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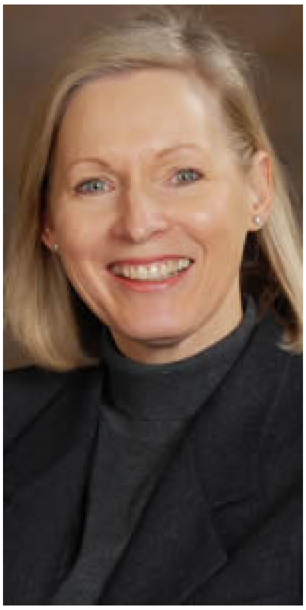
The new Companies Act calls on directors to rethink their ethics strategy

The new Companies Act came into effect this May. It now places much more responsibility on top management and holds directors liable for losses.



The Act was ushered in by Trade and Industry Minister Rob Davies, with the aim of reducing the red tape and cost of doing business in South Africa.

One of the legal ramifications of the Act is the requirement of all listed business, companies with over 750 on their public interest score (in two of the last five years) and state-owned companies to establish a social and ethics committee.

This committee is the equivalent of a Corporate Social Responsibility committee, as companies are now legally responsible for the positive impact of company activities on the environment, consumers, employees, communities, stakeholders and all members of the public.

No less than three directors or 'prescribed officers' (senior managers or executives) should be involved in the committee. At least one of them should be a non-executive director and must have been non-executive for the previous three financial years.

The new Act is in line with the recent move towards good corporate governance espoused by the King III Report. While King III provides recommendations which are not legally enforceable, the Companies Act is law.

Businesses now have within 12 months to comply with the Companies Act, so it is important for companies to understand their current ethical standing before they proceed.

King III states that, "The establishment and maintenance of an ethical corporate culture requires the governance of ethics, that is, the board should ensure the company has a well designed and properly implemented ethics management process."

The problem, however, is that large corporations lack the tools to enable them to properly monitor business ethics. If companies don't know where they stand, then how can they know which way is up?

Cynthia Schoeman (Pictured above), external lecturer at Wits Business School and former HR director at TWP Projects, heads up her own company, Ethics Monitoring & Management Services, an answer to this ethical dilemma.

It is focused on improving ethics in the workplace and building a critical mass of people who are committed to ethics.

"Ethics is the new fault line for businesses," says Schoeman. "It's unlike any other workplace challenge as failure cannot be corrected by simply cutting costs next quarter."

Schoeman employs a web-based survey, the Ethics Monitor, which is basically a measurement tool intended for organisations with employees of 100 or more who regard having a high ethical status as an important factor in mitigating risk.

"The results of the Ethics Monitor survey provide insight into the ethics of an entire business beyond what the CEO reflects to Board members," Schoeman continues.

The new Companies Act and the King III Report both point towards ethics as a central issue in business management. If ethics fail, the blame now falls on the shoulders of directors.

Businesses that do exercise high levels of ethics will enjoy greater investor confidence, customer loyalty, easier access to capital and will attract top talent… all contributing to competitive advantage.

Competitive advantage or not, the new Companies Act highlights a higher level of legal responsibility for directors and top management to make sure their companies are in line with the law. And now, ethical business is law.

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