A guide to Implementing Social & Ethics Committee Requirements

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Business Action for Sustainable Growth
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**Introduction**

In July 2015, the National Business Initiative (NBI) conducted a survey, among a closed group of its members, appointed to sit on Social and Ethics Committees in terms of the Companies Act, 71 of 2008 and its Regulations (the Act).

The Social and Ethics Committee is a governance committee and plays a vital role in relation to corporate governance. It has focused mandate and in most cases, overlaps with activities that fall within other operational committees, such as the transformation committee, environmental, health and safety committee and the employment equity committee.

Accordingly, the purpose of the survey was to gain an understanding of the manner in which NBI members have implemented their Social and Ethics Committees in relation to governance frameworks and how effective these frameworks are.

The survey also addressed how the effectiveness of social and ethics committees is monitored and how company’s deal with the overlaps that may exist without duplicating processes.

The respondents to the above survey consisted of 13 companies, some of whom were represented by Company Secretaries, Ethics Officers, Ordinary Committee Members and Chairpersons of the Social and Ethics committee.

The survey was distributed to state owned enterprises, listed companies and private companies, all of whom are in terms of the Regulations of the Companies Act, 2008 required to establish a Social and Ethics Committees, (for private companies, the establishment of a Social and Ethics committee is dependent on the calculation of its public interest score card as per the formula in the Act).

The majority of the respondents who completed the survey were from Listed Companies.

The survey results indicated that whilst many committees have Terms of Reference/ Charters in place, there is a need among members to share best practices and engage with each other in learning forums. This can be attributed to the fact that the Social and Ethics Committee is a fairly new concept in our corporate governance regime and given the overlaps that may occur with other committees, it is important to ensure integration and not duplication within organisations.

The functions of the Social and Ethics Committee is to monitor the company’s performance in:

- Social and economic development (including the United Nations Global Compact Principles, the Organisation for Economic Co-operation and Development recommendations regarding
corruption, the Employment Equity Act and the Broad-Based Black Economic Empowerment Act);

- Good corporate citizenship;
- Environment, health and safety;
- Consumer relationships; and
- Labour and employment.

The committee has the usual powers and obligations of a board committee.

Majority of the respondents surveyed indicated that they had frameworks in place that guided them on the above reportable areas and that the committee had identified many areas of concern/improvement and had made a positive impact on the organization.

However, the survey results indicated that there was no consistency in relation to the monitoring of the activities of the committee, with some respondents indicating that they were monitored by their external auditors, other internal auditors and the majority indicating that the company secretary monitored the activities of the committee. The Act is silent in this regard on who should perform this function.

Furthermore, the results indicated that companies varied in terms of how the agenda and board packs were determined. Three companies indicated that the agenda was based on the company needs, while the other three companies indicated that it was based on the Companies Act. Only two companies indicated that it was based on company strategy and one indicated “other” but did not elaborate.

The purpose of this guideline and framework, is therefore to address the basic principles that should be implemented to ensure that the Social and Ethics committee, is able to achieve its purpose and mandate as required by the Companies Act, 2008. The framework also addresses how such implementation can be monitored.

The following is contained in this document:

- Monitoring indicators for the five core focus areas of the committee;
- Framework for Social and Ethics Committee;
- Specimen of Reporting Template;
- Specimen of Charter/Terms of Reference;
- Specimen of Annual Work Plan

Please note that the information contained herein is generic in nature and included for guidance purposes only. For legal or professional advice, contact a governance specialist to tailor their advice to suit your company’s needs.
Part One

Overview of the Companies Act and Regulations

S72 (4) of the Companies Act, 71 of 2008 states that the Minister may by regulation prescribe:

- Categories of companies that must each have a social and ethics committee;
- Functions to be performed; &
- Rules governing the composition and conduct of social and ethics committees

The Regulations referred to above, were effected in 2011. In terms of Regulations 43(1) (c), the regulations state that a Social and Ethics committees must be established for:

a) every state owned company;
b) every listed public company; and
c) any other company that has in any two of the previous years scored above 500 points in terms of their Public Interest Score card.

For companies that were incorporated after 1 May 2011, they have a year within which to appoint their first Committee members. This means for:

State owned companies - date of incorporation
listed public companies - date of listing
any other company - date that the company first met the public Interest score criteria (this is calculated at the end of each financial year as per Regulations 2011 paragraph 26)

Because companies were given a year from 1 May 2011 to implement their Social and Ethics Committees, most companies that were already in existence prior to the regulations being effected, have already established their Social and Ethics Committees, their role now is to ensure effective monitoring. This framework does not address the issue of exemptions as dealt with in s72 (5) of the Companies Act.

This document therefore addresses the manner in which companies can ensure effective monitoring and that the Social and Ethics Committee makes a meaningful contribution to the organizations activities and various stakeholders, including its most valuable asset, its human capital.
Functions and Monitoring Indicators of the Social and Ethics Committee

The functions of the social and ethics committee are threefold:

- To monitor the company’s activities by having regard to applicable legislation, codes of best practice and any legal requirements as specified;
- To draw matters within its mandate to the attention of the board as occasion requires; and
- To report to the shareholders of the company at the annual general meeting on matters within its mandate.

The committee has the usual powers and obligations of a board committee as it is statutory in nature. However Regulation 43 of 2011 is very specific and requires it to monitor matters, relating to:

Social and Economic Development, with a focus on:

- the United Nations Global Compact Principles – these are ten universally accepted principles in the areas of human and labour rights, environmental responsibility and anti-corruption;
- The Organisation for Economic Co-operation and Development recommendations regarding corruption;
- The prescripts of the Employment Equity Act; and
- The Broad Based Black Economic Empowerment Act

Good corporate citizenship, ensuring that the company:

- promotes equality, prevents unfair discrimination and reduces corruption; and
- Partakes in community development and keeps records of sponsorship donations and charitable giving’s

Considers the Environmental, health and safety concerns:

- In particular, the Impact of the company’s activities on its products or services

Consumer Relations:

- Considers the Company’s advertising, public relations and compliance with consumer protection laws

Labour and Employment:

- considers the company’s standing in relation to the International Labour Organisation Protocol on decent work and working conditions; and
- educational development of employees
3. **Penalties**

Failure to comply with the Regulations is a reportable irregularity and breach of the Companies Act, section 216 (the Act).

This means, that the company auditors have to make mention of non-compliance with the Act, in instances where for example, the company met the public interest scorecard threshold but failed to implement the Social and Ethics Committee.

Section 216 which is the penalty provision, states that a person may be convicted of an offence in terms of the Act and liable where they have contravened sections 213 (1) which deals with “breach of confidence” or section 214 (1) which deals with “false statements, reckless conduct and non – compliance.” Such liability will result in a fine or imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment.

The section goes on to state that in any other case or in instances of any other breach of the Act, the person may be convicted to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and imprisonment.

Accordingly, we now focus on what the Social and Ethic committee is required to monitor.
4. Monitoring Indicators

The content to be monitored in terms of Regulation 43 of 2011 is categorized under five key headings and referred to in this document, as the monitoring indicators.

