THE ETHICS INSTITUTE

ibe
Institute of Business Ethics

Ethics & Compliance HANDBOOK

Liezl Groenewald and Guendalina Dondé

SNC·LAVALIN
SUPPORTED THIS PROJECT FINANCIALLY

Authors: Liezl Groenewald and Guendalina Dondé
Editorial support: Prof Deon Rossouw and Philippa Foster Back CBE
Cover design and layout: Lilanie Greyling (Dezinamite Visual Solutions)
Publishing Editor: Monia Wadham (IBE)

Ethics and Compliance Handbook
© The Ethics Institute (TEI) 2017 and Institute of Business Ethics (IBE) 2017
ISBN 978-0-620-75268-8 printed copy
ISBN 978-0-620-75491-0 electronic copy

Published by: The Ethics Institute
Hadefields Office Park Block E, 1267 Pretorius Street, Hatfield, Pretoria, South Africa
Website: www.tei.org.za
Contact: info@tei.org.za

© The Copyright is the Creative Commons Copyright 2.5. It means:
The Ethics Institute grants the right to download and print the electronic version, to distribute and to transmit the work for free, under three conditions: 1) Attribution: The user must attribute the bibliographical data as mentioned above and must make clear the license terms of this work. 2) Non-commercial: The user may not use this work for commercial purposes or sell it. 3) No change of text: The user may not alter, transform or build upon this work. Nothing in this license impairs or restricts the author's moral rights.

The Ethics Institute reserves intellectual property rights of materials and processes generated by ourselves prior to or during the completion of this study. This includes (but is not limited to) consultation processes, research instruments and reporting methodologies.

THE ETHICS INSTITUTE

ibe
Institute of Business Ethics

Ethics & Compliance HANDBOOK

Liezl Groenewald and Guendalina Dondé

SNC·LAVALIN
SUPPORTED THIS PROJECT FINANCIALLY

Acknowledgements

A number of people have been helpful in producing this handbook. The authors are grateful to the TEI and IBE teams for their support and advice. In particular, Deon Rossouw (TEI Chief Executive Officer) and Philippa Foster Back (IBE Director) contributed practical help and advice on the content and style of this publication.

The authors are particularly thankful to all those who agreed to be interviewed for this handbook and provided their input and expertise: Graham Brunton (Group Ethics and Compliance Manager at Tullow Oil), Robert Smith (Director of Business Compliance and Ethics at Serco), Peter Montagnon (Associate Director at IBE), Osama (Sam) Al Jayousi (Group Compliance Manager at Carillion) and Philip Jordan (Chairman of the Ethics Committee at Total).

The authors are very grateful to them and others who have been supportive.

Other publications in The Ethics Institute's handbook series, available at www.tei.org.za

The Social and Ethics Committee Handbook (2012)
The Ethics Reporting Handbook (2014)
The Ethics Risk Handbook (2016)

Table of Contents

Acknowledgements
Foreword by The Ethics Institute 2
Foreword by the Institute of Business Ethics 3
Recognition of sponsorship: SNC-Lavalin 4

INTRODUCTION 5

About this handbook 6
Who is this handbook for? 8
Standardisation of terminology 8

PART 1: SETTING THE CONTEXT 9

1.1 Ethics and compliance: conceptual differences 10
Values and rules 11

PART 2: DIFFERENT SIDES OF THE SAME COIN? 14

2.1 The origins and development of the ethics and compliance role 15
2.2 The respective responsibilities of ethics and compliance practitioners 17
2.3 Similarities in roles and responsibilities 19
2.4 Dissimilarities in roles and responsibilities 20
Focus 21
Different skills sets 22
Different mindsets and approaches 23
2.5 Shared challenges 26
An 'image' problem 26
External stakeholder trust in business 27
Getting the message heard at the top table 27
2.6 The risk of combining ethics and compliance 28

PART 3: WORKING TOGETHER 30

3.1 Collaboration at the governance level 32
The governing body 32
Governing body committees 36
3.2 Collaboration at the operational level 42
What a productive collaboration looks like 45

CONCLUSION 46

About The Ethics Institute 49
About the Institute of Business Ethics 50
About the authors 51

Foreword by The Ethics Institute

Both unethical and illegal conduct can cause organisations great harm, and jeopardise their sustainability. Consequently, responsible organisations have been implementing measures to protect themselves against illegal and unethical conduct. Sometimes organisations opt for combining their defence against unethical and illegal conduct in one management function. This publication assesses whether it is prudent to combine the ethics function and the compliance function in organisations, or whether it is better to maintain ethics and compliance as separate, though complementary functions.

The Ethics and Compliance Handbook forms part of the Ethics Handbook Series of The Ethics Institute. These handbooks are intended to provide those responsible for governing and managing ethics in organisations with useful and practical guidance. Since the governance and management of ethics can never be isolated from other management functions in organisations, the Ethics Handbook Series explores the interface and collaboration between ethics management and other management functions – in this case, the interaction between the ethics and compliance functions in organisations.

As with all previous Ethics handbooks, The Ethics Institute has partnered with one of its strategic partners that has an interest in the theme of the specific handbook. In the case of The Ethics and Compliance Handbook, we have opted for partnering with the Institute of Business Ethics (based in London). In 2016 The Ethics Institute and the Institute of Business Ethics signed a Memorandum of Understanding that provides for various forms of collaboration. The Ethics and Compliance Handbook is the first fruit of that collaboration.

I would like to thank the Director of the Institute of Business Ethics, Philippa Foster Back, for her unwavering support to this project. Furthermore, I would like to thank the co-authors of the book for their dedication and hard work to produce this very useful and much needed guidance on the ethics and compliance interface. Liezl Groenewald from The Ethics Institute acted as the project leader, and was very ably supported by Guendalina Dondé from the Institute of Business Ethics.

I trust that The Ethics and Compliance Handbook will help organisations around the globe to create positive synergy between the ethics and compliance functions in their mutual pursuit of protecting their organisations against the risks of unethical and illegal conduct.

Prof Deon Rossouw CD (SA)
CEO: The Ethics Institute

Foreword by the Institute of Business Ethics

The international perspective this handbook gives on ethics and compliance and the management of the two functions is a timely insight. It is an often debated topic at IBE events and in our advisory practice, as companies of all nationalities and in all sectors often struggle as to how they should run these important business functions. Those companies that are regulated often see compliance as pre-eminent. Yet many have come to recognise that to build a positive corporate culture it is important to establish the right mindset. That mindset, which should be based on an ethical framework of corporate values to guide decisions and behaviours, will be encouraged by the creation of a separate ethics function and will lead to better compliance as a result.

As this handbook illustrates, the two functions cannot work in isolation and need to collaborate closely with each other and with other departments, given the centrality of ethics to a business within a defined governance framework. Through the work of the King Committee and recently in the King IV Report on Corporate Governance for South Africa 2016 this is set out. In the UK, the UK Corporate Governance Code is not currently prescriptive as to all companies being required to have a code of ethics or board level committee to oversee its embedding. These matters are currently being debated.

The Institute of Business Ethics is pleased to have collaborated with The Ethics Institute on this handbook, and I thank and congratulate Liezl and Guen on this publication.

Philippa Foster Back CBE
Director, Institute of Business Ethics

Recognition of Sponsorship: SNC-Lavalin

The Institutes would like to thank SNC-Lavalin for its generous sponsorship towards the research, design and printing of this publication.

Founded in 1911, SNC-Lavalin is one of the leading engineering and construction groups in the world and major player in the ownership of infrastructure. The company has a workforce of 35 000 employees spread over 50 countries. SNC-Lavalin teams provide engineering, procurement, construction, completions and commissioning services together with a range of sustaining capital services in the four industry sectors of oil and gas, mining and metallurgy, power and infrastructure.

SNC-Lavalin is committed to doing business with the highest ethical standards and expects its employees to act with integrity at all times. With this in mind, the company implemented a robust Ethics and Compliance Program across all its sectors and regions. Ethics and compliance principles, procedures and controls are firmly embedded and integrated into all of the company's key operational processes.

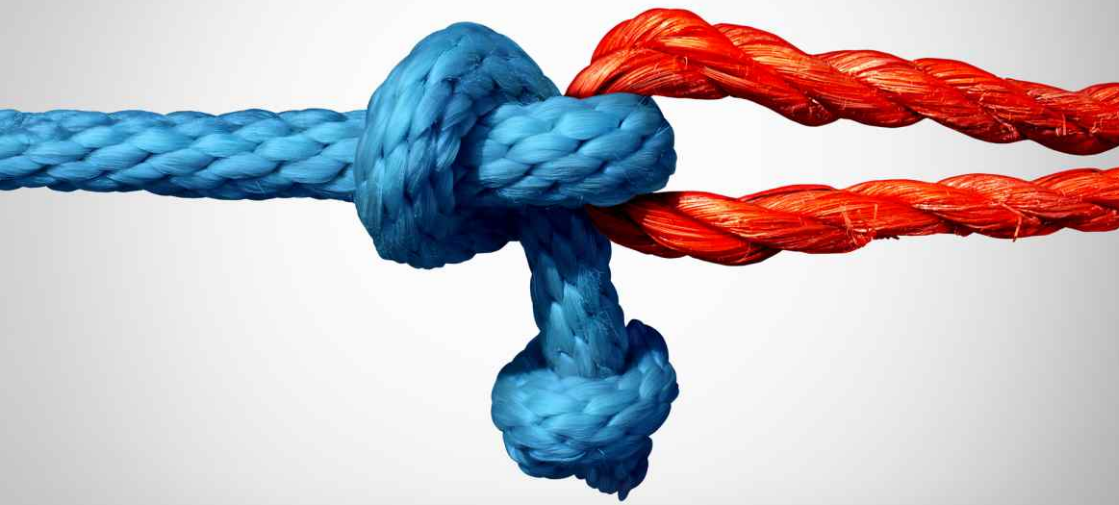
"Ethics and compliance is woven into the very fabric of our organization," explains Neil Bruce, President and CEO of SNC-Lavalin. "Our employees understand the importance of maintaining exceptionally high standards of business conduct – it is part of the job."

In addition, SNC-Lavalin has designed customized training programs to raise employee awareness on ethics and compliance issues at all company locations across the globe. Employees are empowered to think of themselves as ethics ambassadors and speak out if they see something that makes them feel uncomfortable.

"Doing the right thing is fundamental to the business. Ultimately for SNC-Lavalin, ethics and business success goes hand in hand. Acting ethically should be as natural as breathing – you don't have to think about it: it's just the way you do business," said Dr Hentie Dirker, Chief Compliance Officer, SNC-Lavalin.

SNC-Lavalin is also involved in global initiatives aimed at promoting ethical business. We want to make a positive impact on the business environment in high risk regions. It is in this context that SNC-Lavalin is proud to sponsor this Ethics and Compliance Handbook.

SNC·LAVALIN



Introduction

About this handbook

Ethics and compliance practitioners represent a relatively young, but rapidly maturing profession that has become increasingly important in many organisations, as companies all over the world have realised that addressing ethics risks, in addition to compliance risks, is crucial to promote long-term sustainability. If it is true that the values that underpin the ethics of business are as old as business itself, the second half of the twentieth century has witnessed a professionalisation of organisational ethics, and organisations created specific job roles with the task of overseeing and managing their newly created ethics and compliance programmes.

In particular, these professions started to emerge in the USA during the late 1970s and 1980s, as a self-regulatory response of business to significant corporate scandals that prompted the government to issue pieces of regulation, such as the Foreign Corrupt Practices Act in 1977[1]. Professionals that developed in this context were required to focus on ensuring compliance with the law, whilst the attention to a purely ethical aspect developed at a later stage.

