

# Anti-Corruption Ethics and Compliance Handbook for Business



THE WORLD BANK



# ANTI-CORRUPTION ETHICS AND COMPLIANCE HANDBOOK FOR BUSINESS



This publication has been jointly co-ordinated by the Secretariats of the OECD, UNODC, and World Bank under their sole responsibility. It does not necessarily represent the views of the countries, business associations, or individual companies that are members of the institutions that have contributed to this publication.

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## *Message from the OECD, UNODC and World Bank*

The idea for this handbook began with G20 governments looking for ways to practically implement the 2010 G20 Anti-Corruption Action Plan. This Plan recognises the integral role the private sector plays in the fight against corruption and calls for greater public-private partnership in this effort. Since the adoption of the Plan, G20 governments and their private-sector counterparts have met on a number of occasions to look at ways to build this partnership.

One of the suggestions that has come out of the discussions has been companies' observation that the myriad of existing anti-corruption principles for business can be confusing, especially for small and medium-sized enterprises with limited resources, which are looking for concrete ways to prevent corruption in their business dealings in an increasingly complex and globalised operating environment.

To address this challenge, this handbook has been developed by companies, for companies, with assistance from the Organisation for Economic Co-operation and Development (OECD), the United Nations Office on Drugs and Crime (UNODC), and the World Bank. Our three organisations only facilitated the work of private-sector organisations, which have volunteered their expertise and time with us. These organisations include: representatives from the accounting and auditing profession, the Basel Institute on Governance, the Business and Industry Advisory Committee to the OECD (BIAC), the International Bar Association (IBA), the International Chamber of Commerce (ICC), the World Economic Forum Partnering Against Corruption Initiative (PACI), Transparency International (TI), and the UN Global Compact.

The handbook is not intended to create new standards or represent any form of legally binding requirement for businesses. It has been developed to serve as a useful, practical tool for companies seeking compliance advice in one, easy-to-reference publication.

The handbook is divided into three sections. The first section provides an overview of the international anti-corruption framework, within which companies conducting international business must operate. The second section provides a brief introduction to how companies can assess their risk in order to begin developing an effective anti-corruption ethics and compliance programme. The third and most significant section brings together the major business guidance instruments. A comparison of these instruments reveals that they all largely include the same basic anti-corruption ethics and compliance elements. These elements are further illustrated using real-life, anonymised case studies provided by companies. Finally, the handbook includes as an annex a quick-reference table providing a cross-comparison of all the major business guidance instruments referenced in this handbook.

The OECD, UNODC, and World Bank hope this handbook will be a useful resource not only for companies headquartered in G20 countries, but for all companies that recognise the need for developing and implementing robust anti-corruption ethics and compliance programmes.



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- Andrew Hayward, Head of Ethics and Compliance, **Balfour Beatty plc**
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<sup>1</sup> Contributors are listed alphabetically by organisation.



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## FEEDBACK AND FURTHER CONTRIBUTIONS

Feedback on the contents of this handbook, and further contributions of case studies illustrating good practices for implementing anti-corruption ethics and compliance programmes and measures, are very welcome. To provide feedback, please contact:

### OECD

Mary Crane-Charef  
Mary.Crane-Charef@oecd.org

### UNODC

Julia Pilgrim  
julia.pilgrim@unodc.org



## A. THE INTERNATIONAL LEGAL FRAMEWORK FOR COMBATING CORRUPTION

In the past decade, an international legal framework has been developed to tackle corruption. This framework includes the United Nations Convention against Corruption, or the UNCAC, which entered into force in 2005 and currently has 168 parties, and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force in 1999 and includes 40 states Parties.

At the regional level, the international anti-corruption framework also includes the:

- Inter-American Convention Against Corruption, which entered into force in 1997 and whose Parties include the member countries of the Organization of American States;
- African Union's Convention on Preventing and Combating Corruption, which was adopted in 2003 and has 33 African members;
- Council of Europe's Criminal Law Convention on Corruption (adopted in 1998) and Civil Law Convention on Corruption (adopted in 1999);
- European Union's anti-corruption policy, outlined in Article 29 of the Treaty on European Union and carried out via two main instruments: the Convention on the Protection of the European Communities' Financial Interests (1995) and the Convention against Corruption Involving European Officials or Officials of Member States of the European Union (1997).

These instruments mandate that State Parties criminalise and punish a variety of corrupt practices. Relevant domestic laws have a direct impact on business, especially in States Parties to instruments that require the establishment of liability of legal persons for corrupt acts.

Some of the international conventions mentioned above (such as the UNCAC and the Council of Europe Criminal Law Convention on Corruption) require holding legal persons liable for corrupt practices, as does the OECD Anti-Bribery Convention. Additionally, some of the instruments expressly promote the adoption by businesses of compliance programmes and codes of conduct. The OECD Recommendation for further Combating Foreign Bribery, adopted in 2009, asks Member countries to encourage companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. In support of this provision, the OECD issued a *Good practice guidance on internal controls, ethics, and compliance*. The AU Convention also requires States Parties to establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights.

The World Bank's sanctions system complements this international anti-corruption framework. The Bank may issue a public letter of reprimand to the sanctioned party, order its debarment or demand restitution of ill-gotten gains to the government or to the victim of the corruption. In addition to regular debarment, the Bank can impose conditional non-debarment and debarment with conditional release.

## B. RISK ASSESSMENT<sup>2,3</sup>

### *B.1 Introduction*

The primary objective of the corruption risk assessment is to better understand the risk exposure so that informed risk management decisions may be taken. A structured approach for how enterprises could conduct an anti-corruption risk assessment is outlined in the steps below. Readers should note that each enterprise's own risk assessment exercise is unique, depending on that enterprise's industry, size, location, etc.

### *B.2: Risk Assessment Approach*

#### *Step 1: Establish the process*

An understanding of corruption risks, schemes, and potential legal consequences is a prerequisite for an effective risk assessment. Therefore, it is useful to raise awareness with key member firm stakeholders that will be involved in the process. An introductory workshop prepared by the owner of the anti-corruption policy/programme (e.g. legal, risk management, ethics and compliance) — and, if possible, senior management — might be considered to explore the corruption risks in more detail. The objective is to address the (sensitive) topic of corruption, acknowledge that the enterprise might be exposed to corruption risks, and identify the steps to explore the risk exposure. If an enterprise wants to identify its risk exposure and commits to a robust corruption risk assessment, it is wise to consider:

- Who owns the process, and who are the key stakeholders?
- How much time will be invested in the process?
- What type of data should be collected, and how?
- What internal and external resources are needed?
- What framework will be used to document, measure, and manage the corruption risk?

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2. Reference may also be made to chapter II of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide":  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

3. This section of the Anti-Corruption Ethics and Compliance Handbook for Business was provided by the Risk Assessment Sub-Working group of the United Nations Global Compact Working Group on the Tenth Principle against Corruption.

## ***Step 2: Identify the risks***

In this step, an enterprise would identify risk factors (e.g. why would corruption occur at our enterprise?) and risks and schemes (e.g. how would corruption be perpetrated at our enterprise?). During this step, the enterprise might ask questions such as: where in our business processes is there exposure to corruption risks, what type of transactions and arrangements with government employees and third parties could result in creating corruption risks, and what locations where we do business pose a greater corruption risk than others?

There are many different ways for an enterprise to collect relevant data and information on why and how corruption risks may occur. These can include:

- Desktop research.
- Reports from the internal audit function on compliance risks, past incidents of noncompliance, and common corruption risks.
- External sources, such as research on corruption cases or allegations in the industry and country profiles.
- Understanding of the specific areas of potential direct and indirect interaction with government employees.
- Interviews with individuals from functions such as legal, risk management, ethics and compliance, internal audit and procurement, as well as with senior management of business/divisions at the country, regional, or local level.
- Surveys, including self-assessments of employees and external parties.
- Workshops or brainstorming sessions to explore corruption risks.

## ***Step 3: Rate the Inherent Risk***

In order to allocate resources efficiently and effectively to an enterprise's identified corruption risks and the associated schemes, one good practice is to rate both the probability that each scheme might occur and the corresponding potential impact of that occurrence. The aim is to prioritise the responses to these corruption risks in a logical format based on a combination of their probability of occurrence and their potential impact should they occur. There is some subjectivity in this assessment, and the ratings will be influenced by the experience and backgrounds of individuals involved in the ratings. A simple qualitative scale could be used to classify each scheme's probability or potential impact as either (i) high, medium, or low, or (ii) very high, high, medium, low, and very low, or a quantitative scale, with scores applied judiciously to each scheme, could be used.

Combining the probability and potential impact assessments for each corruption scheme produces an assessment of inherent corruption risk. The inherent risk represents the overall risk level of each scheme without consideration of existing controls. It is these areas where mitigating controls will likely be most important in mitigating corruption schemes.

#### ***Step 4: Identify and rate mitigating controls***

Once the corruption risks and schemes have been identified, the risk assessment team should consider undertaking the process of mapping existing controls and mitigating activities to each risk and scheme. This is important because the controls should be commensurate with the probability and potential outcomes of misconduct. In documenting controls, an enterprise should differentiate between **scheme-specific** controls and **general (entity-level)** controls, and **preventative** vs. **detective** controls. Most identified controls can be labelled as either preventative or detective, though some may serve dual purposes. Information about relevant controls can be obtained through a variety of means. While the review of control and process documentation is typically a key step, relevant controls can also be identified via interviews and targeted surveys with stakeholders who can help identify the appropriate controls. In addition, during this step, the team or individual leading the anti-corruption risk assessment effort could also assess with the business process owners whether the mitigating controls and programmes identified are indeed functioning as per the policy and process. It is common for several controls to be selected as mitigation for each risk and scheme. At the end of this step, the enterprise would likely have identified relevant mitigating controls, if any, for each of the risks and schemes identified in step 2.

There are many different ways to rate and communicate the design and effectiveness of the mitigating controls. A simple qualitative scale could be used to classify each set of controls that mitigate a risk or scheme as either (i) effective/low risk, partially effective/medium risk or ineffective/high risk, or (ii) very effective/very low risk, effective/low risk, partially effective/medium risk, somewhat effective/high risk and ineffective/ very high risk, or a quantitative scale with numerical-value scores applied to each scheme could be used.

#### ***Step 5: Calculate the residual risk***

Residual risk is the extent of risk remaining after considering the risk reduction impact of mitigating controls. In spite of anti-corruption programmes and their internal controls for mitigating the risk of corruption schemes' occurring, it is usually still possible for such risks to occur. As a result, there will normally be some level of residual risk for each corruption scheme. An assessment of residual risk is thus an important consideration as it can be used to assess whether existing controls are effective and proportionate to the level of inherent risk. As with inherent risk, there is an element of judgement involved in assessing the residual risk of each corruption risk/scheme. If a qualitative scale, such as high/medium/low, was used for the inherent risk and controls risk ratings, then a similar scale can readily be used for residual risk. On the other hand, should strong controls be identified to mitigate the high inherent risk scheme, the control risk would be low and the residual risk would likely then be determined to be low. If a quantitative scale is used to determine inherent risk and the control risk ratings, then residual risk could be calculated as a function of inherent risk and control risk. Score ranges would need to be assigned to determine whether the residual risk is low, medium, or high.

#### ***Step 6: Develop an action plan***

An enterprise can evaluate the residual risk of each corruption scheme to determine whether a corruption risk response is needed and, if so, what the desired elements of that plan would be. A key determinant of the response plan is the level of risk tolerance or risk appetite, which will vary from enterprise to enterprise. For any corruption scheme that has a residual risk within the risk tolerance set by management and approved by those charged with governance, no further risk mitigation is required. Management may choose to implement additional risk mitigation if it believes the cost-benefit ratio to be attractive, but this is not essential. For any corruption scheme that has a residual risk greater than the risk tolerance set by management and approved by those charged with governance, action is necessary to

reduce the risk until it is within the tolerance threshold. For these items, a corruption risk response plan is needed.

### B.3: Documentation of Results

#### *Risk registers*

Anti-corruption risk assessments are often documented using detailed spread sheets or database templates such as a risk register. Each risk factor, risk, and scheme can be documented individually in a risk register. This register can also be used to document the ratings for each risk and scheme as well as for the programmes and controls that mitigate each risk.

An illustration of a sample risk register template is as follows:

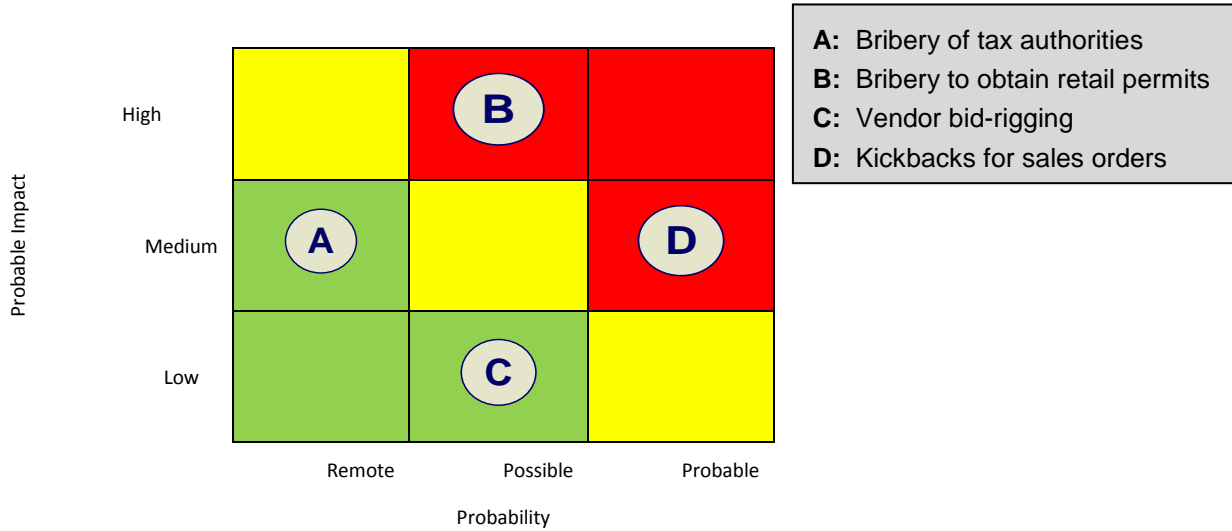
Location/Region: ABC Business Unit: XYZ								
Corruption Risk Factor	Corruption Risk	Corruption Scheme	Probability	Potential Impact	Inherent Risk	Anti-Corruption Controls	Control Risk Rating	Residual Risk Rating
Local business climate	Bribery of a government officials	Potential improper payments to government officials in order to obtain permits	Medium	High	High	<ul style="list-style-type: none"> <li>- Global Anti-Corruption Policy and Procedures, including specific content on payments to government officials</li> <li>- Anti-corruption training for employees that is tailored for select regions and key functions</li> <li>- Global whistleblower hotline</li> <li>- Annual anti-corruption audits on payments to government officials</li> </ul>	Effective	Medium

#### *Heat Maps*

Heat maps can also be an effective tool to summarise the results of a corruption risk assessment. A corruption risk heat map shows risks identified by the enterprise, placed according to their likelihood and potential impact, on a background of multiple colours with each colour representing a different overall level of risk. Simple heat maps typically have sections that are red, yellow, or green, denoting high-risk, medium-risk, and low-risk, respectively.

Heat maps can be used both to illustrate a consolidated enterprise-wide view and to illustrate views by location or function. Heat maps are flexible by design and can be developed for individual risks or can show categories that include multiple different types of risks.

**Example Heat Map -**



***B.4. Linkage between risk assessment and other compliance programme elements***

A good anti-corruption risk assessment allows enterprises to develop and maintain a compliance program that is tailored and risk-based. The risk assessment entails understanding how various anti-corruption programmes and controls are working in an enterprise, as well as their effect on risks. Only then can the enterprise direct compliance resources to the best use. For example, employee training is a critical part of any anti-corruption compliance programme, but it is not always logistically practical to provide all employees in a large enterprise with the same type or intensity of anti-corruption training. One solution might be to provide tailored and targeted training to the employees whose activities entail higher corruption risk areas. Training, like almost every other aspect of an effective anti-corruption program, must be targeted and one tool in making the trainings more targeted is to factor the results of the corruption risk assessment.

***B.5: Risk assessment as an ongoing dynamic process***

Effective anti-corruption risk assessment should be performed periodically, e.g. on an annual basis. There also may be triggering events such as entry into new markets, significant reorganisations, mergers, and acquisitions that will create opportunities for refreshing the risk assessment. Continually deploying resources in the most effective manner requires a current and accurate understanding of the risks.

Without high-level management support, risk assessments run the risk of being an academic exercise without any practical impact on an enterprise. To mitigate this risk, active involvement of management is paramount. Management should be responsible for performing the risk assessment and reporting periodically to those charged with governance on the status and results of the anti-corruption risk assessment as well as on the implementation of any resulting risk mitigation action plans. For larger enterprises, a good strategy is also to have operating unit/regional location ownership of the anti-corruption risk assessment. In this approach, each operating unit/regional location is responsible for performing the risk assessment related to its segment. This allows individuals with specific local, business, and industry knowledge to compile the risk assessment for each relevant segment based on parameters and guidelines provided by a centralised owner (e.g. from headquarters).



## C. DEVELOPING AND IMPLEMENTING AN ANTI-CORRUPTION ETHICS AND COMPLIANCE PROGRAMME<sup>4,5</sup>

This section of the handbook aims to bring together the main internationally recognised business instruments on anti-bribery. These include, in alphabetical order:

- Anti-Corruption Code of Conduct for Business (APEC: Asia-Pacific Economic Co-operation)
- Business Principles for Countering Bribery (TI: Transparency International)
- Good Practice Guidance on Internal Controls, Ethics and Compliance (OECD: Organisation for Economic Co-operation and Development)
- Integrity Compliance Guidelines (World Bank)
- Principles for Countering Bribery (PACI: World Economic Forum Partnering Against Corruption Initiative)
- Rules on Combating Corruption (ICC: International Chamber of Commerce)

The chapters in this section reflect the 12 main anti-bribery elements included in all of these instruments. Each chapter includes the relevant excerpts from each instrument with a case study based on actual experience to illustrate how such a compliance measure could be implemented in practice. (See Annex 1 for a comparison table of all eight business guidance instruments on anti-bribery referenced in this handbook.)

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4 The reference (in alphabetical order) to any of the principles in the handbook is without prejudice of their legal status and standing.

5 Reference may also be made to chapter III of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide":  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

## **C.1: Support and commitment from senior management for the prevention of corruption<sup>6</sup>**

### *a) Compilation of references to international business principles<sup>7</sup>*

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.c. Leadership: The Board (or equivalent) and the CEO should play a role in the launching of the Programme and demonstrate ownership and commitment to the Code and Programme.

#### **Business Principles for Countering Bribery**

2. The Business Principles:

(...) These Business Principles are based on a Board commitment to fundamental values of integrity, transparency and accountability.

6.1.1 The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's programme.

#### **ICC Rules on Combating Corruption**

##### **Part III: Elements of an Efficient Corporate Compliance Programme**

...

##### **Article 10 (Elements of a Corporate Compliance Programme):**

...

Each Enterprise should consider...

a) expressing a strong, explicit and visible support and commitment to the Corporate Compliance Programme by the board of Directors or other body with ultimate responsibility for the Enterprise and by the Enterprise's senior management ("tone from the top").

#### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.1. [Companies should consider] ... strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery.

<sup>6</sup> In relation to this international business principle, reference may also be made to article 34 of the UNCAC and chapter III, section A of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide" ([http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf))

<sup>7</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

### **PACI Principles for Countering Bribery:**

Principle 5.1.3: The Board of Directors (or equivalent body), Chief Executive Officer (or executive board) and senior management should demonstrate visible and active commitment to the implementation of the PACI Principles.

### **World Bank Group Integrity Compliance Guidelines:**

2.1 Leadership: Strong, explicit, visible, and active support and commitment from senior management, and the party's Board of Directors or similar bodies, for the party's Integrity Compliance Programme (Programme) and its implementation, in letter and spirit.

#### *b) Case studies*

#### **Case Study 1: A multinational company engages senior management in the development of its compliance programme**

Company A is a medium-sized multinational company with its head office in a European country. In the recent past, Company A was involved in a foreign bribery investigation by Italian authorities. The prosecution alleged that Company A's intermediaries conspired with executives of the company to commit bribery in the process of obtaining tenders in foreign countries. Company A itself also came under investigation.

As news broke of its involvement in the investigation, Company A immediately suspended the top managers involved. It was a decision adopted by the board: the board decided to suspend itself and contextually appointed a new CEO and a new board. Also, for the first time in the history of the company, ownership was separated from management.

Company A did not have an organisational model for preventing bribery before the investigation. Therefore, there were no internal policies addressing foreign bribery. On the advice of Company A's defence counsel, the board engaged a risk management and compliance firm to assist in this process. By deciding to adopt a governance model that addressed corporate criminal liability, the new board had also begun to develop an appropriate programme to prevent foreign bribery. The independent compliance firm, in collaboration with Company A's counsel and senior management, performed a detailed assessment on a number of risk areas. As part of this process, the firm interviewed relevant employees in each risk area, from senior management to staff. The CEO and the board were often engaged in discussions with the consulting firm, allowing the drafting of the overall policies that were tailored to the company's business model and reflected its operations. Following the results of the risk assessment, a new organisational model was drafted that included policies and procedures to guard against potential corruption risks. Company A's board swiftly approved the new model.

During interviews, which lasted several hours each, senior and key operational managers of all of the company's departments explained their roles and the day-to-day operations to the consulting firm. Thanks to this transfer of knowledge, the outside firm was then able to draft relevant detailed procedures for each department.

The board's strong backing of such a process, which could have been seen as otherwise intrusive, was fundamental in allowing swift access to information and openness by the operational managers. Members of the board even reviewed drafts of the policies and were actively engaged in the process, and also the operational managers reviewed the procedures relevant to their area and provided the outside firm with invaluable insights on the company's operations.

As part of the new organisational model, Company A adopted a code of ethics, put into place policies and procedures, and set up an independent supervisory body with the mandate to ensure that policies and procedures are respected. The code of ethics, policies and procedures were put on its intranet and made available to all employees. In addition, the independent compliance firm held training courses of 20 hours per each risk area for all relevant employees. Senior management accompanied the consulting firm during the training programme, introducing them to Company A's employees and explaining the importance of the new "zero tolerance" approach towards foreign bribery in particular and corporate crime in general.

## C.2: Developing an anti-corruption programme<sup>8</sup>

### a) *Compilation of references to international business principles*<sup>9</sup>

#### **APEC Anti-Corruption Code of Conduct for Business:**

2. The enterprise, in consultation with employees, should develop a programme, reflecting its size, business sector, potential risks and locations of operation that clearly and in reasonable detail articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control. The Programme should be consistent with all laws relevant to countering bribery in all the jurisdictions in which the enterprise operates. It should apply to all controlled subsidiaries, foreign and domestic.

4.e. Human resources (par. 2). The human resource policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, and employee representative bodies, as appropriate.

#### **Business Principles for Countering Bribery:**

2. The Business Principles:

- The enterprise shall prohibit bribery in any form, whether direct or indirect
- The enterprise shall commit to implementing a Programme to counter bribery. The programme shall represent an enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

3.1. An enterprise should develop a Programme that, clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control.

3.3. The Programme should be consistent with all laws relevant to countering bribery in each of the jurisdictions in which the enterprise transacts its business.

3.4. The enterprise should develop the Programme in consultation with employees, trade unions or other

<sup>8</sup> Reference may also be made to chapter III, section B of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide":  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>9</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

employee representative bodies and other relevant stakeholders.

3.5. The enterprise should ensure that it is informed of all internal and external matters material to the effective development and implementation of the Programme, and, in particular, emerging best practices including engagement with relevant stakeholders.

#### **ICC Rules on Combating Corruption:**

##### **Part III: Elements of an Efficient Corporate Compliance Programme**

##### **Article 10 (Elements of a Corporate Compliance Programme):**

Each Enterprise should consider...

d) Making it the responsibility of individuals at all levels of the Enterprise to comply with the Enterprise's policy and to participate in the Corporate Compliance Programme;

#### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.3 [Companies should consider] ... compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company.

#### **PACI Principles for Countering Bribery:**

2. The enterprise shall commit to the continuation or implementation of an effective Programme to counter Bribery. An effective Programme is the entirety of an enterprise's anti-bribery efforts, specifically including its code of ethics, policies and procedures, administrative processes, training, guidance and oversight. This commitment is to develop and administer an internal compliance Programme that effectively makes an enterprise's anti-corruption policy an integral part of daily practice.

3.1 An enterprise should develop a Programme that clearly and in reasonable detail articulates values, policies and procedures to be used to prevent Bribery from occurring in all activities under its effective control.

3.2 The Programme should be tailored to reflect an enterprise's particular business circumstances and corporate culture, taking into account such factors as size, nature of the business, potential risks and locations of operation.

3.3 The Programme should be consistent with all laws relevant to countering Bribery in all the jurisdictions in which the enterprise operates.

3.4 The enterprise should involve employees in the implementation of the Programme.

3.5 The enterprise should ensure that it is informed of all matters material to the effective development and implementation of the Programme, including emerging industry practices, through appropriate monitoring activities and communications with relevant interested parties.

#### **World Bank Group Integrity Compliance Guidelines:**

2. Responsibility: Create and maintain a trust-based, inclusive organizational culture that encourages

ethical conduct, a commitment to compliance with the law and a culture in which Misconduct is not tolerated. (...)

2.2. Individual Responsibility: Compliance with the Programme is mandatory and is the duty of all individuals at all levels of the party.

4. Internal Policies: Develop a practical and effective Programme that clearly articulates values, policies and procedures to be used to prevent, detect, investigate and remediate all forms of Misconduct in all activities under a party's/person's effective control.

### **UN Convention against Corruption (UNCAC):**

Article 12.2. – Private sector

Measures to achieve these ends may include, inter alia:

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

### ***b) Case studies***

#### **Case Study 2: A medium-sized company encourages compliance with its policy of prohibition of bribery by using local business input to update and strengthen its Code of Conduct**

Company B is a medium-sized medical products and services company with 7,500 employees, based in a European country. Operating globally, Company B has sales subsidiaries in principal markets and production in Hungary, China, France, the United States, and Denmark. While 70 percent of sales are in Europe, Company B is seeing a large increase in growth in emerging markets.

In 2010, Company B decided to update and strengthen its Code of Conduct and compliance system for three reasons: First, it needed to comply with the new UK Bribery Act, which set a new international standard for facilitation payments, gifts, and hospitality that Company B thought it needed to directly address; second, it was thought that employees did not necessarily have sufficient awareness of the company's current policies for ethical behaviour; and third, some challenges, such as managing conflicts

of interest, needed to be addressed differently in the new Company B Code of Conduct.

Company B's primary objective was to create a global Code that would apply regardless of location, taking all possible input into consideration when developing the new Code – without compromising Company B's standards.

The development and implementation of the new Company B Code of Conduct and compliance system was based on the following questions:

How do we develop a global Code of Conduct that can be applied in practice throughout all the diverse cultures we do business in? (For example, expectations regarding business ethics, e.g. gift-giving, can vary greatly from country to country.)

