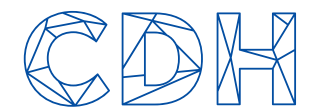




# **KING V AN OVERVIEW**





For more than 30 years, the King Reports on Corporate Governance for South Africa have constituted the premier corporate governance codes in South Africa. They contain numerous recommendations and principles with respect to best corporate governance practice for enterprises. The reports are supplemented by practice notes issued from time to time by the Institute of Directors in Southern Africa (IODSA).

## Introduction

The King Reports are not legally binding. However, for entities with a primary listing on the Johannesburg Stock Exchange (JSE) Limited securities exchange, certain aspects are binding by virtue of the Listings Requirements imposing obligations on issuers to comply with them. In respect of the matters in King which the JSE does not consider mandatory, an issuer is nevertheless required to describe the extent of its compliance, and explain any non-compliance, in its annual report to shareholders.

There have also been cases where the High Court has considered the principles expounded by King to be binding on state-owned entities (*SABC v Mpofu* [2009]), and where it has referred to those principles as a yardstick against which the conduct of directors should be measured in the context of their fiduciary duties (*Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company* [2006] and *OUTA v Myeni* [2020]).

The King V Code on Corporate Governance for South Africa, 2025 (King V) was launched on 31 October 2025. King V supersedes King IV in its entirety. The application of King V is effective for financial years commencing on or after

1 January 2026, with early adoption encouraged. Listed companies should track any consequential changes to JSE Listings Requirements where they hard-code specific King recommendations.

From a structure and format perspective, King V is significantly different to King IV, with the content being streamlined and simplified. Its substantive principles, however, are broadly in line with its predecessor's. King V has reduced the 17 governance principles in King IV, to 13 principles. The 13 principles are general and high-level in nature, the idea being that they can be applied by any entity regardless of its nature or size. It is the granular practices that are implemented in applying the principles which will naturally differ depending on the entity. King V introduces a Disclosure Framework to be used by organisations for reporting on King compliance.

As with King IV, King V 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).

## Areas of comparison

Below is a table containing a brief comparison of some of the material and practical aspects of King IV and King V, as well as a comparison of these from a Companies Act 71 of 2008 (Companies Act) perspective.

	King IV	King V	Companies Act
<b>Composition of governing body</b>	<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 (or another designated executive, as is appropriate for the organisation).</p> <p>The governing body should set targets for race and gender representation in its membership.</p> <p>Arrangements for periodic, staggered rotation of members should be made.</p>	<p>Unchanged.</p>	<p>Little is prescribed in respect of board composition.</p> <p>At least 50% of directors (and alternates) must be elected by shareholders, and other directors may be directly appointed by any third party named in the memorandum of incorporation (MOI), or as ex officio directors.</p> <p>There is no requirement for the rotation of directors.</p>
<b>Independence of directors</b>	<p>A list of criteria (e.g. financial interests in the entity, and present or past relationships with the entity) are used to determine if a director is independent. However, these are 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.</p>	<p>Refines criteria for determining independence of members of a governing body. Key features include: cooling-off non-involvement period of at least three financial years for former executive managers before categorisation as independent; tenure longer than nine years as a strong indicator of non-independence (i.e. stronger presumption against independence created); and independence factors are applicable to related parties of members of the governing body. Participation in a share-based scheme, or one's position as a professional adviser to the company, have been dropped as specifically listed factors indicating non-independence. If the board concludes independence despite such indicators, it should disclose a reasoned rationale.</p> <p><a href="#">See further detail on independence criteria below.</a></p>	<p>There is no general requirement or test for independence of directors other than in the context of the audit committee composition, as well as that of the "independent board" in the context of takeover law.</p>

## Areas of comparison...continued

	King IV	King V	Companies Act
<b>Chairperson of governing body</b>	<p>Should be an independent, non-executive.</p> <p>The office of chairperson and CEO must not be occupied by the same person.</p>	Unchanged.	<p>Not regulated or prescribed. At common law, the chairperson is appointed by the board.</p> <p>Nothing prevents the CEO from being the chairman as well.</p>
<b>Lead independent director</b>	Required to be appointed irrespective of the chairperson's independence status, and has an enhanced role under King IV. The lead independent director fulfils the chairperson's role when the latter is conflicted.	Unchanged, save that the functions of the lead independent director are less prescriptive – the lead independent director must provide support to the chairperson, lead in the absence of the chairperson where the chairperson is conflicted and facilitate the performance evaluation of the chairperson.	Not regulated or prescribed.
<b>Chairperson's involvement in committees</b>	<ul style="list-style-type: none"> <li>• Should not be a member of the audit committee.</li> <li>• Should not chair the remuneration committee, but may be a member of it.</li> <li>• Should be a member of the nomination committee and <b>may</b> also be its chairperson.</li> <li>• May be a member and chair the risk committee.</li> <li>• May be a member of the social and ethics committee but should not chair it.</li> </ul>	Unchanged, save that the recommendation is stronger now that chairperson <b>should</b> be both a member and chair of the nomination committee.	Not regulated or prescribed. The board can constitute any number of committees and has wide powers of delegation to such committees, but the chairperson's participation in such committees is not directly regulated. However, the audit committee's composition (including the qualifications of its members) is prescribed and therefore if the chairperson does not meet the relevant criteria they cannot be a member of that committee.
<b>Delegation</b>	General principles of delegation are set out. Provides 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.	Unchanged.	<p>In terms of section 76(4) read with section 76(5) directors are entitled to rely on delegates to whom they have reasonably delegated any functions or powers.</p> <p>The form and manner of delegation is not prescribed or regulated.</p>

