

Exploratory Analysis of Malaysian Code of Corporate Conduct

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ABSTRACT

Mismanagement and wrongdoings by companies and the ruling government have become national issues for some countries. These offenses have affected the social economy of the doers' countries, especially to the innocent public. The public has shown high concerns on these issues and they have bluntly questioned and criticized the actions done by the doers. Evidences have shown billion of losses incurred for the investigation costs and costs to regain the public trusts. Unfortunately, those who were not involved have suffered the most due to the dissolution of the companies and they were losing jobs out of these inexcusable incidences. One of the reasons for misconduct in companies and government authorities was due to weak practices of Code of Corporate Conduct. In the Malaysian context, the code was not stated mandatory in any law. It was more on voluntary effort by the companies or by the government authorities. Without a formal documentation and proper contents of codes may hinder members of Malaysian companies or government authorities from knowing expected ethical behavior in making accurate ethical decisions and actions. This study focused on Malaysian companies by examined the elements and themes existed in their Codes. The mixed method approach was used to collect the data. The secondary data were analyzed using Exploratory Content Analysis while the primary data (from the questionnaire) were analyzed using Exploratory Data Analysis. Findings indicated that elements of Code of Corporate Conduct such as shared values, principles, code of company practices and responsibilities towards different stakeholders do exist but in a different form of documents. Interestingly, three types of themes disclosure emerged; favored themes, moderate themes and unfavored themes. The favored themes focused on the protection towards companies and employees. While moderate themes focused on the expected behavior of employees. Relationship with third parties is the least themes to be disclosed.

KEYWORDS: Code of Corporate Conduct, Market-Based Governance, Discipline-Based Governance, Favored Themes, Moderate Themes, Unfavored Themes, Good Corporate Citizen.

INTRODUCTION

An effective code as one element of good corporate governance [1] has been given serious attention by the governments, Securities Exchange Commission (SEC) and accounting professional bodies. The United State and the United Kingdom have emphasized codes in their laws and guidelines such as Sarbanes Oxley 2002 and SEC guidelines that made it mandatory for companies to have Code of Corporate Conduct. This was further emphasized by the professional bodies. In year 2006, International Federation of Accountants (IFAC) had made requirements regarding Good Practice Guide Defining and Developing an Effective Code of Conduct. In addition, the International Ethics Standard Board for Accountants (IESBA) proposes changes to code of ethics definition of those in charged with governance. Whilst in the Malaysian context, the Ethics Standard Boards of Malaysian Institute of Accountant (MIA) has reviewed the code for its applicability in a Malaysian environment [2]. This development provides evidences of high concern for ethics in governance.

Market-based governance related to ownership concentration [3] has become the main focus in Asia companies. As a result, a company with an ethical code is not a priority as the owner (shareholders) is seen to be more interested in profit and dividends or simple company's growth [4]. This indicated that Shareholder Theory and Agency Theory were strongly applicable in most parts of the world. It is undeniable that both theories are not without weaknesses and have been identified to contribute towards increasing the number of misconduct and mismanagement by companies' members. For example, self-interest [5], self-interest incentives (i.e. corruption), 'revolving door' situations [6], promoting narrow professional goals [7] and non-confrontational work environment- 'industrial quiet' [8]. However, these immoral behaviors could be prevented if companies provide Code of Corporate Conduct consisted of shared values and responsibilities towards stakeholders. The statement of shared values and responsibilities towards stakeholders can be used to guide the employees regarding expected ethical behavior. The Al Ghazali's Theory of Virtue [9] stated one of the ways to acquire virtuous characters is through

learning where authority outside human teach them to act virtuously. In the context of companies, to attain virtuous characteristics through learning, the companies must set up the codes that fully consider the shared values and responsibilities towards stakeholders. These elements are not only on paper but to be really implemented. Setting and implementing Code of Corporate Conduct prove that they have considered seriously their 'social contract' to be a good corporate citizen. This supported the Legitimacy Theory that requires the companies to operate within the bounds and norms of their respective societies.