Elsewhere, a different approach was adopted. In the UK, a business ethics approach was taken with the formation by business people of the Institute of Business Ethics in 1986 and Sir Adrian Cadbury's Corporate Governance Code (1992) *Financial Aspects of Corporate Governance*[2]. In 1994 the Institute of Directors of Southern Africa (IoDSA) introduced the First King Report of Corporate Governance for South Africa (King I).[3] Since then a number of regulations, best practice codes and legislation have materialised that underscore the importance of ethics and compliance practitioners in building ethical organisational cultures.

These different perspectives have had an impact on the way in which organisations all over the world have organised their ethics and compliance functions. In practice the titles and job responsibilities of ethics and compliance professionals vary significantly (see Part 2), but it is undeniable that they, having been charged with the responsibility of leading an organisation's efforts to protect itself from ethics and compliance risks, have a unique and special role in an organisation.

In general terms, it can be observed that many organisations, especially in the USA and in Europe, tend to combine ethics and compliance under the remit of a single function. In South Africa the preference appears to be for separating the ethics function from the compliance function, mainly due to the influence of the Third King Report on Corporate Governance for South Africa, 2008 (King III). However, the research conducted for this

[1] The United States Department of Justice, Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. (FCPA)

booklet shows that many organisations are debating internally the best way to manage ethics and compliance risks, questioning their current frameworks. While ethical aspects seem to gain prominence over compliance issues in many US corporations, some multinationals with subsidiaries or offices in South Africa tend to merge ethics and compliance within the same function.

This handbook explores the different roles of ethics and compliance practitioners in promoting ethical conduct in organisations, and analyses benefits and drawbacks of the two approaches to understand whether it is more effective for organisations to have two separate functions dealing with ethics and compliance respectively. It is based on desktop research and interviews with senior ethics and compliance practitioners with global responsibilities in a range of industries based in South Africa, the UK and Europe.

> "It is important that all employees should know what standards of conduct are expected of them. We regard it as good practice for Boards of Directors to draw up codes of ethics or statements of business practice and to publish them both internally and the UK."
>
> Committee on the Financial Aspects of Corporate Governance (1992)

[2] The Committee on the Financial Aspects of Corporate Governance, chaired by Sir Adrian Cadbury (1992) Financial Aspects of Corporate Governance

[3] IoDSA, King I Code of Corporate Governance in South Africa 1994

Who is this handbook for?

This handbook is aimed primarily at two principal audiences, namely:

1. Governing bodies and senior executives who seek to understand how to manage ethics and compliance effectively; and
2. Ethics and compliance practitioners who seek to understand the scope and responsibilities of their roles.

Other secondary audiences include, but are not limited to: Social and Ethics Committees (in South Africa), Operational Ethics Committees, Risk Management Committees, Internal Audit, Legal, and Human Resources.

Standardisation of terminology

Different sectors and industries employ different structures and naming conventions for the governance of ethics and compliance. To avoid unnecessary repetition, the following umbrella terms will be used throughout this handbook:

- Governing body (equivalent of a board of directors of organisations ["… the body who has primary accountability for the governance and performance of the organisation"])[4]
- Chief executive officer (managing director)
- Ethics governance committee (equivalent of Social and Ethics Committee in South Africa, Ethics and Compliance Committee or other governance bodies tasked with the governance of ethics and/or compliance)
- Compliance committee (Ethics and Compliance Committee or other governance bodies tasked with the governance of compliance)
- Ethics practitioner (ethics director, ethics manager, ethics officer, ethics advisor, integrity manager, etc.)
- Compliance practitioner (compliance director, compliance manager, compliance officer, etc.)

[4] Institute of Directors (2016) *King IV Report on Corporate Governance for South Africa*, p. 12. Available at www.iodsa.co.za

Part 1
Setting the Context

1.1 Ethics and compliance: conceptual differences

Chief Justice of the U.S. Supreme Court Potter Stewart once stated: *"Ethics is knowing the difference between what you have the right to do and what is right to do."*[5] This is, in essence, the main distinction between ethics and compliance, two concepts that are otherwise often closely associated, particularly in the business world.

As table 1 shows, the common denominator that links the two concepts is the need to explain and influence the way in which people at work behave ('doing the right thing'). The approach to this, however, can be diametrically opposed. Whereas ethics implies that people will behave in accordance with a system of common values that are agreed and shared, compliance means that people must do what they are told to do, either by law or by their superiors. It follows that ethics indicates that individuals need to rely on their own personal judgement to discern right and wrong, often questioning why they are encouraged to behave in a certain way. Such considerations are far less prominent in the definition of compliance.

GLOSSARY

Ethics	Compliance
1. a system of accepted beliefs that control behaviour, especially based on morals 2. the study of what is morally right and what is not	1. the act of obeying an order, rule, or request (formal) 2. the state of being too willing to do what other people want you to do (mainly disapproving)

Table 1: Definitions of 'ethics' and 'compliance' from the Cambridge English Dictionary

This distinction becomes even more evident when it is applied in a business context. According to the Cambridge Dictionary of Business English, compliance is *"the fact of obeying a particular law or rule, or of acting according to an agreement"*. On the other hand, the IBE defines business ethics as "the application of ethical values to business behaviour" and, according to Rossouw and van Vuuren, business ethics *"refers to the values and standards that determine the interaction between business and its stakeholders"*.[6] A number of considerations stem from these definitions; the remainder of this section addresses the most relevant of those.

[5] Coffey R. (2013) *Ethics for community planning*, US: Michigan State University Extension
[6] Rossouw, D. and van Vuuren, L. (2013) *Business Ethics*, Cape Town: Oxford University Press South Africa, chapter 1, p. 5

The 'Golden Rule'[7]

DID YOU KNOW

In an international context, whilst the law of the country where the company operates provides a good framework for compliance, the understanding of how ethics should be applied in practice can vary significantly in different cultures.

A common example is the provision of gifts and entertainment, which are seen as a fundamental part of doing business in some countries but interpreted as an unacceptable way of influencing business in others. The so-called 'Golden Rule' – "Treat others as you would like them to treat you" – can provide some guidance on this and can be used relatively easily to determine whether an action would be regarded by both parties as ethical.

Values and rules

If the definition of compliance is focused on laws and rules, the key element of business ethics is values. By definition, the law consists of a number of norms which constitute obligatory rules of behaviour that apply to all members of a society. It can be argued that these legal norms are closely related to ethical values, in the sense that the law represents the expression of the ethical values that guide society.

To understand this relationship better, it is important to analyse the different factors that contribute shaping the ethical values in business and society. Figure 1 illustrates this.

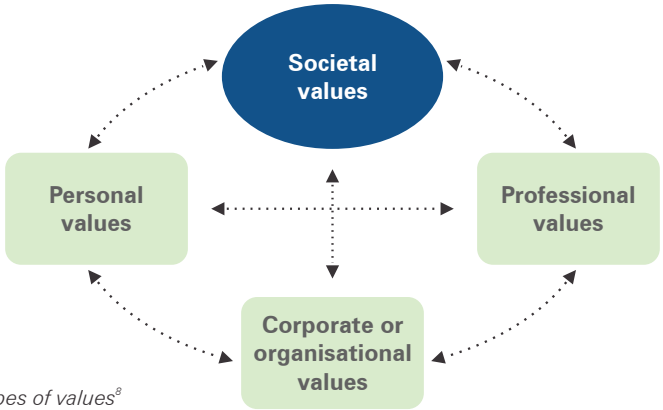


Figure 1: Types of values[8]

[7] IBE Report (2014) *Towards Ethical Norms in International Business Transactions*
[8] IBE Core Series (2016) *Codes of Business Ethics: a guide to developing and implementing an effective code*

- **Societal values** are those shared by members of a community. They define the collective identity of a specific community and might find expression in, for example, political parties, and cultural or religious groups. Societal values might evolve over time and change as societies and their economies integrate in a globalised world. Laws and regulations can be seen as one possible expression of these values.

Societal values in practice: the EU
The European Union's fundamental values are respect for human dignity and human rights, freedom, democracy, equality and the rule of law. These values unite all its member states – no country that does not recognise these values can belong to the Union. Its main goal is to defend these values in Europe and promote peace and the wellbeing of its citizens. For its part, the European Parliament seeks to ensure that these values are enshrined in EU legislation.

- **Professional values** are those defined by a professional body and determine the standards of behaviour that members need to live up to in order to fulfil the purpose of their profession effectively (e.g. accountants and lawyers).

Professional values in practice: the Hippocratic Oath
A traditional example of the codification of professional values is the Hippocratic Oath, an oath historically taken by physicians. In its original form, it requires a new physician to swear to uphold specific ethical standards. Of historic and traditional value, the oath is considered a 'rite of passage' for practitioners of medicine in many countries. Although nowadays various modernized versions are often used, the general rule is still the same everywhere: "Do no Harm."

- **Corporate or organisational values** are the values that an organisation expects its employees to apply when they carry out their jobs. All organisations operate on the basis of a set of core values, be they explicit or not, which describe 'how business is done around here'. Such values, usually a combination of strategic, work and ethical values, form the basis of corporate codes of ethics and the related policies.

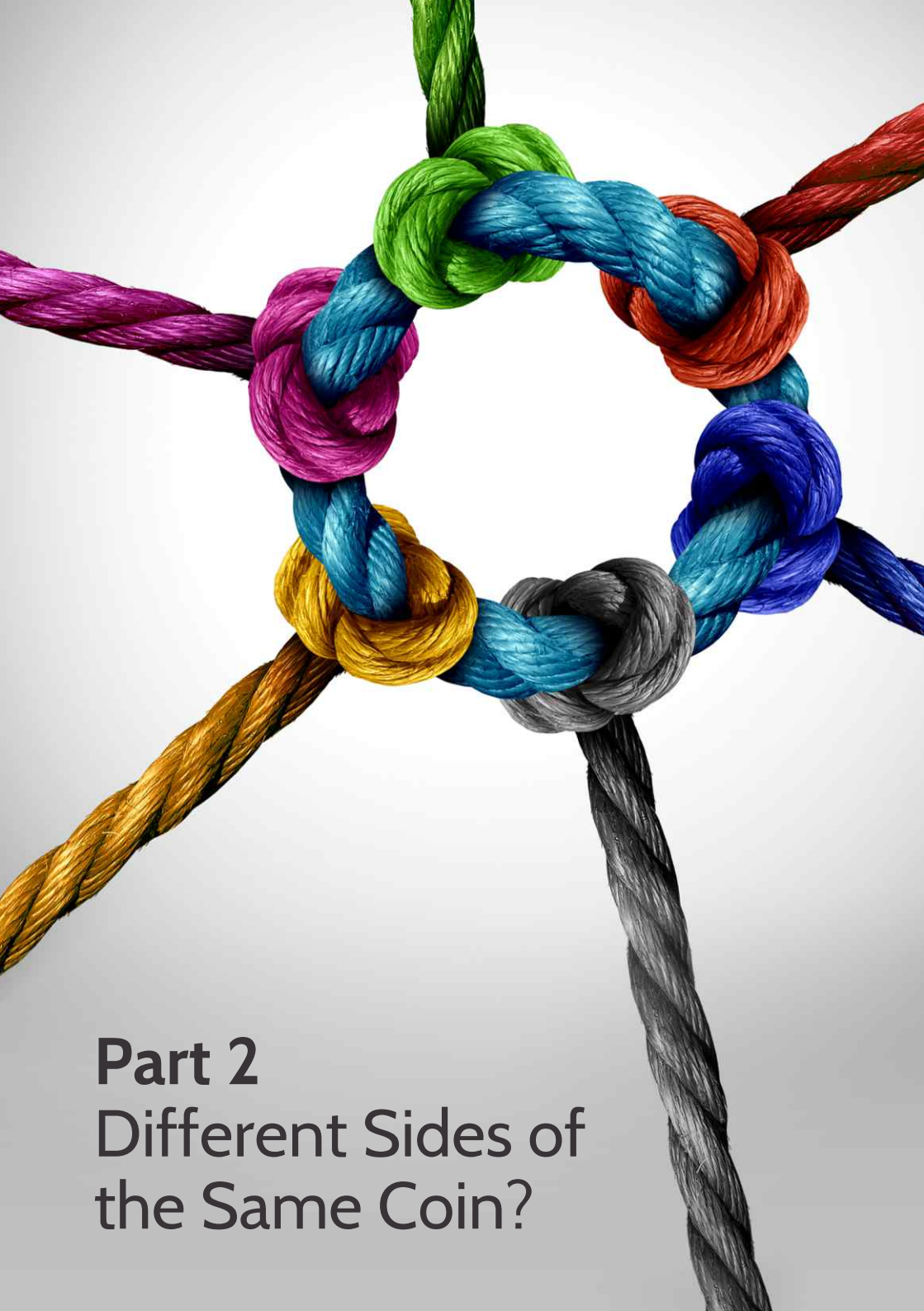
Corporate values in practice: the oil, gas and petroleum industry

