

## Global Compliance: South Africa

Posted By [Ethisphere.com](http://ethisphere.com) On March 25, 2008 @ 11:43 am In [feature on home](#), [issue\\_005](#) | [No Comments](#)

# GLOBAL COMPLIANCE: // BY ERIN RUSSELL

# SOUTH AFRICA

Welcome to South Africa, commonly referred to as “The Rainbow Nation.” The developing country’s nickname, describing its aspirations of a unified and multicultural society, creates a purposefully metaphorical counter to its historical struggles with racial separatism and inequality. Seen by many as the standout on a continent of emerging markets, South Africa accounts for nearly 40 percent of Africa’s entire GDP. Although the country’s economy is by many standards highly developed, it is weakened chiefly due to the fact that the country was isolated from the global economy until the mid-1990s and that there is still a large economic and social disparity among its citizens.

The past few years have seen South Africa’s viability as an investment opportunity increase, aided by its valuable geographic location and a government open to foreign direct investment. In 2006, it was ranked 45 on the Global Competitiveness Index—an admirable showing for a developing country. Though the business infrastructure is not yet sophisticated enough to compete with many developed western countries, it certainly provides a model for other African countries to emulate. Increased investment and developments in telecommunications and technology should give the entire African continent some of the boost it needs to be a stronger international competitor.

South Africa is a forerunner in many arenas of industrial manufacturing. The country is the international leader in the production and exportation of gold; it boasts a substantial coal exportation market and is a forerunner among mineral processors. Other areas experiencing notable growth and of interest to potential investors are tourism, agriculture and construction.

Though South Africa has managed impressive feats for a young, developing democracy, the country needs to address some fundamental issues before it can truly repair any disarray in its corporate sector. As such, multinationals that have an interest in expanding into the South African market should take measures to prepare for the unique corporate and ethical environment of the country.

This regular section of Ethisphere Magazine focuses on compliance and ethics in global business. Each issue spotlights a different country, with excerpts from Ethisphere Institute research. Ethisphere Council members can access previous country reports. [1] [To learn more click here.](#)



# THE ETHICAL CLIMATE FOR FOREIGN ENTERPRISES

// DAVE LOXTON AND TANYA VILJOEN

South Africa's status as a democratic state has been short-lived—it became a democracy in only 1994—and transformation was initially slow, with little change apparent to the outside world. In recent years, however, the transition has gained rapid momentum, as a result of a concerted effort by the South African Government to stimulate the economy and facilitate equality and the redistribution of wealth.

South Africa boasts a relatively sophisticated legal framework which is continually evolving to conform to international standards, especially with regard to legislation involving corporate regulation and compliance, commerce and intellectual property. With the re-entering of South Africa into the global arena, legislative efforts have also focused upon fraud and corruption, money laundering, drug trafficking and terrorism— issues that plague even the most developed and economically stable countries.

Notwithstanding a first world legislative framework, the Global Economic Crime Survey conducted by PricewaterhouseCoopers in 2007 revealed that 72 percent of companies in South Africa fell prey to economic crime from 2005 to 2007, compared with 43 percent globally. Despite this shocking fact, the results show that over the same period, South Africa experienced a 13 percent decline in economic crimes as opposed to the four percent decrease that occurred worldwide. The crimes that are most prevalent in South Africa—and that most frequently lead to economic loss in the country—are asset misappropriation, money laundering, bribery and fraud.

In South Africa, fraud costs each company approximately ZAR8.5 million (more than \$1 million) from 2005 to 2007. Multinationals cited temptation as a principle driver of fraud, with other factors such as weak controls, low level of commitment to the company, relative anonymity and lack of clarity about a company's ethics also contributing to the widespread issue.

To successfully enforce its continually improving legislative framework, South Africa is in need of an effective judicial system. Like many countries, this is where South Africa falls short—South African law enforcement are overburdened and don't always have the required training to effectively investigate matters, or even keep abreast of the increasingly sophisticated measures used by criminals. Public frustration sets in even as noncompliance and illegal activities are reported because of law enforcement's lack of understanding regarding the crime and its complexity. Similarly, prosecutors are overworked and often frustrated with poor investigational work and the resulting deficiency of evidence that they have to work with. Until these immediate matters are appropriately addressed, crime in South Africa will continue to pay.

## 2007 COUNTRY STATS:

### Population:

43,997,828 people

### Median Age:

23.5 years (men),  
25.1 years (women)

### Life Expectancy:

43.21 years (men),  
45.66 years (women)

### Languages:

11 official languages are Afrikaans, English, Ndebele, Pedi, Shangaan, Sotho, Tsona, Tswana, Venda, Xhosa and Zulu. English is the language of business, politics and the media.