Malaysia has reported that one of the reasons for companies entrapped into misconduct or mismanagement was due to non-existence or weak practices in the Code of Corporate Conduct or Code of Ethics. According to Malaysian Securities Commission Chairman, violations by companies were due to inadequate codes of ethics and concern of stakeholders [10]. In KPMG survey 2009, one of the reasons for unethical behaviors in Malaysian workplace was significantly due to poor communication of the code of ethics [11]. Furthermore, the Chairman of Securities Commission and head of KPMG Forensic Malaysia have suggested code of ethics as the solution in preventing the fraud [10, 12].

Implementation of codes can be based on voluntary and mandatory approach depending on how the country perceived the codes. In Malaysia, Code of Corporate Conduct is a voluntary basis, which is totally different compared to countries such as the United States and the United Kingdom that have treated this document as a mandatory requirement. Therefore, Malaysian regulators and companies need to understand and be familiar with the contents of codes especially on shared values and responsibilities towards stakeholders. Without a formal document with the proper contents may lead to ignorance by Malaysian companies and their members regarding expected ethical behavior in making accurate ethical decisions and actions. It is concluded that lacking in understanding the Code of Corporate Conduct may affect the overall objective of the National Integrity Plan, which is to establish a fully moral and ethical society whose citizens are strong in religious and spiritual values and imbued with the highest ethical standards [13]. Code of Corporate Conduct as highlighted in the literature can legitimize corporate behavior through its formal writing, portrays ethical practices of companies and guides companies' members to behave ethically according to the required norm. Thus, the researchers are motivated to examine the existence and practices of code in Malaysian companies by focusing on its elements (shared values and responsibilities towards stakeholders) and themes.

LITERATURE REVIEW

Many researches on Code of Corporate Conduct have been conducted in various countries such as the United States, Italy, the United Kingdom, China, Irish, Canada, Australia and Sweden [14]. About 53% of the largest companies worldwide implemented the codes [15] (Kaptein, 2004) (Kaptein, 2004) which indicated formal codes are recognizable and common to some profit oriented companies. Among the areas of research on codes were its implementation, contents and worthiness in influencing employees' behavior. The contents of the code may influence the actual practices of companies' members. Thus, research for finding appropriate code contents/themes has been continued until today with various results emerged such as for protecting the company, shareholders or stakeholders or for encouraging ethics conduct among employees or for moral image [16, 17, 18, 19]. It is believed that the differences were due to various theories understood and applied by the companies or authorities.

Code of Corporate Conduct is an internal document that has evolved through several phases from its origin to its changes in the contents or themes until its usefulness in influencing the employees' behavior. Codes are not a new tool to the business, but its existences can be traced back before World War 2 [20]. According to [21], USA was the first country in the world which experience extensive movement among its companies in utilizing the codes. Utilization of codes was then became worldwide interest in 1980s [20] with researchers reported substantial presence of corporate codes in many other countries. In 1943, Johnson and Johnson's Credo Embrace was to highlight their corporate responsibility towards their customers, employees, the community and stakeholders, while in 1980s, General Electric, General Dynamics, Martin Marietta (now Lockheed Martin) introduced codes as a tool for self-regulate rather than just following government regulations.

The contents of Code of Corporate Conduct have gone through a few phases of changes all over the world as shown in Table 1.

Table 1: Contents of codes in various countries

Country	Study by	Ref	Findings	Frequent Themes
North America	Cressey and Moore	[16]	Wide diversity Insufficient attention to the social responsibilities	Conflict of interest
	Hite, Bellizziand and Fraser (1988)	[22]	Covered all topics	Misuse of funds Improper accounting Conflict of interest Political contribution Confidential information
	Robin, Giallourakis, David and Moritz	[23]	Inability to aid ethical decision making	Rule-based statement
	Pelfrey and Peacock	[24]	No uniform understanding in terms of appropriate contents of codes 3 schools of philosophy: a) Possible ethical situation b) Simple statement of values c) General rules on topics of concern	General rules on topics of concern
	Lefebvre and Singh	[25]		Issues pertaining conduct against corporation (protecting the firm)
UK	Schlegelmilch and Houston	[26]	Too general and too broad	
France, German and UK	Langlois and Schlegelmilch	[27]	Basic formats: (a) Regulatory documents on behaviours and sanctions (b) Aims, objectives and values (short and widely phrased creeds) (c) Social responsibility to many stakeholders with wide range of topics	Concepts of fairness and honesty Country specific items related to political issues and employees relations
Australia	Kaye	[28]	Were not widely used in the development and enforcement of ethical standards of behaviour.	
	Farrell and Cobbin	[29]	Specific guidance ethical content was very low	
	Wood	[30]	Were not distinctly Australian	

