



Guidance for Boards

King IV FAQs

Frequently asked questions around
King IV and its application

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hour**

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King IV Frequently Asked Questions

APPLICATION

1. What is King IV and/or the King reports?

The King report is a voluntary and aspirational code of good corporate governance practices that organisations in South Africa are encouraged to follow. The practice recommendations are based on both international best practice and the local South African context. King IV is the latest iteration of the King reports. King IV sets out the role and responsibilities of governing bodies and the standard of conduct expected of governing body members.

2. Which report should I apply - King III or King IV?

You should always apply the latest King report, which currently is King IV. In addition, you should keep up to date with King IV practice notes and interpretation notes which are released that provide further guidance on the practices and application of King IV principles.

3. Does King IV apply to non-listed companies?

Yes, King IV applies to all organisations incorporated in South Africa irrespective of the nature and size, or the industry and sector in which the organisation operates. In order to assist with understanding and implementing the King IV principles and practices in the various sectors, the King IV Report includes King IV Sector Supplements with application guidance for State-Owned Entities, NPOs, SMEs, Municipalities and Retirement Funds. These supplements are not separate codes, but show the user how to apply King IV proportionally and in respect to different nuances found in these sectors. The same approach can be followed for any other sector or industry not specifically covered in the supplements.

4. Is King IV mandatory?

No. King IV is not a legally binding or statutory document, however its application can be made mandatory by an organisation through its MOI. In addition, the JSE has incorporated the application of some of the practices recommended in King IV into its Listings Requirements, making it mandatory for listed companies. In addition, disclosure on King IV is also mandatory for JSE listed companies. Other regulators may do the same.

It should also be noted that good governance does not exist separately from the law, and a corporate governance code that applies on a voluntary basis may also trigger legal consequences. A court considers all relevant circumstances in determining the appropriate standard of conduct for those charged with governance duties, including what the generally accepted practices for a particular setting and situation are. Voluntary governance codes such as King IV recommend leading practices for how governance duties should be discharged, and therefore influence and affect what practices are considered and eventually adopted and implemented by governing bodies. The more widely certain recommended practices in codes of governance are adopted, the more likely it is that a court would regard conduct that conforms to these practices as meeting the required standard of care. In this way the provisions of voluntary codes of governance find their way into jurisprudence to become part of the common law. Consequently, failure to meet an established corporate governance practice, albeit not legislated, may invoke liability.

5. Why is King IV voluntary? Should it not be made mandatory and/or law?

King IV is voluntary because it provides greater flexibility as a code for good corporate governance that can be applied taking into account the context of the organisation. This assists with fostering mindful application of governance towards adding value and it mitigates against grudge compliance.

There are certain basic minimum governance practices which are already included in the Companies Act, for example, the provisions on the appointment of a company secretary, approval of directors' fees and establishment of audit and social and ethics committees.

Another reason for not legislating King IV in its entirety is because legislation, by virtue of its nature, operates on the level of the minimal requirement. The King reports wishes organisations to aspire to achieve certain higher outcomes. The ideal mindset is substance over form, which is difficult if not impossible to achieve, through legislation which is more about rules and not principles.

The other factor to consider is that compliance can unfortunately not be taken for granted. Lack of compliance with existing law is a reality in South Africa and it would not be reasonable to assume that legislating corporate governance would be the exception.

6. How is King IV enforced if it is not mandatory?

It would be a mistake to conclude that voluntary codes of governance carry no sanction when contravened. The principles and practices that are recommended in these codes become the norm for behaviour as soon as they are generally and widely adopted. These adopted norms are then enforced by social and market forces and sanctions. In other words, stakeholders and customers may choose to go to invest and spend elsewhere if they are not satisfied with the quality of governance at a company including their values and ethics. With the broader society now having a voice through social media, it has a powerful tool to affect the reputation of companies.

A prerequisite for these forces and sanctions to work, though, is transparency and disclosure. Society and the market can only respond to what is known to them. It is for this reason that King IV places so much emphasis on meaningful disclosure that enables stakeholders to assess the quality of corporate governance rather than a binary account of which recommended practices have been followed and which not. More flexibility and judgement are allowed for on the implementation of King IV but in exchange the onus is on organisations to be more transparent on how that judgement has been exercised.

Another prerequisite for social and market forces to work, is for shareholders and other stakeholders to actively hold organisations accountable for good corporate governance. Institutional investors in particular have an important role to fulfil in this regard. This is addressed in King IV by virtue of the 17th principle that requires institutional investors to exercise their rights as holders of beneficial interest in the securities of companies responsibly. This includes being active owners.