How do we develop a global Code of Conduct that employees throughout all our subsidiaries can easily relate to? (The key to answering this question was to get a "reality check" of exactly what went on in the different countries and incorporate real-life compliance examples into the new Code of Conduct.)

To address these challenges, the Corporate Responsibility and Compliance (CRC) team began interviewing country managers and marketing managers in almost every nation where Company B operates. First, the CRC team sent out a detailed questionnaire covering all relevant topics (bribery, gifts and hospitality, training provided to healthcare professionals, etc.)

Following the questionnaire, in-depth interviews were conducted with every country manager, who was expected to have consulted with the appropriate people in his/her team in order to provide more detailed feedback and input. These interviews also allowed the CRC team to collect actual examples of compliance situations.

During this process, the CRC team made sure to explain the benefits of taking part in the consultations. Company B explained to country managers that the process gave them the opportunity to inform the company about any issue or challenge regarding the new proposed Code of Conduct.

The resulting updated Company B's Code of Conduct applies to all countries where Company B operates, and includes three parts:

- Corruption and bribery (including a ban on facilitation payments);
- Fraud and conflicts of interest;
- Interaction with healthcare professionals (e.g. dinners, entertainment, gifts, congresses, training, contracts, donations).

The situational examples provided during the consultation process were included in the Code of Conduct Guidelines, helping to ensure that every employee and all Company B stakeholders — including healthcare professionals with whom Company B does business — know what to expect.

The Code of Conduct language is simple and straightforward. Company B has also developed an e-learning course with a final exam on the Code of Conduct and guidelines that all white-collar employees must pass. Overall, the feedback received from members of Company B has been very positive.

### **Case Study 3: A multinational company invites local business units and business committees to help ensure compliance with its prohibition against bribery**

Company C is a multinational enterprise based in a South American country, active in the manufacturing, home improvement and construction industries with operations in Colombia, China, Mexico, and the United States and sales in North and South America, Europe, and the Middle East.

In 2011, Company C updated its 1998 Code of Ethics to address the complexity of today's corporate world and so that the Code would equally apply to employees, distributors, suppliers, and clients. The new Code of Ethics is divided into six chapters:

- Acting with integrity
- Integrity within the company
- Negotiation with external parties
- Conflicts of interest
- Administration of the code
- Resources

The Code includes specific anti-bribery provisions. For example, section 3.1 states, "Payments to obtain advantages, influence a decision or accelerate a procedure are not permitted." Regarding relationships with governmental authorities it states that employees should "[r]efrain from offering or receiving money, gifts, benefits, discounts, employment opportunities and any consideration that may be interpreted as bribe."

When the new Code of Conduct was released in 2011, the following activities were carried out in order to ensure compliance with the Code:

- Members of the Board of Directors received the Code of Ethics.
- Every employee received the Code of Ethics and signed his/her commitment to it.
- Suppliers received a copy of the Code of Ethics.
- Ethics references and case studies were posted on the Company's intranet.
- An ethics helpline was included on the company website to facilitate the reporting of any situation that could violate the Code of Ethics.

There is periodic follow-up through different channels. Every business unit committee and Corporate Ethics Committee is responsible to ensure compliance with the Code and to take the necessary action to prevent any breach under their respective scopes. A few members of the Board of Directors are invited to participate in the Corporate Ethics Committee. Furthermore, Company C provides its employees with ethics-related publications and has carried out two discussion groups with suppliers.

Company C's system for managing ethics contains the following elements:

- The Team Meeting: This is an opportunity for the promotion of ethical behaviour.
- Direct communications with the Lead Manager: Based on confidence and good faith, the lead manager may offer opportunities to share doubts and concerns with his/her employees.
- Permanent dialogue with the Human Resources Manager/General Managers of each business unit: As representatives of Company C, HR Managers and General Managers are sources of



contact and advice that help with decision-making according to Company C's ethical guidelines.

- Corporate Ethics Committee: This Committee considers what actions should be taken when reports of violations of the Code are received. The Committee is composed of Company C's President, Corporate Vice-Presidents and Corporate Labour Relations Manager. The Committee meets ordinarily at least once every quarter and extraordinarily as required.
- Ethics Committee in every business unit: This Committee is responsible for considering doubts, concerns or complaints regarding possible non-application of the Code; carrying out the corresponding analysis; and adopting the pertinent actions. It is composed of at least three members, including the General Manager and the Human Resources Manager, and meets quarterly.
- Audit Committee of the Corporate Board of Directors: This Committee follows up on the fulfilment of general policies and criteria of ethical behaviour of the Company.

### C.3: Oversight of the anti-corruption programme<sup>10</sup>

#### a) *Compilation of references to international business principles*<sup>11</sup>

##### **APEC Anti-Corruption Code of Conduct for Business:**

4.i. Organisation and responsibilities: The Board (or equivalent) should be satisfied that an effective programme has been developed and implemented.

The Board (or equivalent) should also be satisfied that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken.

The Chief Executive Officer (or equivalent) is responsible for seeing that the Programme is implemented effectively, with clear lines of authority. Depending on the size of the enterprise, consideration should be given to making the day to day operation and breaches of the code the role of a senior officer of a company.

##### **Business Principles for Countering Bribery:**

6.1.1 The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's Programme.

6.1.2 The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently, with clear lines of authority.

<sup>10</sup> In relation to this international business principle, reference may also be made to article 34 of the UNCAC and chapter III, section C of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide"  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>11</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

### **ICC Rules on Combating Corruption:**

#### **Part III: Elements of an Efficient Corporate Compliance Programme**

##### **Article 10 (Elements of a Corporate Compliance Programme):**

Each Enterprise should consider...

e) appointing one or more senior officers (full or part time) to oversee and co-ordinate the Corporate Compliance Programme with an adequate level of resources, authority, and independence, reporting periodically to the Board of Directors or other body with ultimate responsibility for the Enterprise, or to the relevant committee thereof;

### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.4 [Companies should consider] ... oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority;

### **PACI Principles for Countering Bribery:**

5.1.1 The Board of Directors (or equivalent body) is responsible for overseeing the development and implementation of an effective Programme.

5.1.1.1 The Programme should be based on the PACI Principles and the Board (or equivalent body) should provide leadership, resources and active support for management's implementation of the Programme.

5.1.1.2 The Board (or equivalent body) should ensure that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken.

5.1.2 The Chief Executive Officer (or executive board) is responsible for seeing that the Programme is carried out consistently with clear lines of authority. Authority for implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.

5.1.2.1 Authority for implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.

### **World Bank Group Integrity Compliance Guidelines:**

2.3. Compliance Function: Oversight and management of the Programme is the duty of one or more senior corporate officers, with an adequate level of autonomy and with sufficient resources and the authority to effectively implement.

## *b) Case studies*

### **Case Study 4: European engineering company develops a Supervisory Board to oversee compliance<sup>12</sup>**

This leading Italian engineering service company has operated for more than 50 years in the field of hydraulic work, transportation infrastructure, building and town planning permissions, and environmental matters. The company operates in a number of developing countries all over the world, on behalf of major international agencies.

In December 2010, one of these agencies, the World Bank, found the company responsible for failing to control the operations of a branch office in Indonesia and sanctioned the company for this failure. As a result, the company, in co-operation with the World Bank, worked to improve its capacity to reduce and eliminate the risk of similar failures in the future by adopting an Organisational Management Control Model (hereinafter called the "Model"). The Model is based on compliance with the following fundamental requirements: the traceability of actions, adequate formalisation of activities and related controls, and separation of functions and responsibilities. It complements the company's existing Code of Ethics.

Care was taken to ensure the Model meets legal requirements, the World Bank Group Integrity Guidelines, and other quality assurance procedures. The Model's development consists of:

- An analysis of the company's existing quality management system and of how this system could be improved;
- An audit of the quality management system and procedures by a certifying company;
- Board of Director approval and adoption of the Model; and
- Appointment of a Supervisory Board to ensure compliance with the Model's Protocols and Procedures.

The Supervisory Board, created in July 2011, is independent and composed of three members, who were selected for their experience on the board of similar companies and had the required qualities. As provided under the domestic legislation in the country where the company is headquartered, the Board has full autonomy in its power of initiative and control. In carrying out its functions, the Supervisory Board may, in case of special need, rely on the support of independent external consultants and advisors, using a budget that is specifically allocated by the company. One of the three members of the Supervisory Board is also the Independent Third Party (as per World Bank Group rules) in charge of reporting directly to the Bank on the company's conduct in relation to the regular compliance with the Model.

One of the company's senior engineers has been appointed to liaise with the Supervisory Board, so as to facilitate its work and co-ordinate relations between the Supervisory Board and the company's internal structure. The engineer attends every Board meeting and his duty is to provide the members with any information or documents they may request, as well as to assist the company's personnel with specific issues concerning the application of the Model.

In case of non-observance of the Model and the Code of Ethics, the Supervisory Board will recommend the adoption of disciplinary measures, as provided by the Model. According to the Organisational Model, the company's management is under an obligation to inform the Supervisory Board of important

<sup>12</sup> This company has an obligation to adopt and implement an integrity compliance program satisfactory to the World Bank, represented by the World Bank Group's Integrity Compliance Office, in connection with a WBG debarment. The compliance program needs to reflect the World Bank Group's Integrity Compliance Guidelines relevant to the company's circumstances. The company may agree to share its name in the final, reviewed, and published version of the handbook.

decisions and to forward any documents relating to alleged non-compliance with the Model (such as documents relating to criminal or labour proceedings). Furthermore, all employees have the e-mail address of the Board members and are trained and informed that they may report any non-compliance at any time (even anonymously).

The company believes that the adoption of the Model – despite complications attributable to its inevitable impact on the personnel’s operating procedures, consolidated by many years of operation – constitutes an essential tool for the proper governance of any company intending to operate in the global market. With the adoption of the Model and the creation of the Supervisory Board, the company has since worked to train its personnel and to raise awareness of the Model, from top management to each employee of the company, as well as among business partners and consultants.

### **Case Study 5: A multinational telecommunications company creates a Business Principles Office and Committee to ensure compliance**

Company D, based in a European country, is a global telecommunications leader with 306.6 million customers. It is publicly held (listed on stock exchanges in two European countries, Argentina, Peru, and the United States), has more than 1.5 million direct shareholders, and operates in more than 25 countries in Asia, Europe, and Latin America; Latin America is Company D’s largest market.

During a period of rapid expansion into international markets, the Company D Group decided to develop new Company D Business Principles, which combined the company’s existing Business Principles and Code of Ethics with the pre-existing principles governing the activities of Company E, which earlier had been acquired by Company D. The Principles were developed in consultation with both inside and outside experts and was adopted by the Board of Directors in December 2006. They apply to all Company D employees in all countries where Company D operates and are based on the principles of honesty, integrity and trust, respect for the law, and human rights.

In order to guarantee compliance with the new Business Principles, Company D created a Global Business Principles Office, which includes the following departments: Human Resources, Internal Audit, Secretary General and Legal Affairs, and the Chairman Secretary’s Office. The Global Business Principles Office and Committee are located in the country where the company is based. This Office is in charge of the strategy, principles, norms, and assurance mechanisms for adequate ethics management among the company’s operations. Each local operation must establish a corresponding Committee “Principles Office.” Normally, the committees (global and local) meet quarterly to monitor the implementation of the strategy and plan of action, but the committees also may meet in extraordinary sessions whenever ethical issues arise. The committees of the regions are constantly accountable to the Global Business Principles Committee.

The Business Principles Office is in charge of communicating the Business Principles to the entire Company D Group.

The functions of the Office also include the detection and evaluation of the risks associated with the Business Principles and defining areas of action that require a global position for the Business Group. This includes reviewing compliance processes and controls and ensuring that they are proportionate and suitable for compliance with legal requirements and with best business practices. Company D evaluates and detects the risks associated with the principles through detailed research (surveys of company stakeholders, enabling a tiered risk rating on levels of importance) from which its Headquarters gets a risk matrix.

Moreover, the Global Business Principles Office reads and responds to queries, complaints, or allegations made by employees, suppliers, or partners regarding compliance with the Business Principles. Reports of violations and questions regarding the Business Principles can be confidentially or anonymously communicated through a channel for confidential assistance. Company D’s suppliers and other interested parties can also make reports and ask questions of the Business Principles Office, confidentially or anonymously.

The Business Principles Office intervenes in each of the complaints received and, after having analysed and investigated the complaint, drafts a report that the respective manager must be taken into account by the respective manager, Human Resources, and the Legal department to prevent similar situations from occurring. If violations are detected, there are different kinds of penalties; depending on the breach, the penalty can be administrative, disciplinary, and/or criminal.

Last, but not least, the Business Principles Office has created an online tool for Company D employees to receive adequate training on the Principles. This course is mandatory, and its main goal is to keep employees duly informed about the Code of Ethics and to provide an opportunity for them to reflect on the importance of these standards when carrying out daily activities.

#### **C.4: Clear, visible, and accessible policy prohibiting corruption<sup>13</sup>**

##### *a) Compilation of references to international business principles<sup>14</sup>*

#### **APEC Anti-Corruption Code of Conduct for Business:**

1. Prohibition of bribery: The enterprise shall prohibit bribery in any form. Bribery is offering, promising or giving, as well as demanding or accepting any pecuniary or other advantage, whether directly or indirectly, in order to obtain, retain or direct business to a particular enterprise or to secure any other improper advantage in the conduct of business.

Instances of bribery which are the subject of these principles may involve transactions by, or in relation to, subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or employees with (including but not limited to) a public official, family members and close associates of a public official, a political candidate, party or party official, any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), or a third party.

#### **Business Principles for Countering Bribery:**

6.1.1. The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's programme.

6.1.2. The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.

<sup>13</sup> Reference may also be made to chapter III, section D of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide":  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>14</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

### **ICC Rules on Combating Corruption:**

#### **Part I: Anti-Corruption Rules**

**Article 1:** Enterprises will prohibit the following practices at all times and in any form, in relation with:

- A public official at international, national or local level;
- A political party, party official or candidate to political office; and
- A director, officer or employee of an Enterprise,

whether these practices are engaged in directly or indirectly, including through Third Parties:

a) Bribery is the offering, promising, giving, authorizing or accepting of any undue pecuniary or other advantage to, by or for any of the persons listed above or for anyone else in order to obtain or retain a business or other improper advantage, e.g. in connection with public or private procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings.

Bribery often includes (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting party, their close relatives, friends or Business Partners or (ii) using intermediaries such as agents, subcontractors, consultants or other Third Parties, to channel payments to government or party officials, or to employees of the other contracting party, their relatives, friends or Business Partners.

#### **Part III: Elements of an Efficient Corporate Compliance Programme**

**...Article 10 (Elements of a Corporate Compliance Programme):**

Each Enterprise should consider...

b) establishing a clearly articulated and visible policy reflecting these Rules and binding for all directors, officers, employees and Third Parties and applying to all controlled subsidiaries, foreign and domestic;

### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.2 [Companies should consider] ... a clearly articulated and visible corporate policy prohibiting foreign bribery;

### **PACI Principles for Countering Bribery:**

2: The enterprise shall prohibit Bribery in any form. Bribery ("Bribery") is the offering, promising or giving, as well as demanding or accepting, of any undue advantage, whether directly or indirectly, to or from:

- a public official,
- a political candidate, party or party official, or
- any private sector employee (including a person who directs or works for a private sector enterprise in any capacity),
- in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business.(...)

4.1.1: The enterprise should prohibit Bribery in all business transactions that are carried out either directly or through third parties, specifically including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective

control.

4.1.2: The enterprise should prohibit Bribery in any form, including on any contract payment or portion of a contract payment, or by any means or channels to provide improper benefits to customers, agents, contractors, suppliers or employees thereof.

4.1.3: The Programme should provide guidance on the meaning and scope of this prohibition, with particular attention to areas of high risk to a company in its business sector.

#### **World Bank Group Integrity Compliance Guidelines:**

1. Prohibition of Misconduct: A clearly articulated and visible prohibition of Misconduct (fraud, corruption, collusion and coercive practices), to be articulated in a code of conduct or similar document or communication.

#### **UN Convention against Corruption (UNCAC):**

Article 12.1 – Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

#### ***b) Case studies***

##### **Case Study 6: A transportation products and services supplier sets a corporate policy barring bribery**

Company F is an international supplier of products and services related to the transportation industry, with subsidiaries and operations throughout the world. In 2011, Company F was in negotiations with a third-party company to participate and obtain a public contract from a Mexican governmental agency in order to install equipment on federal roads. The third party was to enter into the bidding process with the government on behalf of the company. Then, after obtaining the public contract, the third party was to hire the company as subcontractor to perform all work related to the bidding.

In the course of the negotiations with the third party, Company F found that the third party was indirectly owned by former and current politicians. It also learned that, in order to obtain the contract, the third party intended to use its connections with governmental authorities and to request “contributions” from the company for undisclosed purposes. This created a risk that bribes might be paid to Mexican government officials to obtain the contract and that Company F could face a risk of sanctions under the US Foreign Corrupt Practices Act (FCPA) and Mexican criminal law.

After learning this information, Company F immediately terminated all negotiations on the project and hired a firm to do an FCPA analysis. In addition, Company F began implementing a strict procedure for identifying and researching their contracting parties, potential business partners, employees, and officers, in order to learn of and avoid any possible act of corruption or bribery in which Company F’s potential commercial partners could be involved.

In particular, Company F established a policy expressly banning offering, promising, or giving money or

other things of value to public officials in exchange for business advantages. This policy is now set forth in Company F's Code of Conduct, with which all officers and employees of Company F are required to comply.

In addition, Company F prepared an internal anti-corruption manual applicable to all officers and employees. The manual implements the policy in the Code of Conduct and includes guidance on particular risk areas, as well as specific measures that all officers and employees must take to ensure compliance with the policy, including mandatory procedures that apply before negotiating or executing any agreement with a third party, such as using private bureaus to research the third party in order to discover potential red flags, requiring any potential third party to provide certain information and documents about its business, and requiring the third party to certify that it has complied or will comply with anti-corruption policies comparable to those of Company F.

The manual and Code also include sanctions and penalties that apply in the case of a breach. Each officer and employee is required to acknowledge that he or she understands and agrees to comply with the policy set forth in the Code of Conduct, as well as the procedures set forth in the anti-corruption compliance manual.

### C.5: Detailed policies for particular risk areas<sup>15</sup>

- Facilitation payments;<sup>16</sup>
- Special types of expenditures, including: gifts, hospitality, travel and entertainment, political contributions, and charitable contributions and sponsorships;
- Conflicts of interest; and
- Solicitation and extortion.

#### a) *Compilation of references to international business principles*<sup>17</sup>

#### **APEC Anti-Corruption Code of Conduct for Business:**

##### 3. Scope and Guidelines:

A. Charitable Contributions: The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery, and all charitable contributions and sponsorships should be transparent and made in accordance with applicable domestic law.

<sup>15</sup> Reference may also be made to chapter III, section E of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide": [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>16</sup> Reference to facilitation payments in the OECD Anti-Bribery Convention can be found in Commentary 9 to the Convention and Section VI of the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions. Relevant references in the UNCAC include articles 15, 16, 21 and 30(9). References also include par.20 and footnote 2 of the UN Office on Drugs and Crime Legislative Guide for the Implementation of the United Nations Convention against Corruption and chapter III, section E.1 of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide": [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>17</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.



B. Gifts, Hospitality and Expenses: The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements would be in violation of applicable domestic law.

C. Facilitation Payments: Recognizing that facilitation payments are prohibited under the anti-bribery laws of most countries, enterprises should eliminate them. Facilitation payments, also called 'facilitating', 'speed' or 'grease' payments, are small payments made to secure or expedite the performance of a routine action to which the enterprise is entitled.

D. Political Contributions: The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates, organizations or individuals engaged in politics, as a subterfuge for bribery. All political contributions should be transparent and made only in accordance with applicable law. The Programme should include controls and procedures to ensure that improper political contributions are not made

### **Business Principles for Countering Bribery:**

**5. Scope of the Programme:** The Programme should address the most prevalent forms of bribery relevant to the enterprise but at a minimum should cover the following areas:

#### **5.1. Conflicts of interest**

5.1.1. The enterprise should establish policies and procedures to identify, monitor and manage conflicts of interest which give rise to a risk of bribery, actual, potential or perceived, including those of its directors, officers, employees and contracted parties such as agents, lobbyists and other intermediaries.

#### **5.2 Bribes**

5.2.1 The enterprise should prohibit all forms of bribery whether they take place directly or through third parties.

5.2.2 The enterprise should also prohibit its employees from soliciting, arranging or accepting bribes intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances.

#### **5.3 Political contributions**

5.3.1 The enterprise, its employees, agents, lobbyists, or other intermediaries should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining advantage in business transactions.

5.3.2 The enterprise should publicly disclose all its political contributions.

#### **5.4 Charitable contributions and sponsorships**

5.4.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery.

5.4.2 The enterprise should publicly disclose all its charitable contributions and sponsorships.

#### **5.5 Facilitation payments**

5.5.1 Recognising that facilitation payments are bribes the enterprise should work to identify and eliminate them.

#### **5.6 Gifts, hospitality and expenses**

5.6.1 The enterprise should develop a policy and procedures to ensure that all gifts, hospitality and expenses are bona fide. The enterprise should prohibit the offer, giving or receipt of gifts, hospitality or expenses whenever they could influence or reasonably be perceived to influence the outcome of business transactions.

## ICC Rules on Combating Corruption:

### Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules:

...

#### Article 4: Political and Charitable Contributions and Sponsorships

- a) Enterprises should only make contributions to political parties, party officials and candidates in accordance with applicable law and public disclosure requirements. The amount and timing of political contributions should be reviewed to ensure that they are not used as a subterfuge for corruption.
- b) Enterprises should take measures within their power to ensure that charitable contributions and sponsorships are not used as a subterfuge for corruption. Charitable contributions and sponsorships should be transparent and in accordance with applicable law.
- c) Enterprises should establish reasonable controls and procedures to ensure that improper political and charitable contributions are not made. Special care should be exercised in reviewing contributions to organizations in which prominent political figures, or their close relatives, friends and Business Partners are involved.

**Article 5: Gifts and hospitality:** Enterprises should establish procedures covering the offer or receipt of gifts and hospitality in order to ensure that such arrangements (a) comply with national law and applicable international instruments; (b) are limited to reasonable and bona fide expenditures; (c) do not improperly affect, or might be perceived as improperly affecting, the recipient's independence of judgement towards the giver; (d) are not contrary to the known provisions of the recipient's code of conduct; and (e) are neither offered or received too frequently nor at an inappropriate time.

**Article 6: Facilitation payments:** Facilitation payments are unofficial, improper, small payments made to a low level official to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment is legally entitled.

Facilitation payments are prohibited in most jurisdictions.

Enterprises should, accordingly, not make such facilitation payments, but it is recognized that they may be confronted with exigent circumstances, in which the making of a facilitation payment can hardly be avoided, such as duress or when the health, security or safety of the Enterprise's employees are at risk.

When a facilitation payment is made under such circumstances, it will be accurately accounted for in the Enterprise's books and accounting records.

**Article 7: Conflicts of interest:** Conflicts of interest may arise when the private interests of an individual or of his/her close relatives, friends or business contacts diverge from those of the Enterprise or organization to which the individual belongs.

These situations should be disclosed and, wherever possible, avoided because they can affect an individual's judgment in the performance of his/her duties and responsibilities. Enterprises should closely monitor and regulate actual or potential conflicts of interest, or the appearance thereof, of their directors, officers, employees and agents and should not take advantage of conflicts of interest of others.

If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Where applicable, restrictions imposed by national legislation shall be observed.

## **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.5 [Companies should consider] ... ethics and compliance programmes or measures designed to prevent and detect foreign bribery, applicable to all directors, officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries, on, inter alia, the following areas: i) gifts; ii) hospitality, entertainment and expenses; iii) customer travel; iv) political contributions; v) charitable donations and sponsorships; vi) facilitation payments; and vii) solicitation and extortion;

## **PACI Principles for Countering Bribery:**

### **4.2 Political contributions**

4.2.1 The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates or organizations or individuals engaged in politics, as a subterfuge for Bribery.

4.2.2 All political contributions should be transparent and made only in accordance with applicable law.

4.2.3 The Programme should include controls and procedures to ensure that improper political contributions are not made.

### **4.3 Charitable contributions and sponsorships**

4.3.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for Bribery.

4.3.2 All charitable contributions and sponsorships should be transparent and made in accordance with applicable law.

4.3.3 The Programme should include controls and procedures to ensure that improper charitable contributions and sponsorships are not made.

### **4.4 Facilitation payments**

4.4.1 Recognizing that facilitation payments\* are prohibited under the anti-bribery laws of most countries, enterprises which have not yet eliminated them entirely should support their identification and elimination by (a) explaining in their Programme that facilitation payments are generally illegal in the foreign country concerned, (b) emphasizing in their Programme that they are of limited nature and scope and must be appropriately accounted for, and (c) including in their Programme appropriate controls and procedures for monitoring and oversight of facilitation payments by the enterprise and its employees.

### **4.5 Gifts, hospitality and expenses**

4.5.1 The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could improperly affect, or might be perceived to improperly affect, the outcome of a procurement or other business transaction and are not reasonable and bona fide expenditures.

4.5.2 The Programme should include controls and procedures, including thresholds and reporting procedures, to ensure that the enterprise's policies relating to gifts, hospitality and expenses are followed.

*\*Facilitation payments: These are small payments made to secure or expedite the performance of routine action to which the enterprise is entitled.*

## **World Bank Group Integrity Compliance Guidelines:**

4.3. Gifts, Hospitality, Entertainment, Travel and Expenses: Establish controls and procedures covering

gifts, hospitality, entertainment, travel or other expenses to ensure that they are reasonable, do not improperly affect the outcome of a business transaction, or otherwise result in an improper advantage.

4.4. Political Contributions: Only make contributions to political parties, party officials and candidates in accordance with applicable laws, and take appropriate steps to publicly disclose all political contributions (unless secrecy or confidentiality is legally required).

4.5. Charitable Donations & Sponsorships: Take measures within the party's power to ensure that their charitable contributions are not used as a subterfuge for Misconduct. Unless secrecy or confidentiality is legally required, all charitable contributions and sponsorships should be publicly disclosed.

4.6. Facilitation Payments: The party should not make facilitation payments.

## *b) Case studies*

### **Case Study 7: A US-based multinational company uses an electronic approval form for gifts and payments to public officials<sup>18</sup>**

Company G is a US-based multinational company engaged in activities in about 30 countries around the globe. In many countries where it operates, giving small gifts on particular occasions is regarded as an appropriate business practice. Although such gifts are probably not illegal in the absence of corrupt intent, they may nevertheless give rise to questions from US authorities and may be considered illegal in other jurisdictions. In other countries, staff may feel pressured into agreeing to pay facilitation payments to a public official.

Although Company G's policies required that all gifts, hospitality and facilitation payments to public officials be approved at a reasonably senior level and that in-house counsel be consulted if any doubt arose regarding the legality of a gift, hospitality or facilitation payment, the ability to audit or investigate compliance with this requirement often depended on whether a local manager or counsel had retained documents showing such approval. Because a casual attitude to gifts, hospitality and facilitation payments can develop easily, counsel and compliance staff thought that Company G was putting itself at unnecessary risk when making such payments.

