IV

Putting Business Ethics into Practice

8

Aligning the Responsible Business Enterprise

- Understanding the Importance of Alignment
- Getting the Right People in the Right Places
- Encouraging Employees to Follow Standards and Procedures
- Dealing with Mistakes, Misconduct, or Misunderstandings

This chapter discusses the basic concepts and practices of responsible management. The responsible business enterprise (RBE) aligns its management practices with its core beliefs, standards, procedures, and expectations, supported by its business ethics infrastructure.

Understanding the Importance of Alignment

Core beliefs, standards, and procedures; reasonable stakeholder expectations; and business ethics infrastructure alone do not make an enterprise a responsible business. The essence of an RBE is that it consistently improves its business performance, makes profits, and increases the prosperity of its community by meeting the reasonable expectations of its stakeholders in pursuit of its purpose as an enterprise.

Business Ethics Programs and Business Planning

Research and experience suggest that the most helpful aspect of a business ethics program may be that it supports management practices that align enterprise strategies and management practices with core beliefs, standards, procedures, infrastructure, and expectations.[1] A business ethics program is a fundamental aspect of organizational development that provides the foundation for other important aspects of business planning such as a business plan, marketing strategy, investment prospectus, and proposal for a strategic

PRACTICE NOTE

Alignment: the Ultimate Measure of Success

Success for a business ethics program comes when the core beliefs, standards, procedures, and stakeholder expectations desired by owners and managers become an integral part of everything that owners, managers, supervisors, other employees, and agents think, say, and do: when core beliefs, standards, procedures, and stakeholders' expectations become "the way we do things around here."

alliance. In all these instances, the enterprise must be able to demonstrate a consistent theme in thought, communication, and action. Each of the five elements below, for example, should be based on the preceding ones and, ultimately, on the core beliefs of the enterprise as developed in Chapter 5:

1. Mission
2. Goals and objectives
3. Strategies, programs, and action plans
4. Performance measures
5. Decisions and activities

In the case of a business plan, for example, all of the elements lead to an integrated approach to the four components of a business plan: (a) description of the business, (b) marketing plan, (c) financial management plan, and (d) management plan. A business plan not based on these elements would be necessarily incomplete.

Fundamental Questions

Three fundamental questions address the alignment practices of an RBE:

1. How can we ensure that we have the right people in the right places while we pursue our purpose as an enterprise?
2. How can we encourage our employees and agents to follow our standards and procedures?
3. What do we owe our stakeholders when mistakes, misconduct, or misunderstandings occur that involve our standards and procedures or their reasonable expectations?[2]

Owners and managers can use Worksheet 12, the enterprise alignment worksheet, to assist in answering these questions.

Getting the Right People in the Right Places

Having the right people in place allows an enterprise to face a changing world confident that it can succeed, regardless of the pressures its relevant context might present. To accomplish this, management needs to attract the right people, train them properly, position them well, and treat them fairly. It also needs to see that the "wrong" people are not in a position to distract the enterprise from pursuing its purpose and meeting the reasonable expectations of its stakeholders.

Having Responsible Owners, Managers, and Supervisors

Emphasis on having the right people in the right places begins with owners, managers, and supervisors. Responsible owners and managers need to be people who embrace an RBE's core beliefs. If an RBE's purpose is to be a global energy company, as at Royal Dutch/Shell, then they are passionate about delivering energy on a global scale. If the enterprise's values are integrity, contribution to society, responsibility to customers and employees, and the unequivocal pursuit of quality and excellence, those values naturally guide everything owners and managers think, say, or do. If the envisioned future of the enterprise is to become the company that most changes the worldwide image of Japanese products as being of poor quality, as at Sony, that is the owners and managers' picture of where the enterprise is going and their part in it.

Owners, managers, and supervisors set the tone for all that happens—and does not happen—in their enterprise. Employees and agents watch to see if they "pay attention to ethics, take ethics seriously, and care about ethics and values as much as the bottom line," as one recent study confirmed.[3] Over time, their behavior molds the organizational culture that orders "the way we do things around here," regardless of what the formal documents of the enterprise might say.

Owners, managers, and supervisors are in positions that have authority and require discretion. The decisions they make and the activities they sponsor or condone involve great risk and opportunity for the enterprise. As a result, mistakes, misconduct, or misunderstandings involving owners, managers, and supervisors—especially senior managers—may have far-reaching implications at all four levels of enterprise identity:

1. **Compliance level**. Prosecutors are far more likely to prosecute an enterprise for criminal misconduct if senior managers are involved; they are more likely to find that the organizational culture of the enterprise is a

factor, as well. In the United States, a disproportionate number of small to medium-sized enterprises (SMEs) are prosecuted for misconduct.

2. **Risk management level.** Risk to the enterprise may be dramatically higher if senior managers or those with substantial discretion are involved, often costing into the millions of dollars.
3. **Reputation enhancement level.** The damage to the reputation of the enterprise, especially when senior managers are involved, may be irreparable. In recent years, for example, enterprises with household names have ceased to exist or are struggling to recover from lapses in responsible business conduct at the level of senior management. Such lapses are even more devastating for the SME closely connected to its community, where word travels fast.
4. **Value-added level.** An RBE strives to add value to its community while drawing on the resources of the community. If senior managers violate the trust placed in them by an enterprise's stakeholders, the enterprise may never be able to repair the damage done to the trust, social capital, or resources of the community.

What makes any person a "right person" for a particular enterprise, then, are the responsible criteria of the enterprise itself: its core beliefs, its established standards and procedures, and the reasonable expectations of its stakeholders. Applying these responsible criteria to all hiring, placement, and retaining decisions leads to consistency in action and fairness.

Hiring the Right People

Where the responsible criteria of the enterprise are clear, owners and managers can use people who exemplify the criteria to recruit and evaluate

PRACTICE NOTE

Anticorruption Practices

Enterprises should exercise due diligence in hiring employees and agents who will be exposed to situations in which they may benefit through corruption, conflicts of interest, or undue influence. They should conduct background checks and even inquire into applicants' financial status to avoid placing any employee into a situation he or she cannot resist.

PRACTICE NOTE

Supply Chain Social and Environmental Responsibility

HP has had a long-standing commitment to social and environmental leadership around the world. Our global and corporate citizenship commitment is not only limited to what goes on inside our company walls but also extends to our suppliers. We expect our suppliers to act as responsible corporate citizens and take a positive, proactive stance regarding environmental, occupational health and safety and labor issues.

Hewlett-Packard Company
"Supply Chain Social and Environmental Responsibility"

potential employees. By hiring people who embrace the responsible criteria of an enterprise, owners and managers take a large step toward having an effective business ethics program. It takes only one employee or agent to destroy the reputation of an enterprise. Hiring the wrong people increases the risk of criminal and civil liability and increases the costs of defending the enterprise or correcting any harm done. All of these risks adversely affect the prospects for improving business performance, making a profit, and increasing prosperity in the community. In some cases, as recent examples in Asia, Europe, and the United States, have shown, the bad acts of a few employees (often senior managers) can bring an enterprise to near financial ruin.

To exercise due care, an enterprise must balance the reasonable expectations that applicants, employees, and agents have that an RBE will respect their privacy as individuals. Depending on the applicable employment protection laws, an RBE may screen prospective employees. Owners and managers should carefully research what screening processes an RBE may use in considering applications.

Owners and managers should also exercise due diligence in selecting their strategic alliances, the entities with which they merge, the entities they acquire, their joint venture partners, and their suppliers and service providers. See Appendix E for a sample supply chain management questionnaire, which one company uses to qualify its suppliers.

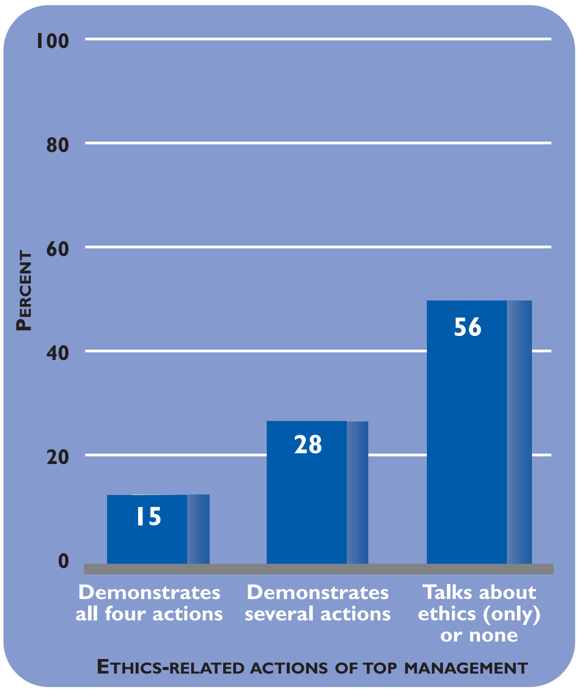
Placing People in the Right Positions

All enterprise positions are not the same as far as level of responsibility is concerned. Owners and managers must take care to ensure that their people are able to assume the level of responsibility that their positions demand. As the level of responsibility increases, so too must the competency and responsibility of the person occupying the position.

