

10 April 2006

ICAEW Rep 25/06

Technical Manager
Professional Accountants in Business Committee
International Federation of Accountants
545 Fifth Avenue, 14th Floor
New York
New York 100017

Dear Sir,

**IFAC GUIDANCE FOR THE DEVELOPMENT OF A CODE OF
CORPORATE CONDUCT**

The Institute of Chartered Accountants in England & Wales ('The Institute') is pleased to respond to your request for comments on the proposed Guidance for the Development of a Code of Corporate Conduct.

Please contact me or Anne Davis (anne.davis@icaew.co.uk) should you wish to discuss any of the points raised in the attached response.

Yours faithfully



Neil Lerner
Chairman, Ethics Standards Committee



ICAEW REP 25/06

**GUIDANCE FOR THE DEVELOPMENT OF A
CORPORATE CODE OF CONDUCT**

Memorandum of comment submitted in April 2006 by the Institute of Chartered Accountants in England and Wales, in response to the International Federation of Accountants proposed 'Guidance for the Development of a Code of Corporate Conduct' published in January 2006

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the 'Institute') welcomes the opportunity to comment on the consultation paper *Development a Code of Corporate Conduct* published by the International Federation of Accountants (IFAC).

WHO WE ARE

2. The Institute of Chartered Accountants in England and Wales is the largest professional accountancy body in Europe, with more than 127,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy.

GENERAL POINTS

4. We welcome this guidance on the *Development of a Code of Corporate Conduct* which is an area of increased importance to organisations and one where there has limited guidance at an international level. However, whilst the guidance has useful content and addresses some of the key issues professional accountants in business would face when developing a code of conduct, there are some significant areas that need to be considered further.

Objectives

5. The guidance aims to address issues relating to the development and implementation of codes of conduct. However, there is little practical guidance on the process for developing a code of conduct. We suggest that a process for developing a code of conduct should involve the following stages:
 - Gathering information, including agreeing objectives for the code, identifying stakeholders and potential benefits and costs;
 - Obtaining commitment of the Board and senior management;
 - Preliminary discussions with stakeholders to find out what is important to them;
 - Drafting the code;
 - Testing or piloting the code;
 - Approving the code;
 - Publication and publicity of the code;

- Reviewing the implementation of the code, including reviewing the content of the code itself.
- 6. When developing and implementing a code of conduct, it may be beneficial for larger organisations to set up a working group with representatives from various functions in the organisation including human resources, finance, internal audit and legal and compliance. This working group would be responsible for ensuring that the code of conduct is part of the organisational culture. Alternatively, smaller organisations may delegate these responsibilities to an individual who is sufficiently senior enough to command the respect and support from others in the organisation.
- 7. Whilst some guidance on implementation issues relating to codes of conduct is contained in the actions required under three approaches to developing a code of conduct, we believe the implementation issues relating to compliance, reporting, help and advice and reinforcement of the code are not adequately covered in the guidance. The need to comply with the code of conduct which, is likely to involve some form of reporting, will help to ensure that a code of conduct is not ignored. Areas to consider relating to compliance and reporting include accountability, policies and procedures, the disciplinary process and the proportionality of punishment. In terms of help and advice, areas to consider include inter alia:
 - the inclusion of dilemma or conflict resolution framework in the code of conduct;
 - the availability of real life case studies;
 - the existence of confidential helplines.

With regards to reinforcement of the code, an organisation should consider, amongst other things, messages from senior management, training and the incorporation of elements of the code into the appraisal process.

Scope

8. The title of the guidance refers to corporate codes of conduct. However, codes of conduct are relevant to all organisations, not just corporates, as is suggested in the forward. Thus, we suggest that the scope of the guidance be changed to developing codes of conduct for organisations.
9. Although this guidance is aimed at professional accountants in business, professional accountants in practice may also find the guidance helpful since professional accountants in practice may also be involved in developing and implementing codes of conduct.

Status

10. The draft guidance has been issued as good practice guidance. As a member body of IFAC, it is unclear as to what our obligations are for adopting or furthering this type of guidance nationally. It is our recommendation that the status of the guidance should be clarified further.

