# MBA8 BECG Class Schedule 2017

<table>
<thead>
<tr>
<th>Class</th>
<th>Theory</th>
<th>Case Study</th>
<th>Practical</th>
</tr>
</thead>
</table>
| 1     | General introduction to Corp Gov and "hubris"  
Sec 7.1 - Business Ethics and Corporate Governance | • Royal Bank of Scotland (UK)  
• Enron & Worldcom (USA) | • Companies Act No. 71 of 2008 and Regulations  
• IODSA: King III |
| 2     | Sec 7.2 - Managing ethics in business                                 | • SA Parastatals (RSA)  
E.g. SAA, Eskom, PRASA, etc | • IODSA: King IV  
• IODSA: Corporate Governance for SMEs |
| 3     | Sec 7.3 - Regulating BECG in BRICS                                    | • PetroBras (Brazil)  
• OAO Rosneft, Pharmstandard &  
Uralkali (Russia)  
• Satyam Computer Services & Sahara India (India)  
• Tianhe Chemicals and Shenguan Holdings Group (China) | • ICGN’s Global Governance Principles, 2014  
• G20 / OECD Corporate Governance Principles, 2015 |
| 4     | Sec 7.4 - Corporate Risk Management                                  | • *Lehman Brothers (USA)  
• *African Bank (RSA) |  |

**Overview of assignment expectations**
MBA 8
BUSINESS ETHICS & CORPORATE GOVERNANCE

GENERAL INTRODUCTION (cont.)

*This intro contains enrichment material that is not in the study guide
SOME PRACTICAL DOCUMENTS

- Companies Act
- King III
(1) COMPANIES ACT & REGULATIONS

- Companies Act No. 71 of 2008 (as amended)
  - *Chapter 2 Part F: Governance of companies
    - Shareholder meetings
    - Board meetings
    - Sub-committees of the board
    - Liability
  - Chapter 3 Part C: Auditors
  - *Chapter 3 Part D: Audit committees

- Companies Regulations, 2011
OVERVIEW

Board of Directors
- Executive, non-executive and independent directors in unitary board

Sub-committees of the Board
- Audit committee, risk committee, social & ethics committee, etc.

Directly accountables
- Chief Officers, e.g. CEO, COO, CFO, CIO, etc.
- Company Secretary (‘legal adviser’)
- Auditors
DIRECTORS’ RESPONSIBILITIES

The board should have executive and non-executive directors (including independent directors). The unitary board remains favoured in South Africa, and should:

• Determine the company’s purpose and values
• Determine the strategy to achieve its purpose
• Exercise enterprise, integrity and judgment
• Protect the company’s assets & reputation
• Monitor & evaluate implementation of strategies, policies, etc.
• Ensure compliance with all relevant laws and regulations
• Ensure that technology and systems are adequate
• Identify key risk & performance indicators for the business
LIMITED LIABILITY

“The basic principle of limited liability is that the company has a legal personality separate and distinct from its members’. Each can own their own assets and incur their own liabilities … As such, creditors who have claims against the company may look only to the corporate assets for the satisfaction of their claims as creditors and generally cannot proceed against the personal (separate) assets of the members … A company’s separate existence is, by way of metaphor, described as a “veil”. This veil is said to separate the company from its members and protect the members from those who deal with the company”

Cohen, J. 2006. A critical study on the doctrines of limited liability and piercing the corporate veil. LL.M. Dissertation: UCT.
STANDARDS OF CONDUCT

• A Director is required to exercise his powers and perform his functions in *good faith* and for proper purpose.
• A Director must have adequate general knowledge, skill and experience to act competently.
• A Director must exercise the *care, skill and diligence* that may reasonably be expected of any and all Directors.
• A Director may rely on senior employees, legal counsel, external auditors, etc.
• A Director may not abuse power by using position or information to gain a personal advantage, and must always act in the best interests of the company.

• *Personal liability*
PERSONAL LIABILITY (Sec 77 of CA, 2008)

(2) A director of a company may be held liable—
   
   (a) in accordance with the principles of the common law relating to breach of a fiduciary duty for any loss, damages or costs sustained by the company as a consequence of any breach by the director of a duty contemplated in section 75, 76(2) or 76(3)(a) or (b); or
   
   (b) in accordance with the principles of the common law relating to delict for any loss, damages or costs sustained by the company as a consequence of any breach by the director of—
       
       (i) a duty contemplated in section 76(3)(c);
       
       (ii) any provision of this Act not otherwise mentioned in this section; or
       
       (iii) any provision of the company’s Memorandum of Incorporation.

