

Ask Mr Sid

Dear Mr Sid

Re: Dealing with a Moralistic Director

I am the CEO and executive director of a food and beverage (F&B) cum entertainment company. In Singapore, we own and run several bars, a nightclub and four karaoke outlets. In Thailand, we are part of a joint venture that runs a nightclub.

We struggle to make ends meet. During the Covid-19 epidemic, we pivoted the entertainment outlets to focus on F&B with takeaways. We returned to entertainment at the outlets after the rules were relaxed.

We work very hard to stay on the right side of the law, given that the nature of our business tends toward the adult end of the market. Our Code of Ethics and Conduct ensures this. Singapore's rules are generally stricter, but we make sure we comply. For instance, we offer cannabis in our nightclub in Thailand but not here, as that would be illegal.

Unfortunately, our audit committee (AC) chair does not grasp the realities of our industry. He was recently brought in by our board chair to provide a veneer of decency and respectability. However, he can be quite a pain with his probing queries. So far, I have been able to handle him until

recently, when we received an anonymous whistleblowing letter.

I told the AC chair to disregard the letter because it was anonymous and manifestly untrue. The letter accused us of prostitution when we run a proper and moral business. Sure, we have hostesses who have to entertain the customers. The more drinks patrons buy, the more money the hostesses and the outlet make. But the hostesses are strictly instructed to avoid any hanky panky. For example, they are not permitted to touch customers while dancing. But, of course, what hostesses do with the customers outside our premises is their personal business. Instead, the AC chair wants to ask the internal auditor to conduct an investigation.

He keeps talking about "doing the right thing". I told him that the right thing is to let management (me) run the business profitably and ethically. I am moral, but he's moralistic. How on earth do I deal with a director like this?

Yours sincerely,

Ethics-Crusader

Dear Ethics-Crusader

I can see you're running a challenging business, exacerbated by the pandemic.

You say that your business is lawful, ethical and moral. However, I believe you are conflating the three terms. There are significant differences between them. Let's address each of them.

Law

You obviously recognise that whatever you do must be legal in the first place.

You imply that whatever you do is legally permitted. My concern is that you seem to be pushing the limits of what the law allows, but you may occasionally overstep it in the process.

For example, the licence for nightclubs and bars generally prohibits waitresses from dancing with customers regardless of whether or not they touch each other. Unless you are making the case that your club hostesses are not classified as waitresses, you are in breach of the law by allowing them to dance with patrons.

Ethics

Ethics is a higher order than the law. What is lawful may not always be ethical.

For example, if a patron insists on buying rounds of drinks for a hostess who is obviously not able to hold her alcohol and has

difficulty to refuse his advances, does the club continue to provide the drinks?

The recruitment, remuneration and management of hostesses are fraught with many such ethical and moral dilemmas. Consider the following:

- Are there physical, age, ethnic, or gender discrimination in the hiring and other processes?
- Are there limits to the amount of alcohol that a patron or hostess can order, to prevent unruly behaviour?
- What is the club's policy against patrons propositioning the hostesses, and vice versa?
- What should be the tipping policy and tip sharing between hostesses, and with bartenders, servers, etc?
- What policies are there regarding relationships and arrangements outside the premises and made within the premises?

You say you have a Code of Ethics and Conduct. Does it take into account issues like the ones listed above? Is your Code primarily concerned with achieving legal compliance, or does it embed and uphold the values of the company?

Of course, there's also a grey zone where what is illegal may not necessarily be unethical or immoral. For example, a group of friends, all of whom, save one, are just over the legal age of 18, want to enter your bar. The one who happens to be just shy of a month to 18 years

old, would not be legally permitted to enter even though it would not really be unethical for him to join in.

Moral

While ethics are extrinsic rules (such as those set out in the Code of Ethics) to guide behaviour and decision-making, morals are what is inside each of us. In a sense, it's personal, so technically, we each could have different moral values. But most sensible people can usually agree to common moral ideals and standards.

Morals tend to be of a higher order, as compared to ethics and law. For example, physically abusing an employee would be illegal. Verbal abuse is not criminal, but it would be unethical. Emotional abuse may not be against the law and ethical standards, but would be immoral.

Ideally, what is considered moral by most people should find its way into the ethical standards.

You mentioned cannabis. Let's use it to illustrate these three concepts. Most jurisdictions recognise cannabis as a dangerous narcotic. However, in June 2022, Thailand decriminalised cannabis for "medical, economic and health-related" reasons. The fact is that one can now legally buy, consume, harvest and sell the drug in Thailand.

