the social and ethics committee handbook

SECOND EDITION

A Guidebook for South African Companies

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As a set of enduring personal rules, ethics ensure that we do what is right when the way ahead is not clear. It is in these moments that who we are determines what we do, and we discover the depth of our values and character. And it is in these moments that we make or break our reputation.

Ethics can thus be defined as a set of moral principles that govern or influence our behaviour, above and beyond the laws or policies that govern a country, industry, profession or company. Like a compass, our ethics guide us in the right direction.

A company's reputation is determined by the behaviour of its people, which in turn is determined by the company's values and ethics. And a company's reputation is key to its ability to unlock opportunities for growth.

For these reasons, ethics is the foundation of good business. It is not only critical to sustain a licence to operate, but rather for developing stakeholder trust and driving outperformance. The cost of failure is therefore high, as evidenced by the impact of ethics and corporate governance failures reaching far beyond the confines of businesses and their reputations. This brings into stark focus the interdependence of society and business, and makes clear the absolute necessity for organisations to demonstrate the highest levels of ethical and effective leadership – both of which are outcomes of good governance.

The fourth King Code of Corporate Governance for South Africa (King IV), published in November 2016, codifies the leadership characteristics that can contribute to the creation and protection of value for businesses and their broader social context. Ethical leadership encompasses good corporate citizenship and sustainability thinking, and effective leadership synthesises purpose and performance. In balance, these ensure that the short- and long-term outcomes for stakeholders are central to the functioning of businesses.

Transaction Capital has positioned itself deliberately in relation to demographic and socio-economic realities to deliver both commercial returns and social benefits. This shared value approach is aligned to the principles of King IV, where corporate citizenship and sustainability are situated at the heart of strategy, rather than as an addendum to it. It is in understanding and responding to the triple context of economy, society and environment that businesses can continue to deepen their social relevance, while delivering commercial returns.
As a legislated committee in terms of the Companies Act, the social and ethics committee supports the board in both compliance oversight and plays an increasingly visionary role in identifying risks and opportunities in the triple context. This Social and Ethics Committee Handbook provides organisations with cogent information on the principles and practices of an effective social and ethics committee. Considering the expanding role of this critical function, we believe that this updated edition makes an important contribution to, and supports the ability of, businesses to align to the tenets of ethical and effective leadership. This will help to ensure their sustainability while serving the various interests of the stakeholders on whom their businesses depend.

David Hurwitz  
Chief Executive Officer  
Transaction Capital
For some companies, the establishment of a social and ethics committee is a legal requirement. However, we encourage the governing bodies of all organisations to consider having a committee that provides oversight of the critical matters of organisational ethics, responsible corporate citizenship, sustainable development and stakeholder relations.

Now, more than ever, we see the impact of a lack of focus on these (what some consider) 'soft' issues on the reputations of some South African organisations.

Whilst many organisations have had functioning social and ethics committees for a number of years, the time is ripe to elevate the role of the committee to being used to add value to the business and the country as a whole.

This guide is an invaluable tool to assist with this elevated focus.

Parmi Natesan
Executive: Centre for Corporate Governance
Institute of Directors in Southern Africa
Introduction

In the Companies Act, 71 of 2008 (hereafter “Companies Act”), there is a single sentence on a new board committee that is required for certain types of companies:

“The Minister may by regulation prescribe that a company or a category of companies must have a social and ethics committee, if it is desirable in the public interest, having regard to (a) its annual turnover; (b) the size of its workforce; or (c) the nature and extent of its activities” (Section 72(4)).

The Companies Amendment Act, 3 of 2011 (hereafter “Companies Amendment Act”) not only elaborated on section 72(4) quoted above, but also added another six sub-sections on social and ethics committees. Later, when the Companies Regulations was gazetted in 2011, substantially more guidance on social and ethics committees was given in section 43.

Thus, what started as a single sentence in the Companies Act grew, over time, into much more substantial guidance through the Companies Amendment Act and the Companies Regulations.

Today – over five years since 1 May 2012 when the requirement became mandatory – social and ethics committees can be found in almost all state-owned, listed, and 'public interest' companies in South Africa.

Initially, social and ethics committees were slowly and reluctantly embraced by South African companies. A survey conducted in May 2012 found that:

- **50%** of companies that were supposed to have a social and ethics committee had established a committee by 1 May 2012;
- **41%** of companies felt that their social and ethics committee understood its mandate; and
- **11%** of companies indicated a strong awareness of the role and functions of the social and ethics committee throughout the company.
  
  *(IoDSA/Mazar, 2012)*

At the time, there was a great deal of uncertainty and, indeed, a lack of understanding of what the committee was supposed to do. One commentator, remarking on the challenge of setting up a social and ethics committee, captured the prevailing corporate mood well:

“But here is some good news for those of us tasked with this responsibility [of setting up a social and ethics committee] – we are probably equally confused…!”

*(Van der Merwe, 2012: 15)*
In response to the uncertainty and confusion about the role and functioning of the social and ethics committee at the time, The Ethics Institute published *The Social and Ethics Committee Handbook* (Rossouw, 2012). The publication was financially supported by GIZ, and endorsed by the Institute of Directors in Southern Africa (IoDSA).

Despite the initial confusion and misgivings, we have observed a growing awareness that the committee can improve the social and ethics performance of companies. It elevates social and ethics matters to board level – thus ensuring that they are treated as matters of strategic importance – and companies with effective committees stand to gain on many fronts that contribute to their overall sustainability. These could include greater public trust, improved risk, compliance, and ethics management, and stronger stakeholder relations.

Leading companies now willingly accept and embrace the social and ethics committee as an opportunity to enhance the governance of their social and ethics performance.

Two developments since 2012 led to the decision to publish this second edition of *The Social and Ethics Committee Handbook*:

**Firstly,** some organisations have already gone through the learning process and are successfully running their social and ethics committees in a manner that contributes to their performance and sustainability. Consequently, a number of leading practices have emerged that need to be captured and shared to assist other organisations still figuring things out.

**Secondly,** the *Fourth King Report on Corporate Governance for South Africa* – King IV (IoDSA, 2016) was published in 2016, making it the first of the King Reports published after the social and ethics committee requirement of the Companies Act became effective. King IV includes a number of recommendations – regarding the composition, role and responsibilities of the committee – which serve as valuable guidance in those areas of the Act that are ambiguous or short on detail.

The purpose of this handbook is to clear up confusion about the role, responsibilities and operations of a social and ethics committee. It provides practical guidance to committee members as well as to those who are responsible for reporting to this committee.
This handbook is divided into three sections:

• **Part 1** provides an overview of the context in which the social and ethics committee emerged. It focuses firstly on the social and ethics governance environment that prevailed under the successive King Reports in South Africa. Against this backdrop, it then contextualises the social and ethics committee as introduced in the new Companies Act.

• **Part 2** consists of a close reading of the legal requirements regarding the social and ethics committee. It looks into various aspects of the social and ethics committee, such as its composition, powers and mandate.

• **Part 3** focuses on leading practices of running an effective social and ethics committee. Among other things, it looks at the role as well as operational aspects of the committee, including terms of reference, monitoring and reporting frameworks, membership, work plans, and agendas.

The purpose of this handbook is to clear up confusion about the role, responsibilities and operations of a social and ethics committee. It provides practical guidance to committee members as well as to those who are responsible for reporting to this committee.
Although the introduction of the social and ethics committee was a new development in corporate governance in South Africa, the idea that companies should govern their social and ethics performance is not new. Internationally, there have been considerable developments, especially over the last three decades, that have emphasised the importance of governing the social and ethics performance of companies. During this period, the concepts of sustainability and corporate responsibility have risen to prominence in the international business community, as evidenced by the emergence of various standards for corporate social and ethics responsibility, such as the United Nations Global Compact and the ISO 26000 Guidance on Social Responsibility. As a result of these developments, reporting on corporate social and ethics performance has steadily increased. Reporting guidance and standards, such as those issued by the Global Reporting Initiative (GRI), AccountAbility (AA), the International Integrated Reporting Council (IIRC) and others, have further advanced the process of monitoring and reporting corporate social and ethics performance.

The dawn of democracy in South Africa was accompanied by a growing awareness of corporate social and ethical responsibility. The government introduced a series of laws that had the intention of advancing these outcomes, such as the Employment Equity Act, 55 of 1998, the Broad-Based Black Economic Empowerment Act, 53 of 2003, the Consumer Protection Act, 68 of 2008, as well as various Industry Charters.

The private sector also took an initiative that would have an important influence on corporate social and ethics performance in the new South Africa, with the formation of the King Committee on Corporate Governance in 1992. This committee produced its first report in 1994, a second in 2002, a third in 2009, and in 2016 the Fourth King Report (King IV) was published. These developments in South Africa are depicted in diagram 1.

![Diagram 1: Timeline of significant developments increasing awareness in South Africa](image-url)
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Diagram 1: Timeline of significant developments increasing awareness in South Africa
The four King Reports became critical drivers of corporate social and ethics responsibility in South African companies. They also had an impact on legal reform, on the Listings Requirements of the Johannesburg Stock Exchange (JSE) and on the introduction of the Socially Responsible Investment (SRI) Index of the JSE (replaced in 2015 with the FTSE/JSE Responsible Investment Index Series).

The guidance provided by the King Reports on the governance of social and ethics performance is useful for making sense of the legal requirements in the Companies Act. In the following sections, the King IV vision, principles and recommendations regarding the governance of social and ethics performance are briefly outlined.

1.1 King IV on social and ethics governance

The Corporate Governance Code of King IV starts with a chapter on “Leadership, ethics and corporate citizenship”. Placing this chapter right at the beginning was no coincidence, but rather a recognition that good governance starts with – and cannot be sustained without – ethical leadership and corporate responsibility. In this first chapter, there are two principles that address the governance of social and ethics performance explicitly.

Corporate social performance

Principle 3 of King IV addresses the social aspect of corporate governance when it states that:

“The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen” (King IV Report, 2016: 45).

By describing the organisation as a “responsible corporate citizen”, King IV advances a view of the organisation as a responsible member of the society in which it operates. It thus makes the organisation co-responsible for the wellbeing of society. This view of the organisation is confirmed in the statement:

“Corporate citizenship is the recognition that the organisation is an integral part of the broader society in which it operates, affording the organisation standing as a juristic person in that society with rights but also responsibilities and obligations” (King IV Report, 2016: 11).

The concept of the responsible corporate citizen implies that organisations have responsibilities that go beyond their shareholders and extend to their other stakeholders. The governing body consequently needs to consider not only the impact of the company’s performance on shareholders, but also on employees, society, the economy and the natural environment. This is made quite clear in the statement:
“King IV (like its predecessors) advocates a stakeholder-inclusive approach, in which the governing body takes account of the legitimate and reasonable needs, interests and expectations of all material stakeholders in the execution of its duties in the best interest of the organisation over time. By following this approach, instead of prioritising the interests of providers of financial capital, the governing body gives parity to all sources of value creation, including among others, social and relationship capital as embodied by stakeholders” (King IV Report, 2016: 25).

But what does it mean in practical terms for a company to act as a responsible corporate citizen? In the Guidance on Social Responsibility issued by the International Standards Organization, namely the ISO 26000 standard, corporate responsibility is defined as:

“The commitment of an organization to incorporate social and environmental considerations in its decision-making and be accountable for the impacts of its decisions and activities on society and the environment” (ISO 26000).

