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King III to King IV: Managing the Disclosure Gap

By Brian Mungofa CA(SA)

Introduction

Nkonki Incorporated is a Gold Sponsor of "King IV Report on Corporate Governance for South Africa 2016" also known as King IV. As an organisation we fully support the principles and leading practices of good corporate governance as recommended by King IV. King IV advocates an outcomes-based approach with specific emphasis on four (4) governance outcomes namely, ethical culture, good performance, effective control and legitimacy. The King IV objectives, as articulated in the report, are to:

- Promote corporate governance as integral to running an organisation and delivering governance outcomes such as ethical culture, good performance, effective control and legitimacy.
- Broaden the acceptance of the 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
- Present corporate governance as concerned with not only structure and process, but also with an ethical consciousness and conduct.



Nkonki has embarked on this thought leadership project to specifically assist organisations with the transition of the application and disclosure requirements from King III to King IV. Emphasis is placed on assisting organisations to identify changes in disclosure requirements from King III to King IV and therefore assist in implementing application and disclosure of King IV principles. This entire thought leadership is based on the content as provided in King III and King IV.

Legal status of King IV

King IV in its self is a set of voluntary principles and leading practices. It is important to note that some practices of good governance from King IV and its predecessors codes have been legislated in parallel with the voluntary King codes of governance. Where conflict between the legislation and King IV exists, the law prevails.

Listed organisations need to be very aware. Certain of the King IV practices have been legislated in the various listing requirements and therefore are mandatory to be adhered to. The disclosure of such adherence for listed organisations is also mandated in the applicable listing requirements.

The application regime of King IV is "apply and explain" moving away from the "apply or explain" regime of King III. This brings about the concept of proportionality. King IV advocates the application of the 16 principles (principle 17 is applicable to institutional investor organisations) as they stand. The practices as recommended in the Code are positioned at the level of leading practices and may therefore not be suitable and appropriate for all organisations. King IV strives to instill a qualitative approach in which recommended practices are implemented as opposed to a mindless quantitative approach. Practices are therefore meant to be scaled in accordance with the following proportionality considerations particular to an organisation;

- Size of turnover and workforce
- Resources
- Extent and complexity of activities including impact of the triple context in which it operates



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Disclosures on the application of King IV is effective in respect of financial years starting on or after 1 April 2017.

Where King IV disclosure should be made

King IV places onus on the governing body to determine where the King IV disclosures should be made making examples of the Integrated Report, Sustainability Report, Social and Ethics Committee report or other online or printed information of reports. Although recommendation is made that the governing body may choose to disclose its application of King IV in more than one of the above mentioned reports caution is made to avoid duplication by making use of cross-referencing. Despite where disclosure is made, updates are recommended to be done at least annually, be formally approved by the governing body and be publicly accessible, which can influence where the King IV application disclosures are made.

Listed Companies

JSE listed companies need, however, to take note of the legislated listing provisions requiring that specific corporate practices as recommended in King Code (to be applied to the latest applicable King Code) be implemented and the disclosure of compliance be made in the annual report or annual financial statements. According to the JSE listing requirements section 3.84 the effect of incorporating certain practices from the King Code in the Listings Requirements is to make their implementation mandatory, this is notwithstanding the fact that application of the corporate governance practices in the King Code is generally voluntary. Specific provision of this requirement can be found in JSE Listing requirements 3.84 and 8.63.

ZAR X listed companies need to endeavour to apply the King Code of governance to the appropriate degree. Such companies are required to comply with specific requirements concerning corporate governance and must disclose the extent of compliance therewith in their annual report. The specific requirements are articulated in Section 5 of the ZAR X listing requirements. It is noted that these specific requirement make inferences to King III.

4 Africa Exchange (4AX) listed companies are required to disclose its compliance or non-compliance with the King Code in its Listing Particulars with a minimum required disclosure articulated in section 6.20 of that listing requirements. There is no prescription made in which Listing Particulars document the disclosures should be made for these companies.

A2X Markets listed companies must clearly and comprehensively disclose in their annual financial statements how they applied the principles set out in the King Code as well as the extent of its non-compliance, including for what part of the reporting period there has been non-compliance as required by section 3.10 of that listing requirements.

