CORPORATE GOVERNANCE: THE ETHICAL SHORTFALL WITHIN THE BUSINESS PRACTICE

ARISTIDIS KOTSIS

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Executive Summary

Corporate governance has become a heated topic of debate when meetings arise and new legislation is drafted. It is also a means to mould new ways of doing business as more and more businessmen are found to be committing irregularities in their actions. Fraud has become rife with over 30 000-fraud cases reported annually. Where will it end and how to curb this?

Within this study, a comparison is drawn between corporate governance and ethics. The interrelationship between the two is noted and compared. The differences are brought forward and similarities discussed.

The study tries to define ethics and corporate governance. It then moves on to establish which are the principles of corporate governance. This is followed by an evaluation of ethics and corporate governance. Finally, recommendations are made to make corporate governance more effective.

These are hard questions but ones, which need answering.

The study concerns itself with the study of corporate governance and ethics. Corporate governance is not merely a theoretical tool but one, which needs to be practiced. The question concerning the fact that ethics is synonymous to corporate governance is questioned and answered.

In question are the definitions of ethics and corporate governance. Each is defined but the realisation that there is more than one definition of each, which is widely used, is debated. Each definition brings its own problems but also proves that it is vital to the whole. Definitions are usually one-liners, which instil an author's point of view. To complement each definition further elaborance is made. Each of these further defining statements are discussed and compared to the definitions. A comparison is sought and the purpose of these elaborances is discussed.

The principles of corporate governance are documented and later discussed in detail. Comparisons with ethics are drawn and the principles are later discussed with practical examples to serve as guidelines and examples.

The driving principles of corporate governance and the King report are debated and transparency proves to be the driving factor over and above all other principles.

Within the study, it becomes apparent that corporate governance is only essential in big business. Small to medium business is left out. Why should this be? Another provocative question reviewed is the question of whether corporate governance is essential or not. Why all this fuss over a theoretical report.

However, to discuss corporate governance without ethics is like using only half measures in a teacup. Defining ethics is easy but the real study comes forth when the true essence of what is ethics is debated. Morality is a factor but the inner soul's consciousness of what is right or wrong is discussed. The laws of human nature serve all. The scales can be tipped either way if the price is perceived high enough.

The rights and obligations of ethics are questioned together with the director's responsibilities in determining the ethical climate in business. Practical examples are reviewed and the theory is integrated within these examples. Examples of bribery, paying of suppliers on time, ethical guidelines and a code of ethics are reviewed and practical examples reconciled.

Trust is a key factor to ethics. Openness, competence, integrity, benevolence and reputation are discussed. These are key principles just like those of corporate governance.

Within the chapters that follow the definitions and principles of both ethics and corporate governance are compared and discussed. So are the ethical guidelines and weaknesses of governance.

Remedies and solutions to corporate governance and ethics are discussed. Finally, the question of the fallacy behind the myth is brought to light.

The conclusion is short but brigs about various notions, which have been discussed in the study.

Each section has its own points of reference but forms part of the whole. Hopefully the questions under review are answered satisfactorily and people have learned something from this study.

Ethics is a difficult subject to discuss because it is either present within a person or it is not. There are no half measures. People are perceived to have it without question or they are simply ignored. The problem with big business today is that their directors are becoming more scrupulous and unethical in doing business. They use any means to obtain the mighty dollar. Their sole purpose is self-centeredness and not stakeholder value. Everyone looks after themselves and not the company. Somewhere along the line, the bubble will burst and media showdowns such as the Worldcoms and Leisurenet incidents raise their dirty heads. People do not like these media spectacles and get angry when they read of how the crimes were committed but these are the few that make it to the media. Many, in the region of 30 000 per annum do not get any mention. Immoral acts of wrongdoing are the number one crime business is being faced with today. There appears to be no end in sight. Practical examples of these failures are documented but the moral fibre of these people is not changed. They can start new companies and perform their acts without worries. They don’t have to change their modes of thought. They can do as they please. It is these issues, which are discussed in the chapter that follow. It is these acts, which find their way on the paper printed below.

Business is difficult enough without having these narrow-minded people take over companies, build them up to fortune 500 companies and then destroy them with greed or uncaring manners. Stakeholders and shareholders are the losers and not the dirty culprits of deception.

Below is a brief review of corporate governance and ethics. Below is an evaluation of the two with practical examples of corporate wrongdoing. Remedies are discussed but they are mere tools of theory. Practical solutions should be the order of the day.

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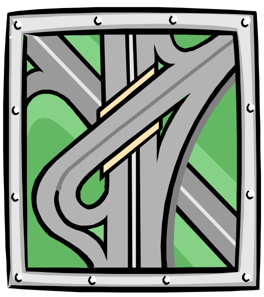
Chapter 1

Introduction



1.1 Introduction

Corporate Governance has become a heated topic of discussion within the realms of the business community. Linked to ethical behaviour the subject has become a matter of fierce and academic debate.

King (1994:7) states '*that critics, disturbed by prominent examples of corporate wrong doing, concerned about high executive remuneration, and worried about 'short–termism', have routinely prescribed better corporate governance as the cure*.'

The introductory page of the website for Nathan & Friedland (2004), informs that, '*corporate governance was formed to address the many practical issues facing corporations in South Africa associated with the application of an increasingly complex legislative and regulatory environment*'. They continue by informing that South African corporations are finding themselves with demands for social equity and integrity. Added to this is the increasing demand for transparency.

Steve Harcourt Cooke, forensic specialist, advised in a personal interview in 2003/04/15, that corporate governance is a mechanism through which boards and directors are able to direct, monitor and supervise the conduct and operation of the corporation and its management in a manner that ensures appropriate levels of authority, accountability, stewardship, leadership, direction and control. It is this type of stewardship, transparency and integrity which differentiates good leadership from the bad. Corporate governance is driven by people not by its own means. People are what make it successful!

Garratt (2000) informs that mankind does not seem to be advancing very far. Mankind seems to be more capable of gross injustices than ever before. Bad news is heard on all sides and most people would agree that the world is in "a bit of a mess".

People are devices to good and evil and their perception thereof is what makes one act in a positive (good) or negative (evil) manner. Most humans are born 'good', but experiences and temptations motivate to question their humanity. The choice to choose is what describes a man on his deathbed. Had he lived a good life and chosen well or was he disliked for his bad choices. Unethical behaviour is not respected.

As Harcourt Cooke (2004) says, *'Theory is a tool notarised by highly intellectual theorists to serve as a guide for those who wish to follow it'*. He continues stating that it is merely not enough to introduce a report such as The King Report on Corporate Governance (King:1994), setting out various rules, regulations and findings, expecting companies to follow, if these rules and regulations are not legally enforceable within companies or legally prosecutable by law. The mere suggestion that the report will inform is not good enough to promulgate action of enforcement or prosecution if not adhered to. Companies can sign on to be corporate governant but do not have to implement or follow the report. There is no monitoring body, no evaluation unit or sanction for violation. The executives, who wish to absorb corporate governance within their companies, must first take ethical behaviour to heart and later implement, manage, evaluate and refine corporate governance to fulfil their theoretical purpose. Leaders and employees alike, have to find it within themselves to become ethical and follow the principles of good corporate governance. It therefore seems that without this inner soul compliance, corporate governance is 'DOOMED TO FAIL.' All the theory will be no better than the paper it is written on. It is this finding, which is making the belief that doing business ethically is non-existent. The 17 principles of corporate governance must be absorbed within the essence of the culture of the companies to become effective. This is not being done! Corporate governance, which directly relates to ethical behaviour, is being adopted with criticism and relative slowness.

The authors daily exposure to forensic audits has produced a reality that executives purely choose to ignore ethical behaviour when it comes to business transactions. The actuality is that most executives are aware of corporate governance but find it too expensive and time consuming to implement. They therefore choose not to instil the basics of corporate governance within the companies they manage or decide to implement them very slowly. Even when corporate governance is implemented, the fundamentals of doing business ethically are being ignored. Self-gain, greed and various other factors far precede the moral accountability of running the company to their best ability for all stakeholders. The evidence is that unethical behaviour is not legally prosecutable and corporate governance is not an act, which is lawfully enforceable. It is purely a report of procedures and suggested processes. If an executive acts unethically, he is never prosecuted. In most instances, meetings were held between the companies and the perpetrators and matters were resolved through dismissal without recourse. The losers were always the stakeholders and shareholders who placed reliance and trust in those offenders.

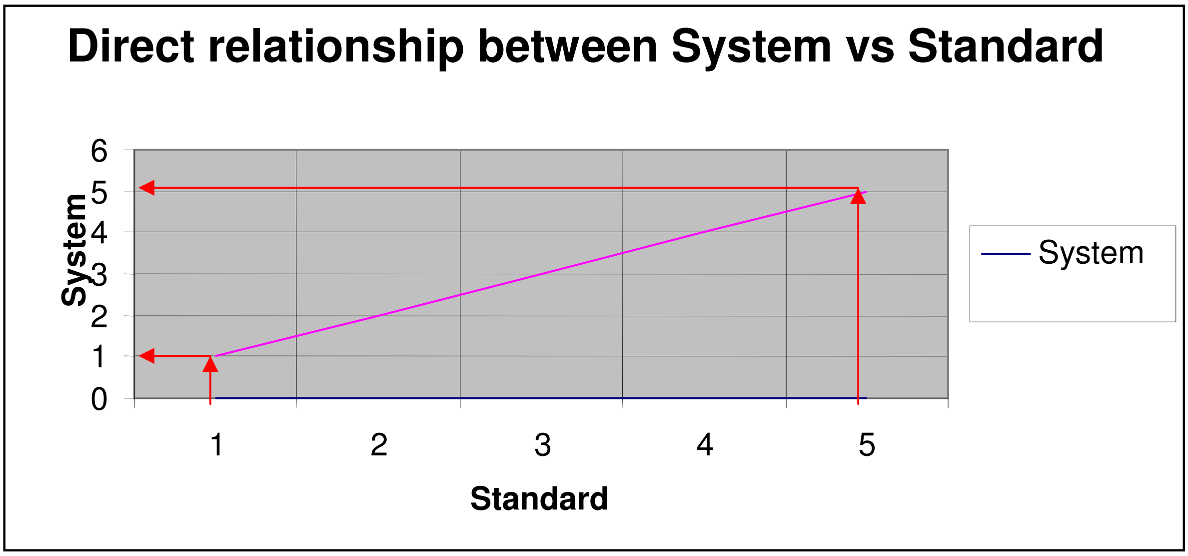
1.2 Problem statement - What are we researching?

Corporate governance seeks to instil various principles within the business community to develop a sense of trust and accountability. This trust and accountability forms part of the characteristic evolution better known as 'ethics'. Ethics and corporate governance are synonymous with each other. The one works hand in hand with the other and they should not be seen to be different. Corporate governance describes the system / principles by which companies are directed while ethics relates to the standards by which they adhere to.

Further study within the next two chapters will reveal that people within companies devise **'systems of morality'** by which they act upon, and this is **'corporate governance'**. The **'level / standard'** by which they do this is **'ethics'**. The 'system' (corporate governance) cannot work without the 'standard' (ethics). A low 'standard' evolves into a shallow 'system' and visa versa. This direct relation is explained with the use of the two graphs as reflected below. (Table 1 & 2). The author for reference purposes has created these two graphs.

Figure 1 reflects the theoretical effect by which the 'standard' is directly related to the 'system' i.e. ethics to corporate governance. '1' depicts a bad 'system' or 'standard' and '5' and excellent 'standard' or 'system'. If the 'standard' is weak, the 'system' is too.

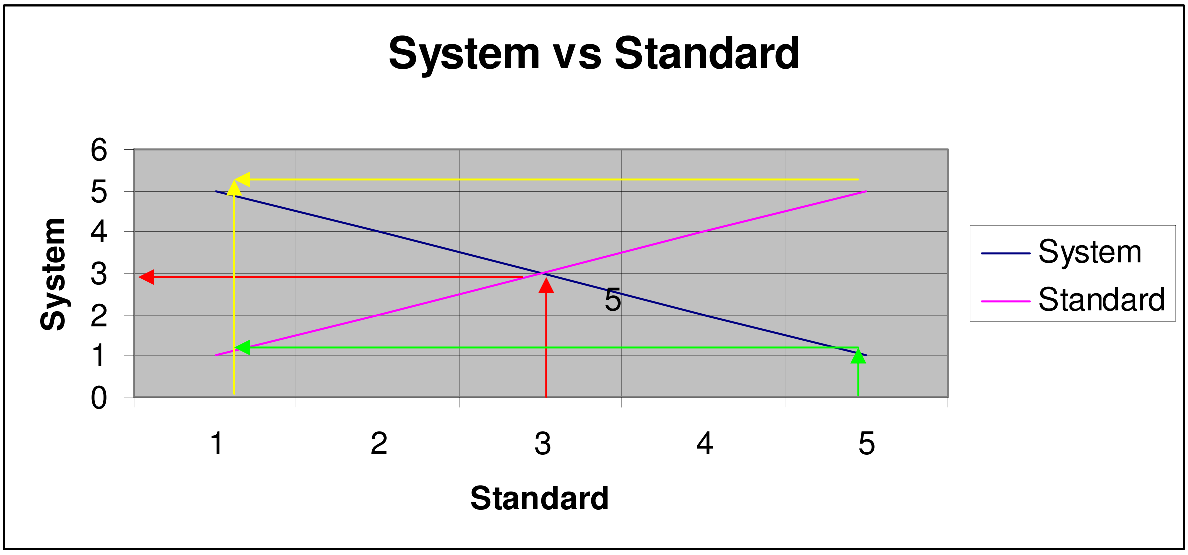
Figure 1: The direct relationship between Systems (corporate governance) and Standards (ethics) – Source (Author)



Theoretically, a standard of five would be ideal. The system of corporate governance would be excellent and so would the standard of ethics. Unfortunately, in practice this is not the case, as underhanded dealings, far out way, the honest transactions of the sincere few. Greed has become the reality. Constantly being mediatised are those leaders most employees worship, as being villains of unethical behaviour.

This defies the theory and results in an imbalance. A high 'standard' (5) (Yellow) can result in a low 'system' (1) (Green) and visa versa. The reasons of non-conformity are vast and each perpetrator has his / her own tale. Most though are because of greed and self-gain. If the graph is analysed, corporate governance could be implemented but ethics could be lacking.

Figure 2: The imbalance of systems vs standards in the practice – Source (Author)



The need to perform this research proposal on the shortfalls of practical ethical behaviour in corporate governance, arises from the fact that most business executives are practically disregarding the frame work set out by M.E. King SQ in his report, ‘The King Report on Corporate Governance’ as well as any other requirements by legislation and morality. A complete lack of respect and total ignorance to the fact that the report is a means of performing in the best interest of all ‘stakeholders’ and not for the ‘self being’ is being eluded. Daily newspaper articles depict unscrupulous business antics that shock the underlying community. The very essence of honesty in doing business is being withered. In the past, deals were made with handshakes, now business is a competitive elusion of who will benefit from the other by which ever means possible, with complete disrespect to all stakeholders. ‘Unity builds strength’, but when senior managers act selfishly only enriching themselves, the ethical debate becomes a matter of contention.

The problem statement can be defined as follows:

‘Corporate governance requests a mutual understanding that all executives who control but also transact with companies will act in a manner that will not be unbecoming or unethical. Many though prefer to act in self-greed and not for the benefit of the company. It is therefore the exposure of why business executives do not act ethically, that is being researched’.

The ethical failure by executives in the practice is the main focus of this research proposal and no other part of the King Report will be questioned or discussed. Practical examples of misconduct have been highlighted to further elaborate on the shortfalls of ethical behaviour within the corporate governance context. Various remedies have also been suggested, which should better enforce and police those who seek to abuse and undermine the business ethics of the future.

1.3 Goals and objectives

This study is dealing with a vast subject matter under fierce academic review. Many business representatives are constantly looking at corporate governance and ethics to solve their business problems. Corporate wrongdoing has become a daily media spectacle with no end in sight.

This study cannot, therefore, do justice to all the points of views reflected. It however attempts, to summarize the more prominent points to allow some guidance in current thinking on ethical awareness, compliance and instruction, and its effect on the general business world.

The objective is to determine why various members of the business community have not been able to act ethically within the realms of corporate governance by evaluating corporate governance and ethics to identify these unethical behaviours.

The secondary objectives seek to:

1. Define corporate governance and evaluate the principles of corporate governance,
2. Defining ethics and study the study the guidelines, rights and obligations of ethical behaviour,
3. Establish if ethics is being practiced practically.

4. Compare and evaluate corporate governance and ethics,
5. Identify practical examples of unethical wrongdoing in both corporate governance and ethic.
6. Provide recommendations on how corporate governance can become more successful practically.

All the above-mentioned objectives have been completely studied and explained in detail.

1.4 Demarcation and scope of study

A restriction to the volume of information available was inevitable.

Specific sectors of the business community such as the governmental sectors were omitted. Only the private practice was studied. The reason for this omission was to avoid political debate. Only individuals within the civil sphere have been discussed.

Small businesses have been excluded from the definition of corporate governance and therefore excluded from this study. There is not enough articles and media information to enable this study to gather enough information on small businesses. Large corporations seem to have all the media attention. Many small companies are managed and employed by the owners themselves. No segregation of duties takes place, as in the case of large corporations, thereby making corporate governance less risky.

A specific part of the King Report was studied i.e. the ethical part and no other.

International examples have also been included, but the majority of examples are South African.

1.5 Key Concepts

The following key concepts have been defined for convenience, which are utilised throughout remaining chapters are:

- **Economic activity** – '*Is any situation where people voluntarily enter into transactions of economic exchange for goods or services.'* (Rossouw & Van Vuuren. 2004: 2).

- **Business ethics** – 'I*s about identifying and implementing standards of conduct that will ensure that, at a minimum level, business does not detrimentally impact on the interest of the stakeholders.'* (Rossouw & Van Vuuren. 2004: 4).

- **Corporate governance** – '*The system by which companies are directed and controlled'* (Smerton, 1998:1).

- **Ethical business conduct** – '*A means of which enterprise stakeholders - most notably its staff - adhere to defined standards in all their business decisions and actions.'* (King, 2001:122).

- **Integrity** – '*A person is regarded to as someone with integrity when s/he consistently adheres to a set of ethical standards.'* (Rossouw & Van Vuuren. 2004: 6)**.**

- **Fraud –** is only committed if deception results in gaining an advantage over, or inducing a loss to the other party in the transaction. Without the element of gain or loss, one could not consider this case of fraud. (Artlidge & Party, 1998: 21-22, Van Heerden, 1991: 30-32, Snyman, 1999: 535-541)

1.6 Content of study - Chapters 2 to 6

Each chapter is outlined as follows:

Chapter 2 - Defining corporate governance and study of the principles thereof.

To enable the study to commence, a clear understanding of corporate governance must be established. Chapter 2 defines corporate governance. It also studies what the principles of corporate governance are. These principles are the 'blue print' to corporate governance and the paucity of these principles forms the basis for the deficit of practical implementation, which is discussed throughout the remaining chapters.

Chapter 3 - Ethical guidelines, rights and obligations

Corporate governance is merely a tool, which not only brings to light the required standing for good business ethics but also the essence of good business behaviour. The do's and don'ts of ethical behaviour are explained. However, what is corporate governance without ethics? Put on a scale, either side must not out way the other.

It is important that all companies act with integrity and with an ethical backbone. Chapter 3 studies the ethical guidelines, rights and obligations set forward in the theory but also reflects the shortfalls thereof in the business community. Practical examples of these shortfalls are presented and how they affect the common person is discussed. It also studies the question of what is ethics and where it stems from.

