONS AND ASSUMPTIONS OF THE RESEARCH

Certain limitations and assumptions exist in the research which has been conducted and these are detailed below.

2.6.1 LIMITATIONS OF THE RESEARCH

The first limitation is that only recommendations of the King Report which could have a direct impact on fraud and which are

- Prof. M. Steele, Head of the Department of Accounting at the University of the Witwatersrand.

In addition to the above, a half-day seminar on Corporate Governance was attended at the University of the Witwatersrand on 11 October 1995. Speakers included Prof. M Katz, and Mr L. van Staden of Deneys Reitz. Comments made by the speakers relevant to the research topic have been included in this report.

The questions posed to each of the interviewees were specific to their specialised fields of knowledge and consequently no standard questionnaire used in performing the interviews has been incorporated into the appendices of this research report.

2.3 LITERATURE SURVEY

In addition to the study of the King and Cadbury Reports, literature relating to these reports from a wide range of sources was consulted to ensure adequate coverage of the topic. A diverse range of authors and their opinions have been incorporated into this research report under the discussion of the King Report's proposals. Literature relevant to fraud is also addressed.

2.4 THE METHOD OF ANALYSING THE DATA

The research will focus on firstly explaining the frauds which occurred within the entity. Once the frauds have been detailed, the corporate governance structure of the company in which they occurred is described. The structure existing in the company at the times the irregularities were perpetrated is then compared to the recommended structure of corporate governance detailed for an entity in Chapter 19 of the King Report. The comparison highlights the following:

- recommendations of the King Report which had not been implemented in the company at the time the irregularities occurred.

2. RESEARCH METHODOLOGY

This chapter discusses the procedural framework within which the research was conducted. The primary avenues of research were the investigation of a case study, the conduct of interviews, and a review of the King and Cadbury Reports and literature relating to these documents.

2.1 THE CASE STUDY

A large South African company was selected as the case study due to its size and the recent significant frauds which it has experienced. The author adhered to the recommendations of a forensic accountant and an attorney involved in the investigation and prosecution of the fraud to investigate only a single case study because:

- the volume of evidence involved in a single case is so great that to investigate more than one case would be impractical at the research report level.
- currently there are a limited number of frauds in South Africa which are available for investigation and research. Of those frauds which were available the case best suited to the research objective was selected.
- the frauds investigated are current and therefore the information is more readily available than for other significant frauds which occurred a number of years ago. To investigate such past cases would be impractical from the perspective of arranging interviews and gaining access to documents and this approach has therefore been avoided.

2.2 INTERVIEWS

Interviews on the topic of fraud and corporate governance were conducted with the following people as research in the writing of this report:

- Mr M. King, Chairman of the King Committee on Corporate Governance, the proposals of which are the topic of this Report.
- Mr R. Anderson, Chairman of the Johannesburg Stock Exchange and one of the members of the King Committee.

Smaller companies have complained that the appointment of non-executive directors would upset the balance on the board - if executives are to remain in the majority, a board size of at last five directors would be required (where the suggested minimum of two non-executives is adhered to) and many companies have smaller boards. Supporting a larger board size or having executive directors lose the ability to control decisions are options that few small companies are willing to consider (Accountancy, 1993:38). However the restriction of the applicability of the King Report to only large companies should obviate this problem.

Reay (1994:74) found that the perceived benefits of non-executive directors among the business community were considered to be the protection of shareholder interests (85%), being custodians of good corporate governance (80%) and providing high level contributions to strategy and objectives based on industrial or commercial experience (69%). These results indicate a belief contradictory to those who question the benefit of the non-executive director. He found that the 'watchdog' role of these directors was becoming an increasingly prominent feature.

However Reay questioned whether these new responsibilities which the King Report imposes on non-executives are justifiable. Many non-executives were appointed for their experience and business acumen, but their roles have now become very different to what they were intended to be when they were first appointed. The emphasis for qualification as a non-executive director is now moving away from being business experience to top level management experience in another quoted company, but this is unlikely to be of benefit to the company which employs them. Non-executives are untrained in the detection and prevention of fraud and consequently may not be effective in this regard, as occurred in the case study.

The requirement that non-executive directors be independent has the detrimental impact of limiting such directors' working knowledge of the business so that they can only be expected to ask probing questions and act as guardians to prevent possible mismanagement by executive directors. However their power in this regard may be considerable (Stiles and Taylor, 1993:64).

The recommendation of greater participation by non-executive directors in corporate governance has not gone unopposed. It has been labelled by Corrin (1993:81) as a blatant slur on the integrity of executive directors. The author goes on to say that the:

> "whole [Cadbury] report is like a script for a 'soap' where the non-executive director is cast as a saint, the auditor as a tarnished angel, and the executive director as a villain."

Corrin points out that non-executive directors, 'the pillar of the King Report', were on the board of all companies involved in previous scandals which prompted the Cadbury Report; this observation does challenge the notion that this requirement of the King Report will be able to prevent fraud in companies. This assertion is supported by the results of the case study company which did have non-executive directors on the board at the time the frauds occurred. However this was prior to the King Report proposing new standards for the selection of non-executive directors and the performance by them of their duties.

In contrast to Corrin, Reay (1994:74) considers that these recent corporate failures such as Maxwell, Polly Peck and Queens Moat are not indicative of the effectiveness of non-executives generally. This contention was however not supported by the shareholders' unenthusiastic reaction to the announcement that non-executive directors had been appointed to the board of Hanson, a company whose board is dominated by two individuals. The non-executive directors at Maxwell Communications Corporation had impeccable credentials - one was a former Attorney General, another a former Lord Chancellor - yet even they were unable to prevent fraud on a massive scale (Stiles and Taylor, 1993:64).

4.2.5 THE NON-EXECUTIVE DIRECTOR

King requires that non-executive directors should be independent of the company in all aspects other than their directors' fees. Their selection should accordingly be planned and agreed by the majority of the board with no element of 'tokenism' in the appointments. The potential success of the current body of non-executive directors in South Africa has been brought into question by the accusation that the majority of such appointments were made via the 'old-boy' network (Woodburn, 1994:8). To counteract this charge the King Report has recommended that appointments now be made on the basis of merit.

Most commentators agree that the most fundamental proposal of the King Report relates to the new role advocated for the non-executive director. Wixley (1993:4) contends that the essence of the Best Practice recommendations is a fundamental change in the significance and responsibilities of non-executive directors, arising as a result of the King Report's reliance on the influence that needs to be exerted by such directors.

The primary benefit of the non-executive director is the anticipation that they will provide independent scrutiny of the company's activities. Although South Africa's top 100 companies have a number of non-executive directors (as can be seen in appendix 12, large listed SA companies generally meet the requirements of at least two non-executive directors), implementing this proposal diligently on a national basis is likely to prove difficult due to the limited number of candidates available for selection (Wixley, 1993:5). One solution to the problem is the use of directors serving on other boards, but this leads to the problem of the 'old boy network' noted above. Stiles and Taylor (1993:64) consider that this does not necessarily render the non-executive ineffective, but often does.

companies combining the roles of chairman and CEO. Some argue that this state of affairs is unavoidable and may be the reason for the superior performance of these companies (Wixley, 1993:5). The shortage of skilled candidates in South Africa for the position of non-executive director also makes the separation of the roles of executive and non-executive director difficult to implement since finding a suitable candidate to fill the new position will not be easy (Clarke, 1994:42).

4.2.4 THE BOARD OF DIRECTORS

The proposals of the King Report affecting the board of directors relates to the structure, meetings and functioning of the board. The Report requires that there should be a balance of executive and non-executive directors with at least two non-executives on the board who carry 'significant weight' in board decisions.

Full and effective control over the company and executive management is required and all material decisions should be made jointly by the board of directors. What constitutes 'materiality' should be established for matters which require board authorisations, such as the acquisition of assets above a certain rand amount. This was a control not applied at the case study company and resulted in it experiencing substantial losses. However collusion between the CEO and financial director as was the case at *M* and *U* made concealment of the fraudulent transactions easier. This highlights the importance of the contribution of audit committees, internal auditors, the separation of the posts of chairman and CEO, and non-executive directors in combating fraud, factors which are explored further on in this report.

In the case study company the board comprised 8 directors in *M*, and after the merger 6 directors in *U*. The fact that many of *M*'s transactions were not approved by the board is indicative that this control can be beneficial if a means of enforcing this procedure can be established.

have potentially serious effects. This has been demonstrated on numerous occasions such as in the cases of Mr Nadir of Polly Peck, Mr Maxwell at Maxwell Communications, and Mr Walker of Brent Walker. In such instances non-executive directors and external auditors proved of no effect in deterring these individuals from their determined path. Stiles and Taylor (1993:63) argue that the separation of the roles of chairman and CEO is justified in large companies on the basis that the two jobs entail significantly different responsibilities. Whilst the chairman is engaged with strategic affairs and handling external issues, the CEO is primarily involved in the management of operational matters. Despite the adoption of such measures a natural leader may still be able to dominate a company, as in the case of Michael Green at Carlton and Sir Paul Girolami at Glaxo (Stiles and Taylor, 1993:63).

However the likelihood of such misconduct is far greater if the posts are not separated. Prof. Katz at a corporate governance seminar at the University of the Witwatersrand stated that the filling of the position of chairman by a non-executive director is critical, since it is the chairman who leads the board meetings. Where the chairman is not independent he or she has the capacity to avoid issues which are important but which he or she wishes to keep away from the attention of the board as a whole - an occurrence which Prof. Katz said he had observed on numerous occasions.

In the case study examined in this research report, the accused (Mr K) did not combine the roles of chairman and CEO and yet was still able to commit fraud on a large scale. Whilst constantly providing fictitious information to the board he was able to mislead his fellow directors because of his convincing manner.

