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THE SOUTH AFRICAN BOARDROOM

A practical guide to directors, decisions and governance under King V

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Editorial draft

Legal position checked to 06 August 2026

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Publication note

This manuscript is intended as a general guide to South African corporate governance and company law. It does not constitute legal advice and should not be relied on as a substitute for advice on a company's particular circumstances. The legal position, regulatory requirements and governance standards should be confirmed before publication and before any action is taken.

Introduction

Boards carry authority that belongs to the company. They approve strategy, allocate capital, appoint executives and oversee risks that may shape the business for years. The quality of those decisions depends on more than the experience of the people seated around the table. It depends on a governance framework that gives directors clear authority, reliable information and a disciplined process through which judgement can be exercised.

South African boards now operate within a changed governance environment. King V replaced King IV and applies to financial years beginning on or after 1 January 2026. Amendments to the Companies Act have also altered important areas of board accountability, committee composition, remuneration reporting and the time periods within which director conduct may be challenged.

These developments do not turn governance into a compliance exercise. They place greater emphasis on the way a board reaches decisions, explains its approach and demonstrates that authority has been exercised responsibly. A board should know which powers belong to it, which decisions require shareholder approval and which duties remain personal to each director. It should also be able to show that material decisions were supported by suitable information and an accurate corporate record.

This guide brings the legal framework and the practical work of the boardroom together. It considers the composition of the board, the duties attached to office, the protection offered by the business judgement rule and the processes through which decisions are made and recorded. It also addresses removal, delinquency, personal liability and the specialist oversight undertaken by board committees.

The aim is not to prescribe one governance structure for every company. An owner-managed private company will not need the same machinery as a listed group or state-owned company. The board should nevertheless be able to explain why its arrangements are suited to the organisation and capable of supporting responsible authority.

1. The Governance Framework

Every board decision must be grounded in authority. The Companies Act, the company's Memorandum of Incorporation and any sector-specific law or listing requirement establish the powers available to the board and the approvals required before the company may proceed. King V adds a principles-based governance standard that influences how those powers should be exercised and explained.

Board authority under the Companies Act

Section 66 of the Companies Act places the management of a company's business and affairs under the direction of its board. Subject to the Act and the Memorandum of Incorporation, the board may exercise the company's powers and perform its functions. This creates a broad mandate, but not an unlimited one.

Shareholders retain powers that the Act or the Memorandum of Incorporation reserves for them. These may include electing and removing directors, amending the Memorandum of Incorporation and approving specified transactions. Ownership does not give shareholders an automatic right to manage the company's affairs. That responsibility remains with the board.

The distinction becomes important in companies with a controlling shareholder, investor-appointed directors or a detailed shareholder agreement. A director may owe contractual or commercial obligations outside the boardroom, but the powers of office must still be exercised on behalf of the company.

The Memorandum of Incorporation

The Memorandum of Incorporation adapts the statutory framework to the company. It may regulate board composition, appointment rights, voting thresholds, shareholder protections and the allocation of authority. It also provides the reference point against which company rules and shareholder agreements must be tested.

The document should not be treated as an incorporation record that can be forgotten once the company begins trading. A business may admit new investors, establish committees or create different classes of shares while leaving its constitutional arrangements unchanged. The resulting gaps often emerge only when a transaction or dispute requires the company to establish who held authority.

Boards should work from the company's actual Memorandum of Incorporation rather than from assumptions about standard practice. The document should be reviewed after significant changes in ownership, funding, strategy or regulation.

King V

King V was released on 31 October 2025 and replaced King IV in its entirety. It applies to financial years beginning on or after 1 January 2026. It remains a voluntary, principles-based code rather than legislation, although listed and regulated organisations may face additional requirements connected to its use.

The Code retains an outcomes-based approach and reduces the number of principles from the earlier code. Its emphasis falls on ethical and effective leadership, responsible corporate citizenship, strategy, performance, reporting and the governance of risk, technology and information.

Proportionality remains important. A smaller company can apply the governance principles without reproducing the structures of a listed group. The board should still be able to explain how its arrangements support the intended governance outcomes.

