

**THE CODE OF CONDUCT OF THE SOUTH AFRICAN PUBLIC SERVICE COMPARED  
WITH INTERNATIONAL GUIDELINES**

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## ABSTRACT

The overall aim of this research was to understand the essential elements/factors that contribute to the effectiveness of the content of codes of conduct in the public service in addressing corruption. The ultimate objective was to compare the South African public service code of conduct with practical guidelines to determine whether it complies with international practice. The international guidelines used in this research were that of the Organisation for Economic Co-operation and Development on codes of conduct, the Technical Guide to the United Nations Convention against Corruption, the United Nation's International Code of Conduct for public officials and the Council of Europe's Model Code of Conduct for public officials. The findings of this research confirmed that the South African public service code of conduct is deficient in some areas and it is recommended that these deficiencies be addressed, having regard to the provisions of the International Guidelines.

## KEY WORDS AND PHRASES:

code of conduct for Government, code of conduct in South Africa

differences between public and private sector codes of conduct

effectiveness of codes of ethics/conduct

government corruption

public service corruption in South Africa

professional ethics in South Africa

public sector corruption

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## **GLOSSARY**

### **CODE OF CONDUCT**

A written document defining ethical standards of an organisation. These standards include rules of how to interact with colleagues and clients, leadership principles, rules on compliance with the law and workplace security (Petersen & Krings, 2009:501–2). They are usually directional as they are rule-based but they may also be a combination of aspirational and directional approaches (Organisation for Economic Co-Operation and Development (OECD), *Unclassified*, 2009:34).

### **CODE OF ETHICS**

A formal statement of an organisation's values and standards of behaviour on certain ethical and social issues. A code of ethics is usually aspirational in that it describes core ethical values that should guide employees in their behaviour and ethical decision-making. These are value based and shorter than directional codes which are rule-based codes of ethics which are usually detailed and lengthy and prescribe how employees should behave in certain specific situations (Rossouw, Prozesky, Burger, du Plessis & van Zyl, 2006:232–233).

For the purpose of this research, if a code of ethics includes rules governing employees' behaviour, it is used interchangeably with the term "code of conduct".

### **CONSTITUTION**

Constitution of the Republic of South Africa, 1996.

### **CORRUPTION**

When a person accepts or gives any form of gratification (in cash or kind) either for himself or on behalf of another, for the purpose of doing something (an act or omission) which is

illegal, dishonest or biased and which would result in an undue benefit either for the giver or receiver of the benefit (Prevention and Combating of Corrupt Activities Act 12 of 2004). In short it may be defined as the abuse of power, entrusted to a person for personal gain (Transparency International (TI), [n.d.]:1). For the purpose of this research it also includes acts of bribery. The terms “corruption” and “bribery” are used interchangeably.

## **DEPARTMENT**

National department, provincial administration or a provincial department in Government (Public Service Act 103 of 1994).

## **ETHICS**

Refers to the character and manners of a person in his/her interaction with others (Rossouw *et al.*, 2006:3). Gildenhuis (2004:13) defines ethics as “principles or standards of human conduct” which is sometimes referred to as morals and it essentially deals with what is right and wrong, good and bad and acceptable and unacceptable. Hence ethical behaviour is behaviour which is not only good for one-self but also good for others (Rossouw *et al.*, 2006:4).

## **GOVERNMENT**

Section 40 of the Constitution of the Republic of South Africa, 1996 defines government as consisting of a national, provincial and local sphere which is distinct from each other but interrelated and interdependent.

## **INTEGRITY**

Is honesty which further means truthfulness; not inclined to steal, cheat (Chambers Mini Dictionary, 2002:252, 278).

## **INTERNATIONAL GUIDELINES**

For the purpose of this research it refers collectively to the Organization for Economic Co-operation and Development Guidelines on Codes of Conduct, The Technical Guide to the United Nations Convention against Corruption, United Nations International Code of Conduct for Public Officials and the Council of Europe's Model Code of Conduct for Public Officials (OECD, *Public Management Committee*, 1998:1; United Nations: Office of Drugs and Crime (UNODC), *Technical Guide*, 2009:18–27; UNODC, *Compendium of legal instruments, International Code*, 2005. 114–115; Council of Europe (CoE), *Recommendation No. R (2000) 10, Model Code*, 2000:1–8).

## **INTERNATIONAL ORGANISATION**

For the purpose of this research it refers to an entity that is globally recognised as a standard-setting body and refers to the Organization for Economic Co-operation and Development, United Nations Organisation and the Council of Europe.

## **ORGANISATION**

For the purpose of this research it refers to both a public and/or a private entity.

## **PRIVATE SECTOR**

For the purpose of this research, is a term used to describe business entities.

## **PUBLIC SERVICE/SECTOR**

For the purpose of this research, this term is used to collectively describe the employees employed in the administration of government.

## **VALUES**

Are beliefs of what is right or wrong (Brooks, 2007:137).

## ABBREVIATIONS AND ACRONYMS

AU Convention:	African Union Convention on Preventing and Combating Corruption (OECD, <i>Combating Bribery</i> , [n.d.]:1–3).
Code:	Code of Conduct.
Corruption Index:	Transparency International Corruption Perception Index (TI, <i>Corruption Perception Index</i> , 2010:13).
CoE:	Council of Europe
DPSA:	Department of Public Service and Administration (South Africa).
EU:	European Union.
International Code:	United Nation’s International Code of Conduct for Public Officials (UNODC, <i>Compendium of legal instruments, International Code</i> , 2005. 114–115).
ISS:	Institute for Security Studies (South Africa).
Manual:	Explanatory manual on the Code of Conduct for the Public Service of South Africa (Public Service Commission (PSC), <i>Explanatory Manual</i> , 2002:1).
Model Code:	CoE’s Model Code of Conduct for Public Officials (CoE, <i>Recommendation No. R (2000) 10, Model Code</i> , 2000:1–8).
OECD:	Organization for Economic Co-operation and Development.
OECD Guidelines:	Organization for Economic Co-operation and Development Guidelines on Codes of Conduct, <i>Public Management Committee</i> , 1998:1).
NACF:	National Anti Corruption Forum (South Africa).
PSC:	Public Service Commission (South Africa).
SA:	Republic South Africa.

- SA Code: Code of conduct for the Public Service of South Africa.
- SADC: Southern African Development Community.
- SADC Protocol: Southern African Development Community Protocol against Corruption (OECD, *Combating Bribery*, [n.d.]:1–3).
- SA Public Service /Sector: South African Public Service.
- Technical Guide: The Technical Guide to the United Nations Convention Against Corruption (UNODC, *Technical Guide*, 2009:18–27 ).
- UN: United Nations Organisation.
- UN Convention: United Nations Convention against Corruption (OECD, *Combating Bribery*, [n.d.]:1–3).
- UNODC: United Nations: Office of Drugs and Crime.
- USA: United States of America.

# THE CODE OF CONDUCT OF THE SOUTH AFRICAN PUBLIC SERVICE COMPARED WITH INTERNATIONAL GUIDELINES

## CHAPTER 1: GENERAL ORIENTATION

### 1.1 INTRODUCTION

“Corruption hurts everyone and harms the poor the most” (TI, [n.d.]:1).

Corruption may be a consequence of unethical behaviour. It causes high financial loss to organisations, stakeholders and the public and can also result in board members and top management facing huge penalties even if they were not the actual perpetrators of the crime (Kaptein, 2009:3).

Mattson Jnr and Martin (2009:5–7) lists a number of executives of some major organisations serving prison sentences. They also confirm the aggregate fines in all the cases to be over \$4,5 billion (USA dollars). The stakeholders who suffer the most from unethical behaviour are employees and shareholders (Webley & Werner, 2008:1).

Corruption not only plagues the private sector but is also rife in the public sector. In fact there is a greater interest in public sector corruption than in that found in the private sector. This is due to the moral ethical culture prevailing in society and the expansion and complexities of governments and public administration (Gildenhys, 2004:5). According to a 2002 report by the German Federal Agency for Criminal Matters, the public sector attracted corruption more than the private sector (European Institute of Public Administration, 2004:39).

Public servants not only work for the organisation but also and most importantly, they serve the people of the country. It is important to understand that a corrupt public sector has no moral ground to fight corruption in the private sector, which is one of the mandates of any government, i.e. to make laws to fight crime. The public sector sets the example and, therefore, if the public sector is corrupt, then society as a whole becomes corrupt (Gildenhys, 2004:6, 10).

Corruption in the public service undermines the fight against poverty by enriching corrupt officials with money that should be used for infrastructure and development. It increases operational costs for the organisation which results in poor service delivery to the people and damages the reputation of the country. As a result, foreign investors who contribute to local employment and the economy are scared off (Department of Public Service and Administration (DPSA), 2006:4; Institute for Security Studies (ISS), 2005:23,114).

Corruption amounts to “betrayal of public trust and interest for individual gain”. If public money is not used to fulfil the mandate of government, it is more likely to be misused for the fulfilment of selfish interests (Mafunisa, 2000:11; Pillay, 2004:586–7). In 2004/2005 the South African Special Investigations Unit (SIU) allegedly saved the South African government an amount of R3,5 billion calculated on projected future losses over a 10 year period (Department for International Development (DFID), 2007:23–24).

Corruption results in major costs to borrowers by causing macro economic instability. Foreign direct investment is negatively impacted to the extent that the investors either manipulate the situation or shun the country. Small entrepreneurs cannot be competitive and most importantly, the poor suffer (World Bank, [n.d]:7–8). Furthermore, corruption results not only in the public losing confidence in the State but also in its agents and the enterprises it manages (Fattah, 2011:65).

The impact of corruption on the public sector and its citizens, as well as national and international investors, has caused South Africa to enforce anti-corruption strategies (National Anti-Corruption Forum, 2009:1–7). Engagement and co-operation between government, national enforcement agencies and the private sector as well as international organisations have also become the order of the day (DPSA & UNODC, 2003:26, 44, 75, 80).

Many of the international organisations such as the UN, OECD and Council of Europe have developed conventions and protocols on combating corruption and recommend the code as one of the tools to combat corruption (UNODC, *Compendium of Legal Instruments*, 2005:1–21). Between 2003 and 2007, South Africa signed and ratified various international protocols and conventions on or against corruption (OECD, *Combating Bribery*, [n.d.]:1–3).

It has clearly become a trend if not an imperative in the public sector to develop and implement conduct codes as mechanisms for assisting in fostering ethical behaviour (Garcia-Sanchez, Roderiguez-Dominguez & Gallego-Alvarez, 2011:190).

If an organisation is involved in the global arena, it is wise to familiarise oneself with the codes of other countries to ensure understanding and compliance (Brooks, 2007:240). In light of SA's interaction in the global arena, it is appropriate to compare the SA Code with the international guidelines proposed by international standard setting bodies.

### **1.1.1 The code of conduct**

Corruption in the public sector is considered to be the most "important unethical behaviour". It is committed due to pure selfish interest to the detriment of another and/or due to economic or social circumstances (Garcia-Sanchez *et al.*, 2011:191).

Rossouw *et al.* (2006:9) explains that people are influenced by their environments. If unethical behaviour is condoned, even individuals with good ethical values can become corrupt. When ethical behaviour is rewarded, corrupt or unethical people can change for the better. It is, therefore, imperative that an organisation has a mechanism in place to manage behaviour. The mechanism used by most organisations in managing behaviour, which has become compulsory in some countries, is the code of conduct. Schwartz (2004:323–324) comments that, in terms of the Sarbanes Oxley Act (2002), public companies in the United States, are expected to report whether it has a code for certain senior and top managers and if not, to provide reasons why this is the case. Similarly, the New York Stock Exchange and the Nasdaq Stock Market require such disclosure.

There is a perception that having an ethical code of conduct legitimises an organisation (Messikomer & Cirka, 2010:57). Companies that do not have a code of conduct are pressured by their stakeholders or even compelled by law, to have one even if it costs time and money (Kaptein & Schwartz, 2008:111).

Ethics and values are fundamentals in establishing integrity of an organisation (Rossouw *et al.*, 2006:3–5). The public service has common values which contribute

to the formulation of codes (Magahy & Pyman, 2010:61). Standards of conduct emanate from values. Codes can therefore be aspirational or directional or both. This however, can result in confusion between codes of ethics and codes of conduct. Often these terms are used interchangeably (Wood & Rimmer, 2003:183; Schwartz, 2004:324; Skubik & Stening, 2008:516). Kaptein and Schwartz (2008:118–120) describe many factors that contribute to the overall effectiveness in the creation, development and implementation process of codes. The desired effect (to assist in the fight against corruption) will be lost if certain elements in the development and implementation process of such codes are lacking and will render codes “toothless tigers” (Petersen & Krings, 2009:501). It is also important to understand the purpose and orientation of a code. The focus may be to manage relations with stakeholders or employees or on the organisation’s profit margin (Malan & Smit, 2001:175; Brooks, 2007:157).

Codes may cover a wide range of circumstances for which standards of conduct may be prescribed. These include conflicts of interest, gifts, procurement, political activity, post-employment activities, confidential information and disclosure of assets. It also provides guidance on implementation and enforcement mechanisms such as communication, training of officials, penalties, hotlines and protection of whistleblowers (UNODC, *Compendium of legal instruments*, 2005:114; UNODC, *Technical Guide*, 2009:20–26).

Codes have many advantages. They improve the organisation’s brand image and reputation, whilst illustrating to shareholders the organisation’s commitment to having and/or promoting ethical behaviour (Stevens, 2008:601). In some countries like the USA, it is used as a mitigating factor against severe penalties for non-compliance with laws (Garcia-Sanchez *et al.*, 2011:190).

The widespread adoption of ethics programmes creates the impression that there is improvement in organisational ethics. In 2007, 86% of the Fortune Global 200 companies had codes compared to 49% in 1999 (Kaptein, 2010:208).

The numerous corruption scandals involving multi-national organisations (Helin & Sandstrom, 2007:253) as well as the various global interventions and focus regarding public sector corruption cause one to question what makes a code effective.

The SA government views corruption in a serious light and in response to the Constitution, drafted a code of conduct for the public service in 1997 (PSC, *A Practical Guide*, 2002:4). A commission known as the King commission has developed various guidelines to assist the SA private and public sector in good governance resulting in the King reports I–III being applicable to both private and public sector organisations (Institute of Directors, 2002:32). The King II report provides detailed guidelines on the drafting and implementing of the code of conduct. The King III report is merely an amendment and an update of the King II report. It caters for the new laws governing organisations, which were promulgated subsequent to the King II report. It deals mainly with general governance (Institute of Directors, 2009:4).

### **1.1.2 Contributions by international organisations to the code of conduct of the public sector**

The OECD, UN and CoE assists countries in developing international standards and best practises in various common areas of interest and concern. These organisations have become globally recognized, standard-setting bodies on areas of corruption. They have produced various guidelines, protocols and conventions in the fight against corruption. South Africa ratified some of these protocols and conventions. A code of conduct, as a mechanism to fight corruption in the public service is one of the tools strongly advocated by all of these protocols and conventions (UNODC, *Compendium of legal instruments*, 2005:1–20).

The UN developed the International Code, which was adopted by the General Assembly, in response to the serious problems caused by corruption in its member states (United Nations, *Implementation of the International Code*, 2002:1). The UN developed the Technical Guide to provide technical advice, tools and examples of good practise to ensure that the provisions of the UN Convention against Corruption are realised (UNODC, *Technical Guide*, 2011:1). The UN and the CoE provide the codes as annexures to their respective conventions (UNODC, *Compendium of legal instruments*, 2005:1–20).

The OECD developed an Integrity Management Framework, which is a framework that supports good governance and integrity in the public service. It strongly supports the code as a tool for fostering integrity in the work environment (OECD, *Integrity Framework*, [n.d.]:1). It also developed a model framework, which includes a code that highlights the importance of content of codes (OECD, *Unclassified*, 2009:34–36). In this research, the contributions made by these international organisations will be construed as the guidelines of international practice in light of the status and membership of these organisations. These guidelines as well as the codes developed by the UN and CoE are discussed in more detail in chapter 3.

## 1.2 PROBLEM STATEMENT AND OBJECTIVES

TI is a recognised international civil society organisation whose mission it is to lead the fight against corruption by partnering with governments, businesses and civil society in developing and implementing measures to address corruption (TI, *About Transparency International*, [n.d]:1).

The TI Corruption Perceptions Index (CPI) ranks countries according to the perception of corruption in their respective public sectors, with rates ranging from 9–10 as being very clean and 0–0,9 as highly corrupt (TI, *What is Transparency International*, [n.d]:1). Countries are rated every year using various criteria and assessments by internationally recognised organisations. The rankings change when a country's rating drops by 0,3 or more and the change is confirmed by more than 50% of the data sources used to evaluate the country (TI, *Corruption Perceptions Index*, 2010:2).

### 1.2.1 The research problem

In 2010 SA ranked 54<sup>th</sup> out of 178 other countries with a rate of 4,5 out of 10 and within the sub-Saharan Africa region, SA is ranked 5<sup>th</sup> out of the 47 sub-Saharan countries (TI, *Corruption Perceptions Index*, 2010:13).

In 2009 SA's rating was 4,7. Its 2010 ranking is a decrease of 0,2. Although, according to the TI CPI, this drop is insignificant in respect of the ranking, it is an

indication that there is no improvement relative to the CPI. This implies corruption is on the increase, despite the SA Public Service having an anti-corruption strategy, which includes a code. The focus of this research is only on the code and specifically its content.

Therefore the problem statement is: the content of the SA Code does not comply with international guidelines.

The overall aim of this research is to understand in general what the code is; what its characteristics, purpose and the essential elements/factors are that contribute to the effectiveness of its content in addressing corruption in the public service. Books, journals and the practical guidelines of international organisations will be researched. The ultimate objective is to compare the SA Code with international guidelines.

