

Oana-Marina BĂTAE

The Bucharest Academy of Economic Studies

ETHICS AND THE IMPACT ON CORPORATE GOVERNANCE

Review
Article

Keywords

*Ethics,
Code of Conduct,
Fraud,
Whistleblowing,
Romanian Banking Ethical Code,
Corporate Governance*

JEL Classification

D73, G30, M14

Abstract

Nowadays, more than ever before, the companies are under the watchful eye of the stakeholders. However much energy, effort and also expertise a company brings in order to bear on the risks of the unethical behavior, many surveys have proved that fraud, bribery and also corruption are unlikely to completely disappear. In order to prevent an unethical behavior, companies must be able to identify, investigate and also remediate actions of different individuals who are prepared not to comply with the ethical principles. Ethics is an important aspect formalised through a Code of Conduct within companies, which has the role to articulate the core values and also employees' behavioural expectations. It is the responsibility of the management to ensure that the personnel follows this code, otherwise it is informed about the penalties that might arise. Ethics is characterized also by transparency, supporting an increase in the trust of people and institutions.

INTRODUCTION

Business consists in the balance between risk and also reward. It is well known that once the reward becomes greater, meaning higher earnings of the company, increased market share, faster increase in share price, the risk becomes higher and needs to be managed very well.

Many companies are constantly assessing the risks that might arise, both in certain and uncertain situations, fraud being only one of the multiple risks that entities are facing in their day-to-day activities, but fraud is very often perceived as a remote risk – “it does not happen here”.

However, the companies need to challenge themselves and make a realistic risk control self-assessment and answer the question: “How could it happen here?” It is difficult to address this question because often the perpetrators of fraud are actually individuals who occupy position amongst the most trusted employees and challenging such persons, who may have been a part of the company for many years, places the management in an uncomfortable position (Hussain, 2014).

This is the moment in which the most trusted individuals break the Ethics Code of the organization they are part of.

ETHICS – A KEY ISSUE NOWADAYS

Different ethical dilemmas and also multiple compliance complexities are faced nowadays by all type of organizations.

The health of the business can be protected by developing an accurate framework for the compliance programs and by identifying, assessing and controlling the risks each company is facing.

During the time, a decrease in confidence of the public service was observed among all citizens, along with an increase in the mistrust level. (Public Management Service, 1998).

Nowadays, most organizations are facing a wide range of different compliance requirements, internal and external, that have to be met in order for their business to keep looking forward. Ethics and compliance challenges are, in fact, magnified by: multiple changes in the business structure, various complex operations, new or changed laws and regulations and also increase in the enforcement.

A survey prepared by Management Today (“MT”) together with KPMG Forensic Accounting which included the opinions of more than 800 managers, senior managers, directors and partners, points out the need of ethics since the beginning, this having to be taken into account due to the following facts highlighted in the survey: one of three persons says that each individual lies to their coordinator depending on occasion; less than half of individuals

who participated in the survey consider the persons at the top to hold, indeed, strong ethical principles and to be considered role models for the other below; 25% affirmed that favoring family or close friends in awarding different contracts still occur even if it is considered unacceptable; 7% even agreed that it is fine to inflate profits in an artificial manner as long as money are not actually stolen; individuals over 40 years adopt a more judgmental approach to their ethical behavior; one of five individuals was actually prepared to admitting that it is totally unacceptable to charge personal entertainment to company’s expenses; the reasons of not reporting a fraud include one of the sentences: “It’s a fair game” or “Everybody is doing it” or “It’s none of my business.” (Weait, 2001).

During their career, many professionals have to deal at least once with temptation. Often, gifts are used in order to disguise criminal activity and bribes and in most of the cases this situation is hard to be isolated. Such gifts can be represented by cash; luxury trips, travel and accommodation abroad; free holidays; buying immovable properties below their market value etc. Once the gifts are accepted, the ethics falls over (Pickett, 2010).

The first individual who confronted the dependent relationship between both self-interest and ethics in the economic behavior was Adam Smith. Also, Adrian Cadbury has written about the company codes and how they are prepared with the scope of providing guidance to the employees. (Jones and Pollitt, 1998).