TOTAL	SASOL
Respect: the source of sustainable, trust-based operations and relations **Responsibility** towards others and in our jobs **Exemplary behaviour,** which underpins the internal and external credibility of our actions and initiatives.	**Safety:** We are committed to zero harm and all that we do, we do safely. **People:** We create a caring, engaged and enabled work environment that recognises both individual and team contributions in pursuit of high performance. **Integrity:** We act consistently on a set of values, ethical standards and principles. **Accountability:** We take ownership of our behaviour and responsibility to perform both individually and in teams. **Stakeholder focus:** We serve our stakeholders through quality products, service solutions and value creation. **Excellence in all we do:** We deliver what we promise and add value beyond expectations.

- **Personal values** are the principles and beliefs that are important in the life of an individual and guide people in the choices they make, both in the workplace and outside. They are influenced by a number of factors and they might vary considerably from person to person within the same organisation.

Personal values in practice: your employee's personal values
Companies tend to appreciate the importance of understanding the personal values that drive their employees. Some users of Glassdoor, a website where employees and former employees can anonymously review companies and their management, report that in their selection interview they were asked to explain *"What are your personal values, how do they align with the firm, and why do you want to work here?"* Another user explains that he chose his current company because it is *"a workplace that aligns with my personal values."*

It is worth noting that the different sets of values outlined above do not represent separate entities, but they are closely interrelated and influenced by one another. From an organisational perspective, understanding what people and society value, and how this impacts on employee behaviour, is essential. This is ultimately the key point that ethics and compliance have in common.



Part 2
Different Sides of the Same Coin?

2.1 The origins and development of the ethics and compliance role

As mentioned in the introduction, a number of factors influenced the way organisations world-wide have developed their internal frameworks to manage ethics and compliance. A particularly important aspect that informed a number of legislative interventions, especially in the USA, is linked to the fight against bribery and other forms of corruption in business, allowing organisations to bring the effectiveness of their ethics and compliance programmes as mitigating evidence in court. Such measures often address ethics and compliance as a single function. The US Federal Sentencing Guidelines of 1991 allowed organisations with effective ethics and compliance programmes to reduce fines by up to 95%, and penalised those without effective programmes by increasing fines by up to 400%. This assisted in creating a commonly shared identity for the emerging US-based model of ethics and compliance. The formation of the Ethics Officer Association in 1991 (later the Ethics and Compliance Officer Association) lent impetus to this model and it was further strengthened by the Sarbannes-Oxley Act of 2002 which required that corporations incorporate ethics in the organisations.

Outside the US, multinational and large organisations, especially in Europe, adopted the US model, albeit sometimes adapted to fit their business. Global business, global service providers and "cross-border legislation such as the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010, have all provided a means by which ethics and compliance program 'orthodoxy' has spread" suggests Fiona Coffey, author of a report on the role and effectiveness of ethics and compliance practitioners.[9]

In South Africa, King III laid the foundation for the establishment of ethics management structures and the appointment of someone responsible for managing ethics programmes in organisations because of its premise that corporate governance is grounded in an ethical foundation. King III also set guidelines on the management of ethics in organisations. The Fourth King Report (King IV) (2016) holds this same view.

Although the King Codes are not enforceable through legislation, complying with the principles of the Code is a requirement for listed companies in South Africa. King III deliberately did not advise that ethics and compliance should be combined, but rather highlighted that although ethics and compliance should interact, ethics is about action beyond compliance. Following the King III recommendations, a notable number of South African organisations appointed ethics practitioners whose task is to develop and implement ethics programmes in view of embedding organisational values into their culture. Ethics practitioners are trained and certified by TEI to fulfil their ethics management responsibilities as advised by leading global experts in the field of

[9] IBE Report (2014) *The Role and Effectiveness of Ethics and Compliance Practitioners*

business ethics, as well as the King Codes. This training encompasses very few aspects of regulatory and legal compliance and is focussed on equipping ethics practitioners with the know-how of institutionalising ethics.

DID YOU KNOW

The South African Business Ethics Survey 2016[10] found that nearly two thirds (58%) of employees in large South African organisations know that their organisation has an ethics practitioner who is solely responsible for managing the ethics programme; and 73% said that their ethics practitioner makes a difference in the organisation.

In the UK, views appear to be somewhat mixed. Although a number of UK-based organisations seem to adopt the model prevalent in the US of combining ethics and compliance, the debate is still ongoing and a number of commentators have questioned the validity of such an approach. An example of the latter is provided by the Salz Review, an independent review of Barclays' business practices after the Libor scandal, which states that "moral intuition disappears by a context which clouds our intuition and encourages compliance behaviour instead of thinking and sound judgment".[11] In addition, the IBE has argued that this distinction has a significant impact on the ability of organisations to restore public trust. Governments and the business community need to consider that *"while regulation is needed to prevent abuse and ensure orderly behaviour, it will not on its own deliver trust. Indeed, the need for regulation implies a lack of trust because it suggests that organisations will not do the right thing, unless they are forced to. More regulation and an even greater focus on compliance is not the answer. […] The key imperative for policy makers concerned with culture and ethics should be to ensure they have a framework in place which encourages companies to make good decisions for themselves."*[12]

[10] TEI (2016) *The South African Business Ethics Survey 2016.* Available at: https://www.tei.org.za/index.php/resources/research-reports
[11] De Klerk, M. (2015) 'Should ethics and compliance be combined or separated?' Available at: https://www.tei.org.za/index.php/resources/articles/business-ethics/6869-should-ethics-and-compliance-be-combined-or-separated
[12] IBE Survey (2016) *The Institute of Business Ethics: the next 30 years*
[13] De Klerk, M. (2015) Should ethics and compliance be combined or separated? Available at: https://www.tei.org.za/index.php/resources/articles/business-ethics/6869-should-ethics-and-compliance-be-combined-or-separated

The point is that compliance is rule-based and drives a rule-based culture, whereas ethics is principle-based and drives a values-based culture.[13] Interviews with ethics and compliance practitioners highlight that when these functions are combined, it is important that the organisation understands the risk of becoming excessively compliance-focused, thus undermining the ethics messages.

2.2 The respective responsibilities of ethics and compliance practitioners

> "Ethics and Compliance are two separate functions. Compliance is not an art form – it's about rules, policies, and regulations. Ethics is an art form, and to practice it, you have to understand the business you're in and how best to communicate its values to employees and other stakeholders."
>
> Patrick Gnazzo at the February 2012 meeting of the Business and Organizational Ethics Partnership

The differences between ethics and compliance mentioned above have a practical impact on business practice. They translate into distinct perspectives that practitioners in ethics and in compliance need to take. It is vital that organisations consider both these perspectives.

Table 2 below firstly defines ethics and compliance practitioners, and secondly provides generic job descriptions for these two roles, detailing the different tasks and responsibilities under their remit.

	Ethics practitioner	Compliance practitioner
Definition	The ethics practitioner ensures that an organisation conducts its business in a manner that is aligned with the organisational values and standards of behaviour as espoused in its code of ethics.	The compliance practitioner ensures that an organisation conducts its business in full compliance with all national and international laws and regulations that pertain to its particular industry, as well as professional standards, accepted business practices and internal standards.

	Ethics practitioner	Compliance practitioner
Generic job description	- Develops, initiates, maintains ethics management programme - Actively manages ethics in the organisation - Provides guidance to the governing body, senior management and employees on ethics-related issues - Conducts and coordinates ethics risk and opportunity assessments - Promotes integrity and ethical behaviour in the organisation - Advises employees on ethical matters - Collaborates with other functions (e.g. compliance, risk management, internal audit, HR, etc.) to direct speak up (whistleblowing) and other reports of unethical behaviour to appropriate channels for investigation and resolution - Develops and implements ethics awareness and other ethics training programmes, and anti-corruption measures - Identifies trends in unethical behaviour / behaviour that transgresses the organisation's Code of Ethics/Conduct - Ensures organisational integrity of policies, procedures and practices - Manages conflicts of interests, including: ✓ Financial disclosures related to employees ✓ Applications for external remunerative work ✓ Maintaining gift register - Identifies (through speak up/whistleblowing lines and other channels) and reports on unethical behaviour and corrupt activities - Maintains a database of all employees under investigation and those disciplined for unethical conduct - Provides regular feedback to the governing body and executive management on ethics performance and challenges	- Develops, initiates, maintains legal and regulatory compliance programme - Actively manages compliance in the organisation - Provides guidance to the governing body, senior management, and employees on compliance-related issues - Identifies potential areas of compliance and legal vulnerability and risk - Promotes compliant behaviour in the organisation - Advises employees on compliance matters - Collaborates with other functions (e.g. ethics, risk management, internal audit, HR, etc.) to direct compliance issues to appropriate channels for investigation and resolution - Develops and implements compliance awareness-, communication- and other training programmes - Identifies trends in non-compliance to rules, regulations, procedures and external standards - Acts as independent review and evaluation body to ensure compliance issues are appropriately evaluated, investigated and resolved - Monitors, and as necessary, coordinates compliance activities of different functional areas to stay abreast of the status of all compliance activities - Monitors the performance of the compliance programme and takes appropriate steps to improve its effectiveness - Provides regular feedback to the governing body and executive management on compliance performance and challenges

Table 2: Generic job descriptions of an ethics practitioner and a compliance practitioner

2.3 Similarities in roles and responsibilities

The relationship between ethics and compliance in business is complex, mixing significant similarities with important traits that are peculiar of one or the other. Ethics and compliance mutually contribute to organisational culture and employees' behaviour, but the differences rest in the methods and the approaches that ethics and compliance might use to do so.

As Part 1 clarifies, it can be argued that from one perspective the boundaries between ethics and compliance can be blurred. Ethics is mostly compatible or even the basis of law and regulation. There clearly is an overlap between ethics, compliance and the law. However, there are differences that cannot be ignored. While the compliance practitioner is called upon to clarify complex cases in relation to laws and regulations, the ethics practitioner is often called upon to clarify whether organisations' employees, and senior management's decision-making processes, are in line with the organisation's ethical values.

Table 3 below demonstrates similarities in the roles and responsibilities of ethics and compliance practitioners.