This control alone thus cannot eliminate the possibility of fraud. An additional consideration is that South Africa will experience significant problems if this requirement were to be made mandatory - Raymond Ackerman at Pick 'n Pay and Donald Gordon of Liberty Life are two examples of South African

The effect of the above requirements of King are likely to be negligible, since if the threat of criminal charges for the frauds committed by the accused was insufficient to deter them it is unlikely that accounting legislation (whose penalties will in all likelihood be far less severe) would have altered their behaviour. It appears therefore that the requirements relating to disclosure would have been unsuccessful in preventing the frauds. This contention is supported by Brown and Laverick (1994:89) who found that:

> "recent annual reports highlight the corporate performance of some large well-known companies such as BCCI, Polly Peck, Trafalgar House, Blue Arrow, and Maxwell Communications all had an unexpected feature in common. They turned out to be deliberately misleading. Other annual returns extolling the virtues of company performance could likewise be regarded as 'economic with the truth'. They also lack consistency in their methods and techniques of accounting, making interpretation and cross-comparisons difficult."

Brown and Laverick's opinion indicates that whilst the increased disclosure would make non-compliance with GAAP more difficult, it could not prevent failure by corporations to adhere to best practice.

2.3 THE CHAIRMAN

Instead of making it mandatory for the post of the chairman and chief executive officer (CEO) to be separated, the King Report indicates only that this would be preferable, and that the position of the chairman should be occupied by a non-executive director. This proposal was made despite substantial opposition to this on the premise that the risks entailed in allowing the functions to be united outweighed the related benefits. This argument prompted the Cadbury Report, in contrast to the King Report, to make it mandatory for the posts to be segregated (Clarke, 1994:42).

The justification for the inflexible stance adopted by Cadbury is that excessive power vesting in a single person in an entity may

- that the *Code of Corporate Practice and Conduct* has been adhered to and any areas of non-compliance are disclosed and justified. As will be shown further on, there were certain areas in which the company failed to comply with the requirements of the King Report. Such a disclosure could not have prevented the irregularities but may have served as a warning to investors to be wary and perhaps could have instilled more caution in the *Q* group before finalising the take-over agreement.

- legal force should be given to Accounting Standards; had this requirement existed Mr K and Mr S would have been guilty of another crime for the revaluation of the fixed assets which were credited to the loan account. Whilst such legislation would have the effect of limiting the judgement of professionals (AC100 (1983 par. .08) recognises that in certain limited instances compliance with GAAP may not necessarily achieve fair presentation) and hence is not ideal, it would appear from current non-adherence to GAAP that the approach may be justified.

- the proposed establishment of an accounting review panel to examine material departures from accounting standards; since nobody (including the external auditors) detected the frauds which occurred in *M* until up to two years after they had been committed it appears that this control will be ineffective except in instances of gross and obvious misstatement.

- requiring the republication of accounts (at the expense of the directors) where these have failed to comply with relevant accounting standards. Because *U* was owned by only two parties (*H* and W Ltd) this cost would not have onerous to Mr K and Mr S. This requirement would consequently not have been of great effect.

reasons therefor. It is also necessary for the directors' report to incorporate statements that, *inter alia*:

- the financial statements fairly present the company's state of affairs. Mr K and Mr S as directors of *M* in the case study would have been forced to either adjust the financial statements or make an explicit misrepresentation in the financial statements as to the company's financial position and performance. However it appears that this requirement is merely a codification of existing practice expressed in GAAP, which details that the management of a company is responsible for the financial statements (AU005 par. .12, 1992) read in conjunction with the Companies Act (1973) s286 which requires that the "financial statements of a company shall fairly present".

- accounting policies are suitable and applicable accounting standards have been applied with any departures disclosed, explained and quantified. This requirement should have resulted in the journal entry passed for the revaluation of the fixed assets in *M*, which was credited to the loan account of Mr K, being disclosed for not complying with AC202 (1983) which requires that such amounts be credited to a non-distributable reserve (AC202 was the applicable accounting standard at the time the frauds occurred; it has subsequently been superseded by AC123 (1995) which has similar requirements).

- an effective system of internal controls have been maintained. It is evident from the case study that the internal controls at the company investigated were inadequate, and this statement could not truthfully have been made by Mr K and Mr S in the financial statements.

to counter the growing occurrence of fraud in South Africa (see appendix 7).

4.2.1 APPLICABILITY OF THE KING REPORT

The King Report's recommendations apply to all listed companies, large public entities, large unlisted dependant companies and large control boards and co-operatives. The Report considers 'large' to include companies whose shareholders equity is R50 million or more. The company which is the subject of the case study falls within the scope of the King Report as it is an "affected corporation" as defined, being a large unlisted dependent subsidiary of a company listed on the main board of the Johannesburg Stock Exchange. *U* had a turnover of R750 million in 1993 when the frauds occurred, and in the 1995 year a turnover of approximately R1 billion is anticipated for *U* by the company's new management.

4.2.2 INCREASED DISCLOSURE

Certain controls proposed by the King Report which may indirectly reduce the risk of fraud by management revolve around increased disclosure to the users of the financial statements of companies. Some of the disclosures advocated by the King Report include endorsements, a directors' report with increased disclosure, and statutory amendments to aid in achieving improve corporate governance. This is because of its:

> "recognition of the fact that by and large South Africa's philosophy of regulation of companies, in keeping with that of the Anglo-American tradition, is by means of disclosure" (King Report, 1994:3).

In terms of the Report's requirements an endorsement relating to corporate governance is required by the directors of the company. This endorsement should state that it supports and has applied the principles of *"The Code of Corporate Practices and Conduct"* with notification being given of any areas of non-compliance and the

4. THE KING REPORT'S RECOMMENDATIONS

This chapter considers the recommended changes to corporate governance required by the King Report. The opinions of academics and professionals (ascertained in the literature review) relevant to these proposals are noted. These recommendations are then compared to the structure of corporate governance existing in the case study company.

4.1 THE KING REPORT ON CORPORATE GOVERNANCE

> "At the heart of the report is a 'Code of Best Practice', addressed to boards of listed companies. The Code will clarify responsibilities, encourage disclosure, tighten standards, strengthen controls systems, and encourage a balance of interests on the board and constructive challenge. Points in the code of particular interest to accountants and auditors are that boards must establish audit committees, directors should report on the effectiveness of their system of internal financial control; directors should state in their report that the business is a going concern, with supporting assumptions or qualifications as necessary", (Cadbury, 1992:71).

The above summary of the Cadbury Report by its chairman, Sir Cadbury, provides an indication of what the proposed changes to corporate governance advocated by both the Cadbury and the King Reports entail. A survey of the literature relating to the topic reveals that many academics and professionals are critical of the proposals and their claimed benefits.

4.2 RECOMMENDATIONS OF THE KING REPORT

The recommendation for compliance with the best practice for corporate governance are contained in Chapter 19 of the King Report. These recommendations cover a wide range of areas, from the board of directors to a code of ethics for a corporation. Each proposal of the King Report relevant to this research report is noted in this section, and where applicable, literature supporting or refuting the recommendation is addressed. Many of these proposals are similar to business' planned steps

policy of *M* would not have permitted the realisation of such a profit, prior to the year end fictitious sales amounting to R10 million were processed through *U*'s records. The journal entry to accomplish this amounted to a debit to debtors and a credit to sales without a corresponding entry to cost of sales being recorded, falsely increasing the profit for the 1994 year by R10 million.

accounting practice (GAAP) prevailing at the time required that such revelations be credited to a non-distributable reserve (AC202, par. .24, 1983), this increase was attributed instead to Mr K by crediting his loan account with *M* by this amount. Consequently Mr K is guilty of fraud for attributing the increase in the value of the company's assets to himself and increasing the value of the company by R4.3 million for the purposes of determining the net asset value of the company at the date of the merger, such that *Q* paid R4.3 million for a non-existent increase in the value of *M*'s assets.

3.2.6 WAREHOUSE EQUIPMENT

Prior to the merger *M* passed the following journal entry:

Dr	Fixed assets	R2.3 million	
Cr	H loan account		R2.3 million

The entry was supposedly for the transfer of fixed assets from *H* to *M*, thereby increasing the assets of *M* by that amount. The asset was described as "warehouse equipment" but no such assets ever existed. These fictitious assets were part of the purchase price paid by *Q* and the total amount therefore represents a defrauding of *Q* by Mr K.

In an attempt to give the warehouse equipment asset some degree of legitimacy the journal entry which created the asset was reversed and replaced with a journal entry supported by a number of false invoices - some for companies who deny having issued them and others for companies which do not exist. A fraud was committed by providing fictitious invoices to support the journal entry, because the act of doing so was actually or potentially prejudicial to *M*, the external auditors of *M*, and *Q*.

3.2.7 FICTITIOUS SALES

During the merger negotiations Mr K had asserted that the profit of *M* for the 1994 year would be R20 million. Since the pricing

(although the full extent of this misstatement was not detected due to fraudulent confirmations provided by the managers of the newly formed *U* to the auditors). Earlier performance of this investigation would have ensured that a fairer price was paid for the company. In addition to this the due diligence investigation would at least have alerted the *Q* directors to the problems in Mr K's claims and may even have resulted in the group's directors commissioning a more thorough investigation. Knowledge of the industry in which *M* and W Ltd operated should perhaps also have resulted in the directors of *Q* questioning the sales success of *M*. Both the above factors indicate that the exercising of due care (i.e. diligence and professional scepticism in negotiating the take-over contract) by the *Q* group's directors could have assisted in avoiding the losses suffered by the group as a result of the crimes perpetrated by Mr K and Mr S.