### **1.2.2 Research objectives and thesis statement**

The objectives of this research are the following:

- a) To determine the general nature and characteristics of codes.

Factors influencing its origin e.g. integrity, ethics, values, objectives of the organisation, stakeholders, as well as the factors that influence its creation, development and implementation are considered broadly. More importantly, the factors fundamental to the code's content, which is the main focus of this research, shall be examined in greater detail. Values plays a fundamental role in an organisation and it is believed should be included in the content of a code. Values result in the formulation of standards of behaviour (Magahy & Pyman, 2010:61).

There may be different rationales and depth of coverage that codes fulfil. Understanding the purpose, focus, and orientation of codes will enable one to determine the impact of codes. (Brooks, 2007:157).

This objective gives one an understanding not only of the impact of the code, but also the intention behind the development and implementation of the code.

- (b) To analyse the OECD's guidelines, the Technical Guide, International Code and Model Code.

To perform an analysis of the recommendations/guidelines and sample codes of the international organisations mentioned above in order to determine what constitutes international practice and to make a comparison with the SA Code.

(c) To analyse the SA Code.

The SA Code was implemented before SA signed the UN Convention. The first and only assessment performed on its efficacy was in 2006 (PSC, *Report on the Efficacy of the Code, 2006:27*). As described in the report itself, the assessment was not a comprehensive assessment (PSC, *Report on the Efficacy of the Code, 2006:29*).

(d) To compare the code of the SA Public Service with international guidelines and practice.

Given that SA is a signatory to the various conventions associated with the aforementioned organisations; the SA Code is analysed and compared with the principles and guidelines made by such organisations to determine whether it complies with same.

(e) To make findings and recommendations

Upon completion of the review of literature, specific findings and recommendations shall be made in relation to the research objectives and areas for future research.

### **1.3 DELINEATIONS AND LIMITATIONS**

This research is focused on analysing and comparing the content of the SA Code with specific international guidelines in addressing corruption in the SA public sector.

It must be emphasised that the research is not considering the effectiveness of codes overall but rather aiming to identify those factors, principles and components that are considered fundamental by the international community in making the content of codes effective in addressing corruption. Furthermore, the research broadly and briefly discusses all the other factors that contribute to the overall effectiveness of the creation, development and implementation of codes. It is, however, emphasized that the discussion thereof is merely to establish a general overview of what a code is and how the factors under discussion contribute to it.

The international guidelines were developed to address corruption in the public service. Therefore, the main focus of this research is on those standards and principles that address corruption. Hence the content will not be considered in respect of how the code addresses other areas such as service delivery and employer/employee relationships.

Although literature that covers both private and public sectors was studied, the focus here is on the public sector.

As highlighted earlier, multinational businesses extensively use codes as tools to combat corruption. Scandals involving senior and top management have greatly affected the private sector. It is therefore a good environment to take lessons from regarding the mistakes or improvements being made in the creation and use of codes. Gilman (2005:33–37) explains the importance of learning from the private sector.

Whilst some of the literature deals with codes of businesses and other private sector organisations, it highlights areas that are common to the content of codes – irrespective of the sector to which they may apply.

Areas where an actual or even potential distinction between the codes in the private and public sector existed were not considered. This is amplified regarding the case of gifts – as the private sector is profit driven, it deals with gifts differently from the public sector which is service oriented.

The focus in this research is not on the codes of the private sector or the differences and similarities of the codes in public and private sectors, but is limited to those areas of commonality and the lessons that could be learnt from the private sector.

The research is limited to two spheres of the SA Government, namely National and Provincial Government, as the code is applicable only to these.

Whilst the introduction to the research highlights the problem of corruption, this will not be dealt with comprehensively except insofar as standards of conduct are prescribed for certain areas of corruption as highlighted by the international guidelines.

This research is confined to the code as an anti-corruption mechanism and is specifically aimed at the content of the code. It does not deal with any other anti-corruption tools or strategies like the role of hotlines and other internal control measures. It does not consider any other document except the international guidelines for comparison. It is emphasized that there are many factors which contribute to the overall effectiveness of a code. This research only focuses on those internationally recognised principles that contribute to the effectiveness of the content of codes. The content of the code of the SA Public service is assessed to determine whether, at face value, it complies with international guidelines. In this regard, external measures that impact or influence the SA Code were not considered, like the role of the private sector, other legal and regulatory frameworks of the country, which governs the public officials conduct. It should be noted that apart from the SA code, there are other laws and regulations governing the conduct of public officials for example the Public Finance Management Act 1 of 1999 and the regulations thereto, the Financial Disclosures framework (PSC, *Report on Conflict of Interest*, 2007:12). These will not be considered in this research.

The PSC conducted an assessment of the SA Code in 2006. However, the assessment did not include a comparison with international guidelines (PSC, *Report on the Efficacy of the Code*, 2006:29). Whilst this research will consider the findings, it conducts its own assessment of the SA Code. Criteria and information will be obtained from a comparison between the SA Code and the guidelines and codes of the OECD, UN and CoE were used.

The SA Code is also considered against the relevant literature to assess the quality or correctness of the provisions of the code. This was not intended to be a comprehensive assessment and is considered merely for the conclusion and recommendations made at the end of this research.

This research is confined to a review of literature sources and the sources from international organisations as described in the research methodology section below. No interviews or sampling was conducted.

#### **1.4 ASSUMPTIONS**

The following assumptions are made:

In light of SA's accession to the various international conventions and protocols on corruption, it is assumed that SA is committed to fighting corruption in its public service.

As mentioned earlier, corruption is a manifestation of unethical behaviour. Therefore, it is assumed that some employees in the SA public service are unethical and committing corrupt acts.

A fundamental mechanism, if not the only one, in managing unethical and corrupt behaviour in the working environment, is the code. The content of a code is one of the main factors contributing to the overall effectiveness of a code. If corruption is rife or on the increase in any working environment, one of the areas the code may be deficient in, is its content.

Given its ranking in the TI CPI for 2010 and the impact of corruption on the country (DPSA, 2006:4; ISS, 2005:23,114; DFID, 2007:23–23), it is assumed that corruption in the SA public service is either rife and or on the increase. This translates into the further assumption that the code of the SA Public Service is deficient in its content.

The OECD guidelines, the Technical Guide, the International Code and Model Code are the established and generally accepted international guidelines and principles to which public service codes may be compared.

Due to the SA government's national and international role, it is only fitting to assume that the code governing its public service should be in line or complies with generally accepted international guidelines. However, in light of the extent of corruption, this may not be the case. It is, therefore, further assumed that the SA Code does not comply with international guidelines.

It is further assumed that there are no essential or major differences between public and private sector codes. The process of content creation is similar between the private and public sectors and the factors that contribute to the effectiveness of the content of codes in the private sector are similar to those in the public sector.

Where the literature refers to codes of ethics but it becomes clear that they include standards of behaviour or conduct, it is assumed that they refer to codes that are a combination of values and rules.

## **1.5 SIGNIFICANCE OF THE RESEARCH**

The purpose of this research is to assess whether the SA Code complies with international guidelines.

This is important as it would establish whether or not the SA Code is compliant with international protocols and conventions. If it is not compliant the literature review will provide the necessary information and criteria to highlight the areas for improvement as well as the reasons and method for improvement.

If the SA Code is found to be compliant it would validate the content.

This research may identify areas which may be used by the DPSA to either improve or validate the SA Code or initiate a comprehensive review of the SA Code.

## **1.6 RESEARCH DESIGN**

This research is based on a review of literature available on the topic. Various books and articles on the subject were consulted. The intention was to provide an understanding of codes in general and specifically on the creation of content, which is the main focus of this research.

In addition, the international guidelines are also discussed.

A review of literature sources and the sources from international organisations was done as described in the research methodology below.

## **1.7 RESEARCH METHODOLOGY**

The methodology used in this research is a review of literature. According to Hofstee (2006:91) secondary literature i.e. literature published by other scholars and which is relevant to the research must be reviewed.

There are many purposes of a literature review, one of which is mainly to lend support and credence to the work one has done. This removes doubt and establishes credibility (Hofstee, 2006:91–92).

The research must have a theoretical basis which is developed from the literature reviewed (Leady & Ormrod, 2005:64). “A theory is a logical explanation for why something is as it is or does as it does” (Hofstee, 2006:92). Furthermore, it contextualises the research in relation to other studies. One needs to comprehend how the recommendations compare with others.

Finally, the significance of the research must be clearly understood. This can be achieved by comparing it with other literature on the topic and to subtly highlight the inadequacies in that work. This makes the research more significant.

According to Baumeister and Leary (1997:313) there are many advantages to a literature review. It allows the researcher to address much broader questions than in an empirical research. Also, the sweeping statements made by the author may be considered true unlike in an empirical research. The most important benefit of a review of literature is that it is vital in scientific studies to bridge the gap in interpretation as it examines and integrates information from numerous sources to arrive at a result.

Baumeister and Leary (1997:317) list some of the common mistakes made by many authors. These are inadequate introduction and coverage of evidence, as well as a lack of integration. The lack of critical appraisal and failure to adjust conclusions are also listed as further mistakes researchers/authors make.

Originality is another important factor in any research work. This is about showing that the research conducted has not already been done (Hofstee, 2006:93). Thus, it is imperative to consider the most recent work done in the field and information that is most closely related (Mouton, 2005:87). The fact that no other work has been done on the subject contemplated, confirms its originality which is a crucial requirement in any research (Hofstee, 2006:93).

### 1.7.1 Literature search conducted

Apart from using Google Scholar, the library websites of the University of Pretoria (E-journal platform, Proquest and Emerald) were accessed and searches were performed on the topic. Key words, titles and phrases were used to conduct the search for articles and books. The following words and phrases were used: codes of conduct, codes of conduct in South Africa, differences between public and private sector ethics, differences between public and private sector codes of conduct, public service corruption, public service corruption in South Africa, government corruption, government corruption in South Africa, professional ethics, professional ethics in South Africa, effectiveness of codes of ethics/conduct, code of conduct for Government, public sector corruption, public sector corruption and controls and corruption cases in South Africa.

Other websites accessed were Sabinet Law, the World Bank, NACF, ISSafrica, South African Government Information, Money Web, UN, UNODC, OECD, DPSA, Institute of Directors and the Public Service Commission as well as websites from various international organisations.

#### (a) Academic books and journal articles

A search on titles regarding the topic and key words mentioned above was conducted. Whilst there is an abundance of literature (including books and articles) available on codes, most of them focus on codes in the private sector. These were useful when looking at the areas of commonality in the content creation of codes.

Most of the literature were international publications and related to international private sector entities. A reasonable number of reports and articles were found regarding codes for the public service.

A literature search was conducted on the internet and university websites using the key words mentioned above. A catalogue search was conducted on book titles at

the Universities of Pretoria and South Africa respectively. The search was restricted to literature published from 2000 to date.

(b) Regulatory and institutional sources

Much of the information accessed on the regulatory frameworks was sourced in hard copy directly from the PSC and the DPSA, and electronically from their respective websites. International documents, protocols and/or conventions were also accessed electronically including the UN Convention against Corruption, the Model Code and the OECD guidelines. Other international websites accessed were the Independent Commission against Corruption, World Bank, TI and the OECD.

(c) Original sources cited by authors

This was a search of articles and books cited by authors in their works. It was difficult locating books as some were published internationally and not readily available. However the same cannot be said for articles. Many articles were found through citations by authors, e.g in the documents by the OECD and the UN, namely the International Code and Model Code.

(d) Inclusions and exclusions

Most books and articles on the code and its general characteristics were mainly by international authors and focused on the private sector. Fewer articles and books specific to codes relating to SA or the SA public sector were readily available.

Literature published prior to 2000 was generally excluded but exceptions were made in certain instances e.g. legislation, namely SA's Public Service Act 103 of 1994 and the Constitution of the Republic of South Africa, 1996.

Only literature published in journals and books, thus excluding literature published in popular magazines and newspapers, were used in this review.

Practice notes and guidelines as well as policy briefs were included only if they related to legislation or were developed by nationally and or internationally recognised standard-setting or regulatory bodies, e.g. the King reports on corporate governance in SA and the King III practice notes on the code and OECD Unclassified Global Forum on Public Governance.

## **1.8 CHAPTER OUTLINE**

### **1.8.1 Chapter 1: General orientation**

Introduces the topic of this research and outlines the problem statement and objectives of the research, the delineations and limitations, the research methodology, assumptions and significance of the research.

### **1.8.2 Chapter 2: Overview of the code of conduct**

Explains the origin of a code going back to its relationship to values, the role in an organisation's integrity, the manner in which it is developed, the areas it needs to focus on and the manner in which its content is structured and drafted to effectively address corruption.

The intention is to consider researchers' views on codes. This would provide the theoretical basis of codes in support of the practical guidelines and codes recommended by the international organisations. Does the theory work in practice or is the lack of substance in practice highlighted by the theory?

### **1.8.3 Chapter 3: Contributions by international organisations to the code of conduct of the public sector**

The guidelines of the OECD regarding the development and content of codes are discussed – specifically with regard to how the content addresses corruption.

The Technical Guide and codes of the UN and the CoE are also analysed with the focus on how they deal with corruption. These are for all intents and purposes the established minimum standards and good practice in public sector codes. It is emphasized that these are the practical guidelines.

The intention is to understand the international practice regarding the content of codes.

#### **1.8.4 Chapter 4: The SA Code of conduct**

The SA Code is discussed with focus on the background to its formulation and implementation, which includes the legal framework and other regulatory prescripts upon which it may be founded. The content is also discussed in detail relating specifically to those areas of risk prone to corruption.

#### **1.8.5 Chapter 5: The SA Code of conduct compared with International Guidelines**

Compared to international guidelines, the SA Code is analysed to determine whether it complies with set guidelines.

#### **1.8.6 Chapter 6: Conclusion and recommendations**

Upon reviewing all the sources of information, a conclusion is drawn from the comparison with practical guidelines of international organisations, highlighting the shortcomings (if any) of the current SA Code. The SA Code is also assessed against the theory discussed in chapter 2. Thereafter final conclusions and recommendations are made.

Sufficient information will be gathered in order to make concrete recommendations on addressing the deficiencies (if any) so that the code will become an effective weapon in the government's arsenal in its fight against corruption in the Public Service.

The limitations of this research and recommendations for further research are also discussed in this chapter.

## CHAPTER 2: OVERVIEW OF THE CODE OF CONDUCT

### 2.1 INTRODUCTION

The success of a business clearly does not depend solely on its financial performance. It also depends on the socio-ethical and environmental performance which is evident in the shift from single to triple bottom line reporting. When it comes to financial reporting, discipline is firmly entrenched. The problem that most organisations contend with is to develop discipline in socio-ethical environmental reporting (Rossouw *et al.*, 2006:131).

There are many tools which contribute to management of the behaviour of employees in the work environment. The code is one such tool. This chapter explains the reason why by providing a general overview of the code. It is reiterated that the focus of this research is the content of the code. How content is created and developed will be discussed. The reason for this is to determine the theoretical principles of what a code's content should include. However, the process of creating and developing the content of codes cannot be explored in isolation.

The information included in this chapter is to provide for a better understanding of codes. The origin of codes and the reasons why certain factors contribute to the effectiveness thereof and how best certain common corruption activities and risks may be addressed, are discussed. Apart from providing an understanding of codes, it also describes views on what the code content should include. It is once again reiterated that the focus of this research is to do a comparison of the content of the SA Code with that of international guidelines, which includes codes.

This comparison does not focus on the correctness or appropriateness of the actual content of the aforementioned. Although the International Guidelines may be considered good practice, they are not immune to change. Some of the literature reviewed succeed the drafting of the International Guidelines and hence may highlight more recent, workable developments or practical solutions for codes. This chapter is aimed at determining the correctness and appropriateness of the content

of the code. It examines recommendations regarding the creation and development of the content of public service codes in order to make them effective.

The importance of this chapter and its relevance shall become clear in the conclusion and recommendations of this research. Upon finalisation of the comparison, it would be prudent to highlight not only the findings of the comparison but also to consider the reasonableness, correctness and relevance of the provisos contained in the SA Code.

The content of the code forms part of a wider context. This chapter explains this wider context. There are many factors which contribute to the creation, development and effectiveness of the content of a code.

## **2.2 ORIGIN OF THE CODE OF CONDUCT**

### **2.2.1 Integrity**

In chapter 1 the importance of integrity in and of an organisation was highlighted. The integrity of an organisation consists of a framework of a wide range of elements. These elements are supported by a strong programme of internal controls, which includes standards of conduct (Magahy & Pyman, 2010:57–59).

A code may be a combination of a legal framework which provides for legal obligations and corresponding sanctions and an ethical framework which describes core values which an organisation must aspire to. It also highlights what values are expected from employees and describes their legal obligations. In other words, the code tells the employee what his/her personal obligations are under the law and what the parameters of his/her accountability are. Apart from the aforementioned purpose, codes provide guidance on the management of the organisation. It further highlights that the organisation must ensure that it has mechanisms to support the employee in complying with the standards of conduct. These may be protected disclosure/reporting mechanisms if the employee has an obligation to report corruption (Magahy & Pyman, 2010:61–62).

The code is the foundation upon which professionalism is built, in that it is a set of in-house rules of conduct which regulates members of a specific professional group. Profession is defined to mean a “vocation of calling” and includes the public administration (Gildenhys, 2004:115). A further purpose of the code is to highlight to employees how to avoid conflicts of interests and how to conduct themselves in their public and private lives (Gildenhys, 2004:115–116, 125).

The King II report not only developed a code of corporate practice and conduct applicable to, among others, the public sector, but compels the development, implementation and codification of standards of ethical behaviour. It sets out the requirements to be met by organisations in order to show their commitment to the code (Institute of Directors, 2002:32).

