REPORT

ETHICS AND THE CREDIT INSURANCE INDUSTRY

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CONTENT.

References: Direct quotations from others are shown in the text by for instance: (10. Kidder, 2003: 237). This indicates that the quotation comes from the book listed in the Bibliography/References (see pages 238 – 243) as number 10 by R.M. Kidder, page number 237. Where no page number is indicated, the text is not a direct quotation but is based on the relevant book.

INTRODUCTION.

Ethics and the Credit Insurance Industry.

The purpose of this report is to investigate whether ethics is important to the credit insurance industry and to consider the role a code of ethics can play in helping to make better decisions.

The conclusions that I reach are that ethics plays a vital role in building and sustaining a healthy credit insurance business and that a well designed and managed ethics policy is an invaluable tool in running an ethical business and in protecting the reputation and long term viability of a credit insurer.

The report begins by providing - in part I - a brief outline of the major ethical theories including short reviews of the two closely related subjects of corporate governance and sustainable development. It continues by discussing the impact of ethics on business in general. I commence the heart of the report by examining in part II ethics in the credit insurance industry, by defining credit insurance and describing the special roles it plays in national and international economies. I then focus on the pertinent operational aspects of a credit insurance business, i.e. marketing and sales, underwriting, claims and reinsurance with particular reference to the role ethics can and should play in each of them.

By drawing together the outcomes of these various deliberations the basic guidelines for the drafting of codes of ethics in the credit insurance industry will be developed (obviously each company has to design its own code in line with its own corporate culture, values and circumstances). Finally I attempt to show the benefits a well drafted and properly managed code can have for a credit insurer (part III).

PART I.

THE THEORY OF ETHICS AND ITS IMPACT ON BUSINESS.

Chapters 1 - 9

CHAPTER 1.

NORMATIVE BUSINESS ETHICS THEORY.

Standards of business ethics[1] cannot be built on empirical research or business professional thought and experience alone; independent, normative (what ought to be) ethical theory needs to underpin such standards in order to give them legitimacy and objectivity. Actions must be justifiable and such justification cannot be based merely on the self interest of people, their thoughts or experiences, to be morally acceptable. More broadly based standards founded on independent theory will lead to better decisions because they will be fairer. Business ethics is applied ethics which aims to help solve practical problems and which presupposes the existence of valid moral values[2]. The following are very brief descriptions of the main ethical theories that have developed over the past centuries, their shortcomings and their applications to business. Because I believe that Kant's moral philosophy addresses business ethics in the most appropriate way - for reasons that will become clearer later in this chapter - I shall, in the subsequent

[1] In this report I do not differentiate between the word "ethical" and "moral" – they are ascribed the same meaning.

[2] Under moral values in business I understand certain basic values (principles, priorities, or standards) which should be anchored in any business. They have the character of ultimate aims and are the necessary principle elements for harmonious co-operation. They guide the business's thoughts and actions, e.g., freedom, equality, justice, respect for the individual, health, security and wellbeing. They are the business's conceptions of desirability, of the quality of reality. Values can be bad or immoral, e.g., the values of the Mafia, the Apartheid or Nazi regimes or al-Qaeda.

discussions, examine business ethics and ethics in credit insurance based predominantly on his thoughts.

UTILITARIANISM. [3]

The morality of an action according to this theory depends entirely on the outcome of that action.

An action is right if its consequences produce the greatest happiness (modern utilitarians often say “utility” or “satisfaction” or “preference”) or minimizes overall pain for affected people. The theory is based on the belief that the purpose of morality is to achieve human welfare by minimizing harm and maximizing benefit. Utilitarianism is interested only in the consequences of an action, not the agent’s (actor’s) motive or character or the act in itself.

Efficiency, creativity and the right attitude are good tools for optimizing benefits, not merely in the sense of profit maximization but also as far as social welfare is concerned. Many business decisions are therefore influenced by utilitarian theory.

Because utilitarianism is interested only in a satisfactory outcome for most of the affected people, this theory is prepared to sacrifice the rights of the minority in the interest of the majority. Being interested only in the final outcome may result in actions that ignore or overrule personal preferences and feeling, rights such as privacy, freedom, religion etc. because such feelings may be in the way of acting so that the utility for the largest number of affected people is maximized. For instance, it would not be ethical in utilitarian terms to allow Muslim staff members to take off on Islamic holidays in a predominantly Christian firm if the absence of the Muslim employees would seriously affect the productivity of the firm and thus reduce the production bonuses of all employees. The minority of the employees would enjoy time off at the expense of the

[3] Jeremy Bentham 1748-1832 British philosopher said “pleasure is the only good, and pain the only evil: else the words good and evil have no meaning”. He was the father of the utilitarian moral theory. John Stuart Mill 1806-73 British philosopher was a strong supporter of Bentham’s utilitarianism and revised and refined it.

majority. Business cannot act in this utilitarian manner. It needs to find ways which will allow it to respect every individual's rights and dignity in all its dealings with employees and other stakeholders[4].

Utilitarianism will allow any means to justify a good outcome. Utilitarianism values an act according to the level of utility it achieves. The act which realizes the highest satisfaction is the right act. Utilitarianism therefore obliges an agent to act to achieve the best consequences even if that means killing an innocent.

Negative responsibility means that an agent is just as responsible for things others do as the agent is for his own actions, provided the agent could have prevented the others from doing those thing. For instance: A loves B but knows that B wants to deceive C. If A can prevent B from committing this act, A must stop B from performing this deception, even if that means that as a result of A's interference, B will thereafter loathe A.

Bernard Williams (English philosopher b. 1929) noted that the actions of others may determine how the agent may have to act to achieve the utilitarian aim and could well require the agent to compromise her integrity or abandon her projects.

Another difficulty with utilitarianism is to measure the actual utility (the degree of satisfaction or happiness) that will be obtained. It is usually impossible to know this before the action is completed and it makes it therefore difficult to know beforehand whether an action will be right in term of utilitarian theory. In business, tools such as budgeting, cost/benefit analysis, risk assessment or management by objectives are employed to help arrive at a decision to act in a certain manner which is judged to result in a morally right outcome according to utilitarian theory. But to rely on such probable outcomes of an action introduces subjectivity into the decision.

Feelings such as love, passion, excitement, pleasure and pain are all important parts of life and must therefore feature in any viable ethical theory. It seems therefore intolerable

[4] Stakeholder in this document means anyone who effects or is affected by the business in question.

to ignore an agent's motivation for his action entirely and focus only on the consequences of the action as utilitarianism does. For instance, if an agent had the evil intention of defrauding his employer but as a result of a mistake by the agent his action to defraud the employer actually resulted in a windfall profit and thus in great pleasure to the employer, one could hardly call the action morally good because unintentional pleasure resulted from the evil intent.

As utilitarianism considers only the consequences of an action, it ignores all that which has gone before, the narrative[5], the history of the agent and the circumstances that have influenced the action. To ignore all this may mean that the agent, e.g., a business, might have to break promises or relationships built up over many years, in order to behave so that the consequences of its action produces the highest utility.

Morally unacceptable utilities (e.g., drinking on the job) or utilities that are in conflict with justice can also negate the good of utilitarian inspired action. Are there not things that are sacrosanct which forbid decisions based on utilitarian considerations, e.g., the destructions of an ancient, beautiful building in order to erect a supermarket?

To summarize, utilitarianism does not provide entirely satisfactory measures because it cannot, in many cases, tell us in advance what the right, moral course of action would be, nor are utilitarian based actions practical because they demand of the agent to give up too much of his personal feelings and rights. By ignoring all else bar the consequences of an action, utilitarianism may support unfair, unjust actions ignoring the rights of the individual or the minority. It therefore seems unsuitable as the only basis for (business) ethics.

KANTIANISM.

According to Kantian ethics[6] the morality of an act is not dependent at all on the outcome of the action. One's duty[7] is to act in accordance with the Good Will which Kant sees as

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[5] As per Alasdair MacIntyre in his essay *The Virtue, the Unity of a Human Life, and the Concept of Tradition.*

[6] Immanuel Kant, German philosopher 1724-1804.

the unconditional, intrinsic good, independent of what it affects or accomplishes. The Good Will is expressed in acts that are willed[8] rationally by a free agent, employing reason only, and that are done from duty[9], from principle, (not the agent's personal wish, passion or inclination) and can be universalized (nothing can be a moral principle which cannot be a principle for all rational beings). Universalization is other-regarding; it calls for treating all people as equals and for the willingness to reciprocate. An act based on a universalizable maxim[10] is an act justifiable by reason.

Kant's thoughts are formulated in his categorical imperative (what is to be done regardless of wants) as follows:

1. Act only on maxims that you can will to be universal laws of nature (Formula of Universal Law – FUL).
2. Always treat the humanity in a person as an end, and never merely as a means (Formula of the End-in-Itself – FEI).
3. So act as if you were a member of an ideal kingdom of ends in which you were both subject and sovereign at the same time (Formula of the Kingdom of Ends – FKE).

The intention of the universal law (see point 1. above) or universalization is to ascertain whether the maxim, the rationale upon which an action is based, could be a universal law, one that every rational being in similar circumstances can act upon without making our social life irrational. For instance as a maxim allowing lying – except in very special circumstance, where the actor has to choose between saving a life and lying – would be irrational to universalize because if we were to always lie, there would be no trust.

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[7] Duty is what a person is obliged or required to do irrespective of the person's wish or inclination. Duties can be moral, legal, parental, occupational etc. depending on their foundation or grounds. Because a duty can have several different grounds, it can be, say both moral and legal, though it need not be of more than one type. (1. Audi, 1999: 248).
[8] Willing involves committing oneself to doing something, including willing the necessary means insofar as they are available, to bring that situation about. (Onora O'Neill: "Constancy in Action").
[9] Acting from duty means that one's action must be willed – chosen using one's intellect, not one's desires or inclinations – that one acts purely from principle.
[10] Maxims are rules of action, underlying principles that guide our more specific intentions. Maxims are morally acceptable only if they are universalizable.

Coercing and deceiving persons are, according to Kant (point 2. above), very serious moral misconducts. What makes humans different from other living species is our ability to reason and make decisions. This sets us free but also condemns us to choose. If we coerce, deceive or withhold vital information from others, we hamstring their ability to make a reasoned decision based on all the facts. By acting in this fashion we take away from them the ability to decide for themselves, and thus to act autonomously. We deprive them, in Kant's words, of their dignity[11] and their right to autonomy. That is equal to treating them as mere means, not as ends in themselves. Only those who can freely decide, whose dignity and autonomy is fully respected can be held responsible, can be asked about the right or wrong, the good or bad of their actions. Business must tell the truth, be transparent and not withhold information so that stakeholders can take fully informed, rational decisions. The Formula of the End-in-Itself also indicates that businesses have a moral duty to contribute to the development of human rational and ethical capacities through the provision of information and education, training and growth opportunities to their employees and where reasonable, to others.

While the categorical imperative that we should treat persons as an end and never merely as a means seems a very worthwhile and good rule, its implications are very profound and following this rule can be difficult. To treat a person always as an end, i.e., respect the person's dignity means, among other things, that one should allow the person to consent to any proposition freely. In order to consent properly, the person must understand fully what is being proposed, realizing the deeper aspects and consequences. Because of different cultural backgrounds, upbringing, intellect and education, misunderstandings are very easy. The proposal must not be misleading, and it must be clear and complete. Obviously no amount of coercion may form part of the consent. For instance, offering a poor individual a job at a ridiculously low wage may not allow the individual free choice because he will probably be forced to accept the position – he might not have a choice – as without the job he might starve to death. Onora O'Neill draws attention to these difficulties (16. O'Neill, 1985).

[11] Dignity represents the intrinsic human worth that persons are rational beings, free and capable of making their own decisions – it is what sets us apart from animals. Kant's theory gives rise to and secures individual rights. The end does not justify the means and this is then the basis of human rights.

Business is a community of people and must treat the humanity in people with dignity and respect (point 3. above). The rules that govern an organization must be capable of being supported by everyone in the firm. The Kantian view of an organization is a moral community (the Kingdom) created to achieve common goals and shared ends (rules accepted by all and to which all are subject – each member of the organization is sovereign and subject at the same time). The concept of the ideal Kingdom of ends results in changing an "I" (egoism, authoritarianism) to a "we" (democracy, respect for others). If one sees a firm purely as a tool to make profits one is acting contrary to the "respect for persons" principle (see page 12).

Kant's categorical imperative, consisting of these three formulas, is a tool for testing the rightness of maxims. The categorical imperative is a test of fair play – including that one does not make an exception for oneself. According to Onora O'Neill (17. O'Neill, 1989), Kant's categorical imperative is a test which aims to ground an ethical theory on notions of consistency and rationality rather than upon considerations of desire and preference.

The Formula of Universal Law (FUL) (see 1 on page 11) requires us to think about the maxim on which we would be acting to achieve our purpose. Further, we must consider whether or not we "can will" without contradiction the maxim as a universal Law (9. Kant, 2002: 67). FUL is a test of the sufficiency of the reasons for action and choice which are embodied in our maxim (11. Korsgaard, 1985). There are two contradictions that may arise when applying the test:

- a contradiction in conception of the maxim; and
- a contradiction in the will.

It is essential that a maxim includes the following three elements so that it can serve the purpose of the FUL appropriately (9. Kant, 2002: 67):

- the type of act proposed;
- the purpose or end of the proposed act; and
- the motivating reason for doing it.

It is what happens to the purpose that is the key to the contradictions (11. Korsgaard, 1985).

The following is an example of a maxim: “to advise a prospective purchaser of all the qualities and defects of the item(s) he wishes to buy (the type of act proposed) in order to build trust and a good reputation (the purpose of the act) so as to grow the business (the motivating reason).” This maxim could be universalized without contradiction in conception because there is no conceptual contradiction in the maxim (as there would be if the maxim would, for instance, state that the items should be sold for the highest possible profit – disclosing defects would not achieve such a goal). There is also no contradiction in willing such a maxim because the purpose of the maxim, namely to build trust and a good reputation is fully supported by willing the maxim (however, should it, by way of illustration, not be the purpose of the agent to build a flourishing business, then there would obviously be a contradiction in willing this maxim). The reason and purpose of the maxim (to grow the business and to build trust and a good reputation) are fully supported by the action (to give the purchaser all relevant information).

The *contradiction in conception* in the maxim “I will make a false promise in order to obtain a loan so as to enrich myself” is that should such a maxim become standard procedure, if it were universalized, promises would become meaningless. The action of making a false promise would no longer work as a way to achieve the purpose, i.e., to obtain a loan, because no lender would be prepared to rely on a promise. Thus there is a conflict of ideas in the maxim if it were universalized.

The above example also shows that the maxim could only achieve its purpose if it were an exceptional maxim, one to work for us only. Such a maxim cannot be willed as a universal law because it is self-seeking and thus not other-regarding. That is, the maxim would also be unethical in terms of Kant’s other dictate of the categorical imperative: “always treat the humanity in a person as an end, and never merely as a means (FEI)” (see 2 of page 11). The maxim would only work for us because most people do not act in accordance with our maxim, they in fact keep their promises. That is why lenders would accept our promise, not knowing that ours is a false one. Thus other people's honesty makes our deceit effective – we are treating others as mere means.

For Kant, willing is regarding yourself as a cause: that the will is "a causality of living beings insofar as they are rational." Willing is regarding yourself as the cause of the end in question – as the one who will bring it about. This distinguishes willing from mere wanting, wishing or desiring (11. Korsgaard, 1985).

A business that supplies weapons of mass destruction (WMD) to a volatile country at war in order to reap maximum profits would support the proliferation of such weapons and thereby raise the risk of the total annihilation of the world population. A maxim "to sell WMD for profit to such a country" could therefore not be willed to be a universal law because it could result in the destruction of mankind and hence prevent realization of the maxim's end. Also, if universalized, every manufacturer of WMD could deliver such weapons and this would be contrary to the business's purpose of reaping maximum profits. Thus universalizing such a maxim would be a contradiction in will. The act would also be in contradiction of the categorical imperative because it does not comply with the FEI (see pages 11 and 12) as it would support armed hostilities which treat people as mere means, not as Ends-in-Themselves. The FEI would also be violated because the firm would be acting unfairly and irrationally. The firm could not subscribe to the concept of all weapons suppliers providing warring countries with unlimited amounts of WMD because under such a scenario the likelihood of an Armageddon is sharply increased. Thus the business is making an exception for itself and the excuse "if we do not supply someone else will" is not acceptable.

Assuming that the people employed by the firm would not support the supply of WMD under these circumstances, they would lose respect for their employer and would feel uncomfortable working for the firm. Such an action by the firm would therefore also violate the Formula of the Kingdom of Ends (see 3 of page 11).

Kantian theory accepts as the basic motivation for acting morally, a sense of duty. Perfect duty, according to this theory, is to will a maxim, i.e., to develop a guideline on the basis of universalizability (would it be possible for others who find themselves in similar circumstances to act in accordance with my proposed maxim)[12]? Kant's moral law requires us to act only on a maxim that is universalizable. It is important therefore that the fundamental circumstances surrounding a particular case are carefully described (including the three points raised on page 13) when designing a maxim that is to guide one's action in solving the case because only then can the test of universalizability be properly applied. Accordingly it is important to distinguish between the maxim, the rule that is to govern one's action and the question that the action is to solve. The maxim must be rational whereas the question to be solved can obviously involve a very emotional issue.

The need for designing maxims with care is highlighted by the problem of conflicting ethical principles, which applies to all moral theories. For instance, what to do when one has promised to keep a secret and some one else asks about it? One cannot tell the truth and at the same time keep one's promise. Or the case where a competitor asks certain details of the business's marketing strategy – one should never lie but if one does not, one puts one's business in danger. One cannot easily develop universalizable maxims for such situations: If one's maxim is to always tell the truth, one breaks the promise to keep the secret or one may put one's business at a disadvantage. These type of conflict issues have not been resolved and are proving to be a serious problem for those who are confronted with such situations. Guidelines to morality are just that; they do not give an answer that is automatically right for every occasion. The agent has to apply his mind, use judgment and reason. However, by carefully circumscribing the fundamental basis of a maxim the problem of conflicting ethical principles can be greatly reduced.

[12] Perfect duties must always be complied with by a moral person and they require that one executes them without room for choice as to how they should be fulfilled, e.g. the duties to keep a promise or not to lie and to respect others or to will a maxim are perfect duties. Imperfect duties, duties that one should comply with at least some of the time, allow leeway, i.e. they permit one to choose. Thus the duty to help those in need is an imperfect duty since it can be fulfilled by helping the sick or the starving or the oppressed and one can help any one of these groups in different ways.

Kant rejects utilitarian ethics because “the motives of virtue are put in the same class as those of vice and we are instructed only to become better at calculation, the specific difference between virtue and vice (rightness) being completely wiped out” (8. Kant, 1964). By considering an act as ethical only if its consequences are the greatest happiness for the largest number of affected persons an immoral act could be ethical in utilitarian terms. All we are asked to do by utilitarianism is to calculate what will produce the greatest happiness and act accordingly.

One of business’s duties is to earn sustainable profits. Thus, business has to ensure that the maxims by which its actions are guided are in line with this duty and are universalizable. This means that business cannot act in violation of the categorical imperative. Employing lying, cheating, withholding vital information, coercing etc. in order to earn profits would not be in line with the categorical imperative and such acts would be unethical in terms of Kantian theory.

Kant’s duties in terms of the Formula of the End-in-Itself (refer to page 11) are set out in the following table:

Duties to:	Positive Duties: (mostly imperfect duties)[13]	Negative Duties: (mostly perfect duties)[14]
Self:	Self realization. Be true to one’s values.	No self-abuse. No self-contempt. No suicide. Not self-seeking.
Others:	Care for and support others. Treat others according to their desert.	Never treat others merely as means. Never disrespect others dignity and autonomy. Don’t kill. Don’t lie, deceive, mislead. Don’t coerce. Don’t break trust or promise. Don’t withhold relevant information.

These duties also apply to businesses.

[13] Imperfect duties allow leeway in the interest of inclination, i.e. that permit one to choose among several possibilities of fulfilling them, e.g. help those in need: choose the sick, the starving and how to help the

VIRTUE ETHICS.

According to this theory the rightness of the act is a function of the goodness of a person's character.

Aristotle (1. Aristotle, 1998), the preeminent Greek philosopher (384-322 B.C.) who largely fathered virtue ethics, said that a good, virtuous character is neither natural nor unnatural but is cultivated and made part of the individual, much like a language, tradition or profession (30. Beauchamp, 2001: 34). Moral virtues are acquired through upbringing, early experiences and habitual practice of acting in a virtuous manner as opposed to intellectual virtues which are developed through education. Moral knowledge cannot be acquired merely by attending lectures and it is not characteristically found in people too young to have had much experience of life – stupid people can never have virtues because they are unable to learn from their experiences.

Aristotle (1. Aristotle, 1998) explains what he means by virtue by referring to the flute-player or the craftsman and draws a parallel to human goodness: A flute-player, a craftsman or a businessman have defined functions or social roles and their goodness is dependent on their performance as such. Human goodness depends on the performance of the human's distinctive "craft", which Aristotle sees as the active exercise of the soul's[15] faculties in conformity with rational principles. Only humans are capable of rational decision-making, only humans have the ability to choose – it is what distinguishes man from all other living things. This then is man's specific "craft" the execution of which determines his goodness, his virtuousness.

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chosen group. Imperfect duties may be overridden by perfect duties and must at least sometimes be complied with.

[14] Perfect duties are duties that must be performed what ever the circumstances and do not allow leeway, e.g. to keep one's promise or not to kill or harm others.

[15] The soul is defined as the immaterial "I" that possesses conscious experience, controls passion, desires and action and maintains a perfect identity from birth to death (3. Blackburn, 1996).

The soul of a business is, I believe, represented by its culture[16], values and ethics which have been developed over years by - and are expressed by - its people and which, if strongly inculcated control its passion, decisions and actions. The purpose of a business is to satisfy the market by producing the goods or services wanted by the market and for which it has been set up. It must do so at a profit and in a manner dictated by its culture, moral values and ethics. A business which is successful in achieving this would be a virtuous business.

A virtuous or just person has a fully conscious desire to act in a morally correct, virtuous manner and acts so out of principle, from a fixed disposition and not just out of duty. A morally good person acts from the right feelings (at the right times, on the right occasions, towards the right people, for the right motives and in the right way) in the right measure – somewhere between the extremes. Excess or deficiency in feelings results in bad actions. The mean, the balance between the extremes is what the virtuous agent will live by and this applies to business too. A balanced approach in decision making and acting is what makes a business a long term success.

Aristotle (1. Aristotle, 1993) differentiates between:

- the temperate, moral or virtuous person who is the one who does the right thing, is happy doing it because he does it out of principle, from a fixed disposition, knowing he does the right thing because he acts from virtuous feelings;
- The continent person does the right thing because he knows that this is how he ought to act but he struggles because he wishes to act differently due to contrary desires; he does not act from a fixed disposition;
- The incontinent or morally weak person does the wrong thing knowing that it is wrong because he is not able to fight the overwhelming contrary desire;
- And finally the intemperate person does the wrong thing believing it to be the right way to act according to his personal principles, his fixed disposition. The intemperate man does not repent; the incontinent is always capable of remorse. The intemperate is

[16] Culture: The way of life of a people, including their attitudes, values, believes, art, sciences, modes of perception, and habits of thought and activity (3. Blackburn, 1996).

incurable while the incontinent can be cured. Vice, as displayed by the intemperate, is chronic while incontinence is an intermittent illness. Vice is deliberate and incontinence is not.

The culture, values and ethics of a business is dependent on the degree of temperateness or intemperateness of the group of people who manage and run it. Operations by organized crime are an example of business conducted by intemperate individuals. The raison d'être of Aristotle's virtue ethics is eudaimonia, the ancient Greek term for human flourishing or happiness [17]. Whereas utilitarianism aims at achieving the greatest happiness for the affected people, Aristotle believes in the greatest florishing of the individual.

A just business in Aristotelian terms is a virtuous one because it performs its function and its social role well. It promotes virtue in others and acts as the virtuous person would**.** For the utilitarian a just business is one that produces the greatest utility, regardless of how it achieved that state. According to Kant a business is morally right if it follows the categorical imperative, i.e. if it respects the dignity and autonomy of all persons.

Virtue theorists maintain that it is unreasonable to expect of a moral theory that it must provide clear guidelines about what ought and ought not to be done. As Aristotle said, virtue ethics can provide an outline only without much precision in details. Rosalind Hursthouse (7. Hursthouse, 1991) points out: The application of virtue ethics rules does require the most delicate and sensitive judgment. Those that follow virtue are forced to think out for themselves what is best suited to a particular circumstance just as a doctor, a navigator or a businessman need to consider their actions depending on the circumstances which confront them in a particular situation.

[17] Eudaimonia is the most final end: We pursue wealth, honour, pleasure, knowledge and virtue not only for their own sake but mainly for the sake of eudaimonia.

The doctrine of the mean[18], which says that we should not display excess or deficiency in our feelings and actions but live according to the mean between the two extremes, is the guiding rule to the way we should behave in order to achieve eudaimonia in virtue ethics. For instance generosity is a virtue if the mean is applied, that is one should be neither mean nor prodigal. However, the doctrine is not a very clear guide because the mean varies for different people – there may be as many means as there are differences between people. For instance, some people have sycophantic personalities, others are argumentative and a third kind is naturally amiable. The mean of being pleasant in daily life will be different for each of these groups. The persons being addressed also have different sensitivities and therefore conceive pleasantness in differing ways. Also, not all virtues have a mean. For instance, I either tell the truth or I don't; I keep a promise or I break it, a business supplies its shareholders with all the facts or it does not. In other words there are some absolute virtues that I will have to comply with and there are some relative virtues, which do have a mean and which are relative to various people and situations, like courage, or in business – cost control (too little is inefficient, too much damages the future of the enterprise).

There is also the question as to whether all virtues are under all circumstances worthy ideals. Take courage: is it a virtue if it is employed in a heinous act? This raises the questions as to whether a moral theory based entirely on character is sufficient and whether one needs to have all virtues in order to achieve eudaimonia. If the latter is the case then that would presumably ensure that an ethical person, a person of good character, would not entertain a heinous act and therefore the first question raised in this paragraph would not arise. But if man has to display all the virtues in order to achieve the telos (end or purpose) of virtue ethics then it requires perfection of man and it could be argued that such a demand is against equality and democratic principles. Some people will display great and good character in certain circumstances but may fail in others. As Alasdair

[18] From this definition it can be seen that Aristotle's mean does not infer mediocrity, second-rate or inferiority. He said: "The man who knows his business avoids too much and too little – he seeks the relative mean. An artistic masterpiece is destroyed by too much or too little – just the right amount makes it a masterpiece – the mean preserves it".

MacIntyre[19] pointed out, only in certain kinds of societies or types of jobs can virtue prosper. An example would be on the one hand the medical profession, which is involved in performing a job that is inherently virtuous i.e., looking after the health of people and on the other, the job of an assembly worker who has the manual task of adding a small component to hundreds of large machines that are being built. Clearly, the environment of the medical profession lends itself far more to displaying virtues than the assembling job.

From the few points raised above it would appear that virtue theory on its own does also not provide sufficient practical guidance to help in solving ethical problems in business.

FEMINIST THEORY, ETHICS OF CARE.

This is a theory focused on personal relationships and appropriate character traits such as sympathy, compassion, love, friendship, loyalty etc. The proponents of this theory believe that the Kantian and utilitarian theories overlook the importance of the well-being of others because they demand impartiality which treats individuals as impersonal. People do not necessarily act out of a feeling of responsibility but often because they care or because of their special attachment and love towards another. I do not believe that Kantian theory is impersonal. As earlier stated, the importance of the well being of others or the personal relationship that can and should affect the action, need to be taken care of honestly in the rational design of the maxim. If they were not, the maxim and the resulting action could not be one of a person with good will, with a good character. However, the universalization, the testing of the maxim needs to be done rationally and without emotion.

The "Golden Rule" is considered part of the ethics of care. It is a rule which appears in many religious teachings and received its name from Confucius (551 – 479 BC) who wrote "Here certainly is the golden maxim: Do not do to others which we do not want them to do to us". The Golden Rule controls our actions and forces us to keep others in mind and promote their interest. However, the Golden Rule has its limitations, e.g., when

[19] Alasdair MacIntyre in his essay: *The Virtue, the Unity of a Human Life, and the Concept of Tradition.*

both parties happen to like intuitively immoral things (for instance a reciprocal agreement to bribe); when more than two parties are involved who is the one in who's shoes one should step? Nevertheless, the Golden Rule is frequently and effectively applied in the search for answers to difficult moral problems.

Ethics of care can assist - if thoughtfully applied in softening**,** or rather in paraphrasing the demands of Kant's categorical imperative - in ensuring that a company takes on the characteristics of a moral community (the ideal kingdom of ends, in Kant's language, see pages 11 and 13) and this can result in improved corporate ethics and productivity.

THE COMMON MORALITY THEORY.

W.D. Ross (30. Beauchamp, 2001: 29/30) who is a well known proponent of this theory argues that there are several basic rules of moral obligation that do not derive either from Kantian or utilitarian theories:

- Promises create obligations of fidelity;
- Wrongful actions create obligations of reparation;
- The generous gift of friends creates obligations of gratitude;
- The obligations of self-improvement, non-malfeasance, beneficence, and justice.

According to Ross, one's greatest obligation in any particular circumstance must be based on the greatest difference of right over wrong in that particular context. The strongest obligation in the particular case must be acted upon. For instance where the obligation to keep a promise conflicts with the obligation to protect the life of a person, then the weightier obligation of protecting the life will override the obligation of keeping the promise.

These thoughts have lead to the acceptance by many moral philosophers that rights and obligations are not inflexible standards. The idea of an exception-free hierarchy of rules and principles has been replaced by one that accepts that although they represent strong prima facie moral demands in cases of conflict, there may not be a single right action.

It seems to me that these thoughts are not contradicting Kant's theory. Kant accepted that there can be conflicts between different moral claims and that in such case the more serious obligation must supersede the less compelling one. As has been pointed out earlier (pages 13 to 16), the maxim needs to articulate the circumstances in order for it to be rationally tested through universalization.

SOCIAL JUSTICE – RAWLS'S JUSTICE AS FAIRNESS (23. Rawls, 2001).

Theories of social justice are ideologies about the principles of how political and economic institutions should be designed and what they should try to achieve.

One of the world's most distinguished political philosophers, the American John Rawls (1921 – 2002) a protagonist of Kantian thoughts, made a considerable contribution to the theory of social justice. Although the subject is generally thought to be a political issue, it has considerable ramifications for business ethics (as will be seen more clearly in discussions later during this report).

Rawls's theory of fairness rests on his two principles of justice[20]:

1. The indefeasibility of individual rights[21] (the equal basic liberties principle); and
2. That social and economic inequalities should be tolerated only if:
   - offices and positions are open to all under circumstances of fair equality of opportunity (fair equality principle), and
   - absolute priority is given to the needs of the worst off (the difference principle).

Rawls asked: how can people with conflicting ideas about morality, religion and the good life, agree to principles that will allow them to live together in a stable society? To answer this question Rawls developed his famous "veil of ignorance". The veil of ignorance (a theory for the process of decision making) defines the "original position" –

[20] Justice means equitable distribution of rights and obligations.

[21] Individual rights are the rights to equal political liberties, e.g. the right to vote and to be eligible for public office, freedom of thought, speech and assembly, freedom to own property and freedom from arbitrary arrest.

the situation where the decision makers have to contract into basic social or economic structures without knowing which role or position in society they themselves will hold. Decision makers in the original position are equally situated in that they are ignorant of their talents, wealth, and position in society and about society's opinions. They see themselves as equals.

Rawls believed that decision makers in the original position would support the above mentioned two pillars of his theory, i.e., the equal basic liberties principles and the fair equality principle together with the difference principle.

Rawls thought that people would employ a strategy that maximizes their minimum gain, or equivalently, minimizes their maximum loss because decision makers in the original position would aim to secure for themselves and those they represent the basic rights, liberties and fair opportunities and a fair share of the primary goods[22]. Rawls calls this strategy the "maximin rule" which counsels that at least in some circumstances the right decision is that which makes the worst outcome as good as can be. He also judged that decision makers under such circumstances would accept the difference principle rather than agree to utilitarian principles. Rawls thought the veil of ignorance a fair procedure and believed that fair procedures would result in fair outcomes.

The difference principle would be supported by the maximin rule under the condition of the veil of ignorance because the total output will be higher (the best qualified will have the incentive to produce to their best ability) and the decision makers will be guaranteed not to be worse off than under a system of equal division of wealth. Our free market economy and our progressive tax system are examples: the capable can earn more and become wealthy and are thus incentivised to grow the economy which is to the advantage of all. The higher earners will pay proportionally more in tax whereas the poor need not pay any tax.

[22] Rawls defines primary goods as: basic liberty, freedom of movement and choice in occupation, the powers and prerogative of offices and positions of responsibility, income and wealth, the social basis of self-respect, e.g. that societal practices do not denigrate an individual's self-worth.

Decision makers working under the conditions of the veil of ignorance have to decide which principles it would be rational to adopt under given circumstances. This connects the theories of justice and rational choice in line with Kant's categorical imperative (the maxims they would formulate would be respectful of autonomy and universalizable) because decision making under the circumstances of the veil of ignorance forces other-regarding on and in the interest of all participants.

The following table illustrates preferred benefit distributions under different ethical systems:

Recipient	X	Y	Z	Total	Systems
Distribution I	3	3	3	9	Egalitarian
Distribution II	3	4	12	19	Utilitarian
Distribution III	2	3	11	16	Libertarian
Distribution IV	4	5	9	18	Rawls/Kant/Difference Principle.

NOTES:

1. While an egalitarian distribution seems fair – everyone gets the same benefit – it may in fact be highly unfair because any one X, Y or Z may work particularly hard and diligently and not get recognition for the extra effort. Egalitarianism equals mediocrity – the total output is lower because of the lack of incentive. The most capable are not motivated to achieve their full potential.
2. Utilitarians would choose distribution II because it maximizes utility (total 19) although it produces extreme inequality, particularly for X. X's low benefit receipt is accepted in the interest of the greatest amount of benefit.
3. Libertarians believe in a radical free market. Any of the distributions could be acceptable, provided the benefit holding is transferred justly[23].
4. Rawls would support distribution IV because although there is inequality, X and Y are improving their position (are best off under all 4 distributions) – the difference principle is working. Although not shown in this example, the Ralwsian system is likely to

[23] According to this theory, a holding acquired justly including its fruits, is not subject to the veto of others (substantive self-ownership), e.g. Rawls' difference principle is not accepted under this theory.

produce the highest total because participants will see this as a fair system and will therefore all contribute to their best ability.

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This short synopsis of the more important moral theories tells us that while most have some shortcomings, they all have something important to say about ethics in business. Kant's theory is to my mind the most authoritative philosophy and, while I shall not ignore the others, Kant's categorical imperative will be the ethical basis for my reflection on morality in business.

Business management issues that are closely linked to ethics are corporate governance and sustainable development. Ethics in business, corporate governance and sustainable development are matters that are much higher on the public's agenda to-day because of globalization, the occurrence of disasters (ecological) and the greater interest shown by investors and the media (good corporate citizen issues). The next two chapters deal with corporate governance and sustainable development, after which I will discuss the relevance of ethics to business.

CHAPTER 2.

CORPORATE GOVERNANCE.

“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 INTERESTS OF INDIVIDUALS, CORPORATIONS AND SOCIETY.

Sir Adrian Cadbury
Corporate Governance Overview, 1999
World Bank Report

The many corporate collapses caused by fraud, misrepresentation, suppression of information and corruption which resulted in huge losses for investors and decimated trust and confidence in business and financial markets have brought increased regulation, e.g. the 2002 Sarbanes-Oxley Act in the US and corporate governance guidelines, e.g., the King Report on Corporate Governance for South Africa 2002 (King II). These regulations and guidelines aim at restoring public confidence in corporations, capital markets and the various operators in these markets. Investors and other relevant stakeholders need to be supplied with truthful, complete and transparent information so that they are enabled to take reasoned decisions. Only under such full disclosure conditions can capital markets function optimally, ensuring fair corporate market valuations and encourage corporations to comply with their moral duty to respect the dignity of others.

The key to good corporate citizenship is to find the right balance between performance and conformance (50. King, 2002: 2). While ethics needs to help business find the right answers to the often difficult questions about the correct moral way and to develop and implement institutions, corporate governance is more an issue of controlling compliance with the agreed institutions, values and purpose of the business. I believe that Sir Adrian Cadbury’s definition as quoted at the head of this chapter is too wide.

For the business’s strategies, goals and policies to be successful, it is obviously necessary that the purpose of the business is clearly defined. The values by which it wishes to live and the institutions that are to govern it need to be agreed, clearly outlined and communicated to all stakeholders identified as relevant to the business. Compliance with these policies must be monitored and enforced through an appropriate corporate governance set of rules.

Poor corporate governance will encourage fraud, corruption, mistrust and generally unethical behaviour resulting in waste, loss of reputation, flight of capital and honest, capable employees and stakeholders. Well governed companies are significantly higher valued than companies with similar profit records but that are poorly governed (36. Holliday, 2002: 38). Generally, investors are prepared to pay an “ethical premium” for shares in companies that have strong, stakeholder accepted ethical and governance policies by which they live and through which they enjoy a good reputation gained from stakeholder’s perceptions of the relevant company’s integrity, competence, honesty, and social and environmental responsibility. Ethical behaviour and good corporate governance are significant not only for the particular business, but also for the development of national and international financial markets.

Due to the increasing multinationalism of business, its role in global governance matters is growing. Consequently, there is a greater demand by society for the private sector to manage its affairs in such a manner that it adds value to the economic, social and environmental development.

Corporate governance can be effective only if suitable remedies and sanctions are in place to redress and (where necessary) enforce compliance with the relevant institutions. It is the duty of the owners or the board of directors and management to ensure that a stakeholder-agreed ethical code of conduct and corporate governance policies are in place and complied with. In the United States the US Federal Sentencing Guidelines [24] explicitly refer to the "realization and active use of ethics programmes".

The owners of a business are ultimately responsible for appointing and removing the members of a company's board of directors. This needs to be done in compliance with the legal requirements and as far as possible in line with corporate governance guidelines (in South Africa, King II). Usually the board plays a major role in the selection of new board members, the appointment of the CEO, executive succession and in the proper constitution of the board. Great care needs to be taken in the election (which should be formal and transparent) of board members so that the board as a whole represents a body of well qualified people with diverse but relevant interests, vision, courage, good ethics and communication skills.

The board is also responsible for vetting and monitoring the achievement of the company's strategic plans and goals, ensuring effective external and internal auditing and compliance by the business with all statutory requirements.

Because of its diverse duties and powers, the board should establish committees such as remuneration and nomination, audit, and ethics committees to assist the board in its controlling duties and decision making process. The audit committee should be responsible, inter alia, for corporate governance, risk management and fraud prevention.

[24] The US Federal Sentencing Guidelines, including the "Corporate" Sentencing Guidelines mandate more uniform and more severe penalties for corporations convicted of criminal misconduct.

The remuneration and nomination committee determines the terms and conditions of employment and the pay structure. Particular care needs to be taken by this committee that incentives, be they for the CEO, the sales team or any other employee, will promote ethical behaviour as laid down in the business's code of ethics. The committee will also recommend nominations to the board and institute succession planning.

Auditors must in the first instance report to the audit committee but need to have board approved channels of communications direct to the chairman of the board and any other relevant stakeholder.

The company's ethics policy (including its culture and values) must carry the approval of the entire board and should be managed, monitored and treated as a living document by the ethics committee. The committee and the board must ensure that the policy is not merely a piece of paper but that the company and all its relevant stakeholders live by it, and the board should adjudicate any difficult ethical question or dilemma. (For more on this issue refer to chapter 19 "Implementation and Management of a Code of Ethics").

The corporate governance policy must ensure open, transparent and complete reporting (financial, social and environmental) in line with the Financial Reporting Bill (in South Africa), the International Federation of Accountants and the South African Institute of Chartered Accountants guide lines, the company's ethics policy and other relevant statutes.

The board also has the duty to see to it that the directors and managers of the company are aware of their legal, fiduciary and ethical responsibilities.

Credit insurers have certain additional issues that need to be taken care of within their corporate governance policy, e.g.:

1. Their reserving policy – see page 173.
2. The solvency margin and/or asset ratio.

3. Risk management, other than underwriting risks, e.g.: Investment risks; money market and foreign currency risks; operational risks and reinsurance risks.
4. For companies in South Africa: The Employment Equity and Skills Development plans, the provisions of the Financial Sector Charter and other applicable legal stipulations.
5. For companies operating in countries additional to their home market: The relevant statutory requirements prescribed by the authorities in the respective countries.

All the regulations and corporate governance guidelines in the world cannot entirely prevent corporate misconduct, scandals and the resulting misery for many, mostly innocent people, but such policies can assist in keeping misdeeds to a minimum.