To recap, the five headings are categorized in the Act as follows:

1. SOCIAL AND ECONOMIC DEVELOPMENT
2. GOOD CORPORATE CITIZENSHIP
3. ENVIRONMENT, HEALTH AND PUBLIC SAFETY
4. CONSUMER RELATIONS
5. LABOUR AND EMPLOYMENT
The five monitoring indicators cut across the following key pieces of legislation, please note that there may be additional pieces of legislation to consider, depending on the industry and the applicable laws and that this list is not exhaustive:

- Basic Conditions of Employment Act No. 75 of 1997
- Competition Act No. 89 of 1998
- Consumer Protection Act No. 68 of 2008
- Employment Equity Act No. 55 of 1998
- Financial Intelligence Centre Act No. 38 of 2001
- Labour Relations Act No. 66 of 1995
- National Building Regulations and Building Standards Act No. 103 of 1977
- National Environmental Management Act No. 107 of 1998
- National Water Act No. 36 of 1998
- Occupational Health and Safety Act No. 85 of 1993
- Prevention and Combating of Corrupt Activities Act No. 12 of 2004
- Skills Development Levies Act No. 9 of 1999
- Unemployment Insurance Act No. 63 of 2001 and the Contributions Act No. 4 of 2002
6. **Overlaps with other Committees**

In addition to the above, there may be overlaps with existing committees such as:

- Audit and Risk – Statutory Committee;
- Employment Equity and Skills Retention Committee;
- Environmental, Health and Safety Committee;
- Sustainability Committee; and
- Transformation Committee

*King III makes passing reference to the Social and Ethics Committee, Regulation 43 which gives effect to the form & purpose were published after King III*

In order to ensure that duplications are avoided, members of the Social and Ethics Committee may also be appointed as members of other committees and are therefore able to provide feedback on various issues where there is an overlap. E.g. that the chair of the Social and Ethics committee is also a member of the Audit and Risk committee with the objective of ensuring that information is shared effectively.

The responsibility to respect Social and Ethics indicators is NOT a one-time transactional activity, but is ongoing and dynamic. Managing Social and Ethics risks needs to involve meaningful engagement and dialogue with the affected stakeholders.

The results of Social and Ethics report need to be made available and accessible to stakeholders/public.
Part Two

Constituting the Committee: The Step by Step Guide

Step 1

Understand the Act

The first step in understanding the implementation of Regulation 43 of 2011, is to:

1. APPOINT:

The committee must comprise not less than three directors or prescribed officers, at least one of whom must be a director not involved in the day-to-day management of the company’s business. Whilst the Act does not define who a prescribed officer is, best practice provides the following definition:

**Prescribed Officer** means a person who exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or regularly participates to a “material” degree in the exercise of general executive control over and management of the whole, or significant portion of the business and activities of the company.

In other words, this individual may not necessarily be a director of the company but may be the company secretary or CFO.

Please note that, subsidiary companies whose holding company has an established Social and Ethics committee or who have been exempted by the Tribunal do not have to set up a Social and Ethics committee as per Regulation 2011, paragraph 43(2)(a) and (b).

It is recommended that the Chair of the Social and Ethics Committee must be the Non-Executive Director to ensure objectivity and oversight.

The Social and Ethics Committee is a statutory committee that addresses governance matters and can be referred to as being advisory in nature. It can be assisted by the Company Secretary or Governance and Risk Manager.

The Charter or Terms of Reference may also allow for suitably qualified persons to be co-opted onto the committee, to render such services as may be necessary to assist the committee in its deliberations, e.g. Health and Safety Representative. S 72(8) of the Act states that the social and ethics committee is entitled to:
• Require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee’s functions;
• Request from any employee of the company any information or explanation necessary for the performance of the committee’s functions;
• Attend any general shareholders meeting;
• Receive all notices of and other communications relating to any general shareholders meetings; and
• Be heard at any general shareholders meeting contemplated on any part of the business of the meeting that concerns the committee’s functions.

Similarly, and for ease of reference the above may also be included in the Terms of Reference/Charter.

The role of Committee members is to:

2. MONITOR:

The company's activities with regards to applicable legislation/codes of best practice.

3. REPORT:

At the Annual General Meeting on the activities that fall within its mandate to monitor.

In order to establish an effective Social and Ethics Committee, we discuss below the governance and due diligence framework that can be implemented by the company.

Step 2

Set up appropriate Governance Structures (Social and Ethics Committee)

• Select at least three suitable members to appoint to the Social and Ethics Committee, such members can be appointed by the Board of Directors of the Company. The Act requires that one of the members must be a non-executive director. In considering making this appointment, it is important to ensure that the member was not involved in the company operations, for at least three years prior to their appointment;
• Shareholders/Directors and those charged with governance must understand the business case for social and ethics committees. This is over and above what is legislated;
• Furthermore, they must understand what Social and Ethics (monitoring indicators) are and how they relate to the specific business, in this regard, they must be guided by the Companies Act;
• They must understand both the Risks and Opportunities inherent in Social and Ethics compliance; and
• Get executive commitment and engagement to deliver on the Social and Ethics mandate (Tone at the Top).

Once the above has been attained, the committee members must:

**Step 3**

**Develop an appropriate Strategy**

• Identify all major Social and Ethics risks and opportunities in the company’s operations;
• Identify everything that the company is already doing that is relevant to Social and Ethics (e.g. overlap with other board committees); and
• Review and revise business strategy to take into account Social and Ethics considerations. In other words, ensure that the strategy considers the subject matter contained in the monitoring indicators.

**Step 4**

**Policy Framework**

• Develop an appropriate Policy Statement which is relevant to the business and references the relevant social and ethics conventions and standards – this can be displayed for all employees and various stakeholders to read;
• Draft Terms of Reference / Board Charter;
• Draft a Work plan – this will ensure that monitoring occurs regularly;
• Identify how Social and Ethics are addressed in all existing policies;
• Define and embed appropriate management responsibilities; and
• Ensure that policy implementation and expected results are systematically reviewed, the Act requires report at the AGM.

**Step 5**

**Procedures and Processes**

• Integrate Social and Ethics into all operational process and procedures of the company/ organization;
• Develop and implement appropriate Social and Ethics risk assessment processes and procedures for the business as a whole; and
• Evaluate and assess Social and Ethics impacts of all key operations of the business.
**Step 6**

**Capacity and Capability**

- Assess the Social and Ethics culture in the company and develop mechanisms to embed a Social and Ethics culture at all levels in the business;
- Adapt learning and development programs to include Social and Ethics aspects in all aspects of management and staff development – this can also be done by ensuring that the Charter allows for ongoing training for members and that this is adequately budgeted for;
- Identify the relevant Social and Ethics stakeholders for the business and engage proactively – this can be implemented by inviting them to committee meetings and allowing them an opportunity to present to the committee; and
- Integrate social and ethics in all internal and external communications of the business.

**Step 7**

**Monitor Performance**

- Identify indicators for measuring social and ethics performance and ensure it is properly communicated throughout the business;
- Develop and implement a methodology for quantitative and qualitative measurement;
- Identify and implement best practice in reporting on social and ethics performance and outcomes; and
- Evaluate and assess actual performance and adapt with corrective action where needed
8. FRAMEWORK SNAPSHOT

FRAMEWORK FOR COMPLIANCE WITH REGULATION 43 OF 2011

Business Case
- Understand what SEC is
- Understand how it relates to business
- Identify the risks, responsibilities & opportunities
- Build the business case for SEC
- Get executive commitment & engage colleagues

Strategy
- Find out what other committees are doing that may overlap with SEC
- Identify potential risks & opportunities
- Revise strategy in light of SEC considerations

Policies and TOR
- Identify what SEC considerations are already included in policies
- Develop a policy statement regarding SEC considerations and Board Charter
- Define management responsibilities
- Ensure policy implementation & results are reviewed systematically

Processes and Procedures
- Form an SEC base-line for the company
- Undertake SEC risk assessment
- Integrate SEC into the ongoing management of a project or act on findings as appropriate

Capacity & Capability
- Understand how SEC can be embedded in the business culture
- Build relationships with other committees
- Review different types of training, select training programs and target groups
- Integrate SEC considerations into

Tracking Performance
- Use topics in the Companies Act to track performance and in SEC Charter
- Develop and implement methodology for acquiring quantitative and qualitative data
- Review data and include in strategy
- Identify good practice in SEC reporting
- Report at the AGM

-
Part Three

Monitoring indicators

The monitoring indicators provide a helpful starting point for companies to think about opportunities for supporting their Social and Ethics committees.