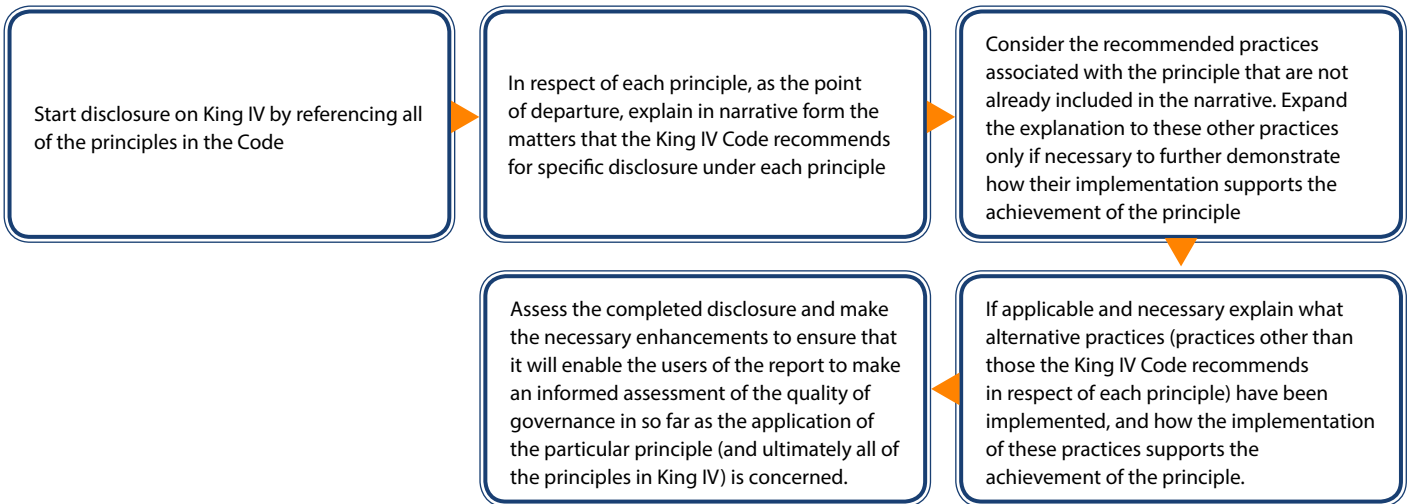
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Roadmap to disclosure on the application of King IV

King IV recommends the following roadmap to disclosure on the application of King IV



Disclosure on application of King IV

Within each principle of King IV specific disclosure recommendations are included as a guidance and a starting point on the disclosure of the application of a particular principle. The detail of information to be disclosed in the narrative should be guided by materiality, and should enable stakeholders to make an informed assessment of the organisations quality of governance. King IV is explicit in mentioning no need to disclose whether each practice has been implemented or not, as this is quantitative and does not necessarily add to the quality of disclosure. Disclosure is also not required against the four (4) outcomes as King IV indicates that it can be left to the user to draw inferences from the narrative provided.

While King IV is very deliberate in recommending that organisations

follow a holistic and proportionate approach to implementation of each of principle in King IV, Nkonki Incorporated is of the view that the use of a recommended disclosure practices checklist goes a long way in assisting organisations ensure that they manage disclosure gaps that may inadvertently be made on their journey of implementation and application of King IV from King III. Nkonki has summarised the recommended disclosure practices as recommended under the 17 principles of King IV with reference to where these can be located in King IV. Nkonki has also colour coded the recommended disclosure practices to assist organisations hone in on new disclosure recommendations in King IV that were not included in King III, these are coded in "red". King IV has elaborated or improved on some disclosures that were recommended in King III, these have been coded in "yellow". Some disclosure recommendations have essentially been carried forward from King III to King IV, these have been coded "green".