This is particularly the case if the position has substantial discretionary authority, such as the high-level personnel discussed in Chapter 6: a director, an executive, an individual in charge of a business unit or major function, or someone with a substantial ownership interest. But this principle also applies to other positions such as plant and sales managers and employees who advise the public or have authority to set price levels or negotiate contracts, especially for government contracts.

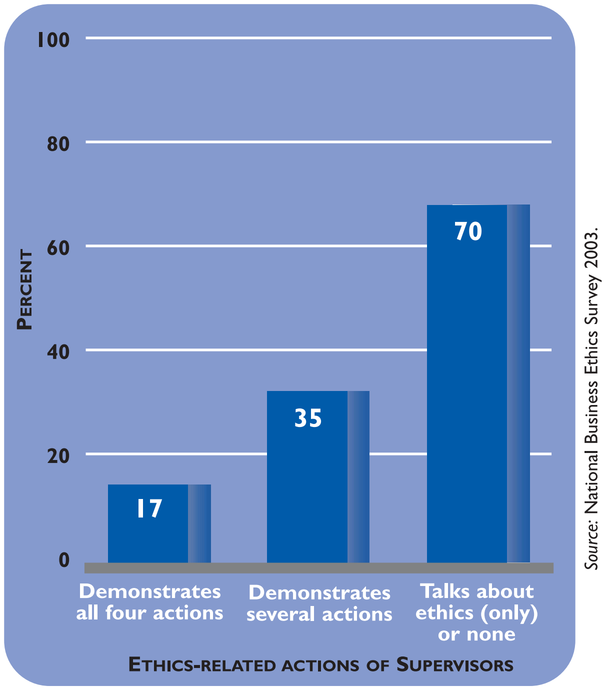
Where high-level personnel are involved in misconduct, the enterprise itself is at greater risk. Government prosecutors, sentencing judges, the media, and the public, which might be inclined to treat an isolated incident of misconduct by lower-level personnel as an individual shortcoming, are more apt to attribute the misconduct of senior personnel to the enterprise as a whole.

FIGURE 8.1
Observed Misconduct by Actions of Top Management



Source: National Business Ethics Survey 2003.

FIGURE 8.2
Observed Misconduct by Actions of Supervisors

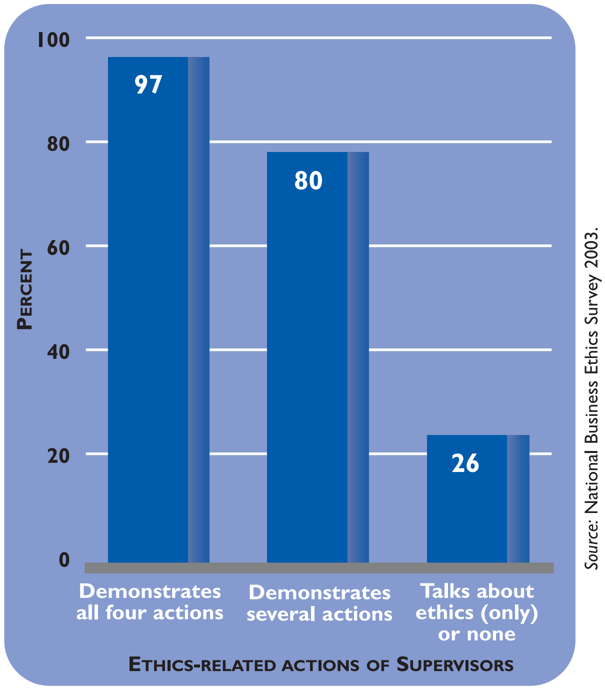


Moreover, the conduct of managers and supervisors is a key indicator of the effectiveness of the business ethics program. As recent research displayed in Figure 8.1 shows, where top management demonstrates four ethics-related actions, only 15 percent of employees say that they observed misconduct. The number climbs to 28 percent where management demonstrates fewer ethics-related actions and jumps to 56 percent where top managers only talk about ethics or take no action at all.[4] (The four ethics-related actions are talking about the importance of ethics, keeping promises and commitments, setting a good example, and keeping employees informed.)

Figure 8.2 shows that the outcomes are even more dramatic for supervisors: only 17 percent of employees observed misconduct where supervisors demonstrated all four ethics-related actions, but 35 percent observed misconduct where supervisors demonstrated fewer ethics-related actions, and 70 percent observed misconduct where supervisors only talked about ethics or took no action at all.[5] (The four ethics-related actions for supervisors are slightly different from those for top management: supporting employees who follow ethics standards is substituted for keeping employees informed.)

These associations between the ethics-related actions of managers and supervisors and expected program outcomes held true for the following

FIGURE 8.3
Employee Satisfaction with Organization by Actions of Supervisors



outcomes as well: less feeling of pressure to compromise standards, more satisfaction with management's response to reported concerns, more sense that managers and supervisors are held accountable, and more satisfaction with the enterprise as a whole. Having the right people in the right places is essential for an enterprise to be a responsible business enterprise. Figure 8.3 addresses employee satisfaction with the organization.

Retaining the Right People

Responsible people want to use their skills and knowledge in pursuit of a purpose they value. Compensation is important, but the sense of being a responsible member of a responsible enterprise has value in and of itself. As one researcher noted, "The right people will do the right things and deliver the best results they are capable of, regardless of the incentive system."[6]

Having hired the right people, an RBE strives to assign them work they find worthwhile and challenging. It is *irresponsible* to assign a person who lacks the required capabilities to a responsible position.

Often the people most taken for granted are the good people who are trying to do the right thing and succeed. Owners and managers must be alert to practices that reward unscrupulous employees, while leaving conscientious

PRACTICE NOTE

Values

Defining who we are and how we are different from other companies is important to us. These values define our differences and give meaning to our work. They begin to describe what we mean by the "Herman Miller Way." Our future depends on how well we live out these fundamental values. As we do business in an increasingly competitive environment, will our deeds match our words? We believe that if these values become second nature to us and guide our actions, we will deliver extraordinary value to our customers. Moreover, if we make a meaningful contribution to their businesses and their lives, we will flourish and thrive.

Herman Miller Japan Ltd.
"A Different Kind of Company"

employees feeling unrecognized and frustrated. Examples of this situation abound: sales commissions based on total sales that do not account for customer returns or complaints are but one. Managers who engage in "creative bookkeeping" to meet enterprise goals or objectives—and are consistently rewarded for their "performance"—are another.

Dealing with the Wrong People

From time to time, owners and managers make mistakes and hire or retain someone who does not share the reasonable criteria of the enterprise. He or she may be unable or unwilling, even with intense management guidance and training, to follow enterprise standards and procedures or contribute to meeting reasonable stakeholder expectations.

When owners and managers make mistakes in hiring, an RBE does neither these employees, their fellow employees, nor the enterprise any favor by having them remain in place. Where management's commitment is clear, employees and agents will often "self-select" themselves out of the enterprise. If they do not, owners and managers must take steps to remove them from the enterprise. This task is not a matter of discipline, although enforcing standards and procedures through discipline is one way to encourage responsible behavior.

Often, the owner or senior manager is the "wrong person." This situation is a particular challenge for those who rely on SME goods or services, especially if the good or service requires the expertise of the owner. Large, complex enterprises (LCEs) may lose a critical part of their supply chains. Here, of course, the entire enterprise is at risk of being prosecuted or debarred from preferred supplier lists. More often, the best employees and agents seek employment elsewhere rather than have their livelihoods placed at risk, if they have the chance.

Sometimes other stakeholders, such as suppliers and even customers, may be the wrong people. As discussed in Chapter 9, it is responsible management to know your customer. See Appendix E for a sample supply chain management questionnaire.

Encouraging Employees to Follow Standards and Procedures

Many management practices support responsible business conduct. These supportive management practices fall in three categories:

1. Recognizing employee contributions
2. Rewarding ethical behavior
3. Punishing unethical behavior

Need for Recognition

The single most important thing that responsible owners and managers can do to encourage responsible business behavior is to recognize the contributions their employees and agents make in pursuit of the purpose of the enterprise. Where managers have tasked employees with challenging work, they should recognize and commend successful completion. Even failure, where it is the result of a good faith effort to contribute, should be addressed favorably, especially if the employee has learned something from it and has shared the experience with other employees.

