Chapter 3 - Enhanced Accountability and Transparency

43. Social and Ethics Committee

See s. 72 (4) to (10)

(1) This regulation applies to—

(a) every state owned company;

(b) every listed public company; and
Application

- State owned companies
- Listed companies
- Large companies with “Public Interest Score” > 500
  
  _in any 2 of the past 5 years_
Public Interest Score

- Section 26 of the Companies Act Regulations
- “for profit company”
- Contemplates group vs company

\[ \text{PI Score} = \text{Nr}_{-}\text{Employees} + \text{Nr}_{-}\text{Debt} + \text{T/O}_{-}\text{Million} + \text{Nr}_{-}\text{Shareholders} \]
UNLESS...

(2) A company to which this regulation applies must appoint a social and ethics committee unless—

(a) it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or

(b) it has been exempted by the Tribunal in accordance with section 72 (5) and (6).
Penalty for Non-compliance

- Limited to directors assuming the expense of a general meeting
- Reputational damage
- Administrative penalties
Organisation

- 3 directors OR prescribed officers
- 1 of whom is a non-executive director

(4) A company’s social and ethics committee must comprise not less than three directors or prescribed officers of the company, at least one of whom must be a director who is not involved in the day-to-day management of the company’s business, and must not have been so involved within the previous three financial years.
Prescribed Officer

38. Prescribed officers of companies

See s. 66 (10)

(1) Despite not being a director of a particular company, a person is a “prescribed officer” of the company for all purposes of the Act if that person—

(a) exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or

(b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the company.

(2) This regulation applies to a person contemplated in sub-regulation (1) irrespective of any particular title given by the company to—

(a) an office held by the person in the company; or

(b) a function performed by the person for the company.
Responsibilities

1. Monitor company activities

2. Draw matters to the board’s attention

3. Report to board & shareholders
1. Monitor which Company Activities?

- Social & Economic Standing & Development
- Good Corporate Citizenship
- Environment, Health & Safety
- Consumer relations & compliance with laws
- Labour and Employment
Social & Economic Standing & Development

- UN Global Compact Principles
- OECD Recommendations
- The Employment Equity Act
- The BBEEE Act
Good Corporate Citizenship

- Contributions to the community
- Record of charitable payments
- Equality, discrimination and corruption measures
• ILO Protocol on Decent Work

• Employment relationships

• Contribution to education
Opportunity

- Shareholders
- Alignment
- Board
- King III
International Codes & Guidelines UNCOVERED
International Codes & Guidelines

- UN Global Compact
- OECD recommendations regarding corruption
- ILO Protocol on Decent Work
UN Global Compact: “Businesses should...”

Human Rights
- Support and respect the protection of human rights
- Not be complicit in human rights abuses

Labour
- Uphold the freedom of association & right to collective bargaining
- Eliminate all forms of forced and compulsory labour
- Eliminate child labour
- Eliminate discrimination re employment and occupation

Environment
- Support precautionary approach to environmental challenges
- Promote greater environmental responsibility
- Encourage environmentally friendly technologies

Anti-Corruption
- Work against corruption in all its forms, including extortion and bribery.
1. Not to offer or give undue advantage
2. Develop risk-based internal controls, ethics and compliance programmes
3. Prohibit or discourage the use of “small facilitation payments”
4. Documented due diligence of hiring and oversight of agents
5. Enhance transparency of efforts
6. Promote employee awareness
7. Not to make illegal contributions
ILO Protocol on Decent Work
International Labour Organisation

1. Strengthening fundamental principles and rights at work

2. Promotion of employment

3. Strengthening and broadening social protection coverage

4. Strengthening social dialogue
   - Strengthening Institutional Capacity of NEDLAC, Bargaining Councils & dispute resolution bodies
   - Strengthening Trade Union and Employer organizations and Collective Bargaining Councils.
   - Formalization of the informal economy – enforcing and promoting labour standards
Alignment with King III
UNCOVERED
Alignment with King III

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is hereby acknowledged.
Alignment with King III - amended 23 Feb 2012

- Chapter 1. Ethical Leadership and Corporate Citizenship
- Chapter 2. Boards and Directors
- Chapter 8. Governing Stakeholder Relations
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## Board Committees

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Tricks & Traps
UNCOVERED
"MAKE SURE EVERYTHING IS DONE ETHICALLY. WITHIN REASON, OF COURSE."
NB points

1. The Board is to institutionalize ethics throughout the company

2. SEC must have a working knowledge of all applicable legislation

3. SEC members must be able to decide INDEPENDENTLY

   Appoint a Committee with enough resources

4. What’s on the agenda?
1. Institutionalise Ethics:

Ethical Leadership & Guidance

1. Make sure one has all the facts
2. Ask oneself: What specifically am I being asked to do? Does it seem unethical or improper?
3. Clarify one’s responsibility and role
4. Discuss the problem with one’s supervisor
5. Seek help from Company resources
6. One may report ethical violations in confidence without fear of retaliation
7. Ask first, act later
2. Know the legislation

Social aspect is in most cases covered by actual legislation;

• Consumer Protection Act
• National Credit Act, etc.
• Basic Conditions of Employment Act
• Labour Relations Act
• Skills Development Act
• Occupational Health & Safety Act
• National Environmental Management Act
• Mine Health and Safety Act
• Foodstuffs, Cosmetics and Disinfectants Act
• Water Act
• All of its related laws (Air quality Act, Waste Act, etc.)
3. Appoint the Committee

1. The SEC
   1.1 Members
2. TOR and Mandate
3. SEC’s role
4. Responsibilities
   4.1 Committee
   4.2 Execs
5. Measure, evaluate and report

It is about respectful and functional relationships
4. What’s on the agenda?

• Employment Equity

• Pay Equality (Say – on – Pay)

• Bribery & Corruption Prevention

• Environmental - Water
Employment Equity

What is the Board’s directive?

1. Compliance
2. Discrimination
3. Reputation

• Proving support and advice to the board
• Governance: Policy - Strategy - Framework
• Assurance from Internal Audit
Say – on - Pay

1. What is your Board directive - Policy?

2. What are you prepared to disclose?

3. What is equitable / What is ethical?
   • Provide guidance to the board
   • Report to the shareholders
African Expansion Strategy?

1. OECD recommendations on reducing bribery corruption
2. United Nations Convention against Corruption
3. Legislation
   - Prevention and Combating of Corrupt Activities Act 2004

Bribery and Corruption Prevention Policy
Help the Board State their Intent

- Employment Equity Policy
- Pay Equality (Say – on – Pay) Policy
- Bribery & Corruption Prevention Policy
- Environmental Policy
Join the conversation