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# Doing Business in South Africa: An overview of ethical aspects

BY JUDITH IRWIN

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# Introduction

This Paper offers a synopsis of the business ethics climate in South Africa.

It will be useful to companies operating in or considering entering the South African market.

The information presented has been gathered from a range of sources including interviews with corporate ethics practitioners working in South Africa and subject experts.

The Paper is divided into two parts:

An overview of the operating environment for business in South Africa is presented in **Part 1**. Exploring the cultural characteristics and context for business, such as key issues of concern, will help a company to understand better its employees' behaviour in the face of ethical dilemmas.

**Part 2** considers current business ethics and corporate responsibility trends and challenges in South Africa. How mature is the field? What issues are ethics and responsibility programmes focusing on? How has the cultural diversity of the country and the operating context influenced this?

The Paper ends with a list of Further Resources and organisations that are playing a prominent role in promoting ethical business in the country.

## 01

# Context

The Republic of South Africa is the largest economy in the African continent with a Gross Domestic Product (GDP) of approximately US\$364 billion in 2010.<sup>1</sup> The country's main economic activities are mining and agriculture, with tourism an important contributor also.

## 1. Cultural traits

South Africa is a culturally diverse nation. The population consists of four main groups: Black African (79%), White (Afrikaners and white English) (9%), Coloured (9%), and Indian/Asian (3%).<sup>2</sup> Each ethnic group exhibits differing and varied religious, cultural and linguistic traits.<sup>3</sup> Identity is firmly rooted in ethnicity, and while historic rivalries between groups do exist, great maturity has been demonstrated since the move to majority rule in 1994.

The traditional African concept of 'Ubuntu' is widely respected amongst South African people, particularly the black population. Ubuntu is an ethic or humanist philosophy that emphasises people's allegiances and relations with each other; 'I am because you are; you are because we are'. Qualities associated with Ubuntu are mutual respect and support, interdependence, unity, collective work and responsibility.<sup>4</sup>

## 2. Political history and government

In 1961, South Africa became a self-governing republic, having previously been a British dominion. The minority white population had dominated politics and it was in 1949 that the National Party Government embarked on the approach of apartheid, artificially segregating the races and, crucially, providing lower standards of education to the majority black population. Apartheid ended when the country moved peacefully to majority rule in 1994.

Since 1994, the country's government has been led by the *African National Congress* (ANC), in alliance with the Communist Party and the *Congress of South African Trade Unions* (COSATU). The ANC is pursuing essentially free-market policies, but has a significant social agenda influenced by its two alliance partners, each of whom has a more left-wing attitude. There is a material legacy of under-investment in both infrastructure and people to overcome. The country's history of racial oppression and a colonial and apartheid system has divided people on the basis of race and linguistic grouping. As a result of this, South Africa is grappling with achieving social cohesion and uniting the nation around a common sense of purpose.

<sup>1</sup> *The World Bank* (2010). Available at: <http://data.worldbank.org/country/south-africa>

<sup>2</sup> Statistics South Africa, *Mid-year population estimates* (2010). Available at: <http://www.statssa.gov.za/publications/P0302/P03022010.pdf>

<sup>3</sup> For an in depth analysis of the cultural traits of the South African population see: Geert Hofstede's *Cultural Dimensions study* ([www.geert-hofstede.com](http://www.geert-hofstede.com)) and Fons Trompenaars, *Riding the Waves of Culture* (1997)

<sup>4</sup> *King III Report* (2009) pg. 62. Available at: [http://www.iodsa.co.za/downloads/documents/King\\_Code\\_of\\_Governance\\_for\\_SA\\_2009.pdf](http://www.iodsa.co.za/downloads/documents/King_Code_of_Governance_for_SA_2009.pdf)

### 3. 'Broad-Based Black Economic Empowerment'

The concept of black economic empowerment was introduced by the South African Government post-apartheid to promote the participation of black people and other historically disadvantaged people in the South African economy. Initially, this was on a sector-by-sector basis and early 'Charters'<sup>5</sup> included those for the financial services and mining industries.

Towards the end of the 1990s there was growing discontent amongst the black community about the effectiveness of the strategy. The concern was that it only benefitted a select few black people in the country – generally those who were politically connected. It was cynically dubbed 'Black Elite Enrichment'. Subsequently, a document titled *A Strategy for Broad-Based Black Economic Empowerment* (B-BBEE) was released in 2003. It defines B-BBEE and outlines a scorecard against which companies are assessed on their empowerment progress. However, the sector charters have not been repealed and there can be conflicts (in both definitional and target terms) between the legislation and the sector charters.

