

CHAPTER 19.

IMPLEMENTATION AND MANAGEMENT OF A CODE OF ETHICS.

IMPLEMENTATION:

A code of ethics needs to be implemented carefully, otherwise the code will remain mere words on paper. The aim of the implementation must be an ethics friendly organizational structure (this is elaborated upon later in this chapter when the management of the code of ethics is discussed). It is not enough for a policy to be written; everybody in the company must feel it – it must be considered in decision-making; it must be referred to in management reviews and tough decisions will be made in support of the code of ethics. The implementation of the code must cut out any possible ambiguity, e.g., sales growth versus quality and honest advice and/or product versus customer service. As has been said earlier in this report, the future profits of a company are linked to the reputation of the business. Mistrust is a real barrier to the flow of information, trade and long term owner value. This needs to be stressed at all junctures of the development, implementation and management of the code.

A widely accepted ethical code delivers mutual gain (a Kingdom-of-ends in Kant's parlance, see page 12). Introduction, consensus, free and open communication and

consultation, agreed standard operating procedures, education and training are necessary to get wide acceptance. It is therefore vital that top management sells to all concerned the reasons participation by all in the development of a code and the mutual advantages that flow from it. A code of ethics cannot be enforced top down; such a management dictated policy would not achieve anything as it would be seen as paternalistic and dictatorial and thus not carry the support of those who have to behave within its boundaries.

One possible way to help clarify to staff the workings and benefits of a code and so obtain their buy-in into the implementation and usefulness of it is the method used by BMW (Hartmut Kreikebaum *Grundlagen der Unternehmensethik* – 38. Kreikebaum, 1996: 292 - my translation):

Set a value system, e.g.,

- Trust;
- Role model;
- Truth-telling;
- Tolerance; and
- Responsibility.

Have senior management agree to these points and undertake to work accordingly. To see whether the desired behaviour is achieved, let staff do, after an appropriate period, an anonymous upward appraisal of management's following practices:

- Delegation of decision-making and actions;
- Motivation of subordinates;
- Dissemination of the relevant information timely and in appropriate form down the ladder;
- Cooperation with the staff and its form and intensity; and
- Initiation of development programs and promotion of colleagues/juniors.

Such assessment of management can serve not only in the development of an ethics policy and supply a measure of the management style, but also show that a code must be complied with by all and that it can be of great advantage to the staff in general.

A code of ethics must also address - if it is to apply not only to the staff of the company - the attitude and conduct of customers, suppliers and other stakeholders that the company wishes to see. They need to be consulted on the relevant provisions that are to be brought into the code of ethics, so that they have an opportunity to make their input and thereafter to consent to the conditions. Only then can they be expected to behave accordingly. A credit insurer could for instance specify a condition that it will not underwrite any risk that violates environmental or human rights standards (see the Equator principle, chapter 12 “Underwriting”, pages 137 to 143).

I believe a code of ethics to be a very important indicator of the way of life within and of a company. The finalization and implementation of such a difficult, significant and jointly agreed policy should be celebrated through staff festivities at which preferably the whole board should participate. The chairman and the CEO should address the event on the values, relevance and consequences of the code.

MANAGEMENT:

The task of ethics management is to define and give life to an organization’s guiding values, to create an environment that supports ethically sound behaviour and instills a sense of shared accountability among employees. For this to happen the company’s guiding values must make sense, be clear and be well communicated. An ethics policy accepted by the affected people will set out obligations and aspirations that are widely shared and that are central to the company’s way of conducting business. Top management must be personally committed and deeply believe in them. They must be prepared to take difficult decisions that support the ethical code, and in conflict situations they must uphold the moral way. They must demonstrate their commitment. A necessary way of inculcating an ethical code is the setting of examples in concrete actions by management. Management needs to ensure that the advocated values are properly integrated into the decision-making process and that the company’s actions fully reflect its ethical code. The business’s systems and structures must support and reinforce the espoused ethical values. For instance, excellent customer service can be delivered by the

credit insurer only if the staff is well trained and motivated, the information technology is designed to deliver fast and accurate information and authority and responsibility is delegated to ensure quick, quality decision-making. Checks and balances must be in place to ensure objective judgment.⁶⁰ The necessary decision-making skills, knowledge and competency to make ethically sound decisions must be in place throughout the company.

However, the development of a code of ethics and the training in its meanings and applications are not enough. Management must consistently preach the need, value and the significance of abiding by it. Information about successes and non-compliance, about rewards and punishment, about major moral decisions and their implication (whether good or detrimental) should be made available to and discussed with all staff. Such details serve as staff motivators and also as controls by showing interest in the ethical quality of the operation.

As the King Report (50. King, 2002: 122) recommends, each company should demonstrate its commitment to its code of ethics by:

- Creating systems and procedures to introduce, monitor and enforce its code of ethics;
- Assigning high level individuals to oversee compliance to the ethical code;
- Assessing the integrity of new appointees in the selection and promotion procedures;
- Exercising due care in delegating discretionary authority;
- Communicating with, and training, all employees regarding enterprise values, standards and compliance procedures;
- Providing, monitoring and auditing systems for reporting of unethical or risky behaviour;
- Enforcing appropriate discipline with consistency; and
- Responding to offences and preventing re-occurrences.