Ethics practitioners	Compliance practitioners
Safeguarding and embedding organisational norms and standards of behaviour	*Safeguarding and embedding* regulatory and legal standards applicable to the organisation
Debating difficult ethical issues	*Debating* difficult legal issues
Changing business processes that present unacceptable risk of ethical failure	*Changing business processes* that present unacceptable risk of legal failure
Challenging corporate values and standards	*Challenging* corporate rules and standards
Identifying and monitoring ethics risk	*Identifying and monitoring* compliance and legal risk
Advice giving, education and training regarding ethical standards	*Advice giving, education and training* regarding compliance and legal standards
Dealing with speak up/whistleblowing cases	*Dealing with* speak up/whistleblowing cases

Ethics practitioners	Compliance practitioners
Building and maintaining close working relationships with business leaders to drive understanding of ethical standards	*Building and maintaining close working relationships* with business leaders to drive understanding of legal and regulatory standards
Integrating ethics in the business strategy	*Integrating* compliance in the business strategy
Challenging business decisions that carry an ethical or reputational risk	*Challenging business decisions* that carry a legal or reputational risk
Enabling business and culture change	*Enabling business and culture change*
Leveraging innovative ideas from other companies and functions	*Leveraging innovative ideas from other companies and functions*
Cultivating strong support of the governing body and CEO	*Cultivating strong support* of the governing body and CEO
Understanding the organisational strategy and the broad range of risks associated with that strategy	*Understanding the organisational strategy and the broad range of risks associated with that strategy*
Recognising that ethical reasoning skills must be an enterprise-wide competence	*Recognising* that compliance skills must be an enterprise-wide competence

Table 3: Similarities in the roles and responsibilities of ethics and compliance practitioners

2.4 Dissimilarities in roles and responsibilities

There are a number of dissimilarities in the respective roles and responsibilities of ethics and compliance practitioners. We only focus on the four most important ones, namely different focus, skills, mindsets and approaches.

"Ethics and Compliance are different, but complementary; they reinforce one another."
Philippe Montigny, CEO of ETHIC Intelligence

Focus

Probably the most prominent dissimilarity lies in the different focus of ethics and compliance practitioners. Rossouw and Van Vuuren[14] identify five modes of ethics management. They describe a mode as "the preferred strategy of an organisation to manage its ethics."[15] These modes are the immoral, reactive, compliance, integrity and total aligned modes. Comparing the compliance and integrity modes provide a fine-tuning of the dissimilarities between ethics (where 'integrity' in integrity mode stands in for 'ethics') and compliance.

Ethics	Compliance
Internal standards	External and internal standards
Values and culture	Rules, directives, regulations, standards
Chosen	Required
Reward ethical behaviour	Discipline unethical behaviour
Best practice	Lowest standard
Associated with networks	Associated with hierarchy
Dynamic	(Relatively) static
Transformational and aspirational	Transactional and directive
Performative ('walk')	Demonstrative ('talk')

Table 4: Different focus areas of ethics and compliance practitioners

Table 4 above provides a clear depiction of the different focus areas of ethics and compliance practitioners. Ethics practitioners' main focus is on transforming organisational culture in alignment with the core values of the organisation and developing employees' ethical decision-making skills. Compliance, on the other hand, focuses mainly on ensuring that the organisation prevents corruption and adheres to internal and external rules which, if not adhered to, can lead to externally imposed sanctions.

[14] Rossouw, D. and van Vuuren, L. (2013) *Business Ethics*, Cape Town: Oxford University Press South Africa, chapter 5
[15] Ibid

Different skillsets

Although there may be some overlap in the roles of ethics and compliance practitioners, there is a significant distinction in their respective required skillsets. Most compliance practitioners have a legal background. Research confirms that legal personnel may not be well suited to developing an approach that is oriented primarily towards shared values and ethical aspirations beyond legislation.[16] Lawyers are trained to protect the organisation from legal problems and tend to prioritise a legalistic, black-and-white interpretation of the issues over a broader perspective focused on culture and ethics.[17] Enron is a case in point. They bent the rules of compliance to their advantage by legally structuring and moving their debt to special-purpose entities to hide the practices that violated the law. Whilst senior leaders were busy trying to legally justify their position, they gave little or no thought to the culture of the organisation, which became permeated with negative values and role models, ultimately taking their toll on the company. Enron's collapse was huge and devastating.

Very appropriately to Enron's case, Lager[18] states that: "governments demand compliance, ethics demands leadership; a leader who strives for compliance is unlikely to lead an ethical organisation".

"The distinctiveness of the skills required, and the different relationship with organisational sponsors implied by each role formulation, makes it unlikely that one individual can perform all activities effectively at the same time."
Fiona Coffrey

Because of the different skillsets needed, it is difficult to find an individual that can successfully lead both ethics and compliance. This is recognised also by the Federal Sentencing Guidelines, which do not expect that one individual should lead the ethics and compliance programme (United States Sentencing Commission, 2012).[19]

One of the ethics and compliance practitioners interviewed for this handbook highlighted that an ethics practitioner can acquire the skillset to manage compliance, but not vice-versa. He explained that this is mainly dependent on the mindset required and the focus that ethics practitioners need to place on influencing behaviour. *"If you get your ethics right,* he argued, *you will always be compliant but not the other way around".*[20]

[16] Qualitative research conducted for the present handbook based on interviews with senior ethics and compliance practitioners
[17] De Klerk referencing Trevino, L. K., Weaver, G. R., Gibson, D. G., & Toffler, B. L. (1999) 'Managing Ethics and Legal Compliance: What works and what hurts?' *California Management Review*, 41(2), 131-151
[18] Lager, J.M. (2010) 'Overcoming Cultures of Compliance to Reduce Corruption and Achieve Ethics in Government', *McGeorge Law Review*, 41(1), 63-83
[19] De Klerk, M. 2015. *Should ethics and compliance be combined or separated?* Available at: https://www.tei.org.za/index.php/resources/articles/business-ethics/6869-should-ethics-and-compliance-be-combined-or-separated
[20] Qualitative research conducted for the present handbook based on interviews with senior ethics and compliance practitioners

Different mindsets and approaches

As figure 2 below outlines, overseeing ethics on one side, and ensuring compliance on the other, require different mindsets and different approaches.

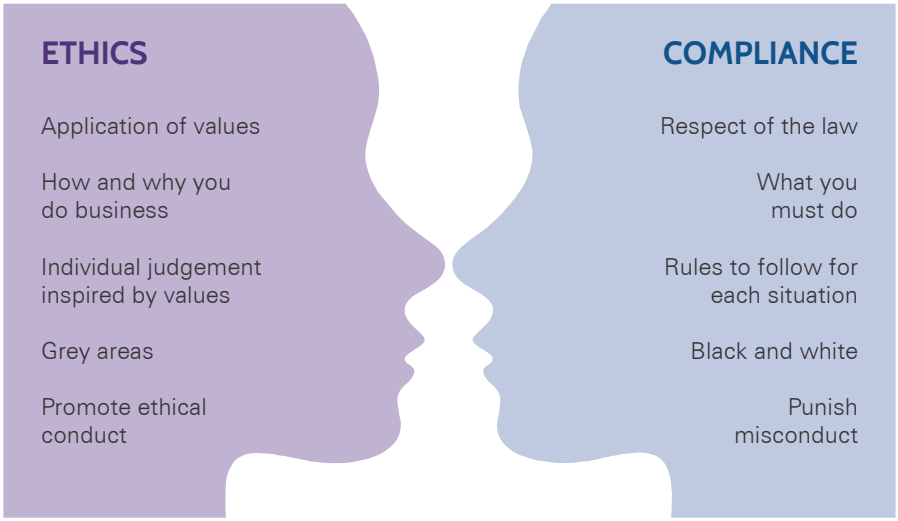


Figure 2: Main differences between ethics and compliance in an organisation

These different mindsets and different approaches can be summarised in four elements:

1. Key principle

A first important difference between the two professional profiles in figure 2 is linked to the key principle that informs their approach to their job. Whilst the law constitutes the reference point for the compliance function, at the heart of business ethics are the organisation's core values.

This has significant practical repercussions. The compliance practitioner's job needs to be grounded on a set of mandatory laws and regulations. The ethics practitioner needs to inspire employees to follow standards of behaviour that are based on the core values of their organisation. Ethics practitioners also need to inspire employees to often go beyond what is required by law. These standards are voluntarily adopted. Indeed, it is

often said that ethics start where the law ends and what is legal is not necessarily always considered ethical.

This distinction is sometimes reflected in the way organisations structure their codes and in the title they use for the document. Organisations that are mainly compliance-oriented tend to rely on rulebooks that set out all the requirements their employees have to comply with. This is what is often referred to as a 'code of conduct'. Values-driven organisations, on the other hand, tend to convey the idea that the code is aimed at explaining 'how things are done around here', supporting individual decision-making inspired by the organisation's core values. These codes are often referred to as a 'code of ethics'.

2. Employee engagement

Another significant difference can be found in the language that ethics and compliance practitioners use to engage with employees, which can be summarised in the difference between the 'you must' of compliance and the 'we will' of ethics. Supporting employees in exercising their individual judgement is paramount in organisational ethics. For this reason, ethics practitioners need to explain why certain standards of behaviour are encouraged and how the organisation's core values can be applied in practice. Compliance practitioners, on the other hand, need to explain to employees what they have to do to comply with laws and regulations.

Again, this is an element that clearly emerges in the language used in internal communications. Values-driven organisations generally opt for clear, accessible language and adopt an inclusive tone, where the use of 'we' and 'us' result in increased employee engagement. On the other side of the spectrum, there is the language of compliance that often talks about 'the employee's obligations'.

"The right attitude and values can be worth more than the number of rules you put in place. What people actually do matters more than what they say or believe."
Robert Smith, Director, Business Compliance & Ethics, Serco Group Plc[21]

3. Decision-making

A third aspect that is distinctive of an ethics practitioner's approach is the idea that the guidance that they provide, be it in the form of a code of ethics or through any other element of an ethics programme, cannot cover every situation in which employees may find themselves. Because of this, ethics practitioners frequently offer further guidance to employees through a decision-making model or guide. This encourages employees to use their own judgement and ask when they are unsure about something. In many organisations such guidance takes the form of a set of questions (often in the form of a decision tree) to be answered before proceeding with a course of action.

[21] Smith, R. Whitepaper, 'Strategies for creating a visionary organisational culture', *NAVEX Global*. Available at www.navexglobal.com

Supporting decision-making: 'questions to ask yourself'

DID YOU KNOW

These questions may include:

- *Would it appear fair to my colleagues and manager?*
- *Would I be comfortable if it appeared in the newspapers?*
- *What would my family think of my decision?*
- *Am I willing to be held accountable for this decision?*
- *Does this decision accord with the company's values?*

These kinds of decision-making guides are designed to help employees make decisions that do not have clear-cut answers and that fall into what is often referred to as 'grey areas'. These situations are sometimes characterised by ethical dilemmas where there isn't an obviously right decision, and that involve a choice between 'two rights' or 'two wrongs'. This might produce a clash between two different sets of values (e.g. personal and organisational values) and therefore employees have to establish a hierarchy of such values and decide which ones they need to prioritise.

The main question that compliance practitioners need to ask employees is: "Is it legal?" From a compliance perspective, if the answer to this question is 'yes' then the employee can proceed with the course of action. This approach implies that everything that is not explicitly forbidden by laws or regulations is allowed, thus presenting the decision-making process more in black and white terms.

4. Objectives

The long term objective of both ethics practitioners and compliance practitioners is the same: ensuring that people behave in a way that supports the long-term sustainability of their organisation. However, they differ in how this overarching goal is achieved.

Compliance practitioners prevent misconduct by ensuring that organisations are aware of and comply with relevant laws and regulations. Their approach is black and white with no room for grey areas or moral judgement. They have a very important role to play after an instance of misconduct has been identified. In these cases, there are specific procedures that compliance practitioners need to follow. They advise how investigations should be conducted in terms of compliance with relevant legislation and involve law enforcement authorities when required, in order to hold those involved in the transgression of regulations and the law responsible. In some cases they impose the prescribed punishments.