B-BBEE targets social and economic development of black people through seven key areas:

1. Ownership
2. Management control
3. Employment equity
4. Skills development
5. Preferential procurement
6. Enterprise development
7. Socio-economic development.

The B-BBEE Act 2003 which followed the report outlines the duty of state and public bodies to take an entity's B-BBEE status into account when entering into decisions affecting:

- Procurement
- Licensing and concessions
- Public private partnerships
- The sale of state-owned entities.

Following the Act, *Codes of Good Practice* on B-BBEE were published in 2007.<sup>6</sup> The Codes provide clear and comprehensive criteria for the measurement of B-BBEE, as based on the scorecard. Private companies must apply the Codes if they want to do business with any government entity. In addition, where a private-sector enterprise relies on government-issued licences or permits, it is commonplace for the company to be obliged to enter into various commitments, usually in terms of delivering B-BBEE and the social change agenda, as a condition of the grant of the licence or permit.

In March 2011, the *Department of Trade and Industry* finalised the development of a *Standardised National Training Programme* for B-BBEE verification and, in conjunction with the government departments responsible for Charters, has embarked on an awareness campaign to further familiarise verification agencies with the imperative of measuring sector Codes.

<sup>5</sup> Sector Charters are voluntary industry initiatives by stakeholders with common commercial characteristics seeking to promote and give effective meaningful expression to the purpose of black economic empowerment. Sector codes are legally binding and enforceable to the sector and industry

<sup>6</sup> For B-BBEE *Codes of Good Practice* see *Department of Trade and Industry*, South Africa: [www.dti.gov.za](http://www.dti.gov.za)

## 4. Trade unions

The high level of constitutional provision afforded to freedom of association and collective bargaining, together with the prevalence of manual labour in key sectors of the economy, has translated into strong and active trade unions in South Africa.

As COSATU forms part of the ruling alliance, the actions of certain unions who enjoy a high profile within that alliance tend to have greater political credibility and implications than would be the case elsewhere in the world.

In addition, in pursuit of its inclusive approach to democracy, the Government has created a tripartite body – *The National Economic, Development and Labour Council* (Nedlac). Nedlac comprises of representatives from relevant government departments, organised labour and industry bodies to adjudicate on certain matters. This is indicative of the profile and role enjoyed by trade unions in South Africa. While the process often operates smoothly, there are incidents of conflict, e.g. in April 2011, Nedlac refused to engage with the Government on drafts of the proposed Labour Bill on the basis that, if passed as law, it could threaten job creation.<sup>7</sup>

## 5. Unemployment

The country has a population of approximately 49.3 million with around one quarter of those being unemployed.<sup>8</sup> However, this figure is widely thought to be understated and in many parts of the country, particularly rural and otherwise remote areas, local unemployment rates are significantly higher. Unemployment has been exacerbated by various factors such as slow growth from 1970 – 2000, poor export performance, ‘skills-biased technological change’, stunted educational development due to apartheid, and the fact that the two sectors that are most intensive in low-skilled employment (agriculture and mining) shed jobs steadily.

The lack of equality in the distribution of wealth between predominantly urban whites, the newly created black middle class and (especially) rural blacks is a major source of tension and contributes to many of the challenges facing the country. This is in part due to low levels of income generating employment and wage inequality amongst those with employment, exacerbated by skill shortages.

During much of the 1990s, the ANC had a relaxed attitude towards immigration, especially from neighbouring countries. As a consequence, some South African’s blame ‘foreigners’ for taking the available jobs and there have been incidents of violent protests and xenophobic attacks in various parts of the country.

To tackle unemployment, the Economic Development Minister, Ebrahim Patel launched the *New Growth Path* in December 2010.<sup>9</sup> The purposes of the programme are to create decent work, reduce inequality and defeat poverty by restructuring the South African economy to improve its performance in terms of labour absorption and composition and rate of growth. President Jacob Zuma declared 2011 as South Africa’s ‘year of job creation’.

<sup>7</sup> For more information see: <http://tiny.cc/232j3>

<sup>8</sup> *International Monetary Fund: World Economic Outlook Database* (October 2010).