The above description of social responsibility implies that a company needs to take its impact on different contexts into consideration, not only in its decision making, but also in its accountability for the impact of decisions made.

King IV refers in this regard to the “triple context” that organisations need to consider, namely the “combined context of the economy, society and environment in which the organisation operates” (King IV Report, 2016: 24).

A useful tool for making sense of the different kinds of impact that a company can have on its context is provided in diagram 2. This framing shares the logic of the triple context, but splits the societal aspect into two dimensions, namely, the internal stakeholders (workplace), and the external stakeholders (social environment):

Diagram 2: Dimensions of Corporate Responsibility (Based on Crane, Matten and Spence, 2008)
Starting from the top-left quadrant and moving in a clockwise direction, this diagram makes clear the following:

- Firstly, the company should consider, and be accountable for, its impact on the **economy** in which it operates. This implies the company should ensure that it does not, for example, undermine fair competition, or harm local economic development, but rather that it contributes positively to the marketplace.
- Secondly, the company should consider its impact on the **workplace**. This implies that the company should, among other things, take care of the health, safety and development of its employees.
- Thirdly, the company needs to consider its impact on the **social environment**; in other words, the people and communities affected by its operations. This concerns, for example, the effects of its products and services on the safety, health and quality of life of consumers.
- Finally, the company needs to consider how its activities impact on the **natural environment**. This brings into play such issues as pollution, waste management and the responsible use of natural resources.

King IV uses the very same approach to corporate citizenship illustrated in diagram 2, only in verbal format. King IV outlines the following areas of responsibility in its discussion of Principle 3:

- “Workplace (including employment equity; fair remuneration; and the safety, health, dignity and development of employees);
- Economy (including economic transformation; prevention, detection and response to fraud and corruption; and responsible and transparent tax policy);
- Society (including public health and safety; consumer protection; community development; and protection of human rights); and
- Environment (including responsibilities in respect of pollution and waste disposal; and protection of biodiversity).”

(King IV Report, 2016: 45)

**Corporate ethics performance**

Besides governing the social performance of organisations, the governing body is also responsible for ensuring that the ethics of the company is governed well. This is explicitly stated in Principle 2 of King IV:

“The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture” (King IV Report, 2016: 44).

King IV unpacks what it means to manage a company's ethics effectively, by introducing the various elements of an ethics management process. These various elements are captured in the Governance of Ethics Framework that was developed by The Ethics Institute and is displayed in **diagram 3**.
Starting from the top-left quadrant and moving in a clockwise direction, this diagram makes clear the following:

- Firstly, the company should consider, and be accountable for, its impact on the economy in which it operates. This implies the company should ensure that it does not, for example, undermine fair competition, or harm local economic development, but rather that it contributes positively to the marketplace.

- Secondly, the company should consider its impact on the workplace. This implies that the company should, among other things, take care of the health, safety and development of its employees.

- Thirdly, the company needs to consider its impact on the social environment; in other words, the people and communities affected by its operations. This concerns, for example, the effects of its products and services on the safety, health and quality of life of consumers.

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Diagram 3: The Governance of Ethics Framework
(Rossouw and Van Vuuren, 2017: 226)

The Governance of Ethics Framework is designed to ensure that ethics is governed and managed in a manner that cultivates an ethical culture in the organisation.

**Ethics management is thus never a goal in itself, but should rather always be seen as a means to achieve the outcome of an ethical culture.**

In pursuit of the ultimate goal of an ethical culture, there are a number of aspects of ethics management that the governing body should attend to:

1. **Leadership commitment**
   The governing body should ensure that the organisation is led by leaders with ethical integrity. This aspect of the governance of ethics is entrenched in Principle 1 of the King IV Code that states: “The governing body should lead ethically and effectively” (King IV Report, 2016: 43).

2. **Governance structures**
   The governing structures should ensure that the ethics of the organisation is properly governed. According to the King IV concept of organisational governance, this would entail that (a) there is an appropriate strategy for managing ethics, (b) the organisation has developed policies and standards to guide its staff and supply chain on what is ethically appropriate conduct, (c) the governing body exercises regular and proper oversight of the ethics performance of the organisation, and (d) the ethics performance of the organisation is reported and disclosed to stakeholders.
3. Ethics management
As part of its oversight function, the governing body should ensure that the following ethics management processes are effectively managed:

i. Regular ethics risk and opportunity assessments are conducted;
ii. An ethics management strategy is developed and implemented;
iii. Codes of ethics and conduct, as well as relevant ethics policies, are developed;
iv. Ethical standards are institutionalised in the organisation through processes such as training, communication, performance management, the provision of safe reporting channels to report observed misconduct; and
v. Ethics performance is monitored and reported to the governing body.

4. Independent assessment and external reporting
The governing body should ensure that regular independent assessments are conducted (typically by the internal audit function) to assess the adequacy and effectiveness of the organisation's ethics management processes and structures. The outcomes of these independent assessments should be reported by the governing body to external stakeholders on a regular basis.

Ultimately, all these aspects of the governance of ethics should contribute to the cultivation of an ethical organisational culture. This implies that ethics should become a way of living in the organisation. Or, as is often said in popular parlance: “the way we do things around here even when nobody is watching”.

In summary, King IV recommends that the governing body ensures its organisation's social performance and ethics performance are well-governed. Building on this context of the imperative for social and ethics governance, the following sections discuss the introduction of the social and ethics committee in the legislation.

1.2 The Companies Act on social and ethics governance
It is highly significant that one of the stated purposes of the Companies Act is to:

“Reaffirm the concept of the company as a means of achieving economic and social benefits” (Section 7(d)).

This specific purpose makes it clear that, under law, companies in South Africa are not regarded as merely vehicles for creating wealth for shareholders, but also as vehicles for producing wider economic and social benefits to society. The introduction of the social and ethics committee in the Act can thus be seen as a mechanism for ensuring that companies do indeed monitor and report whether and in what way they produce social benefits to the economy, workplace, society, and natural environment.

The heading under which the social and ethics committee is introduced in the Companies Act is also significant: “Board committees”. This makes it clear that, while
the social and ethics committee is a statutory committee with specific legal duties of monitoring and reporting, it is also a board committee that assists the board in exercising its social and ethics governance responsibilities. This role, as a committee of the board, is also reflected in the social and ethics committee's responsibility for drawing matters within its mandate to the attention of the board of directors. By constituting the social and ethics committee simultaneously as a statutory and a board committee, another purpose of the Companies Act is given expression, which is to:

“Promote the development of the South African economy by encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation” (Section 7(b)(iii)).

The mandate of the social and ethics committee outlines the three main functions of the committee:

1. To monitor the company's activities with regard to the following five areas of social responsibility:
   (i) social and economic development;
   (ii) good corporate citizenship;
   (iii) the environment, health and public safety;
   (iv) consumer relationships; and
   (v) labour and employment.

2. To draw matters within its mandate to the attention of the board as required.

3. To report to shareholders at the annual general meeting on the matters within its mandate (cf. Companies Regulations section 43(5)).

These functions of the social and ethics committee are displayed in diagram 4:

![Diagram 4: Functions of the social and ethics committee](image-url)
Thus, the social and ethics committee has, firstly, a monitoring responsibility, and secondly, a double reporting responsibility: to the board of directors (as and when required), and to the shareholders (at the company's annual general meeting). This mandate is unpacked in more detail in a close reading of the Companies Act and Regulations in part 2 of this handbook.

1.3 Comparing King IV and the Companies Act

Comparing the above brief excerpts of King IV and the Companies Act, a number of similarities and dissimilarities emerge.

The similarities between the two documents are the following:

- Both adopt an inclusive view of the company by not regarding it merely as a vehicle for producing shareholder benefits, but also for producing value for a wider range of stakeholders and the environment.
- Both impose a responsibility on the board of directors for governing the social performance of the company.
- Both impose a responsibility on the board of directors (or on the social and ethics committee of the board) for reporting on the social performance of the company.

There are, however, some striking dissimilarities between the two documents:

- The Companies Act requires the social and ethics committee to merely monitor the company's activities in the areas prescribed in its mandate and then to report on them to the board and shareholders. King IV, in contrast, requires governing bodies to move beyond mere oversight to also providing strategic direction to the organisation.
- While King IV imposes the responsibility for the governance of ethics on governing bodies, the mandate of the social and ethics committee in the Companies Act is quiet on the governance of ethics. Indeed, the last time the word “ethics” is seen in the mandate of the social and ethics committee is in the name of the committee (cf. Rossouw, 2011: 29).
- The external reporting responsibility of the board of directors on social and ethics matters is much more comprehensive in King IV than the reporting responsibility of the social and ethics committee in the Companies Act. In the former, the board's reporting responsibility is not confined to social matters, but also includes the company's ethics. Furthermore, King IV recommends reporting not only to shareholders, but also to other stakeholders via the sustainability and integrated report. The social and ethics committee mandate in the Companies Act only requires reporting to shareholders at the company's annual general meeting.
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1.3 Comparing King IV and the Companies Act

Diagram 5: Dissimilarities between King IV and the Companies Act

<table>
<thead>
<tr>
<th>King IV</th>
<th>Companies Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
<td>Impact on society</td>
</tr>
<tr>
<td><strong>Strategic focus</strong></td>
<td>None</td>
</tr>
</tbody>
</table>
| Monitor and report on: | • Social and economic development
• Good corporate citizenship
• The environment, health and public safety
• Consumer relationships
• Labour and employment |
| Report to: | Shareholders at AGM |

The fact that the ethics dimension has been neglected in the mandate of the social and ethics committee in the Company’s Act, despite the appearance of the word ‘ethics’ in the name of the committee, seems to be an oversight by the law-makers. At the time of the publication of this second edition of the Social and Ethics Committee Handbook, the Department of Trade and Industry (dti) had already started the process of amending the Companies Act. One of the areas that is specifically targeted for amendment is the social and ethics committee mandate, and there are strong indications at this stage that the oversight will be corrected. In part 3 of this handbook, specific proposals are offered on how the committee mandate can be extended to include the governance of ethics.
This section presents a close reading of the relevant sections of the Companies Act and the Companies Regulations. Relevant aspects about the requirement for having a social and ethics committee are outlined, including types of organisations mandated to comply, grounds for exemption, consequences of non-compliance and the committee’s composition, appointment, mandate and powers. The relevant sections of the Companies Act and Regulations are extracted directly for ease of reference.

The fundamental determinant of whether a company must have a social and ethics committee is its impact on the public interest. The factors considered to be material for determining the extent of a company’s impact on the public interest include its annual turnover, the size of its workforce, as well as the nature and extent of its activities. Two categories of companies are automatically considered to meet this requirement, namely:

· State-owned companies; and
· Listed public companies.

A third category of companies required to have social and ethics committees is that of companies with a public interest score above 500 points in any two of the preceding five years.

The requirement for having a social and ethics committee is applicable as per extract 1:

43. Social and Ethics Committee

(1) This regulation applies to––

(a) every state owned company;
(b) every listed public company; and
(c) any other company that has in any two of the previous five years, scored above 500 points in terms of regulation 26(2).

