



CODE OF GOVERNANCE
PRINCIPLES FOR SOUTH AFRICA -
2009

KING COMMITTEE ON GOVERNANCE
(King III)

Impact on local government in South Africa

Introduction

President Jacob Zuma during his 2009 State of the Nation address:

“We are committed to a service delivery culture that will put every elected official and public servant to work for our people, and ensure accountability to our people”

The Public Sector consideration of King III

In contrast to King I and King II, King III applies to all entities regardless of the manner and form of incorporation or establishment.

Principles are drafted on the basis that, if they are adhered to, any entity would have practiced good governance.

The compliance with the PFMA and MFMA has established many of the governance practices within the Public Sector and the challenge is now to assess what changes, if any, are needed to achieve King III compliance.

The Public Sector consideration of King III

- The Public Sector is governed through substantial Acts and regulations.
- The extent of self-regulation, in which an organisation voluntarily monitors its own adherence to legal and ethical standards, needs to be balanced against these statutory and regulatory requirements. The extent of the success of self-regulation can mitigate the need for further statutory and regulatory requirements.
- King III refers to the functional responsibility of those charged with governance in any entity although the terms 'company', 'boards' and 'directors' are used.
- King III is aligned to the functional responsibility within Public Sector structures and for the local government this is the councils and the mayor's office as chairman.

Overview

Key elements of the Code

Application	Applies to all entities, regardless of their nature, size or form of incorporation – Public and Private sector
Governance regime	A code of principles and practices on a non-legislated basis.
	King III is on an 'apply or explain' basis

Each principle is of equal importance and together forms a holistic approach to governance. Consequently, 'substantial' application of this Code and the Report does not achieve compliance.

Overview

New requirements possibly applicable to local government

- The need for an annual integrated report that focuses on the impact of the organisation in the economic, environmental and social spheres
- A statement by the audit committee to the board and shareholders on the effectiveness of internal financial controls to be included in the integrated report
- The consideration of the strategic role of IT and its importance from a governance perspective
- The positioning of internal audit as a strategic function that conducts a risk-based internal audit and provides a written assessment of the organisation's system of internal control, including internal financial controls
- The governance of risk through formal risk management processes.

The Public Sector reports on sustainability matters through in year and annual reports to the Executive Authority and Parliament in terms of how the entity/department has met their compacts and these compacts have included many of the core sustainability requirements (IDP). The Public Sector will need to review the recommendations of King III and determine the extent to which the reporting will need to be aligned to these recommendations.

Overview

King III chapters

Chapter 1	Ethical leadership and corporate citizenship
Chapter 2	Boards and directors
Chapter 3	Audit committees
Chapter 4	The governance of risk
Chapter 5	The governance of information, communication and technology
Chapter 6	Compliance with laws, rules and standards
Chapter 7	Internal audit
Chapter 8	Governing stakeholder relationships
Chapter 9	Integrated reporting and disclosure

Ethical leadership and corporate citizenship

Principle/s	Summary recommendation/s	Applicability to Public Sector	MFMA Requirements
<p>Responsible leadership, the council's responsibilities and ethical foundation</p>	<ul style="list-style-type: none"> •The council should provide effective leadership based on an ethical foundation •The council should do business ethically •Set values to which the municipality will adhere formulated in its code of conduct •Ensure that all deliberations, decisions and actions are based on the four values underpinning good governance 	<p>The responsibility for leadership is assigned to the Executive Authority in term of section 3 of the Public Service Act and delegated to the Accounting Officer or equivalent.</p> <p>The principles need to be considered and applied as appropriate by the Accounting Officer or equivalent.</p>	<p>Per section 151 of the Constitution of South Africa, the executive and legislative authority of a municipality is vested in its Municipal Council.</p> <p>Per section 30 of the Municipal Systems Act the EXCO, the Executive Mayor or a Committee appointed by Council is responsible for the implementation, evaluation and monitoring of the Intergraded Development Plan (IDP) which incorporates these principles.</p> <p>Schedule 5 to the Municipal Structures Act and Schedules 1 and 2 to the Municipal Systems Act provides a Code of Conduct for Councillors and staff.</p>