To address this risk, Company G implemented an electronic approval form (e-form) for gifts, hospitality and facilitation payments, which had the advantages of ensuring that management was properly involved in approval of gifts, hospitality and facilitation payments and of providing an audit trail.

Because not all of Company G's field locations had access to a server-based e-form system, Company G's in-house software development staff created a web-based approval form. Creation of the form presented a few challenges. For example, each of Company G's business units was structured slightly differently, so the approval chain was set up differently depending on the unit involved. Once a simple form was created, along with necessary databases to support it, the form was beta-tested in one country where gift-giving, hospitality and facilitation payments were common. This process highlighted a number of required modifications to the prototype, and allowed the project managers to eliminate as many bugs as possible before extending it to the entire company.

The web-based form was gradually brought into use, country by country, and is now the accepted method to obtain approval for gifts, hospitality, and facilitation payments throughout Company G's

<sup>18</sup> Reference to facilitation payments in the OECD Anti-Bribery Convention can be found in Commentary 9 to the Convention and Section VI of the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions. Relevant references in the UNCAC include articles 15, 16, 21 and 30(9). References also include par.20 and footnote 2 of the UN Office on Drugs and Crime Legislative Guide for the Implementation of the United Nations Convention against Corruption and chapter III, section E.1 of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide" ([http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf)).

operations. The approval system contains a number of controls to prevent side-stepping its requirements:

The approval form is dated by the computer system rather than by the requestor, in order to prevent approvals after the fact being made to appear timely.

The sequence of approvers is in a fixed database maintained centrally, in order to prevent requestors from choosing the route of least resistance.

Even minor gifts, hospitality or facilitation payments require approval from a senior manager based outside the country from which the request was being made. This allows local managers to insist that they do not have the authority to make a requested payment, and to “blame” someone out of the authorities’ immediate reach for any refusal.

Each approver’s electronic signature is recorded in a database separate from the form itself. This database is accessible only by audit and investigations staff.

This approval system works for most gifts, hospitality, facilitation and other benefits offered to public officials. Only some very complex proposals, such as a visit by a senior public official to inspect Company G’s operations in another country, still require separate discussion and approval as they tend to be beyond the scope of the web form. In addition, the introduction of the form and the training associated with it have shown staff the importance of properly reviewing offering, promising or giving gifts, hospitality, facilitation, and other types of payments to public officials and have helped eliminate any casualness towards such payments.

Finally, the technology has allowed Company G to audit procedures and payments quickly and accurately, and has eliminated dependence on the chance retention of e-mails. If necessary, Company G can demonstrate to authorities a robust and compliant system, and the seriousness with which it approaches its anti-corruption obligations.

### **Case study 8: A German multinational company issues a policy on delegation trips**

In early 2008, in light of recent enforcement actions against other companies that involved allegations of improper travel and entertainment provided to customers, Company H decided to evaluate its compliance programme with respect to how customer and delegation trips organised by Company H entities are covered by its compliance programme and how, if at all, the programme might be adapted.

Company H recognised at the outset that delegation trips are an important and legitimate marketing tool for Company H entities and gives them the opportunity to present on-site their products and plants as well as technical skills, quality standards, and service capabilities. In the context of a delegation trip, however, customers may request or expect the inviting company to host the participants and to cover or reimburse certain costs, e.g. for accommodation, transportation, entertainment, or living expenses. Any such benefits to be provided to participants are covered by the Company H Compliance Policy on Corruption Prevention. Company H believes that the tools provided in the context of the company’s compliance programme are in general sufficient to give secure guidance to Company H entities organising delegation trips, as in most cases the potential leisure part of the trip can easily be singled out and separately evaluated under the Company H compliance rules.

Nonetheless, in some business activities it may not always be easy to distinguish leisure activities from the business content of the visit. For example, reference sites of Company H’s elevator business are often located in newly established buildings in interesting cities all over the world. Company H concluded that it is even more necessary to carefully review from a compliance perspective such delegation trips in order to avoid any appearance of wrongdoing in connection with such trips and to ensure that all details of such trips are accurately reflected in the books and records of the appropriate Company H Elevator Company.

In order to give more detailed guidance to Company H Elevator companies and to implement a consistent process of approval and recording in the books and records, Company H decided to issue the Company H Elevator Policy on Delegation Trips. This policy covers all kinds of domestic or international plant visits, visits of reference sites, product and plant inspection trips, road shows or the like organised and operated by Company H Elevator companies for public or private customers or other business partners.

The Policy on Delegation Trips provides, for example, that any delegation trip needs to be covered by a legitimate business purpose (such as a trip to an elevator plant or reference site to present products or to share technical knowledge, service capabilities, or advice on professional organisation, management/workforce or related issues). The degree of hosting and entertainment, if any, must be insignificant in terms of its time frame and value in relation to the professional part of the visit. Hosting expenses and costs for entertainment, gifts and other benefits that are borne by the inviting company must be reasonable in amount and necessary to serve the legitimate business purpose. Further, any reimbursement of costs for transportation to enable participation in the trip and accommodation is to be avoided (except for reasonable local transport during the delegation trip) and shall only occur if it is explicitly requested by the customer in writing (e.g. in the tender documents) or in exceptional cases. Cash reimbursements are in all cases excluded.

In more detail the policy sets out the conditions under which delegation trips with hosting and cost coverage/reimbursement may be agreed and how they are to be documented. First of all, the delegation trip needs prior approval by the responsible executive management of the company and, in certain cases, a review by the competent legal department or compliance officer. Second, comprehensive documentation requirements must be met. These include documentation of the invitation process, the agenda, and any envisaged hosting or entertainment (including the scope and value of any provided benefits). Any delegation trip also must comply with local and other applicable laws as well as with Company H's internal rules. Overall, this delegation trip policy has become a very practical tool to help Company H Elevator companies to organise delegation trips in a compliant way.

### **Case Study 9: An Australia-based healthcare company strengthens its procedures for site visits**<sup>19</sup>

Company I is an Australian based healthcare company that manufactures and distributes personal hygiene products in Australia and in the Asia-Pacific Region. Company I's products must be approved by regulators before they can be sold to end customers. Prior to 2010, Company I's Code of Conduct clearly prohibited the payment of bribes, but allowed facilitation payments if necessary to expedite routine government processes. The process of authorising such payments was not clear, although Company I's Business Policies Manual said that if an employee had any doubt about whether a payment should be made, the question should be referred to the office of Company I's secretary.

In 2003, Company I's board approved plans for new facilities in the Philippines. To set up the new facilities, Company I was required to secure approval from the Philippines Health Department (PHD). Over a period of six months, Company I's officers had numerous meetings with national regulators and paid approximately 19.84 million pesos (AUD 455 000) for approval fees, site visits, and inspections

<sup>19</sup> Reference to facilitation payments in the OECD Anti-Bribery Convention can be found in Commentary 9 to the Convention and Section VI of the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions. Relevant references in the UNCAC include articles 15, 16, 21 and 30(9). References also include par.20 and footnote 2 of the UN Office on Drugs and Crime Legislative Guide for the Implementation of the United Nations Convention against Corruption and chapter III, section E.1 of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide". [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

(some of which took place at Company I's existing facilities in Australia and India, as the proposed Philippines facility was to be identical to these existing facilities). The plans were approved in 2004 and the new facilities were constructed, completed, and commissioned in 2008.

A few years after construction of the new facilities, in 2010, allegations arose in the Philippines that foreign businesses had bribed local government officials to secure government approvals. Although Company I was not named, PHD was, together with three senior officials, including the chair of the approval committee for Company I's new facilities in the Philippines. The chair of the risk subcommittee of Company I's board became aware of these matters from Company I's joint venture partner in the Philippines. He immediately notified Company I's general counsel, who supervised an internal investigation conducted by in-house and external counsel.

These facts of the investigation did not clearly point to an offence under the Philippines' or Australia's anti-bribery laws applicable at the time of the payments. All payments made to PHD had been supported by PHD invoices, and the payments were made to PHD rather than to any individual official. Although the need to pay approval fees, site visits, and inspections was not necessarily supported by a legal requirement, these were considered to be usual fees in construction projects of this type. The payments had been recorded as "contract expenses" rather than by including details and reasons for each cost expenditure. Although public officials who participated in three-day site visits to Company I's plants in Australia and India extended their stays, the facts showed that the officials personally paid for entertainment expenses during the visits, as well as the extra expenses incurred as a result of extending the stays.

Nonetheless, as a result of the findings of the investigation, Company I took steps to implement specific measures for dealing with the issues that had been identified:

- Company I issued a revised Code of Conduct that applies to all of its companies and joint venture entities in all countries and reflects current anti-corruption legal developments in the US, the UK, and elsewhere.
- Company I implemented compulsory compliance training programmes in all countries for all employees. The training was co-ordinated by external lawyers and used legal and non-legal speakers. In addition, for all sessions, a senior executive attended to reflect the importance Company I placed on all employees acting with the highest ethical standards.
- Company I implemented strict controls over all its travel bookings, with a centralised agent appointed to ensure consistency of bookings. All foreign visits were subject to sign off at the board level.
- Company I implemented revised procedures for recording expenses incurred for all projects. A local supervisor was appointed to liaise with government departments in each country and use, where necessary, local lawyers to advise on local practices.
- Company I's general counsel was authorised to undertake periodic reviews of all operations and procedures in high risk countries in order to identify potential corruption issues and, if necessary, to engage independent forensic experts to assist in evaluating these issues. The general counsel used this information to prepare quarterly reports on Company I's compliance with its internal procedures for review by the board.
- Company I appointed independent and experienced anti-corruption auditors to undertake random audits of all of Company I's operations.

By this process, Company I and its board addressed the issues that arose in the Philippines and ensured that they would not be repeated in other parts of the world or that, if they did occur, they would happen only in circumstances known to and approved by Company I.

## C.6: Application of the anti-corruption programme to business partners<sup>20</sup>

### a) *Compilation of references to international business principles*<sup>21</sup>

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.a. Business relationships: The enterprise should prohibit bribery in all business transactions that are carried out directly or through third parties, including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective control

#### **Business Principles for Countering Bribery:**

### **6.2 Business relationships**

#### **6.2.1 General**

***The content of the following General section applies to all business entities***

6.2.1.1 The enterprise should implement its Programme in all business entities over which it has effective control.

6.2.1.2 Where the enterprise does not have effective control it should use its influence to encourage an equivalent Programme in business entities in which it has a significant investment or with which it has significant business relationships.

6.2.1.3 Whether or not it has effective control over a business entity, the enterprise should undertake properly documented, reasonable and proportionate anti-bribery due diligence of business entities when entering into a relationship including mergers, acquisitions and significant investments.

6.2.1.4 The enterprise should avoid dealing with business entities known or reasonably suspected to be paying or receiving bribes.

6.2.1.5 The enterprise should perform reasonable and proportionate monitoring of its significant business relationships. This may include the right to inspection of books and records.

6.2.1.6 The enterprise should document relevant aspects of the implementation of its Programme or equivalent by associated business entities.

6.2.1.7 In the event that policies and practices of associated business entities are in conflict with the principles of its own Programme the enterprise should take appropriate action. This can include requiring correction of deficiencies in the implementation of the Programme and the application of sanctions.

6.2.1.8 The enterprise should have a right of termination in the event that associated business entities engage in bribery or act in a manner inconsistent with the enterprise's Programme.

#### **6.2.2 Joint ventures and consortia**

Where the enterprise is unable to ensure that a joint venture or consortium has a Programme consistent with its own, it should have a plan for taking appropriate action if bribery occurs or is reasonably thought

<sup>20</sup> In relation to this international business principle, reference may also be made to article 34 of the UNCAC and chapter III, section F of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide"  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>21</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.



to have occurred. This can include: requiring correction of deficiencies in the implementation of the joint venture's or consortium's Programme, the application of sanctions or exiting from the arrangement.

### **6.2.3 Agents, lobbyists, and other intermediaries**

6.2.3.1 The enterprise should not channel improper payments through agents, lobbyists, or other intermediaries.

6.2.3.2 The enterprise should undertake properly documented due diligence before appointing agents and other intermediaries.

6.2.3.3 All agreements with agents, lobbyists, and other intermediaries should require prior approval of management.

6.2.3.4 Compensation paid to agents, lobbyists, and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered.

6.2.3.5 Agents, lobbyists, and other intermediaries should contractually agree to comply with the enterprise's Programme and be provided with appropriate advice and documentation explaining the obligation.

6.2.3.6 The enterprise should contractually require its agents, lobbyists, and other intermediaries to keep proper books and records available for inspection by the enterprise, auditors or investigating authorities.

### **6.2.4 Contractors and suppliers**

6.2.4.1 The enterprise should conduct its procurement practices in a fair and transparent manner.

6.2.4.2 The enterprise should take steps to identify its contractors and suppliers.

6.2.4.3 The enterprise should assess the risk of bribery in its contractors and suppliers and conduct regular monitoring.

6.2.4.4 The enterprise should communicate its anti-bribery policies to contractors and suppliers and work in partnership with major contractors and suppliers to help them develop their anti-bribery practices.

## **ICC Rules on Combating Corruption:**

### **Part I: Anti-Corruption Rules**

...

**Article 2: Third Parties:** With respect to Third Parties subject to the control or determining influence of the Enterprise, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Enterprise's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Enterprise or as subcontractors in the supply chain, Enterprises should:

- a) instruct them neither to engage nor to tolerate that they engage in any act of corruption;
- b) not use them as a conduit for any corrupt practice;
- c) hire them only to the extent appropriate for the regular conduct of the Enterprise's business; and
- d) not pay them more than an appropriate remuneration for their legitimate services.

...

### **Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules**

**Article 3: Business Partners:** Business Partners include (i) Third Parties and (ii) joint venture and consortium partners as well as contractors and suppliers.

A. An Enterprise should, with respect to a Third Party, and to the extent that it is within its power:

- a) make clear that it expects all activities carried out on the Enterprise's behalf to be compliant with its policies; and
- b) enter into a written agreement with the Third Party:
- informing it of the Enterprise's anti-corruption policies and committing it not to engage in any corrupt practice;
  - permitting the Enterprise to request an audit of the Third Party's books and accounting records by an independent auditor to verify compliance with these Rules; and
  - providing that the Third Party's remuneration shall not be paid in cash and shall only be paid in (i) the country of incorporation of the Third Party, (ii) the country where its headquarters are located, (iii) its country of residence or (iv) the country where the mission is executed.
- B. The Enterprise should further ensure that its central management has adequate control over the relationship with Third Parties and in particular maintains a record of the names, terms of engagement and payments to Third Parties retained by the Enterprise in connection with transactions with public bodies and state or private Enterprises. This record should be available for inspection by auditors and by appropriate, duly authorized governmental authorities under conditions of confidentiality.
- C. An Enterprise should, with respect to a joint venture or consortium, take measures, within its power, to ensure that a policy consistent with these Rules is accepted by its joint venture or consortium partners as applicable to the joint venture or consortium.
- D. With respect to contractors and suppliers, the Enterprise should take measures within its power and, as far as legally possible, to ensure that they comply with these Rules in their dealings on behalf of, or with the Enterprise, and avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes.
- E. An Enterprise should include in its contracts with Business Partners a provision allowing it to suspend or terminate the relationship, if it has a unilateral good faith concern that a Business Partner has acted in violation of applicable anti-corruption law or of Part I of these Rules.
- F. An Enterprise should conduct appropriate due diligence on the reputation and the capacity of its Business Partners exposed to corruption risks to comply with anti-corruption law in their dealings with or on behalf of the Enterprise.
- G. An Enterprise should conduct its procurement in accordance with accepted business standards and to the extent possible in a transparent manner.

#### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.6 [Companies should consider] ... ethics and compliance programmes or measures designed to prevent and detect foreign bribery applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter "business partners"), including, inter alia, the following essential elements:

- i. properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners;
- ii. informing business partners of the company's commitment to abiding by laws on the prohibitions against foreign bribery, and of the company's ethics and compliance programme or measures for preventing and detecting such bribery; and iii) seeking a reciprocal commitment from business partners.

## **PACI Principles for Countering Bribery:**

5.2 Business relationships: The enterprise should apply its Programme in its dealings with subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has business relationships.

### 5.2.1 Subsidiaries

5.2.1.1 The Programme should be designed and implemented on an enterprise-wide basis, applicable in all material respects to controlled subsidiary entities.

5.2.1.2: The enterprise should undertake measures to see that the conduct of subsidiary entities is consistent with the PACI Principles.

5.2.2 Joint ventures (The provisions in 5.2.2 apply also to non-controlled subsidiaries, consortium partners, teaming agreements and nominated subcontractors).

5.2.2.1 Due diligence should be conducted before entering into a joint venture, and on an ongoing basis as circumstances warrant. The Programme should provide guidance for conducting due diligence.

5.2.2.2 The enterprise should undertake appropriate measures, including contract protections, to ensure that the conduct of joint ventures is consistent with the PACI Principles.

### 5.2.3 Agents, advisors and other intermediaries

5.2.3.1 The enterprise should undertake due diligence before appointing an agent, advisor or other intermediary, and on an on-going basis as circumstances warrant.

5.2.3.2 The Programme should provide guidance for conducting due diligence, entering into contractual relationships, and supervising the conduct of an agent, advisor or other intermediary.

5.2.3.2.1 Due diligence review and other material aspects of the relationship with the agent, advisor or other intermediary should be documented.

5.2.3.2.2 All agreements with agents, advisors and other intermediaries should require prior approval of senior management.

5.2.3.2.3 The agent, advisor or other intermediary should contractually agree in writing to comply with the enterprise's Programme and should be provided with materials explaining this obligation.

5.2.3.2.4 Provision should be included in all contracts with agents, advisors and other intermediaries relating to access to records, co-operation in investigations and similar matters pertaining to the contract.

5.2.3.2.5 Compensation paid to agents, advisors and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered and should be paid through bona fide channels.

5.2.3.2.6 The enterprise should monitor the conduct of its agents, advisors and other intermediaries and should have a contractual right of termination in case of conduct inconsistent with the Programme.

### 5.2.4 Contractors, subcontractors and suppliers

5.2.4.1 The enterprise should conduct its procurement practices in a fair and transparent manner.

5.2.4.2 The enterprise should undertake due diligence, as appropriate, in evaluating contractors, subcontractors and suppliers to ensure that they have effective anti-bribery policies.

5.2.4.3 The enterprise should make known its anti-bribery policies to contractors, subcontractors and suppliers. It should monitor their conduct and should have a contractual right of termination in case of conduct inconsistent with the Programme.

### **World Bank Group Integrity Compliance Guidelines:**

5. Policies re: Business Partners: Use party's best efforts to encourage all business partners with which the party has a significant business relationship or over which it has influence to adopt an equivalent commitment to prevent, detect, investigate and remediate Misconduct (and, in the case of business partners which are controlled affiliates, joint ventures, unincorporated associations or similar entities, to the extent possible obligate them to so adopt). This includes agents, advisers, consultants, representatives, distributors, contractors, subcontractors, suppliers, joint venture partners, and other third parties.

5.1. Due Diligence on Business Partners: Conduct properly documented, risk-based due diligence (including to identify any beneficial owners or other beneficiaries not on record) before entering into a relationship with a business partner, and on an ongoing basis. Avoid dealing with contractors, suppliers and other business partners known or (except in extraordinary circumstances and where appropriate mitigating actions are put in place) reasonably suspected to be engaging in Misconduct.

5.2. Inform Partner of Integrity Compliance Programme: Make party's Programme known to all business partners and make it clear that the party expects all activities carried out on its behalf to be compliant with its Programme.

5.3. Reciprocal Commitment: Seek reciprocal commitment to compliance from party's business partners. If business partners do not have an integrity compliance programme, the party should encourage them to adopt a robust and effective programme by reference to the activities and circumstances of those partners.

5.4. Proper Documentation: Document fully the relationship with the party's business partners.

5.5. Appropriate Remuneration: Ensure that any payment made to any business partner represents an appropriate and justifiable remuneration for legitimate services performed or goods provided by such business partner and that it is paid through bona fide channels.

5.6. Monitoring/Oversight: Monitor the execution of all contracts to which the party is a party in order to ensure, as far as is reasonable, that there is no Misconduct in their execution. The party should also monitor the programmes and performance of business partners as part of its regular review of its relationships with them.

6.2 Contractual Obligations: Employment and business partner contracts should include express contractual obligations, remedies and/or penalties in relation to Misconduct (including in the case of business partners, a plan to exit from the arrangement, such as a contractual right of termination, in the event that the business partner engages in Misconduct).

11. Collective Action: Where appropriate — especially for SMEs and other entities without well-established Programmes, and for those larger corporate entities with established Programmes, trade associations and similar organizations acting on a voluntary basis — endeavour to engage with business organizations, industry groups, professional associations and civil society organizations to encourage and assist other entities to develop programmes aimed at preventing Misconduct.

## b) Case studies

### Case Study 10: Company K conducts due diligence on its third parties

Company K is a leading global infrastructure and engineering business, with over 50,000 employees and operations in over 80 countries. Company K operates in a sector that is known to be a high corruption risk sector, as its business often involves tendering for large public and private projects, and managing large, complex supply chains, increasingly in emerging markets.

As in all sectors, the corruption risks are increased and harder to manage if third parties are involved whose actions can result in criminal liability or reputational damage for the company. Company K's construction contracts rely heavily on third parties, such as sub-contractors, suppliers, and joint venture or consortium partners. Company K recognizes that it can be legally and reputationally exposed if any third party behaves in an illegal, unsafe or unethical way; for example, offering or paying bribes to get work certified or paid.

#### Due diligence

Much of what is said and written about third-party risk focuses on due diligence. This is an important part of Company K's procedures, as the company's managers need to find out what they can about a third party's track record and reputation, and thus seek to avoid corrupt third parties and enter into arrangements with their eyes open. But they do not place undue reliance on the imperfect assurance they are able to gather about a third party's ethics and anti-corruption procedures. Their procedures attempt to minimise their reliance on such assurance so that, if they are wrong about the third party, they still have a very good chance of identifying and managing the corruption risks.

Thus, in addition to a third-party questionnaire, Company K uses a risk-assessment checklist, designed to identify the opportunities and incentives for corruption in relation to the specific project being considered. Checklist questions include the following:

- What type of customer are we dealing with? Are they public or private, "blue chip" or other? Do we have any reason to think they will operate a corrupt tender process or project?
- Will the customer be operating a genuine, transparent, robust, competitive tender process for this project? Is information disclosure carefully controlled by the customer, and are tender deadlines properly enforced?
- Is there anything suspicious about the specification for the tender, e.g. is it biased in favour of a certain technology, bidder, sub-contractor or supplier?
- Can the tender process be subverted?
- Can an honest bidder win? Will an ethical bidder inevitably lose to a corrupt one in this case?
- What do we know about other bidders?
- Who would need to be influenced in order for a corrupt bidder to succeed?
- Would we know if the bid were awarded to us or our JV (if we are in JV) other than on merit?
- If so, what rights to withdraw or other recourse would we have?

The process continues with a consideration of the project execution and procurement risks and controls that will be present:

- If we win the work, will we have procedures in place to ensure that:
  - work is done safely and to the appropriate quality and specification;

- work is certified without bribes being offered or extorted; and
- applications for payment, variations, and extensions of time are not inflated or otherwise false?
- How will materials be imported and transported?
- Will we control procurement? There is a significant risk of sub-contractors paying bribes to, or being owned by, someone who can influence the tender process in our and their favour.
- Are all sub-contractors and suppliers to be appointed pursuant to a proper competitive tender process? If not, on what basis are they being selected?
- Have they been suggested by, or do they have any links to, a public official or other representative of the client?
- Will there be any consultants involved in the project, or any other third party:
  - whose services are not clearly required;
  - whose expertise and experience do not seem appropriate?

### **Red flags and business justification**

Having gone through the above process, they then use a business justification and red-flag checklist to identify and mitigate risks associated with each relevant third party. Clear accountabilities are placed on responsible managers to demonstrate that there is a clear, legitimate business justification for engaging the third party and that they honestly and reasonably believe that corruption is not likely. Key issues to address include the following:

- What are the opportunities and incentives for the third party to engage in corruption, e.g. to pre-qualify for a tender, to win or fulfil work, to get work certified or paid, to gain an advantage in doing business, or to gain permits and approvals?
- Are we partnering with anyone, and are they “blue chip”, i.e. do they have a good reputation and are they subject to strict regulatory scrutiny (e.g. a NYSE-listed company or a company subject to the UK Bribery Act)?
- What other third parties will be involved?
- Are any third parties recommended by the customer or a public official?
- Is the third party demonstrably qualified to perform the work?
- Are they an approved supplier? If not, why not?
- Are we paying them no more than fair market value for services that we actually need?
- What are the deliverables, and how will they be evinced?

### **Agents and Commissions**

Company K does not utilise many agents, partly because its business model does not often warrant it, and partly because of the opportunities and incentives for corruption inherent in a commission arrangement. If the company does need to use a third party on a commission or success-fee arrangement, Company K manages the risk via a group-wide procedure that requires extensive due diligence, clear and legitimate justifications for fee arrangements, and formal written approval from the Group Head of Ethics and Compliance and a main Board Executive Director.

### **Contractual protections**

Company K also addresses corruption risks via its contracts with third parties, by having third parties enter into contractual representations, warranties and undertakings (i) to comply with applicable laws and not engage in corruption and (ii) comply with Company K’s Code of Conduct for Partners, Sub-contractors and Suppliers, or, preferably, the third party’s own credible anti-corruption code, if they have one. In high-risk situations it is imprudent to place undue reliance on contractual obligations, which might

be readily agreed to and just as readily flouted by a determinedly corrupt third party. Company K takes much more comfort from a third party that can demonstrate its own embedded ethics and anti-corruption procedures.

Finally, Company K generally negotiates a right to audit high-risk third parties.

### **Case Study 11: An Australia-based construction and engineering firm educates its contractors about its expectations**

Company L, an Australian-based construction and engineering firm, is a subsidiary of a US engineering corporation. In 2008, Company L was awarded a principal engineering contract – valued at USD 13 000 000 – for the extension and upgrade of a power facility 300 km outside Manila in the Philippines. Company L engaged five local Philippines subcontractors to assist with the project. Each subcontractor was a successful family business and was highly recommended to Company L by its site supervisor, an experienced local engineer who had worked for Company L for 10 years. However, the subcontractors had no codes of conduct or policies of any description. The head of each subcontractor was the father of the family and his spoken English was acceptable while his written and reading English was limited.

In consultation with in-house and external counsel, Company L took a number of steps to ensure that each subcontractor understood its obligations with regard to the sub-contracts awarded as well as with regard to its obligation not to offer, promise or provide bribes or other inappropriate benefits to public officials. In particular, Company L invited each of the subcontractors to attend a series of 2 briefing sessions in Manila. Company L's General Manager for Contracts and the site supervisor (who was fluent in local Philippines Spanish) conducted the meetings, and Company L's external counsel attended to provide assistance in explaining the contract obligations. The sessions were in English and translated into Philippines Spanish. In addition, all documents provided were given in English and Philippines Spanish.