Chapter 4 - Study of corporate governance and ethics

The theory of chapters two and three are evaluated and compared. A comparison between the principles within corporate governance is compared to the rights and obligations of ethical behaviour.

Each of the objectives of this study is then formulated within the findings of the comparisons to form a conclusion.

Chapter 5 - Remedies and solutions

A summary of the findings is made and a conclusion formulated. Recommendations for future research are also made.

Chapter 6 - Conclusion

The conclusion is made.

Chapter 2

Defining corporate governance and study of the principles thereof

2.1 Looking ahead - Introduction

Before one can get a clear understanding of the complex relationship between ethics and corporate governance, one has to get an understanding of what is corporate governance and what is ethics.

This chapter deals with corporate governance and the next with ethics.

Chapter 2 defines corporate governance. The study basis itself on the definition by King in the King Report, and then further attempts to find some balance by studying further definitions identified in other publications and commentaries. Within the review, it will become apparent that there is no one unified definition internationally to define corporate governance and this is the start of the confusion, which is eminent in the business sector. Four definitions are studied, each with their own meaning. Attributed similarities are attempted to be found and discussed in further detail.

The chapter then continues by studying the principles of corporate governance. These principles structure the foundation of what is expected from leaders and employees alike to act with ethical intent. Each principle is described and studied to obtain a better understanding thereof.

Study is also made of when corporate governance is required. It is important to understand when it is essential to act in a manner required to be corporate governant.

2.2 Defining corporate governance and its principles

2.2.1 Defining

After studying both local and international publications, it has become evident that different countries have different interpretations as to what constitutes corporate governance. There is no one formal definition used throughout the world. As reflected below, there are numerous interpretations of what constitutes corporate governance. The use of the word ‘constitutes’ is not lightly used. A constitution in any company sets a predefined set of rules, which must be adhered to. If these rules are not completely defined or understood, their misinterpretation will / could lead to serious and costly errors.

Smerton (Smerton, 1998:1), defines corporate governance as, ‘*The system by which companies are directed and controlled’*.

This definition is rather vague and even worse, very generalised. It refers to a system, which is not clearly defined nor elaborated upon. It is difficult to truly understand the meaning of directed and controlled. The reference to directed does not clearly define the use of ethical or responsible behaviour. Directed in the ways of doing harm is not understood. Controlled has no substance as the format of controlling is only as good as the payment of committees and professional fees. The companies, which have the funds i.e. the larger enterprises, will be controlled effectively as they have the resources to administer control. Companies, which really need to be controlled, will not be dealt with, as they will escape unnoticed through the self-controlling system they have devised.

The system by which companies are governed is understood to be a framework of effective accountability to parties who have an interest in the company. It may be regarded as the process of controlling management (Sheritan & Kendall (1992:146) and balancing the interest of all stakeholders to ensure responsible behaviour by the company with the objective of achieving the maximum level of efficiency and profitability for the company.

What is understood is that it is expected that the board act honestly, in the best interest of the corporation. This is a contradiction in times of hostility and corporate survival. All ethical antics are disregarded in times of survival (Harcourt Cooke (2004).

Corporate governance is a system, but it is also a controlled measure to prevent various irregularities. These irregularities are directly affected by the nature of the corporation i.e. the structure of the company, its ultimate goals and the company's concerns. (De Jager (2000:16) De Jager continues to state that, '*No single system of corporate governance can be identified as universally dominant. Accordingly, satisfactory solutions to the current problem of corporate governance cannot be created from the abstract formalisms or idealised models of the corporation but should be designed to suit peculiar market structures, legal systems, traditions and cultural and societal values. Consequently, corporate governance may vary by country and sector and even for the same corporation over time.*' How is it then that the controlled system can be defined? It is a work in progress and should be seen as such. It should be constantly changing to the needs of the abovementioned values. It is therefore a system of control. A system by which control is undertaken by all stakeholders and not only shareholders and directors, to govern ethically through the changes required by those stakeholders.

To add further insult to directors, Sir Adrian Cadbury (King Committee on Corporate Governance.2001:8) defines corporate governance as: '*Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals ... The aim is to align as nearly as possible the interest of individuals, corporations and society.*'

This definition is in no way in line with the previous one defined by King. This definition has more relevance and attributes to common practice of society at large and not controlled like the King definition. Populace in general are moral and want what is best for their future generations. The balance between the economic wellbeing and social goals of companies is under close study by this populace. It is these pressures, which has forced the awareness of corporate governance. King (King (2002) explained, that while in San Francisco he noted a banner on the San Francisco bridge reading, "Down with the corporations". He continued clarifying, that if corporations continued on their current track of blindly enriching themselves at the expense of others, society, the instigators of social pressures would effectively down the corporations through various methods including disrepute.

What is important to note is that there exists a difference between the Cadbury and King definitions. One affects the social pressures while the other the systems and controls. Both are correct but vary in context. These differences can create confusion and the difference becomes apparent in the ethical corporate governance between different countries. Can these differences become unified and a means of conformity reached? Maybe through time and through a unified international Corporate

Governance Committee this could be possible. The reason these two definitions have been isolated is that two of the highest recognised authorities in corporate governance to date have defined these definitions. It is a well-known fact that King has become the authority internationally on corporate governance but Cadbury started it all. Yet both have different views on the subject.

Further explanation is required. It is important to determine why there is such a lack of understanding in the economy of corporate governance. How can a director understand what is required of him, if he cannot simply understand the meaning!

Sheridan and Kendall (Sheridan & Kendall, 1992:1) define but explain further. They describe good corporate governance as:

"*A system of structuring, controlling and operating a company to achieve the following*:

- *Fulfilling the long-term strategic goals of the owners, which after survival may consist of building shareholders value or establishing a dominant market share*
- *Consider and care for the interest of existing, past and future employees*
- *Take account the needs of the environment and the local community both in terms of physical effects and interaction with the local population*
- *Maintain excellent relationships with customers and suppliers*
- *Comply with all legal and regulatory requirements."*

The aspects of the abovementioned definition are those of conformity to all stakeholders related to the company. This definition is more defined than and not as abstract as the King one. They both are basing their definitions on a method of control but Sheridan & Kendal are relating theirs to aspects of meeting the needs of various related parties. This is important for any company, as the needs of all stakeholders should be met to sustain the development of that company. Negative aspects only hinder the performance of the social upliftment and the value established within the perception of shareholding.

To add to the abovementioned, but without defining, the Commonwealth (Commonwealth, Not dated:1) refers to corporate governance as being essentially about leadership. This is in line with King and his definition.

The Commonwealth elaborates using the following words to make their point. They state that corporate governance is: (Commonwealth, Not dated:1)

- *'Leadership for efficiency;*
- *Leadership for probity;*
- *Leadership for responsibility, and*
- *Leadership which is transparent and which is accountable.'*

In short, no person will trust a corporation if is managers are known, or suspected, of not acting with integrity, transparency, good morals and trust; misusing funds for improper purposes and corrupting the economic system. It is therefore about leadership and the values instilled within them. Those values are about honesty, integrity and ethics. All of the abovementioned have merely added their point of view to defining corporate governance. They are not specific but attach to the global expansion of the definition. These merely embrace to the confusion of obtaining one unified definition globally. Study of the abovementioned definitions or rather statements it becomes apparent that somehow they tend to miss the underlying values of corporate governance. These values simply spell one word, “ETHICS.”

Mandy De Waal (De Waal,2002:56) defines corporate governance as: *“The structures, systems and values by which organisations take decisions in pursuing their objectives.”*

She explains this as follows: ‘*Good corporate governance is when those decisions are taken transparently with the appropriate built-in accountabilities, and business leadership is held responsible at various levels to the constituents involved or affected by that corporation’.*

What is important to note in the abovementioned definition is the use of the terms, systems and values. Add these terms to the definition of King a comfort of similarity is starting to form. Not much, but the idea is there. The striking word is values. Values have a unique way of expressing a manner of conformity to the highest level, be it moral or spiritual. This is what is expected of all leaders of companies.

In the context of things, this would be the closest definition to being accurate. Corporate governance is about systems and values, which are instilled in directors to act with integrity and morality.

To define corporate governance in one sentence without using other explanatory tools is difficult. The author though has made an attempt.

Simply stated:

‘Corporate governance is the implementation of a set of rules and regulations, which will govern the company in a manner which is ethical, honest and instils the principles of corporate governance in their fullest. It is the regulatory monitoring of companies and its leaders by all stakeholders involved within those companies, to warrant ethical behaviour and good conduct, thereby ensuring the well-being of all those stakeholders.’

Definitions are tools for understanding a context, but the practical causes and effects are discussed throughout the study. Do people understand these definitions? This is a question, which was debated mentally for a long time.

In summary, the concepts of directed, controlled, social and economic goals, stakeholder conformity, leadership and values all relate to integrity, morality, accountability and ethics. These values are the important groundwork to becoming better leaders.

2.2.2 The principles of Corporate Governance

Defining a matter is usually a restrictive measure of making sense of a broader subject. Anyone who wishes to comply with corporate governance, should be seen to incorporate the under mentioned principles.

Why are these principles important? Well, the basis of all subject matter is its foundation. These principles, together with the definition, set the foundation of the tree, which will become the subject matter in the chapters to follow.

The following 18 principles have been combined from two different sources. The principles are: (Fenner, 2002: 12 and De Waal, 2002:62):

- **Loyalty** - Total promise to the stakeholders in all aspects of business.
- **Morality** – All aspects of business should be dealt within an honourable and just manner.
- **Integrity** - An act of total honesty in all respects. *'Honesty and integrity are the most important issues*' - MetAm's Dr. Chris Visser.
- **Honour** – Employees should act with nobility towards their employer.
- **Communication** - Complete communication to all related channels including stakeholders at all times.
- **Discipline -** This refers to the commitment of senior management to adhere to company policies and procedures. "85% have at some stage overridden controls to perpetrate fraud."
- **Transparency -** When directors provide information to outsiders, they will be held accountable for its accuracy i.e. ensuring that all decisions, particularly strategic decisions, are open to scrutiny by stakeholders, particularly shareholders.
- **Independence -** Possible conflicts of interest. Non executive directors should definitely be independent and have influence on issues of strategy, key positions and the way the company conducts itself.
- **Accountability -** Management will be accountable to stakeholders for their actions. '*With all the corporate failures, people who are charged with running a business on behalf of others are not held responsible for what they are doing'* - Guy Brazier of Tip Offs Anonymous.
- **Responsibility -** Because management is responsible for the business, they are held accountable for their actions and behavior. Step out of line and you will be dealt with. '*A person with no previous contacts with a company and who has no ties or loyalties with the company. This type of person can ask hard questions regarding the company, quality and how risks are managed*' - Ernest & Young's Garth Caplin.
- **Fairness -** Acting to the detriment of shareholders by entering into lucrative contracts with friends and family, without following company policies and procedures, won't be accepted.
- **Social Responsibility -** Managers and directors should be aware that they can't only watch the bottom line. The environment,

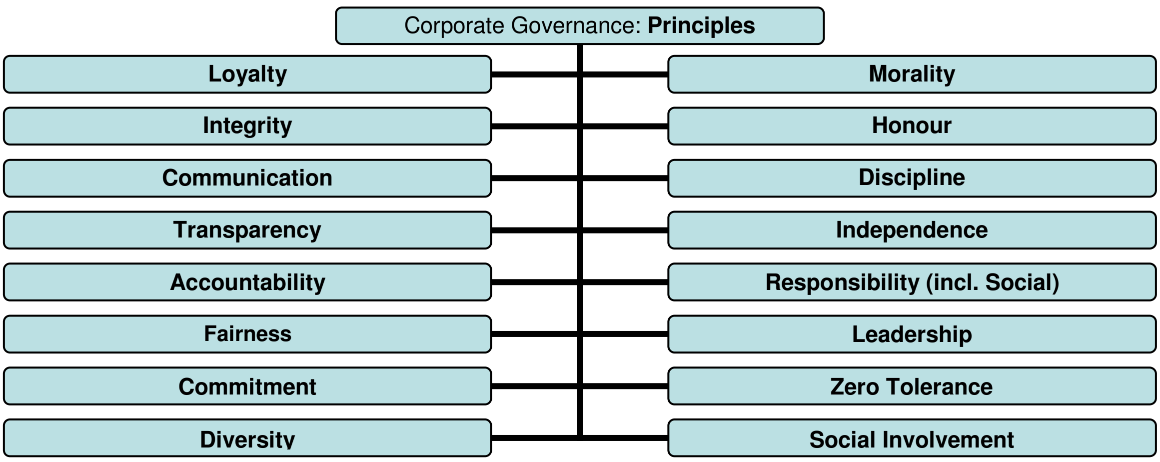
unfair discrimination practices, empowerment related issues are of relevance.

- **Leadership** - Always be aware of a CEO who is particularly strong. Corporate governance is more an attitude of mind than a set of rules to be complied with. Corporate governance will not work where a manager is more interested in power than performance. '*Good governance requires a regular assessment of leadership's performance*' - Ernest & Young Garth Coppin.
- **Commitment** - Leaders in the organisation must walk the talk. Honesty and transparency must be principles in communications with all stakeholders, employees and the community. Corruption must never be tolerated.
- **Zero Tolerance** – People will always find a way around things. '*Get the small things right and then you can build from there*' - Complex Africa CEO Peter Watt.
- **Diversity** – '*What is right for one company might be wrong for another*' - Prof Nick Segal, UCT, Graduate School of Business.
- **Social Involvement** – '*If business comes with no moral sympathy or honourable code of behaviour, God help us all because it is the most empowered, wealthiest and important institution on the planet*' - Body Shop founder Anita Roddick.

The message to management based on the abovementioned principles is clear: Avoid situations that compromise independence and accountability; walk the talk; be fair and socially responsible, and most importantly be ethical in all you do, then and only then it might be just possible, your actions will help to improve public perceptions of poor governance in the corporate world.

The common ground between all the above-mentioned principles is that strategic goals and daily tasks of the corporation must be planned and performed in such a manner that they are deemed righteous, ethical and transparent and not with the intent to mislead. Only good and not bad actions are permissible. For misbehaving, directors must receive a severe punishment.

Figure 2.1 : Principles of Corporate Governance



2.2.3 Driving principles of governance

Good corporate governance is, '*when decisions are taken transparently with business leadership being held responsible at various levels to the constituents involved or affected by that corporation.*' (De Wall, 2002:62). Directors must be free to drive their companies forward, but exercise that freedom within the framework of effective acceptability.

Overall, the purpose of King II is not solely to wield a big stick, but rather to ensure that transparency and appropriate governance are encouraged and reinforced. However, the King report is merely a tool that has no substance if not adopted and controlled by those who wish to partake in it. Corporate governance is a mental state of transition to acting ethically in all respects of business and life. For those who do not adopt this method of transition there is no recourse. The only course is the criminal and civil legal systems, which are, not only time consuming but also tedious, unfair and sometimes like playing roulette, argumentative for not acting fairly.

(De Waal, 2002: 62) De Waal notes that committee chair, Mervyn King, stated that conforming to governance standards would constrain management. Notwithstanding this constraint, it is important for companies to continue performing while conforming. The trick behind sustainable success, according to King, is finding the correct balance between this conformance and performance. This very notion of conformance has been adopted by Mr. Brad Beira, CEO of Lipton Griffin International CC (LGI) sole distributors of Motorola handsets in South Africa. His philosophy in turning a company of non conformance to one of conformance is to adopt various attitudes of governance in all levels of business within the company thereby creating a culture of performance. He has been successful with this implementation and LGI appear to be leaders in the running to corporate governance transition.

Regulation is good but should be moderately or rather carefully imposed. If the system of corporate governance is made too onerous, and too much emphasis is placed on controls, regulation may well stifle enterprise. The fact is that good corporate governance practices are now becoming a necessity for all business enterprises, and are no longer restricted to the activities of public – listed corporations in advanced industrial economies.

It is this very notion that does not necessarily go against business strategy but works hand in hand with it. It must not be assumed that corporate governance is a watchdog over governors but rather a tool to be used to advance business. Nobody wants to deal with a company whose directors have a negative stigma attached to them.

The question is, should this watchdog syndrome not be imposed on those who fail to understand the necessity of good corporate governance? The driving force of good governance should not only be the abovementioned but also the educational transition into believing that governance is essential and necessitates current transformation.

2.3 When is corporate governance essential?

Corporate governance is essential within the following circumstances ((King, 1994:1):

*‘**Firstly** the importance of corporate governance is essentially only relevant where there is a division between the owners of the equity and the directors of the business. With an “independent” company the owner of the equity and the directors are effectively merged. As soon as the owner of capital is dependent on directors to control the business or the directors are dependant on another person to finance the company, a good system of corporate governance is imperative.*

***Secondly** the recommendations of the King Committee are directed at all companies (“the effected corporation”) listed on the main board of the Johannesburg Stock Exchange, large public entities as defined in the Public Entities Act, banks, financial and insurance entities as defined in the various Financial Services Acts, large unlisted dependent companies, large quasi – state entities such as control boards and cooperatives.’*

The problem with the abovementioned statements is that no reference is made to small, medium (SMME) and large enterprises who are not listed on the Stock Exchange or are not big enough to fall in the definition of large dependent companies. Ethical behaviour should be respected and practiced by all business members. No one should be left out. Not even SMME’s.

Is it not essential that all companies, whether they are listed or not, act in an ethical manner, without transcending and / or contravening moral laws. Why should corporate governance only be limited to listed companies? Everyone has the right to corporate governance. If not by the shareholders, then by the stakeholders!

The abovementioned circumstances should not limit the scope of corporate governance but should be seen by stakeholders as a guide. Through lateral thinking, all circumstances can be made applicable.

2.4 Is corporate governance essential

Is corporate governance necessary? Is a system of watchdogs to govern corporations necessary? The answer is yes! The number of cases that appear in court every year is proof of this. Strings of big listed companies have run into trouble morally and ethically. Fraud and liquidations under auspicious circumstances has become rife since the year 2000. Without a doubt, there has to be some sort of governance on decision makers. Companies, which have made the headlines recently include LeisureNet, Transnet, SAA, Macmed, Regal, Enron, Parmalat, Xerox and Worldcom to mention but a few. These were listed companies with reputable backgrounds, but if these companies are anything to go by, they have simply proven the stench of deception and rot which lies within big business. Business ethics just fell by the way side as the roots of all evils took over: - ‘Greed’ makes deception and fraud all that sweeter. Directors and shareholders don’t want to loose all they have achieved. They want it all for themselves even if it means poor pensioners loosing their life's savings. Steve Harcourt-Cooke, a forensic accountant with Computer Forensic Services CC, has worked on hundreds of fraud cases involving unethical behaviour. This is proof that corporate governance is not a reality yet.

According to the Commonwealth Association for Corporate Governance, corporate governance is becoming a factor to be reckoned with. With the globalisation of the market place, traditional dimensions of corporate governance defined within local laws, regulations and national priorities are becoming increasingly challenged by circumstances and events having an international impact. Simply stated, as the World becomes smaller and business becomes more global, a set of internationally accepted guidelines to business needs to be adopted (Commonwealth, Not dated:1)

Some of these factors are:

- *'Institutional investors are insisting on high standards of corporate governance in companies in which they invest.*
- *Public attention through high profile corporate scandals and collapses has forced governments, regulators and boards of corporations to carefully reconsider fundamental issues of corporate governance as essential for public economic interest.*
- *Experiences of public sector reform and privatisation in many countries have set demands on state owned enterprises and government agencies to address standards of integrity expected of the public service.*
- *Other interesting developments in corporate governance include the rise of "ethical investors" requiring corporations to pay increasing attention to the social role of business, notably in the areas of environment, health and safety, ethnic and communal relations. More and more corporations are adopting social auditing standards in dealing with such matters as the ethical sourcing of products from developing countries and the treatment of communities in which they operate.'*

This globalisation factor become prevalent with the "Summit on Social Development" held in Sandton, South Africa in 2002. Country leaders and businessmen are striving to fundamentally develop one unified agreement on various issues affecting the world and business. This can be seen as a fundamental step towards a unified governance.