Available at: <http://www.imf.org/external/pubs/ft/weo/2010/02/weodata/index.aspx>

<sup>9</sup> For more information see: <http://tiny.cc/a5lew>

## 6. Education

Perhaps the most damaging legacy of apartheid lies in the education of the majority population. Illiteracy and innumeracy is relatively common and has created a significant group of people who find it difficult to work in the mainstream economy. A second impact is the skills gap faced in many professions, including teaching. By international standards, South Africa devotes significant budgets and resources to its education system, but the results are disproportionately poor. Employers face a significant skills gap, exacerbated by the need to fill racial quotas in order to meet B-BBEE targets.

## 7. Crime

Although there is a degree of stereotyping, crime and particularly violent crime is a reality in South Africa. Personal security and safety is a significant concern for many people and results in a situation which hinders the re-integration of the races that the Government seeks.

Organised crime, usually in the form of established gangs ('syndicates'), has been known to infiltrate the workforce and many companies have strategies in place to minimise the risk.

## 8. Delivery of change agenda

As noted, the ANC-led Government will have to deliver on its social agenda if it is to continue to gain the support of the people. The ruling government has made some headway in its delivery of basic services (water, electricity, housing etc), although challenges in delivery do remain. There is a perception that the pace of change has been slow, and there are real concerns around capacity and capability of the state, corruption and the lack of proper systems, as well as accountability and leadership issues. The situation is potentially exacerbated by the ANC's official policy of 'cadre deployment', which leads to the appointment of government officials at national, provincial and local levels based on loyalty to the ANC rather than necessarily having the appropriate skills and qualifications for the role.

## 9. HIV and AIDS

A further contextual factor for any business operating in South Africa is the prevalence of HIV and AIDS infection. In 2010, 43% of deaths in the country were AIDS related, 5.2 million of the total population (10.5%) were living with HIV and just over 1.5 million adults (15years +) were in need of anti retroviral therapy.<sup>10</sup> Given that a large proportion of sufferers are of working age, the prevalence of HIV/AIDS has the potential to affect the labour supply and productivity of the labour force.

The South African Government is working hard to combat the spread of HIV and AIDS and in 2001 the country became a signatory to the *United Nations Declaration of Commitment on HIV/AIDS*. The Declaration sets out targets for the international community towards reducing the spread of HIV/AIDS and alleviating its impact.

<sup>10</sup> Statistics South Africa, *Mid-year population estimates* (2010). Available at: <http://www.statssa.gov.za/publications/P0302/P03022010.pdf>



## 10. Bribery, corruption and fraud

In their *Corruption Perception Index*, Transparency International (TI) rank South Africa as the 5th least corrupt country (out of 33) in the sub-Saharan African region in 2010 (54th out of 178 worldwide).<sup>11</sup> Yet bribery, corruption and fraud are still considered to be a problem. In a survey conducted by TI in 2010 in which members of the South African public were asked how they thought the level of corruption in the country had changed in the last three years, 24% said it had decreased, 14% felt that it had stayed the same, and 62% said it had increased.<sup>12</sup>

Survey respondents were also asked to rate the extent to which they perceived a series of institutions in the country to be affected by corruption, including business. The results are presented in Table 1.

**Table 1: Perception of the South African public of the extent to which institutions are affected by corruption (1 = not at all corrupt, 5 = extremely corrupt)**

Police	4.4
Political parties	3.9
Parliament	3.8
Public officials	3.6
Judiciary	3.5
NGO	2.9
Business	2.8
Education	2.6
Media	2.5
Religious bodies	2.4
Military	2.2

The survey results demonstrate that corruption is considered to be more common in the public sector than it is in business. Low level corruption such as slush funds and nepotism are perceived to be common in the public sector. The infamous ‘Arms Deal’ procurement scandal of 1999 was an internationally high profile example of such corruption that took place at national government level.<sup>13</sup>

One of the material issues facing the country is the low credibility of law enforcement officials. The police are widely perceived as corrupt (see Table 1) and the 2010 conviction on corruption charges (involving links to organised crime) of the Commissioner of the South African Police Service, Jackie Selebi, who was eventually sentenced to 15 years in prison, has done little to improve perceptions. He has appealed the sentence.

