



**ICGN**

International Corporate Governance Network

15 May 2016

Institute of Directors in Southern Africa

RE: ICGN response to the Draft King IV Report on Corporate Governance for South Africa 2016

Dear Madam or Sir,

The International Corporate Governance Network (ICGN) is an investor-led organisation of governance professionals with members including institutional investors responsible for assets under management in excess of US\$ 26 trillion.<sup>1</sup> Our mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies worldwide. As such we, as an organization of members with significant investments in South African companies, welcome the opportunity to share our comments in respect to further improving the leadership and corporate governance of listed companies in South Africa and ultimately, society at large.

ICGN recognises the progressive contributions to corporate governance best practices that have come from the four King Reports and/or Codes on Governance in the past several years, as guided by the King Committee. ICGN's own South-African-based members have been active in their review and commentary of each Report and/or Code that has been issued.

In this response, ICGN would like to express its appreciation for the important societal perspective presented in the draft Report. This emphasis builds upon the strong tradition of the earlier King codes, and has a clear relevance in a South African context. We also believe that this King IV philosophy has resonance in many markets around the world and complements in many ways the global perspective in ICGN's own Global Governance Principles<sup>2</sup>.

ICGN wholeheartedly agrees with a quote from the Report that states:

“Leadership and corporate governance go hand in hand and neither exists in a vacuum. Both need to be relevant to the situation in which

<sup>1</sup> For more information about ICGN, please visit <https://www.icgn.org>

<sup>2</sup> See ICGN Global Governance Principles: [http://icgn.flpbks.com/icgn\\_global\\_governance\\_principles/#p=1](http://icgn.flpbks.com/icgn_global_governance_principles/#p=1)

they are applied... King IV took place in the context of organizations having to contend with an increasingly dynamic and demanding external environment. In this environment, good corporate governance is essential if an organization is to achieve prosperity for itself and the broader society.”

The underpinnings of the King IV report build from philosophies that the ICGN has long supported. These include: ethical and effective leadership; independence of directors; organizations being an integral part of society; principles of good corporate citizenship; sustainable development; stakeholder inclusivity and responsiveness; integrated thinking; and integrated annual reports.

The King IV Report builds upon and clarifies the need for governing bodies to appropriately consider the external environment in which they operate and engage with their external stakeholders. ICGN shares this view that a fully developed strategy includes the perspectives of investors, professional advisors, the standard-setting community and other relevant parties, including stakeholders.

It was helpful to understand how the King IV Report uses the word, “stakeholders,” to determine whether “shareholders” are or are not included within the definition. As defined within Part 6, the Glossary of Terms, “stakeholders” include those who are connected to the organization by contract or otherwise and who are affected by the outcomes of business activities. And we noted that there are specific sections within the King IV Report in which shareholders are referred to specifically.

Our more specific comments on the Report relate to the following topics:

- Stakeholder and Shareholder Primacy
- Ethics and Integrated Response
- Integrated Reporting
- Institutional Investors
- Minority Ownership
- Other Comments

### **Stakeholder and Shareholder Primacy**

The Report states that governing bodies need to take account of and balance the legitimate and reasonable needs, interests and expectations of an organization’s key stakeholders in its decision-making process. ICGN agrees

that leadership does “start with each person charged with governance duties, but, in addition, the governing body as a collective must set the ethical example and tone.” The governing body, which in public companies is the board of directors, is the “tone at the top,” and as such sets the organization’s culture, its value proposition, and the relationships with shareowners, stakeholders and other external parties, by balancing the interests, needs and expectations.

The Report also states that shareholders would not have predetermined precedence over other stakeholders, and we note that King IV continues the focus on the “stakeholder inclusive” model of governance, as an alternative to a shareholder primacy model. ICGN recognizes that this raises important issues with regard to company purpose and how this relates to the company’s “members” as shareholders and providers of risk capital. In ICGN’s view the company and its board are accountable to its shareholders and have responsibility to its key stakeholders-- all in promotion of the company’s own long-term success and value creation as a commercial entity.

In this context we are not of the view that a stakeholder model needs to be positioned as an alternative or tradeoff to the shareholder model. ICGN would offer another perspective. From the perspective of promoting a company’s long term sustainability, it is important to consider investors and stakeholders in a symbiotic way- both are necessary to support each other and the governing body. It could be most relevant to focus on how the relationships that stakeholders and investors have with governing bodies could put them in alignment with one another and create “win-win” situations that support long-term value creation. To that end, ICGN believes that there should be inclusiveness with respect to the roles that governing bodies should have with stakeholders *and* investors.