**First briefing session.** During the first briefing session, Company L's representatives spoke about (i) Company L's overall ethical philosophy and culture; (ii) its collaborative approach to work and treating all employees as part of the team; (iii) Company L's zero-tolerance policy for any illegal or improper conduct, including the payment of any monies or things of value to public officials; and (iv) the importance of disclosing potentially improper or illegal conduct to the site supervisor or to Company L's external legal counsel. Company L's outside counsel also discussed the legal consequences that might arise for Company L or its subcontractors or representatives if bribery or corruption were to occur, including the potential consequences of fines and imprisonment.

In addition, the subcontractors were taken through, at a high level, their key contractual obligations:

- the requirement that they each pay a performance bond of USD 50 000 (which, although relatively small in comparison to the value of the works, acted as an incentive to keep the subcontractors honest and committed);
- the physical work to be undertaken;
- the need to disclose any and all complaints of improper or illegal behaviour and any criminal or civil prosecutions against the business or any individual associated with the business over the previous five years;
- the need to disclose any family or relatives (of the owners and family members of the business) employed by any branch of local, municipal, state, or national government and the positions so held by such persons;
- the obligation (or warranty) not to act illegally including not making any payment to any third party or government official for any reason and to immediately report such requests to Company L;
- the requirement to indemnify Company L if any conduct of the subcontractors caused any loss of

whatever nature;

- Company L's right to randomly inspect the books and records of the subcontractors; and
- Company L's right to terminate the subcontracts, including, at Company L's absolute discretion, a right to unilaterally terminate if it had a reasonable basis that a subcontractor had acted illegally, improperly, in breach of the subcontract or contrary to any applicable laws and regulations.

The session ended with a time for questions and answers. At the end of this session, the subcontractors were asked to take copies of the subcontracts and consider them carefully. They were also counselled to obtain, if they wished, independent legal advice, and Company L agreed to cover legal expenses up to a maximum amount of USD 5 000 for each subcontractor. If independent legal advice was obtained, Company L required a certificate from the independent lawyer that his or her client had read and understood the contract. If not, the subcontractor was required to sign a certificate confirming that it understood the terms of the subcontract, had been offered independent legal advice, and had declined it.

**Second briefing session.** The second briefing session was held two weeks later and provided an opportunity for the subcontractors to raise any questions they or their lawyers had, failing which the documents were to be executed. Three contractors had received independent legal advice, and their lawyers asked questions about the obligation not to make any payment to third parties and about termination and audit rights. Each of the questions was answered in English and Philippines Spanish, and the independent lawyers were fluent in both languages.

At the conclusion of the second session, each subcontractor agreed to sign the subcontracts. In addition, certificates were provided by the independent lawyers and by the two subcontractors who did not retain lawyers. Company L confirmed to the subcontractors that the site supervisor would liaise with them in case they had any issues under the contract and if any requests for payments were received by them, the site supervisor was to be immediately notified.

**Completion of the subcontracts.** During the construction project, Company L undertook random audits of the subcontractors' records. No evidence was seen or allegations made of improper payments or conduct. Two contractors referred requests for payments from a public official to the site supervisor, and these were considered and dealt with by Company L (one was legitimate and the other was referred to the local police for consideration). On completion of the project, the performance bonds were returned and the contractual relationship ended, save for enduring indemnities in the event something arose in the future.

As a result of the pro-active approach taken by Company L to educate its subcontractors on the behaviour and conduct expected of them, Company L's management was able to ensure that they acted consistently with Company L's ethical standards and minimised the risk of improper or illegal conduct and performed the construction work to the required professional standard.



## C.7: Internal controls and record keeping<sup>22</sup>

### a) *Compilation of references to international business principles*<sup>23</sup>

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.d. Financial Recording and Auditing: The enterprise should develop and maintain appropriate financial reporting mechanisms that are accurate and transparent as well as internal mechanisms for monitoring and controlling of the financial reporting system in accordance with internationally recognised accounting standards.

#### **Business Principles for Countering Bribery:**

6.7.1. The enterprise should establish and maintain an effective system of internal controls to counter bribery, comprising financial and organisational checks and balances over the enterprise's accounting and record keeping practices and other business processes related to the Programme.

6.7.2. The enterprise should maintain available for inspection accurate books and records that properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.

6.7.3. The enterprise should subject the internal control systems, in particular the accounting and record-keeping practices, to regular review and audit to provide assurance on their design, implementation and effectiveness.

#### **ICC Rules on Combating Corruption:**

##### **Part II: Corporate Policies to Support Compliance with Anti-Corruption Rules**

**Article 9: Financial and Accounting:** Enterprises should ensure that:

- all financial transactions are adequately identified and properly and fairly recorded in appropriate books and accounting records available for inspection by their Board of Directors or other body with ultimate responsibility for the Enterprise, as well as by auditors;
- there are no "off the books" or secret accounts and no documents may be issued which do not fairly and accurately record the transactions to which they relate;
- there is no recording of non-existent expenditures or of liabilities with incorrect identification of their objects or of unusual transactions which do not have a genuine, legitimate purpose;
- cash payments or payments in kind are monitored in order to avoid that they are used as substitutes for bribes; only small cash payments made from petty cash or in countries or locations where there is no working banking system should be permitted;
- no bookkeeping or other relevant documents are intentionally destroyed earlier than required by law;
- independent systems of auditing are in place, whether through internal or external auditors, designed to bring to light any transactions which contravene these Rules or applicable accounting rules and

<sup>22</sup> Reference may also be made to chapter III, section G of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide":  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf)

<sup>23</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

which provide for appropriate corrective action if the case arises;

- all provisions of national tax laws and regulations are complied with, including those prohibiting the deduction of any form of bribe payment from taxable income.

### **Part III: Elements of an Efficient Corporate Compliance Programme**

#### **Article 10 (Elements of a Corporate Compliance Programme):**

h) designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in or hiding of corrupt practices;

i) establishing and maintaining proper systems of control and reporting procedures, including independent auditing;

### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.7 [Companies should consider] ... a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery;

### **PACI Principles for Countering Bribery:**

#### **5.7 Internal controls and audit**

5.7.1 The enterprise should maintain accurate books and records, which properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.

5.7.2 The enterprise should establish and maintain an effective system of internal controls, comprising financial and organizational checks and balances over the enterprise's accounting and recordkeeping practices and other business processes related to the Programme.

5.7.3 The enterprise should establish feedback mechanisms and other internal processes designed to support the continuous improvement of the Programme.

5.7.4 The enterprise should subject the internal control systems, in particular the accounting and recordkeeping practices, to regular audits to verify compliance with the Programme.

### **World Bank Group Integrity Compliance Guidelines:**

4.1. Due Diligence of Employees: Vet current and future employees with any decision-making authority or in a position to influence business results, including management and Board members, to determine if they have engaged in Misconduct or other conduct inconsistent with an effective Integrity Compliance Programme.

4.2. Restricting Arrangements with former Public Officials: Impose restrictions on the employment of, or other remunerative arrangements with, public officials, and with entities and persons associated or related to them, after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure or those functions over which they were or continue to be able to exercise material influence.

4.7. Recordkeeping: Appropriate records must be maintained regarding all aspects covered by the Programme, including when any payment is made for the matters or items listed in 4.3 through 4.6

above.

4.8. Fraudulent, Collusive and Coercive Practices: Particular safeguards, practices and procedures should be adopted to detect and prevent not only corruption, but also fraudulent, collusive and coercive practices.

6.1 Financial [Internal Controls]: Establish and maintain an effective system of internal controls comprising financial and organizational checks and balances over the party's financial, accounting and recordkeeping practices, and other business processes. The party should subject the internal controls systems, in particular the accounting and recordkeeping practices, to regular, independent, internal and external audits to provide an objective assurance on their design, implementation and effectiveness and to bring to light any transactions which contravene the Programme.

6.2 Contractual Obligations: Employment and business partner contracts should include express contractual obligations, remedies and/or penalties in relation to Misconduct (including in the case of business partners, a plan to exit from the arrangement, such as a contractual right of termination, in the event that the business partner engages in Misconduct).

6.3. Decision-Making Process: Establish a decision-making process whereby the decision process and the seniority of the decision-maker is appropriate for the value of the transaction and the perceived risk of each type of Misconduct.

### **UN Convention against Corruption (UNCAC):**

Article 12.3 – Private sector

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents; and
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

### ***b) Case studies***

#### **Case Study 12: Multinational infrastructure company introduces internal controls to monitor and check activities and payments of agents**

Company M is a multi-national infrastructure company headquartered in Europe with major operating centres in Eastern and Western Europe and the Middle East and plans to expand to Asia-Pacific and sub-Saharan Africa. The latter markets have historically presented more difficulty for Company M, due to low cost competitors and the Company's concerns with local market conditions. Nevertheless, abundant infrastructure investment opportunities have led the Company to refocus its efforts on these more difficult and higher-risk markets.

Company M has established a permanent compliance department with a Chief Compliance Officer (CCO)

and a Sector Compliance Officer (SCO) for each of the Company's four business sectors, together with compliance personnel assigned to advise and assist the business units in the field. The SCOs report directly to the CCO, who has direct and indirect reporting lines to senior management and the Board of Directors.

Given its unfamiliarity with these new markets and the geographic remoteness of many of its more recent and prospective projects, Company M increasingly sees a need to rely heavily on local and/or regional third-party sales agents and consultants ("Agents").<sup>24</sup> In some of the new markets Company M is considering entering, the use of Agents is mandatory for conducting business transactions in the local market. These Agents are typically compensated on a commission basis for projects that they successfully help Company M win. In addition to making commission payments, Company M reimburses Agents for business-related expenses, including meals, entertainment and hospitality related to the Company's business.

Company M knows that it could be found liable under its country's anti-bribery and corruption laws for corrupt payments offered, promised, or given by its Agents to public officials on behalf of Company M, even if these Agents are hired locally in another jurisdiction and are citizens of another country. Therefore, Company M established a robust due-diligence process to screen all Agents before engaging them. Moreover, recognizing the risks posed by these third parties – particularly in the less familiar and higher-risk markets – Company M has instituted a number of internal processes and financial controls to ensure the activities of its Agents are checked and monitored.

#### **A. Monitoring**

In terms of monitoring, Company M has put in place three major initiatives to track the activities of its Agents.

1. **Monthly Reports** - Company M includes in each of its written agreements with Agents a requirement that the Agent provide a monthly activity report, detailing its activities on behalf of the Company for the previous month. The substance of the activity reports varies depending upon the situation but includes information such as: (i) details regarding meetings held by the Agent, (ii) market intelligence and analysis gathered, (iii) status of negotiations with the client or potential client, (iv) introductions made or planned by the Agent, (v) approximate hours spent on Company M activities, and (vi) a summary of all commissions and other payments made, pending or expected under any currently effective agency contract with Company M. The activity reports are provided on the 15th of every month to the Company's business manager (usually a senior regional or country officer) responsible for the relationship with the Agent. After verification by the business manager, the reports are provided to the Compliance Department and included in the Agent's Due Diligence File.
2. **Annual Certifications** – Company M also includes in each of its Agent agreements a requirement that the Agent sign an annual (and occasionally biannual) compliance certification. Through this process, the Agent periodically renews its certification that it has not made any improper payments on behalf of Company M or otherwise violated international anti-corruption, anti-competition, and similar laws (or the Company's Code of Conduct and relevant policies) in the course of its representation. The annual certification also includes a statement that there have been no material changes to the Agent's shareholding since completion of the latest due diligence.
3. **Regular Audits** – As allowed by Company M's agency agreements, Company M regularly audits the books and records of its Agents. The Internal Audit department, after consultation with the

<sup>24</sup> For more information on the role of intermediaries in international business transactions, please see *Typologies on the Role of Intermediaries in International Business Transactions*, OECD Working Group on Bribery in International Business Transactions (October 2009): <http://www.oecd.org/daf/anti-bribery/anti-briberytypologyreports.htm>.

CCO and the Company's external auditors (independently), puts together an Audit Plan covering four to eight Agents each year – who may be the same or different than Agents subject to review by the Company's external auditors. During this audit, the Internal Audit department reviews in detail the accounts of the Agent and focuses on higher-risk expenditures such as entries for "entertainment," "marketing costs," "gifts" and "commissions." In addition, if applicable, the Internal Audit department seeks to track funds (commission payments and/or reimbursements) paid to the Agent to confirm the use of funds and, if indicated, any other ultimate recipient of funds. Once completed, an audit report is prepared and circulated to the CCO and Chief Financial Officer, and where suspicious or irregular payments or activities are noted to the CEO and General Counsel (who also has primary responsibility for determining whether further reporting to national authorities is required or appropriate).

## **B. Checking**

Company M also uses a system of checks and controls over payments, including cost reimbursements, made to Agents. In particular, at least three (and sometimes four) signatures from different levels of the Company are required before remitting a commission payment to an Agent (or reimbursement above different thresholds depending on the category of claimed cost involved). When an Agent submits an invoice, intake occurs through an accounting department administrator. The invoice is copied and logged into the Company's accounting system, and then sent to the business manager. At the next stage, the business manager reviews the invoice, confirms its accuracy, and provides approval for payment, after which the invoice is sent to the SCO for his/her approval. The SCO also reviews the invoice and provides two key checks:

1. That the payment matches what is called for in the agency agreement (e.g. the commission was calculated properly, the payment is going to the designated bank account, and the services match those contemplated in the agreement); and
2. That the proofs of services (and reimbursement claims proofs) are adequate. If the proofs are deemed inadequate (i.e. do not contain sufficient detail or contain material discrepancies or inconsistencies), the invoice will be returned to the business manager with instructions to seek more detailed and accurate proofs of service and/or reimbursable amounts proofs.

Once the SCO approves, s/he sends the invoice to the Sector President for final approval, after which the invoice is remitted to the accounts payable department. Using a standard checklist, the accounts-payable department will ensure that appropriate signature and checks have been completed before initiating payment.

As a further check on commission payments, the accounting system automatically flags and stops commission payments (singly or in the aggregate) over \$1 million, which then require approval by the CCO. In fact, Company M has several automatic controls built into its accounting system to capture and flag unusual or higher-risk transactions for approval. For example, although many expenses incurred by Agents must be pre-approved by the business manager and Company M's Compliance Department, reimbursements above category-dependent threshold levels are flagged for final approval by the CCO prior to payment.

Internal controls, such as those used by Company M to monitor the activities of its Agents, require commitment and co-ordination from the entire organisation. Although the checking and monitoring are time-consuming and sometimes intrusive, the reception Company M has received from business managers and Agents, especially after training, has largely been positive.

### **Case Study 13: Swiss-based luxury hotelier enhances anti-corruption internal financial controls and recordkeeping for petty cash payments at acquired international operations**

Company N is among the most exclusive European hoteliers with iconic properties and unparalleled guest services. The founding family had recently divested its controlling interest to a UK-based private equity fund. Under the impetus of the fund managers, Company N acquired other exclusive hotel operators and flagship properties in major world capitals including Beijing, Buenos Aires, Dubai, Johannesburg, London, Mumbai, and New York City. In order to retain the market and cultural uniqueness of each acquisition, Company N allowed local management to retain wide “innkeepers’ independence” or “success within the system” under its corporate standard.

As part of the acquisition process, Company N’s Chief Compliance Officer conducted a thorough corruption risk assessment that resulted in identification of inadequate or non-existent internal financial controls for certain high-risk business processes at several acquired entities that were not in compliance with Company N’s corporate anti-bribery and corruption (ABC) policies. Among the high-risk business processes identified for improvements were financial controls for the disbursement of petty-cash payments.

Standard internal financial controls are primarily focused on assuring the accuracy and reliability of financial reporting and, therefore, are effective only above reporting materiality thresholds. Petty-cash payments are so small that they are often not considered material to a business’ financial reporting. Company N’s Chief Compliance Officer was aware that certain anti-corruption statutes, such as the UK Bribery Act and US Foreign Corrupt Practices Act, do not have a materiality standard related to the value of illicit payments. Further, these statutes also have books and records requirements that require companies to maintain accurate books and records and an adequate system of internal controls, while prohibiting companies from misreporting and concealing bribery and other improper acts from their accounting records.

Company N’s Chief Compliance Officer was aware that one of the safest ways to prevent Company N from violating these statutes was to introduce specific financial controls for the disbursement of petty-cash payments at Company N’s new acquisitions. Despite Company N’s “innkeepers’ independence” approach to assimilating its new acquisitions into its global network of hotel operators, Company N thus designed and implemented enhanced financial controls for petty-cash processes. The design of internal control enhancements was built upon foundational control activities, including:

- Authorisation of transactions;
- Physical and information-technology safeguards;
- Recording and retaining transaction detail and support;
- Segregation of duties (among the authoriser, custodian, and record keeper); and
- Supervision of operations (reviews, monitoring, and account reconciliations).

In initiating this enhancement, Company N’s Chief Compliance Officer recognized that petty-cash payments provide limited evidence of the exchange, so bribes and other improper payments are often accomplished by exploiting this vulnerability.

As a result of the enhancements made to internal finance controls, all petty-cash operations now utilise the following controls:

- Designated account owner and separate account custodian for petty-cash accounts;
- Certifications by requestor and approver that intended use of petty cash is compliant with ABC-related and other policies and procedures;
- Transactions approved at appropriate level(s) using risk-based hierarchy;
- Authorization based on consideration of ABC-related red flags outlined in the job aide, “Petty Cash ABC-related Red Flag Checklist”;
- Clearly communicated purposes for which petty cash funds can be used;

- Petty-cash funds limited to minimal balance;
- Petty-cash funds physically safeguarded;
- Fund administered using a voucher system (sequentially numbered) and log;
- Fund transactions recorded with sufficient detail:
  - Request for funds includes amount requested, business purpose, intended payee;
  - Recording in petty cash log of vouchers issued, outstanding and closed;
  - Cash receipt signed by employee receiving the funds;
  - Underlying receipt from vendor/service provider obtained and submitted by requestor substantiating use including the payee, date of payment, and goods/service provided;
  - Exceptions, if any, to return of underlying receipt to be addressed in manner consistent with underlying risk; and
  - Petty-cash records and transaction support to be maintained for appropriate legal retention period;
- Petty-cash fund transactions properly accounted for in the general ledger;
- Outstanding vouchers timely resolved and requestors barred from further funding until overdue or outstanding vouchers are closed;
- Petty-cash fund reconciled on periodic basis; and
- Petty-cash counts and reviews periodically performed by employees independent of account owner and custodian.

By designing an electronic form for petty-cash requests to replace the paper-based manual systems previously used by Company N, a significant portion of the internal controls listed above were automated. Once employees were trained in the new automated system, the incremental burden on business operations was considered acceptable relative to the increased risk mitigation to be realised by Company N.

The new automated petty-cash process is initiated by a requestor who is issued a system-numbered electronic petty-cash request voucher. In completing the voucher, the requestor is required to select from a pull-down menu that includes all approved uses of petty cash and transaction amount limits under Company N's local market policies. Only after the requestor electronically signs the compliance certificate is the request forwarded to the appropriate approver using the designated approval matrix. The approver is provided with online access to the job aide "Petty Cash ABC-related Red Flag Checklist" for consultation before electronically signing the compliance certificate and approving the petty-cash request. Only approved requests that have been fully completed are transmitted to the petty-cash administrator for processing.

The disbursement of cash by the petty-cash custodian is documented by the requestor electronically signing an acknowledgment of the receipt of the cash. The electronic cash receipt is time-stamped to automatically start the three-day period within which the requestor must return the underlying receipt from the vendor/service provider substantiating the use made of the cash, including the payee, date of payment, and goods/services provided. These supporting documents are scanned by the petty-cash administrator and digitally filed with the corresponding voucher, which is linked to the general ledger expense entry.

In order to avoid errors in recording the transaction in the general ledger, each of the approved uses listed on the pull-down menu is mapped to an appropriate general ledger account (e.g. "Ground transportation for less than €25" will be automatically recorded as "Travel Expense"). The system automatically blocks an employee with a funded petty-cash request voucher that has been outstanding for more than three days

from being issued a new voucher until the delinquency is resolved. Petty-cash-fund replenishment is automatically generated when the balance of closed vouchers (i.e. those for which the petty-cash administrator has received all supporting receipts) reaches a pre-set level, and replenishment cash funding is limited to the total of those closed vouchers. All petty-cash records are routinely backed up and are included in the company's electronic record-retention system.

The internal control environment and recordkeeping that Company N has implemented for the petty-cash process across its global operations illustrates how ABC-related controls must be integrated with standard internal financial controls in order to adequately deter and detect bribes and other corrupt payments.

## C.8: Communication and training<sup>25</sup>

### a) *Compilation of references to international business principles*<sup>26</sup>

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.b. Communication: The enterprise should establish effective internal and external communication of the Programme. The enterprise should publicly disclose its Programme for countering bribery. The enterprise should be open to receiving communications from relevant interested parties with respect to the Programme.

4.h. Training: The enterprise should aim to create and maintain a trust based and inclusive internal culture in which bribery is not tolerated. Managers, employees and agents should receive specific training on the Programme, tailored to relevant needs and circumstances. Where appropriate, contractors and suppliers should receive training on the Programme. Training activities should be assessed periodically for effectiveness.

#### **Business Principles for Countering Bribery:**

##### **6.4. Training**

6.4.1. Directors, managers, employees and agents should receive appropriate training on the Programme.

6.4.2. Where appropriate, contractors and suppliers should receive training on the Programme.

##### **6.6. Communication and reporting**

6.6.1. The enterprise should establish effective internal and external communication of the Programme.

6.6.2. The enterprise should publicly disclose information about its Programme, including management systems employed to ensure its implementation.

6.6.3. The enterprise should be open to receiving communications from and engaging with stakeholders with respect to the Programme.

6.6.4. The enterprise should consider additional public disclosure on payments to governments on a

<sup>25</sup> In relation to this international business principle, reference may also be made to article 34 of the UNCAC and chapter III, section H of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide". [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>26</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.



country-by-country basis.

6.6.5 In the spirit of greater organisational transparency and accountability to stakeholders, the enterprise should consider disclosing its material holdings of subsidiaries, affiliates, joint ventures and other related entities.

### **ICC Rules on Combating Corruption:**

#### **Part III: Elements of an Efficient Corporate Compliance Programme**

##### **Article 10 (Elements of a Corporate Compliance Programme):**

j) ensuring periodic internal and external communication regarding the Enterprise's anti-corruption policy;

k) providing to their directors, officers, employees and Business Partners, as appropriate, guidance and documented training in identifying corruption risks in the daily business dealings of the Enterprise as well as leadership training;

### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.8 [Companies should consider] ... measures designed to ensure periodic communication, and documented training for all levels of the company, on the company's ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for subsidiaries.

### **PACI Principles for Countering Bribery:**

#### 5.6 Communication

5.6.1 The enterprise should establish effective mechanisms for internal communication of the Programme.

5.6.2 The enterprise should publicly disclose its Policy for countering Bribery.

5.6.3 The enterprise should be open to receiving communications from relevant interested parties with respect to its Policy for countering Bribery.

#### 5.4 Training

5.4.1 Managers, employees and agents should receive specific training on the Programme, tailored to relevant needs and circumstances.

5.4.2 Where appropriate, contractors and suppliers should receive training on the Programme.

5.4.3 Training activities should be assessed periodically for effectiveness.

### **World Bank Group Integrity Compliance Guidelines:**

7. Training & Communication: Take reasonable, practical steps to periodically communicate its Programme, and provide and document effective training in the Programme tailored to relevant needs, circumstances, roles and responsibilities, to all levels of the party (especially those involved in "high risk" activities) and, where appropriate, to business partners. Party management also should make statements in its annual reports or otherwise publicly disclose or disseminate knowledge about its Programme.

## *b) Case studies*

### **Case Study 14: A multinational electronics company undertakes in-person training**

Founded in 1969, Company O has grown into a USD 30 billion business and become one of the world's leading Electronics Manufacturing Services (EMS) providers, offering complete design, engineering, and manufacturing services to aerospace, automotive, computing, consumer digital, industrial, infrastructure, medical, and mobile OEM customers. With a network of facilities in 30 countries, Company O helps customers design, build, ship, and service electronics products worldwide.

Having over 200,000 employees, of whom over 60 per cent reside outside of the country where Company O is headquartered (many in China), the company decided to conduct several in-depth, in-person training sessions in Asia. The training sessions were conducted in four Asian countries, including China, and were designed to reinforce Company O's commitment to operate legally and ethically everywhere it does business. Training was given to senior site management, controllers, and other employees.

The rationale for conducting in-person compliance and anti-corruption training was based on Company O's headcount and global footprint, the 2011 amendments to the China Criminal Law relating to bribery, the implementation of the UK Bribery Act 2010, and the increased enforcement of the US Foreign Corrupt Practices Act by the US Department of Justice and US Securities and Exchange Commission. In preparing the training, the company considered the following challenges:

- how to communicate the relevance, applicability and significance of anti-corruption compliance in a way that would resonate with the company's diverse employee population;
- how to effectively communicate the seriousness of the consequences associated with violating the company's anti-corruption policies and procedures, including its Code of Business Conduct and Ethics; and
- how to stimulate an interactive dialogue with varied audiences.

In order to address these challenges, Company O used local and nationally public stories to highlight the need to assess risk, identify red flags, and report them as soon as practicable. The company also highlighted the myriad of consequences that could befall an individual or company that engages in prohibited conduct or whose third-party business partner does so, on its behalf. The training was conducted in English as well as in the local language, which enabled employees to pose questions and obtain answers in their local language. In addition, a variety of quizzes and hypothetical questions were incorporated into each of the training sessions in order to promote interaction with those in attendance.

The in-person training, conducted by Company O's Chief Compliance Officer and VP, Global Compliance & Investigations, covered the following topics:

- the precept that the company's commitment to act ethically and legally starts at the top;
- ways Company O's employees can promote a culture of ethics;
- relevant anticorruption laws, including the US FCPA, the UK Bribery Act and China's Criminal Law, as well as anti-corruption/anti-bribery laws in Singapore; Hong Kong, China; and Malaysia;
- the company's policies prohibiting commercial and government corruption in any form;
- company guidelines on gifts and entertainment offered, provided, or received from public officials;
- the importance of accurate record keeping; and
- the importance of safeguarding and protecting confidential, non-public information.

The training was well-attended, well-received and yielded many requests by managers to use the presentation materials. It also resulted in lively discussions concerning real challenges facing employees and led to requests for “train-the-trainer” sessions to be given to individuals within internal functional groups in Asia as well as in other countries.

## **C.9: Promoting and incentivising ethics and compliance<sup>27</sup>**

### **a) Compilation of references to international business principles<sup>28</sup>**

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.e Human resource (par. 1): Recruitment, promotion, training, performance evaluation, and recognition should reflect the enterprise’s commitment to the Programme.

#### **Business Principles for Countering Bribery:**

##### **2. The Business Principles:**

(...) Enterprises should aim to create and maintain a trust-based and inclusive internal culture in which bribery is not tolerated.

**6.3.1.** Human resources practices including recruitment, promotion, training, performance evaluation, remuneration and recognition should reflect the enterprise’s commitment to the Programme.

**6.3.3.** The enterprise should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes, even if such refusal may result in the enterprise losing business.

