Steering point • November 2016
A summary of the King IV Report on Corporate Governance™ for South Africa, 2016

**King IV™**
An outcomes-based corporate governance code fit for a changing world

http://www.pwc.co.za/kingIV
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November 2016

The dynamic economic, social, technological and political environment that South Africa and indeed the world finds itself in calls for a steady hand at the helm of organisations and a principles-driven approach to leadership and governance. Our latest annual Global CEO Survey reveals fascinating insights into the minds of today’s business leaders.

In our survey of more than 1 400 CEOs in 83 countries, 84% of CEOs said they are expected to address wider stakeholder needs and 76% said that business success is about more than financial profit alone. Additionally, 52% of CEOs said creating value for wider stakeholders drives profitability.

The survey findings point to the reality that business leaders are facing that business does not operate in a vacuum and that the success of any organisation is linked to the success of its stakeholders.

King IV™ is directly aligned to PwC’s purpose of building trust in society as it helps build a bridge between organisations and society. It is for this among other reasons that we support King IV™ which, while retaining many of the guiding principles of its predecessors, seeks to instil a greater level of integrated thinking in board decisions, asking governing bodies to consider not just financial gain, but the larger triple context, including social and environmental considerations.

Mindful application of the updated Code™ provides a solid base of principles from which organisations can work to navigate in these challenging times.

Dion Shango  
PwC Southern Africa  
Regional Senior Partner

Anton van Wyk  
PwC Africa Clients and Markets Leader  
Member of the King Committee

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The Institute of Directors in Southern Africa NPC released the King IV Report on Corporate Governance™ for South Africa, 2016 (King IV™) on 1 November 2016.

Disclosure on the application of King IV™ is effective in respect of financial years starting on or after 1 April 2017, but the King IV Report™ encourages immediate transition.

King IV™ replaces King III in its entirety.

Overview and summary

If one was asked to summarise King IV™ in one word, ‘transparency’ would come to mind. King IV™ builds on its predecessors’ positioning of sound corporate governance as an essential element of good corporate citizenship. Good corporate governance requires an acknowledgement that an organisation doesn’t operate in a vacuum, but is an integral part of society and therefore has accountability towards current and future stakeholders. With the introduction of an ‘apply and explain’ regime, King IV™ asks organisations to be transparent in the application of their corporate governance practices.

King IV™ reinforces the notion that good corporate governance is a holistic and interrelated set of arrangements to be understood and implemented in an integrated manner – good governance is not a tick-box or compliance exercise. King IV™ asks for mindful application of the King IV Code™ and for its recommended practices to be interpreted and applied in a way that is appropriate for the organisation and the sector in which it operates. Mindful application harnesses the benefits of corporate governance in the interests of the organisation.

The legal status of King IV™, as with its predecessors, is that of a set of voluntary principles and leading practices. In South Africa, a hybrid system of corporate governance has developed over time – some practices of good governance have been legislated (for example in the Companies Act, 2008) in parallel with the voluntary King Code™ of governance. If there is a conflict between legislation and the King Code™, the law prevails.

Good governance, however, does not exist separately from the law: The courts consider all relevant factors in determining the appropriate standard of conduct for those charged with governance duties, including what the generally-accepted practices for a particular setting and situation are.

The more widely recommended practices in codes of governance are adopted, the more likely it is that a court would regard conduct that conforms to these practices as meeting the required standard of care. In this way, the provisions of voluntary codes of governance find their way into jurisprudence to become part of the common law. Consequently, failure to meet an established corporate governance practice, albeit not legislated, may invoke liability.

King IV™ does not represent a significant departure from the philosophical underpinnings of King III. Concepts that were introduced by King III and earlier versions of the report, such as ethical and effective leadership, the organisation being an integral part of society, corporate citizenship, sustainable development, stakeholder inclusivity and integrated annual reports have remained, but have been refined in King IV™.

King IV™ advocates integrated thinking, which takes account of the connectivity and interdependencies between the range of factors that affect an organisation’s ability to create value over time.

