

Chapter 3

The **Internal Corporate Documents**

Table of Contents

A. THE COMPANY CHARTER	46
1. Charter Provisions	46
2. When to Amend the Charter	48
3. Who Can Amend the Charter	48
4. How to Amend the Charter	49
5. Registration of Charter Amendments	50
6. When Charter Amendments Become Effective	52
7. Disclosure of the Charter	52
B. THE BY-LAWS OF THE COMPANY	53
1. Types of By-Laws	53
2. How to Adopt and Amend By-Laws	54
C. COMPANY CODES OF CORPORATE GOVERNANCE.....	55
D. COMPANY CODES OF ETHICS	57
1. What Is a Code of Ethics	57
2. Why Adopt a Code of Ethics	57
3. How to Implement a Code of Ethics	58

The Chairman's Checklist

- ✓ Does the company have a valid charter, with provisions on the protection of shareholder rights, equitable treatment of shareholders, division of authority among the governing bodies, and information disclosure?
- ✓ How detailed is the charter compared to by-laws? Do the charter and by-laws merely copy the exact language of legislation?
- ✓ Is the charter freely available to interested parties and accessible on the internet?
- ✓ Has the company developed by-laws as recommended by the Federal Commission for the Securities Market's Code of Corporate Conduct? If yes, were these by-laws approved by the Supervisory Board or the General Meeting of Shareholders? Does the company regularly consult and follow its by-laws?
- ✓ Has the company adopted its own corporate governance code? If so, does the company code touch upon the principles of fairness, responsibility, transparency, and accountability? Does the company code provide recommendations on the relationship between the corporate bodies, notably the interaction between the Supervisory Board and General Director or Executive Board?
- ✓ Has the company identified a core set of values? Does the company have a code of ethics based on these values?

The charter is the founding document of a company. No company can be established without a charter.⁶⁸ A charter establishes a company, and determines its structure and purpose. It is fundamental to a company's system of corporate governance, ensuring the protection and equitable treatment of shareholders, distribution of authorities between the governing bodies, and disclosure and transparency of the company's activities. It also plays an important public role in relation to third parties since it provides information about the company, especially on its corporate governance system. The company is required to register the charter and its amendments with a state registration authority.⁶⁹

⁶⁸ Civil Code (CC), Article 98, Clause 3; LJSC, Article 11, Clause 1.

⁶⁹ CC, Article 51; Law on Joint Stock Companies (LJSC), Article 11, Clause 1; Articles 13 and 14; Law on State Registration of Legal Entities, Article 12.

The company may, and under certain circumstances must, adopt by-laws that expand the charter provisions. By-laws are useful in regulating detailed procedures for the company's governing bodies and can help avoid unwieldy charters that are difficult to understand and amend.

Company-level corporate governance codes and ethics codes allow the company to make its governance structure more transparent, and demonstrate the company's commitment to good corporate governance and good business practices.

This chapter examines corporate governance issues as related to charter provisions, and explains when and how a charter and by-laws can be amended, and how the amendments are registered. It further touches upon the important role that company-level corporate governance and ethics codes play.

A. The Company Charter

1. Charter Provisions

The charter must include minimum provisions related to the company's structure and charter capital, the authority of the governing bodies, and shareholder rights. Regardless of the company's activities, ownership and management structure, the charter must include the following mandatory provisions:⁷⁰

- Full and abbreviated name of the company;
- Location of the company;
- Legal type of company (open or closed);
- Number, nominal value, and types of shares (common or preferred), and the classes of preferred shares issued by the company;
- Shareholder rights by type and class;
- Amount of charter capital;
- Structure and authority of the company's governing bodies, and the procedure for the adoption of decisions by these bodies;
- Procedure for preparing and conducting the General Meeting of Shareholders (GMS);

⁷⁰ LJSC, Article 11, Clause 3.

Chapter 3. The Internal Corporate Documents

- Issues that must be resolved by a super-majority or a unanimous vote of the GMS, the Supervisory Board, and the Executive Board;
- Period within which the company holds the Annual General Meeting of Shareholders (AGM);
- Information concerning branches and representative offices of the company;⁷¹ and
- Amount of the reserve fund and the amount of annual deductions from the net profits of the company to the reserve fund.⁷²

In addition to the foregoing mandatory provisions, the Company Law requires certain additional provisions under specific circumstances.