In the earlier studies, the code was more on protecting the organization rather than protecting the interest of other stakeholders. At that time, little consensus was made on the proper subject matters of a code among the corporation officials. According to [16], most code content in 1980s reflected concern towards unethical behavior that could harm the profits and little commitment to social responsibility. This was supported by [17] that showed firms preferred to emphasize matters that avoiding illegal activities, employee misconduct and little emphasis on the environment, product quality, or safety. Interestingly, this is still in practice as claimed by [18]-codes were designed to defend the organization against egregious behavior of employees and lack of ethical guidance and vision.

In [31] discovered themes such as conflict of interest, followed by personnel character, customer relations, payments and gifts. Whilst, in [14] identified themes related to stakeholder responsibilities, stakeholder principles, corporate values, internal conduct and implementation and compliance. Code focuses on conduct on behalf of the organization, conduct against the organization, integrity of books and records, the basis of the codes (legal, ethical or both), the specific laws cited, make reference to government agencies, internal and external compliance/enforcement measures, codes mentioning enforcement/compliance procedures, penalties for non-compliance and finally the references to the need to maintain the corporation’s “good reputation”[32,33]. Whilst, in [34] examined the codes in terms of its general principles, social values, rules of conduct, relationship with third parties, implementation and sanctions. The above discussion indicated that the companies likely to document their shared values and responsibilities to various stakeholders.

MATERIAL AND METHODS

This study employed a mixed methods approach as the research design with the purpose of exploring and generalizing the existence of the COCC and their elements and themes in Malaysian Public Listed Companies (MPLCs). This study applied an exploratory design method with the instrument development model. This design connected the qualitative and quantitative method through the development of the instrument. The qualitative phase is to explore the contents of the selected COCC whilst, the quantitative phase is to make generalizations towards the contents of COCC. The secondary data (COCC) were analyzed using Exploratory Content Analysis while the primary data (from the questionnaire) were analyzed using Exploratory Data Analysis.

RESULTS AND DISCUSSION

There are 12 different elements related to code for which are the shared values, company's principles, companies' rules of conduct and related themes to employees, shareholders, consumers, the environment, government, foreign government, supplier, competitors and wider society. Codes of ethics practice related to acceptable employees' behavior in the organization are commonly stated in the Code of Ethics or Terms and Condition of Services (TACOS) or Employees' Handbook (EH) or formal COCC which is not disclosed to the public. However, the public is made known of the existence of code through the Corporate Governance Statement and Internal Control Statement stated in the annual reports. In the qualitative phase, Code of Corporate Conduct (COCC)/TACOS/EH were from 25 selected companies, 32% are from industrial product, 24% from finance, 20% from consumer products, 12% from trading/services/communication, 4% each from infrastructure, technology and hotel. All companies have responded regarding the existence of code with 40% (10) shared their code of ethics, 32% (8) did not want to disclose and 28% (7) did not give any response. The study concluded that most companies were very transparent while some were reluctant to reveal their code of ethics. The analysis of elements and themes is following the definition by [27]. In addition, themes that are commonly used by other companies in other countries [33, 34] are also referred.