ETHICAL CODES IN LONDON

Over the time, different codes have been developed in order to suit various companies, these covering either honesty, conduct, objectivity and so on.

A code of conduct is able to provide an easily accessible statement of all the core values which relate to the ethical and legal conduct of the business.

It should typically be comprised of sections related to: provided services to customers, personal interests, conflict of interests, inducements and gifts, insider trading, relationship with both auditors and regulators, money laundering, personal expenses claims and reporting the breaches of the code. (Hitchins et al, 1996).

It functions as an internal document which is important in the decision making process. In addition, the code of conduct is also designed to serve to the stakeholders of a company and to fulfill their expectations towards the profession.

Some of the purposes of the codes of conduct are the following: to promote an ethical behavior; to provide guidance when an individual faces difficult decisions – a proper code will make distinction

between serving public interests and internal rules or loyalty towards a company; to establish both the rights and accountabilities; to state the moral and professional development; to enhance the status of each profession etc (Palidaukaite, 2003).

One of the ethical codes is represented by the Civil Service Code which comprises a set of provisions which cover the conduct of the civil servants and most areas of concern and the need for impartiality. All civil servants should have a behavior defined by honesty, impartiality and integrity, conduct which can be acquired by taking into account the following: impartial and honest advice shall be given to each Minister without being constrained by favor or fear; all information relevant in the decision making process shall be made available anytime not only upon a request; civil servants shall deal with the affairs of the public in an efficiently, promptly and sympathetically manner, without maladministration or bias; they should use in an effective and efficient manner the money of the public; they should not take advantage of their position to follow their private interests or the interests of others; they shall refuse any benefits of any kind from another individual, benefit which might reasonably be seen by others to compromise both their integrity and their professional judgement; they shall behave in such a way to deserve and also keep the confidence of the Ministers; they shall also comply with all the restrictions on the political views which are implied by their profession; any official information shall not be disclosed by the civil servants without authority; they shall not try to influence the decisions or even actions taken by Ministers; whenever a civil servant confronts a situation in which he or she thinks is forced to act in an illegal manner, he or she must report immediately to the appropriate persons which have the right authority to act in a specific manner according to the Code; civil servants have the duty to report any breach of ethics or an unlawful fact exercised by others, to the appropriate authorities in a proper time; the duties of confidentiality need to be exercised even after they are no longer serving to the public (The Civil Service Code, 2013).

Another type of ethical code is represented by the Nolan principles. In the Nolan code, seven principles are united in order to form the basis for development of a more detailed code for the public sector: integrity - individuals shall not place themselves under any obligation that might lead to a weak performance of their duties due to the exercised influence; objectivity – any contract award or recommendation of an individual for rewards or an appointment for a top position shall be made on merit, without a breach of integrity; selflessness – the decisions are taken solely by covering the public interest and not the personal ones or of their family and friends; accountability – the holders of public office are fully accountable for both their actions and

also decisions no matter what consequences might appear; openness – they shall be as open as it is possible regarding the decisions they make and the actions they take, all the actions being explained by appropriate reasons proving transparency on the one side, but on the other side they shall restrict information if it is not appropriate to reveal it; honesty – any private interest relating to the public one must be declared and any conflict between the two of them must be resolved; leadership – the promotion of these principles shall be done at each occasion (The Nolan Code, 2014).

BANKING ETHICAL CODE IN ROMANIA

Another code is the one covering the Romanian banking system and adopted by the members of the Romanian Associations of Banks (“RAB”). By applying the stipulations of the Banking Ethical Code, RAB is proposing the following: to promote an adequate conduct of the employees of the credit institutions towards the clients, authorities, banking environment, business community and colleagues; to enhance the confidence of the clients in the financial banking sector as a whole; to promote the public image according to which the credit institutions and the banking personnel offer their clients highly qualitative products and services; to encourage and promote the good cooperation between the banks; to sustain a correct competition on the financial banking market in accordance with the market conditions; to promote the mutual respect within the banking community.