Integrated thinking underpins all of the following:

- Seeing the organisation as an integral part of society and thus as a corporate citizen;
- Stakeholder inclusivity;
- Sustainable development; and
- Integrated reporting.

King IV™ is, similar to King III, drafted for application by all organisations. Additional sector supplements have also been introduced in King IV™ with the purpose of providing high-level guidance and direction on how the King IV Code™ should be interpreted and applied by a variety of sectors and organisational types.

“The 21st Century has been characterised by fundamental changes in both business and society. These fundamental changes provided the context within which the King Committee set out to draft King IV, and have influenced both its content and approach.”

– Mervyn E King SC
Chair of the King Committee
King IV™ in a nutshell

- A set of voluntary principles and leading practices.
- Drafted to apply to all organisations, regardless of their form of incorporation.
- Sector supplements explain how the King IV Code™ should be applied by certain organisations/sectors.
- Proportionality is explained and advocated.
- King IV™ focuses on outcomes. The King IV Code’s™ principles and practices are linked to desired outcomes, therefore articulating the benefits of good corporate governance.
- The Code™ differentiates between principles and practices. Principles are achieved by mindful consideration and application of the recommended practices.
- ‘Apply and explain’ regime (as opposed to ‘apply or explain’ regime in King III).
- New ‘look and feel’ to the King IV Report™ and King IV Code™.
- Philosophical underpinnings in King III retained but refined in King IV™.

- ‘Corporate governance’, for purposes of King IV™, has now been defined.
- Key new or enhanced features of King IV™ relate to:
  - Fair, responsible and transparent organisation-wide remuneration;
  - Responsible and transparent tax strategy and policy;
  - Balanced composition of governing bodies and independence of members of the governing body;
  - Delegation to management;
  - Delegation to committees;
  - Corporate governance services to the governing body;
  - Performance evaluations of the governing body;
  - Audit committee disclosures;
  - Risk governance;
  - The combined assurance model;
  - Social and ethics committees;
  - Performance evaluations;
  - Responsible institutional investors; and
  - Technology and information.
New ‘look and feel’ to the King IV Report™ and the King IV Code™

King IV™ has a very different look and feel to that of King III. King III consisted of the King III Code, which contained the Code principles and recommended practices, and a separate King III Report, which contained the principles and more detail on the practice recommendations. King IV™ is synonymous with the King IV™ Report, a single document consisting of seven parts.

Structure of the King IV™ Report

<table>
<thead>
<tr>
<th>Part 1</th>
<th>Part 2</th>
<th>Part 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of terms</td>
<td>Fundamental concepts</td>
<td>King IV application and disclosure</td>
</tr>
<tr>
<td>Part 4</td>
<td>Part 5</td>
<td>Part 6</td>
</tr>
<tr>
<td>King IV on a page</td>
<td>King IV Code on corporate governance</td>
<td>Sector supplements</td>
</tr>
<tr>
<td>Part 7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Content development process and King Committee</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The King IV Code™ contains principles, practices and governance outcomes that interact as follows:

- **Governance outcomes** are the benefits that organisations could realise if the underlying principles – and therefore, ultimately, good governance – are achieved. These governance outcomes are:
  - Ethical culture;
  - Good performance;
  - Effective control; and
  - Legitimacy.

- **Principles** embody the aspirations of the journey towards good governance. They guide what organisations should strive to achieve by the application of governance practices. Principles build on and reinforce one another; they are phrased so that they are fundamental to good corporate governance and hold true across all organisations.

- **Practices** are recommended at the level of leading practice. The practices associated with a particular principle should be applied so that they support and give effect to the aspiration as expressed in that principle. Practices may be scaled in accordance with proportionality considerations.

‘Apply and explain’ vs ‘apply or explain’

The application regime of King IV™ is ‘apply and explain’: ‘Applying’ the principles and ‘explaining’ how they are being effected. The principles are basic and fundamental to good governance and application thereof is therefore assumed.

The detail of information to be provided in the narrative should be guided by materiality, and should enable stakeholders to make an informed assessment of the quality of the organisation’s governance. Disclosure is neither required against each King IV™ recommended practice nor against the King IV™ intended governance outcomes.

