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BEYOND THE CHECKLIST: HOW KING V IS REVOLUTIONISING GOVERNANCE AND RESTORING TRUST

By Jene' Palmer CA(SA) GCB.D (CGF Research Institute: Director)

The publication of the King V Code on Corporate Governance for South Africa 2025 ('the Code') marks more than just an update - it signals a profound philosophical shift. This new Code is engineered to restore and solidify stakeholder trust by providing verifiable assurance that companies are led with integrity and are effectively managed. It is a powerful move designed to drive transparent, long-term governance impacts and fundamentally end the era of "tick-box" compliance.

While a compliance approach provides essential governance to meet legal and regulatory requirements, it often creates a false sense of control (for the board and management). Over time, this rules-based focus can erode self-regulation and ownership, creating a culture where rationalisation replaces critical thinking and accountability. Effectively, King V demands that organisations move from compliance to conscience. Decision-making must be underpinned by integrity and remain aligned with the organisation's purpose, vision, and values, forcing directors to demonstrate they take their fiduciary duties seriously.

The death of tick-boxing

The core architecture of King V is built to dismantle the culture of mindless compliance by focussing on genuine, demonstrable results:

1. Outcomes-based accountability: Integrity as the foundation

King V is fundamentally an outcomes-based framework. It reduces the number of principles and shifts the focus squarely onto consequences. A company cannot claim good governance simply by having a policy; it must demonstrate that the policy has resulted in the realisation of the four critical governance outcomes:

- **Ethical culture:** Are ethical behaviours and integrity observable throughout the organisation, informing every decision?
- **Performance and value creation:** Is the company creating and sustaining value in a responsible manner that considers the interests of all stakeholders?
- **Conformance and prudent control:** Are risks managed and is compliance effective, ensuring the board operates within its legal and ethical mandate?

- **Legitimacy:** Is the company trusted by its stakeholders and society? This outcome confirms the license to operate is earned through ethical conduct and genuine engagement, ensuring governance is inclusive.

This change raises the bar: directors must move from simply *reporting* on what they *did* to *substantiating* the ethical and tangible value they achieved to earn stakeholder confidence.

2. Mandatory, substance-driven disclosure

King V standardises and increases the rigour of disclosure through the mandatory King V Disclosure Framework. While standardisation might sound procedural, it serves a critical purpose: it promotes transparency and comparability, making it far easier for stakeholders to assess the quality of governance and leadership.

- **Disclosure by exception:** This powerful mechanism requires organisations to explicitly state any recommended practices they have *not* adopted and provide a clear, reasoned explanation, along with any compensating measures. Directors can no longer quietly ignore problem areas; to build stakeholder confidence they must justify why non-compliance is equivalent to proper governance, effectively providing a guarantee that the board has applied its mind to every principle, acting in good faith.
- **Mindful application:** The entire "apply and explain" model is strengthened. The quality of disclosure is now judged by how well it enables stakeholders to make an informed assessment of governance quality, aggressively discouraging vague or boilerplate generalisations.

The director's guarantee: Assurance backed by legal risk

The requirement for a concluding statement on the realisation of governance outcomes is a potent change. While this declaration theoretically carries the risk of "window dressing," the Code incorporates integrated mechanisms to prevent superficial adherence and ensure director accountability.

1. The requirement for substantiation

The concluding statement cannot stand alone as a mere assertion. King V provides a clear antidote to abuse in its Foundational Concepts by explicitly stating that "*...the governing body, if called upon, should be able to substantiate its conclusion on the governance outcomes with reference to the principles and practices.*"

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The concluding statement must therefore be supported by an integrated audit trail (chain of evidence) that demonstrates responsible, ethical decision-making. This transforms the director's high-level opinion into a guarantee that must be tied back to objective evidence of effective control and ethical practice. Any false or superficial claim would immediately lack this essential chain of documented proof.

2. Legal weight and fiduciary duty

For directors, signing off on an unsubstantiated statement is a serious risk which could:

- **Undermine fiduciary duty:** Making a negligent or dishonest concluding statement undermines a director's duties to act with due care, skill, and diligence - all extensions of the foundational requirement for ethical leadership.
- **Result in loss of protection:** If a statement is later found to be grossly negligent, a director would likely struggle to rely on the protection afforded by the business judgement rule in litigation. Without sound governance structures and robust proof to back the statement, it would be extremely difficult for a director to demonstrate they acted diligently and in the company's best interests.

In effect, King V makes blatant abuse a highly risky proposition for individual directors. By demanding a demonstrable record of ethical leadership and effective control, King V structurally enforces the serious nature of their fiduciary responsibility and makes their claims of good governance legally credible and genuinely impactful.

King V is ultimately a stakeholder compact. By demanding that the high-level declaration of good governance must be backed by a comprehensive, auditable chain of evidence, King V transforms corporate reporting from an exercise in compliance into a demonstrable act of accountability, solidifying the foundation for long-term public trust and ethical and inclusive governance.

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For further information contact:

Jené Palmer (CGF: Director) - Cell: +27 (0)82 903 6757 / E-mail: jpalmer@cgf.co.za

Terrance M. Booysen (CGF: Chief Executive Officer) - Cell: +27 (0)82 373 2249 / E-mail: tbooysen@cgf.co.za

CGF Research Institute (Pty) Ltd - Tel: +27 (0)11 476 8261 / Web: www.cgfresearch.co.za