

BUSINESS ETHICS - HEART AND SOUL OF COMPANY'S CULTURE

“A living person has a mind which can have knowledge or intention and he has hands to carry out his intention. A corporation has none of these; it must act through living persons.”

I. BUSINESS ETHICS

Business Ethics is a form of applied ethics. It is a set of principles or standards of human conduct that govern the behavior of individuals or organizations. Business ethics reflects the philosophy of business, one of whose aims is to determine the fundamental purposes of a company. Corporate entities are legally considered as persons in most nations and it is necessary that they operate in accordance with general moral imperatives and special professional responsibilities. Definite value system and code of conduct must exist to facilitate an ethical climate for the Company to sustain and develop progressively. Good business ethics can also be called as Corporate Governance and is central to building corporate brands and in the formulation of strategies of business management.

II. ROLE OF BOARD OF DIRECTORS

The Directors of a Company assume legal responsibility for the company's resources, their decisions and actions as directors of the Company. A Company holds the capital provided by the Shareholder's in trust. If a company's purpose is to maximize shareholder returns, then sacrificing profits to other concerns is a violation of its fiduciary relationship. Hence it is significant that the business ethics of a company permeates the heart and soul of the company's culture so as to align itself to its vision and mission statement and its main objects.

A. Position of Directors – Directors are described sometimes as agents, trustees and managing partners. But these expressions are not exhaustive in nature but only indicative of their duties and responsibilities to the Company. Board of directors is one with the intelligence, integrity and courage to exercise dutiful overview of the management and contribute meaningfully to the strategic affairs of the corporation. The lawmakers have come a long way in identifying and recognizing the importance of Boards and their roles in protecting the interest of stakeholders. It is therefore imperative that the Directors are trained and informed of all powers, responsibilities and liabilities that attach to their capacity and position.

B. Duties of Director broadly encompasses the following in all of his decision making and actions:

- a) Duty to act in the interests of the company and not in the interests of any other parties
- b) Duty to act within the Company's powers
- c) Duty to actively participate in the Company's affairs
- d) Duty to promote the success of the Company
- e) Duty to exercise independent judgment
- f) Duty of good faith
- g) Duty of skill, care and diligence
- h) Duty to avoid conflicts of interests
- i) Duty not to accept benefits from third parties that may give rise to conflict of interests
- j) Duty to declare an interest in a proposed transaction or arrangement
- k) Duty not to delegate
- l) Duty to authenticate and approve the financial statements of the Company
- m) Other duties:
 - The company is not wrongfully trading
 - The company does not pay illegal dividend
 - The accounts are prepared properly, with proper keeping books and records

The Directors should be aware that there are civil and criminal sanctions and penalties for breaches of your responsibilities and duties as a director.

III. BUSINESS ETHICS AND COMPANY'S CULTURE – It is well known that the ethical tone of the organization is set at the top, the actions and attitudes of the board greatly influence the ethical climate of an organization. There may be a definite Code of Conduct and Business Ethics for all the Board members and the senior management. This value system will flow and be inculcated to the the entire organization. When the directors are Compliance and Values oriented, it is bound to be an example set to the organization as a whole.

IV. DEVELOPING A CODE OF CONDUCT AND BUSINESS ETHICS

Code of Business Conduct and Ethics contains standards of business conduct that must guide actions of the Board and senior management of the Company.

The Code may include the following:

- a) Company Values – Inclusive of its Vision and Mission Statement
- b) Avoidance of conflict of interest
- c) Accurate and timely disclosure in reports and documents that the company files before Government agencies, as well as in Company's other communications.
- d) Compliance of applicable laws, rules, and regulations including Insider Trading Regulations.
- e) Maintaining confidentiality of Company affairs.
- f) Non competition with Company and maintaining fair dealings with the company.
- g) Standards of business conduct for Company's customers, communities, suppliers, shareholders, competitors, employees.
- h) Prohibition of Directors and senior management from taking corporate opportunities for themselves or their families.
- i) Review of adequacy of the Code annually by the Board and a Committee thereof.
- j) No authority of waiver of the Code for anyone should be given.

The Code of Conduct for each Company summarises its philosophy of doing business.

Although the exact details of this code are a matter of discretion, the following principles have been found to occur in most of the companies:

- a) Use of Company's assets
- b) Avoidance of actions involving conflict of interest
- c) Avoidance of compromising on commercial relationship
- d) Avoidance of unlawful agreements
- e) Avoidance of offering or receiving monetary or other inducements
- f) Maintenance of Confidentiality
- g) Collection of information from legitimate source only
- h) Safety at workplace
- i) Maintaining and Managing Records
- j) Free and Fair competition
- k) Disciplinary actions

To create a Code of Ethics, an organization must define its most important guiding values to the roles and responsibilities of the persons affected, review the existing procedures for guidance and direction as to

how those values and standards are typically applied, and establish systems and processes to ensure that the code is implemented and is effective.¹

V. For the purpose of assuring and safeguarding the interests of the Company, the Board of Directors should be aware of certain 'when, what, why and whom' to ensure good governance and compliance so as to avoid ethical or moral irregularities in their operations. The directors of the company serve as the decision making and action taking task of the corporation and therefore they must do so with outmost care and regard to the consequences of their actions and omission of action. Apart from the statutory compliances, the directors should know what they owe to the Company and its stakeholders.

