

# The King V Draft



## THE LONG-AWAITED KING V© CODE IS HERE – WHAT’S NEW?

An overview of the recently released King V Code on Corporate Governance for South Africa (“King V”) (©2025 The Institute of Directors in South Africa) will be of little value to the reader if not first being reminded of the meaning of an outcome-based approach to corporate governance as adopted by the current King IV™ Report on Corporate Governance for South Africa, 2016 (“King IV™”). Comments posted on social media in response to the release of King V© leaves one with the distinct perception that the outcome-based approach is still not well understood.

In short, an outcomes-based approach means:

- The governance efforts of an organisation should result in specific OUTCOMES, which King V© describes as “the criteria by which to evaluate the consequences and value of” these governance efforts. The leadership of every organisation in South Africa, whether listed or not, should strive to achieve these outcomes.
- To assist the leadership of organisations to achieve these outcomes, a framework of governance is provided, made up of PRINCIPLES that provide the north star towards the adoption of fit-for-purpose, appropriate practices. Similar to the outcomes, the principles are universally applicable to every organisation, whether listed or not.
- Finally, to guide organisations in the effective application of every principle to achieve the desired outcomes, RECOMMENDED PRACTICES are given. It is in the application of these practices that the uniqueness of every organisation must be recognised and respected. For example, as a consequence of listing requirements, a company that is listed will have a different approach to the recommended practices than an unlisted company or any other organisation for that matter.

Bottomline, it is not a one-size-fits-all, failproof recipe to ensure supreme governance into perpetuity and completely eradicate the risk of corporate failure. It requires continued application of mind by organisational leadership. As I pointed out several years ago in an [article on this topic](#), a new King Code can be published every year, in the absence of effective and ethical leaders in our organisational corridors and boardrooms, there will be many more disasters to come. Some demand that it be legislated, but if I may quote the doyen of corporate governance in this country, Prof Mervyn King, one cannot legislate morality. Case studies of our spectacular corporate failures, both in private and public sector, tell us that he is probably correct in his thinking.

With that out of the way, let's turn to several of the significant features of King V© as well as the key differences between King V© and King IV™, with a specific focus on the three elements as already mentioned – outcomes, principles and practices – starting with some general observations.

#### *General observations*

- The intention was clearly to produce a more succinct, focused code. Wording deemed superfluous has been removed, making it easier to digest and interpret.
- The fundamental concepts to King IV™ have remained mainly unchanged with some revised and shortened wording. In line with a few of its

predecessors, King V© again references the concept of ‘ubuntu’ in listing the critical building blocks of integrated thinking together with corporate citizenship and a stakeholder-inclusive approach.

- While the concept of the economic, social and environmental context within which organisations function was noted in King IV™, it seems to feature more strongly in King V© with several of the principles and recommended practices making specific reference thereto.
- The concept of the governing body being able to delegate some of its functions to different committees is much more prevalent in King V©.

### Outcomes

King IV™	King V©
• Ethical culture	• Ethical culture
• Good performance	• Performance
• Effective control	• Conformance
• Legitimacy	• Legitimacy

- The starting point remains the exercise of effective and ethical leadership that is fundamental to achieving the desired outcomes.
- Unlike King IV™, each outcome is defined with the renamed outcome ‘conformance’ (as opposed to ‘effective control’) being defined as *“Effectiveness, consistency and discipline with respect to adherence by the organisation to laws, regulations and adopted standards as well as the establishment and monitoring of the system of internal controls.”*

### Principles

- The number of principles has been reduced from 17 to 12. This was achieved in several ways:
  - Some principles have been combined, such as the principles relating to organisational ethics and responsible corporate citizenship, as well as the principles relating to risk governance and compliance.
  - The principle relating to performance evaluation (King IV™ Principle 9) has been removed, but the concept of performance evaluation was retained in a recommended practice forming part of King V© Principle 1.
  - The principles relating to the governing body being the focal point and custodian of corporate governance (King IV™ Principle 6) and the responsibilities of institutional investors (King IV™ Principle 17) have been removed.

- The wording of the principles has been revisited and amended. In most instances, the wording is shorter and clearer. In addition, the word 'should' in each principle has been removed, resulting in the aspirational format of the wording of King IV™ being replaced by a more positively charged statement.