CHAPTER 3.

SUSTAINABLE DEVELOPEMNT.

"SUSTAINABLE DEVELOPMENT SEEKS TO MEET THE NEEDS AND ASPIRATIONS OF THE PRESENT WITHOUT COMPROMISING THE ABILITY TO MEET THOSE OF THE FUTURE."

World Commission on Environment and
Development (also known as the Brundtland Commission).
(36. Holliday, 2002: 13).

Sustainable development is about ensuring a better quality of life for everyone, now and for generations to come (36. Holliday, 2002: 174). Sustainable development has to do with human rights, social justice, economic growth and the protection of the environment. It is clear from the above that this cannot be just a national issue but that for sustainable development to be successful it has to be a world wide effort addressing all three ingredients simultaneously.

As Rushworth Kidder points out (10. Kidder, 2003: 204): "the question is how to protect the natural environment while permitting human development. The very pressure that gives such cogency to environmental concerns also fires the need for development. Will we promulgate regulations and ideals that enshrine nature's rights at the expense of human rights?"

The efforts required to sustain our world are similar to those needed to ensure a long and healthy life for business. Although this is not always obvious to, or accepted by, business, I hope this chapter will show the correctness of this assertion. Business has a major role to play in sustainable development, and it should be readily prepared to take up this challenge which is in its own long term interest. Some businesses are major polluters and do not care because the market demands their product and the consumer, in his eagerness to obtain the product, is prepared to overlook the resulting environmental contamination. Only an irresponsible, unethical business would consciously behave in this manner. Governments have a duty to look out for such unacceptable conduct and put a stop to it in the interest of all. The polluting company should be punished, either by a new competitor and/or the consumer or by severe penalties inflicted by government.

Ethical people accept that they have a responsibility for the welfare of both the present and future generations. The obligation arises from Kant's categorical imperative, namely the duty to treat others as ends not merely as means, to care for others and to refrain from harming them, and to respect their dignity and autonomy, whether they are of this or future generations. Ethical people cannot, in good conscience, ignore protecting the environment, waste limited natural resources or fail to develop the up and coming generations. To ignore these aspects would condemn future generations to untold misery.[25]

Successful business is all about achieving as much output with as little input as possible, and no business can be successful without well educated, motivated and capable people.

[25] An extreme example is the debate around the nuclear waste site in Nevada, USA that has already been under preparation for nearly 20 years at a cost in excess of $5 billion and which is to be put into operation in 2010. The waste to be stored there will reach its peak radiation level only after 100 000 years. The Environmental Protection Agency is expected to write a regulation that will protect the safety of humans in the area for 100 000 years from 2010 – a task that is probably impossible to fulfill at this stage, yet it is clearly the ethical thing to do in the interest of future generations. We cannot take actions to-day that militate against future generation's safety – ethics has a job to do to help find solutions.

But as long as business does not have to pay a fair price for polluting the environment or when resources, education and training are subsidized, business's bottom line may not be effected sufficiently for it to have a real incentive to act in a way wholly conducive to sustainable development. Subsidization also suppresses realization of the inherent risks and long term dangers and encourages laziness and complacency in finding ways to actively do something in support of sustainable development. In order to ensure a fairer market the authors of the book: *Walking the Talk* (36. Holliday, 2002) recommend that business should promote full-cost pricing. The cost of goods and services ought to include all the economic, financial, ecological and social cost elements. For instance, the costs of pollution by a business and/or its product, e.g., of cleaning up the environment or better, of preventing pollution in the first place (consider the efforts made by the automotive industry in regard to the use of more ecological friendly materials which helps to reduce pollution on scrapping of old cars) and of educating the people it employs (at least a fair portion of school and university fees) should be born directly by business and be calculated into the product price. Under such conditions business would have a proper understanding of the cost involved; it would not have to carry them itself because it could pass them on to the consumer (which seems fair as the consumer would be the main beneficiary); and business would have a real incentive to protect the environment, to conserve resources, to work for social justice and to do so in a most cost efficient way in order to keep prices down and thus be competitive.

In managing business and sustainable development, short- and long- term questions need to be carefully balanced. However, markets and stakeholders are usually less open to long- term realities, and for this reason business must sensitize them to these issues by pointing out the long- term environmental facts, by reporting on what it is doing and intending to do in addressing these matters and drawing attention to the cost/benefit affects accruing to the business over the long term. Transparency, "triple bottom line" (financial, social, environmental) reporting is needed not only for control purposes but also for business to reap the full benefit from its ethical behaviour. While it is easy to measure profitability, it is practically impossible to measure environmental protection and social justice. More work needs to be done to develop meaningful and comparable reporting standards for these two more esoteric issues. However, this should not be seen as a reason for not attempting to report on those matters in a serious manner.

Sasol Ltd., which is a South African international, integrated oil and gas company with substantial chemical interests has received world-wide recognition for its sustainability reporting.

Sasol's chairman, Pieter Cox, writes in the company's Sustainable Development Report 2002-2004 (60. Sasol: 4 and 11) "The result of our efforts has been externally recognized and is reflected, for example, in our improved overall score on the Dow-Jones Sustainability Index, our acceptance on to the JSE Socially Responsible Investment Index, and our receipt of several awards and accolades."

Under the heading "Implementing sustainable development – a matter of good business" the company states the following: "At Sasol we recognize there are significant advantages to be obtained in increasing shareholder value in a manner that is socially and environmentally responsible, and that contribute to overcoming the legacies of some of our past activities. We believe sustainability practices make good business sense". The report then refers in some detail to issues such as:

- Identifying and managing risks;
- Complying with legal requirements and fostering trust with the various stakeholders;
- Improving energy and material efficiency, reducing waste and pollution;
- Developing environmentally friendly and innovative products;
- Employing socially responsible practices;
- Improving market share by enabling consumers to deal with companies they respect and whose values they share.
- Being a socially responsible company that displays integrity and motivates its staff;
- Enhancing reputation through ethical practices.

Sustainable development's case is positive for business because practicing it results in improved reputation, brand value and customer relations[26]. As with all ethical questions

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[26] The truth of this is well illustrated by the initiatives taken by many of Japan's large corporations: Canon says that it is "our objective to coexist with nature, part of our corporate philosophy is living and working

in business, sustainable development issues can sometimes appear to be in conflict with the business's perceived aims. As is more fully explained on pages 42 and 43, business has the duties to earn profits, create long term wealth and fulfill its other ethical obligations. Polluting the environment, failing to live up to corporate social responsibilities and wasting scarce resources will not allow a business to comply optimally with its duties – including earning profits and creating long term wealth. As long as there are not relevant national or industry-wide institutions (see chapter 6) that impose sustainable development supportive behaviour, it will always be far more difficult for a business alone to conduct its affairs in a sustainable development friendly way. Business needs to advertise its responsible behaviour and the eco/socio friendliness of its products so that purchasers know and can support such operators/products. As an example, consider the tuna fish which is caught in nets that do not also catch or entangle dolphins. Consumers who know this fact prefer to buy that brand of tuna, even if it is a little more expensive. Clearly, it would be preferable if the entire tuna fishing industry would catch their fish without endangering dolphins. It is the duty of the industry to design an appropriate institution for all to comply with. To save scarce resources, avoid pollution and waste (e.g., recycling), innovation will be necessary to develop new products, markets and processes. When designing new products, services and processes, business needs to carefully consider the ethical, environmental and social impact of and the ethics involved in researching and developing such new products and processes. Transparency will require a measure of joint innovation with stakeholders which should improve the supply chain through greater co-operation with suppliers and enhanced staff motivation and their personal growth. The more management can highlight the benefits that can be derived from sustainable development, the greater will be the market's acceptance of the link to profitability. Dow Jones introduced a Sustainability Index (DJSI) in 1999 and this index, which tracks the performance of the leading sustainability driven international companies, has consistently outperformed the Dow Jones Global Index. The

together for the common good". Olympus chairman is quoted as saying that "our core mission is to improve the health and happiness of people around the world". Ricoh lives by a code that says "refuse, return, re-use, reduce, and recycle". It consistently strives to reduce the input needed for a given output (raw material and energy). Ricoh does not accept materials from suppliers that create waste and their workers' overalls are made from recycled plastic soft-drink bottles. Ricoh's chairman says "our proudest accomplishment in environmentalism is that we have involved everyone in the company. We have increased our earnings by being environmentally correct".

Chicago Climate Exchange, the London International Petroleum Exchange and the recently formed European Climate Exchange are examples of new markets that are developing for the trading of emissions credits.

Preserving the environment is for many companies already a distinct competitive advantage. Improving the output obtained from limited resources and capturing the hearts and minds of the business's employees are clearly also improving a business's competitive position. But sustainable development can flourish only in the right legal framework – government has to be accountable and must allow private enterprise sufficient freedom to deliver sustainability. Governments, the relevant international organizations, businesses and NGOs[27] must jointly develop effective and appropriate institutions including tax systems, subsidy regimes and pricing mechanisms which fully account for the cost of the various sustainable development components and which ensure the right degree of transparency in reporting. Such institutions should try to ensure, as far as possible, that all degrees (even small ones) of pollution, waste of limited resources and antisocial behaviour are disclosed so that any unfairness or free riding is reduced to an absolute minimum.

NGOs, and through them organized public opinion, play an ever greater role in the acceptance or rejection by the market of products, services and processes, e.g., cloning. Business must therefore be prepared to co-operate with and be open towards such organizations and to discuss the environmental and social affects their new inventions may have and ameliorate them where necessary. Society is also questioning the value of new technology and the concomitant risks (e.g., genetically modified crops). While such new products or technologies may on the face of it contribute substantially to sustainable development, society needs to be convinced and has a moral right (see Kant's categorical imperative, i.e., the Formula of the End-in-Itself) to insist that its views are taken fully into consideration.

[27] Non-Governmental-Organizations are unfortunately not all responsible, ethical and knowledgeable organizations. Some will peddle ideas that are not thought through properly or that are not aimed at the public good, but with which they seek to boost their own political clout.

In cases of public pressure and negative sentiment toward a company's product, it is no longer helpful to argue that it is the supplier and not the company itself that is acting unethically. Outsourcing supply should not mean outsourcing moral responsibility. Businesses need to encourage their suppliers, customers and other business associates to manage their operations in a manner that supports ethical behaviour and sustainable development. Many SMEs feel that they cannot afford paying attention to ethics, but such an approach is a little like the fisherman who has so many fish to clean that he does not take the time to sharpen his knife. (See also the discussion on page 153 concerning the "ought" and the "can" for new small businesses).

Corporate social responsibility requires business making an effort to improve the quality of life for its employees, their families, the local community and society at large. Such action motivates and creates loyalty, good reputation and trust – invaluable assets which are beneficial for any business even if activities of this kind ostensibly sacrifice some short term profit. For there to be a level playing field business must agitate for the development of appropriate institutions (see chapter 6 "The Importance of Institutions") and structures to be in place in order that there is motivation for running ethical, sustainable businesses and so that no one gets a free ride at the expense of others.

Management must ensure that stakeholders do not perceive its sustainability development policy as a mere fad. While it would be poor judgment to over emphasize sustainability issues in economically difficult times, it would also be wrong to give the impression that ethics and sustainability are issues to be considered only when the company is strongly profitable.

"Poverty is one of the single largest barriers to sustainability" (36. Holliday, 2002: 241). Business cannot flourish if surrounded by poverty and it must therefore strongly support open, liberal global markets – free trade will promote poverty alleviation, sustainable development and ethics, also in the underdeveloped countries.

It is abundantly clear that sustainable development is an important moral issue for business and that it should be addressed in a company's ethics policy. I shall return to this issue in part III of this report.

Although as a financial services business, credit insurance is not likely to damage the environment directly, but by supporting polluters with its credit insurance facilities it can encourage such undesirable behaviour. This also applies to corporate social responsibility issues, although, through its own human resources policies, credit insurers are also directly responsible for enlightened personnel procedures. For more about these issues see chapter 12 "Underwriting".

CHAPTER 4.

THE IMPACT OF ETHICS ON BUSINESS.

"VERY FEW EXECUTIVES ARE OUTRIGHT SCOUNDRELS. RATHER VIOLATIONS OF CORPORATE AND SOCIAL VALUES USUALLY OCCUR INADVERTENTLY BECAUSE NO ONE RECOGNIZES THAT A PROBLEM EXISTS UNTIL IT BECOMES A CRISIS. THIS TENDENCY TOWARDS INITIAL TRIVIALIZATION SEEMS TO BE THE BIGGEST ETHICAL PROBLEM IN BUSINESS TODAY."

Laura L. Nash

Ethics without the Sermon.

Harvard Business Review on Corporate Ethics.

(35. Harvard, 2003: 30)

Before discussing ethics and business it is necessary to agree on the role of business in society, ethics having received our attention in the previous chapters.

It is said that the purpose of business is to make profits. Without profits, no one would invest or remain invested in a business; it would slowly collapse, and, instead of being a job creator, it would destroy work places. Profitability must, however, be of a long-term nature (see also chapter 3 Sustainable Development). A one-year profit explosion and thereafter liquidation is not of much help to the shareholders, employees and society at large.

Business has different moral duties from those of the individual. It has, among others, the moral duties to survive, to earn profits and to create long-term wealth because that is what gives it its right of existence and that is the purpose for which it was created. Only by earning profits will the business be able to fulfill its other ethical duties towards its stakeholders and society at large, e.g.:

- To create livelihoods – jobs;
- To supply goods and services wanted by the market;
- To contribute to the health and growth of the economy;
- To pay taxes;
- To respect the dignity and autonomy of all persons;
- To comply with its responsibly designed ethics, corporate governance and sustainable development policies;
- To help develop institutions (engage government, NGOs and other relevant bodies);
- To create a healthy and motivating work environment and
- To support – within its means and subject to approved budgets – charitable organizations, social efforts such as education and training, the arts, sport etc.

With the exception of Marxism, all ethical theories, as quoted earlier in this report, fully supports the morality of the profit motive as long as it is not profit at any price and as long as it is a reasonable profit. Competition, the free market system, is there to help ensure through the pricing mechanism that profits remain within boundaries acceptable to society. For these reasons monopolies, oligopolies, price fixing and other anti-competition behaviour are unacceptable and governments have the duty – through competition boards or similar instruments – to prevent their development.

Sound businesses are the basis of a healthy economy, which is to the advantage of most. Thus utilitarian theory supports the right of business to earn market related profits. Kantian theory also accepts this business role as a moral duty provided business upholds the provisions of the categorical imperative (see page 11) in pursuing profitability. Because business has as its function the provision of goods or services to society at a profit, virtue ethics would accept this function as business's distinctive "craft" and thus as a virtue of business. This would be subject to business complying with the doctrine of the mean (see pages 19 and 21), i.e., profits need to be reasonable, market related and earned in an honest manner, by a virtuous character (business).

You may well say that this sounds all very theoretical, idealistic and a little naïve. And it is true that in the tough world of business with its cut and thrust competition and the fight for survival, ethics, which concerns itself with practical reasoning about good and right, about duty and obligation, about virtue and freedom, and about rationality and choice, is frequently viewed by so-called hard businessmen in a cynical light. It is sometimes considered weak and unintelligent to act in an ethical manner. This thinking seems to me to emanate from times when businesses were run in an authoritarian manner, when the boss laid down what was to be done and employees carried out his instructions without daring to ask a question or even make a suggestion. It probably also stems from a misunderstanding of what is meant by "ethics in business". Sensible businessmen have long ago accepted that ethics and sound business need to complement one another. But it is self evident that ethics can play a meaningful role in business only if it helps to build and sustain a better enterprise.

Contemporary circumstances require an approach to ethics very different from that of the authoritarian, old fashioned businessman. Due to:

- The vastly greater complexity of business;
- The advance of technology which revolutionizes our lives;
- The much greater speed with which business has to be conducted;
- The much longer distances over which business has to be transacted;
- The much greater fragmentation of ownership;
- The far more competitive environment;
- The much larger scale of business;
- The massive information flows that need to be handled;
- The pressing ecological questions and problems;
- The problem of knowing the future effects of new technologies on our lives;

- The need for the humanization of the workplace;
- The complications involved in dealing with growing unemployment;
- The ever increasing pressure by society for business to deliver real value, to be socially responsible and to protect the environment and
- The large number of laws and regulations

business has become far more intricate and complicated to manage and administer. At the same time, people's options to act constantly increase and the demand for specialist knowledge and intelligence also grows. The owners, directors and/or managers of a business can no longer be expected to know everything or be everywhere. Subsidiarity needs to be employed in order to provide motivated, efficient and personalized service to the market. It is therefore impossible for the owners, directors and managers alone to dictate what is to be done and so they must delegate if they want the business to remain competitive. But effective delegation requires careful selection of the persons concerned, who must be trusted, respected, motivated and given the necessary responsibility and authority to act (their dignity and autonomy – in Kant's language – must be protected). Ethics can be an effective tool to help in achieving successful delegation.

Although our world has become much more individualistic, we have become considerably more dependent on others. No one, and certainly no business, can function entirely in isolation. Without customers, suppliers, employees, shareholders, accountants, lawyers and so on, a business could not function. It is therefore vital to the businessman - in all his decisions and actions - to keep others in mind. Should he deal with others in an authoritarian, uncaring, off-hand manner, riding roughshod over their interests and needs, he may reap the same in return, which is clearly not in the interest of his business. No business can rely on an authoritarian business style; all decisions must take others into consideration. Business totally depends on and is imbedded in society. That is so not only because business has to supply goods and services to members of society in order to exist and succeed or because it has to attract members of society to become its employees, but also because society is providing the infrastructure that makes it possible for a business to operate. Without the required transport-, legal- and communications- infrastructure, without taxation and political etc. systems, it would be virtually impossible to run a business. Business pays taxes and fees for these services but it is questionable whether they compensate society sufficiently (see also chapter 3 – sustainable development) and in any case they alone do not make for a good interdependent relationship that is so necessary for both business and society to flourish. Consumers may boycott a business's products and services if society perceives the business to act unethically or not to behave as a good corporate citizen. This raises the question for internationally operating organizations whether that which is considered ethical in one country is moral in another. This problem is discussed in chapter 5 dealing with Cultural Relativism.

As the Shell Brent Spar case[28] has shown, it is not sufficient for business to act legally. It must also be seen to be conducting its affairs in a morally legitimate manner. Such moral behaviour has to be seen as an honest, thought through corporate effort, in order to be taken seriously and for it to have long-term positive affects.

While no business can operate without being confronted by ethical issues, there are no ready norms or formulae that can be easily introduced into business and which then automatically produce the required ethical results. Both Kant and Aristotle said that ethics can provide only guidelines, no absolute rules. Business is an entirely practical occupation which must operate in a highly competitive environment and long-term profitability is essential. Because ethics is concerned with the goodness of the interaction between a "self" and "others," the "self" cannot be excluded from ethics. It is therefore incorrect to neglect the "own" interest – or that of the business. The business's well-being is a prerequisite for its balanced, ethical interaction with others. Business ethics must aim to align ethics with the organizational goals in such a way that the own interests are balanced with those of all the stakeholders. Keeping this in mind, as well as the fact that people/businesses cannot operate on their own, it seems clear that the ethics of the businessman must be a combination of doing what both serves his long-term interest

[28] The Brent Spar which was a very large floating oil storage and loading buoy in the North Sea was decommissioned in 1991 and it was Shell's intention after very careful investigation to sink the platform. Although Shell complied with all the relevant legal requirements and obtained the British government's approval for its intended action, it omitted to discuss the matter with the appropriate NGOs. Green Peace on hearing of this plan objected strenuously and the whole affaire became a major environmental and morally charged issue to the serious embarrassment and detriment of Shell and its shareholders.

while ensuring that most others involved with the business are not adversely affected. For a business, making a market related profit is a moral duty and while it may also be management's wish to produce profits, the overriding motivation for profitability is no doubt business's obligation to be profitable (I am obviously not talking here of organizations "not for profit" – they would have other duties). As long as the businessman complies with the provision of the categorical imperative while acting to earn such a profit he is acting ethically correct according to Kant's moral theory. Any ethic that does not also support this drive for the achievement of own interest would be stillborn. Ideal or purely theoretical ethical answers that cannot be converted into reality are of little help. No owner or manager can afford pursuing naïve morality.

It is interesting to note what Adam Smith (the influential Scottish philosopher and economist (1923 – 90)) had to say: "It is not from the benevolence of the butcher, or the baker, that we expect our dinner, but from their regard to their own interest". Smith was not an admirer of unadorned selfishness. He thought benevolence praiseworthy and a great virtue. He believed that civilized conduct is built on the good character, on sympathy towards others. Benevolence is not required in order to advance the economy and thus the public good. Benevolence is a desire for the good of others and a disposition to act so as to further the good; it has to do with fairness, emotional capacity and is sentiment based. Kant holds that we must at least give some support to those in need. He rejects a policy of refusing to help the needy, but caring for others and supporting them is an imperfect duty (see page 17). A duty that allows leeway in the interest of inclination, i.e., that permits one to choose among several possibilities of fulfilling such a duty. For instance one could choose to help the sick, the starving and one could decide how to help the chosen group. Imperfect duties are usually overridden by perfect duties but must at least sometimes be complied with. A business can neither help all in need nor usually provide a chosen group with all manner of possible relief. A business's moral duties are those spelt out on page 42 and its morality does not depend on any one of them but on its best endeavours to comply with all, or at least most of these obligations. Consequently, while benevolence by business has positive moral value (if done from the right attitude and with the concurrence of those who actually own the asset that is given away in a charitable gesture, i.e. the owners/shareholders of the business) it is not an absolutely necessary ingredient of business ethics that a business *always* acts in a benevolent manner.

The shopkeeper who gives customers certain products below the normal retail price (loss leaders) and does so not for humanitarian reasons but in order to draw customers into his shop where they will hopefully purchase at the same time other goods, on which the shopkeeper makes a handsome profit, does not perform a benevolent act. The shopkeeper's act is expedient, merely in his own interest. His act would be a benevolent one only if he were to sell certain goods below the normal retail price in order to help others who are in need. Such an act would represent charity, which is obviously good and admirable, but as said before, it is not a sine qua non to ethical behaviour in business.

However, a business which wants to act ethically must at least some times act in a benevolent manner. That is why I believe business should support charities and other worthy social causes via a properly approved budget and should make this part of its board and shareholder supported code of ethics.

Central to any ethic is the relationship of the "ought" and the "can". Any "ought" presupposes a "can", i.e. is it possible for a business under competitive pressure to comply with business ethical dictates? Ignoring this question would lead to utopian expectations which would fail in the reality of business and damage the entire case for business ethics. However, whenever one's own interest, or for that matter those of the business, come into conflict with ethical behaviour, every effort needs to be made to find a way in which both can be brought together resulting in a fruitful solution (43. Suchanek, 2001: 2). Any operation that pursues purely its own interest and that clearly violates the interests of those affected by its activities is not a business – it is a crime syndicate (42. Rossouw, 2002: 25).

As Charles Handy, the well known Irish writer, broadcaster and teacher, wrote in the Harvard Business Review: "The purpose of business is not to make a profit per se – it is to make a profit so that the business can do something better, something that is the real justification for the business". For me such justification should be for the business to comply with its ethical duties listed on page 42 in addition to striving for survival and the creation of long term wealth. I believe that these ethical duties, including the duty to generate profits, are interdependent – they produce a win-win situation**.** The European management writer Arie de Geus argued: "Companies die because their managers focus on the economic activity of producing goods and services" (and I would add making short term profits, which efforts have many a time lead to fraud and misrepresentation by management) "and forget that their organization's true nature is that of a community of people". Kant's Kingdom of Ends, as referred to in his categorical imperative, says much the same.

It should be noted here that business ethics is not the same as prudence. Prudence means to be careful so as to avoid undesirable circumstances; it is essentially selfish. Acting in a prudent way may lack moral merit or be morally wrong. In the same vein, although the law is directly concerned with moral problems, legally correct actions may not be morally acceptable and vice versa, if something is illegal it is not necessarily immoral.

Often an important tension in business is between the desire for excessive profit (greed) and morality. Thomas Hobbes, the British philosopher (1588-1679) said about human greed that there is no end goal, only a limitless "wanting more" moving us from one aim to another – the continual progress of the desire (5. Hobbes, 1988). While human ambition is good in so far as it drives development, progress and improvement of society's circumstances, when it becomes avaricious it is destructive. Ethics' predominant obligation in business is to contribute towards a solution of the conflict between inordinate profit – the constant desire for more - and morality. It must do so in an ethical and at the same time in a practical, implementable way. Milton Friedman tried to answer this question by stating, "the social responsibility of business is to increase its profits" (33. Friedman, 1970). This attitude could be interpreted as a typical ethical egoistic[29] stance. Friedman rules out unfairness, coercion and harming others, but he considers solely the interests of the shareholders and ignores the needs of all other stakeholders. Vis-à-vis shareholders Friedman's position can be seen as Kantian but his ethic is focused too narrowly.

Jukka Kilpi (37. Kilpi, 1998) gives the need for a company to consider all its stakeholders additional force by clarifying the nature and thus the obligations of a company: Businesses lack moral agency on their own. Their moral obligations are determined by actual contractual and legal arrangements, e.g., the memorandum and articles of association and other contracts such as employment, purchase, sales agreements etc. – the company is thus a nexus of contracts. These contractual arrangements make a business into a secondary moral agent, an artificial person. For a secondary moral agent to exist, moral and legal attributes have to be imbued into it. Only natural persons can do this and they do so, for instance, when they agree to establish a limited liability company in order to co-operate through such a company for a particular aim. The rights and obligations are always ascribed by natural persons to a corporation. Without such prescription a corporation would not exist.

Natural persons, by having autonomy can agree to limit their liability by transacting through and making promises via a limited liability company as long as they do not restrict their own as well as others' autonomy. As representatives of the corporation, natural persons act as the corporation itself but are bound to respect the corporation's promises. The representatives cannot act as the corporation contrary to the company's nexus of contracts – that would be illegal and immoral as it would be tantamount to breaking promises.

Due to this constitution a company cannot take the interest of only shareholders into account – the web of contracts (contracts are the medium of promises) requires the

[29] Ethical Egoism is the theory that the only valid standard of conduct is the obligation to promote one's own well-being above everyone else's.

corporation to recognize and respect the interests of all stakeholders because they are all part of the nexus of contracts.

Autonomy is the source of the moral duty to keep a promise and it also allows us to agree to limit our liability by making promises via a limited liability company. But a promise is the moral essence of a contract and because a company is a set of contracts its moral essence is embodied in the set of promises.

To this I would add that there are of course obligations that appear not to flow from a contractual obligation, e.g. to respect the dignity and autonomy of others or protecting the environment, but such duties should be prescribed in the company's internal conditions of operation, such as the corporate governance, sustainable development and ethics policies. These policies also represent contracts and therefore are ideally part of the nexus of contracts and set of promises that constitute the company.

While natural persons can limit their liability by transacting through a limited liability company, they cannot through this mechanism escape liability for their fraudulent or immoral acts. As representatives of a limited liability company, natural persons have the moral and legal duties to ensure that their company enters into and acts in accordance with legal and moral contracts. This concept has also been highlighted by a recent case brought against AIG, America's and the world's largest insurance company, where the CEO of AIG had to relinquish his job because he had been personally implicated in boosting AIG's reserves by designing and negotiating an "income-statement smoothing" reinsurance contract.

The contracts making up the web (and resulting set of promises) which constitute the company must all be legal and moral contracts and this forces the company to deal with all its stakeholders (not merely its owners) in a morally and legally correct manner.

This expose shows that Milton Friedman's view that no moral claim can be made on a business except to secure the best return for itself within the law and the ethical customs of the society within which it operates, is too narrow. Friedman's view seems an impoverished conception of what people engaged in business ought to do. The various objectives associated with a business being part of and operating within a community are moral obligations which ought also to be complied with by business (see page 42 for a list of such obligations). Management has a duty to safeguard the welfare of the business and this means balancing the various claims of the stakeholders in the business. The owners require growing returns on their invested capital; the customers want goods/services of excellent quality and at reasonable prices; the market wants the business to spend on R & D so that it can supply new, better, more exciting products; staff want higher wages, a congenial working environment, interesting and fulfilling jobs, training and generous fringe benefits; and the community wants business to protect the environment, support charitable organizations etc. In the interest of the survival and prosperity of the business, management must keep the interests of the various stakeholders in balance. All stakeholders have legitimate claims on the business and their fair and even-handed recognition is necessary for a flourishing enterprise. As an illustration of the inadequacy of Friedman's notion, I would for example refer to what is said in chapter 11 (Marketing and Sales), page 99: It is the credit insurer's duty to provide a prospective client with all the relevant information, so that the client can decide, in the full knowledge of all the relevant details, what type of policy she wishes to purchase. This is a moral duty with which the insurer ought to comply even though it may not be in the insurer's shareholders' explicit interest of maximizing profit.

The dependence of business on others, as referred to in pages 44 and 45, also calls for a wider responsibility of business, one that includes the consideration of the rights and needs of <u>all</u> its stakeholders, <u>not</u> one that is confined to pursuing purely the interests of its owners.

One could be led to believe that Friedman's statement should lead to a maxim reading something like this: "We (the owners of the business) will support only those actions by the business that will lead to the immediate increase in earnings in order to grow our long term value and we will not allow other social issues to be recognized as responsibilities of our business.” Such a maxim would not be capable of universalization because ignoring all other social responsibilities would probably hinder the achievement of the purpose of the maxim – the long term growth of shareholder value. This would be so because all the other stakeholders in the business would be disgruntled and thus not give of their best in order to support and grow the business. The maxim would at the least lead to a contradiction in conception. It would also be contrary to Kant’s direction that one should at least sometimes, help others.

Friedman’s approach to the profit/morality problem seems to lack depth because it offers no heuristic for the solutions of the many conflicts that arise every day in business. For example, how should the following be viewed: paying an incentive in order to obtain a lucrative order; selling at huge profits textile goods manufactured by child labour; or developing and producing pharmaceuticals and selling them at a high price in order to recoup in an inordinately short period development costs but thereby making the product too expensive for purchase by poor countries that are in desperate need of the preparation? The opposite of Milton Friedman’s view is, I believe, the Kantian theory which gives morality the absolute primacy and imposes positive duties on business to aid others even at some cost to itself. This means putting respect for persons first and seeing as immoral any business practice which puts money on a par with people.

If one sees a firm purely as a tool to making profits one is acting contrary to the “respect for persons” principle. The “respect for persons” principle or as the categorical imperative states it “always treat the humanity in a person as an end and never merely as a means” requires that a business respects the dignity and autonomy, not only of its shareholders but of all its stakeholders even if treating others in this manner may not result in the maximization of profits. As we have seen earlier, Kant or for that matter any reasonable stakeholder would expect a business to make a market related profit as long as it is earned in an ethical manner. A moral theory which would forbid striving for equitable profits would make no effort to find a win-win solution for the profit/morality conflict and would therefore not find support in practical every-day life. It would be doomed to failure.

The tension for business between the duties to maximize profits and at the same time help others is in reality only an apparent one. Self-regarding (for a business to only do the prudent thing) and other-regarding (for a business to respect[30] and show concern[31] for others) are generally interdependent. Without respecting and caring for its customers, employees, suppliers, shareholders etc. a business will not be able to maximize profits and create long term wealth. Morality tries to set out the way people should live their lives for them to be good lives. It would be peculiar to suggest that this concept should ignore entirely people's own interests. Morality therefore should be seen as moderate, balancing the stringent view, which insists on strict other-regarding (a maximalist theory which seems harsh and unreasonable) and prudence, which is entirely self-interested (minimalist theory). The moderate view of morality makes a moral life a realistic possibility and allows the integration of the other-regarding with the self-regarding. Kant said getting joy out of an action <u>can</u> rob it of its moral worth. But this is so only if the fundamentals of the maxim on which the agent acts have as its aim joy for the agent herself. Kant strongly supported actions that make people happy, not because such actions have necessarily great moral worth, but because happy people are much more inclined to live a life based on the categorical imperative. As has been shown on page 17, Kant's formula of the End-in-Itself prescribes, among others, the duty of self-realization which supports the integration of self-regarding with other-regarding. These views apply to business as well.

Investors and the press celebrate the company that produces exceptional profits and such accolades are well deserved provided the excellent results have not been achieved at the expense of ethical conduct. As Peter Drucker (47. Drucker, 1987) pointed out, business profits are needed because they are the source of capital formation. Business in the modern economy needs a continuously rising capital base to finance growth, technology and R & D demands, social expenditure, the cost of capital and of tomorrow's jobs. Without profits the business will fail, not be able to act ethically or be a force in the

[30] Respect: to adhere to constraints on what one may do to others, to acknowledge the dignity and autonomy of others.
[31] Concern: caring about other people's welfare.

support for the public good. Sometimes the competitive nature of business is used as an excuse for unethical behaviour towards competitors. However, competition fosters economic growth, fair pricing and quality of service and must therefore be protected from unfair, unethical, damaging action. Markets have expanded enormously both nationally and internationally and their growing diversity can provide much greater choice at reduced costs for all consumers, particularly the poor. But the full benefit of enlarged markets can be garnered only if global markets are not interfered with. If markets are regulated, wealthier nations must not unfairly exploit poor countries. All market players must be subjected to robust competition and consumer protection laws. Unethical, monopolistic or price fixing business practices will undermine justice, growth, improving standards of living and safety and therefore inhibit investment, development and job creation.

On other occasions business maintains that because of competitive pressures it cannot afford to act ethically. An ethical business is transparent and provides complete and truthful information to its stakeholders so that they can choose freely whether to buy the company's products or services, whether to supply it with products or services, whether to extend credit facilities to it, whether to accept employment by it or whether to invest in it etc. Such openness builds the reputation of and trust[32] in the enterprise which is the basis of sound long-term stakeholder relations and by and large the best source of competitive advantage if combined with business acumen, efficiency, innovation, industriousness and intelligence.

Plurality, the national state's diminishing ability to guide due to globalization, and the consistently growing complexity of every-day life, forces business to accept the role of moral actor because no one else does or can alone fulfill this role, e.g., the role big business in South Africa has accepted to play in the HIV/AIDS and Black Economic Empowerment issues. Business ethics is therefore becoming a more and more important discipline.

[32] For a discussion on trust see chapter 6.

To summarize, the role of business is to supply the market with goods and/or services required by society and to do so at a reasonable, market related profit. Business must strive to fulfill its other moral duties (as set out on page 42) which will mean that it satisfies society's legitimate demands on and expectations of a responsible corporate citizen. Ethics has a distinctly positive impact on the sustainable profitability of business, including credit insurance as will be seen from Part II of this report. Good management includes attention to ethics, corporate governance and sustainable development, but they must be applied honestly, intelligently and, in Aristotle's words, keeping the "mean" in mind. A simplistic, gullible approach will harm the business and damage the credence of business ethics. Institutions – the subject of chapter 6 – are vital tools helping in the effort to act ethically in business. But before addressing that issue, I wish to examine in the following chapter how business should deal with its ethical norms when it has to operate in a foreign society which has cultural rules different from those of the company's home country.

CHAPTER 5.

CULTURAL RELATIVISM.

I have mentioned earlier that business is embedded in society and that for it and society to flourish, good interdependent relations are necessary. But societies are different, they have distinct cultures – each society has its own way of life, attitudes, beliefs and habits. For business to be embedded in a society it has to adopt at least the major traits of that society's culture and beliefs. This raises the question for a firm that operates in various countries, whether it must accept and act in different moral ways in accordance with the cultures of the relevant host country. Does it mean that a company entering a new market must give up its own code of ethics which it has developed over many years and which is based on the culture of its home country in order to operate successfully in the new market? This is clearly an important question for multinationals and is best dealt with by considering the theory of cultural relativism.

Relativists believe that true moral standards vary from place to place or from community to community. Morality, they think, is contingent on cultural beliefs. What ever a culture thinks is right or wrong is really right or wrong for the members of that culture. Cultural relativism questions our general belief in the objectivity and universality of moral truths.

Cultural relativists make the following claims, some of them may be false and others not (21. Rachels, 1999: 22/3). (Comments on these claims are stated in brackets behind each claim).

1. Different societies have different moral codes**.** (I do not believe that there are differences in fundamental moral codes although there can be differences in the implementation of codes – see chapter 5 for further elaboration).
2. There is no objective standard that can be used to judge one societal code better than another. (Normative ethical theory is the objective standard. Kant's categorical imperative (see page 11) is the best independent, neutral guide and has been the foundation of the world wide accepted UN Declaration of Human Rights).
3. The moral code of our own society has no special status; it is merely one among many. (See my comments to the other 5 claims stated here).
4. There is no "universal truth" in ethics; that is, there are no moral truths that hold for all people at all times. (The universal truth is that no society can lead a normal, reasonably secure life if basic ethics such as injunctions against killing or violating people, against raping, lying and not keeping promises are not substantially observed).
5. The moral code of a society determines what is right within that society; that is, if the moral code of a society says that a certain action is right, then that action is right, at least within that society. (If this were right we would have to accept that if the Brazilian culture were to support bribery as an acceptable business practice in contracting with their government, and the Japanese culture was totally opposed to such practices, then it would be merely a question of opinion – of the culture one claims to adhere to – as to whether bribing (which has been made illegal by both the US and the EU) is ethical or not.
6. It is mere arrogance for us to try to judge the conduct of other peoples. We should adopt an attitude of tolerance toward the practices of other cultures. (I agree that tolerance is required and that one should try to understand a country's peculiar habits, customs and laws and work within them, but that does not mean one should subscribe to cultural relativism, ignore the fundamental ethical commands referred to in 4. above, or abandon Kantian ethics).

If the relativists are correct in their thinking, there is no criterion independent of one's culture to determine whether an action is right or wrong. For instance, some years ago South Africa's culture supported discrimination against black people (apartheid) but such cultural belief did not make apartheid moral. Some cultures supported slavery and anti-Semitism but not to condemn such practices seems totally wrong. Some activities are wrong no matter where they take place. But some practices that are unethical in one setting may be acceptable in another. For instance, the chemical EDB, a soil fungicide, is banned for use in the United States. In hot climates, however, it quickly becomes harmless through exposure to intense solar radiation and high soil temperatures. As long as the chemical is monitored, companies may be able to use EDB ethically in certain parts of the world (46. Donaldson, 2003: 120).

James Rachels, former professor of philosophy at the University of Alabama in Birmingham, makes the point that cultural relativism not only forbids us criticizing the ethics of other societies but it would also deny us the rights to criticize our own and that would have the additional effect of undermining moral progress (21. Rachels, 1999: 26).

There have been many attempts by governments, international organizations and the private sector to design a code of conduct that would have international application in business and that would override relativism. These attempts have given rise to the question as to whether there really are fundamental moral disagreements. Some philosophers have come to the conclusion that basic moral principles seldom differ but that the practice of implementing moral principles may differ widely. Just because there may be differences in customs does not mean that there is disagreement about basic moral principles. Here is an example from the business world provided by Beauchamp and Bowie (30. Beauchamp, 2001: 8): the US and Germany have laws to protect consumers from the adverse affects of new drugs and to bring new drugs to the market as quickly as possible, yet they have different standards for making the trade off between protection from side effects and saving lives as soon as possible. This shows that both cultures agree about basic principles of morality but disagree about how to live by those principles in practical situations. It is therefore important to differentiate between principles and implementation.

If, however, thinkers are wrong and there are in fact fundamental moral disagreements – relativism of moral principles – it still does not follow that there is no ultimate norm or set of norms in which everyone *ought* to believe. An example of such an issue is the earlier referred to apartheid policy of South Africa. Some philosophers believe that deep down there is always a single correct ethical norm and that nothing more than skepticism would be justified if fundamental conflict were discovered.

Should one accept ethical relativism, serious thought about and the resolution of moral problems would be impossible – in fact, a discussion of ethical differences between varying cultures would be superfluous and morality in the international or inter-communitarian sense would to a large extent become irrelevant.

People generally believe that some fair and justified compromise can be reached through negotiations and that there is a set of basic moral principles that every culture *ought* to accept. Imagine what life would be like for a society which did not value truth telling, which would not condemn murder, rape, fraud and corruption or which did not care at all for the environment and the mental and physical health of its people.

In some instances in international business one finds that what is right or acceptable in one country is considered wrong in another. In this context bribery, extortion and the issue of facilitating payments remain common problems. Both the US and the EU have passed laws outlawing bribery in international trade. The criticism that such laws disadvantage multinationals that have to comply has been proven incorrect, and complaints by foreign countries of western moral imperialism are misplaced because such laws do not prescribe to foreign business, only to those who have their home in the EU or the US. International firms should respect the moral norms of the country in which they operate but the law against bribery should be seen as a universal norm and thus business is morally obliged not to bribe.