### **2.2.2 Ethics, values and the code of conduct**

The question that arises is: What is ethics? Does it differ from values and how does it result in being fundamental in the development of the code?

Ethical behaviour refers to behaviour that is not only good for oneself but also good for another. Hence behaviour that concentrates on acts that are good only for one self is seen to be unethical. Values refers to the standards that are used to determine whether an action or behaviour is good, not only for oneself but for another. For example, if it is believed that equality or freedom is good, the test is to determine whether it is good only for oneself or also for others. If an individual believes that only he deserves equality or freedom such an action will not be good. Such behaviour shall amount to unethical behaviour (Rossouw *et al.*, 2006:3–5). Values play a major role in the governance of an organisation. They contribute largely to the integrity framework which promotes the code as a tool in its framework (Magahy & Pyman, 2010: 61–62).

The King II report describes seven common, yet critical universal values that should govern organisations. They are discipline, transparency, independence, accountability, responsibility, fairness and social responsibility (Rossouw *et al.*, 2006:122–123).

### 2.2.3 Developing the code

#### (a) Assessment of risks

According to Malan and Smit (2001:175) a code should be finalised after an organisation has been designed. The code must be a product of consultation with all stakeholders, namely employees, shareholders, management, clients and suppliers.

The development of codes includes the determination of ethical risk in an organisation, codifying, institutionalising ethical standards and reporting ethical performance. Stakeholders' perceptions of an organisation's ethical performance as well as their ethical expectations of the organisation are considered. In so doing, the organisation will then be able to identify ethical problems/risks and the ethical opportunities that can be adopted (Rossouw *et al.*, 2006:122–123, 131).

It is important for ethical standards to be included in a code of ethical conduct – the reasons will be discussed later. This means that standards must be implemented and enforced in an organisation.

Since organisations have worked toward triple bottom line reporting which entails reporting on economic, social and environmental performance, it has become imperative for organisations to manage and control risk. In the UK, the Turnbull report calls for directors to not only consider the risks but also to ensure that adequate measurements are in place to address the risks (i.e. identify and manage risks) (Garrat, 2003:195).

King II requires boards to take responsibility for the management of risks. The King reports (II and III) are applicable to both the public and private sector (Institute of Directors, 2002:4; 2009:1).

#### (b) Purpose, focus and orientation of the code

An effective code is an important fact of a modern system of internal control. It informs employees in writing how they are expected to behave and it causes compliance. Thus, it prevents management from being accused of not providing

guidelines to its employees and employees being charged for misconduct for violation of standards that are not stipulated (Brooks, 2007:157).

Codes can be created for different purposes and the extent or depth of their coverage can also differ. Codes can be information instruments. They are used to share information ranging from making employees aware of the importance of their ethical conduct to the financial success of the organisation. They can be compliance-focused whereby they describe in statement form what is acceptable and unacceptable employee conduct (Malan & Smit, 2001:175).

Sometimes codes are drafted for the purpose of explaining what is expected of employees in their relationship with stakeholders. The focus here is stakeholder commitment. The main purpose of some codes is to communicate the values/mission of the organisation. The intention here is to instil in employees a sense of pride in being an employee of the organisation by highlighting ethics and types of conduct as essentials. Many codes may be a combination of all of the aforementioned. The nature, purpose and extent of application are determined and usually reflective of the circumstances prevalent in the environment in which the organisation finds itself. An informational and compliance orientated code usually indicates that the organisation faces pressure from stakeholders and needs to comply with the legal framework. The environment, therefore, dictates the nature and approach (orientation) of the code to be created – whether it will be aspirational, directional or a combination of the two (Brooks, 2007:157).

## **2.3 THE CODE OF CONDUCT VERSUS THE CODE OF ETHICS**

### **2.3.1 Various descriptions of the code of conduct**

Schwartz (2004:324) highlights the fact that codes can be referred to as codes of ethics, codes of practice, credos, mission statements or value statements. Skubik and Stening (2008:516) confirm this view. As a result of the use of different names to describe either codes or codes of ethics, there is confusion as to the distinction, nature and purpose of codes and codes of ethics (Kaptein & Schwartz, 2008:112).

Wood and Rimmer (2003:183) mention various types of descriptions of codes of ethics and conduct. They highlight the fact that the code of ethics is about the values of an organisation, whilst the code of conduct is a set of practical guidelines that puts values into practice. They also suggest that some organisations use a document with a combination of codes of ethics and conduct, whilst others have a code of conduct without a code of ethics or a code of ethics without a code of conduct.

### **2.3.2 Aspirational versus directional codes of conduct**

Some scholars propose that a code of ethics can be either regulatory or aspirational. It enforces those ethical principles that cannot be debated or it provides for standards that employees can aspire to. It can also be educational in that the code does not set rules or standards but allows the employee to decide. Classifying the code of ethics into the aforementioned categories has caused greater confusion regarding the distinction between the code of ethics and the code of conduct. The first two descriptions fall within the sphere of codes of conduct because they are “prescriptive” whilst the last falls within the sphere of ethics (Wood & Rimmer, 2003:184).

A code may be defined as a document which sets out specific standards of conduct expected of an employee under certain circumstances. It represents an organisation’s interpretation of its core values whilst a code of ethics is a “general statement” of an organisation’s core values. A public service code of ethics sets out broad principles of integrity, accountability, responsibility and trustworthiness. The code of ethics is not aimed at how these principles or core values are enforced in practice (Whitton, 2001:3).

The nature and extent of application of codes also vary. Codes can be inspirational in that they describe in a short statement the key values of an organisation. These are usually referred to as credos (Schwartz, 2004:324). While some codes describe standards of behaviour, others can be ethical and highlight the expected ethical principles (Skubik & Stening, 2008:516).

Between 1965 and 1990, most public sector codes in the west, were a combination of values and standards of conduct, but this created difficulties. Employers found that it was difficult to take disciplinary action based on employees breaching general principles. It, therefore, became necessary to clearly distinguish between the code of ethics (values) and standards of conduct. The disadvantage of relying on aspirational codes of ethics is that it makes it very difficult to charge an employee for the violation of generally broad ethical principles. Values are subjective and open to various interpretations. Equally so, when a code is directional and clearly specifies prohibited behaviour, the likelihood of it omitting other forms of misconduct is possible. This again may then render it worthless. Furthermore, the employee becomes constrained and unable to apply themselves without fear (Whitton, 2001:4).

The OECD (OECD, *Unclassified*, 2009:35) promotes a combination of approaches. This has proven to be the most successful, because, whilst it describes the values that the organisation wants to foster in its employees, it also attaches penalties for non-compliance.

## **2.4 NATURE OF THE PUBLIC SERVICE CODE OF CONDUCT**

Both the International Code and the Model Code are a combination of approaches i.e. aspirational and directional (UNODC, *Compendium of Instruments, International Code*, 2005:114–115; CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:1).

According to Magahy and Pyman (2010:61) an ethical framework gives rise to and provides the strategy for the development of a code. It represents the core values of integrity and provides guidance to decision makers regarding complex matters. Standards of conduct are drafted so as to reflect the values of the organisation.

Clearly, values form an integral part of the integrity management system. Shared values contribute to the success of an organisation and largely influence thinking and behaviour in public organisations (Kernaghan, 2003:712).

Many countries have value statements which are stand-alone documents referred to by the code. They are separate but not independent, whilst some codes include the

values in the code document (Kernaghan, 2003:716–717). In some countries the statement of values appears at the beginning of the code whilst others like Australia and Canada continually reinforce the values throughout the text of the code (Magahy & Pyman, 2010:65).

Irrespective of where they appear in the code, it seems from the literature reviewed that values impact strongly on the content of the code. Values may be described as moral obligations. Value equals integrity; this value gives rise to the principle that an employee may not use his/her public office for personal gain (Gilman, 2005:10).

Given the importance of the role of values in the creation of codes (Magahy & Pyman, 2010:61–62) this research considered whether the public service in general has a common set of values.

Whitton (2001:4) lists the following values (which he refers to as principles) as being the minimum set of principles implemented in most modern western public sector systems: serving the public interest, transparency, integrity, legitimacy, fairness, responsiveness, efficiency and effectiveness.

The above values are almost similar to the core values of the public sector in OECD member countries. These are: impartiality, legality, integrity, transparency, efficiency, equality, responsibility and justice (European Institute of Public Administration, 2004:34). These values are supported by Van der Wal, de Graaf and Lasthuizen (2008:473–475).

Emanating from the values, specific standards of conduct need to be developed in order to encourage compliance with such values (Magahy & Pyman, 2010:61).

This research shall determine whether the SA Code shares common values with the International and Model codes. With regard to the common values, the question that is asked is whether the common values give rise to similar standards of conduct used to address the actual or potential problem of corruption.

## 2.5 NATURE AND ORIENTATION OF THE CONTENT OF THE CODE OF CONDUCT

### 2.5.1 Nature and orientation

The content of a code is extremely important. A blank code is no code because there will be no message to communicate, nor does the mere existence of a code make it effective. The content and design, although not the only factors that contribute to the overall effectiveness of a code, are the most important factors to properly communicate the intention of the employer and to achieve the purpose of its existence (Kaptein & Schwartz, 2007:119).

Malan and Smit (2001:175) explain that the content of codes may vary depending on the purpose for which the code was intended. Codes may be statements of intent, they may include values and guidelines on standards of behaviour or they may be documents that list detailed definitions of conduct expected from employees – all employees – executives included. It must highlight that the conduct described in the code is expected of all employees as individuals as well as employees of the organisation. The code should clearly indicate how employees should treat the public and colleagues. It must indicate what powers they have in taking decisions. It needs to guide employees on how to deal with actual and potential corruption risks and what their limitations are with respect to acting in their private interests. Very importantly, it must describe the consequences (penalties) for non-compliance with the code.

According to Rossouw *et al.* (2006:190–191) codes have essentially similar content. The similarity in content can be categorised as values and virtues, specific regulations and requirements, skill and competency requirements and relationships with others.

Schwartz (2004:328–331) examined various aspects of code content, namely:

- a) justification for the subject matter of codes;
- b) provision of examples;

- c) tone of the code, i.e. use of negative language, e.g. don't do as opposed to positive language being do x or try to do x;
- d) length of the code;
- e) relevance of the code,
- f) realism of the behaviour expected.

The findings regarding each of these aspects are summarised below.

In the area of justification, Schwartz (2004:329) examined whether the content of the code affected employees' willingness to comply, in other words, do the employees believe the subject matter of the code and would this affect compliance? If employees do not believe in the reason for the existence of the code, they may not want to comply. It was found that, if provisions in the content are seen to be unreasonable or unfair, they would not be complied with or may diminish the potential for compliance.

Schwartz (2004:329) found that the use of examples in the code gave employees a better understanding of the code's provisions. This understanding contributes to the effectiveness of the code.

Contrary to other research, it was further found that a negative tone or negative language in a code was preferred to a positive tone as it clearly indicates what cannot be done. In a survey employees acknowledged that the purpose of a code was not to inspire and, therefore, does not need to be positive. The only drawback was that when the word "unacceptable" was used, the impression created was that when the word "unacceptable" was not stipulated, then the behaviour was acceptable. However, despite this drawback, codes with positive tones posed many more problems (Schwartz, 2004:329–330).

Regarding the length of the code, Schwartz concluded that lengthy codes may present problems, thus rendering them ineffective (Schwartz, 2004:330). According to the survey by Schwartz, some employees believed that a code should contain as much detail as possible in order to provide sufficient guidance. Others felt that a very lengthy code was unnecessary. Hence the conclusion that a code should be of a reasonable length without it being too long or too short.

Employees also indicated in the survey conducted by Schwartz that the behaviour expected of employees must be reasonable and realistic. If the code stipulated certain unattainable behaviours, activities or expectations, it would be ineffective. Codes must be relevant to the activities of the employees. If they are not, they will not be read (Schwartz, 2004:330).

In order to keep them current and in step with the organisation, its employees and environmental changes, the content of codes should be open to revision and amendment (Faan, 2001:175). O'Dwyer and Madden (2006:220) state that the revision of a code shows the commitment and seriousness of the organisation in the code.

The layout of most codes also follows a similar pattern. It has a preamble or introduction, which emphasizes the commitment to ethical values and behaviour. This is followed by a list of definitions as well as laws, regulations and requirements emanating from these. It also includes sections on conflict of interest, confidentiality of information and behaviour expected towards others. Codes are concluded with a paragraph on the compliance of employees to laws and other regulatory frameworks or employees' responsibility to each other and/or the public. Whilst the content of codes is similar, it may differ in terms of the depth of coverage on the above areas. Notwithstanding, they all still promote what behaviours are acceptable, the standards of skill and performance required and compliance with the regulatory framework (Rossouw *et al.*, 2006:191).

## **2.6 IMPORTANCE OF THE CONTENT OF THE CODE OF CONDUCT IN ADDRESSING COMMON CORRUPTION ACTIVITIES AND RISKS IN THE PUBLIC SERVICE**

It cannot be assumed that employees understand the crimes and the conduct prohibited in an organisation. Hence, a fundamental problem that may occur in the content of codes is the lack of explanation of the activities and or risks of corruption and the conduct that is prohibited. Sometimes acts of corruption are not clearly defined. Whilst some acts of corruption may be clear other areas such as acceptance of gifts, entertainment and conflict of interest may not be as clear to

employees. Similarly, the conduct that is prohibited but associated with such risk must also be clearly described (Gordon & Miyake, 2001:162).

Magahy and Pyman (2010:57–76) conducted an international review on the ethics and business conduct of 32 countries' defence ministries and armed forces. One of the aims was to assess the strength of regulations pertaining to specific activities/risks of corruption. The common activities/risks in all of these countries were bribery, acceptance of gifts, entertainment, conflict of interest and post-separation/ employment activities. The SA Code, International Code, Model Code as well as the OECD Guideline and Technical Guide list similar activities/risks.

It was found that the content of codes lacked clarity in defining the aforementioned activities and/or risks of corruption. They did not adequately (if at all) explain the steps to be taken to avoid such activities or potential activities or risks. Also the employee was not informed of what he can do to report such incidents (Magahy & Pyman, 2010:57-76). The following examples are briefly discussed to illustrate the findings:

### **2.6.1 Bribery**

Bribery is the giving or receiving of anything of value that would influence an official act or business decision. It also includes any form of gratification given illegally directly or indirectly to the receiver (Singleton & Singleton, 2010:83). Bribery payments can take numerous forms including gifts, expensive entertainment like lunches, holidays, expensive tickets to sport games, drugs, sexual favours, employment either for the bribe taker or his/her family or friends. Loans can be paid off and houses and cars may be given as gifts (Biegelman & Bartow, 2006:174).

Gratification extends to family and friends of the recipient of such gratification (The Prevention and Combating of Corrupt Activities Act 12 of 2004:5)

The code, therefore, needs to define bribery as an illegal activity. Further, it should provide examples and guidance on the steps to be taken when an employee is confronted with or suspect's bribery. It is important to identify the illegal activity and to act appropriately. Magahy and Pyman (2010:70) found in their survey that

although bribery was described as an illegal activity, the code lacked in details on the steps to be taken by an employee when confronted by an actual or potential act of bribery. This naturally creates difficulties as the employee needs guidance and mechanisms to report such activities.

### **2.6.2 Economic extortion and illegal gratuity**

Albrecht (2003:438) explains economic extortion as being the opposite of bribery. Bribery is when the vendor (service provider) offers the bribe but extortion is when the employee demands a bribe from the vendor for influencing a decision in favour of the vendor. It is further explained that illegal gratuities is actually a sub-category of bribery where corrupt employees are rewarded benefits for decisions that were made in the vendor's favour.

Gratuities are made after the approval of the deal and not before. According to Singleton and Singleton (2010:84) an intention to influence a decision does not necessarily exist, thus it becomes difficult to prove.

The survey by Magahy and Pyman (2010:66–70) highlighted the fact that gifts and entertainment were perceived not to be as important as bribery. Many codes include provisions governing the amount, nature and recording of gifts and hospitality, whilst others just include blanket prohibition. Although the blanket prohibition may be acceptable, it can be seen to be unreasonable. It was also found that no guidance was included on where and how problems in this area should be addressed.

### **2.6.3 Conflict of interest**

Conflict of interest is when an employee, manager or executive of an organisation has a hidden personal or financial interest in a matter which is to the detriment of the organisation. It is important to note that the difference between this form of corruption and the others is that here the employee is acting out of pure self interest and not for and on behalf of any one else. In other words the employee is not being bribed. If an interest is disclosed, then it is not a conflict of interest (Singleton & Singleton, 2010:83).

The survey by Magahy and Pyman (2010:71) showed that conflicts of interests were not adequately addressed in codes. Conflicts of interests were defined poorly or not at all. Again, it was found that there was a lack of guidance regarding how to identify, act, report and resolve such conflicts. It is important in this specific act/risk to assure employees that a potential conflict of interest does not warrant sanction. However, there should be voluntary disclosure and lack of such disclosure warrants penalties. This also implies that mechanisms to allow for such disclosure should be available.

#### **2.6.4 Post-separation/employment activities**

Post-separation/employment activities are also important to be addressed in a code as this can create or develop into serious risk for an organisation. This is when an employee leaves the public service to work for the private sector or conducts activities (e.g. opens his/her own business) after he leaves the public service (OECD, Policy Brief, 2005:2). There is a risk of confidential, proprietary information being passed on to the new employer who may be a competitor. Alternatively, the information may be used in his/her own business e.g. using client information or selling information to competitors. It, therefore, becomes imperative for the code to address the area of public/private movements. It should state the conditions regarding employment by service providers and competitors and the protection of confidential information (Magahy and Pyman, 2010:68).