**Capital:** Pretoria

**Literacy Rate:** 86.4%

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## ECONOMY AND TRADING PARTNERS

**GDP per capita (PPP):** \$10,600

**GDP (Purchasing Power Parity):**

\$467.6B

**GDP (Official Exchange Rate):**

\$216.5B

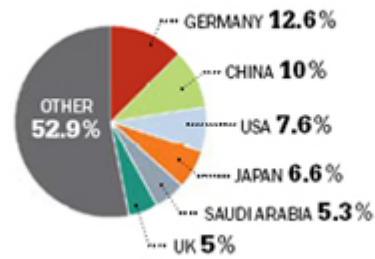
**GDP (Real Growth Rate):** 5%

**INFLATION:** 6%

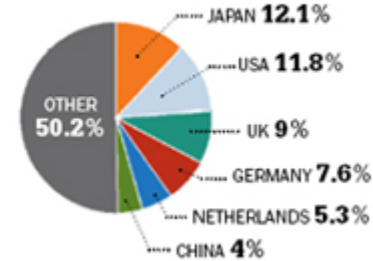
## MAJOR INDUSTRIES:

- Mining
- Automobile Assembly
- Metalworking
- Machinery
- Textiles
- Iron and Steel
- Chemicals
- Fertilizer
- Foodstuffs
- Commercial Ship Repair

TOP IMPORT PARTNERS 2006:



TOP EXPORT PARTNERS 2006:



# ETIQUETTE TIPS

## YOU SHOULD KNOW BEFORE YOU GO

**COMMUNICATION** Communication styles differ significantly across South Africa, and depend largely on an individual's cultural ancestry. It would be prudent to conduct research into your South African associate's background to gain a better understanding of how to best approach negotiations.

In general, rural residents tend to be more outgoing and conservative in nature, while those in urban areas tend to exhibit higher levels of flexibility yet are slightly more materialistic. South Africans as a whole tend to be direct and perceived as loud in their communication—although they are acutely aware of the timing and placement of conversation so as to not make their visitors or associates uncomfortable.

Avoid conversation topics such as: comparing cities (a source of pride for many South Africans), race relations and local politics.

Respect for elders and one's ancestors is a critical part of African culture. One should go out of their way to demonstrate respect for these individuals, as a lack of respect is considered extremely offensive.

## CORPORATE | ENVIRONMENT

Although those who have attained their senior positions and high status through diligence and hard work are respected, egalitarianism is practiced throughout the country. Decision making often involves consulting with subordinates, which can slow business processes that tend to be protracted to begin with.

South Africa's work week is aligned with much of Western culture, with typical hours being 8:30 am- 5 pm Monday through Friday.

South Africa's informality extends to many companies' dress codes, but more formal clothing is encouraged for initial meetings. Apparel overall should be conservative. Men should stick to dark colored, conservative suits, and women should opt for formal suits or dresses. Women have not yet attained senior positions in the country. Women new to South Africa should be prepared to endure some levels of patronizing behavior.

## GREETINGS

Titles are usually not used in the business setting.

As a rule, shaking hands is the most common way to greet your South African business associates. However, some women may refrain from this practice and nod their heads, in which case a simple nod back would be appropriate. It is best to wait for a woman to extend her hand.

Maintain eye contact, especially when shaking hands and during introductions—this is a fundamental step in establishing trust.

## BUSINESS MEETINGS

Make an effort to schedule in-person meetings, as they are widely preferred to less personal forms of communication such as emails or phone calls.

Schedule meetings far in advance, a month or two ahead of time if possible, and try to avoid the peak holiday seasons that occur mid-December through mid-January as well as the weeks before and after Easter.

Although you should prepare meeting agendas and distribute them to your South African colleagues ahead of time, these schedules are not strictly adhered to. Deadlines are also seen as being fluid, so be sure to include dates for deliverables within contracts.

Avoid interjecting while someone else is speaking or raising your voice during negotiations.

A note should be sent to attendees following each meeting that details the progress made in the meeting and outlines the next steps that the parties have agreed to take.

## **RELATIONSHIPS**

Networking and relationships are a crucial component of business success in the country. Make an effort to engage in some form of personal dialogue unrelated to work with your South African counterparts, who are known to be highly personable and conversational. A strong reference or formal introduction letter from a familiar third party may be valuable in reaching your intended audience and accelerating the business process.

