CHAPTER 6.

THE IMPORTANCE OF INSTITUTIONS.

“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\textsuperscript{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.

\textsuperscript{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 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.

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).

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.