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Promoting Corporate Governance across the board

DIRECTORS FORUM

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An Ethics Guide for Boards

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PREFACE

Ethics underpins good Corporate Governance and developing an ethical corporate culture is therefore an important objective for Boards. Ethical behaviour, as witnessed by numerous corporate scandals, will not manage itself and directors and managers need clear guidance when dealing with ethical dilemmas. Decisions taken within an organisation may be made by individuals or groups, but whoever makes them will be influenced by the corporate culture. The tone at the top is critical to creating the ethical culture of the workplace. Having a Code of Ethics is a good start, but words on paper are not enough. This document focuses on the necessity for Boards to develop strategies and policies to embed ethical behaviour in their organisations. It is designed to be a practical guide to help Boards better understand the need for ethics management and then develop the appropriate governance and management frameworks for their organisation.

This Guide is organised in 3 essential parts:

A Principles

1. What do Business Ethics mean?
2. Why should Boards care about an Ethical Work Culture?

B Implementation

3. Developing an Ethical Work Culture
4. Identifying areas of Ethics Risks and Opportunities
5. Ethics Strategy and Management
6. Dealing with Ethical Dilemmas and making Ethical Decisions

C Current Examples of Corporate Best Practice

7. Best Practices
8. Model Code of Conduct for Directors

This Guide has largely been inspired by the work of the Ethics Institute of South Africa, with which the MIoD has an MOU, and by the work of its CEO, Prof Deon Rossouw, and his collaborator Leon van Vuuren, in their book “Business Ethics” (Oxford University Press). We thank Prof Rossouw for his precious collaboration.

In this Guide we refer to Codes of Ethics, which govern decision-making, and Codes of Conduct, which govern actions.

A special resource pack designed to assist with the practical implementation of this Guide can be downloaded from the MIoD website (www.miod.mu).

PRINCIPLES

1. WHAT DOES BUSINESS ETHICS MEAN?

1.1. Definitions

There are many academic definitions of Business Ethics, but in essence Business Ethics is the way a business conducts its activities. Here are 2 definitions:

- Business ethics is the application of morality by individuals with respect to management or business decisions (Corporate Governance, A Director's Handbook, CCH New Zealand, 1994).

- Business ethics refers to the values and standards that determine the interaction between business and its stakeholders (Business Ethics, 4th Ed, Deon Rossouw & Leon Van Vuuren).

1.2. Key principles

Business Ethics goes beyond simple compliance and respecting the law; it is about written and unwritten codes of principles, values and behaviours, based on the organisation's culture, that govern decisions and actions within an organisation. It is how you make decisions and conduct business.

2. WHY SHOULD BOARDS CARE ABOUT AN ETHICAL WORK CULTURE?

Unethical behaviour presents a clear risk to the image and reputation of the organisation, as well as its sustainability. Equally there are clear benefits to adopting an Ethical Culture.

2.1 What are the benefits?

a) Enhanced reputation and reduced risk of scandal
b) Greater trust from shareholders that their investments are being managed with integrity
c) Greater customer trust and satisfaction
d) Less chance of fines, trade restrictions and prosecution
e) Reduced fraud and corruption
f) Less management time handling ethics issues
g) Greater attraction and higher retention of ethical employees and top human talent who wish to be associated with an ethical organisation, thus resulting in improved productivity
h) Improved risk management
i) Less risk of supply chain issues
j) Improved performance and bottom line
k) Improved sustainability
l) Greater investor confidence when making investment decisions
m) Moral support from the community and society where the ethical organisation operates , thus obtaining the 'licence to operate'

2.2 Fraud and Corruption – some facts and figures:

- According to the Association of Certified Fraud Examiners (ACFE) 2012 Report to the Nations on Occupational Fraud and Abuse , the typical organisation loses 5% of its revenues to fraud each year.

- In a global survey of employees, EY calculated that businesses may be losing 20% of their earnings due to fraud (Ernst and Young: Navigating today's complex business risks Europe, Middle East, India and Africa Fraud Survey 2013).

- A survey by KPMG of Southern Africa showed that 75% of fraud cases were perpetrated by the company's own employees. In 48% of them, there was collusion between the internal fraudster and a third party. 91% of frauds were repeat crimes. And in 1 out of 6 cases other employees were aware of the alleged fraud but kept silent (KPMG Southern Africa Fraud Survey 2002)

NORTEL
In 2003, Nortel incorrectly reported earnings of one cent per share immediately after a massive layoff period. They used this money to pay the top 43 managers of the company. The SEC and the Ontario securities commission eventually settled civil action with Nortel. However, a separate civil action was taken against top Nortel executives including the former CEO for defrauding the shareholders of Nortel of more than $5 million. According to the prosecutor this was accomplished by engineering a financial loss in 2002, and a profit in 2003, thereby triggering Return to Profit bonuses of $70 million for the top executives.

Source Wikipedia

2.3 Financial Misreporting

Financial misreporting is a major area of fraud and unethical behaviour. It not only destroys the company, impacting negatively on all the stakeholders, but often has serious knock on effects on the economy and the country's image. Not all accounting scandals are caused by top executives. Often managers and employees are pressured or willingly alter financial statements for the personal benefit of the individuals over the company, especially when managers are compensated for short-term results.