<sup>11</sup> *Transparency International Corruption Perception Index* (2010). Available at: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/in\\_detail](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail)

<sup>12</sup> *Transparency International Global Corruption Barometer* (2010). Available at: [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2010/results](http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results)

<sup>13</sup> For more information on the ‘Arms Deal’ see: [http://en.wikipedia.org/wiki/South\\_African\\_Arms\\_Deal](http://en.wikipedia.org/wiki/South_African_Arms_Deal)

In 2009, the Directorate of Special Operations (also known as the ‘Scorpions’), were disbanded after their investigations into then Deputy President Jacob Zuma were found to have been politically influenced. His corruption trial subsequently collapsed and, in the aftermath, the Scorpions were abolished.<sup>14</sup>

More common in the private than the public sector is fraud. In PwC’s most recent *Global Economic Crime Survey* (of senior representatives of 3,037 companies in 55 countries), 62% of South African respondents indicated that they had been impacted by fraud, compared to a global average of 30%.<sup>15</sup> Some of the most common forms of economic crime that businesses in South Africa encounter are ‘asset misappropriation’ and ‘financial statement fraud’.

The survey also found that the percentage of internal perpetrators of fraud was 62% vs. a global average of 53%. Internally, more fraud was committed by junior staff members than middle or senior management (50% vs. global average of 42%). Externally, 33% of agents/intermediaries in South Africa were found to have committed economic crime – over 50% more than the global average of 20%.

B-BBEE and associated preferential procurement has come under scrutiny by wider society as unfair and a wellspring of corruption and fraud, with many feeling that it has increasingly become a system for the redistribution of wealth rather than one to draw black people into productive activity as owners of capital.

## 11. Initiatives to combat bribery, corruption and fraud

The South African Government has taken significant strides to combat corruption in both the public and private sectors in the country. In addition to legislation such as the *Prevention and Combating of Corruption Act* (2004), the country is a signatory to various United Nations (UN) conventions including the *UN Convention against Corruption* and the *Convention on Transnational Organised Crime*, the *African Union Convention on Preventing and Combating Corruption*, and the Organisation for Economic Co-operation and Development (OECD) *Convention on Combating Bribery of Public Foreign Officials in International Business Transactions*.

<sup>14</sup> For more information on the Scorpions see: [http://en.wikipedia.org/wiki/Scorpions\\_\(South\\_Africa\)](http://en.wikipedia.org/wiki/Scorpions_(South_Africa))

<sup>15</sup> PwC *Economic Crime in a Downturn, The Global Economic Crime Survey* (2009) South Africa country report. Available at: [http://www.pwc.com/en\\_ZA/za/assets/pdf/pwc-sa-global-economic-crime-survey-nov-2009.pdf](http://www.pwc.com/en_ZA/za/assets/pdf/pwc-sa-global-economic-crime-survey-nov-2009.pdf)

Following the 1999 ‘Arms Deal’ scandal and to encourage transparency in the procurement process, the South African Government published the *General Procurement Guidelines*. The Guidelines prescribe a minimum set of standards that emphasise openness, effective competition ethics and fair dealings in public sector procurement.<sup>16</sup> In May 2011, the Ministry of Finance announced that it has established a *Multi-Agency Working Group* (MAWG) to coordinate and investigate corruption-related supply chain management practices. Other national initiatives have included:

- National Anti-Corruption Forum (NACF) – Brings together representatives from the public sector, the private sector and civil society with the aim of identifying problems and advising the government on how to counter corruption.
- Special Investigating Unit (SIU) - Conducts investigations of corruption in state bodies and reports to the President. The SIU has a dedicated speak up service where concerns about public bodies can be raised.
- Public Service Commission (PSC) - Investigates, monitors, and evaluates the organisation and administration of the public service. Also runs a speak-up line for the public to report incidents of corruption in the public service.
- South Africa Revenue Service (SARS) - Operates a dedicated *Fraud and Anti-Corruption Hotline*.