However, the interests of any shareholder or any other stakeholder may be afforded precedence based on what is believed by the board to serve the best interests of the company; these interests should be interpreted with in the parameters of the company as a sustainable enterprise and the company as a responsible corporate citizen. This approach gives effect to the notion of redefining success in terms of lasting positive effects for all stakeholders.

This is in part reflected in ICGN’s Global Governance Principles, Responsibilities, Section 1.3, stating that the “board of directors should make available communication channels for dialogue on governance matters with investors *and stakeholders* as appropriate” (emphasis added).

## **Ethics and Integrated Response**

ICGN agrees with the Draft Report that ethics and ethical practices are the foundation of good business practices. External stakeholders, particularly those that are not investors, can attempt to influence a governing body to address their own unique perspectives and issues. The board may be beholden to the society that supports its business, its products and output, but it must strive over the long term to balance the divergent demands of its stakeholders, including the need to cover the cost of capital for its shareholders.

We agree that companies should be good corporate citizens. They operate within a societal context, with or without a global footprint, through their investment of capital, the payments of taxes and wages to workers, and any philanthropic activity that benefits a local economy. There is interdependency between companies and society. Inasmuch as a corporation depends on communities and individuals, so, too, do communities and individuals depend on companies to provide jobs, taxable income and stimulate economic growth.

Investors, particularly institutional investors, seek long-term value creation in the companies in which they invest. It does no good when companies compromise the ability of future generations to meet their own short-term needs. We agree with the draft Report that companies should be looking for successful outcomes for the business so that society can flourish. The ICGN Global Governance Principles, Corporate Culture 4.1 state that “[H]igh standards of business ethics should be adopted through codes of conduct/ethics (or similar instruments) and oversee a culture of integrity, notwithstanding differing ethical norms and legal standards in various countries. This should permeate all aspects of the company’s operations, ensuring that its vision, mission, business model and objectives are ethically sound and demonstrative of its values.”

The report references a need for an “integrated response” by governing bodies that requires measurement in the environmental, social and governance arenas- with an understanding of the risks and opportunities when defining strategic objectives. The dimensions of the economic, social and environmental perspectives are intertwined. ICGN would agree. Under the Global Governance Principles Section 1.2, the “board of directors is accountable to investors and relevant stakeholders for protecting and generating sustainable value over the long-term” and should b) “monitor the effectiveness of the company’s governance, environmental impacts, and social practices, and adhere to applicable laws.”

In this vein, ICGN published a report earlier this year on culture, ethics and risk which explores how “red flags” of cultural risk may be identified by investors and other stakeholders<sup>3</sup>. ICGN believes that better reporting on cultural factors could establish a positive atmosphere for more engagement between stakeholders and a better dialogue between the management, the board and shareholders.

## **Integrated Reporting**

The Report requires that governing bodies look to the future and show how the organization has positively or negatively affected the economy, society and the environment by issuing an integrated annual report. It also requires that financial and sustainability reports are integrated rather than separately disclosed in reports at different times in the year. The report should show how the organization creates value. ICGN supports this view, and believes that integrated thinking and reporting are of fundamental importance—particularly with regard to ensuring that a company is adequately aware of and reporting about its interactions with key stakeholders and society more broadly.

In the ICGN Global Governance Principles, Section 7.1 it is stated that a ‘balanced and understandable assessment of the company’s position and prospects should be presented in the annual report and accounts in order for investors to be able to assess the company’s performance, business model, strategy and long-term prospects.’

Under Section 7.5, the Principles call for an ‘integrated report that puts historical performance into context should be published and portray the risks, opportunities and prospects for the company in the future, helping investors and stakeholders understand a company’s strategic objectives and its progress towards meeting them’ and should include environmental, social and governance related information that is material to the company’s strategy and performance. Integrated reporting is intended to reduce silo-mentalities and has been a hallmark of ICGN’s effort to encourage transparent reporting of financial and ESG information. We also refer you to ICGN’s Integrated Business Reporting and Corporate Risk Oversight Guidance<sup>4</sup>.

## **Institutional Investors**

The draft Report mentions that institutional investors and shareholders should hold the board accountable on the application of voluntary codes of governance. The King IV Report requires that the governing body of an

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<sup>3</sup> See <https://www.icgn.org/sites/default/files/redflagsfinal.pdf>

<sup>4</sup> See: <http://icgn.flpbks.com/icgn-integrated-business-reporting/#p=1>

institutional investor ensure that the organization responsibly manages its rights, obligations, legitimate and reasonable needs, interests and expectations as holders of beneficial interest in the securities of a company. Everyone in the investment chain should be aware of its duties.

