



GENERAL GUIDANCE NOTE

The Board Charter aligned to King IV[©]

August 2018

PURPOSE

In accordance with the King IV Report on Corporate Governance™ for South Africa 2016¹ the governing body ensures that its role, responsibilities, membership requirements and procedural conduct are documented in a charter, which it regularly reviews, to guide its effective functioning.

This General Guidance note is to provide guidance on what components could be included in such a charter as per best practice recommendations. Below are the various sections suggested for inclusion in the charter. An organisation may use this as the basis for their charter however consideration should be given to the organisation's specific context and requirements.

The below are clauses which could be in a charter as per best practice and King IV principles application, however it is not an exhaustive list and other elements may be included, such as:

1. company secretary responsibilities;
2. detail in respect of each governing body committee;
3. matters reserved for the governing body;
4. dispute resolution;
5. media, PR and crisis matters.

¹ King IV Report on Corporate Governance for South Africa 2016, Copyright and Trade marks are owned by the Institute of Directors in Southern Africa NPC, www.iodsa.co.za

BOARD CHARTER CONTENT FRAMEWORK IS SET OUT BELOW:

Introduction

The governing body of [NAME OF ORGANISATION] (**Organisation**) acknowledges the need for a Board Charter as recommended in the King IV Report on Corporate Governance for South Africa 2016 ('King IV').

This Board Charter is subject to the provisions of the [Companies Act No. 71 of 2008 ('Companies Act'), the organisation's Memorandum of Incorporation ('MOI')] and any other applicable law or regulation.

Drafting Tip

The relevant documents or legislation that impact and govern the Board Charter can be provided for here. It is commonly the Memorandum of Incorporation (MOI) or other governing document and applicable legislation that is referred to.

The Organisation is committed to good governance as espoused in King IV as ethical and effective leadership in order to achieve the core governance outcomes of an ethical culture, good performance, effective control and legitimacy.

Purpose and objective for Board Charter

The purpose of this Board Charter is to set out the governing body's role and responsibilities as well as the requirements for its membership, its meeting and other procedures.

Membership

The governing body consists of a minimum of [____] and a maximum of [____] governing body members, inclusive of ex officio directors.

Drafting Tip

A minimum and maximum number of members can be provided as determined by the governing body or as provided for in the MOI or other governing document.

The governing body comprises a balance of executive and non-executive members. The governing body appoints a Chair and a Lead Independent (LI) from the independent non-executive members. The chief executive officer (CEO) and at least one other executive are ex officio members of the governing body.

To maintain a balance of power, the governing body consists of a majority of non-executive members, most of whom are independent. Independence is determined if the governing body concludes that there is no interest, position, association or relationship which, when judged from the perspective of a reasonable and informed 3rd (third) party, is likely to influence unduly or cause bias in decision-making in the best interest of the organisation.

Non-executive members are appointed through a formal process and the Nomination Committee assists with the process of identifying suitable candidates to be proposed.

The term of office for non-executive members is [____]. Thereafter non-executive members may be re-elected for [____] subject to the rotation guidelines in the MOI [or other applicable document].

Drafting Tip

The term of non-executive members may be provided for in the MOI or other governing document or may be statutorily provided for and this can be included herein. There should also be inclusion of the rotation of non-executive members. King IV provides that non-executive members should not serve for longer than 9 years (which could be 3 terms of 3 years) subject to annual independence testing. King IV also recommends establishing arrangement for a periodic, staggered rotation of non-executive members.

A formal induction programme takes place for new governing body members, containing relevant information about the organisation, as approved by the Nominations Committee.

Inexperienced governing body members are developed through an informal mentorship programme.

A continuing professional development programme is implemented, which ensures that governing body members receive regular briefings on changes in risks, laws and the business environment.

The governing body has a succession plan in place for the governing body membership, the CEO and other executive members. This plan provides for identification, mentorship and development of future candidates.

Drafting Tip

King IV recommends having these succession plans in place for the governing body members, the Chair and Lead Independent; the CEO and other executive members. Same may be a formal plan or an informal discussion of the governing body and this sort of detail may be included here.

Non-executive members are/are not remunerated for their services on the governing body as per the [____].

Drafting Tip

Whether non-executive members are or are not remunerated should be included. The specifics of how the remuneration is comprised can be included here or reference can be made to another document. It can also be included whether the remuneration is approved by the shareholders at the AGM or through any other process that is used by the organisation.