The *Q* group director interviewed for this research report indicated that it is now group policy for a due diligence investigation to be conducted prior to formalising acquisitions, indicating a belief by the group's management that the performance of this procedure could have assisted in protecting the group from the frauds.

5.1.3 RENTAL GUARANTEE DEPOSITS AND LOANS

The creation of the fictitious asset was accompanied by *M* processing a journal entry raising the asset and decreasing the loan owing by its holding company. Under normal circumstances such a misstatement could have been detected by:

- requiring approval from the board of directors for the supposed acquisition of the asset.
- investigation by the internal auditors of all material transactions over a specified amount. Had an attempt been made to verify the asset through the inspection of supporting documentation or alternatively by confirmation with the counterparty to the transaction discrepancies would have been identified for further investigation.

- internal audit of payments meeting specific criteria (material or unusual payments) to establish the validity thereof. Such audits would have resulted in the investigation of irregularities such the payment of R7.5 million via a single cheque. Where it was established that these payments were not authorised the internal auditors would have reported the event to the audit committee who would duly inform the external auditors, who, upon receiving information of the act could have taken appropriate action.

It is thus probable that a properly functioning system of internal controls could have prevented the frauds involving the transfer of cash.

5.1.2 THE EXCESSIVE PAYMENT FOR THE TAKE-OVER

Mr K's assertion to the *Q* group during the take-over negotiations that *M* had net assets of R25 million was accepted by the directors of the group responsible for negotiating the take-over without obtaining independent verification of this assertion. The reasons for this included the apparen success of the company due to its high turnover, and Mr K's persuasive nature. This error of accepting the accused's stated value and the concluding of the agreement prior to conducting a due diligence investigation rendered the company vulnerable to not only a loss on the price paid, but also to merging with a company whose personnel were not trustworthy. The *Q* directors therefore failed in their duty in this regard to act with due care and skill as was required in their role as stewards of the shareholders of the *Q* group.

With hindsight it is evident that the due diligence investigation should have been conducted prior to the finalisation of the agreement. The external auditors of the *Q* group were commissioned to perform a due diligence investigation four months after the merger and the results of their investigation revealed that the net assets of the company were overstated

effectiveness of the King Report depends on the unity of its controls which must operate in harmony to achieve the Report's objectives. Whilst it is acknowledged that this is not easy to achieve, the importance implementing and maintaining these controls is demonstrated by the losses incurred in the case study company which arose in part from not adhering to the King Report's recommendations.

Various controls which could have prevented the frauds, or at least detected them and resulted in their being reported to the appropriate authorities are now examined. Interpretation of the findings indicate that the majority of the frauds in the case study were avoidable.

5.1.1 INTERNAL CONTROLS OVER CASH

One of the preferred methods of the accused for committing fraud involved the unauthorised withdrawal of funds from the company. This occurred in instances such as the purchase of shares from his fellow shareholders, the withdrawal of the cash cheque of R200 000, the loan advance of R2,035 million which Mr K withdrew from *M*, and the concealment of the s38 contravention. These acts resulted in the crimes of fraud, theft, and contravention of s227 of the Companies Act procedures required for authorising loans to company directors.

Controls which could have prevented these irregularities include:

- authorisation by the board of directors for all cash payments over a certain amount (e.g. R1 million) or authorisation for specific types of transactions. None of the payments in *M* or *U* were authorised by the board, which facilitated the ease with which the frauds were committed.
- proper segregation of duties such that the managing director cannot assume responsibility for requisitioning cheques without providing suitable documentation (e.g. matched capital expenditure authorisation forms, orders, goods received notes and invoices).

5. ANALYSIS OF THE RESULTS

This chapter considers, through the process of interpretative analysis, whether the frauds at the case study company could have been avoided by implementing the King Report's proposals.

5.1. THE PREVENTION OF THE FRAUDS

Whilst the King Report's proposals may not be able to prevent all fraud (see 4.5) adherence to its recommendations can have a significant impact on the occurrence of fraud in a company. The examination of the frauds in the case study indicate that the majority of the frauds could have been prevented had the King Report's controls been implemented in the organisation.

The research indicates that the primary controls of the Report which can assist in reducing fraud are:

- the maintenance of an effective system of internal controls
- a competent, independent internal audit function, an important part of whose responsibilities should include investigating any management override of internal controls, and unusual and material transactions.
- an influential audit committee with non-executive director representation on the board, to whom internal audit and other employees can report any irregular activities by management. The non-executive directors should also have sufficient power on the board to act decisively on any information coming to their attention indicating that there has been mismanagement by the executive directors.

For the King Report's proposals to be effective it is important that these controls all operate jointly and effectively. If there are ineffective internal controls or an incompetent internal audit function both the prevention and detection of fraud are unlikely, as is shown in the case study. Even if internal controls are effective and internal auditors discover an irregularity, where there is no independent and powerful audit committee to report this to, corrective action will once again not be taken. Thus it is evident that the

Mr King regards to the solution to the problem of controlling fraud to be for business to be more proactive in combating it. This includes the performance of fraud audits by a company and anticipating areas vulnerable to irregularities and strengthening internal controls in such areas. However he believes that the structure which his report has proposed will assist in establishing minimum standards which should improve corporate governance in the long run. This contention is supported by the analysis of the findings of this research report in Chapter 5.

The opinions of Mr King, Mr Anderson, and Prof. Steele coincides with Stiles and Taylor (1993:68) who question:

> "can adoption of the Cadbury Code stop a Maxwell? The Cadbury committee was set up in the wake of the collapse of the Maxwell companies and other high profile scandals but the consensus seems to be that the code could do nothing about it."

The analysis of the frauds in the case study company in the next chapter does not appear to support this statement entirely, however, since the finding is that the majority of the frauds which occurred at the company could have been avoided by diligent adherence to the King Report's proposals.

4.5 NO GUARANTEE OF GOOD CONDUCT

Stiles and Taylor (1993:67) found that the recommendations of Cadbury "cannot guarantee good conduct". Citing British Airways (BA) as an example they noted that with five of the six fundamental corporate governance criteria in place the company still failed to conform with good corporate ethics. Richard Branson of Virgin Airlines reported BA to the European Commission in 1991 for using its greater market power to force his company out of business, and Branson further accused Lord King and the airline of using unethical practices to accomplish this. The result was a humiliating apology by BA and an award of £3.5 million damages to the aggrieved party. The inquiry resulting from the affair is how the situation occurred with majority of the proposals of the Cadbury Report in place?

The opinion of Mr Anderson expressed in the interview with him is that the Report's proposals cannot prevent all fraud. His belief is that benefits of proposals such as separating the post of CEO from that of the chairman and having an aggressive audit committee will be to reduce the risk of management irregularities in companies, but that no system of controls will ever be perfect. He considers that the potential success of the proposal advocated by King will depend to a large extent on the diligence with which companies apply the individual proposals. This opinion is supported by the research conclusions arising from the case study investigated.

In an interview with Mr King, chairman of the King Report, he disagreed with the contention that by adhering to his report's recommendations all management irregularities could be prevented. Mr King's belief is that since no legislation in the past has been able to eradicate fraud despite numerous attempts to do so, it should not be expected that his Report's proposals can accomplish this. He said that better control of companies is the primary objective of his Report, and that increasing the quality of business controls should have the logical result of reducing the incidences of fraud.

the opinion that such requirements will be effective for all new companies seeking a listing. From these findings it would appear that the King Report's proposals require statutory enforcement for their effect to be appreciable.

The limited application of both the Cadbury and the King Reports to only large or listed companies is a further constraint, and there have been calls that 'good corporate practice should be universal from the start' (Certified Accountant, 1993:9). However the requirements have also been labelled as too expensive for smaller companies to adopt (Accountancy, 1994:14). King counters this argument with the contention that smaller companies usually have owner involvement, which overcomes the problem of the divorce of ownership from control and the structure required for corporate governance in larger entities in such instances is not required (King Report, 1994:5).

This limited application may result in statutory interference in the regulation of the accountancy profession, a situation which most writers agree should be avoided. O Kane (1992:3) stated that:

> "given the prolonged period of self-doubt on the part of the accounting profession, and the public mistrust regarding financial reporting and the role of auditors, a report that raised a few blisters might have proved more cathartic. Instead the soul searching will continue, or until the statute makers take action for themselves."

Compliance with the recommendations of the King Report is one effective means to avoid the detrimental effects of greater statutory regulation and thus warrants close consideration. Stiles and Taylor (1993:62) consider that:

> "the mission was to spread the boardroom practices of the best companies to all others. The Cadbury Report may therefore be taken to represent an exercise in benchmarking. Benchmarking has been defined as 'the search for industry best practices that lead to superior performance'. The benchmarking process is becoming an increasingly important tool for raising standards in both commerce and industry around the world."

recommendations forwarded by it. However it still represents only a partial solution, since a code of ethics can influence, but not dictate, management actions.

4.3 CONTROLS AT THE CASE STUDY COMPANY

At the time the frauds occurred in *M* and *U* the companies had only a limited number of the controls recommended by the King Report. Both companies did have non-executive directors on their boards, and the role of chairman was segregated from that of CEO. However neither company had an internal audit department, an audit committee, or a code of ethics. None of the transactions causing the frauds were ever presented to the boards of *M* or *U* for approval, a factor aggravated by the fact that internal control at both companies was weak. The significance of these findings is explored in the next chapter.

4.4 ENFORCEABILITY OF THE RECOMMENDATIONS

Even if it were established that the King Report's recommendations could prevent fraud there is a lack of effective sanction to enforce compliance with its recommendations. Enforcement of the King Report's proposals will be difficult. Even the requirement of it being a condition of listing is not a guarantee of that affected corporations will comply with the Report's recommendations. The general attitude among businessmen is that legal provisions are irrelevant because they know they can break the law in this area with impunity. Over a two year period seventy serious material irregularities at corporations were reported to the authorities, but there was only one prosecution (Gleason, 1993:32). Gleason further argues that until steps are taken with regard to the provisions of the Companies Act it seems SA will continue with its antiquated and apparently unenforceable method of corporate governance.

