
# Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa

the dti
Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

towards full-scale industrialisation and inclusive growth

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## Foreword by the Minister of Trade and Industry

Responsible corporate citizenship is integral to good corporate governance. South Africa's growing role on the continent necessitates that South African businesses behave as responsible corporate citizens when investing and operating in Africa.

These guidelines aim to encourage South African companies to voluntarily align their involvement and practices with the South African Government's integration and development objectives in Africa, and to build mutual confidence, trust and benefit for the companies and societies in which they operate.

Until such time as an international binding agreement is developed for the private sector, these guidelines set out key principles and standards of good practice that are consistent with applicable laws and internationally recognised standards for South African businesses operating on the continent. These guidelines also support and complement South Africa's commitment to Africa's development and economic integration agenda through the New Partnership for Africa's Development (NEPAD) and the programmes of the African Union (AU), notably Agenda 2063.

**Dr Rob Davies (MP)**
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## Introduction

The *Guidelines for Good Business Practice for South African Companies Operating in the Rest of Africa* is an initiative of the Department of Trade and Industry (**the dti**) that was developed in consultation with other related government departments, the private sector and labour organisations. These guidelines are a voluntary set of principles and standards that aim to promote responsible business conduct. They provide a guiding framework for South African companies, as active members of the continental business community, to promote sustainable economic development in Africa in accordance with the continent's socioeconomic developmental imperatives.

These guidelines, therefore, set out sound business practices for South African businesses in the form of principles and standards of good practice that are consistent with South African legislation, the laws of host countries, as well as internationally recognised standards. Furthermore, these guidelines are supportive of South Africa's strategic priority to expand the presence of the South African private sector on the rest of the continent and to encourage the private sector to promote local and regional economic development. This will contribute to advancing the development integration agenda by promoting industrial development, and boosting intra-Africa trade and interconnectivity through investment in infrastructure development.

As an AU member state, South Africa's growing political and economic role in the rest of Africa requires that South African companies adhere to high standards of corporate governance and corporate social responsibility. South Africa has also played a leading role in developing corporate governance standards and integrated reporting, as set out in the Companies Act, 2008 (Act No. 71 of 2008) and the internationally acclaimed King Report on Corporate Governance. South African companies are, therefore, highly regarded in terms of their financial reporting and governance standards.

In addition, these guidelines aim to encourage South African companies to follow practices that are fully aligned with the values underpinning the South African Constitution and Government's foreign policy, as it relates to the African development agenda. They comprise 12 principles that provide a guiding framework on acceptable behaviour, which is supportive of Government's effort to promote sustainable development in Africa. This is necessary in cultivating and upholding positive and mutually beneficial relationships between companies and the societies in which they operate.

The South African Government recognises the competitive environments in which South African companies are required to operate, as well as the variety of legal and regulatory systems that are in place. These guidelines, therefore, aim to promote responsible corporate citizenship by encouraging a commitment to compliance with the laws and policies of the countries in which South African businesses operate, and adherence to international best practice. International and regional instruments were utilised in drafting these guidelines[1] and, in many respects, adapted to apply more directly to South African companies operating in the rest of Africa to ensure alignment with the South African Government's developmental approach to Africa.

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1 *Refer to page 13 for a list of the international and regional instruments consulted.*

## Background

Continental integration has long been recognised as critical to advancing Africa's endogenous growth and development. Regional integration constitutes an important aspiration of the AU's Agenda 2063. Economic integration, in particular, remains a critical component of the continent's efforts to ensure sustainable and inclusive economic growth, particularly in promoting economies of scale, enabling competitiveness, promoting diversification and addressing supply side constraints.

AU member states promote and support a development integration approach. This approach considers economic integration taking place simultaneously on three fronts: market integration, infrastructure development and industrial development. This model takes into account the levels of disparities in development, and is premised on the understanding that trade can only benefit those countries with a competitive and diversified manufacturing base. This underpins the urgent need to boost productive capacity. Infrastructure is not only necessary to trade competitively in Africa; it could be used as a major catalyst for industrial development through regional sourcing to promote the development of regional value chains.

The development trajectory being followed through Agenda 2063, therefore, aims to position Africa as a long-term strategic market and supplier of beneficiated resources through the prioritisation of, for example: labour-intensive manufacturing industrialisation underpinned by value addition to commodities; increasing agricultural productivity and promoting value-addition; developing the blue economy; and establishing regional industrialisation hubs linked to global value chains and commodity exchanges. This will promote the structural transformation of Africa's economies away from production and trade in commodities and primary products to manufactured products, and aims to ensure value-addition to natural resources at source.

South Africa has consistently championed broader regional integration through the Southern African Customs Union, the Southern African Development Community (SADC), the Tripartite Free Trade Area, as well as the envisaged Continental Free Trade Area. In addition, South Africa has been at the forefront of growth in intra-Africa trade and is one of the key sources of investment in the rest of Africa, hence the need for the alignment of Government with the private sector to ensure a coordinated approach to regional economic integration.