It is important to highlight that failure to live up to the organisation's ethical standards will have consequences from the perspective of ethics practitioners as well. It should help to add weight to the organisation's commitment to ethics. However, this is not the main focus of their role. Their main purpose is the prevention of misconduct and empowering employees to exercise moral judgement. It follows that their main efforts

will be put into the development of an appropriate and effective ethics management framework that can pro-actively help employees to make good decisions before misconduct occurs, i.e. taking a preventative approach.

The 20:60:20 rule

DID YOU KNOW

The 20:60:20 rule is often used to describe the average attitudes to ethics within an organisation. It assumes 20% of people in most organisations possess a strong drive to 'do the right thing' no matter what and they are prepared to take personal risks to make sure that their ethical values are reflected in their behaviour.

Another 20% have loose ethical standards and are disengaged from any initiative that the organisation might take to promote ethics. These people tend to be cynical and focus on their personal, short term gains.

The middle 60% are people who generally try to behave ethically, but they need to be supported and guided especially when they find themselves under pressure. This is where the real leverage for the ethics practitioner lies: to be able to prevent misconduct effectively. If they can get the middle 60% aligned with the committed top 20%, they can have a positive impact on the culture of their organisation and reduce the risks that come from the disengaged bottom 20%.

2.5 Shared challenges

This section has so far outlined the principal differences that exist between ethics and compliance. However, there are also some shared objectives and challenges that organisations need to bear in mind, whichever model they decide to adopt.

It has already been mentioned how ethics and compliance practitioners share one objective, that is influencing how people behave to promote the long-term sustainability of the organisation. Some of the main challenges that practitioners in both fields need to address to have a concrete impact on business practice will now be examined.

An 'image' problem

The first challenge requires ethics and compliance practitioners to work on the workforce's perception of their roles within the organisation. The ethics and compliance practitioners consulted in preparing this publication[22] highlighted related issues in both ethics and compliance.

[22] Based on a series of in-depth interviews conducted by the authors with practitioners in ethics and/or compliance from different industries and countries

Some practitioners report that 'ethics' can be a difficult word to use in their internal communications, as some employees feel that the organisation is questioning their personal morals, suggesting they might not behave ethically in some situations. As a result, they can be defensive and difficult to engage with the ethics programme. Some organisations avoid using the word 'ethics' in the job title for this function altogether, using 'Business Integrity' or 'Responsible Business' instead.

The compliance function might experience similar issues. Some practitioners report that an excessive focus on compliance might produce the impression among employees of being under strict surveillance by a compliance practitioner who is just waiting for a *faux-pas* on their side to punish them. This negative perception makes it difficult for the compliance practitioner to be trusted and to create constructive engagement.[23]

External stakeholder trust in business

A second aspect that needs attention is the importance of fostering a relationship of trust between the organisation and its external stakeholders, in particular with society from which it derives its licence to operate. This is critical to long-term success. However, a succession of scandals has tarnished the reputation of business worldwide and across all sectors. Society has become increasingly concerned about business behaviour, and the perception that business prioritises its short-term financial interest over respect for its stakeholders has grown.[24]

Ethics and compliance practitioners share this challenge and have an important role to play in engaging with external stakeholders to improve the situation. Building strong relationships with a wide range of external stakeholders, such as regulators and suppliers, requires organisations to clearly define and communicate openly what standards of behaviour are expected and encouraged. This will help organisations in building a mutually beneficial relationship between business and the broader society.

Getting the message heard at the top table

Another important point on which ethics and compliance practitioners need to focus is to engage effectively with the governing body and senior executives in order to get the ethics and compliance message addressed at the top level of the organisation.

To do so effectively, it is paramount that ethics and compliance functions benefit from direct reporting lines to the top, particularly to the governing body. It is advisable that ethics and compliance practitioners are able to attend governing body meetings to address ethical concerns. Although the roles of ethics and compliance practitioners are evolving, it remains a challenge for them to gain direct access to governing bodies.

[23] Ibid
[24] IBE Survey (2016) *Attitudes of the British Public to Business Ethics 2016*

Such access has the merit of enhancing the ability of the governing body to take governance responsibility for ethics and compliance, and setting the 'tone at the top' that can influence employee behaviour. In addition, this allows ethics and compliance practitioners to be more involved in strategic planning, helping the governing body to keep ethics and compliance in focus when they set targets and objectives for the organisation.

2.6 The risk of combining ethics and compliance

This handbook has thus far provided a picture of ethics and compliance, highlighting differences and similarities between the two roles. Interviews with ethics and compliance practitioners confirmed that, arguably, it is possible to design a programme that combines the different orientations of ethics and compliance. A number of organisations seem to suggest that there are significant benefits in addressing both ethics and compliance under the remit of the same function. It helps the organisation to manage these issues effectively through a more integrated approach. They argue, in particular, that it allows them to avoid 'silo thinking' and prevents confusion among employees regarding the roles and responsibilities of the two different functions.

However, they also admitted that there are a number of risks organisations should be aware of when they combine ethics and compliance within the same function. It is important that organisations consider these risks carefully when they structure their approach to ethics and compliance. Some of the most relevant risks are outlined below.

1. **Setting the bar too low.** Strong focus on the compliance approach is likely to influence the attitude of employees, scaling down the prominence of the ethics message and, in the words of Prof Mias de Klerk, "slowly erode morality and moral thinking."[25] Broadly speaking, compliance is focussed on adherence to the minimum standards of legal and regulatory requirements and protecting the organisation when breaches of the law occur, or illegal acts are detected. Research confirms that in some companies compliance dominates the values-based approach of ethics when they are combined.[26] In such instances, the highest priorities are reviewing legal compliance risks and developing and enforcing policies and procedures, with ethical aspects very low on the priority list. Interviewees agreed that organisations need to be proactive in communicating the importance of ethical decision-making, avoiding the perception that 'everything that is not explicitly forbidden is allowed'.

[25] De Klerk, M. (2015) '*Should ethics and compliance be combined or separated?*' Available at: https://www.tei.org.za/index.php/resources/articles/business-ethics/6869-should-ethics-and-compliance-be-combined-or-separated

[26] De Klerk referencing Trevino, L.K., Weaver, G.R., Gibson, D.G., & Toffler, B.L. (1999) 'Managing Ethics and Legal Compliance: What works and what hurts?' *California Management Review*, 41(2), 131-151 and *Corporate Executive Board* (2013)

"When combining ethics and compliance, people tend to define ethics in terms of legal compliance rather than ethical aspirations, and implicitly endorse a "code of moral mediocrity."[27]

Trevino, Weaver, Gibson, & Toffler, 1999

2. **Dismissing personal accountability.** A pre-occupation with compliance results in a justification of decisions based on rules, laws and regulations without considering the ethical merit or moral implications of their decisions. Interviewees agreed that a values-based ethics approach is significantly more effective to reduce unethical and illegal behaviour than a compliance-based approach. The reason being that ethics, which proposes standards of behaviours that are voluntarily chosen, is more likely to motivate employees to accept personal accountability for their behaviour. Compliance, on the other hand, implies that employees must behave as they are told by regulators and the law, shifting the perception of accountability towards a higher level: 'I was just obeying orders', employees might say when they are asked to explain their behaviour.

3. **Playing the 'blame game'.** Excessive focus on specific laws and regulations might drive people to hold individuals that breach the rules solely responsible for ethical lapses. As a result, they might fail to look at the bigger picture and the cultural changes that the organisation should introduce to promote standards of behaviour that are in line with its values. On the other hand, ethics plays an important role in supporting individual accountability, empowering employees to make sound decisions and to actively promote change.

4. **Limiting opportunity but not likelihood.** A strong compliance programme can limit the opportunity of misconduct through the implementation of effective controls, processes, systems and policies. Most organisations with strong compliance programmes have, for example, set explicit limits on gifts and implemented delegations of power in the supply chain. These are all aimed at limiting opportunity for misconduct. But a single-minded compliance focus on the latter does not necessarily positively impact the likelihood of misconduct occurring. A strong ethics programme, however, reduces the likelihood of employees rationalising misconduct. Rather, they will engage in moral reasoning to justify why they should not transgress organisational ethics standards.

Interviewees confirmed that a strong compliance orientation can dilute ethics if not supported by structures that strongly promote an ethical culture. They stressed that without a focus on promoting organisational values and ethical culture, compliance usually trumps ethics; or put differently, "compliance easily squeezes out ethics as a matter of available organizational attention span."[28]

[27] Ibid

[28] De Klerk referencing Trevino, L.K., Weaver, G.R., Gibson, D.G., & Toffler, B.L. (1999) 'Managing Ethics and Legal Compliance: What works and what hurts?' *California Management Review*, 41(2), 131-151

Part 3
Working Together

Whichever internal framework organisations choose to manage ethics and compliance, it is paramount that both ethics and compliance are properly addressed and that a collaborative approach is encouraged. This ensures not only that ethics and compliance are applied to business practice in a coordinated and consistent way, but also that ethics and compliance are well integrated into the governance structures and strategy of the organisation.

Collaboration between ethics and compliance should occur on two levels: governance and operational. Figure 3 below demonstrates the relationship and reporting lines of the two functions in terms of the mentioned levels.

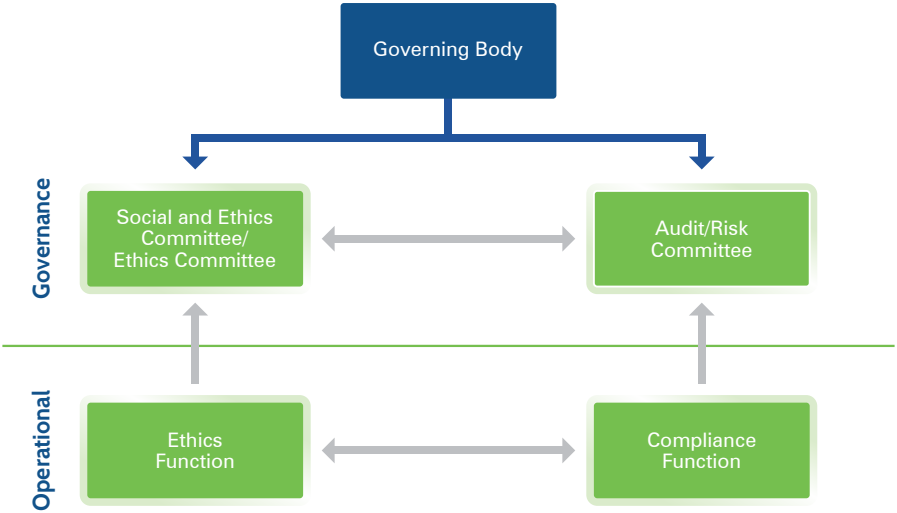


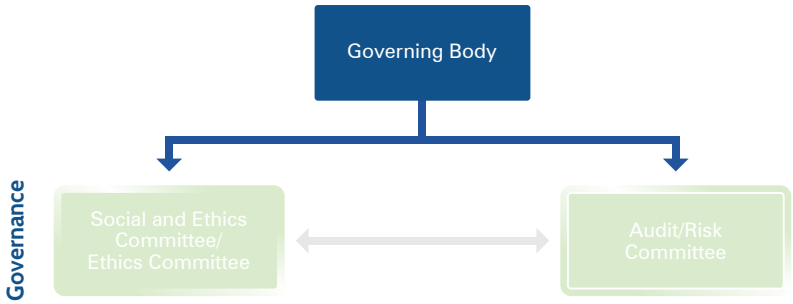
Figure 3: Relationship and reporting lines of ethics and compliance

In the rest of this section we elaborate on the reasons why a collaboration between ethics and compliance is important both at the governance level and at the operational level, and also provide guidelines for how such a collaboration can be effected.