#### **ICC Rules on Combating Corruption:**

##### **Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules**

**Article 8: Human Resources:** Enterprises should ensure that:

- human resources practices, including recruitment, promotion, training, performance evaluation, remuneration, recognition and business ethics in general, reflect these Rules;
- no employee will suffer retaliation or discriminatory or disciplinary action for reporting in good faith violations or soundly suspected violations of the Enterprise’s anti-corruption policy or for refusing to engage in corruption, even if such refusal may result in the Enterprise losing business;
- key personnel in areas subject to high corruption risk should be trained and evaluated regularly; the rotation of such personnel should be considered.

##### **Part III: Elements of an Efficient Corporate Compliance Programme**

<sup>27</sup> In relation to this international business principle, reference may also be made to article 34 of the UNCAC and chapter III, section I of UNODC’s publication “An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide”  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>28</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

#### **Article 10 (Elements of a Corporate Compliance Programme):**

l) including the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met and specifically against the compliance with the Enterprise's anti-corruption policy;

#### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.9 [Companies should consider] ... appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against foreign bribery, at all levels of the company;

#### **PACI Principles for Countering Bribery:**

5.3.1 The enterprise's commitment to the Programme should be reflected in its Human Resource practices.

5.3.2 The enterprise should make clear that compliance with the Programme is mandatory and that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business.

#### **World Bank Group Integrity Compliance Guidelines:**

8.1. Positive: Promote the Programme throughout the party by adopting appropriate incentives to encourage and provide positive support for the observance of the Programme at all levels of the party.

#### **b) Case studies**

##### **Case Study 15: Company N combines compliance and human resources thinking to create structured financial incentives for ethics and compliance in healthcare sector**

Company P is a USD 1 billion company in the healthcare sector. It is a stock-exchange-listed company with operations and sales around the globe. It was created as a spin-off from a larger conglomerate in 2004. After three years as a self-standing corporation, a new management team was appointed with the mission of, *inter alia*, re-engineering the company's culture to meet increased regulatory and economic challenges. This overall compliance effort was called the 'No Opportunity Lost' principle, which was adopted by the new Chief Executive Officer. This principle places compliance on every agenda and inside every objective and team structure. It seeks to ensure compliance is "always talked about" and in non-compliance fora.

The new management team at Company P announced immediately that ethics and compliance would form part of the company's strategic plan *and* be used to achieve a competitive advantage. As part of this effort, the Human Resources and Legal & Compliance Functions decided to bring together Company P's compliance and compensation tools.

The team's overall mission was to create a system in which operational managers, and not merely Compliance Managers, would talk about and act on ethics and compliance in positive terms. The use and creation of a positive vocabulary around ethics and compliance, recognisable by those acting in the greatest risk area -- sales and marketing -- was central to the new system.

Like its industry peers, Company P had a compensation system based on three pillars: base salary,

variable compensation, and long-term incentives (e.g. stock grants, stock options). Company P refined its compensation model over a three-year period to create a unique link between its compliance programme and the three elements of its total compensation systems in order to encourage behaviours and leadership in ethics and compliance. The new model now includes the following steps:

- A new performance management objective (PMO) was added to the traditional six PMOs for all “key managers” (the top 150 managers in a company of 4,000 employees). PMOs determine these managers’ variable pay at the end of each financial year. The Compliance PMO measures an individual’s performance in ethics and compliance.
- Using Company P’s risk-management system, each individual’s Compliance PMO is tailored to specific functional roles *and* seniority in order both to ensure key risks are being addressed effectively, and to make the objectives directly relevant to those covered. This avoids any “box checking” culture on ethical questions. Senior executives’ Compliance PMOs differ from those of regional sales managers; clinical managers and other customer-facing employees have different PMOs from IT teams, and so on.
- The ethics and compliance PMO *must* form at least 10 per cent of a covered employees’ target variable compensation, but it is often higher.
- Individual performance is assessed biannually by line managers in performance reviews. Compliance staff participate in the reviews and ensure alignment throughout the organisation on performance measurement.
- Uniquely, employees can *overachieve* their Compliance PMO, receiving up to 200 percent of the weighted target for this objective.
- Senior managers also have the ability to issue special discretionary variable-pay awards for outstanding leadership in ethics and compliance.

Consistent with the need for robust “tone at the top”, this system includes all members of Company P’s Executive Leadership Team, as well as the Chief Executive Officer. The CEO’s own performance vis-à-vis objectives is reviewed by the Board of Director’s Remuneration Committee and Committee for Internal Audit, based on closed-door interviews with the General Counsel and Chief Compliance Officer. The Committees also have the power to interview also outside consultants/law firms if deemed appropriate.

There are also consequences when managers fail to meet the Compliance PMO:

- A performance evaluation of “Fails to Meet Expectations” should result in the loss of *all* variable pay (including that relating to sales, marketing, revenue, profitability or other achievements by the manager in his or her role).
- Performance that is below stated objectives but that does not fall to the level of “Fails” results in a multiplier of variable pay that is lower than 100 per cent.
- A minimum achievement of “Meets Expectations” is necessary for sales persons and sales and marketing management to be eligible for the “President’s Club” of high performers (regardless of actual sales performance), and therefore for the additional awards that membership of this elite organization otherwise provides.

Managers receive day-to-day guidance on both (a) how to apply the variable pay levers in practice, as well as (b) how ethics and compliance objectives can receive “Exceeds Expectations” or “Outstanding Performance” evaluations from the Compliance Function. Both evaluations can result in a positive multiplier for receipt of variable-pay bonuses, up to 200 per cent.

In addition, a Handbook for Company P managers has been co-written by Human Resources, Compliance, and Business Unit teams to provide both quantitative and qualitative guidelines, and examples of behaviour under each level of achievement.

The Handbook links the ethics and compliance PMO to the goals of Company P’s Global Compliance

Programme in a very concrete *and measurable* manner. Examples of conduct that will trigger a positive multiplier on variable pay include:

- Manager acts upon “No Opportunity Lost” principle and places compliance on 100 per cent of meeting agendas;
- Manager and team members carry with them at all times their individually named “Company P Compliance Commitment” card. The card is renewed and reissued annually to all employees having successfully completed their personalised training requirements. The card includes Compliance Team contact details, key ethics messages for the year, and is a visible and verifiable symbol of alignment to Company P’s vision for ethics and compliance.
- Manager oversees compliance with the team’s tailored training requirements 100 per cent on time, or ahead of schedule;
- Manager demonstrates creativity in how to talk about compliance. Examples of rewarded initiatives include arranging a visit to prison cells by team, inviting a guest speaker from industry who has served time in prison for ethics violations, having peers and even competitors address teams on compliance performance as perceived from *outside* the company, etc.
- In the event that mistakes are made, Manager respects the “Speak Up” policy of Company P and engages in a discussion on compliance challenges and how mistakes can be rectified.

#### **C.10: Seeking guidance – Detecting and reporting violations<sup>29</sup>**

##### ***a) Compilation of references to international business principles<sup>30</sup>***

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.g. Raising Concerns and Seeking Guidance: The Programme should encourage employees and others to raise concerns and report suspicious circumstances to responsible enterprise officials as early as possible. To this end, the enterprise should provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances (‘whistleblowing’) in confidence and without risk of reprisal.

These channels should also be available for employees and others to seek advice or suggest improvements to the Programme. As part of this process, the enterprise should provide guidance to employees and others on applying the Programme’s rules and requirements to individual cases.

#### **Business Principles for Countering Bribery:**

6.3.4 The enterprise should make compliance with the Programme mandatory for employees and directors and apply appropriate sanctions for violations of its Programme.

6.5.1 To be effective, the Programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the enterprise should provide secure and accessible

<sup>29</sup> In relation to this international business principle, reference may also be made to article 34 of the UNCAC and chapter III, section J of UNODC’s publication “An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide”. [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>30</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

channels through which employees and others should feel able to raise concerns and report violations (“whistle-blowing”) in confidence and without risk of reprisal.

6.5.2 These or other channels should be available for employees to seek advice on the application of the Programme.

### **ICC Rules on Combating Corruption:**

#### **Part III: Elements of an Efficient Corporate Compliance Programme**

##### **Article 10 (Elements of a Corporate Compliance Programme):**

m) offering channels to raise, in full confidentiality, concerns, seek advice or report in good faith established or soundly suspected violations without fear of retaliation or of discriminatory or disciplinary action. Reporting may either be compulsory or voluntary; it can be done on an anonymous or on a disclosed basis. All bona fide reports should be investigated;

### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.11 [Companies should consider] ... effective measures for:

- i. providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company's ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions;
- ii. internal and where possible confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where appropriate, business partners, willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds; and
- iii. undertaking appropriate action in response to such reports;

### **PACI Principles for Countering Bribery:**

#### **5.5 Raising concerns and seeking guidance**

5.5.1 The Programme should encourage employees and others to raise concerns and report suspicious circumstances to responsible enterprise officials as early as possible.

5.5.2 To this end, the enterprise should provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances (“whistleblowing”) in confidence and without risk of reprisal.

5.5.3 These channels should also be available for employees and others to seek advice or suggest improvements to the Programme. As part of this process, the enterprise should provide guidance to employees and others on applying the Programme’s rules and requirements to individual cases.

### **World Bank Group Integrity Compliance Guidelines:**

#### **9. Reporting:**

9.1. Duty to report: Communicate to all personnel that they have a duty to report promptly any concerns they may have concerning the Programme, whether relating to their own actions or the acts of others.

9.2. Advice: Adopt effective measures and mechanisms for providing guidance and advice to management, staff and (where appropriate) business partners on complying with the party's Programme, including when they need urgent advice on difficult situations in foreign jurisdictions.

9.3. Whistleblowing/Hotlines: Provide channels for communication (including confidential channels) by, and protection of, persons not willing to violate the Programme under instruction or pressure from hierarchical superiors, as well as for persons willing to report breaches of the Programme occurring within the party. The party should take appropriate remedial action based on such reporting.

### **UN Convention against Corruption (UNCAC):**

*The UNCAC also highlights the importance of protection of reporting persons.*

#### **Article 33 – Protection of reporting persons**

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

#### ***b) Case studies***

#### **Case Study 16: Company Q develops a whistleblowing hotline**

Various factors contributed to the development of the Company Q hotline. These range from cultural attitudes influencing the importance and acceptability of whistleblowing, the decentralised structure of the Company Q business model, the advent of whistleblower regulation (such as the US 2002 Sarbanes-Oxley Act, which requires protection against retaliation of whistleblowers) and internal cases and investigations that have resulted in reviews and the strengthening of the Company Q Integrity Programme in which the hotline is an essential element.

The case that acted as the catalyst to the introduction of a whistleblowing hotline occurred in the beginning of the 1990s. An allegation was made to Company Q in the US (Company Q US) regarding kickbacks and conflicts of interest by an external stakeholder. This allegation was passed to the internal audit function to handle with the help of an external investigator who conducted the investigation. The investigators' findings resulted in the termination of a number of Company Q employees' contracts with Company Q US. Thereafter, it was decided to introduce a more formalised hotline system to enable reporting of concerns; however, at first this was a modest initiative that was limited in scope.

The first hotline in Zurich (Company Q headquarters) consisted of a local number and was not widely used at first. Meanwhile, Company Q US decided to formalise its hotline in the US, this time in the context of their Code of Conduct, newly issued in 1996. This new hotline in the US was a toll-free number available 24 hours a day, 7 days a week, and all calls were routed to the Office of Ethics in the US. From the outset it was accepted that the caller could maintain his or her anonymity, although identification has always been encouraged to facilitate communication over what may be a period of weeks or even months during the course of an investigation. At this time, investigations were still outsourced to an external consultant.



In 2004, following a settlement with the US Securities and Exchange Commission, Company Q hired an independent consultant to review the compliance programme. The consultant made a series of recommendations in the final report, including in relation to the further expansion of the hotline. This created the impetus to improve access to the hotline throughout the company, to develop a comprehensive approach to its implementation, and to improve the investigation and follow up of allegations and concerns raised by employees as well as external stakeholders. Company Q's Compliance (now Integrity) Department was tasked with developing and rolling out the global hotline, as well as engaging in an education and awareness programme to ensure its implementation and visibility within the company. The future investigation of allegations arising from the hotline reports was given to a team of internal investigators. In bringing investigations in-house, the aim was to ensure that a consistent and robust approach would be taken not only when inquiring into the issues raised by a reporter to the hotline but also when applying disciplinary or remedial actions, so that these would be consistent throughout the company. In addition, the advantage of a centralised team of investigators would facilitate the co-ordination of expertise to investigate the range of issues raised by hotline reports, as well as simplifying the collection of data for statistical and analytical purposes.

It was evident that the company would be best served through an external hotline provider that could ensure comprehensive and consistent global coverage in a professional manner. The selection criteria applied to potential hotline suppliers included not only the price, the supplier's reputation, the scope of services and languages offered, but also (and of great importance) the quality of the staff answering the phones at the call centre(s). All short-listed vendors were therefore subject to an on-site visit, and staff members who were staffing the call lines were interviewed at random to assess their attitudes, professionalism, and experience. The selection of a suitable provider was only the first step in the process, however: before the roll-out could begin, Company Q had to address other practical issues, such as whether all countries could actually offer toll-free phone services. Data-protection considerations also had to be resolved, which in some countries has meant a restricted service can be offered only according to applicable laws.

Early involvement of, for example, the HR, audit, legal and compliance functions throughout the organisation to receive relevant local information and understand local laws and regulations is an important element in ensuring a smooth and speedy implementation of a global hotline. Deploying a questionnaire to the relevant functions around the world in order to ascertain pertinent details of local laws (such as data privacy requirements and employment laws) plays an important role in determining the efficiency of the roll-out and deciding how investigations are to be undertaken once the hotline is up and running.

In the run-up to the global implementation of the hotline, a series of communications on its progress was issued internally to alert staff to its status and to create awareness to employees at an early stage. A global poster campaign was also used to promote awareness of the hotline; the posters were issued in some 25 languages. The importance of these accompanying measures to ensure awareness and understanding of the hotline cannot be underestimated -- nor should the cost or amount of time it takes to co-ordinate a solid and comprehensive education campaign in multiple languages.

The external provider was also able to offer advice on the predicted number of allegations arising through the hotlines, which now covered not only employees but also 2008 stakeholders (through a separate hotline), both which permit reporting through e-mail, ordinary post, or telephone calls. Whilst the provider's predictions were indicative only, they did serve to help ensure the right level of staffing within Company Q to field the incoming hotline allegations. Company Q decided to centralise all the issues arising from the hotline to the Compliance (now Integrity) function from the outset, but this approach is only one of many alternatives; other companies may route the incoming reports to different functions such as Legal, Internal Audit, HR as well as Compliance. There is no prescribed or better solution to this aspect of operating a hotline service, as long as the issues are addressed in a timely and fair manner using as transparent a procedure as possible.

The reasons that may inhibit recourse to a hotline are generally related to fears of losing one's job or being subjected to some other form of retaliation, or to the belief that the issue will not be addressed satisfactorily or indeed at all by those receiving the report. To address these fears, clear messages to educate employees about how and when to report and the meaning of the non-retaliation policy in

practice are necessary to ensure the effectiveness of the hotlines. Regular repetition of these messages with follow-up awareness campaigns also needs to be organised. Raising the quality of whistleblowing reports and engendering trust that issues will be dealt with in a safe environment from the perspective of the reporter is important; just as crucial is the quality and transparency of the investigatory procedures and the visibility of the outcome following the resolution of an investigation (where appropriate and legally permissible).

In recent years the improved quality of reporting (namely the reporting of more serious allegations and at an earlier stage, or even before potential wrongdoing) can be attributed to various factors, such as the move away from extreme levels of confidentiality that excluded even people who could have helped prevent the recurrence of wrongful behaviour from knowing the outcome of an investigation, to the position whereby appropriate sharing of the results of investigations with senior management can contribute to more effective and targeted training programmes and remedial actions that can bring about real change. Therefore, as the hotline reporting system has matured over recent years, the level of sharing the lessons from cases in an appropriate manner has evolved, thus increasing transparency and knowledge within the Integrity Function itself, as well as among senior management in the business divisions. These managers disseminate the messages learned from cases including to the wider workforce through training modules that feature “sanitised” versions of the cases, in addition to the Integrity function writing about and communicating stories of misconduct through the intranet available to all employees

Company Q employees and stakeholders can be confident that their reports will be treated seriously and handled in a professional and confidential manner and that the results may well have a bearing on how the company operates and how it addresses the issues raised through a hotline report. Thus it is clear that the hotline will continue to play an important role in the Integrity Programme and remains an important source to improve processes and procedures, mitigate risks, and prevent and reduce wrongful behaviour.

### **Case Study 17: A food company implements an Ethics Line**

Company R is a food sector enterprise with more than 67 years of experience. Some of the company's products include milk, yogurt, cheese, juice, and smoothies. Company R has local operations in Colombia, Venezuela, Ecuador, Peru, and the US and employs more than 6,200 people.

In line with its commitment to ethics and transparency, Company R has developed ethical guidelines applicable to all employees, including a Code of Conduct and a Code of Corporate Governance and Internal Labour. To strengthen commitment to these codes and to monitor compliance deviations, Company R has also implemented an Ethics Line. The Ethics Line is a confidential and anonymous reporting mechanism, where employees, customers, distributors and/or suppliers can report or receive consultation on potentially unethical actions or other situations that may affect Company R's interests.

The Ethics Line has local telephone numbers in each of the geographical areas where Company R operates (that is, in Colombia, Ecuador, Venezuela and the US). The Ethics Line is enabled 24 hours a day. On weekends and holidays, a report can be left as a message.

Any report made on the Ethics Line is subject to an internal review. First, the report is recorded in a database with restricted access. The reports in the database are sorted based on criteria for measuring the impact on the company. This is done by an authorised member of the Corporate Control Direction. They are then analysed and addressed, a plan for taking action is set forth and carried out, and the findings are submitted to the Ethics Committee.

Company R's Ethics Committee has two main functions. First, it evaluates reports received through the Ethics Line and researches solutions for the problems reported. Second, it develops written guidance on the possible consequences of fraud, in line with the rules set forth in the Code of Conduct and the Code of Corporate Governance and Internal Labour, in order to ensure equal treatment of the individuals involved.

Company R also has an outreach campaign through which it shares information about the Ethics Line with its employees as well as other stakeholders, such as distributors and industry suppliers. The outreach campaign is designed to raise awareness of issues related to Company R's ethical guidelines, such as theft, bribery, conflicts of interest, and unauthorised payments, among others. Campaigns are conducted through internal communications tools, such as magazines, advertisements, and a newsletter.

Benefits of the implementation of the Ethics Line include the following:

- a) The reduction of the likelihood of internal fraud and unethical behaviour;
- b) A stronger culture of anti-fraud and ethical behaviour within the company;
- c) The ability to gather and provide feedback to senior management on the operation and implementation of the Code of Conduct and the Code of Corporate Governance and Internal Labour;
- d) An assurance of trust and transparency for company stakeholders; and
- e) A stronger company reputation.

Those who make reports on the Ethics Line can receive assistance from Company R's "Protection and Prevention" team, which is responsible for guaranteeing the security of Company R Ethics Line whistleblowers.

### **Case Study 18: A US-based multinational company establishes a confidential hotline for reporting corruption concerns**

Company S is a US-based multinational engaged in the exploration for, and production of, hydrocarbons in about 30 countries around the globe. In the US, the company also has retail operations, selling gasoline and related products directly to the public and operating convenience stores at gas stations. The company has many thousands of employees of many nationalities.

For many years, Company S operated a confidential hotline for its employees. It was originally intended to allow employees to report (anonymously if they wished) incidents of graft or corruption in the procurement process. The hotline was effectively confined to the company's largest operating countries, particularly those in large economies. This was not as a result of any deliberate policy on the company's part; rather, it was a reflection of the technical difficulties of providing free and widely available telephone facilities in smaller economies, as well as a general inability of many employees – particularly lower-level ones -- in these countries to access international dialling.

Nonetheless, because the hotline number was prominently displayed in all of Company S's premises, it began to be used for other purposes, e.g. employees complaining about supervisors, gas-station customers complaining about the condition of restrooms, and other items unrelated to corruption. As the company's operations spread to more remote and challenging countries, and as enforcement of the US Foreign Corrupt Practices Act became increasingly active, the need to overhaul the system in order to target corruption issues became apparent.

As Company S began looking at creating a truly worldwide hotline for reporting corruption concerns, it quickly became apparent that setting up such a hotline would be a considerable technical challenge. Although most countries had a toll-free number system of some sort, many did not permit the use of a local toll-free number to connect to an international destination. To deal with this challenge, Company S hired a specialist provider that created a system to match the company's needs. Local, toll-free numbers are now provided in each country of operation and are well-publicised in all of Company S's offices and plants, in its business-practices handbook, and during anti-corruption training. Wherever possible, the local toll-free number connects to the specialist provider's US facility. Where this is not possible, the number connects to a facility in the same country as the caller. None of the answering facilities is staffed by company personnel, to help ensure anonymity.

Another challenge Company S faced was to ensure that concerns raised through the hotline were

conveyed quickly to the right company department. For clarity, Company S chose to operate only one hotline number, even in countries where it has various operations. However, calls are directed to the appropriate response team through a menu system (for example, using voice prompts such as, “If you are calling about a human resources issue, press 4...”, “If you are calling about a corruption concern, press 5...” and so forth). Thus, messages taken through the system are passed to the appropriate department in the company. All messages reporting or alleging corrupt activity are sent immediately to the compliance group, which in turn involves counsel whenever needed. The menu system also offers a choice of the language(s) of the country from which the call is made, as well as English.

A caller to the hotline is offered the chance to receive feedback on how any investigation prompted by his or her report is progressing. However, the caller receives an explanation that providing such feedback will involve the loss of the caller’s anonymity, at least between the caller and the service provider.

Although the new hotline was expensive to set up and is expensive to maintain, it has been very well-received. Local employees in countries of operation feel that Company S is as interested in hearing from them as from its employees in the US or Europe. In addition, compliance and training staff feel that Company S is taking its obligations seriously and that they can demonstrate this to authorities if necessary.

#### **Case Study 19: A UK health and social care provider implements whistleblowing arrangements as part of its overall risk management strategy**

Company T began working with Public Concern at Work (PCaW), an independent whistleblowing charity and legal advice centre, in 2008, with a view to implementing comprehensive whistleblowing arrangements throughout the organisation as part of its overall risk-management strategy. The main challenges were disseminating the information to a large and diverse work force working in different settings and determining how best any new whistleblowing arrangements could be promoted to all staff.

Putting into place arrangements would comprise the following elements:

- Review/redraft of the company whistleblowing policy
- Policy launch, communication and promotion
- Training of designated officers/named persons in the whistleblowing policy
- Refreshing the message regularly
- Reporting to governance structures on policy awareness and use

##### Review/redraft of whistleblowing policy

As a starting point, PCaW carried out a review of Company T’s existing policy with a view to bringing it into line with the PCaW model policy and ensuring it met best practice as set out in the BSI 2008 Code of Practice.<sup>31</sup> This process involved reviewing the policy and ensuring that the language and tone of the policy were encouraging and reassuring for the staff member who would be using it. The review ensures that the assurances in the policy are comprehensive and that other policies mentioned (such as grievance and anti-bribery/anti-fraud policies) are also reviewed to ensure overall clarity in the messaging.

The policy also needed to avoid being overly legalistic and simple for the reader to understand, covering the following main points:

<sup>31</sup> The BSI 2008 Whistleblowing Arrangements Code of Practice can be found online here: <http://shop.bsigroup.com/forms/PASs/PAS-1998/>

- Who and what the policy covers
- That the assurances offered to staff under the policy are clear and unambiguous and they are:
  - that the staff members will not suffer or be at risk in relation to their position when using the policy
  - that their identity will not be revealed without their consent unless required by law
  - that any reprisal against anyone using the policy is a disciplinary offence and will be taken seriously
- How to raise concerns, including who concerns can be raised with and full contact details
- What to expect when a concern has been raised
- Bespoke e-mail and Freephone number for contacting PCaW
- Details of key regulators

#### Policy launch, communication and promotion

Once Company T and PCaW were satisfied that the policy met best practice, the next step was to schedule a policy launch and how it would be communicated and promoted to all staff. As Company T has a large work force, a communication strategy was put into place that considered how best to do this. Jointly branded posters and postcards were created that mentioned the policy, and the bespoke telephone number and e-mail set up with PCaW to enable Company T staff to receive confidential and independent advice. Promotion is essential to setting up whistleblowing arrangements; this informs staff of the existence of the policy and what it is for, and should be accompanied by a clear message from company leaders that it is safe and accepted to raise a concern about wrongdoing, risk, or potential malpractice within the company (and to regulators if need be).

At the launch, a letter and an e-mail were sent out to all staff to advise them of the new policy, and Company T made use of the intranet and company newsletter to create a message from the Group Finance Director to promote the policy launch.

#### Training of designated officers/ named persons in the whistleblowing policy

It is best practice for whistleblowing policies to have specific, named contacts to whom staff can turn when raising their concern; these individuals are usually known as the designated contacts or whistleblowing officers. As part of the implementation of comprehensive whistleblowing arrangements, it is important not only to have named individuals as contacts within the policy but for these individuals to receive training on how to handle both the concern and the whistleblower.

After Company T reviewed and launched the whistleblowing policy, PCaW conducted training for the divisional and group designated officers. The training was interactive, with group exercises and case studies throughout to allow the participants to fully understand and engage with the subject. The training covered a variety of issues including:

- The costs of keeping silent
- Reasons that individuals do not speak up
- The dilemmas staff may face
- The law in the United Kingdom (Public Interest Disclosure Act)<sup>32</sup>
- The handling of the concerned employee
- Key policy messages

<sup>32</sup>

Text of the Act can be found online here: <http://www.legislation.gov.uk/ukpga/1998/23/contents>

- Practice and audit

#### Refreshing the message

It is important that once the arrangements have been put into place, they do not become stale and forgotten by staff. This is best done by refreshing the policy messages at regular intervals. Company T does this by periodically introducing new jointly branded posters and postcard designs. Company conferences are used as an opportunity to distribute literature relating to whistleblowing, and surveys of managers are taken periodically on the topic of whistleblowing. The results of such exercises are then communicated to staff.

#### Ongoing work

Whistleblowing is a standing item on the company's quarterly governance committee meeting, where this issue and other incident reporting processes are considered in detail and trends are mapped. PCaW are invited annually to report to this committee. Reports include company information on the volume and nature of calls received from Company T, in addition to more general trends noted by the charity on the advice line and further promotional and survey work.

### **C.11: Addressing violations<sup>33</sup>**

- Internally; and
- externally with authorities

#### *a) Compilation of references to international business principles<sup>34</sup>*

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.e. Human Resources (par. 3) The enterprise should make clear that compliance with the Programme is mandatory and that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business.