According to Magahy and Pyman (2010:71) rules should be in place to govern employees leaving the organisation. A distinction is made between current employees seeking employment outside of the organisation whilst employed (which may amount to conflict of interest) and employees who leave the organisation and then find employment.

## **2.7 OTHER FACTORS WHICH CONTRIBUTE TO THE EFFECTIVENESS OF THE CONTENT OF THE CODE OF CONDUCT**

Kaptein and Schwartz (2008:118–120) describe many factors that contribute to the overall effectiveness of codes including stakeholders, the environmental/organisational characteristics, organisational objectives, the creation, development and implementation process of codes and enforcement mechanisms.

Stakeholders contribute highly to the organisation and their expectations must be considered when developing the code. Stakeholders can, rightly so, dictate the standards of conduct and types of penalties they expect. Environmental/organisational factors have been found to impact the effectiveness of codes and impact the behaviour of employees e.g. the size of the organisation, the economic situation inside and outside of the organisation (Kaptein & Schwartz, 2008:118).

It is important to understand exactly what the organisation wants to achieve. What are its goals and objectives e.g. are these profit or service driven? Does the organisation want to emphasise values or rules? Answers to these questions affect the development and implementation of the code (Kaptein & Schwartz, 2008:118).

The process of creating a code not only improves awareness but can determine whether the code has the support of the employees. If employees are consulted and allowed to contribute to the creation of the code, it will give them a sense of ownership, which will encourage compliance. This process also includes regular revision in order to cater for changing circumstances (Kaptein & Schwartz, 2008:119).

The code must be distributed and communicated to staff. However it is important that employees not only read but also understand the content of the code. Therefore, the code must be supported by other instruments like training and workshops (Kaptein & Schwartz, 2008:119).

A code's effectiveness depends on the mechanisms available for reporting and addressing actual and potential offences e.g. hotlines and protection of whistleblowers. There must also be sanctions for violations. A code without sanctions becomes toothless. Management must also support the code. If there is

no support for the code, employees don't take it seriously. When employees perceive that management doesn't support the code they inclined to believe that it is merely for window dressing. Hence, the tone set by top management is extremely important in supporting the code (Kaptein & Schwartz, 2008:120).

## 2.8 CONCLUSION

It is evident from the above that many factors contribute to the effectiveness of codes and more specifically to the effectiveness of the content of codes. It is reiterated that the focus of this research is on the content of the code and not the other factors discussed above. However, it is important to understand the nature of codes in order to understand the process of creation and development of its content.

The content of codes must be considered under a wide range of circumstances. Therefore, in summary, a code forms part of an integrity framework which consists of a legal and ethical framework (Magahy & Pyman, 2010:57–59). Values give rise to ethics. These are the fundamentals in the creation of codes. Codes are distinct from, although related to, codes of ethics. Codes are standards of conduct which may include or refer to values. Therefore, codes can be rule based or based on a combination of rules and values (OECD, Unclassified, 2009:35; Wood & Rimmel, 2008:183–184).

The common values of the public service are serving the public interest, transparency, integrity, legitimacy, fairness, responsiveness, efficiency and effectiveness (Whitton, 2001:4).

In developing the content of a code it is important to assess the corruption risks that the organisation faces. This assists in defining the types of risks in the content and the standards of conduct expected in addressing such risks (Rossouw *et al.*, 2006:122–123, 131). A further consideration when developing the content of a code is to understand the purpose for which the code is being implemented. Is it to be used merely to share information about the mission and values of the organisation, or to set standards of behaviour? This influences the content (Malan & Smit, 2001:175).

It must be justifiable. It must describe and define in detail the types of corruption risks that an employee may encounter and the standards of behaviour expected. It should have examples to facilitate better understanding. A negative tone is preferred so as to clearly show what would be unacceptable behaviour and the code must be of a reasonable length. It must have provisions that are relevant and expectations that are realistic (Schwartz, 2004:328–331).

Codes generally have similar content. They differ only in respect of the depth of coverage (Rossouw *et al.*, 2006:191). The public service in most countries share common values and risks. The corruption risks faced by most public sectors are areas of bribery, conflict of interest, gifts and entertainment, post separation employment/activities. The content of codes often lacks in defining these risks, providing examples and guidance on how or what employees should do to address actual or potential risks (Magahy & Pyman, 2010:57–76).

Apart from the content being effective, other factors also contribute to the overall effectiveness of the code. A code must be properly communicated and not only read, but also understood by employees. To ensure that this happens the code should be properly distributed among employees and employees should receive training on the code. The content of codes should be revised regularly in order to adapt to changing circumstances in the work environment. Very importantly, the code must be supported and practised by management (Kaptein & Schwartz, 2008:118–120).

A code should include enforcement mechanisms to enable proper reporting of actual or potential crimes e.g. hotlines, protected disclosure policies, protection of whistle blowers and sanctions for violations (Kaptein & Schwartz, 2008:120). Detailed codes result in ethical decision-making and behaviour as opposed to less comprehensive or non-existent. However, it was found that codes that highlight penalties/sanctions for non-compliance are more effective (Petersen & Krings, 2009:504). It becomes abundantly clear that whilst the content has a major impact on garnering support for compliance, other tools should also be employed to reinforce the code.

## CHAPTER 3: CONTRIBUTION BY INTERNATIONAL ORGANISATIONS TO THE CODE OF CONDUCT

### 3.1 INTRODUCTION

Chapter 1 highlighted the fact that corruption was a national and international problem. South Africa is a signatory to various international conventions and protocols and member of various international organisations in its fight against corruption.

The three prominent international organisations are the OECD, the UN and the CoE. Their respective contributions to the development and actual content of codes are discussed below.

The mission of the OECD is to have a forum for governments to share experiences, challenges and solutions to common problems. Its ultimate goal is to improve the lives of people on an economic and social level by promoting policies and setting standards (OECD, *About the OECD*, [n.d.]:1).

One of the OECD's main area of focus is to promote effective governance in the public and private sectors (OECD, *About the OECD*, [n.d.]:1).

The UNODC leads the global fight against drugs and international crime. It renders assistance in the global fight against corruption. The UN views corruption as a serious impediment to economic and social development. Hence through the UNODC the UN partners with public and private sectors to fight corruption, specifically in governments (United Nations, *About UNODC*, 2011:1–2). The UN developed the International Code and thereafter developed the Technical Guide to the International Code.

On 11 May 2000, the Committee of Ministers of the CoE adopted Recommendation No. R[2000], 10 of the Committee of Ministers to member states on codes of conduct for public officials (the recommendation) (CoE, *Recommendation No. R[2000]*, 2000:1). Emanating from the recommendation, the Model Code, for public officials, was developed.

In light of the aforementioned organisations' contributions to the fight against corruption, the guidelines and recommendations made by them in respect of the content of codes may be considered to be international good practise.

The review of the comparison table in the Appendix hereto, gives rise to many observations. It reveals the common characteristics, principles and provisions contained in the OECD and Technical guidelines and the international codes. It should be explained that the guidelines merely provide a framework within which certain provisions may be drafted, whilst the international codes provide the actual provisions. The observations are discussed under the following broad categories namely: nature and orientation of the content of the code and specific corruption activities and risks.

### **3.2 THE OECD**

The OECD has, among others, developed an Integrity Management Framework (the Framework), which includes twelve principles on managing ethics in the public service. All the principles call for the promotion and demonstration of ethical conduct (OECD, *Public Management Committee of the OECD*, 1998:1).

The Framework is made up of instruments, processes and people. In order to achieve integrity an organisation must develop standards and regularly update, monitor, enforce and give guidance on such standards to its employees (OECD, *Integrity Framework*, [n.d]:1–2).

The OECD recommends the code of conduct in its Framework (OECD, *Unclassified*, 2009:34). The Framework describes conceptual issues and findings about the impact of codes and highlights policy recommendations concerning code content and scope. The Framework was approved by the OECD's Public Governance committee on 6 May 2009 and may be used as a guideline in drafting codes.

The majority of the country members of the OECD have developed and implemented formal codes. These codes set out either broadly or specifically those values and principles governing certain behaviour on corrupt or potentially corrupt practises (OECD, *Ethics Codes and Codes of Conduct*, [n.d.]:1).

In 1996 the OECD developed a model framework( the OECD guideline) for the public service which included aspirational ethical principles and a code which specified the standards of behaviour that were required under specific circumstances. The intention was to clearly distinguish the ethical principles from the standards of conduct so that employees could be certain of those behaviours that were prohibited (Whitton, 2001:4).

### **3.2.1 Nature and orientation of the content of the code of conduct**

The OECD guideline defines a code as having a rules-based approach which would unambiguously describe the types of behaviour expected. It must also establish the procedures for monitoring compliance and punishing non-compliance. It distinguishes the code from a code of ethics. A code of ethics is defined as being values based (aspirational), which focuses on general values and not specific types of behaviour. The intention of the code of ethics is to allow employees to exercise independent reasoning. The employer thus provides the general framework of values together with the necessary support and training to assist the employee in applying these values in his/her daily work life (OECD, *Unclassified*, 2009:34).

The OECD advocates that the code should be used if a weak compliance/regulatory framework exists outside of the organisation which would not hold employees accountable in the event of them breaching the internal framework. There will thus be a need for a rules-based code. The converse will hold if there are laws or a strong regulatory framework outside the organisation which would punish corrupt behaviour. In such circumstances there would be no need for a rules-based approach i.e. prescriptive standards of conduct but rather a values-based code of ethics (OECD, *Unclassified*, 2009:35).

It is reiterated that organisations can develop a hybrid of the two approaches whereby the values are listed with specified standards and principles on how to apply the values (OECD, *Unclassified*, 2009:35).

The OECD recommends that the code begins with an introduction which explains the purpose and characteristics of the code (OECD, *Unclassified*, 2009:36). It further recommends that the content of the code should address the following areas:

- a) Objectives: What expectations are addressed by the code?
- b) Scope: This should show whom the code is applicable to.
- c) Enforcement: Whether the code is enforceable and if so, how?
- d) Contact: Whom employees may contact for clarity on any aspect of the code?
- e) Hierarchy of values and rules: This will indicate whether the values and rules described are in order of importance or not.
- f) Conflicting values: This should explain what/how staff may deal with situations where the values listed in the code clash with each other. It should also state whether there is support for employees in the form of training or coaching, in order to assist them with such conflicts.
- g) Consistency: It should show that the code forms part of an integrity framework and should describe the other instruments included in the framework and what their relationship to the code is.

The introduction must be followed by the body of the code which must list the core values (a limited number) which must be defined, specified in rules and if possible, followed by examples (OECD, *Unclassified*, 2009:36), *Unclassified*, 2009:37).

The OECD recommends further that in order to avoid vagueness, the text should be clear, simple, specific and concise. It must be logically structured without overlapping, terminology should be used consistently throughout and cross referencing to other documents and instruments relevant to the code should be done (OECD, *Unclassified*, 2009:37). The OECD guidelines also make recommendations on certain corrupt activities and risks which are common in the public service.

### **3.2.2 Common corruption activities or risks**

The OECD identified specific activities/risks of corruption and developed guidelines in respect thereof. The activities focused on are: gifts and gratuities (as one act) and conflict of interests.

(a) Conflict of interests

The OECD developed specific guidelines to manage conflict of interests. These guidelines proved to be effective in OECD member countries (OECD, *Recommendation on Conflict of Interest*, 2003:3). The guideline is a comprehensive international benchmark to help governments promote integrity and high standards of conduct within the public sector (OECD, *Policy Brief*, 2005:1).

The guidelines describe conflict of interests to include situations where an employee either joins or leaves a public service organisation and has or establishes a commercial relationship prior to or thereafter, with a private company he either worked for or leaves to join, i.e. post public office employment (OECD, *Policy Brief*, 2005:1).

The OECD policy brief describes the following areas/situations as having the potential for conflict of interest namely: assets, liabilities/debts, personal relationships, family relationships, business interests, external activities/positions, gifts, benefits and hospitality (listed as one activity) with the latter three activities being the highest likely areas for conflict to exist (OECD, *Policy Brief*, 2005:1).

The guidelines list the core principles for managing conflict of interest as being to serve the public interest, support transparency and promote individual responsibility. It also advocates that an employee should lead by example and create an organisational culture which is intolerant of conflicts of interests (OECD, *Recommendation on Conflict of Interest*, 2003:4–6).

The guidelines also describe the key recommendations when developing the conflict of interest measures or standards as being identifying conflict of interest situations, establishing procedures to deal with conflict situations, leadership commitment to addressing conflict of interest, engage employees through training and awareness campaigns, address contraventions of the conflict of interest policy standard and engage the private sector by making it aware of the policy (OECD, *Recommendation on Conflict of Interest*, 2003:6–9).

(b) Gifts and gratuities

The code must also give attention to the issue of gifts and gratuities. It should describe in detail the nature, type, value and conditions upon which gifts may be accepted or rejected (OECD, *Procurement Toolbox*, [n.d.]:1).

An organisation must stipulate what gifts are reportable and those that need not be reported. Gifts and gratuities are also related to conflict of interests. Therefore, the code must outline those areas which can influence procurement officials (OECD, *Procurement Toolbox*. [n.d.]:1).

Apart from the value of the gift, it is also important to understand the context in which the gift is given and received, in other words, what the relationship between the giver and receiver is. If the gift is made to the official in his/her private capacity instead of his/her capacity as representative of the organisation, the question arises whether the relationship between the giver and receiver compromises the integrity of the official (receiver) or the official's organisation (OECD, *Procurement Toolbox*, [n.d.]:1).

The OECD has developed a checklist on gifts and gratuities for officials to consider when accepting gifts, using the mnemonic GIFT (OECD, *Procurement Toolbox*, [n.d.]:2). It translates as follows:

**Genuine:** Is the gift genuine or is it being given to influence me as official?

**Independent:** If I accept this gift, will a reasonable person question or doubt my independence in performing my job in the future, especially if the giver of the gift is involved in the decision I make?

**Free:** If I accept the gift, will I feel obligation in anyway whatsoever to the giver, his/her family, his/her friend or associates?

**Transparent:** Do I feel free to declare this gift openly to whomsoever?

### 3.3 THE TECHNICAL GUIDE

On 31 October 2003, the UN General Assembly adopted the UN Convention against Corruption (UN Convention) which came into force on 14 December 2005. The

convention focuses on, among others, prevention of corruption, criminalisation of acts of corruption and calls for international co-operation. The Technical Guide was developed to ensure that the provisions of the UN Convention are implemented. It provides examples, advice and tools to States on how to put the articles of the Convention into practice (United Nations, *Convention*, 2011:1–3).

One of the preventative measures promoted in the Technical Guide of the UN Convention is the Code for Public Officials (UNODC, *Technical Guide*, 2009:18).

It calls for each state to develop and implement standards of conduct for public officials so that they perform their duties correctly, honourably and properly. These standards must be drafted where appropriate in accordance with each state's domestic, regulatory (legal) framework, but should take note of the International Code, the Model Code and the OECD's recommendations (UNODC, *Technical Guide*, 2009:18).

### **3.3.1 Nature and orientation of the content of the code of conduct**

The Technical Guide recommends that the code describe the core values of the organisation. It further prescribes the core values to be lawful conduct, integrity, due process, fairness, professionalism, and ensure efficiency, purpose and accountability (UNODC, *Technical Guide*, 2009:20).

The code should make provision for standards on conflict of interest, gifts, benefits, outside activities and reporting of corruption by public officials. Therefore, the State should have systems and measures in place to facilitate such reporting (UNODC, *Technical Guide*, 2009:19).

The Technical Guide, like the OECD Guidelines, proposes a combined approach i.e. a combination of values and standards. The standards must provide guidance on how employees should conduct themselves, and must be drafted into a code which provides this guidance. The code must clearly indicate to employees what is expected of them in the performance of their official duties. It should also indicate what the consequence for non-compliance is. The code serves both the employer and employee, i.e. making the employee aware of the standards and describing the

penalties for non-compliance and it provides grounds for the employer to take action against the employee for non-compliance (UNODC, *Technical Guide*, 2009:20).

The Technical Guide advises that content can be approached in various ways. The content can address a multitude of topics including standards and values of the public office, conflicts of interest, gifts and benefits, bribes, fairness and equity in handling the public, confidential information, use of resources, post employment and other activities, procurement and sanctions. Specific clauses should be included for employees in high risk corruption areas (UNODC, *Technical Guide*, 2009:23–24). The recommendations regarding specific activities or risks are discussed below.

### **3.3.2 Common corruption activities or risks**

#### **(a) Conflict of interest**

It is important for the code to describe financial conflict of interests (e.g. where the official, in his/her official capacity, does work that would affect him/her or his/her close family/friend's financial interest) and non-financial conflict of interest (i.e. where the official's work impacts on people or entities with whom he has close personal relations) (UNODC, *Technical Guide*, 2009:21).

The Technical Guide recommends that the following issues be considered specifically with regard to conflict of interest: incompatible positions in a specific office, what interests and assets must be declared, whether there are different requirements for different posts, how far does the family line extend, i.e. immediate family or further, who must disclose, what would be the value, who verifies the information, who ensures compliance and will declarations be published (UNODC, *Technical Guide*, 2009:26)

#### **(b) Gifts and gratuities**

Similarly recommendations for gifts and hospitality are made. The issues that should be addressed are: permission to be obtained for the acceptance of gifts, invitations or any form of hospitality, the information required for registering of gifts and

hospitality, who has access to the register, ownership of any gift, investigating allegations, verification of information and sanctions. All gifts given and received should be recorded and the minimum value which requires declaration and also requires permission/approval prior to acceptance or giving the gift should be specified. The code should also determine when and how soon declarations must be made prior to or after receiving, accepting and/or giving the gift (UNODC, *Technical Guide*, 2009:27).