Performance evaluations are an important means of recognizing employee and agent behavior. Core beliefs, standards and procedures, and reasonable stakeholder expectations should be important elements of the evaluation process. Employees will notice if owners and managers say these are important but do not care enough to have reports on whether their subordinates comply with them. Managers and supervisors will also notice that they are not evaluated on whether they promote the responsible criteria among their subordinates.

Reward Systems

An important principle of management is that employees tend to do what is rewarded. If managers want responsible employee and agent behavior that meets standards and procedures and that contributes to meeting reasonable stakeholder expectations, they should pay close attention to what they reward. Few managers plan to reward unethical behavior, but many do. Few managers plan to discourage ethical behavior, but many often do.

Commission schemes are the classic way that managers reward unethical behavior and discourage ethical behavior. If a value of the enterprise is customer service or excellence, the enterprise should aspire to customer satisfaction. However, sales agents and their managers are often compensated not by how well their customers are satisfied, but by how much product is sold. For example, there are numerous instances of sales agents receiving large bonuses based on the volume of their sales, without regard for the number of product returns or customer complaints (see Table 8.1). In one case, a sales agent, knowing that he was being transferred to another region, colluded with customers to order more products than were needed so that he would receive a bonus that the agent following him would otherwise have received. It is obvious that this "reward system" discourages ethical behavior and encourages unethical behavior.

Employees are quite skilled at finding out what is required for success in an enterprise. Although a code of conduct may say that customer service is a value, even one manager saying, "Do whatever it takes," dilutes the message. Sometimes the signal may be more subtle. For example, when an employee's success results from unethical behavior, recognizing his or her efforts can lead to cynicism at best, and other employees joining in at worst.

There is much opposition to rewarding ethical behavior explicitly. First, there is a widespread sense that one should not reward people for doing what

TABLE 8.1 Compensation Scheme Comparison

Poor compensation scheme: Employees paid a commission based on their sales irrespective of product returns or customer complaints.	**Ethical result:** Employees may use any tactic necessary to increase volume because this scheme rewards quantity over quality. Such schemes can lead to low-quality service, high product returns, channel stuffing,[7] and in some cases fraud.
Good compensation scheme: Employees paid a year-end bonus that requires reaching targets of quality, customer satisfaction, and customer feedback for product improvement set 9 to 12 months in advance.	**Ethical result:** Employees are rewarded for focusing on projects that produce long-term results. Such schemes encourage employees to consider the big picture and to work with other employees during their day-to-day work life.

they should be doing anyway. Second, in organizational cultures that have a strong group orientation, as discussed in Chapter 4, rewards to an individual may be resented and may even make the individual uncomfortable. In such cultures, a reward to an individual may disrupt the harmony of the group.

The first point merits some further thought. As the sales bonus scheme above reflects, managers often reward people for doing what they should have done all along—in this case, selling products. What is the justification for such incentives? Perhaps to spur employees beyond what would otherwise be the minimum acceptable standard of performance. Here is where rewards for ethical behavior make a lot of sense.

If employees honestly fill out expense reports, as some authors suggest, the behavior is so much the norm, that it makes no sense to reward it.[8] However, consider the employee who reports an apparent violation of standards and procedures for the welfare of the enterprise when other employees do not. Without reports from employees who know what is actually going on in the enterprise, owners and managers might learn of problems too late to prevent serious misconduct or lessen the harm done. Although reporting concerns may be expected of all employees, it is not the norm in most enterprises. Substantial minorities of employees say they would never report misconduct they observed to managers.[9] Many others are as concerned about retaliation from their peers as they are about retaliation from managers.

Whatever the specific circumstances may be—and with due regard to the organizational culture—ethical behavior that goes beyond the norms of

PRACTICE NOTE

Employee Reporting

It is every employee's responsibility to:

Review not just the results of subordinate's work, but how those results were obtained.

Guardsmark LLC
"Guardsmark Code of Ethics"

conduct in the enterprise should be rewarded. Rewarding employees for reporting concerns makes a lot of sense if it is not the norm, and owners and managers should plan for it. The reward may be as simple as recognition. The reward may also need to be made in private. The behavior should certainly be reflected in performance evaluations.

Discipline Systems

Recognition and reward are two means of encouraging employees and agents to follow standards and procedures. But what should owners and managers do when standards and procedures are violated? They need to take all necessary steps to get the violator's attention and to prevent further violations, up to and including dismissal and reporting to law enforcement. They need to do this to protect the enterprise and its stakeholders from further harm.

Take the example of a sales agent who earns bonuses through collusion or by offering improper discounts. Fairness requires that the violator knew or should have known that the choice or action was inconsistent with enterprise core beliefs, standards and procedures, or reasonable stakeholder expectations. It is not fair to discipline an employee or agent for violating norms he or she had no reason to know existed. Fairness also requires that the employee or agent be given the opportunity to explain his or her actions. The discipline, if any, must be proportionate to the offense and legally administered.

But fairness is a concept that has a broader application. It is not fair to the enterprise or its stakeholders, including fellow employees, to fail to enforce standards and procedures. First, irresponsible behavior does not help other employees meet the reasonable expectations of stakeholders. Second, a single act of misconduct may result in prosecution of the enterprise, civil claims, loss of reputation, and removal from preferred provider lists and strategic partnerships. Finally, if environment, health, and safety standards and procedures are violated, the welfare of other employees and the community is put at risk.

Allowing standards and procedures to be violated with impunity sends a powerful message. When managers fail to enforce their own standards, they signal that they do not believe in those standards. Moreover, there is no reason why stakeholders should believe that the one violated standard is the only one in which managers do not believe. The whole set of values may come into question because of one failure to act.

Such questions arise particularly where employees perceive a double standard. Recent research suggests that employee perception of a business ethics program as primarily protecting owners and managers is the single most harmful factor to the prospects of the program's success.[10] If ordinary employees are punished for violating a standard but senior managers are not, the entire business ethics program may be regarded as simply one more way to protect owners and managers.

One final consideration is to avoid the temptation to punish all employees for the violations of some of them by setting new standards or procedures. Often, if managers are uncomfortable with confronting an employee or agent about his or her behavior, they instead admonish the group as a whole or establish another standard or procedure designed to encourage the desired behavior.

Dealing with Mistakes, Misconduct, or Misunderstandings

Despite the best efforts of owners and managers, sometimes things go wrong. Even the most responsible business enterprises make mistakes. Standards and procedures will be violated, and reasonable stakeholder expectations will be dashed. Owners and managers deal with these challenges. In the words of one author, "they don't kid themselves."[11]

Owners and managers need to plan for mistakes, actual misconduct, and stakeholder misunderstanding of the enterprise's decisions and actions. At a minimum, they need to establish standards and procedures for dealing with such matters. Managers should be trained on how to exercise crisis management. And when something goes wrong, owners and managers need to determine what happened—and why. They need to determine what steps to take to mitigate further harm or exposure: corrective action, restitution, voluntary disclosure, or any number of other remedial actions to compensate harmed stakeholders or prevent further violations.

Moreover, stakeholders that have been harmed by an enterprise's misconduct expect that they will be informed of a violation of standards that affects them, as well as that all harm done will be corrected, if possible. Failing to meet those expectations sends an undesirable message from owners and managers: *Our core beliefs are negotiable. Our standards apply only if they are not too costly. Failing to meet the reasonable expectations of our stakeholders is acceptable, if we can avoid getting caught.*

You Decide

In one plant where a number of employees were consistently late, the supervisors gave lectures nearly every day to the team as a whole about the importance of being on time. Eventually, they began to demand that employees arrive early just so that the late ones would be "still late, but on time."

This practice was considered unfair by the responsible employees and was ignored by the irresponsible ones, who continued being late.

What does this tell us about the culture of the enterprise?

Dealing with Mistakes and Failures

In many offices, one will find a sign that reads "To err is human, to forgive divine—neither of which is the policy of this company." However, an RBE recognizes that the employee who never fails is probably not contributing his or her fullest in pursuit of the enterprise's purpose. Much can be learned from failure, provided that the effort was intended to achieve enterprise ends and that the means were well chosen and within enterprise boundaries.

BOX 8.1

Model Policy Statement

Employees and agents are expected to accept full responsibility for their decisions and activities on behalf of the enterprise, but management will support choices or actions applying the standards and procedures of the enterprise in good faith, even if they result in mistake or failure.

An RBE fosters an environment in which the creativity and enthusiasm of its employees and agents are encouraged even in the face of mistakes and failure. There is no surer way of preventing creativity than to punish employees for mistakes made in good faith.