Mr Anderson, Chairman of the Johannesburg Stock Exchange, agreed in an interview conducted with him that although it is a requirement of listing that a company adhere to certain of the King Report's proposals, it is unlikely that non-compliance would result in delisting. He is however of

4.2.9 CODE OF ETHICS

In terms of the King Report every affected organisation should have its own Code of Ethics implemented as part of its corporate governance structure. Features of such a code should include a commitment to the highest standards of behaviour, and the code should contain sufficient detail so that clear guidance is provided as to the expected behaviour of all employees.

Miles and Taylor (1993:68) consider that getting the appropriate structure for corporate governance by itself is insufficient - there has to be a commitment to ethical behaviour and processes of good governance, and this alone will ensure best practice. If this is true the requirement of the King Report that an entity adopt a code of conduct may be among the most important of its proposals. A proposed solution of business to the problem of fraud is to implement such a code (see appendix 10). One way in which the King Report is superior to the Cadbury Report is in its recognition of the importance of ethics:

> "Another important dimension is that without integrity contractual relationships would surely collapse. What, therefore, has to be evolved is a participative corporate governance system of enterprise with integrity," (King Report, 1994:2).

It is important to appreciate when considering corporate governance that ethics can only be influenced, they cannot be fashioned in concrete, unlike regulations and standards. Consequently the proposals of the King report can only hope to move behavioural norms in the right direction. A statement of principles is a more effective deterrent and it might provide users of accounts with some information that would help to identify companies with corporate governance problems; but it is unlikely to deter the determined abuser (Certified Accountant, 1993:9). The supplement to the King Report "Code of Ethics for Enterprises and all who Deal with Enterprises" providing such ethical guidance may be amongst the most effective of the

4.2.8 THE INTERNAL AUDIT

King requires that affected corporations have an internal audit function, the effectiveness of which should be reviewed by the external auditors, and whose findings should then be communicated to the audit committee. The audit committee will then report any items of significance regarding the company's existing form of internal control to the board of directors.

Internal audit was recommended by the King Report as one aspect of good governance and business agrees that it can assist in counteracting fraud (eight percent of businesses plan to increase the budget for their internal audit functions - see appendix 10).

A critical aspect of ensuring the effectiveness of internal auditors is that a company has sound internal controls. The president of the Chartered Institute of Management Accountants in the United Kingdom criticised the Cadbury Report, claiming that it emphasised the importance of financial controls whilst neglecting other important elements of internal control (Hewitt, 1992:5). This criticism is equally applicable to the King Report. As is shown in appendix 9 weak internal controls are the second most common factor permitting the occurrence of fraud, a finding which supports Hewitt's criticism.

In an interview conducted with Prof. Steele for this research report, she stated that internal controls and internal auditors can have an positive impact on reducing fraud in an entity. In the case study investigated the primary frauds were committed by management - Prof. Steele's belief is that the role of internal controls encompasses the control of management so that no individual has absolute power in the organisation. Had such effective controls existed in the case study company, many of the frauds which occurred could have been prevented, as is discussed in Chapter 5 of this report.

The requirement that all audit committee meetings should be attended by internal and external audit representatives can yield benefits. Any problems which are discovered by internal audit and raised at such meetings can be more effectively dealt with by involving external audit through adding their influence to the issue. Where fraud does come to their attention they can also act as a powerful force that is more difficult to suppress than the internal audit. This is especially true considering the requirement of the Public Accountants and Auditors Act Section 20(5). This section requires the auditor to report such material irregularities to the Public Accountants and Auditors Board who can then inform third parties of the matter, including the police. An effective means of opposing fraud which is not subject to override by top management is thus available from implementing this proposal.

4.2.7 THE AUDIT COMMITTEE

The effectiveness of the audit committee is a subject of controversy. Since it is comprised chiefly of non-executive directors whose degree of involvement in the company is limited, they are unlikely to have the degree of knowledge required to appreciate all factors relevant to the business of the entity (Wixley, 1993:6).

One area in which the audit committee can improve corporate governance is in lending authority to the non-executive directors. By ensuring non-executives comprise the majority of the members of audit committee their position in this regard provides them with additional power, and Wixley thus believes that the audit committee has structural importance to a company. If employees had the opportunity of reporting irregularities coming to their attention to a powerful audit committee, appropriate action could have been taken in response to this. Business also considers that the audit committee may have a role to play in combating fraud (see appendix 10).

4.2.6 THE EXTERNAL AUDIT

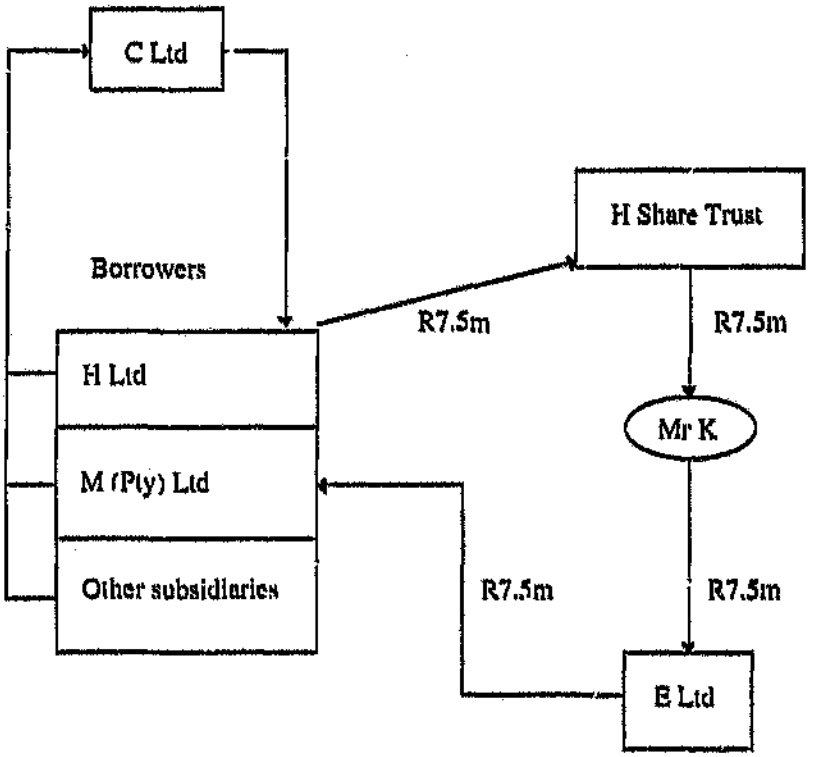
The King Report seeks to extend the duties of external auditors in certain spheres and emphasises the importance of the duties of the auditor. The Report requires that business and professional ethics should be adhered to rigidly by the auditor and that their independence be unimpeachable. Whilst these requirements are already encoded in the statement of Ethics issued by the South African Institute of Chartered Accountants (ET, par. .12 and .13, 1992), perceived problems with auditors' independence is affecting the faith of the public in the profession (Discussion Paper 12, par. .66, 1994).

In the case study under consideration the external auditors were independent in all respects required by generally accepted auditing standards. However this did not ensure their detecting the frauds which occurred in the entity. Whilst King requires that auditors express an opinion on any departures from applicable accounting standards, in the case of the case study the audit procedures applied did not detect any of the irregularities, and those matters which were queried by the auditors resulted in management providing them with fictitious corroborating information. Therefore the King Report's proposals in this regard are unlikely to reduce fraud

This situation is aggravated by AU005 (1992) which states that the auditor is "not responsible for preventing illegal acts, other irregularities, and errors" (par. .15). The auditing statement also recognises the additional problem of activities designed to conceal the frauds, which did not occur in the case study. King did not propose changing the auditing standard. (However AU005 requires that auditors plan and perform their procedures to ensure that it is probable that their procedures will detect any material misstatements (par. .16). The frauds which occurred were material to results of the case study company, and there is evidence that the external auditors of *M* and *U* were guilty of negligence in the performance of their duties.)

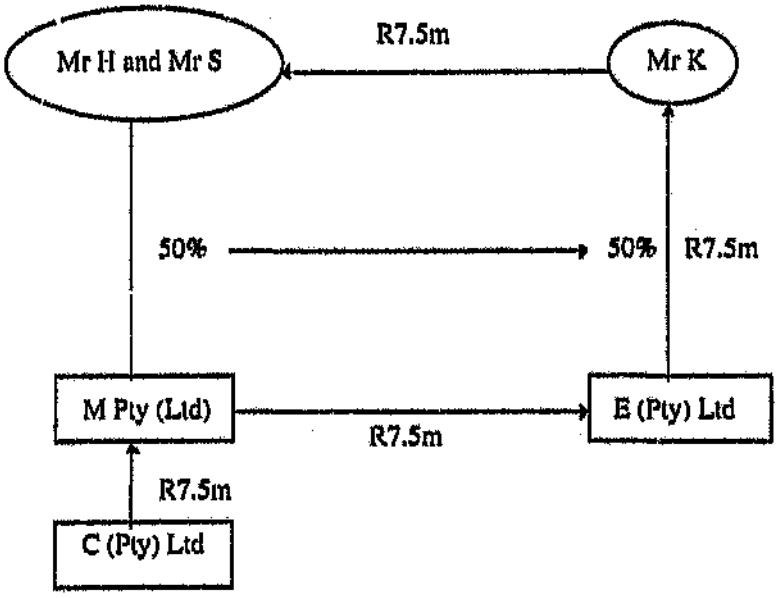
APPENDIX 3

The Attempt to Regularise the s38 Contravention



APPENDIX 2

(i) Mr K's Contravention of s38



Section 38(1) of the Companies Act states the following:

