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## **Director Governance Compliance Readiness Guide (2026)**

*Prepared by RK Corporate Consulting (RKCC)*

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Corporate governance failures rarely begin with deliberate misconduct. In practice, they begin with informality.

Board meetings are not minted.

Dividends are declared verbally.

Conflict disclosures are assumed rather than recorded.

Statutory registers are incomplete.

Many directors only recognise the seriousness of these omissions once a shareholder dispute arises, funding due diligence is conducted, or personal liability is alleged under Section 77 of the Companies Act 71 of 2008.

By that stage, the focus shifts from governance management to legal defence.

This guide is designed to intervene earlier. It assists directors in assessing whether their governance framework is legally defensible before exposure crystallises.

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### **Purpose of This Guide**

This toolkit assists directors and business owners in determining whether their company complies with the governance obligations imposed by the Companies Act 71 of 2008.

It is designed to help you:

- assess whether statutory records are properly maintained;
- evaluate whether distributions comply with the Solvency and Liquidity Test;



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- identify fiduciary and conflict disclosure risks;
- evaluate exposure under Sections 75, 76 and 77; and
- determine when professional remediation is required.

This guide does not replace legal advice. It helps you determine whether your governance framework is defensible — and whether your personal protection remains intact.

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## **Legal Framework: Corporate Governance Under the Companies Act 71 of 2008**

Discipline in governance is not optional. It is statutory.

The following provisions operate collectively:

- Section 19 – Separate Legal Personality
- Section 20(9) – Disregard of Juristic Personality
- Section 24 – Statutory Records
- Section 4 read with Section 46 – Solvency and Liquidity Test and Distributions
- Section 75 – Disclosure of Personal Financial Interests
- Section 76 – Standards of Directors' Conduct
- Section 77 – Personal Liability

Each provision reinforces the others. Compliance is structural, not isolated.

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### **Section 19 and Section 20(9): Separate Legal Personality and Its Limits**

Section 19(1) confirms that a company exists as a juristic person separate from its shareholders and directors.



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Section 20(9) permits a court to disregard that separation where it is used for unconscionable abuse.

Separate legal personality is preserved through operational discipline.

Separate Personality Integrity Check

Confirm that:

- The company maintains a dedicated bank account.
- Corporate and personal expenses are clearly separated.
- Director loan accounts are formally recorded and reconciled.
- Shareholding changes are reflected in the securities register.
- Assets registered in the company's name are not used interchangeably for personal benefit.

**✘ Risk if overlooked:**

Blurring financial separation weakens the evidentiary basis for limited liability and may support arguments for veil piercing under Section 20(9).

**Practical Illustration**

A director routinely transfers funds from the company account to settle personal obligations, intending to "regularise" the amounts later. No formal loan agreement or board resolution exists.

During litigation, those transfers are recharacterised as misuse of corporate funds.

Informality becomes vulnerability.

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## **Section 24: Statutory Record Compliance**

Section 24 requires companies to maintain prescribed statutory records.

These are not administrative formalities. They are evidentiary instruments.



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Statutory Record Readiness Check

Confirm that:

- Securities register is current.
- Register of directors is accurate.
- Director appointments and resignations are properly filed.
- Board meetings are minted and signed.
- Written resolutions are properly executed.
- Annual financial statements are prepared and approved.
- Annual returns are filed with CIPC.

**✘ Risk if overlooked:**

In dispute or regulatory review, inability to produce statutory records significantly increases personal exposure.

**Practical Illustration**

Two companies face shareholder disputes. One produces structured board minutes and statutory registers. The other relies on recollection and informal email exchanges.

The commercial facts are similar.

The legal defensibility is not.

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**Section 4 read with Section 46: The Solvency and Liquidity Test**

Before authorising dividends or distributions, directors must reasonably conclude that:

- the company's assets exceed its liabilities; and
- the company will remain able to pay its debts for 12 months following the decision.

This is a forward-looking financial assessment.



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Distribution Compliance Checklist

For each dividend or distribution in the last three financial years, confirm:

- A board resolution was passed.
- The resolution records application of the Solvency and Liquidity Test.
- Updated financial statements were reviewed.
- Contingent liabilities were considered.
- A written solvency statement was signed and retained.

**✘ Risk if overlooked:**

Unlawful distributions may expose directors to personal liability under Section 77.

**Practical Illustration**

A profitable company declares dividends based on management accounts. No written solvency assessment is prepared. Twelve months later, liquidity pressure arises.

When challenged, directors cannot demonstrate that the statutory test was applied at the time of the decision.