The policy statement in Box 8.1 affirms management's commitment to expect the best from employees and agents while providing responsible criteria for evaluating their choices and actions. It reinforces the responsibility that employees and agents assume: to make responsible choices and to take responsible actions to achieve the ends of the enterprise. It is also a liberating policy, which tends to free employees and agents from the fear of unfair criticism or punishment if they make mistakes or fail.

A responsible response to mistakes of employees includes an evaluation of what happened, and why. It includes a sincere effort to learn from mistakes or failure. Managers may need to modify the standards and procedures that failed to prevent the misconduct. They may choose to retrain or educate the employee or other agent, or they may reassign the person, especially if that person is in a position that has substantial discretionary authority.

Dealing with Misconduct or Serious Harm to Stakeholders

It is important to distinguish mistakes from misconduct. Misconduct is intentional, negligent, or reckless disregard for the core beliefs, established standards and procedures, and reasonable expectations of the stakeholders of the enterprise. It also involves violating standards or procedures, including the admonition to obey the letter and spirit of the law.

For example, it is no excuse that a choice or action, such as bribing a government official to make a sale, might contribute to achieving the financial ends of the enterprise in the short run. First, it is not clear that making sales through bribery ever contributes to the welfare of an enterprise in either the short or the long run. Bribery often benefits only the employee. Second, owners and managers set the standard precisely because they decided that bribery raises an unacceptable risk to the enterprise. To fail to enforce the standard is to accept a risk that they had determined was unacceptable.

Owners and managers respond to misconduct in the same way they respond to a mistake—by evaluating what happened and why. This response includes a sincere effort to learn from what went wrong. In addition, the perpetrator may be disciplined or terminated as the law permits.

When the misconduct is a violation of law or a stakeholder is seriously harmed, a number of other steps must be considered.

Voluntary Disclosure

When an employee or agent violates the law on behalf of the enterprise, both the individual and the enterprise may be open to prosecution. As a matter of responsible policy, owners and managers must consult with local counsel regarding the advisability of voluntary disclosure to the government. Voluntary disclosure is not an easy step to take if it appears that the government is unaware of the violation or if the rule of law is not the norm. There are good reasons in most economies, however, for an RBE to establish a policy of voluntary disclosure.

First, employees need to know what the policy is and how seriously owners and managers take their admonition to obey the law. Without such clarity, owners and managers may be encouraging a pattern of misconduct from which they will be unable to escape. Second, in many jurisdictions, voluntary disclosure will be treated as good corporate citizenship, and punishment may be limited to the individual alone. In some places, the law of a jurisdiction mandates disclosure and lack of disclosure is a separate violation. In other places, the government promises more lenient treatment if disclosure is voluntary.

Finally, the risk of prosecution and harsh penalties against the enterprise often increases dramatically if the government discovers the violation and learns that the enterprise concealed it.

As two authors note, there are a number of potential dangers in failing to voluntarily disclose a violation: if the government discovers a violation, damage to the credibility of the enterprise may be irreparable. Government agencies are more likely to prosecute if the government discovers a violation. The failure to disclose is more likely to be seen as a cover-up, perhaps to protect senior management. If a subsequent violation occurs, the failure to disclose may be used against the enterprise at the later trial. The authors conclude, "Accordingly, even where the [enterprise] believes that the government is unlikely to eventually discover the violation, it is often in [its] best long-term interest to report the violation to the government."[12]

Where the rule of law is not the norm, owners and managers must carefully examine the relevant context of the enterprise in establishing its policy and seek professional advice. There are situations, to be sure, in which voluntary disclosure will simply open the enterprise to more administrative corruption. Nevertheless, owners and managers must also consider the organizational culture and the effect that failing to take responsibility for misconduct will have on the attitudes of employees.

Where extortion by agency officials can be expected when an RBE reports its' misconduct, it is important that an RBE not deal with this situation in isolation. If extortion is expected, owners and managers should plan to work with trade associations and nongovernmental organizations (NGOs) to reduce their exposure. Since a primary tool in the fight against corruption is transparency, trade associations and NGOs can support enterprises that voluntarily disclose their misconduct by issuing their public statements targeting the offending agency or by otherwise bringing pressure to bear on the agency to reduce extortion. In a climate of such intense attention, especially media scrutiny, an RBE may be less vulnerable to agency extortion.

In any event, responsible managers must establish a policy to govern how they will deal with misconduct before it happens, when their judgment is clearest. In this way, they can identify gaps in capability. In addition to developing a crisis action plan, for example, owners and managers may identify a critical need for a spokesperson or adviser on media relations.

Cooperation with the Government

Accepting responsibility and voluntarily disclosing misconduct to the government may be followed by a government inquiry or investigation. Or the government may make unannounced visits to the enterprise. Responsible managers establish policies to address these contingencies and set procedures for employees and agents to follow.

How the enterprise responds to government requests has potentially serious legal implications. Responsible managers will establish a policy that governs how the enterprise will respond to government requests. Such a policy supports employees and agents in making the responsible decision to cooperate.

The standards and procedures should be developed with legal counsel familiar with the laws and practices of the jurisdictions in which the enterprise does business. If there is substantial potential for government investigations, audits, or compliance visits, owners and managers should ensure that responsible employees are identified and that their responsibilities are clear. Whom they should contact for advice, including legal counsel, should be clear as well. Having such policies and procedures helps ensure that employees act responsibly and avoid mistakes that may be costly to the enterprise.

Corrective Action

As a general principle, an RBE takes all appropriate steps to cure any harm it has caused stakeholders. These steps include compensating victims, stopping operations, recalling products, restoring the environment to its previous condition, and taking steps to prevent future harm. The enterprise may undertake community service to repair the harm caused by the misconduct.

Where further harm can be predicted, such as health problems that can take decades to manifest themselves, an RBE may set up a trust fund for stakeholders damaged by its misconduct.

Handling Misunderstandings and Other Crises

Sometimes a crisis is not of the enterprise's making. What does an RBE do when accused of shortcomings it did not commit? Responsible management works through such misunderstandings. The general principle is to learn how to pursue the enterprise's purpose and meet reasonable stakeholder expectations by engaging stakeholders when appropriate.

For example, in a famous case in the United States in 1982 involving the pain remedy Tylenol, the manufacturer, Johnson & Johnson, was faced with seven deaths linked to adulterated Tylenol capsules. It chose to avoid risk to its customers, consumers, and reputation by removing millions of dollars of the product from the market.

During an intense period of information gathering and deliberation, two independent management teams considered as many as 150 alternatives for dealing with the crisis. Managers took the dramatic step of recalling 31 million bottles, which cost the enterprise more than $100 million. Johnson & Johnson redesigned the packaging of its product, and just six weeks later Tylenol was back on the shelves. Eventually, it recovered and even increased its market share. Although the experts were predicting that Tylenol, as a brand, would not last a year, "What those experts failed to anticipate was the public reaction to what was perceived as a deliberate act of corporate responsibility that was beautifully executed and skillfully followed up with a well-designed recovery plan."[13]

The decision to recall Tylenol was based on the Johnson & Johnson "Credo," first drafted in 1943 (see Box 8.2).[14] Although the decision was made by the chief executive officer, it reflected the organizational culture of the enterprise as a whole. As one observer noted, "Without a set of values and guiding principles deeply ingrained throughout the organization, it is doubtful that [Johnson & Johnson's] response would have been as rapid, cohesive, and ethically sound."[15]

BOX 8.2

Johnson & Johnson's Credo

We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services. In meeting their needs everything we do must be of high quality. We must constantly strive to reduce our costs in order to maintain reasonable prices. Customers' orders must be serviced promptly and accurately. Our suppliers and distributors must have an opportunity to make a fair profit.

We are responsible to our employees, the men and women who work with us throughout the world. Everyone must be considered as an individual. We must respect their dignity and recognize their merit. They must have a sense of security in their jobs. Compensation must be fair and adequate, and working conditions clean, orderly, and safe. We must be mindful of ways to help our employees fulfill their family responsibilities. Employees must feel free to make suggestions and complaints. There must be equal opportunity for employment, development, and advancement for those qualified. We must provide competent management, and their actions must be just and ethical.

We are responsible to the communities in which we live and work and to the world community as well. We must be good citizens—support good works and charities and bear our fair share of taxes. We must encourage civic improvements and better health and education. We must maintain in good order the property we are privileged to use, protecting the environment and natural resources.

Our final responsibility is to our stockholders. Business must make a sound profit. We must experiment with new ideas. Research must be carried on, innovative programs developed, and mistakes paid for. New equipment must be purchased, new facilities provided, and new products launched. Reserves must be created to provide for adverse times. When we operate according to these principles, the stockholders should realize a fair return.

