International Bar Association

Global Employment Institute

Code of Conduct Report

June 2017

The International Bar Association

1   The International Bar Association (IBA) was created in New York on 17 February 1947, where representatives from 34 national bar associations convened with the common purpose of furthering the establishment of law and administration of justice worldwide.

2   The IBA is the leading organisation of international legal practitioners, bar associations and law societies. Since 1970 the IBA has allowed the admission of individual lawyers, and has steadily expanded its ranks to boast membership of more than 80,000 individual lawyers and more than 200 bar associations and law societies worldwide.

3   Together, they make the IBA 'the global voice of the legal profession'. The bar associations also form the governing 'Council' of the IBA which passes resolutions and guidelines that influence and support the worldwide legal profession.

The Global Employment Institute

4   The International Bar Association Global Employment Institute (IBA GEI) was formed in early 2010 for the purpose of developing a global and strategic approach to the main legal issues in the human resources and human capital fields for multinationals and worldwide institutions.

5   Drawing on the wealth and resource of the IBA membership, the IBA GEI's skilled, dedicated and experienced members provide a unique employment, discrimination and immigration law contribution to private and public organisations throughout the world on a diverse range of global issues.

6   The IBA GEI is becoming the leading voice and authority on global HR issues by virtue of having a number of the world's leading labour and employment practitioners in its ranks, and the support and resource of the world's largest association of international lawyers.

7   Its activities include the preparation of reports on global and strategic HR legal issues. We have successfully completed a number of reports in this regard, including a report on age and the workplace (the 'Age Report') and a report on social media (the 'Net Report').

8   These reports are published on the IBA website and distributed to companies and notable practitioners around the globe. Only leading practitioners in their jurisdictions are asked to respond to these surveys. These reports are not, and are not intended to be, legal advice. Readers should take the appropriate legal advice.

Codes of Conduct

9   A code of conduct is a set of rules outlining the social norms and rules and responsibilities of, or proper practices for, an individual, party or organisation. Related concepts include ethical, honour, moral codes and religious laws. In its 2007 International Good Practice Guidance, 'Defining and Developing an Effective Code of Conduct for Organisations', the International Federation of Accountants provided the following working definition:

> 'Principles, values, standards, or rules of behaviour that guide the decisions, procedures and systems of an organisation in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations.'

10   A common code of conduct is written for employees of a company with a view to protecting the business and communicating the company's expectations to employees. Most multinationals do have a code of conduct, for example, Coca Cola, Intel, Philips, to name just a few.

11   In a good code of conduct, rules and regulations are mentioned, and it is made explicit how to 'do the right thing'. Companies hope that a code will help to safeguard the trust of the public in the company. Such codes are not always guaranteed to protect the company, for example, companies like BP, Enron and Volkswagen all had codes of conduct in place but were still involved in high profile cases. However, their codes of conduct do not appear to have played a role of importance in the ethical controversies these companies have weathered.

The Working Group

12   This report was prepared by an IBA GEI code of conduct working group (Working Group) coordinated by Dirk Jan Rutgers, Vice-Chair for Knowledge Management of the IBA GEI Council, and the IBA GEI is grateful for the assistance of Working Group members Anne M Harten, Craig Pattison, Sheridan Mather, Andrea Schwartz, David Denney, Maura Murphy, Karine Korevaar, Alexia Aurelio, Sherica Bryan and Amit Bhasin for their invaluable contributions to this report. A special word of thanks is due to Working Group member Michael Moy for his great contribution to the drafting process.

13   The Working Group is pleased to present this Code of Conduct Report ('the Report') reflecting the results of a comprehensive survey of multinational companies. The Report delivers an insight into the way these multinationals use codes of conduct to establish a fair and balanced corporate culture, as part of their corporate responsibility strategies.

14   The Working Group intends that the public release of the Report will provide the basis for a draft code for organisations who wish to develop effective and reliable codes of conduct. The ultimate ambition of this project is to enhance the management, performance and productivity of global organisations.

Findings, Practices and Conclusions

The survey

15   On 1 March 2016, the IBA GEI released a survey which formed the basis of the findings of the Report. The survey put forward 34 questions for respondents, canvassing the details of the codes of conduct that have been implemented in their businesses, how they were created and their effectiveness.

16   Respondents to the survey came from businesses spanning a broad range of industries, including high profile companies involved in mining, financial and legal services, insurance and automotive industries.

17   The questions were tailored to encourage respondents to provide detailed responses of their experiences and insights into codes of conduct working in practice, and the Working Group is indebted to all 36 multinationals for their contributions to the survey and the Report, including among others:

- Amway;

- Arcor;

- Gowling WLG;

- Grupo EULEN;

- Pitney Bowes Ltd;

- TMF Group;

- Western Union;

- Wood Mackenzie Ltd; and

- XL Catlin.

Survey questions

18   The substantive questions asked in the survey in relation to companies' own codes of conduct were as follows:

- Does your company have a code of conduct?

- When did your company implement a code of conduct?

- What were the reasons for implementing this code?

- What issues are covered in the code?

- Does the code make a distinction in the company's expectation of behaviour between senior management, white, and blue collar employees?

- Is the code applicable to all of the countries in which the company operates?

- Which regions are excluded and why?

- Does the company have more than one code of conduct?

- If your company has more than one code or policy or works council agreement covering conduct guidelines, do you think it is practical to replace these with a single code of conduct?

- Are employees required to individually consent to the code?

- Is the code part of the employment contract?

- Is the code meant to be legally binding on all employees or is it a set of guidelines?

- Was the code adopted in the form of a general set of rules that was imposed by management?

- Did your company make use of outside counsel in the drafting process (HR/Legal/Governance experts)?

- Did your company include employees, works councils, and/or unions in the drafting process?

- Was there a draft code or example on which your code is based?

- Are there employees, such as compliance officers, that play a special role in enforcement?

- Does your company provide employees with training on the most important topics found in your company's code of conduct? If so, do employees have to sit an exam after such training?

- Does your company regularly refresh employees' knowledge on the code of conduct?

- Has your company experienced any problems in enforcing the code?

- Were these problems regionally based (eg, more issues in, for example, Japan or the Netherlands)?

    – If so, please specify in which countries/regions;

- Has your company's code ever played a role in litigation?

- Have you received positive or negative feedback from your employees in relation to the code?

- Do you think the code influences the behaviour of employees?

- Do you think there are measures that could be taken to enhance the influence of the code?

Q1 Does your company have a code of conduct?

Answer Choices	Responses
Yes	91.67%
No. Why not?	8.33%
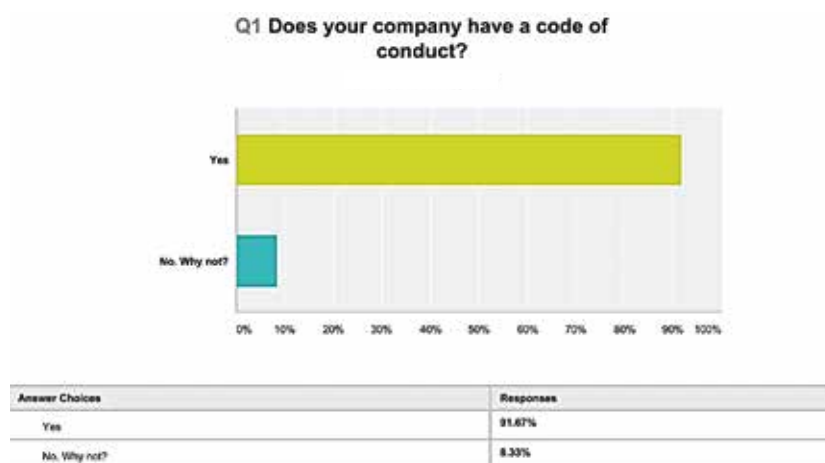
Findings

Prevalence of codes of conduct

**19** The overwhelming majority of survey respondents answered that their company has a code of conduct, with 90 per cent responding in the affirmative.

20 Two respondents did not have codes of conduct, with both offering differing reasons. The first was governed by an industry code of conduct published by the local Solicitors' Regulation Authority, which operates in conjunction with company policies that address matters traditionally dealt with in codes of conduct. The second respondent noted that trade unions had refused to accept any potential code as a term of employment, and accordingly the company was unable to implement a code in their business.

20 Many respondents answered that their codes had been in effect for a long period of time. The vast majority of codes had been in effect for over ten years, with some responding that they had been in existence since the inception of the business. At least four respondents' codes were said to have existed in various forms for over 25 years.