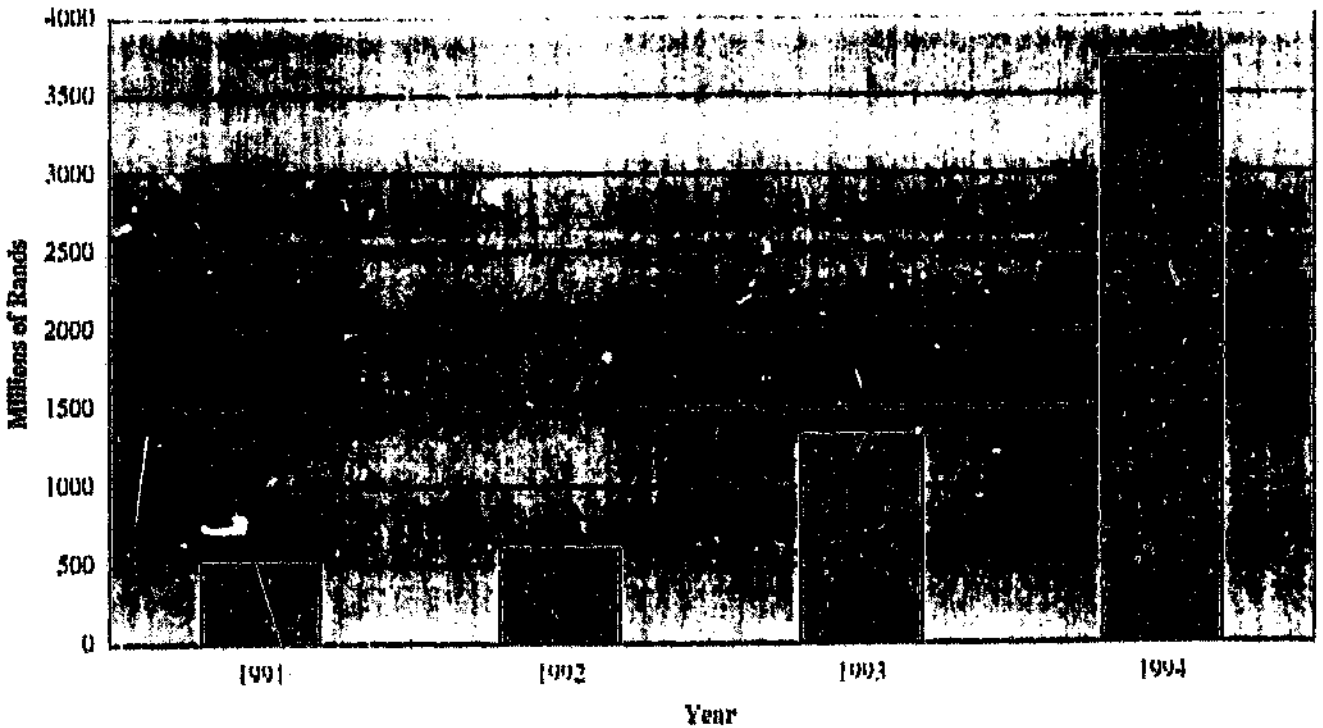
No company shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purposes of or in connection with a purchase or subscription made or to be made by any person of or for any shares of the company, or where the company is a subsidiary company, of its holding company."

(ii) The Creation of the Holding Company and Sale of Shares in M (Pty) Ltd to H Ltd



APPENDIX 1

Reported Cases of Fraud in South Africa



Source: South African Police (quoted in Mittner, 1995)

risk to companies and their shareholders of fraud by senior employees. However the proposals cannot achieve a panacea, because, as stated by Speechly (1994:9):

> "But as a measure to prevent large-scale fraud, the code could prove ineffective. It would be foolish to think that someone like Maxwell would have behaved any differently had the code been in place then. I don't think it can be seen as a guarantee against bad behaviour."

The recommendations' primary accomplishment will be moving corporate governance closer to its ideal structure: the establishment of a correct balance in the needs between the freedom to manage, accountability, and the interests of different stakeholders. It also offers a means of controlling the growing fraud rate which it appears that government will be unable to prevent. Mittner (1995:11) quotes Mr King, saying that:

> "King frankly admits that the State is incapable of apprehending and prosecuting white collar criminals. Their crimes are too complicated and there are too few forensic experts to solve them."

Since the State cannot be relied upon to counteract fraud, it is evident that business will be required to take the initiative and accomplish this. Peter Wilmot (1994:11), former president of the South African Institute of Chartered Accountants, found from his research that the best protection for a company against fraud is:

1. Strong, involved, investigative management.
2. Good systems of internal controls and internal checks.
3. Strong independent external auditors.

Wilmot further urges management to challenge the ethos of their corporate culture to ensure that it conveys unequivocally the message that dishonesty, lack of integrity, and dubious dealings will not be tolerated. All these procedures are recommendations made by the King Report, and Wilmot warns that unless these procedures are adopted the "prevention of white collar crime will not be achievable". It is through its recommendations of such procedures that the King Report has the potential to make a valuable contribution to controlling management fraud in South Africa.

7. CONCLUSION

The recommendations forwarded by the King Committee are already being adopted by South African companies. Conshu Holdings Ltd and Amrel Ltd both included a corporate governance report in their 1995 Annual Reports (before it became a requirement listing on the Johannesburg Stock Exchange), indicating a willingness on the part of the financial community to implement the proposals.

A potentially serious problem of the King Report is that it is not possible to measure the extent of compliance by a company to the Report's proposals - it is possible, for example, to disclose that a company has an internal audit function, but how can a user of the financial statements determine its effectiveness? Prof. Katz at a Corporate Governance Seminar expressed concern that companies and investors are becoming obsessed with adhering to corporate governance checklists. He stated that quantitative sterile checklists give false comfort as to the adequacy of an entity's corporate governance, since it ignores the chemistry on the board of directors. An illustration provided of this fact was that whilst the chairman may be a non-executive director, if the managing director has an overbearing personality and the chairman is timid, the managing director will dominate the company irrespective of how many of the corporate governance checklist requirements are met. Factors such as these reinforce the importance of the requirement that non-executive directors be independent and equipped with sufficient authority to challenge executive management on the board.

The recommendations of the King Report agree with those of Discussion Paper 12 on *Meeting the Financial Reporting Needs of Users of Financial Statements in South Africa*. The Council of the South African Institute of Chartered Accountants reviewed the report and endorsed the King Report without reservation (Techtalk, 1995:1). The way thus seems clear for the adoption of King's proposals. An additional incentive for companies to comply with the King Report is that it will assist in the preventing the self-regulation of the accountancy profession in South Africa being replaced by statutory control, a situation which most commentators agree should be avoided (O Kane, 1993:3).

The conclusion of this research report is that adherence to the recommendations of the King Report can make an important contribution to the alleviation of the

The answer to the research question posed at this start of this report, from the results of the research conducted, therefore, is that the primary recommendations of the King Report can assist in preventing management irregularities within an organisation, but cannot be expected to eliminate the risk of management fraud entirely.

5.4 AREAS FOR FURTHER RESEARCH

Items which have been identified in this report as requiring further research are:

1. How to measure the extent of adherence to factors which the King Report requires that companies disclose. In the interview conducted with Mr King he conceded that a defect of the Report's requirements is that the *effectiveness* of a control implemented by a company cannot be measured and reported.
2. Whether the King Report's requirements should be legally enforced.
3. Should the responsibility of external auditors be extended to encompass the detection of fraud?

a company institute a strong code of ethics, supported by effective internal controls and alertness on the part of management in noting warning signs of fraud. Wunder found that in combating fraud:

> "The single biggest deterrent is a strong, top-down policy that is well communicated to all employees that theft will not be tolerated and anyone caught stealing will be prosecuted."

5.3 KEY FINDINGS OF THE RESEARCH

A summary of the key findings of this research report is:

1. No person in the organisation should be considered above suspicion in combating fraud. Despite K and S's positions as directors of the company and K's apparent trustworthiness, both were guilty of significant frauds, which should serve as an indication that all employees of a company, whatever their level, must be subject to some form of control.
2. The primary controls of the King Report which can assist in reducing the risk of fraud by management are:
   - a strong system of internal controls, any override of which by management should be referred automatically to the audit committee by an employee who detects such occurrences.
   - a competent, effective and independent internal audit function.
   - an independent audit committee with influential non-executive representation on the board embodied with sufficient power so that any matters coming to their attention can be effectively addressed.
3. A harmonious and effective operation of the above controls is essential for them to be successful in preventing and detecting fraud.
4. A code of ethics which is effectively communicated to all personnel in an organisation and adopted by senior management is an important component of an effective corporate governance structure.
5. Since not all frauds can be prevented by adhering to the above procedures and controls, steps such as fraud audits may prove necessary in combating fraud.

they been effective, would certainly not have exceeded the related benefits (as measured by the extent of losses arising from the frauds which occurred).

It is significant to note that the case study company *U* and its holding company, the *Q* group, have now implemented all the controls recommended by the King Report. The opinion of the company's current management is that the recommendations of the King Report regarding internal control and corporate governance are of value and that implementing the proposals is worthwhile. This finding should serve as a warning to other entities who do not yet have King's recommended corporate governance structure to take preventative action before they too become victims of the rising incidence of fraud in South Africa.