As with many cultures, the style of communication is a direct reflection of the level of a relationship with one's associates— more open and honest communication is likely to occur as you grow more familiar with your colleagues. Use a more formal and diplomatic tone in initial conversations, and be prepared for a first meeting to be used largely to establish rapport and mutual trust, which are both vital to South Africa's business culture.

# **FOUR COMPLIANCE AND ETHICS ISSUES TO CONSIDER**

## **01 // THE "LIGHT TOUCH"**

South Africa's adoption of the UK's "light touch" regulatory style can pose dilemmas for multinationals still bound to comply with more legalistic and compliance-based regulations such as Sarbanes-Oxley. The South African Government, as well as many of the country's businesses, have been slow to embrace the principles of legislation like SOX—given that it would drive up compliance costs for firms already on strict budgets, and who can't afford to lose any competitive ground, it's not surprising.

South Africa's approach to corporate governance can be best summarized by referencing the King Reports on Corporate Governance, which coincided with the end of the apartheid and were in response to growing international governance standards, pressure from corporate investors and to conform to the cultural shift that occurred with a new democracy. In 1994, the King I Report endorsed an integrated approach to governance by acting in the best interests of a wide base of stakeholders. The King II Report, published eight years later, laid out recommendations for a Code of Corporate Practices and Conduct. The recommendations entailed in the King Reports apply to all organizations listed on the JSE Limited, Africa's largest stock exchange, including banks, financial and insurance companies and most public entities. Though these efforts are substantial, and note-worthy for an emerging economy, there are more developed countries that have been critical of the Reports, as they only make recommendations for compliant behavior and are not legally binding legislation.

## **DEAL WITH IT**

While only South African corporations listed in the United States are responsible for SOX compliance, issues can arise for investors when operating in an environment not bound entirely to the confines of Sarbanes-Oxley. You'll want to make sure that your employees and managers are keenly aware of the standards that they must still adhere to. Persistent SOX training is a great measure to ensure that there is an unmistakable awareness of the restrictions SOX imposes, the requirements for disclosure and the penalties for malfeasance.

With all of the attention that the King Reports receive, it's quite easy to forget that the practices discussed in them are merely suggestions. For multinationals bound to the legal constraints laid out by SOX, FCPA, FSG, etc, it's advisable (as always) to adhere to these parameters, which are significantly more thorough in their requirements—not to mention the fact that they carry penalties for noncompliance. However, the King Reports can be an effective measure for assessing potential business partners and vendors in the region, since they are presented in the "light touch" fashion that South Africans tend to be more accustomed and responsive to.

## 02 // WORKPLACE INEQUALITY AND DISCRIMINATION

A notable difference in the South African workplace is the inherent imbalance of the workforce, particularly at the management and executive level. Concerns for discriminatory practices are unique in this developing country in that there are not only issues with discrimination based on gender, race and religion, but other measures such as age, sexual orientation, HI V/AIDS status and disability.

### DEAL WITH IT

Be sure that your company's Code of Conduct and HR policies account for the unique obstacles when hiring in SA—each should contain detailed and frank discussions of the equal opportunities for employment offered by a firm. Measures should be taken to see that hiring practices are not only nondiscriminatory, but transparent and well documented so as to protect your organization from potential liability.

## 03 // BRIBERY

Transparency International ranked South Africa as the sixth country in the world most likely to bribe. More and more, South African companies not only see bribery as an accepted practice when conducting business in the region, but a necessary component for success.

### DEAL WITH IT

Companies should be proactive in trying to mitigate the risks presented. Objectively research the South African market and where your company is likely to encounter bribery issues—the more you understand this issue, the better you can prepare employees to avoid it. A robust compliance program with a focus on corruption is more likely to win leniency from regulators in the event of malfeasance. Finally, insist on conducting periodic audits—this extends to potential partners, subcontractors and agents. Although this won't be common practice for your local counterparts, and you may encounter some resistance, it's a vital step to ensure that your organization isn't committing—knowingly or unknowingly—FCPA violations that could cost millions.

## 04 // CORRUPTION

The factor that has contributed the most to corruption growth in South Africa? Corruption and illegal practices that go unchecked, unregulated and unpunished. This happens for many reasons, mostly having to do with inadequate control policies and legislation and insufficient resources to form a unified effort against corruption. It's a commonly held belief in South Africa that corruption efforts have taken a back seat to other pressing issues like poverty, HI V/AIDS, inequalities and high unemployment.