Governance disclosure

King V is accompanied by a dedicated disclosure framework. An organisation that claims application of the Code should describe the practices through which it has applied the principles during the reporting period. A standard statement that the company follows King V will provide little insight into its actual governance.

The disclosure should correspond with the company's board charter, committee mandates, delegation framework and published reports. Where a recommended practice has not been followed, the explanation should identify the reason and any alternative practice used to support the relevant principle.

Boards should approve governance disclosure through a considered internal process. The company secretary, legal, risk, compliance and assurance functions may contribute, but responsibility for the account given in the company's name remains with the board.

A framework suited to the company

The legal and governance framework should operate as one system. The Companies Act establishes the statutory base. The Memorandum of Incorporation reflects the company's chosen structure. Sector legislation and listing requirements add obligations linked to its activities or status. King V provides a wider standard for responsible leadership and accountability.

A board should be able to trace the authority for every material decision, identify the approvals required and confirm that its charters and delegations remain current. Governance then becomes part of the company's decision-making capacity rather than a separate layer of administration.

2. Board Composition and Governance Support

Board authority is exercised collectively, but its quality depends on the people appointed and the way their roles are understood. A board needs knowledge of the business, financial and regulatory competence, enough independence to test management and sufficient continuity to oversee the consequences of its decisions.

A board assembled for its purpose

The Companies Act prescribes minimum numbers of directors for different forms of company. The Memorandum of Incorporation may require a larger board and create different routes through which directors take office. Shareholders must retain the statutory right to elect the required proportion of directors in a profit company other than a state-owned company.

Compliance with the minimum does not establish that the board is suitably composed. The company should identify the skills and perspectives required by its strategy, regulation and risk profile. Appointments should address those needs rather than preserve a familiar structure.

King V expects the governing body to have an appropriate balance of knowledge, experience, diversity and independence. The board should be able to explain its composition and the way in which succession planning will preserve the capabilities required over time.

Executive and non-executive directors

Executive directors combine board office with a management role. Their detailed knowledge of operations assists the board, although it also means that they are closely involved in developing and implementing the proposals under consideration.

Non-executive directors are not responsible for the daily management of the company. They contribute through board and committee work, bringing experience and a degree of distance from management. That distance does not create a lower standard. A non-executive director must prepare properly, understand the company's affairs and request further information where the material presented is not sufficient.

A suitable balance allows operational knowledge to be tested through independent scrutiny. The structure should prevent one individual or aligned group from exercising authority without effective challenge.

Independence

Every director must exercise independent judgement, irrespective of whether they are formally classified as independent. The separate designation of an independent non-executive director considers whether a relationship or interest could reasonably influence judgement or create the appearance of bias.

Independence should be assessed by substance rather than title. A material shareholding, recent executive role, longstanding commercial relationship or close association with a controlling shareholder may affect the conclusion. The assessment should be revisited as relationships and tenure change.

Formal independence is not a substitute for competence. A board needs directors who understand the company and remain willing to question established thinking.

Nominee directors

An investor may negotiate the right to nominate a director. The appointment gives the nominating party representation at board level, but it does not convert the director into an agent who may disregard the company's interests.

A nominee director may consider the knowledge and concerns of the shareholder that nominated them. The director must still reach an independent conclusion in the company's best interests. Instructions from the nominator cannot replace the judgement required by the office.

Information rights require particular care. Appointment by a shareholder does not give the director unrestricted authority to pass confidential board information to that shareholder. The Memorandum of Incorporation, shareholder agreement and board policies should distinguish the information that may be shared from information held only in the director's board capacity.

Alternate directors and prescribed officers

An alternate director who participates in board affairs assumes the duties and potential liabilities attached to office. The appointment should be authorised by the Memorandum of Incorporation and properly recorded. It should not be treated as an informal arrangement for sending a substitute to a meeting.

Certain senior executives may be prescribed officers even though they have not been appointed to the board. The classification depends on the functions performed and the degree of general executive control exercised over the company or a substantial part of its activities. Important conduct and liability provisions extend to them.

Boards should identify prescribed officers and ensure that they understand the responsibilities attached to their positions. Job titles alone do not determine the legal position.

The company secretary

The company secretary holds a distinct governance office. Public companies and state-owned companies must appoint one, while other companies may do so voluntarily or because their Memorandum of Incorporation requires it.