(3) A director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director having—

   (a) acted in the name of the company, signed anything on behalf of the company, or purported to bind the company or authorise the taking of any action by or on behalf of the company, despite knowing that the director lacked the authority to do so;

   (b) acquiesced in the carrying on of the company’s business despite knowing that it was being conducted in a manner prohibited by section 22(1);

   (c) been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or shareholder of
FIDUCIARY DUTY AND DELICT

- **Fiduciary** – A person ("steward" or "trustee") into whose care another person ("owner") has placed any person or property of value

- **Fiduciary duty** – the fiduciary has a high duty to sacrifice his/her own self-interest and carefully and consistently act in the best interests of the owner

- **Delict** – The circumstances in which one person can claim compensation from another for harm that has been suffered as a result of the other person’s wrongful and blameworthy conduct
VIDEO: https://www.youtube.com/watch?v=fxobc-eesfe
APPORTIONMENT OF DAMAGES

- Apportionment of Damages Act No. 34 of 1956
- Before the Act came into existence, the ‘all or nothing’ principle was applicable in South Africa. In order to determine whose negligence was the decisive cause of the loss, the courts looked at ‘who had the last opportunity of avoiding the accident.’
- After the Act, South African courts now recognise:
  - Contributory Negligence: Where a person suffers damage caused partly by his own fault and partly by another’s fault
  - Joint or Several Wrongdoers: Where two or more persons are jointly or severally liable for someone else’s losses

Joubert Galpin Searle Attorneys,
CASE STUDY

- TBA appointed a convicted thief as their financial manager
- They neglected both to put a system of checks and balances in place, and to inform their auditors
- Their auditors were PWC who audited them regularly over several years
- PWC performed a “general” audit without focusing on the financial manager, and did not pick up the string of thefts for a couple of years. By the time they eventually did, the value of the thefts was enormous
- TBA sued PWC for the losses they suffered
BOARD COMMITTEES

• Sec 72 of CA, 2008 allows the Board to appoint any number of committees. Sec 94 prescribes the only compulsory one: The audit committee (which can be further delegated with risk) (must be elected at the AGM for public companies)

• Board committees can help advance the business of the board efficiently, while not mitigating the duties and responsibilities of the board and its directors

• Board committees can give detailed attention to specific areas of their duties and responsibilities in a more comprehensive evaluation of issues such as:-
  • Audit and internal control;
  • Risk management; Remuneration;
  • Social and ethics; etc.
The audit committee is the principal governance watchdog and is obligatory in many countries (including South Africa).

One third of the members of the audit committee must have qualifications and experience in economics, law, corporate governance, financial, accounting, etc.

All members must be independent (no other relationship)

- The audit committee must nominate the external auditor and approve their fees and terms
- Receive and investigate complaints about accounting practices, internal audit, internal financial controls, etc.
- Report on their activities in the corporate governance section of each annual report
- Oversee risk management (if delegated)
(2) KING III

- “King III” consists of:
  - Principles
  - Report
  - Practice Notes

- Please note: Companies already implementing King III should continue to do so even after King IV
EXAMPLE: PRINCIPLES (1 SENTENCE)

Principle 2.3: The board should provide effective leadership based on an ethical foundation.

Principle 2.4: The board should ensure that the company is and is seen to be a responsible corporate citizen.

Principle 2.5: The board should ensure that the company’s ethics are managed effectively.

Principle 2.6: The board should ensure that the company has an effective and independent audit committee.

Principle 2.7: The board should be responsible for the governance of risk.

Principle 2.8: The board should be responsible for information technology (IT) governance.

Principle 2.9: The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards.
The board’s responsibility for risk governance

Principle 4.1: The board should be responsible for the governance of risk

1. The board should exercise leadership to prevent risk management from becoming a series of activities that are detached from the realities of the company’s business.

2. The board should be responsible for the governance of risk through formal processes, which include the total system and process of risk management. The board should show leadership in guiding the efforts aimed at meeting risk management expectations and requirements.

3. The board should be able to demonstrate that it has dealt with the governance of risk comprehensively. This should include the development and implementation of a policy and plan for a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, as well as the related internal control, compliance and governance processes within the company.

4. The board should be able to disclose how it has satisfied itself that risk assessments, responses and interventions are effective.

