

BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

COMMENTARY

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1. INTRODUCTION

This Commentary on the 2013 edition of the Business Principles for Countering Bribery explains the clauses and the changes made to the edition and provides background to its provisions. It also indicates some of the ways in which the provisions can be implemented. Links are provided to tools or publications where further information and guidance can be obtained from Transparency International and other organisations.

ORIGIN AND AIMS OF THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

The Business Principles were first published in 2002, with a second edition issued in 2009 and followed by a third edition in 2013. The Business Principles were developed by Transparency International and Social Accountability International following requests from enterprises that they create an authoritative business anti-bribery code. It was decided to use a multi-stakeholder process to develop the Business Principles. A Steering Committee was formed, drawn from enterprises, trade unions, Transparency International and Social Accountability International. The Steering Committee oversees the Business Principles and the development of revisions. Transparency International provides the Secretariat for the Business Principles initiative and the Steering Committee.

The aims of the Business Principles are to set out best practice guidance for enterprises in countering bribery and, advised by the Business Principles Steering Committee, to capture emerging best practice and incorporate this into revisions of the Business Principles. For example, this 2013 edition now includes clauses recommending public reporting on organisational transparency and country-by-country reporting, two emerging areas of practice.

ACHIEVEMENTS OF THE BUSINESS PRINCIPLES

Influence on other codes and guidance

The Business Principles have been a significant influence in development of corporate anti-bribery practice. They have also been used as a reference by legislators and other similar codes. The guidance and codes that have taken account of the Business Principles include, amongst others, the UK Ministry of Justice Guidance to the UK Bribery Act, the Global Reporting Initiative Sustainability Reporting Framework, the UN Global Compact Reporting Guidance on the 10th Principle against Corruption, and the Partnering Against Corruption Initiative and its Principles for Countering Bribery.

Tools and surveys

The framework and best practices set by the Business Principles have provided the basis for a range of tools developed by Transparency International, including self-assessment checklists,

detailed guidance on aspects of anti-bribery practice and, importantly, the Transparency International assessments of Transparency in Corporate Reporting¹.

Corporate benchmarking

The Business Principles have exerted much of their influence by providing a benchmark for enterprises in developing or strengthening their own anti-bribery measures. While much of this use remains mostly undocumented, a number of enterprises refer publicly to having used the Business Principles as the reference for their anti-bribery Programmes.

USING THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

The Business Principles are intended for use by enterprises both as a tool that reflects best anti-bribery practice and for benchmarking an enterprise's own practices. They should be used as a starting point for assessing or developing practice. Countering bribery is not only an expression of an enterprise's values but also a risk management exercise. Different enterprises will be subject to varying levels of risk and will need to place different levels of emphasis on the topics covered by the Business Principles. The Business Principles are specific to the issue of bribery and therefore do not replace a full code of conduct. Rather, they represent a detailed elaboration of one aspect that is covered by a code of conduct.

FOCUS ON COUNTERING BRIBERY

The Business Principles focus on bribery rather than the broader issue of corruption as bribery is one of the most significant corruption issues for enterprises and societies. Other major forms of corruption such as fraud and money laundering are already well catered for in legislation and guidance. The Business Principles include all the main topics recognised as part of the corporate agenda for countering bribery. The definition of bribery used for the Business Principles is: 'Bribery: the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.'² This is a broad definition related to enterprises. It covers an abuse of office, breach of trust or illegal act by an employee or a third party acting on behalf of the enterprise. Bribery can occur both actively and passively. In active bribery, the employee or representative of the enterprise may act corruptly by giving or attempting to make a bribe, whereas in passive bribery, the employee or representative accepts a bribe or acts corruptly on the promise or expectation of a bribe.

STRUCTURE OF THIS COMMENTARY

This Commentary provides comments and guidance on each of the clauses of the 2013 edition. For each clause, the following information is provided:

¹Transparency in corporate reporting: assessing the world's largest companies, 2014. http://www.transparency.org/whatwedo/publication/transparency_in_corporate_reporting_assessing_worlds_largest_companies_2014.

² Definition used in the Business Principles for Countering Bribery.

- **Clause:** At the front of the section in bold type, the relevant clause from the Business Principles is shown.
- **Change:** A statement of whether the clause has been modified or remains as in the 2009 edition is given.
- **Description:** A description of the topic is provided.
- **Implementation:** Some aspects of good practice implementation measures are indicated.
- **Further information:** Some sections include links to guidance on the topic.

NEW SECTIONS AND CLAUSES

These are as follows:

- 4. Risk assessment
- 5.1 Conflicts of interest
- 6.6.4 Country-by-country reporting
- 6.6.5 Organisational transparency
- 6.9 Cooperation with authorities

The section on business relationships has been reordered and individual clauses throughout the Business Principles have been amended where it was felt that wording could be improved or the meaning clarified further.

