King IV Commenting Platform

Filled Thursday, May 12, 2016

Page 1

Welcome to the official King IV Commenting Platform. After you have downloaded and reviewed the draft King IV Report here [if this link does not open, please copy and paste the following into your browser: https://c.ymcdn.com/sites/iodsa.site-ym.com/resource/resmgr/King_IV/King_IV_Report_draft.pdf], you will be able to enter your comments using this platform. The public comment process takes place in 2 phases, the first of which invites comment on the whole of the King IV Report, bar the Sector Supplements. The Sector Supplements are to be subjected to public comment during phase 2. This platform will remain open in respect of phase 1 for two months from 15 March 2016 to 15 May 2016. Phase two of the commentary process, being commentary on the sector supplements, will be opened on notice. Commenting terms and conditionsPlease note that this process is open and transparent. All comments submitted will be available for public view at http://www.iodsa.co.za/page/KingIVCommentLibrary and NO anonymous comments are permitted. Comments received are added to the library for public viewing weekly together with the identity of the individual or organisation on behalf of whom the submission is made. Only comments submitted through this platform will be considered for the finalisation of the King IV Report.

Do you agree to the King IV commenting terms and conditions?

Yes

Page 2

Personal Details Section:

*Title:
Mr

*First Name:
Andrew

*Last Name:
Lapping

*I am commenting on behalf of:
An organisation

*Name of organisation:
Allan Gray Proprietary Limited

*Capacity within organisation:
Chief Investment Officer

Page 3

PART 1: Introduction and Foundational Concepts

PART 1: Introduction and Foundational Concepts

Add your comments for this part here:

Variable	Response
PART 1: Introduction and Foundational Concepts | 1. Introduction	(No response)
PART 1: Introduction and Foundational Concepts | 2. Objectives of King IV	(No response)
PART 1: Introduction and Foundational Concepts | 3. King IV definition of corporate governance	(No response)
PART 1: Introduction and Foundational Concepts | 4. The underpinning philosophies of King IV	(No response)
PART 1: Introduction and Foundational Concepts | 5. Local and international developments since King III	(No response)

PART 2: Content Elements and Development

PART 2: Content Elements and Development

Add your comments for this part here:

Variable	Response
PART 2: Content Elements and Development | 1. Overview of the nine parts of the King IV Report	(No response)
PART 2: Content Elements and Development | 2. King IV Code elements	(No response)

PART 2: Content Elements and Development | 3. Sector Supplements	(No response)
PART 2: Content Elements and Development | 4. Content development process	(No response)
PART 2: Content Elements and Development | 5. Drafting convention	(No response)
PART 2: Content Elements and Development | 6. Presentation features of King IV	(No response)

PART 3: Application of King IV

PART 3: Application of King IV

Add your comments for this part here:

Variable	Response
PART 3: Application of King IV | 1. Legal status of King IV	(No response)
PART 3: Application of King IV | 2. Scope of application of King IV	(No response)
PART 3: Application of King IV | 3. Proportionality – appropriate application and adaption of practices	(No response)
PART 3: Application of King IV | 4. Disclosure on application of King IV	(No response)
PART 3: Application of King IV | 5. Transition from King III to King IV	(No response)

PART 4: King IV on a page

PART 4: King IV on a page

Add your comments for this part here:

(No response)

PART 5, CHAPTER 1: Leadership, Ethics and Corporate Citizenship

PART 5CHAPTER 1: Leadership, Ethics and Corporate Citizenship

Add your comments for this part here:

Variable	Response
PART 5CHAPTER 1: Leadership, Ethics and Corporate Citizenship | 1.1 Ethical leadership	(No response)
PART 5CHAPTER 1: Leadership, Ethics and Corporate Citizenship | 1.2 Organisation values, ethics and culture	(No response)
PART 5CHAPTER 1: Leadership, Ethics and Corporate Citizenship | 1.3 Responsible corporate citizenship	(No response)

PART 5, CHAPTER 2: Performance and Reporting

PART 5CHAPTER 2: Performance and Reporting

Add your comments for this part here:

Variable	Response
PART 5CHAPTER 2: Performance and Reporting | 2.1 Strategy, implementation, performance	(No response)
PART 5CHAPTER 2: Performance and Reporting | 2.2 Reports and disclosure	(No response)

PART 5, CHAPTER 3: Governing Structures and Delegation

PART 5CHAPTER 3: Governing Structures and Delegation

Add your comments for this part here:

Variable	Response
PART 5CHAPTER 3: Governing Structures and Delegation | 3.1 Role of the governing body	(No response)

PART 5CHAPTER 3: Governing Structures and Delegation | 3.2 Composition of the governing body	(No response)
PART 5CHAPTER 3: Governing Structures and Delegation | 3.3 Committees of the governing body	(No response)
PART 5CHAPTER 3: Governing Structures and Delegation | 3.4 Delegation to management	(No response)
PART 5CHAPTER 3: Governing Structures and Delegation | 3.5 Performance evaluations	(No response)

PART 5, CHAPTER 4: Governance Functional Areas

PART 5CHAPTER 4: Governance Functional Areas

Add your comments for this part here:

Variable	Response
PART 5CHAPTER 4: Governance Functional Areas | 4.1 Risk and opportunity governance	(No response)
PART 5CHAPTER 4: Governance Functional Areas | 4.2 Technology and information governance	(No response)
PART 5CHAPTER 4: Governance Functional Areas | 4.3 Compliance governance	(No response)
PART 5CHAPTER 4: Governance Functional Areas | 4.4 Remuneration governance	15 May 2016Ansie Ramahlo, King IV Project LeadThe King CommitteeCommentary on the Draft King IV Report on Corporate Governance for South Africa 2016Thank you for the opportunity to comment on the Draft King IV Report on Corporate Governance for South Africa 2016 (“Draft King IV”). Our comments are as follows:General commentary on Draft King IV:We are broadly supportive of the objectives, principles and recommended practices put forth in Draft King