The statutory duties include advising directors on their powers and responsibilities, alerting them to relevant law, reporting failures to comply with the Act or constitutional documents and supporting the proper recording of board, committee and shareholder meetings.

The office should not be reduced to the preparation of packs and minutes. A capable company secretary identifies procedural defects before decisions are taken, maintains the governance calendar and helps the board keep its charters, delegations and disclosures aligned.

The reporting relationship should allow candid advice. The company secretary works closely with the chair and management, but should have direct access to the board and enough standing to raise a concern about the conduct of any person involved in the process.

Private companies can also benefit from professional company secretarial support, particularly where ownership is divided, the company operates across jurisdictions or a significant transaction is approaching. The arrangement may be internal or outsourced, provided that the role has access to suitable information and authority.

3. Directors' Duties and Business Judgement

Appointment to a board gives a director access to the company's authority and information. It also imposes duties that apply whenever those powers are exercised. The duties belong to each director individually even though the board usually acts collectively.

Good faith, proper purpose and the company's interests

Section 76 requires directors to act in good faith, for a proper purpose and in the best interests of the company. A power cannot be used to secure an improper advantage, cause harm to the company or pursue an undisclosed objective.

Proper purpose asks why the power was exercised. Directors may believe that a decision will benefit the company and still misuse a power where the true purpose falls outside the reason for which it was granted. An issue of shares may raise this concern if its principal purpose is to dilute a shareholder or preserve control rather than meet a genuine capital need.

The duty is owed to the company. Employees, customers, lenders, regulators and communities may nevertheless be central to the assessment of its long-term interests. Their position affects the company's ability to operate, meet its obligations and create sustainable value.

The distinction is important. Stakeholder interests form part of responsible judgement where they affect the company. They do not authorise a director to substitute another party's interests for those of the company.

Independent judgement

A director may listen to management, shareholders, advisers and fellow board members. Those views may inform the decision, but they cannot replace the director's own assessment. Consensus within the board does not remove personal responsibility.

Independent judgement does not require routine opposition. It requires proper engagement and a willingness to challenge information, assumptions or authority where the proposal appears incomplete.

A director who remains opposed to a proposal should vote against it and ensure that the dissent is recorded. An abstention may not provide protection where the Act imposes consequences on a director who participated in a decision and failed to vote against conduct known to be unlawful.

Conflicts and personal financial interests

Directors may hold shares, serve on other boards or have relationships connected to a proposed transaction. The existence of an interest does not always establish misconduct. The legal concern lies in disclosure and the effect of the interest on participation.

Section 75 requires a director with a personal financial interest, or a relevant interest of a related person, to disclose the interest and its general nature before the board considers the matter. The director must then leave the meeting and may not participate in deliberation or voting, subject to the detailed statutory rules.

Standing declarations assist the company, but they do not replace consideration of the particular transaction. The minutes should record the disclosure, departure and any later return to the meeting.

Conflicts can extend beyond an immediate financial benefit. Confidentiality obligations, close relationships or competing appointments may affect objectivity even where the technical definition of a personal financial interest is not met. A board policy should address these broader circumstances.

Care, skill and diligence

The statutory standard combines an objective assessment with the director's own knowledge, skill and experience. A director must meet the level reasonably expected from someone performing the same functions. Greater expertise may increase what can reasonably be expected.

The law does not require every director to be an expert in every subject. It does require preparation, an understanding of the company and recognition of the limits of personal knowledge. Further information or specialist advice should be obtained where the board material does not support an informed conclusion.

Advice assists the process but does not transfer the decision. A legal opinion may establish that the company has authority to proceed without deciding whether the proposal is commercially sound. A financial review may confirm the model without deciding whether its assumptions are acceptable.

The business judgement rule

The business judgement rule recognises that directors make decisions under uncertainty. A sound decision may still produce a poor commercial outcome. The law does not require directors to guarantee success.

The protection applies where the director took reasonably diligent steps to become informed, had no undisclosed material personal financial interest and held an actual and rational belief that the decision served the company's best interests.

The rule does not validate an improper purpose, a decision outside the board's authority or conduct that contravenes another provision of the Act. It protects an informed exercise of judgement, not optimism detached from evidence.