In a 2010 OECD review of South Africa’s enforcement of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, the country’s strong legislative framework for combating bribery corruption was praised. However, overall, the review recommended that South Africa should step up its efforts and resources dedicated to raising awareness, detecting, investigating and prosecuting cases of bribery in international business deals in both the public and private sector.<sup>17</sup>

## 12. Corporate governance

The standard and principles for corporate governance in the country is set by what are known as the King Reports issued by the *King Committee on Corporate Governance*. The Committee was commissioned by the Institute of Directors in South Africa and chaired by the former Supreme Court judge, Mervyn King, who viewed it as an opportunity to educate the recently-democratised South African public on the principles of working in a free economy. Three reports have been issued: *King I* (1994), *King II* (2002) and most recently, *King III* (2009). Compliance with the King Reports is a requirement for companies listed on the Johannesburg Stock Exchange and together they represent significant milestones in the development of the business ethics agenda.

*King III* operates on an ‘apply or explain’ basis and emphasises that all decisions and actions of the board and executive management should be based on the ethical values of responsibility, accountability, fairness and transparency. Under the Code, the board is responsible for building and sustaining an ethical corporate culture (including implementation of a code of ethics and related policies). It is also the duty of the board to ensure adherence to ethical standards and that ethical risk is incorporated into the risk management process and the company’s ethical performance is assessed, monitored, reported and disclosed.<sup>18</sup> King makes direct reference to the concept of Ubuntu in the Code suggesting that: “*Such leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency and based on moral duties that find expression in the concept of Ubuntu.*”

<sup>16</sup> For more information on the *General Procurement Guidelines* see:

<http://www.treasury.gov.za/legislation/pfma/supplychain/General%20Procurement%20Guidelines.pdf>

<sup>17</sup> The report and full recommendations are available at: [www.oecd.org/daf/nocorruption](http://www.oecd.org/daf/nocorruption) <http://www.oecd.org/dataoecd/8/39/45670609.pdf>

<sup>18</sup> For full text of *King III* (2009) see: [http://www.iodesa.co.za/downloads/documents/King\\_Code\\_of\\_Governance\\_for\\_SA\\_2009.pdf](http://www.iodesa.co.za/downloads/documents/King_Code_of_Governance_for_SA_2009.pdf)

To date, there has been no credible and generally accepted national standard available for measuring how various organisations are performing against the standards set out in *King III*. To address this challenge, the Institute of Directors in South Africa has recently developed the *Governance Assessment Instrument* - a web-based tool that serves as both a measure and a framework for good corporate governance in terms of structure, policies and procedures.<sup>19</sup>

Complimenting *King III* is the *Companies Act 2011*. Under the Act, every listed company, state owned company, and any company with a public interest score of over 500 points,<sup>20</sup> is required to establish a social and ethics committee. The role of the committee is to monitor the company's activities and report to the board on matters including compliance with relevant legislation and codes of best practice (e.g. the OECD recommendations regarding corruption and the 10 UN Global Compact Principles). The new Act also contains a comprehensive list of circumstances involving fraud, misrepresentation or dishonesty under which directors can be disqualified. Janette Minnaar-van Veijeren of the *Ethics Institute of South Africa* said of the Act that "*Unethical and criminal behaviour by companies, their employees and their agents, including suppliers, will no longer be tolerated.*"<sup>21</sup>

<sup>19</sup> Institute of Directors South Africa, *Governance Assessment Indicators (GAI)*. <http://www.iodsa-gai.co.za/>

<sup>20</sup> Every company must calculate its 'public interest score' at the end of each financial year. The score is calculated by adding points awarded for things such as the average number of employees, turnover during the financial year and the number of individuals who are known by the company to have a beneficial interest in any of the company's issued securities. For more information, see: [http://www.dti.gov.za/news2011/companies\\_regulations\\_final.pdf](http://www.dti.gov.za/news2011/companies_regulations_final.pdf)

<sup>21</sup> Business Live South Africa, 5th September 2011, *Days of corporate secrecy over says Ethics Institute*. Available at: <http://www.businesslive.co.za/southafrica/2011/09/05/days-of-corporate-secrecy-over-says-ethics-institute>

## 02

## Trends and Challenges

### 1. Current trends

The focus of corporate ethics and corporate responsibility (CR) programmes will be shaped by the cultural characteristics and operating context explored in Part 1.

There are high expectations for companies to contribute significantly to social development. Under the Government's B-BBEE Act (2003), companies doing business with public bodies are required to show how they are sharing their wealth with South Africa's poorest. Termed 'corporate social investment' (CSI), this is effectively strategic philanthropy and is a key element of a CR programme in any company. Corporate Foundations or Chairman's Funds are common ways of manifesting CSI and companies usually focus on contributing to social and economic needs such as healthcare, education, skills development and job creation.