King IV™ states that the governing body has the discretion to determine where the King IV™ disclosures will be made; for example in the integrated report, sustainability report, social and ethics committee report, or other online or printed information or reports.

The governing body may also choose to disclose its application of King IV™ in more than one of these reports. Duplication of King IV™ disclosures should be avoided by making use of cross-referencing. Group companies should also make use of cross-referencing to avoid duplicate disclosure.

King IV™ disclosures should be updated at least annually, formally approved by the governing body and be publicly accessible.

In contrast, King III’s application regime was ‘apply or explain’: An explanation was only required by King III where a principle was not applied.

Impact on listed entities

Despite King III’s ‘apply or explain’ requirement, the JSE Limited required listed entities to apply and explain their application of the 75 King III principles. The reduction of the number of principles from 75 to 17 in King IV™ therefore lightens the disclosure obligation as it pertains to listed entities.

It is however noteworthy that King IV™ asks for mindful consideration and disclosure about the application of its recommended practices. The focus is on the quality of the King IV™ application explanation rather than on the quantity thereof.
Sector supplements

The sector supplements illustrate how the King IV Code™ should be interpreted and applied in various contexts, situations and legislative regimes. The King IV Report™ does not include supplements for all sectors and categories of organisations. The King Committee decided to issue supplements that were representative of a wide range of sectors and categories of organisations.

Those sectors and categories of organisations for which specific supplements are not provided should consider the particular supplement that is most closely aligned to their organisational structure. The sector supplements should be read together with the remainder of the King IV Report™.

To summarise the linkage between the King IV Code™ and the sector supplements:

• All governance outcomes as per the King IV Code™ apply;
• All principles as per the King IV Code™ apply, with the necessary adaptation of terminology as explained in each supplement; and
• The recommended practices in the King IV Code™ should be considered together with the specific recommendations contained in each supplement and industry or sector codes and guidance issued by professional and industry bodies and regulators. Implementation of practices is subject to applicable legislation and scaling for proportional application as is appropriate for the organisation.

Supplements have been provided for the following sectors:

• Municipalities;
• Non-profit organisations;
• Retirement funds;
• Small and medium enterprises; and
• State-owned entities.

Key new or enhanced features of King IV™

Fair, responsible and transparent organisation-wide remuneration

King IV™ covers remuneration governance in a lot of detail. In this regard, its recommendations focus on:

• The responsibility of the governing body for setting an organisation-wide remuneration policy that should articulate and give effect to its direction on fair, responsible and transparent remuneration;
• Remuneration disclosure; and
• Shareholder voting on remuneration policy and implementation.

The remuneration policy should specifically provide for the following:

• Arrangements ensuring that the remuneration of executive management is fair and responsible in the context of overall employee remuneration in the organisation.
• The use of performance measures that support positive outcomes across the economic, social and environmental context in which the organisation operates and/or all the capitals that the organisation uses or affects; and
• If the organisation is a company, the voting by shareholders on the remuneration policy and implementation report, and for the implementation of related responding measures as outlined in the King IV Report™ (King IV Code™ Part 5.4 Recommended practice 29).

King IV™ recommends disclosure by means of a remuneration report in three parts:

1. A background statement that should briefly provide context for remuneration considerations and decisions;
2. An overview of the main provisions of the remuneration policy; and
3. An implementation report which should contain details of all remuneration awarded to individual members of the governing body and executive management during the reporting period (King IV Code™ Part 5.4 Recommended practice 32).
King IV™ recommends that the remuneration policy and the implementation report should be tabled every year for separate non-binding advisory votes by shareholders at a company’s annual general meeting.

The remuneration policy should record the measures that the board commits to take in the event that either the remuneration policy or the implementation report, or both have been voted against by 25% or more of the voting rights exercised.

Such measures should provide for taking steps in good faith and with best reasonable effort towards, as a minimum, an engagement process to ascertain the reasons for the dissenting votes and appropriately addressing legitimate and reasonable objections and concerns raised, which may include amending the remuneration policy, or clarifying or adjusting remuneration governance and/or processes. (King IV Code™ Part 5.4 Recommended practices 37 and 38).