9.1. Monitoring Indicator 1: Social and economic development, with focus on:

The United Nations Global Compact Principles –

THE TEN PRINCIPLES OF THE UN GLOBAL COMPACT

The UN Global Compact’s ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights;
- The International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work;
- The Rio Declaration on Environment and Development; and
- The United National Convention against Corruption.

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption:

HUMAN RIGHTS

- Principle 1: Businesses should support and respect the protection of Internationally proclaimed human rights; and
- Principle 2: Make sure that they are not complicit in human rights abuses.

LABOUR

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: The elimination of all forms of forced and compulsory labour;
- Principle 5: The effective abolition of child labour; and
- Principle 6: The elimination of discrimination in respect of employment and occupation.

ENVIRONMENT

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: Undertake initiatives to promote greater environmental responsibility; and
- Principle 9: Encourage the development and diffusion of environmentally friendly technologies.
ANTI-CORRUPTION

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

Continued

Social and economic development, with focus on:

The Organisation for Economic Co-operation and Development recommendations regarding corruption

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) RECOMMENDATIONS ON COMBATING BRIBERY, BRIBE SOLICITATION AND EXTORTION (2011)

The OECD recommendations in general terms state that companies should not, directly or indirectly offer, promise, give or demand a bribe or other undue advantage to obtain or retain business of any other improper advantage and that they should resist the solicitation of bribes. In particular, they provide that companies should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channeling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.

2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.

3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.

4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.
5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and cooperation with the fight against bribery, bribe solicitation and extortion.

6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.

7. Not make illegal contributions to candidates for public office or to political parties or to other political organizations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

For further information on corruption, please visit [www.oecd.org/corruption](http://www.oecd.org/corruption).

The prescripts of the Employment Equity Act; and

The Broad Based Black Economic Empowerment Act.

In undertaking the above role, the Committee may consider the following guidelines to assist in monitoring the Companies Activities in relation to Social and Economic Development. These guidelines take into account the four subheadings relating to the UNGC Principles, the OECD Guidelines, the Black Economic Empowerment Act and the Employment Equity Act.

9.2. **Checklist for Monitoring Indicator 1 – Social and Economic Development**

<table>
<thead>
<tr>
<th>No</th>
<th>Best Practices</th>
<th>Prevailing Laws &amp; Regulations</th>
</tr>
</thead>
</table>
| 1-1 | Ensure whether the company has a written policy against unjustly influencing and bribing public officials, or engaging in any other methods that subvert the representative process of government or and/or other judiciary | Principle 10 of the UNGC and OECD Conventions. *If the company is not a signatory to the UNGC, consideration may be given to becoming a signatory.*  

The Prevention of Organised Crime Act, 121 of 1998 (POCA) and The Prevention of Combatting of Corrupt Activities Act, 12 of 2004 (PRECCA) is legislation to consider when drafting company policy in this regard  

The company may also have a Code of Conduct applicable to Employees. |
<p>| 1-2 | Check whether the company has guidelines or a Code of Conduct instructing employees on how to deal with bribery and corruption issues and that these guidelines are made available to all employees, particularly those who are involved in legal matters relating to Company Policy | Principle 10 of the UNGC and OECD Conventions. <em>If the company is not a signatory to the UNGC, consideration may be given to becoming a signatory.</em> POCA and PRECCA is legislation to consider when drafting company policy in this regard |
| 1-3 | Establish if the company investigates the level of bribery practices in a particular country or industry before engaging in business in that area and that in instances where bribery is too severe, the company takes extra precautions to make employees aware or refrains from operating in that area | Principle 10 of the UNGC and OECD Conventions. <em>If the company is not a signatory to the UNGC, consideration may be given to becoming a signatory.</em> POCA and PRECCA is legislation to consider when drafting company policy in this regard |
| 1-4 | Ensure that the company sends two or more people to meetings with government officials in order to discourage practices of bribery and corruption | Principle 10 of the UNGC and OECD Conventions. <em>If the company is not a signatory to the UNGC, consideration may be given to becoming a signatory.</em> POCA and PRECCA is legislation to consider when drafting company policy in this regard |
| 1-5 | Ensure if bribery and corruption is sever, whether the company informs the government officials prior to meetings that all discussions and correspondence with them may be recorded and subject to the Same laws as above will be applicable including the UNGC Principles and OECD Guidelines |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1-6</td>
<td>Check whether the company is transparent about facilitation payments and actively works to eliminate them</td>
<td>Same laws as above will be applicable, including the UNGC Principles and OECD Guidelines</td>
</tr>
<tr>
<td>1-7</td>
<td>Ensure whether relevant NGO’s and other external parties confirm that the company is not involved in the bribery and corruption of government officials</td>
<td>Same laws as above will be applicable, including the UNGC Principles and OECD Guidelines</td>
</tr>
<tr>
<td>1-8</td>
<td>Does the Company have a mission statement</td>
<td>General compliance with Companies Act monitoring indicator 1</td>
</tr>
<tr>
<td>1-9</td>
<td>Does the company have an established Employment Equity Committee</td>
<td>Employment Equity Act 55 of 1998</td>
</tr>
<tr>
<td>1-10</td>
<td>Does the company actively recruit for previously disadvantaged employees and disabled employees</td>
<td>Employment Equity Act 55 of 1998</td>
</tr>
<tr>
<td>1-11</td>
<td>Does Company policy and environment promote a culture of non-racialism and non-sexism and do Human Resources (HR) policies reflect the company’s commitment to the achievement of equity in the workplace</td>
<td>Employment Equity Act 55 of 1998 and Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>1-12</td>
<td>Does the environment eliminate unfair discrimination and implements affirmative action measures.</td>
<td>Employment Equity Act 55 of 1998</td>
</tr>
<tr>
<td>1-13</td>
<td>Does the company strive to have equitable representation of suitably qualified people from designated groups and are they plans that will assist the company to achieve this</td>
<td>Employment Equity Act 55 of 1998</td>
</tr>
<tr>
<td>1-14</td>
<td>Do employment policies advocates for the elimination of employment barriers that adversely affect people from designated groups.</td>
<td>Employment Equity Act 55 of 1998</td>
</tr>
<tr>
<td>1-15</td>
<td>Does the company have a BEE Score Card</td>
<td>Broad Based Black Economic Empowerment Act 53 of 2003 and Codes</td>
</tr>
</tbody>
</table>

Review the BEE files and utilise the information contained therein to make findings and recommendations. In most cases there will be a information and activities that the company is already doing. Ensure That the Social and Ethics Committee does not duplicate process with the Employment Equity Committee if there is one.

**9.3. Source Documents and Procedures:**

- Interview Management/ Board of Directors
- Employee List and Status
- Review internal Policies and Procedures
- Draft Inquiry letters to third parties
- Review BBBEE file
- Review mission statement and strategy documents
- Emails or print screens attesting internal procedures and policy communication
- Site inspections
- Annual Report and Integrated Report
9.4. Monitoring Indicator 2: Good corporate citizenship, ensuring that the company

- promotes equality, prevents unfair discrimination and reduces corruption; and
- Partakes in community development and keeps records of sponsorship donations and charitable giving’s

In undertaking the above role, the Committee may consider the following guidelines to assist in monitoring the Companies Activities in relation to it being a good corporate citizen. Please note that as this section also requires the monitoring of corruption, it may be that there is an overlap with the UNGC Principles and the OECD Conventions, accordingly, the process undertaken in Monitoring Indicator 1 may also address some of the indicators under this heading.

