# Focus on Culture and Conduct Brings New Considerations for Corporates and Investors

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***Companies and investors must consider the impact that poor corporate culture may have on their potential to achieve an exit, in particular an IPO.***

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It is now apparent that no institution or business unit, whatever its geography, industry, sector, or size, is above the negative impact of a poor culture. Culture- related issues at Uber, Sports Direct, Boeing, and others highlight the implications of getting things wrong, including financial loss, reputational issues, and damage to investor confidence.

Often defined as "the way that people within an organisation behave when no one is looking", culture is a growing area of focus for regulators and policymakers around the world. The focus on culture has become more acute during the COVID-19 pandemic, as investors and consumers observe and judge companies based on their navigation of the crisis, particularly treatment of employees and wider societal stakeholders.

In our view, the global regulatory direction of travel is clear. Companies and investors planning an exit must consider the impact that poor corporate culture may have on their potential to achieve an exit, in particular an IPO, and to prosper as a company in the longer term.

**Regulators Care About Culture and Conduct**

In the financial services sector, the UK's Financial Conduct Authority (FCA) leads the way in the work it is doing on corporate culture and conduct, having set out heightened expectations relating to not just financial conduct, but also non-financial conduct. In the US, the New York Federal Reserve, the Securities and Exchange Commission, the Office of the Comptroller of the Currency, the Financial Industry Regulatory Authority, and the Consumer Financial Protection Bureau have all also recently emphasised their focus on these topics. And the importance of culture extends beyond financial services — a wide range of prosecutors and regulators are increasingly coordinating efforts and sharing learnings.

**IPO Preparation**

Companies preparing for an IPO need to pay close attention to cultural indicators as part of the transition to the additional scrutiny and reporting obligation that a listing brings. There is increasing focus on listed companies to monitor and disclose their company culture. The Financial Reporting Council's (FRC) UK Corporate Governance Code, which is applicable to all companies listed on the premium segment of the FCA's Official List, requires continual assessment and monitoring of company culture to ensure that policies, practices, and behaviours are aligned with corporate purpose, values, and strategy. In particular, the FRC has indicated that boards should develop a common and consistent language around culture, noting that sources of cultural insights can come from, among other things, turnover rates within the company, employee surveys, health and safety data, and promptness of payments to suppliers.

Furthermore, UK public companies are required under a combination of statutes, rules, and guidance to disclose how they have effected good culture in their organisation, including through granular disclosure of executive remuneration, diversity and recruitment policies, and discussion of how directors have considered and discharged their duties to key stakeholders over the previous financial year. Pre-IPO candidates, particularly those seeking a premium listing in London, should consider assessing their internal culture, as well as their systems and controls, to ensure that they can operate effectively once listed and on an ongoing basis.

**Measuring and Monitoring Culture — What Are the Key Metrics?**

Preparing for an exit, particularly an IPO, can represent a reflection point for investors and management to ensure appropriate policies and procedures are in place. While there is no easy way to identify a good or bad culture, in a corporate context, values, attitudes, and behaviours both within the company and in relations with external stakeholders are critical. Often this is set out in defined corporate values, such as integrity, respect, innovation, safety, transparency, trust, and honesty. But to see how widely adopted such values are within the business, it is usually necessary to look at a broad range of factors, including the company's purpose and strategy, the communication of its expected behaviours through internal guidelines and codes of conduct, its recruitment and reward processes, and its interactions with third parties. Latham & Watkins' guide *Culture—A Practical Framework for Sustainable* Change seeks to bridge the theory-practice divide by outlining practical measures and techniques that companies can usefully adopt in their quest to institute a meaningful, objectively monitorable, and operationally workable culture change program.

**Remedying Toxic Culture**

When allegations of a toxic culture or broader conduct problems (such as siloed thinking, dominant CEOs, leadership arrogance, pressure to meet numbers, overambitious targets etc.) are identified, an independent cultural review is often the first step towards remediation. Any review process must be closely tailored to the business and the relevant issues. However, such reviews frequently entail policy review, targeted interviews, and focus groups, with post-review reporting and practical recommendations. Some companies have established dedicated culture or conduct subcommittees, while others have extended the remits of existing committees to explicitly cover culture. The same remedy will not be right for every company, but all boards are encouraged to incorporate culture as an agenda item, pay close attention to measured cultural indicators, and ensure that positive culture and conduct is promoted throughout the company.