Role and Responsibilities**Drafting Tip**

The below is drafted to align with King IV and may be different for all types of organisations. In addition, specific statutory roles and responsibilities should be included here.

The role and responsibilities of the governing body are to:

1. Leadership, Ethics and Corporate Citizenship

- Lead ethically and effectively by cultivating the characteristics of integrity, competence, fairness, transparency, accountability and responsibility and exhibit them in their conduct.
- Govern the ethics of the organisation in a way that supports the establishment of an ethical culture by:
 - setting the direction on how it should be approached
 - approving codes of conduct and ethics policies and oversee management's implementation thereof; and
 - exercising ongoing oversight of the management of ethics.
- Ensure that the organisation is and is seen to be a responsible corporate citizen, by setting the direction for corporate citizenship it should be approached and addressed.

2. Strategy, Performance and Reporting

- Appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are inseparable elements of the value creation process, by:
 - steering and setting the direction for strategy;
 - considering, challenging and approving management's formulation of short, medium and long-term strategy;
 - approving policies and operational plans developed by management to give effect to the approved strategy; and
 - exercising ongoing oversight of strategy implementation and assessment.
- Ensure that reports issued by the organisation enable its stakeholders to make informed assessments of the organisation's performance as well as its short, medium and long-term prospects by:
 - setting the direction of how it reporting should be approached;
 - approving management's determination of the reporting frameworks to be used;

- overseeing that reports comply with legal requirements and meet the needs of stakeholders; and
- ensuring the integrity of external reports, including the integrated report and annual financial statements.

3. Governing structures and delegation

- Act as the focal point and custodian of corporate governance in the organisation by steering the organisation and setting its strategic direction, approving policy and planning that give effect to that direction, overseeing and monitoring the implementation and execution by the management and ensure accountability for the organisation's performance through reporting and disclosures.
- Assume responsibility for governing body composition by setting the direction and approving the processes for it to attain the appropriate balance of knowledge, skills, experience, diversity and independence to objectively and effectively discharge its governance role and responsibilities.
- Promote diversity in its membership including field of knowledge, skills and experience, age, culture, race and gender, including the setting of targets for race and gender representation.
- Appoint a Chair and Lead Independent from the independent non-executive members.
- Determine the number of outside professional positions that the Chair and the other governing body members are allowed to hold, taking into account the relative size and complexity of the organisations the Chair or governing body members are involved with, as well as consideration of the impact to the organisation's reputation any outside professional positions have.
- Ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of duties.
- Ensure that the evaluation of its performance and that of its committees, its Chair and its individual members, support continued improvement in its performance and effectiveness
- Ensure the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities.
- Appoint the CEO, formally evaluate the performance of the CEO, and ensure there is succession planning in place for the position.
- Set the parameters for the powers which it reserves for itself, and those that are to be delegated to management.
- Ensure that there is access to professional and independent guidance on corporate governance and its legal duties, and also that it has support to coordinate the functioning of the governing body and committees.

4. Governance Functional Areas

- Govern risk in a way that supports the organisation in setting and achieving its strategic objectives, by:
 - setting the direction of how it should be approached and addressed in the organisation;
 - approving policy that articulates and gives effect to the set direction;

- delegating to management the responsibility to implement and execute and provide ongoing oversight;
- considering the need for periodic independent assurance; and
- evaluating and agreeing the nature and extent of risks that the organisation is willing to take in pursuit of its strategic objectives.
- Govern technology and information in a way that supports the organisation in setting and achieving its strategic objectives, by:
 - setting the direction of how it should be approached and addressed in the organisation;
 - approving policy that articulates and gives effect to the set direction;
 - delegating to management the responsibility to implement and execute and provide ongoing oversight; and
 - considering the need for periodic independent assurance.
- Govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen, by:
 - setting the direction of how it shall be approached and addressed in the organisation;
 - approving policy that articulates and gives effect to the set direction;
 - delegating to management the responsibility to implement and execute and provide ongoing oversight; and
 - considering the need for periodic independent assurance.
- 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, by:
 - setting the direction of how it should be approached and addressed in the organisation;
 - approving policy that articulates and gives effect to its direction on fair, responsible and transparent remuneration; and
 - ensuring that remuneration is disclosed by means of a remuneration report.
- 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, by:
 - setting the direction concerning the arrangements for assurance services and functions;
 - satisfying itself that an effective and robust combined assurance model is applied, which is designed and implemented to cover the organisation's significant risks and material matters; and
 - approve the internal audit charter and ensure arrangement achieve the desired purpose; and appoint the chief audit executive.