Consultation

11. The draft guidance appears to be based entirely on North American and British literature as evidenced by the bibliography. Given that this guidance is intended to be good practice guidance for organisations across the world, we would recommend that further research and/or consultation be undertaken to gain international acceptance.

COMMENTS ON SPECIFIC POINTS

Introduction

12. The introduction in this guidance states that codes of conduct are a useful tool for establishing standards of behaviour in an organisation. We believe that the development and implementation of codes of conduct is one mechanism for establishing standards of behaviour in an organisation. The strategy, objectives, policies, procedures and operational mechanisms in an organisation need to also support this objective.

Benefits

13. Whilst a significant number of benefits associated with developing and implementing a code of conduct have been identified in this guidance, this guidance would be more powerful if the benefits of developing a code of conduct were identified at a higher level and more clearly. Instead of concentrating on specific details, benefits may be framed in terms of guidance for employees, reputation, trust, minimising actual or potential legislation, risk management, performance and addressing stakeholder concerns as identified in exhibit 1 in the draft.
14. More specifically, referring to directors and officers responsibilities for an organisation, we believe that this point needs to be amended. Directors and officers have always been responsible for the acts of the organisation; what has changed are the consequences associated with those responsibilities as evidenced by the penalties associated with the Sarbanes-Oxley Act 2002.

The Role of the Professional Accountant

15. The role of the professional accountant is alluded to in various areas in this guidance, including the forward, conclusion and the section entitled *The Role of the Professional Accountant*. Whilst the guidance states that the role of the professional accountant in business needs to be clear, we believe that the guidance fails to address this need. Furthermore, the guidance is too prescriptive in certain areas. In particular, the ability of professional accountants to meet some of the requirements identified in the draft will be dependent on their seniority and role as well as the organisation the individual works for.
16. We would expect most professional accountants, whether they are in business or in public practice, to be able to :

- Recognise potential ethical problems with the organisation they support;
- Apply a framework or a decision-making process for resolving conflicts;
- Articulate the reasons for making particular decisions from the perspective of a code of conduct.

We question whether all professional accountants in business, especially those in junior positions, would have the ability and authority to:

- identify, monitor, and communicate the expectations of stakeholders, as well as the costs, benefits and risks related to meeting those expectations;
- monitor and report on compliance with their organisation's code of conduct;
- assess whether the proposed action on current and future initiatives effectively manages the risks faced by the organisation.

17. We suggest that the draft discusses the role of accountants at a higher level, without being too prescriptive. For example, as leaders in an organisation a professional accountant in business may be responsible for developing, implementing and demonstrating commitment to the organisation's code of conduct. Alternatively, as assurers, professional accountants in business may be responsible for monitoring and reporting on the compliance of the organisation's code of conduct.
18. One area in which the role of the professional accountant can be more prescriptive is the recommendation that professional accountants in business should support the organisation's code of conduct through their own behaviour. The inclusion of such a suggestion may then also provide a link to the IFAC Code of Ethics referred to in this section. Furthermore, it may be worthwhile exploring and providing guidance on what a professional accountant in business should do if the organisation's code of conduct is in conflict with the principles contained in the IFAC Code of Ethics.

Defining Conduct of Organisations

19. We believe the intention of this section is to explain what is meant by an organisational code of conduct. However, the title for this section does not necessarily make this clear. We recommend that this section be renamed to *What is a Code of Conduct*.
20. If the intention is to explain what is meant by a code of conduct, then we believe it would be helpful to emphasise and elaborate on the fact that codes of conduct may have different names and may adopt different styles and approaches.
21. Goals such as "*the greatest good for the greatest number*", "*respect of the rights of others*" and "*a fair distribution of costs and benefits*" are based on philosophical theories rather than business principles which guide organisational objectives. It is more likely that an organisation's goal included in a code of

conduct is phrased in terms of a commitment to integrity rather than a goal based on philosophical theories.