Table 2 indicated that Malaysian COCC/TACOS/EH disclose the elements of companies' shared values, principles and stakeholders responsibilities. Malaysian companies focus more on the responsibilities towards itself, followed by responsibilities towards employees and then responsibilities towards customers and communities. The companies prefer to disclose issues impacted primarily on company relationship with customers. This finding has some similarities with the studies previously conducted

Table 2: Elements in COCC/TACOS or EH

Elements	Number of Companies Highlight the Themes
1. Shared values	6
2. Company's principles	5
Responsibilities to stakeholders (company)	
1. Protection and confidentiality of company information	8
2. Obligation to comply the internal and external rules and regulations	5
3. Remedy action and penalties for non-compliance	4
4. Use of co. assets	5
5. Accuracy of company records	4
6. Conflict of Interest	5
7. Theft/Fraudulent/unfair activities/misconduct	4
8. Acceptance of bribe/kickbacks/gifts/entertainment	8
9. Give bribe/kickbacks/gifts/entertainment	4
Responsibilities to stakeholders (employees)	
1. Occupational, health and safety	4
2. Care of employees' welfare	2
3. Equal employment and opportunity	2
4. Sexual harassment	6
5. Racial harassment	3
6. Religious harassment	3
7. Substance abuse	1
8. Dress code	3
Responsibilities to stakeholders (customers/clients)	
1. Client confidentiality	1
2. Services and product safety	2
3. Services and product quality	2
Responsibilities to stakeholders (communities)	
1. Conservation and environmental issues	2
2. Helping others	2
3. Impact of company on society	1
4. Civic and community affairs	2
Other issues	
1. Issues impacted primarily on company relationship with foreign government	1
2. Issues impacted primarily on company relationship with customers	6
3. Issues impacted primarily on company relationship with competitors	1
4. Issues impacted primarily on company relationship with investors	1
5. Issues impacted primarily on company relationship with suppliers	1

Additional themes such as whistle blower protection, no discrimination, outside employment, etc. (as shown in Table 3) have also been identified in the Malaysian context which seldom highlighted in other countries.

Table 3: Additional themes highlighted in COCC/TACOS/EH

Themes	Number of Companies Highlight the Themes
1. Reporting of violation	1
2. Whistle blower protection	3
3. No discrimination	3
4. Responsibility of ethics committee	1
5. Outside employment	4
6. Misuse position	2
7. Involvement in politics	2
8. Employees' family in business dealing	1
9. News release/publication to outsider	4
10. Disclose relationship with third parties	1

The above findings concluded that elements of code do exist and each company stated them in different form of documents such as in a formal COCC or TACOS and EH. These findings were further supported by the findings in the quantitative phase. Three quarter of the respondents (75%) do agree that companies need to set up COCC formally. Among the highest reasons for not having COCC are this document is not required by law and not a norm or practice in Malaysian corporate setting. However, the percentages are relatively small 18.2% and 10.9% respectively. 74% do not know why their companies do not have formal COCC. Furthermore, these results could be due to the practice of hybrid approach of corporate governance that allows flexibility in managing the companies. This scenario is different from the United State as Sarbanes Oxley Act 2002 and New York Stock Exchange and Toronto Stock Exchange requires companies to have COCC. The respondents agreed to have formal COCC for few reasons such as to make known about ethical behavior, to ensure consistency between ethical action (EA) and ethical decision (ED), as a reference or guidance in ethical issues, showing commitment to stakeholders, the protection mechanism against charges and finally for surveillance/supervision purposes.

Findings from secondary data using Exploratory Data Analysis are reflected in the findings of the primary data questionnaire as depicted in Figure 1. Primary data are analyzed using Exploratory Data Analysis. Figure 1 showed the availability of corporate shared values and principles, employees' ethical guidelines and stakeholder concern. 70% and 73% of respondents agreed the codes' elements such as shared values and principles and ethical guidelines respectively were in the company's TACOS and EH. Only 43.6% and 46.1% of the respondents respectively agreed shared values and principles and ethical guidelines were in the COCC. However, only 35.2% of the respondents agreed stakeholder concern was in TACOS/EH. Interestingly, the remaining respondents agreed the stakeholder concerns were in the annual report (AR).

