

# Corporate Governance in the Tertiary Education Sector

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**Abstract:** Corporate governance practices are increasingly being accepted as representing best practice in the governance of virtually all the different types of organisations. While considerable research has been undertaken in the broad area of governance of universities across the globe, there is hardly evidence of in-depth studies on the applicability of corporate governance principles in the tertiary education sector, particularly regarding public universities. This study sought to attempt a preliminary desk study intended as a precursor to detailed analysis of whether and how corporate governance practices (best practice) can be applied to the tertiary education sector.

**Keywords:** Autonomy, Corporate governance, Public universities, Self-regulation, Tertiary education

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## 1. Introduction

This paper discusses the extent to which tertiary institutions are embracing corporate governance principles, and to indicate whether it is a good idea for tertiary institutions to do so. The focus in this paper is on public universities. Historically, universities have largely embraced the collegiate approach to management and provision of governance oversight. Public universities have several stakeholders that often include national and provincial government, donors, students and staff. The public universities are usually large organisations that play a key role in the community. Good governance and accountability thus become key issues that they cannot afford to ignore. While public universities are not corporate entities, they stand to benefit from employing good corporate governance practices as espoused by the various governance codes in existence. In southern Africa, it is mainly the King Code, now in Version IV, that is the prominent guide in matters concerning good corporate governance.

Corporate governance as espoused by the King Code is all about good governance and accountability, things that are important in any public entity. While organisations such as tertiary institutions, and specifically public universities as that is the subject matter of this paper, may be structured differently from business entities such as companies, the same corporate governance principles detailed in the main King IV Code apply to these entities. The various sector supplements covering the different

types of entities confirm that corporate governance principles are applicable to virtually all types of organisations (King IV, 2016). The supplements themselves were merely intended to facilitate synchronisation of terminology used in the King IV Report to that used in the various other types of organisations and to give overall guidance of how to apply corporate governance principles in these other organisations.

Traditionally, universities have tended to have a unique governance structure, much as it is not uniform throughout the world. That structure is in contrast to that relating to businesses or the truly corporate structure. Decision making has tended to be based largely on committee structures of the academic body and the governing body, with very little management decision making by the various leadership positions found in a university. There is considerable and comprehensive literature on university governance practices across the globe (Aghion, Dewatripont, Hoxby, Mas-Colell & Sapir, 2009; Baldrige, 1971; Fielden, 2008; Saint, 2009; Salmi, 2009). However, there is no evidence of any significant studies on university governance in relation to corporate governance as now practised in many countries around the world, save for mention of this by scholars such as Fielden (2008:41), but without really any discussion of what this would mean. There are various corporate governance codes that include King IV, a code based on South Africa but is observed in many countries in the southern African subcontinent and beyond. This

paper aims to present a preliminary analysis of the state of affairs regarding the application of corporate governance principles in the tertiary education sector, basing it primarily on public universities. This is intended as a precursor to in-depth studies that may explore the desirability and feasibility of applying corporate governance practices to the tertiary education sector worldwide.

## 2. Literature Review

Corporate governance is all about good, ethical, effective and legitimate governance (King IV, 2016). While corporate governance codes, such as King IV (2016), were primarily focussed on inculcating good governance practices in the corporate sector of any economy, overall the principles of good governance are applicable to all the different types of organisations, universities included. However, universities are a unique category of entities when it comes to their governance. As alluded to above, historically, universities are managed and governed on a collegiate approach, and approach that is non-existent in the corporate sector. But good governance and accountability are just as important to universities as they are to all other types of organisations. Thus, it is simply the collegiate model that poses some challenges, albeit few, to the full application of corporate governance codes in universities.