Reasons for implementing codes of conduct

22 Reasons given for creating codes of conduct generally emphasised the companies' desire to foster a culture of integrity and ethical corporate behaviour across their organisations. Many respondents also highlighted the need for a universal standard to apply across different company groups or to be applied to new acquisitions.

23 A number of respondents observed that legal compliance was a contributing factor, with some jurisdictions requiring certain organisations to prepare codes of conduct addressing ethical matters. Upholding a code of conduct was also suggested to be an important factor in preserving the company's legal position in the event of any breaches.

Content of codes of conduct

Q4 What issues are covered in the code?
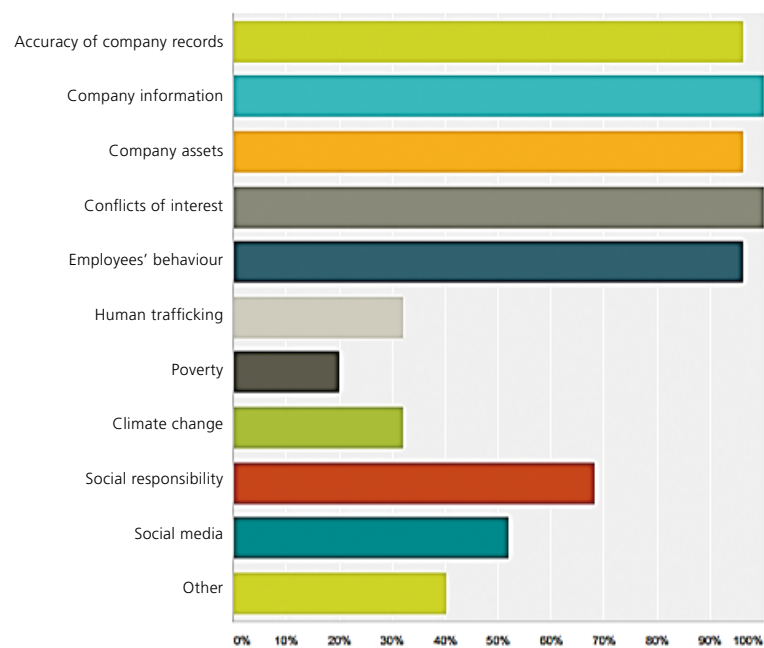
Answer Choices	Responses
Employees should ensure the accuracy of company records	96.00%
Employees should safeguard the company's non-public information	100.00%
Company assets should be used in the manner intended	96.00%
Conflicts of interest	100.00%
Employees should act in a fair and lawful manner	96.00%
Human trafficking	32.00%
Poverty	20.00%
Climate change	32.00%
Social responsibility	68.00%
Social media	52.00%
Other	40.00%

CODE OF CONDUCT REPORT – IBA Global Employment Institute

24 The survey graph demonstrates that multinationals are driven to include a broad number of issues in their codes of conduct. Prevention of harassment and respect for human rights were both core tenets of codes of conduct, reflecting companies' focus on regulating employee behaviour and creating safe, respectful workplaces.

25 The most prevalent issues seen in these codes are those that have a nexus to the companies' business interests and activities, with social issues like human trafficking and poverty appearing relatively less frequently. Legal compliance and bribery/antitrust standards featured commonly in responses, as part of a broader trend of companies including express requirements for their employees to observe and comply with local laws.

26 Five particular matters were consistently present in nearly every code:

- ensuring accuracy of company records;

- safeguarding confidential information;

- proper use of company assets;

- conflicts of interest; and

- requirements for employees to act in a fair and lawful manner.

27 Social responsibility and social media issues appear to be a relatively popular addition to codes of conduct, which may be a consequence of the potentially significant impact of these activities on companies' corporate image in the digital age. Interestingly, climate change featured in only a quarter of respondents' codes.
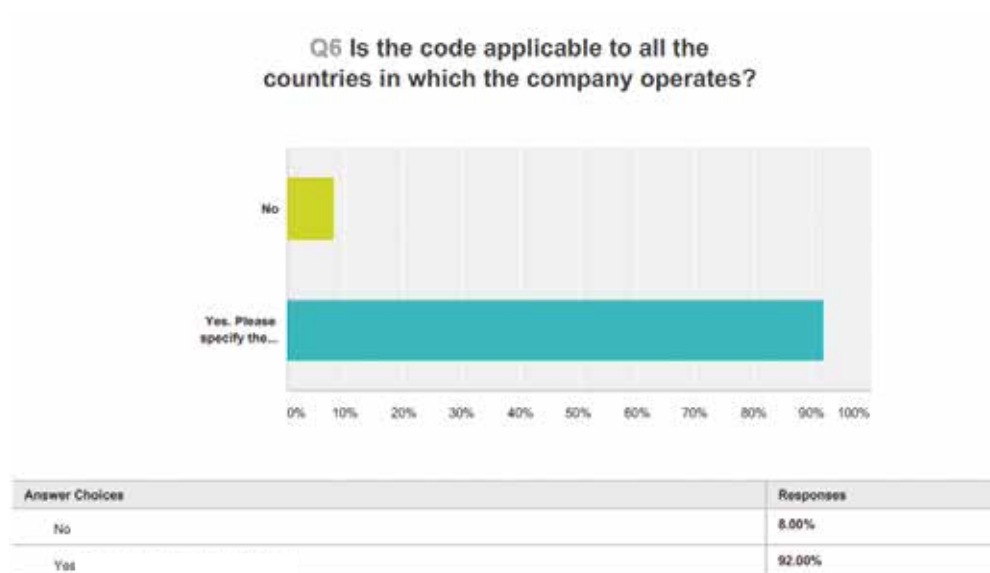

Q5 Does the code make a distinction in the company's expectation of behaviour between senior management, white, and blue collar employees?
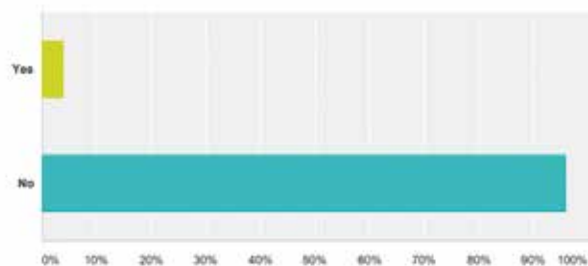
Answer Choices	Responses
Yes	4.00%
No	96.00%

28 Of all the codes surveyed, only one made a distinction in their expectations of behaviour between senior management, white and blue collar employees. While that respondent did not elaborate on the extent or details of the distinction made, different scales of responsibility among varying levels of employee might conceivably require the company to impose stricter obligations on more senior employees.

29 Other respondents' feedback reinforced that idea, observing that although their codes made no distinction between expectations of individual levels, senior employees are expected to demonstrate a stronger example than is expected from newer junior staff.

Regional influence

Q6 Is the code applicable to all the countries in which the company operates?

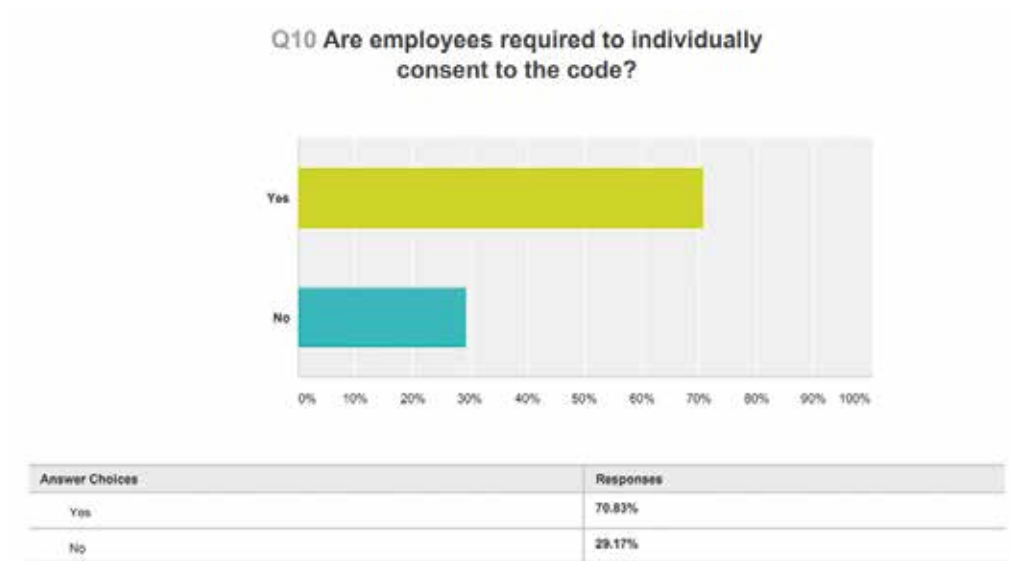| Answer Choices	Responses
No	8.00%
Yes	92.00%

30 All but two of the codes surveyed are applicable in all of the countries in which the company operates, with almost 50 per cent of respondents indicating that the code applied globally.