### **3.4 THE INTERNATIONAL CODE**

The International Code is recommended by the UN Convention as one of the instruments to be used as a guideline by countries when drafting their respective codes (UNODC, *Technical Guide*, 2009:18–20).

The General Assembly of the United Nations adopted the International Code on 12 December 1996. The code sets out the principles governing conflict of interests, disclosure of assets, gifts and confidential information, among others (UNODC, *Compendium of legal instruments, International Code*, 2005:5).

The International Code's recommendations and provisions are dealt with under the following categories:

#### **3.4.1 Nature and orientation of the content of the code**

The nature, purpose and core values of the organisation appears at the beginning of the International code. It speaks of trust, loyalty, integrity, efficiency, effectiveness, impartiality, fairness and attentiveness. It describes the public office as one of trust and, therefore, there is an implied duty to act in the public's interest. It further states that public officials must be loyal to the interests of the public. It highlights the values of integrity, efficiency and effectiveness in the performance of a public officer's duties. The employee shall always use public resources responsibly, effectively and efficiently. There is a call for the public official to always be attentive, fair and impartial in the execution of his/her duties. There shall be no undue preference or discrimination shown to any person or entity. There will be no abuse of power and

authority. It is clear that the International Code also advocates a combined approach (UNODC, *Compendium of legal instruments, International Code*, 2005:114).

### **3.4.2 Common corruption activities or risks**

The International Code includes provisions on the following corrupt activities and risks.

#### **(a) Conflict of interest**

Officials are advised not to abuse their official authority for the improper advancement of their own or their family's personal or financial interest. It explains further that the official should not engage in any transaction, take on any position or responsibility or have any financial interest that would be incompatible with his/her office or duties and responsibilities (UNODC, *Compendium of legal instruments, International Code*, 2005:114–115).

The section also deals with disclosure of financial and other activities which the official performs for financial gain outside of his/her normal working hours and which may cause an actual or potential conflict of interest. It compels the official to comply with the internal policies/measures that attempt to prevent or reduce such conflicts of interest. It highlights the prevention of the use of public resources and information for work/activities that do not form part of the official's duties (UNODC, *Compendium of legal instruments, International Code*, 2005:114–115).

#### **(b) Gifts and gratuities**

Public officials are barred from accepting or soliciting directly or indirectly any gift or favours that may influence the decisions, judgement or the way they perform their functions (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

(c) Confidential information

Information that is confidential, which is in the official's possession must be kept so, during and after the official's term of employment. The only time this rule may be broken is if the official is compelled to divulge confidential information as a result of law, duty or a court order (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

(d) Political activity

The official must not allow his/her political activities to affect his/her objectives in the performance of his/her duties and result in the public losing confidence in his/her impartiality (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

(e) Disclosure of assets

Public officials are required (in terms of the law and administrative policies) to disclose all their assets and liabilities and that of their spouses and dependants where possible (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

(f) Post-employment activities

The Code also regulates officials' actions once they leave the employ of the public service. It states that officials must comply with all the rules and policies regulating the abuse of their previous official positions for the unfair benefit of their post-employment activities (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

### 3.5 THE MODEL CODE OF CONDUCT

The UN's Technical Guide recommends, among others that the Model Code be considered when drafting a code for public officials, (UNODC, *Technical Guide*, 2009:20).

In developing the Model Code various international programmes and resolutions regarding actions against corruption were considered. It, therefore, calls on all the governments and member states to develop and implement codes for public officials based on the Model Code. It further instructs the Group of States against Corruption (GRECO) to monitor the implementation of the recommendation (CoE, *Recommendation No. R (2000) 10*, 2000:1–2).

#### 3.5.1 Nature and orientation of the content of the code of conduct

The Model code begins with a definition of the term “public official” and an explanation of to whom it applies. It describes the object of the code as being to set standards of integrity and conduct. It is worth noting that the Model Code is also applicable to individuals employed in the private sector but who perform public services. The Model Code is not applicable to elected representatives, judicial officers and members of government (CoE, *Recommendation No. R (2000) 10*, *Model Code*, 2000:1).

The Model code also highlights compliance with the core values of the organisation and the fact that the official must always consider the rights and interests of all others and never act to the detriment of any person. The official's decision-making must be lawful and impartial, and his/her private interests must not conflict with his/her public position (CoE, *Recommendation No. R (2000) 10*, *Model Code*, 2000:1–3).

The official should avoid actual and/or potential conflicts of interest and must avoid using his/her position for personal interests. The official must always act in a manner that would preserve the public's trust and confidence in the public service. The public must trust that the public service acts with integrity, impartiality and effectiveness. The official shall remain accountable to his/her superior unless

otherwise indicated. He/she must treat information and documents acquired during the term of his/her office with the required confidentiality (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:3–8*).

### **3.5.2 Common corruption activities or risks**

The Model Code has specific provisions regarding certain corruption activities and risks.

#### **(a) Conflict of interest**

The article starts with a definition of conflict of interest as being any work situation in which the official has a personal interest and which influences, or may influence the official's objectivity in performing such work. Private interest is defined to include a benefit or advantage to himself/herself family, close relatives, friends and any outside person or entity with which he/she has close business or political relations (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:3*)

The official is called on to be alert to any actual or potential conflict of interest and to ensure that he takes steps to avoid such conflict. He/she must immediately report the conflict when he becomes aware of it, and must comply with whatever he/she is instructed to do. The public official should (i.e. not compelled) report any conflict when he is required to do so. All conflicts of interest should (again this indicates a choice) be resolved before appointment of new employees or current employees to new positions (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:3*).

The official is deterred from engaging in outside activities (including holding positions) which are in conflict with his/her position and duties as an official. If he/she is unsure, he must obtain clarity. The official should notify and obtain approval for any work activities to be performed outside (whether paid or unpaid) from the employer. The official must declare any membership or association in organisations that may compromise his/her position or the performance of his/her work as a public official. The official should not place himself in a situation, both in his/her private or official life, wherein he/she becomes obligated to return a favour to

the person to whom he/she becomes obligated (CoE, *Recommendation No. R (2000)10, Model Code, 2000:4-6*).

(b) Gifts and gratuities

The official should not accept or demand any gifts, favours, hospitality and any other benefit for himself/herself or family or close relatives or friends as well as organisation/s he/she has close relations with, which may result in his/her decisions being influenced and his/her objectivity being compromised. This provision does not apply to conventional hospitality and minor gifts. It states that should the official be unsure of whether to accept, he should seek clarity. The term “conventional” and “minor” are not defined. This presents difficulties (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:5*).

The Code also sets out the steps to be taken by an official when offered an improper gift and advantage/benefit. There are eight steps highlighted. One of the more important steps is that the official should not accept the undue advantage under any circumstances. The official should not accept the advantage on the grounds that it is required for evidence i.e. the official shall use it as proof of the bribe. If the gift has been delivered and cannot be returned, it should be kept as evidence but handled as little as possible. There should be witnesses, the giver of the gift/benefit should be identified and a written record should be prepared as soon as possible. The matter should be reported to the supervisor or directly to the police as soon as possible. The official should continue working on the matter that caused the undue benefit (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:5*).

The official should not place himself/herself in a situation, both in his/her private or official life, wherein he/she becomes obligated to return a favour to the person to whom he/she becomes obligated. The public official should not use his/her position to give or receive any gifts, unless he/she is authorised to do so. The official should also not use his/her position to influence any one (i.e. colleagues and/or third parties) for his/her personal interests (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:6*).

(c) Confidential information

Whilst some information may be subject to disclosure in terms of the access to information laws, all other information should be protected against unlawful disclosure and theft. The official should protect such information that is not only in his/her possession but also official information that he/she becomes aware of but is not in his/her possession. The official should ensure that he/she does not use the information for personal purposes and should not access information that he/she is not supposed to have access to. Very importantly, the official should not withhold information that ought to be released and should ensure that the correct information is disclosed. He/she should not disclose false and misleading information (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:6).

(d) Political or public activity

The official is advised to keep his/her political activities and views independent and separate from his/her public office so as not to lose the confidence of the public and employer in his/her objectivity in the performance of his/her duty. The official should comply with any rules that lawfully restrict his/her political activity due to his/her position or nature of his/her job (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:4–5).

(e) Disclosure of assets

The public official must declare on appointment and thereafter at regular intervals, any personal interests that may be affected by his/her official duties. It seems that this article differs from the one on conflict of interest. The article on conflict of interest deals with private interests influencing the official's work duties whereas here it deals with official work duties influencing personal/private interest (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:4).

(f) Post-employment activities and former employees

The official is advised not to use his/her position as an official to find outside employment. The official should not allow the prospect of outside employment to cause him/her to do something that may create an actual or potential conflict of interest in his/her public service job. The official should disclose any confirmed offer and/or also acceptance of the offer that may create potential/actual conflict (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:7–8*).

Another important provision herein is that the ex-public official should not act for or on behalf of a third party, for an appropriate period of time, where such representation may give the third party confidential information against the public administration. The period should be stipulated or else it will become ineffective. The former public official should also not disclose confidential information obtained during his/her work as a public official, unless required to do so by law. The public official should comply with the necessary rules governing acceptance of appointments on leaving the public service (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:8*).

### 3.6 CONCLUSION

A code is defined as a document which sets out standards of behaviour. It may include the values that an organisation aspires to. In other words, a code may be a combination of standards and values. It is one of the tools in an integrity management framework which includes principles on the management of ethics in the public service (OECD, *Public Management Committee, 1998:1*).

The OECD confirms that a code can be rules or values based or a combination of the two approaches. The OECD developed guidelines on the content of codes. It recommends that the content of the code should be simple. It must have an introduction, a body and examples. The content must include the objectives and scope of the code. It should also indicate how the code will be enforceable, who the contact persons are for cases that need to be clarified, what the hierarchy of values and rules is and how conflicting values may be dealt with (OECD, *Unclassified, 2009:34–36*).

The OECD guidelines are useful, especially on the areas of gifts and conflicts of interest. One can use these in the drafting of a code (OECD, *Procurement Toolbox*, [n.d.]:1).

The Technical Guide provides valuable recommendations on the content, which are similar to those recommended in the OECD Guidelines. The Technical Guide is a very comprehensive practical guide – not only on the code but also on how to implement the provisions of the UN convention. It focuses on the code as one of the tools. It consolidates and adequately addresses all those important potential and actual areas of risk of corruption namely, conflict of interest, gifts, benefits, outside activities and reporting of corruption by public officials. The technical guide recommends that the code be clear and understandable. It should identify the consequences for non-compliance and must serve both the employer and employee (UNODC, *Technical Guide*, 2009:18–27).

The International Code, although not very comprehensive, addresses those fundamental actual and/or potential areas of risk of corruption, namely conflict of interest, gifts, use of confidential information and post-employment activities. It is noted that the nature, orientation and content of the International Code follow the recommendations of the OECD. It also contains a combination of both values and rules (UNODC, *Compendium of legal instruments, International Code*, 2005. 114–115).

The Model Code is also fairly comprehensive and, like the Technical Guide and International Code, covers a wide range of areas. It also contains a combination of values and standards. The content is very similar to, although more detailed than the International Code. It deals with a number of areas but focuses on those potential and actual areas of corruption namely conflict of interest, outside interests, gifts and improper offers. It also addresses post-employment activities, abuse of power and public property. The Model Code also shows that employees must be treated well and be protected (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:1–8).

This was lacking in the OECD and Technical Guidelines as well as the International Code. The only deficiency in the Model Code is the fact that most of its provisions are not compulsory.

The content of the International Code and Model Code is similar to the extent that they both focus on essential areas of actual and potential corruption.

## CHAPTER 4: THE SA CODE OF CONDUCT

### 4.1 INTRODUCTION

In 2002, the Cabinet of SA approved the Public Service Anti-Corruption Strategy (Anti-Corruption Strategy). This strategy called on departments to establish the necessary mechanisms for the detection, prevention and combating of corruption in the public service (DPSA, *Anti-Corruption Capacity Requirements*, 2006:2).

The Anti-Corruption Strategy adopted a holistic approach to fighting corruption. It proposed, among others, that the legislative framework regarding corruption be reviewed. It also proposed that professional ethics be managed, that mechanisms be implemented for reporting corruption and protecting whistle blowers and that employees be made aware, trained and educated in this regard (DPSA, *Anti-Corruption Capacity Requirements*, 2006:5).

One of the initiatives implemented to improve professional ethics in the public service and to address some of the proposals mentioned above, is the SA Code. The SA Code is one of the tools which allows for the implementation of the Anti-Corruption Strategy (DPSA, *Anti-Corruption Capacity Requirements*, 2006:7–9).

### 4.2 ORIGIN OF THE SA CODE OF CONDUCT

The public service is governed by basic values and principles (S197(1) of the Constitution of the Republic of South Africa, 1996). These include a high standard of professional ethics, objective and fair services, accountability, transparency and access to accurate information (S195(1) of the Constitution of the Republic of South Africa, 1996).

The SA Code was promulgated and published on 10 June 1997 as an amendment to the regulations to the Public Service Act 47 of 1997. The purpose of the code was to encapsulate the principles of S195 by providing guidelines to employees on the standards of conduct expected (PSC, *Report on the Code*, 2006:5).

In 2002 an explanatory Manual (the Manual) on the SA Code was published by the PSC. The purpose of the Manual is to offer practical guidance on the SA Code to foster better understanding of its provisions and application. It is explained in the Manual that it, as the SA Code, is subject to revision (PSC, *Manual*, 2002:4, 7). For the purpose of this research the SA Code includes the Manual and these documents must be read together.

The Manual emphasizes the need for short training courses to be developed for all employees on standards of ethics in the work place. In its current form the Manual lists a number of practical examples which will educate employees on ethical issues. The Manual also highlights the importance of executing authorities and management in creating an environment where values and good examples are set for employees. The employer must also ensure that all employees are aware of the code. The Manual reiterates that all employees are governed by the code and that non-compliance will be sanctioned (PSC, *Manual*, 2002:7–9).

The Manual offers practical explanations and numerous examples regarding all the provisions of the code. However, this research focussed on those examples relating to provisions regulating conduct that may result in actual or potential corruption, if not regulated.

### **4.3 ANALYSIS OF THE SOUTH AFRICAN CODE OF CONDUCT**

#### **4.3.1 Nature and orientation of the content of the code of conduct**

The purpose of the code is to give practical effect to the provisions of the Constitution and to confirm that all employees are expected to comply with the Code. It is further stated that the code is a guideline to employees on the ethical behaviour expected from them in their private and work life. It explains that compliance with the code will enhance professionalism and establish confidence in the Public Service (Public Service Act, *Regulations*, 2001:47).

The SA Code is rules based in that it compels compliance. Non-compliance may result in the employee being charged with misconduct (DPSA, *Anti-Corruption Capacity Requirements*, 2006:25).

The SA Code does not list all the core values together under a specific section. However, the values are mentioned throughout the code under the various rules and standards, e.g. the employee must be faithful to the country and honour the Constitution; the employee must put the interest of the public first and must loyally execute policies. The SA Code also describes the manner in which the employee is expected to treat the public and his/her colleagues, as well as the manner in which he/her performs his/her duties. Both the SA Code and the Manual provides for the standards and clear examples as well as the consequences for non-compliance (Public Service Act, *Regulations*, 2001:47–59; PSC, *Manual*, 2002:7–64).

The employee must abide by all statutory instructions governing his/her conduct and work. The employee must always act in the best interests of the public and must be objective, fair, polite, and helpful. The employee must refrain from discrimination in any way and should not abuse his/her official position either to promote or discriminate against any other political party or interest group. The employee must respect a person's dignity and constitutional rights and the right to access information (Public Service Act, *Regulations*, 2001:47–48).

The following example is used to explain this area:

Example 1: When an official is to develop policy, it is important to ensure that the policy is in line with the Constitution. Also, the principles of transparency in service delivery and public participation must be promoted in developing the policy (PSC, *Manual*, 2002:10).

The SA Code begins with Part A, the purpose of the Code. Part B is an introduction and Part C deals with conduct in relation to the legislature and executive, the public, employees, duties, personal conduct and private interest and elective candidates. (Public Service Act, *Regulations*, 2001:47–50). The aforementioned is briefly discussed below.

The introduction refers to the need to give direction to officials regarding their relationship with the legislature, political and executive office-bearers, colleagues

and the public. It also indicates the manner in which employees should perform their duties, how to avoid conflicts of interests and how to behave in private and public environments (Public Service Act, *Regulations*, 2001:47).

Part B of the SA Code explains that although it is intended to be as comprehensive as possible, it is not. There may be other rules governing behaviour which may have been left out. Hence it is incumbent upon the Head of Department to ensure that the basic rules, principles, and values governing the public service are complied with by employees. In this regard, they must ensure that all employees are familiar with the standards in the code and the employees accept and abide by it (Public Service Act, *Regulations*, 2001:47).

The introduction emphasizes that the primary purpose of the code is to promote excellent conduct. The purpose explains that the code is to give practical effect to the provisions of the Constitution. The SA Code contains rules which address the various acts or omissions. It does not list the values in order of hierarchy. However, it should be noted that the values are highlighted in the various rules and the Manual as discussed above. It does state the objectives and scope under the purpose and introduction (Public Service Act, *Regulations*, 2001:47–50).

#### **4.3.2 Common corruption activities or risks**

The SA Code addresses the following corrupt activities and risks.

(a) Conflict of interest

The SA Code addresses conflict of interest under various sections but mainly under the employee's relationship with the public, the performance of duties, personal conduct and private interests (Public Service Act, *Regulations*, 2001:48–50).

The manual deals with various examples under the aforementioned sections illustrating conflict of interest situations (PSC, *Manual*, 2002:16, 21–22, 27–29, 42–48).