A problem which has been identified in justifying the benefits of implementing the King Report's proposals is how to measure the effectiveness of the various controls implemented. To measure anything requires a yardstick - and in their reporting auditors and directors will require a set of parameters that the investing community accepts as appropriate benchmarks for the information required. King has not indicated, *inter alia*, how the value of internal control, and the effectiveness of non-executive directors are to be measured. Consequently calls have been made not to require something to be reported before it can be measured (Keegan, 1993:79). It is one thing to say that a control exists, but quite another to claim that it is effective. This is mentioned as a *caveat* and is noted under Section 5.4 as a matter for further research.

The importance of management adopting a proactive stance in combating fraud is an additional control to those recommended by the King Report which must be considered. Marias (1994:18) encourages companies to adopt a fraud response plan as part of ensuring a more proactive stance by business to combating fraud. This entails planning and preparing a document which sets out policies and procedures guiding a company's responses to fraud or theft. Its purpose will include the minimisation of the risk of subsequent losses, improving the scale of recoveries, and making a clear statement to employees that the company will not be a 'soft' target for attempted fraud. Wunder (1995:42) also recommends that

making misrepresentations at the outset, the merger may never have been approved. The current company management also admits that had closer attention been paid to *U*'s operating results the amount of the loss which occurred could have been significantly reduced. Likewise permitting the loan account of the company to expand without investigation as to how the funds were being utilised was a failure by the directors of *Q* to perform their duties with due care. More involved and diligent board of director review (and particularly by independent non-executive directors) as proposed by King may have assisted in limiting this negligence which, according to a senior manager of the *Q* Group, did considerable damage to the reputations of the *Q* directors involved in the affair.

The exercise of greater caution and full and proper enquiry into all details relevant to the merger by the *Q* directors involved would have contributed to limiting the losses incurred by the group.

5.2 CONCLUSIONS FROM THE RESEARCH

A common response arising from the interviews conducted with Prof. Steele, Mr Anderson, and Mr King was that the King Report's proposals cannot prevent all fraud. The survey of the literature related to the King and Cadbury Reports yielded similar conclusions. The results of this research report supports this assertion. However the investigation of the case study provided evidence that the King Report's proposals, had they been implemented and complied with at the company investigated, could probably have prevented or detected the majority of the frauds which occurred in that company. This leads to a finding that there are significant benefits to be gained from adherence to the King Report's recommendations.

Whilst complying with King may be costly, in the case of the case study company it can be observed that expenditure on controls such as an internal audit function and an audit committee may have saved the *Q* group up to R400 million. This would indicate that cost of such controls, had

- a review of company operating results by internal auditors and senior management would have identified a major fluctuation in results in the month that the journal entry was passed. This would then have been followed up on and the cause determined. A gross profit percentage review for example would have highlighted a significant difference requiring investigation.
- general ledger reconciliations to subsidiary ledgers (e.g. the debtors control account to the age analysis) would have established a difference of R10 million which would have to be accounted for, and the fraud could have been detected in this manner.
- work by the internal auditors on matching invoiced sales to authorised order forms and signed proof of delivery notes would have failed to find documentation supporting the R10 million sales and an investigation would have resulted.

Proper internal controls and review by management should have prevented this fraud. Had this not occurred an effective system of internal control systems coupled with management intervention should have detected the irregularity.

5.1.7 RECKLESS TRADING

The charge of reckless trading was raised against Mr K for pricing goods sold at a mark up so low that the company as unable to achieve any level of profitability, thereby necessitating substantial borrowing which could not have been rapid. In so doing his actions were prejudicing both the company's shareholders and creditors.

The *Q* group concedes that one of their primary errors in the affair was to commit themselves to the take-over before performing a due diligence review. This would have highlighted the true state of the company's affairs and would also have demonstrated the character of Mr K. Had *Q*'s directors been aware that Mr K was

being set-off against the shareholder loan account could have been prevented and/or detected in a number of ways:

- members of the board on receipt of the management accounts should have queried the increase in the fixed assets. The amount would not have been authorised or have resulted in an outflow of cash and thus probing questions regarding this journal entry would have arisen from both members of the board and the internal audit function.
- internal auditors by inspecting the fixed asset register and vouching fixed asset costs would have identified a discrepancy. As the audit committee should be responsible for following up on the results of work performed by internal audit appropriate action could be taken by non-executive directors on the audit committee in response to the work done by the internal auditors.
- the external auditors should have detected the fraud as the amount was material and the manner of accounting was in contravention of GAAP.

The above analysis indicates that this fraud is thus avoidable.

5.1.6 FICTITIOUS SALES

It was established by the forensic accountants that the computerised sales system was manipulated by a computer programmer employed in the company at the instance of Mr K. This resulted in transactions to enable the fictitious sales of R10 million to be processed. Controls forming part of an effective system of internal controls which would have detected or prevented this fraud include:

- segregation of duties so that a computer programmer cannot access live programmes and pass journal entries, which would include a system of password controls and menu restrictions.
- a computer log to note access violations so that these can be followed up on by other senior data processing personnel.

A problem with the above analogy however is that Mr K and Mr S entered into an arrangement with a third party to provide fictitious confirmation of the amount which proved sufficient to mislead the external auditors. This factor coupled with the problem of collusion between the financial and managing directors resulted in a situation in which the detection and following up of any suspected frauds would have proved onerous. Consequently it is possible that this fraud may not have been detected by internal auditors.

5.1.4 THE PROVISIONS FOR EQUIPMENT

In paying for non-existent assets, either directly in the form of cash or indirectly by reducing its holding company's liability owing to it, *M* was directly benefiting Mr K, *H*'s majority shareholder. Internal controls which could have proved effective in preventing this fraud include:

- requiring directors to authorise these material transactions through capital expenditure authorisations.
- segregation of duties which would require the generation of the purchase requisition, the receipt of the asset and custody thereof, and the recording and payment for the asset to be performed by different personnel of the company.
- internal auditors who agree assets in the general ledger control account to the fixed asset register balance and physically inspect fixed assets reflected on the regist...

Any of the above internal controls could have proved effective in preventing or detecting the fraud relating to the provision for equipment. It is therefore considered that these frauds could have been avoided.

5.1.5 ASSET REVALUATION

The revaluation of fixed assets with the non distributable reserve

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APPENDIX 12

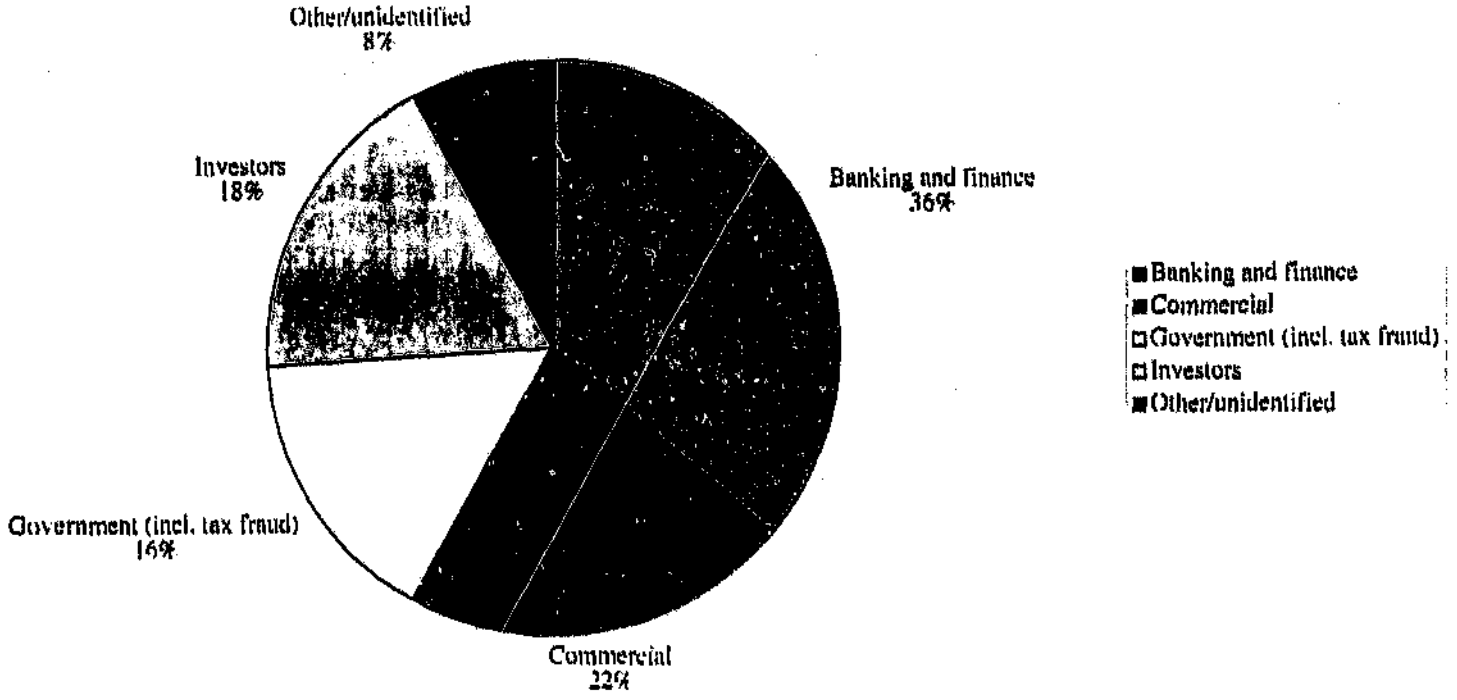
Analysis of the Directors of Some of South Africa's Top 100 Companies

COMPANY NAME	NONEXECUTIVE DIRECTORS	EXECUTIVE DIRECTORS	NONEXECUTIVE PERCENTAGE
Tongaat	12	7	63%
Premier	10	6	63%
Tiger Oats	8	7	53%
Engen	7	7	50%
Rainbow	4	4	50%
Liberty	11	11	50%
SAB	9	10	47%
Pepgro	6	8	43%
Anglo	11	19	37%
Barlows	8	14	36%
Trencor	3	6	33%
Altron	3	7	30%
Pick 'n Pay	4	12	25%
W&A	3	11	21%
Searcell	1	10	9%

Source: Wixley, J. Power in the hands of the few, Accountancy SA, September 1993, p. 6.