IV. We consider Draft King IV to be a marked improvement over King III and believe that the proposed changes will result in more effective corporate governance, increased transparency and enhanced accountability to shareholders and other stakeholders in companies.Comments on Prescribed Officers as contemplated in Draft King IV:Section 30(4) of the Companies Act (71 of 2008) (the “Act”) requires disclosure of the remuneration paid to the directors and prescribed officers of a company. A “Prescribed Officer” is defined in the Act as a person who “exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or regularly participates to a material degree in the exercise of general executive control and management of the whole, or a significant portion, of the business and activities of the company”. The JSE Listing Requirements, King III (as amended in 2012) and Draft King IV similarly recommend detailed disclosure of the remuneration of executive directors and “Prescribed Officers” as defined in the Act.Unfortunately, this wording has created a loophole that we have seen a number of JSE listed companies exploit: these companies simply state that the executive directors (most often only two or three in number) are the only “Prescribed Officers” of the company, thereby avoiding meaningful disclosure of the remuneration paid to the rest of the company’s executive committee. In the United Kingdom a similar loophole in the relevant regulations is also routinely exploited by companies to avoid making meaningful disclosure.We therefore urge the King Committee to clarify the wording of King IV so that companies have to disclose the remuneration of all members of a company’s executive committee. We believe that this is unequivocally in line with the ideals of transparency and accountability as contemplated in Draft King IV. In line with this proposed wording, when we refer to “executive remuneration” in this document we specifically refer to the remuneration of all members of a company’s executive committee.Commentary on the executive remuneration practices of Draft King IV:As investment managers, some of the most pervasive problems we find at the JSE listed companies in which we invest our clients’ money are that executives lack skin in the game and are incentivized using variable remuneration instruments that vest over too short a period of time. Remuneration committees also often award multi-million Rand golden handshakes to departing executives whose variable incentives did not vest. The end result is a misalignment between executives’ incentives and the long-term best interests of shareholders and other stakeholders in the company.We have been very proactive in engaging with the boards of listed companies to address these and other governance-related problems. We have a strong preference to conduct these engagements directly with boards and not publically as we have found through experience that shareholder activism by way of a war in the media tends to be an ineffective strategy for affecting change and is often contrary to our clients' interests as well as those of other stakeholders. This preference for discreet engagement has unfortunately resulted in a perception that Allan Gray and other investment managers are disinterested in actively engaging with companies regarding governance, executive remuneration and other sustainability considerations. We assure you that this is not the case and, as an indication of how important this matter is to us, our portfolio managers have met with the boards and executives of JSE listed companies to discuss governance and executive remuneration issues on 122 occasions in the last 12 months alone and discussed other sustainability considerations with companies on 86 more occasions. We have also initiated and persisted with more than a dozen shareholder activist campaigns that resulted in material improvements to the executive remuneration schemes of JSE listed companies. While we are working hard at putting pressure on companies to improve in this regard and we undoubtedly share the King Committee goal of improving corporate governance in South Africa, we are often hampered by the lack of mechanisms available to shareholders through which to hold the board and executives to account, specifically so when it comes to executive remuneration.Draft King IV makes noteworthy progress towards addressing this problem that we face. To be specific, we are strongly supportive of the following recommend practices detailed in Draft King IV:• separate shareholder resolutions on the remuneration policy and implementation;• adoption of a higher threshold of 75% as the percentage of votes required in favour of the resolutions;• compulsory shareholder engagement if the 75% threshold is not met; and• implementing enhanced disclosure requirements.We consider these to be important steps in the right direction.However, we believe that Draft King IV falls short in some respects regarding executive remuneration and "shareholder say on pay". While we think it would be unwise to follow "international best practice" blindly without applying one's mind when setting regulations, it is our experience as practitioners who often engage with dual-listed companies that are subject to non-South African corporate governance regulations that there are a number of governance regulations in other jurisdictions that are substantially beneficial to shareholders and other stakeholders. This has also been confirmed by the experiences of Orbis, our international sister company with whom we have engaged extensively in forming our opinions of governance and executive remuneration best practices. We have therefore identified five governance practices through these experiences that we believe if implemented in South Africa would be similarly beneficial for the stakeholders of companies and contribute to the long-term sustainability of our domestic capital markets. We accordingly urge the King Committee to apply their minds towards incorporating the following recommended practices into the final King IV:1. making the shareholder resolution on executive remuneration compulsory for listed companies as is the case in major financial markets such as the United Kingdom, the United States, the European Union and Australia;2. making material severance payments (or other payments on termination of services) to directors and prescribed officers of listed companies subject to shareholder approval, as is the case in Australia;3. requiring the remuneration policy to be subject to a shareholder resolution annually;4. making the shareholder resolution legally binding for listed companies as is the case in the United Kingdom or by considering other mechanisms such as the two strikes mechanism that is applied in Australia; and5. explicitly recommending through the recommended practices in King IV that the long-term incentives (“LTIs”) of executives vest over a period of no shorter than five years and that the biggest component of executives’ remuneration packages should be LTIs.We believe that the incorporation of these additional recommended practices into King IV will provide institutional shareholders with the necessary mechanisms through which to hold boards and executives accountable on matters pertaining to executive remuneration. We have previously submitted comments to the Financial Services Board, suggesting that they amend the JSE Listing Requirements to incorporate these improvements, though our suggestions have not yet resulted in any changes to the Requirements to date. It has also been the case historically that the JSE Listing Requirements have taken its cue in setting regulations on corporate governance from the latest version of the King Report. Accordingly, we believe that the King Committee is best positioned to fix the regulations related to corporate governance in South Africa. We therefore urge you to consider this responsibility and the resulting impact on the JSE Listing Requirements when writing the final King IV.With regards to point one and two, it has been our experience that these are effective tools in practice through which shareholders hold boards to account. We believe that implementing these points as recommended practices will unambiguously promote accountability and good corporate governance, while we struggle to see how their implementation could be detrimental to any of the respective stakeholders of companies.With regards to point three, it has been our experience with many listed companies that remuneration committees usually take a long time to make changes to a company's executive remuneration scheme and we suspect that this may sometimes be an intentional tactic on their part. We are concerned that making a company's remuneration policy subject to a shareholder resolution only every second year (as opposed to every year as is currently the case) will only result in further delaying tactics and will remove the sense of urgency that is often required of a remuneration committee in the case that a company has an egregious remuneration scheme. We fail to see how it is in the interests of the stakeholders of a company and contributes to improved accountability to only subject the remuneration policy to a shareholder vote every second year.With regards to point four, we have on a number of occasions encountered companies that in multiple consecutive years receive a high percentage of votes against their executive remuneration policy, yet do not make meaningful improvements to the policy. Despite voting against the remuneration policy (and often some of the board members responsible for it) and engaging with the board over these matters, the mechanisms currently at our disposal often lack teeth (for example, the shareholder resolution on executive remuneration is not binding), or are too blunt (for example, selling the shares of a company who awards excessive golden handshakes to executives), thereby rendering them ineffective. We also believe it to be a strange anomaly of the current regulatory environment in South Africa that the remuneration of a company's board members is subject to a legally binding shareholder resolution in terms of section 66(9) of Act, yet the remuneration of its executives is not.With regards to point five, we believe that if King IV were to make an explicit recommendation that the LTIs of executives vest over a minimum period of five years and that LTIs should make up the majority of executives' remuneration that it would achieve a number of the goals and ideals envisaged in Draft King IV. It will force executives to consider the long-term term performance and sustainability of the companies that they manage, while also improving the alignment of their interests with those of shareholders and other stakeholders in the company. It will also ensure that executives have skin in the game and think about the long-term consequences of their actions. It also addresses the problem we