As noted earlier, where business depends on the grant of a licence from government (as is the case in many sectors), the award is often conditional on the satisfactory delivery of CSI initiatives over an extended period, with the on-going risk that one's licence and hence business may be at risk if the measurable outcomes are not achieved.

Every company listed on the Johannesburg Stock Exchange (JSE) has a code of ethics and has some form of ethics management programme in place as a result of the requirement to adhere to *King III*. In an example of global leadership, JSE-listed companies are also required to publish annually an 'integrated report' covering the 'triple bottom line' of people, planet and profits in one document. Reflecting an absence of guidance on good practice, the *Integrated Reporting Committee* (IRC) was created in May 2010 to develop guidelines for good practice on integrated reporting.<sup>22</sup> Recent research showed that South African companies publish the fifth highest number of GRI-based<sup>23</sup> sustainability reports in the world and are leading in comparison to other emerging economies.<sup>24</sup>

<sup>22</sup> Five major South African organisations founded the IRC – namely, the *Association for Savings & Investment South Africa (ASISA)*, *Business Unity South Africa (BUSA)*, *Institute of Directors in Southern Africa (IoDSA)*, *JSE Ltd* and *The South African Institute of Chartered Accountants (SAICA)*.

<sup>23</sup> Global Reporting Initiative (GRI) – Develops and disseminates globally applicable *Sustainability Reporting Guidelines* for voluntary use by organisations reporting. Available at: [www.globalreporting.org/](http://www.globalreporting.org/)

<sup>24</sup> *King III and GRI +12: A 2011 Review of Sustainability Reporting in South Africa*. Available at: <http://www.sustainabilityservices.co.za/2011ReportsKing/King%20III%20&%20GRI+12%20Research%20Report%20-%20MHR%20-%20Final.pdf>

The extent to which ethical practice is embedded in the corporate culture of businesses in South Africa is not clear. A recent study conducted by the *Ethics Institute of South Africa* concludes that there is a wide gap between regulation on ethics management, the level and quality of reporting, and the actual implementation and influence on strategic decision making within the business.<sup>25</sup> The study, entitled *South African Corporate Ethics Indicator* (SACEI) assessed the ability of companies listed on the JSE to deal with ethics risks through their corporate culture and ethics management structures and processes. Key findings and recommendations from the most recent SACEI, conducted in 2009, are outlined in Box 1.

**Box 1:****Key findings and recommendations of the SACEI 2009 survey***Key findings*

- It is standard practice for South African companies to have a Code of Ethics.
- Codes of Ethics are not being sufficiently communicated to employees.
- The adequacy and effectiveness of ethics management structures and processes needs further enhancement.
- Employees remain skeptical about the ethical leadership and the resilience of the ethical culture within companies to withstand ethical compromise.
- Employees are dissatisfied with responses they receive from their companies when they speak up about unethical behavior.

*Recommendations*

- Communication and training on Codes of Ethics and ethics policies need to be improved.
- Companies need to assess the adequacy and effectiveness of their ethics management structures and processes regularly, in order to improve their ethics management.
- The ethical culture in companies needs to be strengthened. It is imperative that ethical behaviour becomes part of the DNA and identity of every company.
- Leaders need to set the tone by visibly and audibly committing themselves to the ethical standards of the company.
- Companies have to demonstrate to all staff members that reports of risky behaviour are appreciated and taken seriously.

<sup>25</sup> The study was based on a survey of 3,667 people from 20 Johannesburg Stock Exchange listed companies. For full survey results see: <http://www.ethicsa.co.za/uploads/files/ethicsindicatorElectronic.pdf>

## 2. Key challenges

Priority areas for businesses operating in South Africa are:

### Speaking up

An effective means of reducing bribery, corruption and fraud is to encourage and support employees to report their concerns. Whilst legally, those who speak up are protected against retaliation in South Africa under the *Protected Disclosure Act* (2000), incidents of retaliation in the workplace do occur.

South Africans are generally sceptical that action will follow such reporting, in keeping with their experience that the nation has world-class legislation in many areas, but often little or no effective enforcement capability. The example set by members of the political elite and/or their families and associates, and the lack of action taken against them sets a poor precedent and does little to encourage people to speak up.

