Revisions to Crisa align with growing interest in ESG investment

By Giles White, Elodie Maume, Madelein Burger, Zelda Swanepoel & Kent Davis

21 Jan 2021

Environmental, social and governance (ESG) integration in the corporate decision-making process is gathering momentum around the world. More active engagement with ESG issues, particularly by institutional investors, is also emerging domestically, with the revision of the Code for Responsible Investment in South Africa (Crisa)..

123rf.com

The code was launched in 2011 in response to the King III Report on Corporate Governance South Africa. King III and its predecessors provided a governance framework for companies and their boards but did not include institutional investors. To fill that gap, the Institute of Directors in South Africa (IoDSA) set up the Crisa committee to develop a stand-alone code for institutional investors.

The main objective of the revision is to position the code as a custodian of governance for the South African investment community.

The revised draft was sent out for public comment in November 2020, and consultation is open until 31 January 2021, with the goal of launching a new code by the end of the first quarter of 2021. It retains similar core concepts to the 2011 version, but there are some changes to bring it in line with global and local developments. In addition to its five revised principles, the draft proposes practice recommendations focused on implementation to support action, and reporting to promote transparency.

The draft revised code comes at a time of increasing societal concern about ESG issues and public pressure on all key players in the corporate ecosystem to take these issues seriously. The current re-evaluation of the purpose of companies and the shift in their focus from solely looking to maximise shareholder value (given strong momentum in the public arena by the Covid-19 pandemic) sits at the heart of the increased importance of ESG issues for corporates and investors.

Of course, the challenge remains that directors are required, under our law, to focus on the best interests of the company (interpreted by the courts as meaning the best interests of shareholders as a whole). However, it may well be that weighing up the interests of a wider group of stakeholders is today perceived as acting in the best interests of shareholders. In addition, when it comes to investors, they in turn owe a duty to act in the best interest of their own members / asset owners and not to the investee entity and can therefore make decisions (including regarding the voting of their shares) with ESG issues at the forefront of their minds (especially if investors make decisions to invest in an investee based on its stated approach to ESG issues).

Purposeful engagement and voting to create long-term value

Crisa encourages investment organisations to discharge their stewardship duties diligently. The concept of stewardship is borrowed from the UK Stewardship Code 2020 issued by the Financial Reporting Council (a statutory body). For the purposes of Crisa, diligently discharging stewardship duties means managing and overseeing investments with a view to creating long-term value for the economy, the environment and society as part of the delivery of superior risk-adjusted returns to clients and beneficiaries. The code suggests that investment organisations will achieve this through engaging with investee companies and exercising their voting rights. We note that this may also be achieved by the initial decision as to which entities to invest in or the later decision which to divest from.

Investment organisations should disclose their policies on engagement, escalation of concerns and voting or the issuance of proxies. They should also publish their full voting records (or a link to voting records), together with the reasoning behind their voting decisions, if these were in conflict with their policies. They should disclose the nature and number of their engagements on ESG and broader sustainable development concerns relative to the total number of engagements, with a breakdown by topic. The outcomes of these engagements should also be explained.

Collaboration with stakeholders

Crisa encourages collaboration among various actors along the investment value chain, such as regulators, shareholders, service providers, investees and beneficiaries as well as industry bodies. This collaboration should be directed towards building capacity and skills within each organisation and the broader industry to enhance the identification and management of ESG and broader sustainable development issues, particularly those with market-wide implications.

Corporate governance

Although Crisa is a stand-alone code, it should be applied with the principles of corporate governance of the King IV Report on Corporate Governance 2016 in mind. The code recommends that the boards of investment organisations put in place sound governance structures and processes to enable oversight of, and accountability for, their investment activities.

Broader application to all asset classes

The principles of Crisa will apply across all asset classes, investment styles and types of investment organisations to promote the application of the principles beyond listed equities to additional asset classes. This includes, for example, fixed income bonds, real estate or infrastructure investments.

Apply and explain disclosure regime

It is proposed that the disclosure regime in Crisa (currently apply or explain) be aligned with that of the King IV (apply and explain). Interestingly, apply and explain is also adopted by the UK Stewardship Code. Institutional investors will therefore need to disclose in a report how they implemented the principles and practices of Crisa and, where applicable, how they adapted these to scale application of practices on a proportionate basis. The code recommends that the report be made public as far as possible to ensure it is readily accessible to stakeholders.

Success of Crisa in the balance

The revised code will remain voluntary. In addition, unlike the UK Stewardship Code, there is no mechanism to become a formal signatory to Crisa.

The Crisa Committee proposes in its consultation paper to conduct an organisational review process to explore how best to position the revised code for success through optimal effectiveness in application. This process will include the development of an organisational model to establish Crisa as the body that would serve as the custodian of the code, as well as to consider potential monitoring approaches to enable oversight of implementation.

ABOUT THE AUTHOR

Giles White, Elodie Maume, Madelein Burger, Zelda Swanepoel and Kent Davis from Webber Wentzel