Information per King IV		
King IV Principle	King IV Reference	Recommended Disclosure Practices
1. The governing body should lead ethically and effectively.	Part 5.1 (1.ii)	Members of the governing body should avoid conflicts of interest. In cases where a conflict cannot be avoided, it should be disclosed to the governing body in full at the earliest opportunity, and then proactively managed as determined by the governing body and subject to legal provisions. ●
	Part 5.1 (3)	The arrangements by which the members of the governing body are being held to account for ethical and effective leadership should be disclosed. These arrangements would include, but are not limited to, codes of conduct and performance evaluations of the governing body and its members. ●
2. The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture	Part 5.1 (10)	The following should be disclosed in relation to organisational ethics:
	Part 5.1 (10.a)	An overview of the arrangements for governing and managing ethics. ●
	Part 5.1 (10.b)	Key areas of focus during the reporting period. ●
	Part 5.1 (10.c)	Measures taken to monitor organisational ethics and how the outcomes were addressed. ●
	Part 5.1 (10.d)	Planned areas of future focus. ●
3. The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen	Part 5.1 (15)	The following should be disclosed in relation to corporate citizenship:
	Part 5.1 (15.a)	An overview of the arrangements for governing and managing responsible corporate citizenship. ●
	Part 5.1 (15.b)	Key areas of focus during the reporting period. ●
	Part 5.1 (15.c)	Measures taken to monitor corporate citizenship and how the outcomes were addressed. ●
	Part 5.1 (15.d)	Planned areas of future focus. ●
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.	Part 5.2 after recommended practice 8	In respect of disclosure for strategy and performance King IV recommends that referral be made to the Reporting recommended practices listed under Principle 5 of the Code. ●
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	Part 5.2 (15)	The governing body should oversee that the following information is published on the organisation's website or on other platforms or through the media as is appropriate for access by stakeholders: ● a) Corporate governance disclosures b) Integrated reports c) Annual Financial Statements and other external reports.
6. The governing body should serve as the focal point and custodian of corporate governance in the organisation	Part 5.3 (5)	The following should be disclosed in relation to the primary role and responsibilities of the governing body:
	Part 5.3 (5.a)	The number of meetings held during the reporting period, and attendance at those meetings. ●
	Part 5.3 (5.b)	Whether the governing body is satisfied that it has fulfilled its responsibilities in accordance with its charter for the reporting period. ●
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.	Part 5.3 (30)	The following should be disclosed with regards to the composition of the governing body: ●
	Part 5.3 (30.a)	Whether the governing body is satisfied that its composition reflects the appropriate mix of knowledge, skills, experience, diversity and independence. ●
	Part 5.3 (30.b)	The targets set for gender and race representation in the membership of the governing body, and progress made against these targets. ●
	Part 5.3 (30.c)	The categorisation of each member as executive or non-executive. ●
	Part 5.3 (30.d)	The categorisation of each non-executive member as independent or not and, when a non-executive member of the governing body has been serving for longer than nine years, a summary of the views of the governing body on the independence of the member. ●
	Part 5.3 (30.e)	The qualifications and experience of members. ●
	Part 5.3 (30.f)	Each member's period of service on the governing body. ●
	Part 5.3 (30.g)	The age of each member. ●