A review by the IBE of five international companies operating in South Africa found that all provided a means to speak up but there were mixed views about the effectiveness of the mechanism. Where usage by employees was low, companies suggested that it was in part because of cultural barriers to speaking out, both in Afrikaner circles and the various black cultures. A major cause of this is the historical link with 'impimpis' - apartheid era informants who betrayed their comrades, often with devastating consequences.<sup>26</sup> The philosophy of Ubuntu which emphasises respect for seniority and allegiances with one another reinforces this unwillingness to challenge authority.

### Conflicts of interest management

South Africa became quite an insular economy as a consequence of apartheid and one of the responses of the population was to start small businesses. The working population is also fairly close-knit and for the most part business people know each other. As a result, it is extremely commonplace for employees to run business 'on the side' or to encounter family members in their business dealings. In the public sector, employees may opportunistically set up companies in their/a family member's name in order to tender for contracts. It is essential to adopt and enforce robust policies and procedures to manage the conflicts that inevitably result.

### Diversity and B-BBEE

Given the diversity of the population, the legacy of apartheid, and the economic empowerment strategy in place (B-BBEE), promoting and supporting diversity in the workforce is a fundamental aspect of any corporate ethics programme in South Africa. Balancing legal requirements to reflect the population demographics in the organisation with relevant education/work experience can be challenging. Dealing with government intervention in procurement and sale of equity stakes to defined racial groups is also challenging for companies trying to maintain independence in their supply chain. Costs of complying, measuring and reporting on the B-BBEE scorecard also need to be considered and supporting policies on non-discrimination and equal opportunities should be in place. 'Fronting', whereby companies nominally promote or appoint black individuals into senior positions to achieve a better B-BBEE rating, is a criminal offence.<sup>27</sup>

### HIV/AIDS

The duty of care for employees with HIV/AIDS and their families is a material aspect of CR programmes. Costs expected in managing an effective HIV/AIDS response programme may include ensuring provision of anti retroviral treatment for employees, health and safety training, HIV counselling and testing and awareness raising campaigns around safer sex practices. Companies may also be faced with costs of employee absenteeism and the need to hire new workers due to illness and mortality as a result of HIV/AIDS.

<sup>26</sup> Camerer L (2001) 'Protecting whistle blowers in South Africa: The Protected Disclosures Act, no 26 of 2000', *Anti-Corruption Strategies*, Institute for Security Studies, Occasional Paper No. 47 – 2001. Available at: <http://www.iss.co.za/Pubs/Papers/47/Paper47.html>

<sup>27</sup> E.g. <http://www.supplymanagement.com/news/2010/doubts-cast-over-bbbee-procurement-scores/>

## Summary

The context for doing business in South Africa, one of the fastest growing emerging economies in the world, has been largely shaped by the legacy of apartheid. Business is expected to contribute to the change agenda through corporate social investment, B-BBEE initiatives and help tackle high rates of HIV/AIDS.

Cultural influences, such as the humanist philosophy 'Ubuntu' and connotations between employees who raise concerns and apartheid era informants (in particular amongst Afrikaner and various black cultures), bear significant influence over employees' behaviour in the workplace. This may present ethical challenges for companies operating in the country.

The Government's commitment to stamping out bribery and corruption in both the private and the public sector is evident in the range of initiatives that have been implemented; however there is still progress to be made. The King reports on corporate governance (in particular *King III*) and the *Companies Act* (2011) provide a world class framework for corporate governance and have played a pivotal role in raising the profile of business ethics.

For companies operating in South Africa or those considering entering the market, understanding the ethical aspects and challenges of doing business in the country will assist in shaping an effective ethics programme. This is more pertinent than ever before with the advent of new, cross-jurisdiction legislation, such as the *UK Bribery Act* (2010).



## Further Resources

There are several organisations operating in South Africa that promote ethical business practices. These include:

### **African Institute of Corporate Citizenship (AICC)**

Promotes sustainable business practice across Africa.

<http://www.aiccafrica.org/>

### **Business Ethics Network-Africa (BEN-Africa)**

BEN-Africa seeks to facilitate interaction between academics and practitioners who share an interest in business ethics, to gather and disseminate information on business ethics in Africa and to strengthen the commitment and competence of members to improve the business ethics record of Africa.