3.1 Collaboration at the governance level

The governing body

The interviews conducted for this handbook highlighted that the governing bodies ("the body who has primary accountability for the governance and performance of the organisation",[29] in the UK and elsewhere often referred to as the Board of Directors) of many organisations consider both ethics and compliance as paramount to the long-term sustainability of their business. The importance of an effective tone from the governing body has already been highlighted.



To understand how this is implemented in practice, the IBE surveyed a number of companies operating in Europe, asking how the governing body of their organisation takes responsibility for ethics.[30] The majority of respondents said there is a dedicated committee, while one third of respondents said that this responsibility is taken collectively by the governing body.

Practical experience gained working with international organisations provides a picture of how the governing body ensures that compliance issues are addressed appropriately. Responsibility for the compliance programme is generally delegated to the compliance function which might work with external lawyers. The Chief Compliance Officer often reports to the General Counsel and legal department or to the Audit and/or Risk Committee. Either the relevant committee involved or the Company Secretary then ensures that compliance is on the governing body agenda.

[29] Institute of Directors (2016) '*King IV Report on Corporate Governance for South Africa*', p. 12. Available at www.iodsa.co.za
[30] IBE Survey (2017) *Corporate Ethics Policies and Programmes: 2016 UK and Continental Europe Survey*

In order to make sure that the governing body fulfils its ethics and compliance responsibilities, there are two main elements to consider:

a. Ensure direct access to the governing body

Both ethics and compliance practitioners contribute to the 'tone at the top' through their access to the governing body; the ethics practitioner provides a platform for reinforcing the organisational values in decision-making, while the compliance practitioner provides a platform for reinforcing adherence to regulatory and legal requirements. Direct access to the governing body ensures that ethics and compliance are agenda items that warrant regular discussion. Not only do these discussions focus on ethics and compliance risks, but ethics and compliance are integrated in the strategic thinking of the governing body. This helps the ethics and compliance functions to inform decision-making at the highest level.

b. Ensure that the information presented to the governing body is relevant, brief and timely

It is important that the information the governing body receives is useful and provides succinctly the picture needed for the governing body to have an understanding of the culture of its organisation. For this very reason, it is imperative that ethics and compliance practitioners collaborate closely with the governing body through relevant board committees, to make sure that the information provided is consistent and to avoid omissions or repetitions. In the same vein, it is just as important that the governing body fosters a close relationship with these practitioners, values their input and ensures that their input is considered in the organisation's strategy.

Ethics

The responsibility of governing bodies to promote and support an ethical culture is recognised by regulations and codes of practice world-wide. In South Africa, King IV, Principle 2 requires that *"The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture."*[31] In the UK, the Corporate Governance Code (2016 update) states that *"One of the key roles for the board includes establishing the culture, values and ethics of the company. It is important that the board sets the correct 'tone from the top'. The directors should lead by example and ensure that good standards of behaviour permeate throughout all levels of the organisation. This will help prevent misconduct, unethical practices and support the delivery of long-term success."*[32] This was confirmed by some interviewees, who reported that the main efforts of senior leaders are put towards the promotion of an ethical culture, as they believe that if they achieve this objective effectively, compliance with the law will follow.

[31] Institute of Directors (2016) *King IV Report on Corporate Governance for South Africa 2016*, p. 44. Available at www.iodsa.co.za

[32] Financial Reporting Council (2016) *The UK Corporate Governance Code*

Ethics in the boardroom

DID YOU KNOW

The importance of ethics at the governance level is confirmed by the results of the IBE survey of large companies with operations in Europe.[33] Almost two thirds of respondents said that senior leaders in their organisation are very engaged in ethics. This is mirrored by the focus on ethics, values and culture at the governance level, with 86% of respondents stating that these are regular items discussed in governing body meetings. Results from companies listed on the London Stock Exchange in the FTSE 350 group, for which it is possible to track changes over time, show that this has improved significantly since 2013, moving from 65% to 96% in 2016.[34]

In terms of the governance of ethics, King IV recommends that the governing body should:

- set the direction of how ethics should be approached and addressed by the organisation
- approve codes of conduct and ethics policies that articulate and give effect to its direction on organisational ethics
- ensure that codes of conduct and ethics policies:
  - include the organisation's interaction with both internal and external stakeholders as well as the broader society; and
  - address the ethics risks of the organisation
- ensure that the codes of conduct and ethics policies are communicated, through different channels of communication, to employees and other stakeholders to enable them to become familiar with the ethical standards of the organisation
- delegate to management the responsibility for implementation and execution of the codes of conduct and ethics policies
- exercise ongoing oversight of the management of ethics and, in particular, oversee that it results in, *inter alia*, the application of the organisation's ethical standards in recruitment and performance evaluation processes; sanctions and remedies for the transgression of the organisation's ethical standards; the institution of whistle-blowing mechanisms to detect transgressions of the ethical standards; and the monitoring of employees and other stakeholders' adherence to the organisation's ethical standards through, among others, periodic independent assessments.[35]

In addition to the afore-mentioned responsibilities the governing body also has the responsibility to disclose the status of its ethics to the organisation's stakeholders. This necessitates close collaboration between the ethics function and the ethics governance structure(s) reporting directly to the governing body (see par 3.1.2), as the latter needs to obtain reliable, valid and current information to enable them to report on

[33] IBE Survey (2017) *Corporate Ethics Policies and Programmes: 2016 UK and Continental Europe Survey*
[34] IBE Survey (2017) *Corporate Ethics Policies and Programmes: 2016 UK and Continental Europe Survey*
[35] Ibid fn [32], pp 44-45

the organisation's ethics status. Similar principles are set out in the UK Corporate Governance Code.

In the UK, the Financial Reporting Council (FRC) has furthermore produced a report of observations on the role of the governing body in supporting an ethical culture. The main suggestions that emerge from the report can be summarised as follows:

- **Demonstrate leadership.** Leaders must embody the desired culture, embedding this at all levels and in every aspect of the business. Governing bodies have a responsibility to act where leaders do not deliver.
- **Embed and integrate.** The values of the company need to inform the behaviours which are expected of all employees and suppliers. Human resources, internal audit, ethics, compliance, and risk functions should be empowered and resourced to embed values and assess culture effectively. Their voice at governing body level should be strengthened.
- **Assess and measure.** Indicators and measures should be aligned with the desired outcomes and material issues to the business. The governing body has a responsibility to understand behaviour throughout the organisation and to challenge where they find misalignment with values or need better information. Governing bodies should devote sufficient resources to evaluating culture and consider how they report on it.
- **Recognise the value of culture.** It is the governing body's role to determine the purpose of the organisation and ensure that the organisation's values, strategy and business model are aligned with it. They must not wait for a crisis before they focus on organisational culture.
- **Be open and accountable.** Good governance means a focus on how openness and accountability are implemented throughout the organisation and those who act on its behalf.
- **Align values and incentives.** The performance management and reward system should support and encourage behaviours consistent with the organisation's purpose, values, strategy and business model. The governing body is responsible for explaining this alignment clearly to shareholders, employees and other stakeholders.
- **Exercise stewardship.** Effective stewardship should include engagement about culture and encourage better reporting. Investors should challenge the governing body on the behaviours they are encouraging in companies.[36]

Compliance

Similarly, the importance for governing bodies to ensure that regulatory and legislative requirements are met at all times is highlighted in best practice codes and legislation. In South Africa, Principle 13 of King IV requires that *"The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen."*[37]

[36] Financial Reporting Council (2016) *Corporate Culture and The Role of Boards*
[37] Ibid, p. 63

In the USA, the Federal Sentencing Guidelines (first promulgated in 1984) encourage organisations and their governing bodies to take responsibility for ensuring compliance with the law by setting up effective internal compliance frameworks. This was achieved by mitigating the potential fine range – in some cases up to 95 percent – if an organisation can demonstrate that it had put in place an effective compliance programme. In the UK this is also reinforced in pieces of legislation such as the 2010 Bribery Act, which stresses the responsibility of governing bodies to put in place adequate internal procedures to ensure compliance with the law.

As mentioned above, King IV recommends that the governing body assumes responsibility for the governance of compliance with applicable laws, rules, codes and standards by setting the direction for how compliance should be addressed in the organisation. This entails:

- approving policy that articulates the approach to compliance, and that identifies relevant compliance standards
- delegating the management and execution of compliance to the management of the organisation
- providing oversight of compliance, specifically as it pertains to:
  - compliance being understood in all its facets
  - compliance management having a holistic view of how applicable standards relate to one another
  - monitoring regulatory environment responses to changes and developments that could affect the organisation
- considering the need to receive independent assurance on the effectiveness of the organisation's compliance management programme.[38]

The governing body should disclose to its stakeholders the organisation's compliance management plan, repeated regulatory penalties, sanctions or fines imposed for non-compliance with statutory obligations, as well as findings of non-compliance by environmental regulators.

For the governing body to fulfil the afore-mentioned responsibilities it needs input from the compliance function. Seeing that the latter generally does not have direct access to the governing body, it has to collaborate – through effective reporting – with the relevant committee, i.e. the Audit and/or Risk Committee, reporting to the governing body.

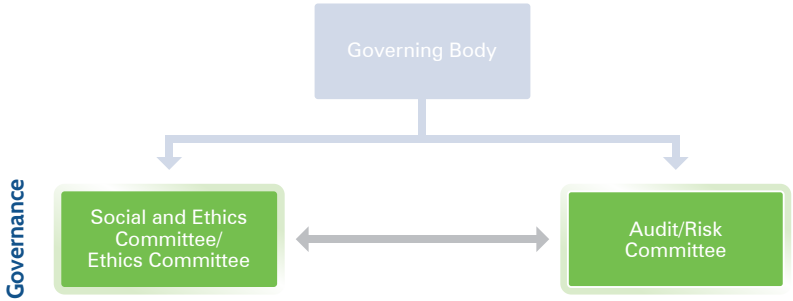
Governing body committees

Committees at governance level are effective ways through which the governing body fulfils its responsibilities and oversees both ethics and compliance. In particular, a more prominent focus on organisational ethics and compliance, and on what has often been referred to as 'non-financial risks', has increasingly encouraged organisations world-wide to form special board committees to deal with, among others, ethics and compliance, and their respective roles in establishing responsible organisations.

[38] Ibid, p. 63-64

Having such committees at board level ensures that ethics and compliance issues are looked at systematically. Committees can focus on the relevant details and identify trends and risks in a timely way that can help to identify potential problems when they are still at an early stage.

The ethics function in an organisation typically reports to the statutory Social and Ethics Committee (South Africa) or a non-statutory Ethics Committee (or a hybrid) in the UK, while the compliance function in South Africa and the UK reports to the Audit and/or Risk Committee.



South Africa: Social and Ethics Committee

Since May 2012, certain organisations in South Africa have been required to have a Social and Ethics Committee as a subcommittee of the governing body. The new Companies Act of 2011 stipulates that a Social and Ethics Committee is mandatory in:

- State owned companies
- Listed public companies
- Organisations with significant public interests.

The mandate of a Social and Ethics Committee is to monitor that the organisation is adhering to all relevant legislation, other legal requirements, and prevailing codes of best practice with regard to:

- Social and economic development
- Good corporate citizenship
- The environment, health and public safety
- Consumer relationships
- Labour and employment.

Since the Companies Act is silent on the ethics mandate of the Social and Ethics Committee, TEI, in its 2012 publication *The Social and Ethics Committee Handbook*[39],

[39] Rossouw, D. (2012) *The Social and Ethics Committee Handbook*, Pretoria: The Ethics Institute of South Africa. Available at https://www.tei.org.za/index.php/resources/handbooks-and-toolkits

proposed that the mandate of the Social and Ethics Committee be expanded to include an ethics mandate. This proposal has been taken up widely by corporate South Africa and is also supported by King IV.