When firms try to take advantage of a lower cost structure, whether it is lower wages or lower taxes, they are often accused of exploitation. It has been suggested that capitalism benefits the rich and powerful industrial nations at the expense of the poor countries, e.g., multinationals using sweatshop operations as their suppliers. Public pressure against such practices has produced an international code of conduct in this regard which is monitored by companies, NGOs and the Fair Labour Association. Economists have pointed out that low wages paid to workers in poor countries are contributing to an increase in the standard of living in those countries. By thinking this issue through carefully, applying moral standards and imagination, multinationals can do a great deal to improve the lives of those who work for them in underdeveloped countries, e.g., countering child labour through education grants and keeping them out of the sweatshop environment. As more fully discussed in chapter 12 "Underwriting", credit insurers can also influence the outcome of such projects, if they are involved, by providing credit insurance facilities subject to appropriate conditions.

Should a company behave as the Romans do if it is in Rome? Beauchamp and Bowie in their book *Ethical Theory and Business* (30. Beauchamp, 2001: 528) suggest that if the norms of the home country (the country where the business is incorporated or has its headquarters) and those of the host country are in conflict, a multinational corporation has four options:

- Follow the norms of the home country because that is the patriotic thing to do;
- Follow the norm of the host country to show proper respect for the host country's culture;
- Follow whichever norm is most profitable;
- Follow whichever norm is morally best, i.e. follow international moral norms for business practices.

These four alternatives are not mutually exclusive, yet the forth option seems the best.

This discussion highlights the importance of establishing international business ethics norms. Beauchamp and Bowie in their book point out that:

- Widespread agreement already exists, as illustrated by the large number of signatories to the UN Declaration of Human Rights and a number of international treaties, e.g. the "Guidelines for Multinational Enterprises" adopted by the OECD or the "Caux Round Table Principles of Business" (30. Beauchamp, 2001: 623) and the Global Compact (36. Holliday, 2002: 167).
- Corporations ought to accept the moral norms that make society and hence business itself possible.
- Business practice presupposes certain moral norms, e.g., adhere to agreements as shown in Kantian arguments (see pages 10 to 17) and
- Without relevant institutions (see chapter 6 "The Importance of Institutions") business is seriously hampered.

The claim that international business should follow an international code of ethics does not demand inflexibility. As for all ethical questions, a code can only be a guide and where situations require it variations in conduct are in order.

What is important is that the multinational corporation thoroughly familiarizes itself with the general culture and the way in which business is conducted in the host country. Our view of ethics and the world is strongly influenced by the culture in which we live and we should not rigidly impose our views on others. But at the same time we need to guard against relativism. As Rachels points out, many (but not all) of our practices are merely peculiar to our society, the result of cultural conditioning. We need to keep an open mind and not be dogmatic and arrogant. While there are differences of customs there may not necessarily be disagreements about basic moral principles.

Finally, the legal implications of a multinational's actions in foreign countries need to be carefully considered. Clearly, companies should not act unlawfully, no matter where they operate. If a business finds local laws grossly unjust it should refrain from operating in such a country – as quite a number of foreign companies did during the latter part of the apartheid era in South Africa.

CHAPTER 6.

THE IMPORTANCE OF INSTITUIONS.

"NO INDIVIDUAL IS SAFE FROM ERROR AND GUILT, EVERYONE IS IN DANGER AND CAPABLE OF DESTROYING AND EVERYONE REQUIRES PROTECTION FROM HIM/HERSELF AND FROM OTHERS. MAN IS DEPENDENT ON THE REGULATING EFFECT OF LAW. NO HUMAN COULD EXIST IN PEACE WITHOUT RULES AND NORMS. WE NEED, PRECISELY FOR THE SAKE OF OUR FREEDOM, INSTITUTIONS THAT ORDER SOCIETY. WITHOUT SUCH INSTITUTIONS, WE WOULD BE EXPOSED TO CHAOS".

Richard von Weizsäcker
Former German President.
(51. Weizsäcker, 1983: 137)

John Rawls, the well-known American philosopher, said we should view society as a co-operative undertaking for mutual advantage (22. Rawls, 1971). People and businesses must, in their own interest, be prepared to give of their own (effort, time, money, thought etc.) for the development of co-operative institutions for the reciprocal advantage of all.

Institutions[33] are of such great importance because people and businesses will always have joint and conflicting interests - if only due to the scarcity of resources – and well drafted institutions help to avoid conflict and to improve co-operation. They should enhance the chances of realizing one's own and at the same time others' interests.

"Justice is the first virtue of social institutions" is what John Rawls said. In our modern world, institutions are what govern our actions and they must represent justice; they must be such that they foster the bringing about of results, which are just, and they must be created by consensus of those who are affected by them – that is what gives them authority. Justice thereby becomes the measure of the institutions for societal co-operation for mutual advantage. Fair conditions of co-operation require some limitations of freedom in action of the individuals and business. Institutions release the individual or the business from having to make too many decisions, as they are society accepted obligations, rules directing us through a multitude of often bewildering situations without us having to consider and choose alternatives. The sacrifice of some freedom is therefore worthwhile because it enables all to pursue their goals in a more efficient way and to act in accordance with the greatest freedom possible in to-day's open, pluralistic society.

Ethical demands must be in line with agreed institutions. As an example, it would clearly be unhelpful to advise business, which has to operate in a competitive environment desired by society, to undertake actions which would systematically result in it being placed in a disadvantaged competitive position, vis-à-vis other players in its market.

Institutions must be designed so as to encourage co-operative (ethical) work. Institutions that promote societal co-operation for mutual benefit have moral quality; they are a form of social capital of the community. However, not all types of collaboration between individuals are desirable. Co-operation which is at the expense of third parties, such as cartels or other competition contraventions, corruption or organized crime, is clearly not desirable.

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[33] Institutions in this context are rules, mechanisms, standards, laws, e.g. road traffic ordinance, safety and quality standards (SABS mark), rules of conduct, corporate governance and ethical policies, accounting disclosure policies, health regulations, JSE rules, FBS disclosure requirements etc.

Due to the shifts towards individualization, pluralism, larger organizations (national and global) and the concomitant growth in opportunities and problems in social life, principles resulting from concerns, such as religion, rank, class or social groupings are no longer major value drivers. The profusion of individual opinions, ideals and thoughts has led to the slow demise of generally accepted value conceptions such as religion, nationality or social order (casts) which naturally provided in the past bases for legitimate social institutions. Today's society is integrated and organized by agreed institutions. They are the key needed to help co-ordinate people's actions and deliver the greater certainty needed for planning in every day living and to provide the foundation for a successful life. And so, for instance, must the conflict between economy and ecology be addressed. It is the task of ethics to help find reasonable answers to the question of how the economy and business can be shaped so that they are ecologically friendly. Ethics must help by suggesting means of bringing these two areas into harmony and by assisting in drafting relevant institutions (see chapter 3 "Sustainable Development").

The ethical problem is to discover the institutions/mechanisms that will help achieve a successful, co-operative life. In order to tackle this problem, ethics must first come to terms with the real problems, starting from the status quo, and then search for better alternatives (43. Suchanek, 2001: 39). The problem is often not so much to find a better alternative but how to implement it, as is for instance shown in the classic problem in game theory: "the prisoners' dilemma." The dilemma structure[34] is helpful in finding the institutions that will achieve mutual advantage, that will produce the incentive and trust required by all affected parties for them to comply with the institutions or rules, i.e., to act in the best interest of all (see chapter 8 "How to deal with Dilemmas in Business Ethics"). The example of "the tragedy of the commons" (where, due to the lack of agreed rules/institutions the common is destroyed through overgrazing by many different herdsmen) illustrates how important agreed institutions or rules are in order to achieve a successful living-together.

[34] Moral dilemmas are any problems where morality is relevant. It includes not only conflicts among moral reasons but also those between moral reason and reasons of law, religion or self-interest (2. Audi, 1999).

The market economy provides the presently best-known mechanism for economic social co-operation for the mutual benefit of all and which provides every businessperson or firm with ample incentives to invest into continued co-operation. Competition, which forces other-regarding and self-interest (for both seller and buyer), is the ingredient which make for the quality of the market economy. The reciprocal dependence of the market players is of importance. Nothing is as detrimental to the co-operation for mutual advantage as a situation where one party has nothing to lose, i.e., is not dependent on his opposite, e.g., a monopoly. However, the framework of the market economy and related laws alone are not enough to ensure that immoral dealings are not encouraged through economic benefit. In a world of insecurity, lack of knowledge, power-play, complexity and dynamic development which opens the door to fraud, sharp practices, scams and corruption, additional ethical efforts are required from business.

For all these reasons, business needs to invest in institutions/mechanisms that improve, facilitate and encourage ethical behaviour in its own and in society's interest. Such investments could be:

- Ethical policies and value statements that foster human dignity, respect and trust;
- Corporate governance guidelines demanding open, complete and truthful reporting;
- Sustainable development policies supporting humane, ecologically friendly projects;
- Improved productivity through the development of a mutually acceptable corporate culture;
- Building/improving the reputation of the organization as an ethical player;
- Growing the social capital - the network of stakeholders - and solving any conflicts which may be prevalent;
- Fostering a co-operative environment between competitors, NGOs, government and other relevant industry stakeholders through industry associations and the setting of agreed standards to deal with issues that one company cannot solve on its own;
- Investments in industry market information, explaining to the outside world the idiosyncrasies peculiar to the particular industry, its products and services.

But because modern society is marked by a plurality of *Weltanschauungen* and approaches to life, tolerance is required in finding institutions and norms that are acceptable to all or at least a great majority and that will thus carry the necessary authority.

Ethics, sometimes referred to as “the obedience to the unenforceable,” is a pre-requisite to sustainable success, to excellence in business, to cultivate dedication and creativity in employees. Man’s co-operation is built on trust in common customs, values and standards as expressed in agreed institutions. Only if this social capital exists can collaborative attempts succeed. Without institutions unethical actions will be taken willingly or, more likely, inadvertently and such action can devastate business, seriously hurt people and may even end up putting lives at risk. An investment by business in necessary and relevant institutions that support and help to constantly develop ethical consciousness and action is therefore a very sound one. On the other hand, too many or poorly drafted institutions and laws will hamper free trade, creativity and enterprise through red tape. There is no point in introducing laws and institutions if they are not complied with and this means enforcement and sanctioning non-compliance, which in extreme situations may lead to a police state.

It would be unrealistic to assume that institution building could be left to the private sector only. Because of the interdependence in ethics of the “ought” and the “can” and due to the at times server pressures business is exposed to in the market, government must retain the role of setting the national institutional framework.

Any business is subject to certain institutions, e.g. company and tax laws, auditing and information disclosure regulations as well as rules and agreements binding on members of certain industry or trade associations. For credit insurers, institutions such as the companies act and the insolvency law, the Financial Services Board regulations and Financial Sector charter as well as agreements made at their international associations (the Berne Union and the International Credit Insurance and Surety Association), to name a few, are important regulations to which credit insurers must adhere and which they need to help develop. Further reference will be made to some of these institutions in Part II of this report.

As mentioned earlier, co-operation is dependent on trust and because trust is such an important ingredient it forms the subject of the following chapter.

CHAPTER 7.

TRUST.

"CORRUPTIO OPTIMI PESSIMA" – "Corruption of the best is the worst."

(Latin citation, origin unknown)

Public trust in business has reached a very low level as a result of the many frauds, thefts and misrepresentations which have led to the demise of some of the largest corporations world wide and resulted in enormous losses for investors, employees and other stakeholders. Trust means being accurate, complete and relevant in one's dealings with others.

A survey done by the World Economic Forum in 15 countries showed that the percentage of people saying they had "a lot" or "some trust" in the executives of multinational companies averaged only 33%. The leaders themselves enjoyed less trust than the corporation they led. In a follow up survey by a US research institution 74% of people said the reputation of corporate US is either "not good" or "terrible".

This lack of trust is the result of considerable differences in values between society and business, and this leads to pressure by society for more regulations and legislation to control business. Due to such pressure, the Sarbanes-Oxley law was promulgated in the US. In South Africa we have among others, "the Prevention and Combating of Corrupt Activities Act" (PACCA) of 2004. This act states in its preamble:

> “Corruption and related corrupt activities undermine the rights contained in the Bill of Rights, endanger the stability and security of society, undermine the institutions and values of democracy and ethical values and morality, jeopardize sustainable development, the rule of law and credibility of governments, and provide a breeding ground for organized crime.”

Francis Fukuyama, in his book on trust (4. Fukuyama, 1995), shows how a low-trust-society has high transaction costs. The implementation of the Sarbanes-Oxley law has increased auditing expenses in the US by between 200% and 300%. Clearly business does not enjoy being smothered with regulations and having to incur the extra cost, but more amenable self regulation by business is insufficient. The more complex and challenging business environment does not allow reliance on the market to police itself. Where large sums of money are involved, ethical issues are often not taken too seriously, meaning that institutions and laws are needed to help keep actors on the straight and narrow.

Society has been outraged by the frauds and corporate governance lapses including exorbitant executive pay awards (e.g. the debacle around the Mannesmann/Vodaphone bonuses and the increases granted by many boards to the CEOs of the companies they lead and which did not perform well). All this has eroded trust by society in business and yet “without trust we cannot stand” as Onora O’Neill states (18. O’Neill, 2002: 3). We need to be able to trust one another at least to some extent for society to function. As the sociologist Niklas Luhmann said “a complete absence of trust would prevent one even getting up in the morning”.

What needs to be done to rebuild this all important commodity of trust? Obviously telling the truth, being open and transparent, disclosing all relevant information needed by the parties concerned to make a rational decision – in short, doing what for Kant is the most important ethical requirement – respecting the dignity, the autonomy of others – is the minimum. However, Oliver Williams[35] believes that this is not enough for building or restoring trust in business. Stakeholders, be they supporters or critics, must be given the opportunity to ask a specific person in a particular business for specific information. By offering stakeholders this chance and by ensuring that such enquiries are truthfully and completely answered, trust can slowly be rebuilt. Business must realize that it plays an important role in society and that it carries important responsibilities vis-à-vis the populace and that it will be severely sanctioned if it does not fulfill its relevant obligations and thus loses the trust of the community.

If there is mistrust within a company, the business cannot have trusting relationships with its outside stakeholders. That will result in poor customer loyalty, acrimonious and damaging supplier relationships and reluctant providers of capital. Mistrust among managers and staff translates into poor motivation, non-cooperation and bad productivity. Open, truthful and ready communication and consultation is the basis of trust. The CEO and management must make this their responsibility and, although good communication and honest consultation are difficult and time consuming, it is an investment no business can afford not to make.

But without independent external monitoring, verification and public disclosure – without the laws, institutions and regulations, business's initiatives in this respect would only add to public cynicism. Management may talk of mutual trust when unveiling a compliance policy, however, employees often see such a policy as nothing more than liability insurance for senior management – although such an attitude by employees may be entirely unreasonable.

South African multinationals and large corporations are trusted by South African society to a much larger extent (63%) than for instance US organizations by Americans. This can be ascribed to the positive efforts by some South African companies to help their

[35] Oliver Williams is academic director of the Centre for Ethics and Religious Values in Business at Notre Dame University in the US, and a Donald Gordon visiting fellow at the UCT Graduate School of Business. Much of what is said in this section on trust is based on an article by Oliver Williams which appeared in the Business Day of 2nd July 2004.

employees in the fight against HIV/AIDS, to support affirmative action and to accept the need for black empowerment (although a great deal more needs to be done with regard to these issues, particularly by medium and small businesses). Actions such as Pick 'n Pay's open and forthcoming handling of the recent blackmail action against it has helped build considerable consumer trust. Contrast this with the disaster at Mitsubishi, which resulted from their withholding information from the public concerning hidden defects in certain of their cars.

However, trust in the end relies on the integrity, good will and character of the leaders and the managers of businesses. As Oliver Williams stated: "Business leaders are first of all human beings and only secondarily managers of wealth creation. To check your human values at the office door is to invite chaos".

Finally, real trust is not built purely on rational choice; it is normative. Normative trust is the result of integrity, good character and principle. It is, I believe, the only trust of moral value because it is not based on egoism and prudence but on good will, interdependence and reciprocity. Trust has to be earned. As Onora O'Neill says: "Well placed trust grows out of active inquiry rather than blind acceptance" and this is of course in line with the comments by Oliver Williams, as quoted above.

CHAPTER 8.

HOW TO DEAL WITH DILEMMAS IN BUSINESS ETHICS.

Moral debate is about what ought to be, and never about facts. Disputes over facts are not settled by moral contemplations but by checking the actual situation. However, due to different people having varying opinions and feelings and because it is not always easy to tell which views are right, there will always be differences about what ought to be. Where there are competing values and when two different courses of action both seem right and a decision has to be made as to which should prevail, it is natural that there can be conflicting moral claims in a debate over ethical issues.

Not every ethical dilemma has a right solution. Reasonable people often disagree; otherwise there would be no dilemma. In a business context, however, it is essential that managers agree on a process for dealing with dilemmas and in settling any ethical question with which they are confronted. Because businesses and their stakeholders are interdependent, for the company to be strong the stakeholders need to share a common idea of correct behaviour, a business ethic, and to think of it as a positive force for better decision making, not a constraint in settling differences. Such shared values and agreed-upon processes are at the centre of ethical issues.

Laura L. Nash, in her essay “Ethics without the Sermon” (40. Nash, 2003: 19) suggests a practical, business orientated way for managers to confront ethical problems. She recommends that managers try to answer the following 12 questions about the issue under discussion. The answers should assist in finding a solution to the ethical problem or dilemma:

a. Have you defined the problem accurately? A moral decision is an informed decision, one based on factual neutrality, defused of emotion.
b. How would you define the problem if you stood on the other side of the fence? The purpose of such an investigation is to differentiate the purely expedient from the most responsible action.
c. How did this situation occur in the first place? In deciding the ethics of a situation it is important to distinguish the symptoms from the disease.
d. To whom and to what do you give your loyalty as a person and a member of the corporation? The people involved must have a strong sense of integrity that puts loyalty to ethical principles above personal gain.
e. What is your intention in making this decision? The purity of a company’s intentions (purely for profit or purely altruistic) will have wide-reaching effects inside and outside of the company.
f. How does this intention compare with the probable result? The goodness of intent may melt away before the final result. Responsible companies must try to align intent and likely result to show the probable consequences and the limitation of knowledge that might lead to more harm than good.
g. Whom could your decision or action injure? The possibility of injury is an even more important consideration than potential benefit.
h. Can you discuss the problem with the affected parties before you make your decision? Consultation and a participative decision making process can resolve many potential conflicts.
i. Are you confident that your position will be as valid over a long period of time as it seems now? A difference in time frame can totally change the meaning of a problem.

j. Could you disclose without qualm your decision or action to your boss, your CEO, the board of directors, your family, society as a whole? Would you want your decision or action to appear on the front page of the morning newspaper?
k. What is the symbolic potential of your action if understood? If misunderstood? How the symbol is actually perceived is as important as how your intend it to be perceived.
l. Under what conditions would you allow exceptions to your stand? What conflicting principles, circumstances, or time constraints would provide a morally acceptable basis for making an exception to one's normal institutional ethos?

These questions help to show the responsibilities involved in the process of solving a moral problem and clarify the issues involved and so help finding an answer to the particular problem. As Nash says: "The good corporation is expected to avoid perpetrating irretrievable social injury (and to assume the costs when it unintentionally does injury) while focusing on its purpose as a profit-making organization. Its moral capacity does not extend, however, to determine by itself what will improve the general social welfare".

Rushworth M. Kidder (10. Kidder, 2003: 114-117) recommends that one can often categorize a dilemma into one of the following four paradigms:

- Justice versus mercy: fairness, equity, and evenhanded application of the law often conflicts with compassion, empathy, and love.
- Short-term versus long-term: now versus then, reflects the difficulties arising when immediate needs or desires run counter to future goals or prospects.
- Individual versus community: us versus them, self versus others, or the smaller versus the larger group.
- Truth versus loyalty: honesty or integrity versus commitment, responsibility, or promise-keeping.

Such an analysis helps describe the basic issues, the conflicting basic values that make it difficult to make the tough decision. Such an analysis can help in finding a solution to the dilemma by having thought through the problem and the applicable ethical theory and by having tried to apply the relevant theory to it.

Jürgen Habermas, a contemporary German philosopher, developed a strategy for moral decision making in business, known as the “rational interaction for moral sensitivity strategy” (RIMS). Here, Habermas focuses on the *process* by which ethical decisions are made, not on the *content* of moral considerations. He refers to the “ideal speech situation” – the situation where all participants in the discourse are truly equal and in which all forms of coercion or force have been removed. The only thing of force is the most rational argument. Habermas sets the following basic rules that need to be complied with in the “ideal speech situation” for the formulation of moral knowledge:

- The only evidence that participants may introduce into the discourse is empirical experience which is objectively accessible. (Facts only).
- The process of communicative interaction is driven only by the force of the strongest rational argument. (Excluding personal inclination and emotion).
- Only those experiences, arguments, and norms that can attain consensual agreement are regarded as knowledge. (Universalization within the group).
- Any knowledge formulation in this way is always open to future revision. (Openness to re-examination).

Habermas accepts that his “ideal speech situation” is difficult to achieve in business. However, if the people in an organization are serious about wishing to find acceptable solutions to moral problems or dilemmas faced by them, then the participants in the discourse should act as if they were equals (42.Rossouw, 2002: 73). RIMS or the discourse ethic is often seen as utopian (could one expect that an employers organization and a union in wage negotiations would employ the RIMS method?), but it can be a valuable tool if participants in a dialog accept the rules – at least it can provide a measure to gauge the correctness of the collective action. The ethic of dialog (employing the RIMS rules) can be seen as underpinning Kant’s categorical imperative. The co-operative discourse of a group to argue through a problem provides understanding and is a democratic way of finding and agreeing answers and institutions.

John Rawls developed his “veil-of-ignorance” (see page 24) as a tool to advance fairer conditions for co-operation - to achieve fair choices of principles of justice. Michael Pendlebury (19. Pendlebury, 2003) suggests “that we often do better to apply the veil-of-ignorance test repeatedly, flexibly and directly to specific issues that concern us – doing this with a minimum of standing normative commitments, and assuming ignorance in the relevant parties only with respect to information that might prejudice their decisions (e.g., information about who they are in the corresponding real-world bargaining situation)".

The thoughts of Nash, Habermas, Rawls, and Pendlebury all provide suggestions as to the process that could be employed to find answers to ethical questions and dilemmas in business. All are closely related. Nash's list of questions requires total objectivity – as advocated by RIMS, and Rawls's veil-of-ignorance. While it is of course most helpful to have a procedure that one can follow, it alone does not settle the question which of the diverse ethical theories one should lean on when contemplating a moral problem.

James Rachels in his book "The Elements of Moral Philosophy" (21. Rachels, 1999: 194) lays out what he sees as a satisfactory moral theory. He makes the following points:

- As Kant said, because we are rational beings, we can take some facts as reasons for acting in a certain way but we should act from duty, not from inclination. We ought to do the act supported by the weightiest reasons.
- Kant also said that the categorical imperative is binding on all rational agents simply because they are rational. Non-acceptance means not only immorality but also irrationality. This is so because a moral judgment must be based on good impartial reasons.
- But if you accept any considerations as reasons in one case, you must also accept them as reasons in another similar case. One cannot accept reasons some of the time and not at another time nor can one expect others to accept reasons but make an exception for oneself. People have different merit and this means what people deserve, their "desert", is dictated by their behaviour. A person's voluntary action (which dictates its desert) justifies treating one person differently from another as long as such treatment is consistently applied. This is in line with Kant's imperative that we should respect the dignity, the autonomy of persons – that we should never merely treat a person as a means but always as an end.

- Rachels says “only a philosophical idiot would propose to eliminate love, loyalty and the like from our understanding of the moral life”.
- Drawing on Henry Sidgwick[36], Rachels suggests as single moral standard an ethic that values “the interest of everyone alike”. Such an ethic would support the good that people be as well-off as possible and such an ethic should be used in measuring institutions, laws, motives and traits of character. It would be consistent with love, friendship, loyalty, pride in one’s work, keeping promises and so on.
- While merit needs to be considered when deciding on treatment in order to be just and fair, the question as to why one appears to have greater merit than another must be answered in order to show the actual desert, e.g. natural advantages of birth are not legitimate bases of desert.

Rachels’ moral theory is essentially founded on Kantian deontological ethics and his suggested moral standard of valuing “the interest of everyone alike” dovetails with Rawls’ difference principle (see page 24) and Kant’s categorical imperative (see Page 11). The notion to treat people according to their desert does not violate Kant’s or Rawls’s theories provided the treatment is always consistently applied. It supports Kant’s demand that we should respect the dignity and autonomy of others. A rational being is morally entitled to choose and act according to her wish (although such an act is not necessarily ethical, only rational decisions that are acted upon from a maxim that is universalizable are morally right) and she is responsible for what she has elected, provided the decision was made freely, without coercion and with the full knowledge of all the relevant facts.

As has been shown, ethical decision making depends on both the decision-making process itself and on the experience, intelligence and integrity of the decision makers. To many competing ethical claims one cannot often find satisfactory solutions. In the end executives resolve conflicts in their own minds and hearts. But what is clear is that if management’s total loyalty is towards the maximization of profits, achieving higher standards of ethical practice will be impossible. Defining the purpose of the company as

[36] English utilitarian philosopher (1838-1900).

exclusively economic is a deadly oversimplification which allows overemphasis on self-interest at the expense of consideration of others.

The decision-maker must know that no ethical theory gives a reliable answer in all situations. When moral conflicts are involved one has to carefully consider one's action and must keep the consequences of one's actions in mind, e.g., what action do I take as a medical doctor if I can save the life of only the mother or the child?

As Bernd Noll (41. Noll, 2002) proposes in his book entitled *Wirtschafts- und Unternehmensethik in der Marktwirtschaft*, because the different theories all have very valuable inputs but are not in harmony, a compromise needs to be found. Noll recommends that usually one should follow Kantian theory. If an action complies with the categorical imperative it should be preferred over one that does not. But it could be that the consequences of an action are of such importance or have such a severe impact that they cannot be ignored and that the utilitarian theory must dominate over Kantian theory. Noll calls this the "substitution principle".

I believe, as enunciated by Noll, that although Kantian moral philosophy should always be given primacy, one needs to be tolerant of the utilitarian and virtue ethical theories and that one should be open to use them with integrity where on the rare occasion it is called for in setting ones own ethical guidelines and those for a business. However, discipline and objectivity need to be employed – one cannot use one theory to-day and another to-morrow depending on one's inclination or on what would seem to be the most prudent. To do that would result in subjective, illegitimate and probably immoral decisions and actions.

Kant's categorical imperative that one should always treat the humanity in a person as an end, and never merely as a means – that one should respect the dignity and autonomy of the individual is for me an overriding ethical principle. Kant said that the three elements of his categorical imperative (Universalization, Treating People as Ends and the Ideal Kingdom of Ends – refer page 11) really all express the same thing. The kingdom of ends refers to the community of people and if one accepts the need for respecting the dignity of a person one automatically acknowledges the truth of the kingdom of ends. Respecting the dignity and autonomy of all rational beings is also expressed in Kant's imperative that we should act only on maxims which one can will to be universal laws of nature. This is so because this test demands of us to think carefully whether our proposed maxim could in similar circumstances be acted upon by all other rational beings, i.e., we show respect for the autonomy of others. While it has been argued that the universalization requirement is very onerous, rigid and void of all emotions, I doubt that this was really Kant's intent. We need to employ rationality rather than emotion in arriving at a decision or action, but this does not mean that emotional facts should be ignored and that rationality cannot be applied when designing a maxim for an action dealing with emotional issues. For instance, the decision to dismiss a loyal employee because of cost saving measures must take into consideration all the relevant facts – even those that are emotional, e.g.:

- The years of service;
- The loyalty and commitment to the company displayed by the employee over the years;
- The contribution made by the employee to the company;
- The circumstances - financially, health-wise, in the job market and so on - in which the employee will find her/him self.
- The real savings that the company would achieve.

A decision needs to be taken in a rational manner, from Good Will as Kant would say, from duty only and not based on the decision-maker's own inclination, but all the above and other relevant facts must be taken into consideration.

But as Noll points out there can be the exceptional circumstance that will result in a ghastly consequence if one strictly abides by the categorical imperative, e.g., if one knows that a terrorist group has planned and is perfectly capable of executing the killing of a large number of people (think for instance of the recent horror attack on the school in Beslan, Russia) and one can avoid this dastardly deed only by obtaining information from one of their number in custody. As painful and horrifying as it may be, one may have to employ coercion in order to obtain that information from the imprisoned terrorist. Such action seems in line with Rachels' thoughts that people should be treated according to their deserts and it would certainly be in line with the utilitarian doctrine of the greatest happiness for the greatest number of affected people. Kant might not be partial to such an action because it goes totally against his respect for the dignity of the individual concept (although he favours treating people according to their desert) and his claim that coercion is morally not permissible (even though Kant supports punishment).

Some philosophers believe that Kant's prohibition of extreme acts such as killing, lying and coercion are interpreted too severely. They believe that Kant would in fact allow such extreme acts in certain desperate situations. As James Rachels suggested (see page 76) – we ought to do the act supported by the weightiest reason but we need to do this rationally, not because our personal inclination may put greater weight on an act than logic would. This is a difficult question because it can also be claimed that departing from a narrow, strict interpretation of Kantian prohibitions may lead to introducing "slippery slope" arguments[37] into his theory. Nevertheless, as signaled earlier, I support the more lenient interpretation of Kant's injunctions, presupposing always that the agent acts from a universalizable maxim. Careful reflection on and definition of the meaning of some of the extreme actions is needed. For instance, it has been suggested that having to pay tax is coercive. I do not believe this to be true – certainly not in a democracy – because every citizen can disagree via the ballot box with the need of taxation and every citizen has the right to suggest a different system of financing government and its duties to society. While it is true that those who refuse to pay the tax due by them will be punished, this circumstance is a price citizens have to pay for the privilege of living in a free society which is made possible only by agreed institutions with which all have to comply. Being punished for not abiding by such institutions is not coercive (bullying, browbeating) but the desert for flaunting the law. People in Rawls' original position would, I believe, accept a system of taxation, which is also universalizable in accordance with Kant's categorical imperative. In terms of Aristotelian virtue ethics a decision to

[37] The metaphor "slippery slope" portraits one on the edge of a slippery slope, where taking the first step down will inevitably cause sliding to the bottom. For example, it is sometimes argued that voluntary euthanasia should not be legalized because this will lead to killing unwanted people, e.g. the handicapped or elderly, against their will. (2. Audi, 1999)).

use coercion under the circumstance described above may be as difficult as that which a doctor has to take when he is confronted with a case of limited resources which allow him to save only a certain number of critically ill patients. Whatever action the agent decides on, it will be a painful action because it involves coercion, betrayal or inflicting suffering or even death. Such situations are referred to as “tragic dilemmas,” the solutions of which will not fill the virtuous person with happiness but because a virtuous person would have acted in a temperate manner she ought not to feel guilty or bad for having found herself in the invidious position where she was forced to perform the act.

In summary, one should primarily be guided by Kant’s categorical imperative but consider the consequences carefully and if these seem too severe it may be right to introduce utilitarian theory into the decision process, employing Noll’s “substitution principle”. And although what is “too severe” can be open to interpretation, virtue ethics should help guide one to the morally most acceptable action. It may be argued that relying on the “substitution principle” is merely another form of introducing “slippery slope” arguments into dilemma solving. Such an argument would be fallacious I believe, because the Kantian moral theories will not be compromised by “slippery slope” arguments if acts comply with the Formula of Universal Law. Rather, Kantian, utilitarian and virtue ethics will be applied in their pure, unsullied form in an honest attempt to solve a dilemma by finding the right answer that does not have consequences that are too appalling.

In the hustle and bustle of everyday business there is no time to go into such detail when having to decide on an action other than the most important or difficult decisions. It is for this reason that a code of ethics is necessary because it should provide a much simpler and faster pointer toward the ethically correct action and help to ensure consistent behaviour. Part III of this report will deal with codes of ethics.

CHAPTER 9.

CONCLUSION OF PART I.

Considering all the above, I believe that business's first duty is not to strive regardless for an ever-growing bottom line. In order to achieve a long and successful life, sustainable profits and the position of a valuable member of society, business must in the first place be an ethical entity. That means it must develop and continuously refine in the light of changing circumstances, a just – an ethical – policy of conduct (including corporate governance and sustainable development statements). Such an ethics policy must be evolved in concert with all the business's stakeholders. Business must live by that policy (also in difficult times) and it must endeavour to ensure that all its stakeholders do likewise. The ethics policy must of course be based on the twin legs of profitability for the business and at the same time it must aim to benefit all or at least most of the business's stakeholders – this is simply good management. In designing the policy the important principle that an "ought" presupposes a "can" needs to be heeded so as to avoid developing a purely theoretical code from which emanates more harm than good. The policy must provide the basis and be the tool for bringing the business's interests with those of all other affected parties together into a harmonious and fruitful whole – this makes the policy and the business that lives by it ethical. To say that the sole aim of business is profitability implies that when human beings enter the world of business they are reduced to mere profit-seeking creatures. The very idea of business, the legitimacy, survival and success of business, depends on its moral relationship within society. It is therefore crucial that ethics, and trust which is built through ethical behaviour, are not approached as mere prudent managerial tools. That would be opportunistic and would undermine trust and any apparent sincerity and legitimacy of the business.

PART II.

CREDIT INSURANCE AND ETHICS.

Chapters 10 to 14

CHAPTER 10

INTRODUCTION TO CREDIT INSURANCE.

It is necessary to give a brief explanation of credit insurance in order for the reader to understand the circumstances in which major ethical questions arise and also to enable him to critically evaluate the questions and any solutions.

WHAT IS CREDIT INSURANCE?

Credit insurance indemnifies the policyholder against loss resulting from the non-receipt of payment in respect of a transaction approved by the credit insurer. Such transaction must provide for the supply of goods or services on credit terms by the policyholder to a buyer. The non-receipt of payment must be due to the buyer's insolvency/liquidation or protracted default or, where export transactions are involved, can also be due to repudiation or political causes of loss[38]. A simple example: A yarn manufacturer supplies his product to a textile-mill on 120 days terms of credit. The credit insurer has insured the transaction. The textile-mill goes insolvent. In terms of the credit insurance policy the

[38] Protracted default means non-receipt of payment after a specified period from due date. Repudiation refers to the importer's unlawful refusal to accept the goods/services supplied by the exporter. Political causes of loss consist of: a) the refusal of the importing country to allow the exported goods to enter unless such import prohibition already existed at date of export; b) the inability of the importer to transfer the purchase price to the exporter due to the importing country's shortage of foreign currency or other regulation disallowing the transfer which came into force after shipment of the goods; c) non-receipt of payment due to strike, civil commotion, war or other similar disturbances.

credit insurer must pay the amount owed to the yarn manufacturer who has as a result avoided a bad debt loss.

WHY IS CREDIT INSURANCE OF NATIONAL AND INTERNATIONAL IMPORTANCE?

The decisions made by a credit insurer influence the business of many parties. By granting cover, credit transactions are made possible. By declining or withdrawing credit insurance facilities, suppliers' businesses are curtailed and buyers' businesses may be forced into liquidation. The wrong decision by the credit insurer may lead to overtrading or loss of business with the concomitant negative effects on the micro and macro economy. Many export transactions would not take place without credit insurance. Credit insurance helps in channeling limited resources towards worthwhile and healthy enterprises; it promotes the earning of foreign exchange and thereby effects job creation. Internationally, credit insurance is often used for political purposes. By underwriting major capital goods/services projects, the economy of the importing country can be significantly influenced (e.g. Lesotho Highlands Water Scheme or the Mozal aluminium smelter project in Mozambique). The withholding of credit insurance facilities can be used to send a political message to the applying (importing) country. Through its international associations,[39] credit insurers have a considerable influence on international credit terms and conditions. Thus the credit insurer's activities influence the national economy and can play an important role in international relations. The credit insurer's indemnity has not infrequently saved policyholders' businesses which would otherwise have been forced into insolvency due to major bad debts.

HOW IS CREDIT INSURANCE BEING PRACTICED?

Credit insurance is usually underwritten by comparatively small mono-line insurance companies (as opposed to the large multi-line insurers) due to its specialized nature. Credit underwriting is not done actuarially but on an individual risk assessment basis.

[39] The International Credit Insurance and Surety Association and the Berne Union.

This class of business is presently available in 72 countries[40] with between one and three credit insurers per country. Most credit insurers writing domestic and short-term export business (see below for a description of the credit insurance products) are privately owned, some of the large European companies being listed. Government departments mainly conduct medium-/long-term capital goods/services export credit insurance or this business is supported via re-insurance facilities from government. The reasons for government involvement are: a) the long credit terms (up to and in excess of 10 years) for which it is often impossible to obtain re-insurance in the private market; b) government's desire to promote exports, particularly of large projects and c) the political implications of such business.

THE CREDIT INSURANCE PRODUCT.

The following is a very brief description of the major products usually offered by a credit insurer:[41]

- Domestic credit insurance.

  This type of insurance provides cover against a loss caused by the non-receipt of payment of amounts due and payable as a result of the sale of goods or services by a seller (the policyholder) in one country to a buyer (the risk) situated in the same country. The payment terms will usually not exceed 6 months and the insurance normally incepts immediately after delivery.[42] Non-receipt of payment must be due to the buyer's insolvency (or deemed insolvency) or protracted default.

- Short-term export credit insurance.

  Exporters selling goods or services on short credit terms (not exceeding 12 months from date of shipment) can purchase export credit insurance, which provides for an

[40] Credit insurers exist in almost all developed and developing countries. Underdeveloped countries' economies usually do not lend themselves to writing this business on a profitable basis because demand for the service in such countries is generally non-existent or very low.
[41] Although other types of specialized policies and specifically designed covers are available from some credit insurers, this report will confine itself to ethical issues relating to the described products.
[42] Credit insurance usually incepts when the seller loses control over the goods – not withstanding that the sales contract may incorporate a transfer of ownership clause, providing that ownership of the goods passes only to the buyer on receipt of payment by the seller.

indemnity of a bad debt loss emanating from the sale of goods or services by the exporter to an importer. Cover comes into effect as soon as the exporter loses control over the goods – usually on loading of the goods on board a ship/aircraft or when the goods have been sealed into a container. In addition to covering losses resulting from the insolvency or protracted default of the importer, an export policy can also indemnify in cases of repudiation or political causes of loss.

- Medium-/long-term contracts cover.

  Policies of this nature are specifically designed to credit insure a particular transaction involving the export of capital goods/services[43] on medium (1 to 5 years) or long (5 to 10 years) credit terms plus an additional pre-shipment/delivery period[44] depending on the terms of the export contract. In addition to the causes of loss covered under a short-term export credit insurance policy, these types of policies can also provide for indemnities against foreign exchange risks and certain other possible losses. Projects sold on such credit terms are usually very large and as it is impossible for an exporter to carry such a substantial credit on his books for the long period involved, credit insurance is vital because it allows the exporter to lay off or sell the credit risk and re-finance himself. There are two methods that are internationally used for this purpose:

  a) Supplier's credit, which means that the exporter obtains promissory notes from the importer for the purchase price, which notes fall due in six monthly installments over the agreed credit period (usually not longer than 5 years). The payment risk inherent in these promissory notes is credit insured and that enables the exporter to sell the notes (together with the credit insurance cover) to a bank on completion of the project and so receive cash for the export project on final delivery.

  b) Financial credit, which entails the importer entering into two contracts, the export contract with the exporter and a loan agreement with a financial institution. The importer will draw down the loan by instructing the financial institution to pay the exporter in cash against completion certificates. Financial institutions will

[43] Capital goods/services refer to such items as major machinery/equipment, construction or building contracts, technical installations, infrastructure projects etc.

[44] A pre-shipment/delivery period is the construction, manufacturing or building period before the project is handed over in whole or in part to the purchaser.

normally only be prepared to provide such loans provided the repayment risk is credit insured.

Credit insurance is usually written on the basis of co-insurance. This means that the insurer does not cover 100% of a loss so that the policyholder always retains some interest in the risk, inducing him to handle credit giving with care even though he carries insurance. The uncovered portion of the debt can be anything between 5% and 50% (usually it is around 20%).

CHAPTER 11

MARKETING AND SALES.

MARKETING AND THE MARKET IN CREDIT INSURANCE.

Marketing's job is to exploit and protect the market to the best advantage of the credit insurer. The authors of *Walking the Talk* (36. Holliday, 2002: 42) suggest that there are the following ten ways by which the market can help us develop a sustainable business:

- It encourages efficient use of resources;
- It delivers the most cost-effective solutions;
- It offers freedom of choice;
- It encourages competition;
- It foster innovation;
- It spurs human creativity;
- If offers flexibility;
- It promotes transparency of information;
- It helps in wealth creation and
- It opens up new opportunities for improving the quality of life.

In chapter 4 "The Impact of Ethics on Business" it was pointed out that ethics demands that a business keeps its own interest in mind and that a businessman's ethics must be a combination of doing what both serves his long-term interests whilst ensuring that most others involved with the business are not adversely affected.

