CRACKING THE CODE

Mónica Ramírez Chimal explains the key factors underlying an effective code of conduct and ethics

How many cases have you heard of involving fraud, mismanagement, or harassment? It is easy to think that such actions are only performed by "bad people". However, in reality they are often performed by people who simply do not realise that they are doing something wrong, or who find a way to rationalise a poor decision. Such examples highlight the importance of inculcating employees into a culture of values and ethics. Whether your business already has a code of conduct and ethics, or you are planning to update or extend it, this article highlights some of the key factors that you should consider.

Communications is key

A code of conduct and ethics is a communications tool, a source of information, a resource and an assurance for both employees and organisations. A code should provide a baseline for understanding right and wrong, clear guidance for complying with regulations, and an equal measure of support to everyone within the organisation, for example in the form of protection against improper treatment or abuse. Moreover, in the event of regulatory investigations a code should enable the company to demonstrate its interest in maintaining order, discipline and ethical practices.

In order to achieve this, a code must specify the behaviour expected of those working for the company as well as of external parties (suppliers, related parties, etc). An effective code should include:

a. A **statement** of the company's values and ethical principles

b. An **outline of its scope**, including a clear indication that it applies to all staff, shareholders, and third parties, in all locations in which the company has a presence. This should include the breakdown of the responsibilities of employees, executives and of the company

c. A list of **key risks** facing the company, resulting from:

- The **activities** of the company. This should include all company activities that present potential exposure to unethical behaviour. For example, money laundering risk is not restricted to the client side, but may also originate from third parties and employees. As new areas of risk arise they must be incorporated into the list. Currently emerging topics include data privacy and social networks. For the latter, who would have thought that companies would have to regulate what people post in order not to be perceived as the opinion of the company?

- The **location** of the company. This is not the same as the company developing different codes for its branches in, say, Venezuela and Italy. Some countries have increased vulnerability to corruption, others to money laundering, etc.

- The **size** of the company. Small companies and multinationals face different risks. In the former there might be a greater concentration of functions in a single person than in the latter.

d. A **reporting** procedure. The code should clearly indicate:

- Whether an issue can be reported anonymously or not.

- Whether reporting is through an email account, hotline, etc.

- The process: will a case number be given or a receipt issued immediately? How does the employee know its report or case has been received?

e. **Protection** to those who report: whether reporting is anonymous or not, the company should clarify that those reporting have immunity, will be protected and that the information will be treated confidentially.

f. **Acknowledgment** of receipt by the employee. The company should collect supporting documents evidencing that the employee read the code and agreed with it.

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International best practice

International best practice indicates that, to be successful, a code of conduct and ethics should be:

- **Taken seriously** by Directors, CEO, shareholders, members of Committees and the Board. If these key figures do not >>

believe and participate in the code, do not consider seriously cases arising from breaches of the code, or do not behave in accordance with the code, then the code loses its value and meaning. They are the role models with the ability to coach, support and inspire personnel. Related to this point is the question of who receives reports, who determines which reports are to be scaled, and what the response time should be. While the company may choose to outsource this function, it is important that at least one individual internal to the company is involved in real time when a report is received. Do not leave everything in the hands of a third party. Above all, protect those who report even if the case should be scaled to the authorities. Remember that people often do not report due to fear of retaliation, they think they don't have enough information, or their perception is that the company would do nothing.

- **Consistent with laws, regulations, policies and procedures**. Whenever a regulation is issued, or a policy changed, the code should be reviewed and, where necessary, updated. Keep in mind that policies, procedures and code are the rules of the company and, as such, must be in perfect harmony.

- **Practical and useful**. People expect to quickly find what they need. Hence, the code should be ordered (with an index). If the company has a presence in different countries, a corporate code should be developed from which others emerge which may have modifications to adapt to the reality of a country or culture. What applies in France may not necessarily do so in China and vice versa. The idea is not to overwhelm staff with information that is not applicable to them.

- **Written in easy, direct, friendly language**. Generalized, non-technical language should be used, which is understandable to all employees from all areas. The tone should be "friendly" to inspire confidence. Although best practices do not indicate a limit on the length of a code, if it is very long or tedious, employees will tend not to read or consult it. Instead, long preambles should be avoided, and the code should get "straight to the point".

- **Accessible to all**. Employees must be able to access the code either remotely (outside the office) or at the office, whether it is issued physically or electronically (e.g. uploaded to the intranet, etc).

- **Accompanied by staff training**. This can be either through webinars or in-person presentations, and should be tailored according to levels and risk exposure. Trainers should be chosen carefully and should preferably be someone from Compliance or Internal Audit or experts in the field but with knowledge of the company. New staff should receive this training soon after joining.

- **Reinforced constantly.** Given the amount of information we receive every day, what we do not reinforce tends to get lost. The form of reinforcement will vary according to the company culture (either electronically or through visual aids), but may include newsletters, games, posters, quizzes, videos, competition by areas or levels, etc. Any of these will convert learning into something friendly and entertaining. Nobody wants to be lectured to. The employee will learn, strengthen ethics and values and (hopefully) have fun. Emphasising cases of success or good behaviour will motivate employees to behave ethically and to report.

- **Supported by sanctions.** Sanctions should be applied objectively, transparently and consistently. There should be zero tolerance for bad behaviour: no privileges, no absolutions, no exceptions. This will ensure that the code is taken seriously by all.

- **Updated and improved**. Changes in directors of the company, in regulations, laws, policies and procedures, or the emergence of new risks should all prompt updates and improvements to the code. More importantly, significant breaches of the code may indicate a need for improvement. The company should keep a record of every breach according to its nature and recurrence to help identify where and how incorrect behaviours originate.

Whether you are developing a code from scratch, or updating an existing code, it is useful to discuss earlier drafts in small groups of people from different areas and levels (i.e. not only directors) to exchange opinions and scope. This will ensure that the code is grounded in reality, written in appropriate, accessible language, and in alignment with policies and procedures in all areas.

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Growing importance

The importance of the code of conduct and ethics is growing. Among other things, a code may attract the best talent, customers, and shareholders, and motivate employees. An ineffective code may result in risk to an organisation's image and reputation, because every company is comprised of people and is reliant upon the quality of their behaviour, attitude and decision-making. Winning back the trust of employees, third parties and customers is no simple task. Therefore, the key lies in establishing and maintaining good ethical standards.

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