Information and reliance

The appropriate level of investigation depends on the decision. A routine approval will not demand the same process as an acquisition, restructuring or substantial distribution. The value involved, effect on the company and degree of uncertainty should shape the information placed before the board.

Directors may rely on employees, professionals and committees where the reliance is reasonable and the subject falls within their competence. Warning signs, inconsistent information or weak assumptions require further enquiry.

Delegation does not remove board accountability. A committee may undertake detailed work, but the board should understand the reasoning and unresolved risks before approving a matter reserved for it.

Responsible risk and the solvency and liquidity test

The safest course is not always the correct one. Boards may support a proposal carrying meaningful risk where they understand the exposure and consider it justified by the company's circumstances. The decision should have a rational connection to the information considered.

Some corporate actions require the specific solvency and liquidity test in section 4. The solvency limb considers whether fairly valued assets equal or exceed fairly valued liabilities, including reasonably foreseeable contingent items. The liquidity limb considers whether the company will be able to pay its debts in the ordinary course for the following 12 months.

The test applies to matters such as distributions, certain forms of financial assistance, specified share repurchases and amalgamations or mergers. Both parts must be satisfied. A valuable asset base does not establish that cash will be available to meet debts, while short-term liquidity does not establish that the company is solvent.

The board should work from current financial information and a properly supported cash-flow forecast. Material events, funding commitments, contingent liabilities and changes occurring before implementation should be considered. A resolution that merely states that the test has been met will provide little support if the underlying work is absent.

The record supporting judgement

The corporate record should show that the board understood the decision and the authority being exercised. It should identify the principal information, interests disclosed, advice received, conditions attached and resolution adopted.

Minutes need not reproduce every contribution. They should give a fair and intelligible account of the process and any material dissent. The record should reflect the meeting that occurred rather than a stronger process reconstructed after the event.

4. Board Decisions and the Corporate Record

A board decision begins before the meeting. The agenda, papers and proposed resolution should give directors a clear account of the issue and the authority being sought. A disciplined process supports judgement and preserves an accurate record of the powers exercised on behalf of the company.

The agenda and annual programme

The agenda should distinguish information presented for noting, matters requiring discussion and proposals placed before the board for approval. Directors should not have to establish during the meeting whether management is seeking guidance or authority.

Routine reporting should not displace strategy, risk and significant commercial decisions. An annual board programme can schedule financial reporting, risk, succession, committee work and governance disclosure while preserving room for developments that require earlier attention.

The programme should also return to decisions that remain subject to conditions or further monitoring. Approval of a material transaction or investment may require later reporting on implementation and performance against the original assumptions.

Board papers

A board paper should identify the decision required, its commercial purpose and the authority supporting it. The recommended course should be explained alongside the principal alternatives, risks and unresolved issues.

Financial assumptions and legal requirements should appear clearly rather than remain buried in annexures. A large pack may contain every document while failing to show directors what requires their attention. Concise papers supported by accessible detail often provide a stronger basis for discussion.

Material should arrive early enough for directors to prepare. Late papers should be exceptional. A substantial proposal delivered shortly before the meeting may justify postponement unless the urgency is genuine and an informed decision remains possible.

Authority, notice and participation

The board should confirm that the proposal falls within its authority before considering its commercial merits. Some decisions require shareholder approval or a statutory test. Others depend on prior review by a committee.

The notice of meeting should identify the business to be considered with enough clarity to allow preparation. Every director must receive notice, subject to the statutory and constitutional rules on waiver and cure.

Electronic and hybrid meetings are permitted where participants can communicate concurrently and take part effectively. The chair should confirm attendance and address any interruption that prevents meaningful participation.

The chair and company secretary

The chair guides the board through the agenda and creates space for informed challenge. The role does not give the chair authority to settle the outcome before directors have considered the proposal.

The chair should keep discussion connected to the decision without excluding a relevant concern. Before a vote is called, directors should understand the proposed resolution and any conditions that emerged during discussion.

The company secretary supports the process by advising on authority, quorum, conflicts and the wording of resolutions. A procedural concern should be raised before the decision rather than repaired through the minutes.