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 the 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.

MODIFIED CLAUSE: The second sentence defining a Programme in a footnote in the previous edition is now part of the second Principle.

Strictly speaking, there should be only one Principle, prohibition of bribery, as the second Principle is a means to achieve the no-bribery Principle. However, committing to implement an anti-bribery Programme is of such importance that it has been made a Principle. The intent of this Principle is that the Board and senior management recognise that countering bribery requires a strategic approach to ensuring a culture of integrity in the enterprise and, based on continuing risk assessment, the design, implementation and maintenance of a range of policies and procedures to prevent and counter bribery.

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

This supporting statement to the Principles aims to show unequivocally that it is commitment by the Board that underpins an anti-bribery Programme. The commitment is expressed in good governance practices by the Board: placing requirements on the Chief Executive and senior management for implementation of an anti-bribery Programme, receiving reports on the effectiveness of the programme and directing the implementation of any needed improvements. The practices of the Board for oversight and accountability are threaded throughout the Business Principles and this Commentary.

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

This wording supporting the two Principles is the same as in the original edition published in 2002. The needed focus on integrity, transparency and accountability is heightened by recent scandals in the financial and extractive sectors, where the frequent lack of a culture of integrity has been identified as a breeding ground for corruption.

3. DEVELOPMENT OF A PROGRAMME FOR COUNTERING BRIBERY

3.1. The 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.

NO CHANGE: This clause covers activities under the enterprise's effective control. Not all the activities of third parties with which the enterprise has relationships will be under the enterprise's effective control, and policies and procedures should be designed for those as set out in section 6.

Enterprises should develop a comprehensive anti-bribery Programme as described in the Business Principles. An anti-bribery Programme should not be designed solely to achieve compliance with laws, but should also aim to meet the values and integrity commitments of the enterprise. There is now broad global agreement on what constitutes good practice for countering bribery. This is expressed not only in these Business Principles but also in a number of guidance publications including those listed below.

Further information

Adequate Procedures - Guidance to the UK Bribery Act 2010, Transparency International UK, 2013

The UK Bribery Act 2010 introduces an offence of corporate failure to prevent bribery. The only defence for a company is to prove that it had 'adequate procedures' in place to prevent bribery. This Guidance aims to assist enterprises by providing clear, practical advice on good practice anti-bribery systems that in Transparency International UK's opinion constitute 'adequate procedures' for compliance with the Bribery Act.

www.transparency.org.uk/our-work/publications/10-publications/95-adequate-procedures-guidance-to-the-uk-bribery-act-2010

The Bribery Act: Guidance about procedures that relevant commercial organisations can put into place to prevent persons associated with them from bribing, UK Ministry of Justice, 2010

www.gov.uk/government/publications/bribery-act-2010-guidance
www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf

A Resource Guide to the U.S. Foreign Corrupt Practices Act, The Criminal Division of the US Department of Justice and the Enforcement Division of the US Securities and Exchange Commission

www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf
www.justice.gov/criminal/fraud/fcpa/guide.pdf

Recommendation for Further Combating Bribery of Foreign Public Officials

OECD Working Group on Bribery in International Business Transactions Recommendation, 2009

www.oecd.org/daf/anti-bribery/oecdantibriberyrecommendation2009.htm

Good Practice Guidance on Internal Controls, Ethics, and Compliance, OECD 2013

This publication brings together, in one reference resource, the major international business guidance instruments and provides real-life corporate case studies.

www.oecd.org/g20/topics/anti-corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm

3.2. The enterprise should design and improve its Programme based on continuing risk assessment.

NEW CLAUSE: A new clause referring to risk assessment is inserted into this section to emphasise the fundamental role of risk assessment and its repetition as part of a continuous improvement process of an anti-bribery Programme. Additionally, the importance of risk assessment as the platform for designing and maintaining an effective anti-bribery Programme is recognised by the new dedicated section 4.

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.

MODIFIED CLAUSE: The 2009 edition read ‘in all the jurisdictions’ and the wording has been changed to ‘in each of the jurisdictions’.

Compliance with all relevant laws and regulations, including relevant anti-corruption laws, is a legal obligation. Non-compliance with laws places an enterprise at risk of reputational, administrative, civil and criminal consequences, including internal costs, investigations, prosecutions, fines, loss of contracts and possible debarment. An enterprise operating in various jurisdictions will necessarily be subject to the anti-bribery laws in these jurisdictions and may well also fall under the extra-territorial provisions of laws such as the UK Bribery Act. Nevertheless, whatever the variations in laws, the principles elaborated in the enterprise’s anti-bribery Programme should be applied universally in all countries. Monitoring and complying with laws is an extensive task as they vary across jurisdictions. Changes in laws must also be tracked. Further, apart from specific anti-bribery laws and conventions there is a wide range of associated laws and regulations. These include, amongst others, laws covering anti-money laundering, proceeds of crime, asset recovery, financial services, procurement and debarment, market regulation, competition and whistleblowing.