It is expected of ethics practitioners to regularly report to the Social and Ethics Committee on at least the following areas to ensure that the governing body can fulfil its responsibilities as required by Principle 2 of King IV:

- Progress with programme implementation
- Ethics risk areas (key areas of focus)
- Number of whistle-blowing reports
- Ethics training rates
- Trends in ethical behaviour
- Critical incidents
- Strategic considerations.

However, the Social and Ethics Committee also needs to give a broader view to the governing body rather than merely reporting on the progress and content of the ethics programme. It needs to give an overview of the organisation's entire ethics management framework. In other words it should, in addition to the points mentioned above, also focus on:

- How leadership has shown commitment to the ethics programme
- What governance structures and organisational capacity have been put in place to ensure sound ethics performance
- What has been done in terms of ethics management (this will be a synopsis of the ethics function's report)
- Whether there has been an independent assessment of and external reporting on the ethics performance
- The overall ethical health of the organisation (this could include reference to trends, critical incidents and assessment of programme effectiveness).[40]

In practice this report should be drafted by the ethics function, signed off by the Social and Ethics Committee and submitted to the governing body. The ethics function should therefore collaborate closely with the Social and Ethics Committee to ensure that the former can fulfil its ethics mandate and, ultimately, that the governing body complies with the recommendations of King IV in terms of ethics management.

UK: Ethics Governing Body Committees

In the UK, the UK Corporate Governance Code[41] requires a governing body to have three committees: remuneration, audit and nomination. A committee that deals with ethics and corporate responsibility is not mandatory, although it does state that one of the key roles of the governing body includes establishing the culture, values and ethics of the organisation.

[40] Dobie, K. and Plant, K. (2014), *Ethics Reporting Handbook*, Pretoria: The Ethics Institute of South Africa. Available at https://www.tei.org.za/index.php/resources/handbooks-and-toolkits

[41] Financial Reporting Council (2012) *The UK Corporate Governance Code*

However, evidence suggests that shifting perceptions of risk have increasingly encouraged UK companies to form special governing body committees to deal with the broad questions of ethics, corporate responsibility and sustainability. IBE research among the companies listed in the FTSE 350 group on the London Stock Exchange identified that in 2015 there were 57 such committees.

In the UK, ethics practitioners and/or compliance practitioners report *inter alia* on the themes below to either the governing body or governing body committees:

- Ethics training rates
- Code sign-off rates
- Number of disciplinary actions taken against the code
- Number of whistle-blowing reports
- Number of whistle-blowing reports leading to disciplinary action
- Number of supplier/other business contracts terminated for ethical reasons.

The research highlights that a number of organisations in the UK believe that having an ethics, corporate responsibility or sustainability committee is not necessarily the right answer in every case. They argue that there are some important reasons for not choosing to have such a committee. These include the possible dilution of the governing body's responsibilities, the possible overlap with other committees, such as audit and risk, and the sheer administrative complexity of having too many committees.

However, having a specialised committee ensures that important conduct, reputation and ethics issues are looked at systematically, as required by King IV in South Africa. Effective interaction between an ethics committee and other committees with direct access to the governing body will address areas of overlap, prevent duplication and relieve administrative burdens. But it starts with collaboration between the ethics function and the compliance function.

Audit/Risk Committee

While the ethics function reports to the statutory Social and Ethics Committee in South Africa and to a non-statutory Ethics Committee in the UK, the compliance function primarily reports to the Audit and/or Risk Committee. Practical evidence shows that audit and risk are often addressed under the remit of one single committee, although some organisations prefer to establish a Risk Committee as a separate entity.[42]

The Audit and/or Risk Committee is a committee of the governing body. Among its primary responsibilities are the monitoring of the integrity of the organisation's financial statements and the effectiveness of its internal audit function to ensure it complies with the relevant laws and regulations. Moreover, it is responsible for the risk management policies and risk mitigation strategies of the organisation, and oversight

[42] Audit Committees are statutory in both the UK and in South Africa, whilst Risk Committees are not.

of the operation of the organisation's risk management approach and practices. It assists the governing body in fulfilling its oversight responsibilities with regard to the risk appetite of the organisation, the risk management and compliance framework and the management structure that supports it.

The Audit and/or Risk Committee thus assist the governing body in carrying out its risk governance responsibilities. This implies that ethics and compliance risks are also incorporated into the responsibilities and reporting requirements of the committee. In addition to its oversight and reporting role, this committee is also responsible for ensuring that there is proper coordination of risk management across the organisation.

GLOSSARY

Ethics risk	Compliance risk	Organisational risk
Ethics risks are the current or potential organisational beliefs, practices or behaviours (conduct) that are in contravention of organisation-specific standards for desired behaviour, and/or in contravention of legitimate stakeholder rights and expectations. This could negatively impact other key organisational processes and undermine the sustainability of the organisation.[43]	Compliance risk is exposure to legal penalties, financial forfeiture and material loss an organisation faces when it fails to act in accordance with industry laws and regulations, internal policies or prescribed best practices.[44]	Organisational risk encompasses "the totality of risk concerns as defined by the stakeholders". Organisational risk can include many types of risk (e.g., investment risk, budgetary risk, program management risk, legal liability risk, safety risk, inventory risk, and the risk from information systems.)[45]

The compliance practitioner has the responsibility of advising the governing body – through the Audit and/or Risk Committee – on all matters relating to legal- and regulatory compliance risks and vulnerabilities so as to help the governing body decide where to focus its efforts in order to address the areas of greatest risk. As the following section highlights, collaboration with the ethics committee is essential to ensure that ethics risks are properly addressed.

[43] Van Vuuren, L (ed.). 2016. *Ethics Risk Handbook*. Pretoria: The Ethics Institute. P26. Available at https://www.tei.org.za/index.php/resources/handbooks-and-toolkits
[44] Techtarget. http://searchcompliance.techtarget.com/definition/compliance-risk
[45] IT Law WiKi. http://itlaw.wikia.com/wiki/Organizational_risk

Collaboration between Ethics Committee and Audit/Risk Committee

Close collaboration between the Audit and/or Risk Committee and the Ethics Committee is key to ensure that the governing body understands how the organisation's culture is embedded in a way that affects behaviours throughout the organisation, thus ensuring that reputational risks deriving from ethics and compliance lapses are addressed and minimised properly.

Organisations have increasingly acknowledged the importance of this and have put in place internal mechanisms and procedures to ensure that such collaboration is productive and effective, as shown in figure 4.

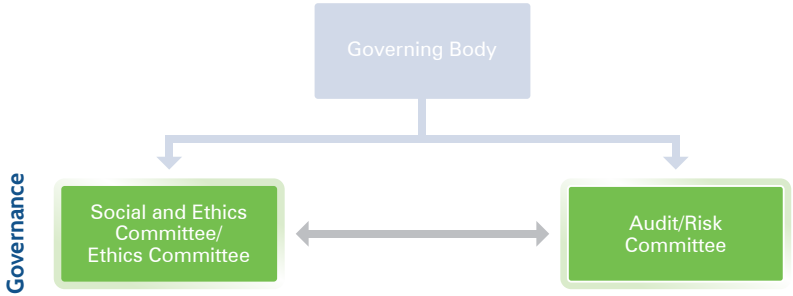


Figure 4: Collaboration between Ethics Committee and Audit/Risk Committee

If the importance of a close collaboration between the Ethics Committee and the Audit and/or Risk Committee at governance level is widely recognised, the practical form that such interaction should take can be tricky to define. This is mainly due to the very different nature of the approach each committee usually takes, which reflects the differences between the mindsets of ethics and compliance practitioners, as highlighted in the previous sections. The Audit and/or Risk Committee and the compliance function, traditionally, have focused on measurable indicators (e.g. number of sanctions imposed), whilst culture and ethics are soft qualities that are not readily subject to formal controls.

Therefore, it is paramount that the Audit and/or Risk Committee and the Ethics Committee work together to identify a number of indicators that can be included in internal audit and risk management activities to strengthen the prominence that ethical dimensions have on the agenda of the former. Similarly, the latter can benefit from the results achieved to determine the root causes of compliance failures in the culture of the organisation, focusing on potential gaps in the ethics programme, and planning further developments to prevent future misconduct.

An example of how this can work in practice emerges from the report written by the committee set up by the UK defence company BAE Systems to advise on how to

improve the company's ethics policies and processes. The report stresses the role of Audit and/or Risk Committees in ensuring that ethical business conduct is promoted within the organisation and suggests that the management of reputational risk should be specifically assessed in all audit reports. The committee advised BAE systems that the Audit and/or Risk Committee should hold at least one joint meeting a year to decide on the preparation of the annual internal audit programme and the ethics risk assessment strategy.[46]

3.2 Collaboration at the operational level

The importance of a collaborative approach is not limited to the governance level. There are significant considerations on how ethics and compliance can successfully join forces at the operational level as well.

In section 2 we have discussed the similarities and dissimilarities in the roles of the ethics practitioner and that of the compliance practitioner. We also elaborated on their shared challenges. It became evident that there can be an overlap in their responsibilities. As such it is paramount that ethics and compliance practitioners collaborate closely at the operational level to ensure that their activities complement and support each other. One implies the other: an organisation cannot be ethical without respecting the law, and legislative standards alone do not insure the organisation against ethical risks.

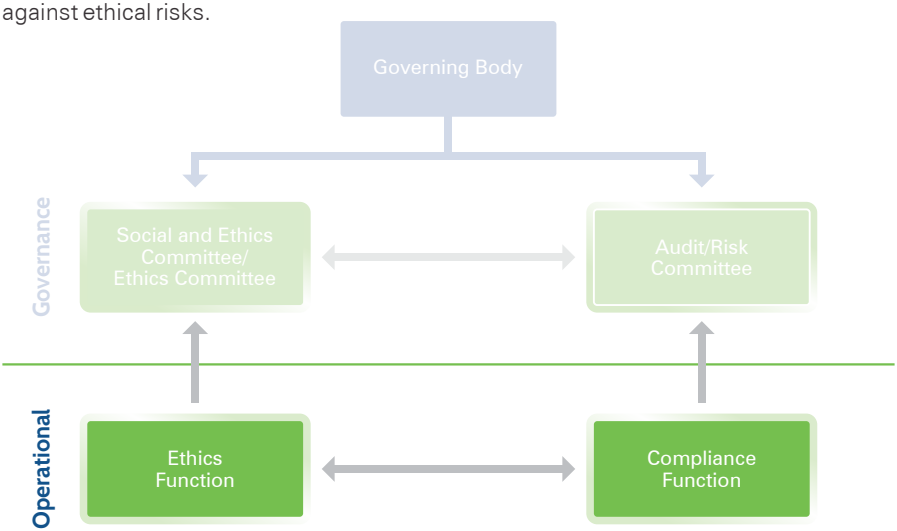


Figure 5: Collaboration between ethics and compliance at the operational level

[46] Woolf Committee (2008) *Business ethics, global companies and the defence industry. Ethical business conduct in BAE System plc – the way forward*

According to Neff and Gresham[47] ethics and compliance programmes must be balanced and defined. Compliance can easily erode ethics if rules and processes are too unwieldy, too bureaucratic or overbearing. In such cases employees stop following the rules and start rationalising which rules to follow. Organisations therefore need to have a risk-based compliance programme that considers the effects on ethical behaviour. This, together with the fact that ethics and compliance are both integral components of organisational culture and successful performance, underscores the importance of collaboration between these two functions.