Guidance is provided to companies on how to calculate their public interest score. Regulation 26(2) in the Companies Regulations makes it clear that four factors need to be factored, namely:

· The number of employees working for the company;
· The amount of debt that the company had at the end of its financial year;
· The amount of turnover that the company had during its financial year; and
· The number of shareholders of the company (or members in the case of a non-profit company) at the end of its financial year.

PART TWO

The responsibilities of the social and ethics committee
This section presents a close reading of the relevant sections of the Companies Act and the Companies Regulations. Relevant aspects about the requirement for having a social and ethics committee are outlined, including types of organisations mandated to comply, grounds for exemption, consequences of non-compliance and the committee's composition, appointment, mandate and powers. The relevant sections of the Companies Act and Regulations are extracted directly for ease of reference.

### 2.1 Companies required to have a social and ethics committee

The fundamental determinant of whether a company must have a social and ethics committee is its impact on the public interest. The factors considered to be material for determining the extent of a company's impact on the public interest include its annual turnover, the size of its workforce, as well as the nature and extent of its activities. Two categories of companies are automatically considered to meet this requirement, namely:

- State-owned companies; and
- Listed public companies.

A third category of companies required to have social and ethics committees is that of companies with a public interest score above 500 points in any two of the preceding five years.

The requirement for having a social and ethics committee is applicable as per extract 1:

**Extract 1: Companies required to have a social and ethics committee**

(Companies Regulations 43(1))

Guidance is provided to companies on how to calculate their public interest score. Regulation 26(2) in the Companies Regulations makes it clear that four factors need to be factored, namely:

- The number of employees working for the company;
- The amount of debt that the company had at the end of its financial year;
- The amount of turnover that the company had during its financial year; and
- The number of shareholders of the company (or members in the case of a non-profit company) at the end of its financial year.
The formula for calculating a company's public interest score according to Regulation 26(2) can be seen in extract 2:

(2) For the purposes of regulations 27 to 30, 43, 127 and 128, every company must calculate its 'public interest score' at the end of each financial year, calculated as the sum of the following:

(a) a number of points equal to the average number of employees of the company during the financial year;
(b) one point for every R1 million (or portion thereof) in third party liability of the company, at the financial year end;
(c) one point for every R1 million (or portion thereof) in turnover during the financial year; and
(d) one point for every individual who, at the end of the financial year, is known by the company—
   (i) in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or
   (ii) in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company.

Extract 2: Formula for calculating public interest score (Companies Regulations 26(2))

2.2 Exemption from the social and ethics committee requirement

The amended Companies Act allows companies to apply for exemption from the requirement of having a social and ethics committee under certain conditions. The two conditions stated in the Act are:

- If the company is already required by another law to have an existing structure in place that performs the functions prescribed by the Companies Amendment Act to the social and ethics committee; or
- If the nature and extent of the company's activities are such that it does not have any significant impact on the public interest.

These two conditions are stated in section 72(5) of the Companies Amendment Act as displayed in extract 3:

(5) A company that falls within a category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement, and the Tribunal may grant such an exemption if it is satisfied that-

(a) the company is required in terms of other legislation to have, and does have, some form of formal mechanism within its structures that substantially...
performs the function that would otherwise be performed by the social and ethics committee in terms of this section and the regulations; or
(b) it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company.

Extract 3: Grounds for exemption from the social and ethics committee requirement
(Companies Amendment Act, section 72(5))

The Companies Regulations add one further instance in which a company is not required to have a social and ethics committee, namely when a company is “a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company” (Companies Regulations 43(2)). This specific exemption would typically apply when the social and ethics committee of a holding company also monitors and reports on the social and ethics performance of subsidiary companies. In these cases, the subsidiary companies are exempted from the requirement to have a social and ethics committee.

Should a company wish to be exempted from the social and ethics committee requirement, it needs to apply for such exemption from the Companies Tribunal. Further guidance on the procedure for applying for exemption can be found in the Companies Amendment Act, sections 72(6) and 72(7).

2.3 Composition and appointment of a social and ethics committee

The Companies Regulations prescribe the minimum membership of a social and ethics committee thus: the committee must consist of a minimum of three directors or prescribed officers. (A prescribed officer is defined in Regulation 38(1)(a) as someone who “exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company” (2011:48)). At least one of these three members must be a director who is not involved in the day-to-day management of the business – either currently or in the preceding three financial years.

The Companies Regulations only refer to the first three members of a social and ethics committee, thus leaving scope for the board to appoint more members should it wish to do so.
The requirements regarding the membership of the social and ethics committee are displayed in **extract 4**:

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

*Extract 4: Membership of the social and ethics committee (Companies Regulations 43(4))*

The manner in which the membership of the committee is composed is somewhat out of step with the best practice recommendation of King IV that governance committees consist of a majority of non-executive directors, the majority of whom should be independent. The absence of this requirement in the Companies Regulations, coupled with the fact that two out of the three required directors can be executive directors – or even prescribed officers – has given rise to speculation that the law-maker might have intended the social and ethics committee to be an operational committee (cf. Candor, 2012: 9). This question is revisited in part 3 of this handbook, in which leading practice in the composition of the committee is shared.

The Companies Act and Regulations are also somewhat ambiguous about who has the responsibility of appointing the committee. Regulation 43(2) states that the company must appoint the social and ethics committee, whereas Regulation 43(3) states that the board must appoint the first members of the social and ethics committee. This apparent ambiguity can be seen in **extract 5**:

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

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

(b) it has been exempted by the Tribunal in accordance with section 72 (5) and (6).

(3) A board of a company that is required to have a social and ethics committee, and that—

(a) exists on the effective date, must appoint the first members of the committee within 12 months after—

(i) the effective date; or

(ii) the determination by the Tribunal of the company’s application, if any, if the Tribunal has not granted the company an exemption;

*Extract 5: Appointment of the social and ethics committee and its members (Companies Regulations 43(2) and 43(3))*

Probably the best way for a company to deal with this quirk in the Regulations is to adopt – at the first annual general meeting following the appointment by the board of the first members – a resolution that the social and ethics committee will be a
The mandate of the social and ethics committee is outlined in the Companies Regulations 43(5). According to this regulation, the Committee has three functions to fulfil: one which pertains to monitoring responsibilities and two which are reporting responsibilities.

Monitoring responsibilities
The first function that the social and ethics committee must fulfil is to monitor the company's activities in five designated areas. These areas are:
- Social and economic development;
- Good corporate citizenship;
- The environment, health and public safety;
- Consumer relationships; and
- Labour and employment.

When the social and ethics committee monitors each of these five areas, it must take into consideration the following standards:
- Any relevant legislation;
- Other legal requirements; or
- Prevailing codes of best practice.

The challenge is that the Regulations provide scant guidance on what the relevant legislation, other legal requirements and best practice codes might be.

In the area of social and economic development, the codes and laws mentioned are:
- The United Nations Global Compact Principles;
- The OECD recommendations regarding corruption;
- The Employment Equity Act; and
- The Broad-Based Black Economic Empowerment Act.
In the area of **good corporate citizenship** no specific codes or laws are mentioned. Instead, the following aspects to be monitored are mentioned:

- Promotion of equality;
- Prevention of unfair discrimination;
- Reduction of corruption;
- The company’s contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
- The company’s record of sponsorship, donations and charitable giving.

With regard to the **environment, health and public safety**, there is also no reference to any specific codes or laws, but it is mentioned that the company needs to monitor the impact of its activities and of its products or services on the environment, health and public safety.

Likewise, in the area of **consumer relationships**, no specific codes or laws are mentioned. However, mention is made of:

- The company’s advertising;
- The company’s public relations; and
- Compliance with consumer protection laws.

In the fifth and final area that needs to be monitored, namely **labour and employment**, a specific standard as well as two more aspects are mentioned. They are:

- The International Labour Organization Protocol on decent work and working conditions;
- The company’s employment relationships; and
- The company’s contribution toward the educational development of its employees.

Another, somewhat strange, challenge: no such document as the “International Labour Organization Protocol on decent work and working conditions” exists. This was officially confirmed by the Department of Trade and Industry (cf. KPMG 2012: 102). There are, however, a number of core conventions of the International Labour Organization (ILO) that explicitly address issues of decent work and working conditions. Furthermore, the ILO has since issued a document, titled *Decent Work Country Profile: South Africa* (ILO 2012), which provides guidance and indicators on decent work and working conditions.

That there is a lack of clear references to relevant legislation, other legal requirements, and best practice codes means that social and ethics committees need to apply their minds in selecting the laws, codes and standards that are relevant to their organisation’s context. In part 3 of this handbook, some leading practices in this regard are discussed.

**Reporting responsibilities**

Besides its monitoring responsibility, the social and ethics committee has two further reporting responsibilities.
The first reporting responsibility is articulated in Regulation 43(5)(b), which states that the committee needs to draw matters within its mandate to the attention of the company’s board as and when the committee deems it necessary for the board to consider such matters. Once more, no criteria are provided that identify which matters need to be brought to the attention of the board, or when this should be done. However, it would be safe to assume that social matters posing material risks or opportunities to the company need to be elevated to board level.

The committee’s second reporting responsibility is to shareholders at the annual general meeting. Again, though, the Companies Regulations provide little to no guidance on the manner and format in which this is supposed to take place.

The mandate of the social and ethics committee is displayed in extract 6:

(5) A social and ethics committee has the following functions:

(a) To monitor the company’s activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to—
   (i) social and economic development, including the company's standing in terms of the goals and purposes of—
      (aa) the 10 principles set out in the United Nations Global Compact Principles; and
      (bb) the OECD recommendations regarding corruption;
      (cc) the Employment Equity Act; and
      (dd) the Broad-Based Black Economic Empowerment Act;
   (ii) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
   (bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
   (cc) record of sponsorship, donations and charitable giving;
   (iii) the environment, health and public safety, including the impact of the company's activities and of its products or services;
   (iv) consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and
   (v) labour and employment, including—
      (aa) the company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
      (bb) the company's employment relationships, and its contribution toward the educational development of its employees;
   (b) to draw matters within its mandate to the attention of the Board as occasion requires; and
   (c) to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

Extract 6: Mandate of the social and ethics committee (Companies Regulations 43(5))
2.5 Powers, rights and resources of a social and ethics committee

Section 72(8) of the Companies Amendment Act bestows certain powers and rights upon the committee, empowering it to fulfil both its monitoring and reporting roles. These are summarised as follows:

- The power to obtain relevant information from any director, prescribed officer or employee of the company;
- The right to attend any general meeting of shareholders;
- The right to receive all communications and notices related to any general meeting of shareholders; and
- The right to address any general meeting of shareholders on any part of the business of such a meeting that is related to the functions of the committee.

The last of the powers mentioned above, namely the right of committee members to address any general meeting, should not be confused with its duty to report to shareholders at the annual general meeting. This specific right is widely seen as a ‘safety valve’ to ensure that material social and ethics matters are not deliberately kept away from shareholders. Members of the social and ethics committee are thus empowered to raise issues within their statutory mandate that they deem necessary for shareholders to be informed of. Neither the chairperson of the board, nor the chairperson of the social and ethics committee, can prevent members of the committee from raising such issues at general meetings.