Furthermore, for companies that have a BBBEE score card, the community development, sponsorship and donations may be contained in the BBBEE file, therefore there may also be an overlap in this regard.

9.5. Checklist for Monitoring Indicator 2 – Good Corporate Citizenship

<table>
<thead>
<tr>
<th>No</th>
<th>Best Practices</th>
<th>Prevailing Laws &amp; Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-1</td>
<td>Ensure whether the company distributes its policies on unfair discrimination and notifies employees of their obligations to refrain from violent, threatening or abusive conduct towards others.</td>
<td>Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 Basic Conditions of Employment Act 75 of 1997 and Employment Equity Act 55 of 1998</td>
</tr>
<tr>
<td>2-2</td>
<td>Find out if the company has a mechanism to receive reports and complaints of workplace violence, harassment and threats, which is specifically designed to competently address all types of misconduct, including sexual harassment</td>
<td>Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 Employment Equity Act 55 of 1998 and Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>2-3</td>
<td>Check whether managers are trained to use appropriate management techniques, including proper disciplinary measures and instructed to refrain from harassing, violent, threatening and abusive conduct</td>
<td>Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 Employment Equity Act 55 of 1998 and Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>2-4</td>
<td>Investigate whether the company promptly addresses stress and tensions (such as racial tensions) in the workplace which can later lead to abusive, violent or harassing conduct</td>
<td>Employment Equity Act 55 of 1998 and Basic Conditions of Employment Act 75 of 1997 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000</td>
</tr>
<tr>
<td>2-5</td>
<td>Ensure whether the company has a procedure to evaluate and select suppliers/associates based on social and ethics commitments</td>
<td>Public Finance Management Act 1 of 1999 or Municipal Finance Management 56 of 2003 Act and Treasury Regulations</td>
</tr>
<tr>
<td>2-6</td>
<td>Ensure whether the company inserts a clause in all contractual agreements indicating that suppliers and other associates are expected to respect human rights/social and ethics issues</td>
<td>Consider Integrity Pacts Public Finance Management Act 1 of 1999 or Municipal Finance Management Act 56 of 2003 Act and Treasury Regulations</td>
</tr>
<tr>
<td>2-7</td>
<td>Investigate if the company undertakes any community development initiatives</td>
<td>BBBEE Act 53 of 2003 and Codes</td>
</tr>
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</tr>
<tr>
<td>2-8</td>
<td>Check whether the company is transparent about facilitation payments and actively works to eliminate them</td>
<td>This process may be undertaken under monitoring indicator 1: Social and Economic Development</td>
</tr>
<tr>
<td>2-9</td>
<td>Establish if the company has a Corporate Code of Conduct</td>
<td>This process may be undertaken under monitoring indicator 1: Social and Economic Development</td>
</tr>
<tr>
<td>2-10</td>
<td>Does the company require companies to submit copies of their Tax Exemption certificates</td>
<td>Public Benefit Organization Act 18 of 2013, Non Profit Organizations Act 71 of 1997 and BBBEE Act 53 of 2003</td>
</tr>
<tr>
<td>2-11</td>
<td>Does the Company actively engage in enterprise development programmes, mentorship and keeps a record of charitable giving’s</td>
<td>BBEE Act 53 of 2003</td>
</tr>
<tr>
<td>2-12</td>
<td>Does the company have a Gifts Register and Fraud Prevention Plan</td>
<td>POCA and PRECCA is legislation to consider when drafting company policy in this regard</td>
</tr>
<tr>
<td>2-13</td>
<td>Ensure whether the company complies with all relevant national law, relevant international guidelines and industry standards regarding services or products</td>
<td>General Compliance with legislation, including Financial Intelligence Centre Act</td>
</tr>
</tbody>
</table>

9.6. **Source Documents and Procedures:**

- Review internal procedures and policies
- Review contracts between company and suppliers
- Review Human Resources Services Contracts
- Review BBBEE file
- Review supplier chain documents and processes
- Develop Supplier Questionnaires
- Gifts Register
- Hotline Reports
- Forensic Investigation Reports and Recommendations
- Risk Register

9.7. Monitoring Indicator 3: Considers the Environmental, health and safety concerns:

- in particular, the Impact of the company’s activities on its products or services


<table>
<thead>
<tr>
<th>No</th>
<th>Best Practices</th>
<th>Prevailing Laws &amp; Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-1</td>
<td>Find out if the company has effective health and safety prevention and remediation procedures in place which comply with Legislation</td>
<td>Occupational Health and Safety Act 85 of 1993</td>
</tr>
<tr>
<td>3-2</td>
<td>Check if the health and safety standards are available in all 11 official languages or in a language that employees understand</td>
<td>Constitutional Rights</td>
</tr>
<tr>
<td>3-3</td>
<td>Ensure that company does routine monitoring of its production, processes, machinery, and ensures that’s they are safe and in working order</td>
<td>Company Policy or Occupational Health and Safety Act 85 of 1993 Safety Health and Environment Policy Emergency Preparedness Plan</td>
</tr>
<tr>
<td>3-4</td>
<td>Are they designated smoking areas and eating areas</td>
<td>International labour organisation Convention 120, Article 5(b) Tobacco Products Control Act 83 of 1993 and Amendments</td>
</tr>
<tr>
<td>3-5</td>
<td>Ensure whether the company routinely monitors its production, processes, machinery and equipment, ensure that they are safe and in good working order</td>
<td>Occupational Health and Safety Act 85 of 1993 and Regulations</td>
</tr>
<tr>
<td>-------</td>
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</tr>
<tr>
<td>3-6</td>
<td>Check whether the responsibilities for health and safety tasks are clearly outlined at all levels of the company and that there is a system for monitoring the accountability of the tasks</td>
<td>Occupational Health and Safety Act 85 of 1993 and Regulations</td>
</tr>
<tr>
<td>3-7</td>
<td>Check whether the workers and managers are trained to respond to workplace emergencies and first aid kits are readily available</td>
<td>Occupational Health and Safety Act 85 of 1993</td>
</tr>
<tr>
<td>3-8</td>
<td>Check whether there are fully functional fire extinguishers and fire escapes on all workplace premises</td>
<td>Occupational Health and Safety Act 85 of 1993</td>
</tr>
<tr>
<td>3-9</td>
<td>Investigate if there is portable water facilities for all employees, there is adequate lighting, suitable ventilation, temperature in the workplace is suitable and steady</td>
<td>International Labour Organisation Convention</td>
</tr>
<tr>
<td>3-10</td>
<td>Ensure that the company provides clean and sanitary toilet facilities appropriate for both genders</td>
<td>International Labour Convention</td>
</tr>
<tr>
<td>3-11</td>
<td>Ensure whether the company provides safety gear, takes into account gender differences and the special needs for pregnant woman</td>
<td>Occupational Health and Safety Act 85 of 1993, specific legislation could also apply e.g. in the built environment the National Building Rules and Regulations may apply</td>
</tr>
<tr>
<td>------</td>
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<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3-12</td>
<td>Investigate whether the workers receive periodic updates on their training to refresh their knowledge and update their skills</td>
<td>Skills development Levies Act 9 of 1999, is the company affiliated to any Services Education Training Authority</td>
</tr>
</tbody>
</table>