SATYAM

The Satyam Computer Services scandal occurred in India in 2009 when Chairman Ramalinga Raju resigned on 7 January 2009 and confessed to manipulating the accounts by US$1.47 bn. On 10 January 2009, the Company Law Board decided to bar the board of Satyam from functioning and appointed 10 nominal directors: "The current board has failed to do what they are supposed to do. The credibility of the IT industry should not be allowed to suffer. " On 22 January 2009, the Crime Investigation Department told the court that the actual number of employees is only 40,000 and not 53,000 as reported earlier and that Mr. Raju had been allegedly withdrawing 20 crore (US$3 m) every month for paying these 13,000 non-existent employees. Satyam was the 2008 winner of the coveted Golden Peacock Award for Corporate Governance under Risk Management and Compliance Issues, which was stripped from them in the aftermath of the scandal. "If it wasn't a gigantic fraud, it would have been a colossal farce. But when nearly $2 bn of wealth that belonged to 300,000 shareholders is eroded in a week; when the jobs of 53,000 employees are on the line; when shareholders' net worth drops from a positive Rs 8,529 crore (US$1.8 bn) to a negative Rs 278 crore (US$59 m); when a company opens itself to multi-million dollar lawsuits; when a company's founders are thrown in jail; and when its very survival is questioned, you wonder: What was Raju thinking? and why did he do it?... The Rajus liked land more than they loved code. In recent years, the Rajus have amassed a land bank of an estimated 7,000 acres... Cash was King... What clearly did Raju in, was the drop in share prices and in real estate, in tandem. So he had to buy more shares to avoid losing the earlier ones; by the end he lost most of them."

Source Business Today 8 February 2009 The Great Satyam Robbery

ENRON

Enron Corporation was an American energy, commodities and services company, based in Houston, Texas. Before its bankruptcy on December 2, 2001, Enron employed approximately 20,000 staff and was one of the world's major electricity, natural gas, communications, and pulp and paper companies, with claimed revenues of nearly $101 billion during 2000. Fortune named Enron "America's Most Innovative Company" for six consecutive years.

At the end of 2001, it was revealed that Enron's reported financial condition was sustained substantially by an institutionalised, systematic, and creatively planned accounting fraud, known since as the Enron scandal. Enron has thus become a well-known example of wilful corporate fraud and corruption. The scandal also brought into question the accounting practices and activities of many corporations in the United States and was a factor in the creation of the Sarbanes–Oxley Act of 2002. The scandal also affected the greater business world by causing the dissolution of the Arthur Andersen accounting firm.

Source Wikipedia

2.4 Brand Reputation and Company Image

Many other companies have suffered when unethical practices are uncovered and publicised:

- The use of 'sweatshops' and 'slave labour' in S.E Asia by NIKE and other upmarket clothing and fashion firms has been highly criticised – the drive for low input cost is seen to have ignored the need for fair and ethical practices by suppliers.

- Advertisers withdrawing their business from the News of the World newspaper in the UK, led to its collapse following revelations that its investigative journalists had hacked the mobile phone of murdered schoolgirl Molly Dowler, thus impeding the police investigation.

- The coincidence of a one million pounds donation to the British Labour Party by Bernie Ecclestone, head of Formula 1 car racing, and a government concession to allow tobacco advertising on Formula 1 cars, has tarnished the image of Formula 1 as a 'clean' sport.

- Insufficient attention to recruitment standards led to a major claim of discrimination in 2000 when Coca-Cola paid US$192.5m to settle such a case out of court.

- The World Health Organisation found children in developing countries who fed on Nestlé's infant-formula had mortality rates five to ten times greater than that of breast-fed children. The problem was Nestlé's campaign of appointing uniformed nurses to distribute the baby formula to poor mothers for free, long enough for lactating mother's milk to dry up. The mother and child became entirely dependent on Nestlé's infant formula, and since most of them could not afford the formula, they gave their children an insufficient quantity. The formula also required clean water, which most mothers could not access. Prompted by concern about Nestlé's "aggressive marketing", a boycott was launched against the company, in the United States in 1977 which expanded into Europe in the early 1980s.

LEHMANS

Before declaring bankruptcy in 2008, Lehman Brothers Holdings Inc. was the fourth-largest investment bank in the US, doing business in investment banking, equity and fixed-income sales and trading (especially U.S. Treasury securities), research, investment management, private equity, and private banking.

In 2008, Lehman faced an unprecedented loss due to the continuing subprime mortgage crisis. Lehman's loss was a result of having held on to large positions in subprime and other lower-rated mortgage tranches when securitising the underlying mortgages; whether Lehman did this because it was simply unable to sell the lower-rated bonds, or made a conscious decision to hold them, is unclear.

On September 15, 2008, the firm filed for Chapter 11 bankruptcy protection following the massive exodus of most of its clients, drastic losses in its stock, and devaluation of its assets by credit rating agencies. Lehman Brothers' bankruptcy filing is the largest bankruptcy in U.S. history and played a major role in the unfolding of the late-2000s global financial crisis.