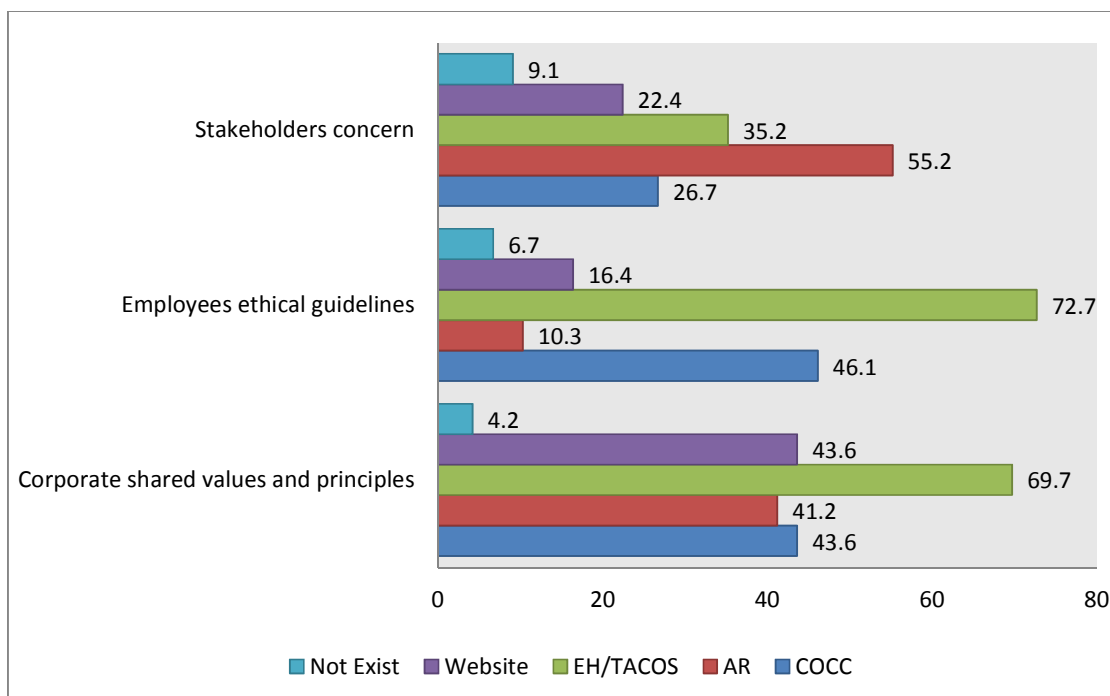


Figure 1: Responses on the availability of corporate shared values and principles, employees ethical guidelines and stakeholder concern

Interestingly, the shared values such as integrity, accountability, transparency, sincerity and corporate social responsibility as promoted by Malaysian authorities were used as the company’s own shared values. In addition, MPLCs do have various ethical guidelines themes which can be categorized into three types of disclosure; strong disclosure (favoured themes), marginal disclosure (moderate themes) and weak disclosure (unfavoured themes).

Strong disclosure/favored themes were represented by 50% and above of the respondents agreed these themes were disclosed in their COCC/TACOS/EH. Among the favoured themes disclosed were the company’s shared values, protection and confidentiality of company information, obligation to comply the internal and external rules and regulations, remedy action and penalties for non-compliance, disclose relationship with third parties, conflict of interest, theft/fraudulent/unfair activities/misconduct, client confidentiality, use of company’s assets, accuracy of company records, occupational, health & safety, care of employees’ welfare, recognition/award to employees, employees’ confidentiality, acceptance of bribe/ kickbacks/ gifts/ entertainment and dress code as shown in Figure 2. Most companies preferred to disclose shared values such as integrity, accountability, transparency, sincerity and corporate social responsibility as recommended by Company Commission of Malaysia and Bursa Malaysia, Central Bank of Malaysia rather than creating their own shared values. The most preferred shared values were integrity and accountability. The other most favored themes are protection and confidentiality of company information, obligation to comply the internal and external rules and regulations, conflict of interest, theft/fraudulent/unfair activities/misconduct, use of company’s assets and dress code. Themes such as conflict of interest, confidential information and accuracy of the company’s records are for the purpose of protecting the companies and are similar to the practice in North America [16,22,25], whilst protection to employees such as occupational, health and safety, care of employees’ welfare, recognition/award to employees, employees’ confidentiality were similar themes as issued by companies in France, Germany and the United Kingdom [27].