APPENDIX II

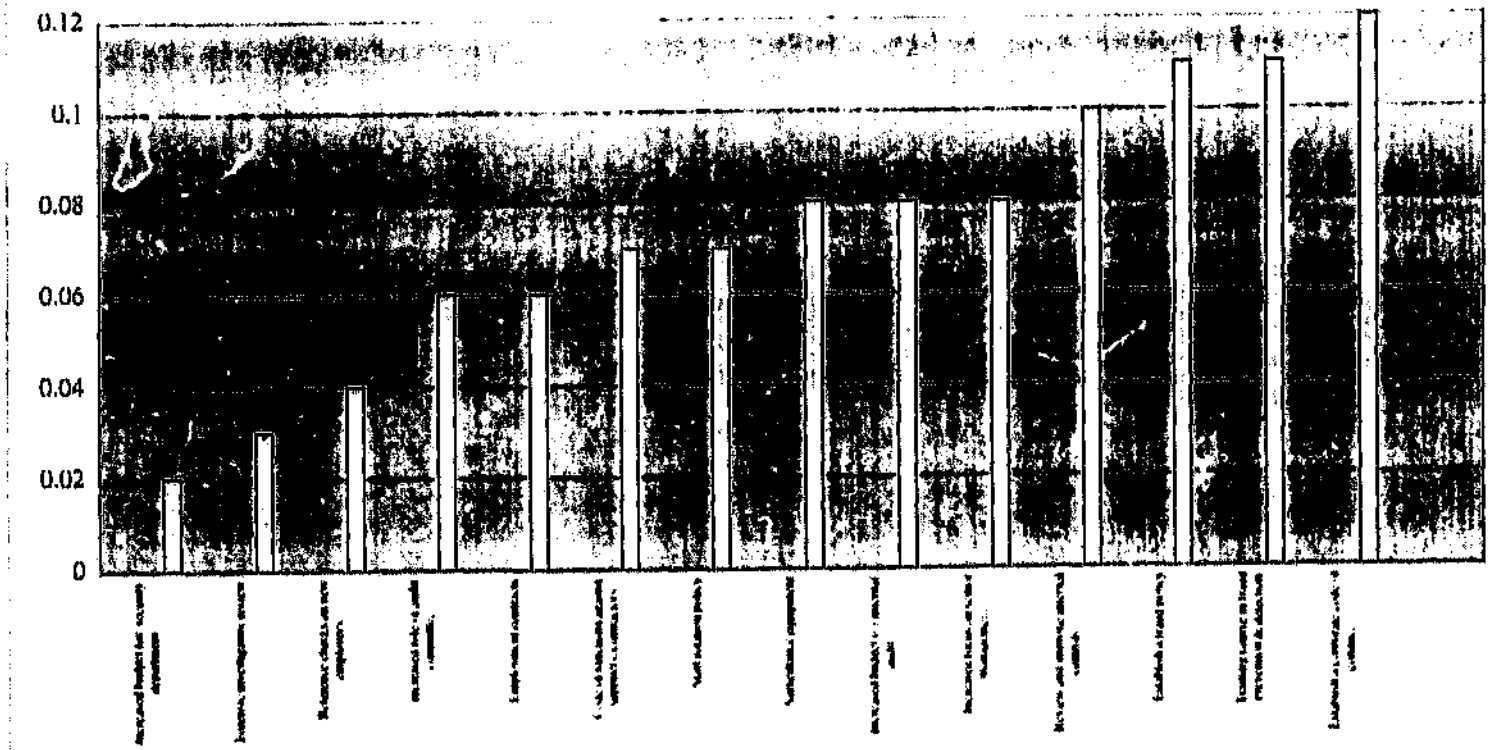
FRAUD VICTIMS IN 1994



Source: KPMG The Forensic Accountant, Issue No. 9, Spring 1994, p. 2.