## Areas of comparison...continued

	King IV	King V	Companies Act
<b>Committees of governing body – general</b>	<p>Should comprise a minimum of three members, and must have formal terms of reference. The minimum content of committees' terms of reference is provided for.</p> <p>Annual report to disclose the committees' respective work and areas of focus during the relevant reporting period.</p>	<p>Unchanged.</p>	<p>Only the composition of the audit committee and social and ethics committee is prescribed (minimum three members; see further composition requirements below).</p> <p>Only public companies, state-owned companies and other companies required by their MOI to have audit committees are required to have an audit committee.</p> <p>State-owned and listed companies are required to have a social and ethics committee, as well as unlisted companies that reach 500 on their public interest score in any two of the previous five financial years.</p> <p>Audit committee and social and ethics committee members of a public company and a state-owned company are appointed by shareholders at each annual general meeting (AGM). In all other cases, members are appointed by the board.</p> <p>Audit committee and social and ethics committee must report to shareholders on their respective areas of work.</p>

## Areas of comparison...continued

	King IV	King V	Companies Act
<b>Audit committee membership</b>	Should comprise at least three members, all of whom must be independent, non-executive.	Unchanged.	<p>A member of the audit committee must not be involved in:</p> <ul style="list-style-type: none"> <li>the day-to-day management of the company's business or have been so involved at any time during the previous financial year;</li> <li>a prescribed officer or full-time employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years;</li> <li>a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and</li> <li>not be related to any person above.</li> </ul>
<b>Nominations committee membership</b>	All members to be non-executive; majority to be independent.	Unchanged.	Not prescribed or regulated.
<b>Risk governance committee membership</b>	Should comprise of both executives and non-executives; majority should be non-executives.	Same, but adds that at least one member should be independent.	Not prescribed or regulated.
<b>Social and ethics committee membership</b>	Should comprise executives and non-executives; majority to be non-executives. To be applied together with Companies Regulations.	Same, but adds that at least one member must be independent.	<p>Per amendments to the Companies Act which came into force in December 2024, in the case of public companies and state-owned companies, the social and ethics committee must comprise not less than three members, with the majority being non-executive.</p> <p>For all other companies, the social and ethics committee must comprise at least three directors or prescribed officers, with at least one non-executive director.</p>

## Areas of comparison...continued

	King IV	King V	Companies Act
<b>Remuneration governance committee</b>	All members should be non-executive; majority should be independent.	Unchanged.	Not prescribed or regulated.
<b>CEO – disclosures</b>	General disclosures relating to remuneration of directors and prescribed officers apply to the CEO. There should be disclosure of the notice period for termination of: the CEO's contract as well as conditions attaching thereto; other professional commitments of the CEO; and whether succession planning is in place for the CEO position.	Unchanged, save that disclosing other professional commitments of the CEO is no longer a requirement.	Only remuneration disclosures are required (by virtue of the CEO being a director or prescribed officer).
<b>Company secretary</b>	Should have an arm's length relationship with the governing body, and thus should not be a member of the governing body.	Unchanged.	Functions and duties are prescribed but it is not stated that the relationship with the board must be at arm's length.
<b>Remuneration – vote by shareholders of a company</b>	Recommends the remuneration policy be submitted for a non-binding advisory vote by shareholders at every AGM (ordinary resolution). 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.	Streamlined provisions relating to remuneration governance.  Recommends that all companies that are required to appoint a social and ethics committee under the Companies Act and its Regulations (i.e. companies with a public interest score greater than 500 in any two of the previous five financial years) submit their remuneration policies and reports for a non-binding advisory vote by shareholders. The executive remuneration policy should be submitted to the shareholders for voting every three years or whenever there are "substantial" changes to the remuneration policy, and the statutory remuneration report should be submitted for voting annually. All subject to the pending Companies Act amendments regarding public companies' remuneration reports.	Remuneration of directors in their capacity as such must be approved by a special resolution within the prior two years. This is understood to include only director fees to non-executive directors, not salaries, bonuses, etc. to executive directors.  Recent (but pending) amendments to the Companies Act provide that public and state-owned companies will be obliged to submit their remuneration policies (every three years) and implementation reports (annually) for a binding vote of the shareholders (an ordinary resolution vote).

