A new year and a fresh start to corporate governance

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Legal Brief

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ON NOVEMBER 1 the King Committee and the Institute of Directors in Southern Africa published the King IV Report on Corporate Governance for South Africa ("King IV").

King IV was developed in response to international and local developments in corporate governance since 2009 when King III, its predecessor, was published. King IV replaces the King III Report in its entirety and applies in respect of financial years that start on or after April 1, 2017.

The stated objectives of King IV are to:

• "Promote corporate governance as integral to running an organisation and delivering governance outcomes such as an ethical culture, good performance, effective control and legitimacy;

• Broaden the acceptance of King IV by making it accessible and fit for implementation across a variety of sectors and organisational types;

• Reinforce corporate governance as a holistic and interrelated set of arrangements to be understood and implemented in an integrated manner;

• Encourage transparent and meaningful reporting to stakeholders;

• And present corporate governance as concerned with not only structure and process, but also with an ethical consciousness and conduct."

Although the principles of corporate governance in King IV do not represent a dramatic shift from those of King III, the following differences are noteworthy:

In line with its objective to make corporate governance "more accessible" and "fit for implementation", King IV has condensed the 75 principles contained in King III into 17 "user-friendly" principles (only one of which applies to institutional investors).

King IV has shifted from an "apply or explain" regime to an "apply and explain" regime where the application of the principles is assumed.

Organisations are encouraged to provide an explanation of the extent and manner of implementation of the governance principles.

King IV adopts an outcomes-based approach (in line with international trends) and represents a positive shift away from a rules-based mindset.

The intention is to ensure that the relevant governing body mindfully considers and applies the principles of corporate governance instead of merely adopting a "tick-box" approach.

In this regard, King IV also provides guidance on how to apply the principles and practices proportionately according to the size, resources and activities of a particular organisation.

With a view to encouraging the broader application of good corporate governance, King IV includes sector supplements which provide guidance on the application of the principles by municipalities, non-profit organisations, retirement funds, small and medium enterprises and state-owned entities.

Stakeholder inclusivity is emphasised and disclosure requirements (including those pertaining to executive and directors' remuneration) have been amplified.

Although only time will tell whether the objectives of King IV will be realised, the practical and robust approach to good corporate governance embodied in King IV should be welcomed.

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