Finally, other provisions are permitted as long as they do not conflict with the Company Law or other legislation.⁷³ These provisions give the company and its shareholders great flexibility in organizing the company structure, including its activities, financial structure, and shareholder rights. In other words, the charter largely determines the characteristics and activities of the company.

→ *For more information on specific types of charter provisions, see the model charter in Part VI, Annex 2 and the table of charter provisions in Annex 3.*

Company Practices in Russia: Many Russian companies copy the exact language of legislation into the charter and/or include many extraneous details. Neither practice contributes to the quality of the charter. The charter should include the information required by legislation (not the text of legislation) and other provisions that are needed for sound corporate governance. For example, the Company Law's Article 78, Clause 1 defines extraordinary transactions and permits the company charter to expand upon the definition. Instead of copying this provision, the company may want to specify what other transactions important to the company shall require the same approval regime as extraordinary transactions. In addition, the charter may stipulate provisions that are recommended by the FCSM Code and best suit the company's objectives.

⁷¹ LJSC, Article 5, Clause 6.

⁷² LJSC, Article 35, Clause 1, Paragraphs 1 and 2.

⁷³ LJSC, Article 11, Clause 3, Paragraph 3.

2. When to Amend the Charter

The charter must be amended when changes occur that affect any mandatory provisions. For example, amendments to the charter are required when the company:

- Reorganizes;⁷⁴
- Changes the amount of its charter capital;⁷⁵
- Changes the rights attached to different types and/or classes of shares;⁷⁶ and
- Establishes or liquidates a branch or a representative office.⁷⁷

The charter must also be brought into conformity with changes in legislation when new requirements are introduced that affect charter provisions.

3. Who Can Amend the Charter

As a rule, only the GMS has the authority to amend the charter.⁷⁸ However, under specific circumstances, special regimes, as illustrated in Table 1, are introduced whereby the amendments can be made by:⁷⁹

- The GMS, but upon the submission of a prior report by the Supervisory Board;
- The Supervisory Board; or
- A relevant state agency.

Circumstances	Competent Body	Legal Requirements
The company increases the charter capital by increasing the nominal value of issued shares.	The GMS	<ul style="list-style-type: none"> • Report by the Supervisory Board on the results of the share issue with a new nominal value; and • GMS' decision to increase the charter capital.

⁷⁴ LJSC, Article 15.

⁷⁵ LJSC, Article 11, Clause 3; Articles 28 and 29.

⁷⁶ LJSC, Article 11, Clause 3; Articles 31 and 32.

⁷⁷ LJSC, Article 11, Clause 3; Article 5, Clause 6.

⁷⁸ CC, Article 103, Clause 1; Article 48, Clause 1. There appears to be an inconsistency between the LJSC, Article 12, and the CC, Article 103, Clause 1, Section 1. The CC states that the decision to amend the charter falls under the exclusive authority of the GMS, while the LJSC provides for circumstances when other bodies can amend the charter.

⁷⁹ LJSC, Article 12, Clauses 2–5.

Chapter 3. The Internal Corporate Documents

Circumstances	Competent Body	Legal Requirements
The company increases the charter capital by issuing additional shares.	The GMS or Supervisory Board	<ul style="list-style-type: none">• Report by the Supervisory Board on the results of the share issue; and• Decision of the GMS or the Supervisory Board, if the Supervisory Board has such authority, to increase the charter capital.
The company decreases the charter capital by purchasing outstanding shares.	The GMS	<ul style="list-style-type: none">• Report by the Supervisory Board on the acquisition of shares; and• GMS' decision to decrease the charter capital.
The Supervisory Board establishes or liquidates representative offices and/or branches.	The Supervisory Board	<ul style="list-style-type: none">• The Supervisory Board's decision to establish or liquidate representative offices and/or branches.
The government, a state agency, or a municipal entity create or terminate a golden share arrangement.	The government, a state agency, or a municipal entity	<ul style="list-style-type: none">• The decision of the government, the state body, or a municipal entity to create or terminate golden shares.

4. How to Amend the Charter

Preparing amendments to the charter requires legal drafting skills and specialized knowledge of legislation.