The Banking Ethical Code is applied to all the banks which are members of RAB. In the cases in which the banks are outsourcing some of their activities, the responsibility regarding the compliance with the Code is maintained by the credit institutions who use outsourced activities.

The fundamental principles which must be respected by all the employees of the credit institutions in their professional relationships with either the clients, the authorities or other employees of other banks, are the following: moral integrity – this is a principle according to which the employees are not allowed to request or accept, directly or indirectly, for themselves or for others, any advantage or any benefit linked to their position in the bank or to abuse in any way of their position; impartiality and discrimination – this is a principle according to which the employees of the financial institutions are obligated to maintain an objective attitude, neutral to any political, economical, religious interest when carrying out their activities; professionalism and transparency – this is a principle according to which the personnel has the obligation to fulfill its tasks with responsibility, competence, efficiency, rightness and clarity; compliance with the laws and regulations; confidentiality – this is a principle

which highlights the obligation of the employees not to transmit any confidential information regarding the facts, data and information related to the carried out activity, to persons which are not authorized to receive such information. The personnel of the banks is obligated to keep the professional secret towards any information and not to use such information in order to obtain personal advantages, any deviation from this principle being punished in accordance with the applicable laws; preventing and combatting corruption facts, money laundering and terrorism activities – through reporting any transaction which might have any link with those mentioned, in accordance with the applicable laws; to exercise prudent activities – when carrying out any financial transactions through the responsible administration of the own funds of the credit institutions and also through informing the clients about the offered products and services of the banks; social responsibility – this is a principle which highlights the implications in resolving different social problems; avoiding denigration – a principle according to which the employees of the credit institutions will exercise their activity with good faith, respecting the interests of the parts which are implied and also respecting the interests of the loyal concurrence in the concrete market conditions.

An important aspect of ethics is related to the conflict of interests which appears whenever an incompatibility situation between the statute of the employee of the credit institution and the personal statute of this individual, transposed through any action which might affect the reputation of the organization. The personnel of the banks is allowed to carry out different activities outside the credit institution with the condition not to prejudice the activity and the position detained by the employee of the bank. Each employee is expected to avoid the implication in different activities which enter in a conflict zone with the interests of the credit institution and its shareholders.

In order to avoid such situations, the personnel has the following obligations: to not follow any financial or personal interest and to act only in the interest of the bank the employee is working for and the shareholders and clients of the organization; to not follow any personal interest when performing transactions in the account of the clients which is different from the interest of the customer; to not borrow money from own funds to the clients or from the clients of the credit institutions; to not offer any other service different from the ones of the bank or group he is part of; to not accept any gifts or rewards from the clients in order to facilitate any bank operation, exception being any gift with a symbolic value or any participation to events to which a refusal might affect the relationship between the bank and its clients (The Romanian Association of Banks, 2009).

CORRUPTION AND WHISTLEBLOWING

Transparency International defined corruption as being represented by the abuse of public power in order to obtain a private gain and it has listed the most significant forces that encourage bribery. Over the time, all the changes and developments occurred not only on economics, but also on other areas, led to an increase in corruption met in foreign organizations of senior staff due to the following: low public salaries, changes in political party funding, deterioration of laws and regulations, public tolerance of the corruption, inefficient controls on money laundering, increase in secrecy of the government, different restrictions on media.

Corruption appears when ethics falls over and it impacts companies in many ways. Sometimes in worst case scenarios it can cost lives, and in the most encountered cases, it costs people health, freedom and money. These costs can be divided into four categories such as: economic, political, environmental and social.

Economically, it breaks the national wealth, the corrupt politicians investing in projects that in fact will fulfill their pockets rather than benefit communities.

Politically, corruption is one of the major obstacles to the law and democracy, public institutions losing their legitimacy when they are misused for personal advantages.

On the environmental front, natural resources are exploited in a careless manner and the ecological systems are destroyed. All over the world, companies still pay bribes in return for access to unrestricted destructions through different approved projects.