Various scholars have written on university governance, a part of which can be explained by the origins of universities, where it was the scholars themselves that played a dominant role in the establishment and running of universities. Harold Perkin (2007) outlines the history of universities well in this regard. One of the most comprehensive reports on governance in universities is that by William Saint (2009), where he surveyed worldwide trends in university governance. The study covered 132 universities in 74 countries around the world (Saint, 2009: 1). This paper relies heavily on this study that was commissioned by the Human Development Network of the World Bank, together with that by Fielden (2008), also sponsored by the World Bank. Saint (2009) argues that the history of university governance has largely remained the same for much of the 200 years of modern history starting in the early 19<sup>th</sup> century (the Humboldtian model of higher education era). The governance structure of universities is best explained by looking at the origins of this institution – The University. Universities have evolved from what initially was an

informal relationship between tutors and students (Saint, 2009), without any significant involvement of the state or regulatory authority, if at all. The formalisation of that relationship in modern times, with the university emerging as an institution of higher learning, and with the involvement of the state primarily to avail resources, has not completely eroded the foundation of universities as autonomous institutions that are largely self-governing to this day. This is particularly true of public universities (Saint, 2009:3). The governing bodies of public universities have significant numbers of internal members and in some cases, these are in the majority. In the study by Saint (2009:9) the sample had 58% of the boards with internal members in the majority, and only 25% had an external majority. The remaining 17% were boards where neither the internal nor the external members were in the majority. The foregoing largely conflicts with corporate governance principles that advocate a majority of non-executive, of whom the majority should be independent. In terms of corporate governance principles, internal members of governing boards would largely be conflicted in the consideration of much of the typical agenda of a governing body. This means that the majority of university governing boards do not pass the desired membership test as espoused by good corporate governance practices.

Public universities have largely continued to be governed and managed based on the collegiality model, with the institutional leader, whether by the title vice chancellor or any other, fulfils primarily a ceremonial and administrative role as a *primus inter pares* (Saint, 2009:2). Decisions are made at various levels of the institution all the way up to the governing body via committees and executive authority is either absent or insignificant. However, it should be borne in mind that not all public universities necessarily fit completely in this model. There are variations between countries with similar practices and at times even between universities in the same country.

Justification for the composition of governing boards of universities that are dominated by internal membership or have a significant proportion of internal members, has hinged primarily on the issue of autonomy. It has always been felt that for universities function optimally and be able to execute their mandate effectively, they need to be autonomous and not be encumbered by inefficient bureaucratic tendencies of state governments (Saint, 2009:3;

Salmi, 2009:28). However, governments as financiers of public universities want to have a say on how universities are run, particularly from the point of view of accounting for resources extended to the institutions. As Saint (2009:2,3) and Fielden (2008:37-38) noted, during the 1990s governments were heavily invested in a state control model of higher education management, but by the end of the decade governments have largely backed down from attempting to exercise control of public universities to seeking autonomy with accountability. In the 1990s, the move by some of the governments to ensure that the external members of governing board were in the majority happened in such countries as Tanzania, Denmark, Norway and England, amongst others (Fielden, 2008:38). This brought the institutions concerned to a governance model (*the corporate model*) that was more aligned to corporate governance principles in terms of composition of the governing board. In countries where government has stepped in to change the composition of university governing boards, the state also ensured that a certain proportion of the members of the governing body are appointees of government (Fielden, 2008). Public universities that have a majority of external members in their governing boards are still fewer than those that have the majority of internal members (Saint, 2009:9).

### 3. Corporate Governance Principles and University Governance

In defining corporate governance, King IV Report (2016) emphasises the exercise of ethical and effective leadership by the governing body in relation to the achievement of the governance outcomes that include ethical culture, good performance, effective control and legitimacy. King IV Report has a total of seventeen (17) principles that guide the exercise of corporate governance. It is these 17 principles that this paper interrogates in terms of whether universities would find it easy to apply. The governance structure of universities is unique as compared to that of companies and similar organisations. While a university has a governing body just like any other formal organisation, it also has a Senate. The senate may be subordinate to the governing body in terms of overall oversight responsibilities, but it is a major governing structure which is also the ultimate authority on the core business of a university: The Academic Agenda. Thus the governing body has little say, if any on core business of the university outside of having the authority to determine

whether resources are available for the university to mount additional academic programmes.

Another unique element of a university is that the governing body often has a sizeable number of employees as full members of the governing body. Some of them end up as members of committees of the governing body. It is with this background that this paper seeks to establish whether King IV Report principles are necessarily suitable for use by universities.

