



*cutting through complexity*

# The oversight role of a Social and Ethics Committee

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THE OVERSIGHT ROLE OF A SOCIAL AND ETHICS COMMITTEE

The introduction by the Companies Act of the requirement for certain companies to have a social and ethics committee (S&E Committee) gives legal backing and imposes legal obligations in relation to a company’s responsibility to a broad range of stakeholders, including employees, consumers, customers, the public and communities. In short, the provisions of the Companies Act in relation to the S&E Committee give legal substance to many of the governance principles and recommendations set out in King III.

At first glance, one may think that the S&E Committee is mandated to deal with the “so called soft issues”. While it is true that the S&E Committee is required to monitor and report on non-financial activities, it is important to note that the S&E Committee has the same legislative standing as the Audit Committee (being the only two statutory committees prescribed by the Companies Act). Furthermore, it is accepted in business today that it is not only financial matters that are critical to the success and sustainability of a company and that there are many so called “soft issues” covered by the S&E Committee which could have a serious impact on a company’s reputation and ultimate success.

In terms of the Companies Act and Regulations, the S&E Committee, if required to be established, has onerous and broad responsibilities that, if not complied with, carry potential liabilities for not only the directors and prescribed officers who sit on the S&E Committee, but for all directors. The board has ultimate responsibility to ensure that a S&E Committee is appointed and functions effectively. Whilst not yet tested in a court of law, it is prudent that directors and prescribed officers understand their role as members of this S&E Committee. A good starting point is to ensure that the S&E Committee has an appropriately documented terms of reference that is understood by all the members of the S&E Committee, and is approved by the board.

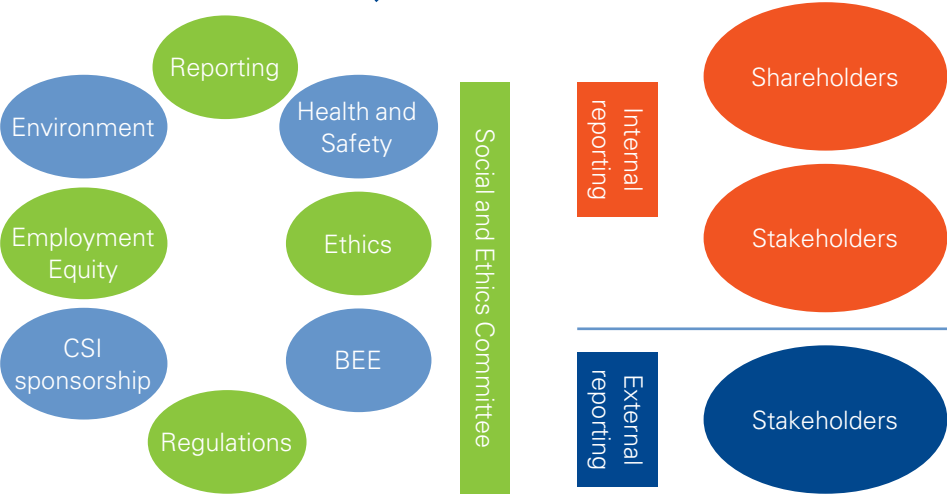
The terms of reference should set out the purpose of the S&E Committee, its mandate, roles and responsibilities, authority and scope. The S&E Committee will typically rely on executive management’s reporting systems and processes, which may need to be refined to produce the information the members require to be able to discharge their duties.

The S&E Committee has a monitoring and reporting role on matters that fall within its scope. This scope is broad and wide-ranging and includes such matters as the Organisation for Economic Co-operation and Development (OECD) recommendations regarding corruption, the United Nations Global Compact Principles, the International Labour Organisation Protocol (currently no guidelines are provided for the latter two) and various South African statutes, codes and best practice.

At KPMG, we appreciate that the S&E Committee’s authority is wide and multi-faceted and accordingly presents a challenge when it comes to monitoring activities across such a diversity of areas.

The diagram illustrates the role of the S&E Committee as an oversight body. The S&E Committee’s mandate, although dictated by the Companies Act’s Regulations, is an assurance provider and an oversight body for the Board, Shareholders and other Stakeholders (e.g. regulators, employees, suppliers, customers, communities, etc.). The S&E Committee should discharge its responsibilities by engaging with executive management on matters such as Environmental risks, CSI Spend, Employment Equity, Ethics, Health and Safety issues, BEE and Compliance with numerous laws and regulations. The committee should also review the reporting of these matters and will therefore need to ensure that management are able to provide sufficient information tools, policies, independent assurance and monitoring mechanisms to satisfy the business needs and responsibilities of the committee.

Legislation and Better Practice



Legislation and Better Practice

OUR SERVICES

We as KPMG bring together deep subject matter expertise from multidisciplinary backgrounds to provide practical recommendations to our clients in order for them to refine their understanding of the business imperative of a S&E Committee, and the implementing of effective policies, processes, business tools and independent assurance and monitoring mechanisms.