As R.M. Hare said in his essay entitled *One Philosopher's Approach to Business and Professional Ethics* (34. Hare, 1999: 192-200) the market is based on Utilitarian and Kantian theory including the Golden Rule: "That we should do to others as we wish they should do to us if we were in their situation". Although the pursuit of one's own interest very often coincides with the common good it does not always do so as is illustrated in the basic game-theoretic model "The Prisoner's Dilemma" (3. Blackburn, 1996) where the dishonest will gain, or suffer less than the honest. How can we ensure a growing market in the light of the "Prisoner's Dilemma"? How can we ensure that there is trust? Hare says through "custom", "self-regulation" and "legislation". Custom dictates that cheating is simply not done. Self-regulation and legislation will be made much easier if people in general behave ethically. Self-regulation, although preferred by business, has usually not enough teeth to do the job on its own and although government does not make the best legislation because it is often inflexible, expensive and not industry related, laws are needed to protect the market.

The credit insurer must use the market, as it is the only and a very efficient institution for commerce to create long-term wealth for his shareholders. The credit insurer does this by using the resources offered by the market and needed by the credit insurer, e.g., capital, reinsurance facilities, knowledge, intelligence, IT, clients etc. in a most efficient way.

Innovation and creativity are important ingredients for sustaining and growing a business and the market place (through market research, other market players, e.g., customers, brokers and financial institutions, and similar tools) can point the credit insurer in the right direction.

Without the existence of some form of private property and basic morality, e.g., keeping promises, honoring agreements, truth-telling, transparency and openness, markets could not exist and the business of, the reputation of and the trust in the credit insurer could not be built. The standing of the insurer in the market is the basis of sound long-term stakeholder relations and the best source of competitive advantage.

Competition, freedom of choice and flexibility which a free market fosters and which are at the same time crucial to the market, force the credit insurer to offer a product that the market wants, that is competitive as far as quality and service is concerned and that is priced so that it - at best - allows the credit insurer an underwriting profit which is market related, e.g. exorbitant, unethically high profits are generally not permitted by the market. Even a monopoly will lose its dominant market position if it continue to charge unreasonably high prices. As the King Report (50. King, 2002: 98) points out: “The global awareness is growing that any company’s long-term commercial success is inextricably linked to the sustainable development of the social and economic communities within which it operates.” Such development can only take place within a free market system. Without markets there would be no trade; the individual would have to be self sufficient to survive. But the markets need to be free to provide the best advantage for all participants. It is therefore important and in his interest that the credit insurer fully supports the principles of competition, competitive products and the pricing mechanism and all the other conditions that go with the free market.

Markets continue to grow due to the ongoing development of specialization, productivity, innovation, industrialization, job and wealth creation and a growth in consumption and hence markets also support the growth of the credit insurer’s business. However, few markets are perfect. They can promote greed, stress, and too much competition and allow only the fittest to participate. Free markets are a natural phenomenon but they need to be regulated to a certain extent through robust competition, consumer protection, environmental and similar laws. Without such protection and law enforcement, justice, growth, improving standards and quality of living and development will all be impaired. Investments, job creation and the expansion of credit and thus the need for credit insurance will be weakened. That is why it is the credit insurer’s moral duty to help protect and support the free market, to comply with the relevant laws and help to generate relevant institutions, whether they are of a cultural, self-regulatory or legal nature. A maxim by credit insurers supporting contrary action would be irrational (see pages 13 to 15). The market is a tool to combine ethics and sound business.

THE MARKETING AND SALES FUNCTION.

Marketing is not just promoting what you have to sell, but determining what you produce and how you sell it in terms of what people want. In this sense, marketing precedes sales. Sales and marketing are both important in their different ways. Selling is focused around the point at which the potential customer becomes convinced of the value being offered and commits to the purchase. The role of marketing is to prepare the ground for the sales function, particularly when the potential customer has a choice.

The ground needs preparing in a number of ways:

- Defining the product/service offer in terms of market wants and how these may change in the future.
- Identifying who the market is and what it consists of in terms of different groupings.
- Determining how far to go in re-specifying existing offers for different groupings or generating new specialized offers (including pricing).
- Determining how the end consumer is going to be made aware of the offer and its relative merits compared to the alternatives available.
- Determining how the product is most effectively carried to the market so that there is the opportunity to make the sale.

Once the ground has been prepared, then the sales function can be brought into play. In these terms, marketing is upstream of selling and it operates on a broad front, whereas selling is made up of a series of individual situations. Marketing also serves an internal, brand value building function.

Compared to other forms of insurance, credit insurance is expensive and complicated to administer. It also has more alternatives to compete against than say, fire insurance, e.g., factoring, documentary credits, invoice discounting and self-insurance. Marketing credit insurance involves working out what it does better. For example, the value added by credit insurance: better knowledge of export markets, of buyers and industry credit conditions, dedicated customer service and advice as well as savings on bad debt provisions and debt collection expenses.

The credit insurer's marketing and sales organization can be structured in different ways, e.g., the full sales task approach could include:

- Prospecting.
- Communication (including advertising).
- Quotation preparation.
- Selling.
- Servicing.
- Allocation of scarce capacity.
- Information gathering.
- Statistics.

A narrower approach is favoured by a number of insurers, for instance communications and advertising can be part of marketing as can be certain statistics. The preparation of quotations, the allocation of scarce cover and the servicing of clients is often part of underwriting. Due to these differences I have not attempted in the following discussion to sort the ethical issues involved in marketing and sales into specific compartments.

ETHICS AND MARKETING AND SALES IN CREDIT INSURANCE.

Like all insurance products, credit insurance is a promise, a promise to make good an insured loss. Promises are much harder to sell than a physical product such as a motorcar. Insurance is often referred to as the "ultimate grudge purchase," i.e., no one buys it with pleasure. According to the Financial Services Loyalty Benchmark Report, the result of a survey by Markinor in South Africa, short-term insurance companies command the lowest level of loyalty among customers of the financial services sector.

Credit insurance is a complex product, often purchased by someone whose primary interest lies elsewhere and who is very busy, finds it a nuisance and is not an expert in the field. But credit insurance offers much more than just insurance and is therefore a far more interesting product to buy than most other forms of short-term insurance. Through its credit limit and claims services (see chapters 12 and 13) the credit insurer offers in addition to insurance cover a complete quasi-credit management service and if aptly applied can succor the growth of a healthy business for the policyholder (see also pages 114 to 118 “Ancillary Services by the Credit Insurer”).

Because of the idiosyncrasies of credit insurance, the insurer has to know his clients well and cannot work only through a broker. A great deal of communication needs to take place between the policyholder and the credit insurer. Due to these peculiarities of the business the relation between client and insurer is a much closer one than in other types of short-term insurance where the customer often identifies more with the broker than the insurer and sometimes does not even know who the insurer is. While the usual short-term insurance market is very much driven by premium rates and brokers, where a broker may switch a whole portfolio of clients from one insurer to another just to save a few rand in premium cost, credit insurance is driven by underwriting capacity (see chapter 14 Reinsurance), professional and personalized service by the insurer to his client. Client loyalty therefore tends to be greater in credit insurance, provided of course the credit insurer has the capacity to write the business and supplies the client with the right kind of service.

The intricate nature of the credit insurance product and the knowledge gap between the parties can encourage the credit insurer (or his sales person) to:

a) Over-market his product, to make promises that he does not intend or that he cannot keep. It also induces the insurer to over-dramatize risks and to over-state the benefits (directly and indirectly) of a credit insurance policy.

b) Try and talk the prospective client into purchasing a type of cover that is easy to sell or that the insurer finds the most lucrative but that does not meet the real needs of the prospect.

c) Neglect his duty to design the credit insurance policy so that it gives maximum protection and service in accordance with the client's needs at a reasonable and affordable price and yet produces an acceptable underwriting profit for the credit insurer.

d) Sell a credit insurance policy to a business that does not need credit insurance. For instance, if a firm's debtors are individually small and if they are numerous and thus well spread and if the company has a good credit control system, it may be better off in self insuring its bad debt risk. Under such circumstances it is usually also not to the insurer's advantage to cover the book because the administration costs, the work involved in dealing with many small claims, the effort involved in approving many small credit limits and the time spent in the daily communication with the policyholder would probably make such a policy unprofitable for the insurer or too expensive for the client.

e) Offer a non-viable service. Contrary to other types of insurances, credit insurance is a credit management tool in addition to providing an indemnity. The credit limit underwriting service (see chapter 12 for more details) demands continuous and efficient communication between the policyholder and the insurer. If not professionally handled by the insurer, credit insurance can become intrusive and hinder the policyholder's business.

f) Lie to, deceive and manipulate the prospective client, to flight adverts that make false promises and misrepresent the merit of the credit insurance product. The credit insurer may also act irresponsibly and unprofessionally, not complying with
promises and generally not caring for the customer. Such an attitude will lead to a totally unsatisfactory product and to an unhappy client.

g) Not paying attention to the importance of an efficient, professional administration and backup service (including reinsurance – see chapter 14). Such a situation will result in a poor product and lead to an inadequate and unacceptable credit insurance service.

h) Ignore proper quality control. Supervision and guidance are needed in addition to reliable, motivated, conscientious and committed staff.

i) Disregard the need to invest in training, education and development of his staff. As credit insurance is selling a promise and credit risk management expertise, both delivered by the insurer's staff, untrained, unsuitable, unprofessional employees will destroy the product.

j) Disregard the need for good human skills in all the staff that have contact with clients and other stakeholders.

k) Remunerate staff inappropriately, e.g., encouraging counter-productive behaviour through the wrong type of bonus, commission or brokerage incentive systems.

l) Be careless in appointing insurance brokers authorized to sell and service the insurer's policies.

None of these actions are in the interest of the insurer because they will lead to unhappy policyholders who are likely to cancel their policies at the first opportunity. It is particularly important in credit insurance to keep a client for as long as possible because the profitability of the insurer depends to a large extent on the economic cycles. It would be unsatisfactory for the credit insurer to keep clients only through recessions when claims are high and lose them in times of economic growth when the insurer has to recoup the losses sustained during economic droughts. Dissatisfied policyholders will tell others that the insurer's product is not adding value; they will recommend to anyone who cares to listen that credit insurance is not worthwhile, or at least that the particular insurer is a bad business partner. The guilty credit insurer is therefore not only hurting his own business, but he is also damaging the whole market for credit insurance. This applies ipso facto to unprofessional credit insurance brokers. The insured will also have been harmed and probably other innocent third parties, such as debtors. Actions of this sort by the credit insurer or by brokers are therefore hurtful to all. They are also unethical. From a Kantian point of view, they violate the credit insurer's negotiating partner's dignity and autonomy by misleading and trying to bulldoze him into accepting a policy without affording him the opportunity to take a well-informed and considered decision. It ignores the categorical imperative if the insurer does not listen to or take the prospective client's wishes into consideration or when the insurer acts without care. If the insurer does not offer, within reason, all the plausible alternatives, he precludes the enquirer from choosing – he denies him the use of his capacity for practical rationality. Utilitarians would also consider such action by the insurer as unethical because they do not serve to deliver the greatest utility to all those concerned.

A market dominated by strong but professional competition will not allow an actor to perform in the manner outlined above. Such competition would very quickly ensure the demise of the bad operator. Because of the specialized nature of credit insurance and the comparatively small market for the service, competition in credit insurance is limited in many markets, with the exception of Europe. This fact combined with the complexity of the product, place special duties of care and ethical awareness on the credit insurer. The following suggestions will assist the insurer in avoiding the unsatisfactory behaviour mentioned above:

1. As already stated, the purchaser of credit insurance usually has insufficient knowledge about the product to be aware of all the benefits and drawbacks, the different types of cover and the fact that policies can be specifically tailored to the needs of a business. The credit insurer therefore has a moral duty to provide a prospective client with sufficient detail concerning these issues, so that the purchaser is able to take a well-informed decision – a decision not only as to whether to buy a policy but also what type of policy and service he should purchase in the light of his business's circumstances. This goes back to the Kantian imperative of autonomy. Not to provide the correct

information or not to give all the needed details, to talk somebody into doing things he/she does not wish to do or the implication of which he/she does not understand, is clearly immoral. Some would say the duty to supply sufficient information is a difficult one to comply with, using the lame excuse: what is sufficient? Others will say that omitting to give some information is not as serious as deliberately giving the wrong information. If the omission is deliberate it is obviously a more serious immoral act than if the omission is the result of an oversight. Whatever the case, the omission of a relevant piece of information may lead to the purchaser making the wrong decision – his ability to chose, his autonomy, as Kant would say – has been impaired. And *that* is the crucial issue and is the reason why the credit insurer must ensure that all the needed information is provided. The excuse of an oversight is not good enough. Professionals in the credit insurance business can have no justification for not providing all the relevant information and I do not believe there is any way of universalizing a maxim that says otherwise. For instance, a maxim "it is in order to neglect to provide a party, whom one wishes to acquire as a good client, with relevant information if the neglect is the result of an oversight" could not be universalized because:

- Such a maxim could not be proven. How could one know whether it was really the result of an oversight that the relevant information was not passed on? Such a maxim could lead to the withholding of information dictated by expediency;
- The prospective insured could land up with an inappropriate policy to his and probably also the insurer's detriment, i.e., the purpose of the maxim (to acquire a good client) would not be achieved (contradiction in conception – see page 13 to 15);
- Credit insurance sales people would not be trusted, the product and the insurer would lose integrity and the market would be skeptical about the value of the product and would not believe the credit insurer to be professional. It would lead to the credit insurer's inability to successfully pursue his end, i.e., to build a growing business (contradiction in will – see pages 13 to 15).

2. Advising a prospective client is a particularly difficult area especially now where people are far more litigious. One credit insurer was taken to court by an exporter who

had decided not to purchase a credit insurance policy but subsequently, on sustaining a bad debt, submitted a claim which the credit insurer repudiated on the ground that there was no insurance contract. The court found in the exporter's favour on the basis that the credit insurer had a duty of care towards the exporter and should have tried harder to convince the exporter to take cover. The credit insurer might well have given the wrong advice but it is doubtful that it was given with malicious intent or carelessly. This seems an extreme case but is not that different to recent cases against financial advisors, although in these latter cases the advisor benefited from their wrong recommendations. Ethically the credit insurer is obliged to give the best advice, but he must always point out the consequences of following such counsel.

3. Marketing must help to ensure that the insurer deals in an honest, trustworthy, legal and fair manner and that he honors the terms and conditions of the insurance policies he issues. It is vital for the credit insurer to be known as a reliable, trustworthy underwriter who offers a good product, and marketing's aim must be to design a proper communications strategy. This strategy needs to ensure objectivity and honesty in the company's advertising campaigns and the company must make certain that its products and services comply with their advertised qualities, add real value, and do what is promised. As has been pointed out in chapter 4 "The Impact of Ethics on Business", the survival and success of any business depends on its moral relations with society. The market will punish the credit insurer, and most other operators in the financial field, who misinform, lie, deceive and try to coerce others into buying their products (this may not be the same for every type of product or service, e.g., when you buy a second-hand motor car you anticipate that you will be told at best half-truths and will have to haggle about the price, in real estate one does not as a rule purchase a house for the advertised price and in wage negotiations both parties start with very different offers and slowly bargain towards the finally agreed settlement). The relationship between the credit insurer and the client must be built on trust because it needs to be of a long-term and close nature, for otherwise it will not be mutually beneficial. This is the only basis for a sustainable, beneficial and long-term relationship (see also chapter 7 "Trust").

4. Public relations activities, which aim to spread awareness of the credit insurer and hence establish the brand, are an important marketing activity. Knowledge by the market of the brand, which is perceived as synonymous with quality and other proprietary brand assets, is critical for the success of the credit insurer's business. The need for honesty in public relations activities is just as crucial as in the insurer's advertising policy. This also applies of course to any direct mail exercise the insurer undertakes. The communications strategy must track the effectiveness of any advertising and public relations activities and needs to ensure that it is cost effective.

5. Although the clients of a credit insurer want in the first place to receive a professional, reliable, quality and value-adding service, a coherent corporate social responsibility policy based on integrity, sound values, and a long-term approach, offers clear business benefits to all stakeholders. Such a policy will also positively contribute to the well-being of society as will a well thought out Sustainable Development strategy (see chapter 3 "Sustainable Development"). Marketing should help foster good community relations because this will raise the awareness and reputation of the company and its brand. This in turn will create a preferred employer status for the credit insurer, making it easier to attract good candidates into the company's employ. As has been pointed out in chapter 4 "The Impact of Ethics on Business," society has a right to expect a credit insurer to act morally, as a good corporate citizen. It will punish the company which does not do so.

6. Important in the South African context is the question of Black Economic Empowerment (BEE). The score card developed by government includes a score for purchases from BEE compliant sources. It is therefore important that the credit insurers in South Africa ensure that they comply and are accepted as BEE procurement sources so that their policyholders can in turn comply by being able to show that they are purchasing credit insurance services from a BEE approved firm.

7. The company's ethics policy is a valuable part of the marketing programme. This presupposes that it is a carefully thought out policy which is firmly embedded in the

company as manifested by the every-day behaviour of the credit insurer's staff. Such a policy contributes to competitiveness, efficiency and key relationships vital to the company (see Part III "Codes of Ethics").

8. Where a credit insurer markets and sells policies in a number of countries, he must be familiar with the general culture and way in which business is conducted in each of such markets. The credit insurer needs to apply his mind to such cultural differences and be tolerant towards any divergences between the credit insurer's moral policy and that followed in such other countries. However, as pointed out in chapter 5 "Cultural Relativism" this does not mean that the credit insurer should ignore his own code of ethics and blindly adhere to the cultural beliefs of the host country. Basic moral principles tend to be the same all over the world, even if they may be obscured by differences in culture and of implementation. Naturally, the credit insurer needs to know the laws in the respective country and comply with them unless he perceives them as unethical in which case he should not market his product in that country.

9. An excellent marketing tool for a credit insurer can be advertorials and newspaper articles about interesting business covered, important export projects, large claims and the credit insurer's view on economic and sector developments. Well-trained financial journalists are needed to write such reports and it is therefore in the interests of the credit insurer to assist in the development of financial journalism and to make certain that the media has a good understanding of the profession and the role credit insurance plays in the economy. Such action also helps to make the business of credit insurance more transparent and understandable to the business community. But clearly, a credit insurer must not allow his name or logo to be used in any article or advertisement that does not deserve being linked with the insurer's good name.

10. Useful sources of prospects are the credit insurer's vast archive of status information on businesses and the lists of creditors in insolvent estates. The prime reason for the information records held by the credit insurer is to supply the basic information

required for underwriting purposes but it is clearly an excellent source to scan for potential clients. Creditors who have lost money in a liquidation are likely to be open to an approach by a credit insurer. However, a great deal of the information available to the credit insurer from these sources may be confidential and considerable care must be taken by the credit insurer not to disclose or leak any such classified details. The attendance of trade fairs and supporting credit management and export associations can also be a useful marketing/sales effort. Not only can the product be explained but the credit limit and other relevant services can be demonstrated via the insurer's computer system.

11. Independent market research can be very valuable. In-house research is never entirely objective. Market research is particularly difficult in credit insurance and it is therefore important that the survey is very carefully prepared and analyzed. Feedback must be given to top management for them to initiate relevant action. The research report can make a significant input into new product development and service level improvements. Careful interpretation is required because the market does not always know what it wants and may therefore send misleading messages. Market research is the eyes and ears of the credit insurer and is also an ethical tool because it affords clients the opportunity to express their opinions, to be ends-in-themselves, to be listened to, and for their views to be respected.

12. It is also critical that the credit insurer segments the market carefully. Business must not be treated as a single/homogenous group. Segmentation should be done according to size, sector, and trade level, geographical area, spread/concentration of risks, credit control and market position. Different segments have different needs and require different treatment (product, service level, selling method, communication etc).

13. Marketing should be innovative and helpful in the development and promotion of new products and in the improvement of existing ones. Marketing needs to breathe enthusiasm for the company's business into staff and brokers and into the market and

facilitate the building of the insurer's reputation. It should not promote wiz kid actions because in credit insurance a certain amount of conservatism is needed.

14. New products in credit insurance are difficult to find. The supplier must as far as possible meet the needs of the customer (in line with the categorical imperative), rather than to attempt to seek buyers for products or services the credit insurer is prepared to offer. Great responsibility and care has to be shown in designing new products in this field. The long-term consequences and the effects that a number of economic cycles may have on the success of the new product have to be studied in depth. The wish to innovate and hit the market with a brand new credit insurance service has cost a number of insurers a lot of money, e.g., some years ago some credit insurers became involved in financial guarantees and mortgage bond guarantees. Millions were lost and a number of credit insurance companies were destroyed in often tragic ways. Carelessness in product development and marketing is unethical as it can seriously damage the insurer's business and those that are connected with it. In credit insurance it is not so much a new product but rather the constant fine tuning and adjustment of the existing service to take care of changing circumstances. A major research and development effort goes into finding more efficient, effective and customer-friendly ways and means of delivering the service, e.g., sophisticated computer programming, reporting, client/broker connectivity and operational efficiency. Yet the insurer must carefully listen to the market to detect changing conditions and must understand what influence such change will have on the insurer's business. The signals sent by the market must be used to direct the business's product/service development, and its pricing policy. The market will also indicate what the nature of the key messages should be and it will reveal the identity of the key audiences that need to be reach. Only that company which is able to adjust quickly to market changes will survive – a moral duty for any business.

15. A credit insurer has to be careful with too aggressive a sales approach as this may lead to the acceptance of too much risk and the concentration of exposures in difficult market segments, e.g., the clothing and textile industries. The importance of spread over many dissimilar risks, different industry sectors and preferably also over a number

of geographical areas through export credit insurance must not be overlooked, as this is what gives the credit insurer stability and safety. The insurer must also keep in mind that it is very dangerous to sell his cover to a firm that seems dishonest, does not display integrity and might collude with risks or act fraudulently. All this the insurer should do in the interest of his own business and because it is to the advantage of all his stakeholders.

16. Competition, provided it is professional, is good. It helps keep the market honest, vibrant, customer sensitive and price conscious. It also forces the individual insurer to stay on his toes, focus his efforts and ensure a constant drive towards better added value delivery to the client. Competition provides the opportunity for comparison and enforces the need for operational efficiency. Although competition may be tough and must be fought hard, such fights must be fair and clean. No lies can be told about the competitor and his product/service. Corporate espionage and deceitful behaviour towards competitors should not be countenanced. A morally responsible business will not try, through unlawful means, to achieve a monopoly. Only in very exceptional circumstances will the market and the competition authorities allow such a situation to develop. As has been shown at the beginning of this chapter, generally a monopolistic situation is not healthy for all concerned.

17. But management should not be criticized on ethical grounds for striving to drive the competition out of business, provided it is done in an ethical manner, e.g., by selling a better product or providing a superior service rather than by coercion, deception or unlawful means. It is not the business of business to be the guardian of the competition; it is government's job to see to it that appropriate legislation is in place to protect the consumer from monopolistic or other trade restricting practices.

18. The biggest competitor for the credit insurer is self-insurance. A business that has a good credit management department, operates in a relative low credit risk market, has a good spread of debtors and is well capitalized can do without credit insurance. Such business would set aside a bad debt provision to protect it against unforeseen bad debt

losses. The credit insurer can add value to such a business only by delivering a superior credit insurance service in an impressive way. The insurance cover would allow such a business to release its bad debt reserve, employing the funds more productively, to budget more accurately and to save some money in its credit management department (cost of information, better intelligence, and assistance in collections of over-dues and in liquidation cases). Clearly, such a business is a desirable customer for the credit insurer and this highlights again the importance of excellence of service and the relevance of professionalism in the credit insurer's staff.

19. The underwriter will have designed a type of policy suitable for the prospective client, on the strength of the information provided by the salesperson. In addition to the duty of taking due care in putting such a cover together, the insurer's personnel must explain to the client why they believe the proposed policy is the best type for the client. Should there not be agreement, the insurer must try to accommodate the client's wishes as far as possible, always of course keeping in mind the insurer's own requirements, such as profitability, spread of risks (between different industries, countries, domestic and export business etc.) and administrative efficiency. In short, one should strive towards a win/win position. This makes for a satisfied purchaser and a long lasting, mutually beneficial relationship between the parties which is in line with the insurer's ethical duties. (Specially designed policies do not apply to very small credit insurance contracts because they are standardized products, often sold over the internet and serviced through the insurer's call centre in order to keep costs to a minimum).

20. Close co-operation between marketing, sales and underwriting is necessary. The sales effort will not be successful without team work and prospective clients will not receive a satisfactory service. The end result will be a poor reputation and a damaged image of the insurer in the market place.

21. The insurer must also explain his expertise in credit and export management and what he will add to his client's business. The credit limit, country underwriting and the overdue collection service, the insurer's role in the co-operation with liquidators, in

assisting with creditors' meetings and legal proceedings and the allocation of legal costs between the insured and the insurer, are all issues that need to be fully understood by the policyholder.

22. It is easy for a salesman to make all sorts of promises concerning the services that the underwriter and the claims assessor will deliver once the prospective client has bought a policy, particularly where the salesperson will disappear from the scene once the policy is sold. For this reason it is important that at least on delivery of the final policy, the insurer's employees who are thereafter responsible for the administration of the cover and for the customer service, accompany the salesperson. This provides them an opportunity to introduce themselves to the relevant personnel in the policyholder's office and to explain in detail the terms and conditions as well as all the administrative aspects of the policy. Any misunderstandings about the policy, the credit insurer's service, and the manner he operates, when and how claims are paid and what is expected from the policyholder need to be ironed out as far as possible before the policy is finally handed over to the policyholder. The sales person should visit the new client after six months from inception of the policy to make certain that the client is satisfied with the service he receives. As mentioned elsewhere in this report, excellent communication, a good understanding of one-another's needs and expectations and respect for and trust in one-another are vital for both parties to obtain satisfaction from the credit insurance facility.

23. From the above it can be seen that I believe the credit insurer has a considerable responsibility in providing information to the prospective client. The credit insurer should not rely on the "caveat emptor" principle, for the product is too complex. On the other hand, the purchaser is a business from which one can expect a certain amount of understanding of matters dealing with business credit. It might be considered paternalistic by the prospective client if the credit insurer would approach the sales activity from a "caveat vendor" stance. It seems to me therefore that the credit insurance sales person has to employ a mix of "caveat vendor" and the contractarian view, i.e., a limited paternalism, being the "buyer's keeper" by identifying the needs of

the possible customer and disclosing the information which is essential to meet those needs. Further, the credit insurer has the duty to explain why he believes the suggested product is the best for the potential policyholder so that the buyer understands the issues involved and is thus treated not merely as a means but as an end-in-itself. Only then will the mutual exchange be maximized and the mutual advantage the greatest.

24. To assist the parties in ensuring that there is full understanding of all the important issues connected with a credit insurance policy, the insurer should have a booklet that explains in simple language all the relevant matters. Such a booklet must be designed so that it is of real help to the policyholder's staff who have to work with the policy, but it must also point out that where there is conflict between the booklet and the policy, the policy wording will prevail.

25. Sales and service personnel need to be experts in credit management and export operations. They need to be knowledgeable about the policyholder, his product and his market if they are to understand the credit problems that the local or export client faces. Such knowledge is also necessary in order to build a professional and caring public image. The credit insurer can only be a virtuous (in Aristotle's' meaning) business and fulfill his ethical duties (according to Kant) if he possesses these insights.

26. Training of the insurer's personnel in customer relations, in the ability to tease out the prospective client's or customer's real needs, in credit and export management**,** in the intricacies of the product and service and in being sensitive to the requirements of the market, is vital. As the categorical imperative indicates: only those who have the knowledge and ability to freely decide, who have the authority, autonomy and self-respect, can provide an outstanding service and can be held responsible for their actions. Sales people and brokers must be aware of the fiduciary position they hold vis-à-vis their clients and what the implications and their legal obligations are as a result of this position. The credit insurer cannot afford to ignore or neglect education in business ethics. Clearly, cutting down on or completely ignoring such training needs is a shortsighted view. But training cannot do the job on its own. If the character of the

employee does not display truthfulness, fairness, compassion, courage, respectfulness, enthusiasm and the required intellect, much of the training effort will be wasted. The recruitment of people with the right personality is therefore crucial.

27. By the same token it is the client's duty to do everything to familiarize himself with the terms and conditions of the policy, and to ensure both that his staff is well trained in administrating the cover and that his operating procedures incorporate the administrative needs of the policy. The credit insurer can and should help by offering training courses for the policyholder's staff and by auditing the policyholder's compliance with the policy conditions from time to time in order to avoid repudiations of claims due to non-compliance.

28. Very important in all this is that the insurer's remuneration system supports these client service requirements. If salespeople are given large bonuses dependent merely on the volume of sales they achieve, they are incentivised to sell at all cost, ignoring the prospective client's needs. While a bonus system can be a very useful tool to motivate, it must ensure that it motivates in the right direction. Selling credit insurance requires considerable effort and care in:

- Eliciting and passing on information correctly and completely;
- Listening;
- Ensuring that the client receives what he needs (as far as the insurer can satisfy such need in a manner that is also profitable to him);
- Ensuring that the cover is not sold to an unsuitable candidate (either because he does not really need the product or because he is incapable of administrating it properly or because it is a dishonest business) and
- Dealing with the prospective client in an honest, trustworthy and open manner.

Sales commission should therefore be paid one year in arrear, once it has been established that the insured was sold the correct cover in a thoroughly professional manner. The insurer's own audit of new clients and a market research of new customers by an independent agency can be useful ways of finding out how professional the insurer's sales force is and how satisfied the new client is with his purchase.

In credit insurance it seems questionable whether it is correct to pay a commission only to the sales staff. As has been seen from the points made above and as will be seen in chapters 12 “Underwriting” and 13 “Claims,” a mutually satisfactory, long-term relationship between insured and insurer depends on the ongoing service that the insurer renders the policyholder. It seems therefore just as important that the insurer’s staff responsible for providing this ongoing service to the insured be motivated to supply an excellent service. Chapters 10 “Introduction to Credit Insurance” and 12 “Underwriting” demonstrate that the policy document is merely a shell that is worth very little without the credit limit, collection and claims services. These services are the heart of the credit insurance product and are the essence of what a policyholder has bought. Accordingly, the underwriting, claims and their support staffs are absolutely crucial to the delivery of a professional credit insurance service that will please the client and aid him in building a successful business. For these reasons I believe that the entire staff and not only the sales personnel should enjoy a remuneration package which is made up of:

- A fixed salary;
- A commission based on the individual’s performance;
- A bonus dependent on the underwriting profit of the credit insurer;
- Expenses (where applicable); and
- Fringe benefits.

Clear, agreed, written performance criteria and a fair performance appraisal system need to be the basis of the level of the commission payments to individual employees. The commission must encourage and reward the desired behaviour and performance. Distributive justice (see Social Justice, pages 24 to 27) in business means aligning benefits within the organization to the contribution made to achieve the company’s aim. Salaries linked to performance for all is an example of distributive justice, as is promotion on merit (keeping Rawls’s difference principle in mind).

29. Sales persons need to have a clear understanding of the company’s strategies, policies and code of ethics – they are in the front line and must demonstrate the “customer first” policy and the company’s commitment to ethical behaviour. Sales people must also be

involved in the development of the insurer's marketing and sales strategies. Not only can they make valuable inputs because of their direct involvement in these activities, but the sales personnel's involvement will also motivate them and ensure that they will support the finally agreed strategies. The marketing and sales managers should employ participative management styles, help their staff to develop their personal capabilities through training and mentoring and structure individuals' jobs in such a way that they can show their own initiative and exercise relevant authority, being held responsible for their work. Such a management will ensure motivation and commitment in the employees.

30. Intermediaries such as insurance brokers, banks and other financial institutions can assist the credit insurer in his marketing and sales effort. It is the insurer's duty to ensure that such intermediaries comply with the business policies and ethics of the insurer, that they are professional, knowledgeable and people of integrity. Where required, the insurer should offer training courses to such intermediaries in the technicalities of the product as well as in the credit insurer's business philosophy and ethics policy. It will also be worthwhile to point out that intermediaries can be taken to court for faulty or inadequate advice to a client or prospective policyholder and for material non-disclosure to the insurer.

The credit insurer should never relinquish an existing client to a broker or neglect building good, close and direct relationships with a new client introduced through an intermediary. The continuous communication required between the insured and the insurer to service the insured properly demands that the insurer has immediate and direct access to his client. The insurer has to explain clearly its requirements in this regard to the intermediaries but at the same time the insurer must listen to the intermediaries in order to facilitate their co-operation and to hear the intermediaries' views on the needs of the market and of individual clients. Clearly, a good working relationship between intermediary and credit insurer will be of benefit to all.

Policyholders often prefer to have an intermediary involved in order to fend for them in case of differences with the insurer. Intermediaries are seen by the market as independent and thus unbiased brokers, being specialists in all insurance matters and therefore being able to represent the prospective client's or the policyholder's interests in cases of disputes between the insurer and his client. Here the insurer has the additional duty to do everything in his power to keep the broker independent. All remuneration and other perks that the insurer pays to the broker need to be made known to the policyholder. In fact it would be preferable if the broker would receive his compensation entirely from the insured because it is the policyholder who employs and relies on the broker and it is he who needs to be satisfied that the broker is not in the pocket of or a mere agent of the credit insurer. The present case in the US by Mr. Eliot Spitzer, the New York State Attorney-General, against the world's largest broker, Marsh &McLennan is a good example. Underhand payoffs by insurers to induce the broker to place business with them rather than with the most appropriate insurer, the subject of the case, are unacceptable inducements and clearly unethical because they violate the fiduciary position of the broker vis-à-vis the client and because they undermine the free market system. It is not so much the issue of a broker receiving a higher commission from a particular insurer – he may be worth it because of a superior service delivered by the broker – but rather the fact that it is a secret payment which does not allow the market to play its role and does not permit the purchaser of the insurance service to make a decision based on all the relevant information. Such action violates the purchaser's right to autonomy.

31. It is worthwhile to dwell a moment on the relationship between banks and the credit insurer because this can be a very diverse and contradictory one. Banks often are:
    - Shareholders of the insurer;
    - Suppliers of credit information to the credit insurer;
    - Brokers selling the insurer's product;
    - Influencers of prospective credit insurance clients because they can advise or even oblige their clients to buy a credit insurance policy;
    - Cessionaries taking the credit insurance cover as additional security over book debts on the basis of which they have provided overdraft facilities;
    - Competitors, because they offer all kinds of documentary credit services and often own a factoring company;

- Partners, by offering “managed credit insurance policy services” to small businesses (see paragraph 32 below);
- Financiers of capital goods export projects, relying on the insurer’s credit cover; and
- Direct customers of the credit insurer for political risk and letter of credit cover.

These relationships between banks and credit insurers can produce conflicts. Is a shareholder of a credit insurer unbiased? Will such a bank be an independent broker or act more as an agent for the credit insurer? The bank as “influencer” can get involved in conditional selling, insisting that a client takes out credit insurance in order to obtain a line of credit. As a factor, a bank is a competitor although factors sometime employ the credit insurer as a “re-insurer.” Banks are usually the largest creditors in insolvent estates, and their interests may be contrary to those of the insurer in debt recovery actions. Clearly, these conflicting interests can lead to unethical behaviour – particularly the shareholder relationship.

32. One problem that credit insurers and brokers have is to provide a professional service to small business. Credit insurers have developed a small business policy which is a much simplified facility. It may provide for a fixed monthly premium payment via stop order (eliminating monthly declarations) or offer a less personalized service via the insurer’s call centre. Some insurers have designed together with the banks the so-called “managed policy.” This is a type of wholesale policy taken out by the bank for its small customers where the bank administers the credit insurance cover on behalf of a number of small businesses who are co-insured under the policy. In Rawls’ terms one might say this is in line with his maximin principle – it makes out of a potentially unprofitable situation for the insurer and intermediary the best and at the same time provides credit insurance to small business on a basis that maximizes the minimum outcome.

33. Sales persons are more prone to unethical behaviour under conditions of
    - Fierce competition;
    - Strong pressure on the sales person to sell;
    - High sales commissions;

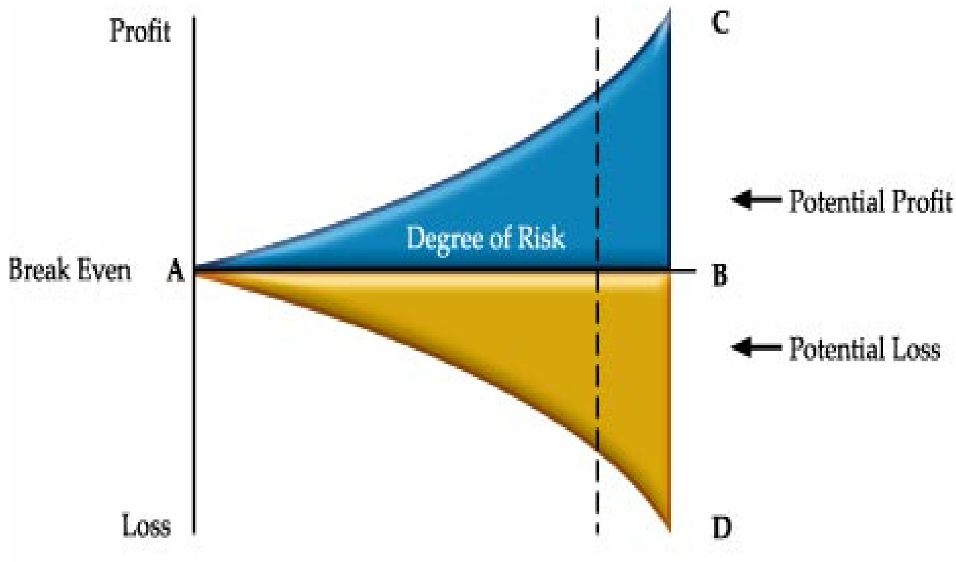
- Unregulated, dubious practices of disclosure;
- Sales managers being removed from actual selling practices; and
- Codes of ethics being non-existent or being widely disregarded in the industry.

For the credit insurance industry it would therefore be very useful if the two international credit insurance associations, the Berne Union and the International Credit Insurance and Surety Association, were to adopt a code of ethics (including marketing guidelines) for the industry which the associations would monitor and manage along the lines as set out in chapter 19 “Implementation and Management of a Code of Ethics.” If the credit insurance industry would adhere to such a code it would be considerably easier for all players to comply because such unanimity would remove the threat of losing business as a result of competitive pressures due to unethical behaviour.

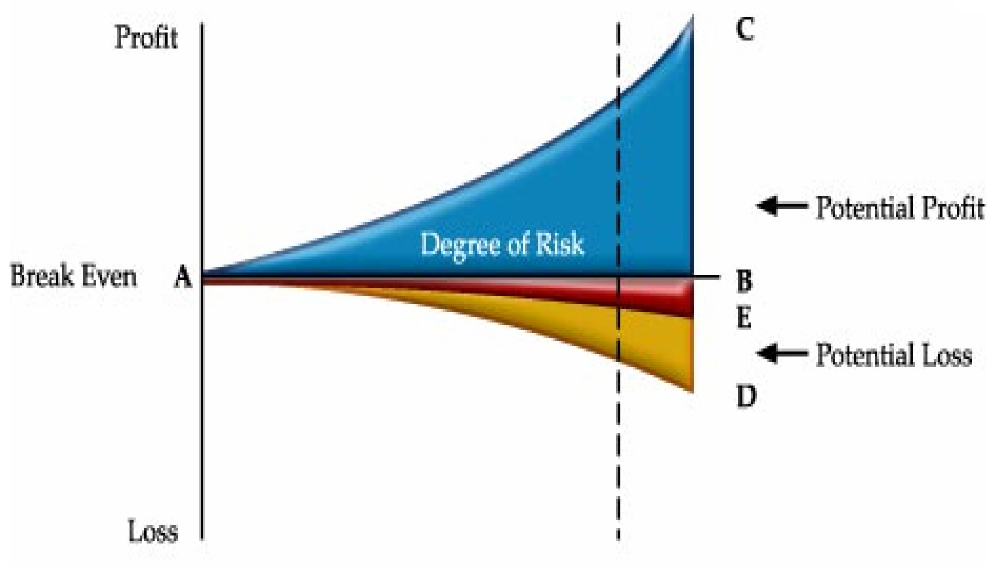
ANCILLARY SERVICES BY THE CREDIT INSURER.

The objective of credit management is improved sales, reduced costs and higher profitability. Credit insurance can enhance these benefits considerably and protect a business from liquidation which may result from it having sustained major bad debt losses. The illustration on the following page gives an indication of the positive impact credit insurance has on a business.