Besides the powers given to the social and ethics committee, the Companies Amendment Act also ensures that the committee has sufficient financial and human resources to exercise its functions. The Act determines that the company should provide the following resources to the committee:

- Covering all expenses reasonably incurred in the exercise of its prescribed functions; and
- Paying for the services of consultants or specialists it might contract to assist in performing its prescribed functions.

The above resources obviously have financial implications, and thus need to be properly procured in accordance with the company's procurement procedures.

The powers, rights and resources granted to the social and ethics committee can be seen in extract 7:

(8) A social and ethics committee of a company is entitled to-
(a) require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee's functions;
(b) request from any employee of the company any information or explanation necessary for the performance of the committee's functions;
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- The power to obtain relevant information from any director, prescribed officer or employee of the company;
- The right to attend any general meeting of shareholders;
- The right to receive all communications and notices related to any general meeting of shareholders; and
- The right to address any general meeting of shareholders on any part of the business of the meeting that is related to the functions of the committee.

The last of the powers mentioned above, namely the right of committee members to address any general meeting, should not be confused with its duty to report to shareholders at the annual general meeting. This specific right is widely seen as a 'safety valve' to ensure that material social and ethics matters are not deliberately kept away from shareholders. Members of the social and ethics committee are thus empowered to raise issues within their statutory mandate that they deem necessary for shareholders to be informed of. Neither the chairperson of the board, nor the chairperson of the social and ethics committee, can prevent members of the committee from raising such issues at general meetings.

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- Covering all expenses reasonably incurred in the exercise of its prescribed functions; and
- Paying for the services of consultants or specialists it might contract to assist in performing its prescribed functions.

The above resources obviously have financial implications, and thus need to be properly procured in accordance with the company's procurement procedures.

The powers, rights and resources granted to the social and ethics committee can be seen in extract 7:

(8) A social and ethics committee of a company is entitled to—
(a) require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee’s functions;
(b) request from any employee of the company any information or explanation necessary for the performance of the committee’s functions;
(c) attend any general shareholders meeting;
(d) receive all notices of and other communications relating to any general shareholders meeting; and
(e) be heard at any general shareholders meeting contemplated in this paragraph on any part of the business of the meeting that concerns the committee’s functions.

(9) A company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

Extract 7: Powers, rights and resources of the social and ethics committee
(Companies Amendment Act, sections 72(8) and (9))

2.6 Non-compliance with the requirement

In sections 84(6) and (7), the Companies Amendment Act makes provision for actions to be taken against companies that do not comply with the requirement of having a social and ethics committee.

A company that is required to have a social and ethics committee, but has failed to appoint one, can have the following steps taken against it:

- The Companies and Intellectual Property Commission (CIPC) can issue the non-compliant company with a notice to constitute a social and ethics committee within a prescribed period;
- CIPC can give notice to the shareholders of a meeting to appoint a social and ethics committee and then convene the meeting and appoint one; and
- CIPC can apportion to each director on a pro-rata basis the cost of convening a meeting to appoint a social and ethics committee if a director knowingly permitted the failure to appoint one.

The actions that can be taken to remedy non-compliance with the requirement of having a social and ethics committee are displayed in extract 8:

(6) If the board of a company fails to make an appointment as required by this Part—
(a) the Commission may issue a notice to that company to show cause why the Commission should not proceed to convene a shareholders meeting for the purpose of making that appointment; and
(b) if the company fails to respond to a notice contemplated in paragraph (a) or, in responding, fails to satisfy the Commission that the board will make the appointment, or convene a shareholders meeting to make the appointment, within an acceptable period, the Commission may—
(i) give notice to the holders of the company's securities of a general meeting, and convene such a meeting, to make that appointment; and
(ii) assess a pro-rata share of the cost of convening the general meeting to each director of the company who knowingly permitted the company to fail to make the appointment in accordance with this Part.

(7) A company that has been given notice contemplated in subsection (6)(a), or a director who has been assessed any portion of the costs of a meeting, as contemplated in subsection (6)(b), may apply to the Companies Tribunal to set aside the notice, or the assessment, in whole or in part.

Extract 8: Remedies for non-compliance with the social and ethics committee requirement
(Companies Act, sections 84(6) and (7))

Besides these specific remedies, there are other general actions that can be taken against companies not complying with this, or any other, requirement of the Companies Act. These remedies are contemplated in sections 156, 157, 171 and 218(2) of the Companies Act.
Leading practices of running an effective social and ethics committee
In the discussion on the composition, functions and powers of the social and ethics committee in part 2, it is made clear that the Companies Act and Regulations at times provide scant information on how the committee should be constituted and how it should function. In order to run an effective social and ethics committee, those tasked with the responsibility need to apply their minds to various aspects related to its functioning, such as the terms of reference, mandate, membership, monitoring and reporting criteria, workplan, and meetings. The social and ethics committee also needs to get clarity on how it will report to the board and the annual general meeting. This is not an insubstantial challenge.

Fortunately, since 1 May 2012 when the mandatory requirement became effective, a great deal of experience has been gained. Over the last five years, The Ethics Institute has worked closely with the Institute of Directors in Southern Africa, and has trained and consulted for hundreds of social and ethics committees and individual members of such committees. In this process, we have been privileged to co-create a range of emerging leading practices with organisations who have been there and done it, and learned lessons along the way. Another important development during the period has been the publication of the Fourth King Report on Corporate Governance, in which a number of important recommendations are made that have a direct bearing on the role, mandate, composition and functioning of the social and ethics committee.

Thus, the leading practices in this section are based on the practical experiences gained by organisations with which we have worked, combined with the recommendations made by King IV. The following ten elements of a social and ethics committee are covered:

1. Role
2. Responsibilities
3. Terms of reference
4. Monitoring and reporting framework
5. Membership
6. Meetings
7. Workplan
8. Relationship with other board committees and operational structures
9. Reporting to the board of directors
10. Reporting to shareholders

### 3.1 Role

Probably the most important factor in determining the effectiveness of a social and ethics committee is the committee’s own understanding of its role.

Should the committee merely take its cue from the Companies Act, it might interpret its role as a social compliance committee that merely monitors whether the company...
adheres to relevant legal, regulatory and best practice standards in the areas prescribed by its statutory mandate. In such a case, the committee would have a reactive and backwards-facing role that monitors the company's social performance for incidents of non-compliance, and then reports the status of compliance to the board and shareholders. The risk of this approach is that it becomes merely a box-ticking exercise.

However, should the committee not only bear its statutory mandate in mind, but also take its cue from King IV's recommendations, it will have a very different understanding of its role. In such a case, the committee would have a more proactive and forward-looking role, ensuring that the manner in which the organisation governs social and ethics performance promotes an ethical culture, and that the organisation conducts itself as a responsible corporate citizen. Conceiving of the social and ethics committee in this way likely leads to an expansion of its mandate in two ways. Firstly, beyond the monitoring and reporting role as prescribed in the Companies Regulations, the committee will also play a strategic role, and advise the organisation on how it can improve its social and ethics performance. Secondly, the scope of social and ethics matters that should be governed will expand beyond the statutory mandate to include any and all other social and ethics matters that might have a material impact on the sustainability of the organisation.

**Effective social and ethics committees tend to opt for the latter approach.** They do not perceive themselves as social compliance committees, but as social and ethics committees that actively advance the ethical culture and corporate citizenship of the organisations that they serve. They see their own role as intrinsically linked to the performance and sustainability of the organisation. As such, they keep a keen eye on any social and ethics matters that may either help or hinder the organisation in pursuit of its strategic objectives.

![Virtuous cycle of social and ethics committee effectiveness](image-url)
The work of the social and ethics committee is thus not a goal in itself, but is intimately linked to the strategy and performance of the organisation. Such an approach to their task earns the committee the respect of the governing body. It also results in the committee being perceived as a valuable and indispensable committee that serves the best interest of the organisation and its stakeholders. This unleashes a virtuous cycle in which committee members perceive their work as purposeful, which has a positive knock-on effect on their commitment and energy to fulfil their role.

### 3.2 Responsibilities

Once a social and ethics committee has clarity about its role, the next step is getting to grips with its responsibilities. As is made clear in part 2, the statutory mandate of the committee is to monitor five designated areas of social responsibility, and then to report to the board and shareholders on whether the company complies with relevant legal, regulatory and best practice standards in those designated areas.

The first challenge that a social and ethics committee faces in this regard is to get clarity on exactly what it is supposed to monitor and report. A popular way of dealing with this challenge is to simply copy and paste the statutory mandate as set out in Regulation 43(5). There are, however, some limitations to this cut-and-paste approach to defining the mandate of the social and ethics committee.

The first limitation is that the company may fail to apply its own mind to the way the mandate of the committee is described in the legislation, which is, at times, confusing and incomplete. For example, the issues of “employment equity” and “corruption prevention” appear under both the areas of “social and economic development” and “good corporate citizenship”, which indicates that the areas overlap and are not well-distinguished from each other. A further limitation is that the descriptions of what is included under each of the areas, that need to be monitored and reported on, tend to be scant and incomplete. The final, and arguably least surmountable, limitation: the governance of ethics is completely disregarded in the description of the committee’s mandate in the Companies Regulations.

Consequently, a governing body and its social and ethics committee would do well to go to the effort of applying their minds beyond what is stated in the legislation, and developing a proper description of the areas on which the committee is mandated to monitor and report.

Part 1 of this handbook features a social responsibility diagram portraying four dimensions of social responsibility, namely, the economic, workplace, social and
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Part 1 of this handbook features a social responsibility diagram portraying four dimensions of social responsibility, namely, the economic, workplace, social and natural environments (see page 11). These four dimensions of social responsibility provide a clear and logical framework for sorting out the various matters on which the social and ethics committee is mandated to monitor and report. Diagram 6 illustrates how all the matters mentioned in Regulation 43(5) can be sorted into the four quadrants:

The social and ethics committee is simultaneously a statutory committee and a board committee. As a statutory committee, it has specific legal duties of monitoring and reporting, but as a board committee, the board can also assign further responsibilities to it to assist the board in governing the social and ethics performance of the company.

King IV recommends that a number of additions be made to the areas mentioned in Regulation 43(5). Using exactly the same four dimensions as in diagram 6, King IV recommends that the following matters also fall within the purview of the social and ethics committee:

- Workplace (including employment equity; fair remuneration; and the safety, health, dignity and development of employees);
- Economy (including economic transformation; prevention, detection and response to fraud and corruption; and responsible and transparent tax policy);
- Society (including public health and safety; consumer protection; community development; and protection of human rights); and
- Environment (including responsibilities in respect of pollution and waste disposal; and protection of biodiversity).

(King IV Report, 2016: 45)
Furthermore, under Principle 8 of the King IV Code, it is recommended that the mandate of the social and ethics committee should be the following:

“Oversight of, and reporting on, organisational ethics, responsible corporate citizenship, sustainable development, and stakeholder relationships” (King IV Report, 2016: 57).

Through this recommendation, King IV not only links the mandate of the social and ethics committee to Principle 3 (“The governing body should ensure that the organisation is and is seen to be a responsible citizen”), but it also adds two further dimensions. Firstly, it specifically mentions “organisational ethics”, which links the mandate of the social and ethics committee to Principle 2 (“The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture”). Secondly, it introduces “stakeholder relationships” as a responsibility of the social and ethics committee.