Quorum, voting and written resolutions

The Memorandum of Incorporation may regulate quorum and voting. In the absence of a different provision, the Companies Act sets the default requirements. The chair should confirm that a quorum remains present where a director leaves or withdraws from a particular item.

Voting should be explicit. The chair should state the resolution and call for each director's position. A director who opposes the proposal should vote against it and request that the dissent be recorded.

A written resolution may generally be adopted by the required majority after every director has received notice of the matter. The procedure suits clear proposals that do not require collective debate. It should not be used to avoid a meeting where significant issues remain unresolved.

The material circulated with a written resolution should support the same quality of decision as a meeting pack. The resolution should identify its effective date and should never be backdated to create authority that did not exist.

Delegation and implementation

A resolution should identify who may implement the decision and which commercial details may still be settled. General authority to take all necessary steps can assist implementation, but it should not obscure the substance of the approval.

Conditions should be capable of verification. Where approval depends on satisfactory documentation or funding, the resolution should identify who may confirm that the condition has been met.

Material decisions should return to the board through implementation reporting. The report may confirm completion, explain a departure from approved terms or assess the result against the assumptions considered.

Minutes and record retention

The Companies Act requires companies to keep minutes of board and committee meetings. The minutes must include resolutions and declarations made under section 75. Resolutions should be dated and sequentially numbered.

A useful minute identifies the matter considered, the principal papers, interests disclosed, material concerns and the decision reached. Significant conditions and dissent should appear where they influenced the outcome.

Minutes should not become a transcript. Their purpose is to preserve a fair account of the board's work. Drafts should be circulated promptly so that factual errors can be corrected without recasting the discussion.

Board and committee minutes and resolutions must be retained for at least seven years. Board papers should be preserved under a clear policy that addresses confidentiality, legal privilege, data protection and other regulatory requirements.

Informal messages and personal email accounts can fragment the corporate record. Material decisions should still proceed through the required board process and be stored within the company's controlled governance system.

5. Accountability and Personal Exposure

A directorship may end through resignation, expiry of a term, disqualification or removal. More serious conduct may lead to delinquency or personal liability. These outcomes serve different purposes and require different procedures.

Removal by shareholders

Shareholders entitled to vote in the election of a director may remove that director by ordinary resolution at a shareholders' meeting. The statutory power applies despite a contrary provision in the Memorandum of Incorporation or an agreement with the director.

The director must receive notice of the proposed resolution and a reasonable opportunity to address the meeting. The right to make representations does not create a veto, but it prevents removal from being treated as a predetermined administrative step.

Removal from the board does not automatically terminate an employment or consultancy relationship. The company should address the directorship and any contractual or labour consequences separately.

Removal by the board

A board with more than two directors may remove one of its members on the grounds in section 71. These include ineligibility or disqualification, incapacity with little prospect of recovery, and neglect or dereliction in the performance of the director's functions.

The procedure is not a general vote of no confidence. The notice should identify the proposed resolution and provide sufficient reasons to allow the director to respond. The remaining directors must determine whether the statutory ground has been established.

A breakdown in relationships or disagreement over strategy will not automatically amount to neglect or dereliction. The company should identify the correct legal route before issuing a notice. A defective procedure can deepen the dispute and undermine an otherwise legitimate concern.

Delinquency and probation

A declaration of delinquency extends beyond removal from one board. It disqualifies the person from serving as a director for the period determined under section 162.

The Companies Second Amendment Act extended the period within which specified applicants may bring proceedings from 24 months to 60 months after the person ceased to be a director. A court may grant a further extension on good cause, including after the original period has expired.

The grounds address serious misuse of office. They include gross abuse of position, personal advantage taken from company information or opportunity, intentional or grossly negligent harm, wilful misconduct and breach of trust. The remedy protects companies and the public from conduct showing that the person should not continue to hold office.

Probation provides a less severe response. A court may impose conditions such as remedial education, supervision or restrictions on future service. It remains a formal consequence and should not be treated as a minor warning.

Personal liability

Section 77 addresses loss, damage or costs suffered by the company. Liability may arise from breach of fiduciary duty or the duty of care, skill and diligence. It may also arise from acting without authority, acquiescing in reckless trading, participating in fraud or supporting specified unlawful corporate actions.