“We see many remuneration committees trying to strike a balance between executive remuneration and stakeholder satisfaction. The Code is looking for the best possible outcome for all interested stakeholders. We think the enhanced transparency of the disclosures recommended together with the voting mechanisms envisaged in the Code will go a long way towards greater accountability and bridging this divide.”
– Gerald Seegers
PwC Africa People and Organisation Leader

Balanced composition of governing bodies and independence of members of the governing body

While previous versions of the King Report addressed the classification of non-executive directors as ‘independent’, King IV™ contextualises the relevance of independence, namely that:

• All members of the governing body, whether they are categorised as executive, non-executive or independent non-executive have, as a matter of law, a duty to act with independence of mind in the best interests of the organisation (King IV Code™ Part 5.1 Recommended practice 1).

• Although important, independence in appearance is one of a number of considerations in achieving balance in the composition of the governing body (King IV Code™ Part 5.3 Recommended practice 6).

• The overriding concern is whether the governing body is knowledgeable, skilled, experienced, diverse and independent enough to discharge its governance role and responsibilities.

• The need for the governing body to set and disclose progress towards targets for race and gender diversity has specifically been included in the Code (King IV Code™ Part 5.3 Recommended practice 30).

King IV™ has enhanced the provisions regarding the classification of non-executive members as ‘independent’. It states that non-executive members of the governing body may be categorised as independent if 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 King IV Code™ recommends a consideration of all indicators holistically, and on a substance over form basis for this purpose. The King IV Code™ lists a number of indicators that may lead to a conclusion of a lack of independence, rather than reflecting an absolute list of independence criteria (King IV Code™ Part 5.3 Recommended practices 27 and 28).

Delegation to management

King IV™ provides for the governing body to delegate the implementation and execution of approved strategy, through policy and operational plans, to management via the CEO (King IV Code™ Part 5.3 Recommended practice 84).

Rather than dealing with the establishment of specific management positions (such as the appointment of the chief financial officer and chief operating officer) for functional areas, as was done in King III, King IV™ provides recommendations for the governing body to oversee that key functional areas are headed by competent individuals and are adequately resourced (King IV Code™ Part 5.3 Recommended practice 87).

Responsible and transparent tax strategy and policy

A fundamental concept in King IV™ is that the governing body should be responsible for a tax policy that is compliant with the applicable laws, but that is also congruent with responsible corporate citizenship, and that takes account of reputational repercussions. Responsible and transparent tax policy is put forward as a corporate citizenship consideration in King IV™ (King IV Code™ Part 5.1 Recommended practice 14).

“In a world of increasingly active regulators and other stakeholders who hold organisations accountable, it’s essential that organisations have a clear tax strategy that the board has discussed and is prepared to explain to the public if necessary.”
– Philip Cronje
PwC Southern Africa Head of Tax Strategy & Operations
Delegation to committees

Similarly to its predecessor, King IV™ deals with the delegation by the governing body within its own structures. The King IV™ recommended practices do not prescribe which committees should be established by the governing body – the governing body should determine what is appropriate for the organisation (King IV Code™ Part 5.3 Recommended practice 39).

The King IV™ recommendations promote effective collaboration among committees with minimal overlap and fragmentation of duties, as well as a balanced distribution of power (King IV Code™ Part 5.3 Recommended practice 44).

King IV™ does, however, contain considerations regarding the following types of committees, where appropriate for the organisation:

- Audit committee;
- Committee responsible for nominations of members of the governing body;
- Committee responsible for risk governance;
- Committee responsible for remuneration; and
- Social and ethics committee.

Corporate governance services to the governing body

King III dealt with the office of the company secretary in isolation. The premise of King IV™ is that the governing body should ensure that it has access to professional and independent guidance on corporate governance (King IV Code™ Part 5.3 Recommended practice 90).