Our multidisciplinary team understands that:

- Section 74 and Regulation 43 of the New Companies Act of 2008 requires all state owned, listed companies and companies with a public interest score of 500 and over to establish a S&E Committee. With the legal requirement in the new Companies Act and its regulations, coupled with the code of principles of King III, the need for organisations to review their own viewpoint of corporate governance is essential.
- The S&E Committee is mandated to serve both internal and external stakeholders (as depicted in the diagram). The S&E Committee, in monitoring the activities of the company with regard to legislation, is exposed to a plethora of laws and codes of practice.
- A good term of reference sets out the purpose of the S&E Committee, its roles and responsibilities, authority and scope in carrying out its duties and ensures that this is aligned to the Board’s mandate and the overall strategic intention of the company.
- As a modern organisation is exposed to numerous of risks, defining an appropriate risk universe for monitoring and reporting as it pertains to the organisation’s activities and stakeholders has never been more relevant.
- The underlying principle of “Integrated Thinking” as well as the potential liability prescribed in the Act will require the S&E Committee to work closely with the board, other committees and executive management to fulfil its responsibility within an effective integrated reporting process.
- The governance of ethics is a lynchpin activity that impacts every matter within the S&E Committee’s sphere of oversight. The S&E Committee should therefore oversee all activities related to the management of corporate ethics, and should keep abreast of the company’s values, its ethics-related policies, its ethics risks and opportunities, and the steps taken to create and sustain an ethical organisational culture.
- Managing sustainability and the risks and opportunities inherent in a company’s impact on the physical and social environment is a fundamental component of modern business. By managing and reporting on sustainable risks and opportunities, companies create greater stakeholder value. This too falls within the S&E Committee’s sphere of responsibility.
- With black empowerment and transformation legislation becoming more and more of a business imperative, government is seeing B-BBEE as a key economic driver. Stakeholders and potential investors are assessing companies’ strength on their BEE credentials.



## AND WE RESPOND TO OUR CLIENTS BY PROVIDING:

ASSISTANCE	CONTACT
<ul style="list-style-type: none"> <li>• Training on corporate governance and clarifying the role and responsibilities of directors.</li> <li>• Defining the responsibilities and composition, mandate, powers and non-compliance issues of the S&amp;E Committee.</li> <li>• Providing the 'need to know' essentials of the committee terms of reference, monitoring guidelines reporting structure, membership and meetings, work plan and board schedule and the relationship of the S&amp;E Committee with other Board Committees.</li> <li>• Facilitating the evaluation of the Board, the S&amp;E Committee and individual directors which provides stakeholders with the assurance that performance of the committee is monitored and learning and development points are actioned to improve effectiveness.</li> </ul>	Ritesh Narsai from our Board Advisory Services Team
<ul style="list-style-type: none"> <li>• Training S&amp;E Committee members on the requirements of the Companies' Act and its regulations.</li> <li>• Highlighting compliance obligations and how these should be dealt with.</li> <li>• Assisting in establishing a legal requirements framework for the S&amp;E Committee.</li> <li>• Identifying and prioritising the company's unique regulatory universe using our regulatory database.</li> <li>• Monitoring compliance with the laws and regulations specified in the Companies Act regulations, to enable the S&amp;E Committee to discharge its monitoring and reporting responsibilities.</li> </ul>	Paul Daly from our Legal Services team and Kerry Jenkins from our Regulatory Compliance Team
<ul style="list-style-type: none"> <li>• Assessing the material impacts of the underlying matters within its mandate in the context of the risk and opportunities posed to the organisation.</li> <li>• Identifying and prioritising each company's unique risk universe using our industry and country databases; and</li> <li>• Highlighting existing and emerging risks and advising on how these should be dealt with. This includes monitoring existence and effectiveness of controls and mitigation plans, so that the S&amp;E Committee is able to discharge its monitoring and reporting responsibilities.</li> </ul>	Johan de la Rey from our Enterprise Risk Management Team
<ul style="list-style-type: none"> <li>• Building stakeholder engagement assessments and processes and defining relationships to proactively manage stakeholder's expectations and minimise reputational risk thereby making business relationships more effective.</li> <li>• Providing strategic risk and operational assessments, product risk assessment, site risk assessment and OHS risk assessments to identify the core sustainability risks and opportunities faced by the company.</li> <li>• Designing effective strategies around scenario planning, environmental, social return on investment and stakeholder engagement.</li> <li>• Reviewing the performance management process and assessing the company's ability to measure performance against its sustainability strategy.</li> <li>• Providing independent external assurance of a company's Sustainable Development report, Social and Labour Plan report and Carbon Disclosure Project Report.</li> <li>• Developing a sustainability reporting framework that focuses on key business issues.</li> </ul>	Neil Morris from our Climate Change and Sustainability team
<ul style="list-style-type: none"> <li>• Ensuring transparent reporting in the integrated report on assessment of material issues, strategic and other mitigating responses and performance against targets set by the organisation.</li> </ul>	Mark Hoffman from our Integrated Reporting team
<ul style="list-style-type: none"> <li>• Providing a strategic overview and assessment of an organisation's B-BBEE status and compliance to the Dti Codes of Good Practice or the relevant industry charters. This overview will highlight to the S&amp;E Committee the level of compliance, the possible opportunities and challenges, foreseeable regulatory changes and any potential risks relating to BEE.</li> </ul>	Boitumelo Ngutshane from our BEE Transactions team
<ul style="list-style-type: none"> <li>• Training on the ultimate purpose of ethics management.</li> <li>• Assisting the S&amp;E Committee with identifying the company specific initiatives associated with successful ethics management programmes.</li> <li>• Identifying company specific ethics data necessary to monitor the governance of ethics and the management of fraud, bribery and corruption.</li> </ul>	Schalk Engelbrecht from our Ethics Management team