

**MINUTES OF THE JOINT SAMREC AND SAMVAL MEETING ON INDEPENDENCE  
HELD ON 29 NOVEMBER 2012 AT 09:00am  
AT THE MILITARY MUSEUM, DELLVILLE WOOD MEETING ROOM**

Present:

Andy Clay	Andy McDonald
Annalie de Bruyn	Dick Minnitt
Dirk van Niekerk	Fiona Harper
Johan Odendaal	John Luckmann
Karin van der Merwe	Kelly Redman
Ken Lomborg	Nirvana Rampersad
Paul Obermeyer	Riaan Davel
Rolf Becker	Tania Marshall
Tersia van Zyl	Gavin O'Connell-Jones
Mike McWha	Prof Christina Dohm
Manus Booyens	Alastair Macfarlane
Masego Mokitimi	

Apologies:

Julian Upshall	Andrew Kinghorn
Arthur Thompson	Gordon Chunnett
Gordon Smith	Ivan Wermuth
Jeremy Witley	Mark Ingham
Nicolaas Steenkamp	Siobhan Joubert
Steven Rupprecht	Vimal Bansi
Hein Hartman	Peter Janisch
Stewart Foya	Viren Deonarain
Breton Scott	Hannes Bornman
Jeanette McGill	Luke Zindi
Rob Croll	Vanessa Clark-Mostert
Daan van Heerden	Martin Nicholson
Mike Mattera	

General discussion

The JSE has tabled a position paper on independence and the purpose the meeting was to determine a view and a position as far as independence is concerned. Globally there are divergent views on the matter as to what independence means and when and how it should be applied within the codes. A recommendation is needed from the WG on what role it sees for independence.

Internationally, reporting codes are being reviewed, including in South Africa. In terms of valuation Australia and Canada and the International Valuations Standards Committee have independence tabled as a topic to consider. IFRS's refers to independence in IFRS13. There are corporate governance issues applicable when dealing with independence.

It was suggested that in this particular instance it is a requirement of the commissioning entity to say independence for an application needs to be demonstrated and that is a rule of the commissioning entity, thereby indicating that it is not something that is incumbent on the codes.

It was suggested that if the concept of independence is consistently applied by the JSE, then it would be assumed that it is a requirement that they require under all circumstances.

In terms of SAMREC and SAMVAL, a qualified competent person or a competent valuator provides technical input whether he/she is doing internal work or external work, and remains a valuator and hence the code defines qualifications, experience, sign offs (etc). In this particular case the independence issue is required by the specific commissioning entity and it is their requirements.

It was submitted that this is an example of independence requirements of a specific regulating body but it should not be considered in isolation. The SAMREC and SAMVAL codes are actually there to support the JSE and to serve as guidelines for all public entities. In particular to investors it would not be correct to say that the SAMREC and SAMVAL codes are something completely independent from other regulative requirements, all these things work together to serve one purpose.

The accounting and auditing industries have got their own requirements as far as professional resolutions are concerned and the JSE has got theirs. The JSE relies on the independence of the auditors for signing off of financial papers, they are relying on reports from SAMREC's competent person and SAMVAL's competent valuator so all of these rely on each other to serve a higher purpose and that cannot be isolated. .

At Anglo American there is a pre-requirement that should the organisation start reporting a new entity (not on the financial balance sheet) on the resource and reserve statements, it may not occur until there has been an independent audit of both reserve and resources, it is a requirement. Auditors cannot take responsibility for resources and reserve, they merely use the information provided to them to provide assurance.

It was submitted that the danger of not addressing independence in the codes is that there are companies that are not in the listed space that also raise capital on the back of Competent Person reports and Competent Valuations which are not independent.

In the code, there is a guideline that says a CP and CV must not be unduly influenced by the commissioning agent.

In terms of public reports, the minute a junior mining company goes out to raise money on the basis of some documentation, that becomes a public report so that is where it is not a listed space, it is a public space.

There is a link between SAMREC, SAMVAL and the JSE which other jurisdictions have not been able to attain. Financial institutions also rely on SAMREC and SAMVAL as they consider it best practice. Therefore, when small private companies set themselves up they will ensure they are compliant with the Codes as the bank will ask if they are compliant with SAMREC and SAMVAL.

The code is there for industry, it has got to be respected by members of industry for this code to actually work. If the code becomes overly prescriptive it is actually going to be ignored by the industry in totality.

If the IFRS standards are considered, they do not require the people who actually put the financial statements together to be independent. It does however stipulate that the information must be reliable and relevant.

It is essential to have checks and balances on any economic statement in a report. There has to be an assurance that the valuation is good and without prescribing what is understood by it. There may be a need to introduce the question of an independent assessment of the valuation if that is what the independent or commissioning entity decides. Whether that commissioning entity is within the company or outside of the company is not the point. CPs and CVs should prepare reports with an independent state of mind.

