



By email: < Edcomments@ifac.org >

28 April 2006

Our Ref.: C/CGC, M40907

Technical Manager
Professional Accountants in Business Committee
International Federation of Accountants
545 Fifth Avenue, 14th Floor
New York, New York 10017
United States

Dear Sir,

**[IFAC Exposure Draft \(ED\):
Guidance for the Development of a Code of Corporate Conduct](#)**

The Hong Kong Institute of Certified Public Accountants (“the Institute”) believes that this is a very worthwhile project, albeit a challenging one, in view of the existence of many diverse kinds of companies, of different sizes, in different industry sectors and having different corporate cultures and practices. The scope of the project is also ambitious, given that it aims to cover the commercial, not-for-profit and government sectors, which encompass organisations with quite different functions and objectives.

Our comments on the ED, some of which are of a general nature and some more specific, are outlined below. They are intended to be constructive and we hope that they will be seen in this light.

General

1. Overall the ED seems rather loosely organised and structured. For example, the section on the typical content of a code of conduct (on pages 5/6) is sandwiched somewhat uneasily between the sections on “Defining Conduct for Organisations” and “Approaches to Developing a Code of Conduct”. It would be helpful if the guidance were to include an index and if the sections and paragraphs were numbered.
2. The ED seems to adopt a halfway house between a generic, principles-based approach and a more detailed and practical approach. It might be better to opt more clearly for one form or the other.

Specific

3. In the section "Benefits of Developing a Code of Conduct" (pages 2/3), it may be useful to make further reference to, e.g., the enactment of US Sentencing Guidance ("the Guidelines") in 1991, which provides potential monetary incentives for corporations to institute ethics or compliance programmes. Under the Guidelines, a company can gain leniency in sentencing based on several "mitigating factors". One of the most important mitigating factors is having a programme "to prevent and detect violations of the law". The Guidelines detail seven criteria against which such programmes are to be judged. These include the existence of standards or codes of conduct, training or other communication regarding the standards, and the designation of a high-level individual to oversee compliance.
4. Contents of a code of conduct –
 - The "Typical Content for a Code of Conduct" (pages 5/6), seems somewhat out of context under the sub-heading "Defining Conduct for Organisation". It might be better placed either in a separate appendix or grouped under "Observations on the Presentation and Content of Specific Codes".
 - The content list seems rather lengthy and detailed and to include operational policies and procedures (e.g., "1.4.3 Internal Communications"; "1.5 Communication and Education"). We would suggest that certain content items be combined (e.g., "1.2 Adherence to Applicable Laws and Regulations" and "2.2.2 Host vs. Domestic Country Laws, etc"). We believe that a code of conduct should aim to be concise so that employees can easily understand and follow it and not be overwhelmed, or put off, by it. It would be helpful if information could be provided as to which headings are more frequently used in codes of conduct and which are less common. If this information is not available, then we would suggest that, as a minimum, an indication be given as to which items should be regarded as priorities and should be included, or are strongly recommended for inclusion, in a typical code.
5. The ED classifies the approaches to developing codes of conduct (page 7) according to the objectives of management – managing for compliance, managing stakeholder relationships, or creating a values-based organisation. We would suggest that reference could also be made to other methods of classification. For example, the International Labour Organisation Conference Board categorises codes of conduct into:
 - Compliance codes: directive statements giving guidance and prohibiting certain kinds of conduct.
 - Corporate credos: broad general statements of corporate commitments to constituencies, values and objectives.
 - Management philosophy statements: formal enunciations of the company's or CEO's approach to doing business.

6. Stage 1 – Managing for Compliance (page 9) includes assigning responsibility for the code of conduct and compliance programme to an appropriate function. We believe that, as a code of corporate conduct would cover many aspects of a company’s operation, one individual function may not be able to effectively assume the sole overall responsibility. Designating responsibility in this way could also undermine the message that maintaining and upholding a code of conduct is a shared responsibility. We would suggest that the ownership of each policy in the code should be assigned to a responsible function. However, we agree that there should be an overall coordinator for the code.
7. Implementation of a Stage 3 code of conduct program (page 10) –
 - Assigning responsibility for interpreting the code: The importance of consistency in interpreting a code, and of fairness and consistency in any disciplinary actions that arise from a code, should be emphasised.
 - Encouraging employees to report behaviour inconsistent with the code: We suggest that the guidance should include more specific guidelines for reporting deviations from the code and on the protection that should be available to those who report such deviations.
8. The questions in the section “Toward Best Practices in Global Business Operations” (page 13) are not particularly self-explanatory. It might be better to explore the various issues further depending upon the answers given.
9. The risk management issues in support of having a code of corporate conduct could be elaborated more with regard to the potential impact on stakeholders (page 4 exhibit 1). These may include:
 - reputational risk of regulatory fines/sanctions;
 - operational risk of losing key customers, suppliers, distributors;
 - fraud risk leading to substantial losses;
 - financial risk arising from disclosing false or inaccurate information in the market place; and
 - attritional risk of losing employees who prefer working for companies with better corporate practices.
10. Success criteria need to be pre-determined and agreed by all interested parties, as part of implementing a code of corporate conduct. In order to incentivise employees, such criteria should be measurable and be able to form part of a company’s pay and compensation scheme.
11. There appear to be various discrepancies between the recommendations in the main body of the ED and the illustrative code in Appendix A. These should be reviewed to improve overall consistency and the impact of the sample code. For example:
 - Appendix A does not seem to have had clear regard to the "Typical Content for a Code of Conduct";



- there is very little coverage of the important issue of conflicts in the sample code;
 - the advice under "Use of Plain, Positive Language" (page 15) has not always been followed, as there are various examples of negatively worded, prohibiting language (e.g., see the sections on "Accountability and Actions" and on "harassment"); and
 - the advice under "Precision and Clarity" (page 14) seems not to have been followed very consistently.
12. Reference could be made to the fact that existing codes, issued by e.g., regulators, could provide a useful source of material for particular sectors or generally. In Hong Kong, for example, the Securities and Futures Commission has issued codes of conduct applicable to fund managers and persons licensed to work in the financial services area. These provide useful guidance to which relevant companies could refer when they devise their own policies, procedures and processes.

We hope you find our comments to be helpful. If you have any questions on our submission or wish to discuss it further, please feel free to contact me at the Institute.

Yours faithfully,

A handwritten signature in black ink that reads 'Peter Tisman'. The signature is written in a cursive, slightly slanted style.

Peter Tisman
Director, Specialist Practices
Hong Kong Institute of Certified Public Accountants

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