Profitability does not replace statutory compliance.

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**Sections 75 and 76: Conflict Disclosure and Fiduciary Discipline**

Section 75 requires disclosure of personal financial interests.

Section 76 requires directors to act in good faith, for proper purpose, and in the best interests of the company.

Conflict Governance Checklist

Confirm that:

- A conflict disclosure register exists.
  - Directors formally declare personal financial interests.
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- Recusals are recorded in minutes.
  - Related-party transactions are documented and authorised.

**✘ Risk if overlooked:**

Decisions may be invalidated and fiduciary breach exposure increases.

**Practical Illustration**

A director participates in approving a contract awarded to an entity in which he holds an interest. The relationship is known informally but not recorded.

In subsequent litigation, absence of documented disclosure undermines the validity of the decision.

Transparency assumed is not transparency recorded.

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## **Section 77: Personal Liability Exposure**

Section 77 provides for personal liability where directors:

- authorise unlawful distributions;
- breach fiduciary duties;
- act contrary to the Act or the Memorandum of Incorporation;
- permit reckless trading.

Exposure Indicator Review

Consider whether:

- Distributions were made during financial strain.
- Creditors were unpaid while dividends were declared.
- Financial decisions were taken without updated financial data.
- Conflict disclosures were omitted.



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✘ **Risk if present:**

Exposure may crystallise during insolvency proceedings or shareholder litigation.

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**Relevant Case Law: Governance Under Judicial Scrutiny**

In *Ex parte Gore NO and Others* 2013 (3) SA 382 (WCC), the High Court confirmed that corporate personality may be disregarded where abused.

In *Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa SOC Ltd* (2017), the court reaffirmed that directors are judged against an objective standard of conduct.

The courts assess documentation, reasoning, and compliance — not subjective belief.

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**LEGAL CONSEQUENCES OF NON-COMPLIANCE (EXPLICIT)**

Failure to comply with governance obligations under the Companies Act 71 of 2008 may result in:

- Personal liability under Section 77;
- Recovery proceedings in insolvency;
- Invalidation of corporate decisions;
- Shareholder derivative actions;
- Veil-piercing arguments under Section 20(9);
- Funding refusal during due diligence;
- Reputational and commercial harm.

Liability exposure is often latent. It becomes visible under scrutiny.



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**Practical Case Study: Governance Informality Under Litigation**



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A private company operates profitably for several years. Dividends are declared verbally. No written solvency assessments are recorded. Conflict disclosures are informal. Statutory registers are incomplete.

**A shareholder dispute arises.**

During litigation, statutory records required under Section 24 cannot be produced. Dividends cannot be supported by written solvency documentation.

The inquiry shifts from commercial disagreement to director conduct under Sections 75, 76 and 77.

**The commercial issue becomes secondary.**

Director conduct becomes central.

**Key lesson:**

Limited liability is preserved through documentation, not assumption.

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**! Why This Guide Matters**

At law, the burden of proof rests on the party asserting compliance.

If governance discipline cannot be demonstrated through documentary evidence, director protection weakens significantly.

Most exposure does not arise from deliberate wrongdoing.

It arises from sustained informality.

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**How RKCC Supports You**

RK Corporate Consulting assists directors and SMEs with:

- Comprehensive corporate governance audits;
  - Statutory compliance gap assessments;
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- Solvency and Liquidity Test implementation frameworks;
  - Director exposure risk evaluations under Sections 75, 76 and 77 of the Companies Act 71 of 2008;
  - Alignment of Memoranda of Incorporation and shareholder agreements;
  - Governance remediation planning before disputes crystallise.

We do not provide generic templates.

We build legally defensible governance systems aligned to your operational reality and risk profile.

Early intervention materially reduces personal exposure and commercial disruption.

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## **Navigating Governance with Confidence**

Company registration creates legal existence.

It does not create governance.

It does not create insulation.

It does not create protection.

Those protections arise from structured compliance, documented decision-making, proper application of statutory tests, disciplined conflict management, and sustained adherence to directors' duties under the Companies Act 71 of 2008.

If your company were subjected to shareholder scrutiny, regulatory review, funding due diligence, or insolvency examination tomorrow, could you demonstrate compliance through documentation rather than explanation?

Governance weaknesses do not disappear.

They accumulate.

They surface under pressure.

They determine outcome.



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Structured governance is not administrative neatness.

It is liability preservation.

Incorporation creates opportunity.

Governance determines whether it survives.

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Navigating compliance with confidence, we handle the red tap while you focus on growth.