Implementation aspects

- **Responsibility:** Assign responsibility for ensuring that the enterprise monitors and is compliant with laws and regulations.

- **Legal advisers:** Discuss with legal advisers how they can help in ensuring compliance with laws.
- **Leadership:** Ensure that the Board and senior management are briefed regularly on requirements of laws and implications of changes in anti-corruption laws, and that they receive alerts and reports when the enterprise has breached or may have breached laws.

Further information

Anti-Corruption Regulation, published annually by Getting the Deal Through

This publication captures the growing anti-corruption jurisprudence developing around the globe. It comprises expert summaries of countries' anti-corruption laws and enforcement policies and includes contributions from Transparency International and the OECD. Topics covered include: foreign bribery, financial record keeping and domestic bribery.

<http://gettingthedealthrough.com/area/2/>

3.4. The enterprise should develop the Programme in consultation with employees, trade unions or other employee representative bodies and other relevant stakeholders.

MODIFIED CLAUSE: The wording 'and other relevant stakeholders' has been added.

Consulting with stakeholders is an important way for an enterprise to determine the external perceptions and expectations of its integrity and anti-bribery activities and how it should design and improve its anti-bribery Programme. Regular consultation with stakeholders and reporting to them on the implementation of the anti-bribery programme as well as organisational transparency are described in section 6.

In particular, employees should be engaged in the development of the anti-bribery Programme as they will have to observe and carry out the policies and procedures. An effective Programme depends on the cooperation, motivation and skills of the enterprise's employees, operating within a culture of integrity. Consultation with employees that is genuinely interactive will draw upon the experience and insights of employees as to where bribery risks lie and their suggestions for practical and effective procedures and checks. The process can also encourage their commitment to the anti-bribery Programme. The consultation process will depend on the enterprise's personnel policies relating to recognition of unions and employee representative bodies. These bodies can assist in the development and implementation of the Programme by lending their weight to the management's anti-bribery messages. Human Resources policies and procedures will need to be designed to support the implementation of the anti-bribery Programme and this should be a further area for consultation, as provided for in clause 6.3.2.

Implementation aspects

- **Define the stakeholders to be consulted:** Research and assess which stakeholders have material interest in the enterprise and its activities and can contribute to the design and development of the Programme.

- **Representative bodies:** Involve trade unions and other employee representative bodies, where they exist, through informal discussions and a formal consultation process.
- **Use departmental meetings, appraisals and surveys:** Discussions and surveys of opinions can be used to gain employees' views and suggestions and communicate the process of designing or improving the anti-bribery Programme.
- **Union officials:** Offer training on the Programme for officials of unions or representative bodies as this may encourage them to promote the Programme and thereby add their authority to the anti-bribery efforts.

Further information

Stakeholder engagement, A Good Practice Handbook for Companies Doing Business in Emerging Markets, International Finance Corporation, 2007

www.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES

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 interested parties.

NO CHANGE: This clause points out that the enterprise should be alert to changes that may affect the effectiveness of the Programme and should detect advances in best practices or emerging issues. The environment for an anti-bribery Programme may change rapidly with external changes in risks, societies, markets and attitudes of stakeholders. The enterprise itself may undergo organisational change, enter new geographical markets or introduce new products and services.

Implementation aspects

- **Organisation:** Assign responsibilities for assessing perceptions of the anti-bribery Programme and researching its effectiveness, monitoring emerging best practices and engaging with stakeholders.
- **Develop and implement methodologies:** Consider using methods such as scenario planning and stakeholder forums.

4. RISK ASSESSMENT

NEW SECTION: This new section emphasises that risk assessment is the basis for designing and improving an anti-bribery Programme. The clause 4.1 was previously in the section Development of a Programme and has been moved to this section and reworded.

4.1. The Programme should be tailored to reflect the enterprise's particular business risks, circumstances and culture, taking into account inherent risks such as locations of the business, the business sector and organisational risks such as size of the enterprise and use of channels such as intermediaries.

MODIFIED CLAUSE: The revised wording gives greater detail by referring to 'particular business risks, circumstances and culture', distinguishing between inherent and organisational risks, and adding a reference to the risks presented by intermediaries and other channels.

Risk assessment is the foundation for the design of the anti-bribery Programme. Law enforcement agencies and regulators will look for evidence of an enterprise's risk assessment when they are called upon to investigate alleged bribery. The risk assessment process will give the company a systematic view of where inherent bribery risks lie, and provide the basis for design of policies and procedures to mitigate prioritised risks. Through a continuing process of risk assessment, the Programme will be maintained and improved to meet changing conditions and risks.