Diagram 7 indicates how the statutory mandate of the social and ethics committee is expanded when the King IV recommendations are incorporated:

*King IV additions

Diagram 7: Expanded King IV mandate of the social and ethics committee
Besides applying their mind to the matters that should be monitored and reported by the social and ethics committee, the governing body also needs to decide whether it wishes to expand the role of the committee beyond mere monitoring and reporting. According to the King IV notion of corporate governance, the act of governing implies four core governance responsibilities, namely:

- Steering and setting strategic direction;
- Approving policy and planning;
- Overseeing and monitoring; and
- Ensuring accountability. (King IV Report, 2016: 40)

One can safely assume that the statutory mandate of the social and ethics committee already covers the last two items on the above list of governance responsibilities, but excludes the first two. **It would thus make sense for the governing body to mandate the social and ethics committee to also assist in steering and setting the strategic direction for the organisation's social and ethics performance, as well as to recommend related policies and plans to the board for approval.** The governing body might even delegate decision-making powers on specific, well-defined matters to its social and ethics committee.

### 3.3 Terms of reference

Once there is clarity about the role (see 3.1 on page 30) and responsibilities (see 3.2 on page 32) of the social and ethics committee, the organisation is in a favourable position to draft (or revise) the committee's terms of reference (or charter).

Experience has shown that creating a good terms of reference for a social and ethics committee is not a once-off exercise, but an evolutionary process.

As the committee develops over time, certain insights are gained, and lessons are learned, and it is important to harvest these and write them into the terms of reference. **Indeed, it is good practice for the social and ethics committee to review its terms of reference at least annually.** Such a regular review will make life much easier and simpler for future members of the committee and will deepen institutional memory at board level.

Although there is no one-size-fits-all terms of reference for social and ethics committees, the following eight generic aspects are typically covered:
1. Name
Key decisions: Will the name of the committee simply be the social and ethics committee? Or will it be combined with an existing committee, such as a transformation committee and thus be called the social, ethics, and transformation committee?

2. Membership
Key decisions: Besides the required members of the social and ethics committee as prescribed by the Regulations, will there be any other members? How will these members be appointed? What will be the term of office of committee members? How many non-executive and executive members should there be on the committee? Is a majority of non-executive members required? Are there also standing and/or ad-hoc invitees?

3. Responsibilities
Key decisions: Besides the statutory prescribed responsibilities of the social and ethics committee, are there any other responsibilities that the governing body wishes to delegate to the committee? Should they only monitor and report on the matters in their statutory mandate, or also attend to the non-statutory social and ethics matters recommended by King IV? Does the committee also have the responsibility to provide strategic social and ethics direction to the governing body? Should the committee approve social and ethics-related plans or policies, or make recommendations in this regard to the governing body?

4. Authority
Key decisions: What rights and powers are given to the committee? Are all the statutory powers given to the committee included in the Terms of Reference? Can the committee make decisions on behalf of the governing body and the organisation? To what resources of the organisation does the committee have access?

5. Meeting procedures
Key decisions: How often will the committee meet? Who will compile the agenda? When will the agenda and minutes of the previous meeting be distributed to members? Who will chair meetings? Who is responsible for keeping the minutes of meetings? Who else, besides the members of the committee, can attend meetings? How will decisions be made? Should an annual workplan be approved?

6. Reporting
Key decisions: How often does the committee have to report on its activities? How will the committee report to the board? How will the committee report to shareholders at the annual general meeting?

7. Review
Key decisions: Who should approve the terms of reference of the committee? How regularly should the terms of reference be reviewed? What procedure should be followed in reviewing the terms of reference?
8. Evaluation

Key decisions: How will the social and ethics committee be evaluated for its effectiveness? How often will the social and ethics committee and its members be assessed? Against what criteria will the committee be assessed to determine its effectiveness?

In the case of a social and ethics committee that opts to include organisational ethics in its terms of reference (as recommended by King IV), the ethics mandate can be articulated as shown in extract 9. This mandate is based on Principle 2 of the King IV Code (2016: 44, paragraphs 4-10).

The committee should ensure that the ethics of the organisation is managed in a way that supports the establishment of an ethical culture, including:

- leadership demonstrating support for ethics throughout the organisation;
- setting a strategy for managing ethics that is informed by the negative and positive ethics risks the company faces;
- articulating ethical standards in a code of ethics and supporting policies;
- ensuring that structures, systems and processes are in place to familiarise the board, employees and supply chains with the organisation’s ethics standards;
- monitoring adherence to the organisation’s ethics standards by all contracted stakeholders;
- making ethics a criterion in the selection, promotion and performance management of staff and suppliers;
- providing reporting mechanisms for safe reporting of unethical behaviour;
- responding to breaches of ethical standards in a manner that will prevent reoccurrence;
- including ethics management and performance in the scope of internal audit;
- reporting on the organisation’s ethics performance in the organisation’s integrated annual report; and
- evaluating the extent to which ethics has become part of the corporate culture.

Extract 9: King IV-aligned governance of ethics mandate for social and ethics committees (Rossouw and Van Vuuren, 2017: 245).

A template terms of reference for a social and ethics committee is included in annexure 1 of this handbook on page 52.

3.4 Monitoring and reporting framework

An organisation that has clarity about the role and responsibilities of its social and ethics committee, and that has captured these insights in the committee’s terms of reference, has laid a solid foundation for having an effective committee. However, the committee will be only able to function effectively if it receives high quality and relevant reports from management. Thus, the development of an effective monitoring and reporting framework for the social and ethics committee is vital.
A social and ethics committee that consists of a majority of non-executive directors (as recommended by King IV – see 3.5. on page 41), will not be sufficiently familiar with the day-in day-out social and ethics performance of the organisation and will thus have to rely on reports from management to exercise its statutory monitoring role.

Whether the committee can do so effectively will consequently hinge on the quality of the information received from managers. If the information is good – no problem. But if it is not, then the adage applies: “Garbage in. Garbage out.”

It is, therefore, imperative that the committee, and those who report to it, develop a clear understanding of what should be reported on each of the areas over which it exercises oversight. Using the four-quadrant model of corporate responsibility (economic, workplace, social, and environmental responsibility) discussed in part 1 and again in 3.2 on page 32, the committee should determine what should be reported on each of the aspects listed in the four quadrants.

The challenge that social and ethics committees face is the lack of specificity in the Companies Act and Regulations about monitoring and reporting social and ethics performance. The Companies Regulations states that the areas within the committee's domain of responsibility should be monitored against “any relevant legislation, other legal requirements or prevailing codes of best practice” (Regulation 43(5)(a)), but only in two of the five areas is any indication given which laws and best practice codes are relevant. As for the other three areas, it is left to the discretion of the implementer to decide what the relevant laws, regulations and codes might be.

The good news is that, for each of the aspects that the social and ethics committee should monitor, there is legislative, regulatory and leading practice material available that is obviously relevant, despite not being explicitly mentioned in the Companies Act or Regulations. In annexure 2 to this handbook on page 57, a number of relevant legal, regulatory and leading practice standards are mentioned.

The social and ethics committee has to develop a set of criteria for monitoring and reporting based upon the specific prescriptions provided in the Companies Regulations, as well as upon other relevant legislation and codes. The list in annexure 2 is a good place to start, but it is far from exhaustive. Each industry has specific laws, regulations and codes that are applicable only to that industry, and the social and ethics committee should also take these into consideration when compiling its criteria for monitoring and reporting the company's compliance.

Should an organisation opt for the King IV approach of moving beyond mere compliance, then it needs to go further by complementing compliance thinking with an understanding of the organisation’s *impact* on its economic, workplace, social and natural environment. In order to assess this broader impact, the organisation can use
compliance and performance indicators in its reporting to the social and ethics committee.

There are a number of useful resources that can be used to find appropriate compliance and performance indicators against which the organisation's social and ethics status can be evaluated. Guidance documents such as the Global Reporting Initiative's G4 Sustainability Reporting Guidelines (GRI G4), the International Standards Organization's Guidance on Social Responsibility (ISO 26000), and the FTSE/JSE Responsible Investment Index Series all provide criteria for monitoring and reporting the social and ethics performance of an organisation.

By way of an example of how such compliance and performance indicators can be used, an approach to reporting on the reduction of corruption (one of the statutory designated areas) is illustrated here.

Using the GRI G4 framework, typical examples of compliance indicators include:

- Does the organisation have an anti-bribery and corruption policy for staff and suppliers?
- Does the organisation provide annual anti-bribery and corruption training to staff and suppliers? (cf. GRI G4, 2013: 77)

These compliance indicators give an indication of the measures that the organisation has taken to reduce corruption. Important as these measures may be, they do not give any indication of how effective the organisation has been in its attempt to reduce or prevent corruption. That is why performance indicators are needed alongside compliance indicators. Using the GRI G4 guidance on corruption once more, the following are examples of performance indicators:

- What were the findings of the anti-bribery and corruption risk assessment?
- How many confirmed incidents of bribery and corruption occurred during the reporting period and what management action was taken to prevent re-occurrence? (cf. GRI G4, 2013: 77)

The leading practice that has emerged is for organisations to distinguish between matters within the mandate of the committee that are material to the organisation's performance and sustainability, and those that are not. In the case of matters that are not of material importance to the organisation, the committee need only monitor whether the organisation complies with legal, regulatory and best practice standards. However, in the case of matters of material importance, the committee must require management to also report against well-defined performance indicators.
There are a number of benefits to using criteria provided by social responsibility standards such as GRI G4, ISO 26000 and the FTSE/JSE Responsible Investment Index. These benefits are:

- Standards provide criteria that are not selected on arbitrary grounds, but represent at least some degree of global consensus on what is relevant;
- Using existing standards ensures that the company can compare and benchmark itself against others using similar standards;
- Should a company already be doing sustainability reporting against one of these standards, the social and ethics committee can draw on – or build upon – already existing monitoring and reporting processes in the company;
- The process of reporting to both the board of directors and shareholders at the annual general meeting is made easier when the social and ethics committee can refer to the sustainability or integrated report of the company; and
- Using established standards brings rigour and discipline into the process of monitoring and reporting, as these standards identify specific compliance and performance indicators against which a company needs to monitor and report.

A well-developed monitoring and reporting framework is an invaluable asset for the social and ethics committee and for the organisation, as it avoids a lot of the guesswork about what should and should not be reported to the committee.

Because of the greater clarity of expectations that comes with a good reporting framework, the tension between members of the social and ethics committee and those tasked with reporting to them is reduced. In the absence of such a monitoring and reporting framework, frustration, tension and confrontation are likely to characterise the relationship.

Lastly, it is important that there should not only be clarity on what should be reported to the social and ethics committee, but also on how the required information should be reported. The committee should indicate its preferences regarding, for example, verbal or written submissions, or a combination thereof; dashboards or narratives or a combination thereof; quarterly, half-yearly or annual reporting intervals; and whether reports should include trend

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**Non-material matters:**

- Compliance monitoring

**Material matters:**

- Compliance monitoring and performance reporting
analyses over time. An illustration of an ethics reporting framework can be found in The Ethics Reporting Handbook (Dobie and Plant, 2014: 14-16).