31 Only two codes excluded a region, with the application of one of those two being confined to United States regions only. The reason given for implementing this code was for legal compliance, suggesting that the code was drafted in a manner intended to comply with specific US regulatory requirements and would not have effective application elsewhere. That respondent noted that it is open to company affiliates in other jurisdictions to create their own specific codes of conduct.

Structure of codes of conduct

32   Only one of those surveyed responded that their company had implemented more than one code. Views expressed in the survey were that it was more practical to amalgamate more than one code, policy or works council agreement covering conduct issues into a single code of conduct, so long as it remained broad enough to account for varying legal standards.
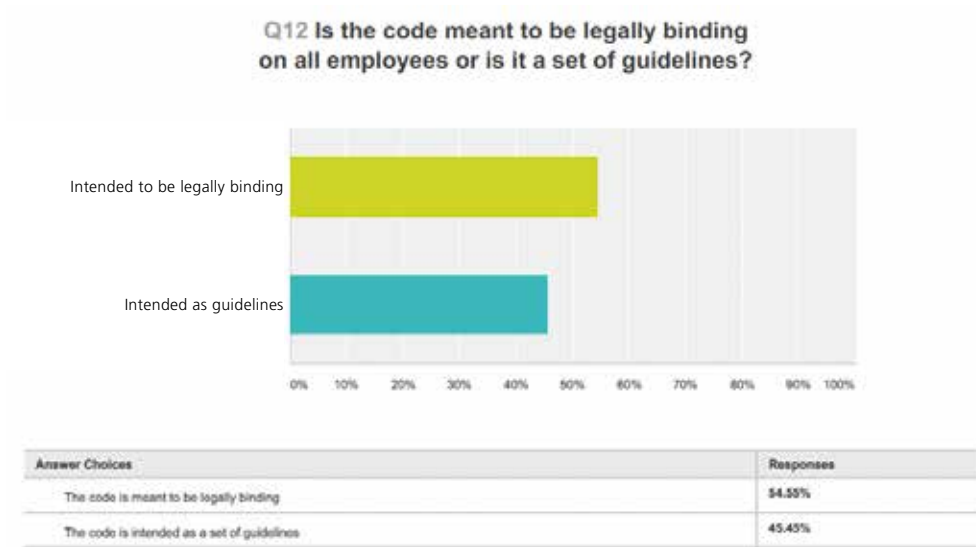
Employee consent

Q10 **Are employees required to individually consent to the code?**

Answer Choices	Responses
Yes	70.83%
No	29.17%

33   Two-thirds of multinationals surveyed required their employees to consent individually to the code of conduct.

34   The majority of those who require employees to consent to the code mandate that consent be given in writing, with a record often stored on the employee's personal file. A number of respondents also responded that their employees are required to undertake annual re-certification of their understanding and adherence to the code.

Incorporation in employment contracts

35   Almost 50 per cent of those surveyed had adopted the practice of incorporating the code as part of the employment contract. Some respondents suggested that jurisdiction influenced whether this was done. A number of companies (particularly in the US) do not enter into formal written employment contracts with many employees, and other respondents noted that different jurisdictions had different legal positions in relation to incorporation of codes into the employment contract.
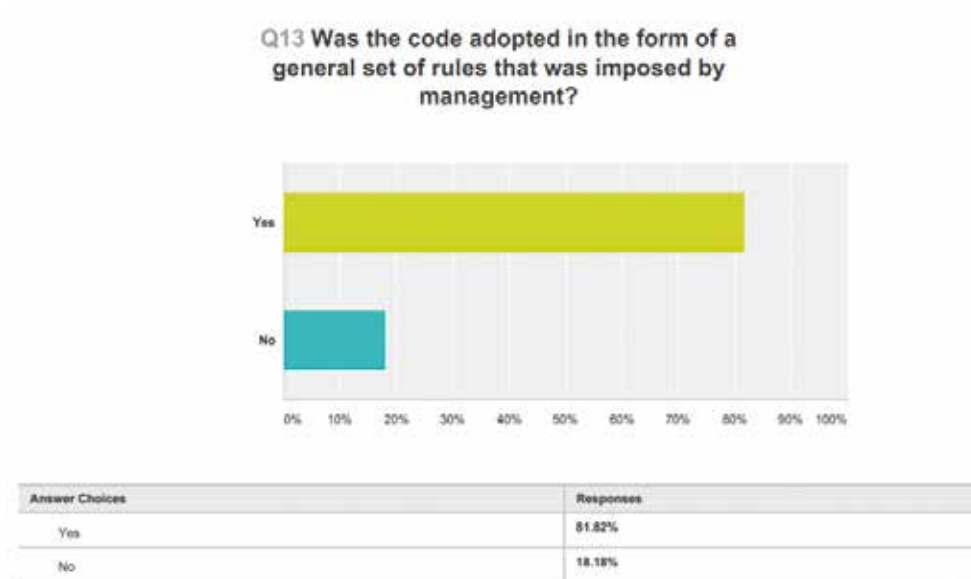
36   In some cases, codes are incorporated by way of broad statements within the contract that make reference to a general requirement to adhere to applicable policies and procedures. The effect of company policies on the employment relationship was of concern to one respondent, who noted their practice of clearly stating that the application of any policy does not itself give rise to an employment relationship.

Legal effect

Q12 **Is the code meant to be legally binding on all employees or is it a set of guidelines?**

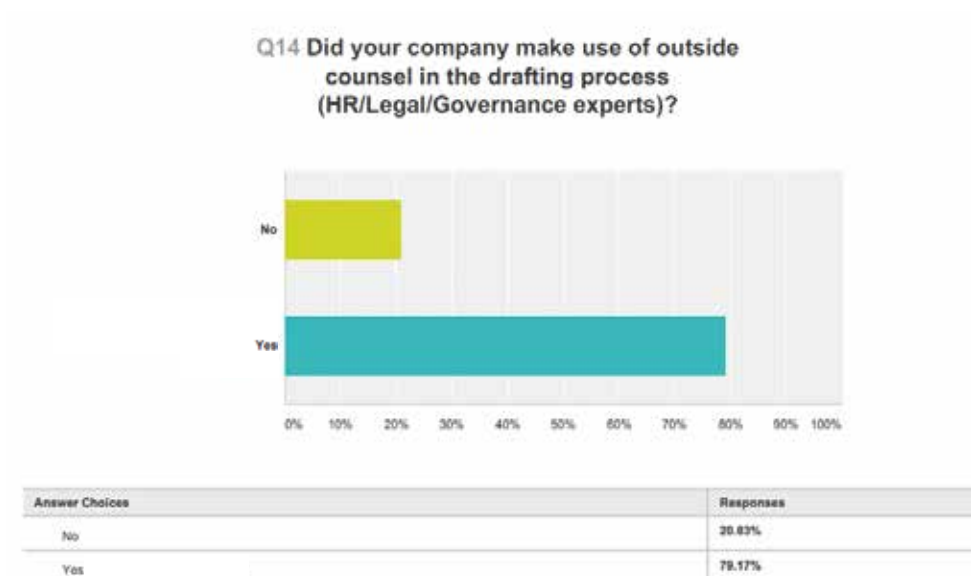| Answer Choices	Responses
The code is meant to be legally binding	54.55%
The code is intended as a set of guidelines	45.45%

37   Slightly more respondents intended the code to be legally binding on employees than those that intended their code as a set of guidelines. It was commonly acknowledged that in some jurisdictions this may not necessarily be the case.

38   The areas of bribery and antitrust drew particular attention, with certain jurisdictions applying legal force to these specific elements of company codes.

Implementation

Q13 Was the code adopted in the form of a general set of rules that was imposed by management?

Answer Choices	Responses
Yes	81.82%
No	18.18%

39 The overwhelming majority of companies surveyed implemented their code by way of a general set of rules imposed by management. A number of respondents indicated that this was not the case in their business; however, the procedure they adopted for implementing their codes was not made clear.

Use of outside counsel in the drafting process

Q14 Did your company make use of outside counsel in the drafting process (HR/Legal/Governance experts)?

