



HKCGI Ethics, Bribery and Corruption Guidance Note (Eleventh) - Anti-corruption Policies and Ethics Training Disclosure in Environmental, Social and Governance Report (Part 2)

This guidance note refers to the Stock Exchange of Hong Kong Limited's (the Exchange's) review of issuers' environmental, social and governance (ESG) disclosures. Specifically, in relation to the new social key performance indicator (KPI) for anti-corruption training provided to directors and staff being lower-than-average reporting level. This guidance note offers guidance and governance best practice for complying with the 'comply or explain' requirement.

Introduction

In November 2022, the Stock Exchange of Hong Kong Limited (the Exchange) released the findings of its latest review of issuers' environmental, social

and governance (ESG) disclosures according to requirements set out in its ESG Reporting Guide. In relation to the new social key performance indicator (KPI) for anti-corruption training provided to directors and staff being lower-than-average reporting level. This guidance note continues with the guidance and governance best practice for complying with the 'comply or explain' requirement, specifically on the important issues relating to whistle-blowing and ethics training.

Whistle-blowing policy¹

The core elements of the whistle-blowing policy include:

1 D.2.6, Appendix 14, Listing Rules, 'The issuer should establish a whistleblowing policy and system for employees and those who deal with the issuer (e.g. customers and suppliers) to raise concerns, in confidence and anonymity, with the audit committee (or any designated committee comprising a majority of independent non-executive directors) about possible improprieties in any matter related to the issuer.'

Also, D.3.7, Appendix 14, Listing Rules, 'The terms of reference of the audit committee should also require it: (a) to review arrangements employees of the issuer can use, in confidence, to raise concerns about possible improprieties in financial reporting, internal control or other matters. The audit committee should ensure that proper arrangements are in place for fair and independent investigation of these matters and for appropriate follow-up action.'

Gratitude is expressed to the Hong Kong Business Ethics Development Centre (HKBEDC) of the Independent Commission Against Corruption (ICAC) as author of this guidance note. The members of the Institute's Ethics, Bribery and Corruption Interest Group are Dr Brain Lo FCG HKFCG (Chairman), Jeremy Birch, Mary Lau, Michael Chan, Ralph Sellar and William Tam ACG HKACG. Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive, serves as Secretary to the Institute's Interest Groups. If you have any comments and/or suggestions relating to the Institute's Interest Groups, he can be contacted at: mohan.datwani@hkcgi.org.hk.

1. *Statement of intent*

A policy statement from the top about the company's commitment to high probity standards and ethical business practices, and encouraging reporting of concerns about any actual or suspected misconduct or malpractice in relation to the organisation by employees and external parties.

2. *Types of breaches and personnel to which the policy applies*

The types of breaches and conduct issues to which the policy applies, with examples of the major and minor ones, and the level of substantiation that may justify reporting.

The personnel to which the policy applies including the personnel implicated and the reporting parties. This should cover employees at all levels and other stakeholders who might be victims of staff misconduct such as business counterparts (e.g. suppliers).

3. *Responsibilities of the company's personnel in implementing the policy*

A description of the responsibilities of the organisation's personnel in implementing and overseeing the policy.

4. *Reporting channels*

The establishment of appropriate reporting channels with relevant mandates since reports may be made against staff members of different levels, including senior management.

The description of different means for making reports and the ways for which anonymous reports are handled.

5. *Consequences of false report*

A statement against the making of knowingly false reports or malicious allegations and its consequences.

6. *Confidentiality*

A statement pledging confidentiality of the whistleblower's identity and the details of the report, and the requirement for the persons handling the reports to keep all related information confidential except on a need-to-know basis.

7. *Protection against retaliation*

The policy and measures of protection against unfair dismissal, victimisation or unwarranted disciplinary action against bona-fide whistleblowers.

8. *Handling of reports*

The procedures for timely handling of reports received, suspected criminal offence(s) revealed by the report or internal enquiry/ investigation.

The requirement for centrally recording the reports received and documenting the follow-up actions to ensure accountability.

The requirement for prudent handling of internal enquiry/ investigation to avoid jeopardising subsequent investigation by relevant law enforcement agencies.