### 3.5 Membership

The Companies Regulations prescribe that the company's board should appoint at least three directors (or prescribed officers) as members of the social and ethics committee. One of these directors must be a non-executive director. The Regulations, however, clearly state that these three directors should be “the first members of the committee” (43(3)). This opens the door for the board to appoint more than three members.

It is pointed out in part 2 of this handbook that the way the Companies Regulations describes the composition of the social and ethics committee constitutes flawed thinking. Because it is required that only one of the three members of the committee must be a non-executive director, the other two members can be executive directors (or prescribed officers), resulting in a majority of executive directors on the committee. And yet, a basic principle of good governance is that executives should not oversee and assess their own performance. Or, to put it more simply, it is never a good idea “to mark your own homework”. The composition of the committee, as described in the Companies Regulations, thus amounts to flawed governance thinking.

King IV also identified this flaw in the composition of the social and ethics committee, and therefore made the following recommendation about its composition:

“The social and ethics committee should, subject to legal provision, have executive and non-executive members, with a majority being non-executive members of the governing body” (King IV Report, 2016: 57).

The composition of the committee is one of the matters that should be addressed in the terms of reference of the committee, and most leading companies are doing so, along with following the King IV recommendation.

Of utmost importance to running an effective social and ethics committee is having the appropriate mix of talent in the committee. Persons with relevant expertise in the field of social and ethics performance need to be selected. It is recommended that a company involve its nominations committee – if it has one – in the selection of members of the social and ethics committee to ensure that the right mix of skill and talent is appointed.
It sometimes happens that organisations decide to combine the social and ethics committee with another committee, such as a human resources, safety or transformation committee. In other cases, companies might decide to expand the mandate of an existing committee so that it includes the social and ethics committee statutory mandate. In such cases, special care needs to be taken to ensure that the 'hybrid' committee – either combined or with the expanded mandate – still has the necessary expertise to govern the social and ethics performance of the organisation.

Since there inevitably will be some cross-interests between the social and ethics committee and other committees of the board, such as the audit and/or risk committee, human resources committee, or safety and health committee, it makes sense to have members of these other committee(s) represented as ex officio members of the social and ethics committee. Some organisations even make it compulsory for the chairpersons of all other board committees to be ex officio members of the social and ethics committee.

In addition to membership, the terms of reference of the social and ethics committee should determine whether there will be standing and/or ad hoc invitees. In deciding on such invitees, the committee needs to look at its informational needs. Which operational committees or functional areas in the company have the information that the committee requires to perform its monitoring and reporting roles?

Key information providers – for example, an operational sustainability committee, human resources, internal audit, ethics office, governance, legal and compliance – can be standing invitees of the social and ethics committee. Others that might only on occasion be required to provide information to the committee can be ad hoc invitees.

Should the board or the company lack expertise in a specific area(s) that falls within the mandate of the committee, it can consider having an outside expert(s) as a standing or ad hoc invitee(s).

Invitees of the committee can participate in deliberations, but obviously have no voting rights.

### 3.6 Meetings

The meeting of the social and ethics committee is the engine-room of the governance of the social and ethics performance of the organisation. It is therefore vitally important that these meetings are well prepared and properly conducted. In this respect, the chairperson and the secretary of the committee have important roles to play.

The chairperson of the social and ethics committee needs to be appointed or selected according to the procedure stipulated in the terms of reference of the committee. The chairperson is responsible for setting the agenda of the meeting, in consultation with
the CEO (or another executive) and the secretary of the social and ethics committee. The agenda should be aligned with the workplan of the committee (see 3.7. on page 44) and should give priority to the material social and ethics matters that might affect the performance and sustainability of the organisation. As chairperson of the meetings, s/he should ensure rigorous and constructive conversations, as well as proper interrogation of reports submitted to the committee.

The chairperson is also responsible for bringing social and ethics matters of material concern to the attention of the board, as well as for reporting on the committee's activities to shareholders at the annual general meeting.

The secretary (or secretariat) of the social and ethics committee also needs to be appointed according to the procedure stipulated in the committee's terms of reference. The secretary can be a member of the committee or a standing invitee of the committee. Some companies opt for making the company secretary responsible for providing the secretariat to the social and ethics committee.

The secretary of the committee plays a vital role in its success and effectiveness. As members can only fulfil their responsibilities if they are properly prepared for meetings, it is imperative for the secretary to ensure that they receive their committee packs well in advance. An emergent leading practice is for members to receive their social and ethics committee packs at least five business days prior to the meeting.

It is vitally important to keep accurate minutes of meetings. When queries or concerns are raised about the company's social and ethics performance or reporting, the minutes of the social and ethics committee can play a crucial role in the company's response to such queries or concerns. There are already examples of companies that have been summoned by aggrieved parties to disclose the minutes of their social and ethics committees' meetings to determine their degree of responsibility and/or culpability.

It is thus a safe practice to assume that minutes of social and ethics committee meetings might become public documents in future, and to treat them with appropriate seriousness.

Care should be taken to ensure that the minutes are properly drafted by a competent person, and are included as part of the full meeting pack of the board meeting immediately following the social and ethics committee meeting. This is so that other members of the board can familiarise themselves with the proceedings of the meeting.

If not determined in the terms of reference of the social and ethics committee, the committee needs to decide on the number of meetings per year. The appropriate number of meetings needed for the social and ethics committee to fulfil its responsibilities depends on a variety of factors, such as the size of the company, the mandate of the social and ethics committee, the company's social and ethics risk
profile, and the specific industry in which it operates. Based on practices observed since the mandatory introduction of social and ethics committees, the emergent norm is to meet on a quarterly basis.

### 3.7 Workplan

A social and ethics committee armoured with a clear terms of reference, a monitoring and reporting framework, and clarity about the number of meetings that will be held, is well positioned to develop an annual workplan. The workplan must match the responsibilities of the social and ethics committee (see 3.2. on page 32) with the number of meetings scheduled per year. It should also make clear who should report what, and by when, to the committee.

The workplan should ensure that the committee meets all its monitoring and reporting responsibilities within an annual cycle. One option is for the committee to attend to all aspects within its mandate at each of its meetings, though this is quite a tall order, especially for large organisations, and therefore very few are doing so. **A much more popular option is a rolling agenda approach where the committee spreads the various aspects covered in its mandate over the scheduled meetings for the annual cycle, and only addresses specific aspects at specific meetings.**

The distinction between material and non-material social and ethics matters (see 3.3. on page 35) is particularly relevant in the design of the committee's workplan. Material matters are those social and ethical matters that are likely to have an impact on the organisation's performance and sustainability, and should be attended to more regularly than non-material matters. In the case of non-material matters, the committee might only attend to such matters once during its annual cycle of meetings, while material matters should be attended to on a more regular basis, possibly even as standing items on the meeting agenda.

Should a company take the rolling agenda approach, not all invitees of the social and ethics committee need attend all committee meetings. Only those invitees who must give input on the matters discussed at a specific meeting will need to attend – this is important to note in the development of the workplan.

The workplan should also make provision for a meeting immediately preceding the company's annual general meeting to finalise the committees' report to shareholders.

On a more general note, the workplan assists the chairperson and secretary of the committee to set the agenda for each meeting, and enables the providers of reports to plan ahead.

Once a social and ethics committee has developed both a monitoring and reporting framework and a workplan, there is greater clarity about what should reported, by
when, and by whom, to the committee. Demystifying the working of the committee in this way brings clarity and rhythm to the manner in which it operates.

**Diagram 8** shows an example of how an organisation can use the four-quadrant model to structure its workplan for responsibilities pertaining to the workplace. This is a real-life example.

<table>
<thead>
<tr>
<th>Area</th>
<th>Aspect</th>
<th>Responsible person</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workplace</td>
<td>Employment equity</td>
<td>AB</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Safety &amp; health</td>
<td>CD</td>
<td></td>
<td>X</td>
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<tr>
<td></td>
<td>Staff development</td>
<td>EF</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Decent work &amp; employee relationship</td>
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<td></td>
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<td>GH</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Culture &amp; staff satisfaction</td>
<td>GH</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

*Diagram 8: Example of workplan for workplace responsibilities*

### 3.8 Relationship with other board committees and operational structures

In fulfilling its mandate, the social and ethics committee should ensure that there is synergy and synchronisation among its activities and those of the company's other board committees and operational structures.

What should be avoided at all cost is duplication and silos in the company where the committee is unaware that matters within its mandate are already being addressed by other board committees or operational structures.

In selecting its information providers, the committee should ensure that it has access to all operational structures that deal in some way or another with the matters within its mandate. Such operational structures might include, for example, internal audit, human resources, legal and compliance, ethics office, or marketing functions. Specific operational committees that might also be relevant include those managing sustainability, safety and health, stakeholder relations, or ethics. It is also particularly important to ensure close collaboration between the social and ethics committee and the company's operational structure responsible for sustainability.
reporting, as the committee's reporting should be closely aligned with the company's sustainability reporting (see 3.10 on page 48).

There are also synergies among the mandate of the social and ethics committee and those of other board committees, such as the audit committee and the risk committee. The risk committee, for example, has to follow up on social and ethics risks that the social and ethics committee uncovers. When such risks are identified, the risk committee must advise the board on how they should be mitigated. The audit committee, on the other hand, is linked to the social and ethics committee by the audit committee's responsibility for the sustainability and integrated reporting of the company. So, to ensure congruence between the social and ethics committee's reporting and the company's sustainability and integrated reporting, there need to be close links among these committees. **For this reason (as suggested in 3.5 on page 41), it would make sense to have a member of the risk committee and a member of the audit committee as either ex-officio members or standing invitees of the social and ethics committee.**

King IV's recommendation that further matters be added to the mandate of the social and ethics committee – such as fair and transparent tax practices, fair remuneration, and stakeholder relations – increases the potential for overlap with the work of other board committees. Therefore, similar arrangements need to be made with other committees whose scope coincides with that of the social and ethics committee.

That being said, the fact that two or more board committees attend to the same matter does not necessarily mean they are duplicating one another's work. It should rather be a case that the various committees approach the same matter from different perspectives. An example of how this can happen is provided in **diagram 9**.

**Diagram 9: Demonstration of how each board committee applies a different focus to the same information**

Diagram 9 illustrates how three committees (namely the audit, risk, and social and ethics committees) can all receive the same corruption report and examine it from a different perspective with a different outcome in mind. It is neither necessary nor efficient to produce three reports for three committees. When the social and ethics
committee discusses the corruption report, they do so from the perspective of ensuring that the ethics management plan contributes to resilience against corruption. In contrast, the risk committee determines whether corruption risk is material, and if so, includes it in the risk mitigation strategy and plans of the organisation. Finally, the audit committee studies the same report to determine whether forensic investigations should be commissioned, and if so, whether these should be done by internal or external forensic investigators.

The emergent leading practice in dealing with such potential overlaps in scope between various committees is to call a meeting of the chairpersons of affected committees, and then compare their respective terms of reference to ensure that each committee's focus is clear and distinct from the others'. Such a meeting should preferably be called by the chairperson of the governing body, or by the company secretary.

This link between the social and ethics committee and other committees has implications for the sequence in which meetings are scheduled. For example, should the risk committee wish to follow up on social and ethics risks, the meeting of the risk committee should come after the meeting of the social and ethics committee. In a similar manner, should the social and ethics committee wish to make an assessment of the fairness of the organisation's remuneration approach, its meeting will have to be scheduled after that of the remuneration committee.