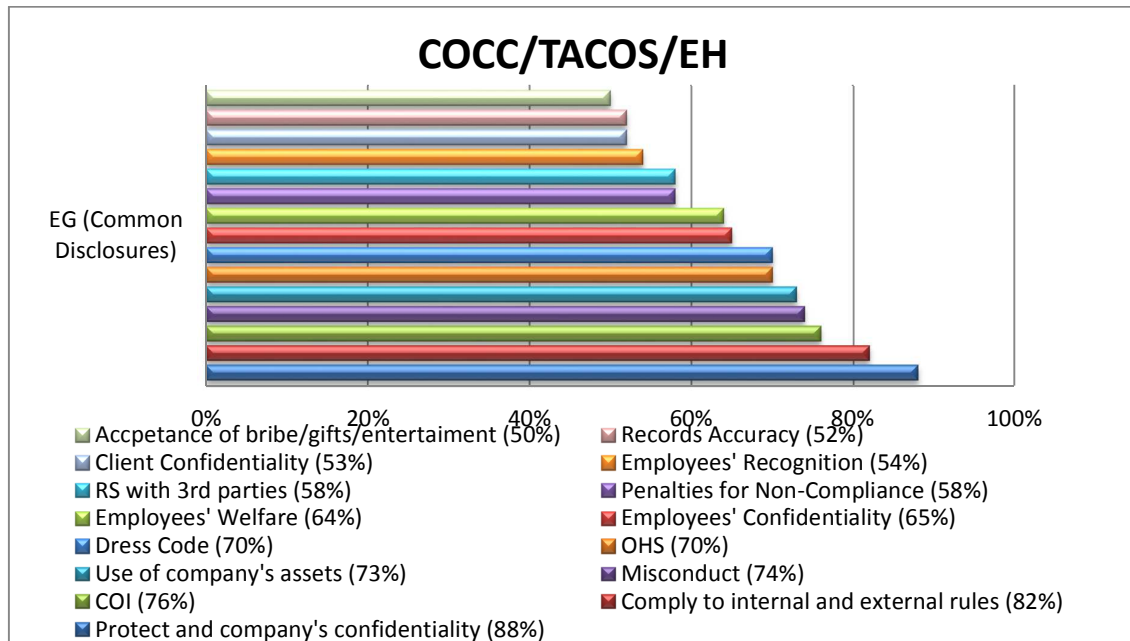


Figure 2: Ethical guidelines (common disclosures)

Marginal disclosure (moderate themes) was represented by 40%-49% of the respondents agreed. The moderate themes to be disclosed were reporting of ethical guidelines violation, no discrimination, outside employment, misuse position, employees’ family in business dealing, news release/publication to outsider, equal employment and opportunity, sexual harassment, give bribe/kickbacks/ gifts /entertainment, product/services safety and issues impacted primarily on company relationship with investors/shareholders as shown in Figure 3. In other words, moderate themes focused on the expected behavior of employees

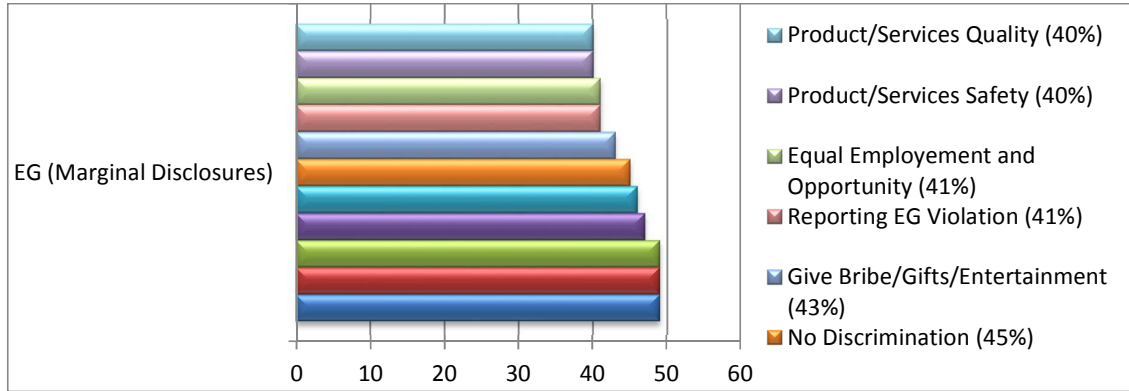


Figure 3: Ethical guidelines (marginal disclosures)