<p>The council should ensure that the municipality is and is seen to be a responsible corporate citizen.</p>	<p>The council should:</p> <ul style="list-style-type: none"> •Consider financial performance and the impact of the municipality’s operations on society and the environment. •protect, enhance and invest in the wellbeing of the economy, society and the environment •ensure that the municipality's performance and interaction with its stakeholders is guided by the Constitution and the Bill of Rights •ensure that collaborative efforts with stakeholders are embarked upon to promote ethical conduct and good corporate citizenship •ensure that measurable corporate citizenship programmes are implemented 	<p>The responsibility for effective service delivery is assigned to the Accounting Officer or equivalent and management, through the Executive Authority.</p> <p>The principles need to be considered and applied as appropriate by the Accounting Officer or equivalent</p>	<p>Chapter 4 of the Municipal Systems Act provides for Community participation, while Chapter 5 stresses the need for community involvement in approving amendments to the IDP (Section 23 and 34).</p> <p>Section 95 of the Municipal Systems Act provides for the provision of sound customer care and management systems.</p>
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<p>Ethics risk and opportunity profile</p>	<p>The council should ensure that the municipality's ethics are managed effectively.</p> <ul style="list-style-type: none"> •Adherence to ethical standards is measured •Internal and external ethics performance is aligned around the same ethical standards •Ethical risk and opportunities are incorporated in the risk management process •A code of conduct and ethics-related policies are implemented •The municipality's ethics performance should be assessed, monitored, reported and disclosed 	<p>The management of ethics is assigned to the Accounting officer.</p> <p>The measurement and the development of ethics polices are not mandated in terms of the PFMA nor the MFMA.</p> <p>Ethical risk is considered but is not elevated to this extent, in terms of reporting and disclosure.</p>	<p>Schedule 5 to the Municipal Structures Act and Schedules 1 and 2 to the Municipal Systems Act provides a Code of Conduct for Councillors and staff.</p>
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Councils and King III

- The council is responsible for governance of the municipality and municipal entities.
- The council elects the Speaker, Mayor and Municipal Manager.
- Council direct involvement in strategy setting - IDP
- The speaker is the “chairman” of council and cannot be, by definition, be independent but is non-executive (King III requirement)
- The executive mayor should serve as the chief spokesman of the municipality
- Council composition is determined by section 20 of the Municipal Structures Act elected by the local community and proportional representation.
- No assessment of councillor performance – however, a councillor may not be absent from 3 consecutive meetings.
- Per section 53 of the MSA the council must define the roles and responsibilities of councillors and structures.

Overview of matters of interest

- Per MFMA S 166 - Each municipality and each municipal entity must have an audit committee
- Other committees can be established per section 32 of the Municipal Structures Act where council must develop of system of delegations.
- Where municipal committees are established council should determine the composition – King III recommends that they should only comprise councillors with municipal officials attending in an ex officio capacity.

Remuneration in the municipalities

- Councillor salaries and allowances are determined in terms of the Remuneration of Public Office Bearers Act in consultation with the MEC for local government.
- The salaries and allowances of the MM and HOD's are approved by Council.
- The salaries and allowances of the other staff are approved by the SA Local Government Bargaining Council.
- The remuneration of Councillors, the MM, CFO and HOD's is disclosed in the notes to the annual financial statements per MFMA section 124.(1)(a) and (c).

Statutory alignment with King III

- Per MFMA Section 166.(4)(b) - The audit committee must meet as often as is required, but at least four times a year.
- Per MFMA Section 166.(4)(a) – the AC should consists of at least three persons with appropriate experience of whom the majority may not be in the employ of the municipality or municipal entity. However, no councillor may be a member of the audit committee.
- Per MFMA Section 166.(5) – The Chairperson is appointed by the Council.
- Per MFMA Section 166.(2)(a) the Audit Committee reports to the Municipal Council
- Per Section 166.(2)(iv) the AC advises on the adequacy, reliability and accuracy of financial reporting and information.
- Per MFMA Section 166.(2)(a)(ii) the AC is responsible for risk management.
- Per MFMA Section 165.(2)(b) Internal Audit must report to the AC.
- The external auditor is the Auditor General (AG) or accounting firm as appointed by the AG.

Matters for consideration for municipal Audit Committees

- The audit committee responsibility for the effectiveness of combined assurance including internal audit
- Fraud risk responsibility.
- ICT assurance should be aligned to the company's normal assurance activities under the auspices of the audit committee.
- The audit committee conclusion and reporting annually to council on the effectiveness of the company's internal financial controls
- Internal audit reporting annually on the effectiveness of the municipality's system of internal financial controls

Statement on effectiveness of internal financial controls

Per MFMA Section 166.(2)(a)(i) and 166.(2)(b) the audit committee has the responsibility/power to advise the Council on amongst others internal financial control and internal audits as well as to review the annual financial statements to provide the Council with a credible view of the financial position of the municipality, its efficiency and effectiveness.