The public service serves the entire country and its people. It is imperative that the public official serves the entire populace in an unbiased and fair manner. In this way the public will have trust and confidence in the public service (PSC, *Manual*,

2002:16). An employee must not engage in any transaction or activity that would cause a conflict in his/her official duties. All employees must perform their duties in a loyal and dedicated manner. Therefore, the employee should not do anything (either in his/her official or private capacity) that would or could amount to fraud or theft, interference or influence in the performance of his/her duties, including his/her objectivity and the perception of actual or potential prejudice or favour of certain parties (PSC, *Manual*, 2002:42). The following explanations and examples are used to illustrate this area:

The employee is prohibited from abusing his/her powers to do anything that would result in an unfair benefit to himself/herself or his/her friends and family. He/she should also not use his/her powers/position to influence colleagues to do anything that results in undue benefit to him/her, his/her family and/or friends, which includes gifts (Public Service Act, *Regulations*, 2001:48, 50). The Manual describes the following example:

Example 1: An employee works in the procurement section and is in charge of processing applications for services from the public. The employee's neighbour is aware of the employee's position and the fact that the employee can influence decisions. The neighbour approaches the employee to assist in processing his/her application or giving him/her preference. The employee must not assist the neighbour on this basis (PSC, *Manual*, 2002:16).

The employee cannot, without approval, perform remunerative work outside of the employee's official work (Public Service Act, *Regulations*, 2001:50). It is expected of an employee to completely devote his/her time, attention and skills to his/her official duties. If not, it would prejudice the employer and the public. Performing work outside of his/her official duties and hours will result in the aforementioned. Therefore, it is mandatory for the employee to obtain prior approval to do remunerative work outside official hours and duties (PSC, *Manual*, 2002:56). The following examples illustrate what is meant by this provision.

Example 1: An employee may be a partner in a business outside of his/her official duties. The business requires of him to work there after hours. However, there may

come a time when the official needs to work overtime in order to complete an official task. As a result, the official becomes frustrated and his/her attention is divided. A conflict of interest may arise (PSC, *Manual*, 2002:56).

Example 2: A medical doctor working in the public service cannot work part time in a friend's surgery and receive payment, without the approval of the Head of Department (PSC, *Manual*, 2002:56).

Example 3: An employee performs a second job after official hours. The employee works late and goes to bed late. As a result, the employee is exhausted the next working day and cannot perform optimally. This is not in the public interest and is an indirect waste of taxpayers' money (PSC, *Manual*, 2002:56).

The employee must be honest and accountable when dealing with public funds and public resources as these must only be used for official purposes. The employee cannot use or disclose official information for personal or another's benefit (Public Service Act, *Regulations*, 2001:49). It is explained that the public entrusts the employee with assets and funds of the state. Therefore, the employee is expected to use these responsibly. The employee should also create savings for the taxpayer. This can be done by keeping expenses low and rendering services within the available resources (PSC, *Manual*, 2002:44). Various examples are given about the employee using work equipment and property e.g. phones, fax machines and motor vehicles for personal use. The damage or overuse can result in unnecessary expenses which ultimately cause the taxpayer more money (PSC, *Manual*, 2002:45).

#### (b) Gifts and gratuities

The SA Code does deal with gifts and gratuities, albeit it in not too much detail. It should also be noted that gifts and gratuities are also dealt with under the section on conflict of interest. There is a rule against engaging in decision-making that would result in improper personal benefit and another rule against the abuse of public resources and property (Public Service Act, *Regulations*, 2001:49). The manual provides examples in this regard (PSC, *Manual*, 2002:44).

The employee is also not allowed to use his/her official position to obtain gifts or benefits (Public Service Act, *Regulations*, 2001:50). The Manual sets out a number of examples and attaches a specific value to the gift/gratuity (PSC, *Manual*, 2002:53–54).

It is explained that an employee must not favour relatives and friends in work matters and must not abuse his/her authority or influence another employee or allow his/her authority to be abused. Employees should be appointed, promoted and rewarded for their ability to perform and not because of their family background, position in the public or their association with influential people. The Manual defines and distinguishes between favouritism and nepotism (PSC, *Manual*, 2002:27). The following example is used to illustrate this.

Example 1: An employee is promoted because the person who authorizes such promotion is the employee's friend or owes him a favour (favouritism) or is a relative (nepotism). Further examples of favouritism and nepotism are given in the Manual (PSC, *Manual*, 2002:27–29).

A further explanation is that an employee must recuse himself from any action or decision-making process that would cause him to unfairly benefit personally. The employee must declare this situation. It is explained that, when an employee believes that he cannot be objective in his/her work or in taking a decision, or if other people believe that the employee cannot be objective, the employee must withdraw from such activity (PSC, *Manual*, 2002:42–43). The following example is listed.

Example 1: Where an employee is a member of a recruitment panel and one of the candidates to be interviewed or short-listed is the employee's friend or relative, the employee must recuse himself and declare in writing why he is doing so. He must do so even if the employee believes he will be objective, because he may be regarded by others to be subjective (PSC, *Manual*, 2002:43).

An employee cannot, without prior written approval from the Head of Department, accept or obtain private gifts, benefits or items of monetary value of R350 or more, for himself/herself during the performance of his/her duties as these may be considered to be bribes. The Manual explains that the public official is paid his/her salary from taxes collected from the public. Therefore, the public official must always

serve the public professionally. No additional amounts are payable to the official for any service unless it is for a specific further service, e.g. issue of an identity document. No other payments either in cash or in kind are payable to the official. Both the public and the employee must clearly understand this. Notifications should be displayed in service charters and buildings. Where additional payments are required, it must be indicated on the relevant application forms (PSC, *Manual*, 2002:53).

Potential service providers must also be notified that the principles of the Constitution shall be followed for the procurement of goods and/or services. The Constitutional principles require the highest degree of professional conduct. Therefore service providers need to know that they should not offer gifts, sponsorship, promotional material or lunches. This would create the impression that the service provider intends to bribe the decision-makers. In addition, it causes unfair competition for smaller service providers (PSC, *Manual*, 2002:53–54).

The Manual advises that this area is a very contentious one and the PSC cannot provide a sufficiently comprehensive guideline. It requests departments to approach the PSC for advice in any area of uncertainty (PSC, *Manual*, 2002:54). Notwithstanding, it lists the following as guidelines:

- It reiterates that acceptance of gifts or any item of monetary value can only happen with the written approval of the Head of Department.
- All gifts and hospitality given in excess of R350,00 by a source other than a family member, must be declared.
- Employees may consult the PSC on areas of uncertainty (PSC, *Manual*, 2002:54).

(c) Confidential information

The employee must allow the public access to information, excluding information protected by law (Public Service Act, *Regulations*, 2001:48). Although the public has the right of access to information held by the state, this right is limited to non-

confidential information. Some information is strictly confidential because its disclosure could jeopardize the security of the state (PSC, *Manual*, 2002:48).

The employee is also compelled to keep confidential matters, documents and discussions (that are either classified or implied to be such) confidential (Public Service Act, *Regulations*, 2001:49). The examples given deal extensively with electronic information and the need to protect such information. It also speaks of how, when and who should have access (PSC, *Manual*, 2002:49).

An employee must not use or disclose any official information for personal benefit or the benefit of another.

It is explained that employees may become privy to official information in the course of the performance of his/her duties. This information may not be disclosed without the necessary approval. The employee cannot use the information for personal benefit or the benefit or detriment of others. Employees must always consider whether the disclosure would be in the interest of the public service. Importantly, the Manual explains that transparency does not mean indiscriminate disclosure. Due to the fact that it is almost impossible to do a comprehensive list of the information that can/cannot be disclosed, employees are advised to approach their supervisors when uncertain of the information to be disclosed (PSC, *Manual*, 2002:55). The following examples are used.

Example 1: The disclosure of interview questions or selection criteria to applicants will not only unfairly favour the candidate who receives the information, but will prejudice the other applicants. They will not have an equal opportunity to contend for the position (PSC, *Manual*, 2002:55).

Example 2: If an employee knew that a government project would result in property values increasing in a specific area, he should not use this information to enrich himself/herself or his/her family or friends (PSC, *Manual*, 2002:55).

(d) Political activities

The employee must loyally execute the policies of the government of the day. The employee must be faithful to the country and its Constitution. The employee must

put the interest of the public first in the execution of his/her duties (Public Service Act, *Regulations*, 2001:47–48).

The employee must be objective, fair, polite and helpful when dealing with the public. The employee must refrain from discrimination. The employee should not abuse his/her official position to either promote or discriminate against any other political party or interest group (Public Service Act, *Regulations*, 2001:48). The employee cannot engage in party-political activities in the workplace (Public Service Act, *Regulations*, 2001:49). When an employee is elected as a candidate in a national election, the employee cannot remain employed in the organisation. He/she shall be placed on leave until he/she is no longer a candidate (Public Service Act, *Regulations*, 2001:50).

The Manual provides a detailed explanation of the meaning of this provision and a few examples illustrating such meaning (PSC, *Manual*, 2002:10–13).

Whilst an employee may not share the same political views or belong to the ruling party, the employee is obligated to execute on the mandate of the government of the day. The employee must serve the government of the day loyally, faithfully and with dedication (PSC, *Manual*, 2002:11). The following example is used:

Example 1: An employee believes that primary health care should be the government's highest priority and furthermore, the employee belongs to a political party that supports this view. However, the government's highest priority is housing and crime prevention. The employee must accept the government's priority and must perform his/her duties accordingly, despite his/her beliefs. The employee must set aside his/her feelings and must act objectively in furthering the government's priorities and not his/her own (PSC, *Manual*, 2002:12).

The public includes political parties and interest groups. The employee should not allow himself/herself to act prejudicially or to the benefit of any such political party or interest group. All members of the public must be treated equally and fairly (PSC, *Manual*, 2002:21). The following example illustrates this point:

Example 1: An employee belongs to a specific cultural or religious society. The society applies for a grant. The employee is in a position to evaluate the applications and makes recommendations on whether they must be approved. The employee

should not favour an application due to his/her connection with the society. The employee should also not reject applications by other societies to which he does not belong. The employee must declare his/her interest in the society which he belongs to in order to avoid actual or potential conflict of interest (PSC, *Manual*, 2002:22).

#### **4.4 ASSESSMENT OF THE SOUTH AFRICAN CODE OF CONDUCT BY THE PUBLIC SERVICE COMMISSION**

In 2006, the PSC conducted an assessment of the SA Code.

The aim of the survey was, among others, to measure compliance with the SA Code, assess the scope and content and assess best practice pertaining to the SA Code (PSC, *Report on the SA Code*, 2006:v).

The key findings revealed that the code itself causes its enforceability in that it makes non-compliance with its provisions an offence. The content encapsulates the principles of the Constitution. However, majority of the respondents to the survey believed that the SA Code was not effectively communicated. They also indicated that employees did not place a high value on the Code as the Code did not encourage the reporting of corruption and other offences (PSC, *Report on the SA Code*, 2006:vi).

The SA Code was assessed in three areas namely content, implementation and compliance. The conclusion was that the SA Code had little impact. The reasons listed may be summarized as follows: the code has not been reviewed since its inception and is therefore not updated nor reader friendly. This is despite the development of the explanatory Manual. The Manual was not published in all official languages. The SA Code's content and style must be reviewed. The SA Code has been implemented in some provincial departments, but many of the departments surveyed had not implemented it effectively (PSC, *Report on the SA Code*, 2006:vi).

Among others, it was recommended that a comprehensive review be conducted on the style and content.

## 4.5 CONCLUSION

Gildenhys (2004:127) comments that the development and implementation of the SA Code was a step in addressing corruption in the SA Public Service. The most serious criticism is the use of ambiguous words which can be interpreted positively or negatively, e.g. use of the word “reasonable” in relation to accessibility and instructions. “Reasonable” must be defined.

Also mention is made of appropriate channels to report or air grievances. What happens when those channels are unavailable? An adequate, safe whistle-blowing mechanism is needed (Gildenhys, 2004:128).

As is apparent from the aforementioned chapters, codes play a major role in influencing employees to conform to acceptable standards of behaviour.

There are many factors which contribute to the codes’ overall effectiveness as well as factors which contribute specifically to the effectiveness of its content (Kaptein & Schwartz, 2008:118–120; Petersen & Krings, 2009:504).

The SA Code is no exception. The SA Code’s content has been divided into 5 categories regarding the employees’ relationship with the legislative and executive, the public, other employees, performance of duties, personal conduct and private interests (Public Service Act, *Regulations*, 2001: 47–48).

Although the SA Code on its own may not be comprehensive, the Manual offers substantial explanations and examples in those fundamental areas that contribute to potential or actual corruption, namely conflict of interest, gifts, confidential information. However, there are some areas in the Manual that require updating. The Manual explains that the employee should not do anything (either in his/her official or private capacity) that would or could amount to fraud or theft (PSC, *Manual*, 2002:42). One of the examples used is the following: An employee should not serve on the board of an organisation that does business with his/her department (PSC, *Manual*, 2002:42).

This example is unclear because in practice, the employee can serve on the boards of state owned enterprises as a representative of the department or minister. This should be clarified in the Manual.

Various examples are given about the employee using work equipment and official property for personal purposes e.g. phones, fax machines and motor vehicles. The damage or overuse can result in unnecessary expenses which ultimately cost the taxpayer more money (PSC, *Manual*, 2002:45).

These examples should also extend to other activities, e.g. the misappropriation of public funds for personal gain as no examples on this issue are included.

The explanation that an employee must encourage an efficient, effective, transparent and accountable administration falls short in explaining further the need for transparency. If the administration is run efficiently and transparently, it will leave little room for corruption and other forms of mal-administration (PSC, *Manual*, 2002:45). The examples should include examples of where poor record keeping can result in weak controls and hence lead to potential or actual corruption.

The Manual explains that when an employee advises a higher authority, this advice should be professional and honest. The advice must not be affected by personal views (PSC, *Manual*, 2002:48). This section is not adequately addressed. Further examples and explanations should be given regarding subjective advice, e.g. if advice is subjective or not completely honest because the advisor employee is afraid or being pressured to withhold correct advice, he is still accountable. The incorrect advice could result in irregularities being performed, e.g. the awarding of a tender when the proper procedure was not followed.

The employee must maintain confidentiality of matters, documents and discussions, classified or implied to be such. The examples given deal extensively with electronic information and the need to protect such information. The examples also indicate how, when and whom should have access (PSC, *Manual*, 2002:49). This is insufficient. More examples are required to show that information cannot be disclosed to an opposing party in a litigation matter. More examples should also show that confidential information, whether in hard copy or electronic format, must

be kept securely and cannot be used during or **after** an employee's term of employment.

The area of gifts and hospitality was most comprehensively explained in the Manual. It is explained that employees may become privy to official information in the course of the performance of his/her duties. The following example is used: If an employee knew that a government project would result in property values increasing in a specific area, he should not use this information to enrich himself/herself or his/her family or friends. The example merely explains the principle but should explain how the enrichment could occur i.e. by way of purchasing a property in the area (PSC, *Manual*, 2002:55). As it stands, this example does not offer much clarity to the employee.

The SA Code is clearly not a comprehensive document and requires review as per the findings of the PSC Report (PSC, *Report on the SA Code*, 2006:vi). The same applies to the Manual.

However, the SA Code together with the Manual provides a sound base upon which professional conduct may be built (Gildenhys, 2004:125).

## CHAPTER 5: THE SOUTH AFRICAN CODE OF CONDUCT COMPARED WITH INTERNATIONAL GUIDELINES

### 5.1 INTRODUCTION

During the years 2003 to 2007, South Africa signed the SADC Protocol against Corruption, ratified the UN Convention on Transnational Organised Crime, the UN Convention against Corruption, the AU convention on Preventing and Combating Corruption and acceded to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, *Combating Bribery*, [n.d.]:1–3).

The OECD, UN and CoE assists countries in developing international standards and best practises in various common areas of interest and concern. These organisations have become globally recognized, standard-setting bodies on areas of corruption. They have produced various guidelines, protocols and conventions in the fight against corruption (UNODC, *Compendium of legal instruments*, 2005:1–20).

In light of the aforementioned it is appropriate to compare the SA Code to the guidelines of these international organisations. If an organisation is involved in the global arena, it is wise to familiarise oneself with the codes of other countries to ensure understanding and compliance (Brooks, 2007:240).

The Appendix hereto provides a comparison of the SA Code with those common guidelines and standards highlighted in the OECD guidelines, Technical Guide, the International Code and the Model Code.

A review of the comparison in the Appendix gives rise to many observations which are discussed below.

## 5.2 COMPARISON OF THE SA CODE OF CONDUCT WITH INTERNATIONAL GUIDELINES

Upon perusal of the OECD Recommendations, the Technical Guide, the International Code and Model Code, the following common recommendations/guidelines and provisions emerged. These may be categorised broadly under the following headings: nature and orientation of the content of the code and common activities of corruption or risks. Each category is briefly discussed below.

### 5.2.1 Nature and orientation of the content of the code of conduct

#### (a) The International Guidelines

The OECD Guideline highlights that, depending on the strength of the legal framework, either the rules or values-based approach can be used. It is, however, recommended that a combination of the two is best (OECD, *Unclassified*, 2009:34–35).

The OECD Guideline recommends that the Code must have an introduction (explaining its purpose and characteristics) a body, which must state a specific number of core values, rules and examples (OECD, *Unclassified*, 2009:36).

The content must address the objectives, scope, enforcement, contacts, hierarchy of values and rules, conflicting values and consistency (OECD, *Unclassified*, 2009:36).

The Technical Guide states that the standards of conduct must be drafted into a code and must provide guidance. It must clearly identify to employees what is expected of them. It should identify the consequences for non-compliance. The Code should include the core values of the organisation (UNODC, *Technical Guide*, 2009:20).

In the introduction to the International Code the values of the organisation, are highlighted. It also includes standards of conduct (UNODC, *Compendium of legal instruments*, 2005:114). The International Code may therefore be described as a combination of rule and values.