A business needs a well thought out credit policy and it must be remembered when designing it that best practice should be heavily influenced by the customer. Such a policy is central to a good marketing strategy and can provide a powerful competitive advantage. Credit is an implied guarantee of quality – shoddy goods or services should not be sold on credit because the supplier may never get paid. An attractive offer comprises a package of product and finance, simply because it is cheaper and more convenient for the customer not to have to organize finance from another party. The credit insurer can help the company in drawing up a credit policy because of his specialized knowledge and experience. The insurer’s pre-delivery vetting (credit limit service – see chapter 12 “Underwriting”) enables the policyholder to offer a seamless solution (goods, service and credit) to credit worthy customers.



1. In order to make some profit, some risk has to be taken - line A to B
2. As more risk is taken so the potential for profit increases - curve A to C but the potential for loss - curve A to D - also increases.



3. Through careful risk management the potential for loss can be reduced - curve A to D.
4. As far as CREDIT MANAGEMENT is concerned, this risk of bad debt losses can be nearly eliminated through CREDIT INSURANCE, thus minimising the total risk curve - curve A to E.

(Adapted from Risk Model by Don Russel & Mike Corber.)

The credit policy of a company is an important ingredient of its market segmentation. A company must concentrate its marketing and sales efforts on firms with sound credit standing. Slow payers tend to be unsatisfactory customers, financially weak and far more costly to administer. They also produce the bad debts. In export business there is the additional risk on the importing country which needs assessing. Knowledge of the International Commercial Terms (INCOTERMS), their advantages and limitations, is needed when designing a credit policy for export trade. Again, these issues are the credit insurer's every-day business. He will ensure, through the credit limit service, that sales efforts are not expanded on high, unacceptable commercial or country risks. The insurer's experience with export business and his international network are at the disposal of the policyholder, aiding the decision process and guiding the company in its export efforts.

As the old saying goes: A sale is not a sale until the money is in the bank. The credit insurer can give advice on the design of an effective credit application form, on the wording of the sales contract, ensuring that all the contractual terms and conditions are taken care of. As the credit insurer will not be on risk where the policyholder has not met his contractual obligation, any alleged breach must be cleared up. It is therefore important that a dispute resolution clause is built into the sales contract. The payment terms should be very clearly stated, industry related and as simple and flexible as possible. A good credit policy will help a great deal towards maximizing sales and minimizing risk, and the company should therefore seek the advice of and make use of the experience of the credit insurer.

A well structured and staffed credit department is vital. A good credit risk assessment methodology is basic to any good credit management policy. Ready access to fast and reliable information sources is crucial and, where appropriate, relevant securities need to be evaluated and obtained. White-collar crime in the credit field is difficult to detect. The credit insurer must be able to assist the company with all these issues.

Billing and statement stationary needs to be simple, clear, complete and attractive and the payment process must be easy, quick, flexible and efficient. Good debtors' accounting, monitoring, collection and handing-over systems must be in place and the issue of credit notes needs careful control. Nothing can be more frustrating and time consuming than an inefficient query resolution system. Proof of compliance with every aspect of the sales contract must be available. The liquidation process and the rights of creditors when dealing with irregularities, negligence, collusion, short cuts and fraud, require expert knowledge. If not handled correctly, a great deal of money can be lost. Correctly established bad and doubtful debt reserves, together with a properly designed write-off policy, need to be in place. The credit insurer can provide guidance and direction.

An all round, expertly designed and managed credit policy will result in a lower credit insurance premium cost to the policyholder.

A well-managed debtors' book represents the most valuable and usually the largest asset a business possesses. Because of the size and importance of this asset it should be credit insured. The rights under such a policy can be ceded to a financial institution, increasing the security afforded by a cession of book debts. This can lead to an increased financing facility, often at a lower interest rate than available for an overdraft based on an unsecured cession of debtors.

Other added value services that a credit insurer can sell at a profit are:

- Buyer information (through the purchase of an information bureau);
- Finance (through the purchase of a factoring house).
- Credit management consulting and credit staff recruiting services.
- Supply of country reports and surveys.
- Export promotion services;
- Debt collection services.

Only a credit insurer who is well qualified to supply such supplementary services should offer them. It would be unethical to advertise them or refer to them in the credit insurers' brochures, if the credit insurer does not have the necessary specialist staff readily available and thus does not have the ability to deliver these services in a truly professional manner.

MORALITY IN MARKETING AND SELLING CREDIT INSURANCE.

As has been shown in this chapter, there are many ethical issues involved in the honest marketing and selling of the credit insurance product. The main issue is undoubtedly the credit insurer's duty to be truthful, to be transparent and to disclose vital information in all his dealings with potential clients. Lying, cheating, suppressing important information or employing coercive practices in order to sell a credit insurance policy would be in violation of Kant's categorical imperative. The credit insurer needs to go out of his way in dealing with all his stakeholders in an ethical manner. If the insurer were to subscribe to Milton Friedman's policy: "the social responsibility of a business is solely to increase its profits (see page 48), he would not only act unethically vis-à-vis his clients, re-insurers, staff and all other stakeholders except his shareholders, but would in fact in the end damage his own business because he would acquire a reputation as a rapacious, uncaring insurer who does not deserve normative trust (see chapter 7). As a utilitarian one could also not support such behaviour as it could not serve to provide the greatest utility to the affected people (certainly not in the long-term). Aristotle would ascribe such behaviour to the incontinent or intemperate person (see page 19). Actions as stated above would not be compatible with the Golden Rule and with Ross's Common Morality Theory (see page 23). As Rawls has pointed out, fairness of circumstances under which agreement is reached transfers to fairness of the principle agreed to (23 Rawls, 2001).

But not all marketing and sales questions are that simple, e.g., is it unethical to promise a certain action in order to obtain the business from a very desirable prospect although you know that the credit insurer has to rely on a most unreliable third party to deliver what you have promised? Or is it moral to offer a premium that is too low in order to "get the foot in the door" with the intention of increasing the rate once the client has incorporated the credit insurance product into his administrative processes and has learned to rely on it and cannot easily cancel the service? I believe it would be deceiving a prospective client if action is promised that may be impossible to deliver – for what ever reason. I do not have the same qualms with regard to the initially lower premium. The insured receives a definite advantage in the first year. If the business proves as desirable as the insurer thought, it is likely that the premium will not be raised in the second year. If it has produced losses, an increase is justified and probably acceptable to the client. In any case the policyholder will be strong enough to negotiate and will not have to accept the insurer's premium rate.

As philosophers have pointed out, their theories are guidelines and do not present an unconditional, exact science. Moral dilemmas will always occur and the marketing or sales managers will have to carefully apply their minds – in a manner as outlined in chapter 8 "How to deal with Dilemmas in Business Ethics" – and in consulting the credit insurer's code of ethics (see Part III) to find solutions to such problems.

However, there is no doubt that a credit insurer who gives careful considerations to such dilemmas in an honest effort to find an ethical solution will display values and a behaviour that builds normative trust. Such trust will help to openly discuss and overcome problems that may have resulted from a wrong decision.

CHAPTER 12

UNDERWRITING.

Credit risk underwriting in this report refers to the following three activities:

1. The assessing of a prospective client's:
   - Debtors book;
   - Bad debt experience;
   - Credit control policies and administration;
   - General degree of exposure to credit risk resulting from the prospective client's market position;
   - Financial position, and
   - Integrity.

   The reason for this assessment by the credit insurer is to decide whether he should accept the prospective client as a policyholder. If so, the information and its assessment are required in order for the underwriter to frame the terms and conditions of the policy (including the premium rates) he would be prepared to offer. This part of the underwriter's work is hereafter referred to as "policy underwriting."

2. The assessing of the credit risk[45] pertaining to a particular debtor[46] of the policyholder so that the credit insurer can decide whether to accept the risk for underwriting purposes and, if so, the level and terms and conditions of the credit limit[47] on the debtor. This part of the underwriter's work is hereafter referred to as "credit limit underwriting."
3. The evaluation of country risk (political and economic) on importing countries so that the credit insurer can decide on the acceptability of such country risk and the relevant premium rate and terms of cover. This activity is referred to as "country underwriting."

POLICY UNDERWRITING:

For the purpose of this report it is assumed that a credit insurer offers three different types of credit covers:

- Domestic credit insurance.
- Short-term export credit insurance.
- Medium-/long-term contracts cover.

Please refer to chapter 10 "Introduction to Credit Insurance" for an explanation of these products.

CREDIT LIMIT UNDERWRITING:

Credit limit underwriting is confined to domestic and short-term export credit insurance. The policies for these covers are merely frame agreements, setting out the administration details, the terms and conditions of the cover in general and the premium cost. The credit insurer will then issue credit limit annexures to the policy document, being cover notes for each of the policyholder's debtors stating the amount for which the insurer is prepared to go on risk for such debtor and detailing any special conditions subject to which the

[45] Credit risk means the risk that a debtor may not be able and/or willing to pay a legally binding debt, which is due and payable.
[46] As a rule credit insurers cover risks on businesses only, not on private individuals.
[47] A credit limit is the amount, which the credit insurer covers as a maximum on the relevant debtor and should ideally represent the amount owned at any one time by the debtor to the policyholder. A credit limit can carry conditions, e.g. security requirements such as guarantees or other types of security.

credit limit has been approved.[48] For instance, a steel merchant will have as customers many different engineering, building and manufacturing firms. The credit insurer would investigate the credit worthiness of each of these clients and establish appropriate credit limits. Thus the insurer may agree to cover credit up to a limit of R500 000 on firm **"**A**".** The relevant credit limit annexure to the steel merchant's policy may state that such insurance cover is only of force provided the policyholder has obtained the personal guarantees of the directors of "A" for all amounts owed by "A" to the steel merchant. Should the policyholder not comply with the condition he would not enjoy cover on "A" and would have to bear any loss as the result of "A's" demise entirely for his own account.

COUNTRY UNDERWRITING:

Due to the "political" risks cover in short-, medium- and long-term export credit insurance policies, country underwriting needs to be practiced by the credit insurer. It evaluates the degree of risk that payment may not be received for an export due to political actions enacted after the exporter has lost control of the goods, such as the placing of restrictions on the importation of the goods/services forming the subject of the export or prohibiting the transfer of funds for settlement of the debt resulting form the export transaction. A country's possible inability, due to economic circumstances, to make available the necessary currency required for payment of the debt resulting from the import, and other similar hazards, are also part of country risk assessment.

ETHICAL PROBLEMS THAT CAN ARISE IN UNDERWRITING.

1. Domestic and short-term export credit insurance policy underwriting.
    a. The underwriter could be tempted to purposely mislead by formulating a credit insurance offer which is most advantageous to the insurer but which may be unsuitable or unnecessarily comprehensive and thus expensive for the prospective client. Alternatively, the underwriter could deliberately disadvantage the insurer

[48] In medium-/long-term contracts cover the credit limit is included in the policy document because it is specifically drawn to cover one contract only.

in order to bring the policy on the insurer's books or to favour the prospective client for some other reason, e.g., collusion.

b. Carelessness on the part of the underwriter can lead to the issue of an inappropriate policy at the expense of the client or the insurer.

c. The underwriter could make promises that cannot be kept, e.g., offering to issue a particular credit limit, extending cover for exports to a market not acceptable to the insurer, undertaking to provide unrealistically speedy decisions (credit limit underwriting as well as claims) or offering future premium reductions.

d. Where only a limited amount of political cover is available on a particular export market, the underwriter has a duty to ensure fair distribution among needy policyholders. It would be unethical to prefer one exporter over another without valid reasons, e.g., the larger, better, loyal policyholder may deserve some preference.

e. Because the credit insurance product is complex and its value for a new prospective client not that easy to assess, it is difficult for a purchaser of credit insurance to gauge the reasonableness of the premium cost, which can allow the underwriter to quote a premium rate that is unfair compared to like risk profiles. The market for credit insurance is not very transparent due to asymmetry in information/knowledge. This puts a greater responsibility on the insurer to treat clients fairly.

f. Policy wordings can be unclear, ambiguous and not easily understood. Insurance policies are often full of "small print".

g. When difficulties or conflicts between the policyholder and the insurer arise, the policyholder may not know who to turn to for unbiased advice. This is particularly so if the policy was not bought through a competent insurance broker.

h. Due to the nature of a credit insurance policy the policyholder needs to be able to communicate easily and instantaneously with knowledgeable, trustworthy people in the insurer's office. If the insurer is not able to make such people available to the policyholder it will lead to frustration and loss for the policyholder and the insurer.

   This list highlights unethical behaviours, i.e., deliberate or careless actions by the underwriter/insurer, which result in unfairly disadvantaging the client or the insurer. As has been said earlier, respect for the dignity and autonomy of others is basic to Kant's ethics. Building and protecting a business's reputation and strengthening the trust it can expect from its stakeholders is vital for the long term success of a business and cannot be achieved without heeding Kant's call. Reputation and trust depend on reciprocity in open, fair dealings, in giving credence to the need for moral behaviour. If the competition with which the credit insurer has to contend is not very strong and if the broker market is not sophisticated, it is of course much easier for the underwriter/insurer to get away with unethical behaviour toward the client. But even in a very competitive environment, the credit insurer has to guard against complacency because the complexity of the credit insurance product will, even under such circumstances, allow unethical behaviour.

The following are suggestions that, if implemented, can help to avoid such unethical behaviour:

- Underwriters should have explicit instructions not to suggest a type of credit insurance policy that is inappropriate for the prospective client. For instance, where a prospective client has a large number of small customers, don't insist on insuring them – it is usually in the client's best interest, from a cost and administration point of view, to be his own insurer for such small, well-spread exposures. It is the large debtor's account which can have a devastating result for the client if that debtor defaults, that should be covered by credit insurance. If the client deals with some AAA accounts, such as Anglo American or Coca Cola, the insurer should be prepared to exclude them from cover if the customer so desires but only after having made the consequences abundantly clear in writing to the prospective client. In export credit insurance, an exporter does not, under certain circumstances, have to offer for cover his exports to all his export markets. The pros and cons should be clearly explained to the prospective policyholder.

- The company culture should guide all staff members not to make promises that cannot be kept.

- The insurer should make it a rule that the terms, conditions and administrative requirements of the policy are carefully explained to the prospective client. An easily understandable “Policy terms and Conditions” booklet should be available to the prospective clients, but it should be pointed out that the policy wording is final and that non-compliance with the terms and conditions of the policy may prejudice any claim that the policyholder may have.

- The insurer’s underwriting instructions should make it clear that underwriters are to be consistent and fair in the setting of premium rates. Like risk profiles should carry similar premium rates unless there are good reasons for variations.

- Segmentation of the risks accepted by the credit insurer is even more important than segmentation in marketing. The credit insurer’s risk universe needs to be subdivided into:
  1. Industry levels (primary, secondary, tertiary etc.);
  2. Trade levels (mining, manufacturing, wholesaling, retailing, etc.);
  3. Legal entities (listed, public, private companies, partnerships, etc.);
  4. Geographical areas (countries, provinces, cities);
  5. Size categories (aggregate exposure per risk in value bands);
  6. Risk quality (poor, medium, good, etc); and
  7. Causes of loss (insolvency, protracted default, repudiation, etc.).

Declared insured turnover or debtors balances, premium income, claims paid and salvages received need to be allocated according to these segments so that underwriting has a sound foundation for establishing premium rates. Such statistics are also needed to ensure that the insurer does not accept too much risk in one particular segment and thereby endangers the stability of the business. Re-insurance arrangements (see chapter 14 "Reinsurance") are also based on these statistics and in case of need they allow the insurer to act quickly where a particular segment is suddenly exposed to a considerable change in its risk profile, e.g., a natural disaster, such as the recent Tsunami, which may result in a serious increase in the risk of business failures in the effected region.

Not only are these statistics necessary in order to direct the business but they are a manifestation of a professionally run organization that is able, at least to some extent, to perform its underwriting duties ethically. However, that is only true of statistics that are based on a sufficiently large sample. Statistics are usually not 100% reliable because of too small a sample and because significant factors influencing the risk do not remain constant, e.g., random fluctuations in claims – that is the unpredictable bunching of a number of large claims (in line with the Monte Carlo fallacy[49]) or due to a gradual change in the risk factors. Even if the statistical picture would be totally reliable, the market may not bear the "correct" premium (due to the insurance cycle or because of competitive pressures or re-insurance availability) or the insurer may, for business reasons, accept the business at inappropriate rates.

Other statistics that help to pitch premium rates at the right level are:

- Credit insurance association (Berne Union and ICISA) statistics which provide world wide credit insurance experience per cause of loss and geographical area.
- National statistics concerning liquidations, insolvencies and the establishment of new businesses.

[49] The fallacy that although when tossing a coin, over the long run, more or less 50% of the time it will show heads and 50% tails, this does not mean that if heads has not come up for some time heads must be "due" to come up at a grater than one-half probability. The probability of heads coming up remains one-half for each toss.

- o Industry association statistics, e.g., building industry bad debt experience.
- o Individual policyholder statistics, e.g., bad debt ratio.

While reinsurance (see chapter 14 “Reinsurance”) provides an umbrella against random risks and changing risk factors, the insurer needs to be permanently vigilant and alive to constantly altering perils.

- As is known, insurance is based on the collection of comparatively small amounts of premiums from many for the settlement of losses sustained by the few. Is it ethical to take premiums from many people who may never have a claim? I think it is because:
  - o No one is forced to buy insurance.
  - o Everyone who buys it knows it is quite possible that one may not incur an insured loss and thus collect an indemnity.
  - o The assumption-of-risk theory explains why premiums paid for possibly one’s whole life during which no losses have been sustained have not been paid “in vain”. The insured has transferred the chance that she might suffer a loss to the insurer and it is for the assumption of this risk, the hazard that he may have to pay an indemnity, that the insurer is entitled to the premium.
  - o Moreover, in credit insurance not just insurance is provided. The credit limit service and other advice available from the insurer are of considerable use to the policyholder and are there to help avoid losses in the interest of both the insured and the insurer.

- Is it equitable that all policyholders, whose insured risk profile is similar, pay more or less the same premium rate notwithstanding that they may be in very different economic circumstances? According to Rawls’s difference principle, economic inequality is justified provided it is to the greatest benefit of the least-advantaged members of society.

  Small and/or poor businesses clearly benefit from the considerable premium contributions of large, well-off organizations. Not only do the payments of the latter increase the pool out of which claims can be paid but, their contributions also help in reducing the premium cost for all. In fact, without the large and wealthy organizations being part of the insuring community, there would probably be no insurance scheme and this would hit the small and/or poor businesses hardest because they can least afford sustaining a loss.

An insurance premium rating system based on risk profiles and not on the insured's ability to pay is therefore basically fair. But insurers are pressed into and generally agree to give premium rate discounts to large, good clients and such premium reduction can, if overdone, lead to the distortion of the insurance pricing mechanism. If taken to extremes, such discounting would result in every insured paying a premium more or less equal to his claims and that would of course negate the reason for and the principle of insurance. Thus insurers must be circumspect in discounting premium rates for reasons that are not strictly based on the overall risk profile into which the insured falls.

- Any special arrangements agreed with the prospective client must be in writing, preferably within the policy document.

- While it is unavoidable that credit insurance policies include quite a number of terms and conditions, they should be worded clearly, unambiguously, in user-friendly language and print. So-called "small print," as well as highly technical terms and complex wordings, should be avoided at all cost. The policy wording lays down what is expected from the client and it must be made quite clear that non-compliance may result in the repudiation of a claim or the withdrawal of the entire policy. The client (who in credit insurance is always a business) can be expected to be a fully rational being, capable of understanding the credit insurance contract, and it is therefore fair and ethical that he be held fully responsible for his errors and omissions, as long as the insurer has complied with his duties.

- A final policy should wherever practical be delivered to the new client by both the sales person and the underwriter who will service the policy. This will ensure that no promises are made which the underwriter cannot keep.

- The policy should give all the relevant details of the Insurance Ombudsman so that the policyholder can refer any dispute he may have with the insurer for evaluation to the ombudsman. The policy must obviously comply with all the disclosure requirements laid down by the South African Financial Services Board and the credit insurer needs to comply with the industry's code of conduct, e.g., the code of ethics designed by the South African Insurance Association for the South African insurance industry.

- Although many credit insurance policies are sold through the intermediary of an insurance broker, it is important that direct, personal contact is made at the earliest possible time between the prospective client and the relevant expert staff of the insurer. Due to the intimate understanding that the underwriter needs to have of the client's business[50] and because of the continued interaction that needs to take place between these two parties,[51] clear, direct (with copy to the broker) communication between the policyholder and the credit insurer is vital for an efficient and satisfactory relationship between all the parties involved so as to avoid misunderstandings and delays and help build a good, trusting relationship. Sales personnel and underwriters must, in addition to being experts in the technical aspects of credit insurance, have good personal relations skills, be sensitive to a client's needs and be aware of the implications of their own fiduciary position vis-à-vis the client, broker and the public in general. An enthusiastic, open, helpful and entirely ethical attitude is required in order to

[50] Personal knowledge by the underwriter of the prospective client's business is very important so that the underwriter can consider whether the insurer should offer cover. A business that does not have the ability to administer a credit insurance policy or one that is clearly unethical should not be granted credit insurance in order to avoid difficulties for both parties at a later stage. If cover is granted, the underwriter needs intimate knowledge of the policyholder's business so that he can offer the most appropriate type of cover and provide an efficient service to the policyholder.
[51] There can be a multitude of communications that have to take place between the two parties, even in one day, because of the constant change in the policyholder's debtors book.

represent the credit insurer in a proper manner and serve the client professionally. (For the broker/insurer relationship refer also to chapter 11 “Marketing and Sales”).

- The underwriter must advise the prospective client before selling him a policy if cover on one of his export markets is not available or can only be provided on restricted terms. For example, the credit insurer may have no capacity or only a limited amount of cover available on a particular export market. Alternatively, the credit insurer may be prepared to grant insurance cover only for a certain market on restricted payment terms (only on letter of credit or cash against documents terms of payment etc.). Perhaps no transfer of funds cover can be offered or no credit to government departments or institutions is available. If the prospective client can purchase only commercial or only political risk cover, he needs to be told and the implications clearly explained. Usually an exporter does not have to offer for cover his exports to all the countries he sells to. Again this needs to be discussed and the advantages/disadvantages pointed out.

- If relevant, the underwriter should explain the effects that the credit insurer’s reinsurance arrangements for political risks may have on the exporter.

- The credit insurer should audit the administration of the credit insurance policy on a regular basis (both in the client’s and its own offices). This will ensure that both parties comply with the terms, conditions and undertakings and will avoid the position later where the insurer repudiates a claim due to non-compliance. Such checks will help the insurer in making certain that he receives the premium due to him, and they will foster good relations and assist the insured in case difficulties are experienced in administering the policy.

- The underwriter should not feel any trepidation if called on to disclose decisions and actions to a superior, the CEO or the board of directors – this is a measure of ethical, fair and correct dealings by the underwriter.

- Prompt, professional service by the insurer is vital for the client to obtain full value from his credit insurance policy. It is therefore helpful for all parties concerned if the insurer has at regular intervals a market research study done by an unbiased third party to gauge the quality and speed of service and the market's perception of the insurer's product. Such market research reports are an excellent basis for a constant effort by the insurer to improve his service and build a satisfactory and loyal clientele.

2. Medium-/long-term contracts policy underwriting.

   The ethical problems that can arise in domestic and short-term export credit insurance policy underwriting as listed above can to some extent also appear in contracts underwriting. The remedies would be similar to those mentioned there, but, due to the size, complexity and possible social, political and/or environmental effects of large projects, additional ethical questions arise in contracts policy underwriting with which the insurer has to deal:

   a. Tendering for and negotiating such large projects involves the exporter in considerable time and expense. In order not to waste such effort and costs, the insurer should be able to advise the exporter in advance of the availability of credit insurance cover and export finance. However, international political and economic circumstances can change very fast with the result that export credit insurance on a particular country may no longer be available or only conditionally accessible at the time the tender is awarded.

   b. The importance of the under-mentioned issues need to be discussed with the exporter:
      - The level of equity required to be invested by the promoters of the project;
      - The local content stipulations[52];
      - Payment guarantees/security requirements;

[52] In many cases a minimum percentage of the value of the export contract has to originate from the export credit insurer's country of domicile in order for the contract to be eligible for the credit insurance cover.

- The need for feasibility studies;
- Environmental impact studies;
- The legal enforceability of the export and finance contracts, any guarantees, and other pertinent documents and payment mechanisms in both the exporting and importing countries;
- The possible requirements of export/import permits and operating licenses;
- The need for a special letter of approval of the contract from the government of the host country;
- Foreign exchange approvals;
- The availability of the necessary infrastructure and inputs (funding or physical material/labour) from third parties;
- Logistical problems and
- Administrative requirements.

The above should all be drawn to the attention of the exporter and need to be resolved in a manner that will allow the credit insurer to support the proposed project with credit insurance/finance.

c. The credit insurer will not wish to underwrite a project proposed by an exporter who is not capable (financially or technically) of executing the proposed export contract or who appears to act unethically (wanting to use shortcuts, employing deceptions, refusing to provide information etc.). The insurer’s risk will be considerably higher due to the likelihood that the exporter will not perform in terms of the agreed export contract or due to legal disputes or incorrect behaviour on the part of the exporter.

d. Certain types of goods/services may not be acceptable to the credit insurer for underwriting purposes, or may require special security conditions due to past bad experience with such projects or because they are ethically not acceptable.

e. A credit insurer should not support the exports of armaments or other military supplies into a volatile region unless there are special circumstances that justify supporting the side fighting the war and wanting to purchase the weapons. A "just war" (28. Singer, 1993: 386) could be described as one that is fought:

- In national self-defense;
- In defense of another state against external aggression;
- To recover rights previously lost in an unjust aggression against the party that lost the rights;
- In defense of fundamental human rights;
- To punish an unjust aggressor;

and provided that:

- Not more violence than is required to achieve the aim is used;
- The bad consequences do not outweigh the expected good consequences of the war; and
- It is fought only against persons who are legitimate targets of attack.

f. The credit insurer should not support projects that will have negative environmental or social implications unless there are very strong mitigating circumstances.

g. Although a project may produce jobs, profits, foreign exchange through exports and tax earnings for the host country, the affected population in that country may be seriously opposed to the project because it might pollute, destroy recreational or ecologically sensitive areas, damage the tourist industry, be aesthetically unacceptable or clog up the infrastructure.

h. The credit insurer must also keep in mind international conventions, values and laws when considering an application for credit insurance for a large capital goods export project.

i. Where the insurer knows that the project to be exported is clearly not viable, he should not support it.

Many of these issues are difficult to solve. The obvious solutions are often contrary to the interests and wishes of the exporter and/or the importer. The credit insurer should promote export business in the interest of his client, the exporter, and also the exporting country's economy. But the credit insurer should at the same time not aid unethical or back non-viable projects. The long period involved from conception of the project to realization and final payment make the risks difficult to assess and the ethical issues particularly complex.

Here are some guidelines that may help in approaching the ethical questions raised:

- The credit insurer must assist the exporter in the negotiation of the export contract and the related financial agreements so that they are in line with the credit insurance requirements. This includes advice as to the likelihood of the availability of cover for the contemplated project and about any foreseeable special conditions that may attach to such cover. In this way the credit insurer alerts the exporter to any obstacles that may be in the way of a satisfactory insurance and financial package required to realize the export business. It also gives the exporter an opportunity to withdraw from the business if cover is not available or if the exporter finds the requirements too onerous, before having spent too much time, effort and expense in pursuing the project. Some credit insurers will provide the exporter with an undertaking – usually valid for a 3 months period, which can be extended – that in principle, cover for the particular project will be made available within the period of validity of the undertaking. A commitment fee is payable by the exporter for such an undertaking.

- The credit insurer should help the exporter to deal with the issues raised in b. above. While the credit insurer cannot have all the expertise required for matters such as legal opinions, technical studies and other expert reports and inputs that may be necessary, the insurer has a moral obligation to point out to the exporter that such preconditions, documentation and requirements may be needed. Clearly, it would be unfair and unethical not to advise the exporter of such preconditions because, in terms of Kant's categorical imperative, the exporter's dignity, which is grounded in the capacity for practical rationality, would be squashed as the exporter would be precluded, due to the insurer's negligence, from doing the correct thing founded on all the relevant information. It is the exporter's duty to comply with all such conditions and the credit insurer's advice is given without obligation. Non-compliance by the exporter could lead to the non-issue or withdrawal of cover or the repudiation by the insurer of a claim at a later stage.

- It is the insurer's obligation to advise the exporter immediately should he not wish to support him for a particular project. Where possible the credit insurer should tell the exporter of ways and means to overcome the shortcomings, e.g., by suggesting that the exporter works together with a financially sound or technically capable partner. The insurer has a duty of care toward the exporter because he is the specialist in the field of export credit insurance and finance and therefore possess insights that the exporter may not have. Through the credit insurer's advice the export may be won on a basis acceptable and advantageous to all parties. As previously mentioned, it is the credit insurer's duty to encourage sound export business rather than to stand in its way.

- If the credit insurer feels that he cannot support a project or can only do so subject to particular terms due to the type of goods/services that are to be exported, he must communicate such fact to the exporter immediately and alert him to restrictions or special conditions that may be require in order to afford insurance cover to such exports. Some examples of problematic projects are:
    - Credit insurers have experienced many problems with the repayment of loans made available for the financing of contracts for the building of hotels. Often these difficulties are due to political, economic or security changes that adversely affect the tourist industry and thus the occupancy rate of the hotel.

To make such a proposed export contract insurable may require special payment guarantees and mechanisms and a higher equity investment by the promoters than may be needed for other types of projects.

- o Casino building projects can raise serious ethical problems. Their undesirable effects on some members of society, who may not be able to withstand the lure of gambling, need to be carefully considered by the credit insurer before he decides whether to support such projects. There are no established guidelines to help resolve such questions but it might be worthwhile to discuss the issue with the government of the importing country, with religious and labour movements and relevant NGOs in the host country. The credit insurer needs to avoid espousing a paternalistic attitude but if the local community and government are strongly opposed to gambling it is likely that the credit risk inherent in the project is considerably higher. The culture of the importing country may not support casinos and under such circumstances it would be foolish for a credit insurer to extend his facilities to such a project (see also chapter 5 – Cultural Relativism).
- o Where credit insurance cover for the exports of armaments and other military materials is under consideration, guidance from the exporting country's department of foreign affairs as well as from the United Nations could be sought before a decision to cover such business is made. The definition of what a "just war" is in ethical terms (see page 133) can also be drawn on, although this is a description still under debate in philosophical circles.

- When a credit insurer has to decide whether to provide support for a project that has negative environmental implications, he may experience considerable difficulties in arriving at a decision that is fair to all participating parties. Where there is no doubt that a project will have severe adverse impact on the ecology, the credit insurer should, for ethical and risk reasons, refuse to provide insurance cover. We have a responsibility towards all rational beings. Ignoring serious ecological problems that will result from a project only so that the exporter can succeed in winning a lucrative order at the expense of the affected population is disregarding their human rights and dignity, is treating them, in Kant's language, merely as means. The problem lies with projects where it is not entirely clear what their ecological impact will be. While an environmental study provided by the exporter may well indicate that the impact is nil or minimal, a similar study by an independent expert may show that there is a major ecological problem with the project. A third study provided by the importing country's government might yet again say something different, depending on the importance of the project to the government concerned. While the findings of an independent expert should be decisive, the exporter and importer may have valid counter arguments, particularly considering that the study of the environment is not an exact science. What should guide the export credit insurer in deciding? The following may be of help:

EQUATOR PRINCIPLES[53].

25 international banks involved in project financing have agreed to what they have called the "Equator Principles", which they designed to help them to ensure that any larger ($50 million or more) projects they become involved in are socially responsible and environmentally sound.

Export credit insurance, the same as project financing, plays a major role in world wide economic development and therefore has considerable leverage in backing and promoting ecologically friendly infrastructure, production and service projects and ensuring that socially responsible, ethical practices are employed in

[53] At June 2005 the following 31 international banks had signed the Equator Principles: Australia: Westpac Banking Corp.; Belgium: Dexia Group and KBC Bank N.V.; Brazil: Banco Bradesco, Banco do Brazil, Banco Itau and Unibanco; Canada: Canadian Imperial Bank of Commerce, Royal Bank of Canada and Scotiabank; France: Calyon Corporation and Investment Bank; Denmark: Eksport Kredit Fonden (Export Credit Agency); Germany: Dresdner Bank AG, HVB Group and WestLB AG; Italy: MCC S.p.A.; Japan: Mizuho Corporation Bank, Ltd.; The Netherlands: ABN AMRO Bank NV. ING Group and Rabobank Group; Spain: BBVA S.A.; Switzerland: Credit Suisse First Boston; United Kingdom: Barclays plc, HSBC Group, Standard Charter Bank and The Royal Bank of Scotland; United States: Bank of America, JPMorgan Chase, Citigroup Inc. and Manulife; European Union: European Investment Bank.
In 2003, 23 of the above banks arranged US$55.1 billion of project loans using the Equator Principles. This represented 75% of US$73.5 billion project loan market for that year (64. Equator Principles).

the execution and subsequent operation of such projects. The “Equator Principles” provide that for all projects likely to have significant adverse environmental impact, or that will have potentially adverse environmental impact on human populations or environmentally important areas, finance should be made available only provided that:

a) An Environmental Assessment (EA) satisfactory to the lender has been completed.
b) The EA has addressed all of the following points:
   - Assessment of the baseline environmental and social conditions.
   - Requirements under host country laws and regulations, applicable international treaties and agreements.
   - Sustainable development and use of renewable natural resources.
   - Protection of human health, cultural properties, and biodiversity, including endangered species and sensitive ecosystems.
   - Use of dangerous substances.
   - Major hazards.
   - Occupational health and safety.
   - Socioeconomic impacts.
   - Land acquisition and land use.
   - Involuntary resettlement.
   - Impact on indigenous peoples and communities.
   - Cumulative impacts of existing projects, the proposed project, and anticipated future projects.
   - Participation of affected parities in the design, review and implementation of the project.
   - Consideration of feasible environmentally and socially preferable alternatives.
   - Efficient production, delivery and use of energy.
   - Pollution prevention and waste minimization, pollution controls (liquid effluents and air emissions) and solid and chemical waste management.

- Compliance with applicable host country laws, regulations and permits required by the project.
- Compliance with the minimum standards applicable under the World Bank and IFC Pollution Prevention and Abatement Guidelines and
- Compliance with the IFC Safeguard Policies.

c) An Environmental Management Plan (EMP) based on the EA and which suggests mitigations, action plans, monitoring, management of risk and scheduling.

d) The lenders must be satisfied that groups affected by the project, including indigenous peoples and local NGOs, are consulted in a structured and culturally appropriate way, which includes making the EA available to the public for a reasonable period in local language and in a culturally appropriate manner. An independent expert advice and review can be called upon by the lenders.

e) The buyer/borrower has undertaken to
   - Comply with the EMP in the construction and operation of the project.
   - Provide regular reports, prepared by in-house staff or third party experts, on compliance with the EMP and
   - Where applicable, decommission the facilities in accordance with an agreed Decommissioning Plan.

f) If necessary, lenders have appointed an independent environmental expert to provide additional monitoring and reporting services.

g) In case of need the lenders will engage with the borrower/buyer and seek solutions to bring the borrower/buyer back into compliance with its covenants.

As the EA demands, the basic facts about the ecological or social problems need to be well understood. If not, individuals will differ about the action that should be taken, not because they have different ethical standards but because they hold different factual views. The need for a good understanding of the issues involved when deciding on the morality of supporting a project is the same as the absolute requirement of defining and agreeing the problem accurately when trying to solve a dilemma in business as discussed in chapter 8 “How to deal with Dilemmas in Business Ethics”.

The “Equator Principles” comply with the normative ethical theory of Kant (the demands of the categorical imperative (see pages 11-17) and Sustainable Development (see chapter 3 “Sustainable Development”)). A project that complies with the “Equator Principles” will be in line with the categorical imperative because the principles force the promoters/contractors and financiers to:

- Consider all people affected by the project;
- Treat those affected not merely as means but as ends-in-themselves;
- Protect the dignity and autonomy of those concerned by informing them properly of the project and by consulting the effected community;
- Take into account not only those presently affected but also future generations; and
- Bear in mind that any decommissioning of the project needs to be carefully planned.

The benefit distribution of a project that complies with the “Equator Principles” is also likely to be the most acceptable, complying with Rawls’ “difference principle” (see pages 24 to 26). A project that damages the environment and ignores the social and health needs of the population may on the face of it be cheaper to build and as a result may have a better profitability, but its benefits will be distributed only to its owners, employees, and the state in the form of taxes. The poor who are detrimentally affected by the project are likely to receive none of the benefits, but have to endure all the harm it causes. A project that complies with the “Equator Principles” will ensure that the harm is minimized, that the benefits are fair and sustainable (provided the completed project turns out to be economically viable) and that those who are affected by it, who are not employed by the project and who are worse off, will at least receive some benefit from the project as a result of the growth of the economy in the region, possible improvement in health care, schooling and other amenities.

Complying with the "Equator Principles" and thus Kantian moral theory should generally be of greater importance to the host country than utilitarian (see pages 8 to 10) justifications because the concern of the affected people – even if they are a minority – cannot be overlooked if the project is to be an economic and political success. The complexity lies in balancing the social and environmental harm against the economic benefit. As Beauchamp and Bowie point out in their book *Ethical Theory and Business Practice* (30. Beauchamp, 2001: 22): "The problem with utilitarianism is to decide whether unites of happiness can be measured and compared in order to determine the best course of action. In deciding whether to open a pristine national wildlife park to coal mining, for example, how does one compare - in terms of utilitarian theory - the combined values of an increase in the coal supply, exports, jobs and consumer purchasing power with the value of wildlife preservation and environmental protection?" The categorical imperative and Rawls's Justice as Fairness provide a more satisfactory guide. Rawls requires a decision from people in the original position, from behind the veil-of-ignorance, as this process will produce a rational answer, not one based merely on a guess as to which action may in the future maximize utility. All the facts, but no partisan views, are taken into consideration in this decision-making process and thus a fairer, more just decision is taken. The categorical imperative forces taking affected peoples' needs into consideration, not only of present but also of future generations. It demands that monetary returns do not trump people, and that careful thought be given to the maxim, the principle on which the final action is founded – it must be universalizable.

The crucial issue is that the "Equator Principles" must be correctly implemented, and here the credit insurer could perform an important role. Although these principles are very ambitious and somewhat idealistic, I believe credit insurers should strongly promote them and make their cover dependent on their adoption.

Finance draw-down certificates should be approved by the credit insurer only if he is satisfied that up to that stage of the project the “Equator Principles” have been complied with or, if there are difficulties, acceptable steps have been taken to ensure rectification. Naturally, there will be exporters and/or importers or borrowers who will have all kinds of reasons as to why the principles cannot or should not be applied to their particular project. Credit insurers may have to be flexible but they should push hard for the adoption of the principles and should demand valid reasons for non-compliance before considering approval of credit insurance cover. This is obviously an area where lenders, credit insurers, exporters, governments and other relevant parties, such as NGOs, should co-operate, exchange experiences and develop refinements to the “Equator Principles”. Such co-operation can only be in the interest of all parties involved and will be of great significance to the socially healthy and sustainable development of projects and economies (see also chapter 6 “The Importance of Institutions”). The credit insurance industry, via its international associations, should develop a common policy of backing these principles. As has been pointed out in chapter 3 “Sustainable Development”, ecologically efficient projects can be more cost-effective than environmentally unfriendly ones.

The “Best Practical Environmental Option” is defined in King II (50. King, 2002: 112) as that option that has most benefit, or causes least damage, to the environment at a cost acceptable to society.

Now that the Kyoto Protocol is coming into operation after the long awaited ratification by Russia, the market mechanisms to help the parties to the Protocol achieve their national emission targets at lowest cost will be established. These will allow, among others, a contractor/exporter in an industrialized country to earn emission credits by funding an ecologically friendly project in a developing country. Credit insurers should be fully aware of these new mechanisms because they can help to reduce the costs of projects and support sustainable development.

Credit insurers should consider such projects more favourably when deciding on underwriting terms and conditions.

Credit insurers, financers and exporters must be seen to act legally and responsibly in their support of large projects as has been demonstrated by the Shell Brent Spar case (see page 45). The media takes great interest in big projects and can seriously harm the reputation of the parties involved if they act unethically.

A credit insurer cannot be a moral preacher – it is not his duty to ensure that everyone does the right and good thing, but he has a duty to support what ever can be done to turn an ecologically unfriendly project into an environmentally friendly one, keeping his own interest in mind. Underwriting projects that seriously injure the environment cannot be in his long-term interest because it increases the credit risk[54] and is likely to result in severe criticism of the credit insurer and even the exporting county. What about projects that prove ecologically damaging only after they have been completed? Provided all reasonable precautions, investigations and enquiries were made before the project was implemented and all indications were that the project would be ecologically acceptable, neither the insurer, nor the financier or the exporter should be held responsible. Kantian ethics is not dependent on the outcome but rather on the Good Will with which the project has been undertaken. That means the project must have been willed rationally by a free agent, employing reason only and acting from duty and on a maxim that is universalizable (see page 11). As the parties concerned with this project seem to have complied and thus acted from Good Will, their action would be ethical. The project's environmental problem would rest with the importer and the importing country's government. The purchaser of a project accepts certain risks and this would include the

[54] A project may, because of its ecological problems, not be viable; both politicians and the local people may attack it; it may stir up international condemnation or be harmed by Green Peace; it could be severely detrimental to the economy of the host country.

environmental risks. It may however rebound on the export credit insurer if, as a result of ecological problems, the importer does not pay.

