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KING V™

2 CPD points

GUIDANCE NOTE

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KING V CONTEXTUAL INTERPRETATION AND APPLICATION

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Introduction

Applying King V across diverse organisations and sectors requires a considered and nuanced application of mind, that balances King V recommended practices with organisation-specific context and realities.

This guidance paper is ancillary to and should be read in conjunction with the King V Code on Corporate Governance in South Africa (the Code), together with the King V Foundational Concepts, King V Glossary and King V Disclosure Framework (collectively, the King V Report or King V).

Intended audience

This guidance is primarily aimed at the governing body, it being the focal point of corporate governance within the organisation. In addition, the guidance will also assist those who support or advise the governing body on the implementation of King V - including but not limited to company secretaries and legal, governance and other compliance professionals - by providing clarity on how the Code's practices can be applied by different organisations.

Purpose

The purpose of this guidance paper is to provide high-level direction on how the Code recommended practices should generally be interpreted and applied by a variety of organisations of different sizes, in various sectors and with different legislative regimes. The guidance offers examples and insights on the interpretation and application of the Code in these various contexts.

Given the diversity of sectors and the numerous governance challenges that may arise, it is not feasible to cover all instances comprehensively. Instead, the guidance highlights common themes and considerations to assist with thinking through the application of King V. Sector specific guidance is provided in addition to this general guidance paper.

The overarching aim is thus to enable those responsible for considering, approving and implementing the Code in their organisations to mindfully interpret and adapt the recommended practices to their particular realities, while still giving effect to the objectives expressed in the principles and the realisation of the governance outcomes.

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The examples provided are designed to illustrate how governing bodies might approach the application of the Code in practice. They are not prescriptive checklists or one-size-fits-all solutions – ultimately, good governance requires the exercise of judgment in light of an organisation's unique context.

Certain aspects of the Code are emphasised for their relevance to a specific sector. However, it would be incorrect to assume that aspects of the Code not specifically addressed in this guidance are not applicable. All principles and practices as set out in the Code should be considered in their entirety to ensure comprehensive corporate governance.

General guidance on the interpretation and implementation of King V

What is universal and what requires judgement

- The **governance outcomes** set the ultimate criteria against which the governing body and the stakeholders of an organisation should assess the quality of governance in that organisation. They apply to all organisations, regardless of their size, legal form or sector.

- The **principles** in the Code are also universally applicable and serve as the articulation of the ongoing objective that the organisation should aim to attain, with the necessary adaptation of terminology where required.

- The **recommended practices** are positioned in the Code at the level of leading practice, making them ideally suited to larger organisations with corporate structures characterised by separation between ownership and control and with relatively high complexity and impact. Organisations should thus apply judgement in implementing the recommended practices proportionally, as is considered necessary and sufficient in support of the principles.

Reconciling King V to legislation

In applying the Code, organisations must be mindful of the relationship between the Code's recommendations and binding legal requirements. Generally, applicable legislation and regulation set the minimum governance standards that organisations must comply with. King V, however, in

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certain instances, advocates governance practices or standards that go beyond the legal minimum. In such cases, organisations should strive to achieve the higher aspiration in the interest of sound corporate governance.

In limited instances where a direct conflict exists between legislation or regulation and a King V recommended practice, the law prevails. However, a difference in a recommended practice from legislation or regulation does not automatically constitute a conflict, nor does the mere fact that the Code advocates a higher standard of governance than the legislation or regulation requires. A true conflict exists only if a King V recommended practice is impossible to implement without violating the law. In most instances, the Code's higher standards are complementary to legal requirements, not contradictory.

The separate sector-specific guidance, hyperlinked in this document, include reference to specific Acts or regulations to demonstrate the linkage and alignment between King V's principles and practices with legislation and regulation – even if different terminology or wording is used. Aligning the Code with legislation in this way ensures that governance is implemented in compliance with the law while pursuing the broader objectives of the Code as expressed in the principles and realising value for the organisation through the governance outcomes.

Proportional application of King V recommended practices

Whilst the specific guidance papers supplementary to this general guidance focus on the nuances in various sectors, even within the same sector, organisations may vary in size, nature, complexity, ownership structure as well as with respect to the organisation's economic, social and environmental impact.

King V is designed to be applied proportionally, meaning that its practices can be scaled and adapted to fit an organisation's circumstances. Smaller or less complex entities can and should practice good governance, but the manner in which they implement certain recommendations may differ from that of a large company.

Thus, even where not expressly stated in the Code, practices are meant to be scaled in accordance with the following proportionality considerations particular to the organisation:

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- The size of operations of the organisation, including turnover and workforce.
- The nature and complexity of the business model of the organisation.
- The ownership structure of the organisation.
- The organisation's actual and reasonably expected economic, social and environmental impact.