The objective of the Model Code is to set standards of integrity and conduct. The employee is called upon to comply with the core values of the organisation. The core values are clearly described. Furthermore, the employee is called upon to consider the rights and interests of all others and must never act to the detriment of any person. Decision-making must be lawful and impartial and private interests must not conflict with the employee's public position (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:1). The Model Code highlights the importance of the Code and recommends that it forms part of the employment contract. Violation of the Code shall result in disciplinary action. The code shall be reviewed regularly.

In summary; the International Guidelines propose a code with a combination of values and rules (standards). The values feature prominently right at the beginning of the documents, which emphasises its importance. The objective and provisions regarding, compliance and sanctions also appears in the introduction of the code. This confirms the nature and orientation of the code to be a combination of values and rules.

(b) Comparison with the SA Code

Despite having a reasonably strong legal framework, the SA Code is rules based in that it compels compliance. Non-compliance may result in the employee being charged with misconduct (DPSA, *Anti-Corruption Capacity Requirements*, 2006:25). Both the SA Code and the Manual provides standards and clear examples and also sets out the consequences for non-compliance (Public Service Act, *Regulations*, 2001:47–59; PSC, *Manual*, 2002:7–64).

The purpose and introduction explains that compliance with the code will enhance professionalism and establish confidence in the public service. It also indicates the manner in which employees must conduct themselves in their private and public capacity (Public Service Act, *Regulations*, 2001:47).

The SA Code does not list all the core values together under a specific section. However, the values are mentioned throughout the Code under the various rules and standards, e.g. the employee must be faithful to the country and honour the Constitution; the employee must put the interest of the public first and must loyally

execute policies. The manner in which the employee is expected to treat the public and his/her colleagues as well as the manner in which he/she performs his/her duties, is also dealt with (Public Service Act, *Regulations*, 2001:47–48).

The SA Code differs from the International Guidelines, in that the values are not stipulated collectively under a specific section or in the introduction. Further, according to the report by the DPSA, it is a rules based code unlike the recommendations of the International Guidelines that the code be a combination of both rules and values. However, this is questionable because the analysis shows that the values appear in the code albeit fragmented in that they are included under specific sections

## 5.2.2 Common corruption activities or risks

### (a) Gifts and gratuities

#### i) The International Guidelines

The OECD describes gifts and gratuities as one of the areas which is prone to actual or potential risk of corruption. It recommends that the nature, type, value and conditions upon which gifts/gratuities may be accepted, must be described in detail (OECD, *Procurement Toolbox*, [n.d.]:1).

This issue is also covered as a recommendation in the Technical Guide. Various issues must be addressed regarding gifts and hospitality (UNODC, *Technical Guide*, 2009:27).

Both the International Code and Model Code raises gifts and gratuities as an area of concern. The International Code provides that public officials are barred from accepting or soliciting directly or indirectly any gift or favours that may influence their decisions, judgement or the way they perform their duties (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

The Model Code provides that the official should not accept or demand gifts, favours, hospitality and any other benefit for himself, family, close relatives, friends or organisations that the official has close relations with that would influence the

official's decision and objectivity. The employee is advised to take certain steps to limit or avoid the risk of accepting an improper advantage. These steps include gathering of evidence and reporting such matters (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:5*).

The Model Code calls on the employee to refrain from being placed in a situation which compels a return of favours. The employee should not use his/her position to give or receive gifts, unless authorized to do so. The employee should not use his/her position to influence colleagues for his/her personal benefit (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:6*).

ii) Comparison with the SA Code

The SA Code has a rule against engaging in decision-making that would result in improper personal benefit and the abuse of public resources and property (Public Service Act, *Regulations, 2001:49*). The Manual provides examples in this regard (PSC, *Manual, 2002:44*).

The employee is also prohibited from using his/her position to obtain gifts or benefits for himself nor must he accept gifts or benefits (Public Service Act, *Regulations, 2001:49–50*). The Manual provides many good examples of the aforementioned situations (PSC, *Manual, 2002:42–44, 53–54*).

The SA Code and Manual does not specify in detail the steps that should be taken to avoid the risks associated with gifts or improper advantage as highlighted in the Model code. It does, however, make provision for the reporting of corruption and other offences (Public Service Act, *Regulations, 2001: 49*).

Except for the aforementioned, the SA Code may be considered to be compliant with the International Guidelines in this area.

(b) Conflict of interest

i) The International Guidelines

The OECD recommends that the term “conflict of interest” must be defined to include, among others, post-employment activities. It also includes an employee

who establishes a commercial relationship with a private organisation prior to or after leaving the public service. Other areas that may be included as potential conflicts of interest are also highlighted. The OECD has specific guidelines which deal with conflict of interest situations. This guideline makes recommendations on how to manage, identify and address conflict of interest situations (OECD, *Policy Brief*, 2005:1-2; Organization for Economic Co-operation and Development, *Recommendations on Conflict of Interests*, 2003:4–9).

The Technical Guideline also makes specific recommendations regarding the management and procedures to be followed with respect to conflict of interest. These include what positions are incompatible in a specific office, what interests and assets must be declared and what the different requirements for different posts are. Furthermore, recommendations exist on determining how far records extend, i.e. immediate family or further, who must disclose the value, who verifies and who ensures compliance (UNODC, *Technical Guide*, 2009:26).

The International Code prohibits the employee from engaging in any transaction or abusing authority which would result in improper, personal benefit. It includes benefits accruing to the employee's family. It also deals with disclosure of financial interest and other activities performed for financial gain by the employee outside of normal work hours, which may cause a conflict of interest (UNODC, *Compendium of legal instruments, International Code*, 2005:114–115).

It compels the employee to comply with internal policies and measures governing such activities. The employee is prevented from using public resources and information for personal purposes. The employee must also comply with all the rules and policies regulating the abuse of an employee's previous public positions and information for personal benefit once the employee leaves the public service (UNODC, *Compendium of legal instruments, International Code*, 2005:114–115).

In the Model Code the official is called upon to be alert to actual or potential conflicts of interest and describes the various steps to be taken to avoid conflict of interest. The official must ensure that he takes steps to avoid the conflict. The employee must report the conflict as soon as he becomes aware of it (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:3–4).

The Model Code also addresses possible conflict of interest issues that result from outside activities which may result in conflict with the employee's official position. It therefore recommends that the employee obtain approval for any work activities to be performed outside. The employee must also declare any membership or association in organisations that may conflict with the employee's official duties (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:4*).

The employee should not use his/her position to find employment outside the organisation. The employee should not allow the prospect of outside employment cause him to do something that may create an actual or potential conflict of interest in his/her official job (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:7*).

ii) Comparison with the SA Code

The area of conflict of interest is fairly well addressed in the SA Code.

The employee is prohibited from abusing his/her powers to do anything that would result in unfair benefit to himself/herself or his/her friends and family. The employee should also not use his/her powers/position to influence colleagues to do anything that results in undue benefit to him/her, his/her family and/or friends, which also includes gifts (Public Service Act, *Regulations, 2001:48–50*).

The employee cannot, without approval, perform remunerative work outside of the employee's official work (Public Service Act, *Regulations, 2001:50*).

The employee must be honest and accountable when dealing with public funds and public resources as these must only be used for official purposes (Public Service Act, *Regulations, 2001:49*).

The employee cannot use or disclose official information for personal or another benefit (Public Service Act, *Regulations, 2001:49*).

The SA Code is considered to be in line with the International Guidelines in this area.

(c) Confidential information

i) The International Guidelines

The above provisions and those discussed below, up to paragraph (f), were not addressed in the OECD guideline and Technical Guide, but appear in both the International Code and Model Code.

The International Code states that the employee is prevented from using public resources and information for personal purposes. The employee must also comply with all the rules and policies regulating abuse of an employee's previous public positions and related information for personal benefit once the employee leaves the public service (UNODC, *Compendium of Legal Instruments, International Code*, 2005:114–115).

Confidential information in the employee's possession must be kept as such during and after the employee's term of office. The only time that the employee may divulge this information is if the employee is compelled to do so as a result of law, duty or a court order (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

The Model Code has a similar provision. Information must be protected against unlawful disclosure and theft. This rule extends to information in the employee's possession or of which the employee is aware. The employee should not use the information for his/her benefit and should refrain from accessing confidential information that he should not. The employee should not withhold information that should be released and should also not disclose false and misleading information (CoE, *Recommendation No. R (2000) 10, Model Code*:6–7).

## ii) Comparison with the SA Code

The SA Code has almost similar if not identical provisions to the International Guidelines.

The employee must be honest and accountable when dealing with public funds and public resources as these must only be used for official purposes (Public Service Act, *Regulations*, 2001:49). The employee cannot use or disclose official information for personal or another's benefit (Public Service Act, *Regulations*, 2001:49).

The Manual deals extensively with examples on all of the above, however, it does not deal with post-employment activities (PSC, *Manual*, 2002:42–44).

The employee must allow the public access to information, excluding information that is protected by law (Public Service Act, *Regulations*, 2001:48). The employee is also compelled to keep confidential matters, documents and discussions that are either classified or implied as such, to be confidential (Public Service Act, *Regulations*, 2001:49).

The Manual provides an explanation and numerous examples on this issue (PSC, *Manual*, 2002:48–49).

The SA Code is considered to be compliant with the International Guidelines in this area.

(d) Political activities

i) The International Guidelines

The International Code states that the official must not allow political activities to affect his/her objectivity in the execution of his/her duties. This would result in the public losing confidence in his/her impartiality (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

The Model Code states that the official is advised to keep his/her political activities and views independent and separate from his/her public office to prevent the loss of confidence of the public and employer in his/her objectivity as an employee. The employee should comply with the rules that regulate his/her political activity (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:4–5).

ii) Comparison with the SA Code

The SA Code states that the employee must loyally execute the policies of the government of the day. The employee must be faithful to the country and its Constitution. The employee must put the interest of the public first in the execution of his/her duties (Public Service Act, *Regulations*, 2001:47–48).

The employee must be objective, fair, polite and helpful when dealing with the public and must refrain from discrimination. The employee should not abuse his/her official position to either promote or discriminate against any other political party or interest

group. The employee cannot engage in party political activities in the workplace. Furthermore, when an employee is elected as a candidate in a national election, the employee cannot remain employed in the organisation but shall be placed on leave until he is no longer a candidate (Public Service Act, *Regulations*, 2001:48–50). The Manual provides a detailed explanation of the meaning of this provision and a few examples illustrating such meaning (PSC, Manual, 2002:10–13).

The SA Code is considered to be compliant with the International Guidelines in this area.

(e) Disclosure of assets

i) The International Guidelines

The International code provides that public officials must disclose their assets and liabilities and (where possible) that of their spouses and dependants (UNODC, *Compendium of legal instruments, International Code*, 2005:115).

The Model Code includes a provision that the employee must declare on appointment and thereafter at regular intervals, any personal interests that may be affected by his/her official duties (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:4).

ii) Comparison with the SA Code

The SA Code is silent on this issue. It is therefore not compliant with the International Guidelines.

(f) Post-employment activities

i) The International Guidelines

The OECD guidelines cover this under the section on conflict of interest (OECD, *Policy Brief*, 2005:2). The International Code also deals with it under the section on conflict of interest (UNODC, *Compendium of legal instruments, International Code*, 2005. 115). The Technical Guide does not state the rules or conditions for post-

employment activity but does recommend that the code should address it (UNODC, *Technical Guide*, 2009:23–24).

The Model Code contains an entire article on post-employment activity (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:7). Clearly this entail strong potential or actual risk of corruption in the form of an act of bribery where an employee, relative or friend is promised a job with a better salary in order to unduly influence the employee's decisions (Biegelman & Barlow, 2006:174).

The Model Code states that the employee should not use his/her position to find employment outside the organisation. The employee should not allow the prospect of outside employment cause him to do something that may create an actual or potential conflict of interest in his/her official capacity (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:7–8).

ii) Comparison with the SA Code

Whilst the SA Code addresses employment activities during the course and scope of employment in the public service, it does not deal with post-employment activities. It is therefore not compliant with the International Guidelines.

### 5.3 CONCLUSION

The comparison between the SA Code and the International Guidelines regarding the category of the nature and orientation of codes highlights a few anomalies. The SA Code does not list all the core values of the public service under its purpose or introduction. The guidelines by the international organisations including both the codes, recommend that the core values be listed in the code prior to the body of standards. Despite this apparent shortfall, it is noted that, throughout the SA Code and Manual, the values are mentioned under specific provisions. Therefore this distinction is not a significant difference. The SA Code may therefore be considered a combination of rules and values based.

In general, the content of the SA Code, although not identical, is similar to the recommendations in both the OECD Guidelines and the Technical Guide. The same may be said when compared to the International Code and Model Code.

The comparison between the SA Code and the International Guidelines regarding the category of common corruption activities and risks, exposed certain concerning deficiencies. The activities, in which these deficiencies were apparent, are gifts and gratuities, disclosure of assets and post employment activities.

Whilst the International Code, the OECD Guideline and Technical Guide deals with all these activities adequately, the Model Code is by far the most detailed. The recommendations of the OECD, which provides a checklist on gifts (OECD, *Procurement Toolbox*, [n.d.]:1–2) and the Technical Guide, which provides practical steps to deal with gifts, e.g. registering, obtaining approval, value (UNODC, *Technical Guide*, 2009:27) should be coupled with the Model Code. In this way a near perfect provision on gifts and gratuities will be developed. The comparison looks at this combination. In respect of the other activities, the Model Code is the best international guideline against which to compare the SA Code as it incorporated most if not all of the recommendations proposed by the other guidelines.

The major difference between the Model Code and the SA Code is that the Model Code is worded in a way that implies that its provisions are not obligatory. It consistently makes use of the word “should” in all of its provisions. It may be argued that the Model Code serves as a mere guideline.

The other difference between the SA Code and Model Code is on the area of gifts. The Model Code is slightly more specific about who else other than the employee is prohibited from benefiting due to the relationship with the employee. It includes family, close relatives, friends as well as organisations (CoE, *Recommendation No. R (2000) 10*, *Model Code*, 2000:5). The SA Code refers only to the employee (Public Service Act, *Regulations*, 2001:50). This is inadequate and incongruent with the Prevention and Combating of Corrupt Activities Act 12 of 2004. The legislation is clear in its definition of corruption and not only refers to the giver or receiver of a gratification, but also any other person associated with the giver and receiver, who benefits as a result of the gratification.

The SA Code is not completely devoid on the provision of gifts. The Manual, which must be read with the SA Code, does provide for a specific value. It also gives examples of the types of gifts and favours that potentially or actually amount to bribes (PSC, *Manual*, 2002:53).

Regarding the gifts and gratuities, the SA Code lacks largely in stipulating the practical steps as highlighted in OECD Guidelines, the Technical Guide and the Model Code.

The Model Code explains further what steps should be followed when an employee receives an improper offer. It advises the employee to return the offer, keep the gift as proof, what to do under such circumstances and what should be done if the gift cannot be returned (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:5–6).

The SA Code is silent on the disclosure of assets.

The only other area in which the SA Code was lacking, was on post-employment activities. The OECD guidelines cover this under the section on conflict of interest (OECD, *Policy Brief*. 2005:1). The International Code also deals with it under conflict of interest (UNODC, *Compendium of legal instruments, International Code*, 2005:115). The Technical Guide does not state the rules or conditions for post-employment activity but does recommend that it should be addressed by the code (UNODC, *Technical Guide*, 2009:23–24). The Model Code contains an entire article on post-employment activity (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:7). Clearly this is a potential or actual risk of corruption, which can be in the form of an act of bribery where an employee, relative or friend is promised a job with a better salary in order to unduly influence the employee's decisions (Biegelman & Barlow, 2006:174).

Save for the above areas, the SA Code adequately addresses all the other common corruption activities and risks and is in line with the International Guidelines.

## CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

### 6.1 INTRODUCTION

Corruption in the public service has had a huge impact on the entire country. Among others, it undermines the fight against poverty by enriching corrupt officials and it hampers service delivery and the economy (DPSA, 2006:4; ISS2005:23,114). It has become a trend if not an imperative in the public sector to develop and implement conduct codes as mechanisms for assisting in fostering ethical behaviour (Garcia-Sanchez, Roderiguez-Dominguez & Gallego-Alvarez, 2011:190).

The impact of corruption on the public sector and its citizens, as well as national and international investors, has caused South Africa to enforce anti-corruption strategies (National Anti-Corruption Forum, 2009:1–7). Engagement and co-operation between government, national enforcement agencies and the private sector as well as international organisations have also become the order of the day (DPSA and UNODC, 2003:26,44,75,80).

The South African government in response to the Constitution, drafted a code of conduct for the public service in 1997 (PSC, *A Practical Guide*, 2002:4). Between 2003 and 2007 South Africa signed and ratified various international protocols and conventions on or against corruption (OECD, *Combating Bribery*, [n.d.:1–3]). One of the tools recommended by these conventions is the code (UNODC, *Compendium of Legal Instruments*, 2005:1–20). The OECD, UN and CoE developed practical international guidelines in an effort to assist countries with the drafting and implementation of codes in their respective public sectors (UNODC, *Compendium of Legal Instruments*, 2005:1–20).

In light of SA's interaction in the global arena, it was appropriate to compare the SA Code with the international guidelines proposed by the aforementioned international standard setting bodies. Brooks (2007:240) explains that if an organisation is involved in the global arena, it is wise to familiarise oneself with the codes of foreigners to ensure understanding and compliance

## **6.2 THE RESEARCH PROBLEM AND OBJECTIVES**

The overall purpose of this research was to understand in general what the code is; what its characteristics and purpose as well as the essential elements/factors that contribute to the effectiveness of its content in addressing corruption in the public service are. The main objective was to compare the SA Code with the practical guidelines to determine whether it complies with international practice.