Johnson & Johnson
"Our Credo"

Modifying the Business Ethics Program

Finally, where mistakes, misconduct, and misunderstandings occur, the responsible business constantly evaluates its performance. It uses such incidents as opportunities to learn how the business ethics program is performing. The essential question is, "Does this enterprise have an effective business ethics program?"

The questions for self-governing organizations discussed in Chapters 2 and 4 also apply to a review of any significant incident:

- Were adequate standards, procedures, and expectations established?
- Were responsible managers involved or did they meet their responsibilities?
- Were the standards, procedures, and expectations effectively communicated?
- How did the enterprise detect the incident and could it have been prevented or detected earlier?

- Are the employees and agents involved capable of meeting the standards, procedures, and expectations? Do they have the necessary skills, knowledge, understanding, and attitudes?
- What was done to encourage employees and agents to comply with the standards, procedures, and expectations? What more could be done?
- Was the enterprise's response appropriate?
- How should the incident be treated when evaluating the overall business ethics program?

SUMMARY

Responsible management practices are critical to the success of an RBE in improving its business performance, increasing the prosperity of its community, and contributing to the social capital in its markets by learning to meet the reasonable expectations of its shareholders. Owners and managers of an RBE develop responsible management practices by answering these three questions:

1. How can we ensure that we have the right people in the right places while we pursue our purpose as an enterprise?

2. How can we encourage our employees and agents to follow our standards and procedures?

3. What do we owe our stakeholders when mistakes, misconduct, or misunderstandings occur that involve our established standards and procedures or their reasonable expectations?

To have the right people in the right places in the enterprise involves using the enterprise's core beliefs, standards and procedures, and reasonable stakeholder expectations to establish responsible criteria. An RBE uses these responsible criteria to recruit, hire, retain, assign, and dismiss employees and agents, especially managers and supervisors.

To encourage employees and agents to follow enterprise standards and procedures, pursue the enterprise's purpose, and meet reasonable stakeholder expectations, responsible managers evaluate decisions and activities according to the responsible criteria, and they reward and discipline employees and agents as appropriate.

When things go wrong for an RBE, responsible managers address mistakes, misconduct, and misunderstandings. They learn from mistakes and failures made in good faith. They confront misconduct and respond appropriately. They discipline employees and agents, and they voluntarily disclose to, and cooperate with, government authorities, as appropriate.

RESPONSIBLE BUSINESS ENTERPRISE

Checklist

1. How carefully do we align our management practices with our core values?

2. What are our policies regarding recruiting, hiring, training, and employing our work force?

3. What risks do we foresee in our business climate, and what is our plan for dealing with them in the event of a crisis?

4. What strategic alliances can we forge to see that we do not have to deal with these crises in isolation?

12 Enterprise Alignment Worksheet

RBE Worksheet 12, which may be photocopied for use within your organization, provides a tool to help owners and managers consider all enterprise alignment issues. Owners, managers, and staff members should work together to compare and contrast current management practices with enterprise standards. Expect significant give and take as to what the relevant current standards and practices actually are. This discussion is part of the dialogue and engagement process the RBE wants to foster.

	Enterprise Core Beliefs	Reference Practices	Current Practices	Required Changes
Having the right people in the right places				
Encouraging compliance; building commitment				
Responding appropriately to mistakes, misconduct, and misunderstandings				

Responsible Business Conduct and Practices

9

- Challenges to the Responsible Business Enterprise
- Relationships with Government Officials and Entities
- Role of the Private Sector in the Regulatory Process
- Government Contracting and Procurement
- Role of Voluntary Action
- Relationships with Foreign Governments and Businesses

Using the tools contained in this manual, the responsible business enterprise (RBE) has set standards and procedures to guide employees and agents, fostered reasonable expectations among its stakeholders, built supporting business ethics infrastructure, and aligned its management practices with its core beliefs. This chapter applies these elements of a business ethics program as the foundation for five specific areas of business conduct and practice that challenge an RBE, especially, but not exclusively, in emerging market economies. By developing responsible business practices in those five areas, the RBE can be part of the solution to the challenges facing business in all markets.

Challenges to the Responsible Business Enterprise

There are a number of issues of responsible business conduct to which the owners and managers of an RBE need to give special attention:

1. Relationships with government officials and entities
2. Role of the private sector in the regulatory process
3. Government contracting and procurement
4. Role of voluntary action
5. Relationships with foreign governments and businesses

These five issues are central to what it means to be a responsible business enterprise. The discussion in this chapter, along with RBE Worksheet 13 at the end of the chapter, will help owners and managers establish responsible standards, procedures, and expectations and compensate for weaknesses through business ethics infrastructure, communications and feedback, and enterprise alignment. The chapter will also help create reasonable expectations for external stakeholders: government, other businesses, civil society, and the community as a whole.

Relationships with Government Officials and Entities

Governments establish the necessary conditions for economic stability, social progress, and environmental protection by adopting laws, policies, and practices that help markets perform independently, free of undue government interference. These conditions, sometimes referred to as “good public governance,” help an economy grow according to market principles. Just as an RBE has a vital interest in good corporate governance, the private sector as a whole has a vital interest in supporting trustworthy, stable, accountable, and reliable governments capable of good public governance.

Good public governance respects human and property rights, supports the sanctity of contracts, protects residents, provides infrastructure that speeds the transportation of goods and services and supports the transmission of knowledge, and establishes a market-oriented legal framework and reliable judicial institutions that allow its residents to resolve conflicts. Good public governance is founded on a transparent relationship between government and the private sector.

Reducing Corruption, Bribery, and Extortion

To create the conditions necessary for good public governance, one must address the problem of corruption, from both the demand side and the supply side. Both government and the private sector are responsible for creating conditions for transparent business, and they should repudiate all corruption, bribery, and extortion. Leaders in business and government should work together to combat corruption.

One means of private–public sector cooperation is for business enterprises to recommend standards, procedures, and expectations to help the government administer laws and regulations in a transparent, accountable, and fair manner. Business leaders and government officials should have an ongoing public dialogue about issues that contribute to corruption, such as monopoly practices, discretionary fees, onerous taxes, and regulations and licenses that impede business and entrepreneurship. This dialogue should

BOX 9.1

Government Anticorruption Policies

Government anticorruption policies take many forms:

- Commercial codes governing contracts and dispute settlement
- Law enforcement and judicial procedures promoting due process and the rule of law
- Independent systems promoting and ensuring the integrity and efficiency of agencies
- Civil service reforms and competitive wages
- Systems promoting integrity of capital markets and transparency on issuance of securities
- Systems promoting predictable and transparent procurement and privatization
- Improved and standardized public accounting, auditing, and management systems
- Effective bankruptcy and insolvency laws
- Limits on discretionary authority tending to administrative corruption
- Oversight mechanisms and appellate remedies
- Protection for whistleblowers and the media
- Disclosure of and access to public records
- Encouragement of civil society participation in anticorruption efforts

U.S. Department of State
"Recognizing and Making Anticorruption Issues Part of the Business–Government Dialogue"

aim to ensure that government administrative processes at all levels are fair, transparent, competitive, and informed. Box 9.1 lists some of the anticorruption and good governance policies that emphasize transparency, due process, and accountability.[1] See also Appendix F for a more comprehensive list of guiding principles for fighting corruption in government.

Government administrative, licensing, inspection, and certification procedures intended to regulate business often create obstacles to business. For example, governments sometimes require several official signatures to complete the simple act of registering and opening a business. Such administrative obstacles increase opportunities for public officials to demand bribes and favors. As Table 9.1 shows, while opportunities for bribery and extortion vary somewhat from market to market, the average proportion of bribes spent on each type of public service varies substantially.[2]

Bribery, kickbacks, and other forms of illegal or corrupt conduct increase costs for an enterprise not only because of the payments involved but also because it requires management time and effort to work with officials, maintain secret accounting books, and address threats of extortion and blackmail. To reduce such obstacles, business leaders and government officials should work together to establish regulatory practices that reduce administrative discretion and promote transparency and efficiency.