The 2014 United Nations (UN) Conference on Trade and Development's World Investment Report states that South African outward foreign direct investment almost doubled to $5.6 billion, powered by investments in telecommunications, mining and retail. These investments are critical in promoting intra-regional value chains and are mutually beneficial in that they not only provide benefits for the countries in which South African firms invest, but also job opportunities in South Africa. South Africa's economic growth is intrinsically linked to Africa's economic growth, and its sustained growth is dependent on its ability to integrate into the regional, continental and global markets.

## Purpose

These guidelines aim to provide a guiding framework for South African companies operating in Africa. They set out sound business practices for South African businesses in the form of principles and standards of good practice that are consistent with South African law, the laws of host countries and internationally recognised standards. The application of these guidelines is voluntary. Compliance with domestic laws is the primary obligation of companies and these guidelines do not substitute host countries' domestic laws or regulations.

While these guidelines are not legally binding, they set benchmarks for appropriate behaviour. The business community has a role to play in contributing to sustainable economic development. These guidelines encourage South African businesses to be responsible corporate citizens by working continuously towards minimising operations that have negative social, economic and/or environmental impacts. This will, in turn, improve their public image and reputation in the countries and societies in which they operate.

Furthermore, these guidelines aim to proactively encourage South African companies to follow practices that are fully aligned with the values underpinning the South African Constitution and Government's foreign policy as it relates to the African development agenda.

These guidelines support South Africa's commitment to Africa's development agenda, as set out in NEPAD as well as AU programmes, notably Agenda 2063.

## Application

These guidelines:

**Provide** a guiding framework for South African companies operating in Africa;

**Apply** on a voluntary basis to South African companies/private sector with investments/operations in the rest of Africa; and

**Intend** to provide guidance on the manner in which South African listed/unlisted companies should conduct themselves in the rest of Africa.

## Definitions

**Accountability** refers to the obligation of an individual or organisation to account for its activities, accept responsibility for them and disclose results in a transparent manner.

**Bribery** is an offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something that is dishonest, illegal or a breach of trust, in the conduct of the enterprise's business.

**Companies** refer to entities that are listed/unlisted, public/private, subsidiaries, branches and parastatals.

**Companies Act** is the Companies Act, 2008 (Act No. 71 of 2008).

**Company** is a juristic person incorporated in terms of the Companies Act, a domesticated company or a juristic person that, immediately before the effective date:

*(a)* Was registered in terms of the –

(i) Companies Act, other than as an external company as defined in that Act; or

(ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule 2;

*(b)* Was in existence and recognised as an "existing company" in terms of the Companies Act; or

*(c)* Was deregistered in terms of the Companies Act and has subsequently been re-registered in terms of this Act;

**Corporate governance** refers to the framework of rules and practices by which a board of directors ensures accountability, fairness and transparency in a company's relationship with all its stakeholders (e.g. financiers, customers, management, employees, Government and the community). It is concerned with holding the balance between economic and social goals, the aim being to align, as closely as possible, the interests of individuals, corporations and society.

**Corporate citizenship** implies an ethical relationship of responsibility between the company and the society in which it operates. As responsible corporate citizens, companies have a legal and moral obligation to their economic, social and natural environments, and should protect, enhance and invest in the wellbeing of the economy, society and natural environment.

**Corporate social responsibility** is a component of the broader notion of corporate citizenship. It refers to the responsibility of a company for the impact of its decisions and activities on society and the environment through transparent and ethical behavior. It includes sustainable development, environmental issues and issues pertaining to the health and welfare of society.[2]

**Corruption** is the misuse of a public or private position for direct or indirect personal gain.[3]

2 *King Report on Corporate Governance in South Africa, 2009*

3 *United Nations Handbook for Practical Anti-Corruption Measures for Prosecutors and Investigators, Vienna, September 2004*.

**Ethics** refers to that which is good or right for human interaction. Thus, conduct is ethical if it gives due consideration not only to that which is good for oneself, but good for others[4]

**Human rights** are those inalienable rights belonging to all human beings and encompass the right to equality, life and security, personal freedoms, and economic, social and cultural freedoms.[5] They are the fundamental rights that humans have as contained in Chapter 2 of the Bill of Rights of the Constitution, as well as the UN's Universal Declaration of Human Rights.

**Integrated reporting** is a holistic and integrated representation of the company's performance in terms of the value it has generated within the context of the economic, social and natural environment.

**King report or King Code** is the King Report on Corporate Governance in South Africa, 2009, or its successor in title.

**Stakeholder** is one who has a reasonable and legitimate expectation to be engaged with or to receive information from the institutional investor or its service providers on the grounds that they are affected by the investment activities and decisions of the institutional investor or its service providers.

**Sustainability** is conducting operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs. Furthermore, it takes into account the impact of business operations on the economic life of a community or society at large in which it operates. It includes environmental, social and governmental issues.[6]

**Transparency** means the lack of hidden agendas and conditions, accompanied by the availability of all information required for collaboration, cooperation and collective decision-making.