Answer Choices	Responses
No	20.83%
Yes	79.17%

40   The survey demonstrated multinational companies' preference to utilise specialist external resources to assist in effectively drafting their codes.

41   Legal advisers were the most common source of advice, with responses showing that the motivation for engaging these specialist advisers was to ensure the code was enforceable in their relevant jurisdictions.

### *Inclusion of employees, works councils and/or unions in the drafting process*

Q15 Did your company include employees, works councils, and/or unions in the drafting process?
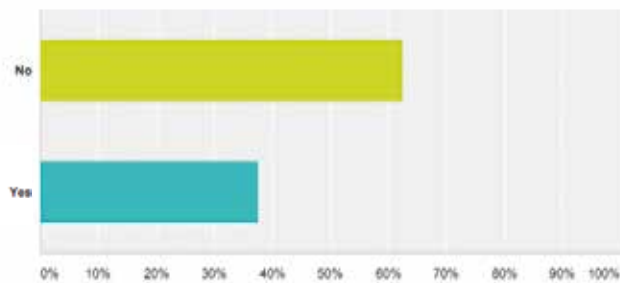
Answer Choices	Responses
No	62.50%
Yes	37.50%

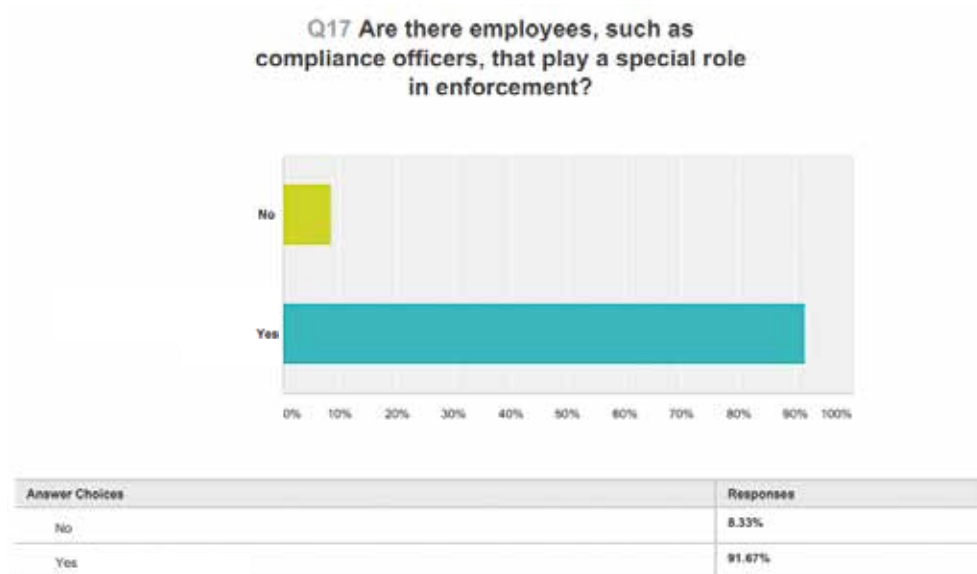**42**   The trends made evident from the survey show that companies are less inclined to include different stakeholders in the drafting process.

43   Responses suggest that where consultation does occur, employers are turning to employees for input into appropriate standards. Managers can offer useful insight from their experience dealing with employees and can give practical recommendations where they foresee any issues in implementation.

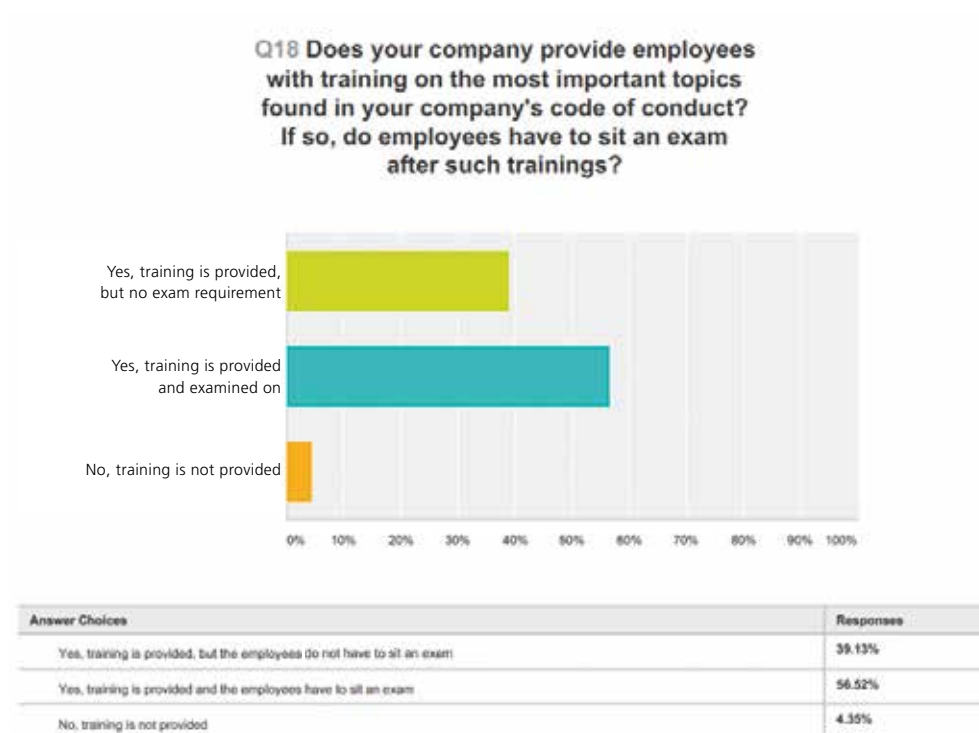## Were the codes based on any pre-existing draft documents?

Q16 Was there a draft code or example on which your code is based?

Answer Choices	Responses
No	58.33%
Yes	41.67%
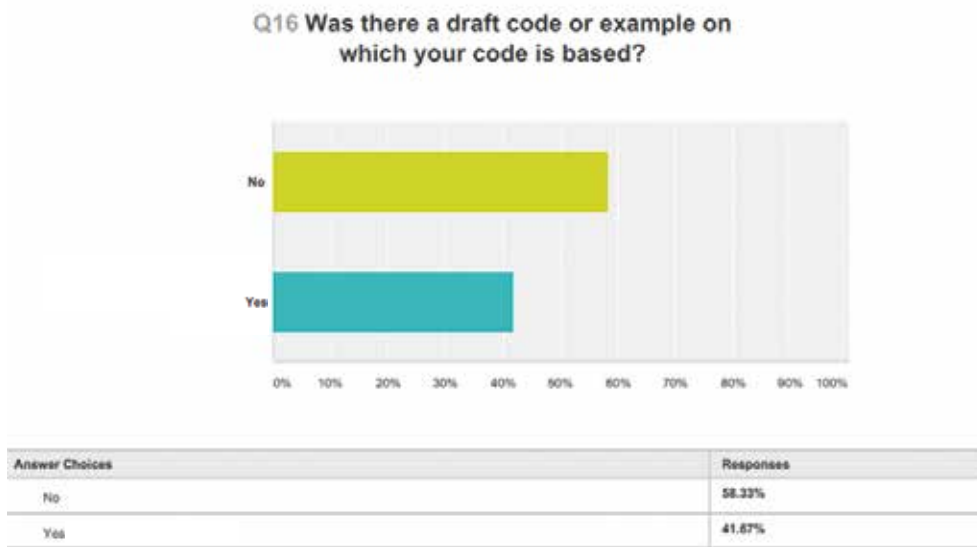
44   Subsidiary companies surveyed unsurprisingly sought to base their codes of conduct on those of their parent company.

45   The survey also gave an insight into how multinationals sought to inform themselves of appropriate standards for their codes. As well as engaging external consultants to provide insight into current practices, several respondents conceded that their companies had analysed codes of similar companies to use as benchmarks for the appropriate issues and standards to apply to their employees.

Enforcing compliance

Q17 Are there employees, such as compliance officers, that play a special role in enforcement?

Answer Choices	Responses
No	8.33%
Yes	91.67%

46 Enforcement of codes in the companies surveyed is almost exclusively dealt with by way of designated employees.

47 Internal compliance officers are often engaged both to ensure compliance and to identify opportunities to improve and update codes, while some organisations also engage training staff to educate and assist employees.

48 Some organisations allocate responsibility for compliance and auditing to their Human Resources teams, while two respondents convene ethics or conduct committees to manage and rule on code of conduct matters and report to senior management on compliance and effectiveness.