TABLE 9.1 The Average Proportion of Bribes Spent on Each "Service"

Country	Connection to Public Services	Licenses	Taxes	Government Contracts	Customs	Courts	Health/Fire Inspections	Legislation Influence	Other	Total
Armenia	10.9	9.8	30.6	5.8	14.0	4.7	2.9	3.2	18.0	100.0
Azerbaijan	9.2	20.2	31.6	17.4	8.6	6.0	4.3	2.4	0.1	100.0
Belarus	9.6	30.4	28.2	7.3	7.1	3.6	13.6	0.2	0.0	100.0
Bulgaria	17.7	22.6	14.1	6.6	11.9	13.6	8.2	2.8	2.6	100.0
Croatia	9.1	6.7	7.3	44.7	10.7	8.8	4.1	4.0	4.5	100.0
Czech Republic	8.3	16.3	7.2	43.0	6.4	6.5	9.2	1.6	1.6	100.0
Estonia	2.0	26.5	6.4	34.5	15.2	2.5	4.2	5.9	2.8	100.0
Georgia	11.0	18.3	29.3	3.6	9.6	11.3	10.4	6.6	0.0	100.0
Hungary	7.3	43.6	10.9	11.1	14.2	3.1	3.3	1.4	4.9	100.0
Kazakhstan	10.7	23.2	20.3	5.3	14.4	12.7	9.5	1.3	2.8	100.0
Kyrgyzstan	5.0	15.2	53.5	6.5	6.8	4.5	7.4	1.1	0.0	100.0
Lithuania	14.0	8.5	16.3	5.0	15.1	8.7	17.6	4.3	10.6	100.0
Moldova	14.9	29.7	21.4	3.9	10.4	9.0	7.0	1.6	2.2	100.0
Poland	7.4	26.1	8.8	17.7	15.8	9.9	5.7	4.3	4.3	100.0
Romania	16.1	39.8	6.3	7.8	15.2	5.2	5.7	3.4	0.6	100.0
Russia	11.7	20.4	18.5	11.3	8.8	11.1	11.6	2.8	3.7	100.0
Slovakia	5.7	33.2	10.1	18.3	11.8.	12.9	4.3	1.3	2.5	100.0
Slovenia	6.5	24.9	4.3	36.3	8.7	5.3	5.8	8.2	0.0	100.0
Ukraine	10.3	21.3	25.8	10.4	12.2	6.8	9.7	2.5	1.1	100.0
Uzbekistan	8.5	18.0	27.9	15.4	10.9	5.2	12.0	0.9	1.2	100.0
Overall	10.6	22.0	19.4	14.6	12.2	7.9	7.8	2.6	2.9	100.0

Source: Joel S. Hellman et al., "Measuring Governance, Corruption, and State Capture" Policy Research Paper 2312 (Washington, D.C.: World Bank, 2000)

Business associations in some emerging market economies have succeeded in influencing governments to adopt one-stop registration for new businesses. In the Russian Federation, for example, the Business Partnership of Seversk (Tomsk Oblast), a nongovernmental organization (NGO), has worked with municipal authorities to increase transparency and to reduce administrative barriers. With input from the NGO, government authorities simplified procedures for leasing public property, which included streamlining procedures to resolve disputes and eliminating illegal fees. A database of federal and local laws and regulations was developed, and the business community has received training in current laws and regulations related to business operations and business rights and responsibilities.[3]

To facilitate good public governance, the RBE can adopt standards, procedures, and expectations for conducting business with government officials and entities as part of its business ethics program. They should be based on knowledge of and respect for the specific rules that govern the conduct of

PRACTICE NOTE

Transparency and Government Revenue

In 1998, when Newmont Mining Corporation began its joint-venture Batu Hijau copper mine in Indonesia, it created a program to promote transparency in revenue-sharing payments to host governments. With its first royalty payment, Newmont placed a full-page advertisement in local and regional newspapers detailing the amount of money transferred to the national government. For subsequent payments, totaling more than $38 million by the first quarter of 2002, the company generated news coverage detailing the royalty payment, transfer documents, and deposit account number. Legally, a percentage of royalties is to flow back to the region of impact but, in reality, it is often delayed or not sent at all. At first, regional authorities, whose receipt of mining royalties was suddenly exposed to public scrutiny, reacted by attempting to deny the payments. Over the course of a year, however, both local and regional authorities used the increased transparency and media coverage to pressure the national government to return funds more quickly to the region.

Juliette Bennett
"Multinational Corporations, Social Responsibility, and Conflict"

public officials.[4] These standards, procedures, and expectations should make clear that employees and agents must abide by all laws and regulations, especially refraining from bribery and other forms of corrupt conduct intended to influence official decisions.

Encouraging Government Standards and Procedures

Responsible business leaders should encourage governments to adopt formal programs to guide the choices and actions of civil servants through established standards, procedures, and codes of conduct. These standards and procedures should address issues such as values of public service, conflicts of interest, use of public office for private gain, and acceptance of political contributions and bribes. Government standards and procedures help ensure that government officials uphold the law and avoid even the appearance of impropriety. Creating clear standards and procedures to which public officials are held accountable helps instill respect and public confidence in government institutions.

Government officials should be encouraged to go beyond simply setting standards and procedures. Civil servants should be hired and assigned transparently and should receive compensation adequate to support their families properly without resorting to corruption. Training and education should be provided to raise awareness of the devastating impact of corrupt practices on the functioning of public governance, as well as on economic growth and social capital. Oversight mechanisms to monitor and audit government functions at particular risk to corruption are essential, especially where civil servants are reluctant to report their concerns. Finally, these standards and procedures must be enforced, and the government must respond appropriately when bribery and corruption are uncovered.

Business leaders must also recognize, however, that good public governance requires resources. Reasonable civil servant compensation, for example, tends to reduce corruption, but it must be paid, in part, with the taxes that businesses pay. Failure to pay business taxes when the government is trying to reform makes reform efforts virtually fruitless. Being part of the solution to this challenge of developing a market economy requires paying the enterprise's fair share of the cost of government.

Role of the Private Sector in the Regulatory Process

The ultimate objective of good public governance is to create conditions under which markets function independently and facilitate fair competition. These conditions help innovative, effective, and efficient enterprises succeed and grow while preventing inefficient enterprises from looting public resources. They create opportunities for increased investment and trade.

Under conditions of good public governance, the private sector has a vital role in influencing the government to adopt laws, regulations, and practices designed to enable the market to function independently. This activity should be conducted on a transparent basis designed to benefit all stakeholders in the development of a market economy and civil society.

Improperly Influencing Government

There are several obstacles to good public governance, including practices that enable enterprises to influence government policy improperly. Enterprises operating in many markets have adopted the practice of forming patron relationships with individual public officials as a means of securing government contracts and preferential treatment.

Many large and successful enterprises strive to "capture" the state by securing the passage of laws or obtaining licenses that benefit them over other enterprises. What many think of as state capture is the effort of a firm to shape the laws, policies, and regulations of the state to its own advantage by providing illicit, illegitimate, and non-transparent private gains to public officials.[5] Such practices may offer short-term gains, but they are a major source of business risk and market instability.

State capture is also a cause of poor public governance, because decrees issued to benefit one enterprise or organization injure the economy as a whole by undermining competition. An enterprise that engages in state capture has a stake in maintaining conditions of poor public governance, including weak state institutions and ambiguous laws and regulations. State capture seriously impedes the development of the rule of law. It creates conditions under which effective and efficient enterprises support ineffective and inefficient enterprises. World Bank studies show an association between state capture and poor governance in emerging market economies.[6]

Properly Influencing Government

To foster stable conditions for economic growth, responsible business leaders should help establish clearly defined laws and practices regulating how businesses might influence government decision-making. RBEs conduct their business with government on a transparent basis. They organize themselves around issues of mutual concern with other enterprises to lobby the government under applicable laws and procedures.

Business associations provide a structure that enables private-sector leaders to find one voice and coordinate efforts. They provide the opportunity and leverage to influence lawmakers in an ethical and democratic

PRACTICE NOTE

Goals of Business and Government Executives

Greater emphasis on morale, productivity, stability, efficiency, and growth is placed by business executives than government executives. Government executives place more importance than business executives on such goals as quality, effectiveness, public service, and value to community. Goals like customer service, leadership, and innovativeness are rated similarly important by business and government executives.

Barry Z. Posner and Warren H. Schmidt
"The Values of Business and Federal Government Executives: More Different Than Alike"

manner. RBE leaders work with their business associations and trade groups to demand accountability of government and to create conditions for fair competition.

To maximize their leverage and influence, RBE leaders develop a national business agenda that promotes the goals and incorporates the interests of both large enterprises and small to medium-sized enterprises (SMEs)—and the public interest.[7] This agenda identifies policy and legal reforms that are required of government to create the conditions necessary for all transparent enterprises to compete and succeed. RBEs publish their goals and strategies in the media in order to reach out to other businesses and solicit feedback from external stakeholders and civil society.

Private-sector lobbying efforts by RBEs promote and instill good public governance and respect for the rule of law. When a particular law or regulation is damaging to the market, RBEs seek to amend or replace it in a manner that respects the legislative process.