### DEAL WITH IT

Companies engaging in business in South Africa will, for the time being, have to be proactive in not only ensuring that they have vigorous internal control policies in place that define and outline penalties for corruption in addition to providing adequate reporting mechanisms, but also to conduct due diligence when selecting and auditing partners and vendors.

# SOUTH AFRICA: CURRENT CONCERNS AND TRENDS FROM AN INSIDE PERSPECTIVE

## // DAVE LOXTON AND TANYA VILJOEN

South Africa has had to grapple with all the usual ethical challenges that come from being an emerging market. There are currently certain legal/ethical considerations that are fairly unique to South Africa which anyone conducting business in South Africa needs to be aware of:

### ■ Black Economic Empowerment

The Broad Based Black Economic Empowerment Act (BE ) was introduced in 2003 to redistribute the nation's wealth to a broad base of black South Africans who were disadvantaged under Apartheid. The BE Act does not set any targets, but makes provisions for the implementation of Codes of Good Practice. The Codes define "black people" as South African citizens who are African, colored or Indian.

The Codes set out certain targets related to seven elements of BE —black equity ownership, management, employment equity, enterprise development, preferential procurement, skills development and socio-economic development initiatives—against which companies are measured. Companies are graded to the extent that they meet the specified targets in terms of a scorecard that is established by the Codes.

Every state and public entity in South Africa (which includes entities such as Eskom, South African Airways, etc.) is legally bound to take the BE into account and apply the codes when selecting their service providers. There is no legal obligation for a private enterprise to comply with these codes—but it is important for those companies that wish to conduct business with the government, or ensure that they score as high as possible on the scorecard. This has a knock-on effect, as in order to score highly on the procurement element of the scorecard, companies will need to ensure that as many of their service providers as possible also score highly—therefore encouraging companies to give preference to service providers who have good BE credentials. Compliance with the Codes is therefore more of a commercial imperative than a legal one.

- **Employment Equity**

Employment Equity (EE) is one of the criteria on how an employer's progress towards BE is measured. The Employment Equity Act of 1998 (EEA) aims to achieve EE through eliminating unfair discrimination and requiring the implementation of affirmative action.

- **Procurement**

Fraud surrounding procurement practices is still one of the main areas of corruption that companies operating in South Africa face, despite new legislation trying to combat it. A trend has emerged with public tenders where the work isn't awarded to any of the parties who actually submitted a tender for the project. Rather, tender is granted to a company owned by those responsible for awarding the tender, or by their friends and family.

- **Energy Crisis**

The energy crisis that South Africa is currently facing has been well documented in the media. The financial damage to South African business and industry is unquantifiable. Despite crippling many industries and scaring off foreign investors, there seems to be no measure of accountability—even though the country's government and Eskom, South Africa's government-owned energy supplier, have been warned for years that energy supplies would not sustain economic growth and that urgent action had to be taken to provide new energy sources. It is the private sector, and therefore it is the citizens that pay the very high price in the end.

- **Economic Crime**

The Prevention of Corrupt Activities Act of 2004 is considered to be a groundbreaking piece of legislation in South Africa, as it extended the definition of corruption to encompass corrupt activities amongst any persons or bodies, regardless of whether or not they are public figures. The act also places a reporting duty on any authority who knows or suspects that any other person has committed an offense involving an amount of ZAR100,000.00 (\$13,000) or more. The most severe penalty for corruption is life imprisonment.

The Prevention of Organized Crime Act of 1998 is also aimed at combating organized crime activities such as racketeering and money laundering. Its penalties are also stiff and include a fine of up to ZAR100 million (\$13 million) or life imprisonment for racketeering.

The heavy penalties imposed for economic crimes sends a clear, zero-tolerance message by the government to economic crime, and shows the serious light in which these are regarded. South Africa's government is aware that the prevalence of crime, specifically crime in the corporate sector, is one of the reasons why many investors are hesitant to invest in the country.

To exacerbate the current situation, a battle between the government and the African National Congress (ANC) is presently underway with regard to the future of a specialist crime fighting unit known as the Scorpions—created to fight organized crime in South Africa—which has possibly been too successful, as a number of corrupt ANC members have been exposed by them. The Scorpions currently report directly to the National Prosecuting Authority. Without any public comment on the matter, the ANC is calling for the disbandment of the Scorpions so that they can be dissolved into the national police force—whose record shows little success in curbing criminal activity. These matters only add to current public sentiment that safety and security are not matters of national priority.

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URLs in this post:

[1] To learn more click here: [\*\*http://ethisphere.com/join-the-council\*\*](http://ethisphere.com/join-the-council)

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