49 One company surveyed indicated that employees are responsible for being the organisation's 'collective conscience', and those employees are encouraged to report any potential or actual breaches.

Code of conduct training

Q18 **Does your company provide employees with training on the most important topics found in your company's code of conduct? If so, do employees have to sit an exam after such trainings?**

Answer Choices	Responses
Yes, training is provided, but the employees do not have to sit an exam	39.13%
Yes, training is provided and the employees have to sit an exam	56.52%
No, training is not provided	4.35%

50 All respondents offer training of some form to their employees on the code of conduct, with half of those surveyed requiring their employees to sit an exam on the content of the code.

51 Traditional induction training is offered by respondents, but a number have also implemented training programmes. These programmes feature both annual familiarisation sessions and more sophisticated recurring modes of training comprised of posters, newsletters and morning meeting discussions.

52 The training and any associated exams seek to educate employees not only of the standards expected of them under the code, but also of appropriate reporting mechanisms.

53 Companies surveyed take a proactive approach to refreshing employees on the content of their codes with 95 per cent of respondents saying they do so regularly. While many companies conduct their refresher training on an annual basis, a number run refresher courses for their employees more frequently.

Q19 Does your company regularly refresh employees on the code of conduct?
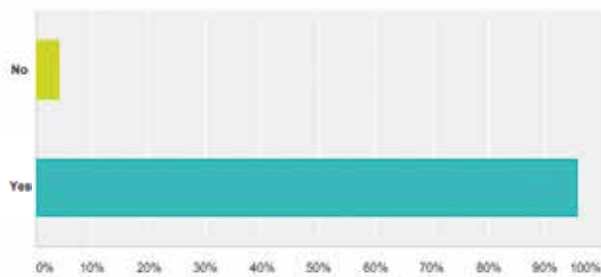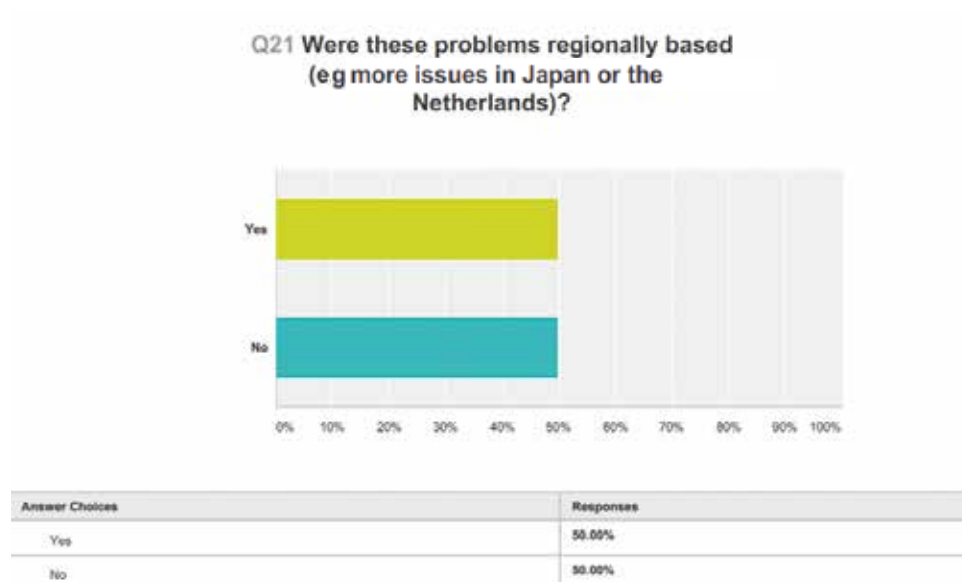
Answer Choices	Responses
No	4.17%
Yes	95.83%

54 A number of different initiatives were listed for keeping the code to the forefront for employees. Some organisations target specific employee groups to receive reminders or training on specific relevant parts of the code in addition to regular general training. Others adopt that strategy company-wide, delivering specific training on different chapters as part of the general annual refresher training.

Difficulties with enforcement

Q20 Has your company experienced any problems in enforcing the code?

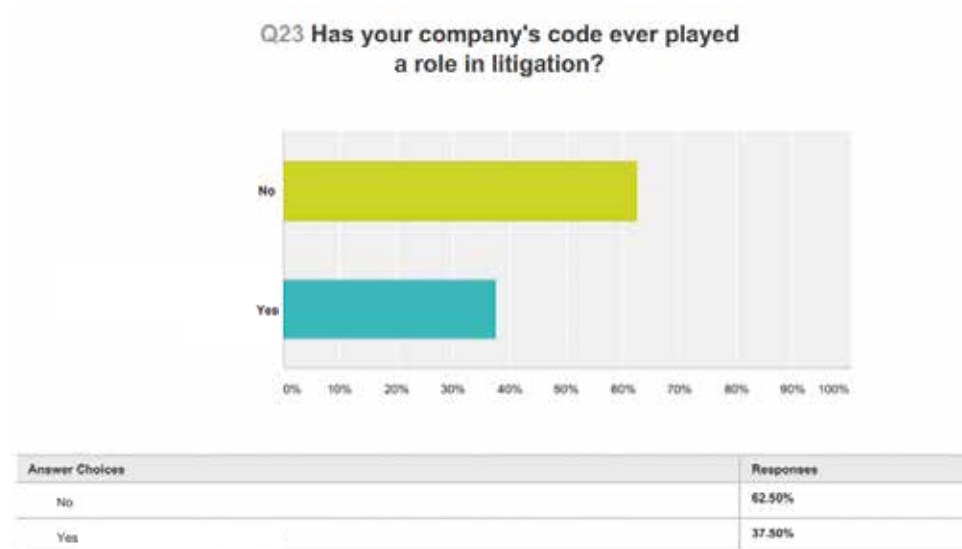| Answer Choices	Responses
Yes	21.74%
No	78.26%
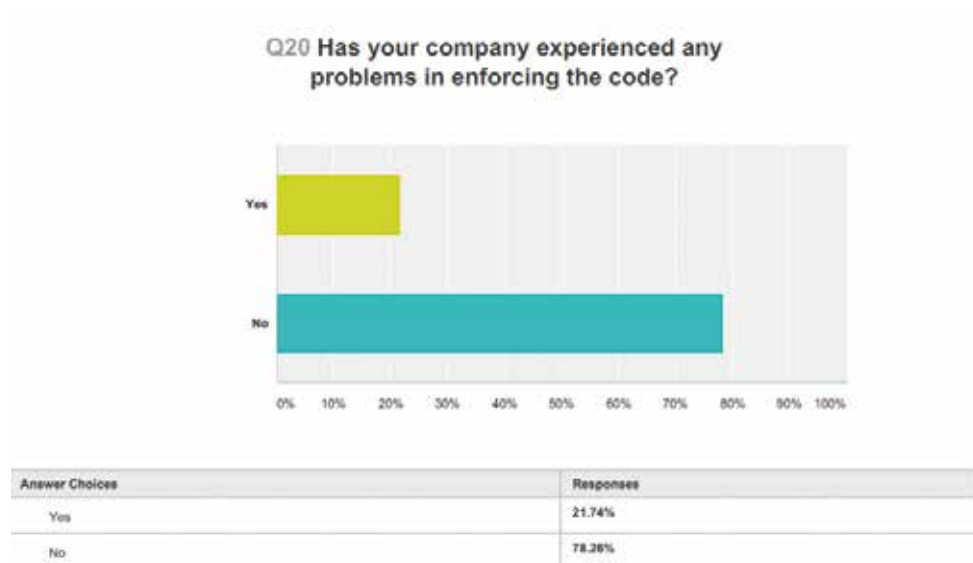
55 Most companies surveyed reported they had not experienced any problems in enforcing their codes, perhaps a reflection on the effort and resources employed in their creation.

Q21 Were these problems regionally based (eg more issues in Japan or the Netherlands)?