Thus through societal expectations of good governance practices, international trade and regulators, the enforcement of King IV becomes the norm and in effect mandatory in order to do business. South African courts, in addition, have used the King reports as the basis for assessing the reasonable standard of conduct expected of a director¹ and as such, directors will be held accountable to this standard should they appear before a court.

Accountability for the application of King IV relies on public disclosure. It is only when companies disclose in their company reports and their websites so that stakeholders can form an assessment on the quality of corporate governance that the checks and balances can be leveraged. The JSE

¹ See IoDSA paper on [Business Judgement Rule](#) for more information

listings rules makes this disclosure compulsory for all listed companies. In addition, there are also a handful of specific recommended practices that have been made compulsory.

7. Who is responsible for corporate governance within an organisation?

The governing body/board of directors is the focal point for corporate governance in accordance with King IV. Other role players such as the CEO, company secretary, executive management, senior management and stakeholders also play a role to ensure good governance practices are implemented within an organisation and outside stakeholders (shareholders, customers, society) hold the company accountable for following good governance.

8. How should the implementation of King IV be approached?

The application regime of King IV is on a voluntary 'apply and explain' basis. As the principles in King IV are stated as aspirations and ideals that are fundamental and basic to good governance, application thereof is assumed. The explanation part of 'apply and explain' refers to the adoption of the recommended practices to be explained in narrative form, setting out the practices that have been adopted and the progress made towards giving effect to each principle. As the principle serves as the guide for what the practices should achieve, it is easier to apply judgement to which recommended practices should be implemented and how.

The principles in King IV have been phrased so that they are universally applicable regardless of the type of organisation. In this way, consistency of the understanding of corporate governance is achieved within the South African ecosystem of organisations. (Part 6 of the King IV contains sector supplements, but these are not an alternative to the main King Report. The supplements merely serve as guidance on the interpretation of King IV by these sectors.)

Principles are also clearly differentiated from practice recommendations in that the practices are about what needs to be done to give effect to these aspirations and ideals. Achieving these aspirations and ideals will, according to the philosophy followed in the draft of King IV, lead to corporate governance outcomes which include: an ethical organisational culture; performance and value creation; adequate and effective control; and trust, a good reputation and legitimacy. These outcomes are incorporated in the definition of corporate governance in King IV.

The consequence of the outcomes-based approach is that it cannot be claimed that good governance is in place simply by virtue of having implemented the recommended practices or differently put, by ticking the boxes. Box-ticking compliance is one of the major stumbling blocks towards governance that adds value to an organisation. It is said that inflexibility is evidence of a lack of understanding and it is indeed true as far as the implementation of governance practices in a box-ticking fashion is concerned. Understanding and insight assists with mindful and judicious application which is the opposite of taking the easier route of box-ticking. As the principle serves as the guide for what the practices should achieve it is easier to apply judgement to what and how practices should be implemented. Simply put, practices are the means and the principles the end.

The principles and outcomes in King IV are meant to depict the intent so that organisations and those charged with their governance can adapt practices – quality over quantity. In this way the emphasis shifts from a compliance mind-set to corporate governance that achieves the intended outcomes and benefits.

9. How should organisations apply the concept of proportionality mentioned in King IV?

The principles under King IV are universal and apply to all organisations irrespective of size, nature and industry in which it operates. However the practices implemented by organisations may differ based on size, maturity and nature of the organisation. This means even where not expressly stated

in the King IV Report, practices are meant to be scaled in accordance with the following proportionality considerations particular to the organisation:

- Size of turnover and workforce.
- Resources.
- Extent and complexity of activities, including impact on the triple context in which it operates.

Application of practices on a proportional basis is subject to legal requirements (which cannot be ignored) and ultimately giving effect to the principle that the practices are associated with.

This concept of proportionality allows for the flexible application King IV, making it applicable to all organisations. Thus the reason for the apply and explain regime: organisations must explain how they have applied the practices to achieve the principles of King IV.

10. How should organisations disclose their implementation of King IV?

APPLY PRINCIPLES	EXPLAIN PRACTICES
<p>All principles are phrased as aspirations and ideals that organisations should strive for in their journey towards good governance and realising the governance outcomes. The principles are basic and fundamental to good governance, and application thereof is therefore assumed.</p>	<p>Explanation should be provided in the form of a narrative account, with reference to practices that demonstrate application of the principle. The explanation should address which recommended or other practices have been implemented, and how these achieve or give effect to the principle.</p>

Specific disclosure recommendations are included under each principle of the King IV Report. These recommendations are intended as guidance and a starting point for disclosure on the particular principle.