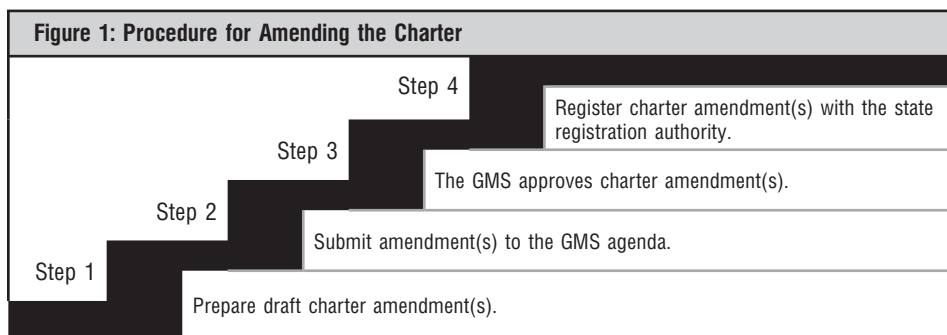
Best Practices: It is accepted practice that the company through its legal counsel/department prepares the charter amendments in cooperation with outside legal consultants and with the participation of the Corporate Secretary. The General Director should closely follow the process.

There are three ways a company can amend its charter:

- Changing existing charter provisions;
- Adding new charter provisions; or
- Approving an entirely new version of the charter (redrafting the charter), which is useful when many changes must be made.

The Russia Corporate Governance Manual

Figure 1 illustrates the procedure for amending the charter. The procedure for restating the charter is similar.



Source: IFC, March 2004

The GMS has the authority to approve the charter amendments with a $\frac{3}{4}$ -majority vote of shareholders participating in the GMS (unless the charter provides for a higher percentage of votes).⁸⁰ The approval of charter amendments that limit the rights of preferred shareholders requires two votes:⁸¹

- A $\frac{3}{4}$ -majority vote of all preferred shareholders of a particular class whose rights will be affected as a result of charter amendments (unless the charter provides for a higher percentage of votes); and
- A separate $\frac{3}{4}$ -majority vote of all other shareholders with voting rights participating in the GMS (unless the charter provides for a higher percentage of votes).

5. Registration of Charter Amendments

All amendments made to the charter must be registered with a state registration authority.⁸² As of 1 June 2004, the Ministry of Taxes and Collections is responsible for the registration of legal entities and charter amendments, and now serves

⁸⁰ LJSC, Article 49, Clause 4.

⁸¹ LJSC, Article 32, Clause 4, Paragraph 2.

⁸² The procedure for registering the charter is regulated by the Civil Code, the Company Law, and the Law on the State Registration of Legal Entities. See LJSC, Article 14.

Chapter 3. The Internal Corporate Documents

as the state registration authority.⁸³ The state imposes a fee for registering charter amendments of not more than RUR 2,000 each time amendments are registered.⁸⁴

The state registration authority must register charter amendments within five working days⁸⁵ from the day the company has submitted the following documents:⁸⁶

- Signed application form;
- Decision to amend the charter;
- Text of charter amendments; and
- Receipt verifying the payment of the state duty for the registration.

The official submission date is the date on which the state registration authority receives all required documents in the correct form.⁸⁷ The requirements for documents and the form of the written application are specified by law.⁸⁸

The registration is officially completed when the state registration authority registers the new charter or charter amendments in the registration books.⁸⁹

In case of charter amendments related to branches and/or representative offices, simplified procedures require the company to submit the following documents:

- A signed notification form; and
- The Supervisory Board's decision regarding a branch and/or a representative office.

The state registration authority must register charter amendments in the registration books within five days of the day the documents are submitted to the registration authority. The company is entitled to receive proof of registration in writing from the register.⁹⁰

⁸³ Resolution of the Government of the Russian Federation No. 319, 17 May 2002.

⁸⁴ Law on State Duty, Article 4, Clause 1.

⁸⁵ Law on State Registration of Legal Entities, Article 8, Clause 1.

⁸⁶ Law on State Registration of Legal Entities, Article 17, Clause 1.

⁸⁷ Law on State Registration of Legal Entities, Article 9, Clause 2.

⁸⁸ Resolution of the Government of the Russian Federation No 439, 19 June 2002.

⁸⁹ Law on State Registration of Legal Entities, Article 11, Clause 2.

⁹⁰ Law on State Registration of Legal Entities, Article 19, Clauses 1 and 2.

