

Long live the King

 By [Nicci Botha](#)

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It seems ironic, for a country with such a well-established code of good corporate governance as the King codes, how many companies - including an august institution such as audit firm, KPMG - are having their ethics and integrity questioned as the Gupta email saga unfolds.



Mervyn King

It undoubtedly raises the questions: How many corporates just use King to pretty up their annual reports, or pay lip service to JSE criteria if they are listed? And does King IV, released late last year, have more teeth than its predecessors?

Law firm, Cliffe Dekker Hofmeyr, hosted a seminar where the changes to the code were unpacked.

JSE and the high court

Although the King reports are not legally binding, entities with a primary listing on the JSE need to comply with some of the principles in accordance with the exchange's reporting criteria. However, the high court has considered King to be binding to state-owned enterprises (SABC vs Mpofu 2009), and where it relates to the fiduciary duties of directors (Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company 2006).

Shortly after the launch of King IV on 1 November 2016, the JSE published its proposed amendments to align with the new provisions.

Structurally different

From a structural and format perspective, King IV is significantly different to King III. Much has been made of the switch to "apply and explain" as opposed to "apply or explain" in King III.

However, in the end, 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 only applies to institutional investors),

The 17 principles are general and high level, with the idea being that they can be applied across a broad range of organisations, regardless of their nature or size. It is the granular practices which are implemented in applying the principles, which will naturally differ.

In addition, there are sector-specific supplements related to state-owned entities, municipalities, retirement funds, non-profit organisations and small/medium enterprises, which lay out the nuances and modifications that need to be borne in mind when applying the principles to these kind of enterprises.

ABOUT NICCI BOTHA

Nicci Botha has been wordsmithing for more than 20 years, covering just about every subject under the sun and then some. She's strung together words on sustainable development, maritime matters, mining, marketing, medical, lifestyle... and that elixir of life - chocolate. Nicci has worked for local and international media houses including Primedia, Caxton, Lloyd's and Reuters. Her new passion is digital media.

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