



The South African Institute for
Advancement



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King III fails to consider non-profit sector recommendations

The King Code of Governance Principles (King III) was released on 1 September 2009 and will become applicable on 1 March 2010. While the release of King III represents a significant advance in good corporate governance it falls short in responding to the distinct needs of non-profit organisations (NPOs) to which it is also applicable.

In April 2009 Inyathelo made a public submission to the Institute of Directors, endorsed by 57 civil society organisations and 17 individuals on the Draft King III report. This submission pointed out the key differences between non-profit and commercial entities and how the draft King III Code failed to give recognition to the distinctive features of non-profit entities. The submission cautioned against enacting superficial changes in addressing the Draft King III's fundamental shortcomings with regard to NPOs. The submission further recommended that a sub-committee be appointed to develop a chapter within King III that specifically addresses non-profit governance.

This submission, which reflects voices of the non-profit sector was never formally acknowledged and the drafters noticeably opted to affect cosmetic rather than substantial changes with regard to the relevance of King III to the non-profit sector. King III has failed to acknowledge and respond to the fundamental concerns facing non-profit organisation and good governance practices and offers little value in meeting its own principle (8.2) of enabling entities to 'proactively deal with stakeholder relationships' in the case of the non-profit sector.

King III remains unquestionably designed for businesses. Although components of King III will benefit some NPOs, the final version of King III remains wanting in its appropriateness and applicability for the non-profit sector as a whole. More particularly, King III has not take into account the following important factors:

1. That the majority of South African NPOs are small community-based organisations. Procedures such as "integrated reports", "audit committees", "corporate citizenship policies" and "business rescue proceedings" would not find place amongst such organisations. Yet, NPOs will effectively be required to discern which of the principles contained in King III apply to them and explain to their stakeholders why other principles may not be applicable.

2. The Directorate for Nonprofit Organisations is tasked with the responsibility under the Nonprofit Organisations Act of 1997 to ensure that the standard of governance within NPOs is maintained and improved. One of the objectives of that Act is to encourage NPOs to maintain adequate standards of governance, transparency and accountability and to improve those standards. The Directorate for Nonprofit Organisations is accordingly a key stakeholder with reference to non-profit governance in South Africa. Contrary to its message of 'inclusivity of stakeholders', the committee has seemingly excluded this important stakeholder in developing King III.
3. Section 8 of the Companies Act of 2008 recognises two types of companies, namely: profit companies and non-profit companies. This Act notes that the main objective of a non-profit company is to pursue a broader public objective or to promote social change as opposed to generating profit. King III's main emphasis remains firmly on business. The non-profit sector is however not a sub-sector of the marketplace and it cannot be assumed that governance principles aimed at governing commercial entities should apply to NPOs.

King III has however addressed some key concerns with regard to its relevance and applicability to the non-profit sector, namely that:

1. King III now deems a company's stakeholders as its ultimate compliance officer, thus considering the fact that NPOs are not marketplace led.
2. Noting that NPOs do not have "shareholders", performance is deemed to be the ultimate responsibility of the board. Appropriately, King III applies the notion of "improvement of economic value" only in relation to "trading entity" and not to NPOs.