- The credit insurer should not support an export contract that makes provision for unduly large commissions. Although customs and conditions vary from country to country, commission rates, other percentages or rake-offs that are not in line with internationally accepted, ethical practices may hide bribes and corruption and must therefore not be supported by a credit insurer.

- Providing support for the export of machinery to a country where child labour will be employed to operate it may be ethically wrong, but without knowing the full details of the circumstances prevailing in the importing country, it may be very paternalistic and even harmful to the children involved if the export does not take place due to the credit insurer's refusal to provide the required cover. The insurer needs to obtain the relevant information before making a decision.

- A project that may have as its object the plunder of the natural resources of the importing country for the benefit of some external party should not carry the support of the credit insurer.

- Where the insurer knows that the contemplated project is clearly not viable, he should not support it. This is in the insurer's own interest (increased payment risk) as well as in the interest of the importing country, where it will damage the local economy. So-called "white elephant" projects, such as a palace for the despot of a poor country, have been the source of many financial and political problems, and credit insurers have a duty to help prevent them. Such projects are unethical because the country's resources – its tax revenue for instance – are used for the sole pleasure of the ruler; the resources are stolen from the community. Society is treated by the dictator merely as a means and the act is not compatible with Kant's Formula of the Kingdom of Ends (see page 13).

- The “Berne Union”, the international association of export credit insurers, which has as its members most export credit insurers in the world, agrees on maximum credit terms for particular types of projects in order to prevent ever longer terms of credit and so as to make sure that the size of a project and the type of goods/services involved receive appropriate credit conditions. Credit insurers need to comply with these international agreements.

- Finally, the reader’s attention is drawn to chapter 5 “Cultural Relativism” which deals with the question of ethical conduct in other countries.

3. Domestic and short – term export credit limit underwriting.
   1. The credit insurer markets himself as an expert in credit risk evaluation. The policyholder relies on the insurer to advise him in a highly professional manner about the credit risks involved in his business. Should the insurer not live up to the trust placed in him he will incur losses for both the policyholder and himself and will have abused the policyholder’s faith in him. A central aspect of the credit insurance policy is negated and the insurer will have forfeited his raison d’etre through his unprofessional behaviour. The policyholder has good reason to discontinue his relationship with the insurer and could even have a legal case against the insurer for breach of trust.

   2. An underwriter who does not take sufficient care in deciding whether to accept or reject a particular credit limit acts unethically because he:
      - Does not provide the professional service to which the policyholder is entitled;
      - Does not do the job for which he is employed, trained and receives his salary;
      - Probably damages the business of the buyer by denying credit facilities.
      - Damages the buyer’s reputation by advising the policyholder that cover on the buyer is not available.
      - May preclude the policyholder from transacting some profitable business;

- Prevents his employer from earning the premium he could have earned if the risk is in fact acceptable and a credit limit had been issued;
- Exposes the credit insurer and the policyholder to unreasonable risk if he underwrites the limit[55] even though the risk is unacceptable.
- Acts in bad faith: It is often so that the insured knows more about his client than the credit insurer. Due to the insured's duty of utmost good faith (uberrima fides), the basic insurance principle forming part of all insurance policies, the policyholder is obliged to advise the insurer of any adverse information he may have about the buyer and to refrain granting credit to such a buyer, without specific prior approval by the insurer, even if a valid credit limit on the buyer is in force. This duty of utmost good faith should not be a one sided obligation. The credit insurer (underwriter) should have a similar responsibility towards the policyholder.
- May lose the client for the insurer due to his uncaring attitude.

3. Granting credit insurance facilities that are too generous, too restrictive or subject to inappropriate conditions (e.g., guarantees or other security provisions such as cessions of debtors or bonds, etc.) may have similar consequences as mentioned above and is therefore also unacceptable. Credit limits that are unreasonably high will induce the buyer and the policyholder to overtrade with a concomitant increase to the credit risk. This should not be seen as paternalistic but merely as responsible credit management.

4. Some people believe that credit loss predictability indicators should not dominate business because they encourage risk-avoidance. Those advocating this stance believe that risk taking is the essence of business. Encouraging risk taking enhances business growth, we are told. While I fully agree that risk taking is unavoidable in business, it would be unethical to accept risks willy-nilly or

[55] The policyholder may incur a loss due to the co-insurance clause, which is found in most credit insurance policies. The clause means that the insured will only be indemnified a percentage (usually 80%) of a loss, the insured retaining for his own account and uninsured the remainder of the loss. The reason for the co-insurance clause is that it should induce the policyholder to act prudently and with due care in all his credit transactions.

consciously entering into highly risky transaction only because they might help grow one's business. It is unethical because high risk is synonymous with a high chance of loss and because loss is usually harmful to others, e.g., creditors, shareholders and society, in addition to the agent himself. It is immoral to recklessly or carelessly accept high risk (see also page 165). Weighing the risk carefully before venturing into the transaction is therefore the right thing to do. Credit insurance is a sensible tool for protecting the creditor from major bad debt losses and for safeguarding that credit is extended to reasonable risks. The credit insurer will use financial and other relevant information including viable prediction indicators in deciding whether to underwrite a risk. But clearly the insurer has to be prepared to accept risk, otherwise he would not have any policyholders and there would be no justification for the credit insurance product. The market forces the insurer to be a risk taker and it is the credit insurer's job to try and turn unacceptable risks into acceptable ones and thus enable business to flow where it otherwise may be blocked. This can be brought about by, inter alia, security arrangements, more in depth credit investigations or by negotiations between the creditor, debtor and the credit insurer. As has been pointed out elsewhere in this report, the large numbers and the wide spread (over industries, geographical area, size, etc.) of exposures enable the credit insurer to accept more risk than a single supplier is capable of absorbing. The insurer also acts as an excellent distributor of the costs associated with bad debts. A tiny premium charge paid by all insured creditors covers the bad debt losses of the few suppliers who might well be forced into liquidation themselves had they not taken bad debt insurance.

5. Delaying credit limit decisions unnecessarily represents not only poor service but is also unethical because of the adverse consequences (e.g., not being able to satisfy the buyer's needs) all concerned parties will suffer. But by the same token, taking decisions too quickly is also detrimental. As mentioned earlier, care is required and it is better to provide a quality decision a little later than a poor, careless decision quickly.

6. An underwriter must guard against being unduly influenced by either the policyholder who is pressing for the cover in order to execute a profitable order or by the buyer who is interested in obtaining as much suppliers' credit as possible.[56] In many instances the buyer will use all manner of tactics to talk the credit insurer into providing insurance cover to his suppliers.[57] The underwriter is in a conflict situation vis-à-vis the policyholder. Excellence of service to the policyholder is and must be his aim. Policyholders frequently use this and the personal relationship that develops between them and underwriters as a tool to try and squeeze more cover out of an underwriter than is justifiably acceptable.

7. Collusion between buyers, policyholders and underwriters can lead to considerable losses for the credit insurer.

8. Information obtained form a policyholder needs to be kept strictly confidential. Imagine the consequences if the credit insurer were to pass on details of one policyholder's debtors to another or if he would tell a competitor of the policyholder about the trading details of the policyholder. All information about the debtor - the credit risk - must also be treated with great circumspection. Leaking such information may damage the debtor's business and can lead to a defamation action against the insurer.

9. Underwriters have mandates within which they can bind the insurer to credit risks accepted by them. By exceeding an underwriting mandate, an underwriter can expose the insurer to substantial risks/losses.

10. Problems can also arise with the allocation of a limited amount of available cover. The credit insurer must avoid preferring one policyholder above another and so

[56] Supplier's credit is usually the cheapest form of credit and often obtainable without having to reveal information which the buyer would prefer to keep to himself.
[57] This is usually so because the buyer's business cycle and limited own capital requires substantial, external finance, funding that may not be available from his banker and/or is more expensive.

channel trade to one at the expense of another policyholder. To clarify: The insurer will be prepared to underwrite a certain maximum amount on a particular risk. If he receives applications for cover from a number of clients which in aggregate vastly exceed this maximum, the insurer will have to allocate the available cover between the various applicants. It would be unfair (and against Rawls' Justice as Fairness principle – see page 24) were the underwriter to give the total available cover to just one policyholder, thereby allowing this client to trade with the risk on an insured basis to the exclusion of all other policyholders.

11. It would also be incorrect for an underwriter to knowingly underwrite fraudulent and/or unethical businesses. Such action would expose the credit insurer to additional risks, would misdirect resources and would be contrary to the interests of the community at large.

12. The more difficult risks (size, complexity and/or quality) need to be underwritten with particularly great care, attention to detail, caution, vigilance, experience, knowledge of the trade and professionalism in evaluating and underwriting such exposures. Imagination is required in order to find ways and means to make a difficult risk more acceptable.

13. Due to constantly changing circumstances, continuous supervision, management and re-evaluation of all underwritten risks is vital in order to avoid unnecessary loss for the policyholder and the insurer.

14. Ethics also requires that the insurer keep proper records of the accumulation of the total of all exposures, consisting of credit limits underwritten for a number of policyholders on the same debtor. Only in this way can the insurer control and manage his exposure on a particular debtor and such detail is vital for the purchasing of appropriate re-insurance by the credit insurer.

15. Every insurer needs re-insurance facilities because his own financial strength is not sufficient to enable him to settle major claims that he may be called upon to pay. The policyholders rely on the insurer's integrity, financial strength and re-insurance arrangements when they place their risks with him.

Ethics requires that the credit insurer considers carefully what steps he needs to take to avoid these problems from arising. Here are a number of suggestions:

- Credit limit underwriting is not done on an actuarial basis. Each individual risk requires separate investigation and assessment due to the type of risk involved. The underwriter has a certain authority to bind the insurer and with this authority goes the responsibility to act fairly - with due care - towards all parties. Credit limit underwriting is not an exact science and requires experience and a feel that develops over time. This is particularly so because the factual information available on the risk is often limited. The credit insurer therefore has a duty to the underwriter, the policyholder, and the buyer and to himself and his other stakeholders, to ensure that the underwriter is properly trained in the techniques of underwriting and that he is allowed time to build the experience needed to perform the job diligently.

- The underwriter must be factually neutral. In assessing a credit risk he cannot allow himself to be swayed by the policyholder, the buyer, rumours or emotions. The factual information available and cool, professional judgment is what must be the basis of the decision. It is the underwriter's duty to extensively gather the facts about the risk without using this activity to unduly delay a decision. An ethical decision is an informed decision. A decision that is taken blindly or based on convenient ignorance is unforgivable. It is worth noting here that King II (50. King, 2002: 148) recommends that private companies should also disclose their financial situation in the service of transparency and good corporate governance.

- Consumers demand assurances that the goods they purchase are safe, are produced in conditions that do not deny workers their rights and that they are not damaging the environment in their production, consumption, or disposal. If the consumers' demands in this respect are not satisfied, they may well boycott the product concerned, with obvious detrimental consequences for the supplier that may well rebound on to the credit insurer**.** Labeling of products has become a popular tool for manufacturers to communicate effectively to consumers the ethical standards their merchandise complies with. The credit insurer should take an interest in the way a risk it underwrites addresses environmental and social issues because they do affect the long-term quality of the risk. Not only can the risk be seriously hurt by a consumer boycott but governmental actions, such as fines or even forced closure can lead to a loss for both the policyholder and the insurer.

- A company that complies with a sound corporate governance policy (see chapter 2 "Corporate Governance") will be a more acceptable risk for the credit insurer, and I believe that it is the credit insurer's duty to set an example by following its own responsible corporate governance and ethics policies. Through such actions the credit insurer can help to improve the standard of business conduct and disclosure to the advantage of the national economy.

- In chapter 4 "Impact of Ethics on Business" I claim that central to any ethics is the relationship of the "ought" and the "can". Any "ought" presupposes a "can". Is it possible for a new business to act ethically or is it forced to concentrate on survival only and therefore cannot be expected to worry about acting in an ethical manner? Deon Rossouw in his book *Business Ethics in Africa* (42. Rossouw, 2002: 36) suggests that we could apply Piaget's (20. Piaget, 1948) moral development theory to business as well, e.g.:
    - Survival morality – a pre-moral phase because it takes no cognizance of the interest of others.

- Reactive morality – a willingness to conform to the demands of society in order to gain social acceptance.
- Pro-active morality – the quest to do good through its activities, products and services.

According to this theory it is in order for a new business not to consider others if it is struggling for survival. I cannot see how this can be right. Any business, particularly a new one, is an agent dependent on others, e.g., customers, employees and creditors, and not to keep their needs in mind is likely to result in the demise of the business. If a new business does not care about its customers it will not satisfy their needs and eventually lose them; if it does not pay its creditors it will not treat them as ends in themselves and therefore it will, in the end, not be able to obtain the goods it needs to supply its customers; and if a new business does not care for its employees it will frustrate them and will not be able to trust them to help build the business. The majority of businesses that go insolvent are new ones. Their demise is usually due to poor planning of the new venture, undercapitalization and thus relying too heavily on bank and creditors' money. As a result, the new business may find itself in financial trouble. This leads to delaying payments to creditors and using all sorts of shortcuts in an effort to make ends meet. Creditors do not appreciate being treated like this and they will curtail credit, making it even more difficult for the new business to survive. Customers are not serviced efficiently and become disenchanted with the new supplier. Staff feel insecure in their jobs and may not like what they see and hear. Thus, without proper planning and at least the minimum amount of capital the new business is doomed. It ought never to have been allowed to start because its failure will waste valuable resources and hurt others. I do not therefore believe in Deon Russouw's "survival morality." Even a new business must act ethically and should always comply with Kant's doctrine never to treat others merely as means – this is a basic obligation. It is no doubt so that some of the other ethical duties spelled out on page 42 of this report are of a category that a new business "can" not comply with and therefore "ought" not to have to comply with, e.g., to help develop institutions or to support charitable organizations. For a credit insurer it is difficult to know whether a new firm is acting morally because it is likely to be a minor risk in monetary terms that does not allow the credit insurer the time and expense to investigate the risk in great detail. But if the credit insurer becomes aware of serious unethical behaviour by the risk, he should not grant cover or withdraw existing cover, because an unethical business should not be supported for moral reasons and because it is clearly a higher risk for both the policyholder and the insurer.

- The opposite of a small, new business is the large, well established corporation that sees itself as so powerful that ethical behaviour either is considered an unnecessary and naïve effort or is only resorted to when it suits the organization (which is of course not ethical at all). This attitude has been dealt with in chapter 4 – "The Impact of Ethics on Business". However, what is a supplier to such a business to do when he is treated in a clearly unethical manner by such a corporation (and it is usually the smaller, weaker supplier that is treated in this way because the important supplier will not accept such treatment and can usually force the purchaser into treating him with reasonable fairness)? This may well be a question of "can" and "ought." Even the smaller supplier "ought" not to accept being treated in a manner that hurts his dignity – in the interest of self-respect and being true to his values. But on the other hand the small supplier "can" possibly ill afford not to do business with the large corporation, in which case his overlooking but not condoning the way he is treated should not be seen as unethical. Sometimes a large purchaser, who finds himself in a financially tight spot or wants to squeeze extra credit out of his suppliers, tries to deceive his suppliers through a totally disingenuous corporate structure that precludes an understanding of the financial standing/credit worthiness of the undertaking. Monies are shuffled from subsidiary to subsidiary and suppliers are told that the goods were sent to the wrong outlet; that they should invoice another group company; or they are advised that the cheque is "in the post"; or that some minor, obscure condition in the purchase contract has not been complied with and all this only in an effort to stretch supplier credit. This is a clearly unethical conduct. The credit insurer cannot interfere in the relationship between the purchaser and the policyholder, but he should take note of tactics employed by the risk to delay payment and possibly downgrade the risk (which may have an effect on premiums charged for such a risk) even if it is financially in a sound position. Risks that employ murky, deceptive corporate structures should be viewed with great suspicion by the credit insurer.

- Contrary to popular assumptions, the poor can be a very profitable market, e.g., the micro lending industry. It takes considerable imagination, creativity and determination to develop a market infrastructure and suitable products for unsophisticated, poor people. Pricing and affordability are crucial issues. Because the amounts in which the poor deal are very small, transaction costs for financial services are usually disproportionately high. But South Africa's four leading banks have succeeded in designing a product for the market of about 13,5 million poor, as yet un-banked people with the creation of the MZANSI account. With a MZANSI card a person can use any of the four big banks in the country at costs considerably lower than applicable to the banks conventional customers. Although this is a joint development, the four banks compete freely as far as the charges for the various banking services available to a MZANSI card holder are concerned. The "managed policy" as referred to on page 113 is a way to bring credit insurance to the small business.

Credit is a powerful means to free the poor from the cycle of poverty. It can be the kick-start for a new business. Credit oils the wheels of the economy. What must a credit insurer do to address the credit needs of the poor?

I believe that one must consider the following facts:

- The credit that can be underwritten by credit insurers is business-to-business credit.
- Business has the moral duty to survive, to earn profits and to create long-term wealth (as discussed in more detail in chapter 4 "The Impact of Ethics on

Business”). Its duty is not to act entirely selfless, in a manner that militates against its long-term wealth creation obligation. Business people can be expected to know this principle and respect it.

  - Credit relies on trust (see chapter 7 “Trust”) and trust needs to be earned. A new business has to prove that it deserves credit if it cannot offer security. It has to begin by paying cash and so build a reputation. This may mean that it has to start on a very small scale. A record of cash purchases will be a basis for being granted small amounts of credit which will grow on the back of a good credit paying record.

- In addition to good training and the accumulation of experience, the corporate culture of the credit insurer needs to strongly promote trustworthiness, loyalty and commitment in its employees. This requires recognition of good work done, and giving authority to qualified underwriters together with matching responsibility. The staff needs to be motivated and proud of its employer. All this requires a motivating and enlightened human resources policy. Such a policy supports respect for the dignity and autonomy of the individual (treating employees not merely as means but as ends-in-themselves) and equitable remuneration that backs ethical behaviour. It also provides challenging and satisfying jobs with personal development and growth opportunities, and it requires an open and congenial working atmosphere.

- Quality in the work performed by underwriters is paramount. This needs to be accepted and fully supported by staff. The underwriter must be aware of the policyholder’s requirements. He, the underwriter, must have a good understanding of the policyholder’s business, particularly in relation to questions of credit. All credit limit applications by the policyholder must be dealt with promptly and in an expert manner.

- In addition to being professionals in underwriting credit risks, underwriters need to have good people’s skills so that they can deal sympathetically but firmly with policyholders, debtors, information sources and other people they come into contact with.

- The insurer has to be constantly vigilant in order to detect fraudulent behaviour. An independent credit committee, which has to vet and track large risks, as well as good internal audit, can assist here. A strong corporate culture of openness, trustworthiness, participatory management and a well entrenched ethics policy will help in avoiding underwriting staff becoming involved in unsavory actions. Careful recruitment, good staff communications and enlightened human resource policies are also important tools to fight dangers of deception and double-dealing.

- Underwriters need to know when and how they can make information available to a policyholder in order to help the policyholder to understand certain decisions by the underwriter. As the policyholder could, due to an underwriter's decision, lose large, lucrative transactions, it is understandable that the policyholder may feel justified in demanding reasons from the underwriter for the decision. On the other hand, the underwriter often makes his decision on the strength of information given in confidence. Revealing such information means breaching confidentiality and could lead to losing a valuable information source. Making such confidential information available to third parties may also harm the debtor, and the credit insurer could be sued for defamation.

- The credit insurer needs to have checks and balances in place to ensure that underwriters do not exceed their mandates. Building suitable blocks into the underwriting computer system can easily do this. It is obviously important that mandates are given in line with knowledge, experience and trustworthiness.

- The credit insurer must be careful with blacklisting certain classes of buyers. Well thought through, objective criteria that are ethical and fair need to be the basis for such action. Using race, gender, domicile or religion as a basis for blacklisting would be totally unacceptable. The same applies to a register of delinquent directors or other business people. Such information can be an important underwriting tool.

- Under certain conditions the credit insurer could auction off available credit cover, but this would raise serious administrative difficulties where continuous, ongoing business is concerned as opposed to a once off contract.

- Clearly, the underwriter has to be prepared to listen to all parties involved, e.g., the policyholder, the buyer and all available sources of information. All information so collected requires critical evaluation before a decision is made.

- Underwriters need to be persons of integrity and the credit insurer has a duty to carefully select the people he places in these difficult and responsible positions.

- The credit insurer needs a first class risk administration and management system. Proper recording, controlling, evaluation and periodic re-assessment of the risks is necessary in order for the insurer to meet his business and ethical obligations to all his stakeholders.

- Spread provides the insurer with the basis of his risk absorption capacity. Thus the credit insurer has to strive for the best possible spread in numbers, sizes, industries and locations of his risks. Through the diversified portfolio of his risks, the credit insurer is able to accept the risks from his policyholders at premiums that are attractive to both parties. A credit insurer who sells both domestic and export credit cover is clearly better placed than one who provides only domestic or only export cover. The demand for credit insurance fluctuates vastly between different industries and this hampers the credit insurer’s aim for a perfect spread. Credit and country risks of a superior grade are less likely to be offered to the credit insurer, even though the terms for insuring such risks will be far more attractive than for poor grade risks. The insurer must therefore strive to structure his products in such a fashion that they induce the policyholder also to offer his first class risks for cover. Careful risk portfolio management is an aid to balancing the credit risks to which the insurer is exposed. A well balanced and diversified portfolio is basic to survival and long term profitability of the credit insurer. Ignoring this important issue puts the future of the insurer in danger and is therefore unethical towards his shareholder and clients – an insolvent insurer cannot keep his promise as embedded in the credit insurance policy.

4. Country Underwriting.

   The insurer's moral obligations towards his clients or prospective policyholders in country underwriting are similar to those described above.

   The underwriter needs to be thorough and diligent in collecting the relevant information concerning the political and economic situation as well as historic and likely future developments of the country under consideration. The political and economic relations between the exporting and importing countries need to be kept in mind as well as any special circumstances such as legal, financial, licensing etc. regulations that may affect exports and the flow of payments in foreign exchange.

   The information so gathered requires intelligent analysis and presentation in a country report that concisely and completely highlights the important issues. The report should also draw conclusions and make recommendations so that a decision by the country underwriting committee can be taken.

   The country underwriting committee's decisions will include political and economic risks grading. These gradings will dictate the terms and conditions on which risks on a particular country can be underwritten as well as the premium rate that will be levied on insured exports to that country.

   International agreements, such as sanctions, restrictions or understandings agreed to within the Berne Union (the international association of export credit insurers) need to be complied with.

Country underwriting is clearly a complex job that requires specialist knowledge and skills. Large credit insurers would have people with economics degrees attending to this work. Smaller companies may make use of the services available from such institutions as the World Bank, the *Economist*, their own government etc.

Because the accumulation of many risks resulting from the exports by many of the credit insurer’s policyholders to the same country can result in very large exposures on any one country, careful, conscientious underwriting is crucial in order to avoid mammoth claims.

Meticulous work in this field is an ethical obligation toward the exporting community, the importing county, the credit insurer himself and his reinsurers.

CHAPTER 13

CLAIMS.

I begin this chapter by discussing a number of ethical issues that touch on the promise to pay a debt, the forgiveness of a promise to pay that is not kept, and on liquidation, fraud and recklessness. Thereafter I list a number of matters that the credit insurer needs to keep in mind in order to comply with his moral duties in the settlement of claims.

HAS A TRADE DEBTOR A MORAL DUTY TO PAY HIS DEBT?

A trade debt is the result of a contract. It is the promise to pay the debt that is intrinsic to a contract of buying and selling on credit, and it is this promise that is the moral force behind a contract.

There are three Kantian reasons for a moral duty to pay a debt:

1. The Formula of Universal Law (see page 11). It would not be possible to universalize a maxim that would allow breaching a promise (unless a much weightier issue forced the breach) as this would be irrational – a promise would be a totally meaningless concept, and hence one could not achieve whatever goal one had in making the promise if everyone broke promises. To break the promise to pay would be unfair, unreasonable, based on the wrong intentions and an action not from duty, i.e., it would not be morally

and legally right (unless there are very good reasons), and as we have seen from the discussion on pages 13 and 14, a maxim providing for the dishonouring of a promise is a contradiction. According to Kant, moral actions are based on good reason and impartiality. While the debtor may wish not to pay and enrich herself in this way, such an action would be driven by her personal inclination and would therefore not be ethical. A person of good character, or a business wishing to perform the right action, would act from a maxim that is universalizable. Universalization treats all people in the same way – one cannot just take without giving. The universalization principle is the key for an act to be moral. As has been shown earlier (see page 13), a maxim that would include breaking a promise would be a contradiction in conception.

2. The Formula of the End-in-Itself (see page 11). If we promise something to another person that person relies on it. Were we to break our promise willy-nilly we would ignore the categorical imperative always to treat the humanity in a person as an end, and never merely as a means. Breaking the promise would indicate that we do not care for the person, that we have used the person to get what we want without paying our due, and ignoring the person's rights. As Kant said through the categorical imperative: do not merely use a person to achieve your own goals – to do so ignores the intrinsic dignity and autonomy of the person. Such a maxim would also represent a contradiction in will because it would endeavour to use the concept of a broken promise to obtain something (see page 13).

3. A promise has moral force because it has been made autonomously by a rational being. Autonomy is intrinsic to the human being enabling and forcing the person to choose (as opposed to other sentient beings). A promise creates expectations about the future behaviour of the agent. The agent, through the promise (an expression of free will) limits his future choices, but not his ability to exercise autonomy (which is guaranteed by our being rational agents). As Jukka Kilpi says (37. Kilpi, 1998: 58/9) "The expression of an autonomous will is not just a contingent, ethically irrelevant moment in the endless sequence of events, but a demonstration of the capacity to reshape the future through the imposition and observance of moral principles. This statement

amounts to more than just a definition. It is a true description of a uniquely human characteristic, and as such it is powerful enough to make true the moral principle that promises should be kept. The moral permanence of promissory obligations rests on the autonomy of the promissors, on their capacity to shape the future by introducing permanence which is valid independent of changes of mind and mood."

As has been noted in pages 49 and 50, a corporation has no autonomy but because the persons representing the corporation have (through their autonomous action) agreed to treat the corporation as an agent and built a decision structure that expresses its intention, the corporation has secondary moral agency. Because of this status those who represent the corporation have the duty to honor the corporation's promises, and others their promises to the corporation. When a company makes a promise to pay it does so through the natural person who represents the company. The natural person does not incur personal liability - unless she specifically states so - and her making the promise on behalf of the company does not affect her autonomy because the promise is made on behalf of the limited liability corporation. The limit liability character of the debtor is public and all have agreed to the transaction in the full knowledge of the debtor's status. The parties have thus accepted that the natural person is acting for the debtor and has a personhood quite distinct from that of the debtor and although the natural person is not personally liable for the fulfillment of the debtor's promise, the corporation, as a secondary moral agent, must honor its promises.

FORGIVENESS OF A PROMISE TO PAY THAT IS NOT KEPT.

I stated above that a debtor (whether an individual or a company) has a moral duty to pay her debt and that promises must be kept. However, there is general agreement that there may be good reason to release an insolvent from her promise, provided that her state is not due to her own fraudulent or reckless action. The following are suggested grounds for such forgiveness:

1. Forgiveness of debt can at any time be granted by creditors if they wish to show mercy. However, there is no institutional way to forgive; it can only be done by a unanimous act by all the debtor's creditors.

2. Impossibility of the debtor to comply with the promise to pay, e.g., if the debtor simply does not have the funds. As has been said earlier, an ethical "ought" implies a "can". It would be absurd to impose a moral duty where the performance of such duty is impossible.

3. Utilitarians believe that it is ethical to release an insolvent from his promise to pay because such release is seen as providing the best outcome for the debtor, for society and often also for the creditors. Clearly, for the debtor it is advantageous to be released, and for society it also seems preferable because a debtor who is for ever obliged to repay his creditors has no incentive to find a new way to earn an income – it would stifle economic initiative. Often insolvents cannot repay their debt in any case, and creditors therefore do not lose out if a debtor's promise to pay is exonerated through liquidation. It is also argued that the supply of credit is elastic – as credit losses increase, so the price for credit to debtors will rise, meaning that all debtors will have to pay for the few that default. Thus creditors do not lose out. Nevertheless, the utilitarian endorsement of freeing the debtor from her duty to repay her debt through liquidation is subject to all the criticisms of utilitarianism as pointed out earlier in this report (see pages 8 to 10), that is of calculating the actual benefit to all parties, disregarding the very real harm that may be done to a creditor and absolving the debtor from her moral duty to comply with her promise merely for consequential reasons.

4. In terms of Rawls's distributive justice, one can also argue that the insolvent is in the worst position and ought to be brought into a more equal standing with others. This would be achieved by expunging her debt through liquidation/sequestration.

5. As has been said earlier, in accordance with Kantian theory, a human being has autonomy. The autonomy of the person means that she has a prima facie moral duty to

keep her voluntarily made promise to pay her debt. But, this duty falls away if it becomes impossible to perform in accordance with her promise, because a duty to do something that cannot be done is inherently contradictory. A promise narrows the promissor's future choice and if either intentionally or unintentionally her promise removes all her choices she has lost her ability to make free choices and thus her autonomy. For instance if her promise to pay cannot be fulfilled because she does not have the means, and if her creditors will not forgive her, she can no longer make, in her economic life, free choices. As an example, according to law, an unrehabilitated[58] insolvent is not able to start a new business, may not enter into any credit transactions, and is in fact in a position similar to that of a minor. In such a situation a debtor has become totally subordinated to her creditors; she is denied her freedom of will in economic matters and can therefore no longer be held morally responsible for her promise to pay her debt. Having no autonomy because there is no freedom left to make a choice is different from breaking one's promise. In the first instance one has no way to choose and one's life can no longer be influenced by one's will, whereas in the second instance one can always decide to honor one's debt. The institutional discharge of debt, i.e., the liquidation of the debtor expunges the debt and thereby frees the debtor to chose again – she has regained her autonomy. This is the basis for Kantian ethical theory supporting the institutional liquidation process as a tool for an insolvent to regain autonomy. Non-discharge of debt through the liquidation process would amount to debt bondage – a status similar to slavery. As Kant has noted, a person's natural right ceases to exist if she is nothing but a debtor. The way out is to grant an insolvent a discharge of her debt, which can be seen as an expression of the Kantian concept of treating people as ends in themselves (37. Kilpi, 1998: 81).

LIQUIDATION DIVIDEND DISTRIBUTION:

The liquidation of a company requires the distribution of the company's assets among its creditors in accordance with the debts they proved, and if there remains any residue it needs to be distributed among the company's shareholders. Such a distribution is done on

[58] Once an insolvent has gone through the insolvency process and her creditors have been settled in terms of the insolvency procedure, she has to apply to the court for rehabilitation. This tends to be a reasonably simple process.

a pari passue basis – each receives from the pool of assets remaining after preferred creditors have been settled in full, the same percentage of the debt owed to the respective creditor. Is it fair that every creditor receives the same percentage of his claim, or would it be more just to apply the Rawlsian difference principle (see page 24) which would maximize the worst off creditors' shares?

Liquidation is an orderly collection principle that is much preferable to a first grab system. It is not a mechanism to redistribute creditor's rights that existed before the liquidation occurred. It seems therefore correct to use the pari passue basis unless all the affected creditors agree to some other method of distribution, e.g., in large liquidations it is sometimes agreed, for administrative reasons, to pay all the small creditors out in full.

FRAUD, RECKLESSNESS AND NEGLIGENCE:

Ethics demands that those who commit fraud should be punished. Thus a debtor who is being liquidated as a result of a fraudulent act is not entitled to be released through liquidation procedures from her promise to pay her debt. Creditors should, in addition to liquidating the debtor, take action against her under criminal law for the fraud perpetrated by her. According to the Oxford Dictionary fraud is defined as "criminal deception; false representation by means of a statement or conduct, in order to gain a material advantage. If fraud is used to induce someone to part with money, this may amount to theft." Fraud is constituted by the distinctive attribute of causing damage with intention, i.e., by false pretences and other ways of seeking improvement in one's own position by misleading creditors. I don't believe there is any moral theory that can condone such behaviour.

The distinctive characteristic of recklessness is disregarding the consequences or danger of one's action – it means knowingly accepting excessive risk of harm. But what is excessive risk? With the privilege of hindsight, one may conclude that any firm that is liquidated acted recklessly, otherwise it would not have reached this state. However, there is risk in any business, and debt always involves the risk of harming a creditor. A company is entitled, as a secondary moral agent (see page 49), to risk its property in business operations, both as a debtor or as a creditor. In fact there would be no business without the entrepreneur's willingness to take some risk.

It seems impossible to say in advance where the line should be drawn between acceptable and excessive financial risk. It would therefore be wrong to punish a company that made a mistake in its judgment and as a result went under. But as indicated earlier, if the acceptance of high risk is done with the intention of harming the creditor, the act would be fraudulent. If the high risk is accepted in the full knowledge of a person who ought to understand the unacceptable high level of risk, e.g., in a financial transaction by a financially well qualified individual, or one who makes out to be such a person and others are harmed as a result, then I believe the acceptor has acted recklessly, should not be released from her promise and should be penalized. It is the creditor who must consider before extending the credit whether the debtor has sufficient knowledge and is sufficiently circumspect to deserve the credit. If the debtor has withheld vital information or made dishonest disclosures, a creditor has reason to claim that the debtor should not be released through liquidation proceedings and should be punished for fraud or recklessness.

COLLUSION:

Collusion is an agreement between two or more parties in order to prejudice a third party, or for any improper purpose. Collusion is unethical because it has as its aim to harm others or enrich the colluders at the expense of others.

Collusion to carry out an illegal act is punishable in terms of criminal law. Where a debtor has colluded with others to be liquidated with the purpose of being released from promises and/or debts, she should not be set free from her obligations and given back her autonomy after liquidation, but should be sued under criminal law.

NEGLIGENCE:

A failure to comprehend the risk in a credit transaction that a reasonable person would have seen is not a morally punishable act. However, if the debtor knew of the excessive risk and in spite of this she went ahead with the transaction, it would be a case of recklessness. But, as noted earlier, it is usually very difficult, if not impossible, to know whether a person applied her mind carefully enough to a situation. Someone who claims to be an expert in a particular field can be expected to understand the risks connected with an action in his area of expertise and would rightly be judged much harsher than a layman. A credit underwriter would therefore act negligently; he would display a lack of proper care and attention and act unethically if he did not consider all the issues that can reasonably be expected from a credit specialist to be taken into account when making a decision, for instance on a credit limit. Such negligence by an underwriter would be culpable carelessness, could be seen as a breach of the duty of care which a policyholder can expect from the insurer and might give the insured a right of action against the credit insurer under the law of tort.

Generally, recklessness and negligence are morally bad only if a criminal intent is present except, I believe, where people who hold themselves out as expert – and probably charge for their "expert" advice – do not pay the attention to a situation that a reasonable person could expect from them. Such experts have either misrepresented their skill or have shown no respect for the dignity and autonomy of their counterpart and these are clearly unethical acts.

* * *

The following are ethical issues that the credit insurer needs to keep in mind in his claims processing and other related activities:

1. Any claim is the moment of truth for the credit insurer. The policy is a promise to indemnify a loss on certain conditions and for this promise the insurer has received premiums, often long before he is asked to make good on his promise. It would be highly unethical if the insurer would not fulfill his promise in a correct and efficient manner. Claims that are lodged with the insurer need to be attended to efficiently, promptly and professionally.

2. Once the insurer has received a claim, he needs to assess the claim carefully and diligently. Where such a thorough assessment may not be feasible because the claim is

for a minimal amount, the insurer must give the benefit of the doubt to the policyholder if there is any uncertainty about the validity of the claim.

3. The insurer should find reasons for paying a claim rather than trying to find fault with the submitted claim. He should not, in order to avoid a claim, try to find little administrative errors on the part of the policyholder or pick on trivial technical issues that do not affect the loss or make a material difference to the credit insurer, e.g. late submission of a claim (unless it is by a material period that would affect the insurer's reserving policy or re-insurance arrangements).

4. Material breaches of policy conditions must, however, lead to repudiation in order to be fair towards the insurer, its shareholders and re-insurers. The reasons for refusing the claim need to be fully explained to the policyholder and suggestions offered in order to avoid a recurrence of repudiation. Any attempt by a policyholder to defraud the insurer needs to be handled by the insurer in a strict and resolute manner and in accordance with the relevant conditions provided for in the policy.

5. The credit insurer should, where required, assist the policyholder in the handing over of a debtor to attorneys and in the conducting of legal action against the derelict debtor and/or guarantor of a debt.

6. The insurer has a duty to make every effort to mitigate a loss, e.g., address the delinquent debtor directly – with the prior approval of the insured – in an effort to obtain payment from him before a claim under the policy is due. Where there are misunderstandings or disputes between the debtor and the policyholder, the insurer should help sort them out. Because the credit insurer is often in a very powerful position due to his heavy involvement in the debtor's business, pressure by him for payment of over-dues on the delinquent debtor can be very effective because the buyer realizes that the insurer could withdraw cover provided to many of his other suppliers and such action could precipitate the demise of the debtor's business. Using his position

in this way should not be seen as unethical or as blackmail on the part of the insurer provided he handles the collection effort in a professional and correct manner.

7. The credit insurer needs to act responsibly. By taking too tough a line with a particular defaulting debtor he may push the debtor into insolvency. But, on the conversely, if he is lax in his actions, the credit insurer may increase the losses for all concerned (as the saying goes: the first loss is usually the best loss). The insurer must ensure that he does not damage any long-term supplier/customer relationship through the collection effort. An agreed and successful repayment plan will provide opportunities to the policyholder for future sales.

8. The insurer has an obligation to guide a policyholder in decisions to be taken concerning the following matters:
    - Whether to accept, reject or alter compromises or schemes of arrangements;
    - Whether an investigation in terms of the insolvency act into the affaires of the insolvent firm should be undertaken;
    - Who should be appointed as liquidator;
    - Whether or not the creditor should prove his claim against the insolvent estate;
    - How to address other issues that may have to be voted on at creditors' meetings.

    The obligation results from the insurer's claim that he is a specialist in the field of business-to-business credit.

9. The insurer should, where necessary and where he can, prevail upon the liquidator to act ethically, e.g., to ensure that his actions are fair towards all creditors, that they are legal and practical. In many cases the credit insurer may indirectly be one of the largest creditors of an insolvent estate due to the accumulation of amounts owed by the debtor to all the insurer's policyholders. The insurer can therefore influence the manner in which defaulting debtors are dealt with and has a moral duty to guide proceedings to secure an ethical outcome. As such the insurer can help direct the liquidations industry toward correct, clean and fair dealings to the advantage of all concerned. Foreign

prospective investors will want to be satisfied that the host country's insolvency procedures are efficient, correct and ethically carried out.

10. Invalid claims against the estate, fraudulent actions, incorrect preference of certain creditors, the withholding of important information, coercion, incorrect recognition of securities or purported securities, the hiding or wrongful dispossession of assets or the unnecessary delay in bringing the liquidation to conclusion are all actions that the credit insurer can often prevent in the interest of his policyholders, other adversely effected creditors and his own business. The credit insurer should maintain a blacklist of all those liquidators who are inefficient, untrustworthy and have acted unethically.

11. Fraudulent behaviour by directors, owners and management of the insolvent business must be discovered and punished. The insurer is many a time in a good position to notice such unethical actions and support measures that are in the interest of all creditors (see paragraph 16, page 171 for an example).

12. The credit insurer should insist on receiving copies of reports prepared by liquidators and/or judicial managers in terms of sections 311, 400 and 402 of the South African Companies Act dealing with possible criminal or personal liability and acts which may disqualify directors and officers of the company from holding such positions in future.

13. In order to be able to follow up on over-dues from foreign debtors under export policies, the insurer needs a good network of debt collecting agents and attorneys situated in the various countries for which credit insurance cover is available. The insurer's colleague credit insurers in such countries are also very useful partners in the collection of arrears.

14. Losses that are due to political actions by an importing country need to be followed up by the credit insurer on behalf of the export policyholder and in the insurer's own interest. This can be done by:
    - Calling for the assistance through diplomatic channels of the government;
    - Seeking help from the colleague credit insurer in the importing country;

- Reporting to and threatening withdrawal of credit insurance cover worldwide through the members of the international export credit insurance association – the Berne Union;
- Negotiating a settlement agreement with the defaulting importing country's government; and
- Being, in case of need and where appropriate, part of an official debt rescheduling agreement.