The fact is that good corporate governance practices are now becoming a necessity for every country and business enterprise, and are no longer restricted to the activities of public listed corporations in advanced industrial economies.

It is this very notion that does not necessarily go against business strategy but works hand in hand with it. Corporate governance is not a watchdog but rather a tool to advance business. Executives need to understand this and believe within themselves that good corporate governance regulations within their enterprises will result in higher earnings and investor confidence thereby higher share prices. Judge M. King stated at a breakfast meeting in May 2002, that companies who were governed properly had a 20% higher share price than those in the same sectors, which were not effectively governed. (Judge M. King, 2002).

2.5 Conclusion

Before one can study any subject, the background theory needs to be established. Chapter 2 makes this possible by defining corporate governance as well as establishing its principles.

Corporate governance was defined as the regulatory monitoring of companies by all stakeholders involved within those companies, to warrant ethical behaviour and good procedures, thereby ensuring the well-being of all those stakeholders.

However, this definition merely set the foundation for further explanations to be illustrated.

What could be established is that no one international definition has been established throughout the business world? Many definitions have been discussed and illustrated within chapter 2, but no one has captured the international business solely, no one has set the stage whereby they all can conform to. The various definitions illustrated in this chapter were fundamentally different but the various key elements were identified. They were directed, controlled, social and economic goals, stakeholder conformity, leadership and values. These concepts all related to integrity, morality, accountability and ethics.

What is important to note is that the definition goes hand in hand with the principles set out below! Corporate governance cannot act without these. They are –

Discipline, Transparency, Independence, Accountability, Responsibility, Fairness and Social Responsibility.

These can be seen to be tools that aid the broader sense of corporate governance. A line, which defines, cannot merely capture the essence of the meaning. It is this which has forced the principles to light. But are these principles being taken to heart by business. This remains to be seen in the next few chapters.

Noted was the fact that corporate governance is essentially about the internal strategic leadership of the corporation in a manner, which benefits all its stakeholders while achieving the corporation’s objectives. Corporate governance is purely an internal corporate control mechanism and not a quick fix system to society or economies. Corporate governance is therefore an effort to ensure accountability, responsibility and a set of principles, which should be incorporated into every part of the strategic direction of the organisation.

In the broadest sense, an effective corporate governance system should provide a mechanism to regulate the duties and responsibilities of directors, to restrain them from abuse of power, ensuring they act in the best interest of the company and to be aware of the impact of their decisions on the business, community and environment.

The ethics of corporate governance filters from the top of the company to the lowest tiers therein. If the core is rotten so shall the rest of the apple. It does not help merely to force others to act in a manner becoming of business when the leadership is not prepared to do the same.

Being a watchdog of business was never the intention of corporate governance. It was emphasised that corporate governance should not go against business strategy but work hand in hand with it. It must not be assumed that corporate governance is a watchdog over governors but rather a tool to be used to advance business. However, is this possible in a system, which requires further growth in equity returns?

The crucial question remains - Is corporate governance necessary? The answer is yes. The answer lies in the number of cases that come to court every year. There exists a string of big companies that have run into trouble. Without a doubt, there has to be some sort of governance on decision makers. The fact is that good corporate governance practices are now becoming a necessity for every country and business enterprise, and are no longer restricted to the activities of public listed corporations in advanced industrial economies.

Which brings us to the next chapter, the question of ethics?

Within the definitions referred to above, the crucial word is ‘ethics’. To establish a set of rules, principles and definitions is one thing, but to conform to it is another matter entirely!

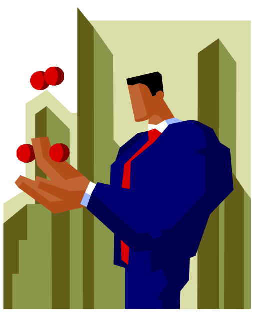
What is the core element, which binds all of the above together? Ethics is the backbone which makes corporate governance function. It is the heart and soul of it all, the spine that hold the body together.

The real question though is, whether ethics is being enforced and how effective has it been practically implemented. Let’s study?

3

Chapter 3

Ethics vs Corporate Governance



3.1 Looking ahead - Introduction

It is important that all companies act with integrity and with an ethical backbone. In the previous chapter it was noted that corporate governance had been defined to include ethical behavior. All principles reflected the essence of an ethical morality which became its character and fundamental conclusion.

To appreciate corporate governance and to fully understand its worth, the ethical essence needs to be understood. Corporate governance is in part about ethics. This chapter tries to define ethics and elaborate further on its character.

Corruption seems to be on the increase on all fronts, including the business world. Not just corruption, but instances of dishonesty and illegal behaviour are also on the increase. In many cases, management does not condemn unethical conduct, but encourages it!

How then does the business community prevent this tendency toward unethical behaviour? In this post-modern world of 'any truth goes', a need to find a concrete ethical system which can be enforced is essential. A need to investigate humans sense of right and wrong must be evaluated. Where does that sense come from?

Humans find that they measure actions against some kind of standards, some real sense of Right and Wrong. Humans have this curious idea that they ought to behave in a certain way; they do not do so. This is bizarre, and leads man to realise that something beyond his imagination governs and judges his actions.

It also leads man to realise that mankind cannot be his own solution to ethical decline. This stands to reason: humans find it hard to keep the simplest of promises (such as New Year resolutions!), let alone adhere to a far more difficult standard of ethical behaviour.

This chapter studies the ethical guidelines as set forward in the theory. More importantly though, it reflects the shortfalls thereof in the business community. Practical examples of these shortfalls are presented and how they affect the common person is discussed. It also analyses business ethics and where it stems from.

3.2 Ethics

3.2.1 Introduction to ethics

To enable one to fully understand what ethics is, one must define it.

The King Report (King, 2001:122), defines ethical business conduct *as: 'A means of which enterprise stakeholders - most notably its staff - adhere to defined standards in all their business decisions and actions.'*

(Richardson, 2004) The existence of established principles of ethical conduct provides a strong measure of organisational integrity. An enterprise's ethical principles represent a major motivator of stakeholder involvement and should permeate its culture, motivating its strategy, business goals, policies and activities. Stakeholders should therefore be active in the process of identifying the ethical principles and standards that will guide organisational practices. Ethical principles should be codified in a manner such that they are easily communicated to stakeholders. Codes of ethical practices should be broad and inspirational enough to guide decision making by employees and other stakeholders in unprecedented situations, but contextual enough to give practical guidance.

Further to the King Report, Rossouw & Van Vuuren (2004:3) declares '*that ethics concerns itself with what is good or right in human interactions. It revolves around three central concepts: 'self', 'good', and 'other'. Ethical behaviour results when one does not merely consider what is good for others. It is important that each of these three central concepts be included in a definition of ethics'*.

Maxwell (2003:Preface) firmly states that ethics is not instilled in the business sector but also in everyday life. Spiritual ethics, home ethics and business ethics are intertwined and related. One cannot exist without the other. The man must be ethical across the board and not segregate amongst his sects of life.

The question remains - Is all this being done in the practice?

3.2.2 Business ethics

(Garratt D. 2000: 1-28) informs in an article written in January 1995 in the California Management Study entitled, "Business Ethics: A View from the Trenches," (as quoted on the KPMG Ethics website) reported the results of in-depth interviews that had been conducted with 30 recent Harvard MBA graduates. Among their comments:

- *'Organisational executives are out of touch with ethical issues;*
- *Organisational pressures as opposed to character flaws lead people to act unethically;*
- *Whistle blowing (exposing other's corrupt behaviour) is a professional hazard;*
- *Staff-level employees often receive explicit instruction from middle managers to perform unethical or illegal actions, e.g., overlook kickback schemes or support cover-ups involving sexual harassment; and*
- *Questionable behaviour does not hurt; in fact, in some cases, it seems to accelerate career advancement.'*

Such studies reveal a tendency towards unethical and self-centred behaviour in the business world. The existence of the ethical corporate governance report is proof of the fact that people will naturally engage in activities which serve their own best interest. The problem of owner/manager separation, and the fact that many stakeholders have claims in the business, means that a means of acceptable levels of trustworthiness must be achieved.

If the definition of ethics is anything to go on by then the adherence to defined standards in all their business decisions and actions is nothing to be admired. All of the abovementioned comments resolve to unethical behaviour in practical terms.

3.2.3 Morality and ethics

(Garratt, 2000) An analysis of the world in general shows that in 'developed' countries the instances of ethical morass seems far less obvious. People think of corrupt African dictatorships, war in the Balkans, unrest in Indonesia, persecution in Sudan, and so on. Why are developed countries more 'moral'? Are they better people? Of course not! In every country's history there has been both good and bad kings, dictators, and corrupt people. Thus, it is not the *people* who make the difference. The difference is, of course, that there is a far greater probability that someone's illegal actions will be discovered and punished in a country with a developed police force and justice system. That greater probability acts as a deterrent to unethical actions. The ideal is, however, self-policing, where each person takes responsibility for their own actions and acts within the law. This is evidently a pipe-dream.

But why, in this advanced, post-modern age, are people moving farther away from this pipe-dream than towards it? It is a general consensus that the problem is a lack of ethics. Morality is lacking in most human beings. People are now growing up with fewer role models which leads to low morality. Actions define a character and the unethical behaviour which is spreading in viral proportions amongst business is sickening to say the least. Ethics is becoming a scarce resource. The set standards required in the definition definitely don't seduce morality. They are lacking.

Thus let's focus the attention to examining the *basis* of ethical systems - how does a system fit in with certain underlying characteristics of human beings, and how does it control or influence those underlying factors, if at all?

3.2.4 Where does ethics come from?

Garratt (Garratt, 2002) argues this question in style. He uses the example of a team through a conference which draws on all sectors of the populace and religions, and comes up with a fusion of ethical systems. He then continues to argue the point by pointing out various facts why this unified noble act could possibly not work. He sites the following reasons:

- *'Firstly, the drawing up of the system presents problems - who do you listen to? We might like to think that the world's ethical and religious systems all have the same message, but they don't. Thus, one will have to be chosen above the other. How do we reconcile such differing views? Should we leave Christianity out altogether? Or should we select the most objectively reasonable ethical system and leave the rest (while emphasising the similarities, but stressing the crucial differences)?*
- *Secondly, people act unethically! A collective ethical system will leave loopholes for the unethical behaviour that people want to commit! Most of us have lied in the past - but almost all of us condemn lying as being wrong. This is a strange thing: people who do not act in a certain way hold that way up as being the way to act. Then why don't they act that way?'*

Based on the two abovementioned arguments he therefore concludes that a coming of minds through a team will fail: If people are unable to listen to or even convince themselves to act in a certain way, they certainly will not be convinced by someone else's ideas - unless those ideas are unutterably convincing and leave no room for argument!

Therefore where does this leave the definition? Once again nowhere! The set standards don't hold as there are acute differences between all people as people act unethically even although they condemn those actions by others.

3.2.5 The "Law of Human Nature"

In the last section it was mentioned that people condemn certain actions which they themselves perform. Why do people do this? Why would a liar, condemn lying? Where do we get the sense that these actions are somehow wrong?

Is lying in business wrong? 'Yes' – people say. But why? Why do people feel that it is somehow 'wrong'?

(Garrat, 2000) *'As human beings, people consider something wrong by holding it up against some standard, some kind of law, which is common to all people. Something 'wrong' is something that runs contrary to that law. What is interesting is that when people are discovered acting against that standard, they do not say "to hell with your standard" - but, instead, try to make out that whatever they were caught doing is somehow justified, or given special exemption against that very standard. People may say (especially nowadays, with the rise of post-modern thinking) that fairness, or justice, is dependent upon the observer. '*

He continues and reflects on further interesting questions: *'if people do not believe in decent behaviour, why should people be so anxious to make excuses for not having behaved decently?'* The truth is that people believe in decency so much (man feels the Standard pressing on him so) that people cannot bear to face the fact that they are breaking it, and consequently try to shift the responsibility. For you notice that it is only their bad behaviour that they excuse - good behaviour they take the credit for.

Maxwell (2003:8 and 13) adds that people are too easy with themselves, judging themselves according to their own good intentions and judging others by their worst actions. The same person who cheats on his taxes or steals office supplies wants honesty and integrity from the corporation whose stock he buys, the politician he votes for. The reality is that anyone who lives a life of shortcuts, deception and cheating does not always finish well in life.

Therefore organisations are not built on strong foundations, but by the individuals that make those decisions and formal foundations.

3.2.6 Ethical rights and obligations

(King, 1994:24) Judge King states that most contracts concluded by the companies involve mutual rights and obligations. This involves trust and the responsibility of management to ensure that the company should do unto others, as the company would want to have done unto itself.

Strong words, as this should serve as a motivational factor for all ethical companies. It is expected that stakeholders act with integrity towards companies, but they do not find it within themselves to do the same towards their stakeholders. Ethics is evolved and created, not cleverly schemed.

The simple fact that companies should do unto others as they wish to have done unto themselves, warrants ethical behaviour and good corporate governance as defined in chapter 1.

(King, 1994: 24) In a discussion document by the Institute of Directors stated: " [1] *It is the responsibility of the directors to determine the moral and ethical climate of the business.* In larger companies, this can be done by publishing policy statements and business conduct guidelines and making sure that they are acted upon. Where companies aspire to partnership relationships with the "contractual" stakeholders such guidelines will ensure [2] *that customers are served not bribed, that employees are trained and motivated, not hired and fired and* [3] *that suppliers are developed not beaten down and are also paid on time.* As a guide, '**doing as you would be done by'** is a good maxim to follow. It is up to the directors to make sure that everyone in the whole organization follows this precept.

As always, theory is a guideline but practice provokes a different picture. A study of the previous paragraph will now be made which shows a vastly different outset.

3.2.6.1 Directors Responsibilities in determining the moral and ethical climate

" [1] It is the responsibility of the directors to determine the moral and ethical climate of the business. In larger companies this can be done by publishing policy statements and business conduct guidelines and making sure that they are acted upon."

Do directors determine the moral and ethical climate of the business? If directors don't, then who does?

In the article 'Companies are taking ethical code seriously,' (Anon, 2001: The Star) it appears that it is not only directors but both directors and society at large who determine the ethics and dictate the climate of a company. In the article the graduates, the director of tomorrow, are forcing a change in the responsibility of the current (old fashioned) directors to adopt a stance of ethical behaviour. This revived culture of transformation brings a sense of urgency to the word 'ethics'. People will no longer tolerate companies who act unethically. With transparency becoming ever more prevalent, the ethical philosophy is rearing its baby head for the better of all humanity. It is expected of directors to create a code and enforce it. It is expected that these codes also be incorporated in the employment contract to prevent unnecessary misunderstandings in the future. Directors know that the more ethical they seem to investors, the more of a premium they can ask for their shares. It is this trust, which creates an added value in their shares price. Directors who pray on earnings per share require this higher value to justify their earnings and create greater wealth within their firm. A positive step towards this is to be linked to ethical boards such as the ' Ethical Trading Initiative '. Being associated with such comities usually means that the directors are committed to ethical behaviour.

The previous paragraph studies the essence of shareholder value placed on government companies. (Payne, 2002:29) Payne elaborates and assists this theory in his article, 'The value of corporate governance'. He states that increased shareholder activism stems from the conviction that better corporate governance will deliver higher shareholder returns. With this in mind, McKinsey conducted a series of surveys to discover how shareholders perceive and, importantly, value corporate governance in both developing and emerging markets.

Undertaken in co-operation with the World Bank and the Institutional Investors regional institutes, the surveys gathered responses about investment intentions from over 200 institutional investors, who together managed approximately USD3.25 trillion in assets.

(Payne, 2002:29) Among the key findings from the survey were the following:

- *'Over 80% of investors say they would pay more for shares of a well governed company than for those of a poorly governed company with comparable financial performance.*
- *The actual premium investors say they would be willing to pay for a well governed company differs by country. For example, investors say they would pay 18% more for the shares of a well governed UK company than for shares of a company with similar financial performance but poorer governance practices. They would be willing to pay a 22% premium for a well governed Italian company, and a 27% premium for one in Venezuela or Indonesia'.*

If companies could capture but a small proportion of the governance premium that is apparently available, they would create significant shareholders value. Moreover, those companies that fail to reform will find themselves at a competitive disadvantage when it comes to attracting capital to finance growth. High governance standards will prove essential to attracting and retaining investors in globalised capital markets, while failure to reform is likely to hinder those companies with global ambitions.

South Africa is equipped with a world class corporate governance code. The challenge to shareowners (particularly the institutional ones), directors, regulators, managers, accountants and auditors is to ensure compliance therewith.

Kuper (2006:43) makes the suggestion that the directors put their 'impartial hats' on and make judgment calls about what constitutes fair practice according to industry codes.

3.2.6.2 The issue of bribery

"… Where companies aspire to partnership relationships with the "contractual" stakeholders such guidelines will ensure [2] that customers are served not bribed, that employees are trained and motivated, not hired and fired …"

The second part of the paragraph listed in 3.2.6. above, requires, that customers be served not bribed.' A strong request, especially for a third world country like South Africa.

Bribery has become a way of life and is constantly being mediatised with no or very little criminal recourse. The most famous publicised case of bribery has had a criminal remedy but only because of its public interest. The perpetrator still has his car and the government has found no unethical conduct in the deal. The only time recourse was taken was after the perpetrator pleaded guilty in 2003 to bribery. The deal being referred to is the now most talked about deal in South Africa, the R43 billion arms deal and the perpetrator is Tony Yengeni amongst others.

An utter insult to the public, Tony Yengeni, a member of government defies all reason for transparency and votes for greed. In the newspaper article, 'Yengeni addresses Mps about kickback claims' (Matison, 2001: Business Times), he denies being bribed and that his Mercedes acquisition did not in any way amount to a gift or a donation. He continues to deny that the acquisition of the vehicle did not in any way whatsoever influence the award, or is related with the award of any contract in the arms procurement, which is under investigation. This definitely reflects the lack of trust, reliance and integrity, which can be placed on the contracts concluded by Yengeni. His decision was influenced by the vehicle donation and is linked to the awarding of the arms deal contract. Do business people like this think that the public are fools? The only problem is that they do not have the power to do anything against the government. If the President decides to bomb Iraq for oil, who can defy him. His motives are hidden, he is not being truthful. Transparency has a long way to go and so does ethics.

(Richardson, 2004) Richardson noted that ethics is about the person. If the person does not wish to act ethically, any contract concluded by that person will have some hidden agenda benefiting themselves. Directors have been appointed in their position to serve their stakeholders for the benefit of the stakeholders. Not for themselves! They are not entitled to be enriched at the expense of the stakeholders. Directors and public figures are the role models for others to follow. Their behaviour influences decisions and behaviours of others, which could form the future.

The public has become the judge and the jury in most relevant cases. Society has a way of dealing with liars and perpetrators. They become social outcasts and have their own ways of expressing themselves. Yengeni received various threats in consequence to his actions. The article, 'Yengeni wary after letter threat', reflects their disappointment. (Matison. 2001)

Another example of bribery is described in the article 'Transnet in legal dispute with Cameroon' (Vermeulen, 2001: Business Times). SAA was involved in a bribery scandal with the Cameroon Airlines. The outcome was that bribery does not pay. Transnet had to pay all outstanding commissions together with being ridiculed by the International Court of Arbitration.