A March 2010 report by the court-appointed examiner indicated that Lehman executives regularly used cosmetic accounting gimmicks at the end of each quarter to make its finances appear less shaky than they really were. This practice was a type of repurchase agreement that temporarily removed securities from the company's balance sheet. However, unlike typical repurchase agreements, these deals were described by Lehman as the outright sale of securities and created "a materially misleading picture of the firm's financial condition in late 2007 and 2008".

Source Wikipedia

2.5 Duty of Care

The Mauritius Code of Corporate Governance states quite clearly that "… good governance is about trust and stewardship in and by corporate leaders…." Boards have a legal duty of care.

A recent survey by EY (2012 12th Global Fraud Survey Growing Beyond: a place for integrity) highlights that in a difficult economic climate, the risk of bribery, corruption and fraud increases. However, despite increased risks, the EY survey shows that companies are still failing to do enough to prevent bribery and corruption. Mixed messages are given by management, with the overall tone often diluted by a lack of widespread training and a failure to penalise breaches. The biggest danger is the tick the box approach which makes everyone feel comfortable, but which ignores the underlying ethical risks.

2.6 Ethical Neglect

"The employee, as an important stakeholder, requires 'goodness' (fairness, honesty, justice, recognition and respect) to experience trust and security. If organisations fail to demonstrate the importance of ethics and incorporate it as a way of life, a harsh business culture may prevail. In short, organisations that have no Ethical Culture may be guilty of Ethical Neglect."

Ethical neglect may lead to the following consequences, in varying degrees of gravity:

- Discomfort, often taking the form of job dissatisfaction, demotivation or negative attitudes;
- Psychological withdrawal (apathy, fear, depression and frustration) or physical withdrawal (tardiness and absenteeism);
- Deliberate or inadvertent withholding of effort or performance (wasting of time, shirking, job neglect, social loafing, free riding and reluctance to be creative); and
- Destructive and overt forms of dissatisfaction as well as other forms of deviant behaviour that threaten the well-being of the organisation and/or its members.

Source: Adapted from Business Ethics by Deon Rossouw and Leon van Vuuren

2.7 Questions a Board should be asking:

- What Ethical Risks are your company exposed to?
- How much is your company losing in fraud and corruption?
- Are individuals in your company able to act in isolation or with the silent complicity of their colleagues?
- Does your company have the ethical mind set and human resource practices that promote human wellness and unlock human potential to its fullest extent?
- Does your company encourage Ethical Decision Making even when there might be a short term loss?

OLYMPUS

Olympus Corporation, a Japanese manufacturer of optics and reprography products, established in 1919, has roughly 70% share of the global market valued at US$2.5 billion. In late 2011, the company fired its newly appointed British president who had uncovered a scam that resulted in a scandal wiping 75% off the company's stock market valuation. The scandal culminated in the company admitting that some of its board members had engaged in one of the biggest and most durable loss-concealing scams in the history of corporate Japan and which related to a US$2.2 billion deal in 2008 to acquire British medical equipment maker Gyrus Group. In the deal, a US$687 million fee was paid to a middle-man – a sum which was equal to 31% of the purchase price, and which ranked as the highest ever M&A. Other Olympus acquisitions also included three other Japanese companies outside its core business and the Board recognised that the assets were worth US$721 million less than their acquisition value of twelve months earlier. In June 2012, Olympus announced 2,700 job cuts (7% of its global work force) and the scrapping of 40% of its 30 manufacturing plants to reduce cost due to investment losses of $1.5 billion dating back to the 1990s. This scandal has raised worldwide concern about the level of corporate governance in Japan.

Source Wikipedia

IMPLEMENTATION

From a Board perspective the two most important steps to be taken are:

a. to ensure that there is an ethical tone from the top – starting with the Board itself and then with the executive management, and

b. to ensure that governance structures and processes are in place that will ensure that the ethics of the company is addressed on a regular basis by the Board and Executive Management.

3. DEVELOPING AN ETHICAL WORK CULTURE

In developing an Ethical Work Culture one should first understand what constitutes organisational culture. Culture can simply be defined as the "way things are done around here". Organisational culture is the way employees go about their day to day work; it is "a set of implicit and explicit rules that are exercised upon an organisation by the leaders and people of influence in that organisation" (Organizational Culture and Leadership, Edgar H. Schein, Professor Emeritus in the Sloan School of Management at the Massachusetts Institute of Technology, 1992).

3.1 The Importance of the Tone at the Top
"The connection between fraud and the "tone at the top" of an organisation has received international attention over the last few years. Tone at the top refers to the ethical atmosphere that is created in the workplace by the organisation's leadership. Whatever tone management sets will have a trickle-down effect on employees of the company. If the tone set by managers upholds ethics and integrity, employees will be more inclined to uphold those same values. However, if upper management appears unconcerned with ethics and focuses solely on the bottom line, employees will be more prone to commit fraud because they feel that ethical conduct is not a focus or priority within the organisation. Employees pay close attention to the behaviour and actions of their bosses, and they follow their lead. In short, employees will do what they witness their bosses doing." (Association of Certified Fraud Examiners www.acfe.com – a full copy of the report can also be found in the resource pack on www.miod.mu)

The same is true of the tone set by the Board. Does your Board have a clear statement on your organisation's position?