Audit committee disclosures

King IV™ recommends disclosure on whether the audit committee is satisfied that the auditor is independent of the organisation, which statement should specifically address the policy and controls that address the provision of non-audit services by the external auditor and the nature and extent of the such services; the tenure of the external audit firm; the rotation of the designated external audit partner; and significant changes in the management of the organisation during the external audit firm’s tenure that may mitigate the attendant risk of familiarity between the external auditor and management (King IV Code™ Part 5.3 Recommended practice 59).

King IV™ also recommends that the audit committee should disclose its views on audit quality with reference to audit quality indicators (King IV Code™ Part 5.3 Recommended practice 59).

King IV™ furthermore recommends that the audit committee should disclose significant matters that the audit committee has considered in relation to the annual financial statements and how these were addressed by the committee (King IV Code™ Part 5.3 Recommended practice 59). This recommended practice will result in users of the financial statements being presented with the following perspectives on the annual financial statements:

- The perspective of the governing body in preparing the annual financial statements, particularly with regard to significant assumptions that the governing body had made;
- The perspective of the external auditor on matters that the auditor considered to be of most significance in the audit of the annual financial statements and how the audit addressed those matters (for those entities where the auditor will be including key audit matters in the auditor’s report); and
- The perspective of the audit committee on the matters it regarded as significant in relation to the annual financial statements and how the audit committee addressed those matters.

“The audit committee fulfils a critical governance role in overseeing the integrity of the annual financial statements. The recommendation in King IV for the audit committee to disclose the significant matters that the committee considered in relation to the annual financial statements, and how these matters were addressed by the audit committee, will provide stakeholders with insight into how the audit committee discharged its duties, and pinpoint the areas or items on which the audit committee focused its efforts. The King IV recommendation dovetails with recent reforms to the external auditor’s report.”

– Pule Mothibe
PwC Southern Africa Assurance Leader
Risk governance

‘Risk’ is defined in King IV™ as follows:

Risk is about the uncertainty of events; including the likelihood of such events occurring and their effect, both positive and negative, on the achievement of the organisation’s objectives. Risk includes uncertain events with a potential positive effect on the organisation (i.e. opportunities) not being captured or not materialising.

King IV™ thus recognises the potential opportunities inherent in some risks while also recognising that opportunities do not always originate from risks facing an organisation. To address the need to strengthen risk governance so as to address rising complexity relating to risk, King IV™ recommends that the risk committee should comprise a majority of non-executive members of the governing body, which goes beyond what King III recommended (King IV Code™ Part 5.3 Recommended practice 64).

Combined assurance model

King III introduced the combined assurance model. King IV™ expands on this concept by indicating that a combined assurance model incorporates and optimises all assurance services and functions so that, taken as a whole, these enable an effective control environment; support the integrity of information used for decision-making by management, the governing body and its committees; and support the integrity of the organisation’s external reports (King IV Code™ Part 5.4 Recommended practice 40). The King IV recommendations do not prescribe the design of the model, but allow for the governing body to exercise its judgement in this regard (King IV Code™ – Part 5.4 Recommended practices 40 – 43).

“The increased focus on accountability means that the organisation’s external reporting has been propelled further into the limelight. This, combined with the need for quality information for decision-making in an integrated manner, means that the quality of the organisation’s internal controls around information have become critical. As the overseers of this system, the audit committee has become a critical element of good governance.”
– Shirley Machaba
PwC Africa Internal Audit and Risk Leader
Social and ethics committees

King IV™ expands on the role of the social and ethics committee as provided for in the Companies Act, 2008 and ascribes the role of oversight of and reporting on organisational ethics, responsible corporate citizenship, sustainable development and stakeholder relationships to this committee (King IV Code™ Part 5.3 Recommended practice 68).

King IV™ encourages organisations that are not required by law to establish such a committee to allocate such oversight to a dedicated committee or to add it to the responsibilities of another committee as is appropriate for the organisation (King IV Code™ Part 5.3 Recommended practice 68).

King IV recommends a higher standard for the composition of this committee than is required in the Companies Act. King IV recommends that a majority of the committee members should be non-executive members of the governing body so as to ensure that independent judgement is brought to bear (King IV Code™ Part 5.3 Recommended practice 70).