KING IV

	have encountered on numerous occasions where executives achieve full vesting on their short-term incentives or LTIs with a relatively short vesting period, only for it to emerge subsequently that the company had actually destroyed value through poor capital allocation and risk management. Indeed, it often takes a number of years for the skeletons to come out of the closet. We believe that making such a long-term focus the default for South African companies is a sorely needed remedy, yet still provides the flexibility for companies to adopt shorter vesting periods or more short-term focused executive remuneration packages if warranted by the relevant circumstance facing the company.Conclusion:We believe that King IV is a unique opportunity to address the growing and justified public concern in South Africa regarding excessive executive remuneration that is based on short-term (and often misguided) considerations at the expense of the long-term sustainability of companies. We believe that amending Draft King IV to provide shareholders with more incisive mechanisms through which to hold boards and executives to account will provide the necessary regulatory framework for investment managers to exert pressure on companies to improve in this regard. We therefore extend an open invitation to you for further constructive engagement at your convenience, whether in person or via written correspondence. Should you require any further detail or clarification on our comments, please feel free to contact us.
PART 5CHAPTER 4: Governance Functional Areas | 4.5 Assurance	(No response)

PART 5, CHAPTER 5: Stakeholder Relationships

PART 5CHAPTER 5: Stakeholder Relationships

Add your comments for this part here:

Variable	Response
PART 5CHAPTER 5: Stakeholder Relationships | 5.1 Stakeholders	(No response)
PART 5CHAPTER 5: Stakeholder Relationships | 5.2 Responsibilities of shareholders	(No response)

PART 6: Sector Supplements

PART 6: Sector Supplements

Content on Part 6: Sector Supplements will be published and opened for commentary during May 2016.

PART 7: Application Register

PART 7: Application Register

Commentary on Part 7: Application register will be addressed in the Comment Questions section, Question 10.

PART 8: Glossary of Terms

PART 8: Glossary of Terms

Add your comments for this part here:

(No response)

Comment Questions (1-5)

Comment QuestionsQuestion 1 - Question 5

Question 1

The set objectives of the King IV Report are to: -promote good corporate governance as integral to running an enterprise and delivering benefits to it;broaden the acceptance of good corporate governance by making it accessible and fit for application by organisations of a variety of sizes, resources and complexity of strategic objectives and operations;reinforce good corporate governance as a holistic and inter-related set of arrangements to be understood and implemented in an integrated manner; andpresent good corporate governance as concerned with not only structure, policy and process but also an ethical consciousness and behaviour.To what extent would the draft King IV Report as it stands achieve each of these objectives?Please comment on how this could be optimised.