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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.	Part 5.3 (30.h)	Other governing body and professional positions held by each member. ●
	Part 5.3 (30.i)	The reasons why any members of the governing body have been removed, resigned or retired. ●
	Part 5.3 (38)	The following should be disclosed in relation to the chair: ●
	Part 5.3 (38.a)	Whether the chair is considered to be independent. ●
	Part 5.3 (38.b)	Whether or not an independent non-executive member of the governing body has been appointed as the lead independent, and the role and responsibilities assigned to the position. ●
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.	Part 5.3 (50)	The following should be disclosed in relation to each committee of the governing body: ●
	Part 5.3 (50.a)	Its overall role and associated responsibilities and functions. ●
	Part 5.3 (50.b)	Its composition, including each member's qualifications and experience. ●
	Part 5.3 (50.c)	Any external advisers or invitees who regularly attend committee meetings. ●
	Part 5.3 (50.d)	Key areas of focus during the reporting period. ●
	Part 5.3 (50.e)	The number of meetings held during the reporting period and attendance at those meetings. ●
	Part 5.3 (50.f)	Whether the committee is satisfied that it has fulfilled its responsibilities in accordance with its terms of reference for the reporting period. ●
	Part 5.3 (59)	In addition to required statutory disclosure and the disclosures recommended in paragraph 50, the following should also be disclosed in relation to the audit committee: ●
	Part 5.3 (59.a)	A statement as to whether the audit committee is satisfied that the external auditor is independent of the organisation. The statement should specifically address: ●
	Part 5.3 (59.a.i)	The policy and controls that address the provision of non-audit services by the external auditor, and the nature and extent of such services rendered during the financial year; ●
	Part 5.3 (59.a.ii)	The tenure of the external audit firm and, in the event of the firm having been involved in a merger or acquisition, including the tenure of the predecessor firm; ●
	Part 5.3 (59.a.iii)	The rotation of the designated external audit partner; and ●
	Part 5.3 (59.a.iv)	Significant changes in the management of the organisation during the external audit firm's tenure which may mitigate the attendant risk of familiarity between the external auditor and management. ●
	Part 5.3 (59.b)	Significant matters that the audit committee has considered in relation to the annual financial statements, and how these were addressed by the committee. ●
	Part 5.3 (59.c)	The audit committee's views on the quality of the external audit, with reference to audit quality indicators such as those that may be included in inspection reports issued by external audit regulators. ●
	Part 5.3 (59.d)	The audit committee's views on the effectiveness of the chief audit executive and the arrangements for internal audit. ●
	Part 5.3 (59.e)	The audit committee's views on the effectiveness of the design and implementation of internal financial controls, and on the nature and extent of any significant weaknesses in the design, implementation or execution of internal financial controls that resulted in material financial loss, fraud, corruption or error. ●
Part 5.3 (59.f)	The audit committee's views on the effectiveness of the CFO and the finance function. ●	
Part 5.3 (59.g)	The arrangements in place for combined assurance and the committee's views on its effectiveness. ●	
9. 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.	Part 5.3 (75)	The following should be disclosed in relation to the evaluation of the performance of the governing body: ●
	Part 5.3 (75.a)	A description of the performance evaluations undertaken during the reporting period, including their scope, whether they were formal or informal, and whether they were externally facilitated or not. ●
	Part 5.3 (75.b)	An overview of the evaluation results and remedial actions taken. ●
	Part 5.3 (75.c)	Whether the governing body is satisfied that the evaluation process is improving its performance and effectiveness. ●

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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.	Part 5.3 (83)	The following should be disclosed in relation to the CEO:
	Part 5.3 (83.a)	The notice period stipulated in the CEO's employment contract and the contractual conditions related to termination. ●
	Part 5.3 (83.b)	Other professional commitments of the CEO, including membership of governing bodies outside the organisation. ●
	Part 5.3 (83.c)	Whether succession planning is in place for the CEO position. ●
	Part 5.3 (89)	A statement by the governing body on whether it is satisfied that the delegation of authority framework contributes to role clarity and the effective exercise of authority and responsibilities should be disclosed. ●
	Part 5.3 (99)	The arrangements in place for accessing professional corporate governance services and a statement on whether the governing body believes those arrangements are effective should be disclosed. ●
11. The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.	Part 5.4 (8)	The nature and extent of the risks and opportunities the organisation is willing to take should be disclosed without compromising sensitive information. ●
	Part 5.4 (9)	In addition, the following should be disclosed in relation to risk:
	Part 5.4 (9.a)	An overview of the arrangements for governing and managing risk. ●
	Part 5.4 (9.b)	Key areas of focus during the reporting period, including objectives, the key risks that the organisation faces, as well as undue, unexpected or unusual risks and risks taken outside of risk tolerance levels. ●
	Part 5.4 (9.c)	Actions taken to monitor the effectiveness of risk management and how the outcomes were addressed. ●
	Part 5.4 (9.d)	Planned areas of future focus. ●
12. The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives.	Part 5.4 (17)	The following should be disclosed in relation to technology and information:
	Part 5.4 (17.a)	An overview of the arrangements for governing and managing technology and information. ●
	Part 5.4 (17.b)	Key areas of focus during the reporting period, including objectives, significant changes in policy, significant acquisitions and remedial actions taken as a result of major incidents. ●
	Part 5.4 (17.c)	Actions taken to monitor the effectiveness of technology and information management and how the outcomes were addressed. ●
	Part 5.4 (17.d)	Planned areas of future focus. ●
13. The governing body should govern compliance with applicable laws and adopted, non-binding rules	Part 5.4 (23)	The following should be disclosed in relation to compliance:
	Part 5.4 (23.a)	An overview of the arrangements for governing and managing compliance. ●
	Part 5.4 (23.b)	Key areas of focus during the reporting period. ●
	Part 5.4 (23.c)	Actions taken to monitor the effectiveness of compliance management and how the outcomes were addressed. ●
	Part 5.4 (23.d)	Planned areas of future focus. ●
	Part 5.4 (24)	Material or repeated regulatory penalties, sanctions or fines for contraventions of, or non-compliance with, statutory obligations, whether imposed on the organisation or on members of the governing body or officers should be disclosed. ●
	Part 5.4 (25)	Details of monitoring and compliance inspections by environmental regulators, findings of non-compliance with environmental laws, or criminal sanctions and prosecutions for such non-compliance should be disclosed. ●
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.	Part 5.4 (32)	The governing body should ensure that remuneration is disclosed by means of a remuneration report in three parts: ●
	Part 5.4 (32.a)	A background statement. ●
	Part 5.4 (32.b)	An overview of the main provisions of the remuneration policy. ●
	Part 5.4 (32.c)	An implementation report which contains details of all remuneration awarded to individual members of the governing body and executive management during the reporting period. ●
	Part 5.4 (35)	The implementation report, which includes the remuneration disclosure in terms of the Companies Act, should reflect the following: ●