To strengthen this process, business associations often adopt a legislative advisory program, which analyzes current legislation and assesses whether it meets the requirements and the needs of business. As part of such a program, the associations provide legislators with objective and accurate information regarding market conditions to assist in their decision-making processes. For an example of such a program, see Box 9.2.[8]

RBE leaders work closely with civil society—including chambers of commerce, trade associations, industry associations, community advocacy groups, public interest groups, and other NGOs—to form alliances that help promote the national business agenda. Civil society "includes organizations, structures, and networks separate from the legislative, administrative, and judicial power of the state and, many would argue, from business but inter-

BOX 9.2

International Center for Entrepreneurial Studies

The International Center for Entrepreneurial Studies has established an innovative program in Romania called the Strategic Alliance of Business Associations (SABA). SABA consists of 44 chambers of commerce and trade groups. SABA brings together large enterprises and small to medium-sized enterprises (SMEs) that have similar concerns and priorities. It helps these enterprises create a national platform for their objectives. It also educates members on changes in business laws and regulations. SABA has helped establish an SME development agency in Romania with wide participation from entrepreneurs. The SABA program is a model for promoting the collective private-sector interests of large enterprises and SMEs in economic reform.

acting with both in a variety of ways."[9] The groups that make up civil society often act collaboratively for the common good to "stimulate democratic action, and to analyze and educate public debate."[10]

NGOs have a stake in the success of RBEs as entities that operate on a legal and transparent basis and fulfill their social responsibilities. Some NGOs specialize in working with the private sector to shape legal and government reform. NGOs also bring business and government leaders together to educate and train them in areas where they should work together on a more cooperative basis. On controversial issues, NGOs can serve as mediators between private- and public-sector representatives.

Government Contracting and Procurement

When an RBE conducts business directly with a government official or entity, whether as a contractor, supplier, or in some other capacity, it should take steps to ensure that its relationships are transparent and ethical. It should abide by all laws; refrain from engaging in bribery, cronyism, or coercion; and avoid even the appearance of impropriety. By so doing, the RBE minimizes the risk of penalties, fines, and other forms of sanction for misconduct.

The success of public projects rests on sound government procurement practices that promote integrity, respect, fairness, and transparency. These practices also help create conditions for good public governance and the development of a market economy. See Box 9.3 for a sample policy.

Challenges in Government Contracting

The process of government contracting and procurement poses a risk of corruption from both the demand side and the supply side. Corruption distorts the process by favoring one enterprise or group of enterprises over another. An obvious example is a contract for government procurement awarded to an enterprise in response to a bribe. Corruption can occur at any point in the process, starting from design and preparation, when selection of the technical criteria, the due date for submission of offers, the time of delivery of the project, and the parties invited to tender may distort the process.

Under such conditions, a responsible enterprise cannot compete successfully for government contracts, even when it outperforms other companies in terms of quality and price. Nevertheless, when seeking a government contract, an RBE abides by all applicable laws, regulations, and stipulations of the tender. It ensures that all statements, communications, and representations to government officials are truthful and accurate.

Model Procurement Standards

The World Bank Group, which lends to governments to finance major restructuring of industries and development of infrastructure, has five basic guidelines that govern its procurement policies:

1. All goods and services needed to carry out the project must be procured with special consideration for economy and efficiency.
2. The loan must be used to purchase only those goods and services needed to carry out the project.
3. All qualified bidders from the bank's member countries have an equal opportunity to compete to participate in the bank's projects.
4. The borrower must encourage the development of local contractors and manufacturers in borrowing countries.
5. The procurement process must be transparent.[11]

Other examples of government procurement policies that ensure transparency and due process in government contracting can be found in some international procurement agreements, most notably the World Trade Organization (WTO) Agreement on Government Procurement (GPA).[12]

The GPA is an accord entered into by 28 WTO member countries to provide market access to each other's government procurement of goods and services. It calls for governments to maintain transparency in government procurement by establishing standards in procurement procedures. These standards are designed to ensure consistency and predictability for enterprises. For example, the GPA sets guidelines for governments to publish notices of procurement opportunities. The notices are required to contain basic information necessary for enterprises to assess their interest in an opportunity and to prepare meaningful bids. The GPA sets out minimum time periods—usually 40 days—in which interested suppliers must submit bids. It also requires that technical specifications be prepared in terms of performance rather than design or descriptive characteristics and not be developed or applied as inappropriate obstacles to international trade.

The GPA addresses other procurement procedures, including qualification procedures, contract award decisions, and publication of procurement laws and regulations. It also seeks due process for suppliers, who are provided the right to learn from procuring entities the reasons that their bids or qualification applications are unsuccessful. The GPA also requires governments to maintain independent and impartial review bodies to hear supplier complaints.

BOX 9.3

Business Ethics and Conduct in Contracting with the United States Government

10. Government rules on gifts and gratuities (broadly defined to include entertainment and business meals) are very restrictive. Employees shall not offer or give a gift or gratuity to any government employee, except where clearly permitted by applicable government regulations (for example, 32 Code of Federal Regulations Part 40). Guidance with respect to the applicable regulations can be obtained from the operating unit Business Practices/Compliance Officer. Furthermore, employees shall not offer or give, directly or indirectly, anything to a government employee who is a procurement official or who performs a procurement function except: (a) beverages at a business meeting, (b) light snacks for a business meeting where government employees in travel status are in attendance, and (c) promotional items displaying the company logo and having a truly nominal value, such as baseball caps or pads of paper. Any exceptions must be approved in writing by the UTC Vice President, Business Practices.

14. Employees shall not offer or give entertainment, gifts, or gratuities to representatives or employees of higher tier government contractors other than customary business courtesies that are reasonable in frequency and value. Offering or giving any payment, gift, or other thing of value to such a person for the purpose of obtaining or acknowledging favorable treatment (a "kickback") is a crime.

15. Even though not otherwise prohibited, employees will not offer or give to any representative or employee of a higher tier government contractor any entertainment, gift, gratuity, or anything else of value that such representative or employee is known to be prohibited from accepting under the policies of the higher tier government contractor.

16. Consultants performing work related to a government contract or subcontract shall be required by contract to comply with the laws and regulations relating to government contracting and with this Policy Statement. This Policy Statement shall be incorporated in the standard terms and conditions for all such consultant contracts, and each such contract shall expressly provide for termination in the event the consultant violates either the laws or regulations relating to government contracting or this Policy Statement.

Implementation

All organizations in the Corporation that contract directly or indirectly with the federal government of the United States are required promptly to maintain current, detailed procedures and policies, including an ongoing program of communication and training, to insure compliance with this Policy Statement and with the laws and regulations governing contracting with the government. Such procedures and policies shall expressly designate the department or activity responsible for implementing each element of the detailed policies and procedures.

United Technologies Corporation
"Code of Ethics"

Integrity Pacts

Another means of ensuring more transparency in government procurement and contracting is called an *integrity pact*, a concept developed by the NGO Transparency International in the mid-1990s. In the context of government procurement, an integrity pact is a formal pact or agreement between a government office inviting tenders and the enterprises intending to participate. By signing such an agreement, an enterprise commits itself to participate in the tendering process in a legal and transparent way. In particular, it pledges not to offer, pay, accept, or seek bribes of any kind during the tender. The government office, in turn, commits that its officials will not demand or accept any bribes.

The key component of an integrity pact is transparency. All offers and payments made by an enterprise should be reported to members of the pact. The pact has preapproved sanctions for violations. Sanctions include denial or loss of the contract, forfeiture of bid security, liability for damages, or blacklisting by the government office.[13]

Use of the integrity pact is slowly developing on a global basis, hindered by the expertise and funds needed to encourage governments and enterprises to enter into the agreement. Transparency International has facilitated integrity pacts in Argentina, Benin, Colombia, and Panama.[14] See Appendix C for a sample integrity pact.

Role of Voluntary Action

The private sector has an economic interest in creating a trustworthy, stable, and reliable government capable of good public governance. Business enterprises, in general, have the potential to be powerful and influential members of their communities.

Beyond the contributions they make in producing goods and services to meet the needs of customers and consumers, businesses provide livelihoods for employees, other agents, and suppliers. Business enterprises pay taxes that support good public governance, but they can do much more as responsible members of their communities.

Leveling the Business Playing Field

Declarations of integrity are a form of voluntary action by enterprises designed to help promote a transparent business environment through responsible business conduct. They document a coalition of enterprises that are committed to fair business practices and showing leadership in this direction. Such declarations offer a means of bringing enterprises together with civil society and government officials and entities with the goal of developing a more transparent investment climate. See Appendix D for an example of a declaration of integrity.

Industry-specific declarations of integrity may be an especially effective means of promoting responsible business conduct. In developing market economies, many industries, professions, and chambers of commerce accomplish much the same effect through codes of conduct that they voluntarily adopt and follow.

A prominent example in the United States is the Defense Industry Initiative, which was formed in 1986 to improve the responsible business conduct of defense contractors following a series of defense contracting scandals. To avoid further government regulation, prominent defense contractors voluntarily subscribed to designing and implementing business ethics programs, to reporting on their performance, and to meeting to share best practices annually.