The detail of information to be provided in the narrative should be guided by materiality, and should enable stakeholders to make an informed assessment of the quality of the organisation’s governance.

There is no need to disclose whether each practice has been implemented or not, as this is quantitative and does not necessarily add to the quality of disclosure. There is also no need to disclose against the outcomes, as it can be left to the user to draw inferences from the narrative provided.

11. Where should disclosure on the application of King IV be made?

The governing body has the discretion to determine where the King IV disclosures will be made; for example, in the integrated report, sustainability report, social and ethics committee report, or other online or printed information or reports. The governing body may also choose to disclose its application of King IV in more than one of these reports.

Duplication of King IV disclosures should be avoided by making use of cross-referencing. Group companies should also make use of cross-referencing to avoid duplicate disclosures. King IV disclosure should be updated at least annually, formally approved by the governing body and be publicly accessible.

KING IV AND CORPORATE FAILURES

1. Are corporate governance failures attributable King IV?

It is justifiable to question whether the King reports have served South Africa well. However, to expect a report for corporate governance to solve incompetence and unethical corporate ailment is not realistic. Whether the aspirations of King IV are brought to life depends on those who apply its principles and practices.

Like any other control, tool or law, King IV provides the framework and guidance, however, it comes down to individual and collective values (culture), behaviour and implementation on a substance over form basis. It is thus imperative to have the right people in leadership roles and for people to do the right things (instilling the that ethical culture).

2. Who is responsible to ensure the governing body is held accountable?

For King IV to be truly effective, shareholders, regulators, institutions and society have to hold governing bodies to account by exercising their rights, performing their civil duty and influencing behaviour and actions of the governing body.

There are several other governance gatekeepers in addition to the governing body. Investors are arguably the most powerful of these because of their legal right to appoint and remove governing body members. The problem arises when investors are 'absent landlords' or when they usurp the powers of the governing body - both of which offences disturb the eco-system of power. In the private sector it tends to be the former and in the public sector there are many examples of the latter in the form of political interference and overreach by the shareholder.

Institutional investors such as pension fund managers, proxy advisors and investment analysts are a sub-set of the general investor body and have a critical role in holding governing bodies accountable. They have considerable influence in how they make investment decisions and exercise their voting powers.

Further gatekeepers down the line include the auditors and regulators on the formal side of things, and media and civil society who enforce accountability more informally.

In summary, corporate governance operates in a larger eco-system and all of the above factors will have to be addressed for corporate governance to become effective as a measure that has meaningful impact on corporate failures.

3. What are the steps that need to be taken to bring us closer to a solution to avoid the corporate failures we have seen?

- ✓ Mindful application of King IV practices that are assessed by the governing body, as to whether they achieve the aspirations as per the principles and realise the outcomes of an ethical culture, good performance, effective control and legitimacy.
- ✓ Acknowledgement by the leadership of companies that King IV is implemented in a context. This context is made up of the tone at the top, i.e. the example by leadership and the existing culture within the company. If leadership does not embody the values espoused in the King IV Report and if the company culture does not support the living of these values, then even the best codes will fail to make an impact.
- ✓ Nomination committees that oversee a formal transparent process for the appointment and election of governing body members who display the characteristics of integrity, competence, responsibility, accountability, fairness and transparency. Nepotism, political and cadre appointments do not contribute to competent governing bodies.

- ✓ Stakeholders and especially institutional investors should hold governing bodies accountable. Society and the media also have a role in this regard.
- ✓ Directors/governing body members should become masters in wielding the art and craft of corporate governance. Too few directors know how governance can contribute value to their companies and the effectiveness of oversight, and they rely solely on skill attained as executives, whereas corporate governance is a specialised discipline.
- ✓ Directors/governing body members must understand their biases in decision-making so that they become better at decision-making.

KING COMMITTEE, IODSA AND KING IV UPDATES

1. Who/What is the King Committee?

The King Committee on Corporate Governance in South Africa was formed in 1992 at the instance of the Institute of Directors in South Africa, following a decision reached at an IoDSA Council meeting on 18 July 1992, where it was agreed that there was a need for a committee to consider and address corporate governance for South Africa. It resolved that former Judge Mervyn King be approached to chair the committee.