Here are but two examples of bribery reflecting unethical behaviour within our borders. Business has a long road ahead before ethics can become a fully-grown reality. Business does not live in Utopia and it is customary that the fittest in business will survive no matter what the cost. Bribery will be a survival strategy and until the mental state of greed is reversed, business will always be faced with this dilemma. Greed has many forms and some of them are a means to a promotion for many directors. Humans live in a competitive world where strategies and promotions are based on getting the deal clinched. Under extreme pressures, directors act and make decisions in ways that normally might not have been made if the pressures were not prevalent. However, if high profile cases get convictions, this scenario will change. Why is it that in Saudi Arabia, nobody steals but in South Africa, the law is mocked?

There are many articles of bribery and corruption. Lately just opening the newspaper on any given day will reveal some source of bribery and / or corruption.

3.2.6.3 Payment of suppliers on time

"[3] that suppliers are developed not beaten down and are also paid on time."

The third part of the paragraph in 3.2.6, requires that suppliers be developed not beaten down and should be paid on time.

Once again, practical examples prove the myth to this assumption.

In the article 'Late payment can break small businesses' (Anon, 2001: Business Times), it is revealed that this is not the case. Manipulation of smaller companies by large companies is made, to make more money for their shareholders. No consideration is given to the other stakeholders. Within the article a survey by Bradstreet shows that out of the 3000 UK companies surveyed, a fifth take more than 60 days to pay smaller suppliers. This is more than twice the accepted length of time for payment and astonishingly, 16 companies take more than 200 days to pay. The average length of time small businesses must wait for their money is 46 days. It is estimated that 10,000 small firms go out of business each year because of late payments and this can no longer be tolerated.

ABI and most petroleum companies require cash before delivering. Pick & Pay has a strategy of paying 180 days or longer. This is a company, which can afford to pay its smaller creditors on time and even cash on delivery, but chooses not to. Its philosophy is, 'take it or leave it!'. With such a mental state, it is no surprise that most SMME's (Small and Medium Enterprises) have a huge failure rate.

Once again, the question arises; do companies do unto others, as they would like done unto them? Evidently not!

3.3 Ethical Guidelines

3.3.1 Guidelines

(King, 1994:25) Judge King states, *'that **directors** have a responsibility as part of corporate governance to create and to lay down guidelines for the moral and ethical conduct of the business of the company'*. Companies should develop, publish and enforce their codes of ethics throughout the company. An ethics committee should be developed within the company to monitor and regulate all ethical behaviour. If an ethical contravention arises, within the company, it should be dealt with swiftly by the comity and punishment should be just.

Boards in South African companies have to create a culture where any stakeholder / employee can without fear or retribution, expose any immoral or unethical conduct by any other stakeholder / director / employee. An immoral act by one stakeholder affects not only the stakeholder of the same class but also on others. An employee who steals from a company any part involved in a process of manufacture impoverishes the company, which puts not only stakeholders but also friends and colleagues of the same class at risk. Colleague's jobs become threatened. All stakeholders are affected by the unethical conduct of one person. If the part is stolen, the delivery of the product to the customer could be delayed, the company's profits are diminished, and the customer's customer suffers and so on.

It is all fine and well to formulate a strategy dictating a method of solutions on how ethics should be imposed, but what is really happening in South Africa? Are companies really applying ethical infrastructures? A survey conducted proves otherwise.

The first ever South African ethics survey reveals that a basic ethics infrastructure exists in most organisations, but that the practices and mechanisms are too basic to be effective and, in some cases, merely indicate lip service to ethics without real commitment by leadership to ethics management.

Malan describes the reason for the survey and its findings as follows (Malan, 2002:3&5):

The objectivity of the survey, conducted jointly by KPMG, the Public Service Commission and Transparency South Africa, was to measure the extent to which South African organizations (public service, private corporations and non-government organizations) have succeeded in establishing certain basic ethics management practices.

The survey focused on initiatives in managing for ethical practice such as:

- Ethical documents;
- Ethics related evaluations;
- Responsibility for the ethics function in the organization;
- Resolution of ethics problems;
- Reporting mechanisms;
- Conducting ethics training;
- Performance evaluation; and
- Risk assessments.

The intention was to take a snapshot of the ethical landscape in South Africa. There were 166 respondents to the survey, representing a diverse range of industries, civil society initiatives and government departments. The survey revealed that a basic ethics infrastructure, such as codes of conduct and whistle blower protection, seems to be in place in most of the surveyed organizations. For example, the existence of written documents that outline the organization's values and principles was reported by 84% of respondents, and 54% of respondents indicated that their organization has a confidential reporting mechanism.

However, some disturbing trends were identified which indicated that South African organizations have not been able to integrate ethics management practices into their existing management processes. A few of these trends are that many organizations do not acknowledge the importance of assigning a senior level manager with ethics responsibilities, and also that more broad-ranging ethics management strategies and procedures are lacking. In more than 50% of the cases, ethics criteria do not form part of performance, reward or promotion criteria. Ethics related evaluations are present in only half of the surveyed organizational, and ethics was reported as part of organizational risk assessment in just more than half (56%) of the participating organizations.

Approximately 50% of the respondents also indicated that their organizations have an explicit strategy focused on promoting ethical values and practice in its day-to-day activities. This indicated that a lot of work remains to be done in convincing organizations of the importance of integrating ethics management practices as an integral part of all processes within the organization.

Although there are some encouraging signs about the management of ethical practices in South Africa, clearly there are still many challenges ahead. The survey partners believe that there is a need for a wide spread internal clean up of the ethics function within organizations. This process will involve the development of comprehensive ethics programmes and a range of activities that demonstrates the organization's commitment to ethics and ethical behavior.

Clearly this is not a process that will occur overnight, and it will take substantial commitment and determination to develop such a programme. The benefits of a successful programme will justify the investment that will have to be made, and will include an increased reputation, a happy workforce, increased trust from internal and external stakeholders and ultimately, an increase in financial performance.

Generally, corporations need to be decent citizens to those who do not have contractual relationships with the company. A decent corporation complies with the law, fulfils its contractual obligations and acts ethically and morally with all interested parties.

In short, it is the responsibility of all stakeholders to ensure that the company operates in a moral and ethical manner even although directors create the culture and guidelines. It is often difficult to imagine that ethical companies still exist. But they do. Not everyone acts immorally or unethically. It would be unfair to call or depict all companies in the negative realm. The benefit should be given to all role players in companies that most are moral, ethical and practice with integrity. The only problem is that most still do not believe they need to act ethically. In March 2003, a meeting was held with a CEO of a company, which did not wish to be named. Discussions were held about their corporate governance status. After an in-depth study, it became apparent that this company had invested a lot of time and effort in making themselves corporate governant. In fact, this company could win awards for its corporate governance systems. The staff adhered to the rules and so did the senior management / directors, or rather so it seemed! After all the talk, formal contracts and procedures were presented, the CEO asked that certain information not be divulged to related stakeholders when the contractual assignment was requested. This information was pertinent to successful decision making matters for these stakeholders. If they had known the true facts, their decision could and would have been different. This company took pride in transparency. This fact was mentioned many times by the directors to the very stakeholders they were conning.

The moral to the story is that when it does not suite, ethics are disregarded no matter what the paper / marketing / image presents.

Ethics is inborn.

3.3.2 A Code of Ethics

(King, 1994:30) King requires that every affected corporation should have its own Code of Ethics, which should be developed, published and enforced as part of the corporate governance of the company.

A Code of Ethics should:

- *'Commit the corporation to the highest standards of behaviour;*
- *Be developed in such a way as to involve management, and all its stakeholders to infuse its culture;*
- *Receive total commitment from the board and chief executive officer of the corporation;*
- *Be sufficiently detailed as to give a clear guide to the expected behaviour of all employees.'*

Nigel Payne (Payne, 2002:21) makes further recommendations. They include the following:

- '*Every company should engage its stakeholders in determining the company's standards of ethical behaviour. It should demonstrate its commitment to codifying its standards in a code of ethics*
- *Each company should demonstrate its commitment to its code of ethics by:*
    - *Creating systems and procedures to introduce, monitor and enforce its ethical code*
    - *Assign high level individuals to oversee compliance to the ethical code*
    - *Assessing the integrity of new appointees in selection and promotion procedures*
    - *Exercising due care in delegating discretionary authority*
    - *Communication with, and training all employees regarding enterprise values, standards and compliance procedures*
    - *Providing, monitoring and auditing safe systems for reporting on unethical or risky behaviour*
    - *Enforcing appropriate discipline with constancy and*
    - *Responding to offences and preventing re-occurrence*
- *Disclosure should be made of adherence to the company's code of ethics against the above criteria. The disclosure should include a statement as to the extent the directors believe the ethical standards and above criteria are being met. If this is considered inadequate, there should be further disclosure of how the desired end-state will be achieved*
- *Companies should strongly consider their dealings with individuals or entities not demonstrating the same level of commitment to organisational integrity.'*

What is vital to note is that companies should act in an authorised productive manner. What is apparent from the abovementioned is that it all starts from the top and filters down into the lower levels of the company. It is up to the senior management to identify what the stakeholders perceive to be important ethically and thereafter integrated within the companies code of ethics. This code is then written down and filtered down within the company. This is then integrated into the culture, evaluated and revised constantly. It is important that the culture of the company accepts this code and believes in it.

Of relevance is that no matter how your code is established or how good it might be, if the employees do not believe in it, or there are not sufficient accessible means for whistle blowers of unethical behaviour, the code will be worthless. There must be a level of zero tolerance in all respects.

'Remember a 'good' reputation might reflect a company's wealth or talent at media management, rather than its core ethical ability'. (Kuper:2006, 50).

Listed below are two examples of how companies are looking at changing their code of ethics. They both might seem small in contrast, but are examples of strides made at accommodating a wave of change in respect of employees and customers. We live, we die, this is a known, but change is inevitable.

Article 1: (Jones, 2001: The Star Newspaper) Last year, a female employee of Ramtech Building Systems, of Mansfield, Texas, a construction firm, approached Thelma Brown, the company's human resources director. The employee, whom the firm did not identify, was concerned with the cursing used in the company's manufacturing facilities. Mike Slataper, the chief executive of Ramtech and Brown soon found that other workers at the 150-employee company, especially women, were distressed by the profanity. The company subsequently created a "Language Code of Ethics".

This action might seem small, but it only takes a small initiative to get the ball rolling. From this, other more serious matters can be tackled and overcome. Once again, we come back to zero tolerance.

Article 2: (Anon, 2001: The Star) Competition and regulators are forcing micro lenders to reform, particularly in areas such as best business practice and ethics, and to take a long-term view of their business and market. The security provided by the ability to deduct money directly from payrolls with no limits no longer exists. Innovation and customer orientation has become the name of the game.

It is good, but also expected, of every company to implement a good code of ethics. This reflects an image of good behaviour and a company worth dealing with. Who wants to do business with a company that has a habit of being in the press with negative releases?

It is all fine and well to request that companies implement a code of ethics, but why has this not been done? Enron, Worldcom, Xerox, Regal Treasury, Leasurenet and many others all appeared to have some form of code, but their business practices have precipitated in major stock losses. Is 'business ethics' a victimless crime, which has become as much an oxymoron as 'military intelligence'? Why do businesses hesitate to actively address organisational integrity? There are various reasons. These are addressed below (Payne, 2002:21):

- '*In the recent KPMG, Public Service Commission and Transparency SA Ethics in Practice survey, shows a high level of business conduct codes in existence but a poor level of organisational attention to actively managing ethics. Ethical behaviour needs to be an agenda of the board. Employment practices, training programmes and reward systems may have to be altered to ensure the desired changes in organisational culture.*

- *A recent survey in the USA conducted by the Conference Board shows that a prime cause of the reluctance of business to do so was the lack of measurable benefit.*
- *The value of corporate governance principles such as transparency, independence, discipline, responsibility, accountability and fairness, must be readdressed to make a difference to business performance and market capitalisation'.*

Once again, it boils down to economics. Can you imagine what it would cost a company to keep the ethical codes as required going? No matter what the price tag one needs to weigh the cost of not having these codes implemented.

The article continues to give further solutions to making management actively manage integrity and ethics. These are:

- '*In compiling the list of key risks faced by the company, the board and management should consider the impact of business ethics. The negative impact of poor ethics may be quite obvious.*
- *Attention should be given to turning positive ethical behaviour into a competitive advantage. For example, when customers know that you keep your promises you are likely to have their loyal support. They may even give you some leeway when something goes wrong.*
- *Dealing with ethical failures is expensive. Investigative costs, loss of management focus, litigation and penalties can be enormous. Most of all, loss of corporate reputation can kill a business'.*

3.4 Common criticism: Spurious

(King, 1994: 9) The belief that being ethical in corporate terms requires pursuing some social welfare or environmental or religious end in place of the corporate purpose is absurd. This belief must be avoided.

If pursuing ' social responsibilities ' is not what makes corporate conduct ethical, what does? The answer is simple. Corporate conduct is ethical if it respects **'distributed justice'** and **'ordinary decency'** (King, 1994: 9). These ethical principles are the ones that must be satisfied for operations and their long-term objectives to be possible. Because long-term views require confidence in the future, and confidence requires trust, the conditions of trust must be observed. Equally, corporations presuppose ownership and therefore respect for property rights. In order not to be, ultimately self-defeating, corporate activities must therefore be conducted with honesty, fairness, the absence of physical violence and coercion, and a presumption in favour of legality. Collectively these constraints may be called ' ordinary decency '.

Furthermore, 'distributed justice' is also essential. What distributive justice means is simply, '*that those who contribute most to the organisation deserve most from the organisation?'* That principle applies to all the rewards a corporation has to distribute. It covers not just payments and promotions, praise and prizes, but also significant responsibilities.

The essential point is that corporations are ethical when they pursue the definitive objectives subject to distributive objectives subject to distributive justice and ordinary decency. If a corporation is not directed at achieving its definitive objectives, and if that definitive corporate purpose violates distributive justice or ordinary decency, it is not ethical.

3.5 Is corporate governance and ethics intertwined?

Rossouw (2004) states that, '*the nature of corporate governance is such that the concept itself has an ethical character. Not only does the concept of corporate governance have an ethical nature, but the practice of corporate governance also requires sound ethical judgment by directors. They need to set corporate goals that are morally sound in order to protect the reputation (or symbolic capital) of the organizations'.*

This statement is symbolic in that directors make decisions that will make investors wealthy, but in the same instance, act morally and socially responsibly to all stakeholders, which have a vested interest in that entity. Therefore the fact that directors must govern in such a manner that is ethical, makes the two intertwined and bombastically alike.

3.6 The role of ethics in building trust

Research done in Africa and elsewhere has shown that there are a number of factors that influence the trustworthiness of a person. This claim by Neville Bews (Rossouw, 2004:152) found that the following factors have a significant impact on how trustworthy managers are perceived by their subordinates. The categories are:

- openness
- competence
- integrity
- benevolence
- reputation

Each of these factors has an explicit or implicit moral character. These characters are described below.

3.6.1 Openness

Openness as defined by Mishra, (Rossouw & Van Vuuren, 2004:148) refers, '*to how freely managers make information available to their subordinates*.'

Further reference is made to two kinds of information, namely functional and personal information.

- *'Functional information is the information that is required by employees to complete their jobs well.*
- *Personal information is making information available freely on the manager's personal life to earn trust of his employees'.*

Openness is an inborn mental status that develops the character of the leader making staff more susceptible to trust and follow the leader's judgments even when uncertainty arises. The amount of information that is freely available, builds trust and effectively makes loyal employees.

3.6.2 Competence

Competence refers to, '*the knowledge and skills needed by managers to influence the domain for which they are responsible'* as defined by Mayer (Rossouw & Van Vuuren, 2004:149).

As with openness, two kinds of competence are relevant:

- *'Technical knowledge of the work they are managing.*
- *The ability to manage people effectively and with fulfillment'*.

It is therefore not only the technical expertise but the ability to manage that makes competence so vital.

Care is therefore a component of competence and the ethical challenge is to manage with care.

Without the relevant skills, a lack of trust will be held by the employees and therefore no trust. Without trust the employees will feel demotivated and neglect their duties becoming unproductive.

3.6.3 Integrity

Mishra, as declared by (Rossow & Van Vuuren, 2004:150), regards a person with integrity as, '*a person who consistently acts in an ethical manner*.'

More importantly staff and people alike can rely on decisions made by their leader, or someone with integrity, because they will not deviate from their decision. This makes governance all more persuasive to integrate with ethics. They almost become synonymous.

Richardson S (Richardson. 2004) explains of how his company was almost bankrupted but two managers with very little integrity. Fraud in the region of R1m was perpetrated within one year, by simply acting without integrity and very little ethics. When the managers were awarded their positions the mask of ethics was worn. It later proved to be a mistake but the damage had been done. Currently the trial is still underway without any results. The legal costs incurred have sky rocketed and the possibility of potential pay-back is an unknown. Both criminal and civil charges are proving ineffective. One has to be carefully monitored and evaluated to determine their true identity. Many join with promises of ethics and corporate governance but few can actually perform those functions truthfully. People want to be perceived as doing the right thing even although they are actually performing the opposite. When found out they simply choose the route of saying, "I am sorry". It is this notion that has made business untrustworthy. It is this notion that has made business difficult. People don't trust because integrity is missing. The sword of righteousness has been laid to rest. Many fear that it could never be lifted up again in dignity. The ethical backbone of managers is missing.

To build integrity the recruitment process must cater for this and staff should be recruited based on their integrity. Further development should also be made to make managers and leaders live and feel the integrity they would like to portray within that company and family life. Integrity is a moral issue, developed in life and the basis of all sound judgments.

3.6.4 Benevolence

Benevolence is demonstrated in actively doing what is good for others. (Rossow & Van Vuuren, 2004:151)

This can be interpreted in a debate about not taking vulnerability of others and being compassionate enough to care enough to make decisions that will ultimately result in decisions based on good standing and moral integrity.

This creates the feature of added trust and integrity. The circle of building trust therefore becomes complete and the fulfillment of one's ethical bind becomes complete.

3.6.5 Reputation

(Rossow & Van Vuuren, 2004:152) continues to define a person's reputation as, '*the perceptions that others accumulate over time of him or her*.'

A reputation takes time to develop and form. A positive interaction over a period of time results in a good reputation of the other. A negative interaction results in a negative reputation.

Time is the factor of all consequences and being people, all relativeness of understanding results from the expression of times gift. Without father clock ticking and the experience it brings, the expression of understanding what the faults are and the knowledge it brings to grow makes it the wonder of mankind.

3.7 Requirements of corporate governance - accountability and independence

(King, 1994: 7) The key concept to corporate governance is accountability.

Accountability means '*that individuals and institutions are answerable for what they do'.*

They must account to others for their conduct and for their use of resources.

(King, 1994:6) '*In order to encourage entrepreneurship and the acceptance of appointments as non-executive directors, a director should not incur liability for a breach of duty of care and skill where they have exercised a business judgement in good faith in a matter in which the decision is an informed and rational one and there is no self – interest*'. The key word is self-interest. Directors should not act with a motive of self-interest. They are employees of the company and all its stakeholders. They are entitled to dividends for their shareholding and not rape the company of its profits. All decisions should be made to encourage the company's growth and objectives. It is the leaders of the company, which create the culture of ethical behaviour.

But many directors don't act ethically and it is due to these lawless individuals that we are faced with newspaper articles publicising unethical behaviour. In recent months, LeisureNet, Discovery, Regents Bank, Macmed, Transnet and many others have all had some form of negative publicity due to unethical behaviour of the directors.

But what promotes unethical behaviour. Payne reveals some of these secrets. He writes of the Enron collapse (Payne, 2002:34):

The collapse of Enron will challenge the future corporate governance in the USA.