### 3.9 Reporting to the board of directors

In terms of its statutory mandate, the social and ethics committee is responsible for drawing matters within its mandate to the attention of the board “as occasion requires” according to the Companies Regulations (43(5)(b)). The responsibility to report to the board of directors is thus left to the discretion of the committee.

The leading practice that has emerged – which goes above and beyond the Regulations' guidance – is to include a report from the social and ethics committee as a standard agenda item of each regular board meeting. The chairperson (or a member in her/his absence) of the social and ethics committee should therefore inform each meeting of the board about the preceding meeting of the committee. Ideally, the minutes of the last meeting of the social and ethics committee should be circulated to the members of the board prior to the board meeting. In his/her submission to the board, the chairperson of the committee should mention non-material matters merely for noting, the detail of which board members can find in the minutes circulated to them. In the case of material matters, though, these should be tabled by the chairperson of the committee for deliberation and/or decision-making by the board.
3.10 Reporting to general meetings of shareholders

Companies Regulations (43(5)(c)) merely states that the social and ethics committee must “report, through one of its members, to the shareholders at the company’s annual general meeting”, while the Companies Amendment Act (72(8)(e)) states that a social and ethics committee is entitled to “be heard at any general shareholders meeting […] on any part of the business of the meeting that concerns the committee's functions”.

It is important to distinguish between these two directives, one being a statutory responsibility to report to shareholders at the annual general meeting, and the other being the power to address any shareholder meeting. As discussed in part 2 of this handbook under the heading “Powers, rights and resources of a social and ethics committee” on page 26, this latter right does not impose a reporting responsibility on members of the committee, but rather provides them with a safety valve and legal protection should they wish to disclose matters to shareholders that the board might want to hide.

Since the Companies Act and Regulations are rather vague about both the content and format of the social and ethics committee's report to shareholders, the board and committee once more need to apply their collective mind to how this reporting responsibility will be performed.

Fortunately, King IV provides some guidance on what should be reported by the social and ethics committee to shareholders at the annual general meeting:

(a) Its overall role and associated responsibilities and functions;
(b) Its composition, including each member's qualifications and experience;
(c) Any external advisors or attendees who regularly attend committee meetings;
(d) Key areas of focus during the reporting period;
(e) The number of meetings held during the reporting period and attendance of those meetings; and
(f) Whether the committee is satisfied that it has fulfilled its responsibilities in accordance with its terms of reference for the reporting period (King IV Report, 2016: 55).

The leading practice that has emerged is for the chairperson of the committee to give a high-level verbal report of the matters recommended by King IV, supplemented by a more detailed written report that is made available before the meeting.

Ideally, the social and ethics committee's report to shareholders should be closely aligned with the sustainability and integrated reporting of the company. When this is the case, the chairperson of the social and ethics committee can verbally refer shareholders to these reports as well.
The single sentence in the Companies Act of 2008 that originally introduced a new statutory board committee has already triggered a substantial reconfiguration of board structures, responsibilities and activities.

Although some companies are grudgingly complying with this new requirement, others are embracing it. Those embracing it do so either because they had been governing their companies' social and ethics performance long before the Companies Act compelled them to do so, or because they see strategic benefit in complying with this new requirement.

Interestingly, the financial penalty that a company and individual directors might face for not complying with the social and ethics committee requirement does not seem to be the main driver of compliance. A stronger driver is the reputational damage a company might suffer for not having a properly functioning social and ethics committee. When a social or ethical scandal erupts, a company stands to be embarrassed if it is exposed for either not having a social and ethics committee, or for having a committee that merely engages in a superficial 'tick-box' exercise.

An organisation stands to benefit in a number of ways from having an effective social and ethics committee:

- The organisation will be applying the leading practice recommendations of King IV by having the board take responsibility for social and ethics performance;
- Social and ethics matters that might pose a risk to the organisation's performance will be strategically considered at board level;
- The organisation will have an additional mechanism, besides its sustainability and integrated reporting, to report its social and ethics performance to shareholders, which is likely to bolster shareholder and investor trust;
- Organisations that are not yet doing sustainability or integrated reporting will be starting the journey of moving beyond financial reporting to also reporting on their social and ethics performance;
- By complying with the legislation and legal requirements either mentioned or implied by the social and ethics committee statutory mandate, the organisation will improve its legal compliance;
- An effective social and ethics committee is likely to enhance the corporate citizenship and ethics performance of the organisation, thus improving stakeholder relations; and
- The organisation is likely to gain in stakeholder trust and reputational value.

We trust that this handbook will help organisations to experience the above benefits of having an effective social and ethics committee.


Annexures

Annexure 1
Template terms of reference

Annexure 2
Relevant legal and leading practice standards

Annexure 3
Useful resources
Annexure 1
Template Terms of Reference for a
Social and Ethics Committee

(Incorporating statutory requirements, King IV recommendations, and other leading practices)

1. Introduction
1.1. The Social and Ethics Committee (the Committee) is constituted as a committee of the Board of <INSERT COMPANY NAME> in terms of section 72(4) of the Companies Act 71 of 2008 read with Regulation 43 of the Companies Regulations, 2011.
1.2. The duties and responsibilities of the members of the Committee as set out in this document are in addition to those duties and responsibilities that they have as members of the Board.
1.3. The deliberations of the Committee do not reduce the individual and collective responsibilities of Board members in regard to their fiduciary duties and responsibilities, and they must continue to exercise due care and judgment in accordance with their legal obligations.
1.4. These Terms of Reference are subject to the provisions of the Companies Act, the Company's Memorandum of Incorporation and any other applicable law or regulatory provision.

2. Purpose of the terms of reference
2.1. The purpose of these terms of reference is to set out the Committee's role and responsibilities as well as the requirements for its composition and meeting procedures.

3. Composition of the Committee
3.1. The members of the committee are appointed for at term as determined by the Board.
3.2. The Committee comprises at least three directors or prescribed officers of the Company, consisting of executive and non-executive members, with a majority being non-executive members of the Board.
3.3. The Committee is chaired by a non-executive Board member who is not the Chair of the Board. The Board elects the Chair of the Committee from the elected members.
3.4. The members of the Committee must collectively have sufficient qualifications and experience to fulfil their duties.
3.5. The Committee members are required to keep their knowledge and skillset up-to-date.
3.6. The Board fills vacancies on the Committee within 40 (forty) business days after the vacancy arises.
4. **Role**

4.1. The Committee has an independent role with accountability to the Board.

4.2. The Committee does not assume the functions of management, which remains the responsibility of the executive directors, officers and other members of senior management.

4.3. The role of the Committee is to assist the Board with the governance of social and ethical matters relating to the Company, as described in the committee’s statutory and non-statutory responsibilities below.

5. **Responsibilities**

5.1. The Committee performs all the functions that are necessary to fulfil its role as stated above and including the following statutory duties:

   (a) Monitoring the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to:

   (i) Social and economic development, including the company's standing in terms of the goals and purposes of:

      - The 10 principles set out in the United Nations Global Compact Principles;
      - The OECD recommendations regarding corruption;
      - The Employment Equity Act; and
      - The Broad-Based Black Economic Empowerment Act;

   (ii) Good corporate citizenship, including the company's:

      - Promotion of equality, prevention of unfair discrimination, and reduction of corruption;
      - Contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
      - Record of sponsorship, donations and charitable giving;

   (iii) The environment, health and public safety, including the impact of the company's activities and of its products or services;

   (iv) Consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and

   (v) Labour and employment, including:

      - The company's standing in terms of the International Labour Organisation's guidance on decent work and working conditions;
      - The company's employment relationships; and
      - Its contribution towards the educational development of its employees;

   (b) Drawing matters within its mandate to the attention of the Board as occasion requires; and

   (c) Reporting, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

   (d) In addition, the Committee performs the following non-statutory responsibilities, delegated by the Board:

      (i) The committee should ensure that the ethics of the organisation is managed in a way that supports the establishment of an ethical culture, including:
- leadership demonstrating support for ethics throughout the organisation;
- setting a strategy for managing ethics that is informed by the negative and positive ethics risks the company faces;
- articulating ethical standards in a code of ethics and supporting policies;
- ensuring that structures, systems and processes are in place to familiarise the board, employees and supply chains with the organisation's ethics standards;
- monitoring adherence to the organisation's ethics standards by all contracted stakeholders;
- making ethics a criterion in the selection, promotion and performance management of staff and suppliers;
- providing reporting mechanisms for safe reporting of unethical behaviour;
- responding to breaches of ethical standards in a manner that will prevent reoccurrence;
- including ethics management and performance in the scope of internal audit;
- reporting on the organisation's ethics performance in the organisation's integrated annual report; and
- evaluating the extent to which ethics has become part of the corporate culture.

(ii) <Include additional responsibilities relating to social and ethics matters that the Board wishes to delegate to the Committee>.

(e) Provide strategic and policy advice to the Board on all matters within the committee's statutory and non-statutory responsibilities.

6. Authority

6.1. The Committee acts in accordance with its statutory powers and the delegated authority of the Board as recorded in these terms of reference.

6.2. The Committee, in the fulfilment of its duties, may call upon the Chairs of the other Board committees, any of the executive directors, company officers or assurance providers to provide it with relevant information subject to a Board-approved process.

6.3. The Committee is entitled to reasonable access to the company's records, facilities and employees as is necessary to discharge its duties and responsibilities.

6.4. The Committee may form, and delegate authority to, subcommittees, one or more designated members of the Committee and to one or more members of the executive to perform certain tasks on its behalf.

6.5. The Committee has the right to obtain independent external professional advice to assist with the execution of its duties, at the company's cost, subject to a Board-approved process.

6.6. The Committee has the right to be heard at any general shareholders meeting on any part of the business of the meeting that concerns the committee's statutory responsibilities.
7. Meetings and Procedures

7.1. Frequency
7.1.1. The Committee holds sufficient scheduled meetings to discharge all its duties as set out in these terms of reference and its annual workplan, but subject to a minimum of two meetings per year.

7.2. Attendance
7.2.1. Executives of the company, other assurance providers, professional advisors may be in attendance at Committee meetings, by invitation only, at the discretion of the Chair, and they may not vote.
7.2.2. Any other member of the Board is entitled to attend the Committee meetings as an observer.
7.2.3. Committee members must attend all scheduled meetings of the Committee, including meetings called on an ad hoc-basis for special matters, unless prior apology, with reasons, has been submitted to the Chair or Committee Secretary.
7.2.4. If the elected Chair of the Committee is absent from a meeting, the members present must elect one of the members present to act as Chair for the duration of that meeting.
7.2.5. Committee members must be fully prepared for Committee meetings in order to provide appropriate and constructive input on matters discussed.
7.2.6. At the commencement of each meeting, all members must declare whether any of them has any conflict of interest in respect of a matter on the agenda.