## Areas of comparison...continued

	King IV	King V	Companies Act
<b>Remuneration report – disclosures</b>	<p>All elements of remuneration that are offered in the organisation and the mix of these should be set out in the remuneration policy, including:</p> <ul style="list-style-type: none"> <li>• base salary, including financial and non-financial benefits;</li> <li>• variable remuneration, including short- and long-term incentives and deferrals;</li> <li>• payments on termination of employment or office;</li> <li>• sign-on, retention and restraint payments;</li> <li>• the provisions, if any, for pre-vesting forfeiture (malus) and post-vesting forfeiture (claw-back) of remuneration;</li> <li>• any commissions and allowances; and</li> <li>• the fees of non-executive members of the governing body.</li> </ul>	<p>Certain additional elements be fleshed out in more detail in the remuneration policy and report:</p> <ul style="list-style-type: none"> <li>• whether executives are required to have a minimum shareholding in the company (and targets in this regard, if any);</li> <li>• whether the exercise of malus, forfeiture and clawback provisions are substantively and procedurally fair;</li> <li>• in the case of formula-based remuneration, whether the board can (and did) exercise an overarching fairness discretion in the case of anomalous results; and</li> <li>• change of control provisions</li> </ul>	<p>Does not require a detailed breakdown of remuneration elements. Remuneration disclosures under section 30(6) entail:</p> <ul style="list-style-type: none"> <li>• director fees</li> <li>• salary, bonuses and performance-related payments</li> <li>• expense allowances</li> <li>• pension contributions</li> <li>• value of options and other share rights</li> <li>• financial assistance</li> </ul> <p>Pending amendments will require disclosures regarding disparity of remuneration of highest and lowest paid employees.</p>
<b>Company groups</b>	<p>Recommends a governance framework be in place between holding companies and their subsidiaries and provides the suggested content of the governance framework.</p>	<p>Unchanged.</p>	<p>Governance framework is not prescribed or regulated.</p>
<b>Artificial intelligence (AI) as a governance consideration</b>	<p>AI not explicitly provided for; principles focused on technology and information governance.</p>	<p>Substantially updates its guidance on information and technology governance, explicitly recognising AI as a critical governance consideration. Organisations must now explicitly address how they govern AI use, particularly regarding human oversight, ethical implications and transparency.</p>	<p>Not prescribed or regulated.</p>

## Areas of comparison...continued

	King IV	King V	Companies Act
<b>Institutional investors</b>	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.	Removed.	Not addressed.
<b>Sector supplements</b>	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.	Removed.	Not addressed other than in terms of the concept of a "state-owned company"; however, this is simply regulated in the same way as a public company except to the extent a ministerial exemption applies in terms of section 9. Non-profit companies are also a separate category, but are regulated the same way as profit companies save for certain exceptions, as set out in section 10 (mainly pertaining to share capital aspects).

### A note on independence

A central theme in King V, as in King IV, is that the board should comprise a balance of power and should have an appropriate degree of independence.

This position is not unique to the South African corporate governance landscape. For example, the respective codes and laws of the US, UK, Australia, India and Germany also stress independence and, to lesser or greater extents, set out a test or list of criteria for measuring the independence of directors. King V has made some interesting changes with regard to the application and content of the criteria.

Compared to King III, King IV moved further away from the notion of boxing independence into set criteria: the criteria became "factors" to be considered in assessing independence – the overarching general test was always whether "there is no interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making in the best interests of the organisation". The factors were not determinative and neither were they exhaustive. This position remains under King V.


**In terms of King IV, the stated range of factors to be considered were whether the director:**

- is a significant provider of financial capital, or ongoing funding to the organisation, or is an officer, employee or a representative of such provider of financial capital or funding;
- if the organisation is a company, participates in a share-based incentive scheme offered by the company;
- if the organisation is a company, owns securities in the company, the value of which is material to the personal wealth of the director;
- has been in the employ of the organisation as an executive manager during the preceding three financial years, or is a related party to the executive manager;
- has been the designated external auditor responsible for performing the statutory audit for the organisation, or a key member of the audit team of the external audit firm, during the preceding three financial years;
- is a significant or ongoing professional adviser to the organisation, other than as a member of the governing body;
- is a member of the governing body or the executive management of a significant customer of, or supplier to, the organisation;
- is a member of the governing body or the executive management of another organisation which is a related party to the organisation; or
- is entitled to remuneration contingent on the performance of the organisation.

