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CORPORATE AND COMMERCIAL ALERT

SPECIAL EDITION: KING IV REPORT

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THE KING IS DEAD, LONG LIVE THE KING

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From a structural and format perspective, King IV is significantly different to King III. The substantive principles, however, are broadly in line with its predecessor. Much has been made of King IV's switch to an "apply and explain" philosophy as opposed to King III's "apply or explain". However, in substance essentially the same position is arrived at, given that King IV has reduced the 75 governance principles in King III, to 17 principles (one of which is applicable only to institutional investors). The newly stated principles are general and high-level in nature, the idea being that they are capable of application by any entity regardless of its nature and size. It is the granular practices which are implemented in applying the principles which will naturally differ depending on the entity.

As with King III, King IV applies to all entities, and accordingly employs the generic term "governing body" when referring to the primary governance structure within an entity (in the case of a company, its board).

The sector-specific supplements, as foreshadowed in the draft of King IV which was released earlier in the year for public comment, are included for the first time, and these will take some time to fully analyse and comment on.

What follows is a table containing a brief comparison of some of the material and practical aspects of King III and King IV.

	King III	King IV
Composition of governing body	<p>Should comprise a majority of non-executives, and the majority of non-executives should be independent.</p> <p>Diversity of membership must be considered.</p> <p>Should be a minimum of two executive members, namely the CEO and CFO.</p> <p>Rotation of members is recommended on the basis that one-third of non-executives retire at every AGM.</p>	<p>Unchanged. Diversity of membership is further emphasised by the addition that the governing body should set targets for race and gender representation in its membership.</p> <p>Periodic, staggered rotation to be determined by the governing body; no specific rotation recommended.</p>

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	King III	King IV
Independence of directors	A list of criteria (eg financial interests in the entity, and present or past relationships with the entity) are set out which criteria deem directors to be independent or non-independent.	Similar criteria are utilised, however these are now framed as non-exhaustive factors to be taken into consideration, and are therefore not necessarily determinative, of a director's status as independent or otherwise.
Chairman of governing body	Should be an independent, non-executive.	Unchanged.
Lead independent director	Required to be appointed only if chairman is not independent, and fulfils chairman's role when the latter is conflicted.	Required to be appointed irrespective of the chairman's position, and has an enhanced role under King IV.
Chairman's involvement in committees	<p>Should not be a member of the audit committee.</p> <p>Should not chair the remuneration committee, but may be a member of it.</p> <p>Should be a member of the nomination committee and may also be its chairman.</p> <p>Should not chair the risk committee but may be a member of it.</p>	<p>Position unchanged insofar as audit, nomination and remuneration committee are concerned.</p> <p>May chair the risk committee.</p> <p>May be a member of the social and ethics committee but should not chair it.</p>
Delegation	General principles of delegation are set out.	Adds that delegation to a member of the governing body must be formal and reduced to writing, setting out the scope and duration of the delegation.

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	King III	King IV
Committees of governing body – general	Should comprise a minimum of three members, and must have formal terms of reference.	Unchanged. The minimum content of committees' terms of reference is slightly expanded. Annual report to disclose the committees' respective work and areas of focus during the relevant reporting period.
Audit committee membership	Should comprise at least three members, all of whom must be independent, non-executive.	Unchanged.
Nominations committee membership	Composition not specifically prescribed. Practice note (Sept 2009) recommends all members to be non-executive; majority to be independent.	All members to be non-executive; majority to be independent.
Risk governance committee membership	Should comprise of both executives and non-executives.	Same, but adds that the majority should be non-executives.
Social and ethics committee membership	Not addressed; regulated entirely by Companies Regulations.	Should comprise executives and non-executives; majority to be non-executives. To be applied together with Companies Regulations.
CEO - disclosures	General disclosures relating to remuneration of directors and prescribed officers apply to the CEO.	Adds that there should be disclosure of the notice period for termination of: the CEO's contract as well as conditions attaching hereto; other professional commitments of the CEO; and whether succession planning is in place for the CEO position.

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	King III	King IV
Company secretary	Should have an arm's-length relationship with the governing body, and thus should not be a member of the governing body.	Unchanged.
Remuneration – vote by shareholders of a company	Recommends the remuneration policy be submitted for a non-binding advisory vote by shareholders at every AGM (ordinary resolution).	Unchanged, but adds that the remuneration policy must contain the measures that the board will take if 25% or more of votes exercised are cast against the policy. The measures taken must be disclosed in the next integrated report.
Company groups	Recommends a governance framework to be in place between holding companies and their subsidiaries.	Unchanged. More detail is provided on the suggested content of the governance framework.
Institutional investors	Not addressed in King III; dealt with in the separate Code for Responsible Investing in South Africa (CRISA).	Specific principles are set out concerning the overarching obligation of the governing body of an institutional investor to ensure that responsible investment is practised by the organisation to promote good governance and the creation of value by the companies in which it invests.
Sector supplements	Not addressed.	Contains sector-specific supplements which address the nuanced and specialised applicability of King IV in respect of municipalities, non-profit entities, retirement funds, SMEs and state-owned entities.

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