22. The content of a typical code of conduct included in pages 5 and 6 would be better placed in the section *Approaches to Developing a Code of Conduct* since this section deals with contents of codes of conduct.
23. We do not agree that the content of a typical code of conduct would necessarily contain the elements suggested in pages 5 and 6. For a code of conduct to be effective it needs to be tailored to the needs of the organisation. Thus, codes of conduct for smaller organisations are likely to be shorter and less elaborate than for large multinational organisations which have to deal with a number of complex areas. We recommend that the word “would” should be replaced by “might” and that it be noted that this is more suitable for a larger organisation. This would acknowledge that different organisations have different requirements of codes of conduct.
24. As far as content of the typical code of conduct, there is no mention of principles or values even though one of the approaches discussed in the subsequent section is a values-based approach to developing a code of conduct. We recommend that a principles or values section is included in the content of a typical code of conduct.

Approaches to Developing a Code of Conduct

25. This section is aimed at providing guidance on different approaches to the Code of Conduct. However, the approaches are described in terms of stages which is confusing.
26. Whilst we agree that the choice of approach depends on the objectives of management, there are other factors which will influence this decision such as:
 - size and nature of the organisation;
 - industry in which the organisation is involved;
 - organisational objectives and responsibilities;
 - costs, benefits and risks associated with different approaches.
27. One of the key approaches identified by the Institute of Business Ethics in their publication *Developing Codes of Business Ethics* is the issues-based approach which is not mentioned in this guidance. An issues-based approach focuses, amongst other areas, on key issues for the organisation such as conflicts of interest, confidentiality, gifts and hospitality, bribery and corruption, the environment and so on. This publication is available at <http://www.ibe.org.uk/>.
28. Whilst we do not disagree with the pros and cons identified in each of the approaches, it is not clear whether IFAC is recommending one as being better for an ethical organisation.

Defining the Organisation's Values

29. In this section, the guidance states that “The most effective codes are generally short, stating clearly and succinctly the obligations it has to each of its stakeholder groups.” In reality, this can only be achieved if a principles or values based approach is adopted. A principles or values based approach focuses on fundamental principles and the application of those principles to situations or activities rather than detailed guidance and prohibitions found under rules-based approaches. Whilst this guidance suggests in places that a rules-based approach has its limitations, we recommend that the differences between a principles and rules based approach to codes of conduct needs to be emphasised to a greater extent.

Toward Best Practices in Global Business Operations

30. The word “overseas” included in this section is an Anglo-Saxon terminology. We would recommend replacing the word “overseas” for “abroad” or “other countries” as appropriate.
31. In point 6 of this section the guidance states “The organisation should focus on its own culture rather than the local national culture.” This absolute assertion is debatable. Therefore, we suggest that this type of issue should be a consideration for an organisation and not one for prescription by this guidance.

Competition Law

32. It is not clear why this guidance focuses on Competition Law and does not mention other laws such as Human Rights, Health and Safety, Anti-Money Laundering and Anti-Terrorism which are also complicated and would be pertinent to an organisation’s code of conduct.

Appendix A

33. The illustrative code does not follow a values-based approach even though it is portrayed as one. The only organisational value mentioned on page 18 is integrity and the rest of the illustrative code is a mixture of content relating to stakeholders, issues and responsibilities.
34. The illustrative example also contains prohibitions such as those under the harassment section. This undermines a values based approach and contradicts the suggestion in this guidance that the language used should be positive (page 15).

MINOR DRAFTING POINTS

35. For ease of reference, it would be helpful to readers if the guidance included section references and sequential paragraph numbering as used by other IFAC guidance such as the IFAC Code of Ethics.
36. Page 4, last sentence under the heading *The Role of the Professional Accountant* should read “.... IFAC Code of Ethics as well as (instead of an) the organization’s code of conduct.”
37. Page 14, second paragraph under the heading *The Law and the Organization’s Code of Conduct* should be changed to “.... can be legal without being considered

to be proper conduct ...” instead of “...can be legal without considered to be proper conduct.”

38. Page 15, penultimate line in the first paragraph under the heading *Use of Plain, Positive Language* should read” ... positive language that includes the logical positive outcomes...” rather than “... positive language that included the logical positive outcomes...”
39. Page 20, the first few lines under the *Health and Safety section of the ABC Organization Corporate Code of Conduct* are duplicates of the last few lines in page 19 under the same section.