"Culture exists regardless. If left to its own devices, it shapes itself, with the inherent risk that behaviours will not be those desired….The board sets the tone from the top of the organisation, and must carry ultimate responsibility for its values, culture and business practices." Salz Report 2013 after the Libor Scandal

3.2 Governance of Ethics

In order to create an Ethical Work Culture, a clear governance framework is required which brings together all the elements of ethics management into a coherent structure. From a Board perspective, it is vital to ensure that there are regular strategic conversations about ethics as well as on-going oversight over the ethics of the company. Ethics thus should be a regular item on Board agendas and the governance of ethics should be included in the terms of reference of one of the Board committees.
Source: Ethics Institute of South Africa

4. IDENTIFYING AREAS OF ETHICS RISK AND OPPORTUNITY

4.1 Ethics Risk Assessment

It is recommended that an Ethics Risk Assessment (the Assessment) be undertaken as the start point for developing an Ethical Work Culture. The Assessment will also enable organisations to develop or update their Code of Ethics.
The Assessment is a planned and structured process carried out at regular intervals by an organisation with the objective of identifying its ethical challenges and their possible solutions. Through a combination of qualitative and quantitative assessment instruments, organisations can thus identify their ethics risks and opportunities in order to compile an organisational Ethics Risk Profile.

The Assessment should seek to accomplish the following:

- Identify the organisation's key Ethics Risks and Opportunities
- Structured time to reflect on the organisation's business culture and behaviour
- Engage with all stakeholders including the full supply chain
- Identify the gap between the actual state of ethics and the desired position

Ethics Risk Assessments and Audits are increasingly required by regulators and law to show due diligence. For example, the failure of a commercial organisation to prevent bribery by an associated person, i.e. someone who performs services for or on behalf of an organisation, and this may include employees, agents, consultants, joint-venture partners or subsidiaries, is an offence under the UK Bribery Act. The US Foreign Corrupt Practices Act requires companies to maintain proper books and records. The Bank of Mauritius Corporate Governance Guideline requires, amongst other things, that a policy be put in place that encourages employees to freely communicate concerns about illegal, unethical or questionable practices to the Board or Committee thereof or to Senior Management, without fear of reprisal. It is therefore increasingly important for companies to be able to report on the adequacy and effectiveness of their organisation's ethics management programme as well as on the prevailing ethical culture of the organisation. The starting point is the Ethics Risk Assessment.

4.2. How does your Board know that it is adhering to Best Ethical Practices?

4.2.1. Scope
Although an Ethics Risk Assessment is tailored to the needs of each organisation, there are certain categories that should be covered:

4.2.2. Beliefs: Embedded Cultural Standards and Behaviour Norms
Questions that address stakeholders' attitudes regarding the corporate values and how they relate to daily work and operations. Even employees with strong personal values are less inclined to take action to "do the right thing" if this is not part of the corporate culture or if the wrong behaviours are silently condoned by Management.

4.2.3. Communication: Unrestricted and Fear

Free, with downward, upward, and lateral communications
Questions that address the perceptions of how well managers create an environment that encourages open discussion of issues, as well as how well they respond to issues when they arise. Does the company create open lines of communication free from possible recriminations.

4.2.4. Leadership : Belief that leaders can always be trusted to do the right thing
Questions that address perceptions of how well managers set the right tone at the top and act consistently with the corporate values and policies, even when it might adversely affect the bottom line.

4.2.5. Equity: Perceptions of justice, fairness, and consistency
Questions addressing the perceptions of how well the company treats all of its stakeholders, both internal and external.

4.2.6. Awareness: Education that goes beyond merely informing people of the rules
Questions addressing perceptions of how well the stakeholders understand what is expected of them and how ethical behaviour relates to their work and the corporate business goals.

4.2.7. Rules and Regulations: Governance, Formal Systems and Processes that support Ethical Conduct
Questions addressing attitudes towards the rules and regulations and whether they are effective in guiding behaviour.

4.3. Identifying Areas of Ethical Risk
A practical approach to the identification of areas of Ethical Risk is to analyse the operations by components of the supply chain, looking at the specific ethical risks present in each step of the business process.
Whilst each organisation has different characteristics, there are many similarities in terms of Ethics Risks. These are some key areas to look at:

Board:
- Clear and full communication of strategic decisions and risks to investors and stakeholders
- Correct and transparent interaction with management and all stakeholders
- Respect for the environment and sustainability
- Good Corporate Governance
- Clear policies and procedures in place including the management of conflicts of interests and related party transactions

Management:
- Implementation of policies and guidelines, especially legal, financial, environmental and HR, and monitoring of practices
- Management behaviour – a clear definition of what is acceptable / not acceptable in the workplace
- Grievance and whistleblowing procedures which are well communicated
- Working conditions with good health and safety policies in practice
- Good communications – sharing of information and a culture of open two-way communication
- Rewards are linked to the organisations values and favour long term value creation rather than short term profit maximisation