15. Insufficient, impractical, loose, deficient insolvency laws are detrimental to business, economic development and investments, and the credit insurer needs to play a constructive role in rectifying and redrawing the necessary laws and regulations. The credit insurer has to engage government and other relevant parties to ensure that the Insolvency Act is brought and kept up-to-date, that it prescribes practical, effective and fair action and that breaches of criminal law by delinquent directors and officers are appropriately punished. Sufficient resources must be available to the State, the Registrar of Companies, the Police Services and other relevant people in the judicial system for these bodies to be able to perform their duties in an efficient and effective manner. (See also chapter 6 "The Importance of Institutions"). South Africa's Insolvency Act is in dire need of a complete rewrite. It was promulgated in 1936 and no material changes have been made to it since. Work on a new act has been in progress on and off since 1988 but it seems that certain parties are not prepared to agree to necessary compromises in order to bring the new act, which will be known as the "Bankruptcy Act", to finality. All parties concerned, including government and creditors such as the South African Revenue Services and the Labour Unions, need to support this effort and ensure its speedy accomplishment.

16. Has a credit insurer the moral duty to pursue a defaulting debtor by taking legal action against the firm, and, where indicated, against its directors, owners and managers and, where appropriate, against any guarantors of the debt? I believe he has because of his prominent position in the field of business credit. Only by taking tough action where necessary can foul play, corruption and fraud be countered. While such action may also

result in the collection of additional salvages for both the policyholder and the insurer, which would be sufficient justification for proceeding along these lines, unfortunately the legal costs involved are often so high that they exceed any possible recovery and the time and expertise that needs to be set aside to manage such actions is extensive and costly. It often takes years to bring such proceedings to conclusion.

17. Is it in all cases right to liquidate a business that cannot pay its creditors, and has the credit insurer a duty to consider preventing such action in the interest of the future of the business, its employees and other stakeholders? Modern insolvency laws, for instance in the UK, tend to make it more difficult to liquidate a business that is in payment default. Efforts need to be made, in terms of such thoughts, to provide business recovery services, to seek ways and means to save businesses from going to the wall. In the US the law provides for Chapter 11 protection for businesses economically thought to be deserving cases. This stays all actions against the business in order to give it time to recover and then repay its old creditors over an agreed period. In South Africa we have a similar situation under Judicial Management (section 427 of the Companies Act), where the judicial manager can obtain new credit for running the business on the basis that such new credit has preference over old credit. A further possibility under section 311 of the Companies Act is to enter into a "Scheme of Arrangement" which usually results in a compromise of debt. Creditors accept such a scheme to avoid a drawn-out winding-up procedure. However, secured creditors (who are usually the largest creditors) and a conservative attitude by the courts normally prevent these mechanisms from being employed. Credit insurers should support rescue efforts where they are clearly deserving because it will help resuscitate some businesses and in the end result in full recovery of the amounts owed, although over a protracted period. Such support should be withheld where there is not a good chance of success because in such cases inefficient business, which has no right to continue under protection, will be encouraged at the possible expense of new, more efficient enterprises (see page 177 (case 2) for an example of a credit insurer's dilemma in deciding on a rescue operation).

18. Where the insured has employed the services of an insurance broker, the insurer needs to keep the broker fully appraised of developments in claims cases.

19. The credit insurer needs to keep in mind his reinsurance arrangements in all claims matters. Where appropriate or required by the reinsurance treatise, the re-insurer needs to be informed or even consulted before very large, contentious claims are settled.

20. A competent salvage operation is essential so that the insurer can effectively follow up on debts which he has indemnified and where there is a possibility of making some recoveries. As the insurer never compensates 100% of the loss sustained by the policyholder (co-insurance principle – see chapter 10 “Introduction to Credit Insurance” – page 89), he has the duty to account promptly to the policyholder for his share of any such salvage received.

21. Clearly, the insurer has a moral duty to employ well qualified, professional staff to handle all claims issues and to deal efficiently and quickly with any claims queries raised by a policyholder.

22. Last but not least, the insurer must have a professional, disciplined and reasonably conservative reserving policy. The proper and careful preparation and constant maintenance of the following reserves:
    - Claims;
    - Salvages;
    - Incurred but not reported claims (IBNR);
    - Unearned premium (UPR);
    - Statutory reserves;

    is crucial to the health of the insurer. Conservative reserving is an important part of good corporate governance (see chapter 2). The correct reporting of his financial results and figures to shareholders and the effective management of the reinsurance treatise depend on adequate provisions for the items listed above. It is not only a matter of establishing reserves based on historical evidence but the insurer also needs to evaluate carefully anticipated market conditions in order to adjust salvage and particular IBNR reserves. Independent actuaries should report to the audit committee and the board of directors on the adequacy of all reserves.

Many of the issues mentioned in this chapter as ethically important are common sense interests of the insurer. Not paying claims or not handling them expeditiously and correctly will soon result in the insurer acquiring a poor reputation, forfeiting trust (see chapter 7 “Trust”) and losing business. But the basic normative ethical theory in which the professional and equitable settling of claims is grounded is Kantian deontological ethics. The policyholder and the insurer have agreed to the terms and conditions of the policy and they are therefore morally bound to abide by them. The insurer has a moral duty to keep his promise and the policyholder must comply with his obligations under the insurance contract.

CASE STUDY NO. 1:

The following case study is based on an actual case and deals with fraudulent and reckless behaviour by directors, owners and management – as referred to earlier in this chapter.

1. A large corporation (hereinafter referred to as "A") wishes to sell a subsidiary because it is unprofitable and does not fit into its re-structuring plans.
2. "A" offers a substantial reward to its financial director (FD) for successfully negotiating and concluding a deal. "A" knows that it will not be easy to sell the business.
3. The FD concludes the transaction with parties (hereinafter referred to as "B") who know that they do not have the funds to pay for the shares in the subsidiary.
4. The sales agreement provides for a deferred payment plan.
5. "B" takes over the subsidiary and milks it of its assets and cash to pay for the purchase.
6. As a result of 5 the subsidiary's resources are depleted and it is unable to pay its creditors.
7. The subsidiary goes into liquidation and creditors lose considerable amounts of money.

Clearly, "B" has acted unlawfully by having used the subsidiaries assets to purchase the shares in it – section 38 of the Companies Act. "B" has also behaved immorally by having entered into the transaction knowing full well that they, "B", did not have the means to pay for it; by defrauding creditors; by having forced the subsidiary into liquidation; and by having milked it of its entire means for "B's" own purposes.

On the face of it “A” may not have transgressed any laws, but has acted in an unfair and unwise manner by enticing the FD into an action that he would probably not have undertaken had he not been encouraged by the large commission. In fact, it can probably be claimed that “A” colluded with the FD in encouraging him to conclude a questionable the transaction. In that case legal action against “A” should be pursued. Certainly any connivance by “A” with the FD would be immoral.

The FD has behaved recklessly in concluding the sale with a party who did not have any means with which to pay the agreed price. He may have shown disloyalty towards his employer, being driven purely by greed but if there was collusion between A and the FD this would not apply. The FD is partially responsible for the demise of the subsidiary, particularly where he, as the financial director of a large corporation, should have foreseen the troubles that are created by selling to someone who does not have the requisite funds.

Both “B” and the FD have ignored what to my mind is the basic ethical duty, namely, to treat others (in this case the stakeholders of the subsidiary) not merely as means but as ends in themselves.

CASE STUDY NO. 2

An example of a Credit Insurer's dilemma in a claims case – as referred to in paragraph 17 (page 172) of this chapter.

These are the facts of the case:

1. The credit insurer (hereinafter CI) knows both the policyholder (hereinafter PH) and the risk (hereinafter R) very well as trustworthy businesses.
2. The PH has a credit limit (see page 121) of R1 million on R.
3. Due to PH's administrative error, PH has R2 million outstanding on R but has always paid premium to CI on an outstanding amount not exceeding R1 million.
4. R is unable to pay its debts due to a considerable appreciation of the Rand. Export competitiveness has sharply deteriorated and imports have become very cheap.
5. R approaches PH and CI with the request to extend the due date for the R2 million debt by 120 days and requests additional new credit of R1 million. R gives as motivation the fact that it is developing a new product that will be competitive and for which there is a good market.

The credit insurer's dilemma:

6. If he refuses the request, R will go into liquidation and the credit insurer will have a loss of R800 000 payable to PH (credit limit of R1 million less 20% co-insurance).
7. PH will have a loss of R1,2 million (R1 million in excess of credit limit plus R0,2 million co-insurance).

8. PH will be unhappy because of the large loss and because of the loss of an important outlet (even R's new product will use PH's raw material).
9. By putting R into liquidation 500 people will lose their jobs.
   BUT:
10. If CI agrees to R's request, he will increase his exposure on R by 100% from R1 million to R2 million.
11. CI is not sure whether R's new product will meet with sufficient success to pull R's business out of its difficulties.
12. By agreeing CI may save R's business and 500 jobs and it may secure an ongoing customer for PH and a continued premium flow to itself.
13. It is quite possible that the first loss. i.e. R800 000 will be the best loss for CI.

Is this a moral dilemma for CI? I think it is because it represents a conflict between reasons of business and moral reasons. From a strictly cold business point of view, looking after only the interests of CI, CI should not be swayed by R's pleadings und apply for R's liquidation. At this stage there may even be a better liquidation dividend for creditors than in some months' time.

However, if CI keeps the other affected parties[59] in mind the situation may not be that clear. Consider:

- PH who is prepared to support R and hopes to retain an important customer.
- R who obviously wants to protect and re-build its business.
- R's 500 employees who wish to keep their jobs.
- R's customers, the market, who may wish to buy R's new product.
- CI's shareholders and
- CI's re-insurers

The latter two may both prefer the certainty and the possibility of the lowest loss.
Further, if R should be successful CI will have cemented its relationship with PH and may even convert R into a new policyholder. The market will see CI as an understanding and valuable business partner who is prepared to take risks – an insurer's business.

[59] I have with purpose omitted other creditors/suppliers of R in order to keep the example simple.

Looking at Laura Nash's suggested way of finding solutions to dilemmas (see pages 69 to 71) for the question that are being answered hereunder) we can say:

a. The problem has been accurately defined.
b. We have looked at the problem from all sides.
c. We know how the situation occurred: The strengthening of the Rand and a reaction by R to this problem which was probably too slow.
d. We are looking at the moral issues of this dilemma because we have a strong loyalty to ethical principles.
e. Our intention in making a decision is to find a win/win answer for all concerned.
f. How does our intension compare with the possible result? This is the million dollar question – we are not certain whether R will succeed with its plan.
g. We know that our decision to support R could injure CI, its shareholders and re-insurers, or, that if we go for immediate liquidation, R, its 500 employees and PH will be hurt.
h. The matter has been discussed with the major players.
i. The question of time is a difficult one. We need to take a decision now and do not have the luxury of being able to wait. It may well be that our decision would be different if we needed to take it at another time due to changing circumstances.
j. Any decision we take needs to be defendable vis-à-vis the board, the shareholders, the re-insurers and the public.
k. The symbolic potential of our action, if understood, would be more positive if we agree to support R because CI would be seen as a caring insurer who is prepared to take a risk in the interest of protecting and re-building a business, saving jobs and standing by his policyholder. This could even be the case should R not succeed.

   If our action is not understood, CI may be considered to have acted stupidly if we support R and cold, irresponsible and typically insurance-like if we do not support R.
l. In this case, I believe more facts would help us to decide or make an exception to our normal way of deciding on such issues.

I believe this analysis highlights the fact that in order to find the best solution CI needs to find out a little more about the reality and beliefs on which R is basing its hope that the new product will succeed. If CI can be reasonably satisfied that R's arguments are sound, it should support R and negotiate with PH about the extent of the new cover, e.g. perhaps they can agree to carrying the additional R1 million new credit on a 50/50 basis or PH may accept that a considerably higher premium has to be paid to CI for the business with R. The excess of R1 million due to PH's administrative error should continue to remain uninsured.

Considering this dilemma in accordance with Jürgen Habermas's "ideal speech situation" or Michael Pendlebury's manner of employing the "veil-of-ignorance" (see pages 74 to 76), we would, I believe, arrive at the same answer. The outcome of the deliberation between the truly equal discussion partners, based on the details described above and provided R does supply credible grounds for the success of the new product would be to support R.

CHAPTER 14

REINSURANCE.

In the same way that an enterprise can transfer certain of its economic risks to an insurer, a re-insurer is the insurer of the credit insurer. Every insurer lays off portions of the risks he underwrites with re-insurers because the insurer's own financial position might be in danger if he were to keep for his own account all the risks that he accepts when writing policies. Just like a policyholder, the credit insurer can, through reinsurance, substitute fixed costs for variable costs, – in other words, calculable reinsurance premiums for claims payments that are difficult to budget accurately.

If the credit insurer does not have sufficient capital and reinsurance, he will not be able to underwrite large and perhaps very lucrative risks or his ability to accept a large number of risks will be curtailed due to their aggregation into large exposures. This would not only mean lost business, but another credit insurer with ample capacity will take business away from the insurer who is short of underwriting capacity. Enough underwriting capacity, correctly mixed (own capital, reinsurance and types of reinsurance) and priced is therefore an important competitive strength. Reinsurance is a vital aspect of credit insurance and is the single most costly purchase. Insurance supervisory authorities (in South Africa the Financial Services Board) will not allow an insurer to operate if he does not comply with the statutory surplus asset ratio or does not have the prescribed solvency.

This legal requirement is there in order to make reasonably certain that the insurer can meet legitimate claims lodged against him and is thus a protection of the interests of policyholders.

The credit insurer will use his capital to carry risks. Thus the stronger he is capitalized, the more risk he can retain for his own account and so save reinsurance premiums. However, the insurer's shareholders will want to see the insurer earning at least a market related return on his capital, their investment. Too much capital may make it very difficult to earn an acceptable return, and too little will make the insurer a poor risk for the policyholders, possibly unable to comply with the statutory solvency margin, and too reliant on re-insurers. Re-insurers will also be unhappy if they feel that the insurer is financially weak and thus unable to participate to an acceptable level in the risks he underwrites. They will either refuse to provide the underwriting capacity or demand more stringent conditions and higher reinsurance premiums. The credit insurer must therefore carefully balance the amount of capital employed in his underwriting operations with the reinsurance facilities he purchases. Reinsurance capacity is somewhat similar to a bank overdraft in other types of businesses. Capital may be more expensive than reinsurance capacity in which case it is obviously in the insurer's interest to make more use of reinsurance and at other times it may be the other way around. This means that the credit insurer needs to assess carefully from time to time the optimum own risk retention in the light of his underwriting risk profile (spread in size, according to industries and geographical areas etc.), claims experience, marketing policy and the level and cost of own capital as compared to the prevailing availability and cost of reinsurance.

The cost of reinsurance depends on the types and mix of reinsurance facilities purchased. It is not appropriate to discuss reinsurance technicalities in this report. Suffice it to say that there are proportional (quota share or surplus) or non-proportional (excess of loss or stop loss) treaties and that these can be mixed in order to provide the most appropriate and cost effective reinsurance cover for the credit insurer.

It is industry practice not to deal with just one re-insurer. An insurer will have a panel of re-insurers with usually one lead re-insurer who participates with the largest share in the insurer's treaties, has the right to agree with the insurer on matters affecting the treaty (such matters are usually detailed in the treaty) for and on behalf of the entire panel and often advises the insurer on difficult insurance issues. The credit insurer must select his re-insurers with care because providing optimum re-insurance requires detailed knowledge of credit insurance and the insurer's business. In a specialist field such as credit insurance, the re-insurer, at least the lead re-insurer, should have a department which specializes in this class of business (including political risk) in order to be able to provide expert service to the insurer. The re-insurer should have relevant knowledge not only from his home market but also from his international connections. A credit insurer must make certain the re-insurers he employs are financially strong, are reliable and have untainted reputations.

The rights and obligations of the parties regarding a reinsurance agreement are set out in a treaty which deals with such things as:

- The class of insurance risks covered, including the geographical scope;
- The inception date of the re-insurer's liability;
- The insurer's underwriting limit and special limit approval procedures;
- The re-insurer's maximum liability under the treaty and a reinstatement clause;
- The premium payable and the method of calculation of premiums for non-proportional business;
- The level of reinsurance and profit commissions;
- Accumulation of risks control;
- Definitions of "any one risk" and "any one event";
- Follow-the-fortune and action clause (the insurer manages the credit insurance business and the re-insurer follows the decisions and actions of the insurer unless they are outside of the scope of the treaty);
- Information and notifications which the insurer will have to supply to the re-insurer concerning risks underwritten and threatening and admitted claims;
- The handling of claims, salvages and ex gratia payments;

- Bordereaux and accounts administration and settlement, including currency issues;
- Premium and claims deposits; and
- Termination and arbitration clauses.

An ordinary reinsurance treaty is simply an agreement to share risk. However, some treaties go much farther and may authorize the re-insurer to inspect, supervise and thus influence the direct insurer's original business by having a say in the determination of some aspects of the basic business policy. It may also empower the re-insurer to help manage the business, rate risks and approve the insurer's policy wordings. Re-insurers may also, under appropriate circumstances, supply the insurer with capital, provide specially qualified staff and give the insurer expert advice and information. The latter may involve suggesting the best suited reinsurance agreement, maximizing and evening out underwriting profits.

As already alluded to in chapter 12 "Underwriting," the political risks inherent in the export of capital goods/services on medium to long credit terms can normally not be placed in the private market. For this reason such business is either underwritten directly by the exporting country's government (through a specially established export credit agency) or the government acts as a 100% re-insurer for such political risks. Such government support seems fair where the necessary credit insurance cover cannot be provided by the private market. Otherwise the export business would be lost. It would however be an unwarranted interference in the market economy if the insurance/reinsurance cover was in fact readily available form the private sector. Where the government acts as re-insurer, it is usual that the insurer can bind the government within certain laid down mandates. Matters falling outside of such authorities will need discussion with and prior approval of the government re-insurer before the insurer can act. Ecological and social issues are of particular importance in the underwriting of exports of capital projects on medium to long credit terms. Both the insurer and the re-insurer should in these matters be guided by the "Equator Principles" as mentioned in chapter 12 "Underwriting".

What are the ethical issues for the credit insurer that arise from such a relationship? I believe the following are the major moral points the credit insurer has to keep in mind. They are all rooted in the Kantian conceptions of promise, deception, fraud, autonomy, trust and the Formula of the End-in-Itself (see page 11), i.e., neither of the parties to the reinsurance contract should treat the other merely as a means but as an end-in-itself.

1. As in the insurer's direct business, his reinsurance relationships are based on mutual trust and complete and full relevant information disclosure. The credit insurer should voluntarily supply relevant information and be candid in his answers to the re-insurer's legitimate questions. The basic principle of reinsurance, namely that the re-insurer is to follow the fortunes and actions of the direct insurer, would break down and the treaty would become unworkable if the re-insurer felt he could not trust the insurer (the opposite is of course also true). The insurer needs to consult the re-insurer on any unusual matter that will affect the treaty and thus the re-insurer's interests, e.g., new or unusual types of risks that the insurer intends to underwrite and cover under the treaty, changes in his underwriting policy or claims payment philosophy and new geographical markets he wishes to enter.

2. The more comprehensive the treaty is, the closer must be the co-operation between the parties. A normal treaty is, in law, an insurance contract; however, a comprehensive reinsurance agreement could be construed to be more, i.e., an insurance contract and a type of partnership. The characteristics of a comprehensive treaty will include some of the points already mentioned above, i.e.:
   - Revenue sharing (profits and losses);
   - The pooling of resources to create economic value for one another;
   - Both parties aim to make a profit out of their co-operation, at least in the medium to long term;
   - Although the insurer has autonomy in running his business, the re-insurer may have certain rights, in terms of a comprehensive treaty, to exercise some control over aspects of the business, to be fully informed about the business and to provide advice and possibly even capital, other assets and expert staff.

But even a comprehensive treaty does not limit the insurer's autonomy and the extra rights granted in such a treaty are one sided, i.e., they give the re-insurer rights over and above those that flow from a pure risk sharing arrangement but not the insurer. A genuine legal partnership is therefore not formed through a comprehensive reinsurance treaty but this discussion highlights again the basis on which a reinsurance contract rests, namely, that of uberrima fides (utmost good faith). Uberrima fides is in insurance language the same as Kant's Formula of the End-in-Itself (see page 11), his demand for the respect of the dignity and autonomy of others. The nexus of contracts (refer pages 49 and 50) which give the insurance and reinsurance companies their power also compels them to keep their promise, to act in utmost good faith, otherwise they will behave immorally.

3. Re-insurers can also offer facilities that will help the insurer to even out his underwriting profit from year to year or stabilize his cash-flow. These are attractive products because the nature of insurance business makes the attainment of reliable profits or cash-flows difficult to achieve due to the uncertainty of the timing and size of claims. Credit insurance underwriting profits can fluctuate widely form year to year, depending to a large extent on the economic cycles. Being able to smooth profits more evenly over the years, either by way of a reinsurance facility or the establishment of an equalization reserve is thus something that the management of an insurance company would welcome. However, such mechanisms distort the real results and thus the financial statements of the insurer. Any misinformation is detrimental to shareholders and not in compliance with good corporate governance.

4. The insurer should appraise his re-insurers, or at least the lead, of his strategies, business plans, corporate governance, sustainable development policies and code of ethics. The insurer needs the full supported by the re-insurer(s) of these policies. Without such backing the parties will not be able to co-operate to the best advantage of all concerned. This does not mean that the insurer must obtain the re-insurer's prior approval (he is autonomous in managing his business) but if the re-insurer is aware of the plans and policies of the insurer he can and should provide an appropriately tailored

reinsurance service. By the same token, the insurer should satisfy himself about the re-insurer's own guidelines concerning these matters and needs to feel comfortable with them for there to be a constructive and long term association. If either party acts unethically or fraudulently toward the other, such action should automatically be grounds for the cancellation of the reinsurance treaty.

5. The policyholder relies on the credit insurer's ability to pay any valid claim promptly. It would therefore be unethical if the insurer would not be able to fulfill his promised indemnity due to the insurer's faulty, unsatisfactory or non-existent reinsurance or due to his non-compliance with the treaty terms. The obligation (morally and legally) to properly reinsure accepted risks, or to be able to provide for them out of own capital, is therefore intrinsic to the policy of insurance. Where very large risks are involved which far exceed the insurer's own capital, a policyholder can insist on a so called "cut-through" clause which, if agreed, would give the policyholder the right to call directly on the re-insurer(s) for settling a loss resulting from the risk concerned.

6. Would it be fair to expect the insurance industry supervisory authorities (in South Africa the FSB) to pay any loss sustained by a policyholder due to the insolvency of the policyholder's insurer? Many countries' governments have established bank supervisory bodies backed by a mechanism that provides compensation to depositors who have lost money due to a bank's liquidation. The situation with regard to insurance companies does not seem that different. If government expends taxpayers' money to set up supervisory bodies, they should put their money where their mouth is and make good losses sustained which are, at least partly, due to the failure of its supervision/control. Such a scheme would have to require that the insurer's auditors confirm periodically to the authorities that the insurer is complying with the terms of the relevant reinsurance treaties. Losses due to fraud by insurers could be financed from a small premium payable by every insurer to the authorities. A system of this type would give additional security to the insuring public, would assist insurers in marketing their product and would give additional assurance to re-insurers.

7. It has also happened that re-insurers have defaulted. For this reason it is important that the insurer regularly checks the financial soundness of the members of his reinsurance panel – a task which could also be controlled via the system suggested under 6. above. As has been said earlier, the insurer has a moral duty towards policyholders, shareholders and all other stakeholders to make certain that the losses sustained from the risks accepted by the credit insurer are appropriately secured by own capital and/or reinsurance facilities so that the claims can be paid promptly and without endangering the soundness of the insurance company.

8. It is necessary that the concepts of “any one risk” and “any one event” are clearly defined in the treaty and well understood by the parties. The most unfortunate case of the terrorist attack on the twin towers of the World Trade Centre highlights the problem. By deciding that this incident represented two separate events the court decreed that the insurers/re-insurers had to pay double the indemnity. These types of predicaments raise legal and ethical questions which are not easy to solve but the outcome of which can have major economic consequences.

9. The insurer should consult the re-insurer before settling very large claims and before agreeing to costly recovery actions. In chapter 13 “Claims” it was suggested that a credit insurer had an obligation to pursue debtors and/or guarantors who have defaulted, particularly if fraud is involved or alleged. As the concomitant legal cost may be considerable, it is only fair that the insurer discusses such action beforehand with the re-insurer.

10. An insurer will sometimes pay a claim even though strictly speaking he is not liable for it in terms of the policy. He will settle the claim or portion thereof because the policyholder has, through unfortunate, unforeseen circumstances not complied with the conditions of the policy and/or because it makes good business sense to make a payment on an ex gratia basis to the policyholder. Is this an ethical action by the insurer vis-à-vis his stakeholders, particularly the re-insurer? Where small amounts are involved and provided the insurer has carefully and honestly applied his mind to the

problem and has pointed out the policy breach to the insured, there should not be any objection because the cost involved is not material and it would be in the insurer's interest to avoid irritating and damaging arguments with the policyholder. However, in case of a large ex gratia payment the insurer should obtain at least the lead re-insurer's concurrence.

In chapter 13 "Claims" I stated that the credit insurer should find reasons for the payment of a claim rather than try to unearth grounds for repudiating it. This could result in a dilemma: on the one hand, the insurer wants to pay claims even if there are small justifications for refusing an indemnity because for marketing reasons, he does not want to be seen as a haggler who hassles instead of paying up. But, the re-insurer – who has to follow-the-fortune and actions of the insurer – may feel that the insurer should adhere strictly to the terms and conditions laid down in the policy wordings (which the re-insurer may have specifically approved). It is for this reason that the insurer needs to disclose his business policy and culture to the re-insurer who should support them. In the end, what is good for the insurer, i.e., his impeccable reputation in the marketplace, will also be good for the re-insurer. But clearly, the insurer must always know what errors or omissions by the policyholder he condones and such a conciliatory claims payment policy cannot apply to policy breaches that will have a meaningful effect on the insurer and his stakeholders including the re-insurer(s).

11. Sometimes insurers employ reinsurance brokers to place their business. Although the broker can help in designing a suitable reinsurance programme and in placing it on acceptable terms with re-insurers, the insurer should always remain closely involved and know his re-insurers. Because reinsurance is a business that rests largely on trust, insurer and re-insurer need to visit each other in order to develop close relations and understand one another's business. The proper reinsuring of the ceding company's business is complicated, expensive and vitally important, and the insurer should therefore have a suitably qualified person on his staff to deal with these matters in consultation with the company's CEO.

12. Good and relevant statistics are an important tool for the insurer to help manage his business and are essential for devising an appropriate reinsurance programme. But the statistics must be meaningful and not be used, in the words of Andrew Lang, "like a drunken man uses lamp-posts – for support rather than illumination."

13. Mention has been made in chapter 11 "Marketing and Sales" of the significance of Black Economic Empowerment (BEE) in South Africa. It would be to the advantage of the insurer if he could purchase his reinsurance facilities from re-insurers who are BEE compliant. As most re-insurers are international companies not registered in South Africa this may be a difficult goal to achieve but re-insurers need to give this matter serious thought (see also chapter 5 "Cultural Relativism").

14. Finally, confidentiality on the part of both the insurer and the re-insurer is most important. The re-insurer will be dealing with many credit insurers and needs to treat information he obtains from each of them with the utmost confidentiality.

An ethical credit insurer can expect an efficient, fitting and excellent reinsurance service complete with advice that should help in building and nurturing his business.

Insurance is an important strand in the economic fabric and if it is rotten the entire structure is weakened. That is why people like the New York State's attorney-general, Eliot Spitzer (also referred to in chapter 11 "Marketing and Sales") are so critically important in keeping this industry (and others) on the straight and narrow, although some no doubt do not like Spitzer and his mission. Even if his motives are not entirely altruistic he performs an important job. During the past decade or so many businesses have forgotten or conscientiously ignored ethics in favour of greed, and the result can be seen to-day on practically every page of the business press. The time has come to turn this trend around in the interest of all and in particular for business' sake.

Re-insurers, insurers, brokers, their clients and other stakeholders such as auditors, lawyers and shareholders must realize that greed, fraud, corruption and sly behaviour are neither in the long term interest of their businesses, nor will support economic development, growth and healthy enterprise. The credit insurance industry needs to seriously deliberate, together with its relevant associates, about the efficacy of its present moral attitudes and policies. It is time to reconsider its ethical institutions and employ its international associations to manage a code of ethics for the industry.

PART III.

CODES OF ETHICS.

Chapters 15 to 20

CHAPTER 15.

WHY A CODE OF ETHICS?

The previous chapters showed that ethics is often a forceful driver of profitable and long term wealth creating business. The Conclusion of part I of this report (page 81) made the point that a business must in the first place be an ethical entity. To achieve this and to remain a respected and trusted organization, a business should draw up a code of ethics (or a policy of conduct) and continuously refine it as circumstances change. Any business must make certain it conducts its affairs in accordance with the agreed code. A code is worthless if it is not enforced, but by the same token ethics is not an exact science. A code of ethics can therefore be no more than a guideline and actions cannot always be blindly based on such a guideline. Careful reflection, judgment and experience is required when applying the code and deciding on difficult moral questions.

A code of ethics, according to Deon Rossouw (42. Rossouw, 2002), is a document or agreement that stipulates morally acceptable behaviour within an organization. The Hippocratic Oath, which still governs the ethical behaviour of doctors, was first established more than two thousand years ago. Ethics in the professions and in business is thus not a new idea or a new vogue.

Ethics guidelines can reside in the head of the owner of a one-man operation, but as soon as the number of persons working in a business increases, the ethics policy needs to be a shared one so that every employee subscribes to it and behaves accordingly. A code of ethics should be in writing to ensure uniformity and consistency over time, place and person; a written code is needed so that there is no difference in the degree of information for all, so that every employee has ready access to it and so that the actions of every employee and of the business as a whole can be measured against the agreed standard. In the heat of the moment it may be difficult to consider all the ethical issues that should guide the decision-maker. A code of ethics is a fast and comparatively simple tool to direct one toward the relevant reflection and right action.

Although morally wrong actions are always due to personal action, it would be wrong to conclude that it is always only a question of the individual's ethics or lack thereof. The firm is responsible for ensuring a business climate in which misdeeds (e.g., stealing) are discouraged. Many corporate moral wrongs or untoward events are the result of a systemic problem. People are often encouraged to act wrongly by the corporate structure (work distribution and integration), by historically grown community values and by inappropriate incentive systems – see also pages 109 and 110. The decision process of a business must incorporate focused, systematic, co-coordinated and binding ethics guidelines, i.e., a code of ethics.

When things go wrong it is not helpful to look only for the guilty individual. Such action excuses everyone else and does not address the administrative processes, policies or values of the company that may have encouraged the bad behaviour. An example is the Baring Bank debacle a few years ago when one of its senior, rogue dealers in Singapore, Nick Leeson, committed the 230-year-old bank, apparently unauthorized, to transactions that led to its collapse. Leeson was jailed – correctly, but it seems clear that the bank's policies were either insufficient or not controlled. The bank's corporate environment (its poor risk management system) encouraged Leeson's behaviour and the bank's compensation policy rewarded success without sufficient consideration of moral issues. The selection, training, mentoring and delegation process was flawed. Thus the bank's management was not blameless.

A code of ethics is not a legally binding policy but it is a self-regulating measure, which provides a guideline and which obtains its force from joint (management, staff and other stakeholders) formulation, from monitoring compliance and from sanctioning breaches. Often the employment contract incorporates the company's ethics policy. The moral credibility of a business depends on the conduct of its staff and it is therefore crucial that the staff is part of the formulation process and fully subscribes to the final code of ethics.

Ethics management requires "value management," which is needed at all levels of the business decision process. A well accepted value system/code of ethics can be the strongest, simplest, most positive and cost-effective management tool. If all people in an organization agreed to a code of ethics, control would be driven by those who agreed and are committed to the code. The personal commitment supports self-discipline, responsibility, and loyalty to the team. Further, a code of ethics is useful because it has orientation (minimum ethical standards), motivation (joint goals can inspire and sharpen the image of the business) and limitation (the code documents the business's preparedness to accept moral responsibility) functions.

A code of ethics helps a company to take the morally responsible action it wants to pursue, but which it might, under competitive pressures and without a code, not take. Competitive pressure may not allow the time for thoughtful deliberations – a code can provide a ready guide. Competitors who do not care about ethical issues may have an advantage but this is likely to be a short term, Pyrrhic victory. The code is an aid in defining ethical issues such as conflicts of interest, receipts of gifts, other questionable payments and actions.

A code of ethics provides us with shared reference points. Without a clear sense of our values we may simply ignore a moral issue – with a code, a value statement, we will at least try to rectify it.

Industry-wide codes can obviate the need for government regulations which are usually expensive to comply with, inflexible, unfair, top-down and therefore demotivating. Government regulations are often seen as challenges to find ways and means to circumvent them rather than to achieve the desired effect. An ethical code is to the mutual benefit of suppliers and purchasers. This is particularly so in credit insurance where the knowledge imbalance of the product between the selling and purchasing parties can lead to uncertainty and suspicion. A code of ethics can help remove distrust from the prospective customer while at the same time be an assurance to the buyer. An industry-wide code is likely to be obeyed by the competitor as well.

To summarise: a code of ethics should be formulated and implemented in order to:

1. help the business to be an ethical entity and to enhance its reputation;
2. make clear what is acceptable and unacceptable practice;
3. guide and ensure uniformity, consistency, efficiency and stability in the decision-making and conflict resolution process;
4. advance joint decision-making and motivate staff;
5. provide ready access to and congruency of information concerning the company's moral values;
6. aid defining ethical issues (e.g., what is an acceptable gift? what is a bribe?) and so make it easier to detect ethical infringements;
7. guide company policy by providing a set of corporate ethical standards and to describe and codify its own value and culture system;
8. encourage ethical behaviour of the board, managers and employees at all levels;
9. support good information and risk management systems;
10. highlight wrong corporate policies and structures and promote organizational integrity and co-ordination;

11. promote awareness of, and sensitivity to, ethical issues;
12. assist customer and market relationships and cooperation between stakeholders;
13. provide a cost-effective and employee-friendly human resource management tool;
14. specify the enterprise's social responsibilities (including corporate governance and sustainable development);
15. obviate government regulations;
16. cater specifically, where required, for cultural changes. For instance from an authoritarian to a more open, democratic organization, from mass standardized production to a custom built product/service line, from a small to a medium or large organization; and
17. as a result of all this, underpin profitability and long term wealth creation.

Business should act ethically because moral behaviour is in its long term interest, because it believes it is the right thing to do and because it is to the benefit of all its stakeholders (including the community in which it operates). That is why business should focus on self-regulation (a code of ethics). This thinking is grounded in the Kantian doctrine: "do what is right because it is right rather than simply because it is what the law requires." Although Kant addressed this tenet at persons rather than firms, people who run businesses and live this doctrine will have high moral standards and thus steer the business along an ethical path.

All the arguments listed in 1 to 17 above apply to credit insurers just as much as to any other businesses and they are mostly founded on Kant's ethical theory as summarized in his categorical imperative.

CHAPTER 16

THE FIRST DECISIONS.

Before beginning to draft a code of ethics, a number of ground rules need to be considered and accepted. These are:

- The audience at which the code should be aimed;
- The process that should be employed to develop the code; and
- The form the code should take.

I. THE AUDIENCE AT WHICH THE CODE SHOULD BE AIMED:

1. The code could be for internal use only with the goal to:
    a) establish agreement about ethically acceptable behaviour within the company;
    b) facilitate moral decision-making;
    c) promote organizational integration and co-operation;
    d) foster motivation, trust and pride (not conceit).

    Or it could also be:

2. The code could be addressed to external parties, that is, to customers, shareholders and suppliers in order to enhance the company's relationships with its external stakeholders.

3. The code could further be directed at government so as to avoid state interference and legislation.

4. A code can also be used to pre-empt legal action as wide publication of such a code can demonstrate the organization's intention to circumvent moral malpractice.

5. If the code is required for a multinational business and international distribution, the rules, regulations and customs in the various countries where the company operates need to be kept in mind (see chapter 5 "Cultural Relativism"). An international code of ethics is far more complex than a purely domestic one.

Depending on the addressees, the reason for the formulation and implementation of a code of ethics, as highlighted in points 1 to 17 at the end of the previous chapter, may change in importance. Because of the interdependence of the business and its stakeholders, I believe a code of ethics should be addressed to all the stakeholders – see also page 51.

II. THE PROCESS OF DEVELOPING A CODE OF ETHICS:

1. The basic beliefs and attitudes of the staff need to be considered. The employees are at the centre of action implementation and their individual value systems cannot be ignored. A successful code of ethics will not just represent the thoughts of top-management. People need to discover the values for themselves (and must be given the opportunity in accordance with Kant's definition of dignity and autonomy to do so) before they will subscribe to them and act accordingly. For instance, a business that employs a large number of non-Christians will find it difficult to introduce an ethics policy that is based entirely on Christian values. The level of trust that prevails in an organization is crucial for a successful development of a code of ethics. If there is low trust, there will be a great deal of skepticism, and in such a case the issue of trust should be addressed before a code

of ethics is discussed, designed and introduced into the company (see chapter 7 “Trust”).

2. A code of ethics will have power only if the participation of those concerned in the discussions of the relevant issues is as wide as possible. Thus, where a code is for internal use only, as many staff members as reasonably feasible should participate in the process. Participation of the employees leads to a democratic process in finding consensus concerning ethical guidelines and allows for the consideration of different religious and/or cultural beliefs. Ethical behaviour cannot be forced; it depends on the jointly accepted attitudes and beliefs of the staff. Corporate values will take root in an organization only if they are shared values. All other relevant stakeholders, e.g., customers, suppliers, shareholders, need to be consulted for a code that is to serve external purposes, and, where the code is to serve both internal and external aims, all stakeholders should be involved in one way or another in developing the code. Establishing trust between stakeholders requires consulting them.

3. Multinational businesses should confer with their various offices in other countries to help formulate ethical standards and interpret ethical issues.

4. An ethical code must not only comply with the yardstick of practical reason and be suitable for the particular business, but also motivate the relevant actors to act in compliance with ethical norms espoused by it. For this reason it is absolutely essential that the board of directors gives guidance and support, that it finds ways to involve the entire organization in the process of determining the ethical norms. The CEO needs to introduce, promote and gain acceptance from the whole staff for the development of a code of ethics.

5. The leader of the organization must have a good sense of what is important to the success of the business and must personally attend to articulating his/her thoughts about the business’s purpose, values, ethics and vision. This input into the

development of the code of ethics is vital. Shareholders, through the CEO, may wish to express certain minimum requirements that they want to see in the code of ethics. This is their right as the owners of the business, but the reasons for such compulsory input should be given and it is the CEO's duty to obtain acceptance from the other involved stakeholders of such matters. Where certain stakeholders cannot accept such minimum requirements and are not prepared to comply with them fully, they should be asked to leave the organization.

6. The company needs to be prepared to set aside the time required to inform and train staff in the basics of ethics and to allow groups of employees to deliberate on the relevant issues. The greater the harmony between the employees about the conception of the right, the better an agreed code will function (see also page 13).

III. THE FORM THE CODE OF ETHICS SHOULD TAKE:

1. How detailed should the ethics code be? If it is too detailed it becomes inflexible and requires constant additions as new questions arise. A very detailed code will curtail management's scope to manage and will be seen as prescriptive and patronizing. It also encourages unthinking action, which is unhelpful in trying to find solutions to ethical dilemmas. Deon Rossouw (42. Rossouw, 2002: 129/30) says an ethical code can take two different forms:

   a) A <u>standard of conduct</u> has the following benefits:

   - It is concise and easy to remember;
   - It is less likely to be confusing;
   - It shows respect for the maturity and discretion of people to apply the ethical values as they see fit;

   and the following weaknesses:

   - It does not provide specific guidance in morally complex situations;
   - It is difficult to enforce because of its brevity.

   An example of such a standard of conduct is the one agreed to by Levi Strauss (the jeans manufacturer) which reads: "Honesty, keep promises, fairness, respect for others, sympathy and integrity must guide discussions and actions within and without.”

b) A code of conduct has the following advantages:

- It is specific, gives clear guidelines and leaves little room for misinterpretation;
- It is easy to enforce – it can spell out the consequences of ignoring it.

The disadvantages are:

- It tends to be long (up to 50 pages) and thus difficult to remember;
- It does not allow much discretion – it can breed an attitude of “thou shalt not be caught out.”

The best form depends on each individual company, on the consensus of those who will have to work in accordance with the code. Striking the appropriate balance between providing clear direction and leaving room for individual judgment makes crafting ethics codes one of the hardest tasks that confront executives.