Answer Choices	Responses
Yes	50.00%
No	50.00%

56 The most frequently cited obstacle to enforcement of codes was difficulty with ensuring legal enforceability in certain jurisdictions. Respondents noted that different jurisdictions have varying requirements in relation to privacy considerations, and in some regions a violation of the code may not be a justifiable reason for dismissing an employee.
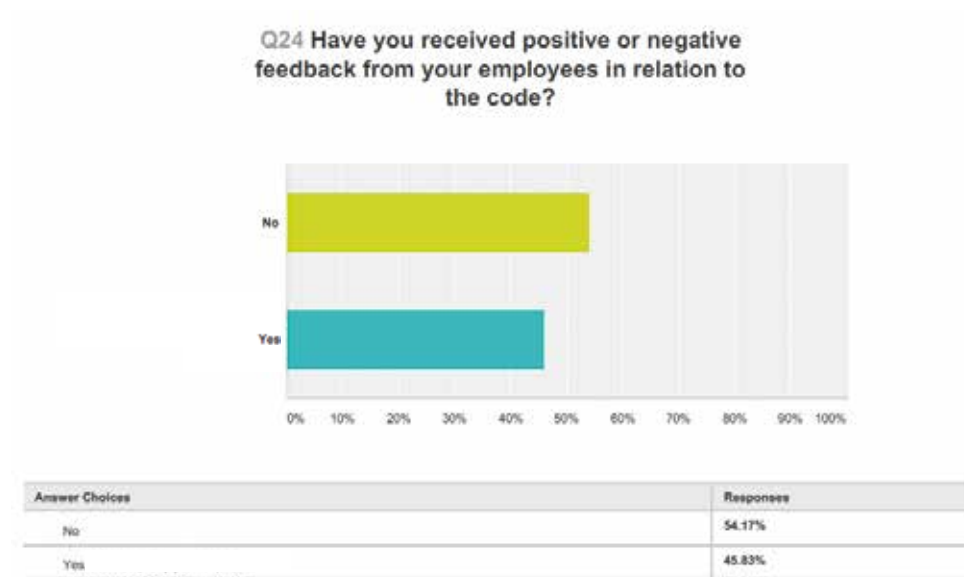
57   Another factor cited was the refusal of unions or works councils to accept the code as a barrier to enforcement, with Europe – and France specifically – mentioned as areas in which their opposition has prevented enforcement.

Codes of conduct in litigation

Q23 Has your company's code ever played a role in litigation?

| Answer Choices	Responses
No	62.50%
Yes	37.50%

58   Approximately one-third of companies surveyed had relied on their code of conduct in litigation. Examples given of litigation included behavioural breaches and disputes relating to intellectual property.

59   Respondents commented that the existence of the code generally gave the company a better position in relation to their court cases. One company surveyed noted that courts had occasionally made inquiries as to whether employees who were the subject of any disputes had completed assigned training relevant to the alleged infraction.

Feedback on codes

Q24 Have you received positive or negative feedback from your employees in relation to the code?

Answer Choices	Responses
No	54.17%
Yes	45.83%

60 Respondents reported receiving generally mixed feedback about their codes of conduct.

61 Positive feedback was given about the accessibility of the code to employees and the positive language used. Employees were also said to better engage with the code where it is seen to demonstrate a commitment to ethical behaviour beyond the minimum legal requirement, and develops a sense of unity and equality among the workforce.

62 The way in which the material in the code is delivered to employees was important in how it was received, with one respondent noting that where employees felt the training was 'boring' they gave negative feedback, even where they understood the code's greater purpose.

63 Common feedback given in relation to codes was that unions and works councils generally adopt a negative view of these codes, arguing they are too broad or irrelevant. One multinational reported that employees held concerns about the potential consequences of this broad drafting, with worries that its application in varied jurisdictions with differing legal standards could result in situations where an employee performing their role in a different jurisdiction might unknowingly breach the code.
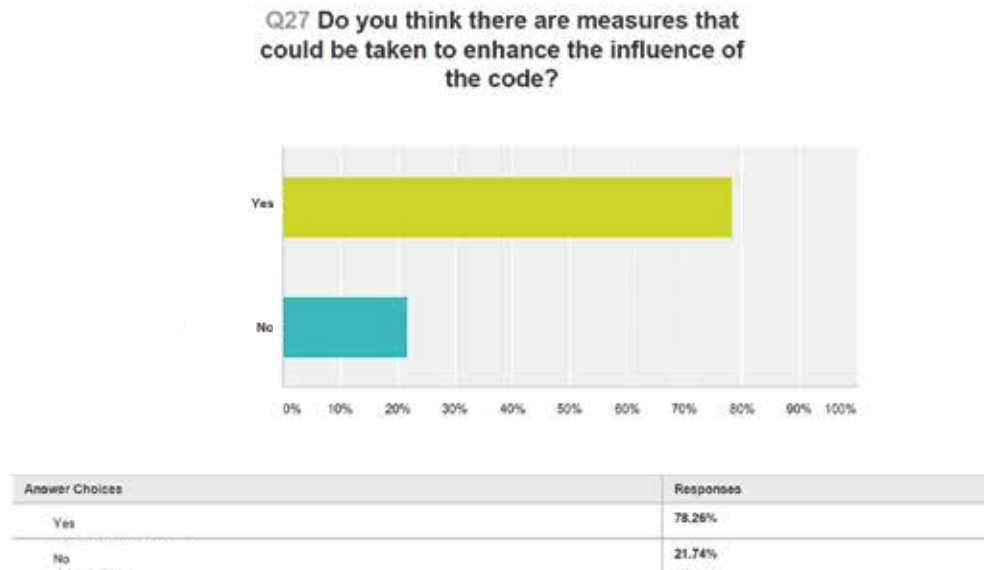
Influence of the code on employee behaviour

Q25 Do you think the code influences the behaviour of employees?

Answer Choices	Responses
No	0.00%
Yes	100.00%
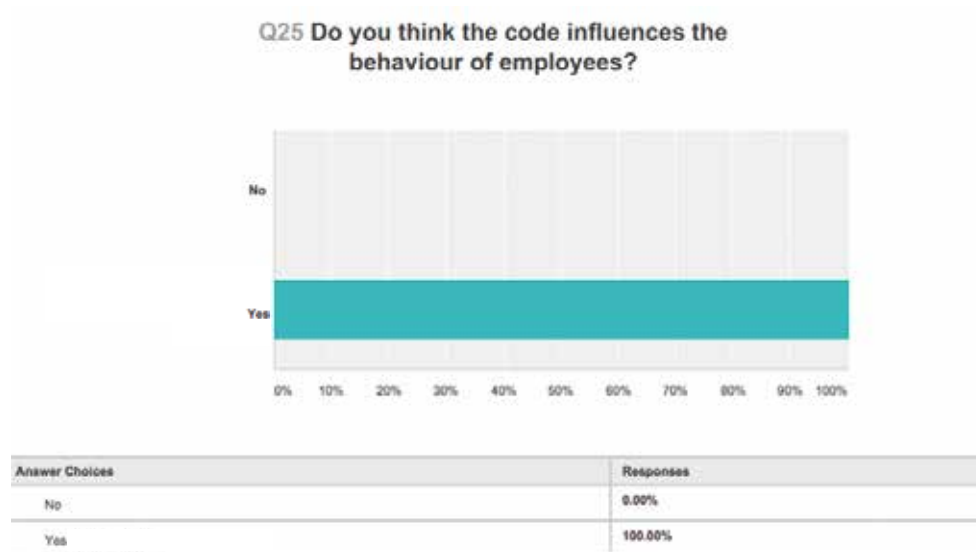
64   Respondents to the survey were unanimous in their belief that their code of conduct influences the behaviour of employees.

65   Paramount to this influence was the understanding that the code sets out the company's expectation framework to the employees in a clear and accessible way. By making the code accessible, employees are actively exposed to and reminded of these expectations and common values.

66   More than simply guiding employees in how they perform their day-to-day work and interact with colleagues, respondents also observed that the code by extension influenced employees to practise those conduct expectations in their dealings with clients and suppliers.

67   Another welcome effect observed from implementing codes was that doing so promotes a culture of self-awareness and encourages employees to be proactive in understanding their behaviour and that of their fellow employees. Empowering employees further allows them better to identify risks, which in turn can be mitigated by further refining the code of conduct.

68   Respondents observed that by encouraging employees to self-assess regularly their behaviour against the expectations of the code, those employees develop a deeper insight into appropriate standards and internalise the code's values in a way that sporadic short-term training often cannot achieve. This strategy helps ensure that, when faced with an ethical dilemma, employees are more likely to make good decisions by reference to the code's values.
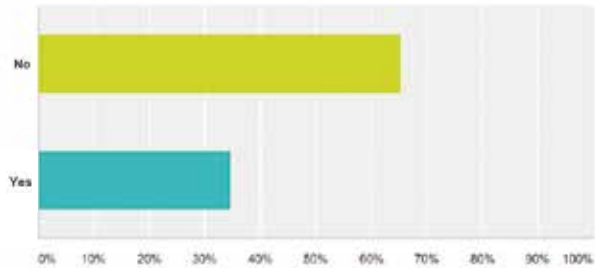
69 Several respondents indicated that it was of critical importance to the influence of their codes that they have effective reporting mechanisms, so that when any uncertainty or breaches do arise they may be addressed appropriately.