In the main, the majority of the King IV Report provisions are harmless as far as these do not conflict with any governance arrangements that typically apply in a university setting. The principles where there are issues worthy of serious consideration in as far as these do not easily lend themselves to easy application by universities, other than those that have gravitated towards corporate (business) structures of governance, include Principle 1 (The governing body should lead ethically and effectively); Principle 2 (The governance body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture); Principle 7 (The governance body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively); and Principle 8 (The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties).

Each of the foregoing principles is discussed in brief on the following page to demonstrate the areas of concern or potential conflict. For the ease of presentation, a table format is preferred over a simply narrative presentation of the issues.

There are universities where the governing body may not take decisions without the advice of Senate even on matters that are not academic, such as remuneration policy. Further, it is not alien to universities for decisions of this nature to be made with the full participation of members who are conflicted as they obviously stand to benefit directly from the outcomes of the deliberations of the governing body. The solution that is in line with principles of corporate governance would be that the university governing bodies be constituted differently to exclude employees other than for the CEO and one

**Table 1: Principle 1**

Principle	Issues Arising
<p><b>Principle 1:</b> The governing body should lead ethically and effectively:</p> <ul style="list-style-type: none"> <li>Members of the governing body should avoid conflict of interest</li> </ul>	<p>A significant number of members of the governing body in universities are university employees representing various sectors of the university such as senate, the executive management and even categories of staff. These members can at times constitute nearly 50% of the membership of the governing body. From time to time the governing body discusses policy and other important matters such a remuneration of employees, where these members would be conflicted. Exclusion of these members from discussion of the same may compromise the governing body in terms of quorum and the legitimacy of decisions made by a meeting that may not have been properly constituted.</p>

Source: Authors

**Table 2: Principle 2**

Principle	Issues Arising
<p><b>Principle 2:</b> The governance body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture</p> <ul style="list-style-type: none"> <li>Application of the organisation's ethical standards to the processes for recruitment, evaluation of performance and reward of employees.</li> </ul>	<p>The challenges here stem from the same difficulties resulting from conflict of interest as discussed under Principle 1 above.</p>

Source: Authors

**Table 3: Principle 7**

Principle	Issues Arising
<p><b>Principle 7:</b> The governance body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively</p> <ul style="list-style-type: none"> <li>The governing body should assume responsibility for its 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</li> <li>The governing body should aim to achieve: <ul style="list-style-type: none"> <li>the appropriate mix of executive, non-executive and independent non-executive members</li> <li>sufficient numbers of members to serve on the committees of the governing body</li> </ul> </li> <li>The nomination of candidates for election as members of the governing body should be approved by the governing body as a whole</li> <li>The nomination of candidates for election as members of the governing body should be formal and transparent</li> </ul>	<p>A typical university governing body comprises a substantially higher number of members that are not independent, much as several of these may be non-executive, than is commensurate with this corporate governance principle. This brings into question the independence and therefore the objectivity of the governing body.</p> <p>It also constrains the governing body from ensuring that its committees are properly constitute with sufficient numbers of independent members, unless the governing body is made very larger (30+ members) in order to bring in sufficient numbers of independent members to make committees viable in terms of comformity to best practice as indicated by corporate governance codes.</p> <p>Usually the majority or a substantial number of the members of a university governing body are representatives of various constituencies and these members are identified by those constituencies independently of the governing body. At times as many as four or five members may be ex-officio members by virtue of the positions they occupy in that particular university (vice chancellor and deputy vice chancellors). The governing body has little or no chance to influence the appointment of new members of the governing body.</p>

Source: Authors

**Table 4: Principle 8**

Principle	Issues Arising
<b>Principle 8:</b> The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties	Membership of committees of the governing body is constrained by factors discussed in Principle 7 above. Typical universities would not find it easy to meet the prescribed composition of some of the committees of the governing body, such as the audit committee, unless it has a very large membership complement that is in the region of 30 members.

Source: Authors

other senior member of the executive leadership. However, to do this would be to radically change the tradition of how universities have been governed for centuries.