There is an internal process and there is an external process. The IFRS is the process by which accountants work together to put financial statements and there is no requirement in there to be independent because you are part of an organisation putting together the statements. Same thing as a person working in a company putting together a resource and reserve statement or a valuation.

The internal CP who does the resource and reserve statement does not need to be independent, but there may be a time where there has to be an external validation for whatever reason, and that person who comes does have to exhibit independence.

It was stated that the Forward of the SAMREC code is clear. It says the South African code for the reporting of exploration results, mineral resources and mineral reserves sets out minimum standards, recommendations and guidelines and guidelines. It doesn't say definitive statements guidelines, it says minimum.

The moment there is a need to take information into the public arena, independence becomes very important as it is necessary to look after the interests of the public. It is important however to ensure that the code does not become prescriptive on this as it is also used internally and for the purpose of external reasons it should only become compulsory when called for by legislation.

The issue for the requirement of independence seems to be where there is interest from the commissioning agent because the manager or the director of a junior companies tries to get a certain outcome and that is where the independence might be required and it is important to divorce that from incompetence.

Manus Booyens presented a paper on independence from a legal perspective. See annexure A.

It was pointed out that the IVSC code of ethics is a fair and reasonable code of ethics and nowhere in the code, does it require a CP or CV to be independent. It was argued that if a person needs to be objective it doesn't mean that person has to be independent.

The SAMVAL code says "the author of the public report should be satisfied that his work has not been unduly influenced by the organisation, company or person commissioning a report or any

report that may be deemed a public report. That all assumptions are documented and adequate disclosure is made of the material aspects that the informed reader may require to make a reasonable and balanced judgement thereof. It is exactly the same wording in SAMREC.

For the purposes of the people out there who want to use or should be using the SAMVAL code, it may be necessary to include something on the issue of independence but not from the perspective of making it compulsory, rather to the meaning of independence because under certain circumstances a commissioning entity may require the independence of a valuator and/or a competent person ie explain to the reader the issue of independence and when it may be required. It is in the code only for explanation and is not prescriptive.

It was suggested from a SAMVAL point of view that a sentence be added to the code to describe circumstances under which independence is required to be demonstrated. This would depend on the nature of the job.

It was pointed out that the IFRS is a stand-alone code that guide financial statements. It is not dissimilar to the SAMREC and SAMVAL Code. There is therefore no obvious reason why the SAMREC and SAMVAL Codes should differ and the IFRS code does not require a person to be independent.

Financial statements of any company are prepared in accordance with the IFRS company standards that the company uses. But then accounting standards do not require independence. It is the auditor that makes a statement about those statements that has to be independent.

The purpose of disclosure or non-independence is to alert the person who relies on the report of the valuation that he is not independent. If independence is not possible or practical then a middle ground in those cases where independence may be required according to the codes would be an independent verification ie an independent check to confirm that the assumptions, the disclosure and the results are of sound and reason.

It was submitted that it would not be fair for an independent competent person to review the work of a non-independent and then take responsibility for it. It would be an additional safeguard for people relying on the report to ascertain if it had been prepared by a non-independent and whether an independent has looked at it and signed off or given some sort of approval that the assumptions, the information, the disclosure and the conclusion are true.

Essentially where we are heading towards is to say that there are circumstances under which independence is required but it is very difficult to list all the circumstances.

Two main thought processes are clear here. Firstly, that there is independence in the sense of creating, preparing and producing the report. Secondly, there could be independent reviews. The people who are preparing a report are technically qualified. They are employed by the company to do their job. They have to be competent persons; they have got all the qualifications that are listed in the SAMVAL code or the SAMREC code for them to prepare a report. Basically this would equate to hiring a person to produce an independent report but then informing them that they are not trusted to be independent.

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Independence should be a form of assurance, not a form of preparing. It is about providing independent assurance for that investor. That is what it is about and not about the preparation of the document.

It was stated that it is not fair to give that discretion of requiring the independent review to the investors as it is not how capital markets operate. Capital markets operate on the basis that there is a JSE that would have required the independent assurance. There are a number of investors out there and they are not aware of inside technical information. They just look at the report, their advisers look at the report and they haven't got the discretion or opportunity to request an independent report. That is the purpose of the JSE.

It was suggested that a definition of independence be included in the code.

Conclusion:

Briefly the decision was reached that in respect to independence; there will be a statement in addition to what is currently in SAMVAL and SAMREC to the effect that under certain circumstances as required by the commissioning entity that independence may need to be exhibited. A definition of independence will be included.