The question is: knowing the dangerous nature of the drug, should the company make cannabis available to its patrons even if it is legal? Is it ethical or moral? Many people would probably say it's not moral or ethical.

Whistleblowing letter

Regarding the whistleblowing letter, I don't suggest that it be dismissed because it is anonymous. There are valid reasons for

anonymity, including fear of retaliation and anticipated discrimination for "ratting" on the team.

Interestingly, the Singapore Governance and Transparency Index awards additional points if the whistleblowing policy states that anonymous complaints would also be investigated. Also, several governmental authorities specifically encourage anonymous whistleblowers.

Best practices suggest two tests be applied to determine whether an anonymous whistleblowing letter should be investigated:

(1) If the allegation is true, would it be substantive? In this case, prostitution would be a substantive offence as it would violate the law.

(2) Can the allegations be substantiated through further investigations on the information provided by the whistleblower? For example, if the letter goes no further than just claiming that the company practices prostitution, there's not much to be investigated. However, if the letter contains material that the internal auditor can follow up on, then the investigation should be launched.

Your moral compass

The main issue is not whether the AC chair is moral or moralistic. It is what the company's moral compass is.

It's a sign of the times that progressive companies are defining their corporate (moral) purpose – their reason for being that goes beyond making a profit. A widely-accepted definition of corporate purpose is: producing profitable solutions for the problems of the people and planet, and not profiting from creating problems.

Alongside corporate purpose is the concept of corporate conscience, which includes the

company's moral stance on societal issues. Those relevant to you might include prostitution, drugs, drunk driving, etc.

It would perhaps be appropriate for the board to define its corporate purpose and consider broad questions such as:

- What business are you in, and how does that create value for your customers and other stakeholders?
- What are your values? Are they aligned with broad societal values? How would you reconcile these with the nature and means of the products and services offered to your customers?
- What is your mission and vision for the business? If your business were ideal in every way, what would it look like?

As you develop a revised Code of Ethics and Conduct, and strategies, I would also suggest you consider specific questions such as:

- Are you morally opposed to prostitution, or are you merely opposed to it occurring on your premises because that would be unlawful?
- Would you allow and encourage the consumption of cannabis if it were legal?
- How can corporate governance and board dynamics with regard to your corporate values be improved?

I hope you can consider these points in the right spirit, in keeping with the times.

Yours sincerely



Mr Sid ■

Who is Mr Sid?



Mr Sid is a meek, mild-mannered geek who resides in the deep recesses of the reference archives of the Singapore Institute of Directors.

Burrowed among his favourite *Corporate Governance Guides for Boards in Singapore*, he relishes answering members' questions on corporate governance and directorship matters. But when the questions are too difficult, he transforms into Super SID, and flies out to his super network of boardroom *kakis* to find the answers.

Mr Sid's References (for this question)

Board Guide

Section 1.5 Rules and Codes
Section 1.6 The "Comply or Explain" Regime
Appendix 1J "Comply or Explain" – Examples of Non-Compliance, 4. Code of Conduct and Ethics
Section 4.5 Risk Management
Section 4.10 Corporate Social Responsibility and Sustainability

Audit Committee Guide

Section 3.4 Whistleblowing
Appendix 3K Whistleblowing Operations

Boardroom Matters

Vol 1, Chapter 10: "For Compliance Sake" by Daniel Ee
Vol 2, Chapter 4: "Business Ethics: Beyond Compliance to Competitive Advantage" by Neo Sing Hwee
Vol 2, Chapter 29: "Whistleblowers: The Directors' Ally" by Michael Gray
Vol 3, Chapter 11 "Setting the Right Board Culture" by Philip Forrest
Vol 4, Chapter 38 "Responding to Anonymous Whistleblowers" by Willie Cheng
Vol 4, Chapter 39 "The Need for Universal Legislation on Whistleblowing" by Abdul Jabbar Bin Karam Din
2020 August 10: "The Growing Importance of Corporate Conscience" by Shai Ganu

SID Directors Bulletin

2018 Q4: "The Morality of Doing Business Purposefully" by Abhijeet K. Vadera and George Gerard
2018 Q4: "The Evolution of the Ethical Corporate Structure" by Tan Cheng Han
2018 Q4: "The Shift in Corporate Ethics in the New Economy" by Neo Sing Hwee
2021 Q2: "Trust and Value Creation" by Low Buen Sin
2022 Q2: "Purposeful Board of Directors" by Stephen B. Young