The company should disclose in its annual statement the degree of adherence to its code. This can be done together with and through triple bottom line reporting – economic,

⁶⁰ A matrix organization is most useful for the proper infusion and enshrinement of an ethics code because it forces decision-making by middle management and feeds real information to the top management team. It is a dialog friendly structure and provides a good foundation for the desired implementation of an ethics policy.

environmental and social. To make such issues “operational” is done by adding relevant specific goals to the business’s balance score card, measured against the above criteria and the directors should say to what extent they believe the ethical standards and the above criteria are being met. If compliance is considered unsatisfactory, the directors should state what steps will be taken to rectify the situation. The most significant obstacles to implementing meaningful ethical and triple bottom line reporting lies in the way management and the board think. If these issues are perceived as not very important, they are unlikely to receive the focus they merit from a value-generating, economic point of view. Furthermore, the business should strongly reconsider dealing with any individual or entity not demonstrating the same level of commitment to organizational integrity and business ethics.

The following are some tools for the institutionalization of a code of ethics:

- The company should establish a Board Ethics Committee to guide the development of the code, monitor its management, ensure the above referred to reporting, see to it that action is taken to keep the code up-to-date and make certain that rewards are given and disciplinary actions taken where appropriate. Major ethics decisions and the resolution of serious dilemmas should be approved by, or recommended to the full board, by this committee. Only if the company’s leadership identifies with the ethics code does it have the necessary clout.
- For large companies a Corporate Ethics Office manages the program. It should:
 - help manage the code;
 - ensure that an ethics training program including an induction procedure is in place and properly used;
 - be responsible for reporting and investigating ethical concern within the company;
 - manage a system of collecting - in a confidential manner - information about violations (including whistle blowing) and about particularly interesting ethical actions and decisions and disclosing them in an anonymous way where appropriate;
 - reveal and control particularly sensitive ethical parts of the business;
 - develop and manage an ethics early warning and audit system;

- deal with public and media issues concerning the company's code of ethics and make relevant input where required into the company's advertising and public relations policies.
- regularly report to the Ethics Committee to which it should also be accountable.
- Similar to corporate governance, credit insurers should also set an example with regard to business ethics. They need to do so because of their prominence in the credit assessment field and their duty to judge and express an opinion, through their underwriting activities, on other businesses.
- Even if the company is too small to justify an ethics office, it needs to have an ethics training program or module within its other training classes.
- Without a proper external ethics auditing system, the ethics policy will not have teeth.
- A thoroughly explained ethics hot line or whistle blowing scheme needs to be in place which must be well publicized to staff and other relevant stakeholders.
- Moral conduct and support for the ethics code and the solving of moral problems also need to be criteria in the regular performance appraisal of all staff members.
- The company should track the number and types of ethics cases and complaints because this will serve as an early warning system for poor management, product quality, gender and racial discrimination, environmental concerns etc.
- The fragmentation of decision making should be avoided at all costs because it leads to bad decisions and the missing of ethical issues. It can lead to focusing purely on the actor's own area of responsibility, ignoring other spheres of related accountability which should be considered in the making of the decision.
- Encourage the exercising of moral imagination, e.g., resolving tensions responsibly and creatively. Examples are (35. Harvard, 2003: 133/4): Coca Cola, which refused to pay a bribe but obtained political support and public trust by sponsoring the planting of fruit trees; or Levi Strauss, who, when discovering that their supplier in Bangladesh employed children under the age of 14, continued to pay the children their wages while they attended school and offered to reemploy them once they had reached the age of 14.
- Professional, rational decision-makers take their own pre-conceived ideas about what they personally see as useful or detrimental, moral or unethical into consideration when making decisions. To an extent that is right – it is probably because of their ability to

make sound judgments that they are in the position of decision-maker, but the company should try to cultivate, also in these experienced people, the use of the ethics code and of ethical decision-making tools (Kant's categorical imperative and Rawls's original position for instance) in arriving at conclusions.

- Management should foster the formation of "Ethics Islands" (38. Kreikebaum, 1996: 278) - an informal communications network which tries to solve ethical dilemmas through discussions, possibly employing where appropriate Jürgen Habermas's RIMS strategy or John Rawls's Original Position processes (see pages 75, 76 and 23) within the group. The members of such an ethical island are linked by a common interest in ethical issues, a system of ethical norms, ethical knowledge and the desire to avoid negative socio-economic, ecological and human rights consequences in their dealings. Such an island can be the motor for ethical development, the uncovering of new ethical conflicts, and it can propound solutions for moral problems. It should report to the Corporate Ethics Office.
- The ethics champion, a person who could be the catalyst of an "Ethics Island," is not interested in short term solutions but tries to find long term answers. She is not orientated by the *Zeitgeist*, but swims against the stream. She questions existing situations; she goes to the root of things and tries to find the real reason for a conflict. She needs to be awake, quick in picking up the basic important issues and needs to have a feel for people and situations. She requires courage, cleverness and commitment.
- An internationally operating company must create and implement a global ethics strategy, locally developed. However difficult it may be to articulate and agree on the values on which such a strategy/code needs to be based, in a global business environment fundamental ethical values convey the company's intentions worldwide. Its moral misbehaviour in one corner of the world is known around the globe in hours, thanks to to-day's information technology, and can seriously affect its reputation and share price world-wide. But local circumstances must be taken seriously if the business is to be successful in the relevant market. Companies must, through their ethical code, support right behaviour in host countries, for instance the decreasing of institutional corruption. A company alone cannot drive out entrenched corruption, but its code of ethics should steer it toward organizations such as Transparency International,