From media reports, it appears that:

- Greed remains a key factor in business. Dishonesty too.
- The veil of 'hugely complex transactions' has again been used to appease regulators, analysts and shareholders, as was the case with BCCI and Barings Bank;
- Corporate governance, risk management and internal control were sacrificed in far of 'profitability' and growth;
- Conflicts of interest were not dealt with;

The above mentioned are some of the symptoms of unethical behavior. This is not to say that these are all of them. Each case has its own merits and should be construed as such.

3.8 Conclusion

Chapter 3 studied the fundamental aspect of corporate governance, the issue of ethics. All aspects of corporate governance should be based upon this tier. The theoretical factors were analysed and fundamental differences were found in practice, once again proving the shortfalls of the theory.

Scrutiny proved various aspects of these shortfalls.

Ethics is therefore a development of what is good. Good within one's self and good within others. The growth of this 'good' makes people want to socialize with these people. The need to be with that person because they are the essence of good, is the need to grow as a person.

It has become apparent that there are certain rights and obligations, which need to be fulfilled in all contractual negotiations to act ethically. These rights symbolize that a company should not do unto others, as they would not want done unto themselves. A partnership approach should be negotiated with complete trust and morality.

These proved to be strong ambitions in a world where every company is competing for the same market. Uncanny tactics have become the order of the day, used by both small and big business to be awarded that next contract and all for what – higher profits to justify earnings per share (EPS). Have people become slaves to EPS? Do they even see past that? When the earnings are good for the year, it is presumed that the director has performed well. He/She must be doing something right, or is it just "short terminism." Have director's just one single ambition: to look good for their reigning timeframe usually three years, no matter what the cost might be to the stakeholders and the next director. Are decisions only short term based and selfishly motivated to window dress? It appears so in many cases. The SAA debate, studied in the next chapter certainly stinks of this tale.

The director's responsibilities in determining moral and ethical conduct also proved the practical inefficiencies that exist. It was established that not only directors who dictate the moral climate of a company, but society at large. With proper training the kids of the future, through the home environment and in secondary and tertiary education mediums, will become moral citizens who will aim at being ethical in business. Everyone aspires for a crime free society where criminality has been washed out and all perform justly and lawfully. It could be a reality if our kids are taught not to be money greedy! Talk to any kid and all he wants to do is make money no matter what the cost. Gone are the days when people just did things out of the kindness of their hearts, to improve themselves and humankind. It is up to the next generation of directors and executives, when leaving university, to seek jobs in companies that act ethically. Those companies tarnished with bad publicity should be avoided and no business dealings should be made with them. This will force companies to clean up their acts and become reputable. DaimlerChrysler is sitting in this position right now. Their arms deal contract sits in the balance of possible retractions due to their bribery tactics.

How many companies have gone out and made a pledge to clean up their acts and write within their mission statements that they will act ethically and morally under all circumstances? Sure contracts will be lost in the short term but in the long term the whole image of the company will change and companies will want to deal with this new untarnished company. Stakeholders will feel comfortable that they can go and sleep at night, knowing that the directors are acting in their best interest and not for their own selfish means.

Bribery is that taboo word nobody wants to talk about, but yet is so prevalent in business society today. This awful word is all around us, but when you ask entrepreneurs if they bribe to achieve their goal the answer is almost always no. Nobody admits to it but yet it is almost always done. To make matters worse the bribed are not even prosecuted if they are caught. The excuses are that the costs are too high to go to court, but what is the message being sent to the criminals? Is it OK to be bribed?

The media is the eyes and ears of the public, and they should be given that right. Justice will only prevail if the media is given the chance to report on unethical behaviour to enable a change in current business practices.

To clean up their act, companies should implement a code of ethics that commits the corporation to the highest standard of behaviour. By doing this and enforcing it upon all members, the company will act within those standards.

Critics need to understand though that immoral conduct does not mean that companies should pursue some social welfare or religious end. It simply means that companies should pursue conduct that represents 'distributed justice and ordinary decency.' In other words, business should be conducted honestly, fair, without self interest to directors and legally. It also means that payments and promotions, prizes and praises and other significant responsibilities should be rewarded fairly and justly. Directors should pursue the corporate objective of the shareholders and all stakeholders. They should award those staff members who meet those criteria and justify the means of good business practice. Similarly, they should punish anyone who acts in bad conduct, utilising all resources to show the public that such behaviour will not be tolerated. However, any members should not incur liability for a breach of duty of care and skill where they exercised a business judgement in good faith in a manner in which the decision is an informed and rational one and there in no self interest. All members should work towards the long-term growth and prosperity of the company and not the short-term ideology of today. Making decisions for short-term strategies only leads to short lived companies. Ethical behaviour leads to longer-term companies.

The problem faced with South African companies though is their lack of implementation. Malan proved that practice has not conformed. He stated that South African organizations have not been able to integrate ethics management practices into their existing management processes. A few of these trends are that many organizations do not acknowledge the importance of assigning a senior level manager with ethics responsibilities, and also that more broad-ranging ethics management strategies and procedures are lacking. In more than 50% of the cases, ethics criteria do not form part of performance, reward or promotion criteria. Ethics related evaluations are present in only half of the surveyed organizational, and ethics was reported as part of organizational risk assessment in just more than half (56%) of the participating organizations.

Approximately 50% of the respondents also indicated that their organizations have an explicit strategy focused on promoting ethical values and practice in its day-to-day activities. This indicated that a lot of work remains to be done in convincing organizations of the importance of integrating ethics management practices as an integral part of all processes within the organization.

Further study also indicated that there were underlying problems within the ethical dilemma. They are

- Organisational executives are out of touch with ethical issues;
- Organisational pressures as opposed to character flaws lead people to act unethically;
- Whistle blowing (exposing other's corrupt behaviour) is a professional hazard;
- Staff-level employees often receive explicit instruction from middle managers to perform unethical or illegal actions, e.g., overlook kickback schemes or support cover-ups involving sexual harassment; and
- Questionable behaviour does not hurt; in fact, in some cases, it seems to accelerate career advancement.

Such studies reveal a tendency towards unethical and self-centred behaviour in the business world. The existence of the ethical corporate governance report is proof of the fact that people will naturally engage in activities which serve their own best interest. The problem of owner/manager separation, and the fact that many stakeholders have claims in the business, means that a means of acceptable levels of trustworthiness must be achieved.

Also noted were the laws of human nature. In summary we seem to measure our actions against some kind of Standard, some real sense of Right and Wrong: the

"Law of Human Nature". Humans have this curious idea that they ought to behave in a certain way; they do not do so.

This Standard is not just a social construct. If it were, we would expect moral systems that are as vastly different as, say, the styles of dress throughout the ages - but there are not. It is also not simply the herd instinct. When we wish to act, we normally have two or more impulses within us, and there is a judge or arbitrator which tells us which instinct to side with, and, surprisingly, it is normally the weakest instinct. Thus, the thing which says "your instinct is weak, strengthen it," cannot itself be an instinct! Another possible objection to the Standard is that it is merely that us humans have some common sense and recognise that acting unselfishly benefits society. This sounds reasonable, except for the fact that it is employing circular reasoning! ‘Society' really means ‘other people' so the objection boils down to: ‘act unselfishly to benefit others'! We could just have easily stopped at ‘act unselfishly'. It does not answer the question why we must do so - the reason is because the Law requires us to.

A fourth objection is that there is no such thing as absolute truth, and therefore no Standard. Let's test this by using an example: a person bursts into your home and murders a loved one. Is he wrong to do this? "Of course!" you cry. But wait: if there are no absolutes, you have no right to condemn his actions, and no grounds upon which to judge him! His truth is that his actions are right. Your truth is that his actions are abominably wrong. Which truth is better, then? Obviously the murderer is in the wrong, but how do we know this? How can we arbitrate between the two truths? Our thoughts betray us: we are subject to the Standard.

A final objection is that this Standard merely reflects what is convenient to us at the time. A murder is inconvenient, and therefore ‘bad'. But that it not true: sometimes the behaviour which I call bad is not inconvenient to me at all, but the very opposite - for example, a war traitor! Further, it should be fairly obvious that decent behaviour in ourselves is not necessarily the behaviour that pays us the most. Some may argue that it is - the payment is in the knowledge that we have done something ‘good', and therefore we get "warm fuzzy feelings". Again, this is using circular reasoning - why would we feel that that behaviour is ‘good', so that we get those feelings? No, ‘good' behaviour does not merely mean that which is convenient to us. Good behaviour is something that meets that Standard common to us all.

Therefore, we are left with the fact that people have this curious idea that they are supposed to act in a certain way, and yet they do not do so.

We have this real Law or Standard which exists over and above the natural material facts. And if a Standard exists, it must have some cause - some place or thing of origin. This forces us into an unusual conclusion: it indicates that there is something or someone who wishes us to act in a certain way! There is some ‘Guiding Influence' in our decision-making.

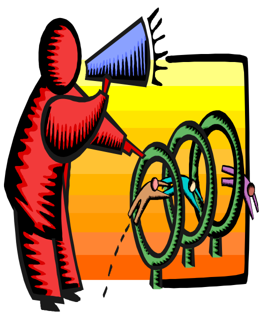
But what does all this mean? Simply put it means that:

- Greed remains a key factor in business. Dishonesty too.
- Corporate governance, risk management and internal control were sacrificed in far of 'profitability' and growth

Due to the lack of ethical behaviour, the abovementioned have become a reality. Greed the route to all-evil, is further prevalent in the next chapter when we study remuneration packages and how they are manipulated to the detriment of the lower tiers in the company. The topic of remuneration packages leaves a sticky stench in all who deal with it. It makes people jealous and resentful. Remunerations should be just and equal but the reality is that it stinks of greed and corruption. Let's study it in more detail in the next chapter.

Chapter 4

A study of ethics and corporate governance



4.1 Looking ahead - Introduction

Chapter 2 specifically studied corporate governance. It defined and set out the principles of corporate governance. It also studied when corporate governance is essential and if corporate governance is essential. These points formed the basis of the chapter. It is important to understand these fundamentals before ethics could be studied and identified.

Chapter 3 studied ethics by defining it as well as trying to explain where ethics originates from. It then discussed the rights and obligations of directors and their responsibilities in determining the moral and ethical climate. Guidelines were latter discussed together with a code of ethics for companies. This briefly formed the second part of the discussion paper.

But why this discussion between ethics and corporate governance. What has all this got to do with each other and more importantly why waste time in transferring all this information from various sources for you to read. What does all this mean in terms meeting the goals and objectives set out in chapter 1.

A study of each of the previous chapters will now be made and a comparison made between them. Thereafter a discussion can be made between the similarities and differences.

4.2 Definitions

By this stage, it has become apparent that there is no one global definition used to define corporate governance. Within chapter 2, paragraph 2.1.1, a total of five different definitions were presented. Each had its own predefined words or phrases attempting to make sense of corporate governance. Most people would be lost if it is expected of them to adhere to many prescribed definitions, defining one quantum, of which they can only make a general understanding. People could make up their own mind as to what is interpreted and therefore make up their own definitions to suite themselves. This is rather dangerous and unscrupulous. What is expected and understood by the masses suddenly becomes correct by those devious few, and this is happening at the moment. Proof of this was made in chapter 3 where examples of unethical behaviour were presented.

But the study does not only define corporate governance it goes further and also defines ethics. This is done in chapter 3. Why the study of both parts? Why not focus on corporate governance and \ or ethics only. Why extend to both? The answer is simple. Corporate governance cannot function without ethical behaviour. They are intertwined and there exists a cross correlation between the two. As explained in chapter 1 paragraphs 1.2, leaders within companies devise 'systems of morality' by which they act upon and this is 'corporate governance'. The 'level / standard' by which they do this is 'ethics'. The 'system' (corporate governance) cannot function without the 'standard' (ethics). A low 'standard' evolves into a shallow 'system' and vise versa. See table 2, chapter 1 for a further explanation.

A study of the definitions between corporate governance and ethics will be made next to establish if similarities or differences exist between them.

King defined corporate governance as a system by which companies are directed and controlled. The system referred to, is the rules and regulations, documented, within each individual company by the corporate governance board to make all stakeholders aware of the way the company would like to function, within the compounds of the corporate governance principles.

This definition is vague therefore making it possible for these systems to be fabricated by any means possible by those who are establishing those systems. There exists no universally template, which can be used to structure these rules and regulations for the company wishing to implement corporate governance. Just as lawyers have draft contracts, which can be adjusted, either by adding in certain parts or removing various sections, which are not applicable, there should be a draft corporate governance rules and regulation bill, which can be adjusted for each company. It is understandable that each company is different and therefore it is no surprise that the draft is designed from scratch to suite each companies needs.

What is important to note is that the definition is very generalised and no mention to ethical behaviour is made. Does this mean that it could be assumed that ethical behaviour is not required within corporate rules and regulations but that a different set of documented rules and regulations be constructed for this purpose specifically. Once again, regulation is required.

But do people attempt to act ethically if they are not required to do so. Chapter three reflects a bleak picture, with many examples of misappropriations and fraud. It is common nature to want more by whatever means possible. People do not want to act unethically but circumstances force them to. People in general want to be good and act in a manner that earns respect from fellow colleagues. Unfortunately, the world does not function like this. The world is cruel with many unknown circumstances. In the article "How to protect yourself from fraud", Anon (2004: 5-11), it states that every day honest people are the victims of fraud. Some of the cleverest minds in the world are devising and carrying out schemes to separate people from their money. More than a hundred years ago, one writer noted: "There are some frauds so well conducted, that it would be stupidity not to be deceived by them." Deception has a long history, dating back to the garden of Eden (Genesis 3:1-5). Old schemes have many variations and new schemes are being concocted all the time. Therefore don't be surprised when you fall victim to fraud and deception.

The definition following Kings is the one by Sheridan & Kendall. It stated that corporate governance is a process of controlling management to ensure responsible behaviour in achieving the maximum level of efficiency and profitability. This can only be achieved if a clear understanding of corporate governance and ethics is made. No half measures are acceptable. Mistakes can be made by the lack of understanding. If the fundamentals are not properly instilled, then the system and standards (corporate governance and ethics) will collapse. Maximum efficiency and profitability is achieved when the company clearly understands what is expected of it. There can be no margin for confusion or error. Resolving of errors and disputes accounts for much of companies wasted time.

The definition of ethics in paragraph 3.1.1, suggest that staff adhere to defined standards in their business decisions and actions. These standards once again boil down to those rules and regulations documented and implemented within the company they were designed for. There therefore exists no difference between corporate governance and ethics in the two definitions mentioned above. Apart from the specific rules and regulations documented both make the same assumptions. Corporate governance talks about a system of control while ethics about the adherence of standards in decision making. Both involve the method of direction through the decision makers. If the decisions made are not ethical, the aura of failure follows. Leaders make decisions which will either direct a company ethically and morally or deceptive and immorally. Leaders direct and form the basis for the culture of that company. Their decisions therefore need to be evolved with the basis of morality.

The differences between corporate governance and ethics would be in the items documented on the rules and regulations schedules, which is sent to all stakeholders within that company. As far as the way that both would be presented or implemented, very few differences would exist.

Studying the definitions from a different perspective, there exist many key words which cannot be ignored. Words such as honesty, accountability, integrity and culture to name a few. These words provide the essence of what is required to be both ethical and corporate governant. They must be strategised, and implemented in all goals, policies and activities.

But what about all the other definitions presented in the study. Why are they noted? The reason is simple, they are there to prove that many definitions exist. Each person defining has made his or her own interpretation and tried to define using various key words. Sir Adrian Cadbury uses the keywords 'social- and communal goals'. Sheridan & Kendall use 'strategic goals, environment and legal and regulatory requirements'. The similarity between Sheridan & Kendall and Sir Adrian Cadbury is environment. They both are concerned with environmental goals.
The Commonwealth is concerned with leadership in their definition, while De Waal is concerned with decisions.
De Waal goes further and has a similarity to King. De Waal talks about systems and values. This is the closest definition to King.

The differences in the definitions should be expected. Different people have different understandings. Free will is not something which can be taken lightly. Free interpretations and free implementations cannot be defined by one sentence. Each is different.

4.3 Business ethics and corporate governance

Garratt in paragraph 3.1.2 notes that executives have lost touch with ethical issues. He notes that pressures lead to unethical behaviour. Explicit instructions by managers to perform unethical or illegal actions is the order of the day. In fact, questionable behaviour accelerates career advancement. If these facts are true, please Lord help us all.

Theory is only as good as the paper it is written on. Ethics is inbred. It is desired, it is implemented without question. The problem is the practical implementation. Circumstances make a mockery of ethical behaviour. When one works to achieve, he will do anything not to loose that achievement. No one wants to be left behind when promotional opportunities arise. People understand that this world is not sin free. The question is how far are they prepared to go to achieve what they want.

Ethics should instil the principles of corporate governance as reflected in figure 2.1. Should is not lightly used. Once again, the persona of what is expected is not always practically implemented. People cannot self-police. They are influenced by what they see and hear. They conform or adapt to their surroundings. If it is expected of them to act unethically, they will do so even if they know that this is the case. What is important to note is that crime pays and the punishment is not severe. Most defrauders have got away with their crimes. The newspaper article in the Business Times, Klein (2004: 1&3) puts things in perspective. It probes how companies are increasingly funding their own commercial probes. The SAPS, Commercial Crimes Unit and the Scorpions, lack the capacity to handle cases that are financially complex. The article continues to state that companies are increasingly worried about the slow pace of prosecutions. Only a handful of people have been successfully prosecuted for high profile commercial crimes committed over the past few years like Beige, Macmed, LeisureNet and Tigon. These high profile examples are only a fraction of the more than 55 000 commercial crime cases reported each year. What is scary is the results of these cases. At LeisureNet, which was liquidated in 2000 leaving debts of R1.2bn, four arrests have been made, including those of joint CEOs Rod Mitchell and Peter Gardener, but the case has moved slowly despite numerous investigations. At Beige, fraud was uncovered in August 1999 but there have been no arrests and one director, Barry Duke, left the country while under surveillance. At Macmed, which collapsed in October 1999, company secretary Alan Hiscock, who was held personally liable for its R647m debt, was recently sequestrated, but there has been no progress on a criminal case. Mining magnate Roger Kebble, arrested in 2002, accused of fraud, and contravening the Companies Act, has had his trial date set for January 2005. From the previous insert, it pays to be fraudulent.

People do act unethically. People lie to suite their needs. People act in a certain way and they will not be convinced by someone else's ideas if they are not utterly convinced that those ideas are sound and leave no room for argument.

Unethical behaviour is human nature. People condemn lying but yet everyone lies. The rule is that something is wrong if common people form a standard. Going against that standard is wrong. The key word is standard, much like the word in the definition of ethics. Which comes down to how is that standard measured. If unethical behaviour is natural then ethics is doomed to fail. No matter how people try to make the rules of ethics more justified, unethical behaviour is inbred and will take precedence.

The key constituent is how badly do you want the carrot presented, which will make you act unethically. The element of risk does become a contributing factor, because risk can be managed. People justify their actions when they are caught acting unethically, stating their case to unequivocal ends. Some are even given special exemptions due to their competency to twist words or argue to means, which cannot be attacked. Therefore the standards are just standards which set some form of rules and hopefully someone will adhere to them. Like the bible set out 10 commandments, the standards can be adhered to or ignored. The bible set the punishment of not adhering to the commandments as retribution to hell. Ethics sets the retribution to possible civil or criminal action. If there is no fear for any of these retributions then ethics is condemned. But there are those who will do there best to be ethical. If that helps them to be promoted is a matter of investigation.