“As a society we are still moving towards redressing the imbalances of the past, be those social, economic or environmental. The role of organisations, particularly through the social and ethics committee, in doing so, and in considering future sustainability, cannot be underplayed.”
– Jayne Mammatt
PwC Africa Sustainability and Climate Change Leader

Responsible institutional investors

King IV™ sets out in principle 17 that the governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote good governance and the creation of value by the companies in which it invests. While the King IV Code™ itself doesn’t specifically refer to the Code for Responsible Investing in South Africa (CRISA), Part 2 of King IV™ indicates that responsible investing principles and practices are set out in CRISA, which accord with the Principles on Responsible Investing and the International Corporate Governance Network Global Stewardship Code.

Technology and information

King IV™ acknowledges the rapid advances in technology and its potential to result in significant disruption, opportunity and risks. King IV recommends practices to assist the governing body with technology governance (King IV Code™ Part 5.4 Recommended practices 10 – 17).

King IV™ recognises that information and technology overlap but are also distinct sources of value creation that pose individual risks and opportunities. To reinforce this distinction, the section in the King IV Code™ refers to ‘technology and information’ rather than ‘information technology’.

“Boards face a delicate balancing act. They are aware of the need to secure business assets, yet cannot afford to relinquish opportunities in doing so. We think the King IV principles are broad enough to focus on both protection and growth.”
– Sidriaan de Villiers
PwC Africa Cybersecurity Leader

Performance evaluations

Where King III recommended an evaluation of the governing body, its committees and its individual members be conducted annually, King IV™ recommends that a formal evaluation process be conducted at least every two years (King IV Code™ Part 5.3 Recommended practice 73).

The governing body should schedule in its yearly work plan an opportunity for consideration, reflection and discussion of its performance and that of its committees, its chair and its members as a whole, in every alternate year (King IV Code™ Part 5.3 Recommended practice 74).
<table>
<thead>
<tr>
<th>Leadership by the governing body</th>
<th>Principles</th>
<th>Governance outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>These are the governing body's primary governance role and responsibilities</td>
<td>Principles embody the aspirations of the journey towards good corporate governance</td>
<td>These are the benefits that organisations could realise through good governance</td>
</tr>
<tr>
<td>Steers and sets strategic direction</td>
<td>Practices support and give effect to the principles</td>
<td>Ethical Culture</td>
</tr>
<tr>
<td>Approves policy and planning</td>
<td>Principle 1 The governing body should lead ethically and effectively.</td>
<td>Good performance</td>
</tr>
<tr>
<td>Oversees and monitors</td>
<td>Principle 2 The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.</td>
<td>Effective control</td>
</tr>
<tr>
<td>Ensures accountability</td>
<td>Principle 3 The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen.</td>
<td>Legitimacy</td>
</tr>
<tr>
<td>Principle 4 The governing body should appreciate that the organisation’s core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.</td>
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<tr>
<td>Principle 5 The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation’s performance and its short, medium and long-term prospects.</td>
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<td>Principle 6 The governing body should serve as the focal point and custodian of corporate governance in the organisation.</td>
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<tr>
<td>Principle 7 The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.</td>
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<td>Principle 8 The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.</td>
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<td></td>
</tr>
<tr>
<td>Principle 9 The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.</td>
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<td></td>
</tr>
<tr>
<td>Principle 10 The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.</td>
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<tr>
<td>Principle 11 The governing body should govern risk in a way that supports the organisation in setting and achieving strategic objectives.</td>
<td></td>
<td></td>
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<tr>
<td>Principle 12 The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principle 13 The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.</td>
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<tr>
<td>Principle 14 The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.</td>
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<td></td>
</tr>
<tr>
<td>Principle 15 The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation’s external reports.</td>
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<td></td>
</tr>
<tr>
<td>Principle 16 In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.</td>
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<td>Principle 17 The governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote good governance and the creation of value by the companies in which it invests.</td>
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<td></td>
</tr>
</tbody>
</table>
Let’s talk

PwC supports good corporate governance and would like to engage with you to gain your insights on King IV™. Contact your engagement partner or any of the following contacts for a discussion on how King IV™ may impact you.

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