Statutory alignment with King III

- MFMA S62 (1)(c)(i) Accounting officer responsibility for financial and risk management and internal control.
- MFMA S165(2)(b)(iv) Internal audit to report and advise on the adequacy of risk management to the AC and accounting officer.
- MFMA S166.(2)(a)(ii) the AC is responsible for risk management.

Matters for consideration for municipalities

- The council should disclose how it has satisfied itself that risk assessments, responses and interventions are effective, and any undue, unexpected or unusual risks and any material losses
- The council should understand the risk levels that it has the ability to tolerate vs. the risk that it is willing to take (risk appetite)
- The council should ensure that risk assessments are performed on a continuous basis (minimum annually) - top-down approach
- Risks should be prioritised and ranked to focus the responses and interventions on those risks outside the board's risk tolerance limits.
- Annual risk management plan approval, implementation and monitoring
- ICT should be integrated into the risk management activities and the risk committee should ensure that ICT risks are adequately addressed
- The risks of non-compliance should be identified, assessed and responded to through the company's risk management processes

Overview of matters of interest

- New specific requirement to demonstrate ICT governance
- Management need to assure the adequacy of ICT through a charter and framework inclusive of ICT steering committee
- Need to understand how ICT impacts on operations and strategies – create ICT present and future footprint
- ICT investment requires the diligence on decision and monitoring for return on investment
- CIO appointment/function recommended
- Information Security Management System (ISMS) is maintained
- Comprehensive records and information management program – includes business continuity, maintenance of evidence and data privacy

Overview of matters of interest

- Legal and regulatory compliance is a well established responsibility for any entity operating in RSA.
- MSA S55.(1)(I) the Municipal Manager is responsible and accountable for the implementation of legislation.
- The council should monitor compliance with all applicable laws, rules and standards.
- The laws, regulations and non-binding rules and standards should be identified and understood as they affect the municipality.
- A compliance policy should be established and monitored by council.
- Disclosure should be made how effective compliance has been achieved and of any significant fines and penalties paid.
- Delegated compliance function/officer is recommended

Overview of matters of interest

- MFMA S165 each municipality and municipal entity must have an internal audit unit. (need for IIA Standards to be adopted – vs. “prescribed norms and standards”).
- MFMA S165.(2)(a) the IA plan should be risk based.
- Per King III Internal audit should provide a written assessment of the effectiveness of internal controls and risk management on a rolling basis
 - Includes evaluating governance processes compliance and sustainability
 - Internal financial controls should be reported specifically to the audit committee on an annual basis
- An independent assurance provider should provide assurance to the board regarding the information security management process
- Internal audit should provide assurance over the combined assurance framework

Overview of matters of interest

- Within the Public Sector the stakeholders are the public at large including Parliament. The Batho Pele handbook further assists in identifying both direct and indirect Public Sector stakeholders
- MSA S55.(1)(o) the MM is responsible for developing and maintaining a system where community satisfaction with municipal services is assessed.
- MSA S41.(1)(c) Development priorities, Objectives, KPI's and Targets should be monitored.
- MSA S24 Council must liaise with other spheres of government.
- MSA S16 the Municipality should develop a culture of community participation.
- Constructive engagement with stakeholders through approved policies.
- The council should be the ultimate custodian of the corporate reputation and stakeholder relationships
- Annual review of stakeholders and the response to the legitimate interests and expectations.
- Disclosure of the nature of dealings with stakeholders and the outcomes of these dealings (including refusals of requests in terms of the Promotion of Access to Information Act, 2000)
- Alternate Dispute Resolution (ADR) - given recognition in the recommendations

Overview of matters of interest

- Integrated representation of financial and sustainability performance – financial and IDP reporting.
- The council will need to decide on the extent of additional reporting required in addition to the MSA S45/6 and MFMA S121 requirements.
- Sustainability reporting is becoming increasingly formalised and sophisticated and needs to be credible.
- The audit committee should recommend the extent of independent assurance over the sustainability reporting.
- A formal process of assurance with regard to sustainability reporting should be established.



Questions?