(No response)

Question 2

Part 2 of the draft King IV Report: Content Elements and Development, deals with outcomes, principles and practices. Clear differentiation of these content elements is key to reinforcing qualitative governance which is outcomes driven rather than about mindless compliance. Is the rationale and the difference between these content elements clearly explained? Please provide suggestions on how this could be further enhanced.

(No response)

Question 3

King IV uses the broader form of address namely: ‘organisations’; ‘governing body’; and ‘those charged with governance duties’. Does this make the King IV Report more broadly relevant to all organisations and sectors?

(No response)

Question 4

The King IV Code recommends that as a minimum, the chief executive officer (CEO) and one other executive should be appointed to the governing body. Other than in King III, it does not specifically recommend the inclusion of the chief financial officer (CFO) as a member of the governing body. This allows flexibility for another executive to be appointed as a member of the board, depending on the nature and needs of the business.Would a recommendation specifically providing for inclusion of the CFO be more appropriate or is flexibility preferable in light thereof that organisations differ?

(No response)

Question 5

Do the independence criteria in Chapter 3 of the Code provide clear and useful guidance for assessment of independence on a substance over form basis?

(No response)

Comment Questions (6-10)

Comment QuestionsQuestion 6 - Question 10

Question 6

Will the new disclosure and voting requirements on remuneration in Chapter 4 of the Code lead to increased transparency and more meaningful engagement on remuneration between organisations and their stakeholders? Please provide suggestions for further enhancement.

(No response)

Question 7

King IV introduces in Chapter 4 of the Code, the 5 lines on assurance in the place of the traditional 3 lines of defence. It also expands on the implementation of the combined assurance model. Will this assist with more effective co-ordination and alignment of assurance? Please provide suggestions for further enhancement.

(No response)

Question 8

The governing body as the focal point of corporate governance and is therefore the primary audience of the King IV Report. King IV requires the governing body of an institutional investor to ensure that the organisation exercises its rights as holders of beneficial interest in companies, responsibly.Does this principle establish the necessary linkage between King IV and the Code for Responsible Investing in South Africa (CRISA) so that governance is reinforced by all role players? How can King IV further reinforce responsible investing practices? (For access to CRISA go to www.iodsa.co.za.)

(No response)

Question 9

King IV introduces 'risk and opportunity' governance to emphasise risk as being about uncertainty and the effect of it occurring or not occurring having a possible negative or positive effect on the organisation achieving its objectives.Is it useful to refer to risk and opportunity governance and will it reinforce it as a value-add rather than conformance exercise?

(No response)

Question 10

The application regime of King IV is 'apply and explain' as opposed to 'apply or explain' in King III. The main difference between the application regime of King III and King IV is that application of the principles is assumed in King IV as they are basic to good corporate governance. Furthermore, the 75 principles in King III have been replaced with 17 principles in King IV. For the 'apply and explain' regime, explanation is required in the form of a high level narrative of the practices that have been implemented and the progress made in the journey towards giving effect to each principle. Will 'apply and explain' encourage greater transparency and qualitative? Should disclosure on King IV application be required to be signed off by the governing body? (For further information on the application regime refer to Part 3: Application of King IV and to Part 7 for a template of the application register.)

(No response)

Survey Questions

Survey Questions

How much do you agree or disagree with the following statements, please give a reason for your answer.

You may need to scroll to the right to see all the options, depending on the size of the screen you are using.

		Why do you say that?
The King IV document is easy to understand	(No response)	(No response)
The document meets the King IV objectives	(No response)	(No response)
King IV is an improvement on King III	(No response)	(No response)

END

Have you added all the comments you would like to add? If not please click on the section you would like to add comments to. Once you have done this you may return to this page and submit your comments.