5. The board’s scope of responsibility for risk governance should be expressed in its board charter and supported by induction and training processes for all board members. Where the board has delegated its responsibility for risk management to a board committee, such board committee’s terms of reference should reflect this responsibility and should be approved by the board.
<table>
<thead>
<tr>
<th>Title</th>
<th>Administration</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CN2 Guidelines Proposal Nomination &amp; Voting March 2011</td>
<td>Administration</td>
<td>2013/06/14</td>
</tr>
<tr>
<td>PDF (219.93 KB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administration</td>
<td>2013/02/06</td>
</tr>
<tr>
<td>PDF (212.99 KB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administration</td>
<td>2013/02/06</td>
</tr>
<tr>
<td>Ch 2: Guidance on Business Rescue Dept 2009</td>
<td>Administration</td>
<td>2013/02/06</td>
</tr>
<tr>
<td>PDF (278.23 KB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administration</td>
<td>2013/02/06</td>
</tr>
<tr>
<td>PDF (212.53 KB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administration</td>
<td>2013/02/06</td>
</tr>
<tr>
<td>Ch 2: On Set Evaluation Questionnaire Aug 2011</td>
<td>Administration</td>
<td>2013/06/14</td>
</tr>
<tr>
<td>PDF (139.72 KB)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administration</td>
<td>2013/02/06</td>
</tr>
<tr>
<td>PDF (222.67 KB)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Responsibilities

The Committee must perform all the functions as is necessary to fulfill its role as stated above and including the following:

1. Oversee the development and annual review of a policy and plan for risk management to recommend for approval to the board.
2. Monitor implementation of the policy and plan for risk management taking place by means of risk management systems and processes.
3. Make recommendations to the board concerning the levels of tolerance and appetite and monitoring that risks are managed within the levels of tolerance and appetite as approved by the board.
4. Oversee that the risk management plan is widely disseminated throughout the company and integrated in the day-to-day activities of the Company.
5. Ensure that risk management assessments are performed on a continuous basis.
6. Ensure that frameworks and methodologies are implemented to increase the possibility of anticipating unpredictable risks.
7. Ensure that management considers and implements appropriate risk responses.
8. Ensure that continuous risk monitoring by management takes place.
9. Liaise closely with the Audit Committee to exchange information relevant to risk.
10. Express the Committee’s formal opinion to the board on the effectiveness of the system and process of risk management.
11. Review reporting concerning risk management that is to be included in the integrated report for it being timely, comprehensive and relevant.
Introduction to Business Ethics and Corporate Governance
# MODULE OUTLINE

<table>
<thead>
<tr>
<th></th>
<th>General intro to BECG and “hubris”</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1</td>
<td>Intro to business ethics and corporate gov</td>
</tr>
<tr>
<td>7.2</td>
<td>Managing ethics in business</td>
</tr>
<tr>
<td>7.3</td>
<td>Regulating BECG in BRICS countries</td>
</tr>
<tr>
<td>7.4</td>
<td>Risk Management</td>
</tr>
<tr>
<td></td>
<td>Assignment</td>
</tr>
</tbody>
</table>
7.1.1 INTRODUCTION TO BECG

- **Old Situation:** Towards the end of the twentieth century, most businesses were driven by the pursuit of profit alone without concern for ethical behaviour. For this reason, the 1980s came to be seen as the epoch of corporate greed and meaningless consumerism.

- **Point of Change:** These demands intensified after the 1989 spill of the Exxon Valdez, the 1995 sinking of Shell’s Brent Spar oil platform, and the killing of activists opposed to Shell by the Nigerian military. No longer could profits be ruthlessly pursued, without taking into account the ethical repercussions of a company’s business ethics.
New Situation: During the 1990s, with the birth of the “New Age Company”, corporations began to change – pursing “profits with principles” (Nichols, 1994:2). This was partly a response to the new business professional, someone who longed for more meaningful work, and partly a response to the fallout of big business at the close of the previous decade.

Since then, companies have evolved from purely profit-driven organisations to businesses, which must consider ethics and values in every aspect of strategy and human resource planning. This is not only to adhere to legal requirements, but also to ensure good corporate governance.
7.1.2 CORPORATE GOVERNANCE

- Corporate governance refers to the internal control mechanisms that regulate and protect the corporation from its human managers.
- “The framework of rules and practices by which a board of directors ensures accountability, fairness, and transparency in a company's relationship with all its stakeholders (financiers, customers, management, employees, government, and the community)”
- The key roles and responsibilities of the board of directors are to ensure accountability, fairness and transparency in its interactions with the *stakeholders
STAKEHOLDERS

- Stakeholders (no longer only “shareholders”) play a critical role in strategic management.
- Any organisation’s business strategy must consider stakeholder expectations and how best to involve stakeholders positively and constructively to achieve successful results.
- Corporate governance is concerned with achieving these results by resolving collective action problems between dispersed investors and reconciling conflicts of interest between stakeholders.
VIDEO: https://www.youtube.com/watch?v=x2t2bes5y9s
CORPORATE GOVERNANCE & CITIZENSHIP