ICGN understands that institutional investors have a responsibility to their own membership, as they fulfill the responsibility of benefit payments to their members at least in part by the investment returns they receive. The institutional investors that belong to ICGN are able to access several key documents relating to the roles and responsibilities of shareholders, from its Institutional Investors Responsibilities Guidance and Global Stewardship Principles, as well as the Global Governance Principles. While we understand CRISA's focus in responsible investment in South Africa is on the asset owner, our own guidance is directed to both asset owners and asset managers—the latter often undertake stewardship responsibilities on behalf of their asset owner clients. They both play critical, but often different, roles in the stewardship process. In this way, ICGN encourages its members—both asset owners and asset managers-- to “walk the walk” that is strongly encouraged for governing bodies and boards of directors. Institutional investors may be required to take different approaches depending on their jurisdictions' laws and rules.

ICGN has encouraged institutional investors to disclose proxy voting guidelines, voting activity and engagement protocols, to assist governing bodies in their understanding the ownership responsibilities of institutional investors. Some investors have more of an activist approach while others practice “quiet diplomacy.” Such a requirement may be challenging for some investors and ICGN would ask that the King Committee be aware of global differences for institutional investors. See the Institutional Investor Responsibilities and other ICGN guidance.<sup>5</sup>

### **Shareholder relationships**

In Part 5.10 we note the language addressing the board's link to relationships with shareholders. In our view the language in that sentence is not entirely clear with regard to what the board's responsibilities are with regard to shareholder relationships. In particular we believe it would be good to encourage board members, as well, as company executive managers, to engage with its investors to gauge views on a range of matters relating to strategy, financial performance, corporate governance and corporate citizenship. ICGN believes this interaction is of fundamental importance to the

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<sup>5</sup> See [http://icgn.flpbks.com/icgn\\_inst\\_investor\\_respons/](http://icgn.flpbks.com/icgn_inst_investor_respons/)

success and effectiveness of stewardship codes, as discussed in the prior section.

ICGN agrees with the basic point in Part 5.14 that the board should oversee that there is equitable treatment of all holders of the same class of shares and that the interests of minority or foreign shareholders are adequately protected. However the way this is expressed suggests the potential for multiple share classes. It is ICGN's view that boards should not create alternative classes of stock that give special or greater voting rights to certain shareholders at the expense of other shareholders. In our view differential ownership rights and dual class share structures should be avoided, as we believe such structures work against good corporate governance and accountability to minority shareholders by entrenching the interests of controlling shareholders.

ICGN believes that all shareholders are the ultimate beneficiaries of strong and ethical leadership by boards of directors.

### **Other Comments**

Overall, the ICGN applauds the King Committee for the comprehensive and detailed approach to ease interpretation and access to the Report's principles. We agree that corporate governance activities should not become a "mere compliance burden."

ICGN did not see a section on whistleblower protection, an important element in providing employees, and ultimately, investors and stakeholders, with an avenue to report violations or breaches of a company's code of ethics or local laws. The Global Governance Principles, under Corporate Culture, 4.3 contains a whistleblowing provision that is an effective way to address the issue. We appreciate there are existing statutory provisions for whistleblowing in South Africa, but it is our understanding from local contacts that the mechanisms are poorly defined and often weakly enforced. It might therefore be useful for King IV to consider whistleblowing, both to offer practical advice and encouragement to make this more effective for companies and employees.

The ICGN appreciates the comprehensive list of committees and their intended responsibilities, the delegation to management and recommended practices for senior management positions. We are also supportive of the themes of long-term value creation, creating a culture of excellence and ethical leadership, the establishment of strong internal risk management and control systems and a robust internal audit function, the emphasis on succession planning by the board for itself and senior management, and the ways to strengthen stakeholder relationships.

The adoption by companies of best practices for good corporate governance demands that companies move forward and report their progress. We recognize that there is no “one size fits all” approach that works for every company. The “apply and explain” standard that the King IV Report requires should give governing bodies, boards and supervisory boards the opportunity to adapt these governance practices to the specific characteristics of their own business and its needs. ICGN believes that there should be clear explanations when a company is not in compliance with any corporate governance code.

We congratulate the King Committee on the release of another major report that will substantially propel the dialogue forward on the engagement of governing bodies, investors and their material stakeholders, with regard to social, environmental and governance best practices.

Thank you for the opportunity to provide comments on the King IV draft report. As stated in the report, “Governance is indispensable for growth and prosperity. Every organization that adopts good corporate governance contributes to sustainable value creation in South Africa, Africa and ultimately, globally.” ICGN fully supports this point.

Should you wish to discuss our comments further, please contact George Dallas, ICGN’s Policy Director, by email at [george.dallas@icgn.org](mailto:george.dallas@icgn.org).

Yours faithfully,

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Chairman, ICGN Board

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