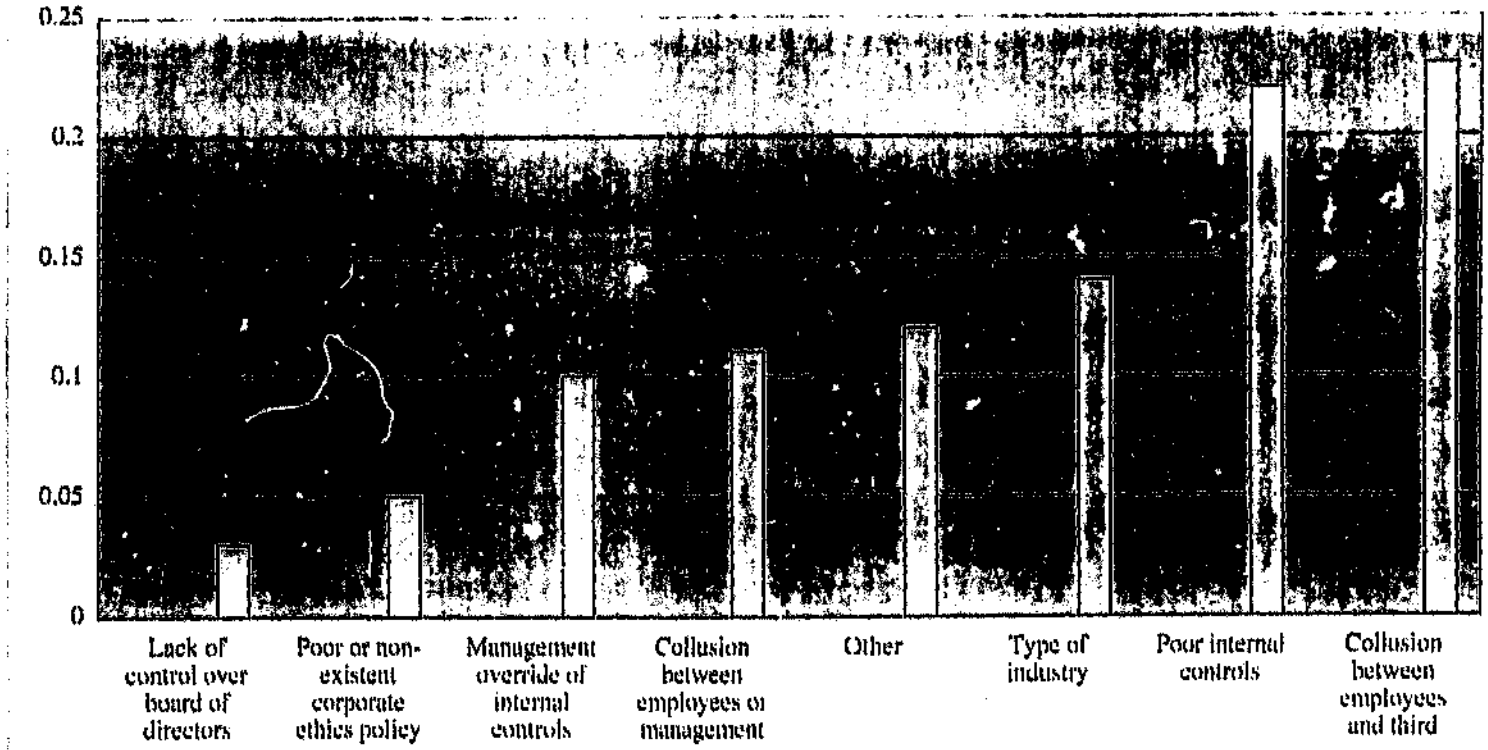
APPENDIX 10

BUSINESS' PLANNED STEPS TO REDUCE THE POSSIBLITY OF FRAUD



Appendix 9

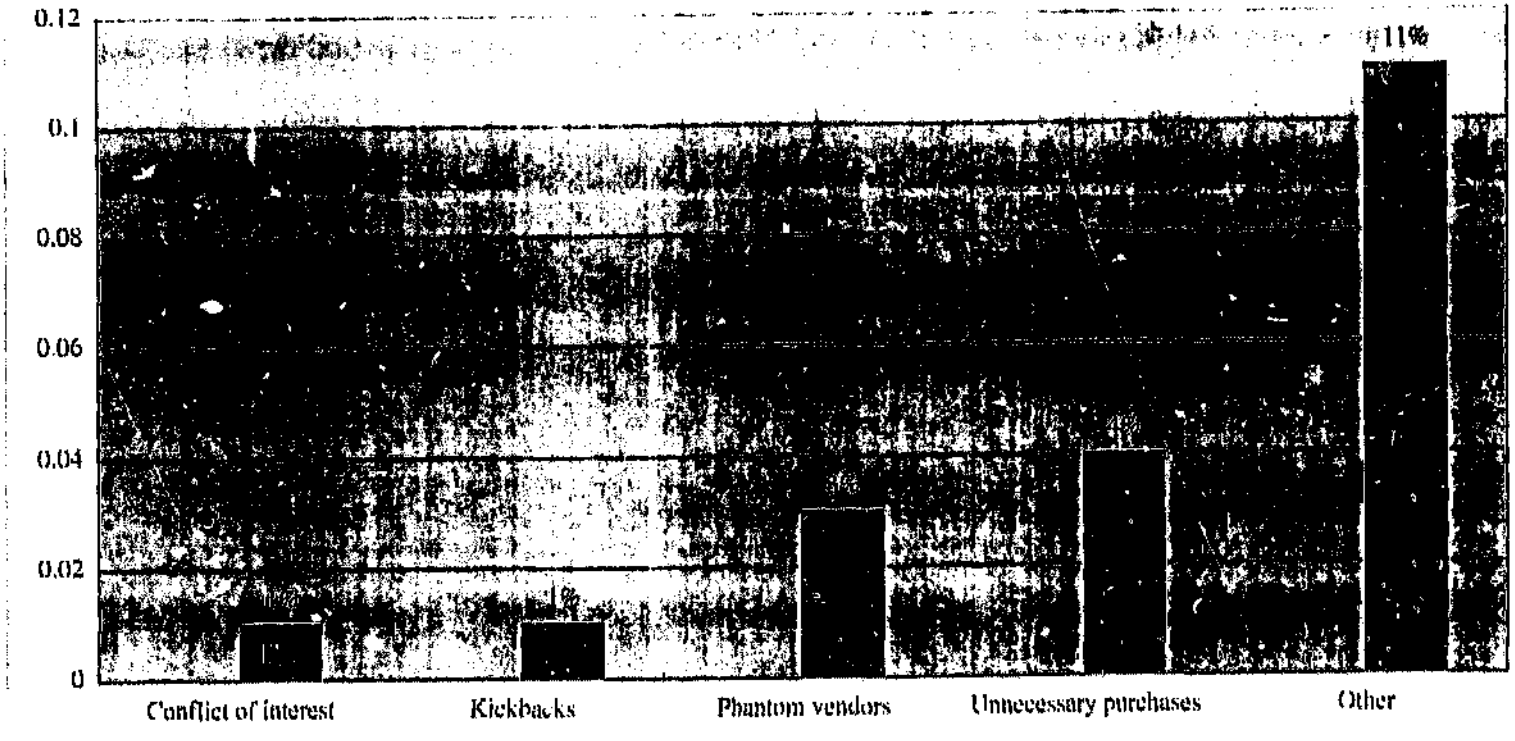
Factors Allowing Fraud to Occur



Source: KPMG Fraud Survey 1994, p. 6.

APPENDIX 8

COMMON MANAGEMENT FRAUDS



APPENDIX 7

Controls Advocated by the King Report Compared to Business' Planned Steps

Control Advocated by Business	*Control Advocated by the King Report*
Increasing budget for security department	×
Forensic investigative review	×
Reference checks on new employees	+
Increased role of audit committee	/
Employment contracts	+
Code of sanctions against suppliers, contractors	×
Staff rotation policies	×
Surveillance equipment	+
Increased budget for internal audit	+
Increased focus on senior management	√
Review and improve internal controls	√
Establish a fraud policy	√
Training courses in fraud prevention and detection	+
Establish a corporate code of conduct	√

Tick Legend

√ = Control advocated by King Report concurs with business' planned steps.

× = Control advocated by King Report does not concur with business' planned steps.

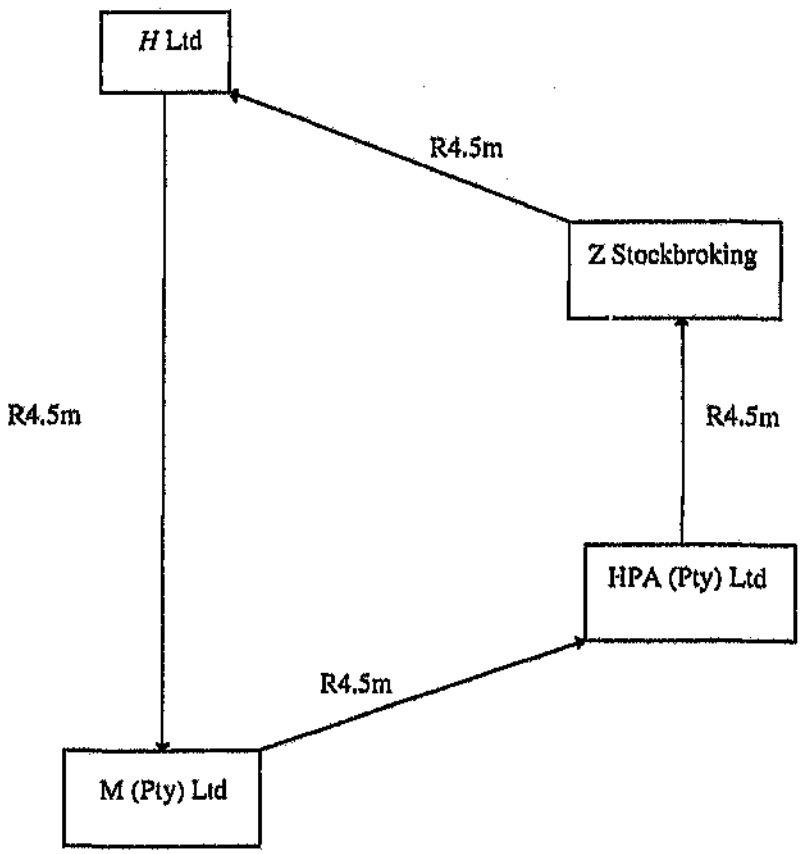
\+ = Control advocated by King Report indirectly concurs with business' planned steps since the control is a part of a sound system of internal controls.

Source: Business recommendations - KPMG Forensic Accounting, 1994

- King Report Controls - King Report, November 1994.

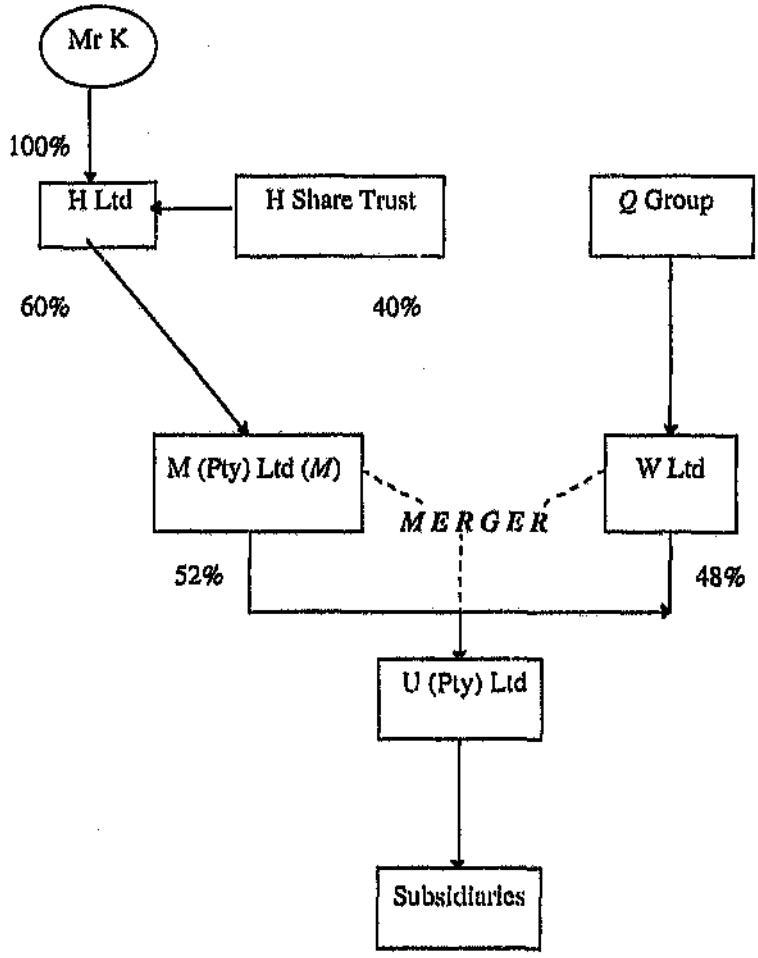
APPENDIX 6

Provision for Equipment of R4 494 772



APPENDIX 5

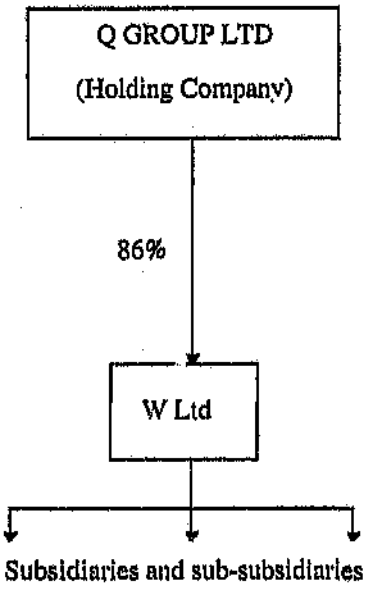
The Group Structure After the Merger of the Groups



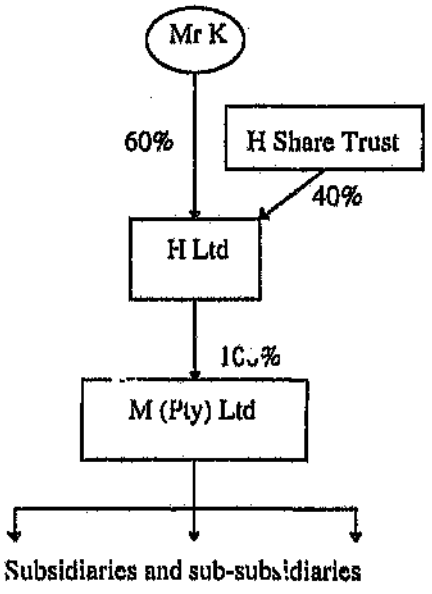
APPENDIX 4

The Gropu Structures of the Two Groups Prior to the Merger

GROUP A



GROUP B



Author: Benade Dirk Christoffel.
Name of thesis: Corporate governance and fraud- an investigation to determine whether the primary recommendations of the King Report can assist in preventing management irregularities within an...

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