" ... they (ethics practitioners) have to ask the question of whether a company should act in a certain way, as opposed to whether the company can act in a certain way".[48]
Michael Volkov

Collaboration between the ethics and compliance functions is crucial in the following areas:

Area of collaboration	Working together
Safeguarding reputation when misconduct occurs	Reputation is an important asset for companies and both ethics and compliance need to work together to ensure that it is protected and safeguarded. Ethics and compliance failures can result in reputational harm that can be detrimental to the organisation. This risk cannot be eliminated completely, but it is paramount that ethics and compliance practitioners join forces to minimise it. One way of doing this is through the promotion of ethical decision-making to (1) prevent reputational harm and (2) ensuring the organisation responds quickly, openly and effectively to tackle the issue when it occurs. This is a two-way approach. On the one hand, ethics needs to be aware of the consequences of management tools put in place by the compliance function to deal with instances of misconduct thereby ensuring that they are in line with the objective of the ethics programme and that they serve the purpose of preventing misbehaviour as well as punishing it. On the other hand, compliance practitioners need to ensure that they make reference to the ethical standards of behaviour and to the core values of their organisation when they sanction those that are found guilty of gross misconduct, ensuring that they understand the negative impact of their actions on the culture and reputation of the organisation.

[47] Neff, C.A. and Gresham, J.J. (2016) 'The difference between ethics and compliance – and why understanding the difference is critical to successful leaders', *Ethikos, The Journal of Practical Business Ethics*, 30(1): 1-5
[48] Volkov, M. (2015) *Corruption, Crime & Compliance*. Available at http://corporatecomplianceinsights.com/person-year-chief-ethics-officer/

Area of collaboration	Working together
Education and training	An objective of both ethics and compliance practitioners is to embed desired standards of conduct into the organisational culture. By collaborating in the area of education and training employees will understand that compliance (rules) have values as its foundation. Education and training through collaboration "… should ultimately be geared towards delivering voluntary compliance with agreed standards of conduct".[49] Ethics and compliance can work together to design training courses to ensure that the major ethics and compliance risks are addressed. In addition, they could collaborate to design training scenarios based on real life examples (appropriately anonymised) that they have investigated.
Dealing with speak up (whistle-blowing) cases	Managing the speak up (whistleblowing) system is another area where ethics and compliance needs to take a collaborative approach. The ethics function is generally responsible for managing the speak up (whistleblowing) system, categorising cases and allocating cases to different business units for investigation. The ethics function is furthermore responsible for the case management system and ensuring that cases are closed within a reasonable time. Compliance often has significant responsibilities in such cases in terms of investigation and consequence management. Feedback on the findings and outcome should be provided to the ethics function.
Advice and guidance to employees	Both the ethics and compliance functions are responsible for providing advice and guidance to employees regarding 'the right thing to do' – be it according to the organisational values or in terms of compliance with the law and regulatory standards. Ethics and compliance practitioners should therefore, when appropriate, consult each other in terms of issues raised by employees for which employees require advice or guidance.
Identify and monitor risk	The ethics function monitors ethics risk while the compliance function monitors compliance risk. These risks are not mutually exclusive as both have an impact on the organisational culture. The ethics and compliance functions therefore need to be consistent in their approach to risk management, and they should both collaborate with the risk management function to ensure a consistent and effective approach, making sure that the business understands these risks and manages them properly.

[49] IBE Report Coffey (2014) The Role and Effectiveness of Ethics and Compliance Practitioners, p.18

Area of collaboration	Working together
Change of business processes to prevent unacceptable risk of reputational harm	Both ethical and legal failures can cause reputational harm. When ethics and compliance practitioners become aware of such risks they need to collaborate to ensure that business processes are changed to mitigate the risks. These business processes must be aligned with the organisational values as well as regulatory and other legal requirements.

What a productive collaboration looks like

Ethics and compliance go hand-in-hand and the importance of a productive collaboration between the two functions should not be underestimated. There are a number of ways in which ethics and compliance practitioners can work together in a productive and effective way:

- Clearly defining job responsibilities of each function to avoid duplication, and communicating them clearly to everyone in the organisation
- Signing written agreements about the purpose of each function and the nature of each of their programs and activities, publishing them on the intranet or on the company's website for everyone to consult
- Scheduling regular face-to-face meetings to promote dialogue and communication, to increase understanding and clarify any misunderstandings about role and activities
- Creating good communication channels to ensure a shared knowledge of new emerging compliance and ethics issues
- Knowing when to refer to one another when there are issues that might be more appropriately dealt with in the other office
- Pointing employees in the right direction so that they are able to contact the relevant function in every circumstance.

Conclusion

Managing ethics and compliance effectively is paramount to promote a positive corporate culture and, ultimately, to ensure the long-term sustainability of an organisation. This handbook has outlined how many organisations all over the world are debating internally the most suitable framework they can adopt to minimise ethics and compliance risks, particularly whether they should address these two issues separately or if they should be integrated within the same function.

As is often the case when talking about ethics, however, it is difficult to find a one-size-fits-all solution and each organisation is encouraged to consider the specificities of its business carefully before making a decision in one sense or another.

Indeed, there are a number of factors that can influence this decision. It is worth mentioning two of the most prominent:

- **Sector:** more regulated sectors might need to give compliance a more prominent role through a separate regulatory compliance function.
- **Company structure:** the organisational structure of a company has an impact on the ethics and compliance issues it faces. For instance, a global business with subsidiaries in different countries might need a different approach compared to companies that focus their activities in a more localised area. In some cases, the need for a closer collaboration between the two might lead organisations to integrate them within the same function, whilst in other instances, it might be more appropriate to have them separate. Those opting for a combined function should, however, be well versed in the risks that such a decision carries.

It is clear that mere compliance is not a good recipe for long-term success and to mitigate reputation risks. When the imperative is to rebuild internal trust, excessive focus on compliance cannot be the appropriate answer; it communicates to employees that the organisation does not trust their judgement and ability to make ethical decisions, and therefore feels the need to place more focus on the enforcement of rules and regulations.

Organisations must address ethics separately from compliance; setting up two different functions is the most effective way to achieve this. In organisations where such a separation is not possible or that have reasons to believe that an integrated ethics and compliance function would be more impactful, such a separation needs to emerge at least at a conceptual and managerial level by making sure that employees understand the differences between the two and that both skillsets are available.

In practice, this translates into giving more prominence to the ethics aspects, putting 'ethics first' and moving away from the confrontational approach of compliance in communications with employees. Engaging with employees by focusing on the organisation's core values, rather than on laws and regulations, can ensure higher levels of proactive engagement from employees. In this context, senior leaders have an important role to play in setting the 'tone from the top'.

The distinction between ethics and compliance is important as it has significant implications on a practical level. If an organisation gets its ethics right, compliance with the law will follow. However, the inverse is not always true, as not everything that is legal is necessarily ethical.

REMEMBER

Ethics and compliance are closely linked. If the ethics function is properly structured, it can enhance the compliance function. Companies need to make sure that collaboration between the two is effective.

Companies should communicate clearly the difference between ethics and compliance to their employees, 'putting ethics first'.

Companies that integrate ethics and compliance under the remit of the same function need to keep a clear separation between the two at the operational level.

Senior leaders have an important role in promoting a values-led approach.

The Ethics Institute is a non-profit, public benefit organisation that commenced operations in August 2000. The organisation is governed by a Board of Directors consisting of prominent persons committed to promoting ethical responsibility.

The Ethics Institute's vision is: *"Building an ethically responsible society."*

We achieve our vision by forming partnerships with the public and private sectors, and the professions. The Ethics Institute serves as a resource through our thought leadership, research, training, advisory, assessment and certification activities.

For more information on The Ethics Institute, please refer to our website www.tei.org.za.

Thought leadership

The Ethics Institute is committed to stimulate and advance awareness of ethics in South Africa and in other countries on the African continent where we are active. We participate regularly in public debates in the media and contribute to standard setting and policy formulation in respect of organisational ethics, corruption prevention and professional ethics.

Services offered

The Ethics Institute offers a wide array of services related to the management of ethics in organisations and professions. These include:

- **Training:** Public and in-house training programmes on a range of ethics-related themes;
- **Advisory services:** Consulting to public-sector and private-sector organisations and professional associations on matters related to the management of ethics;
- **Assessments:** Assisting organisations to gauge their current state of ethics with a variety of assessment instruments;
- **Certification:** Certifying specific ethics-related services and service providers in order to provide assurance that these services and service providers meet relevant ethics standards;
- **Project management:** Acting as project manager for funder organisations wishing to enhance good governance, corruption prevention or professional ethics; and
- **Membership services:** Offering subscription membership to individuals and organisations, with a variety of membership benefits.

About the Institute of Business Ethics

Doing business ethically ...
... makes for better business

The Institute of Business Ethics was established in 1986 to encourage high standards of business behaviour based on ethical values.

Purpose

Our purpose is to promote high standards of business practice based on ethical values. We raise awareness of business ethics through the dissemination of knowledge and good practice.

What we do

- We raise public awareness of the importance of doing business ethically.
- 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 corporate ethics and responsibility policies and programmes.
- We help organisations to provide guidance to staff and build relationships of trust with their principal stakeholders.
- We collaborate with other UK and international organisations with interests and expertise in business ethics.

About the authors

Liezl Groenewald

Liezl is Manager for Organisational Ethics Development at The Ethics Institute. Her main focus is on ethics management in the private sector. She has a special interest in whistleblowing and ethics investigations. She established the Ethics Office at the South African Revenue Service before joining TEI in 2008. Liezl is the President of the Business Ethics Network of Africa and she also serves on a number of committees such as the Editorial Subcommittee of the Anti-Intimidation and Ethical Practices Forum, the Social and Ethics Committee of the Cape Peninsula University of Technology and the Western Cape Regional Committee of the Association of Certified Fraud Examiners. She holds a MA in Applied Ethics (University of Johannesburg) and is busy with her PhD in Applied Ethics (University of Stellenbosch).

Guendalina Dondé

Guen is Senior Researcher at the Institute of Business Ethics (UK). She writes and researches on a range of business ethics topics for the IBE. She is the author of the IBE Survey *Corporate Ethics Policies and Programmes: 2016 UK and Continental Europe Survey* and co-author of the French and Italian IBE Survey *Ethics at Work: 2015 Survey of Employees* and the IBE Core Series *Codes of Business Ethics: examples of good practice*. Before joining the IBE, she collaborated in developing the code of ethics for the Italian Association of Management Consultants and worked for a European Corporate Social Responsibility (CSR) Business Network based in Brussels. She holds a Master's degree in Business Ethics and CSR from the University of Trento in Italy.

Ethics and Compliance Handbook

'Both unethical and illegal conduct can cause organisations great harm, and jeopardise their sustainability. Consequently, responsible organisations have been implementing measures to protect themselves against illegal and unethical conduct. Sometimes organisations opt for combining their defence against unethical and illegal conduct in one management function. This publication assesses whether it is prudent to combine the ethics function and the compliance function in organisations, or whether it is better to maintain ethics and compliance as separate, though complementary functions.'

Prof Deon Rossouw, CEO of The Ethics Institute

This handbook was written in partnership with the Institute of Business Ethics (IBE) (based in London) and explores the different roles of ethics and compliance practitioners in promoting ethical conduct in organisations, and analyses benefits and drawbacks of the two approaches to understand whether it is more effective for organisations to have two separate functions dealing with ethics and compliance respectively. It is based on desktop research and interviews with senior ethics and compliance practitioners with global responsibilities in a range of industries based in South Africa, the UK and Europe.

This handbook is aimed primarily at two principal audiences, namely governing bodies and senior executives who seek to understand how to manage ethics and compliance effectively and ethics and compliance practitioners who seek to understand the scope and responsibilities of their roles. Other audiences that would benefit from this handbook include, but are not limited to: Social and Ethics Committees (in South Africa); Operational Ethics Committees; Risk Management Committees; Internal Audit; Legal; and Human Resources.