

# 3. Ethics and professional conduct in the world of work

## 3.1. Legal confidentiality in business.

### • *Legislative obligation*

The rules governing confidentiality are set out in sections of the Act. They concern all directors, committee members and officers of companies.

### **Summary of Confidentiality Legislation:**

- Duty to maintain secrecy of information.
- No use of confidential information for one's own benefit or advantage.
- Specific duty of confidentiality on members' transactions.
- Exceptions: when the information can be disclosed.

Readers are referred to the text of the Act for a complete description of their confidentiality obligations.

### • *Sound*

business and financial practices require that everyone maintain the utmost secrecy regarding all transactions of the institution and its members, except as provided for by the Act, applicable by-laws or other legislation. In addition to the rules set out in the Act, the following documents provide guidance on the use of confidential information.

### • *Confidentiality Agreements*

Directors, committee members and staff must be asked to sign a confidentiality agreement prior to assuming duties that provide access to members' records . This is a written commitment to maintain the utmost secrecy on confidential matters

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### • *Records Protection*

Each company must have certain administrative and physical controls in place to protect records from unauthorized access or disclosure, property damage, or destruction. The controls put in place must be commensurate with the confidentiality of the records and allow, at a minimum:

- to keep the records out of public view;
- Monitor the location of records during business hours to prevent unauthorized persons from

entering the area or accessing records.

- ***Conduct of employees***

The chief executive officer of each company must ensure that personnel under his or her authority are aware of their duty of confidentiality. Employees should know what they are required to do to protect personal information, verify that it is accurate, useful and complete, and avoid unauthorized disclosure, either verbally or in writing.

- ***Violations of confidentiality***

The following practices are breaches of confidentiality and should therefore be avoided:

- Providing (selling, lending or otherwise making available) copies of the register or distribution list of members to unauthorized persons;
- Discussing a member's transactions or the activities of the credit union (i.e., gossiping) with people who are not entitled to the information;
- Selecting inappropriate locations, such as public places (restaurants or elevators) to meet with the board or committees or to discuss confidential matters with employees;
- Mailing confidential information to recipients' business addresses when it is unclear whether it will be delivered directly to them;
- Reviewing confidential information in such a way that it may be disclosed to unauthorized persons through negligence, lack of supervision or recklessness (e.g., by reading it in a public place or leaving it lying around);
- Asking volunteers to assist with administrative tasks without first explaining confidentiality rules to them.

- ***Exceptions to confidentiality rules***

The persons who have the right to obtain confidential information from the company are listed in the company's code of ethics.

### **3.2. Loyalty to the company.**

The law defines the duty of fidelity as the obligation of the employee to faithfully safeguard the legitimate interests of the employer. The obligation of fidelity is first and foremost an obligation not to do. The worker must therefore, summarily, avoid any act that could result in economic damage to the employer.

The general fidelity obligation and the special obligations referred to in the Act will be dealt with in detail below.

- **The various loyalty obligations:**

- **General loyalty obligation:**

The employee is guilty of a breach of the loyalty obligation in the following cases:

unlawful or immoral behaviour towards the employer

agitation for the purpose of disturbing the peace in the company or

defiling the reputation of the company or

Misappropriation of customers and suppliers or

use of the company's facilities for private purposes.

- **Careful treatment of work instruments:**

The worker is required to treat equipment, machinery, technical installations, vehicles, etc.

- **Manufacturing and business secrets:**

The employee must not, during the employment relationship, use or reveal to third parties facts intended to remain confidential of which he or she has become aware in the service of the employer. All facts which are not well known, which are not generally available to the public and which are of confidential interest to the employer shall be considered confidential. The employee is obliged to maintain secrecy even after the end of the contract. This obligation exists only in so far as it is necessary to safeguard the legitimate interests of the employer.

- **Clandestine work:**

During the term of the employment contract, the worker is not entitled to perform work paid for a third party if this work constitutes a competitive activity for the employer. He is also prohibited from being self-employed or working for free.

- **Obligation to report and remit:**

The employee must hand over to the employer everything he receives from third parties for him in the exercise of his contractual activity. He must inform him of all that he has received and must immediately hand over all that he produces through his contractual activity.

## **Sanctions**

If the employee is guilty of a breach of his duty of fidelity, he is liable to various sanctions:

- termination (without notice only in the event of a serious breach)
- liability (only in the event of fault)
- obligation to perform through legal action.
- Responsibility within the company can be expressed in the form of duties that can be separated

into three categories: the general obligation to work, the duty of fidelity and diligence as well as individual contractual obligations.