Now the question arises, can these standards be instilled within the principles of corporate governance? If these principles are similar to the ethical notions then the answer is yes.

The argument is that if we are taught what is ethical from a young age and we as students understand these requirements without argument then we will become wore ethical. However, this standard would form conformist behaviour, which is unacceptable. Nobody wants to be followers to society. We all want that individual character. Included in this is the fact that this ethical behaviour must not be arguable. This is almost impossible. People question and make their own rules.

Based on the above arguments it is not difficult to understand why many people act unethically. It is inborn. The same applies to the principle of corporate governance. Because ethics and these principles are so similar, it is not difficult to note that one will act ethically in the fullest extreme. People will do what they perceive as being correct for their self-interest and no one else's. They will argue if this is put to question.

What is good to society is not what is good for the person. This unselfishness cannot be deviated from. There are too many contributing factors to the demise of this unselfish notion. It is the way we are brought up. The way we are taught in life to deal with circumstances. Different people deal with different situations differently. No one father teaches his son the same as another dad would his child. These differences are what define us.

In summary – there is something or someone who wishes us to act in a certain way. This goes beyond our upbringing and beyond our social influences – these are some things we just know are wrong. It is generic.

But if this is all true then how do we as humans survive? Yet we do, because there are those who conform. Therefore not all is lost.

There will always be those few who will push the limits beyond those standards, which makes it completely unacceptable to society. Those are the ones that cannot argue their way out of the demise they have created. Those are the punishable ones.

Due to these differences in inbred character, the principles of corporate governance had to be established.

4.4 The principles and their implementation

The principles of corporate governance serve to further expand the definitions of corporate governance and ethics. As studied in the previous paragraph, it became apparent that the definitions were not sufficient to justify the means of corporate governance. Further elaborance is required to create a better understating of what is required to be ethical in a corporate governant environment.

What is important to note is that each principle has some moral edge to it. What these principles stand for is 'morality'. They are the required foundation to make ethical standards and systems, reliable and trustworthy.

Figure 2.1, in chapter 2, reflects the principles in a summarised manner. This paragraph does not intend to define or rewrite paragraphs 2.1.2. What will be made, is the study of these principles within the examples as presented in paragraphs 3.1.6. this is done below in this paragraph in concluding paragraphs 5.1.2. One of the goals of this study is to identify why corporate governance is not practically implemented. Here are some reasons.

Paragraph 3.1.6 notifies that companies should do unto others as they would want to have done unto themselves. Under close scrutiny, it has become apparent that this is not the case.

Within the three examples of: Directors responsibilities in determining the moral and ethical climate, the issue of bribery and the payment of suppliers on time, we noted many practical examples where this was not done. Each had an example of misappropriation of ethical defaults.

It is the responsibility of the directors of that company to create a policy statement and business guidelines. These would then be acted upon by all staff members, creating a culture of ethical superiority. But it is not only the directors but all stakeholders who create the guidelines. With complete and honest communication within the company, these guidelines will meet all the needs of all stakeholders. They too will fully understand what the attempt is and therefore participate more honestly. They will also contribute more freely and act upon those guidelines with pride. A culture of ethical practice will evolve by all. This will ultimately lead to a perception of superior corporate governance and finally to a premium in shareholders share price. The premium differs, but it varies from 18% to 27% more than non-corporate governant companies. A substantial premium to pay for a company, which is trustworthy and moral, but ultimately this is a discount for the future rewards. Leaders of companies should all be striving to meet the demands of these investors and not fulfilling their shellfish desires to compensate their own pockets. Directors have been appointed to run the company for their stakeholder's value. If they do not wish to create value for their investors, then they should not be in that position. They should rather open their own firms and run them for themselves. Directors should have no hidden agendas but should be committed to the wellbeing of the company they manage.

High governance standards will prove essential to attracting and retaining investors.

In other words if the principles of corporate governance are missing then the premium cannot be charged. The guidelines and policy statement must incorporate these principles and embed them within the core of each statement drafted.

The issue of bribery is one which is constantly being debated. Very little recourse is made to perpetrators and is usually not detected. Companies are trying to eliminate this form of practice but when tenders have many competitors, there is no clean cut rules for obtaining that contract. Profits far out way corporate ethical practice and performance is the key to retainment of positions.

The ethical guidelines are usually set to manage the lower tiers of the hierarchy. Senior levels are usually found to play dirty games. Newspaper heading such as 'Nedcor bosses to amass at least R150m from rights issues,' Croty (2004: 1), and 'Will the JSE fine Tokyo,' Bridge (2004: 2) prove this point true. How many times do we open the newspaper lately and we note some form of corruption or fraud. This is simply making it seem right and it must stop!

Ethics has a long way to go and so does corporate governance. They are one and the same and should be developed together. But these are mere terms of reference and can only be developed if the person who feels these words within his soul actually acts within their true meaning within all his daily functions.

Bribery has its consequences. If the person is caught, it creates an aura of distrust and can lead to jailing, dismissal and even repayment of the sum. But how do you get uniformity in the world when bribery is perceived differently in different parts of the world. A comparison is made in the following table.

Table 4.1 – Ethical differences between Europe, Asia and Africa, Hutchenson (1996: 3/43)

Western	***Asia***	***Africa***
Bribery is frowned upon. You could end up in jail. Giving or receiving is generally condemned.	*Giving a red envelope is often accepted and basically expected. Gifts of high value is accepted and expected.*	*Ethics is not a prime aspect of business. Africans do not trust easy and giving of gifts is looked at with distrust.*

To answer the abovementioned question – with great difficulty. Different countries have different cultures and therefore it is difficult to expect them to change easily. It is much like the debate of religion which has no end. You cannot expect a budist to become a Christian overnight and vise versa. The only way this transition is possible is if the business rules of the future become one across the globe. This it seems is impossible in the near future.

The issue once again is that the principles of corporate governance are lacking. If people are not educated they will continue on the destructive course currently being followed. Man needs to change to improve, to evolve, and not to dissolve.

4.5 A study of the ethical guidelines

As discussed in the previous paragraph, guidelines need to be developed, published and enforced within each company. This should not be a matter of, **'should we be corporate governant and ethical,'** but rather, **'we must be ethical and corporate governant in all our actions'**. All companies no matter how small or large should strive to be corporate governant. The foundation must be laid first before the structure is built. The standards and systems must be one and the same and should not deviate. The principles should be embedded within those systems and standards to make the most effective strategy available within each of those companies. No deviations should be permitted. From the highest person to the lowest these 'moral principles' should be acted upon with every decision made. This is the only way forward for any company in the future. Criminal actions are becoming a daily reported routine in newspapers. There appears to be no moral fibre in leaders today.

These guidelines, be it for corporate governance or ethical behaviour, should form the basis of the culture within that company and any person seeing deviating should be reprimanded. Within these guidelines, exposure of no compliant employees and stakeholders should be easy and without retribution.

It is usually the small things that make the hole function and if the guidelines are not effective the entire process could be worthless. All things in life are somehow related and this is true within companies. One small mistake could delay deliveries and ultimately profitability. Therefore the way the company is managed is important.

What is astonishing to note is that companies have been very laxed in getting some guidelines imposed. In most companies who profess to be corporate governant, the picture is bleak. Ethical and corporate guidelines exist, but they are too basic to be acted upon and even act as lip service without any commitment. In other words, companies have fooled most investors by creating a corporate governant / ethical guideline but have not implemented it. They are perceived to be doing what is expected but like magicians on create illusions. This is the very reason why companies fail at being ethical. As long as everyone is fooled they act and do as they please. No-one questions or checks on them. Even if an ethics comity is maintained they resolve by their own means to conclude the deals by their own standards.

If only 84% of the companies surveyed had an ethical infrastructure in place and of these it became apparent that they could not integrate these ethical practices into their existing management processes, then what is the use. If these companies do not see the need to appoint a senior manager with ethics responsibilities or to create integral ethics strategies and procedures, then the system has failed. The exercise was purely a waste of time, resources and money. Ethics does not appear to be an evaluation tool in those surveyed companies, nor in risk assessment. How can this be? It all boils down to perception. If we are deemed to seem to be doing something about ethics we are perceived to be ethical. That is their philosophy.

But would a spring clean be effective. To develop a comprehensive ethics programme requires a dedicated staff member, who is trained in performing this function. He would have to supervise and implement the programme until it is effective. This would mean that the function would have to be duplicated as the first trial was not successful. Further time and energy would have to be made to get the programme right. The buy in by the directors would have to be made and their errors attacked. The company would have to reassure stakeholders of its commitment to ethics and their efforts in trying to get their failures corrected.

Why do all this? The reason is simple – **Increased profitability, increased reputation, happier workforce and increased trust by all stakeholders.**

In summary, it is the stakeholders who ensure that the company functions in a moral and ethical manner, but it is the directors who create and implement the guidelines and culture.

Paragraph 3.2.2 depicts what is required to be included in the code of ethics which ultimately serve as guidelines. What is interesting to note is that these guidelines require the highest standard of ethical behaviour. The very essence of ethics and corporate governance principles is essential. They are intertwined and are one. The standards and systems as reflected in paragraphs 1.2 become apparent without debate. In summary what is required is moral and logical integration. Everyone knows how to act ethically but the guidelines set parameters which need to be adhered to. They also set procedures to avoid misunderstandings.

But why do companies hesitate to address organisational integrity? The reasons have been quoted in paragraphs 3.2.2. What is important to note is that it all boils down to economics. Companies need to believe that their investment into ethical behaviour will yield returns. If not they will continue to act as they are.

4.6 The weakness in corporate governance

Corporate governance is merely a tool to ensure transparency and moral fibre. But it is not a legal enforceable measure. It is purely a means which can be adopted by all those who wish to create future wealth within their companies. If you are not compliant, there is no legal statute that can imprison or fine a company. This is a weakness of huge proportions. Civil and criminal recourse can only be affected through legal means and not through Kings principles.

Regulation must be moderate or else it could stifle business. It is important that directors conform while performing. This is difficult in the beginning, but with acceptance it becomes easier and a normal way of doing business.

It must be assumed that corporate governance is not a watchdog over directors but rather a tool to be used to advance business. The principle that it is a watchdog must be changed and accepted. Until then directors will not move forward.

To go further, corporate governance is only required for large dependent companies, and leaves out small and medium companies where no division of owners and directors takes place. This is partially false as governance should be effected in all companies no matter what size or structure. All companies should be ethical in all dealings.

Governance is perceived to be a means to meet social and environment ends. This is not true. Governance should be seen to be about distributed justice and ordinary decency. This defines governance.

4.7 Is corporate governance essential

A question debated many a time. If governance was not needed, there would not be a growing need for forensic accountants. Every day in the media, fraudulent transactions are reported. As business becomes more global a set of international guidelines needs to be adopted which governs companies ethically and in a manner understood by all global players.

Linked to this is the need for accountability and independence. Without governance the companies growth and objectives would be set aside by scrupulous directors. Like so many other companies in the media today, they would be affected by greed and self interest. They would not act in good faith and profitability would be the driving force to conquer no matter how they achieved it.

4.8 Conclusion

Within this study it became apparent that there was no one global definition to define corporate governance. Five examples were presented each with there own words of reference. The problem with this is that people can construe the words to suite their own needs and thereby get away with irregularities.

Ethics was also defined in chapter 3 which was compared to the definitions of corporate governance in chapter 2. King defined corporate governance as a system by which companies are directed and controlled. The system referred to, is the rules and regulations, documented, within each individual company by the corporate governance board to make all stakeholders aware of the way the company would like to function, within the compounds of the corporate governance principles. What is important to note is that the definition is very generalised and no mention to ethical behaviour is made. Does this mean that it could be assumed that ethical behaviour is not required within corporate rules and regulations but that a different set of documented rules and regulations be constructed for this purpose specifically. Once again regulation is required.

The definition of ethics in paragraph 3.1.1, suggested that staff adhere to defined standards in their business decisions and actions. These standards once again boil down to those rules and regulations documented and implemented within the company they were designed for. There therefore exists no difference between corporate governance and ethics in the two definitions mentioned above. Apart from the specific rules and regulations documented both make the same assumptions. Corporate governance talks about a system of control while ethics about the adherence of standards in decision making. Both involve the method of direction through the decision makers. If the decisions made are not ethical the aura of failure follows.

The differences between corporate governance and ethics would be in the items documented on the rules and regulations schedules, which is sent to all stakeholders within that company. As far as the way that both would be presented or implemented, very few differences would exist.

It has become apparent that corporate governance and ethics are intertwined and cannot function without each other. The system was compared to the standards and there correlation documented in graph format in chapter 1.

But do people attempt to act ethically if they are not required to do so. Chapter 3 reflects a bleak picture, with many examples of misappropriations and fraud. It is common nature to want more by whatever means possible. People don't want to act unethically but circumstances force them to. People in general want to be good and act in a manner that earns respect from fellow colleagues.

Ethics is inbred. It is desired, it is implemented without question. The problem is the practical implementation. Circumstances make a mockery of ethical behaviour. When one works to achieve, he will do anything not to loose that achievement. No one wants to be left behind when promotional opportunities arise. People understand that this world is not sin free. The question is how far are you prepared to go to achieve what you want. People do act unethically. People lie to suite there needs. People act in a certain way and they will not be convinced by someone else's ideas if they are not utterly convinced that those ideas are sound and leave no room for argument.

People do act unethically. People lie to suite there needs. People act in a certain way and they will not be convinced by someone else's ideas if they are not utterly convinced that those ideas are sound and leave no room for argument.

Unethical behaviour is human nature. People condemn lying but yet everyone lies. The rule is that something is wrong if common people form a standard. Going against that standard is wrong.

The argument is that if we are taught what is ethical from a young age and we as students understand these requirements without argument then we will become wore ethical.

Garratt noted that executives have lost touch with ethical issues. He notes that pressures lead to unethical behaviour. Explicit instructions by managers to perform unethical or illegal actions is the order of the day. As a matter of fact, questionable behaviour accelerates career advancement.

We continued to study the principles of corporate governance serve to further expand the definitions of corporate governance and ethics. As studied in the previous paragraph, it became apparent that the definitions were not sufficient to justify the means of corporate governance. Further elaborance is required to create a better understating of what is required to be ethical in a corporate governant environment.

What is important to note is that each principle has some moral edge to it. What these principles stand for is 'morality'. They are the required foundation to make ethical standards and systems, reliable and trustworthy. This was then proven in the study of this chapter.

Investor activism was also studied. High governance standards will prove essential to attracting and retaining investors. In other words if the principles of corporate governance are missing then the premium cannot be charged. The guidelines and policy statement must incorporate these principles and embed them within the core of each statement drafted.

Ethics has a long way to go and so does corporate governance. They are one and the same and should be developed together. But these are mere terms of reference and can only be developed if the person who feels these words within his soul actually acts within their true meaning within all his daily functions.

Table 4.1 studied the Ethical differences between Europe, Asia and Africa. They are studied below.

Western	Asia	Africa
Bribery is frowned upon. You could end up in jail. Giving or receiving is generally condemned.	Giving a red envelope is often accepted and basically expected. Gifts of high value is accepted and expected.	Ethics is not a prime aspect of business. Africans do not trust easy and giving of gifts is looked at with distrust.

Different countries have different cultures and therefore it is difficult to expect them to change easily. It is much like the debate of religion which has no end. You cannot expect a budist to become a Christian overnight and vise versa. The only way this transition is possible is if the business rules of the future become one across the globe. This it seems is impossible in the near future.

The issue once again is that the principles of corporate governance are lacking. If people are not educated they will continue on the destructive course currently being followed. Man needs to change to improve, to evolve, and not to dissolve.

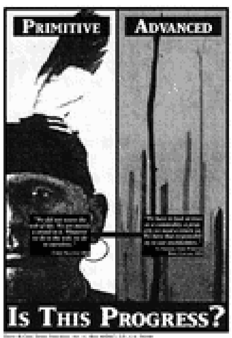
Corporate governance is merely a tool to ensure transparency and moral fibre. But it is not a legal enforceable measure. It is purely a means which can be adopted by all those who wish to create future wealth within their companies. If you are not compliant, there is no legal statute that can imprison or fine a company. This is a weakness of huge proportions. Civil and criminal recourse can only be affected through legal means and not through Kings principles.

The study of this chapter hopefully increased the knowledge of the readers to further understand the similarities of ethics and corporate governance and how the similarities and differences actually affect each other.

5

Chapter 5

Corporate Governance – Remedies and solutions



5.1 Looking forward – Introduction

Chapter 5 studies various solutions to corporate governance. It also studies methods on how to fix up corporate governance within the global and South African environments. It gives 13 recommendations before moving onto various other factors. This chapter specifically answers objectives 4 and 5 in chapter 1 paragraphs 1.4.

Who are these delinquent directors so often referred to in the previous chapters is also defined.

What is important is the question of how to fix corporate governance. Various strategies are discussed and studied with the hope of maybe answering this question.

Globalization is also studied and the impacts thereon upon a unified corporate governance system is discussed.

Enforcement measures and which ethical system should be used is studied.

Finally the purpose of the King Report and the answer to the question why the fallacy behind the myth is studied.

A study of the remedies will first be made and then the other sections will be dealt with in the later part of the chapter.

5.2 Remedies

There are many remedies suggested by various authors to enable companies to follow the correct path to good effective corporate governance. Below are a few. These are an expansion to the King Report.

5.2.1 Independent Board members representing 20% of board members

According to the Shanghai Stock Exchange (SSE), Guidelines for Corporate Governance, Anon (2003:1), a method of having a minimum of 20% external independent board members in listed companies is required. This is to prevent colluding amongst board members and to obtain independence and better decision making quality.

The code continues to include the following recommendations:

- *'At least one-third of a board membership to be non-management for independence*
- *Disclosure of directors and key executives remuneration*
- *Audit committees made up entirely of non-executive directors*
- *Disclosure of information to all shareholders should be "in a fair and equitable manner."*
- *January 1, 2003 is the deadline for all Singapore listed companies to start including their corporate governance practices in their annual reports, with explanations for any deviations from the official code.*

- *Increased disclosure of directors' dealings with related parties*
- *Separation of the roles of chairman and chief executive/managing director.'*

These appear to be effective methods to acclaim some form of independence. As one of the principles of corporate governance, independence is a very valuable part of maintaining ethics. Independence is a sound principle, which makes investors willing to invest.

5.2.2 Critical information systems

King suggests that (King, 1994:16) critical information is vital for a company's proper functioning. For a company to improve its performance or its governance, it must know in what ways its current activities fall short of its aims. Much of the damaging and counterproductive conduct of corporations occurs because people with critical information lack power, while those with power lack essential information.

(King, 1994:16) '*Critical information systems should ensure that managers, directors, and owners are routinely confronted with, not shielded from, uncomfortable facts. Companies could therefore compete on the extent to which they made it more rewarding to identify and resolve problems than to ignore them, and on the basis to which they used their shareholders, particularly their employees and their customers, as a natural early – warning system'.*

What all this refers to is transparency. Without transparency decisions would not be made correctly by both shareholders and stakeholders. Directors would not be confronted on hardened issues which could have huge relevance to various parties decisions. Directors run companies for all stakeholders and not for their own benefit. Every decision they make affects all parties related to the company and therefore complete and honest transparency is required.

King continues by stating that (King, 1994:8), *'information and the quality of that information are critical for the successful operation of markets and to fulfil the principle of transparency in corporate governance.'* Financial reports of companies, therefore, play a vital role. If the financial reporting has the necessary information, uncertainties will be reduced.

The aim must be to provide consistent information in as understandable form, so that a decisive decision can easily be made. Accounting standards need to be revised from time to time in order to take into account the financial reporting needs of users of financial statements.

