

King report 'shifts focus from compliance to best practice'

SANCHIA TEMKIN

Professional Services Editor

THE third King report on corporate governance is a move away from the compliance doctrine, says Miranda Feinstein, a director at Edward Nathan Sonnenbergs and a member of the King committee.

"In the future, companies will give more thought to aspiring to best practice," Feinstein said. She was speaking at the Compliance Institute of SA's 10th annual conference held in Johannesburg yesterday.

The draft third King report recom-

mends that all entities disclose which principles or practices they have decided not to apply and why.

A company could decide that to follow the code in particular circumstances would not be in the best interests of the entity and could follow another practice.

Feinstein said this new approach gave more flexibility to companies, which was necessary now that the code applied to all entities. The response of a company's shareholders would soon be to let it know whether its explanation in the case of a failure to apply the code was acceptable or not, she said.

"The whole thrust of King 3 is to apply

best practice. It will lead to a move away from a 'tick box' approach," Feinstein said. Companies would put more thought into what was suitable for them in terms of corporate governance practice and guidelines, she said.

In future, they would be judged by their shareholders and other stakeholders, such as creditors and suppliers.

Feinstein said some commentators on the third King report had pointed out that the "apply or explain" approach was merely a semantic use of words.

However, this approach went further than a semantic use of words, she said.

The second King report makes refer-

ence to compliance and enforcement of various regulations and legislation in several instances, including civil remedies.

However, corporate governance was something companies should aspire to, Feinstein said.

On the other hand, the law should be adhered to. "Corporate governance is about trying to get best practice across (to companies)," she said.

The chapter on compliance contained in the draft third King report was not concerned with compliance with the code but with the laws, explained Feinstein.

She said that the report focused on giving advice on how to go about

achieving compliance with legislation.

She said the report gave advice on structures, processes and how to reach best practice with the appropriate checks and balances in place to enable directors to discharge their legal responsibilities and to attain higher ethics, while improving risk management.

"Litigation should be seen as a last resort. Mediation is instead encouraged," Feinstein said.

She said companies should not rush into court when disputes arose.

"Try to settle a matter. It's a far better corporate governance practice."

temkins@bdfm.co.za