#### **Business Principles for Countering Bribery:**

6.9.1 The enterprise should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions.

#### **ICC Rules on Combating Corruption:**

#### **Part III: Elements of an Efficient Corporate Compliance Programme**

#### **Article 10 (Elements of a Corporate Compliance Programme):**

n) acting on reported or detected violations by taking appropriate corrective action and disciplinary measures and considering making appropriate public disclosure of the enforcement of the Enterprise's

<sup>33</sup> . Reference may also be made to chapter III, section K of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide":  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>34</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

policy;

**OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.10 [Companies should consider] ... appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding foreign bribery;

**PACI Principles for Countering Bribery:**

5.3 Human resources

5.3.1 The enterprise's commitment to the Programme should be reflected in its Human Resource practices.

5.3.3 The enterprise should apply appropriate sanctions for violations of the Programme, up to and including termination in appropriate circumstances.

**World Bank Group Integrity Compliance Guidelines:**

8.2. Disciplinary Measures: Take appropriate disciplinary measures (including termination) with all persons involved in Misconduct or other Programme violations, at all levels of the party including officers and directors.

10. Remediate Misconduct:

10.2 Respond: When Misconduct is identified, the party should take reasonable steps to respond with appropriate corrective action and to prevent further or similar Misconduct and other violations of its Programme.

### **UN Convention against Corruption (UNCAC):**

*The UNCAC underlines the value of cooperation between the private sector and national law enforcement authorities.*

#### **Article 39.1 – Cooperation between national authorities and the private sector**

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

#### **Article 37.1 and .2 – Cooperation with law enforcement authorities**

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

#### ***b) Case studies***

#### **Case Study 20: A financial services firm addresses allegations of foreign bribery by one of its employees**

The company is a US financial services firm with investments in finance and commodities companies worldwide. In 1998, a managing director at the firm invested a fraction of the funds he managed in an oil deal in a former Soviet republic. The US-based manager anticipated substantial gains if the state, as had been speculated, were to privatise part of its foundering oil industry.

A New York hedge fund, which had been involved with a previous investment by the financial services firm, encouraged the financial services firm to join its own deal to purchase state assets in the former Soviet republic, which involved liaising with a local intermediary. The risks on the investment were high for a number of reasons: the country had a reputation for corruption, the republic's government might choose not to sell the company, and there were media reports that the deal's in-country promoter had stolen assets from other public companies. The following year, the deal collapsed when state leaders decided not to sell the public assets.

Following the collapse of the investment, the US investor firms sued the deal's local promoter, claiming he had embezzled their investment funds. The promoter claimed the US firms should be barred from legal action against him, as he and they had jointly bribed government officials in the former Soviet republic, in alleged violation of the US Foreign Corrupt Practices Act (FCPA), which criminalises the bribery of foreign public officials in international business transactions. An executive of the New York hedge fund pleaded guilty to investing with the promoter after learning of the bribery scheme. He also implicated the managing director of the financial services firm.

In 2005, the financial services firm's managing director was charged with violating the FCPA in a 27-count indictment with conspiracy to bribe senior officials in the former Soviet republic to gain control of the state oil company.

#### **The company's operational challenges concerning corruption**

1) The FCPA demands that a US company must abide by stringent anti-corruption and accounting



provisions. Both the company and its individual employees can be charged with violations of the act.

2) In pursuing an oil deal in a former Soviet state, the US financial services firm was confronted by the challenge of negotiating contracts within a significantly different business culture. The republic in question was ranked in the bottom quartile of Transparency International's Corruption Perceptions Index 2011. In 1998, the year of the deal, the index ranked only 85 countries and the state in which the deal occurred was not amongst them.

3) The company was also investing in a state-owned entity and therefore obliged to enter into dealings with the government of the relevant jurisdiction in order to carry out the transaction.

### **The company's response**

In December 2005, the financial services firm placed the managing director on unpaid leave for the duration of the investigation. Any requests from the director to the company from that point on had to be made through counsel. His employee-indemnification policy covered the fees of a New York law firm, which in turn engaged an investigative firm to provide litigation support. Over several months, and after interviewing numerous individuals in multiple jurisdictions with knowledge about the Soviet republic's local deal-promoter and his business dealings, including identifying collecting and analysing public records, the investigative firm identified evidence that the deal's representative at the New York hedge fund was more involved in the bribery than he had claimed. The investigative firm also obtained documents indicating unethical dealings by the government's primary witness in relation to a previous company acquisition, discrediting his claims.

In the end, it was discovered that the New York hedge fund had assured the financial services firm's managing director that it had investigated the promoter's arrangement with state officials and that it would not fall afoul of anti-bribery laws. In July 2008, after almost a year of investigation, the US government dropped the FCPA charges against the financial services firm's managing director, ruling that further prosecution "in this case would not be in the interests of justice." Once cleared of charges, the managing director was reinstated at the company.

### **Case Study 21: Telecoms company addresses foreign bribery by a third party**

The company is a US-listed multinational company, active in the telecoms sector and is the majority owner of a telecom company based in Eastern Europe. At this subsidiary, there were whistleblowing allegations that a local executive was bribing local government officials in order to obtain telecoms cabling and construction contracts from the local government. The bribes were allegedly paid through a third-party consultant. More specifically, there were allegations that the executive, the third party, and a government official had some sort of business interest in common, possibly shareholdings in a limited company or the joint ownership of an undisclosed asset.

### **The company's operational challenges vis-à-vis corruption**

Some of the company's challenges exist because of the business culture in the jurisdiction where its subsidiary operates, which has scored poorly in recent Transparency International Corruption Perceptions Index measurements. In addition, because of the very nature of the company's business, it has to contract with governments and with the public sector, including publicly owned entities.

### **The company's challenges and considerations in applying the topic in practice**

The main challenge for the company was to ascertain the veracity of the allegations and to understand whether there appeared to be any violations of the US FCPA. The company needed to proceed quickly yet carefully avoid alerting any potential wrongdoers that they were under investigation. The information had to be collected through interviews and investigative evaluation of company documents and other sources, while protecting legal privilege at all times. When conducting this type of internal investigation, companies have to balance the possible concerns of the shareholders and the need to avoid lengthy,

expensive, and possibly disruptive internal investigations, against the US government *ex post* scrutiny.

### **Challenges presented by enforcement actions against the company**

The main challenge for the US-based parent company was to obtain a level of knowledge on the specific facts that would allow the parent company's board to properly decide whether to self-report to the U.S. Department of Justice about any real violations of the FCPA.

### **The company's response**

In order to conduct an internal investigation, the parent company retained outside counsel, who in turn engaged the services of a professional investigative firm, thereby protecting privilege in its fact-finding.

The investigative firm accompanied the lawyers on their trip to Eastern Europe and accomplished the following tasks:

- secured the company's server
- interviewed employees
- conducted a forensic IT investigation for the collection and preservation of all electronic evidence
- conducted background investigations and asset tracing on target subjects.

At the conclusion of the internal investigation, there was evidence that linked the executive and the third party. Relatives of both the executive and of the company's consultant had shareholdings in a locally incorporated IT company. In addition, the consultant owned a property that was rented to a relative of the executive, and it was unclear whether rent was being paid. However, there were no proven links to the politician. It appeared that this was a case of commercial bribery, not sanctioned by the FCPA.

The lawyers assessed that there was no need for self-reporting to the US authorities. As a result of the investigation and scrutiny of compliance programs, or lack thereof, however, the US-based parent company dismissed the executive and re-wrote its anti-bribery policies, making them stricter and compliant with US and foreign laws.

## **C.12: Periodic reviews and evaluations of the anti-corruption programme<sup>35</sup>**

### ***a) Compilation of references to international business principles<sup>36</sup>***

#### **APEC Anti-Corruption Code of Conduct for Business:**

4.f. Monitoring and Review: Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report to the Audit Committee or the Board the results of the Programme review.

The Audit Committee or the Board should make an independent assessment of the adequacy of the Programme and disclose its findings in the Annual Report to shareholders.

<sup>35</sup> In relation to this international business principle, reference may also be made to article 34 of the UNCAC and chapter III, section L of UNODC's publication "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide"  
[http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>36</sup> A full comparison of the anti-bribery business principles cited in this handbook is included in the table found in Annex 1.

### **Business Principles for Countering Bribery:**

#### **6.8. Monitoring and Review**

6.8.1. The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness, and implement improvements as appropriate.

6.8.2. Senior management should periodically report the results of the Programme reviews to the Audit Committee, Board or equivalent body.

6.8.3. The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the enterprise's Annual Report to shareholders.

#### **6.10 External verification and assurance**

6.10.1 Where appropriate, the enterprise should undergo voluntary independent assurance on the design, implementation and/or effectiveness of the Programme.

6.10.2 Where such independent assurance is conducted, the enterprise should consider publicly disclosing that an external review has taken place, together with the related assurance opinion.

### **ICC Rules on Combating Corruption:**

#### **Part III: Elements of an Efficient Corporate Compliance Programme**

...

#### **Article 10 (Elements of a Corporate Compliance Programme):**

...

c) mandating the Board of Directors or other body with ultimate responsibility for the Enterprise, or the relevant committee thereof, to conduct periodical risk assessments and independent reviews of compliance with these Rules and recommending corrective measures or policies, as necessary. This can be done as part of a broader system of corporate compliance reviews and/or risk assessments;

...

f) issuing guidelines, as appropriate, to further elicit the behaviour required and to deter the behaviour prohibited by the Enterprise's policies and programme;

### **OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:**

A.12 [Companies should consider] ... periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, taking into account relevant developments in the field, and evolving international and industry standards.

### **PACI Principles for Countering Bribery:**

## 5.8 Monitoring and review

5.8.1 Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report the result of the Programme review to the Board,

Audit Committee or equivalent body.

5.8.2 The Board, Audit Committee or equivalent body should receive and evaluate periodically an assessment of the adequacy of the Programme.

### **World Bank Group Integrity Compliance Guidelines:**

3. Programme Initiation, Risk Assessment and Reviews: When establishing a suitable Programme, carry out an initial (or updated) comprehensive risk assessment relating to the potential for the occurrence of fraud, corruption or other Misconduct in the party's business and operations, taking into account its size, business sector, location(s) of operations and other circumstances particular to the party; and review and update this risk assessment periodically and whenever necessary to meet changed circumstances. Senior management should implement a systemic approach to monitoring the Programme, periodically reviewing the Programme's suitability, adequacy and effectiveness in preventing, detecting, investigating and responding to all types of Misconduct. It also should take into account relevant developments in the field of compliance and evolving international and industry standards. When shortcomings are identified, the party should take reasonable steps to prevent further similar shortcomings, including making any necessary modifications to the Programme.

9.4 Periodic Certification: All relevant personnel with decision-making authority or in a position to influence business results should periodically (at least annually) certify, in writing, that they have reviewed the party's code of conduct, have complied with the Programme, and have communicated to the designated corporate officer responsible for integrity compliance matters any information they may have relating to a possible violation of the Programme by other corporate personnel or business partners.

### *b) Case studies*

#### **Case Study 22: UK-based international company monitors implementation of a group compliance programme**

The company is operated from the UK and is present in over 80 countries including in Africa, the Middle East, Asia, Latin America, and Eastern Europe. It engages in a variety of business models, including sales to and involving governments and funds from Non-Governmental Organisations.

It came to the company's attention that there was a risk of bribery in connection with this business. The company conducted its own investigation, leading to a self-referral to the UK Serious Fraud Office and debarment from participating in World Bank transactions. The World Bank offered the possibility of conditional release from debarment on the implementation of a satisfactory compliance programme.

The company did not have a compliance programme; therefore, the first step was to appoint a Group Compliance Officer to conduct a risk assessment and establish appropriate policies and procedures and to educate staff. Thereafter, the company has engaged in a monitoring programme to ensure that such policies and procedures are well-understood and adhered to throughout the group.

The company's monitoring programme comprises three components:

- Audit
- Review

- Self-assessment

Through these components, the monitoring programme is designed to give a cross-divisional and international picture of the current state of implementation of the compliance programme. The results are used to identify areas which need more support and to share best practices across the group.

The audit and review components are designed to cover broadly similar subject matter. The main difference between the two is that during an audit, financial data will be sample tested. This is not intended to be a substitute for internal audit of financial controls, however, and both processes result in a qualitative assessment based on interview with relevant staff.

Five audits and five reviews are conducted annually. The subject of the review can be a department, business unit, overseas office, or business process. The audit component is outsourced to an international accounting and consulting firm. A member of the company's compliance department accompanies the auditors on each audit to ensure that the company obtains a thorough understanding of the subject matter covered. The review process is led by the Group Compliance Officer.

Seven topics are assessed in an audit or review. Some examples of some of current points of focus are outlined below. The points of focus will change as the compliance programme matures.

**Governance** – Assess tone at the top and middle. Are active commitment and visible support given by management? Has there been clear, practical and accessible communication of the compliance programme and standards to employees? Has management established a trust-based organisational culture, adopting the principles of openness and transparency?

**Risk assessment** – Review management's engagement in the compliance risk assessment. Are there any new areas of business which should be reflected? Does management engage in any other formal risk-assessment process? If not, how does it assess its risk of fraud, corruption or other legal or regulatory risk?

**Due diligence/management of business partners** – Have business partners been identified? What processes are in place for the selection and appointment of business partners? Are risk-based background checks in place? Do these extend to joint ventures? Has it been effectively communicated that entities are required to adopt the company's Code of Conduct or equivalent standards? How is risk assessed and kept under review?

**Education and training** – Determine level of awareness and understanding of the company's standards, policies and procedures amongst employees (including casual staff) of over three months' tenure. Have all relevant employees participated in required training? Has management identified high-risk employees, such as senior executives and business unit leaders? Has tailored training been requested and, if so, provided?

**Anti-bribery and corruption controls and procedures** -- Do HR practices reflect the company's commitment to the programme? Assess the integrity of employee data: are there any instances of duplicate employees or payments to spouses, associated persons/entities etc.? Assess the business unit's processes regarding reporting of facilitation payments. Assess the business unit's processes regarding gifts, entertainment, hospitality, lobbying, sponsorship, charitable/political contributions, reimbursement of expenses commission payments, petty cash, cash advances, etc.

**Channels for questions, concerns and advice** – Has management established a culture in which questions will be raised? Do managers regularly communicate the requirement for reporting concerns? Does the business unit have a clearly defined plan for response to such concerns? Are procedures in place to ensure that any issues are communicated to the appropriate group function?

**Monitoring and review process** – Ensure that changes in compliance risks are identified and that procedures reflect the current risks. Have local policies/procedures been revised reflecting previous recommendations? Are any changes to the monitoring plan required to reflect issues identified in this review?

In conducting a self-assessment, the head of office or business unit is asked to reflect on his/her own unit's understanding of certain key issues (which may vary from year to year), to indicate whether in his

or her opinion the business unit has understood and implemented the controls identified, and to affirm his or her own personal commitment to the standards required. A copy of the self-assessment form as at Q1 2012 is attached as **Annex 2** at the end of this handbook.

The head of office or business unit is encouraged to seek clarification from his/her staff on any issue s/he cannot complete from his/her own knowledge, and the form is then returned to the Group Compliance Officer for consideration. The results are used to focus and prioritise further education and to provide guidance on the issues covered.

## ANNEX 1: COMPARISON TABLE OF BUSINESS GUIDANCE INSTRUMENTS ON ANTI-BRIBERY

### 1. Overview of Business Guidance Instruments

Name of instrument	Year of adoption or revision	Scope	Adopted or Produced by
<p><b>1. Business Principles for Countering Bribery</b>  <a href="http://www.transparency.org/global_priorities/private_sector/business_principles">http://www.transparency.org/global_priorities/private_sector/business_principles</a></p>	<p>First ed. 2003                      2<sup>nd</sup> ed. 2009 (light revisions)                      The Business Principles for Countering Bribery, SME Edition; revised in 2013</p>	<ul style="list-style-type: none"> <li>- Covers bribes; political contributions; charitable contributions and sponsorships; facilitation payments; gifts, hospitality and expenses</li> <li>- Covers business relationships; human resources; training; seeking guidance; communication; internal controls and record keeping; monitoring and review; external verification and assurance.</li> <li>- 2013 edition also includes clauses and revised language on topics such as risk assessment, conflicts of interest, co-operation with authorities, facilitation payments, lobbyists and communication and reporting.</li> </ul>	<p>Multi-stakeholder group led by <b>Transparency International (TI)</b></p>
<p><b>2. Good Practice Guidance on Internal Controls, Ethics and Compliance</b>  <a href="http://www.oecd.org/dataoecd/5/51/44884389.pdf">http://www.oecd.org/dataoecd/5/51/44884389.pdf</a></p>	<p>2010</p>	<ul style="list-style-type: none"> <li>- Supply-side of bribery of foreign public officials, but could be adapted to bribery in general.</li> <li>- Provides guidance on types of good practices that should be adopted for effective internal controls, ethics and compliance, such as regarding gifts; hospitality, entertainment and expenses; customer travel; political contributions; charitable donations; facilitation payments; and solicitation and extortion</li> <li>- Provides guidance regarding third-party due diligence; financial and accounting procedures; communication and training; disciplinary procedures; incentives; business partners; periodic reviews; actions by business associations and professional organizations</li> </ul>	<p>40 State Parties to <b>OECD Anti-Bribery Convention</b></p>
<p><b>3 Guidelines for Multinational Enterprises – Part VII on ‘Combating Bribery, Bribe Solicitation and Extortion’</b>  <a href="http://www.oecd.org/dataoecd/43/29/48004323.pdf">http://www.oecd.org/dataoecd/43/29/48004323.pdf</a></p>	<p>2011</p>	<ul style="list-style-type: none"> <li>- Bribery of public officials and private sector business partners</li> <li>- No use of third parties, including business partners, to channel bribe payments</li> <li>- Adequate internal controls, ethics and compliance programmes for preventing and detecting bribery, based on regular risk assessment, including employee awareness</li> <li>- Prohibition or discouragement by companies of small facilitation payments</li> <li>- Due diligence for hiring of agents</li> <li>- Transparency and public commitment</li> <li>- No illegal contributions to candidates for public office or political parties or organisations</li> </ul>	<p>42 Governments; <b>OECD</b></p>

Name of instrument	Year of adoption or revision	Scope	Adopted or Produced by
<b>4. Integrity Compliance Guidelines</b> <a href="http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf">http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf</a>	2010	<ul style="list-style-type: none"> <li>- Incorporates standards, principles and components commonly recognized by many institutions and entities as good governance and anti-fraud and corruption practices.</li> <li>- Rules regarding risk assessment, internal policies (including due diligence, arrangements with former public officials, gifts and expenses, political and charitable contributions and facilitation payments), responsibilities of management, business partners, internal controls, training and communication, incentives, reporting, remediation and collective action.</li> </ul>	<b>World Bank Group</b>
<b>5. Principles for Countering Bribery</b> <a href="https://members.weforum.org/pdf/paci/principles_short.pdf">https://members.weforum.org/pdf/paci/principles_short.pdf</a>	2005	<ul style="list-style-type: none"> <li>- Covers bribery of public officials; political candidates, parties or party officials; or any private-sector employee</li> <li>- Implementation of effective programme to counter bribery; risk assessment</li> <li>- Principles regarding political contributions; charitable contributions and sponsorships; facilitation payments; gifts, hospitality and expenses; responsibilities of board of directors, etc.; business relationships; human resources; training; seeking guidance; communication; internal controls and audit; monitoring and review</li> </ul>	Developed by multinational task force of companies with the World Economic Forum's <b>Partnering against Corruption Initiative (PACI)</b> , TI and Basel Institute on Governance
<b>6. Rules on Combating Corruption</b> <a href="http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/ICC-Rules-on-Combating-Corruption/">http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/ICC-Rules-on-Combating-Corruption/</a>	2011 ed. (first published in 1977)	<ul style="list-style-type: none"> <li>- Covers bribery of public officials, including at international level; bribery of a political party, party official or candidate; bribery of a director, officer, employee or agent of a private enterprise; extortion; solicitation; facilitation payments; agents and other intermediaries; joint ventures and outsourcing agreements</li> <li>- Rules regarding corporate policies; financial recording and auditing; responsibilities of board of directors, audit committee; follow-up and promotion of rules</li> </ul>	<b>International Chamber of Commerce [ICC]</b>
<b>7. APEC Anti-Corruption Code of Conduct for Business</b> <a href="http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~media/Files/Groups/ACT/07_act_codebrochure.ashx">http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~media/Files/Groups/ACT/07_act_codebrochure.ashx</a>	2007	<ul style="list-style-type: none"> <li>- Covers bribery in any form</li> <li>- Need to develop program articulating values, policies and procedures for preventing bribery in all activities under enterprise's effective control</li> <li>- Also covers charitable donations; gifts, hospitality and expenses; facilitation payments; political contributions; business relationships; communication; leadership; financial recording and auditing; human resources; monitoring and review; seeking guidance; training; organizations and responsibilities</li> </ul>	<b>APEC member economies</b>
<b>8. UN Convention against Corruption (UNCAC)</b> <a href="http://www.unodc.org/unodc/en/treaties/CAC/">http://www.unodc.org/unodc/en/treaties/CAC/</a>	2005	Article 12 calls on the private sector to play an active role in the prevention of corruption.	



## 2. Comparative Review of Anti-Bribery Business Guidance Instruments

BUSINESS PRINCIPLE	APEC Anti-Corruption Code of Conduct for Business	Business Principles for Countering Bribery	Rules on Combating Corruption	Good Practice Guidance on Internal Controls, Ethics and Compliance	Multi-National Enterprise Guidelines	Principles for Countering Bribery	Integrity Compliance Guidelines	UN Convention against Corruption (UNCAC)
<p><b><u>Support and Commitment from senior management for the prevention of corruption</u></b> (Corresponding handbook chapter: C1)</p>	<p><b>4.c. Leadership:</b> The Board (or equivalent) and the CEO should play a role in the launching of the Program and demonstrate ownership and commitment to the Code and Program</p>	<p><b>2.</b> The Business Principles: (...) These Business Principles are based on a Board commitment to fundamental values of integrity, transparency and accountability. 6.1.1 The Board of Directors or equivalent body should demonstrate visible and active e commitment to the implementation of the enterprise's programme.</p>	<p><b>Part III: Elements of an Efficient Corporate Compliance Programme</b> ... <b>Article 10 (Elements of a Corporate Compliance Programme):</b> ... Each Enterprise should consider... <b>a)</b> expressing a strong, explicit and visible support and commitment to the Corporate Compliance Programme by the board of Directors or other body with ultimate responsibility for the Enterprise and by the Enterprise's senior management</p>	<p><b>Companies should consider, <i>inter alia</i>, the following good practices...:</b> <b>1. strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery;</b></p>		<p><b>Principle 5.1.3</b> The Board of Directors (or equivalent body), Chief Executive Officer (or executive board) and senior management should demonstrate visible and active commitment to the implementation of the PAIC Principles.</p>	<p><b>2.1 Leadership:</b> Strong, explicit, visible, and active support and commitment from senior management, and the party's Board of Directors or similar bodies, for the party's Integrity Compliance Program (Program) and its implementation, in letter and spirit.</p>	<p>Article 12 §2 (b): "Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business..." Companies to adopt codes of conduct or standards to ensure the correct performance of commercial practices. This principle is extrapolated from article 8 of the Convention which provides for States Parties to "...apply codes or standards of conduct for the</p>

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			("tone from the top")					<p>correct, honourable and proper performance of public functions (8 §2)". Companies to (a) adopt, implement and periodically evaluate internal anti-corruption policies and practices; (b) collaborate with each other and with relevant international and regional initiatives to promote and develop such policies and practices. These principles are extrapolated from article 5 of the Convention, which provides for States parties to "...develop and implement effective anti-corruption policies that promote the principles of proper management, integrity, transparency and accountability (Art. 5</p>

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								§1)...establish and promote effective practices aimed at the prevention of corruption (Art. 5 §2)...endeavour to periodically evaluate relevant measures with a view to determining their adequacy to prevent and fight corruption (Art. 5 §3)...collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article (Art. 5 §4)..."
<b>Developing an anti-corruption programme (Corresponding handbook chapter: C2)</b>	2. The enterprise, in consultation with employees, should develop a programme, reflecting its size, business sector, potential risks and locations of operation that clearly and in	2. The Business Principles: The enterprise shall prohibit bribery in any form whether direct or indirect The enterprise shall commit to implementing a Programme to	<b>Part III: Elements of an Efficient Corporate Compliance Programme</b> ... <b>Article 10 (Elements of a Corporate Compliance Programme):</b>	<b>Companies should consider, <i>inter alia</i>, the following good practices...:</b> 3. Compliance with this prohibition and the related internal controls, ethics, and	Enterprises should... 2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and	<b>Principle 3.1:</b> An enterprise should develop a Program that clearly and in reasonable detail articulates values, policies and procedures to be used to prevent Bribery from	2. Responsibility: Create and maintain a trust-based, inclusive organizational culture that encourages ethical conduct, a commitment to compliance with the law and a culture in which Misconduct is not tolerated. (...) <b>2.2.</b> Individual	Companies to prohibit (a) bribery of national public officials (b) bribery of foreign public officials or officials of public international organizations (c) bribery in the

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	<p>reasonable detail articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control. The Programme should be consistent with all laws relevant to countering bribery in all the jurisdictions in which the enterprise operates. It should apply to all controlled subsidiaries, foreign and domestic.</p> <p><b>4.e.</b> Human resources (par. 2). The human resource policies and practices relevant to the Programme should be developed and undertaken in consultation with</p>	<p>counter bribery. The programme shall represent an enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.</p> <p><b>3.1.</b> An enterprise should develop a Programme that clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control.</p> <p><b>3.3.</b> The Programme should be</p>	<p>... Each Enterprise should consider...</p> <p><b>d)</b> Making it the responsibility of individuals at all levels of the Enterprise to comply with the Enterprise's policy and to participate in the Corporate Compliance Programme.</p>	<p>compliance programmes or measures is the duty of individuals at all levels of the company.</p>	<p>detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation).</p> <p>3. Compliance with this prohibition and related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company.</p>	<p>occurring in all activities under its effective control.</p> <p><b>3.2</b> The Program should be tailored to reflect an enterprise's particular business circumstances and corporate culture, taking into account such factors as size, nature of the business, potential risks and locations of operation.</p> <p><b>3.3</b> The Program should be consistent with all laws relevant to countering Bribery in all the jurisdictions in which the enterprise operates.</p> <p><b>3.4</b> The enterprise should involve employees in the implementation of the Program.</p> <p><b>3.5</b> The enterprise</p>	<p>Responsibility: Compliance with the Programme is mandatory and is the duty of all individuals at all levels of the party.</p> <p><b>4. Internal Policies:</b> Develop a practical and effective Programme that clearly articulates values, policies and procedures to be used to prevent, detect, investigate and remediate all forms of Misconduct in all activities under a party's/person's effective control.</p>	<p>private sector These principles are extrapolated from articles 15, 16 and 21 of the Convention, which provide for States Parties to "...establish as criminal offences, when committed intentionally, the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (Art.15 (a)) ... establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international</p>

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	employees, and employee representative bodies, as appropriate.	<p>consistent with all laws relevant to countering bribery in all the jurisdictions in which the enterprise transacts its business.</p> <p><b>3.4.</b> The enterprise should develop the Programme in consultation with employees, trade unions or other employee representative bodies and other relevant stakeholders.</p> <p><b>3.5.</b> The enterprise should ensure that it is informed of all internal and external matters material to the effective development and implementation of the Programme, and, in particular, emerging best practices</p>				<p>should ensure that it is informed of all matters material to the effective development &amp; implementation of the Program, including emerging industry practices, through appropriate monitoring activities and communications with relevant parties.</p>		<p>organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business (Art.16) ... consider adopting such...measures...to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities, the promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a</p>

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		including engagement with relevant stakeholders.						private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting (Art. 21 (a))”.
<b>Oversight of the anti-corruption programme (Corresponding handbook chapter: C3)</b>	<b>4.i. Organisation and responsibilities:</b> The Board (or equivalent) should be satisfied that an effective programme has been developed and implemented. The Board (or equivalent) should also be satisfied that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken. The Chief Executive Officer (or equivalent) is	<b>6.1.1</b> The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise’s Programme. <b>6.1.2</b> The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.	<b>Part III: Elements of an Efficient Corporate Compliance Programme</b> ... <b>Article 10 (Elements of a Corporate Compliance Programme):</b> ... Each Enterprise should consider... <b>e)</b> appointing one or more senior officers (full or part time) to oversee and coordinate the Corporate Compliance Programme with an adequate level of resources, authority and	<b>Companies should consider, <i>inter alia</i>, the following good practices...:</b> <b>4. oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies</b> such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or		5.1.1 The Board of Directors (or equivalent body) is responsible for overseeing the development and implementation of an effective Programme. 5.1.1.1 The Programme should be based on the PACI Principles and the Board (or equivalent body) should provide leadership, resources and active support for management’s implementation of the Programme. 5.1.1.2 The Board (or equivalent body) should	2.3. Compliance Function: Oversight and management of the Programme is the duty of one or more senior corporate officers, with an adequate level of autonomy and with sufficient resources and the authority to effectively implement.	Policy must be applied in equal form to all levels of the company. This principle is extrapolated from article 21 UNCAC (... any person who directs or works, in any capacity, for a private sector entity....) and also from article 26 UNCAC (Liability of legal persons). In addition, several other principles incorporated in other provisions of the Convention apply.