The American Institute of Certified Professional Accountants (King, 1994:8) did a study on what information users believed they needed to make informed investment and credit decisions. Their findings were:

(**Note**: The principles of corporate governance have been included to assist in the understating of their relevance in the recommendations. All recommendations should be seen to assist corporate governance and ethical behaviour in its entirety.)

- *'Although the current historical cost based accounting model is acceptable, consideration should be given to providing fair value information in regard to certain assets and liabilities.* **(Diversity)**

- *Investors and creditors place a high value on reporting which gives information as to each segment of the companies business or separate business unit. This information helps them to predict the companies future earning and cash flows.* **(Transparency)**
- *To be useful to investors and creditors, information can be given about a companies earnings that are stable and / or recurring as it provides a basis for estimating sustainable earnings.* **(Communication)**
- *Companies should disclose information about the estimates and assumptions used in determining the value of material assets and liability amounts.* **(Transparency and Communication)**
- *Users should receive information about any off balance sheet financing.* **(Integrity)**
- *Non – financial business information needs to be given in clear, unambiguous and simple language so that the average reader can understand how the activities being reported are related to the company's financial statements.* **(Morality and Diversity)**
- *Investors and creditors want forward-looking information. Information about opportunities and risks resulting from concentrations in assets, customers or suppliers, should be apparent.* **(Integrity and Accountability)**
- *Information about a company that is consistent over time is valued more highly than information that is comparable between two or more companies.* **(Diversity and Loyalty)**
- *The negative aspects of the year's events should get equal treatment with the positive aspects of the year's events. No report should tend to reflect the company's performance in the best possible light, but a balanced report should be furnished.* **(Zero Tolerance and Fairness)**
- *Legal backing for accounting standards should be put in place and a review panel should be formed to monitor and enforce compliance with accounting standards.* **(Accountability)**
- *The flexibility allowed by current accounting standards diminishes the usefulness of financial reporting. Accounting standards in South Africa should be redrafted so as to reduce the options and to bring them in line with international standards. The standards should have benchmarks, which will result in a consistent treatment for similar transactions and events. Bringing SA standards in line with international standards is important in the context of our industrial policy to be export orientated and outward looking.* **(Integrity and Responsibility)**
- *Companies should be allowed to depart from these accounting standards only if the directors can justify that compliance with these standards would not achieve a fair presentation of the companies business.* **(Commitment)**
- *Section 300(I) of the Companies Act should be amended to require the external auditors to state in their report whether or not they agree with the directors decision to depart from the requirements contained in the accounting standards on the basis that such a report would not give a fair presentation to the interested stakeholders.* **(Independence)**
- *For the amendment to be affective, they must be monitored and enforced. In this regard, a Review Panel should be formed similar to the one, which exists in the United Kingdom. The Panel will review financial statements that are brought to its attention and after discussing the departures from the accounting standards with the directors and auditors of the company concerned, the findings can be made public. The objective is to ensure that*

the public is fully informed and made aware of the financial statements, which are not in compliance with the accounting standards. **(Independence).***'*

The standard setting bodies in South Africa should consider these finding when examining their disclosure requirements and accounting standards which is an on – going matter.

Accounting standards should be aimed to meet the needs of a wide users group.

Contrary to popular opinion, the fundamental financial mechanism of corporate governance is the requirement to report periodically to shareholders and have director's account to the shareholders for their conduct of the company. (Richardson, 2004).

The annual general meeting is the key for keeping directors accountable to shareholders. The annual general meeting provides an opportunity for the shareholders to review the performance of the directors. Shareholders can remove offending directors, and exercise control by authorising, or refusing to authorise, certain kinds of corporate activities.

King continues by stating that (King, 1994:7), '*it is the board's duty to present as simple a report as possible to stakeholders, but the quality of the information must be based on the guidelines of, promptness, relevance, openness and substance over form.'*

In any communication with stakeholders, the directors should ask themselves the following four questions:

- *'Is the communication open or transparent?*
- *Is the communication prompt?*
- *Is the information relevant and substantial or merely a communication of form?*
- *Does it fairly set out the position?'*

If the answer to any of the above four questions is in the negative, the directors must amend the communication appropriately. It is these types of questions which put Procter and Gamble on top of business ethics. (http/www.corpgov.net/news/news.html) (2002): 1)

As of yet South Africa does not have a rating system for companies that are socially responsible.

5.2.3 Corporate elections

A serious problem exists in corporate elections. This is highlighted in the article 'Ending Corporate Democracy,' (Anon. 2002: 1) which states that corporate board elections are about as democratic as old-style communist regimes: they talk the talk but don't walk the walk. A 1991 US study found that over 80% of board candidates were filled by CEO recommendations. Until 1992, shareholders could not even communicate with each other without going through elaborate and expensive filing procedures. Serious obstacles to communication remain.

To realize the potential of more democratic corporate governance a need to encourage monitoring and active participation in corporate governance by investors is becoming necessary. Among the many reforms needed are: (Once again the principles of corporate governance are reflected in brackets)

- '*Institute proxy reform measures, especially for confidentiality in collection, independence in tabulation and uniform treatment of votes and abstentions.* (Independence and fairness)
- *Change the definition of a "voting group" so that shareholders who are not seeking to control a corporation can freely communicate with each other.* (Communication)
- *Allow groups of investors holding at least 10% of outstanding shares access to proxy statements to nominate at least one independent director and to present other non-control related proposals to shareholders.* (Transparency)
- *Require investment companies, banks and insurance companies to meet the same fiduciary standards for the voting of proxies as pension funds under ERISA.* (Fairness)*.'*

Valid suggestions have been made above which are practical and enforceable. They also reflect the interaction of the principles of corporate governance and how they can be implemented in every task.

5.2.4 Investor activism

Kingdon (2002:8) states, '*that the King II report has taken the view that while governance can be encouraged by putting certain measures in place, it generally has to be self-regulated. The concept of encouraging shareholder activism and using shareholders as a way of enforcing governance has taken root globally. In the UK, the Myners Report on institutional investment advocated that fund managers adopt a more hands-on approach to the companies in which they invest. As a result, the UK government has committed itself to passing a law that will place a fiduciary obligation on British fund managers to practice a greater degree of shareholder activism. The Association of Unit Trusts and Investment Funds in the UK has developed a Corporate Governance Code of Good Practice, requiring member funds to report annually to investors about how they promoted good governance in the companies in which they've invested'.*

South Africa is moving in the same direction. In the context of public companies in this country, institutional investors need to make greater demands of the companies they invest in. These can include:

- *'Drafting a set of criteria for investment. These must be much broader than the financial results that are excepted.* **(Transparency and communication**)
- *Calling for disclosure where required, by using the Promotion of Access to Information Act. This entitles the requester of information to disclosure of recorded information without having to give reasons.* **(Transparency)**
- *Make use of section 257 of the Companies Act to investigate, amongst the other things, a company's profit, losses, contracts and assets, as well as its shareholding in, and ability to control, subsidiaries.* **(Transparency)**
- *Moving away from quarterly assessments in favour of a long-term view of investment performance.* **(Loyalty and accountability)**

- *Being more active in the attendance of AGMs, and paying heed to the special business items on the agenda.*
- *Raising queries where reporting is not full and fair.* **(Social responsibility*)'***

Particularly useful in this context is a shareholders' agreement. This not only protects investors, for example by making provision for easier exit, but also bolsters corporate governance by requiring regular reporting by management.

As King stated in a newspaper article (D'Angelo A. 2004:1), chief executives pay should be related to profits made. Profits generated from extraneous factors, such as the exchange rate, and to which the chief executive had made no intellectual contribution should be stripped out of this calculation. Major shareholders adopted a long-term strategy for the company but senior manager's normally had a five year contract with a three year horizon. Managers who adopt a three-year strategy should be penalized for poor performance. Performance should not only be linked to financial aspects such as annual financial statements because they can be manipulated legally to show profits, but to all aspects of the company such as logistics, efficiency etc.

What is required is some form of firmer legitimacy to the King Reports which would force directors to actually start acting with ethical and principal performance.

5.2.5 Morale versus Greed

Morale has been a big problem in South Africa. It destroys productivity and creates unforeseen problems. An intense programme to boost morale through employee involvement in decisions could be an effective tool to better governance. Judge King suggests that directors lead by example. Shirley Jones (Jones S. 1999:1) states that, 'low morale in a company equalled corruption. Judge King advised business leaders to lead by example in their corporate fight against corruption'. He said executives had to accept that the principle of greed was real and then devise mechanisms to manage it. He said it was often best to tackle this problem on a "bottom-up basis".'

The principle of greed is the largest problem facing mankind. Humans have to change their nature and embrace all the principles of corporate governance with open arms to overcome this temptation.

5.2.6 Choice of directors

Unless a person is an insolvent, anyone can become a director. This allows repeat offenders to continue with their illicit dealings unhindered.

An amendment to this situation is necessary and (Vermeulen A. 2001: 2), makes some remarkable suggestions:

- *'Amendments to the Companies Act - A change to this law could result in legislating bans on directors who have been found in breach of fiduciary responsibilities and other offences.* **(Social Responsibility)**
- *Finding a proper test for directors.* **(Morality)**
- *For minor infractions directors are banned for anything up to five years, while a serious hand-in-the-cookie-jar offence could get a lifetime ban.* **(Leadership and zero tolerance)**

- *Lawsuit against offenders is crucial'.* **(Fairness)**

Methods of choosing directors to boards should also be studied. Ettienne Swanepoel (Swanepoel E. 2000:3) suggests that the appointment of directors to the board of a listed company is an important component of good corporate governance. Regrettably, many local institutions support the same candidates for appointment as their nominees to a large number of boards. Frequently, such directors are overextended and do not have the time necessary to fulfil their roles properly. The following example relays the abovementioned more fully. (Swanepoel E. 2003:3)

'Lockheed at its 1990 annual meeting made a series of pledges to make policy changes over the coming year. The most significant pledge pertained to the board of directors. Lockheed promised to add between one and three new outside directors and to accomplish this through a process involving its institutional shareholders. In making good on this pledge, Lockheed became the first publicly held US firm to establish a formal procedure involving major institutional investors in the director selection process.

Lockheed, together with the recruitment firm, set up a process to screen the names. The process was structured to involve several stages during which candidates not suitable could be eliminated. The first screen applied by Lockheed was experience relevant to Lockheed's business operations and adequate time availability to make a dedicated commitment. Individuals who served on too many boards were eliminated. The names were reduced to 80. The recruitment firm then contacted all 80 prospective candidates to determine their interest in being appointed to serve on Lockheed's board. Only 50 candidates expressed an interest. Lockheed's financial and legal advisers undertook a due diligence in respect of the remaining candidates with regard to their serving on competing boards or those with conflicts such as a relationship with a Lockheed customer or supplier. The list was further reduced to 40 candidates. These candidates were interviewed and Lockheed's shareholders were requested to veto those candidates they thought unsuitable.

The upshot of this process was that the new directors appointed to Lockheed's board were properly qualified and enjoyed broad shareholder approval. The Lockheed selection process has since become a business case study and perhaps one that local firms should consider.'

This serves merely as an example but all stakeholders became involved in a process, which made the company make a decisive and correct decision. This is how all decisions should be made.

5.2.7 Directors at fault

De Waal (De Waal, M. 2002:55) makes various suggestions for delinquent directors.

De Waal states that, *'King II does however recommend that the registrar of companies open a register of delinquent directors, where the likes of Levenstein and former Regal chairman Jack Lurie could find their names and to counter the seductions to greed, the King Report offers guidelines for the composition of boards and election of non - executive directives. '*

The report states that an effective board should comprise a balance of executive and non - executive directors. Emphasis is placed on the fact that the non - executives should be independent of management so that minority interests in the company are protected. This allows the chairman to freely raise issues that are related to the management of the company without fear of repercussions. If the chairman is simultaneously involved in company management, there is greater reluctance to raise those issues for fear of inviting criticism on management issues. At Regal's end many of the non - executive directors were friends or relative of Levenstein's. *"If there are strictly corporate governance principles in place you will need to pay them more. Shareholders would rather have excellent corporate governance structures in place than save money on board fees."* A view prevails that given South Africa's limited resources, as performance pressures on non - executives increase, there will be fewer and fewer good people willing or able, to reign - in unruly executives.

She continues by stating that Exxon's was devalued by $3 billion in the week after oil gushing from the tanker Exxon Valdez fouled Alaska in 1989. Motorola saw its capitalization fall 16% after scientists hinted at a link between cell phones and brain cancer in 1995.

The opposite also holds the true. Companies which employ worthy governance principles and practices attract the lion's share of the investor universe. If a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a company opts for lax accounting and reporting standards, capital will flow elsewhere. There is a greater need for transparency as a whole new set of voices look at how companies are performing.

(De Waal, M. 2002:55) A study by international consultancy McKinsey showed that a number of global institutional investors would pay more for equity in a company that upholds good business principles than an equivalent competitor with inferior corporate governance. The McKinsey report showed that well governed corporations can demand an 18 - 27% premium on their share prices.

5.2.8 Tip-Offs Anonymous

De Waal M (De Waal M. 2002:55) states that, Arthur Goldstruck, managing director of high - tech consultancy World Wide Worx, believes that the remedy is to constantly challenge CEO's and other senior directors when there is even a whiff of a problem. For example, Tip Offs Anonymous has an innovative way to encourage whistle blowing. The structure basically facilitates anonymous whistle blowing to drive out white-collar crime and offer companies tools for better corporate governance and risk management. *"It instills a culture of honesty and integrity in the organization,"* says Guy Brazier, a partner at Deloitte & Touche who assisted with implementation of Tip Offs Anonymous. *"The service helps to expose what is going on within an organization and where there is collision with an outsider that no traditional audit process will pick up. It acts as a very valuable and practical deterrent."*

Reports are sanitized of offenders and then handed back to the corporation. Tip Offs Anonymous and its founding partners do not get involved in investigating tip offs, or pursuing further action. It is left to management to bring people to book, which begs the question: Who polices those in power?

5.2.9 Bring the baddies to book

De Waal M (De Waal M. 2002:55) continues to state that, '*while the King Report offers world-class principles for corporate governance, criticism leveled at it rightly claimed that it was not backed by appropriate sanctions.'* Disappointment was deepened as corrupt corporate leaders and delinquent public officials got fines or slaps on the wrists, only to resurrect in another guise or enjoy luxurious offshore lives. *"If we could have a couple of guys in jail it would help,"* says MetAm's Dr Visser. *"We need some examples. It is important that people know and fully appreciate their responsibilities and the consequence of abandoning these. Greed should have an expense."*

A 90 page list of criminal charges, including 18 counts of fraud, was handed to the national directorate of public prosecutions, presenting them with solid artillery to wage war on white collar crime. If Myburgh's recommendations are followed, Regal's directors may find themselves in the criminal courts, with strong prospects of going to jail.

At the time of writing this report, South Africa's more colourful white collar criminals were yet to be charged.

What is needed now is an attitude of zero tolerance and the teeth to ensure that these principles are applied. Decisive action is required to send a strong message to business.

5.2.10 Institutionalising on strategic level

(Rossow & Van Vuuren, 2004:227) uses Manning's definition to define strategy as "*the process of thinking through what today's business is and what tomorrow's business should be, and then getting there*". Strategizing for ethics implies that once ethics has become part of the company strategy, the implementation within all spheres of the company has to be developed and integrated. Constant evaluation and review of the process has to be made and adaptive changes implemented.

Ideally this needs to form part of the culture which will create this environment which will cause the strategy to become ethical. People make ethics happen not paper word formulations which directors or boards conjure up and call strategies.

5.3 Who are these delinquent directors

But who are these delinquent directors who cause this havoc. De Waal M (De Waal M. 2002:55) state that, many investors and industrial leaders view power, arrogance and unchecked leadership as the first signs of decay. *"It is impossible to spot bad corporate governance from the outside until somebody blows the whistle, but an early clue is often tremendous arrogance amongst directors,"* says Arthur Goldstruck, managing director of the high - tech consultancy World Wide Worx.

Delinquent directors first forget that they have not been solely responsible for their success. They forget that they still have a responsibility to stakeholders. At this stage the organizations become the executive's fiefdoms and governance become a vague annoyances.

5.4 How to fix corporate governance

Many other suggestions are made in a detailed article by Byrne JA (Byrne JA. 2002:43-50). The articles is summarized as follows:

An aggrieved employee says she feels betrayed by bosses who have grown rich on stock options while putting the squeeze on health benefits and salaries. The latest wave on skepticism may have started on Enron’s Corp.'s ugly demise, but with each revelation of corporate excess or wrongdoing, the goodwill build up by business during the boom of the past decade has eroded a little more, giving way to wide spread suspicion and mistrust. An unrelenting barrage of headlines that tell of Securities & Exchange Commission investigations, indictments, guilty pleas, government settlements, financial restatements, and fines has only lent greater credence to the belief that the system is inherently unfair. But increasingly, the public perception is that too many corporate executives have committed egregious breaches of trust by cooking the books, shading the truth, and enriching themselves with huge stock option profits while shareholders suffered breathtaking losses.

"I feel thoroughly disillusioned and disgusted," complains Eugene J. Becker, a small investor living near Baltimore. *"These people cannot police themselves. Greed is there driver. It's time for stockholders to start showing their disillusionment in tangible ways."*

At risk is the very integrity of capitalism. If investors continue to lose faith in corporations, they could choke off access to capital, the fuel that has powered America's record of innovation and economic leadership. The loss of trust threatens our ability to create now jobs and reignite the economy. The tyranny of the daily stock price has lead to boarder line accounting and in some cases, outright fraud. And why not, when every upward tick of the stock means massive gains for option-rich executives? *"Excessive CEO pat is the mad-cow disease of American boardrooms,"* says J. Richard Finlay, chairman of the Canada's Center for Corporate & Public Governance. *"It moves from company to company, rendering directors incapable of applying common sense."*

A study by Finlay shows that many boards devote far more time and energy to compensation than to assuring the integrity of company's financial reporting systems.

It's not just the corporation that is at fault. Many of the corporation's outside professionals fell prey to greed and self-interest as well, from Wall Street analysts and investment bankers to auditors and lawyers and even regulators and lawmakers. These players, who are supposed to provide the crucial checks and balances in a system that favours unfettered capitalism, have in many cases been compromised. Many analysts urged investors to buy shares in companies solely because their investment banker colleagues could reap big fees for handling underwriting and merger business. Far too many auditors responsible for certifying the accuracy of a company's accounts looked the other way so their firm could rake in millions from audit fees and millions more from higher margin consulting work. Some outside lawyers invented justifications for less-than-pristine practices to win a bigger cut of the legal fees. Far too often, CEOs found they could buy all the influence they wanted or needed.

To really fix the problem, Congress needs to require companies to expense options. If every option represented a direct hit to the bottom line, boards would be less inclined to dole them out by the millions.

An expanded auditor statement in the annual report would also help. Instead of just asserting that the financials meet generally accepted accounting principles, the auditors' statement should illuminate just where in the wide range of acceptable practices a particular company falls.

If the challenge for executives in the 1990's was to transform corporate behemoths into nimble competitors, the challenge in coming years will be to create corporate cultures that encourage and reward integrity as much as creativity and entrepreneurship. To do that, executives need to start at the top, becoming not only exemplary managers but also the moral compass for the company. CEOs must set the tone by publicly embracing the organization’s values. How? They need to be forthright in taking responsibility for shortcomings, whether an earnings shortfall, product failure, or a flawed strategy and show zero tolerance for those who fail to do the same. The best insurance against crossing the ethical divide is a room full of skeptics. CEOs must actively encourage dissent amongst senior managers by creating decision-making processes, reporting relationships, and incentives that encourage opposing viewpoints. At too many companies, the performance study system encourages a "yes-man culture" that subverts the organization's check and balances. By advocating dissent, top executives can create a climate where wrongdoing will not go unchallenged.