5. Stakeholders

- Adopt a stakeholder inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time, by:
 - setting the direction of how it should be approached and addressed in the organisation;
 - approving policy that articulates and gives effect to the set direction;

- delegating to management the responsibility to implement and execute and provide ongoing oversight; and
- overseeing that the organisation encourages proactive engagement with all stakeholders.

Access to information

In the execution of its duties and responsibilities, the governing body (or any individual governing body member) is permitted to obtain independent, external professional advice at the cost of the organisation, in accordance with the following process... [insert process]

Drafting Tip

King IV recommends including a protocol for obtaining independent, external professional advice and this should be captured in the Board Charter. Examples of such a protocol could be:

1. *a written request by the member to the governing body and majority approving same; or*
2. *completion of a form requiring substantiation for the advice – and the form provides for the details necessary for such a request by the member, which the governing body decides on.*

There is no standard protocol and the organisation needs to determine what is suitable for them.

In the execution of its duties and responsibilities, the governing body (or any individual governing body member) is permitted to request documents and set up meetings with members of management, in accordance with the following process... [insert process]

Drafting Tip

King IV recommends including a protocol for requesting documents and setting up a meeting with members of management and this should be captured in the Board Charter. Examples of such a protocol could be:

1. *request to the executive management; or*
2. *verbal request in governing body meeting, which is decided by the Chair and is noted in the minutes; or*
3. *completion of a form and submitted to either the governing body or the executive or the Chair for approval.*

Chair's Responsibilities

The core functions of the Chair are to:

1. providing leadership to the governing body of an organisation; setting the tone for its performance and undertaking the management of the governing body;
2. playing an active role in engaging governing body members and building upon their strengths and addressing /developing any weaknesses;
3. ensuring that focus is maintained by the governing body on what is best for the organisation; and that the tone for organisational success is set;
4. been accountable to the governing body; and

5. working with fellow members of the governing body in setting the direction and priorities for the execution of the duties by the governing body and acting as the communication channel for governing body decisions where appropriate.

Drafting Tip

There is a King IV Practice Note which has more detail regarding specific duties and responsibilities with regards to the Chair and it may be consulted for this detail. The King IV Practice Note is available on this [link](#).

Lead Independent's Responsibilities

The core functions of the Lead Independent are to:

1. to lead the governing body in the absence of the Chair;
2. to serve as a sounding board for the Chair;
3. to act as an intermediary between the Chair and the other members of the governing body, as and when necessary;
4. to deal with member and stakeholder concerns where contact through the normal channels have failed to resolve the concern or where such contact would not be appropriate;
5. to chair discussions and decision-making of the governing body where the Chair has a conflict of interest; and
6. to meet with the Chair annually about the evaluation and appraisal of the Chair's performance and meeting their duties and responsibilities.

Drafting Tip

King IV provides this detail regarding the Lead Independent, however the organisation may elect the extent of detail they choose to provide.

Company Secretary

The organisation has appointed the company secretary and the company secretary provides professional corporate governance services and advice on legal duties and support to the governing body.

Drafting Tip

Some organisations are required in terms of statutory obligation to have a company secretary, however if there is no legal obligation to have one – the organisation may decide not to have a company secretary; or they may appoint another professional to provide board secretarial services and procure outside professional corporate governance services when necessary. This is for the organisation through the governing body to decide.

King IV does recommend that all arrangements regarding the provision of professional corporate governance services, whether by company secretary or another professional, should be:

- 1. approved by the governing body, including the person's appointment, employment contract, remuneration and possible removal. Furthermore, the governing body must ensure the appointed person has the necessary competence, gravitas and objectivity to provide independent guidance and support at the highest level of decision-making in the organisation;*
- 2. provided unfettered access to the governing body, while maintaining an arms-length relationship with the governing body and the governing body members;*
- 3. reported on to the governing body. This is done via the Chair on all statutory duties and functions performed in connection with the governing body and via a member of executive management designated for this purpose regarding all other duties and administrative matters; and*
- 4. performance evaluated at least annually by the governing body.*

The governing body should ensure role is empowered and that the position carries the necessary authority.

The company secretary should not be a member of the governing body.

Delegation

The governing body may delegate any of its powers to well-structured governing body appointed committees, consisting of such governing body members or other persons as it deems fit, but without abdicating its own responsibilities.

Drafting Tip

The Board Charter may provide for the detail regarding the different governing body committees the organisation has voluntarily chosen to create and is legally required to have. It may provide for detail regarding the governing body members it appoints to the different committees.