2. In his book *Wirtschafts- und Unternehmensethik in der Marktwirtschaft*, Bernd Noll (41. Noll. 2002: 118) suggests two additional criteria to consider when designing the form in which a code of ethics is written:

a) A compliance based code which:

- Is control orientated;
- Relies on external auditing;
- Is supported by an appropriate reward system; and
- Includes a disciplinary code.

This is the traditional, authoritarian management model and may still have a place to-day in businesses of a bureaucratic, low complexity nature.

b) An integrity or value based code which:

- Aims to support morally responsible behaviour;
- Has the goal of sensitizing employees towards the business’s values and culture and to accept responsibility;
- Requires a culture of trust; and

- Presupposes that the employee is interested in the business's goals, is morally integrated and wishes to accept responsibility (this model is aligned with Kant's Kingdom of Ends – see page 13).

This system is right for more complex (particularly international active) organizations with decentralized decision-making and customer relations.

It is usual to find some of each of these elements in a code.

What sort of an ethics code will suit a particular business? This will depend on the type of organization our business is. The code for a sole proprietor will look very different from that of a large, public company and so will it for a bureaucratic as compared to a very innovative business, for instance, an advertising agency.

If a code of ethics is to cater for an internationally diversified business the dangers of cultural relativism (see chapter 5 "Cultural Relativism") need to be avoided. Do in Rome as the Romans do? Or take an absolutist approach, insisting that in whichever country the business has an establishment the ethical code of the company's home office must be strictly applied? Neither of these approaches is right, and a compromise must be found.

In the course of establishing the form, content and tone of the code, one is also building support for the values that will be written into the final code of ethics.

CHAPTER 17.

THE CONTENT OF A CODE OF ETHICS FOR A CREDIT INSURER.

I start this chapter with some general issues concerning the content and tone of a code of ethics and then I provide a list of matters that can be included in a code for a credit insurance company.

The content of a code of ethics obviously depends on the First Decisions (see previous chapter). The content will also be influenced by the history of the company, its culture, values and service orientated business. The needs of the credit insurer's clients and shareholders, the credit insurer's requirements from re-insurers and other suppliers as well as their needs, the relationship with government (if any), the regulatory authorities and the community in general will also be reflected in a comprehensive code of ethics. Competition, the changing business climate and risk situation will impact on the content of the code.

The introduction to the code of ethics should set out the justification for the code – why the code has been developed, what its purpose is to be and who it is aimed at. The introduction should endeavour to convince the reader of the importance of the code of ethics by pointing out the advantages to all concerned of adhering to it.

The starting point of the code must be the formulation of the basic business ethics principles (see section 1 of the list appearing on page 209 to 212). This should be followed by addressing more specific matters as laid out in sections 2 – 8 of this list.

When thinking about the credit insurer's ethics principles one needs to keep in mind – as stated at the very beginning of this report – that standards of business ethics cannot be dictated by personal feelings and experience alone. For an ethics code to be legitimate, objective and to be the basis for morally justifiable actions, it needs to have its roots in independent normative ethical theory. Kant's categorical imperative (page 11) and Rawls's original position (page 24) provide the best ethical theory and process to ground a business's moral principles in. A code of ethics provides pointers but it will usually be necessary to apply one's mind, use reason and judgment, utilizing Kant's universalization process and Rawls's veil-of-ignorance to find answers to difficult moral questions or ethical dilemmas (see chapter 8 "How to deal with Dilemmas in Business Ethics").

If the First Decisions have led the credit insurer to decide on a minimalist code of ethics, such as the Levi Strauss example on page 201, there is not much more to be said about the content. All that needs to be done is for the company, i.e., all its employees, the board of directors and the owners, to decide on the wording of the ethical values. Careful thought should also be given to the consequences for individuals who do not comply, although, as earlier mentioned, it may not always be easy to pinpoint non-compliance with such a vague guideline. To give another example of a very short code, here is McDonnell-Douglas's code of ethics, which is expressed in nine bullet points:

- Honest and trustworthy in all our relationships;
- Reliable in carrying out assignments and responsibilities;
- Truthful and accurate in what we say and write;
- Cooperative and constructive in all work undertaken;

- Fair and considerate in our treatment of fellow employees, customers and all other persons;
- Law abiding in all our activities;
- Committed to accomplishing all tasks in a superior way;
- Economical in utilizing company resources;
- Dedicated in service to our company and to improvement of the quality of life in the world in which we live.

I personally prefer a more complete, detailed code of ethics which provides proper guidelines, not only a summary of elementary, broad-based behavioural directions. A comprehensive code needs to be carefully indexed and cross-referenced to make it easily accessible. A synopsis, putting the main points into a short (not longer than one page), concise précis may be helpful, provided such an abstract is seen as a pointer to the full code and not as a substitute. A code must be clear, simple, unambiguous, and honest, conform to all other corporate policies, and address all issues, particularly those which raise, within and without, the greatest controversies. The US Federal Sentencing Guidelines (as referred to in the King Report on Corporate Governance (50. King, 2002: 105) require business to adopt a comprehensive system of self-regulation, i.e., the more compliance based approach to business ethics.

As earlier mentioned, if the credit insurer writes business in more than one country, the code needs to make provision for this. When underwriting policies in Africa, Europe, the Far-, Middle- or Near East for instance, the code has to take cognizance of the different cultures and rules that apply in each of those markets. It would be arrogant, impractical and unwise to believe that the credit insurer's ethics based solely on his home country can be imposed all around the world (see chapter 5 "Cultural Relativism"). The UN Declaration of Human Rights is a document worth perusing for a multinational credit insurer because it is a good measure of human rights and could be incorporated into the code of such a company.

The company's corporate governance and sustainable development policies should be linked to the code of ethics, including, for instance, triple bottom line accountability and management (economic, social and environmental – see chapters 2 "Corporate Governance" and 3 "Sustainable Development").

Whistle blowing, the protected raising of a concern about malpractices within the organization or through an independent structure associated with the business, should be described and supported through the code.

It is a good practice to combine economical and ethical issues in the code, e.g., market-leadership, survival, profitability with honesty, reliability, responsibility and respect. As recounted a number of times in this report, a business's critical duty is to survive and to create long term shareholder/owner value, always remembering that public safety, human dignity and honesty, matter more. BP in its statement of business policies: *What we stand for: Our Business Policies*, published in 1998, says "A good business should be both competitively successful and a force for good."

Business has a duty to develop the human capacity of rational and ethical thinking and ensure that all personnel are appropriately trained to provide a professional credit insurance service to the market (see page 12 and chapter 12 "Underwriting"). The code of ethics must reflect this.

The broad principles of the company's compensation policy (e.g., what type of behaviour will be rewarded) should also be part of the code of ethics. Such a statement should give insight into and provide motivation to perform according to the company's desired values and culture.

The needs - as far as they concern the company - of the customers, suppliers, shareholders and other stakeholders in addition to those of the company and its employees must be addressed in a code which is to have both internal and external application.

The code of ethics should provide for a system of arbitration to settle differences resulting from its interpretation and application. Sanctions for disregarding and/or rewards for honest compliance with the code need also to form part of it. Common sense would seem to suggest that sanctions will make people more mindful of an ethical code, but research has not been able to prove this (42. Rossouw, 2002: 131). Reward for moral behaviour seems to be a stronger incentive for adhering to an ethical code.

The tone in which a code is written can have a considerable influence on its effectiveness and will depend on whether the company in its First Decisions has opted for a compliance or integrity based code of ethics (see pages 202, chapter 16 “The First Decisions”). A compliance based code would have a more authoritarian, prohibiting tone, whereas an integrity based code will use inspiring, positive and supporting language. A good mix between compliance and integrity based systems seems advisable for a credit insurance business. Care should be taken that the code does not contain unreasonably repressive rules undermining trust, which always remains indispensable.

The responsibility lies with the board of directors to guide the development of the code and to put their stamp of approval on a code that is lucid, user-friendly and aligns ethics with the organization’s goals so that employees can easily make decisions based on the code.

I provide hereunder a list of issues that may be included, in one way or the other, in an ethics policy for a credit insurer. It is not exhaustive and its aim is merely to provide some guide for the discussions around and the drafting of a code. Some may believe this list to be far too long and detailed; others will think that some important points have been left out. It depends on the size, culture, preference and type of operation, as well as on the First Decisions referred to in chapter 16 “The First Decisions” as to how detailed the code of ethics will be for a particular company. In order to facilitate the use of the list, I have arranged the issues according to the main functions of a credit insurer (as addressed in this report) and also stated (where applicable) the page number of this report where the respective issue is being discussed. The list begins with a group of issues under the heading of "General" which enumerates ethical points that apply to all actions in business. As a result of this method of sorting the various issues, a certain amount of duplication is unavoidable.

LIST OF SOME ISSUES THAT MAY BE INCLUDED IN AN ETHICS POLICY FOR A CREDIT INSURER.

1. GENERAL.
   1.1. Basic issues:
      - Do not lie, coerce or withhold essential information;
      - Do not be part of any fraud, reckless action or collusion and don't be negligent;
      - Do not countenance bribery, extortion, corruption and exploitation;
      - Be helpful, courteous and enthusiastic;
      - Have the necessary knowledge and expertise and don't be reticent in saying if you don't;
      - Act responsibly, professionally, promptly and be reliable;
      - Always respect the dignity and autonomy of others;
      - Avoid all hate, sexual or race speech or actions;
      - Accept accountability; honor agreements, be transparent, bring credit to the organization and be proud of it;
      - Keep Kant's categorical imperative in mind (see pages 11 to 17).

   1.2. Legal issues: Always comply with the law.

   1.3. Reputation issues: All who work in or for the company must assume responsibility for building and protecting the company's reputation and image.

   1.4. Staff issues:

- Provide staff with relevant training in technical and ethical matters and provide clear job-descriptions;
- Encourage learning from experience;
- Explain the company's staff and other relevant policies including if applicable, the company's affirmative action, employment equity and skills development policies.
- Staff to be at all times professional, reliable, trustworthy, helpful, courteous, and to respectful;
- Staff to be accurate, complete and relevant when dealing with others;
- Staff to avoid substance abuse and not to work for others without prior approval;
- Staff members' job appraisals must rate these attributes;

1.5. Management:

- Protect the business and stakeholders, and ensure profitability and sustainable wealth creation in an ethical manner;
- Avoid greed;
- Act with integrity; give credit where due and set an example;
- Create an atmosphere of trust, respect and enthusiasm; give fair feedback;
- Remunerate fairly according to merit and ethical behaviour;
- Delegate responsibility and authority clearly and with trust;
- Install impartial, fair process for complaints from staff, customers and other stakeholders;
- Point out consequences of non-compliance with the code of ethics and company policies;
- Do not coerce, lie, cheat, misrepresent, defraud, act recklessly or negligently;
- Be open, honest and transparent in all dealings and information disclosure, which must be complete and user-friendly;
- Comply with government rules and regulations, e.g., in South Africa – Black Economic Empowerment.

1.6. Outside stakeholders: Ensure that all stakeholders know of the company's code of ethics and respect it in their dealings with the company. Do not ignore or violate the interests of those affected by the business's activities. Support businesses that act ethically;

1.7. Whistle blowing: The code of ethics should define whistle blowing, explain its operation and the protection it affords, its advantages and disadvantages and encourage all stakeholders to use the system judiciously;

1.8. Communications: All communications need to be open, complete, honest, prompt and voluntary;

1.9. Donations: Donations and charitable activities must be within a board approved budget. Major altruistic activities need the prior approval of shareholders;

1.10. Conflict of interest: Do not offer or accept unjust advantages, and declare any conflicts of interest. Ensure the concept is defined in the code of ethics;

1.11. Competition and antitrust matters: Treat competitors fairly and do not belittle, ridicule or tell untruths about them or their products. No industrial espionage, collusion, price fixing or similar anti-competition actions should be undertaken;

1.12. Company assets and resources: Care for and protect all company assets such as buildings, motor cars, IT, telephone, copiers etc. Ensure that debtors, investments, cash holdings as well as copyright, reputation and other intangible assets are carefully managed and secured. Develop a policy covering staff use of company assets;

1.13. Privacy: The company's policy concerning privacy rights that arise for staff and the employer from the use of the company's electronic network for personal messages must form part of the code;

1.14. Corporate governance: The company must have a corporate governance policy that should be linked to its code of ethics. The policy needs to be public and the company should report annually relating to its compliance. The policy should be scrutinized regularly to ensure that it remains up-to-date (see chapter 2 "Corporate Governance");

1.15. Sustainable development: Environmental and social responsibility issues must be taken seriously (see chapters 3 “Sustainable Development” and 12 “Underwriting”) and relevant policies must be part of the ethics code;

1.16. Political support: Develop and adhere to a policy on political donations, e.g., to parties. Such a policy requires board and shareholder approval;

1.17. Information: Design and manage policies concerning information disclosure, storage and management, data protection, confidentiality, insider trading, company records, accounts, publications and media relations, advertising and public relations;

1.18. Workplace security and health: Draw up guidelines and make certain they are complied with;

1.19. Community: Describe the relationship the credit insurer wishes to foster with the community in general in its desire to be a responsible corporate citizen;

1.20. Investments: Ensure a board approved investment policy is in place and is followed;

1.21. Gifts: The giving and acceptance of gifts or other hand-outs needs to be prohibited or at least controlled and reported. The code of ethics should include a definition of “gift;”

1.22. International application: Where the code is to have international application the discussion in chapter 5 “Cultural Relativism” should be considered;

1.23. When faced with moral dilemmas, employ a suitable and disciplined method to solve it (pages 72 to 76). Use Kant’s categorical imperative but be tolerant of other theories (pages 78 and 81);

1.24. Sanctions: The code should include an arbitration clause and must state what sanctions will apply on breaching of its provisions;

1.25. Unreasonably repressive rules undermine trust, which is basic to any well functioning code of ethics.

2. MARKETING AND SALES.

2.1. Provide all relevant information. Page 98

2.2. Take great care in advising clients. Page 99

CHAPTER 18.

DRAFTING A CODE OF ETHICS.

Now that the content of the code of conduct has been settled, the code needs to be put into the right format. Again this depends on the individual company's preference, but here are a few hints that should be taken into consideration:

1. A code that is clear and defines the subject matter well will be much easier to interpret and act upon.

2. Care should be taken to avoid, as far as possible, any goal conflicts within the code. The aims of the business and the ethical conduct that is aspired to must be compatible.

3. An ethics code should:
    - Be accepted by all affected persons (see page 11 concerning "consent");
    - Be in writing so that there can be no difference in the degree of information for all;
    - Be formulated in clear, simple language;
    - Take the practicability of its conditions into consideration;
    - Include known aspects of conflict in a manner flexible enough to allow future similar situations to be dealt with.
    - Have build-in-flexibility because that facilitates delegation and thinking.

- Be consistent with other company policies and guidelines;
- Be well communicated and discussed and at all times available to all employees.

4. The people who are to act in accordance with the code should be motivated by it and the code should be phrased in a language that will encourage them to act in compliance with ethical norms (see integrity or value based code – page 202, chapter 16 “The First Decisions”). Few employees are inspired by philosophical concepts; they need an understandable message on which they can act. While a code can only be a guide, it must give sufficient lead for managers and staff not to be put in the position of having to make decisions and act in an obscure value system hidden in a mist of uncertainty.

5. As has been said previously on numerous occasions, trust is established through openness, transparency and consultation (see also chapter 7 “Trust”). If the code is to be a success, all affected individuals need to be part of the design of the code as well. Clearly, an organically grown ethic means a high degree of identification of the employees with the company. An ethic that is believed in by staff is a wonderful motivator, adds greatly to the company’s reputation and is a self-disciplinary tool.

6. A way of designing a code (taken from Hartmut Kreikebaum’s book - 38. Kreikebaum, 1996: 193/4 – my translation) used by the German company Bernhard Kupsch GmbH is to set out the main values and illustrate them in a subsequent part of the code of ethics. The values here are:

- Truth-telling is the honest and responsible way of dealing with the truth;
- Reciprocal trust is the foundation of fruitful co-operation;
- Transparency is the fast way to reach a common goal;
- Credibility is the precondition to convince people of our business aims;
- Honest courteousness is the basis of our relations with one-another;
- Different opinions are a way to new knowledge;
- Self-respect is necessary to strengthen the individual and the business;
- Creativity is the inventive power which protects the existence of the business;
- Our success is the result of good co-operation of all employees in the company.

The company then defines these broad guidelines through further explanations that are grounded in the Golden Rule (page 22): e.g., the value “Different opinions are a way to new knowledge” is further elucidated as follows:

- Listening to the opinions of others fosters preparedness for co-responsibility.
- Through focused questioning one learns the opinions of others.
- I see different opinions as the motor for progress and the nursery of fruitful co-operation.
- I am not closed to suggestions from others, but see them as genuine efforts to help me.
- I do not devalue the opinions of others, and try to see the situation through their eyes.
- I accept other opinions even if they are uncomfortable.
- I take care to listen to others and to understand them.

7. As a CEO, I would decide with staff on the basic issues as explained under paragraph 1 of chapter 17 “The Content of a Code of Ethics in Credit Insurance”. Then the employees in the various divisions listed in that chapter in paragraphs 2 – 8 need to suggest which ethical issues should be answered and in what manner. All this work would be guided by the First Decisions as referred to in chapter 16 “The First Decisions.” Thereafter the first draft of the code should be prepared, tested against actual situations and thoroughly discussed by all staff (or by a specifically appointed committee with input being asked from all employees) and others at whom it is directed. On completion the code should be submitted to the board of directors for approval. Once accepted by all, it will be implemented (see chapter 19 “Implementation and Management of a Code of Ethics”), carefully monitored and adjusted according to experience and new circumstances.

8. It is not easy to find the balance between a short to-the-point code of ethics and one that is very comprehensive. For further details on this subject refer to paragraph 3., chapter 16 “The First Decision”.

9. The length of the code will also influence to some extent the format and look of the final code. If it is a comprehensive code it will be in book form but should preferably be bound so that it is easy to change or add pages. A code must be a living document that is revised from time to time in the light of changing circumstances. Experience with the code will also dictate changes to it. The code of ethics booklet should be attractive, though not opulent, so that it gives the right feel and so that people like the look and use of it.

10. As previously stated, it must have an introduction explaining its rationale, its aim, its audience and should thank all those who have made an input. It should also encourage employees to report any shortcomings in or any changes that they believe should be made to the code and to discuss their experiences in using it. The introduction should be signed by the chairman of the board of directors and the managing director to show full support from the top.

11. The code must be easily accessible to all (in multilingual companies the code should preferably be in all the relevant languages). The language should be plain and user-friendly. Difficult words, phrases and concepts need to be explained. If the code is an unwieldy, difficult to understand document, it will not be used and be nothing more than a waste of time and effort.

12. There must be clear headings and a detailed list of content so that subjects are readily found. For instance Chubb Corporation of the US has divided its comprehensive code into the following main headings:

    - Introduction;
    - The Employment Relationship;
    - Relationships with Customers, Other Business Entities and Government;
    - Responsibility for Compliance.

    And the German company, Siemens’s code has the following content:

    - Business Conduct Guidelines;
    - Basic behaviour requirements;

- Relations with business partners and third parties;
- Avoiding conflicts of interests;
- Handling of company assets;
- Dealing with information;
- Environment, security and health;
- Complaints and hints;
- Implementation and control.

As for the Chubb code, these are the main headings which are illuminated by many subheadings in the list of contents. It is also useful to have sections on “How to use the Code” and “How to deal with ethical dilemmas.” The code of ethics should also include a list of all other relevant company rules, such as general staff policies, disciplinary code, underwriting guidelines etc.

13. A credit insurer could of course divide his code of ethics along the lines of the enclosed list of issues shown on pages 209 to 214 of chapter 17 “The Content of a Code of Ethics for a Credit Insurer”.

14. While the code should be in book form, so that every staff member and other affected stakeholder has her/his own exemplar, it is also very useful to have the code on the company’s intranet for staff and on its website for interested outsiders. The code of ethics should not be seen as a confidential document; on the contrary it should be made widely known. This will also serve to underpin the company’s reputation and is necessary for whistleblowers, as otherwise they might not know what represents a digression from the code.

CHAPTER 19.

IMPLEMENTATION AND MANAGEMENT OF A CODE OF ETHICS.

IMPLEMENTATION:

A code of ethics needs to be implemented carefully, otherwise the code will remain mere words on paper. The aim of the implementation must be an ethics friendly organizational structure (this is elaborated upon later in this chapter when the management of the code of ethics is discussed). It is not enough for a policy to be written; everybody in the company must feel it – it must be considered in decision-making; it must be referred to in management reviews and tough decisions will be made in support of the code of ethics. The implementation of the code must cut out any possible ambiguity, e.g., sales growth versus quality and honest advice and/or product versus customer service. As has been said earlier in this report, the future profits of a company are linked to the reputation of the business. Mistrust is a real barrier to the flow of information, trade and long term owner value. This needs to be stressed at all junctures of the development, implementation and management of the code.

A widely accepted ethical code delivers mutual gain (a Kingdom-of-ends in Kant's parlance, see page 12). Introduction, consensus, free and open communication and consultation, agreed standard operating procedures, education and training are necessary to get wide acceptance. It is therefore vital that top management sells to all concerned the reasons participation by all in the development of a code and the mutual advantages that flow from it. A code of ethics cannot be enforced top down; such a management dictated policy would not achieve anything as it would be seen as paternalistic and dictatorial and thus not carry the support of those who have to behave within its boundaries.

One possible way to help clarify to staff the workings and benefits of a code and so obtain their buy-in into the implementation and usefulness of it is the method used by BMW (Hartmut Kreikebaum *Grundlagen der Unternehmensethik* – 38. Kreikebaum, 1996: 292 - my translation):

Set a value system, e.g.,

- Trust;
- Role model;
- Truth-telling;
- Tolerance; and
- Responsibility.

Have senior management agree to these points and undertake to work accordingly. To see whether the desired behaviour is achieved, let staff do, after an appropriate period, an anonymous upward appraisal of management’s following practices:

- Delegation of decision-making and actions;
- Motivation of subordinates;
- Dissemination of the relevant information timely and in appropriate form down the ladder;
- Cooperation with the staff and its form and intensity; and
- Initiation of development programs and promotion of colleagues/juniors.

Such assessment of management can serve not only in the development of an ethics policy and supply a measure of the management style, but also show that a code must be complied with by all and that it can be of great advantage to the staff in general.

A code of ethics must also address - if it is to apply not only to the staff of the company - the attitude and conduct of customers, suppliers and other stakeholders that the company wishes to see. They need to be consulted on the relevant provisions that are to be brought into the code of ethics, so that they have an opportunity to make their input and thereafter to consent to the conditions. Only then can they be expected to behave accordingly. A credit insurer could for instance specify a condition that it will not underwrite any risk that violates environmental or human rights standards (see the Equator principle, chapter 12 “Underwriting”, pages 137 to 143).

I believe a code of ethics to be a very important indicator of the way of life within and of a company. The finalization and implementation of such a difficult, significant and jointly agreed policy should be celebrated through staff festivities at which preferably the whole board should participate. The chairman and the CEO should address the event on the values, relevance and consequences of the code.

MANAGEMENT:

The task of ethics management is to define and give life to an organization’s guiding values, to create an environment that supports ethically sound behaviour and instills a sense of shared accountability among employees. For this to happen the company’s guiding values must make sense, be clear and be well communicated. An ethics policy accepted by the affected people will set out obligations and aspirations that are widely shared and that are central to the company’s way of conducting business. Top management must be personally committed and deeply believe in them. They must be prepared to take difficult decisions that support the ethical code, and in conflict situations they must uphold the moral way. They must demonstrate their commitment. A necessary way of inculcating an ethical code is the setting of examples in concrete actions by management. Management needs to ensure that the advocated values are properly integrated into the decision-making process and that the company’s actions fully reflect its ethical code. The business’s systems and structures must support and reinforce the espoused ethical values. For instance, excellent customer service can be delivered by the credit insurer only if the staff is well trained and motivated, the information technology is designed to deliver fast and accurate information and authority and responsibility is delegated to ensure quick, quality decision-making. Checks and balances must be in place to ensure objective judgment.[60] The necessary decision-making skills, knowledge and competency to make ethically sound decisions must be in place throughout the company.

However, the development of a code of ethics and the training in its meanings and applications are not enough. Management must consistently preach the need, value and the significance of abiding by it. Information about successes and non-compliance, about rewards and punishment, about major moral decisions and their implication (whether good or detrimental) should be made available to and discussed with all staff. Such details serve as staff motivators and also as controls by showing interest in the ethical quality of the operation.

As the King Report (50. King, 2002: 122) recommends, each company should demonstrate its commitment to its code of ethics by:

- Creating systems and procedures to introduce, monitor and enforce its code of ethics;
- Assigning high level individuals to oversee compliance to the ethical code;
- Assessing the integrity of new appointees in the selection and promotion procedures;
- Exercising due care in delegating discretionary authority;
- Communicating with, and training, all employees regarding enterprise values, standards and compliance procedures;
- Providing, monitoring and auditing systems for reporting of unethical or risky behaviour;
- Enforcing appropriate discipline with consistency; and
- Responding to offences and preventing re-occurrences.

The company should disclose in its annual statement the degree of adherence to its code. This can be done together with and through triple bottom line reporting – economic,

[60] A matrix organization is most useful for the proper infusion and enshrinement of an ethics code because it forces decision-making by middle management and feeds real information to the top management team. It is a dialog friendly structure and provides a good foundation for the desired implementation of an ethics policy.

environmental and social. To make such issues “operational” is done by adding relevant specific goals to the business’s balance score card, measured against the above criteria and the directors should say to what extent they believe the ethical standards and the above criteria are being met. If compliance is considered unsatisfactory, the directors should state what steps will be taken to rectify the situation. The most significant obstacles to implementing meaningful ethical and triple bottom line reporting lies in the way management and the board think. If these issues are perceived as not very important, they are unlikely to receive the focus they merit from a value-generating, economic point of view. Furthermore, the business should strongly reconsider dealing with any individual or entity not demonstrating the same level of commitment to organizational integrity and business ethics.

The following are some tools for the institutionalization of a code of ethics:

- The company should establish a Board Ethics Committee to guide the development of the code, monitor its management, ensure the above referred to reporting, see to it that action is taken to keep the code up-to-date and make certain that rewards are given and disciplinary actions taken where appropriate. Major ethics decisions and the resolution of serious dilemmas should be approved by, or recommended to the full board, by this committee. Only if the company’s leadership identifies with the ethics code does it have the necessary clout.
- For large companies a Corporate Ethics Office manages the program. It should:
    - help manage the code;
    - ensure that an ethics training program including an induction procedure is in place and properly used;
    - be responsible for reporting and investigating ethical concern within the company;
    - manage a system of collecting - in a confidential manner - information about violations (including whistle blowing) and about particularly interesting ethical actions and decisions and disclosing them in an anonymous way where appropriate;
    - reveal and control particularly sensitive ethical parts of the business;
    - develop and manage an ethics early warning and audit system;

- deal with public and media issues concerning the company's code of ethics and make relevant input where required into the company's advertising and public relations policies.
- regularly report to the Ethics Committee to which it should also be accountable.

- Similar to corporate governance, credit insurers should also set an example with regard to business ethics. They need to do so because of their prominence in the credit assessment field and their duty to judge and express an opinion, through their underwriting activities, on other businesses.
- Even if the company is too small to justify an ethics office, it needs to have an ethics training program or module within its other training classes.
- Without a proper external ethics auditing system, the ethics policy will not have teeth.
- A thoroughly explained ethics hot line or whistle blowing scheme needs to be in place which must be well publicized to staff and other relevant stakeholders.
- Moral conduct and support for the ethics code and the solving of moral problems also need to be criteria in the regular performance appraisal of all staff members.
- The company should track the number and types of ethics cases and complaints because this will serve as an early warning system for poor management, product quality, gender and racial discrimination, environmental concerns etc.
- The fragmentation of decision making should be avoided at all costs because it leads to bad decisions and the missing of ethical issues. It can lead to focusing purely on the actor's own area of responsibility, ignoring other spheres of related accountability which should be considered in the making of the decision.
- Encourage the exercising of moral imagination, e.g., resolving tensions responsibly and creatively. Examples are (35. Harvard, 2003: 133/4): Coca Cola, which refused to pay a bribe but obtained political support and public trust by sponsoring the planting of fruit trees; or Levi Strauss, who, when discovering that their supplier in Bangladesh employed children under the age of 14, continued to pay the children their wages while they attended school and offered to reemploy them once they had reached the age of 14.
- Professional, rational decision-makers take their own pre-conceived ideas about what they personally see as useful or detrimental, moral or unethical into consideration when making decisions. To an extent that is right – it is probably because of their ability to

make sound judgments that they are in the position of decision-maker, but the company should try to cultivate, also in these experienced people, the use of the ethics code and of ethical decision-making tools (Kant’s categorical imperative and Rawls’s original position for instance) in arriving at conclusions.

- Management should foster the formation of “Ethics Islands” (38. Kreikebaum, 1996: 278) - an informal communications network which tries to solve ethical dilemmas through discussions, possibly employing where appropriate Jürgen Habermas’s RIMS strategy or John Rawls’s Original Position processes (see pages 75, 76 and 23) within the group. The members of such an ethical island are linked by a common interest in ethical issues, a system of ethical norms, ethical knowledge and the desire to avoid negative socio-economic, ecological and human rights consequences in their dealings. Such an island can be the motor for ethical development, the uncovering of new ethical conflicts, and it can propound solutions for moral problems. It should report to the Corporate Ethics Office.
- The ethics champion, a person who could be the catalyst of an “Ethics Island,” is not interested in short term solutions but tries to find long term answers. She is not orientated by the *Zeitgeist*, but swims against the stream. She questions existing situations; she goes to the root of things and tries to find the real reason for a conflict. She needs to be awake, quick in picking up the basic important issues and needs to have a feel for people and situations. She requires courage, cleverness and commitment.
- An internationally operating company must create and implement a global ethics strategy, locally developed. However difficult it may be to articulate and agree on the values on which such a strategy/code needs to be based, in a global business environment fundamental ethical values convey the company’s intentions worldwide. Its moral misbehaviour in one corner of the world is known around the globe in hours, thanks to to-day’s information technology, and can seriously affect its reputation and share price world-wide. But local circumstances must be taken seriously if the business is to be successful in the relevant market. Companies must, through their ethical code, support right behaviour in host countries, for instance the decreasing of institutional corruption. A company alone cannot drive out entrenched corruption, but its code of ethics should steer it toward organizations such as Transparency International,

Germany, which has been effective in helping coalitions of companies, government officials and others to reform bribery-ridden bureaucracies in Russia, Bangladesh and elsewhere. (See also chapter 5 “Cultural Relativism”).

- There will always be a certain amount of vagueness and uncertainty in a code of ethics. A code can never deal with all the possible moral conflicts a business will encounter. As philosophers have pointed out, no ethical theory is a science; it can be no more than a guideline. A code cannot be applied in an absolute way. This then requires that it is interpreted, managed and enforced by ethical people, people who have a good knowledge of ethics and set great store by ethical behaviour. To manage a code of ethics requires the company to have a corporate ethics officer or at least a responsible person who is honestly interested in the subject, has acquired certain knowledge about the subject and will be happy to be the company’s person responsible for the work of an ethics officer, i.e., the duties, as outlined above.

COMPLIANCE, CONTROL AND THE BOARD’S INVOLVEMENT.

It is necessary to enact a control and auditing system and a reward and sanctioning policy in order to secure compliance with the code of ethics. This will provide additional impetus for ethics management to be taken seriously.

A breach of the code requires disciplining: The secretary who steals petty cash, the underwriter who connives with a policyholder in approving a credit limit on a bad risk, the salesman who falsifies his expense account, the accountant and his boss who alter cost records or the chronically sleazy operator who never does anything actually illegal – all must be dealt with cleanly, with minimum attention to alleged extenuating circumstances. The procedure to be followed has to be in writing, clear and unambiguous, available to all and must be strictly followed. The procedure should lay down the punishment for various derelictions. A system of prior warnings before dismissal needs to be in place and disciplinary hearings have to be held at which the accused employee should be allowed to have present a defender of his/her choice.

However, as mentioned earlier, a system of rewards for good ethical behaviour seems to be more successful than merely a list of punishments. The best climate for managing a code of ethics is where everyone concerned fully and whole-heartedly subscribes to the code. The more skeptical employee may view an ethics code as nothing more than liability insurance for senior management – the root cause of misconduct must be addressed in order to avoid such views. A top down dictated code, even if it is a good one, will certainly produce such feelings.

Where outsiders, such as suppliers and customers, clearly violate the code, the company must consider whether a confrontation will sort the matter out or whether it would be more appropriate to discontinue business relations with such entities.

It is virtually impossible for any business in the financial services sector to protect itself against every potential criminal or unethical act by its employees. It is said that for this reason such businesses must insist upon a corporate culture of absolute compliance, forcing employees to act ethically because they are afraid of the legal and other consequences. Such a view might be more appropriate to banks, but I believe it would not be the right approach in a credit insurance business. Because of its less bureaucratic type of operation and due to the need to delegate to well qualified people in order to provide speedy, professional service to the market, the credit insurer has to trust his employees more. With fear alone and no trust, no business will be able to serve its market well and thus build long term owner value.

On the other hand, where corporate bahaviour is concerned, corporate values and the code of ethics must be treated as absolute. To illustrate this statement, here is an instance from Motorola: they were awarded a contract by a South American government for $10 million which would have earned them a profit margin of 25%. They walked away from this business because the purchaser insisted on a $1 million "fee." Such action underlines the seriousness with which a company takes its ethical commitments. For Motorola it meant having cemented a culture of ethics within their complement of thousands of employees (35. Harvard, 2003: 131/2).

The above shows how important it is for the board of directors to monitor whether management maintains moral standards. Ethical behaviour will be taken seriously only if it is seen as an integral part of the company. It needs to be placed on an equal footing with other corporate obligations. The board needs to give guidance about how management should use its authority to integrate moral conduct within an organization. An ethics code can do this. The board needs to find ways to involve the entire organization in the process of determining ethical norms. It has to assume responsibility for protecting the stock of trust invested in the business. Management must therefore be requested to report to the board on the workings (e.g., violations, ethically directed decisions taken that have a major direct affect on the business, successes and feedback from the market, etc.) of the company's code of ethics, which should be done via the Ethics Committee or the Corporate Ethics Office (if they exist). As stated earlier, the board needs to report on the moral performance of the company to all stakeholders. Such ethics reports can also benefit the reputation of the company in the expanded community, and might be circulated more widely.

CHAPTER 20.

CRITICISMS OF A CODE OF ETHICS.

Critics maintain that codes of ethics are often only nice, banal and meaningless words without carrying any obligation. However, if the code has been developed jointly with staff and other relevant stakeholders, if it is visually supported by management and the board of directors and if it is constantly reviewed and revised in the face of changing circumstances and new experiences, it has great value (see chapters 15 “Why a Code of Ethics” and the “Conclusion” at the end of this report). The process of developing a code of ethics tends to be more important than the actual content (41. Noll, 2002).

Critics also often see a code merely as an opportunistic marketing and public relations instrument. However, a lived code proves its value in crisis situations rather than in trouble free times. Cynical employees or customers will be the first to painfully experience the results of a disregarded written ethics code, i.e., the loss of its value (41. Noll, 2002).

Detractors doubt that management really expects employees to adhere to the moral principles of its code of ethics when it would mean losing business or reducing profits. Maintaining high ethical standards is essential to staying in business and maintaining long term profitability. Consequently, management and the owners of the business expect employees to always act according to ethical principles (41. Noll, 2002).

It has been suggested that a code of ethics is not in the interest of every company. The more an industry sticks to a code the greater may be the advantage for one of them to cheat. I believe this is a frivolous suggestion. An industry that believes in ethical behaviour will quickly take action against the black sheep in its midst that is hurting the entire industry's reputation. The trade association, the market, any consumer protection group as well as government can make the code categorical and severely punish non-compliance (30. Beauchamp, 2001).

Sometimes it is felt that a code is encouraging unrealistic expectations, that it is sanctimonious talk and mystical beliefs about what is possible in a hard, realistic business world. Such criticism is the result of a romantic code of ethics that does not take the real world into consideration, one which is not lived and has not been tested by applying it to real situations.

Being ethical in business has been described as some kind of theft. As Milton Friedman (33. Friedman, 1970) says: the business belongs to its owners and management's job is nothing more than to maximize the returns for them. A business should be "ethical" only insofar as it will maximize profits. Spending time and money on ethical issues is likely to divert efforts and assets that belong to the owners. The owners alone are the ones who have the right to decide what they wish to do with their assets. A business that will only be "ethical" insofar as such "ethics" will maximize profits will not, in the long run, optimize shareholders' value; rather it may destroy it as has been shown many a time in this report (see also pages 48 to 53). However, management should guard against "social responsibility" projects that conflict with long term profits and it should involve the board of directors, and through it, the owners, in the company's code of ethics.

A similar critical remark to the one immediately above is that if business ethics is gauged by business's support for "worthy causes," then the focus shifts away from the manner in which business behaves in its own everyday, ordinary activities. As has been shown in this report, it is not business's primary duty to champion "worthy causes." Ethics and the need for business to earn profits and create long term wealth for its owners must promote one another, and, as we have seen too, ethics is a necessary ingredient for the building of a healthy and growing business.

As Deon Rossouw points out (42. Rossouw, 2002), although a code of ethics is useful and important, it can lead to blind reliance on the written code which may result in people not developing moral sensitivity of their own. Unthinking compliance with a code can lead to wrong decisions. A code is only a guideline, which may require careful interpretation and reflection in difficult situations. Regular discussions of case studies and debates about new moral issues can counter this. One needs skill to use a moral code. Training in moral analysis and ethical decision-making should complement the code.

An ethical code can lead to silencing other views. The debate on ethical matters must remain open and it is important to make provisions for and invite all staff members to make their input into a regular revision of the code of ethics (42. Rossouw, 2002).

An ethical code can be counterproductive, which happens when there is a discrepancy between actual and professed behaviour. It can also suppress moral autonomy through the belief that the code is the gospel and independent, that original thinking is not permitted. Clearly these objections are based on a wrong understanding of the code or, on a failure by the company to explain the workings of the code or on poor control and communications (42. Rossouw, 2002).

Finally, ethics is sometimes considered as a new fad, as another issue which - according to some wise guy - needs the support of top management, which requires a lot of time and therefore takes staff's eye off the ball, or which is just another expensive fancy in a time when everyone should know that the primary duty of management is to reduce costs. I hope that this report has shown that none of these objections is justified; to the contrary, those managers who espouse such views have no right to be called "managers."

CONCLUSION.

I believe that the upshot of this report is that ethics in, and a code of ethics for, a credit insurance business (and for all other businesses as well) have the following distinct advantages: They

- are an excellent management tool.
- build trust.
- build reputation.
- provide a guideline to company policy and staff behaviour.
- facilitate the development of people and good, consistent decision-making.
- show up faulty structures, policies, incentives and pay systems.
- encourage thinking.
- motivate staff.
- build credibility with customers, suppliers, shareholders and the community at large.
- build loyalty.
- help avoid unnecessary government interference.
- protect against unethical competition if there is an industry-wide code of ethics.
- support profitability and long term wealth creation.

In addition to the Marsh & McLennan case, referred to on page 112, there is also the $190 million in fines that AON, the world's second largest insurance broker, has to pay in settlement of New York attorney-general Eliot Spitzer's accusation that the company acted unethically in deceiving clients by inducing them to buy inappropriate or unnecessarily expensive insurance products. Boeing is hoping that the US air force will withdraw a 2 year ban on placing certain contracts with them due to Boeing having misused documents from a competitor, Lockheed Martin. The ban has cost Boeing, so far, contracts worth $1 billion, plus additional, unspecified orders. Citigroup, the world's largest financial services group, will hold ethics classes for all employees in an effort to restore accountability, prevent further mistakes and improve moral behaviour after it had to pay fines of at least British Pounds 5,5 billion due to immoral actions perpetrated by it. Conversely there is Toyota. *The Economist* of 29th January 2005 writes: "Toyota leads a select band of volume car manufacturers that make real profits and one ingredient that contributes markedly to this is the company's strong culture and ethical policy – every Toyota employee knows the "Toyota way" of doing things. But Toyota continues to preach to the converted and it works."

A strong corporate ethic and culture produces real results for the owners, employees, other stakeholders and the community at large in a hard, competitive and fast moving economy. This applies to credit insurance just as much as to any other type of operation.

A code of ethics, if well designed, implemented and managed, is an indispensable means of maximizing these advantages.

Credit insurers should set, also in regard to moral behaviour and the development and management of a code of ethics, an example to all businesses. They should do so in the same way as they should in respect to corporate governance. Because of their prominence in the credit assessment field and their duty to judge and express an opinion on other businesses, credit insurers need to be a model for others to follow.

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