In emerging market economies, codes of conduct are being developed in many industry sectors, including engineering and banking.

PRACTICE NOTE

Community-Driven Development

It is increasingly being recognized in the debate over the approach to development that countries have to own their own development. The catch phrase is that they have to be "in the driver's seat." The imposition of solutions from the outside or the ad hoc injections of support here and there will not add up to long-term development.

Louise Fréchette, Deputy Secretary-General
United Nations
"A New Development Agenda"

Participating in Community Development

An RBE may also contribute to its community by participating in community economic development projects. Such projects promote cooperation between business and the local community. An enterprise that engages in a community economic development activity designs programs to train and employ local citizens. Through such projects, a multinational enterprise partners with locally owned enterprises and franchises to help develop successful business strategies. Such actions enhance an enterprise's reputation and goodwill in the community.

Another avenue for an RBE is to work with a community foundation and local government to support community-driven development. Development projects are designed to meet important community needs by engaging the community itself with help from donors to a local community foundation. The role of enterprises, both foreign and local, is increasing as foreign donors, in particular, see the value in local communities fashioning their own solutions to local problems.[15]

An RBE may encourage its employees to support philanthropic initiatives or to take part in volunteer programs. The RBE might also institute a release-time policy, giving employees paid leave to take part in voluntary initiatives during business hours. Such an initiative will reinforce the enterprise's commitment to supporting employees and the community.

Forming Charitable Foundations

Leading multinational enterprises establish charitable foundations that donate funds to entities whose missions are consistent with the enterprise's values and vision. Such foundations provide funding for educational institutions and students through grants and scholarships, to improve the quality of education.

Relationships with Foreign Governments and Businesses

When engaging in international business, enterprises face government officials and entities, laws, customs, and cultural practices different from those in home markets. An enterprise will face new and different ethical dilemmas, which are shaped by local law, customs, and practices. An enterprise that seeks to conduct business in a foreign market or to form a joint venture with a foreign partner must first become knowledgeable of the local customs and practices. Differences in values and notions of responsible business conduct between joint venture partners, for example, often lead to "communication, cooperation, commitment, and conflict resolution problems . . . , which in turn cause interaction problems that adversely influence joint venture performance."[16]

While consciously striving to understand cultural and legal differences, an RBE remains focused on and committed to its core beliefs and standards, procedures, and expectations of responsible business conduct. It abides by the laws of its home country and all applicable foreign laws, whichever are stricter. It develops a strategy to remain loyal to its core beliefs and standards while adapting to the culture and expectations of local markets.

Combating Bribery of Foreign Officials

When doing business abroad, an enterprise should be aware of the strict rules and regulations that govern bribery in international transactions. In 1997, 34 nations signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This convention, established by the Organization for Economic Cooperation and Development (OECD), went into effect in 1999, and requires signatory nations to make the payment of bribes to foreign government officials a criminal offense. Before the adoption of the OECD convention and its implementing legislation, many nations allowed their enterprises to deduct the costs of bribing foreign government officials from their taxes.

Now enterprises operating in foreign markets are under increasing scrutiny and regulation in their home countries. For example, U.S. firms are governed by the Foreign Corrupt Practices Act (FCPA), which makes it unlawful to bribe foreign government officials to gain a business advantage. U.S. firms that conduct business internationally usually find it advisable to maintain rigorous corporate compliance programs to ensure that they comply with the FCPA and the laws of the other nations that are party to the OECD Convention.

The FCPA prohibits U.S. enterprises from using intermediaries such as an independent agent, joint venture, or foreign enterprise to make corrupt payments on the U.S. enterprise's behalf. These provisions require U.S. enterprises to develop business relationships with reputable and qualified partners and representatives. They encourage these enterprises to practice due diligence when working with foreign enterprises.

Due diligence may come in the form of investigating foreign representatives and joint venture partners to determine their status as a local business. The FCPA encourages enterprises to be aware of red flags. These indicators include unusual payment patterns or financial arrangements, a history of corruption, a refusal to pledge to uphold legitimate business practices, and a lack of transparency. Failure to comply with these provisions could lead to fines or imprisonment under U.S. law. See Appendix F for a detailed description of the Foreign Corrupt Practices Act.

Adhering to Anti–Money Laundering Provisions

Using legitimate business to conceal the illegitimate origins of large sums of money—money laundering—has a destabilizing effect on the enterprises involved, on domestic financial institutions, and on society as a whole. An economy that enables laundering of illegitimate funds is vulnerable to organized crime infiltrating financial institutions and legitimate businesses and aggravating corruption in government. An emerging market economy may be tempted to risk these disasters for the immediate flow of cash through the economy. However, having an image as a haven for money laundering will make it much harder to develop a reputation as a stable and secure environment for investment.[17]

Enterprises working with a foreign partner, or even with a domestic partner that has connections with U.S. financial institutions, should be aware that the anti–money laundering regimes and reporting of suspicious activity that have been required for several years have been extended to additional categories of financial institutions. Under U.S. Treasury regulations that have been promulgated, have been proposed, or are pending, financial institutions required to have an anti–money laundering program include not only banks, savings associations, and credit unions, but also securities brokers and dealers, casinos, operators of credit card systems, businesses engaged in vehicle sales, pawnbrokers, private bankers, and a number of other entities.

While many countries, including emerging market economies, have similar anti–money laundering provisions, the U.S. provisions may affect foreign operations through requirements for due diligence for correspondent accounts and private banking accounts. Under these regulations, a broad range of financial institutions outside of the United States are subject to exercising due diligence under the U.S. anti–money laundering regime if they maintain a correspondent account in the United States. Under some circumstances of enhanced due diligence, U.S. and other financial institutions may be required to gather detailed information before doing business with enterprises or individuals.

Even when an RBE is not technically a financial institution, the basic "know your customer" rule is responsible business conduct. This rule is important for an emerging market economy, in particular, to gain international acceptance. For example, an international body combating money laundering, the Financial Action Task Force on Money Laundering, advocates countermeasures that would restrict financial transactions with some countries. It has recommended or considered such restrictions for a number of countries thus far.[18]

Protecting the Environment

Finally, when engaging in business in a foreign market, an enterprise should be particularly sensitive to issues involving protection of the environment. At a minimum, an RBE abides by the local laws and regulations designed to protect the environment. An enterprise has a social responsibility to examine the impact its operations may have on the local environment and adopt global best practices for protecting the environment.

Global best practices may be more demanding than local practices, but in a global environment, an RBE is expected to adopt the more stringent environmental protection requirements of the host government or its home government. Doing so often requires an RBE to self-regulate, because in emerging market economies the desire to attract foreign direct investment may encourage governments to be somewhat less inclined to enforce their own standards.[19]

SUMMARY

Responsible owners and managers apply all the perspectives, practices, and principles developed in the earlier chapters to meet the challenges that their markets present. Five issues are particularly challenging for enterprises in emerging market economies, although they are present in all markets:

1. Relationships with government officials and entities
2. Relationships with foreign governments and businesses
3. Role of the private sector in the regulatory process
4. Government contracting and procurement
5. Role of voluntary action

Business leaders and government must work together to develop the institutions, laws, regulations, and practices that contribute to good public governance and independent markets. Particular attention should be given to reducing corruption in the forms of bribery and extortion. Government must reduce the opportunities and motivations for corruption. This objective can be achieved through both good corporate governance and good public governance, applying the lessons of Chapters 5 through 8 of this manual.

An RBE is alert to opportunities to improve the business environment through its own responsible business conduct and through its association with other enterprises, civil society, and government. All enterprise decisions and activities aim to improve the RBE's business performance; to help build social capital in its economy; and to work with leaders in business, government, and civil society to develop the essential market-oriented legal framework and reliable judicial institutions.

Responsible Business Enterprise Checklist

1. What is our policy for working with government officials and entities?
2. What does an evaluation of our government's policies tell us?
3. How are we involved in working with other enterprises, civil society organizations, and government to improve market conditions?

13 Responsible Business Practices Worksheet

RBE Worksheet 13 provides a tool to help owners and managers consider the responsible business practices discussed in this chapter. The worksheet may be photocopied for use within your organization. Owners, managers, and staff members should work together to compare and contrast current management practices with enterprise standards, procedures, and expectations or the reference standards discussed in this chapter. Expect significant give and take about what the relevant current standards and practices actually are; this discussion is part of the dialogue and engagement process an RBE wants to foster.

	Compliance	Risk Management	Reputation Enhancement	Value Added
Relationships with government officials and entities				
Role of the private sector in the regulatory process				
Government contracting and procurement				
Role of voluntary action				
Relationships with foreign governments and businesses				