Knowledge is interpreted broadly and may include circumstances that reasonably required investigation. Silence or abstention may not protect a director who knew that the proposed conduct was unlawful and failed to vote against it.

More than one person may be jointly and severally liable for the same loss. The company may recover from a liable person, leaving contribution between them to be resolved separately.

Proceedings under section 77 generally remain subject to a three-year period. The 2024 amendment allows a court to extend that period on good cause, whether or not the original period has already expired.

Relief, indemnification and insurance

A court may relieve a director from liability where the conduct did not involve wilful misconduct or a wilful breach of trust and the director acted honestly and reasonably. The discretion depends on the circumstances and does not convert good intention into a complete defence.

A company cannot release a director in advance from statutory duties or indemnify conduct such as wilful misconduct, wilful breach of trust, fraud or reckless trading. It may advance defence costs and provide indemnification within the limits of section 78.

An indemnity should not promise protection for every claim connected to office. It should define the permitted scope, address repayment where defence costs were advanced and remain consistent with the Memorandum of Incorporation.

Directors' and officers' insurance may respond to defence costs and covered liabilities. The board should review the insured persons, limits, exclusions, regulatory investigations, territorial reach and treatment of claims arising after a director has left office.

Insurance supports directors facing a legitimate claim. It cannot prevent removal, reverse a declaration of delinquency or remove the duties attached to office.

A proportionate response

The company should match the conduct to the remedy required. A shareholder may decide that a director should no longer serve without alleging gross misconduct. Serious abuse may justify delinquency, while financial loss may support a claim under section 77.

More than one route may apply, but each requires its own legal basis and procedure. Accountability is weakened where the desired outcome is pursued through a defective process or every disagreement is presented as delinquency.

6. Board Committees

Committees allow closer attention to specialised areas of oversight. They examine information, engage with management and advisers and develop recommendations for the board. Their work should strengthen the board rather than divide its responsibilities into disconnected areas.

Delegation without abdication

Section 72 permits the board to establish committees and delegate authority to them, unless the Memorandum of Incorporation provides otherwise. The board resolution and committee charter should identify whether the committee may decide a matter or only recommend a course.

Creating a committee does not by itself satisfy the duties of directors. A board member who does not serve on the committee may rely on its work where that reliance is reasonable, but should still understand the recommendation and any material limitation.

A committee report should give the board enough information to exercise its own judgement. Significant alternatives, unresolved risks and differences of view should not disappear from the report in the interests of presenting a single conclusion.

Committee structure and composition

Some committees are created because the board considers them useful. Others arise from the Companies Act or sector legislation. Their source of authority affects appointment, composition and reporting.

The structure should reflect the company's size, activities, regulation and risk profile. A smaller board may combine related mandates, provided that statutory requirements are met and one part of the mandate does not displace the other.

Membership should follow the work assigned to the committee. Relevant expertise, independence and availability are important. External specialists may contribute, but their status and voting rights should be clear.

The committee chair should agree the annual programme, keep discussion focused and report fairly to the board. Material disagreement should be disclosed rather than filtered out to create an appearance of unanimity.

The audit committee

Public companies and state-owned companies must generally have an audit committee, as must a company whose Memorandum of Incorporation requires one. Members are elected by shareholders at the annual general meeting and must satisfy the statutory eligibility requirements.

The committee oversees external auditor appointment and independence, audit fees, non-audit services, financial reporting and complaints concerning accounting or internal financial control. The mandate often extends to risk and internal audit through additional board delegation.

The audit committee should have direct access to internal and external assurance providers. Private sessions may be needed where a concern cannot be discussed effectively in the presence of management.

Its report to the board and shareholders should explain the work performed and the basis for its conclusions. A statement that the committee fulfilled its charter will not give meaningful insight where significant reporting or control issues arose.

The remuneration committee

Remuneration governance now carries a more extensive statutory framework for public companies and state-owned companies. Sections 30A and 30B require a remuneration policy and an annual remuneration report for presentation and approval at the annual general meeting. The provisions became operative for relevant meetings after 22 May 2026, subject to the transitional guidance issued by CIPC.