5.5 Which ethical system to use?

(Garratt. 2000. 1-28.) Garratt makes the following remarks on which ethical systems should be used. He states that the best fit for ethical systems would be the Biblical system. This system recognises that the heart of the problem of ethical decline is the self-centredness of people. The biblical view is the only view which considers that man is incapable of keeping this moral law and is in dire need of rescue.

The bible suggest that people are inherently bad – that is that they tend towards actions which are self-centred, and do not care, firstly about God and secondly about other people. It suggests that people left to their own devices will become steadily more greedy and self centred. It is therefore an ethical system based on Biblical principles, which should be adhere to, and taught in ethics courses. It is this way of thinking that is so radically different from our own self-centred tendencies, that should be taught to show us the way out of this morass we have created for ourselves.

‘Corporate Ethics’ reflects the ethics of men and women in charge. There is no such a thing as corporate ethos as a separate identity. Thus, to shape the corporate world we must shape the men and women going into business. No amount of law will work, as laws are enforced from without rather from within. We need people to police themselves, to make themselves inherently ‘good’. This will make people act in any other way except selfishly.

5.6 The law is inadequate

It should be borne in mind that the laws of the country in which a corporation operates, will ensure socially responsible corporate behaviour. (Rossow & Van Vuuren, 2004:76) denies this claim on the following grounds:

- *'Time limitations*
- *Limitations of the process of law making*
- *Limitations of the process of law implementation'*

'Time limitations refer to the fact that the law will only become effective after the problem has arisen.' Once the problem is highlighted, the law will be written and then implemented. Crises management will therefore be required while the law is being drafted.

Executives should be socially compliant moral citizens who cherish their dignity prior to becoming these monsters of economic wealth.

The limitation with the process of lawmaking centre's around the fact that corporations assist in writing the laws. They would then make exclusions to benefit themselves.

Also the implementation of the law is riddled with limitations. Limitations to implement, debates, green papers, white papers, signing off of the act, and so on, make the process time consuming. Implementation takes time.

These limitations have a negative impact on the legal and corporate governance process. Society has to assist in becoming more just therefore not requiring these processes of legal implementation.

5.7 Globalization

What is important to note is that corporate governance is playing a larger role today than it ever has in the past. Roussant (2002:52) reviews how countries are changing there views on governance based on the bad boy antics of various companies. The bad boy syndrome is not unique to America and it appears to be filtering across the globe. The one thing that is apparent is that each country is adopting its own governance rules. Hopefully there will be a shift in the future to a global set of rules. This might be far off today but a must for the future.

The article summarized reads as follows:

Rather than a convergence to the U.S. model, Becht and others see multiple modes of corporate governance developing around the world. "Just as you don't expect all countries to adopt the U.S. Constitution, you are going to have different corporate governance systems." says Becht. Already, British reforms look quite different from American ones. British boards of directors, for example, cannot use "poison pill" defenses to block hostile takeovers.

Just about everywhere, the battle cry is for more transparency in accounting and greater checks and balances between management and boards of directors. And U.S. scandals are not the only driver of change. Both Europe and Asia have their own crop of home grown disasters. In Europe, the clubby, incestuous world of Switzerland Inc. was rocked by the collapses of Swissair in October 2000, while mighty financial institutions such as UBS and Zurich Financial Services have been reeling from a series of mishaps that critics relate directly to the unchecked power of their executives and their indifference to shareholder rights. Scandinavian corporate practices have been under the microscope ever since it was disclosed that Swiss-Swedish engineering giant ABB secretly granted former Chairman and CEO Percy Barnevik an $89 million golden handshake.

In addition, in Germany, a series of corporate collapses-most recently the implosion of the Kirsch media empire-is finally shaking up outdated German practices. Dutch Biotech Company listed on Frankfurt's Neuer Markt, says all German companies will be affected. "The market will ultimately have much more leverage than any legal body." Says Schatz. "To be in noncompliance when you said you would comply leads to the worst punishment possible, namely loss of credibility."

Of course, the new structures will not stop those determined to deceive and defraud, any more than they did in the U.S. The Cromme Commision's rules, says Schatz, "won't prevent outright criminal activity. If you rob a bank, you don't ask which rules you're not complying with." but to inspire better behavior, you first need actual rules to enforce. Those rules are falling into place

5.8 Enforcement measures

King M (1994:35) states that companies could also compete on the enforcement methods used to ensure the satisfactoriness of their governance and of their performance. A governance committee could be delegated with ensuring strict adherence to the corporate purpose.

The message is out that the report is enforceable but there are indicators that once a perpetrator has committed a crime the law is inefficient in dealing with the crimes. Various suggestions have been made by (Crotty.2000:4). Amid indications of growing resistance to the demands for better disclosure of remuneration of executive directors of listed companies, a task team involved in rewriting the King Report on Corporate Governance has released an early draft of recommendations on the enforcement of corporate governance principles. One of the key individuals involved with drafting the section on enforcement, Michael Katz, said the principles embodied in such a code *"are only effective if adequate remedies and sanctions exist for the enforcement of compliance with those principles."* He said many of the principles of good corporate governance coincided with existing legal principles and were therefore enforceable by law. Katz said it was important to identify why there was a lack of enforcement of existing remedies for breaches of statutory and common law by delinquent directors and officers. In its draft recommendations the task team urged shareholders to take more responsibility for the enforcement of duties by directors and managers. Referring to the financial press, it said *"it may also be advisable for the financial journalists' profession to prescribe to minimum qualifications and disciplinary processes for the maintenance of high standards of journalism".*

One reason current legislation was not enforced was because the office of the director of public prosecutions was under-resourced, affecting remedies under criminal law. The task team suggested liaison between the business community and the director of public prosecutions to determine how the former could enhance the

State's resources. Much more vigorous, however, are the recommendations relating to civil law remedies. The lack of enforcement in this regard was attributed to victims' lack of access to the law. The victims of directors and managerial delinquency are often holders of very small parcels of shares in the relevant company. There is no incentive for these small shareholders to resort to expensive litigation to enforce remedies on behalf of the company whose directors and managers have conducted themselves in a delinquent manner.

It said the deficiency could be cured in two ways: the more liberal use of class actions and the use of contingency fee mechanisms by lawyers. The task team also suggested the Companies Act be amended to disqualify those who had been delinquent in the management of a company from being appointed directors. The task team also said the inertia of shareholders and was "responsible in large measure for the non-enforcement of the breach of duties by directors and managers".

Greater disclosure could highlight misconduct and non-performance, and enable the victims thereof to seek appropriate remedial action.

5.9 The purpose of the King Report

In the foreword of King Report (1994:1) states as follows:

'The purpose of this report is to promote the highest standards of corporate governance in South Africa. That idea will certainly have the support of the whole corporate community.'

The report might have been well received and had the support of the whole community, but the question of practicality still remains. It is one to theorise but an entirely different issue to practice. Lawful practitioners will always be plentiful but the unlawful ones exist too. It is to these members that this report is advocated, but the chances are they will never adhere to it. An acceptance to educate the up and coming executives at schools and universities to act ethically and with compassion is necessary by all stakeholders of the community and business. Corporate governance is not a fad, it is the future. Youngsters will have to embrace it warmly with open eyes and feel its power to survive. The public and stakeholders grow tired of hearing about abuse and misallocations. They want the world to come to its senses. They want to be able to make a deal with a handshake and not fight in court because the contract they signed was abused. People unite to make the business world the world we all would like to trade in. Flush out the bad omens and bring in the righteous new ones. Business is tricky and requires certain unlawful tactics not always specified to be correct. Let's stamp those mental attitudes out. Companies don't need to bribe someone to get the contract. If a company looses the contract due to another company paying a bribe then inform the press and bring it out into the open. Bad publicity is not easy to forget. Years later the public will still remember the story all to well.

5.10 The fallacy behind the myth

Anita Roddick (Roddick A. 2002:3-7), made two statements, which all stakeholders should hold to their hearts. The first statement reads as follows: *"If business comes with no moral sympathy or honorable code of behavior, God help us all because it is the most empowered, wealthiest and important institution on the planet."*

The second: *"Id rather be known for how well we threat the weak and the frail than how well our profit margins are doing."*

Both these statements have an adverse effect on stakeholders who recognise the importance of good corporate governance.

Nobody wants to refer to corporate governance as a fallacy which instils a myth that everybody is trying to find. Corporate governance is a fallacy at the moment, as many examples of wrongdoing have been uncovered and mediatised. It is also a myth as corporate governance is only starting to be respected now. It was a message, which was hidden below the coffers and now has been found by some keen adventurous. Corporate governance has always been with us, it was simply lost on the way to finding materiality.

It is up to the adventurous to show the world that corporate governance is no longer a myth but a full-grown practicality with no flaws or fallacies.

5.11 Conclusion

The media has the highest role to play in drawing the public's attention to examples of poor and good corporate governance. By promoting good governance and tarnishing companies, which act badly, the stakeholders and public will expect executives to start acting ethically. They will monitor their every move and the executives will know it. The companies will be forced to be more transparent for if they are not, they will be scolded and retributed. The public can place two independent monitors in board meetings and decisions will be made public. This will prevent executives acting as they wish with other people's money. The stakeholders then do not have a reason to say, "we did not know!".

Many remedies were suggested. Listed below are some of them:

5.1.1 Independent Board members representing 20% of board members
5.1.2 Critical information systems
5.1.3 Corporate elections
5.1.4 Investor activism
5.1.5 Morale vs. Greed
5.1.6 Choice of directors
5.1.7 Directors at fault
5.1.8 Tip-Offs Anonymous
5.1.9 Bring the baddies to book
5.1.10 Institutionalising ethics

Each remedy had its own suggestions on how to rectify the situation of unethical corporate governance measures.

The question often asked is who are the directors that perpetrate these atrocities. They are common people who view power, arrogance and unchecked leadership as the first signs of decay.
Delinquent directors first forget that they have not been solely responsible for their success. They forget that they still have a responsibility to stakeholders. At this stage

the organizations become the executive's fiefdoms and governance become a vague annoyances.

Various methods on fixing corporate governance were also suggested. These included:

- Congress needs to require companies to expense options. If every option represented a direct hit to the bottom line, boards would be less inclined to dole them out by the millions.
- Congress should provide preferential tax treatment to encourage boards to replace their plain-vanilla option grants, which reward CEOs if the stock rises, with indexed options, which provide a payday only when the stock appreciation outstrips that of peer companies.
- There should be limits put on consulting work done by a company's auditing firm.
- There should be more forensic auditing to dig behind the journal entries.
- The proxy statement should clearly delineate which responsibilities fall to the board and which to management.
- An expanded auditor statement in the annual report is needed.
- CFOs and CEOs must go to jail to get a wake up call.
- Two prominent securities-industry trade groups have recommended that analysts be paid on stock-picking and earnings-estimate prowess, a practice some firms are adopting.
- SEC Chairman Harvey L. Pitt's wants the power to ban corporate miscreants from serving as officers and directors.
- Lawmakers should require accounting firms to pony up annually to fund the Financial Accounting Standards Board instead of forcing the rule makers to go hat-in-hand to the firms they joust with
- CEOs must set the tone by publicly embracing the organization’s values.

It is also apparent that corporate governance is becoming global. All countries are now making a conceited effort to become governant. Hopefully in the future one unified law will be imposed on all companies in those countries

It should be noted that corporate governance is enforceable by law. Many who commit a crime find that they are not burdened by the law. They are left alone with no recourse.

Anita Roddick has made two statements, which all stakeholders should hold to their hearts. The first statement reads as follows: "If business comes with no moral sympathy or honorable code of behavior, God help us all because it is the most empowered, wealthiest and important institution on the planet."

The second: "Id rather be known for how well we threat the weak and the frail than how well our profit margins are doing."

Both these statements have an adverse effect on stakeholders who recognise the importance of good corporate governance.

Nobody wants to refer to corporate governance as a fallacy, which instils a myth that everybody is trying to find. Corporate governance is a fallacy at the moment, as many examples of wrongdoing have been uncovered and mediatised. It is also a myth as corporate governance is only starting to be respected now. It was a message, which was hidden below the coffers and now has been found by some keen adventurous. Corporate governance has always been with us, it was simply lost on the way to finding materiality.

It is up to the adventurous to show the world that corporate governance is no longer a myth but a full-grown practicality with no flaws or fallacies.

Chapter 6

Corporate Governance – Conclusion

Conclusion

Judge King has only supplied the world with a theoretical method; an act of guidelines called corporate governance, but has not implemented or named policing authorities. No governing authority such as the Assets Forfeiture Unit, Registrar of Companies, Ethics Board etc, has any real powers to act upon transgressors. These are worrying thoughts as these are the units mostly seen by the corporate world as their lifelines. Without their powers, transgressors will prevail and perform their dirty work once again.

Companies have been warned. They have been introduced to the business method of the future and it is up to them to apply it with integrity and with completeness, or simply renounce it, and make a mockery thereof.

It would be a shame to make corporate governance a fallacy, which was remembered as a myth by those in the business sector of the future.

This study will reflect on those practical shortfalls and will make sound recommendations to assists in making corporate governance a reality in the future.

It is often difficult to imagine a world where all the fancy tricks of business are removed and the simplicity of it remains. Business has become complicated, creating larger schemes to make more money. Combined with this is the element of greed. The more difficult a money making scheme is, no matter what the rewards, there is always one winner, the person selling the scheme. Nobody cares about the ethics involved. If a scheme fails, another company is formed and the cycle starts again.

What is important to note is that there is awareness now that unethical behaviour per se will not be tolerated. Soon examples of convictions will become a reality and the tendency to act scrupulously will slowly drift away. With the correct training and moral education, the future executives will know that they must be corporate governant to survive. As the markets become tougher, the legal way to obtain a 20% premium on shares will have to be in the investment in corporate governance strategies and education. Just as corporate governance is a reality so is corporate governance. It cannot be avoided or neglected. This is the future. It is a virus, which is killing the spirit of investors. Mistrust and the aura of fraud, shadow the minds of the investors thereby creating a reluctance not to invest in the backbone of all economies, the stock markets. Economies will be stifled with the utter greed and arrogance of a few high profile idiots who only perpetrated crimes for self-interest. They have no social interest, no moral intuition, only their own selfish pride of greed.

For companies to succeed they have to give. Investors and stakeholders alike are getting tired of reading the papers and seeing the atrocities being committed by these corporations. Many are turning a new leaf, but not quick enough.

Maybe the Enron's, WorldCom's etc, are a blessing in disguise. They have brought forth the reality of practical irregularities no matter what the theory states. Until convictions, no theory can set the practical realities aside.

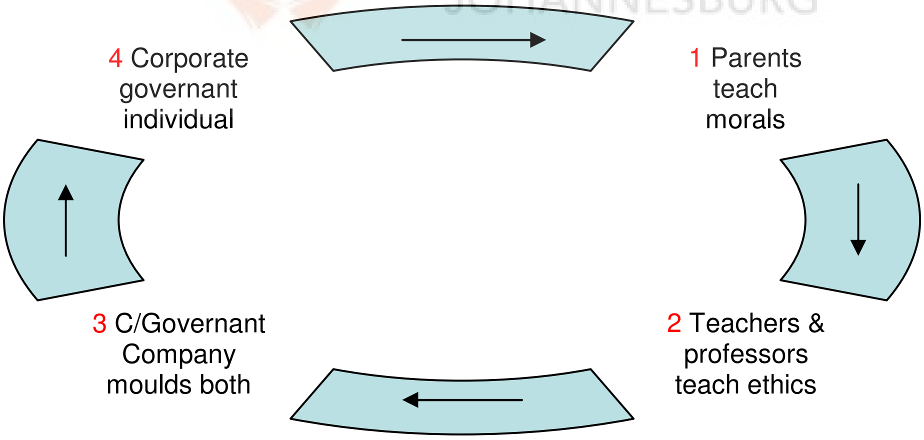
Nobody seeks a World in Utopia but the reality is that unless the corporations change their tune, an erosion of the business fundamentals will be made. Nobody will trust anyone and the simplicity of doing business will no longer exist. Business will become complicated and this will be a tragedy.

The era of international corporate governance guidelines has arrived and will affect those strategies which go against it.

Let us not keep corporate governance a fallacy but rather let's swing the practicality of it around and make the myth a reality. Our economy cannot afford to move backwards anymore. The days are over where directors could simply make decisions without understanding the actual recourse of their actions. They are now accountable to many stakeholders and to keep them all happy will be a difficult task but not impossible.

Issues such as the environment and aids will be developed and strategised. Even although all this costs money, it should be seen as a repayment back to society for the huge profits corporations make. After all the majority of big business is owned by pension's funds and these pension funds get their funding from the individuals like you and me. We have a right to demand a cleaner environment etc.

Corporate governance goes further than the corporation. It is every parent's duties to teach their kids what is right and wrong. This will lay the foundation, so that when the young executive to be, goes for employment interviews he has the basics correct. The company employing him will then just have to mould him to their needs. The circle is simple: The parents teach their kids the morals of life, the teachers / professors train them the ethics and the employers mould these two into there corporate governance foundation.



Not all the theory in this study can make people governant. It is within themselves to decide if they want to be.

Role your sleeves up and make corporate governance a reality. All it takes is a lot of hard work and a vision to succeed. The days of posting huge profits should be refreshed with the cool breeze of investing in social benefits and moral ethics. This is the future and this is what is needed to develop the worm to a beautiful butterfly.

Let's do it together, you and me!

In conclusion let's determine if all the objectives have been met:

The primary objective was to determine why various members of the business community have not been able to act ethically within the realms of corporate governance by evaluating the similarities of corporate governance and ethics within this business environment. This was done in chapter 4 and 3. Practical examples of corporate wrongdoing were presented and discussed.

The secondary objectives were to:

- Evaluate the principles of corporate governance to determine what is required to be ethically corporate governant – Chapter 2.
- Study the guidelines, rights and obligations of ethical behaviour – Chapter 3
- Evaluate corporate governance and ethics – Chapter 4
- Give recommendations on how corporate governance can become more successful practically and finally – Chapter 5
- To give further recommendations for further research – Chapter 5

All the abovementioned objectives have been studied and explained.

Further questions asked were:

- Is ethical business practices a reality in business – this is a matter of speculation, as there are numerous cases of corporate wrongdoing being presented in newspapers today. Each has its own case of merits and should be valued as such.
- Is corporate governance adhered to by company leaders and directors – many do but there is growing majority which don't. It is these, which need to be converted to act ethically and not with self-gain.
- Are the principles of corporate governance implemented, evaluated and formulated within the companies – results showed alarming results that this was not done. This needs to be changed and students at universities need to be taught how they should do this.
- What do businessmen understand is corporate governance – the definition is generalised and confusing. Each author who tries to write about corporate governance has placed his own definition in play. There is no one definition globally which is being used. This creates problems as people use this as an opportunity to deceive and then state that they were well within the definition rights.
- What do businessmen understand by ethical business practices – this was discussed in detail in chapter 3. A general study was made in the chapter and it became apparent that ethics is a system, which is instilled within.
- What is ethics – this is a difficult question to answer as people are generally self centred and greedy. If left to their own devices they will manage to destroy all dignity and morality. It is due to these reasons that ethics has been instilled for thousands of years in all of mankind. It is self taught and inbred.

Hopefully this study has shed some light into the subject as much as it has me.

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Table 1: The direct relationship between Systems and Standards

Table 2: The imbalance of systems vs standards in the practice.

Table 4.1: Ethical differences between Europe, Asia and Africa.