It is therefore required for the governing body to consider and exercise its judgement in determining which governance practices are necessary and fit for purpose in the organisation's unique setting and conditions.

A robust test for the proportional implementation of recommended practices is whether the rationale for non-adoption, or adaption, of practices can be explained to and understood by a reasonable, impartial third party as not compromising the attainment of the objective as set by the principle.

Some examples of proportional application of governance practices include:

- **Establishing functions:** Where the Code recommends establishing certain functions – such as finance, risk, information and technology, company secretarial, compliance or internal audit – smaller, less complex organisations might assign these responsibilities to a single senior employee rather than a dedicated team. Further scaling could involve allocating part-time responsibility for the function to such an employee. Outsourcing of functions or sharing resources with affiliated organisations are additional alternatives. The key is to ensure that responsibility for each governance function is clearly assigned, even if not carried out by a standalone unit.

- **Forming committees**: Where the Code recommends establishing a committee of the governing body, proportionality considerations might lead to a different approach for smaller, less complex organisations. The governing body itself might carry out the functions typically fulfilled by such a committee. Alternatively, the governing body could formally delegate, without abdicating accountability, to one of its members to consider and prepare submissions for recommendation and consideration by the governing body. In both cases, the governing body retains accountability while adapting the structure to its size.

- **Developing policies:** In various places, the Code recommends developing a formal policy. In a large, complex organisation, this might result in a comprehensive policy from the outset.

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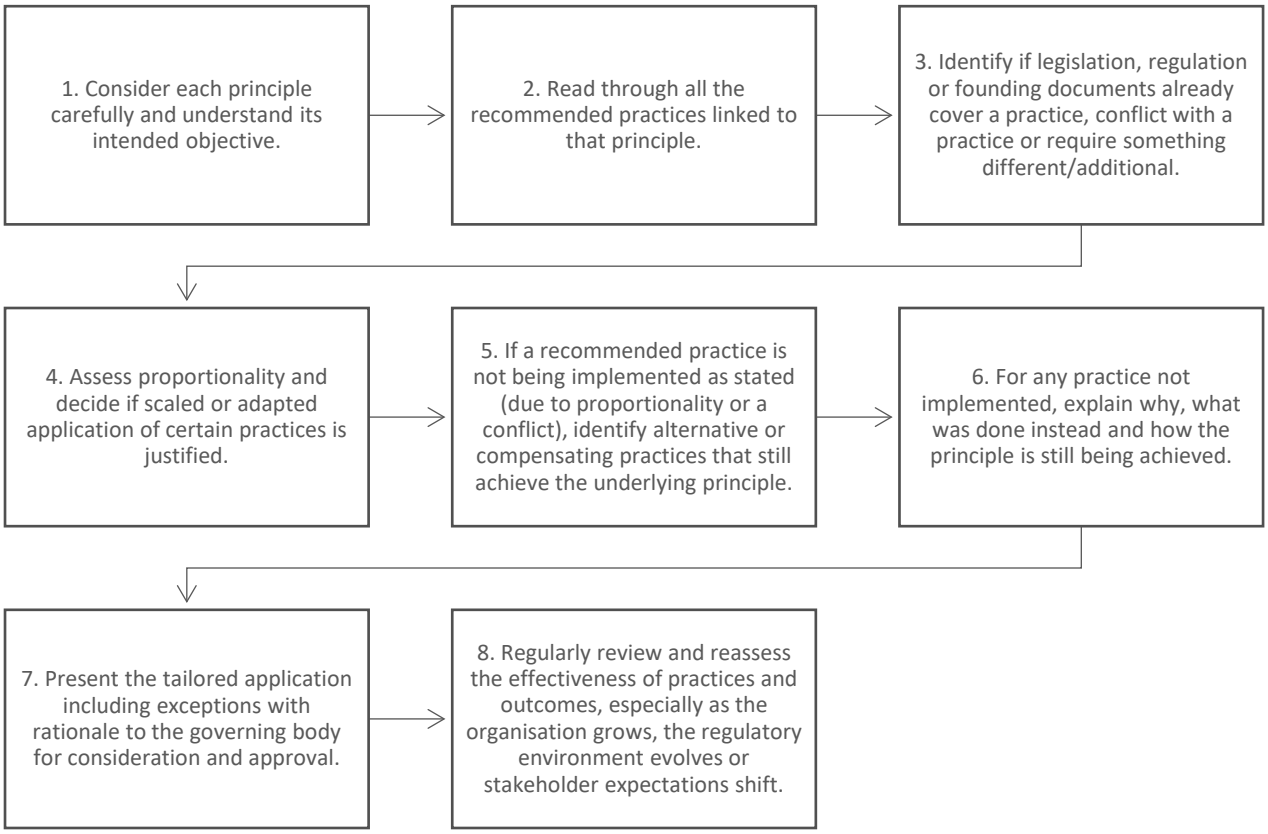
However, a smaller, less mature organisation may begin with simpler documentation outlining a few key guiding criteria, which can be expanded and refined into a formal policy over time as the organisation grows. What matters is that there is an intentional effort to establish clear policies or guidelines and to work towards continuous development thereof.