The remuneration report includes the background statement, policy and implementation report required by the Act. The committee should ensure that the documents explain how remuneration supports strategy and how the company has responded to shareholder concerns.

The role extends beyond approving packages. The committee should consider fairness, internal pay relationships, performance measures, incentives, malus and clawback arrangements, succession and the consequences of remuneration decisions for the company's reputation and workforce.

Where shareholders do not approve the policy or implementation report, the company must follow the statutory response. The committee should prepare for engagement rather than treat the vote as a final procedural step.

The social and ethics committee

The 2024 amendments changed the appointment and composition of social and ethics committees. Public companies and state-owned companies elect the committee at the annual general meeting, while other companies required to have the committee appoint it through the board.

The committee must have at least three members. The composition rules differ according to the company. Public and state-owned companies require a majority of directors who are not involved in daily management and have not been so involved during the preceding three financial years. Other companies require at least one qualifying non-executive director alongside the permitted directors or prescribed officers.

The committee monitors matters linked to social and economic development, good corporate citizenship, the environment, health and public safety, consumer relationships, labour and employment. The board should ensure that the committee's work is connected to the company's actual impacts rather than confined to a generic compliance report.

A company may qualify for exemption or rely on a group committee in the circumstances allowed by the Act. The basis should be confirmed and recorded rather than assumed from group structure alone.

Committee information and records

Committee reporting should show performance against approved policies, risk limits or statutory duties. Broad confirmation of compliance gives little basis for oversight where exceptions and trends are not visible.

Information should move between committees where mandates overlap. A cyber incident, for example, may concern audit, risk, technology, legal compliance and social and ethics oversight. The company secretary can help coordinate the annual programmes and clarify which committee owns the recommendation.

Committee minutes should identify the information considered, the material concerns and the conclusion reached. They should distinguish a recommendation from a final decision taken under delegated authority.

Reviewing the committee structure

Committee mandates should be reviewed as the company changes. Growth, new regulation or a changed risk profile may require a different structure or greater expertise.

The board should consider whether each committee completed its annual programme, received suitable information and reported effectively. Attendance does not establish that the committee discharged its role.

The structure remains effective only while it supports a coherent board view of the company. Committees should deepen oversight without becoming separate territories of authority.

7. Building an Effective Board

A governance framework cannot compensate for a board that lacks the capacity or discipline to use it. Board effectiveness depends on continuing development, evaluation, succession and a willingness to improve the quality of information and challenge.

Induction and continuing development

A new director should understand the company before being asked to exercise authority. Induction should cover the business model, strategy, finances, principal risks, regulation, board procedures and the legal duties attached to office.

The process should include access to key executives, operational context and the company's constitutional and governance documents. A standard pack without discussion may explain the structure while leaving the director unable to understand the business.

Development should continue throughout the appointment. Changes in law, technology, markets and stakeholder expectations alter the questions that directors need to ask. The annual programme should identify areas where the board requires greater knowledge.

Board and committee evaluation

Evaluation should test the quality of the board's work rather than seek confirmation that meetings occurred. It may consider composition, preparation, information, challenge, the relationship with management, committee effectiveness and follow-through on decisions.

The process can be internal or externally facilitated. External support may assist where the board needs an independent view or where relationships make candid internal feedback difficult.

An evaluation has limited value unless it produces specific changes. The board should identify the action required, allocate responsibility and review progress during the following year.

Succession and renewal

Succession planning should address the chair, committee chairs, executive directors and the wider board. A vacancy in a critical role should not leave the company without the experience needed to oversee its most significant risks.

Renewal requires balance. Long-serving directors provide institutional knowledge, but the board must also introduce skills and perspectives suited to the company's future. Tenure should form part of an independence and effectiveness assessment rather than operate as the only measure.

The nominations process should work from a clear assessment of the board's needs. Personal familiarity and reputation may support an appointment, but should not replace a structured consideration of competence, availability and possible conflicts.

The relationship with management

The board appoints and oversees management without taking over daily operations. A weak boundary can produce either passive oversight or board involvement in decisions that should remain with executives.

The delegation framework should define the authority given to management and the matters reserved for the board. Reporting should allow directors to see performance, risk and exceptions without requiring them to manage the underlying activity.