Improving the code's influence

Q27 Do you think there are measures that could be taken to enhance the influence of the code?

Answer Choices	Responses
Yes	78.26%
No	21.74%

70 Responses demonstrated that companies' experience with codes has proven their value, and through that wealth of experience respondents had useful suggestions for how the influence of existing codes might be improved. One fundamental suggestion was to simplify the language used in the code, which would facilitate easier understanding of the code and help all employees relate to the values being ascribed.

71 The overwhelmingly view of respondents was that the key to improving the effectiveness of codes of conduct was increasing awareness. The responses reflected a deeper concern among respondents that the content of the code is of little significance if employees are not aware of it or are not effectively trained in how to integrate the code's values into their work.

72 Providing further training on the code was a common thread, with many respondents emphasising that this training must be done with increased regularity to keep the message in the forefront of employees' minds.

73 Where training sessions are offered, some of those surveyed indicated that providing relevant case studies or weaving the employee's practical experiences into the training will help them relate and understand how to apply what they learn in their employment.

## Q28 Do you know of any companies who have drafted or implemented a code of conduct especially well?

Answer Choices	Responses
No	66.38%
Yes	34.62%

74 Several respondents indicated that the best way to reinforce the code might be to integrate it into daily work, for example, in team/department meetings or more frequent references to the code by senior managers. This might be done in addition to, or as a substitute for, code-specific training sessions.

75 Administratively, convening an ethics committee to review and report on code of conduct matters was put forward as a positive method currently being used by some respondents. Several responses also suggested introducing hotlines or a central contact where ethical concerns can be reported or queried.

76 Another benefit of creating central reporting lines was that it provided a mechanism for employees to provide feedback. Respondents suggested surveying employees as a method of keeping values in the code up to date, and input from employees at the core of the business will give management perspective on areas of risk in day-to-day operations.

Supporting a global model code of conduct

Q29 The Global Employment Institute of the IBA may take the initiative to draft a global model Code of Conduct in 2017. Do you support such an initiative?
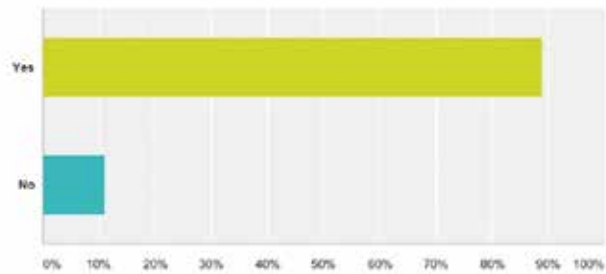
Answer Choices	Responses
Yes	88.89%
No	11.11%

77   Over 85 per cent of respondents were supportive of the IBA GEI's initiative to draft a global model code of conduct, with only three respondents not supporting a model code.

78   One respondent who did not support the initiative noted that trade union opposition had prevented their attempts to introduce a code, and their lack of support was more a consequence of not being able to implement any model code in the future.

79   Respondents who did support the initiative offered useful suggestions for how such a code would operate. As the companies operate across the globe, their comments centred largely on any potential difficulties that might arise from applying the code across various jurisdictions.

80   The need was identified for the code to apply equally across jurisdictions with often subtle legal and customary differences, while one respondent also highlighted a need for the model code to apply equally to businesses in different industries.

81   As suggested by one respondent, consultation and regional expertise would form important parts of achieving those goals. Similarly, the model code would need to be drafted in broad terms if it were to have universal application.

Practices and findings

82   The results of this survey send a clear message that multinational companies are highly motivated to implement codes of conduct as part of their corporate responsibility strategies. The feedback given by respondents reveals long-term trends in how those companies look to develop and refine their codes.

83   All companies surveyed had taken steps to set ethical standards and benchmarks for their employees, and those who had not done so by their own code of conduct still supplemented regulatory rules with their own ethical guidance policies.

Content of codes

84   The detailed contents of these codes reveal the image and ethical standards multinationals seek to portray. Codes of conduct aim to regulate the way employees represent the company and how they behave in their capacity as company representatives, so the matters the codes contain give an insight into the company's priorities and where they have identified potential risks within their business.

85   The companies surveyed sought almost exclusively to apply the code across their entire operations. Where jurisdictional or industry-specific issues arose, the trends indicated that the issues were often addressed by way of workplace policies with more focused application.

86   Much of the emphasis in the codes centres on ensuring that employees act properly in their duties, protecting the company's interests and behaving in a way that is consistent with the company's overarching value systems. The net effect of these requirements is to protect both the employee and the employer.

87   Increasingly however, companies appear to be adopting a dynamic and responsive approach to social issues and seeking to tailor their value frameworks to address areas that might traditionally arise outside of the employment relationship. The environment, charitable contributions, and poverty are all issues that have found their way into multinationals' codes of conduct.

88   This broadening of the scope of their codes appears to be driven by a stronger emphasis on corporate social responsibility. The focus is shifting towards a recognition of not only the company's need to uphold high standards in their commercial dealings, but also their holistic obligations to the community as responsible corporate citizens.

89   With more globalised populations and consumers having immediate access to information, companies also appear to be recognising a larger need to protect their reputations and external image. The addition of social responsibility in well over half of respondents' codes demonstrates an awareness of the paradigm shift towards organisations contributing back to the community and being responsible corporate citizens.

90 Employees' use of social media and public political expression are now areas that are included in some codes, undoubtedly driven by public controversy from employee actions reflecting on their employer.

91 The fundamental message drawn out from the survey is that companies who create codes of conduct do so with the intention of unifying all of their employees under the umbrella of a single ethical framework. The view is that successful codes should be drafted in a way that includes commitments to ethical behaviour without restricting the code's application to any particular area or industry.

92 Survey feedback suggested that companies were most successful when they approached the process of creating a code of conduct in good faith, and demonstrated a commitment to a standard of behaviour beyond the mere legal minimums expected of employees.

93 Where the code used simple, positive language and called for employees to unify to reach a common standard of excellence, employees were more likely to engage and relate to the process.

Drafting and consultation

94 Companies preparing codes of conduct that reflect their organisational values tend to do so at management level, exercising managerial prerogative to set a positive ethical trajectory for their businesses.

95 In order to maximise their efficiency, companies are increasingly seeking to involve external specialists to guide them. Professional services and business are becoming increasingly diversified, and the survey reflects that multinationals are responding in turn and taking advantage of the availability of external support in drafting their codes.

96 The importance of legal compliance in successful business operations drives a higher demand for legal services in the drafting process. HR consulting firms also offer expertise in navigating the process of engaging with employees and stakeholders, and helping companies define their codes in a way that achieves the desired outcomes without infringing rights or liberties.

97 Comprehensive drafting is also important from a risk management perspective. Employees and employers both benefit from certainty in relation to their respective obligations under the code, and it is important that areas of risk be identified so that where any breaches do occur, both parties may confidently rely on the code to preserve their position.

98 Some companies look to their competitors' codes as a basis for their own, and the experience external service providers have in drafting other companies' codes simplifies the process of identifying the types of issues to be addressed.

99 Consultation with employees and unions is less prevalent, which is likely indicative of management's intention to control the direction of their business. Although employee input might offer valuable insight into the actual execution of company operations, this insight is arguably more appropriate for integration into targeted workplace policies than a broader ethical framework.

100 However, as employees are to be bound by the values contained in the code, encouraging employee input and review will increase employee investment in the process. Where employees feel they are valued and are part of the code of conduct process, uptake and respect for the code ought to increase.

101 The same may be true for minimising union or works council opposition to the code, as some respondents indicated that they had encountered union resistance to implementing their codes. Where unions are involved at some level in the consultation phase of the code, their investment and engagement in the process may possibly ease any resistance to its implementation. No doubt such involvement will have an effect on the drafting of the code.

102 Feedback received during the survey indicated that as well as having input into the code, employees are better engaged with its content where it is drafted in a way that challenges them to meet a standard beyond the bare legal minimum. Where the company is unwavering in its genuine desire to push for a new higher standard, employees will also be motivated to push themselves to reach those goals.

Compliance and implementation

103 Where a code of conduct is introduced, it follows that there is an expectation employees will adhere to its terms. By requiring their employees to consent expressly to its terms, the majority of companies are taking proactive steps to ensure that employees not only understand the code but agree to abide by it.

104 Where the code is incorporated into the employment contract, its adherence becomes a term of employment. Where employees are not offered formal written contracts, however, the certainty for employers that comes from incorporation is not available.