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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.	Part 5.4 (35.a)	The remuneration of each member of executive management, which should include in separate tables: ●
	Part 5.4 (35.a.i)	a single, total figure of remuneration, received and receivable for the reporting period, and all the remuneration elements that it comprises, each disclosed at fair value; ●
	Part 5.4 (35.a.ii)	The details of all awards made under variable remuneration incentive schemes in the current and prior years that have not yet vested, including the number of awards; the values at date of grant; their award, vesting and expiry dates (where applicable); and the fair value at the end of the reporting period; and ●
	Part 5.4 (35.a.iii)	The cash value of all awards made under variable remuneration incentive schemes that were settled during the reporting period. ●
	Part 5.4 (35.b)	An account of the performance measures used and the relative weighting of each, as a result of which awards under variable remuneration incentive schemes have been made, including: the targets set for the performance measures and the corresponding value of the award opportunity; and for each performance measure, how the organisation and executive managers, individually, performed against the set targets ●
	Part 5.4 (35.c)	Separate disclosure of, and reasons for, any payments made on termination of employment or office. ●
	Part 5.4 (35.d)	A statement regarding compliance with, and any deviations from, the remuneration policy ●
	Part 5.4 (39)	In the event that either the remuneration policy or the implementation report, or both were voted against by 25% or more of the voting rights exercised, the following should be disclosed in the background statement of the remuneration report succeeding the voting: ●
	Part 5.4 (39.a)	With whom the company engaged, and the manner and form of engagement to ascertain the reasons for dissenting votes; and ●
	Part 5.4 (39.b)	The nature of steps taken to address legitimate and reasonable objections and concerns. ●
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.	Part 5.4 (47)	External reports should disclose information about the type of assurance process applied to each report, in addition to the independent, external audit opinions provided in terms of legal requirements. This information should include: ●
	Part 5.4 (47.a)	A brief description of the nature, scope and extent of the assurance functions, services and processes underlying the preparation and presentation of the report; and ●
	Part 5.4 (47.b)	A statement by the governing body on the integrity of the report and the basis for this statement, with reference to the assurance applied ●
16. In 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 interest of the organisation over time.	Part 5.5 (5)	The following should be disclosed in relation to stakeholder relationships: ●
	Part 5.5 (5.a)	An overview of the arrangements for governing and managing stakeholder relationships. ●
	Part 5.5 (5.b)	Key areas of focus during the reporting period. ●
	Part 5.5 (5.c)	Actions taken to monitor the effectiveness of stakeholder management and how the outcomes were addressed. ●
	Part 5.5 (5.d)	Future areas of focus. ●
	Part 5.5 (18)	The holding company should disclose an overview of the group governance framework that is implemented across the group. ●
Part 5.5 (19)	The subsidiary company should disclose what responsibilities it has delegated to board committees of the holding company and the extent to which it has adopted the policies and procedures of the holding company. ●	
17. The governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests.	Part 5.5 (25)	The responsible investment code adopted by the institutional investor and the application of its principles and practices should be disclosed. ●

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