The research problem was thus the following: the content of the SA Code does not comply with international guidelines. The specific research objectives were to:

**6.2.1** determine the general nature and characteristic of the code.

**6.2.2** analyse the International Guidelines, to determine the core principles and provisions regarding codes.

**6.2.3** analyse the code of the SA Public Service.

**6.2.4** compare the code of the SA Public Service with the aforementioned guidelines to determine whether it complies with the core principles, recommendations and provisos highlighted in the International Guidelines.

It is submitted that the research objectives were properly considered and achieved having regard to the findings and recommendations emanating from this research.

## **6.3 THE FINDINGS**

Upon comparison of the SA Code with the International Guidelines it may be concluded that, in certain areas, the SA Code does not comply with the international practise, whilst in others areas it does. Those areas of non-compliance are summarised below.

### **6.3.1 Nature and orientation of the content of the code of conduct**

The SA Code does not include a list of the core values of the public service in its purpose or introduction. However, throughout the SA Code and Manual, the values

are mentioned under specific provisions. Hence, it may be described as a combination of the rules and values based approach contrary to the report by the DPSA.

In general, the content of the SA Code, although not identical, is similar to the recommendations in both the OECD Guidelines and the Technical Guide. The same may be said when compared to the International Code and Model Code.

### **6.3.2 Addressing common corruption activities and risks**

#### **(a) Gifts and gratuities**

Unlike the International Guidelines, the SA Code refers only to the employee (PSA, *Regulations*, 2001:50) and does not prohibit any family or friends of the employee from offering or accepting improper gifts which is associated with the employees work.

The SA Code also lacks in stipulating the practical steps to deal with gifts as highlighted in International Guidelines. However, it is not completely inadequate. The Manual provides for a specific value and examples (PSC, *Manual*, 2002:53).

#### **(b) Disclosure of assets**

Whilst the International Guidelines make provision for the disclosure of assets, the SA Code is silent on the disclosure of assets.

#### **(c) Post employment activities**

The other area in which the SA Code is largely deficient, is in post-employment activities which is well addressed in the International Guidelines.

## **6.4 RECOMMENDATIONS**

### **6.4.1 Nature and orientation of the content of the code of conduct**

Upon analysis and comparison with the International Guidelines the SA Code does not clearly specify the values of the public service. Although the values can be ascertained throughout the SA Code, it is not collectively specified in the introduction. Values play a major role in an organisation. Standards of conduct are drafted to reflect the values of the organisation (Magahy & Pyman, 2010:61). Shared values contribute to the success of an organisation and influences thinking and behaviour (Kernaghan, 2003:712). Some countries state the values at the beginning of the code as is recommended by the OECD International Code and Model Code.

According to Whitton (2001:4) the core values in most public sector systems are saving the public interest, transparency, integrity, legitimacy, fairness, responsiveness, efficiency and effectiveness. The International Code and Model Code cover only some of these values.

It is, therefore, recommended that the SA Code be amended to include all the core values in the introduction as highlighted by Whitton (2001). This would make it more visible and important.

A code that is either aspirational or directional creates difficulties for the employer and employee (Whitton, 2001:4). It is thus recommended that a code consists of a combination of approaches. The OECD, International Code and Model Code are examples of such a combination.

### **6.4.2 Addressing common corruption activities and risks**

The comparison between the SA Code with the International Code and Model Code highlighted that the SA Code is inadequate in addressing certain corruption risks and/or activities, namely gifts and gratuities, disclosure of assets and post-employment activities. It seems that the SA Code and Manual do not correlate with

practice and other policies such as the financial disclosures framework and the guidelines on gifts as well as outside activities and use of assets for personal purposes. It also does not in any way regulate or manage the employee's post employment activities.

The Manual is also inadequate in giving examples on the confidentiality of information. It focuses mostly on electronic information and not on paper-based information (PSC, *Manual*, 2002:53). It does not deal with the security of such information during and post-employment. It also does not explain how the employee or a third party can use such information against the employer organisation. No examples with regard to gifts and gratuities were given.

Emanating from the above the following recommendations are made:

(a) Gifts and gratuities

Gifts and gratuities can take many forms and in essence amounts to bribery. They can be in the form of expensive entertainment, such as lunches, holidays, expensive tickets to sport games, drugs and employment. Loans can be paid off (Biegelman & Barlow, 2006:174).

Therefore, the examples to be included in the SA Code's Manual should consider the aforementioned. However, it must define bribery to be an illegal activity. It should not only be confined to the employee but should also include the employee's family and friends.

Also, it is recommended that the checklist provided by the OECD Guideline (OECD, *Procurement Toolbox*, [n.d.]:2), be used in the SA Code.

It is further recommended that the practical steps on how employees should deal with gifts as they appear in the Technical Guide (UNODC, *Technical Guide*, 2009:27) should be included in the Manual.

(b) Disclosure of assets

The Model Code states that an employee must declare on appointment and at regular intervals any personal interests that may be affected by employees' official duties (CoE, *Recommendation No. R (2000) 10, Model Code, 2000:4*). The International Code states that officials must not only disclose their assets and liabilities but also, where possible, those of their spouses and dependants (UNODC, *Compendium of legal instruments, International Code, 2005:115*).

The SA Code is silent on this area. The SA Code clearly needs to be updated in this regard.

It is recommended that the SA Code not only adopts the provisions of the International Guidelines mentioned above but also be updated to reflect the provisions of the regulatory framework of the SA public service.

c) Post-employment activities

Post-separation/employment activities can develop into serious risks (OECD, *Policy Brief, 2005:1–9*). Certain rules should be included to govern employees once they leave the employ of the organisation. It is important to distinguish between employees seeking employment whilst currently employed and employees who leave the employ and then find employment. The former may amount to conflict of interest (Magahy & Pyman, 2010:68).

The intention is to guard against the ex-employees utilising confidential information about the organisation to the organisation's detriment. Therefore, certain conditions should be included to manage the area of public/private movements. Conditions regarding employment of ex-employees by service providers and competitors should also be included (Magahy & Pyman, 2010:68).

This area is not covered sufficiently in the Model Code. The Code states that the employee should not do anything that would cause a conflict of interest due to the prospect of outside employment. The other international guidelines don't provide adequate details on this activity and only mentions this in general terms under conflict of interest.

It is recommended that the SA Code should include this area of risk and should follow the recommendations highlighted above by Magahy and Pyman (2010). This is an important area due to the propensity for abuse and or manipulation.

#### **6.4.3 Assessment of the SA Code of conduct by the Public Service Commission**

It is apparent from the literature reviewed that amongst the various factors that contribute to an effective code, the review, amendment and updating of a code is imperative. This is to ensure that it remains current and in step with the organisation, its employees and environmental changes (Faan, 2001:175). O'Dwyer and Madden (2006:220) state that the revision of a code shows the commitment and seriousness of the organisation in the code.

The SA Code was promulgated and published on 10 June 1997 (PSC, *Report on the Code*, 2006:5). In 2002, the Manual on the SA Code, was published by the PSC. It is explained in the Manual that it, as the Code, is subject to revision (PSC, *Manual*, 2002:7).

The first assessment of the SA Code was performed in 2006 (PSC, *Report on the SA Code*, 2006:v). It is the researcher's understanding that this is the only assessment done to date and the SA Code has never been amended.

It is therefore strongly recommended that the SA Code be regularly reviewed and if necessary be amended to ensure it remains current.

#### **6.5 AREAS FOR FURTHER RESEARCH**

Apart from the content being effective, there are other factors which contribute to the overall effectiveness of the code. Some of these factors which are highlighted here below have not been considered in detail in this research. They were also not considered in much detail in the assessment of the SA Code in 2006, by the PSC.

Training on as well as communication of, the code also contributes to its effectiveness. Furthermore and very importantly, the mechanisms for reporting

potential or actual offences also impact on the effectiveness of codes. Whistle blowers should be protected and sanctions imposed for violations. There must be management support for and endorsement of, the code. (Kaptein & Schwartz, 2008:118–120). This research did not consider whether there is sufficient training, communication and enforcement mechanisms supporting the SA Code. Are there sanctions for violations? Are these tools effective? These would be areas for further research.

The Technical Guide advocates the possibility of having more than one code either for different categories of employees or persons/entities doing business with government (e.g. contractors). Separate codes for dealing with certain corruption risks e.g. conflict of interest, may also exist. This research did not focus on whether there are other codes or sub-codes co-existing with the SA Code. This is also an area for future research. The official responsible for the work environment should ensure that the employees are adequately resourced and that the resources are managed and utilized effectively, efficiently and economically. Resources should not be used for personal purposes, unless approval has been obtained (CoE, *Recommendation No. R (2000) 10, Model Code*, 2000:6). It is evident from the literature reviewed that such factors contribute to corruption and the effectiveness of codes. This research did not focus on the work environment and resources available to the public service employee. It also did not focus on the employer/employee relationship, employee/employee relationship and service delivery. These are also areas for further research to determine how the work environment and resources influence the effectiveness of the code.

A further area of research is also how if at all, can the private sector code influence the public sector code? Are there commonalities or vast differences?

The country should also consider the nature and extent of legal enforcement (UNODC, *Technical Guide*, 2009:21). This research did not focus on the external legal or regulatory framework supporting the SA Code. This is also a recommended area for further research to determine how if at all does the other legal and regulatory frameworks assist in making the SA Code more effective?

These areas can be researched independently or collectively.

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APPENDIX

COMPARISON OF THE SOUTH AFRICAN CODE WITH INTERNATIONAL GUIDELINES

	GUIDELINES AND PROVISIONS	OECD RECOMMENDATIONS	TECHNICAL GUIDE	INTERNATIONAL CODE	MODEL CODE	SA CODE
1.	Nature and orientation of the content of the code	The OECD Guideline highlights that, a code can be either rules or values-based. It however, recommends that a combination of the two approaches, is best (OECD, <i>Unclassified</i> , 2009:34–35).	The Code should include core values of the organisation and the standards of conduct. (UNODC, <i>Technical Guide</i> , 2009:20).  This therefore has a combined approach.	The Code highlights the core values and standards of conduct expected of employees (UNODC, <i>Compendium of Legal Instruments</i> , 2005:114). This is a combined approach	The objective is to set standards of integrity and conduct. Violation of the Code shall result in disciplinary action (CoE, <i>Recommendation No. R (2000) 10, Model Code</i> , 2000:1). This code also follows the combined	The SA Code is rules based in that it compels compliance. Non-compliance may result in the employee being charged with misconduct (DPSA, <i>Anti-Corruption Capacity Requirements</i> , 2006:25). The core

					approach.	values are mentioned throughout the code under the various rules and standards (Public Service Act, <i>Regulations</i> , 2001:47.–48). This code also follows the combined approach.
2.	Gifts and gratuities	The OECD identified gifts and gratuities as one of the specific activity/risks of corruption. It recommends that the nature, type,	Various issues must be addressed regarding gifts and hospitality (UNODC, <i>Technical Guide</i> ,	Public officials are barred from accepting or soliciting directly or indirectly any gift or favours that may influence their decisions,	The official should not accept or demand gifts, favours, hospitality and any other benefit for himself, his/her family, close relatives,	The SA Code does deal to a limited extent with gifts and gratuities. There are rules against the abuse of position and public resources to



		value and conditions upon which gifts/gratuities may be accepted, must be described in detail (OECD, <i>Procurement Toolbox</i> , [n.d.]:1).	2009:27).	judgement or the way they perform their duties (UNODC, <i>Compendium of legal instruments, International Code</i> , 2005:115).	friends or organisations he has close relations with that would influence his/her decision and objectivity. The code describes various situations that the employee may experience that may result in the giving or receiving of improper gifts and favours (CoE, <i>Recommendation No. R (2000) 10, Model Code</i> , 2000:5–6).	give and receive undue benefits for oneself or any other (Public Service Act, <i>Regulations</i> , 2001:4950). The manual provides examples in this regard (PSC, <i>Manual</i> , 2002:44,5053).  <b><u>GAP</u></b> The SA Code and Manual does not specify the steps to be taken regarding receipt of gifts
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4.	Conflict of interest	<p>The OECD defines conflicts of interest to include post-employment actions and where an employee establishes a commercial relationship with a private organisation prior to or after having left the Public Service. Areas that may be included as potential conflicts of interest are highlighted. There must be procedures in</p>	<p>Specific recommendations are made with regard to conflict of interest, namely what positions are incompatible in a specific office, what interests and assets must be declared, what the different requirements for different posts are, how far do records extend, i.e. immediate family or further, who must disclose the value, who verifies, who</p>	<p>This section prohibits the employee from engaging in any transaction or abusing his/her authority which would result in improper, personal benefit. It includes benefits accruing to the employee's family. It also deals with financial interests and outside activities performed for financial gain by the employee which may cause a conflict of</p>	<p>The official is called upon to be alert to actual or potential conflict of interest. He must ensure that he takes steps to avoid the conflict. Outside activities which are in conflict with the employee's official position are also dealt with. The employee must declare any membership or association in organisations that may conflict with his/her official</p>	<p>The SA Code addresses conflict of interest under various sections, but mainly under the employee's relationship with the public, the performance of duties and personal conduct and private interests (Public Service Act, <i>Regulations</i>, 2001:48–50). The manual deals with various examples under the aforementioned sections illustrating</p>
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		place to address conflicts of interest. (OECD, <i>Policy Brief</i> , 2005:1-2; Organization for Economic Co-operation and Development, <i>Recommendations on Conflict of Interests</i> , 2003:4-9).	ensures compliance, etc. (UNODC, <i>Technical Guide</i> , 2009:26).	interest. This includes use of the employer's information for personal benefit once the employee leaves the public service (UNODC, <i>Compendium of Legal Instruments, International Code</i> , 2005:114-115).	duties (CoE, <i>Recommendation No. R (2000) 10, Model Code</i> , 2000:3-4,7).	conflict of interest situations (PSC, <i>Manual</i> , 2002:16, 21, 22, 27-29, 42-48).
5.	Confidential information	-	-	The employee is prevented from using information for personal purposes. The employee must	Information must be protected against unlawful disclosure and theft. This rule extends to	The employee cannot use or disclose official information for personal or other's benefit (Public

				<p>also comply with all the rules and policies regulating abuse of an employee's previous public positions and information for personal benefit once the employee leaves the public service. Information that is confidential, which is in the employee's possession, must be so kept during and after the employee's term of office. The only</p>	<p>information in the employee's possession or which the employee is aware of. The employee should not use the information for his/her benefit and should refrain from accessing confidential information that he should not. The employee should not withhold information that should be released. He should not disclose false and</p>	<p>Service Act, <i>Regulations</i>, 2001:49). The employee must allow the public access to information, excluding information that is protected by law (Public Service Act, <i>Regulations</i>, 2001:48). The employee is also compelled to keep confidential matters, documents and discussions (that are either classified or</p>
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				time the employee can divulge this information is if the employee is compelled to do so by law, duty or court order (UNODC, <i>Compendium of legal instruments, International Code, 2005:114–115</i> ).	misleading information (CoE, <i>Recommendation No. R (2000) 10, Model Code:6–7</i> ).	implied to be such) confidential (Public Service Act, <i>Regulations, 2001:49</i> ). The manual provides an explanation and numerous examples on this issue (PSC, <i>Manual, 2002:48–49</i> ).
6.	Political activities	-	-	The official must not allow his/her political activity to affect his/her objectivity in the execution of his/her duties	The official is advised to keep his/her political activities and views independent and separate from his/her public	The employee should not abuse his/her official position to either promote or discriminate against any other



				<p>which would result in the public losing confidence in his/her impartiality (UNODC, <i>Compendium of legal instruments, International Code, 2005:115</i>).</p>	<p>office to prevent the loss of confidence of the public and employer in his/her objectivity as an employee. The employee should comply with the rules that regulate his/her political activity (CoE, <i>Recommendation No. R (2000) 10, Model Code, 2000:4–5</i>)</p>	<p>political party or interest group (Public Service Act, <i>Regulations, 2001:48</i>). The employee cannot engage in party political activities in the workplace (Public Service Act, <i>Regulations, 2001:49-50</i>). The code provides further rules when an employee is elected as a candidate in a national election (Public Service Act, <i>Regulations, 2001:50</i>). The</p>
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						Manual provides a detailed explanation of the meaning of this provision and a few examples illustrating such meaning (PSC, <i>Manual</i> , 2002:10–13).
7.	Disclosure of assets	-	-	Public officials must disclose their assets and liabilities and (where possible) that of their spouses and dependants (UNODC, <i>Compendium of legal instruments</i> ,	The employee must declare an appointment and, thereafter, at regular intervals, any personal interests that may be affected by his/her official duties (CoE, <i>Recommendation</i>	<b><u>GAP</u></b> The SA Code is silent on this issue.

				<i>International Code, 2005:115).</i>	<i>No. R (2000) 10, Model Code, 2000:4).</i>	
8.	Post-employment activities	The OECD guidelines cover this under the section on conflict of interest (OECD, <i>Policy Brief</i> , 2005:2).	The Technical Guide recommends that the code should address post – employment activities (UNODC, <i>Technical Guide</i> , 2009:23–24).	This activity/risk is dealt with under the activity of conflict of interest. The official must comply with all the rules and policies regulating the abuse of any previous official positions for the unfair benefit in their post-employment activities (UNODC, <i>Compendium of legal instruments</i> ,	The employee should not use his/her position to find employment outside the organisation. The employee should not allow the prospect of outside employment to cause him/her to do something that may create an actual or potential conflict of interest in his/her official job(CoE,	<b><u>GAP</u></b> The SA Code and Manual are silent on post-employment activities.



				<i>International Code, 2005. 115).</i>	<i>Recommendation No. R (2000) 10, Model Code, 2000:7–8).</i>	
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