9. *Communication*

The requirement for making the whistleblowing policy and reporting channels known to the stakeholders and effective communication of the policy to them.

The channel that staff may consult the designated officer(s) about the application of

the policy in case of doubt.

10. Periodic review

The requirement for the organisation's senior management to review the provisions and effectiveness of the whistleblowing policy from time to time.

Ethics training

Apart from a comprehensive anti-corruption policy, a holistic business ethics training programme is also indispensable to an effective anti-corruption system.

In essence, business ethics is a set of moral principles, values and standards of conduct by which business corporations operate in a fair, legal and ethical manner. Staff members with a low ethical standard tend to bend the rules and policies for personal gain and therefore one of the fundamental means to promulgate good governance is to enhance staff members' integrity capacity through ethics training.²

Ethics training should be provided to all levels of personnel in the company, including Board members, covering the following areas:

1. Legal and regulatory requirements

In order to protect staff members from crossing the line, relevant anti-bribery laws including the Prevention of Bribery Ordinance as well as other legal and regulatory requirements such as listing rules against the crime and malpractice relating to the company's business are essential.

2. Ethical standards requirement and management's commitment

In ethics training, the company can communicate with staff members about

the guidelines and objectives of its anti-corruption policy. It also serves to demonstrate management's determination to include ethics as an integral part of the business practice.

3. Corruption risks assessment

To enhance staff members' vigilance against risks and impact of corruption to the key operations of the company, common corruption pitfalls and ethical challenges such as conflict of interest that staff may face in workplace and guidance on how to handle them properly are necessary.

4. Case studies and analysis

Through analysing case studies or scenarios of the company, industry or similar operations elsewhere, staff members can develop better understanding of the integrity issues concerned and hence facilitating learning and deterrence.

5. Skills to handle ethical challenges

Acknowledging the damages brought by improper handling of ethical challenges, staff members should be equipped with relevant skills and knowledge to handling ethical dilemmas at work.

6. Management skills to detect warning signs

Management staff should lead by example and personally stay away from corruption and other related crimes. It is equally important for them to prevent bribery from taking place or developing in the company by detecting early warning signs. Skills such as creating an environment conducive to discussion of ethical issues can facilitate managerial staff to perform their gatekeeping role.

2 Toolkit on Directors' Ethics, <https://hkbedc.icac.hk/Upload/guides/15/pdf/decb85f1c726449c9666a8a54a9068c8.pdf>

Whilst ethics training should be incorporated in the induction programme for newly joined staff of all levels as soon as possible, regular training to sustain their corruption prevention awareness and to update them of the latest risks or changes to legal and regulatory requirements are essential.

In designing corporate business ethics training programme, governance professionals may obtain useful information, resources and services from professional bodies and regulators such as the Hong Kong Business Ethics Development Centre³ of the ICAC⁴ which provides customised and free integrity training promoting business ethics and corruption prevention.

To capitalise on the growing trend of online learning, the HKBEDC launched the 'BEDC Channel' on its website in 2021 for organising thematic webinars for a wide range of target groups including directors and senior management of listed companies focusing on their ethical and governance roles. The Exchange's ESG Academy also provides materials for listed companies to build their own long-term sustainability strategies.

Points to note for governance professionals

To help governance professionals, including company secretaries take on a central advisory role in driving good corporate governance and compliance with regulatory requirements, especially in the anti-corruption aspect, here are some points to note. They

should be:

1. Keeping abreast of the developments in anti-corruption laws, rules and regulations and ESG regime that may affect company's business and operations.
2. Ensuring that the board and all levels of staff receive regular integrity training and updates of regulatory developments in relation to ESG standards.
3. Developing and sustaining a sound and effective corporate governance framework comprising comprehensive anti-corruption and whistle-blowing policies, and a holistic ethics training programme.
4. Fostering a robust probity culture to meet the rising integrity expectation from regulators, investors and public.

Conclusion

ESG is evolving globally and so does the Hong Kong ESG regulatory landscape. Governance professionals, especially company secretaries, must stay abreast of the latest ESG developments, including the anti-corruption aspect, for building a sound and effective corporate governance framework and sustaining a probity culture in the company.

3 <https://hkbedc.icac.hk/en>

4 <https://www.icac.org.hk/en/home/index.html>