Socially, corruptions leads to a decrease in the trust of individuals in a state as a whole (Transparency International, 2018).

When people do not speak about corruption, it often is unchallenged. The reason for which whistleblowers are considered to detain a crucial role in saving companies from corruption is the fact that the witness, in most cases, provide invaluable insights, becoming a powerful tool used in the fight against corruption.

However, in many countries across the world, blowing the whistle brings a high personal risk, especially when no legal protection is offered.

Though the whistleblowers are a benefit to the public, sometimes they are seen as betrayers. Also, they are not expected to often report misconduct in their workplace if the employers did not ensure a clear channel of internal reporting of soft facts within the organization (Transparency International, 2013).

ETHICAL THREATS AND SAFEGUARDS

Any situation in which an individual or an organization is tempted not to comply with their code of ethics is considered an ethical threat.

There are five types of ethical threats such as: self-interest, self-review, advocacy, familiarity and also intimidation.

The guidance or any action which has the scope of removing the ethical threat represents an ethical safeguard.

Usually, the ethical safeguards fall into three main categories which are created by profession, work environment and also individual.

The safeguards created by profession include the following: setting of a proper code of corporate governance within the company and also supervising the professional work, process which includes also disciplinary proceeding.

In case of the work environment safeguards, the followings are included: a strong control environment within a company, efficient and effectively internal controls established within a company, accurate disciplinary procedures, organizational code of ethics or conduct and also a set of review procedures and policies up to date.

For the individual safeguards, the followings are examples of components: compliance with all the professional standards established at the level of an entity, maintaining records of issues identified and measures through which the risks were mitigated, transferred or eliminated, contacting different professional bodies across the world if questions are open (Kaplan Publishing, 2014).

THE IMPACT OF ETHICS IN CORPORATE GOVERNANCE

An effective corporate governance represents one of the most significant components of a proper functioning of the economy as a whole. The corporate governance represents a system by which the organizations are conducted and also directed and controlled (The Committee on the Financial Aspects of Corporate Governance and Gee and Co. Ltd. – Cadbury Report t, 1992).

Additionally, the corporate governance represents an internal system which comprises policies, procedures, processes and also individuals that serve the needs of both shareholders and stakeholders by directing and also controlling all the management activities with integrity, objectivity and good savvy (Dovonan, 2003).

The ethical responsibilities relate to what is actually expected from different companies across the world compared with what those entities are required to do from both a legal and economic point of view. In fact, the ethical responsibilities highlight doing what

is in fact seen to be right comparing with doing what is actually simply legal.

Hence, higher than both legal and economic accountabilities are the ethical responsibilities within a company.

The social responsibility represents the manner both employees and also people who occupy positions in top management view their duties in making decisions that help in protecting, enhancing and promoting the well-being of the stakeholders and society as a whole, as mentioned by Carrol in 1981.

The corporate social responsibility strategy includes five significant steps such as: identifying the stakeholders, classifying the stakeholders, establishing the claims of the stakeholders, assessing the importance of the stakeholders and deciding upon response to social pressure. All these steps help including the corporate social responsibility as part of a company's strategic planning processes while behaving in an ethical manner. (Kaplan Publishing, 2014).

CONCLUSIONS

The existence of a good corporate governance model, high ethics, good business and also high corporate responsibility are factors which lead to an increase in the changes of corporate sustainability (Sims, 2003). Being ethical is all about playing fair, thinking about the consequences some actions might bring and also thinking about the welfare of the others (Mihelic et al, 2010).

Therefore, the ethical leadership is linked to corporate governance due to both their principles and characteristics.

However, there will always exist different global hotspots related to corruption and also impropriety which will increase both corruption and fraud risks that an organization might enhance.

Nowadays, businesses are more likely than ever to become under scrutiny in the relation to their compliance reporting framework. Thus, in today's world, the desired transformation within companies is enhanced if ethics, corporate governance and corporate social responsibility jointly become a significant component of the organizational culture. In conclusion, in each company a reinforcement process to commitment to driving ethical growth shall exist and be always monitored.

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