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	<p>responsible for seeing that the Programme is implemented effectively with clear lines of authority. Depending on the size of the enterprise, consideration should be given to making the day to day operation and breaches of the code the role of a senior officer of a company.</p>		<p>independence, reporting periodically to the Board of Directors or other body with ultimate responsibility for the Enterprise, or to the relevant committee thereof;</p>	<p>more senior corporate officers, with an adequate level of autonomy from management, resources, and authority;;</p>		<p>ensure that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken. 5.1.2 The Chief Executive Officer (or executive board) is responsible for seeing that the Programme is carried out consistently with clear lines of authority. Authority for implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority. 5.1.2.1 Authority for</p>		

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						implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.		
<p><b>Clear, visible and accessible policy prohibiting corruption (Corresponding handbook chapter: C4)</b></p>	<p>1. Prohibition of bribery: The enterprise shall prohibit bribery in any form. Bribery is offering, promising or giving, as well as demanding or accepting any pecuniary or other advantage, whether directly or indirectly, in order to obtain, retain or direct business to a particular enterprise or to secure any other improper advantage in the conduct of business.</p>	<p><b>6.1.1.</b> The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's programme. <b>6.1.2.</b> The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.</p>	<p><b>Part I: Anti-Corruption Rules</b> <b>Article 1:</b> Enterprises will prohibit the following practices at all times and in any form, in relation with: A public official at international, national or local level; A political party, party official or candidate to political office; and A director, officer or employee of an Enterprise, whether these</p>	<p><b>Companies should consider, <i>inter alia</i>, the following good practices...:</b> <b>2.</b> [Companies should consider]...a clearly articulated and visible corporate policy prohibiting foreign bribery.</p>		<p>2: The enterprise shall prohibit Bribery in any form. Bribery ("Bribery") is the offering, promising or giving, as well as demanding or accepting, of any undue advantage, whether directly or indirectly, to or from: a public official, a political candidate, party or party official, or any private sector employee (including a person who directs or works for a private</p>	<p>1. Prohibition of Misconduct: A clearly articulated and visible prohibition of Misconduct (fraud, corruption, collusion and coercive practices), to be articulated in a code of conduct or similar document or communication.</p>	<p>Companies to establish internal units or departments to oversee the implementation of their anti-corruption policies and practices; and promote their dissemination. This principle is extrapolated from article 6 of the Convention, which provides for States Parties to "...ensure the existence of bodies...to implement the policies referred to in article 5...oversee their implementation (Art. 6 §1 (a))...increase and</p>



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	Instances of bribery which are the subject of these principles may involve transactions by, or in relation to, subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or employees with (including but not limited to) a public official, family members and close associates of a public official, a political candidate, party or party official, any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), or a third party.		practices are engaged in directly or indirectly, including through Third Parties: <b>a) Bribery</b> is the offering, promising, giving, authorizing or accepting of any undue pecuniary or other advantage to, by or for any of the persons listed above or for anyone else in order to obtain or retain a business or other improper advantage, e.g. in connection with public or private procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings. Bribery often includes (i) kicking back a portion of a			sector enterprise in any capacity), in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business.(...) 4.1.1: The enterprise should prohibit Bribery in all business transactions that are carried out either directly or through third parties, specifically including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective control. 4.1.2: The enterprise should prohibit Bribery in any form,		disseminate knowledge about the prevention of corruption (Art. 6 §1 (b))..."

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			<p>contract payment to government or party officials or to employees of the other contracting party, their close relatives, friends or Business Partners or (ii) using intermediaries such as agents, subcontractors, consultants or other Third Parties, to channel payments to government or party officials, or to employees of the other contracting party, their relatives, friends or Business Partners.</p> <p>...</p> <p><b>Part III: Elements of an Efficient Corporate Compliance Programme</b></p> <p>...</p> <p><b>Article 10 (Elements of a</b></p>			<p>including on any contract payment or portion of a contract payment, or by any means or channels to provide improper benefits to customers, agents, contractors, suppliers or employees thereof.</p> <p>4.1.3: The Programme should provide guidance on the meaning and scope of this prohibition, with particular attention to areas of high risk to a company in its business sector.</p>		

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			<p><b>Corporate Compliance Programme):</b>            ...            Each Enterprise should consider...            ...            b) establishing a clearly articulated and visible policy reflecting these Rules and binding for all directors, officers, employees and Third Parties and applying to all controlled subsidiaries, foreign and domestic</p>					
<p><b>Detailed policies for particular risk areas (Corresponding handbook chapter: C5)</b></p>	<p><b>3. Scope and Guidelines:</b>            A. Charitable Contributions:            The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery, and all charitable contributions and</p>	<p><b>5. Scope of the Programme:</b> The Programme should address the most prevalent forms of bribery relevant to the enterprise but at a minimum should cover the following areas:  <b>5.1. Conflicts of interest</b>            5.1.1. The</p>	<p><b>Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules:</b>            ...  <b>Article 4: Political and Charitable Contributions and</b></p>	<p><b>Companies should consider, <i>inter alia</i>, the following good practices...:</b>  <b>5. ethics and compliance programmes or measures designed to prevent and detect foreign bribery, applicable to all directors,</b></p>	<p>Enterprises should...            3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally</p>	<p>4.2 Political contributions            4.2.1 The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates or organizations or individuals</p>	<p><b>4.3. Gifts, Hospitality, Entertainment, Travel and Expenses:</b>            Establish controls and procedures covering gifts, hospitality, entertainment, travel or other expenses to ensure that they are reasonable, do not improperly affect the outcome of a business transaction, or otherwise result in an</p>	<p>Article 12 §2            (b) "Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the</p>

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	<p>sponsorships should be transparent and made in accordance with applicable domestic law.</p> <p>B. Gifts, Hospitality and Expenses: The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements would be in violation of applicable domestic law.</p> <p>C. Facilitation Payments: Recognizing that facilitation payments are prohibited under the anti-bribery laws of most countries, enterprises should eliminate them. Facilitation payments, also called 'facilitating',</p>	<p>enterprise should establish policies and procedures to identify, monitor and manage conflicts of interest which give rise to a risk of bribery, actual, potential or perceived, including those of its directors, officers, employees and contracted parties such as agents, lobbyists and other intermediaries.</p> <p><b>5.2 Bribes</b></p> <p>5.2.1 The enterprise should prohibit all forms of bribery whether they take place directly or through third parties.</p> <p>5.2.2 The enterprise should also prohibit its employees from soliciting, arranging or accepting bribes</p>	<p><b>Sponsorships</b></p> <p>a) Enterprises should only make contributions to political parties, party officials and candidates in accordance with applicable law and public disclosure requirements. The amount and timing of political contributions should be reviewed to ensure that they are not used as a subterfuge for corruption.</p> <p>b) Enterprises should take measures within their power to ensure that charitable contributions and sponsorships are not used as a subterfuge for corruption. Charitable contributions and sponsorships</p>	<p>officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries, on, inter alia, the following areas: <b>i) gifts; ii) hospitality, entertainment and expenses; iii) customer travel; iv) political contributions; v) charitable donations and sponsorships; vi) facilitation payments; and vii) solicitation and extortion;</b></p>	<p>illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records...</p> <p>7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.</p>	<p>engaged in politics, as a subterfuge for Bribery.</p> <p>4.2.2 All political contributions should be transparent and made only in accordance with applicable law.</p> <p>4.2.3 The Programme should include controls and procedures to ensure that improper political contributions are not made.</p> <p>4.3 Charitable contributions and sponsorships</p> <p>4.3.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for Bribery.</p> <p>4.3.2 All charitable contributions and</p>	<p>improper advantage.</p> <p><b>4.4. Political Contributions:</b> Only make contributions to political parties, party officials and candidates in accordance with applicable laws, and take appropriate steps to publicly disclose all political contributions (unless secrecy or confidentiality is legally required).</p> <p><b>4.5. Charitable Donations &amp; Sponsorships:</b> Take measures within the party's power to ensure that their charitable contributions are not used as a subterfuge for Misconduct. Unless secrecy or confidentiality is legally required, all charitable contributions and sponsorships should be publicly disclosed.</p> <p><b>4.6. Facilitation Payments:</b> The party should not make facilitation payments.</p>	<p>activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State."</p> <p>Companies to ban unequivocally facilitation payments. This principle is extrapolated from article 12 §4 of the Convention which provides for States Parties to "...disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 [bribery] of this</p>

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	<p>'speed' or 'grease' payments are small payments made to secure or expedite the performance of a routine action to which the enterprise is entitled.</p> <p>D. Political Contributions: The enterprise, its employees or intermediaries, should not make direct or indirect contributions to political parties, party officials, candidates, organizations or individuals engaged in politics, as a subterfuge for bribery.</p> <p>All political contributions should be transparent and made only in accordance with applicable law.</p> <p>The Program</p>	<p>intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances.</p> <p><b>5.3 Political contributions</b></p> <p><b>5.3.1</b> The enterprise, its employees, agents, lobbyists, or other intermediaries should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining advantage in business transactions.</p> <p><b>5.3.2</b> The enterprise should publicly disclose all its political contributions.</p> <p><b>5.4 Charitable contributions and</b></p>	<p>should be transparent and in accordance with applicable law.</p> <p>Enterprises should establish reasonable controls and procedures to ensure that improper political and charitable contributions are not made. Special care should be exercised in reviewing contributions to organizations in which prominent political figures, or their close relatives, friends and Business Partners are involved.</p> <p><b>Article 5: Gifts and hospitality:</b> Enterprises should establish procedures covering the offer or receipt of gifts and hospitality in order to ensure</p>			<p>sponsorships should be transparent and made in accordance with applicable law.</p> <p>4.3.3 The Programme should include controls and procedures to ensure that improper charitable contributions and sponsorships are not made.</p> <p>4.4 Facilitation payments</p> <p>4.4.1 Recognizing that facilitation payments* are prohibited under the anti-bribery laws of most countries, enterprises which have not yet eliminated them entirely should support their identification and elimination by (a) explaining in their Programme that</p>		<p>Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct". The Convention provides for States Parties to criminalize a range of manifestations of corruption: bribery of national public officials (article 15); bribery of foreign public officials and officials of public international organizations (article 16); trading in influence (article 18); abuse of function (article 19); illicit enrichment (article 20); embezzlement in the private sector (article 22); laundering of proceeds of corruption (article 23); and obstruction of justice (article 25).</p>

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	<p>should include controls and procedures to ensure that improper political contributions are not made</p>	<p><b>sponsorships</b>  <b>5.4.1</b> The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery.  <b>5.4.2</b> The enterprise should publicly disclose all its charitable contributions and sponsorships.  <b>5.5 Facilitation payments</b>  <b>5.5.1</b> Recognising that facilitation payments are bribes the enterprise should prohibit them.  <b>5.6</b> Gifts, hospitality and expenses  <b>5.6.1</b> The enterprise should develop a policy and procedures to ensure that all gifts, hospitality and expenses are bona fide. The</p>	<p>that such arrangements (a) comply with national law and applicable international instruments; (b) are limited to reasonable and bona fide expenditures; (c) do not improperly affect, or might be perceived as improperly affecting, the recipient's independence of judgement towards the giver; (d) are not contrary to the known provisions of the recipient's code of conduct; and (e) are neither offered or received too frequently nor at an inappropriate time.  <b>Article 6: Facilitation payments:</b>  Facilitation</p>			<p>facilitation payments are generally illegal in the foreign country concerned, (b) emphasizing in their Programme that they are of limited nature and scope and must be appropriately accounted for, and (c) including in their Programme appropriate controls and procedures for monitoring and oversight of facilitation payments by the enterprise and its employees.  4.5 Gifts, hospitality and expenses  4.5.1 The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such</p>		

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		enterprise should prohibit the offer, giving or receipt of gifts, hospitality or expenses whenever they could influence or reasonably be perceived to influence improperly the outcome of business transactions.	payments are unofficial, improper, small payments made to a low level official to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment is legally entitled. Facilitation payments are prohibited in most jurisdictions. Enterprises should, accordingly, not make such facilitation payments, but it is recognized that they may be confronted with exigent circumstances, in which the making of a facilitation payment can hardly be avoided, such as duress or when			arrangements could improperly affect, or might be perceived to improperly affect, the outcome of a procurement or other business transaction and are not reasonable and bona fide expenditures. 4.5.2 The Programme should include controls and procedures, including thresholds and reporting procedures, to ensure that the enterprise's policies relating to gifts, hospitality and expenses are followed. * <i>Facilitation payments: These are small payments made to secure or expedite the performance of</i>		

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			<p>the health, security or safety of the Enterprise's employees are at risk. When a facilitation payment is made under such circumstances, it will be accurately accounted for in the Enterprise's books and accounting records.</p> <p><b>Article 7: Conflicts of interest:</b> Conflicts of interest may arise when the private interests of an individual or of his/her close relatives, friends or business contacts diverge from those of the Enterprise or organization to which the individual belongs. These situations should be</p>			<p><i>routine action to which the enterprise is entitled.</i></p>		



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			disclosed and, wherever possible, avoided because they can affect an individual's judgment in the performance of his/her duties and responsibilities. Enterprises should closely monitor and regulate actual or potential conflicts of interest, or the appearance thereof, of their directors, officers, employees and agents and should not take advantage of conflicts of interest of others. If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials					

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			shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Where applicable, restrictions imposed by national legislation shall be observed.					
<p><b><u>Application of the anti-corruption programme to business partners</u></b> (Corresponding handbook chapter: C6)</p>	<p><b>4.a. Business relationships:</b> The enterprise should prohibit bribery in all business transactions that are carried out directly or through third parties, including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective control</p>	<p><b>6.2 Business relationships</b> <b>6.2.1 General</b> <b>The content of the following General section applies to all business entities</b> 6.2.1.1 The enterprise should implement its Programme in all business entities over which it has effective control. 6.2.1.2 Where the enterprise does not have effective control it should use its influence to encourage an equivalent</p>	<p>Part I: Anti-Corruption Rules ... Article 2: Third Parties: With respect to Third Parties subject to the control or determining influence of the Enterprise, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors,</p>	<p><b>Companies should consider, <i>inter alia</i>, the following good practices...:</b> <b>6.</b> ethics and compliance programmes or measures designed to prevent and detect foreign bribery applicable, where appropriate and subject to contractual arrangements, <b>to third parties such as agents and other intermediaries, consultants,</b></p>	<p>Enterprises should... 4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only.</p>	<p>5.2 Business relationships: The enterprise should apply its Programme in its dealings with subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has business relationships. 5.2.1 Subsidiaries 5.2.1.1 The Programme should be designed and implemented on an enterprise-wide basis,</p>	<p>5. Policies re: Business Partners: Use party's best efforts to encourage all business partners with which the party has a significant business relationship or over which it has influence to adopt an equivalent commitment to prevent, detect, investigate and remediate Misconduct (and, in the case of business partners which are controlled affiliates, joint ventures, unincorporated associations or similar entities, to the extent possible obligate them to so adopt). This</p>	<p>Companies to introduce in their contracts with other private sector entities a clause whereby a stipulation is annulled or rescinded if the other party engages in corrupt practices in the execution of the contract.  This principle is extrapolated from article 34 of the Convention which provides for States Parties to "...consider corruption a relevant factor in legal</p>

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		<p>Programme in business entities in which it has a significant investment or with which it has significant business relationships.</p> <p>6.2.1.3 Whether or not it has effective control over a business entity, the enterprise should undertake properly documented, reasonable and proportionate anti-bribery due diligence of business entities when entering into a relationship including mergers, acquisitions and significant investments.</p> <p>6.2.1.4 The enterprise should avoid dealing with business entities</p>	<p>franchisees, lawyers, accountants or similar intermediaries, acting on the Enterprise's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Enterprise or as subcontractors in the supply chain, Enterprises should:</p> <p>e) instruct them neither to engage nor to tolerate that they engage in any act of corruption;</p> <p>f) not use them as a conduit for any corrupt practice;</p> <p>g) hire them only</p>	<p><b>representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter "business partners")</b>, including, inter alia, the following essential elements: i) properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners; ii) informing business partners of the company's commitment to abiding by laws on the prohibitions against foreign bribery, and of the company's ethics</p>	<p>Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.</p>	<p>applicable in all material respects to controlled subsidiary entities.</p> <p>5.2.1.2: The enterprise should undertake measures to see that the conduct of subsidiary entities is consistent with the PACI Principles.</p> <p>5.2.2 Joint ventures (The provisions in 5.2.2 apply also to non-controlled subsidiaries, consortium partners, teaming agreements and nominated subcontractors).</p> <p>5.2.2.1 Due diligence should be conducted before entering into a joint venture, and on an on-going basis as circumstances warrant. The</p>	<p>includes agents, advisers, consultants, representatives, distributors, contractors, subcontractors, suppliers, joint venture partners, and other third parties.</p> <p>5.1. Due Diligence on Business Partners: Conduct properly documented, risk-based due diligence (including to identify any beneficial owners or other beneficiaries not on record) before entering into a relationship with a business partner, and on an ongoing basis. Avoid dealing with contractors, suppliers and other business partners known or (except in extraordinary circumstances and where appropriate mitigating actions are put in place) reasonably suspected to be engaging in Misconduct.</p> <p>5.2. Inform Partner of Integrity Compliance Programme: Make</p>	<p>proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action (34)"</p>

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		<p>known or reasonably suspected to be paying or receiving bribes. 6.2.1.5 The enterprise should perform reasonable and proportionate monitoring of its significant business relationships. This may include the right to inspection of books and records. 6.2.1.6 The enterprise should document relevant aspects of the implementation of its Programme or equivalent by associated business entities. 6.2.1.7 In the event that policies and practices of associated business entities are in conflict with the principles of</p>	<p>to the extent appropriate for the regular conduct of the Enterprise's business; and h) not pay them more than an appropriate remuneration for their legitimate services. ... Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules Article 3: Business Partners: Business Partners include (i) Third Parties and (ii) joint venture and consortium partners as well as contractors and suppliers. A. An Enterprise should, with respect to a Third Party, and to the extent that it is</p>	<p>and compliance programme or measures for preventing and detecting such bribery; and iii) seeking a reciprocal commitment from business partners.</p>		<p>Programme should provide guidance for conducting due diligence. 5.2.2.2 The enterprise should undertake appropriate measures, including contract protections, to ensure that the conduct of joint ventures is consistent with the PACI Principles. 5.2.3 Agents, advisors and other intermediaries 5.2.3.1 The enterprise should undertake due diligence before appointing an agent, advisor or other intermediary, and on an on-going basis as circumstances warrant. 5.2.3.2 The</p>	<p>party's Programme known to all business partners and make it clear that the party expects all activities carried out on its behalf to be compliant with its Programme. 5.3. Reciprocal Commitment: Seek reciprocal commitment to compliance from party's business partners. If business partners do not have an integrity compliance programme, the party should encourage them to adopt a robust and effective programme by reference to the activities and circumstances of those partners. 5.4. Proper Documentation: Document fully the relationship with the party's business partners. 5.5. Appropriate Remuneration: Ensure that any payment made to any business partner represents an</p>	

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		<p>its own Programme the enterprise should take appropriate action. This can include requiring correction of deficiencies in the implementation of the Programme and the application of sanctions.</p> <p>6.2.1.8 The enterprise should have a right of termination in the event that associated business entities engage in bribery or act in a manner inconsistent with the enterprise's Programme.</p> <p><b>6.2 Joint ventures and consortia</b> Where the enterprise is unable to ensure that a joint venture or consortium has a Programme</p>	<p>within its power:</p> <ul style="list-style-type: none"> <li>• make clear that it expects all activities carried out on the Enterprise's behalf to be compliant with its policies; and</li> <li>• enter into a written agreement with the Third Party: <ul style="list-style-type: none"> <li>• informing it of the Enterprise's anti-corruption policies and committing it not to engage in any corrupt practice;</li> <li>• permitting the Enterprise to request an audit of the Third Party's books and accounting records by an independent auditor to verify compliance with these Rules; and</li> <li>• providing that the Third</li> </ul> </li> </ul>			<p>Programme should provide guidance for conducting due diligence, entering into contractual relationships, and supervising the conduct of an agent, advisor or other intermediary.</p> <p>5.2.3.2.1 Due diligence review and other material aspects of the relationship with the agent, advisor or other intermediary should be documented.</p> <p>5.2.3.2.2 All agreements with agents, advisors and other intermediaries should require prior approval of senior management.</p> <p>5.2.3.2.3 The agent, advisor or other intermediary should</p>	<p>appropriate and justifiable remuneration for legitimate services performed or goods provided by such business partner and that it is paid through bona fide channels.</p> <p>5.6. Monitoring/Oversight: Monitor the execution of all contracts to which the party is a party in order to ensure, as far as is reasonable, that there is no Misconduct in their execution. The party should also monitor the programmes and performance of business partners as part of its regular review of its relationships with them.</p> <p>6.2 Contractual Obligations: Employment and business partner contracts should include express contractual obligations, remedies and/or penalties in relation to Misconduct (including in the case of</p>	

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		<p>consistent with its own, it should have a plan for taking appropriate action if bribery occurs or is reasonably thought to have occurred. This can include: requiring correction of deficiencies in the implementation of the joint venture's or consortium's Programme, the application of sanctions or exiting from the arrangement.</p> <p><b>6.2.3 Agents, lobbyists, and other intermediaries</b></p> <p>6.2.3.1 The enterprise should not channel improper payments through agents, lobbyists, or other intermediaries.</p> <p>6.2.3.2 The enterprise should</p>	<p>Party's remuneration shall not be paid in cash and shall only be paid in (i) the country of incorporation of the Third Party, (ii) the country where its headquarters are located, (iii) its country of residence or (iv) the country where the mission is executed.</p> <p>B. The Enterprise should further ensure that its central management has adequate control over the relationship with Third Parties and in particular maintains a record of the names, terms of engagement and payments to Third Parties retained by the Enterprise in connection with</p>			<p>contractually agree in writing to comply with the enterprise's Programme and should be provided with materials explaining this obligation.</p> <p>5.2.3.2.4 Provision should be included in all contracts with agents, advisors and other intermediaries relating to access to records, co-operation in investigations and similar matters pertaining to the contract.</p> <p>5.2.3.2.5 Compensation paid to agents, advisors and other intermediaries should be appropriate and justifiable remuneration for legitimate</p>	<p>business partners, a plan to exit from the arrangement, such as a contractual right of termination, in the event that the business partner engages in Misconduct).</p> <p>11. Collective Action: Where appropriate—especially for SMEs and other entities without well-established Programmes, and for those larger corporate entities with established Programmes, trade associations and similar organizations acting on a voluntary basis—endeavour to engage with business organizations, industry groups, professional associations and civil society organizations to encourage and assist other entities to develop programmes aimed at preventing Misconduct.</p>	

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		<p>undertake properly documented due diligence before appointing agents, lobbyists, and other intermediaries.</p> <p>6.2.3.3 All agreements with agents, lobbyists, and other intermediaries should require prior approval of management.</p> <p>6.2.3.4 Compensation paid to agents, lobbyists, and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered.</p> <p>6.2.3.5 Agents, lobbyists, and other intermediaries should contractually</p>	<p>transactions with public bodies and state or private Enterprises. This record should be available for inspection by auditors and by appropriate, duly authorized governmental authorities under conditions of confidentiality.</p> <p>C. An Enterprise should, with respect to a joint venture or consortium, take measures, within its power, to ensure that a policy consistent with these Rules is accepted by its joint venture or consortium partners as applicable to the joint venture or consortium.</p> <p>D. With respect to contractors and suppliers, the Enterprise should</p>			<p>services rendered and should be paid through bona fide channels.</p> <p>5.2.3.2.6 The enterprise should monitor the conduct of its agents, advisors and other intermediaries and should have a contractual right of termination in case of conduct inconsistent with the Programme.</p> <p>5.2.4 Contractors, subcontractors and suppliers</p> <p>5.2.4.1 The enterprise should conduct its procurement practices in a fair and transparent manner.</p> <p>5.2.4.2 The enterprise should undertake due diligence, as appropriate, in evaluating contractors, subcontractors</p>		

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		<p>agree to comply with the enterprise's Programme and be provided with appropriate advice and documentation explaining the obligation.</p> <p>6.2.3.6 The enterprise should contractually require its agents, lobbyists, and other intermediaries to keep proper books and records available for inspection by the enterprise, auditors or investigating authorities.</p> <p><b>6.2.4 Contractors and suppliers</b></p> <p>6.2.4.1 The enterprise should conduct its procurement practices in a fair and transparent manner.</p>	<p>take measures within its power and, as far as legally possible, to ensure that they comply with these Rules in their dealings on behalf of, or with the Enterprise, and avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes.</p> <p>E. An Enterprise should include in its contracts with Business Partners a provision allowing it to suspend or terminate the relationship, if it has a unilateral good faith concern that a Business Partner has acted in violation of applicable anti-corruption law or of Part I of these</p>			<p>and suppliers to ensure that they have effective anti-bribery policies.</p> <p>5.2.4.3 The enterprise should make known its anti-bribery policies to contractors, subcontractors and suppliers. It should monitor their conduct and should have a contractual right of termination in case of conduct inconsistent with the Programme.</p>		