6. When Charter Amendments Become Effective

Charter amendments become effective at different times for the company and its shareholders, as well as third parties:

- **The company and its shareholders:** Charter amendments become effective upon the GMS approval;
- **Third parties:** Charter amendments become effective only after registration (or the proper notification of the state registration authority in case of amendments to provisions related to branches and representative offices).⁹¹ However, if third parties relied upon the amendments after they were adopted by the relevant governing body, but before state registration, the company must comply with these amendments as if they had been registered at the time of the *bona-fide* act.⁹²

7. Disclosure of the Charter

The charter is an important source of information for shareholders and potential investors. The original charter document must be kept at the offices of the executive bodies.⁹³ Shareholders, the External Auditor, and other interested parties have the right to inspect the original charter at the company's headquarters within seven days after filing a request.⁹⁴

Best Practices: It is good practice for companies to allow shareholders to view the original charter and provide shareholders with copies within five days.⁹⁵

Copies of the latest registered charter and amendments must be provided to shareholders on request. The company may not charge shareholders for more than the cost of making copies.⁹⁶

⁹¹ Law on State Registration of Legal Entities, Article 19, Clause 3; LJSC, Article 14, Clause 2.

⁹² CC, Article 52, Clause 3.

⁹³ LJSC, Article 89, Clause 2.

⁹⁴ LJSC, Article 11, Clause 4; Article 91, Clause 2.

⁹⁵ Federal Commission for the Securities Market's Code of Corporate Conduct (FCSM Code), Chapter 7, Section 3.1.1.

⁹⁶ LJSC, Article 91, Clause 2.

Best Practices: It is customary to provide copies of the charter to shareholders free of charge.

In practice, there is little justification for not providing shareholders and other interested parties with immediate access to the charter by posting it on the internet, which is a technically simple and cost effective solution.

→ For more on information disclosure included in the charter, see Part IV, Chapter 13.

B. The By-Laws of the Company

1. Types of By-Laws

By-laws are internal company documents that supplement and specify charter provisions. The following by-laws are mandatory:⁹⁷

- By-laws for the Revision Commission;
- By-laws for the executive bodies if established; and
- By-laws for branches and representative offices if established.

Other by-laws are optional. A company has the discretion to adopt other by-laws providing detailed procedures for the company's governing bodies. In any case, the company's by-laws must be consistent with the charter and cannot conflict with legislation.

Best Practices: Although certain provisions must be or should remain stipulated in the charter, by-laws have several advantages:

- By-laws do not need to be registered with the state registration authority, saving the company resources by avoiding registration fees and bureaucratic procedures;
- By-laws require a simple majority vote of shareholders with voting rights participating in the GMS, making it easier to adjust to changing circumstances;

⁹⁷ LJSC, Article 85, Clause 2, Paragraph 2; Article 70, Clause 1; Article 5, Clause 4.

- By-laws provide for the same level of shareholder protection as the charter, since the GMS approves most by-laws, in particular, those affecting shareholder rights; and
- Not all by-laws require shareholder approval. Some by-laws are approved by the Supervisory Board which requires simpler approval procedure compared to the GMS.

At the same time, certain provisions must appear either in the charter or by-laws:⁹⁸

- The way the GMS approves procedural (technical) decisions;
- The procedure for organizing and conducting Supervisory Board meetings; and
- The quorum needed for conducting valid Executive Board meetings.

2. How to Adopt and Amend By-Laws

If by-laws for the governing bodies are to be adopted, they must be approved by a simple majority vote of shareholders participating in the GMS.⁹⁹ The Supervisory Board submits the proposed by-laws for the GMS approval unless the charter provides otherwise.¹⁰⁰

The Supervisory Board has the power to adopt by-laws other than those for the company's governing bodies, for example, on information disclosure. The charter may grant the General Director or Executive Board the right to adopt all by-laws with the exception of those for the governing bodies.¹⁰¹

The Supervisory Board, and possibly the Executive Board, adopts by-laws with a simple majority vote. The charter and by-laws can stipulate a greater percentage of votes necessary for the Supervisory Board to approve by-laws.¹⁰²

⁹⁸ LJSC, Article 49, Clause 5; Article 68, Clause 1; Article 70, Clause 2.

⁹⁹ LJSC, Article 48, Clause 1, Section 19; Article 49, Clause 2.

¹⁰⁰ LJSC, Article 49, Clause 3.

¹⁰¹ LJSC, Article 65, Clause 1, Section 13.

¹⁰² LJSC, Article 68, Clause 3, Section 1.