#### *Recommended practices*

- As with its predecessor, King V© organised the recommended practices in line with the high-level duties of the governing body, being (1) to set the strategic direction; (2) approve the necessary plans and policies to achieve the approved strategy; and (3) delegate execution to management while exercising continuous oversight. The fourth duty speaking to accountability is dealt with as part of the disclosure regime.
- Instead of dealing with reporting recommendations as part of each principle, as in King IV™, a separate Disclosure Template will be provided to guide the disclosure of how the adopted practices assist the organisation in its application of each principle.
- Once again, it is made clear that the recommended practices can be scaled and otherwise adapted in accordance with the proportionality considerations. At the risk of being repetitive, similar to King IV™, this is not a one-size-fits-all checklist. How the principles will be applied to achieve the outcomes is the critical question that the governing body needs to continuously apply its mind to.
- A number of the recommended practices have been amended. The more significant amendments include:
  - When categorising non-executive directors as independent, an added factor for consideration is whether the director has served for longer than nine years. While King IV™ only recommends a rigorous assessment of the independence of a director categorised as independent after a tenure of nine years, King V© has now included this in the list of factors. While the reasoning for this is unclear at this stage, it may be interpreted by some as implying that a nine-year tenure should be the maximum for directors categorised as independent directors. Such an interpretation would be in line with the approach adopted some time ago by the Prudential Authority (SARB) in respect of entities forming part of its oversight universe and could have significant implications for listed entities in particular and warrants some serious debate. That being said, King IV™ does make it clear that the factors as listed should be applied on a 'substance over form' basis and that, once again, application of mind is essential.
  - Unlike its predecessor, King V© states that the chair of the governing body should not chair the risk committee. At the same time, it recommends that the chair of the governing body should chair the

nomination committee, but only if the chair of the governing body is an independent non-executive director.

- It is recommended that there should be at least one independent non-executive director as a member of the risk committee as well as the social and ethics committee.
- The recommended practices forming part of the principle concerning information governance (King V©) have probably seen the most fundamental changes. Concepts such as information technology (IT), data governance and emerging technologies are identified as sub-sets of the broader concept of information governance. Specific recommendations are included to address critical aspects such as characteristics and oversight in relation to artificial intelligence and machine learning.
- Because of the imminent changes to the Companies Act in relation to aspects of remuneration approval, the King IV™ recommended practices that became part of the JSE Listings Requirements concerning non-binding advisory votes on the remuneration policy and implementation report have been removed. However, King V© recommends that the practice should continue for all non-listed and private companies that are required by law to audit their annual financial statements.
- Company secretaries should take note that King V© recommends that minutes of shareholders meetings should be made publicly available, similar to King IV™, but in addition, “within a reasonable time after the meeting”.
- An important addition to the recommended practices forming part of the principle concerning stakeholders (King V©, Principle 12), is the statement that the board must recognise the rights afforded to shareholders in law and ensure that shareholder engagement happen in the spirit of the law whilst appreciating that the company constitutes a nexus for the interests of a variety of stakeholders.

Personally, two concerns relevant to both codes remain:

- The reference to ‘providers of capital’ when referring to shareholders in the case of a company, considering that succeeding shareholders are often not directly providers of capital to the company. Obviously, in the context of a non-profit company, this is also unfortunate terminology as members, if any, are not providers of capital.
- The specific requirement that each member of the governing body should submit to the governing body a declaration of all financial, economic and other interests held by the member and related parties at least annually, or

whenever there are significant changes. Not only does the inclusion of “other interests” result in a potential extensive, undefined list of interests, but the practical implications of annually submitting such a list in respect of the individual and all related parties makes this a near impossible task. Additional clarification and guidance are required in the wording to make this potentially workable.

In conclusion, to summarise the key points of this high-level review of the recently published, draft King V© Code:

- The fundamental concepts and thinking of, as well as the approach taken by, King IV™ remain basically unchanged.
- The main objective seems to be the delivery of a more streamlined code that is aligned with relevant legislative changes as well as critical developments in the world around us, most importantly in emerging technologies.

Governance has never been and will never be about compliance; it is about leadership. I cannot describe the desired leadership better than it is done in King V© when it recommends that the governing body should exercise its governance and leadership role by:

- focusing **inwards** on the organisation,
- focussing **outwards** on the economic, social and environmental context within which it operates, as well as
- monitoring and accounting for the **past and present** whilst also orientating towards the **future**.

Let's hope that one day, there will be a better appreciation, not only for the concept of good governance, but also for the ultimate value it can bring to an organisation.

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