The King Committee was formed as a consequence of these developments and has since remained a standing committee that has met at least once each quarter, for the past 30 years. As a result, brand awareness and credibility have developed around the work of the King Committee that is invaluable for continuity purposes and the promotion of its objectives.

The King Committee is currently supported by the following institutions: the South African Chamber of Commerce and Industry, Johannesburg Stock Exchange, the Prudential Authority, Auditor-General of South Africa, National Treasury, Companies and Intellectual Property Commission, Business Unity South Africa (BUSA), Law Society of South Africa, South African Institute of Chartered Accountants, the Ethics Institute of South Africa, Chartered Governance Institute of Southern Africa, Institute of Risk Management South Africa, the Institute of Internal Auditors, Independent Regulatory Board for Auditors, the South African Reward Association, Association for the Advancement of Black Accountants of Southern Africa, South African Institute of Professional Accountants, Association of Certified Fraud Examiners: SA Chapter and the Financial Sector Conduct Authority.

The King Committee is on a continuous journey to improve the guiding standards for corporate governance in South Africa.

Internationally, the King Committee and the King reports are lauded for how progressive they are in their viewpoints.

2. Who owns the copyright in the King Reports?

The IoDSA owns the sole copyright in all the King reports². As the King Committee is not an incorporated body, it operates under the auspices of the IoDSA which provides the funding, secretariat and all other management functions for the King Committee. These duties include protecting the copyright of the King Reports.

Please refer to the IoDSA [King IV Intellectual Property Policy](#) and general [Intellectual Property Policy](#) for more information on the trademarks registered by the IoDSA and proper referencing of the King IV Report.

² Access the latest [King Report, King IV Practice Notes](#) and other guidance material via the IoDSA website www.iodsa.co.za under the Publications tab.

3. Is the IoDSA and the King Committee planning to update King IV?

The Committee is intentional about remaining attuned to its environment. It is for this reason that the King Committee operates as a standing committee which meets at least once a quarter to consider advances both locally and internationally and to deliberate on how these affect corporate governance guiding standards for South Africa.

Recent developments such as the findings of the Zondo Commission on state capture and the establishment of international standards on sustainability reporting currently underway are under consideration. The amendment of the Companies Act is another development which may necessitate an update to King IV to the extent that it has a bearing on certain recommended practices in King IV. The nature and timing of a potential update will be determined by the progress and details of these developments.

Notwithstanding, it should be noted that the King IV principles and practices were drafted to be broadly applicable, thereby elevating it above prescription and the specifics which may render it sensitive to context and change. This was done for King IV to be relevant to all organisations and to extend the report's lifetime. Because of this approach, it is the opinion of the King Committee that many issues emanating from recent developments are already addressed in King IV albeit not in terms of the specifics thereof. For example, references in King IV to sustainability or the six capitals are sufficiently broad to include matters such as inequality, biodiversity and climate change. In addition practice notes and guidance documents have been issued to deal with some of these topical matters in more detail.

4. Should there be more guidance in the King IV Report on the responsibility of shareholders and investors? (Principle 17 of King IV)

The King reports have all been drafted with the governing body in mind as the audience, not shareholders. During the development of King III there were views that more guidance needed to be given on shareholder governance and the role of shareholders, which is critically important particularly in relation to listed companies. This gave rise to the creation of the Code for Responsible Investment in South Africa (CRISA code) in 2011, which is a code for institutional investors such as pension funds, insurance companies and asset managers.

Principle 17 was brought in to encourage institutional investors, as defined in CRISA, to promote good governance in the investee companies through investment decisions and exercising their rights, including voting rights. From the King perspective, it was useful to create the link and raise brand awareness around CRISA. In keeping with the audience of King IV, principle 17 is directed at the governing body of institutional investors.

CRISA has been updated in September 2022, the main objective of which was to reaffirm a framework of principles for stewardship and responsible investment as a key component of the South African governance framework³.

5. What is the impact of ISO 37000 on the King IV Report?

Since its release there have been queries around the applicability of ISO 37000 to South Africa as we have our own corporate governance report, as well as questions around which standard to apply.

ISO 37000 provides an international perspective on corporate governance from a general overarching perspective. ISO 37000 is intended to facilitate international trade and provide a commonly agreed international language for corporate governance. It is expected that such guidance will still need to be applied in relation to the relevant country's circumstances, statutory and regulatory requirements.