9.9. **Source Documents and Procedures:**

- review internal policies and procedure
- safety manuals
- health and safety plan
- emergency procedures for all potential disasters
- analysis of sufficiency of exit doors, fire extinguishers, sanitation and washing facilities
- Interview with relevant employees, health and safety representative, labour unions etc.
- Annual Report
- employee questionnaires

9.10. **Monitoring Indicator 4: Consumer relations:**

- considers the Company’s advertising, public relations and compliance with consumer protection laws

There may be an overlap when undertaking this process with monitoring indicator 2, given that the company is also required to ensure that it is a good corporate citizen.
### 9.11. Checklist for Monitoring Indicator 4 – Consumer Relations

<table>
<thead>
<tr>
<th>No</th>
<th>Best Practices</th>
<th>Prevailing Laws &amp; Regulations</th>
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<tbody>
<tr>
<td>4-1</td>
<td>Ensure that the company screens and monitors all major suppliers, contractors, sub suppliers, joint venture partners and other major business associates for commitment on social and ethics issues</td>
<td>Consumer Protection Act 68 of 2008 and Regulations</td>
</tr>
<tr>
<td>4-2</td>
<td>Ensure whether consumer organizations confirm that the company takes all measures to ensure that its products do not harm human life or health and that the products comply with all relevant laws with regard to proper product information labeling</td>
<td>Consumer Protection Act 68 of 2008 and Regulations</td>
</tr>
<tr>
<td>4-3</td>
<td>Does the company protect consumers from unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices</td>
<td>Consumer Protection Act 68 of 2008 and Regulations and Competition Act 89 of 1998</td>
</tr>
<tr>
<td>4-4</td>
<td>Check if the company conducts a predevelopment assessment of product risks</td>
<td>Consumer Protection Act 68 of 2008 and Regulations</td>
</tr>
<tr>
<td>4-5</td>
<td>Does the Company promote fair, accessible and sustainable marketplace for consumer products and services</td>
<td>Consumer Protection Act 68 of 2008 and the Competition Act 89 of 1998</td>
</tr>
<tr>
<td>4-6</td>
<td>Ensure whether the company monitors the social and ethics compliance of its suppliers and business partners through regular questionnaires and spot checks in the form of site visits and audits</td>
<td>Companies Act 71 of 2008</td>
</tr>
<tr>
<td>4-7</td>
<td>Investigate if the company engages in any collusive or anti-competitive behavior</td>
<td>Competition Act 89 of 1998</td>
</tr>
<tr>
<td>4-8</td>
<td>Investigate whether the company carefully researches any material potentially protected by copyright to identify its origin, authorship and ownership</td>
<td>Copyright Act 98 of 1978 and Intellectual Property Laws</td>
</tr>
<tr>
<td>4-9</td>
<td>Has the company or industry in which it operates been convicted of transgressing the Competition Act</td>
<td>Competition Act 89 of 1998</td>
</tr>
<tr>
<td>4-10</td>
<td>Is there a mechanism for clients or customers to complain about products or services</td>
<td>Consumer Protection Act 68 of 2008</td>
</tr>
</tbody>
</table>

9.12. **Source Documents and Procedures:**

- Review internal procedures and policies on selecting suppliers
- Review contracts between the company and its suppliers
- Interview with procurement
- Supplier questionnaires
- Integrity Pacts
- Annual Reports
- Review Bid Evaluation Minutes and Bid Adjudication Minutes
- Interviews with Internal Audit
9.13. Monitoring Indicator 5: Labour and employment:

- considers the company’s standing in relation to the International Labour Organisation Protocol on decent work and working conditions; and
- educational development of employees


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<th>No</th>
<th>Best Practices</th>
<th>Prevailing Laws &amp; Regulations</th>
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<tbody>
<tr>
<td>5-1</td>
<td>Investigate whether the Company ensures that employment contracts are fair, transparent, and understood by the workers.</td>
<td>Section 29 of the Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>5-1</td>
<td>Ensure whether all workers are allowed to leave the employ of the Company after reasonable notice.</td>
<td>Chapter 5 of the Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>5-3</td>
<td>Ensure whether all employees are allowed to leave Company premises at the end of their shifts.</td>
<td>Chapter 2 of the Basic Conditions of Employment Act 75 of 1997; Occupational Health and Safety Act 85 of 1993</td>
</tr>
<tr>
<td>5-4</td>
<td>Check whether the Company ensures, by proper investigation, that it does not use labour from agencies or firms involved in trafficking, debt bondage, or kidnapping.</td>
<td>Chapter 6 of the Basic Conditions of Employment Act 75 of 1997 prohibits forced labour and child employment. The Prevention of Organised Crime Act 121 of 1998 covers offences relating to racketeering activities.</td>
</tr>
<tr>
<td>5-5</td>
<td>Ensure whether the company has a policy recognizing the freedom of association rights of its workers.</td>
<td>Bill of Rights of the Constitution of the Republic of South Africa</td>
</tr>
<tr>
<td>5-6</td>
<td>Ensure whether the company engages in collective bargaining and holds regular consultations with authorised workers’ representatives concerning working conditions, remuneration, dispute resolution, internal relations and matters of mutual concerns.</td>
<td>Labour Relations Act 66 of 1995</td>
</tr>
<tr>
<td>5-7</td>
<td>Ensure whether the company takes efforts to protect employees from union related harassment by other workers</td>
<td>Bill or Rights and Labour Relations Act 66 of 1995</td>
</tr>
<tr>
<td>5-8</td>
<td>Ensure whether the company does not withhold wages or threatens to withhold salary or wages to compel overtime or work itself but makes payments on a regular basis and in a timely manner</td>
<td>Labour Relations Act 66 of 1995 and Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>5-9</td>
<td>Ensure whether hiring managers are aware of the forms of forgery, fraud and deceit used by candidates seeking employment e.g. fake qualifications</td>
<td>Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>5-10</td>
<td>Ensure whether the company does not employ any person under the age of 18 to perform work that may interfere with their education</td>
<td>Basic Conditions of Employment Act 75 of 1997</td>
</tr>
<tr>
<td>5-10</td>
<td>Ensure whether the company facilitates open communication and problem solving groups designed to deter monitor, prevent and report workplace violence</td>
<td>Basic Conditions of Employment Act 75 of 1997 and Labour Relations Act 66 of 1995</td>
</tr>
<tr>
<td>5-12</td>
<td>Check whether the company employees are aware of the company grievance process and are able to anonymously submit grievances if they wish to do so</td>
<td>Basic Conditions of Employment Act 75 of 1997 and Labour Relations Act 66 of 1995</td>
</tr>
<tr>
<td>5-13</td>
<td>Inspect records to see if the company systematically and objectively reviews any complaints filed and implements corrective action where required</td>
<td>Basic Conditions of Employment Act 75 of 1997 and Labour Relations Act 66 of 1995</td>
</tr>
<tr>
<td>5-14</td>
<td>Confirm with employees whether the company requests only reasonable information from them and that the purpose for the requests are clearly explains</td>
<td>Bill of Rights</td>
</tr>
</tbody>
</table>
9.15. **Source Documents and Procedures:**

- Interview with the Company’s HR department and Board of Directors
- Internal policies and procedures
- Employment grievances
- Employee list and status
- Time sheets
- Minutes of meetings with labour unions, NGO’s etc.
- Site inspections
- Interviews with employees
- Grievance reports and minutes of hearings
- Inquiry letters to third parties
Part Four

10. Reporting

As indicated, the committee is required to draw matters to the board’s attention and report to shareholders at the company’s AGM. The Act is silent on whether such report should be in writing. It is preferable that it is.