4 *King Report on Corporate Governance in South Africa, 2009.*
5 *Definition based on UN Declaration of Human Rights.*
6 *King Report on Corporate Governance in South Africa, 2009*.

## Principles

**Principle 1: Compliance with domestic legislation and fair business practices**

Comply with all relevant domestic laws, regulations and policies applicable in the jurisdiction of operation. In cases where laws and regulations do not exist, relevant international standards and practices should be applied. Companies should carry out their activities in a manner consistent with competition laws and regulations applicable in the jurisdiction in which they operate. In the absence of competition regulations, companies are encouraged to act in accordance with fair business, marketing and advertising practices, taking all reasonable steps to ensure the quality and reliability of goods and services. Companies are also encouraged not to engage in anti-competitive behaviour or practices. Furthermore, companies should cooperate with investigating competition authorities as well as promote and protect the economic interests of consumers.

**Principle 2**: **Adherence to the UN Global Compact**

The UN Global Compact provides businesses with an international framework for global, value-based management, covering the areas of human rights, labour, the environment and anti-corruption.[7] The UN Global Compact aims to assist the private sector in the management of increasingly complex environmental, social and governance risks and opportunities, seeking to embed markets and societies with universal principles and values for the benefit of all.

**Principle 3: Respect for human rights**

Respect and protect internationally proclaimed human rights and ensure non-complicity in any human rights abuses in operations. Companies should not be complicit in civil conflict or partisan to warring factions to secure business contracts.

**Principle 4: Apply fair labour practice**

Observe and apply fair labour practices and eliminate all forms of forced and compulsory labour, including the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.

**Principle 5: Promote good corporate governance**

Implement and maintain ethical business practices and promote good corporate governance, accountability and transparency, as set out in the Companies Act as well as the King Report on Corporate Governance in South Africa, 2009, with a view to promoting integrated reporting. Apply high-quality standards for disclosure, accounting and audit, and non-financial information, including environmental and social reporting.

The King Report on Corporate Governance in South Africa, 2009, and the Companies Act place emphasis on companies being "responsible corporate citizens" that are run ethically with effective leadership characterised by the values of responsibility, accountability, fairness and transparency.

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7 *Compliance with domestic law is the first obligation of businesses. The King report is not a substitute for and nor should it be considered to override local law and regulation.*

The King Report stresses the importance of building sustainable businesses with consideration for the economic, social and environmental impact of the company. Strategy, risk, performance and sustainability are regarded as inseparable.

**Principle 6: Promote environmental responsibility and sustainable business practices**
Companies should consider the impact of their operations on the environment to the extent that it does not have an undue impact, takes into account human health and safety, and does not compromise the ability of future generations to meet their needs. Companies could undertake initiatives to promote greater environmental responsibility and sustainability in the areas in which they operate.[8]

**Principle 7: Ensure occupational health and safety**
Companies should take adequate steps to ensure occupational health and safety in their operations as per the requirements of the UN Food and Agriculture Organisation and the International Labour Organisation[9]. Companies should also ensure that their products conform to health and quality standards that protect the welfare of consumers.

**Principle 8: Development of regional markets and regional value chains**
Companies should strive to develop regional markets and regional value chains through the procurement of locally produced goods, where possible, to promote regional economic activity, while taking into account issues of standards, quality and price. Businesses are encouraged to undertake programmes that will empower local communities in an effort to develop regional value chains.

**Principle 9: Promote corporate social responsibility**
Companies should endeavour to undertake relevant corporate social responsibility and investment programmes for the benefit of local communities through a company's sense of responsibility towards the community and environment (both ecological and social) in which it operates. Companies express this citizenship through, among other things, adopting processes that reduce waste and pollution, contributing to educational and social programmes, and earning adequate returns on resources.

**Principle 10: Promote the employment of local labour, skills development and technology transfer**
Companies should strive to employ local labour, and undertake appropriate skills and technology transfers to help build human capital in accordance with South Africa and the host country's developmental objectives.

**Principle 11: Avoid engaging in corrupt and illegal activities**
Businesses are implored not to directly or indirectly offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Businesses should take firm steps to combat corrupt and illegal activities. Businesses should acknowledge their role in combating these practices.

**Principle 12: Compliance with tax laws and regulations**

Companies are encouraged to make timely payments of their tax liabilities in host countries and fully comply with tax laws and applicable regulations. In particular, companies should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate.

## References


- African Charter on Human and People's Rights, 2002.
- UN Global Compact, United Nations, 2000.
- The Universal Declaration of Human Rights, United Nations, 1948.
- The NEPAD Business Foundation Covenants, NEPAD, 2005.
- SADC Charter on Fundamental Social Rights, SADC, 2003.
- King Report on Corporate Governance in South Africa, 2009.
- Ruggie, John. (2011). Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, New York, United Nations.
- International Labour Organisation (ILO)
- OECD Guidelines for Multinational Enterprises, Organisation for Economic Cooperation and Development, 2011.

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