Challenge should remain constructive. Management needs to know that the board will test assumptions and require accountability, while directors need access to information that has not been filtered to support a preferred outcome.

The annual governance cycle

The governance calendar should connect legal deadlines, committee work, strategy, risk, reporting and director development. It should identify the decisions and disclosures that require preparation well before the meeting at which they are approved.

The board should review the Memorandum of Incorporation, charters, delegations, interest declarations and succession plans at suitable intervals. Material regulatory changes should trigger an earlier review.

The annual cycle should also include reflection on completed decisions. A board can improve its judgement by comparing the assumptions considered with the outcome achieved and identifying the information that would have strengthened the original process.

Governance as working practice

An effective board does not demonstrate governance through the volume of its documents. It does so through the quality of its authority, information, challenge and accountability.

The framework should remain clear enough for directors to use and strong enough to withstand scrutiny. The board should know what it has decided, why the decision was within its powers and how the consequences will be monitored.

Regular development, evaluation and renewal keep the structure connected to the company it serves. Governance then supports judgement instead of becoming an exercise completed after decisions have already been made.

A Boardroom Checklist

The following questions provide a practical review of the governance framework. They are not a substitute for a legal or governance assessment, but can help a board identify areas that require attention.

- Does the board work from the company's current Memorandum of Incorporation and delegation framework?
- Are matters reserved for shareholders, the board, committees and management clearly identified?
- Has the company reviewed its governance arrangements for King V and the 2024 Companies Act amendments?
- Can the board explain why its composition is suited to the company's strategy, regulation and risk profile?
- Are independence, tenure, conflicts and succession considered as part of board appointments?
- Have nominee directors and their nominators agreed clear boundaries for instructions and information sharing?
- Does the company secretary have direct access to the chair and sufficient standing to raise a concern?
- Do directors receive board papers early enough to prepare and do those papers identify the decision required?
- Are material assumptions, alternatives, risks and legal requirements visible in the recommendation placed before the board?
- Does the board confirm its authority and the required approval pathway before considering commercial merits?
- Are personal financial interests and broader conflicts disclosed before deliberation begins?
- Do resolutions identify the authority granted, the person responsible for implementation and any conditions attached?
- Do the minutes give a fair account of the information, concerns, interests, dissent and decision?
- Are board and committee records retained within a controlled governance system?
- Is the solvency and liquidity test supported by current financial information and a credible 12-month forecast where required?
- Are committee charters clear about delegated authority, recommendations and matters reserved for the board?
- Do committee reports explain the work completed, unresolved issues and the basis for recommendations?
- Have audit, remuneration, and social and ethics committee arrangements been reviewed against the current statutory position?
- Does the board evaluate its effectiveness and follow through on the changes identified?
- Is the annual governance programme connected to strategy, risk, reporting, succession and director development?

Primary sources

This booklet has been prepared with reference to the following primary sources.

1. Companies Act 71 of 2008, as amended. Department of Justice and Constitutional Development. https://www.justice.gov.za/legislation/acts/2008-071.pdf

2. Companies Amendment Act 16 of 2024. Parliament of the Republic of South Africa. https://www.parliament.gov.za/storage/app/media/Acts/2024/Act_16_of_2024_Companies_Amendment_Act.pdf

3. Companies Second Amendment Act 17 of 2024. South African Government. https://www.gov.za/documents/acts/companies-second-amendment-act-17-2024-english-afrikaans-30-jul-2024

4. Commencement of the 2024 Companies Amendment Acts. Department of Trade, Industry and Competition. https://www.thedtic.gov.za/the-dtic-welcomes-proclamation-of-companies-amendment-acts/

5. King V Report on Corporate Governance. Institute of Directors in South Africa. https://www.iodsa.co.za/page/king-v

6. Guidance on sections 30A and 30B. Companies and Intellectual Property Commission. https://www.cipc.co.za/?p=24399

About the Author

Cameron is a Senior Associate Attorney and Corporate Governance Professional at Thomson Wilks, based in the Cape Town office. He currently heads up the firm's Company Secretarial Services Department. With five years of experience in the legal and corporate sectors, his practice focuses on corporate compliance, governance, risk management, and civil litigation.

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