Procurement:
- Procurement Policy and Procedures are in place, published and sent to all suppliers
- Materials or services are purchased from external suppliers who have been vetted
- Suppliers' agreements are in place
- Transparent processes are documented
- Clear policy on facilitation payments, bribes, gifts and hospitality
- Monitoring to ensure policy is followed including such risks as delivery of sub-standard goods, shortfalls on delivery, and ordering of excessive quantities

Manufacturing:
- Health and safety of employees, temporary staff and third party employees
- Environment protection
- Supervisory practices in the workplace to guard against harassment, favouritism and other discrimination
- Policies are in place, clearly communicated and monitored

Marketing & Sales:
- Ethical Standards of Advertising, Policy and Procedures
- Clear and fair Terms and Conditions of Sale which are well published
- Improper practices are avoided with a clear definition of what is acceptable / unacceptable

Consumers:
- Consumer rights are understood, respected and well communicated
- Procedures are in place to deal with defective products and product returns
- Full and open disclosure on product ingredients and effects are in place

3rd Party Suppliers:
- Third party suppliers operate to the same Ethical Standards and Practices and are monitored
- Contracting out of services or supplies does not include contracting out of ethical responsibilities
- Service Level Agreements (SLAs) are in place with certification and verification systems
- Customers understand how to interact with the organisation if problems arise with a third party supplier

- Third party suppliers are treated as part of the standard operating procedures of the organisation

4.4. Methodology
In order to undertake an Ethics Risk Assessment, all stakeholders must be taken into consideration and it is helpful to map your stakeholders first to help you prioritise their importance and define how you are going to interact with them.
Various tools can be used for the assessment:
- questionnaires
- surveys
- focus groups
- interviews
- analysis of Board meetings, policies, procedures, grievances and disciplinary meetings

The Assessment can be undertaken internally, or externally by contracting a consultant.

4.5. Outcomes

4.5.1. Written report
The written report should encompass:
- The state of ethics in your organisation – both real and perceived
- Status of your organisation's values and standards – are they known, understood and practised? How does that show itself?
- Existence of the strength of an ethical work culture or lack thereof

- Status of the Code of Ethics – is it known, understood and practised? How is that demonstrated?
- Degree and status of stakeholder engagement and integrity of the supply chain
- Degree of stakeholder confidence
- Ethics threats
- Ethics opportunities
- Level of management commitment
- Effectiveness of current strategies, structures and systems
- Additional information such as climate surveys, 360 degree reviews and in depth analysis on policies
- Action plan with timelines

4.5.2. Verbal feedback
This usually includes an open dialogue with the board and/or the management team about the ramifications of the assessment and how to link it to the Strategic Intent.

Once you have undertaken an Ethics Risk Assessment, there are 9 clear steps:

- Board review of ethics strategy
- Review or setting up of an ethical work culture framework
- Review or development of the Code of Ethics
- Communications plan
- Review and alignment of Policies and Procedures
- Reporting of unethical conduct
- Training plan
- Data collection and analysis
- Review and reporting

5. ETHICS STRATEGY AND MANAGEMENT

5.1 Ethics Strategy

In developing an Ethical Work Culture and having completed an Ethics Risk Assessment, the Board now needs to define its ethics strategy. What is your organisation's Ethics Strategy?

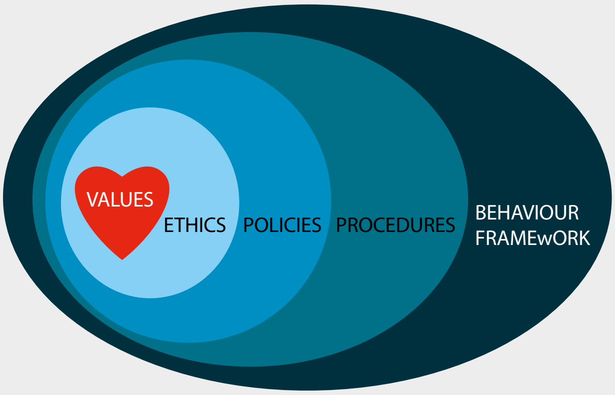
Evolution of Business Ethics in an Organisation

Immoral mode	First generation		Second generation	
Survival	Reaction	Compliance	Integrity	Totally Aligned Organisation
Bread first, Morals later Unethical practices endorsed	Awareness of risk Ethical standards, but no enforcement	Prenvent unethical behaviour Rules and external enforcement	Promote ethical behaviour Values and internal commitment	Ethics entrenched in "way we do" Unethical practice regarded as stupid

(Source: Business Ethics, 4th Ed, Deon Rossouw & Leon Van Vuuren)

5.2 Ethical Work Culture Framework

Once the Board has agreed on its strategy, it must now undertake a review of its values, norms and standards. For the purposes of this publication, we shall say that in order to create an ethical work culture, the following framework is required:



1. Values – that are normed within the organisation
2. Ethics – usually enshrined in a Code of Ethics, based on the organisation's values, and which defines the standards by which its directors and employees will work, and which is well communicated and understood within the entire organisation
3. Policies – that are aligned with and support the organisation's Values and Code of Ethics, and Procedures which ensure the policies are implemented and monitored, for both positive and negative behaviour, and which are simple and transparent
4. Behavioural framework – usually enshrined in a Code of Ethics which describes the positive behaviours to be encouraged and the negative behaviours to be avoided and lays out the rewards for positive behaviour and the consequences of negative behaviour in relation to the organisation's Values, including a clear procedure for reporting breaches of the organisations Code of Ethics.