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		<p>6.2.4.2 The enterprise should take steps to identify its contractors and suppliers.</p> <p>6.2.4.3 The enterprise should assess the risk of bribery in its contractors and suppliers and conduct regular monitoring.</p> <p>6.2.4.4 The enterprise should communicate its anti-bribery programme to contractors and suppliers and work in partnership with major contractors and suppliers to help them develop their anti-bribery practices.</p>	<p>Rules.</p> <p>F. An Enterprise should conduct appropriate due diligence on the reputation and the capacity of its Business Partners exposed to corruption risks to comply with anti-corruption law in their dealings with or on behalf of the Enterprise.</p> <p>G. An Enterprise should conduct its procurement in accordance with accepted business standards and to the extent possible in a transparent manner.</p>					
<b>Internal controls and record keeping (Corresponding handbook chapter: C7)</b>	<b>4.d. Financial Recording and Auditing:</b> The enterprise should develop and maintain	<b>6.7 Internal controls and record keeping</b> 6.7.1. The enterprise should establish and	<b>Part II: Corporate Policies to Support Compliance with Anti-Corruption</b>	<b>Companies should consider, <i>inter alia</i>, the following good practices...:</b> <b>7. a system of</b>	Enterprises should...  2. Develop and adopt adequate internal controls,	<b>5.7 Internal controls and audit</b> 5.7.1 The enterprise should maintain accurate	4.1. Due Diligence of Employees: Vet current and future employees with any decision-making authority or in a position to influence	Article 12 §2 (f) "Ensuring that private enterprises, taking into account their structure and size, have sufficient

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	appropriate financial reporting mechanisms that are accurate and transparent as well as internal mechanisms for monitoring and controlling of the financial reporting system in accordance with internationally recognised accounting standards.	maintain an effective system of internal controls to counter bribery, comprising financial and organizational checks and balances over the enterprise's accounting and record keeping practices and other business processes related to the Programme. <b>6.7.2.</b> The enterprise should maintain available for inspection accurate books and records that properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts. <b>6.7.3.</b> The enterprise should subject the	<b>Rules</b> ... <b>Article 9: Financial and Accounting:</b> Enterprises should ensure that: all financial transactions are adequately identified and properly and fairly recorded in appropriate books and accounting records available for inspection by their Board of Directors or other body with ultimate responsibility for the Enterprise, as well as by auditors; there are no "off the books" or secret accounts and no documents may be issued which do not fairly and accurately record the transactions to which they	<b>financial and accounting procedures, including a system of internal controls,</b> reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery;	ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to	books and records, which properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts. 5.7.2 The enterprise should establish and maintain an effective system of internal controls, comprising financial and organizational checks and balances over the enterprise's accounting and recordkeeping practices and other business processes related to the Programme. 5.7.3 The enterprise should establish feedback mechanisms and	business results, including management and Board members, to determine if they have engaged in Misconduct or other conduct inconsistent with an effective Integrity Compliance Programme. 4.2. Restricting Arrangements with former Public Officials: Impose restrictions on the employment of, or other remunerative arrangements with, public officials, and with entities and persons associated or related to them, after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure or those functions over which they were or continue to be able to exercise material influence. 4.7. Recordkeeping: Appropriate records	internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures." Article 12 §3 "...prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention: (a) The establishment of off-the-books accounts; (b) The making of off-the-books or inadequately identified transactions; (c) The recording of non-existent expenditure; (d) The entry of liabilities with

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		internal control systems, in particular the accounting and record-keeping practices, to regular review and audit to provide assurance on their design, implementation and effectiveness.	relate; there is no recording of non-existent expenditures or of liabilities with incorrect identification of their objects or of unusual transactions which do not have a genuine, legitimate purpose; cash payments or payments in kind are monitored in order to avoid that they are used as substitutes for bribes; only small cash payments made from petty cash or in countries or locations where there is no working banking system should be permitted; no bookkeeping or other relevant documents are intentionally		ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery...	other internal processes designed to support the continuous improvement of the Program. 5.7.4 The enterprise should subject the internal control systems, in particular the accounting and recordkeeping practices, to regular audits to verify compliance with the Program.	must be maintained regarding all aspects covered by the Programme, including when any payment is made for the matters or items listed in 4.3 through 4.6 above. 4.8. Fraudulent, Collusive and Coercive Practices: Particular safeguards, practices and procedures should be adopted to detect and prevent not only corruption, but also fraudulent, collusive and coercive practices. 6.1 Financial [Internal Controls]: Establish and maintain an effective system of internal controls comprising financial and organizational checks and balances over the party's financial, accounting and recordkeeping practices, and other business processes. The party should subject the internal controls systems, in particular the	incorrect identification of their objects; (e) The use of false documents; and (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.”

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			<p>destroyed earlier than required by law; independent systems of auditing are in place, whether through internal or external auditors, designed to bring to light any transactions which contravene these Rules or applicable accounting rules and which provide for appropriate corrective action if the case arises; all provisions of national tax laws and regulations are complied with, including those prohibiting the deduction of any form of bribe payment from taxable income.</p> <p>...</p> <p><b>Part III: Elements of an Efficient Corporate Compliance</b></p>				<p>accounting and recordkeeping practices, to regular, independent, internal and external audits to provide an objective assurance on their design, implementation and effectiveness and to bring to light any transactions which contravene the Programme.</p> <p>6.2 Contractual Obligations: Employment and business partner contracts should include express contractual obligations, remedies and/or penalties in relation to Misconduct (including in the case of business partners, a plan to exit from the arrangement, such as a contractual right of termination, in the event that the business partner engages in Misconduct).</p> <p>6.3. Decision-Making Process: Establish a decision-making process whereby the</p>	

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			<p><b>Programme</b> ... <b>Article 10 (Elements of a Corporate Compliance Programme):</b> ... <b>h)</b> designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in or hiding of corrupt practices; <b>i)</b> establishing and maintaining proper systems of control and reporting procedures, including independent auditing;</p>				<p>decision process and the seniority of the decision-maker is appropriate for the value of the transaction and the perceived risk of each type of Misconduct.</p>	

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<p><b>Communication and training (Corresponding handbook chapter: C8)</b></p>	<p>4.b. Communication: The enterprise should establish effective internal and external communication of the Programme. The enterprise should publicly disclose its Programme for countering bribery. The enterprise should be open to receiving communications from relevant interested parties with respect to the Programme.</p> <p>4.h. Training: The enterprise should aim to create and maintain a trust based and inclusive internal culture in which bribery is not tolerated. Managers, employees and agents should receive specific</p>	<p><b>6.4. Training</b></p> <p><b>6.4.1.</b> Directors, managers, employees and agents should receive appropriate training on the Programme.</p> <p><b>6.4.2.</b> Where appropriate, contractors and suppliers should receive training on the Programme.</p> <p><b>6.6. Communication and reporting</b></p> <p><b>6.6.1.</b> The enterprise should establish effective internal and external communication of the Programme.</p> <p><b>6.6.2.</b> The enterprise should publicly disclose information about its Programme, including management systems employed to</p>	<p><b>Part III: Elements of an Efficient Corporate Compliance Programme</b></p> <p>...</p> <p><b>Article 10 (Elements of a Corporate Compliance Programme):</b></p> <p>...</p> <p><b>j)</b> ensuring periodic internal and external communication regarding the Enterprise's anti-corruption policy;</p> <p><b>k)</b> providing to their directors, officers, employees and Business Partners, as appropriate, guidance and documented training in identifying corruption risks in the daily business dealings of the Enterprise as well as leadership</p>	<p><b>Companies should consider, <i>inter alia</i>, the following good practices...:</b></p> <p><b>8. measures designed to ensure periodic communication, and documented training for all levels of the company, on the company's ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for subsidiaries;</b></p>	<p>Enterprises should...</p> <p>6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.</p>	<p><b>5.6 Communication</b></p> <p>5.6.1 The enterprise should establish effective mechanisms for internal communication of the Programme.</p> <p>5.6.2 The enterprise should publicly disclose its Policy for countering Bribery.</p> <p>5.6.3 The enterprise should be open to receiving communications from relevant interested parties with respect to its Policy for countering Bribery.</p> <p><b>5.4 Training</b></p> <p>5.4.1 Managers, employees and agents should receive specific training on the Programme, tailored to relevant needs</p>	<p><b>7. Training &amp; Communication:</b> Take reasonable, practical steps to periodically communicate its Program, and provide and document effective training in the Program tailored to relevant needs, circumstances, roles and responsibilities, to all levels of the party (especially those involved in "high risk" activities) and, where appropriate, to business partners. Party management also should make statements in its annual reports or otherwise publicly disclose or disseminate knowledge about its Program.</p>	<p>Companies to adopt human resources measures that include:</p> <p>(a) education and training for staff on the risks posed by corruption;</p> <p>(b) adequate selection, training and rotation to other positions, where appropriate, for personnel occupying positions considered especially vulnerable to corruption; and</p> <p>These principles are extrapolated from article 7 of the Convention, which provides for States parties to "...adopt, maintain and strengthen systems for recruitment, hiring, retention, promotion and retirement that...include adequate selection and training of individuals for public positions considered</p>

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	<p>training on the Programme, tailored to relevant needs and circumstances. Where appropriate, contractors and suppliers should receive training on the Programme. Training activities should be assessed periodically for effectiveness.</p>	<p>ensure its implementation.  <b>6.6.3.</b> The enterprise should be open to receiving communications from and engaging with stakeholders with respect to the Programme.  <b>6.6.4</b> The enterprise should consider additional public disclosure on payments to governments on a country-by-country basis.  <b>6.6.5</b> In the spirit of greater organisational transparency and accountability to stakeholders, the enterprise should consider disclosing its material holdings of subsidiaries, affiliates, joint ventures and other related</p>	<p>training;</p>			<p>and circumstances.  5.4.2 Where appropriate, contractors and suppliers should receive training on the Program.  5.4.3 Training activities should be assessed periodically for effectiveness.</p>		<p>especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions (Art. 7 §1 (b))...promote education and training programmes to enable them [public officials] to meet the requirements for the correct, honourable and proper performance of public functions and provide them with the specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas (Art. 7 §1 (d))”</p> <p>(c) in order to prevent conflicts of interest, abstention from hiring, for a reasonable period of</p>

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		entities.						<p>time, former public officials whose functions related directly to employment or activities to be performed or supervised in the private sector.</p> <p>This principle is extrapolated from article 12 of the Convention, which provides for States Parties to "...impose restrictions, as appropriate and for a reasonable period of time, on the professional activities...of public officials...after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure (12 §2 (e))"</p>
<b>Promoting and incentivising</b>	4.e Human resource (par. 1):	<b>2. The Business Principles:</b>	<b>Part II: Corporate</b>	<b>Companies should consider,</b>		5.3.1 The enterprise's	<b>8.1. Positive:</b> Promote the Program throughout	Companies to promote active



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<p><b>ethics and compliance</b> (Corresponding handbook chapter: C9)</p>	<p>Recruitment, promotion, training, performance evaluation, and recognition should reflect the enterprise's commitment to the Programme.</p>	<p>(...) Enterprises should aim to create and maintain a trust-based and inclusive internal culture in which bribery is not tolerated.  <b>6.3.1.</b> Human resources practices including recruitment, promotion, training, performance evaluation, remuneration and recognition should reflect the enterprise's commitment to the Programme.  <b>6.3.3.</b> The enterprise should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes, even if such refusal may</p>	<p><b>Policies to Support Compliance with the Anti-Corruption Rules</b>  ...  <b>Article 8: Human Resources:</b>  Enterprises should ensure that:  human resources practices, including recruitment, promotion, training, performance evaluation, remuneration, recognition and business ethics in general, reflect these Rules;  no employee will suffer retaliation or discriminatory or disciplinary action for reporting in good faith violations or soundly suspected violations of the</p>	<p><i>inter alia</i>, the following good practices...:  <b>9. appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against foreign bribery, at all levels of the company;</b></p>		<p>commitment to the Programme should be reflected in its Human Resource practices.  5.3.2 The enterprise should make clear that compliance with the Programme is mandatory and that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business.</p>	<p>the party by adopting appropriate incentives to encourage and provide positive support for the observance of the Program at all levels of the party.</p>	<p>participation of all employees in the prevention and fight against corruption and to raise awareness of the existence, causes and gravity of and the threat posed by corruption.  This principle is extrapolated from article 13 §1 of the Convention which provides for States Parties to  "...promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by</p>

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		result in the enterprise losing business.	<p>Enterprise's anti-corruption policy or for refusing to engage in corruption, even if such refusal may result in the Enterprise losing business; key personnel in areas subject to high corruption risk should be trained and evaluated regularly; the rotation of such personnel should be considered.</p> <p>...</p> <p><b>Part III: Elements of an Efficient Corporate Compliance Programme</b></p> <p>...</p> <p><b>Article 10 (Elements of a Corporate Compliance Programme):</b></p> <p>...</p> <p><b>I) including the review of business ethics</b></p>					corruption..."

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			competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met and specifically against the compliance with the Enterprise's anti-corruption policy;					
<b><u>Seeking guidance – Detecting and reporting violations</u></b> (Corresponding handbook chapter: C10)		6.3.4. The enterprise should make compliance with the Programme mandatory for employees and directors and apply appropriate sanctions for violations of its Programme. 6.5.1 To be effective, the Programme should rely on	<b>Part III: Elements of an Efficient Corporate Compliance Programme</b> ... <b>Article 10 (Elements of a Corporate Compliance Programme):</b> ... <b>m)</b> offering channels to raise, in full confidentiality,	<b>Companies should consider, <i>inter alia</i>, the following good practices...:</b> 11. effective measures for: <b>i) providing guidance and advice</b> to directors, officers, employees, and, where appropriate, business partners, on	See par. 6 above	5.5 Raising concerns and seeking guidance 5.5.1 The Programme should encourage employees and others to raise concerns and report suspicious circumstances to responsible enterprise officials as early as possible. 5.5.2 To this end,	<b>9. Reporting:</b> 9.1. Duty to report: Communicate to all personnel that they have a duty to report promptly any concerns they may have concerning the Programme, whether relating to their own actions or the acts of others. 9.2. Advice: Adopt effective measures and mechanisms for providing guidance and	Companies to provide disciplinary measures in case of non-compliance with company's anti-corruption codes or standards. This principle is extrapolated from article 8 of the Convention which provides for States Parties to "...consider taking...disciplinary or other measures

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		<p>employees and others to raise concerns and violations as early as possible. To this end, the enterprise should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations (“whistle-blowing”) in confidence and without risk of reprisal.</p> <p><b>6.5.2</b> These or other channels should be available for employees to seek advice on the application of the Programme.</p>	<p>concerns, seek advice or report in good faith established or soundly suspected violations without fear of retaliation or of discriminatory or disciplinary action. Reporting may either be compulsory or voluntary; it can be done on an anonymous or on a disclosed basis. All bona fide reports should be investigated;</p>	<p>complying with the company's ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions;</p> <p><b>ii) internal and where possible confidential</b> reporting by, and protection of, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where</p>		<p>the enterprise should provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances (“whistleblowing”) in confidence and without risk of reprisal.</p> <p>5.5.3 These channels should also be available for employees and others to seek advice or suggest improvements to the Programme. As part of this process, the enterprise should provide guidance to employees and others on applying the Programme's rules and requirements to individual cases.</p>	<p>advice to management, staff and (where appropriate) business partners on complying with the party's Programme, including when they need urgent advice on difficult situations in foreign jurisdictions.</p> <p>9.3. Whistleblowing/Hotlines: Provide channels for communication (including confidential channels) by, and protection of, persons not willing to violate the Programme under instruction or pressure from hierarchical superiors, as well as for persons willing to report breaches of the Programme occurring within the party. The party should take appropriate remedial action based on such reporting.</p>	<p>against public officials who violate the codes or standards established in accordance with this article (8 §6)”</p> <p>Articles 15, 16 and 21 of the Convention (see point 2).</p>

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				appropriate, business partners, willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds; and iii) <b>undertaking appropriate action in response to such reports;</b>				
<b>Addressing violations (Corresponding handbook chapter: C11)</b>	<b>4.e.</b> Human Resources (par. 3) The enterprise should make clear that compliance with the Programme is mandatory and that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if it may result in the	<b>6.9.1</b> The enterprise should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions.	<b>Part III: Elements of an Efficient Corporate Compliance Programme ... Article 10 (Elements of a Corporate Compliance Programme): ... n) acting on reported or detected violations by</b>	<b>Companies should consider, <i>inter alia</i>, the following good practices...: 10. appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the</b>		5.3 Human resources 5.3.1 The enterprise's commitment to the Programme should be reflected in its Human Resource practices. 5.3.3 The enterprise should apply appropriate sanctions for violations of the Programme, up to	8.2. Disciplinary Measures: Take appropriate disciplinary measures (including termination) with all persons involved in Misconduct or other Programme violations, at all levels of the party including officers and directors. 10. Remediate Misconduct: 10.1. Investigating Procedures: Implement procedures for	Companies to adopt measures to (a) ensure that the relevant anti-corruption unit is known to all employees of the company and provide access to such unit for the reporting, including anonymously, of any corruption incidents. (b) protect witnesses and whistle-blowers from potential

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	enterprise losing business.		taking appropriate corrective action and disciplinary measures and considering making appropriate public disclosure of the enforcement of the Enterprise's policy;	<b>company's ethics and compliance programme or measures regarding foreign bribery;</b>		and including termination in appropriate circumstances.	investigating Misconduct and other violations of its Programme which are encountered, reported or discovered by the party.	retaliation, intimidation and unjustified treatment. These principles are extrapolated from articles 13, 32 and 33 of the Convention which provide for the States Parties to "...ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention (article 13 §2)...to provide effective protection from potential retaliation or intimidation for witnesses...who give testimony concerning offences

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								established in accordance with this Convention...(article 32 §1)...to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention (article 33)".
<b>Periodic reviews and evaluations of the anti-corruption programme (Corresponding handbook chapter: C12)</b>	<b>4.f. Monitoring and Review:</b> Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report	<b>6.8. Monitoring and Review</b> <b>6.8.1.</b> The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management of the enterprise should monitor the Programme	<b>Part III: Elements of an Efficient Corporate Compliance Programme</b> ... <b>Article 10 (Elements of a Corporate Compliance Programme):</b> ... <b>c)</b> mandating the Board of Directors or other body with ultimate responsibility for the Enterprise, or	<b>Companies should consider, <i>inter alia</i>, the following good practices...: 12. periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, taking</b>	Enterprises should... 2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery... Such individual circumstances and bribery risks should be regularly monitored and re-	<b>5.8 Monitoring and review</b> 5.8.1 Senior management of the enterprise should monitor the Program and periodically review the Program's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report	3. Programme Initiation, Risk Assessment and Reviews: When establishing a suitable Programme, carry out an initial (or updated) comprehensive risk assessment relating to the potential for the occurrence of fraud, corruption or other Misconduct in the party's business and operations, taking into account its size, business sector, location(s) of operations and other	Companies to periodically evaluate relevant measures and policies with a view to determining their adequacy to prevent and fight corruption. This principle is extrapolated from article 5 §3 of the Convention which provides for the States Parties to "...endeavour to periodically evaluate relevant legal instruments and

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	<p>to the Audit Committee or the Board the results of the Programme review. The Audit Committee or the Board should make an independent assessment of the adequacy of the Programme and disclose its findings in the Annual Report to shareholders.</p>	<p>and periodically review the Programme's suitability, adequacy and effectiveness, and implement improvements as appropriate.  <b>6.8.2.</b> Senior management should periodically report the results of the Programme reviews to the Audit Committee, Board or equivalent body.  <b>6.8.3.</b> The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the enterprise's Annual Report to shareholders.  <b>6.10 Independent</b></p>	<p>the relevant committee thereof, to conduct periodical risk assessments and independent reviews of compliance with these Rules and recommending corrective measures or policies, as necessary. This can be done as part of a broader system of corporate compliance reviews and/or risk assessments; ...  <b>f)</b> issuing guidelines, as appropriate, to further elicit the behavior required and to deter the behavior prohibited by the Enterprise's policies and programme;</p>	<p><b>into account relevant developments in the field, and evolving international and industry standards.</b></p>	<p>assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.</p>	<p>the result of the Program review to the Board, Audit Committee or equivalent body.  5.8.2 The Board, Audit Committee or equivalent body should receive and evaluate periodically an assessment of the adequacy of the Program.</p>	<p>circumstances particular to the party; and review and update this risk assessment periodically and whenever necessary to meet changed circumstances. Senior management should implement a systemic approach to monitoring the Programme, periodically reviewing the Programme's suitability, adequacy and effectiveness in preventing, detecting, investigating and responding to all types of Misconduct. It also should take into account relevant developments in the field of compliance and evolving international and industry standards. When shortcomings are identified, the party should take reasonable steps to prevent further similar shortcomings, including making any necessary modifications to the Programme.  9.4 Periodic</p>	<p>administrative measures with a view to determining their adequacy to prevent and fight corruption.</p>



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		<p><b>assurance</b></p> <p><b>6.10.1</b> Where appropriate, the enterprise should undergo voluntary independent assurance on the design, implementation and/or effectiveness of the Programme.</p> <p><b>6.10.2</b> Where such independent assurance is conducted, the enterprise should consider publicly disclosing that an external review has taken place, together with the related assurance opinion.</p>					<p>Certification: All relevant personnel with decision-making authority or in a position to influence business results should periodically (at least annually) certify, in writing, that they have reviewed the party's code of conduct, have complied with the Programme, and have communicated to the designated corporate officer responsible for integrity compliance matters any information they may have relating to a possible violation of the Programme by other corporate personnel or business partners.</p>	

**ANNEX 2: SAMPLE COMPLIANCE ASSESSMENT CHECKLIST  
(FROM SECTION C.12, CASE STUDY 1)**

**1. Personal Commitment**

**As a member of senior management at [company], I am committed to upholding all relevant company policies and acknowledge my role in establishing a strong, explicit visible and active support and commitment for our corporate compliance programme**

Yes/No

- |   |                          |
|---|--------------------------|
| a. I have read, understand and have complied with the Senior Director information issued by the group including the group policies and company code of conduct.   | <input type="checkbox"/> |
| b. I will continue to ensure my staff give legal, regulatory and ethical issues priority and understand compliance with the group corporate compliance programme is mandatory and the duty of all individuals at all levels of the company. | <input type="checkbox"/> |

**2. Training, Awareness and Communication**

**My staff are aware of and understand the group AB&C policy, Code of Conduct and processes regarding gifts, hospitality and entertainment and have completed any required compliance training.**

Yes/No

- |  |                          |
|--|--------------------------|
| a. My staff are aware of the identity of their Local Compliance Officer, Divisional Compliance Officer (if different) and the Group Compliance Officer and when and how to contact them for advice or guidance.  | <input type="checkbox"/> |
| b. My staff are aware of and understand [company]'s policy on facilitation payments and their duty to report such immediately to the Legal Department.   | <input type="checkbox"/> |
| c. My staff are aware of and understand their duty to report promptly any concerns they may have whether relating to their own actions or the actions of others and how and when to use the group gifts and entertainment register and "whistle-blowing" facility. | <input type="checkbox"/> |
| d. My staff are aware that there must be no retaliation against good faith "whistle-blowers".  | <input type="checkbox"/> |

**3. Due Diligence/Management of Staff and Business Partners**

**I acknowledge the requirement to ensure that persons making decisions and providing services on behalf of the company are appropriate and that this requirement extends to Directors, Staff and Business Partners.**

Yes/No

- a. Any member of staff who is or was a Public Official, was, or is a relative of or in a relationship with any Public Official, has made themselves known to me/my HR department and I have ensured that appropriate supervision is in place.
- b. My staff are aware that they should complete due diligence enquiries on all new Business Partners and we have identified any significant Business Partners to Group Compliance.
- c. We have communicated our policies to our Business Partners and made clear that all activities carried out on our behalf must be in accordance with our Compliance Programme.
- d. My staff understand the nature of interactions and/or business relationships we have with Business Partners and Public Officials.
- e. If the information is publicly available we have identified, where applicable, those persons who are engaged in approving funded contracts, official tenders or adoption processes.
- f. My staff understand that all relationships with Business Partners must be documented fully and that all payments made to Business Partners must be appropriate, justifiable and accurately documented.
- g. My staff understand that they must raise any concerns regarding Business Partners or Public Officials with the Local Compliance Officer, Divisional Compliance Officer or Group Compliance Officer immediately.

**4. Procedures**

**We have established controls and procedures covering payments to third parties, including gifts, hospitality, entertainment, travel, charitable contributions, sponsorships and other expenses to ensure that they are appropriate**

Yes/No

- a. Any gifts/hospitality/entertainment incurred or received by my staff over £75 (or equivalent in local currency) have been approved in advance by line management and recorded in the gifts register.
- b. Any gift/hospitality/entertainment provided to Public Officials are acceptable under local law and regulation and do not exceed £150 (or equivalent in local currency) in aggregate per individual Public Official per annum.
- c. Any charitable/sponsorship donations have been considered and approved in light of the AB&C and Gift Policies. We have made no political contributions.
- d. I have ensured that my staff monitor and reconcile local bank accounts and that there are sufficient signatories and appropriate internal controls in place.

**5. Conflicts of Interest**

**I understand the issues surrounding actual, perceived or potential conflicts of interest and I confirm that a process has been implemented within my business unit/division to ensure that situations that might give rise to a conflict of interest are disclosed to the**

**Company and managed appropriately by an independent person e.g. staff within the Human Resources or Local Compliance Officer or Legal function.**

Yes/No

- a. My staff are aware that they must disclose to their department head, the Human Resources, Local Compliance Officer or Legal departments if they own, serve on the board of, or have a substantial interest in, a [company] competitor, supplier or contractor; have a significant personal interest or potential gain in any [company] business transaction; hire or supervise a relative who works for [company], or have the opportunity to place company business with a firm owned or controlled by a [company] employee or his or her family.
- b. My staff are aware that taking outside employment or freelancing, accepting gifts/entertainment from suppliers, honoraria or other payments from third parties may give rise to an actual, perceived or potential conflict of interest and that if they are in any doubt they must disclose the circumstances to their department head.
- c. Management within my business unit have been given appropriate guidance on conflicts of interest and are aware of the issues that must be reported to the Local Compliance Officer or Human Resources department.

**6. Reporting**

**I confirm that I have reported any instance of fraud, corruption, collusion, obstructive or coercive practice or any other information I may have relating to any possible violation of our group corporate compliance programme by other corporate personnel (whether within or outside my business unit) or any Business Partner to the Group Compliance Officer.**

Yes/No

- a. My staff are aware of and follow the funded contract process.
- b. I and my staff have co-operated fully with all applicable internal audit processes.

**Any other comments:**

**I have made the necessary enquiries in order to complete this assessment on behalf of my division/office/business unit.**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_







# Anti-Corruption Ethics and Compliance Handbook for Business

This *Anti-Corruption Ethics and Compliance Handbook* has been developed to serve as a useful, practical tool for companies seeking compliance advice in one, easy-to-reference publication. It brings together the major business guidance instruments for companies and illustrates them using real-life, anonymised case studies provided by companies. The Handbook has been developed by companies, for companies, with assistance from the OECD, UNODC, and World Bank.



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