<http://www.benafrica.org/>

### **Business Unity South Africa (BUSA)**

Engages South African business on macro-economic and high-level issues that affect it at the national and international levels. Amongst other services, BUSA provides anti-corruption training and in 2009, with the support of GTZ in South Africa, commissioned the Ethics Institute of South Africa to put together a charter for ethical business practice and a set of guidelines for the private sector in South Africa. The *South African Charter of Ethical Business Practice* sets out principles and guidelines on business ethics within a South African context.

<http://www.busa.org.za/>

### **Centre for Business and Professional Ethics (CBPE), University of Pretoria**

The CBPE operates as an interdisciplinary organisation, involving people from various academic disciplines and occupations who are interested in promoting business and professional ethics. The Centre's aim is to play a leading role in addressing moral erosion in South African workplaces by addressing fraud, corruption and governance problems in both private and public sector organisations.

<http://web.up.ac.za/default.asp?ipkCategoryID=5232>

### **Centre for Corporate Governance in Africa, University of Stellenbosch Business School**

The mission of the Centre is to develop both the compliance and the performance aspects of directors' attitudes, knowledge and skills, as well as the link between corporate governance, business ethics and total organisational performance.

<http://www.governance.usb.ac.za/Home.aspx>

### **Compliance Institute South Africa**

The Compliance Institute is the recognised body for all compliance officers and it endeavours to enable professional compliance and to promote the application of international best practice.

<http://www.compliancesa.com/>

## South African government agencies

### **Ethics Institute of South Africa (EthicsSA)**

An independent, non-profit organisation, EthicsSA seeks to promote and advance ethical practices in South Africa – in the public and private sectors and in professions.

<http://www.ethicsa.org/>

### **The Albert Luthuli Centre for Responsible Leadership**

Aims to develop a new generation of responsible leaders, shaping local and international business practices and policies in support of social and environmental justice.

<http://web.up.ac.za/default.asp?ipkCategoryID=10099&subid=10099&ipklookid=3&parentid>

### **Transparency International South Africa**

<http://www.tisa.org.za/>

### **Department of Trade and Industry, Republic of South Africa**

<http://www.dti.gov.za/>

### **Public Service Commission**

[www.psc.gov.za](http://www.psc.gov.za)

### **South African Government**

<http://www.gov.za/>

### **South Africa Revenue Service**

<http://www.sars.gov.za/>

### **Special Investigating Unit**

<http://www.info.gov.za/aboutgovt/justice/siu.htm>

## Other

### **African Union**

<http://www.au.int/>

### **Information Portal on Corruption and Governance in Africa**

<http://www.ipocafrika.org/>

### **Institute of Directors, South Africa**

<http://www.iodsa.co.za/index.asp>

### **National Anti-Corruption Forum**

<http://www.nacf.org.za/>



## The Institute of Business Ethics

*The IBE was established in 1986 to encourage high standards of business behaviour based on ethical values.*

**Our vision** To lead the dissemination of knowledge and good practice in business ethics.

**What we do** We raise public awareness of the importance of doing business ethically, and collaborate with other UK and international organisations with interests and expertise in business ethics.

**We help organisations to strengthen their ethics culture and encourage high standards of business behaviour based on ethical values.** We assist in the development, implementation and embedding of effective and relevant ethics and corporate responsibility policies and programmes. We help organisations to provide guidance to staff and build relationships of trust with their principal stakeholders.

**We achieve this by**

- Offering practical and confidential advice on ethical issues, policy, implementation, support systems and codes of ethics
- Delivering training in business ethics for board members, staff and employees
- Undertaking research and surveys into good practice and ethical business conduct
- Publishing practical reports to help identify solutions to business dilemmas
- Providing a neutral forum for debating current issues and meetings to facilitate the sharing of good practice
- Supporting business education in the delivery of business ethics in the curriculum
- Offering the media and others informed opinion on current issues and good practice.

**The IBE is a charity based in London; its horizons are international as it works with global corporations based in the UK and overseas. Our work is supported by donations from corporate and individual subscribers.**

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Institute of  
Business Ethics

## Doing Business in South Africa: An overview of ethical aspects

This IBE Paper offers a synopsis of the business ethics climate in South Africa. It explores the operating environment for business and considers the cultural characteristics which underpin this. It also looks at current business ethics and corporate responsibility trends in the country and identifies the key ethical challenges facing businesses operating in South Africa.

The Paper will be useful to companies operating in or considering entering the South African market.

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