Table 2: An Overview of Company By-Laws				
By-Laws by Topic	Who Approves the By-Laws	Required	Recommended	See in Annexes
Executive Board	GMS	✓	✓	✓
Revision Commission	GMS	✓	✓	✓
Branches and Representative Offices ¹⁰³	Supervisory Board or Executive Bodies ¹⁰⁴	✓		
GMS	GMS		✓	✓
Supervisory Board	GMS		✓	✓
Control and Revision Service (Internal Audit Function)	Supervisory Board		✓	✓
Information Policy	Supervisory Board or Executive Bodies		✓	✓
Dividend Policy	Supervisory Board or Executive bodies		✓	✓
Corporate Secretary	Supervisory Board or Executive Bodies		✓	✓
Ethical Standards	Supervisory Board		✓	✓
Risk Management	Supervisory Board or Executive Bodies		✓	✓
Supervisory Board Committees	Supervisory Board		✓	✓

C. Company Codes of Corporate Governance

A company-level corporate governance code is a principle-based statement on the company's corporate governance practices. It is intended to make the company's governance structure more transparent and demonstrate the company's commitment to good corporate governance by developing and furthering:

- Responsible, accountable, and value-based management;
- An effective Supervisory Board and executive bodies that act in the best interests of the company and its shareholders, including minority shareholders, and seek to enhance shareholder value in a sustainable manner; and

¹⁰³ Only if these are established by the company.

¹⁰⁴ The General Director or the Executive Board can only do so if authorized by the charter.

- Appropriate information disclosure and transparency, as well as an effective system of risk management and internal control.

By adopting, following, and updating a company-level corporate governance code on a regular basis, the company confirms its desire to demonstrably lead and promote good corporate governance. To foster the confidence of its shareholders, employees, investors, and the public, a company-level corporate governance code should, however, go beyond the established legal and regulatory framework and embrace both nationally and internationally recognized best corporate governance practices.

Company Practices in Russia: Some Russian companies have voluntary corporate governance codes or guidelines in addition to their charter and by-laws. Most of these codes are brief and simple statements of principle. They generally reflect the desire of the Supervisory Board and management to conduct the operations of the company in an honest, fair, legal, and socially responsible manner.

Company codes and guidelines may cover a vast number of topics including:

- **General issues of corporate governance:**
 - Goals and objectives of the company;
 - Relationship between the shareholders and the Supervisory Board;
 - Relationship between the Supervisory Board and the General Director or Executive Board; and
 - Relationship between controlling shareholders and minority shareholders.
- **Good Supervisory Board Practices:**
 - Composition, including the number of independent directors;
 - Number and structure of committees;
 - General working procedures; and
 - Remuneration of non-executive directors.
- **Good Executive Board Practices:**
 - Executive remuneration; and
 - Interaction and relationship with the Supervisory Board.
- **Shareholder Rights:**
 - On organizing and conducting the GMS;
 - Minority shareholder protection;
 - Disclosure of related party transactions; and
 - The company's dividend policy.

- **Disclosure and Transparency Issues:**
 - Internal control function, including risk management;
 - Policy on the use of audit and consulting services and External Auditor rotation; and
 - Accounting and disclosure policies and standards.
- **Accountability of the Company to Stakeholders:**
 - Communications with investors and investor relations.

Which topics to cover will depend upon the issues of greatest relevance to the company.

As a rule, company codes are approved by the Supervisory Board, communicated to shareholders and investors, and published on the company's internet site. Company codes or guidelines must be consistent with legislation, as well as the charter and by-laws, and should generally follow the provisions of the FCSM Code. They cannot, however, replace the charter and by-laws.

→ See Part VI, Annex 4 for a model company-level corporate governance code.

D. Company Codes of Ethics

1. What Is a Code of Ethics

A Code of Ethics (also referred to as a code of conduct, or ethics or responsibility statement) is a basic guide of conduct that imposes duties and responsibilities on a company's officers and employees towards its stakeholders, including, among others, colleagues, customers and clients, business partners (e.g. suppliers), government, and society.

2. Why Adopt a Code of Ethics

A company may wish to adopt a Code of Ethics because it:

- **Enhances the company's reputation/image:** A company's reputation and image constitutes an integral, if intangible, part of its assets. Establishing a Code of Ethics is an effective way to communicate the value a company places on good business practices.