105 It was noted in the survey that differing jurisdictions have different rules regarding incorporating codes into contracts, which would inevitably lead to inconsistencies in the code's enforcement.

106 In the context of multinational companies, these differences could lead to a situation where two identical breaches in different jurisdictions result in one employee being found to have breached a fundamental term of their employment, and the other being found merely to have acted unethically.

107 The survey demonstrates that companies often do not intend their codes to be legally binding as a whole, but they often contain requirements to observe local laws and regulatory requirements. Bribery and antitrust are particular areas of concern for compliance, with some jurisdictions requiring that companies ratify anti-bribery legislation into their codes.

108 Multinationals with well-resourced departments have structured clear pathways of responsibility for enforcement of codes. These pathways include the following levels:

– self-reporting and employee responsibility;

– internal compliance officers;

– integrating compliance into HR departments; and

– ethics or code of conduct committees or focus groups.

109 Perhaps the most effective solutions will incorporate elements of each level as part of a comprehensive strategy. A culture of awareness and respect for the code of conduct inherently requires employees to assume responsibility for their actions; however, that requirement relies on effective reporting structures and follow up from senior employees.

110 The particular reporting structures will be organisation-specific, but the trends emerging from the survey suggest that the method being adopted by multinationals is to centralise the part of the business responsible for compliance. Having a designated area dealing with compliance simplifies reporting (and therefore increases the likelihood any potential breaches will be reported), and allows for clearer oversight of how compliance is being managed and what trends are emerging in that regard.

111 The data generated in compliance may then be utilised in tailoring training more effectively and to address any shortfalls or gaps in the content of the code.

Enforcement

112 Enforcement of codes is not an area with which respondents reported any particular difficulties. There are a number of factors that might contribute to that finding, such as:

– careful and considered drafting with the input of expert advisers;

– intent for the code to represent broad principles of guidance more so than specific prohibitions or obligations;

– organised and efficient compliance and enforcement processes; and

– clear training and communication on what is expected of employees in relation to the code.

113 Situations where the code is not incorporated into the employment contract or has limited enforceability in a particular jurisdiction are most likely to lead to difficulties in its enforcement. The general manner in which many codes are drafted mean that a wide number of behaviours might fall within its scope, but conversely that generality can also lead to difficulties in enforcing the code where its breadth might see it characterised as mere guidance rather than rules.

114 Where breaches of the code are litigated, the simple existence of a code of conduct offers the company support in that it demonstrates the company is committed to an ethical corporate culture, and it provides a concise summary of the company's expectations of the relevant employee.

115 The extent to which these expectations can be relied upon will often be contingent on how clearly those expectations were made to the employee. Where companies have required employees to undertake regularly code of conduct training or refresher sessions, they have been able to argue more forcefully that the employee was aware of any expectations they may have breached.

Improving existing codes

116 The survey demonstrated unequivocally that companies see regular exposure to and feedback on the code as key to building upon their existing ethical frameworks and increasing awareness. This process relies on keeping the code to the forefront, both for employees from an implementation standpoint and for the company management in relation to how effectively the code is operating.

117 Ideally, innovative strategies should be developed to find ways to integrate reflection on the code into daily work. How this might best be done depends on the industry and structure of the company itself, but the survey indicated that current practices included making reference to principles in the code when giving directions or in meetings.

118 Alternatively, references to values in the code can be introduced into internal forms and paperwork so employees are required to consider them at key decision-making junctures. The benefits of this idea are twofold: (1) it will dissuade employees from making unethical decisions in that moment; and (2) it will strengthen the company's position in the event that they commence disciplinary action for any breach.

119 Respondents who required employees to undertake repeated training on their code did so at least annually. Where integration into daily work is not practical, training provides another opportunity to remind employees of the importance of the code and is generally done with sufficient regularity to keep employees familiar with its terms.

120 Strategies like offering both general code training sessions and targeted sessions on important employee-specific areas of the code may be useful in increasing employee engagement with the process. Conducting exams on the content of the code might also push employees to pay more attention to training, encouraging them to be more familiar with the company's values.

121 Feedback suggested that although codes are traditionally implemented by management, integrating practical examples of employees' day-to-day experiences into training was also proving beneficial in maintaining their interest in the process and demonstrating its value.

Conclusions

122 The benefits of implementing codes of conduct are extremely clear from the responses in the survey. The view is that applying a code of conduct not only results in a more productive and healthy business, but also creates an environment in which employees are encouraged to develop and grow as individuals.

123 A company's external image, both up and down the supply chain, is critical to its continued success. Quantifying the benefit of positive impressions on clients or suppliers is often a difficult thing to do, however negative experiences can do significant and rapid damage. More than just regulating how employees treat each other, the code is important in setting out expectations for how employees are expected to interact with external stakeholders as representatives of the brand.

124 Companies should also consider the application of their codes of conduct to temporary workers such as contractors or secondees. Where a business has been proactive and thorough in developing the image it wants to portray, great care should be taken to ensure that even those outside of the traditional employment relationship who represent the company do so by the same standards as the people around them.

125 By developing a culture of excellence and continually emphasising the code and its importance, employees become invested in the process and internalise the standards being practised around them. New employees will then be supported not only by their knowledge of the code itself, but also by their exposure to its day-to-day implementation by the rest of the workforce.

126 The survey demonstrates that many companies see implementation of codes of conduct as a 'top-down' exercise. Senior employees and managers are expected to present strong examples of the values enshrined in the code to strengthen its credibility to more junior employees and serve as reminders of the company's ongoing commitment to excellence.

127 Codes of conduct are equally applicable to companies of any size, and the benefits increase exponentially with the number of employees. Small- and

medium-sized companies seeking to create a strong foundation for growth and employee satisfaction will benefit from having the foresight to create a strong code of conduct.

128 A well-planned code that addresses fundamental standards of behaviour and ethics from the outset can be scaled up as the business grows, ensuring that as new challenges and opportunities arise they will be approached through the lens of the company's broader vision.

Draft code of conduct

Q29 **The Global Employment Institute of the IBA may take the initiative to draft a global model Code of Conduct in 2017. Do you support such an initiative?**
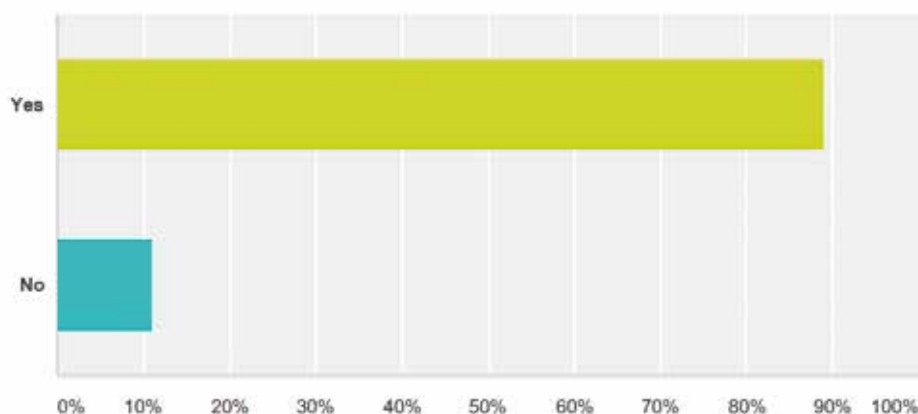
129 As an international body, the IBA GEI is well placed to draft a model code of conduct with its membership comprising experienced senior legal practitioners in many jurisdictions across the world. The insight gained through the survey gives the Working Group particular leverage with which to create a comprehensive and effective model code.

130 The overwhelming majority of respondents to the survey were positive about the IBA GEI's initiative to draft a global model code of conduct in 2017, with 85 per cent of multinationals' surveyed expressing their support. The results of the survey clearly demonstrate the perceived value of a model code to businesses that strive to maintain a high ethical standard for their operations, particularly across a number of jurisdictions.

131 Almost two-thirds of respondents also indicated that they were interested in participating in further discussions about the Report. Having successfully generated enthusiasm for this initiative, the survey has resulted in the IBA GEI being uniquely placed to access a wealth of knowledge and experience in business when drafting a model code.

132 Holding the opportunity available to create meaningful and lasting change to the way multinationals practise their corporate responsibility across the world, the Working Group is now in a position to capitalise on the knowledge gained through the preparation of the Report.

133 The Working Group intends that the Report informs the creation of a model code and in doing so will help to create an invaluable resource that shapes the way these companies implement global frameworks for success.