Germany, which has been effective in helping coalitions of companies, government officials and others to reform bribery-ridden bureaucracies in Russia, Bangladesh and elsewhere. (See also chapter 5 “Cultural Relativism”).

- There will always be a certain amount of vagueness and uncertainty in a code of ethics. A code can never deal with all the possible moral conflicts a business will encounter. As philosophers have pointed out, no ethical theory is a science; it can be no more than a guideline. A code cannot be applied in an absolute way. This then requires that it is interpreted, managed and enforced by ethical people, people who have a good knowledge of ethics and set great store by ethical behaviour. To manage a code of ethics requires the company to have a corporate ethics officer or at least a responsible person who is honestly interested in the subject, has acquired certain knowledge about the subject and will be happy to be the company’s person responsible for the work of an ethics officer, i.e., the duties, as outlined above.

COMPLIANCE, CONTROL AND THE BOARD’S INVOLVEMENT.

It is necessary to enact a control and auditing system and a reward and sanctioning policy in order to secure compliance with the code of ethics. This will provide additional impetus for ethics management to be taken seriously.

A breach of the code requires disciplining: The secretary who steals petty cash, the underwriter who connives with a policyholder in approving a credit limit on a bad risk, the salesman who falsifies his expense account, the accountant and his boss who alter cost records or the chronically sleazy operator who never does anything actually illegal – all must be dealt with cleanly, with minimum attention to alleged extenuating circumstances. The procedure to be followed has to be in writing, clear and unambiguous, available to all and must be strictly followed. The procedure should lay down the punishment for various derelictions. A system of prior warnings before dismissal needs to be in place and disciplinary hearings have to be held at which the accused employee should be allowed to have present a defender of his/her choice.

However, as mentioned earlier, a system of rewards for good ethical behaviour seems to be more successful than merely a list of punishments. The best climate for managing a code of ethics is where everyone concerned fully and whole-heartedly subscribes to the code. The more skeptical employee may view an ethics code as nothing more than liability insurance for senior management – the root cause of misconduct must be addressed in order to avoid such views. A top down dictated code, even if it is a good one, will certainly produce such feelings.

Where outsiders, such as suppliers and customers, clearly violate the code, the company must consider whether a confrontation will sort the matter out or whether it would be more appropriate to discontinue business relations with such entities.

It is virtually impossible for any business in the financial services sector to protect itself against every potential criminal or unethical act by its employees. It is said that for this reason such businesses must insist upon a corporate culture of absolute compliance, forcing employees to act ethically because they are afraid of the legal and other consequences. Such a view might be more appropriate to banks, but I believe it would not be the right approach in a credit insurance business. Because of its less bureaucratic type of operation and due to the need to delegate to well qualified people in order to provide speedy, professional service to the market, the credit insurer has to trust his employees more. With fear alone and no trust, no business will be able to serve its market well and thus build long term owner value.

On the other hand, where corporate behaviour is concerned, corporate values and the code of ethics must be treated as absolute. To illustrate this statement, here is an instance from Motorola: they were awarded a contract by a South American government for \$10 million which would have earned them a profit margin of 25%. They walked away from this business because the purchaser insisted on a \$1 million “fee.” Such action underlines the seriousness with which a company takes its ethical commitments. For Motorola it meant having cemented a culture of ethics within their complement of thousands of employees (35. Harvard, 2003: 131/2).

The above shows how important it is for the board of directors to monitor whether management maintains moral standards. Ethical behaviour will be taken seriously only if it is seen as an integral part of the company. It needs to be placed on an equal footing with other corporate obligations. The board needs to give guidance about how management should use its authority to integrate moral conduct within an organization. An ethics code can do this. The board needs to find ways to involve the entire organization in the process of determining ethical norms. It has to assume responsibility for protecting the stock of trust invested in the business. Management must therefore be requested to report to the board on the workings (e.g., violations, ethically directed decisions taken that have a major direct affect on the business, successes and feedback from the market, etc.) of the company's code of ethics, which should be done via the Ethics Committee or the Corporate Ethics Office (if they exist). As stated earlier, the board needs to report on the moral performance of the company to all stakeholders. Such ethics reports can also benefit the reputation of the company in the expanded community, and might be circulated more widely.