Annexure A – Presentation by Manus Booysen.

## Workshop on Independence

Johannesburg 29 November 2012

### 1. Introduction

Manus Booysen Partner at Webber Wentzel  
Head of the Mining, energy and Natural Resources Practice  
Represent the Law Society of South Africa on the SAMREC/SAMVAL Committee

### 2. The relevance of Independence

The debate on independence is an important one for a number of reasons; which include:  
For South Africa's mining industry and investors in that sector being the interests which the Codes are serving  
Industry, the Investment Community (both locally and internationally) and the Codes are inter-dependent.

### 3. The need for Independence in public reporting of Exploration Results, Mineral Resources and Mineral asset valuation.

#### 3.1 The scope of the Codes

Minimum standard for public reporting

Para 3 - "Those reports prepared as information for investors or potential investors and their advisors."

Para 4 - SAMREC and Para 5 SAMVAL

The author of the Public report should be satisfied that:

- His work has not been unduly influenced by the organisation commissioning the report
- Adequate disclosure is made of all material aspects that the informed reader may require in order to make a reasonable and balanced judgement thereof.

In essence investors and potential investors rely on the contents of a CPR

And the objective of the Codes is that they can properly so rely on a CPR

The Oxford definition of "independent" reads: "Not depending upon the authority of another; not in position of subordination; not subject to external control or rule; self-governing, free."

In the case of *Ruyobeza and Another v Minister of Home Affairs and Others*, the Court was asked to decide whether employees of the Department of Home Affairs appointed to the standing committee for refugee affairs, were capable of performing their functions independently without bias. In deciding that the employees, despite their best intentions, were incapable of being impartial and unbiased, the Court held that:

*"It was inappropriate for employees of the Department to be a source of "independent advice". The dependency on the department by which they were employed, together with the obligation on such employees to adhere to Department policies leads to department bias."*

*"The third, fourth, fifth and sixth respondents are all salaried full-time servants of the State, employed in its Department of Home Affairs. They take orders from their superiors in the department, including, of course, the first and second respondents, who are the Minister and the Director-General of Home Affairs. Subject to the provisions of the Public Service Act (Proclamation [No. 103 of 1994](#)) and any other applicable statutory provisions including, probably, regulations and*

*the Civil Service Code, matters of how, when and where they are to perform their functions can and will usually be dictated by their superiors in the department, including the first and second respondents. They can be transferred, demoted or dismissed from office by departmental action. Conversely, they depend for promotion on departmental action and, in particular, on the views of their superiors in the department as to their eligibility and suitability for such promotion. More examples of their dependence could be given, but it is not necessary to labour the point: by its very nature, the relationship of servant to master has inherent in it the subservience, in matters of the work to be done, of the servant to the wishes and directions of the master."*

From a legal perspective and a logical perspective it is inconceivable that independence can not be a requirement under circumstances where a report or valuation on technical matters must of necessity be relied upon and which can practicably not be verified by the person relying on that report.

4. **Does the SAMREC Codes require Independence?**

Para 4 of SAMREC and Para 5 of SAMVAL essentially require independence.

The work of the author should not be unduly influenced by the person or organisation commissioning the Report.

The difficulty is that it places the responsibility and therefore the judgement to decide whether or not undue influence exists, on the author of the Report.

5. **Alignment between SAMREC and JSE**

Based on the JSE view that independence is required in respect of a CPR for substantial transactions upon which shareholders and investors base their decision making and the JSEs views that independence is in line with International practice,

It is in my view essential to align the Codes with that objectives and requirements of the JSE.

6. **Is disclosure of Non-Independence adequate**

Arguments are being put forward that where a CP or CV is not independent, that fact should merely be disclosed.

The purpose of such disclosure could only be to alert the person who relies on the Report or valuation, that the author is not independent.

The difficulty with disclosure is that it merely alerts the recipient of the report that

- There is non-independence, and/or
- That there may be (but not necessarily is) bias or non-independent judgement and if so, the level of any potential bias.

What it does not do is enable the reader of the report to assess the likelihood or level of any possible bias or influence on judgement.

7. **Recommendation**

It is in my respectful submission inconceivable to argue

- That independence is not essential; and/or
- That mere disclosure of non-independence could be adequate and serve the objectives of the Codes.

In the event that independence as a requirement for CPs or CVs is not practicably achievable - and I am not convinced that it is not - then it appears appropriate to seek a practical solution which will promote the objectives of the Codes and maintain the standard of reports and valuations prepared in accordance therewith. If that were to be the case, my recommendation would be, in addition to disclosure, require an independent CP or CV to review and debate the work of the non-independent author and to certify that:

- the assumptions
- the disclosures; and
- the results,

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Appear to be sound and reasonable.