Delegation is formal and involves the following:

1. Formal terms of reference are established and approved for each committee of the governing body that deal with its composition; role and purpose, functions; delegated authorities; tenure; meeting requirements and procedures and reporting mechanism to the governing body.
2. The governing body committees' terms of reference are reviewed annually.
3. The governing body committees are appropriately constituted with due regard to the skills required by each committee.
4. Governing body committee Chairs' are selected and appointed by the governing body.

The governing body or a committee of the governing body may delegate to management of the organisation any of its powers upon such terms and conditions as is deemed fit. The governing body establishes a framework for the delegation of authority to management.

Assessment

Performance of the governing body, governing body committees and individual governing body members is assessed annually, whether internally or independently.

Based on the results of the performance assessment, the governing body may identify necessary training and development needs for the governing body, committees and individual governing body members.

Informal monitoring of governing body members' preparation, attendance of meetings and participation and contribution in meetings shall be monitored and if considered insufficient, the Chair shall address same with the relevant governing body member.

Meeting Procedures

2. Frequency

- The governing body holds sufficient scheduled meetings to discharge all its duties as set out in this Board Charter but subject to a minimum of 4 (four) meetings per year.
- Meetings, in addition to those scheduled, may be convened by a member of the governing body at any time, on requisition of at least _____% of the governing body members of the governing body.

Drafting Tip

There may be statutory minimum governing body meetings required or the MOI or governing document may provide for a minimum number of meetings and the detail should be included in the Board Charter.

Additional meeting for the governing body meeting may also be provided for in the organisation's MOI or governing document and that detail should be included in the Board Charter.

3. Attendance

- Other members of management, assurance providers and professional advisors may be in attendance at meetings, but by invitation of the Chair of the meeting only and they may not vote.
- Governing body members must attend all scheduled meetings of the governing body, including meetings called on an ad hoc basis for special matters, unless prior apology, with reasons, has been submitted to the Chair or company secretary.
- If the nominated Chair of the governing body is absent from a meeting, the Lead Independent presides over the meeting. Should neither Chair nor the Lead Independent be present, the

members present must elect 1 (one) of the governing body members present to act as Chair for that meeting.

4. Agenda and Minutes

- The governing body, with the assistance of the company secretary, establishes an annual work plan for each year to ensure that all relevant matters are covered by the agendas of the meetings planned for the year. The annual plan must ensure proper coverage of the matters laid out in this Board Charter: More critical matters will need to be attended to each year while other matters may be dealt with on a rotation basis over a 3 (three) year period. The number, timing and length of meetings, and the agendas are to be determined in accordance with the annual plan.
- Notice of scheduled meetings are provided at [_____ days/weeks] prior. A detailed agenda and supporting documentation must be circulated, at least [_____ days/weeks] prior to each scheduled governing body meeting to the members of the governing body and other invitees.

Drafting Tip

Notice of governing body meetings as well as meeting packs may have statutory minimum time period or same may also be provided for in the organisation's MOI or governing document and that detail should be included in the Board Charter. If this is silent in all aspects - it must be included in the Board Charter.

- Governing body members should be fully prepared for governing body meetings to be able to provide appropriate and constructive input on matters for discussion.
- The minutes should be completed as soon as possible after the meeting and circulated to the Chair and then the governing body members for review thereof. The minutes must be formally approved by the governing body at its next scheduled meeting or via email communication.

5. Quorum and Voting

- A representative quorum for meetings is [_____].

Drafting Tip

Quorum for the governing body meetings may also be provided for in the organisation's MOI or governing document and that detail should be included in the Board Charter. If this is silent in other governing documents, it must be included in the Board Charter.

- Individuals in attendance at governing body meetings by invitation may participate in discussions but do not form part of the quorum for governing body meetings.

- At the commencement of each meeting, all governing body members should declare whether they have any conflict of interests in respect of a matter on the agenda.
- The company secretary maintains a declaration of interests' register, to be completed by each governing body member and updated regularly. Governing body members with personal financial interests and/or conflicts of interest are not allowed to vote or participate in the consideration of the matter and must follow the provisions of section 75 of the Companies Act and the MOI in this regard. The company secretary notes in the minutes any abstention from vote or deliberation as a result of conflict of interest.

Approval of Board Charter

This Board Charter was approved by the governing body on [insert date] and will be due for review annually.

Approved by the Governing Body:

Chair of the Governing Body