- *The first category*, the general obligation to work, includes the obligation to work personally, the obligation to work overtime or overtime (under certain conditions) and the obligation to carry out orders and instructions.
- The obligation to provide careful work, to safeguard the interests of the employer and the obligation to account and return belong to *the second category* (duty of fidelity and diligence).
- *Individual contractual obligations* are very diverse. They include, for example, the duty to report ancillary activities, the duty to transfer inventions or discoveries, or the duty to provide continuing education.
- Responsibility within the Company:
- Conflicts of Interest:

A "conflict of interest" exists when an individual's personal interests interfere or appear to interfere, in some way, with the interests of the Company. A conflict situation may exist when a person undertakes actions or has interests that may make it difficult for the Company to be objective and effective in his or her work. Conflicts of interest may also exist when an Employee or one of his or her family members obtains unlawful personal benefits as a result of his or her position in the Company. No Employee shall accept any such benefits from the Company that have not been duly approved and authorized in accordance with the Company's policy and procedure, including any loans or guarantees for personal debts. Employees are required to promote the business interests of the company to the best of their ability. No Employee may have a personal, commercial or financial interest that is incompatible with the loyalty and responsibility due to the Company. Conflict of interest rules are set out in the Act. The code of ethics must recognize these rules and also include policies to protect against their violation.

### **3.3. Corruption in the workplace, its forms, consequences, methods of combating and sanctions against corruption**

Corruption is an international phenomenon, not limited to developing countries. Even developed countries have experienced famous scandals. But what has left the economic literature focused on the case of developing countries is the extent that corruption has taken on in everyday life.

## ○ **Corruption in work:**

Bribery is a criminally reprehensible conduct by which a person (the corrupted) solicits, accepts or accepts a gift, offer or promise, gifts or benefits of any kind with a view to performing, delaying or omitting to perform an act that is directly or indirectly within the scope of his or her duties.

The offence has a dual scope since it covers the existence of a corrupt person and a corrupter. The functions of the corrupt person may be both public and private, but their public nature will result in a heavier penalty than that provided for private corruption.

### **Forms of Corruption:**

Corruption can take many forms and types.

- **Active bribery:** Active bribery is committed by a person making offers, promises, or giving improper advantages to another person in order for the latter to commit a dishonest or illegal act, in connection with his or her position.

- **Passive bribery:** Conversely, a person commits an act of passive bribery by soliciting, receiving, or accepting the promise of an unfair advantage to act in a certain way (i.e., do something, refrain from doing something, or influence a decision). Passive bribery is therefore an abuse of power for personal gain.

The most common forms of corruption are:

- Bribery and kickbacks (as well as facilitation payments, gifts and entertainment, use of intermediaries)
- Conflict of interest
- Fraud
- Illegal levy
- Illegal information brokerage
- Organised crime
- Money laundering

### **The consequences of Corruption:**

Corruption is an agreement ("the bribery pact") between the corrupt and the corrupter. The very existence of that agreement constitutes the infringement without it being necessary to focus on its effects.

The consequences of corruption can be summarized as follows:

- **Reputational risks:** A company's reputation has become a major issue and contributes to its

valuation, particularly on the stock market when it is listed.

- **Economic risks:** Economic risk arises when a company has, for example, decided to use corruption in its business in order to make a profit. The act of corruption may or may not yield the expected results.

- **Financial risks:** corruption has a cost and therefore a systematic financial consequence.

Financially, if the cost/benefit ratio of bribery is greater than one, the company has no interest in resorting to bribery, the consequence is a deadweight loss.

- **Human risks:** If the corruption practiced or suffered by an individual has personal consequences (criminal sanctions, loss of employment, individual reputation, ...),

- **Societal risks:** Inappropriate behaviour by the company can provoke reactions from the social body or accentuate internal tensions up to the point of rejection by public opinion and society. In this area, the consequences of internal corruption at the individual level can escalate into a crisis depending on the power of the social partners.

- **Environmental risks:** For example, if a concession has been illegally acquired in a protected natural area, or if the toxicity of certain products has not been declared when required by local regulations.

- **Legal risks:** the legal consequences concern natural and legal persons.

### **Methods of combating and punishing corruption:**

- **Punishment and punishment**

Corruption is severely punished under the Penal Code. The law provides that the corrupt and the corrupter each face a maximum penalty of imprisonment as well as a fine.

In addition to these sanctions, corrupt persons and corruptors are also liable to additional penalties, including a ban on holding a public office or the professional or social activity concerned by the offence.

Sanctions Strengthening accountability requires the introduction and implementation of sanctions.

In general, these focus on legislation that criminalizes corruption. In some countries, the penal code allows for prosecution not only when there is concrete evidence of corruption, but also for "illicit enrichment", i.e. the possession of wealth and income whose origin cannot be traced to any lawful activity.

***Obviously, sanctions will be in vain if they cannot be enforced.***

The methods of combating corruption are:

- ***Mobilization of managers***

Managers and supervisors are responsible for the integrity of the operations they command. Experience shows that keeping corruption at bay requires effective cooperation between prosecutors, investigators, managers and staff at all levels.

- ***Judicial reform***

Accountability requires that sanctions be applied, but that this must be done impartially. Without this, anti-corruption laws have no effect and only create and increase cynicism about them. To hold public and private sector officials accountable, the judiciary needs independence and the ability to guard against outside interference, whether from management or elsewhere.

- ***Electoral reform***

Free and fair elections are an important mechanism for holding public officials to account. However, to be effective, the electoral process must be accompanied by meaningful civil liberties safeguards to vote and run. In addition, voting procedures must be fair. Campaign finance poses serious challenges to fairness and can be a major source of corruption. Disclosure of funding sources, free television and radio airtime, extrabudgetary sources of funding, whether from the Government or elsewhere, are an important part of accountability

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