**Under King V, the factors are similar, with a few important nuances. The newly stated range of factors to be considered are whether the director or a party related to that director:**

- is a significant provider of financial capital, or ongoing funding to the organisation, or is an officer, employee or a representative of such provider of financial capital or funding;
- owns securities in the company, the value of which is considered significant to the personal wealth of that director;
- has been in the employ of the organisation as an executive manager during the preceding three financial years;
- was in the employ of the organisation as an executive manager prior to the preceding three financial years without having served a cooling-off period of at least three years during which there was no significant involvement in any capacity with the organisation;
- has been the designated external auditor responsible for performing the statutory audit for the organisation, or a critical member of the audit team of the external audit firm, during the preceding three financial years;
- is a significant and ongoing customer or supplier of goods or services to the organisation, or is a member of the governing body or the executive management of a significant supplier or customer to the organisation;
- is a member of the governing body or executive management of, or otherwise stands in a significant relationship to, another organisation which is a related party to the organisation;
- has served as member of the governing body for longer than nine years; or
- is entitled to remuneration contingent on the performance of the organisation.





While King V no longer expressly lists participation in a share incentive scheme or acting as a professional adviser to the company as indicators of non-independence, these circumstances will likely continue to inform independence assessments in practice. This is because King V's catalogue of factors is illustrative rather than exhaustive.

King V advances the "*nine-year*" threshold from a trigger for enhanced scrutiny to a substantive indicator of independence. Under King IV, serving for nine years or more required a heightened review of a director's independence. Under King V, tenure is now expressly referenced in the independence test: a term exceeding nine years may suggest a lack of independence, unless the governing body determines otherwise in the circumstances.

King V extends the independence criteria to apply not only to members of the governing body but also to their related parties (as defined in the Companies Act). This represents an additional layer of scrutiny not present under King IV and aligns with the approach already embedded in section 94 of the Companies Act for audit committee independence. Consequently, the cooling-off period and the nine-year rule, among other requirements, would similarly be applicable to a proposed independent member and their related persons.

In practical terms, boards should track tenure proactively, map and monitor related-party connections, and document a clear, evidence-based rationale wherever a long-serving or otherwise potentially conflicted member is assessed as independent.

## MARKET RECOGNITION

### The way we support and interact with our clients attracts significant external recognition.

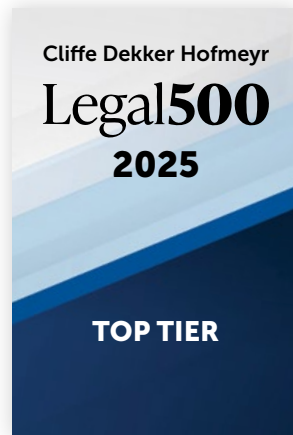
**André de Lange** is the Head of our Agriculture, Aquaculture & Fishing sector, and Director in our Corporate & Commercial practice. *The Legal 500 EMEA 2025* recommended him for commercial, corporate/M&A and in 2022 recommended him for banking & finance.

*IFLR1000 2018–2024* recommended **Yaniv Kleitman** as a 'Notable Practitioner' in M&A.

**Chris Charter** is the Practice Head of our Competition Law team. *Chambers Global 2018–2025* ranked him in Band 1 for competition/antitrust. *The Legal 500 EMEA 2017–2025* recommended Chris as a 'Leading Individual' for competition. *The Legal 500 EMEA 2012–2016* recommended him for competition. *IFLR1000 2019–2024* recommended him as a highly regarded lawyer. *IFLR1000 2011–2018* recommended Chris as a leading lawyer. *Global Competition Review 2020–2021* named Chris a highly recommended lawyer.

**Tim Fletcher** is the Chairperson and a director in our Dispute Resolution practice. He was ranked by *Chambers Global 2025* as an 'Eminent Practitioner'; a category in which lawyers are ranked as highly influential lawyers and exceptional individuals. *Chambers Global 2022–2024* ranked Tim in Band 2 for dispute resolution. *Chambers Global 2019–2021* ranked him in Band 3 for dispute resolution. *The Legal 500 EMEA 2024–2025* recommended Tim in the 'Hall of Fame' for dispute resolution. *The Legal 500 EMEA 2016–2023* recommended him as a 'Leading Individual' for dispute resolution.

**Aadil Patel** is the Practice Head of our Employment Law team, and the Head of our Government & State-Owned Entities sector. *Chambers Global 2024–2025* ranked Aadil in Band 1 for employment. *Chambers Global 2015–2023* ranked him in Band 2 for employment. *The Legal 500 EMEA 2021–2025* recommended Aadil as a 'Leading Individual' for employment and recommended him from 2012–2020.



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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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