The following are **certain statutory and self regulations that a Director must appreciate and adhere to** in all his dealings and generally in his relationship with the Company and its stakeholders for the purpose of assuring ethical or moral principles and practices:

1. Information about the Company –

Prior to his appointment, every director should be informed about the company he is to join and satisfy himself about the company's profile, background and history; its objects, financial status, business strategies and performance. Thereby the director makes an informed choice when he chooses to join the Board of a Company and is better equipped to align his interests with that of the Company and its stakeholders.

2. Formalities to be complied with before appointment of a Director –

a) Director's Identification Number (DIN) –

Any individual who is a director or intends to become a director of a company should apply for DIN. All the directors of a company must obtain DIN. Section 266B has been inserted by the Companies (Amendment) Act, 2006, which provides that the Central Government shall, within one month from the receipt of the application under section 266A, allot a Director Identification Number to an applicant. DIN facilitates the Director to possess a unique identification number which also co-relates his participation in other companies in past or present.

b) Digital Signature Certificate (DSC) –

¹ 'Governance, Business Ethics and Sustainability' by the Institute of Company Secretaries of India – June 2009

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Every director should obtain a DSC and keep it in his control and custody. A DSC is an electronic signature and it attaches liability of the Director to any document that carries it. He should use his DSC with due care and after exercising his mind to any matter that may need his authentication.

c) Consent, Disclosure of Interest and Declaration –

A Consent letter to act as a director should be given to the Company in writing before the appointment as the appointee director may not know the effective date of appointment.

A Disclosure of Interest should be given in writing by a director with details of his relatives as per Form 24AA and the same needs to be submitted at the time of his appointment and at the end of every financial year so as to determine any related party transactions and the details of contracts in which he may be interested.

A Declaration must also be given that the Director is not disqualified from acting as a director as per Section 274 (1) (g) at the time of his appointment and before the close of every financial year.

3. Interested Directors –

Section 297 of the Companies Act, 1956 requires the Board's sanction for any contract where any director may be interested on the mandatory disclosure of the director's interest, if any, in matters transacted by the Board.

Section 300 stipulates that the interested director shall not to participate or vote in Board's proceedings when an interested matter is being transacted.

The Act also prohibits directors from availing loans or advances from Companies and any contravention shall attract huge penalty.

4. Disclosure and Transparency – The Directors should take outmost care to ensure that all legal and other necessary disclosures are made promptly and in compliance with all the relevant laws that may apply in transactions, decisions and actions of the Directors in their day to day affairs of the Company.

5. Governance and Corporate Social Responsibility - The responsibility of a director is not just to ensure good governance of the Company but also to contribute significantly to the stakeholders at large by inculcating in the organization a culture of social consciousness. This supports long term sustainability in the industry apart from corporate branding. This enables the stakeholders to associate with the Company in all its successes and failures by augmenting to their loyalty and patronage towards the Company.

Important Don'ts – Every Director should remember certain important Don'ts which ideally would be covered in the Code of Conduct. However, this requires special mention here as an emphasis on the Duty of Care of a Director while exercising his power in the Company. They are:

- a. Directors should remember not to give his DSC to any other person. It is his signature and the same cannot and should not be allowed to be used by another on his behalf. Any misuse of the same can make him personally liable and he cannot take defense of not having had possession of it or used it.
- b. Directors should not sign on any paper or document without a mandate as any lack of care may lead to a situation of personal liability
- c. Directors should not take any loans from the Company as it may have penal consequences.
- d. Should not involve himself or the Board in wrongful or fraudulent trading.

VI. CONCLUSION

The core of the ethics and compliance program at an organization can be practiced through a Code of Conduct and Business Ethics as explained above. The Code guides the organizations business conduct, requiring honesty and integrity in all matters. All the associates and directors are required to read and understand the Code and follow its precepts in the workplace and larger community.

This Code may be administered by an Ethics & Compliance Committee. The cross-functional senior management team oversees all the ethics and compliance programs and determines Code violations and discipline. The Ethics & Compliance Office also has operational responsibility for education, consultation, monitoring and assessment related to the Code of Business Conduct and compliance issues. The Company may arrange for the Associates worldwide a variety of ethics and compliance training courses administered by the Ethics & Compliance Office. It is important to regularly monitor and audit the business to ensure compliance with the Code and the law. It is also necessary to maintain a consistent set of best-in-class standards around the world that govern how to investigate and handle Code issues and update the code regularly to improve its effectiveness.