

Understanding director independence according to King IV

By [Ansie Ramalho](#)

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As a result of shareholder concerns, MultiChoice recently terminated a service contract with one of its directors, who was nevertheless classified as an "independent" director in the company's integrated report for 2023. The director, Kgomotso Moroka, had been providing consulting services to the company, for which she was remunerated R1.5m for the year ending March 2023. That the advisory contract was extended from a previous year points to an "ongoing" engagement, thus falling foul of one of King IV's indicators of a lack of independence*.



Ansie Ramalho, Chair, King Committee | Source: [IoDSA](#)

Terminating the service agreement is a move in the right direction, and makes it appropriate for her to be categorised as an independent non-executive director. However, the decision to continue paying another director for ongoing advisory services while still categorising him as independent is flawed.

The point is that while it's not wrong per se for directors to provide paid-for advisory services to companies on whose boards they sit, these services should really be of an insignificant, ad hoc nature. Anything more would likely indicate that the director could no longer be classified as "independent".

Defining 'independence'

Equally important to remember is that a director who is not classified as independent is still capable of exercising independence of mind — indeed this is the legal requirement for all directors. It is, in all probability, on this basis that MultiChoice persisted with categorising its non-executive directors as independent. However, in corporate governance

parlance, classifying a director as independent is an assessment of perception and not of mindset.

Labelling a director as independent signals to the users of the integrated report that the director is free from any relationship and interest that may affect decision-making. It is important to have the correct classification so that where there are indeed interests that may potentially cause bias in certain situations or positions, the management of these interests is explained to demonstrate that the possible conflicts are well understood, and managed and that the perception of impropriety is avoided.

This perception is not avoided in the case of John James (Jim) Volkwyn, the lead independent director, and the chair of the remuneration committee. Volkwyn also received payment for advisory services during the 2023 financial year — this time to the tune of R5m. It seems inconceivable that chairing the meeting at which the remuneration of the CEO and executive committee is determined can be combined with negotiating fees for professional advisory services “on a regular and extensive basis” from the very same group.

Need for transparency

MultiChoice’s Integrated Report for 2023 mentions that legal opinion was taken in maintaining Volkwyn’s classification as independent, but it is hard to see what the rationale would be. Disclosing that rationale would have been helpful in eliminating doubt about conflict management — a good example of why transparency is so important. Even though Volkwyn does not receive a director’s emolument, the fact that he does receive payment for additional services raises doubts about him being perceived as independent in line with King IV.

It is arguable that neither of these two directors should have been categorised as independent in the company’s integrated report for 2023. This is not to say they should be disqualified in any way from serving on the board. Almost all boards have a number of directors who are non-executive but not independent. It is sometimes a valid trade-off to sacrifice perceptual independence in order to gain the benefits of deep industry knowledge and experience, as seems to be the case with the two directors in question.

MultiChoice is transparent about the fact that directors are providing advisory services, and the company has responded to shareholder concerns by ensuring that Moroka’s services contract was cancelled. But it needs to go further: directors who are not truly independent should not be classified as such. The correct classification together with an explanation of how existing interests are managed will more than satisfy the requirements for sound governance.

* These indicators are spelled out in Recommended Practice 28 of King IV (p 52), available [here](#). Specific reference is made to “a significant or ongoing professional adviser to the organisation, other than as a member of the governing body”.

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