• There is no universal definition of, or system for, corporate governance.
• Each organisation has its own unique strategic vision and therefore each organisation must consider its own unique understanding of what corporate governance means so that systems appropriate to the strategy are developed.
• Corporate governance deals with the internal checks, balances, systems and values of the organisation, whereas good corporate citizenship deals with external relationships and its impact on the organisation and society.
• Corporate citizenship may be defined as the extent to which an organisation makes a positive contribution to society by respecting its stakeholders.
https://www.youtube.com/watch?v=a3rt8evp6gy
VIDEO: http://www.youtube.com/watch?v=a3rt8evp6gy
7.1.3 DEFINING BUSINESS ETHICS

- **Morality:** Simply put, morality is “the standards that an individual or group has about what is right and wrong, good and evil

- **Principles:** Principles form the foundation of our belief systems – they are the “fundamental truths” underpinning our behaviour

- **Right conduct:** Right conduct refers to action that is guided by principles and morals – in other words, behaviour that is considered right in your society and that is underpinned by principles

- **Business ethics:** Applied ethics – taking principles, morality and right conduct and applying these in a business context
7.1.4 VALUES

- An understanding of business ethics is incomplete without an understanding of values. Values are the moral principles that an individual uses to guide his/her actions.
- Individual values are reflective of the moral principles that an individual considers to be important.
- Moral principles can be understood in the context of an individual’s stage of moral development, e.g. Kohlberg’s “Three Stages of Moral Development”.
Preconventional Stages

Right and wrong determined by reward/punishment

Stage 1: Punishment
Whatever leads to punishment is wrong

Stage 2: Rewards
The right way to behave is the way that is rewarded

Conventional Stages

Views of others matter. Avoidance of blame; seeking of approval.

Stage 3: Good intentions
Behaving in ways that conform to “good behaviour”

Stage 4: Obedience to authority
Importance of “doing one’s duty”

Postconventional Stages

Abstract notions of justice. Rights of others can override obedience to laws/rules

Stage 5: Difference between moral and legal right
Recognition that rules should sometimes be broken

Stage 6: Individual principles of conscience
Take account of views of everyone affected by moral decision
• **Level one: pre-conventional stages** – This refers to the moral development of a very young child
  • **Stage one:** punishment and obedience orientation
  • **Stage two:** instrumental and relative orientation

• **Level two: conventional stages** – These stages occur when the child is significantly older. Their morals begin to be influenced by their society, friends, family and nation
  • **Stage three:** interpersonal concordance orientation
  • **Stage four:** law and order orientation

• **Post-conventional stages** - No longer just simply takes the values and norms of their society as guidelines for their action. They use their own thinking processes to determine what the right course of action is
  • **Stage five:** social contract orientation
  • **Stage six:** universal moral principles orientation
ORGANISATIONAL VALUES

- On an organisational level, values can be the beliefs and ideas that intrinsically influence the attitudes and behaviours of employees to achieve institutional and greater societal goals.

- There are two types of organisational values:
  - *Level* values (e.g. how much work we must do); and
  - *Psychological* values (e.g. what is important to the successful functioning and growth of our company).

- Organisational values have far-reaching implications for the organisation. Values can (a) guide decisions; (b) encourage people to form connections with the organisation based on shared values; and (c) provide guidance on moral dilemmas for employees.
SPIRITUAL INTELLIGENCE

• “Spirituality is ‘today’s greatest megatrend’”

• Spirituality has created a market place where consumers want leaders to be driven by positive values because they are fed up with numerous incidents of corruption, greed, nepotism and favouritism

• There is growing evidence to suggest that workplace spirituality has a very positive impact on workplace productivity and profits. When people feel as if their core positive values are being upheld by the organisation, they are more likely to want to work for it and commit themselves to working as hard as possible for it
SPIRITUAL LEADERSHIP

- Vision Performance
- Calling Make a difference Life has meaning

- Hope/Faith (Effort)
- Altruistic Love (Reward)
  - Membership Be understood Be appreciated

- Organizational Commitment
- Organizational Productivity
- Profit and Sales Growth
- Employee Well-Being
- Corporate Social Responsibility
CLOSING QUESTION ...

- “Treachery, we found, can pay. There is no compelling economic reason to tell the truth or keep one’s word” (*HBR, 1990*)
- Benefits of truthfulness and trust – loyal employees, productivity, loyal customers, stability, ability to weather ups and downs in the market, etc.

  - *But where has this been proven?*

- Or do we believe in the value of good ethics because of our personal values?
Congratulations!
Nice going ... !!
Good bye!
See you next time!
😊

Have a good evening!

www.regenesys.co.za