

Is Corporate Governance Overrated in South Africa?



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While South Africa is still reeling under the recent spectacular corporate disasters in both the public and private sectors, a number of voices are heard questioning the value of corporate governance, and in particular the recommendations of the latest governance report in South Africa, also known as the King IV Report on Corporate Governance for South Africa, 2016 (King IV™).

For those of you that have been a bit removed from the corporate governance debate and, as such, not that well acquainted with the governance reports and codes issued in South Africa, the King reports and codes are the embodiment of governance principles and recommended practices issued by the King Committee (under the auspices of the Institute of Directors in South Africa and the chairmanship of the internationally acclaimed corporate governance expert, Professor Mervyn King) over an extended period of time. The first King Report was issued in 1994 and in November 2016 (22 years later to be exact), King IV™ was released (with King II and King III appearing at intervals during this period). From the outset, it was made clear that the principles and recommendations contained

in the different King reports and related codes applied to all organisations in South Africa, notwithstanding the nature or size of the business or the industry or sector in which it operated.

While the focus of this article is on South Africa, it is worth noting that a large number of countries have issued similar governance reports and/or adopted similar governance codes over the past three decades. Like most of these, application of the principles and recommendations contained in the different King reports were to be done on a voluntary basis. As an aside observation, one of the criticisms that have always been levelled against the King reports is that it does not advocate legislative enforcement of its recommendations. In response, allow me to quote the chair of the King Committee – “one cannot legislate morality”! Globally there is sufficient material and case studies to support this view and to fill a separate article, if not a doctoral thesis.

The King reports were distinguished from most of its global peers, at least in the first few years, by its strong call for organisations to be conscious of the need for responsible corporate citizenship and to consider the legitimate interests of all its material stakeholders, as opposed to only that of its shareholders (typical of a shareholder-centric model). The concept of “ubuntu” (humanity toward others) has been a consistent theme throughout all the King reports. It therefore went beyond mere financial and internal controls, a strong feature of many other global governance reports and codes.

Throughout the period previously alluded to, the definition of corporate governance has also evolved into what is today contained in King IV, being “the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes:

- Ethical culture
- Good performance (value creation)
- Effective control
- Legitimacy

The focus is therefore, first and foremost, on leadership and, in particular, on ethical and effective leadership. Secondly, the main thrust is to achieve the specific outcomes as listed above in the definition of corporate governance. It is not a “rule book” and it does not encourage mindless application of the recommendations. This is where most of those critical of King IV™ (and some of its predecessors) misses the point. No governance report or code, including King IV™, can prevent the corporate failures we have witnessed over the past few years in the absence of ethical and effective leadership. As long as the diseases of greed, fear, sloth, ignorance and arrogance are allowed to fester in our public and private sector boardrooms, there will be many more failures with resultant hardships and losses for stakeholders and, as a result, society.

We desperately need ethical, competent leaders in our boardrooms and in society as a whole. We need leaders who understand the interdependence between organisations and society, leaders who want to make a real contribution to sustainable development, both within their organisations and society. In an organisation with this kind of leadership, who honestly seeks to encourage an ethical culture, who wants to create value for all concerned, who wants to have effective control over the business and lead an organisation that is trusted by its stakeholders, the principles and recommendations contained in King IV™ should make perfect sense.

There are two main reasons that King IV and its content should resonate with the aforementioned leaders. Firstly, King IV provides a framework for ethical and effective leaders to facilitate and guide the implementation of strategies, structures, policies and procedures that will assist with achieving the envisaged outcomes of King IV™. Secondly, an application of the King IV principles and recommendations will assist members of governing bodies, such as directors of companies, in building a strong defence against legal action in the event of a corporate failure that could potential result in personal liability, including amongst others, financial liability for damages (be it those suffered by the entity or others), suffering the humiliation of being declared delinquent or the reputational harm of being found wanting in fulfilling basic fiduciary duties.

The only certainty in business, whether private or public sector, is the presence of uncertainty. Things do go wrong. We do make mistakes – we are human after all. It is in these times that we need to know that we have nevertheless acted in good faith, in the best interest of our organisations and with due care, skill and diligence. An honest and conscious application of the King IV principles and recommendations, considering the nature and size of the organisation and the sector in which it operates, will bring substantial comfort to those in leadership. And if you think this is only relevant for “big business”, think again. As company secretaries and governance consultants we are confronted on a regular basis with the disasters emanating from a lack of good governance in small and medium size organisations, for profit and not for profit, private and public sector.

We are all in need. Society needs sustainable, responsible corporate citizens of all sizes, who understand the need to enable future generations to benefit from its operations and existence. Organisations need effective and ethical leaders who steer their organisations in a responsible manner. Members of leadership teams who strive to achieve the outcomes as proposed by King IV™, who are “intellectually honest” individuals, need support and guidance as to the appropriate principles and practices to adopt.

Is corporate governance overrated in South Africa? You decide.

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