Chapter two

Committees of the Holdings Board

15 The membership of the committees referred to below is as at 31 October 2000. The analysis reflects the position until changes were made in 2001.

15.1 Directors' Affairs Committee

In about October 2000 a directors' affairs committee was established consisting of the non-executive directors. No minutes were kept of the meetings. The committee apparently met before board meetings.

15.2 Remuneration Committee

The remuneration committee consisted of Lurie, Levenstein and M Pollack. It kept no minutes. It did not set the remuneration levels for executives. There was no formal written policy for executive remuneration.

The executives were under-remunerated. Their remuneration packages were significantly below the lower quartile of the market in terms of guaranteed package. Levenstein, the CEO and for a period of 18 months the chairman, earned a total monthly package, excluding incentives, of R37 812. The policy of the bank was to pay below market norms and to use the share option scheme as a potential means to increase remuneration.

The executive directors did not have service contracts.

No provision was made for pension benefits, which were the responsibility of the executives and employees.

The remuneration committee was one in name only.

15.3 Investment Committee

The investment committee consisted of Levenstein, Diesel and Buch.

The mandate of the investment committee was to optimise the returns on portfolios within the risk framework of the bank and its clients.

No formal minutes were kept.

15.4 Alco

The members of the committee were Levenstein, B Levenstein, Diesel and Buch.

The functions of the committee were to manage the bank's liquidity.

No formal minutes were kept.

15.5 Exco

The members of Exco were Levenstein, B Levenstein, Van der Walt, Davis, Diesel and Radus.

The committee met at least on a weekly basis. It was responsible for understanding the risks run by the bank and to ensure that the risks were appropriately managed and for making and implementing executive decisions.

Exco decisions were minuted.

During 2000 Van der Walt found that irregular meetings were held of Exco. No executive decisions were taken. It was merely a meeting of the various divisions and subsidiaries of the Regal Group (2561).

15.6 Credit Committee

The members of the credit committee were Levenstein, Radus, B Levenstein and Davis.

The credit committee did not meet formally. New advances were generally approved on a round robin basis, with a meeting only taking place if there was dissension.

At one time Levenstein had the final say if an advance was to be made to a client and he had the power to reverse a decision to turn down an application for credit taken by the credit committee.

Schipper of DT was informed that Levenstein's authority in that regard had been rescinded and that advances were approved on a unanimous basis – Levenstein no longer had the power to override the decision. Levenstein's evidence was that it happened on a regular basis that he would overrule the credit committee when the committee agreed to a deal and he disagreed (<u>1606</u>). Levenstein could not explain why the factual content of the DT <u>s7</u> report was not disputed at the time the report was prepared and when Regal Bank replied to the report (<u>1606</u>). Nor could he explain why it was necessary for the audit committee on 26 July 2000 to minute: "The audit committee agrees that three members must approve all lending deals. The CEO cannot veto a decision to reject a proposal" <u>(K(2)237.2)</u> (<u>1610</u>).

15.7 <u>Audit Committee</u>

15.7.1 The King Report recommended that all the affected corporations should have audit committees. The audit committee should be chaired by a non-executive director. The committee should consist of at least one non-executive director and preferably the majority should be non-executive directors. The external and internal auditor and the financial director should attend all audit committee meetings. The chairman of the board should not be a member of the audit committee. The audit committee's primary functions include reviewing, *inter alia*, significant transactions which are not a normal part of a company's business.

15.7.2 In terms of s64(1) of the Banks Act, the board of directors of a bank must appoint at least three of its members to form an audit committee. In terms of subsection (3), the majority of the members of the audit committee, including the chairman of the committee, must be persons who are not employees of the bank. The chairman of the board of directors of the bank must not be appointed as a member of the audit committee. In terms of s64(2)(c) one of the functions of the audit committee shall be to introduce such measures as, in the committee's opinion, may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the bank.

15.7.3 Levenstein was chairman of the bank from February 1998 to September 1999. During that period he was a member of the audit committee: see minutes of meeting of BSD, EY and the audit committee on 29 September 1998 (C103); audit committee minutes K(2)175.1 of 24 February 1999;

K(2)195.2 of 23 June 1999 and K(2)205.1 of 29 September 1999.

15.7.4 The King Report recommended that external auditors should attend all audit committee meetings. Louw testified (645 – 6) that KPMG are the auditors of 23 banks in South Africa and they attend every audit committee meeting of all those banks. An analysis of the audit committee meetings reveals that EY attended three out of the four meetings during calendar year 1999; one out of the five meetings of 2000 and all the meetings of 2001. At none of the meetings in 1999 and 2000 were the branding strategy or the Mettle deals discussed by the audit committee. There was discussion of some of those issues at the audit committee meetings of 28 March 2001 ((K3)98) , 12 April 2001 ((K3)104) and 25 April 2001 ((K3)110).

15.7.5 The audit committee did not approve the financial results for 2000 (KPMG 170) which were published on SENS ON 16 May and in the morning papers of 17 May 2000. It did not even meet to consider the results.

15.7.6 The members of the audit committee at 30 August 2000 were Buch, M Pollack, Levenstein, Hiralal and Davis.

The audit committee had terms of reference that had been confirmed by the board of directors. Formal minutes were kept.

15.7.7 On the second day of his testimony, Levenstein said that the omission to invite EY to audit committee meetings was "pure naivety"; it was not done maliciously or wilfully (1629). On the following day, a memorandum was put to him which he had prepared and addressed to Buch and Davis during the 2000 audit in these terms: "An audit committee should now be convened as a matter of urgency to approve the financials. EY are not formal members of the committee, they accordingly must not be invited". He justified the instruction on the grounds that Strydom was party to a political agenda and that Strydom and the auditors could not be trusted (1652-3).

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16.1 Most committees had no founding documents or formal terms of reference. Levenstein sat on seven of the eight committees, i.e. all the committees except the non-executive directors affairs committee. He was the chairman of five of the eight committees. Schipper was told by Davis that Levenstein played a major role on the committees on account of his "vision and experience".

16.2 On his appointment as consultant in mid November 2000, Cohen found that while there were many committees, they consisted mainly of management, and most of the committees did not keep minutes (1867). The board minutes were not of a standard "one would find in any banking organisation". There were a "lot of holes" for example, in regard to missing round-robin resolutions (Cohen 1866). As for the functioning of the boards of directors, Cohen discovered that certain of the directors did not regularly attend board meetings, other directors were getting on in age, and a major concern for Cohen was that independent directors were not truly independent because they had vested financial interests in the bank in that they had shares in the bank and were not remunerated (1867-8).

16.3 Van der Walt attempted to introduce the changes contemplated in the Regal Holdings response to the DT s7 review, such as the reconstitution of Exco, the introduction of an appropriate human resource and remuneration system, and the closure of Shareholders' Trust. He introduced a more formal budget procedure for the 2001/2002 financial year (2562).