³ See the CRISA website for the updated code and more information: <https://www.crisa2.co.za/>

ISO 37000 can be read with and/or applied in conjunction with other specific ISO standards issued in relation to areas such as IT, risk etc.

King IV is already widely applied in South Africa. Continuing to apply King IV will result, to a large extent, in applying the ISO 37000 recommendations. ISO 37000 is very closely aligned with the approach and context of King IV, with certain King IV concepts clearly being reflected in ISO 37000. As both standards are voluntary, it remains the choice of the organisation to determine which standard it wishes to apply. Regulatory requirements, disclosure requirements to allow stakeholders to view comparative information, and available guidance on the application of the standard should be considered in an organisation's decision.

Furthermore, the King reports are recognised in South African courts and common law as the benchmark standard of conduct expected of directors and the governing body. As such even if the ISO 37000 is applied instead of King IV, governing bodies and directors of organisations operating in South Africa would still need to be aware of King IV as this is the South African code for good corporate governance to which their standard of conduct and actions will be compared

For more information on the content of King IV in relation to ISO 37000, see the IoDSA guidance paper [*KIV vs ISO - Comparative guide between the King IV Report on Corporate Governance in South Africa and ISO 37000 Governance of organizations - guidance*](#)

OTHER

1. What are directors' duties and who are they accountable to?

Directors' duties, in accordance with the Companies Act 2008 consist of two legs: the fiduciary duty to act in the best interest of the company and the duty to act with due skill, diligence and care.

King IV specifically addresses the common misconception that for directors to act in the best interest of the company, it legally means that they must act in the best interest of the body of shareholders. Of late there are many academic sources pointing out that the correct legal position is that this duty is a duty to the company as a separate legal entity. Esser and Du Plessis quoted in King IV explains: "The company is represented by several interests and these include the interests of shareholders, employees, consumers, the community and the environment. Thus requiring directors to act in good faith in the interest of 'the company' cannot nowadays mean anything other than a blend of all these interests, but first and foremost they must act in the best interest of the company as separate legal entity... An interest that may be primary at one particular point in time in the company's existence may well become secondary at a later stage." (Esser I, Du Plessis JJ, "The Stakeholder Debate and Directors' Fiduciary Duties", SA Merc LJ 346-36, p360, 2007 (19).

In summary, this means that directors owe their fiduciary duty and their duty of care to the company as a separate legal entity and that directors are therefore accountable to the company. This lies at the heart of our corporate law.

2. What is ethical and effective leadership in corporate governance?

The traditional definition of corporate governance harks back to the early nineties when corporate governance was defined as "simply the system by which companies are directed and controlled". Many reports of corporate governance, including King I, borrowed this definition from the well-known Cadbury Report in the United Kingdom. This definition is still a solid point of departure in coming to grips with corporate governance. "System" is understood to be the mechanics of structures, processes, agreements, metrics and other arrangements in place for controlling the organisation.

The definition of corporate governance evolved during the King journey from being a system to "the exercise of ethical and effective leadership by the governing body" (King IV (2016), p.20) towards

certain outcomes. It will be noted that this definition has two legs to it, namely, ethical leadership and effective leadership. Both are required for sound governance, as in order to have an ethical organisation you need ethical leadership and in order to ensure performance and implementation good governance practices you need effective leadership. The system is a necessity for the governing body to lead effectively and is in this way incorporated in the King IV definition of corporate governance, but it needs to be noted that the King IV definition goes beyond the traditional understanding. Primary to corporate governance is leadership, i.e. the judgement and discernment which are exercised making the system one that is dynamic, fit for purpose and promotes substance over form.

Another limitation of using only the system lens for understanding governance, is that a system typically deals with what can be evidenced and what manifests in the form of behaviour in the external domain. In contrast the King IV premise is that internal and often invisible mind-sets and attitudes are root causes of behaviour – good and bad. It is for this reason that corporate governance should be broad enough to address the internal domain of personal characteristics and values held.

Consequently, in Principle 1 of King IV it is stated that members of the governing body should individually and collectively cultivate the following characteristics and exhibit them in their behaviour: integrity, competence, responsibility, accountability, fairness, transparency. The requirement for competence is especially noticeable here. King IV clearly states that competence includes understanding legal duties but also working knowledge of the organisation, its industry, the triple context in which it operates, the capitals that it uses and affects, etc.

As leadership is at the centre of governance, it is very critical that the election process of governing body members is above reproach and that it is formal and transparent.



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