7.3. Agenda and minutes
7.3.1. The Committee establishes an annual workplan for each year to ensure that all relevant matters are covered by the agendas of the meetings planned for the year.
7.3.2. A detailed agenda, together with supporting documentation, is circulated, at least five working days prior to each meeting to the members of the Committee and other invitees.
7.3.3. The minutes are completed as soon as possible after the meeting and circulated to the Committee for review.
7.3.4. The minutes must be formally approved by the Committee at its next scheduled meeting.
7.3.5. Minutes of the meeting, signed by the Chair, are sufficient evidence that the matters referred to therein have been fully discussed and agreed, whether by way of a formal meeting or otherwise.

7.4. Quorum
7.4.1. The quorum for meetings is a majority of members present.
7.4.2. Individuals in attendance at Committee meetings by invitation may participate in discussions but do not form part of the quorum for Committee meetings and accordingly may not vote on any matter.

8. Evaluation
8.1. The Committee shall perform a self-evaluation of its effectiveness every year and report the results thereof to the Board. The Board may elect to conduct an independent evaluation of the Committee's performance.
9. Review of Terms of Reference

9.1. These terms of reference will be due for review annually.

Approval of these terms of reference

These terms of reference were recommended to the Board for approval by the Chair of the Committee on <INSERT DATE>.

_______________________
Chair of the Committee

These terms of reference were approved by the Board on <INSERT DATE> and will be due for review on <INSERT DATE>.

_______________________
Chair of the Board
Annexure 2

Relevant legal and leading practice standards

Social and economic development
The legal and leading practice standards mentioned in the Companies Regulations are:

- United Nations Global Compact Principles;
- OECD recommendations regarding corruption;
- Employment Equity Act; and
- Broad-based Black Economic Empowerment Act.

Other relevant laws and codes are:

- Further guidance documents related to the United Nations Global Compact, such as:
  - Blueprint for Corporate Sustainability Leadership;
  - Guiding Principles on Business and Human Rights (known as the “Ruggie Report” of 2011); and
  - Reporting guidance on the 10th principle against corruption;
- Transparency International’s Business Principles for Countering Bribery;
- International Labour Organization Discrimination (employment and occupation) Convention;
- Prevention and Combating of Corrupt Activities Act; and
- Industry Charters (for example, Mining Charter).

Good corporate citizenship
No specific legal or leading practice standards relating to good corporate citizenship are mentioned in the Regulations. Some relevant laws and codes are:

- Employment Equity Act;
- Bill of Rights of the South African Constitution (specifically the Right to Equality);
- Promotion of Equality and Prevention of Unfair Discrimination Act;
- United Nations Global Compact:
  - Reporting guidance on the 10th principle against corruption;
- Prevention and Combating of Corrupt Activities Act; and
- Competition Act.

The environment, health and public safety
No specific legal or leading practice standards relating to the environment, health and public safety are mentioned in the Regulations. Some relevant laws and codes are:

- Consumer Protection Act (product safety provisions);
- National Environmental Management Act;
- Environment Conservation Act;
- National Water Act;
- ISO 14000; and
A company's carbon footprint can also be used as a criterion for monitoring and reporting its environmental impact.

**Consumer relationships**
No specific legal or leading practice standards relating to consumer relationships are mentioned in the Regulations. Some relevant laws and codes are:
- Consumer Protection Act;
- National Credit Act; and
- Code of Advertising Practice of the Advertising Standards Authority of South Africa.

**Labour and employment**
With regard to labour and employment, the “International Labour Organization Protocol on decent work and working conditions” is mentioned in the Companies Regulations, but, as indicated in part 2, no such protocol exists. However, guidance on decent work can be found in the core conventions of the International Labour Organization listed below:
- International Labour Organization Declaration on Fundamental Principles and Rights at Work (in particular the eight core Conventions 100, 111, 87, 98, 138, 182, 29, 105).
- International Labour Organization 2012 report on: *Decent Work Country Profile: South Africa*.

Additionally, the following laws and codes are relevant:
- Basic Conditions of Employment Act;
- Occupational Health and Safety Act;
- Labour Relations Act;
- Skills Development Levies Act;
- Unemployment Insurance Act;
- Protected Disclosures Act;
- Children's Act;
- Compensation for Occupational Injuries and Diseases Act;
- Employment Equity Act; and

**Ethics**
Should an organisation opt to include the governance of ethics in the mandate of its social and ethics committee, the following codes and standards would be relevant:
- King IV, Principles, 1, 2, 3 and 8
- King III Practice Notes on Ethics Management;
- United States Federal Sentencing Guidelines (ethics management criteria); and
Annexure 3
Useful resources

- AA1000 AccountAbility Principles Standard 2008
  www.accountability.org/standards/
- All South African Acts (including Companies Act and Companies Regulations)
  www.gov.za/documents/acts
- Blueprint for Corporate Sustainability Leadership
- Code of Advertising Practice of the Advertising Standards Authority of South Africa
  www.asasa.org.za/codes/advertising-code-of-practice
- Global Reporting Initiative (GRI)
  www.globalreporting.org
- Guiding Principles on Business and Human Rights ("Ruggie Report")
- International Integrated Reporting Framework
  integratedreportingsa.org/the-international-ir-framework/
- International Labour Organization Decent Work Agenda
  www.iло.org/global/topics/decent-work
- International Labour Organization Declaration on Fundamental Principles and Rights at Work
- International Labour Organization Discrimination (employment and occupation) Convention
- Decent Work Country Profile: South Africa. (ILO 2012)
- ISO 14000 Environmental Management
  www.iso.org/iso-14001-environmental-management.html
- ISO 26000 Social Responsibility
  www.iso.org/iso-26000-social-responsibility.html
- FTSE/JSE Responsible Investment Index Series
  www.jse.co.za/services/market-data/indices/indices/ftse-jse-africa-index-series/ responsible-investment-index
- King IV Report, Code and Practice Notes
  www.iоdsа.co.za/?page=AboutKingIV
- OECD recommendations regarding corruption
  www.tei.org.za/ index.php/resources/research-reports
- Transparency International's Business Principles for Countering Bribery
  www.transparency.org/whatwedo/pub/business_principles_for_countering_bribery
- United Nations Environment Programme (business guidance publications)
  www.unep.org/resources/business/Publications/
- United Nations Global Compact
  www.unglobalcompact.org
- United States Federal Sentencing Guidelines (ethics management criteria)
  www.transparency.org/whatwedo/pub/business_principles_for_countering_bribery
Deon Rossouw studied at Stellenbosch University where he was also chairman of the student representative council. His academic career started at Rand Afrikaans University in Johannesburg where he became Professor and Head of the Philosophy Department and served on the Executive Committee of the University. In 2004, he moved to the University of Pretoria where he was Head of the Philosophy Department and Director of the Centre for Business and Professional Ethics. During 2008 and 2009, he spent a year as Program Executive for Business Ethics at the Globethics.net Foundation in Geneva, Switzerland. Currently, he is the CEO of The Ethics Institute and Extraordinary Professor in Philosophy at the University of Stellenbosch.

Deon is an internationally recognized expert in business ethics and the ethics of corporate governance. He has written several books on business ethics and published in leading international journals. He was the Founding President of the Business Ethics Network of Africa (BEN-Africa) and served as President of the International Society of Business, Economics and Ethics (ISBEE).

Deon served as a member of the Research Team for the Second King Report on Corporate Governance, and was a member of the Sustainability Committee of the Third King Report on Corporate Governance for South Africa. He was actively involved in the Fourth King Report in his capacity as member of the King Committee for Corporate Governance in South Africa. He has been recognized as a Chartered Director by the Institute of Directors of South Africa.

Deon has extensive training and consulting experience in the private, public and professional sectors in South Africa, but also in other African countries and in Europe. He serves as both executive and non-executive director on a number of boards.
The Ethics Institute is an independent public institute producing original thought leadership and offering a range of ethics-related products and services.

Our vision is: *Building an ethically responsible society.*

We pursue our vision through thought leadership and an ethics-related offering, including training, advisory services, assessments, products and membership opportunities. We work with the public and private sectors, and with professional associations.

All original research work produced by The Ethics Institute, including the Ethics Handbook Series, is freely available on our website.

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**Twitter**  @EthicsInst  
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About Transaction Capital

Transaction Capital owns businesses that operate in highly specialised and under-served segments of the South African and Australian financial services market. Its market-leading divisions, SA Taxi and Transaction Capital Risk Services (TCRS), led by entrepreneurial and experienced management teams, represent a diversified and scalable financial services platform, underpinned by a mature governance framework. The divisions leverage their proprietary data and technology to create value for their customers. Positioned deliberately in relation to demographic and socio-economic realities, they deliver both commercial returns and social benefits.

SA Taxi is a vertically integrated platform incorporating a unique blend of vehicle procurement, retail, repossession and refurbishment capabilities with financing and insurance competencies for focused vehicle types. These competencies, combined with its proprietary data and analytics skills, enable the division to provide asset-backed developmental credit and bespoke taxi insurance, and sell suitable vehicle models and allied services to taxi operators. Through this offering, SA Taxi delivers commercial benefits to taxi operators, helping them to ensure the viability and sustainability of their businesses.

TCRS is a technology-led, data-driven provider of customer management solutions in South Africa and Australia. The division's scalable and bespoke fintech platform improves its clients' ability to originate, manage and collect from their customers. The division leverages its technology and data to mitigate risk and maximise value for clients throughout the customer engagement lifecycle. TCRS acts both as an agent on an outsourced contingency or fee-for-service basis, and as a principal in acquiring and then collecting on non-performing loan portfolios. This diversified revenue model across various consumer credit sectors is central to the division's defensive positioning, supporting its performance in different market conditions.

More information on Transaction Capital can be found at www.transactioncapital.co.za.
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The Institute of Directors in Southern Africa NPC (IoDSA) is a professional body recognised by the South African Qualifications Authority and a non-profit company that exists to promote corporate governance, and to maintain and enhance the credibility of directorship as a profession.

The organisation was established to create Better directors. Better boards. Better business. Its vision is that those charged with governance duties in all sectors be empowered to discharge these duties effectively.

Its mission is supporting and developing those charged with governance duties through providing thought leadership and a platform for peer interaction, which is achieved through the following strategic objectives:

- Achieve organisational growth in a sustainable manner;
- Set principles, develop guidance and support implementation of good governance practices;
- Be the professional body for directors with the view of developing the profession;
- Broaden our influence and reach by developing a committed and loyal membership base;
- Provide learning and development opportunities that increase the number of competent directors on all boards;
- Build a credible and visible brand;
- Serve as a role model for corporate governance and leadership.

Website  www.iiodsa.co.za
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Which companies should have social and ethics committees? What does a social and ethics committee do? How can your organisation ensure that the committee is performing effectively?

Five years after the social and ethics committee became a mandatory requirement of the South African Companies Act, The Ethics Institute has plenty of experience-based guidance to share on the ins and outs of this important governance structure.

This book builds on the material of the first edition, with a look into the historical context that gave rise to the introduction of the social and ethics committee, and a close reading of the statutory expectations it must fulfil.

New to this revised edition is a detailed look at how the Fourth King Report on Corporate Governance (released in 2016) gives guidance on the committee’s ethics responsibility and other areas where the Act lacks detail. We also share emergent leading practices co-created with partners and leading companies who recognise the strategic importance of the social and ethics committee.

This handbook is aimed at practitioners, and is therefore full of practical advice on the committee’s responsibilities, terms of reference, membership, reporting framework, meetings and workplan.