The information contained in this King IV Practice Note is of a general nature and is not intended to address the circumstances of any particular individual or entity. The views and opinions do not necessarily represent the views of the King Committee and/or individual members. Although every endeavour is made to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. The Institute of Directors in Southern Africa shall not be liable to any loss or damage whether direct, indirect, and consequential or otherwise which may be suffered, arising from any cause in connection with anything done or not done pursuant to the information presented herein. As copyright subsists in this paper, extracts of this paper may only be reproduced with acknowledgement to the Institute of Directors in Southern Africa.
Purpose

The purpose of this practice note is to provide clarity around the rationale and approach taken in the King IV Report on Corporate Governance™ for South Africa 2016 (King IV) in relation to governing body committees.

Governing bodies are in general terms permitted to establish committees to assist the governing body with its role and duties. Where the organisation is a company, the Companies Act 71 of 2008, as amended (the Act) also contemplates that the board of directors may appoint committees as needed or determined by the board. The Act also requires certain companies to establish an Audit Committee and Social and Ethics Committee in specific instances.

The King III Report on Governance for South Africa 2009 (King III) encouraged the governing body to create specific committees to assist with the discharge of the governing body’s duties, this guidance was given at a principle level.

This approach is also followed in King IV, however the guidance is given at a practice level. It is key not to focus on the input but rather on the outputs – substance over form.

In keeping with its emphasis on outcomes, the approach in King IV has a different nuance. This practice note is intended to explain the approach in King IV regarding governing body committees.

This practice note does not in any way change any legal obligations an organisation may have in terms of the Act or any other relevant legislation with regards to any governing body committees an organisation is legally required to have.

Background – King III

King III advocated that a governing body should delegate certain functions to well-structured committees. It then provided for the specific committees it believed were necessary for an organisation to have. The committees recommended included committees that were required by law.

Chapter 2, Principle 2.23, practice 130 of King III provided that:

130. Unless legislated otherwise, the board should appoint the risk, remuneration and nomination committees as standing committees. The board of a public listed company, state-owned company and other company that has scored over 500 points in terms of the public interest score calculation, must establish a social and ethics committee (section 72 (4) of the Act read together with regulations 43 and 26 (2) ). The board may also consider establishing governance, IT steering and sustainability committees. Smaller companies need not establish formal committees to perform these functions, but should ensure that these functions are appropriately addressed by the board;

King III provided that a governing body have the following governing body committees:

1. Audit Committee (in terms of the Companies Act if legally required);
2. Social and Ethics Committee (in terms of the Companies Act if legally required);
3. Risk Committee (as standing committee);
4. Remuneration Committee (as standing committee);
5. Nomination Committee (as standing committee);
6. Governance Committee (if deemed necessary);
7. IT Steering Committee (if deemed necessary); and
8. Sustainability Committee (if deemed necessary).

In implementing this practice it was found that in some instances the emphasis was on form rather than substance. For example, the process of managing risk was not the consideration but merely whether the organisation had a risk committee. There was also some confusion as to whether a separate committee was needed even in instances where a particular governing body was of the view that a single committee would suffice.

Consequently, questions were raised as to whether risk could be combined with another committee, where ethics should be dealt with in the light of the legal requirement in certain instances to have a Social and Ethics Committee.

The above reveals an approach to committees that is focused on form rather than substance - almost leading to a tick box approach. It is this concern that King IV sought to address.

**King IV**

King IV has moved away from prescribing specific governing body committees that should be established and rather provides that the governing body should judge which governing body committees are appropriate for the organisation. King IV requires the governing body to make a **judgement decision** around the needs and interests of the organisation and not to think of committees as a compliance requirement.

When making this judgement decision it is critical to look at how governing body committees can be most effective to provide leadership and outputs on all matters in an integrated manner. Creating and combining different governing body committees is also materially affected by the size, resources and activities of the organisation – King IV advocates the proportional application of its recommendations and this includes the creation and combination of committees. There is a King III Practice note which provides guidance on how governing body committee interaction can “improve governing body functioning...”

**Part 5.3, Principle 8 of King IV provides that:**

> Principle 8: The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.

What King IV does is to focus on the **outcome** and it does this in the following manner:

**First,** it places a great emphasis on the role of the governing body members to assess and determine what is appropriate for the particular organisation.

King IV specifically provides that the governing body should determine if and when it delegates a particular role or responsibility to a standing or ad hoc committees (i.e. the emphasis here on the governing body exercising its judgement). This approach endorses the King IV rationale of delegation to committees, which is to:

1. **Promote Independent Judgement:**
   This requires the governing body to apply its mind and discretion on the needs of the organisation and which committees are beneficial to the effectiveness and efficiency of the organisation and the governing body fulfilling its role and responsibilities. It encourages the governing body to think independently of prescribed specifics for committees and to rather consider the organisational needs.

2. **Achieve Balance of Power**
   This requires the governing body to allocate to the different committees specific roles and responsibilities as well as consideration for composition; and in doing so there is a balance of power among all of the committees. This ensures a more balanced perspective and control as well as
shared and dispersed influence within all committees as opposed to the same governing body members considering all matters without diversified input.

3. **Assist with the effective discharge of duties**

   The committees are beneficial in assisting the governing body in fulfilling their duties to the organisation. Allocation or roles and responsibilities to committees allows for the breakdown in the work and more concentrated focus in the committee and therefore making the fulfilment of the governing body duties more effective and efficient.

**Second**, in providing guidance on the types of committees that could be established, it refers to certain functions that should be addressed by committees – thereby leaving sufficient discretion for the governing body to decide what committees it needs and how it would like to determine the scope of the various committees.

In this regard King IV refers, for example, to a committee responsible for risk governance which is not the same as suggesting a risk committee. On the basis of the wording in King IV, there is flexibility as to whether the “committee responsible for risk governance” could be a standalone committee or combined with another committee that has other duties. In this way the focus is on the substance - the risk governance process, rather than structure - form.

King IV recommends having a committee responsible for:

1. Nominations of members of the governing body;
2. Risk governance;
3. Remuneration.

King IV also refers to an Audit Committee and Social and Ethics Committee and this was done to align with the legislative requirements of the Act.

Some organisations may have an Executive committee. Based on the provisions of the Act as well as the recommendations of King III and King IV, this is not regarded as a committee of the governing body. The Executive committee is normally formed under the leadership of the CEO and made up solely of members of the management team.

**Third**, King IV encourages a holistic and integrated approach when the governing body is establishing committees. In delegating to the committees, the governing body should set out to achieve the following:

1. effective collaboration through cross-membership between committee and their members;
2. ensuring complementary work is produced in instances of overlapping of jurisdiction between committees so as to avoid competing approaches; and
3. a balanced distribution of power of membership within the committees, to avoid dominating member/s and undue reliance on specific member/s.

This complete rationale allows for more effective committees as opposed to a dogmatic tick-box compliance with best practice recommendations. It encourages governing bodies to be all-encompassing and effective in their committee creation.

**Conclusion**

In order for governing bodies to create committees in alignment with King IV recommendations, it is fundamental to understand the King IV rationale and thinking towards governing body committees.

The overriding principle (as reflected by Principle 8) is to ensure the application of **independent judgement** by the governing body in the promotion of committees which are effective in achieving and assisting with a **balance of power** and the **effective discharge of duties**. If the committees can achieve the purpose, the end-result is highly beneficial to the organisation.