The important information to relate in this annual report is the terms of reference of the committee, membership details, number of meetings held, major decisions taken and recommendations.

It is preferred that the chair of the social and ethics committee is available at the AGM to answer questions.

Accordingly, below is a specimen of a skeleton report that can be used to document social and ethics matters:
Social and Ethics Committee Letter

In planning and performing our work of the Social and Ethics Committee of [Drafting Note: insert company name], we considered the monitoring factors contained in Regulation 43 of 2011 of the Companies Act, 2008 and related internal controls.

In addition, we reviewed various policies and procedures in business processes that are prone to social and ethics risks and considered the impact of those policies and procedures on Social Compliance.

In performing our work on Social and Ethics Compliance, we become aware of several matters that are opportunities for strengthening the implementation of Social and Ethics Compliance in [Drafting Note: insert company name].

The report that accompanies this letter summarizes our findings and recommendations regarding those matters. The matters noted are only those that come to our attention and, had our procedures for social and ethics related matters been more extensive, other matters might have been noted. Also, the implementation of Social and Ethics Compliance were assessed at a point in time, and no assurance can be drawn that the Social and Ethics Compliance is implemented or will continue to function beyond the point in time at which it was assessed.

We would like to take this opportunity to express our gratitude for the assistance afforded to us by the management and staff of [Drafting Note: Insert Company Name] during the course of our work. We would be pleased to discuss the matters noted during our work in further detail, to perform any additional procedures.

Date

Chairperson of the
Social and Ethics Committee
**Description of the Finding**

**Social and Economic Development**

We noted that in relation to the *United Nations Global Compact Principles (refer to Schedule 1 of Social and Ethics Committee Charter for the 10 principles)* – the following complies:

- The mission statement effective 14 April 2008 states that the core values of the Company is to treat people with dignity and respect and that it is deeply committed to honesty and integrity;

- There is a protected disclosures policy in place that safeguards whistle-blowers, which became effective on 17 November 2010;

- In addition, there is a gifts, bribery and fraud policy effective 10 November 2010. All employees are requested to notify the MD of any gifts received. Fraud and corruption is totally outlawed with provision of a whistle-blowers hotline, the posters are displayed on the company premises;

- There is also a conflict of interest policy that prohibits all members of staff to avoid activities that are in conflict with their duty and loyalty to the employer;

- We were provided with declarations by members of staff relating to transactions between the company and the employee;
The Broad Based Black Economic Empowerment Act:

- The company has a BBBEE level 6

Recommendations

From our review of the declarations, it is not clear if this is reviewed and approved by the MD as prescribed in the Gifts, Bribery and Fraud Policy. We also recommend that a gifts register be implemented.

Accordingly, we recommend that a Gifts register be formulated by the Committee and then circulated to professional staff, indicating that they have not accepted any gifts, hospitality or entertainment from any client, other than those gifts, hospitality and entertainment that are trivial and inconsequential and which they have recorded in the gifts and hospitality register and are in line with the existing policy on gifts.

We also recommend that the committee look at having a short workshop once a year
where they remind staff of the above policies are to report any irregularities to the hotline.

Going forward, the committee should ensure that they receive a report from the hotline service providers, advising on calls received or matters reported.

<table>
<thead>
<tr>
<th>Description of the Finding</th>
<th>Good corporate citizenship, ensuring that the company:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Promotes equality, prevents unfair discrimination and reduces corruption; and</td>
</tr>
<tr>
<td></td>
<td>Partakes in community development and keeps records of sponsorship donations and charitable giving’s:</td>
</tr>
</tbody>
</table>

- The company has a detailed Corporate Code of Conduct that was effective from 14 November 2014, this code covers human rights. Promoting fair competition, good corporate citizenship etc.;
- Having reviewed several job advertisements for various positions including Administrative functions, we noted that the company denies particular gender to apply for certain jobs which are labelled as male or female-dominated occupations. All of its job advertisements are stating a preference for a man or woman which is categorized as unlawful sex discrimination. In addition, based on the review of the company job advertisements, it was also noted that this constitutes age discrimination as the advertisements include the upper age limit for all positions.
- The company currently has a learnership allowance and is registered with the MERSETA;
- The socio-economic development policy advocates for an employee children bursary support program – we were not provided with evidence of such recipients – the responsibility of the committee is to keep a record of such sponsorship;
- There is a sexual harassment policy in place effective 10 November 2010

**Recommendations**

An advertisement must not show any intention to discriminate unlawfully. In relation to sex and age, the use of certain wordings with discriminatory connotations (e.g. mature, young) will be deemed to be discriminatory unless the advertisement specifically states otherwise or unless there is a particular genuine occupational qualification (GOQ) which legitimately requires someone of a particular age or sex.

Advertisements should not include age limits, unless these can be objectively justified. Avoid lower or upper age limits for example, "Benefit Administrator required - Maximum 28 years" as this may discriminate against applicants aged above 28-years-old who actually have the required skills and experience. Similar to the age limit, stating a preference for a man or woman in a job advertisement is unlawful sex discrimination.

Promotion of the fraud hotline should be undertaken or an internal campaign reminding staff to use the hotline without fear of reprisals

More discussions on community development and upliftment projects can be undertaken.
The Corporate Code of Conduct can be displayed throughout the company.

<table>
<thead>
<tr>
<th>Description of the Finding</th>
<th>Considers the Environmental, health and safety concerns:</th>
</tr>
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<tbody>
<tr>
<td></td>
<td><em>In particular, the Impact of the company’s activities on its products or services:</em></td>
</tr>
<tr>
<td></td>
<td>- Based on the interview with the HR staff members and our observation during field visit, it was noted that the company does not have any special facility or policy for disabled workers or any other vulnerable workers</td>
</tr>
<tr>
<td></td>
<td>- There is a detailed Risk Report that was conducted by Marsh;</td>
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<td></td>
<td>- The company keeps track of its fuel, diesel and electricity emissions;</td>
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<td></td>
<td>- There is an incident accident register that is kept up to date;</td>
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<tr>
<td></td>
<td>- There is a communications policy effective 20 October 2010 which relates to internal and external communication regarding quality, environmental and health and safety issues;</td>
</tr>
<tr>
<td></td>
<td>- Email signatures state: Save Trees, save paper – think before you print;</td>
</tr>
<tr>
<td></td>
<td>- There is an Environmental Aspect policy that was effective from 10/12/2014. This policy requires that an environmental register be kept. As this is a new policy, the committee will have to ensure that a copy of the register is kept on file;</td>
</tr>
<tr>
<td></td>
<td>- Furthermore, there is a policy that deals with all the legal requirements that relate to environmental aspects, it is the responsibility of the production manager to ensure that all compliance with legislation is met;</td>
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<td></td>
<td>- The following policies were also identified: Emergency Preparedness and Response, Operational Control, Health and Safety Policy Environmental Policy as well as an Emergency Evacuation Procedure, health matrix;</td>
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<td></td>
<td>- In addition there are fire-fighting certificates on records and pictures of fire representatives as well as a health and safety checklist</td>
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</table>
**Recommendations**

Reasonable accommodation for disabled workers should be established and formalized. Reasonable accommodation is any change to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

1. providing or modifying equipment or devices
2. job restructuring
3. part-time or modified work schedule
4. reassignment to a vacant position
5. adjusting or modifying appraisal system, training materials or policies
6. making the workplace readily accessible to and usable by people with disabilities