5.3 Questions for Boards to ask themselves:

- Do you currently have an established Code of Ethics?
- How up to date is it?
- Are your employees familiar with it? Do they apply it?
  How would you know?
- Do you offer Ethics Training, and if so, is it an on-going process and not just a one off?
- Do you currently have an external reporting mechanism for whistle-blowing and does it include case management tools?
- Do you enforce your Code of Ethics and take action on infractions? Do you monitor, analyse and report on successes and failures?

5.4 Develop or Revise your Code of Ethics

Codes of Ethics can be principle based, then they are very short and less clear in their application, or rules based and then very long and impossible to remember as they cover almost every situation. Best practice these days is a mixture of both – a Code of Ethics based on the company's values and principles and setting the standards by clearly stating what type of behaviour is acceptable and not acceptable and giving some practical examples as a guide.

Once the Code of Ethics has been written, it should be revised annually by the Board and it is recommended that this is done during the Board's Strategic Planning offsite.
We have given some best practice examples of Codes of Ethics in the special resource pack designed to assist with the practical implementation of this Guide which can be downloaded from the MIoD website (www.miod.mu).

5.5 Communicate the Code of Ethics

It is important to communicate the Code of Ethics and your Ethics Strategy to all your stakeholders; and how you communicate will signal the importance which you attach to it and its implementation.
Various and multiple methods can be used according to the target audience:

- Information sessions
- Formal launch
- Booklets, posters
- Training sessions
- Shareholders' meetings
- Personalised letters signed by the Chairman
- Website and Intranet
- Media ads
- Annual Report

5.6 Policies, Procedures andBehavioural Framework

If policies and procedures are already in place, they will need to be reviewed and where necessary revised to ensure that they are consistent with the new or revised Code of Ethics.

Some questions the Board will need to ask:

- Does our organisation have remuneration policies that are fair, equitable and transparent?
- Does our organisation consistently reward the correct ethical behaviour?
- Does the performance management system integrate attitudes and behaviours with other performance criteria?
- Does our organisation consistently sanction unethical behaviours?
- Do we have policies on:
    - Recruitment and vetting of staff
    - Procurement
    - Conflicts of Interest
    - Gifts
    - Internal investigations
    - Disciplinary procedures
    - Related party Transaction
- Do we provide advice on difficult ethical issues?
- Do we have an Ethics Officer / trusted person or Ethics Committee?
- Do we have a safe reporting procedure?

5.7 Reporting Unethical Conduct

Having a mechanism to allow employees to report unethical conduct is an important part of the management of an Ethical Work Culture.

Companies can set up an Ethics Helpdesk, to provide advice and to assist employees in the interpretation of the Code of Ethics or when confronted with difficult ethical issues or when confidentially seeking answers to ethical dilemmas.

An Ethics Hotline should also be provided so that employees can safely report breaches of the company's code of ethics. It is important for employees to be able to report serious issues confidentially, and sometimes anonymously, through a whistleblowing line. The confidential reporting line can help to prevent scandals to be exposed in the public and gives the organisation an opportunity to deal with the issue internally. A company can either implement the reporting line internally or outsource it to an external service provider. The confidential reporting line should be emphasised as being the last resort reporting mechanism when all other reporting avenues have proved to be ineffective.

If you have a reporting line, is it used? If it is not being used, this may be a sign that it is not considered to be confidential or safe; or it is not known about; or your company has not created the climate where it is safe to report.

A fully fledged Ethics Office can be set up to manage the organisation's ethics programme and usually consists of a physical office and/or a website and/or a telephone line. An Ethics Office could be appropriate for larger companies dealing with day-to-day ethical dilemmas in order to ensure the ethics management programme is embedded in the organisation. In this case the Ethics Office would manage the Helpdesk and the Hotline.

5.8 Training & Communication

In developing an Ethical Work Culture, on-going training and constant communication are critical to success. In many companies weekly conversations are initiated by way of scenarios that lead to discussions. All these efforts will fail if they are not fully supported by the Board and the senior management team. For example, a global business made use of a weekly podcast produced by the CEO and downloaded by each staff member every Monday to hear the boss supporting and championing the new Ethical Work Culture. In any organisational change, the communication must be stepped up.

Training on Ethics should:

a) Empower employees to be confident and decisive when required to make ethical decisions;
b) Allow employees to understand, interpret and apply the organisation's Code of Ethics;
c) Highlight the responsibilities of each employee in creating and reinforcing an ethical culture;
d) Outline the confidential reporting lines available to report unethical conduct.

Some tips:

- Use case studies
- Adapt the training style to the audience
- Using an external facilitator may make employee more conformable to share their work experiences.