- **Improves risk and crisis management:** A Code of Ethics can bring potential problems to management's and directors' attention before a full-blown crisis occurs in that a Code of Ethics sensitizes and encourages employees to react to ethical dilemmas.
- **Develops a corporate culture and brings corporate values to the forefront:** A Code of Ethics developed by and widely distributed to the company's officers and employees can help build a cohesive corporate culture, based on a shared set of values, that helps guide employees in their daily work.
- **Advances stakeholder communications:** A Code of Ethics also has a strong demonstration effect towards the company's stakeholders during times of crisis, communicating the company's commitment to ethical behavior and underlining that possible transgressions are exceptions rather than the rule.
- **Avoids litigation:** A Code of Ethics, in combination with an effective ethics program, can help minimize litigation risk resulting from fraud, conflict of interest, corruption and bribery, and insider trading.

3. How to implement a Code of Ethics

Every company is different in terms of size and industry, and each has a different business culture, set of values, and ethically sensitive operational areas. A Code of Ethics should reflect these differences.

A company's Code of Ethics should go beyond simple rules and, instead, focus on core values. Before drafting a Code of Ethics, it is fundamental that a company has identified and formulated its values.¹⁰⁵

Drafting a Code of Ethics goes beyond paper. Developing a Code is at least as much process as outcome. In assessing the need for a Code of Ethics, the company should begin by studying its internal ethics climate, the amount and type of ethical guidance its employees and officers receive, and the risk the company faces without such a Code.¹⁰⁶ As a second step, the company should seek buy-in from every part of the organization, from senior management to workers, if the Code is to truly

¹⁰⁵ For more information on how to design, manage, and implement Code of Ethics, see Kenneth Johnson and Igor Abramov, *Business Ethics: A Manual for Managing a Responsible Business Enterprise* (Washington, D.C.: U.S. Department of Commerce, 2004). See also: www.mac.do.gov/ggp.

¹⁰⁶ Kenneth Johnson and Igor Abramov, *Business Ethics: A Manual for Managing a Responsible Business Enterprise*, Chapter 3, pp. 45–46 and Chapter 5, pp. 93–97.

Chapter 3. The Internal Corporate Documents

guide the company's ethical practice.¹⁰⁷ Most importantly, the company should ensure that a broad consultative process takes place within the company.¹⁰⁸ By the time the Code of Ethics is submitted for the Supervisory Board's approval, every employee should be familiar with the Code and have played a role in drafting it — a process that ensures buy-in and helps with its implementation.

The company must also recognize that the “tone at the top” matters, and that public and demonstrable commitment by senior management and directors is a key component to the implementation of a Code of Ethics.

A Code of Ethics should be user-friendly, i.e. provide practical guidance to the company's management and employees on how to handle ethics problems that may arise in the day-to-day course of business.¹⁰⁹ In support of a Code of Ethics, the company may wish to establish an ethics training program,¹¹⁰ as well as appoint an ethics officer and create an ethics office and/or establish a Supervisory Board Ethics Committee to advise and educate officers and employees, and provide guarantees for confidential counseling.

The Code of Ethics should be subject to continuous change, revision, and renewal by the Supervisory Board's Ethics Committee.

→ *For a model company Code of Ethics, see Part VI, Annex 5.*

¹⁰⁷ Kenneth Johnson and Igor Abramov, *Business Ethics: A Manual for Managing a Responsible Business Enterprise*, pp. 53–56.

¹⁰⁸ Many companies choose to establish a working group or task force to produce a first draft of the company's Code of Ethics for the Supervisory Board's approval, consisting of representatives from every level. See also: Kenneth Johnson and Igor Abramov, *Business Ethics: A Manual for Managing a Responsible Business Enterprise*, pp. 57–61.

¹⁰⁹ The Code of Ethics itself should include a practical procedure for raising an ethical issue (“first go to your supervisor, then to...”), and even a procedure for suggesting changes in the Code. The Code should also include an ethical decision-making model (“Step 1: Check your facts, Step 2...”). See also: Kenneth Johnson and Igor Abramov, *Business Ethics: A Manual for Managing a Responsible Business Enterprise*, Chapter 6, pp. 138–144.

¹¹⁰ A practical ethics training program should be organized around cases that might arise within the context of an employee's daily work and be organized in an interactive manner. See also: Kenneth Johnson and Igor Abramov, *Business Ethics: A Manual for Managing a Responsible Business Enterprise*, Chapter 7, pp. 155–165.