Special facilities may also be needed for disabled workers. Not only will they need suitable disabled toilet and washing facilities, but also easy access to drinking water and to any kitchen facilities on site. The company may also need to make reasonable adjustments to the physical features to accommodate the health and safety of disabled employees:
7. Widening doorways to allow a wheelchair to pass through easily
8. Replacing steps with ramps
9. Relocating light switches and door handles for someone who has difficulties in reaching
10. Putting in place audio-visual fire alarms
11. Providing disabled parking facilities in the head offices and all company’s mining sites

<table>
<thead>
<tr>
<th>Description of the Finding</th>
<th>Consumer relations;</th>
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<tbody>
<tr>
<td></td>
<td>Consider the Company’s advertising, public relations and compliance with consumer protection laws:</td>
</tr>
<tr>
<td></td>
<td>• The company has information guidelines regarding the promotion of access to information;</td>
</tr>
<tr>
<td></td>
<td>• The Corporate Code of Conduct indicates that the company will promote fair, transparent, free competition and sound trade;</td>
</tr>
<tr>
<td></td>
<td>• There is an Information Security Management policy, staff are encouraged to use information systems in a lawful and consistent manner</td>
</tr>
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<table>
<thead>
<tr>
<th>Recommendations</th>
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<tbody>
<tr>
<td>Company Policy and Procedures be reviewed annually, in consultation with employees and relevant parties, to ensure relevance and compliance. It is recommended that the Committee ensure that such review is undertaken and that this form part of their board report. Usually the Access to Promotion documents are also provided online the document indicates that there is no website and was effective from 27/02/2008 – this document needs to be updated.</td>
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<thead>
<tr>
<th>Description of the Finding</th>
<th>Labour and employment:</th>
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<tr>
<td></td>
<td>Considers the company’s standing in relation to the International Labour Organisation Protocol on decent work and working conditions; and</td>
</tr>
<tr>
<td>Educational development of employees:</td>
<td></td>
</tr>
<tr>
<td>• Having reviewed the Collective Labour Agreement as well as interviewing the sample staff members, it was noted that the employees are aware of the company complaint procedure and the procedure is clearly stated in the Collective Labour Agreement. However, we noted that employees are unable to anonymously submit complaints. During our visit, we did not find any facility such as a drop-box enabling the employees to submit complaints anonymously. All complaints should be directed to their Supervisor or Industrial Relation Officers.</td>
<td></td>
</tr>
<tr>
<td>• There is a grievance policy in place which was effective from 22 October 2010;</td>
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</tbody>
</table>
- There is an HIV & Aids policy in place;
- The Employment of Personnel advocates for the promotion of affirmative action, targeting the designated groups;
- There is a retirement policy in place which refers to the imperial retirement claim form?
- There is a disability policy in place and a disciplinary policy, remuneration policy, company vehicle and travel allowance, annual leave, maternity leave, sick leave, family responsibility, induction, study leave, unpaid leave, public holidays, employee benefits, training, smoking, electronic communications, long service, company cell phones, bonus policy, employee study assistance policy,
<table>
<thead>
<tr>
<th>Recommendations</th>
<th>The Social and Ethics Committee must ensure that all submissions to the Labour Enforcement agencies are submitted annually and that there is compliance with Labour Legislation. In addition, policies should be displayed which deal with</th>
</tr>
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<tbody>
<tr>
<td>Each operational site shall possess a drop-box where complaints can be left anonymously. The box shall be checked frequently by the Industrial Relation Officers assigned to that site. The local officers shall report and discuss all complaints with the Corporate Industrial Relation, at which time further action shall be decided. All complaints shall be documented by the Corporate Industrial Relation Officers. If the matter can be resolved internally without the issuance of a formal complaint, the Corporate and the local officers will see to it that the appropriate action is taken. However, if the matter cannot be handled internally, or it is deemed the situation to be serious, steps towards a formal complaint should be taken. If the individual who filed the complaint refuses to come forward and no other employees who may be affected wish to file a similar complaint, the complaint may be filed at the operational site. However, this should be the last resort.</td>
<td></td>
</tr>
<tr>
<td>In addition, policy and procedures for anonymous complaint submission should be established and formalized. These policies and procedures should be made accessible to all staff. Once formalized, appropriate training should be provided on the newly developed policies and procedures notably for the Industrial Relation Officers. The company has a responsibility to increase the employment opportunities for people with disabilities at all levels and occupations by: 1. Developing recruitment plans that includes positive steps to allow the recruitment of disabled people 2. Recruiting widely for positions 3. Giving full consideration to employees with disabilities for inclusion in developmental opportunities 4. Providing reasonable working environments for applicants and employees with disabilities 5. Providing appropriate training to all managers to ensure they understand the commitment and the policies of the company to employ individuals with disabilities and that they have an understanding of programs to recruit, appoint, and ensure that reasonable workplace environments are provided for employees with disabilities</td>
<td></td>
</tr>
<tr>
<td>Comments from Company</td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td></td>
</tr>
</tbody>
</table>

- Employment Equity
- Statement on Occupational Health and Safety

Record of all litigious matters with employees are retained;

Record of employees above retirement age also retained;

- New employees go through an induction programme; and
- Exit Interview Questionnaire reviewed.

11. Terms of Reference
EXAMPLE OF A SOCIAL & ETHICS COMMITTEE CHARTER

Revision History

<table>
<thead>
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<th>Rev</th>
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<th>Details</th>
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<th>Approved</th>
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1. **INTRODUCTION**

The Board ("the Board") resolved to establish the Social and Ethics Committee ("the Committee").

The duties and responsibilities of the members of the Committee as set out in this Charter are in addition to those duties and responsibilities that they have as members of the Board. 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.

This Charter is subject to any other applicable law or regulatory provisions.

2. **PURPOSE AND OBJECTIVE**

The objective of this Charter is to set out the Committee’s role and responsibilities, as well as the requirements for its composition and meeting procedures.

3. **DEFINITIONS**

3.1 In this Charter, unless clearly inconsistent with or otherwise indicated by the context -

3.1.2 "Annual Report" means the Annual Report of the organisation;

3.1.3 "Board" means the Board of Directors as constituted from time to time;

3.1.4 "Chairperson" means the chairperson of the board;

3.1.5 "Charter" means this Social and Ethics Committee Charter;

3.1.6 "Committee" means this Social and Ethics Committee as amended or replaced from time to time;
3.1.7 “Prescribed Officer” means a person who exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or regularly participates to a “material” degree in the exercise of general executive control over and management of the whole, or significant portion of the business and activities of the company;

4. COMPOSITION

4.1 The Committee is a Committee of the Board, advisory in nature and reports to the Board and to the Shareholders;

4.2 The Committee, of which the CEO shall consist of a minimum of three (3) and a maximum of five (5) members.

4.3 The members of the Committee shall be appointed by the Board and shall serve until such member’s resignation or removal. The Board will have the power to remove any members from the Committee and to fill any vacancies created by such removal. The Board shall appoint the Committee Chairperson who shall be an independent non-executive director of the Company. The Chairperson of the Board shall not be the Chairperson of the Committee, but may be a member of the Committee;

4.4 Suitably qualified persons may be co-opted onto the Committee to render such specialist services as may be necessary to assist the Committee in its deliberations on any particular matter. In such instances such persons shall have no voting rights;

4.5 Given the overlap and synergies in the various committees of the Board there shall be a mechanism to facilitate the interaction with other Committees; and

4.6 The Company Secretary or their nominee shall act as secretary of the Committee.

5. ROLE AND RESPONSIBILITIES

5.1 The Committee will:
5.1.1 monitor matters within its mandate; and

5.1.2 draw matters within its mandate to the attention of the board as occasion requires; report, through the board, to the shareholder on the matters within its mandate. The report may take the form of an oral report by the chairperson or any other member of the Committee designated by the Committee to make such report; and