5.9 Data Collection and Analysis

Collecting and analysing data is an essential component in managing the ethical performance of an organisation. It also allows the organisation to report on its ethical performance.

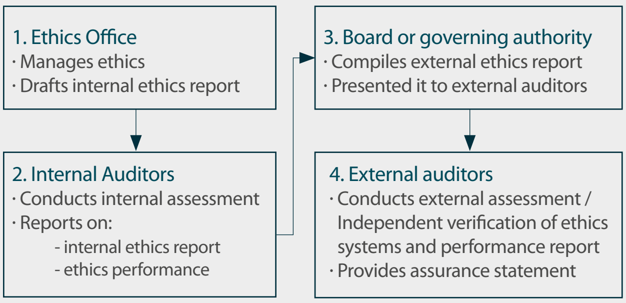
How to collect data:

a) On-going engagement with stakeholders (personal or group interviews or surveys)
b) Number of complaints and disciplinary meetings
c) Number of calls to the ethics helpdesk
d) Reports via confidential reporting lines
e) Performance management system
f) External sources – reputational rating of the organisation

5.10 Review and Reporting

The purpose of ethics management is to create an ethically aware and transparent culture. When the organisation has the correct policies and procedures, it has achieved technical compliance, but the real test is whether these policies and procedures work in practice (effective compliance). It is therefore important to measure and identify successes and areas for improvement. Monitoring is required to observe and check the ethics performance over a period of time. Reporting and disclosure are required to provide information on the organisation's ethics performance to all the internal and external stakeholders. Internal Assessments should evaluate the adequacy and effectiveness of the organisation's ethics performance. External Assessments will verify and provide assurance on the quality of an organisation's ethics performance.

Assessing, reporting & disclosure of ethics performance



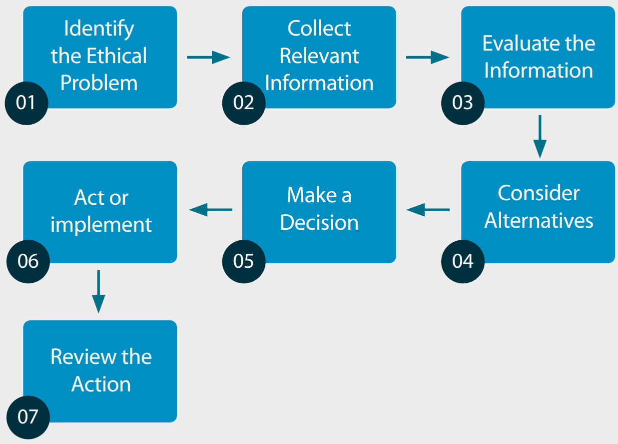
Source: Ethics Institute of South Africa

6. DEALING WITH ETHICAL DILEMMAS AND MAKING ETHICAL DECISIONS

We all deal with ethical dilemmas every day. They concern the grey areas where it is not illegal and there is no written rule, but it may be immoral or unethical. Your Code of Ethics will help your employees to conduct business with the highest standards of ethical behaviour and will guide them, using your values, in their decision making. If they are still unsure what to do, they should be able to talk to someone they trust in total confidentiality for advice, and if they observe malpractice they should be able to report it safely.

It is helpful to provide a framework for making ethical decisions, especially when employees are faced with difficult choices and dilemmas.

Seven-step guide to ethical decision-making



Source: Davis, Michael (1999) Ethics and the University, New York, Routledge

And you can use this Quick Test when making a final decision to act:

a) Is it legal?
b) What does your Code of Ethics/policies say?
c) What would my ethical role model do?
d) How would it look on the front page of tomorrow's newspaper?
e) How does it make me feel?
f) Would I be comfortable sharing my decision with my closest family?
g) Does it pass the Golden Rule test "Do to others as you would wish them to do to you?"

BEST PRACTICE

CURRENT EXAMPLES OF CORPORATE BEST PRACTICE

7. BEST PRACTICES

7.1 Some best practices include:

- Clear commitment from the Board and Management
- Ensuring your Code of Ethics is based on your values and aligned with your corporate Vision, Mission and Goals; and is easy to understand and norm
- Clear definition of what these values mean
- All stakeholders are taken into consideration
- Management is focused on and rewarded for reinforcing the importance of ethical behaviour and setting a good personal example.
- Multiple communication channels are used to ensure that ethical behaviour is aligned with the organisations identity and purpose
- Internal awareness training and programmes
- Adopting a zero tolerance policy towards fraud, theft, corruption or any similar illegal behaviour and taking appropriate disciplinary action
- Providing a confidential internal help line
- Providing a confidential external whistleblowing line
- Promoting an anonymous tip offs line run externally with rewards for information which leads to successful preventions of fraud, theft, corruption or illegal behaviour
- Undertaking ethics research via staff culture and values survey to set a benchmark for ethics awareness against which improvement targets can be set
- Establishing an Ethics Office/Ethics Officer to manage the internal ethics programme and empower managers at all levels to integrate ethics in their day to day actions and behaviour
- Setting up a Board Ethics Committee
- Moderating ethics blogs and ethics chat on intranets with practical examples of what is acceptable and what is not acceptable behaviour
- Celebrating local organisational heroes who demonstrate ethical behaviour
- Customer Charter
- Published assurance Key Performance Indicators
- Policies published on the website
- Discrepancies between desired and actual behaviour are actively identified and dealt with promptly
- Monitoring and reporting including external auditing

7.2. Best Corporate Examples

Marks & Spencers (M&S) is currently recognised internationally as one of the leaders in best ethical practices. A copy of the M&S Codes of Ethics can be found in the special resource pack designed to assist with the practical implementation of this Guide and can be downloaded from the MIoD website (www.miod.mu).