This is the one principle that poses the most significant challenge to universities wishing to apply corporate governance principles as it is the source of the challenges experienced with regard to other principles such as Principle 1 and 2 on the previous page. While a significant proportion of the members of the governing body who are employees of the university are non-executive, they are certainly not independent and thus would not be eligible for membership of committees such the audit committee and would also not be eligible to chair board committees of which they may be members, if the university were to apply corporate governance principles. While the governing body may liaise with various appointing authorities of members of the governing body to try and secure appointees who would assist the body to meet the desired mix of knowledge, skills and experience, this is often very difficult to achieve in practice for a variety of reasons that include the fact that often the appointing authorities may employ criteria that don't let themselves to selecting candidates that meet the requirements of the governing body. For instance, some of the appointees take up membership of a university governing body on the basis of the position they hold in the appointing authority's organisation. A nominations committee for a university is essentially of no use and universities tend not to have such a structure.

The difficulties experienced by university governing bodies in managing the membership of the governing bodies and their committees is as a result of numerous appointing authorities that act independently of the governing bodies. At times, vacancies may remain for extended periods of time because of lack of action by an appointing authority

to fill the vacancy. At other times, the membership of a university governing body may change frequently based on the frequent movements of members out of the positions they hold in the appointing authority's organisation.

#### 4. Conclusion and Recommendations

The governance of public universities has largely continued to be based on the collegial model. While there have been numerous changes mostly instituted by governments desirous of more accountability and even control of universities, the collegial model remains dominant. Scholars and other researchers have suggested that the autonomy of universities is paramount in ensuring that these institutions deliver on their mandate without interference from the state. However, the need for universities to be accountable to the various stakeholders that include state governments cannot be wished away. The question is whether best practice in university governance should be based on corporate governance principles as espoused by such codes as King IV. As of now, many public universities do not meet all the essential elements of corporate governance. The major shortfall in this regard emanates from the way the governing bodies of universities are structured in terms of the composition of these boards, where often the majority of members are internal to the university. Another factor that makes it difficult for public universities to comply with corporate governance principles is that a large proportion of the members are representatives elected or appointed by various stakeholders, doing so independently of the governing body. This makes it difficult for boards to ensure that they have all the critical skills needed for the governing body to function optimally.

This was a preliminary desk study that sought to assess possible bottlenecks to the application of corporate governance (best practice), as espoused

by corporate governance codes such as King IV Report (2016), in public universities. It is necessary for an in-depth empirical study to be conducted based on a representative sample of public universities located in southern Africa, Africa or the world, to show if universities need to follow the stipulations of corporate governance codes or whether other mechanisms can be employed to ensure that the accountability that is expected by the various stakeholders of the universities can be met without subjecting universities to corporate governance principles. Alternatively, research be conducted to deduce as to whether universities have really anything significant to lose by fully aligning with corporate governance principles.

## References

- Aghion, P., Dewatripont, M., Hoxby, C.M., Mas-Colell, A. & Sapir, A. 2009. The Governance and Performance of Research Universities: Evidence from Europe and the U.S. NBER Working Paper 14851. Available at: <http://www.nber.org/papers/w14851>. Accessed on 27 March 2018.
- Baldrige, J.V. 1971. Models of University Governance: Bureaucratic, Collegial, and Political. Washington, D.C: Office of Education.
- Barzelis, A., Majere, O. & Saparniene, D. 2012. University Governance Models: The Case of University of Lapland. *Journal of Young Scientists*, 2(35):90-102.
- Fielden, J. 2008. Global Trends in University Governance, World Bank. Washington DC.
- King IV Report on Corporate Governance for South Africa. 2016. Institute of Directors in Southern Africa. Johannesburg: Institute of Directors in Southern Africa
- Perkin, H. 2007. In James J.F. Forest and Philip G. In Altbach (eds.), *International Handbook of Higher Education*. Dordrecht: Springer. pp.159-205.
- Saint, W. 2009. Guiding Universities: Governance and Management Arrangements Around the Globe. Human Development Network. World Bank: Washington DC.
- Salmi, J. 2009. The Challenge of Establishing World-Class Universities. Washington DC: World Bank.