Weak disclosure (unfavored themes) was represented by less than 40% agreed. The unpreferred themes to be disclosed were own shared values, whistle blowing, involvement in politics, nepotism (favoritism of close one), racial harassment, payments or political contribution to governments or government official or employees, religious harassment, substance abuse, conservation and environmental issues, helping others, impact of company on society, civic and community affairs, product /services quality, issues impacted primarily on company relationship with government, foreign government, customers, competitors and suppliers as shown in Figure 4. Interestingly, in Malaysian context political contribution to governments is not keen to be disclosed as compared to companies in countries such as North America, France, Germany and the United Kingdom.

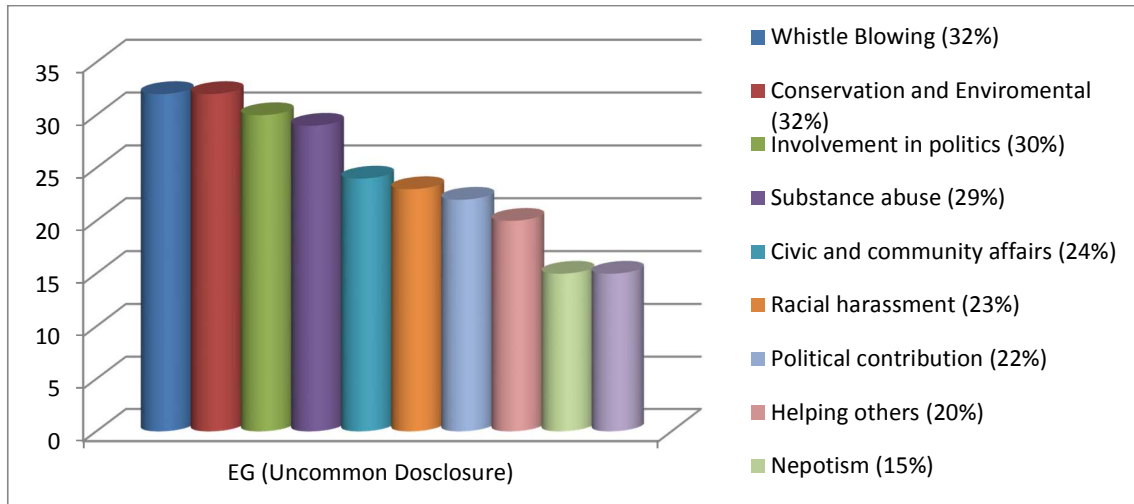


Figure 4: Ethical guidelines (uncommon disclosures)

CONCLUSION

Establishing COCC has been supported by an attainable conceptual framework and by integrating of related theories. Mixed methods approach as applied in this study has further improved the understanding of COCC practices in Malaysian Public Listed Companies. To conclude, mixed methods approach has identified the existence of COCC and its various themes under Malaysian setting. Findings have indicated that elements of Code of Corporate Conduct such as shared values, principles, code of company practices and responsibilities towards different stakeholders do exist but in a different form of documents. Interestingly, 3 types of themes disclosure emerged; favored themes, moderate themes and unfavored themes. The favored themes focused on the protection towards companies and employees. While moderate themes focused on the expected behavior of employees. Relationship with third parties is the least themes to be disclosed.

Therefore, in ensuring COCC is really implemented and practiced, Malaysia should make it mandatory for all organizations (business or non-business) to have their own codes. This may improve companies' ethical culture and norm of ethical performance. A code that is practical and well understood by Malaysian companies' in

highlighting the companies' ethical identity will enhance good corporate citizen. Thus, mismanagement and misbehavior as discussed earlier may be prevented at an early stage of any decisions or actions.

It is therefore suggested for future research, to conduct qualitative research in findings the impact toward employees' ethical behavior between companies that adopt and do not adopt a formal COCC. In addition, investigation can also be made on the impact of COCC toward ethical performance and financial performance of the companies by using a mixed methods approach.

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