8. MODEL CODE OF CONDUCT FOR DIRECTORS

This Model Code of Conduct is designed as a model Code which can be adapted for your Board. A copy can be downloaded from the special resource pack on the MIoD website (www.miod.mu).

[NAME OF COMPANY]
CODE OF CONDUCT FOR DIRECTORS
Date ……………
Purpose

The Board of Directors (the "Board") of [NAME OF COMPANY] has adopted the following Code of Conduct for directors of the Company.

The purpose of the Code is to provide:

- guidance to directors and help them recognise and deal with ethical issues;
- help foster a culture of honesty and accountability and
- mechanisms to report unethical conduct; and

The Code should not be considered as an exhaustive document and should be complemented by applicable laws (for example, the Companies Act 2001) as well as relevant codes of governance (e.g the Code of Corporate Governance 2004).

A. Duties of Directors
Directors should act in good faith and make and enact informed decisions and policies in the best interests of the company.

They have a responsibility to carry out their duties diligently, in an honest manner, with reasonable competence and act within the scope of their authority.

They must consistently attend Board meetings and devote sufficient time to ensure familiarity with the company's business and environment.

Directors should ensure observance of confidentiality provisions of non-public information disclosed to them.

They must act in a manner which enhances and maintains the reputation of the Company at all times.

B. Conflict of Interest
Directors must, as far as possible, avoid conflicts and where a conflict or potential conflict arises, the same must be disclosed and all procedures for dealing with such cases must be strictly adhered to. Directors who are conflicted regarding a particular issue should not participate in the related discussions and decision-making.

A conflict of interest may occur when:

- A director's personal interest is adverse to or may seem to be adverse to the interests of the company.
- A director, or a member of his or her immediate family, receives improper personal benefits as a result of his/her position in the company.

Some of the common conflicts directors should avoid are listed below:

- Personal benefits received from a person/ company seeking to do business or to retain the services of the Company.
- Gifts which are not customary in normal business relationships should not be accepted nor given to any person/company seeking to do business or to retain the services of the Company.
- Engaging in any outside business, professional or other activities that would directly or indirectly adversely affect the Company.

C. Corporate Opportunities
Directors must not take improper advantage of their position or use the Company's property or position for personal gain.

Directors may not use any information or opportunity received by them in their capacity as Directors in a manner that would be detrimental to the Company's interests.

D. Compliance with Laws, Rules & Regulations: Fair Dealings

Directors must comply, and oversee compliance by employees, officers and other directors, with laws, rules and regulations applicable to the Company.

Directors must deal fairly, and must oversee fair dealings by employees and officers, with the Company's customers, suppliers, competitors and employees.

Directors should encourage the reporting of any illegal or unethical behaviour. They should communicate any suspected breaches of this Code promptly to the Chairperson of the Corporate Governance Committee or any other person responsible for Compliance in the Company. Any breach of the Code will be investigated and appropriate actions taken as necessary.

E. Waiver of the Code of Conduct
Any waiver of this Code may be made only by the Board of Directors or a Committee of the Board and must be promptly disclosed to the Company's shareholders.

Directors' Forum

The Directors' Forum has been set up to act as an Advisory Council and Technical Committee to the MIoD. Its objectives are to:

- identify issues which are of most concern to directors
- produce position documents and, through consultation with Government and regulators, contribute to policy development
- be the voice for governance and directors' issues in Mauritius
- develop guidance on governance issues for directors.

Collectively, the Forum is made up of members with high level academic qualifications and professional backgrounds in law, economics, accounting, corporate and securities regulation, the public sector, business, and directorships.

Members of the Forum

Pierre Dinan – Chairman
Clairette Ah Hen
Deva Armoogum
Sunil Benimadhu
James Benoit
Prabha Chinien
Aruna Collendavelloo
Girish B.Dabeesing
Jean-Paul de Chazal
Gerard Garrioch
Michael How Wan Kau
Dr Raj Jugurnath
Georges Leung Shing
Cyril Mayer
Catherine McIlraith
Giandev Moteea
Megh Pillay
Krish Ponnusamy
Anita Ramgutty-Wong
Aisha Timol
Jane Valls
Richard Wooding

We would also like to acknowledge the contribution of Rev. Kim Andersen in helping the Directors' Forum to write and edit this document.

A special resource pack designed to assist with the practical implementation of this Guide can be downloaded from the MIoD website (www.miod.mu).

MIoD

Mauritius Institute of Directors

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