5.1.4 not assume the functions of management, which remain the responsible of the executive directors, officers and other members of senior management;
5.1.5 monitor on-going investigations and appeals

5.1.6 Social, economic development and ethical behaviour, including the

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

5.2.2 Good citizenship, including the –

5.2.2.1 promotion of equality, prevention of unfair discrimination, and reduction [proactively strive in the elimination] of corruption;
5.2.2.2 contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
5.2.2.3 recording of sponsorship, donations and charitable giving;

5.2.3 The environment, health and public safety, including the impact of the activities of the company and of its products or services;

5.2.4 Consumer relationships, including advertising, public relations and compliance with consumer protection laws.

5.2.5 Labour and employment, including—

• the employment relationships, and contribution toward the educational development of its employees; and
• the company’s standing in terms of the International Labour Organization Protocol on decent work and working conditions

5.2.6 The committee must promote and monitor ethical behaviour of the employees, board members and customers paying attention to the following aspects:

• Conflicts of interest
• Confidential information
• Compliance with relevant laws
• Workplace conduct
• Stakeholder relationships
• Public Communication
• Safeguarding of the company’s assets
• Accuracy of company’s financial information
• Employee wellness
• Business courtesies and gifts
• Non-compliance with prescripts
• Internal and external fraud
• Collusion

5.2.7 The committee must take cognizance that its roles and responsibilities may overlap with those of other committee’s duties. In the instances where the committee needs to exercise oversight on matters handled by other sub-committees, the committee shall incorporate its inputs, share information or make recommendations to the Board to consider its views on the matter.

6. AUTHORITY

The Committee acts in terms of section 72(8) of the Companies Act and the delegated authority of the Board as defined, as recorded in these terms of reference. It has the power to investigate any activity within the scope of its terms of reference.

The Social and Ethics Committee of a company is entitled to:

6.1 Require from any director or prescribed officer of the company, any information or explanation necessary for the performance of the committee’s functions;

6.2 request from any employee of the company any information or explanation necessary for the performance of the committee’s functions;

6.3 attend any general shareholders meetings;

6.4 receive all notices of and other communication relating to any general shareholders meeting;

6.5 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; and

6.6 the 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.

The Committee may form, and delegate authority to, subcommittees and may delegate authority to one or more designated members of the Committee.

The Committee makes the recommendations to the Board as defined that it deems appropriate on any area within the ambit of its terms of reference where action or improvement is required.
7. MEETING PROCEDURES

7.1 Frequency

7.1.1 The Committee should hold sufficient scheduled meetings to discharge all its duties as set out in these terms of reference but subject to a minimum of two meetings per year;

7.1.2 Meetings in addition to those scheduled may be held at the request of the Chief Executive Officer, or other members of senior management or at the instance of the board; and

7.1.3 The chairman of the Committee may meet with the CEO and/ or the company secretary prior to a Committee meeting to discuss important issues and agree on the agenda.

7.2 Attendance

7.2.1 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 chairman or company secretary;

7.2.2 If the nominated chairman of the Committee is absent from a meeting, the members present must elect one of the members present to act as chairman; and

7.2.3 Invitees to any meetings shall not have a vote.

7.3 Agenda and minutes

7.3.1 The Committee must establish an annual work plan for each year to ensure that all relevant matters are covered by the agendas of the meetings planned for the year. The annual plan must ensure proper coverage of the matters laid out in the Committee Charter. The number, timing and length of meetings, and the agendas are to be determined in accordance with the annual plan;

7.3.2 A detailed agenda, together with supporting documentation, must be circulated, at least one week prior to each meeting to the members of the board and other invitees;

7.3.3 Committee members must be fully prepared for Committee meetings to be able to provide appropriate and constructive input on matters for discussion; and

7.3.4 The minutes must be completed as soon as possible after the meeting and circulated to the chairman and the Committee members for review thereof. The minutes must be formally approved by the Committee at its next scheduled meeting.
7.4 Quorum

7.4.1 A representative quorum for meetings is a majority of members present. Individuals in attendance at Committee meetings by invitation may participate in discussions but do not form part of the quorum for Committee meetings.

7.5 Evaluation

7.5.1 The board must perform an evaluation of the effectiveness of the Committee every year/self-evaluation.

8 GENERAL

8.1 This Charter may be amended as required, subject to the approval of the Board. It will be reviewed and approved annually.

THESE TERMS OF REFERENCE WERE APPROVED BY THE CHAIRMAN OF THE BOARD AND CHAIRMAN OF THE COMMITTEE ON [DRAFTING NOTE: INSERT DATE] AND WILL BE DUE FOR REVIEW ON [DRAFTING NOTE: INSERT DATE]
The company may also wish to draft a work plan that will assist to monitor its activities on a regular basis, below is an example of a work plan

<table>
<thead>
<tr>
<th>No</th>
<th>Committee Responsible for Oversight</th>
<th>Activities</th>
<th>April - June</th>
<th>July - Sept</th>
<th>Oct - Dec</th>
<th>Jan - March</th>
<th>As needed</th>
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<tr>
<td>1</td>
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<td>Committee evaluation and appraisals</td>
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<td>7</td>
<td>X</td>
<td>Monitoring progress in terms of - Human Resource Development - Work process Transformation</td>
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<td>8</td>
<td>X</td>
<td>X</td>
<td>Monitoring compliance with the Broad–Based Black Economic Empowerment Act</td>
<td>X</td>
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<td>Monitoring of the Employment equity performance and compliance</td>
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<td>Monitoring of the disciplinary reports</td>
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<td>Monitoring the unethical behaviour, investigations and appeals cases</td>
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<td>Monitoring external fraud and related cases</td>
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<td>Monitoring unethical conduct, non-compliance including fraud and corruptions risks and ensuring that the mitigation plans are adequate.</td>
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<td>Combating fraud and corruption</td>
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<td>X</td>
<td>Report to Board Committee</td>
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<td>Compiling Committee Annual report</td>
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13. Conclusion

This guideline and framework document has been compiled to assist the social and ethics committee to perform its job with all the basic information that it needs to understand its functions and the monitoring thereof.

Given the overlaps that the social and ethics committee may have with other committees, it is important for its members to have clarity on the responsibilities and functions, so as to not cause or create duplication and confusion.

The responsibility to respect and give credence to the Social and Ethics Committee is NOT a one-time transactional activity, but is ongoing and dynamic. The benefits for companies to properly implement its social and ethics committee can be summarized as follows:

- Mitigates the costs associated with non-compliance – loss of Shareholder value, Brand value and direct punitive costs;
- Enhances reputation;
- Results in improved staff morale;
- Leads to higher motivation, productivity and the ability to attract and retain the best employees;
- Strengthens the license to operate;
- Gives improved access to new markets, consumers and investors;
- Creates more stable operating environments;
- Promotes better community relations; and
- It's the RIGHT THING TO DO!
The National Business Initiative is a voluntary coalition of South African and multinational companies, working towards sustainable growth and development in South Africa and the shaping of a sustainable future through responsible business action. Since our inception in 1995, the NBI has made a distinct impact in the spheres of housing delivery, crime prevention, local economic development, public sector capacity building, Further Education and Training, schooling, public private partnerships, energy efficiency and climate change.

The NBI is a global network partner of the World Business Council for Sustainable Development (WBCSD), the focal point of the United Nations Global Compact (UNGC) Local Network in South Africa and an implementation partner of the World Resources Institute (WRI) and CDP.