King V implementation

A typical first-time implementation roadmap could be approached as follows:



It is important to note that the implementation of King V—specifically assessing each recommended practice against legislative and regulatory requirements and proportionality—is most work intensive in the first year of implementation. This initial process may require creating a register of all the recommended practices, then aligning these to legislation regulation and, finally, consideration of proportionality, with formal governing body approval. This results in a register with practices as tailored for the organisation which register needs to be maintained and updated, with only incremental adjustments as circumstances change.

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Specific guidance on certain sectors

Scope of the sector-specific guidance

This general guidance is supplemented by separate sector-specific guidance for the following types of entities:

- Municipalities
- State-owned entities
- Retirement funds
- Small and medium enterprises
- Non-profit organisations
- Public higher education institutions
- Medical schemes

These categories were selected as they represent a wide range of sectors and governance environments, and many of the insights can be extrapolated to similar contexts. Each of these sections provides tailored guidance on applying King V's principles and practices within that specific environment, taking into account typical governance structures and challenges in that sector.

For large, listed companies, as the recommended practices in the Code are already positioned at a level of leading practices suited to high complexity, scale and impact, there is usually limited need for proportional application and adaptation of practices other than to meet legislative, regulatory or other specific industry requirements. Thus, no sector-specific guidance has been prepared for this category. Similarly, large private companies that have high complexity, scale and impact should also find applying the King V recommended practices relatively straightforward and feasible without substantial proportional adjustments.

For other organisational types not covered by dedicated guidance, readers are encouraged to draw on the general guidance in this paper; as well as the specific sector guidance that most closely resembles their own context. The absence of a bespoke section for a particular sector does not mean King V is less relevant to it. On the contrary, all organisations should aim to apply the Code's principles diligently. Such organisations can adapt the recommendations and examples from the closest sector detailed in this paper to fit their unique governance context.

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How to use the sector-specific guidance

When applying the Code across various sectors, it is important to recognise that governance terminology and structures will differ from one sector to another. The fundamental roles and responsibilities may be comparable, but they might go by different names or have distinct nuances in practice. For example, practices relating to a governing body of an organisation would equally apply to a council of a municipality or a board of trustees of a retirement fund– even though those leadership structures are not identical. The sector-specific guidance papers help interpret King V's terminology in a manner that aligns with specific sector realities.

The essence of King V – as represented by its governance outcomes and principles – is universally applicable. What changes across sectors is mainly how these principles are achieved and what specific terms and practices are used. The sector-specific guidance clarifies terminology and highlights common governance nuances for these different types of organisations. It also illustrates how certain recommended practices might be tailored to suit the needs and requirements of each sector's governance structures. In doing so, it ensures that regardless of differences in titles or procedures, organisations in all sectors can pursue effective governance consistent with King V's intent.

It is important to emphasise that the sector-specific guidance should not be viewed as stand-alone versions or "mini-King Vs". The actual Code remains the authoritative reference, and must still be read, understood and applied directly. The sector-specific guidance merely provides illustrative examples of interpretation and application within particular sectors. Organisations are expected to exercise their own judgement and adapt these insights appropriately to their unique governance circumstances.

In addition, instead of addressing all the potential variables within each sector, the supplements are intended to demonstrate how the Code should be interpreted and applied in a number of representative contexts, situations and legislative regimes. It is hoped that these demonstrations will enable those charged with governance duties to adapt the practices to their particular governance challenges – including those challenges not addressed in the supplements – while still giving effect to the objectives expressed in the principles. The examples in the sector-specific guidance are designed to demonstrate the manner in which governing bodies should apply their minds to King V and do not replace the exercise of judgement by providing detailed solutions for all situations.

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Conclusion

This guidance note has emphasised that while the outcomes and principles of King V are universally applicable, the recommended practices should be applied proportionally and with due regard to the organisation's unique context, scale, resources and impact.

Ultimately, governance cannot be reduced to a checklist. It requires sound judgement and a clear commitment to the governance outcomes of ethical culture; performance and value creation; conformance and prudent control; and legitimacy. Each governing body must apply its mind to how the Code's outcomes can best be achieved in its circumstances, while remaining mindful of legislative requirements and stakeholder expectations.

By applying King V in a considered and proportional way, organisations strengthen their ability to create sustainable value over time, enhance stakeholder confidence and contribute positively to the broader economy, society and environment.

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