A risk assessment looks at business activities, industries, local business conditions and customs; identifies bribery risks inherent in those activities; and attempts to estimate the likelihood of the occurrence of the risks and their impact on the organisation. Finally, and most importantly, the assessment looks for ways and means to minimise the risks by designing and implementing appropriate preventive and corrective measures of detailed policies and procedures, as provided for in these Business Principles.

Implementation aspects

- **Platform:** Integrate risk assessment into the anti-bribery Programme.
- **Leadership commitment:** The Board and senior management provide commitment, oversight and full support to the risk assessment process.
- **Use organisational knowledge:** The right people are involved to ensure a sufficiently informed and complete overview of the business and its risks.
- **Comprehensive:** Take account of all activities of the business that may create significant bribery risk.
- **Open minded approach:** Avoid preconceptions about the effectiveness of the anti-bribery Programme and the integrity of employees and third parties.
- **Inherent risks:** Identify and describe inherent bribery risks in appropriate detail and evaluate them by reference to a realistic assessment of likelihood and impact.
- **Assess:** Prioritise bribery risks to the extent that this is practical and meaningful.

- **Use:** Apply the results of assessment to design detailed policies and procedures that are reasonable and proportionate to the risks.
- **Attention to residual risks:** Ensure that the Board and senior management review any risks that cannot be mitigated by the anti-bribery Programme, such as entrenched demands for facilitation payments.
- **Continuous improvement:** Carry out risk assessments regularly so that changing circumstances, risks and assessments are identified and the anti-bribery Programme is modified accordingly.

4.2 The enterprise should assign responsibilities for oversight and implementation of risk assessment.

NEW CLAUSE: This clause emphasises that risk assessment requires leadership attention and management attention if it is to be effective.

Further information

Diagnosing Bribery Risk – Guidance for the Conduct of Effective Bribery Risk Assessment, Transparency International UK, 2013

www.transparency.org.uk/our-work/publications/10-publications/678-diagnosing-bribery-risk

Weak Governance Zones - Risk Awareness Tool for Multinational Enterprises, OECD, 2006

www.oecd.org/corporate/mne/weakgovernancezones-riskawarenesstoolformultinationalenterprises-oecd.htm

Guide for Anti-Corruption Risk Assessment, UN Global Compact, 2013

www.unglobalcompact.org/resources/411

Risk Oversight: Evolving Expectations for Boards, The Conference Board, January 2014

www.wlrk.com/docs/RiskOversight.EvolvingExpectationsforboards.pdf

5. SCOPE OF THE PROGRAMME

The Programme should address the most prevalent risks of bribery relevant to the enterprise, but at a minimum should cover the following areas.

MODIFIED CLAUSE: The opening sentence in the 2009 edition referred to risk assessment. This has been deleted as the new section 4 addresses risk assessment in more detail.

This section covers forms of bribery or legitimate activities that can present high risks of bribery, namely conflicts of interest, political contributions and gifts, hospitality and expenses. Trading in influence (also called ‘influence peddling’) is not covered specifically as it is usually associated with a payment or an in-kind advantage; thus it is implicitly covered by the controls set out in the Business Principles to counter bribery as well as those for managing lobbyists.

5.1. CONFLICTS OF INTEREST

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

NEW CLAUSE: The addition of this clause recognises that conflicts of interest can pave the way for bribery.

A conflict of interest does not necessarily involve improper or corrupt behaviour. However, a director, employee or contracted party can become vulnerable to bribery through being involved in a conflict of interest. This could be by being exposed to solicitation or extortion as a result of failing to inform management about a conflict of interest or acting improperly in favour of another interest, such as a ‘revolving door’ appointment between the public and private sector.

Implementation aspects

- **Policy:** Define conflict of interest and provide examples supporting the definition.
- **Design procedures and controls:** Implement a policy and procedures for managing conflicts of interest requiring directors, employees and relevant third parties to disclose potential conflicts of interest to the enterprise.
- **Manage the risks:** Controls for directors, employees and contracted third parties include maintaining a register of statements of conflicts of interest, defining the prohibited activities that lead or could lead to unacceptable conflicts of interest, and requiring exclusion from reviews and decisions where a conflict of interest exists or might be seen to exist.

- **Advice:** Provide ways in which directors and employees can seek advice on the conflict of interest policy and procedures or concerns they may have.
- **Document:** Record reported conflicts of interest, how they have been managed and breaches of policy.

Further information

Sitting on the fence: Conflicts of interest and how to regulate them, U4, 2008

www.cmi.no/publications/file/3160-sitting-on-the-fence.pdf

5.2. BRIBES

Section 5.2 expands on the Principle that an enterprise should prohibit bribery in any form. This section distinguishes between bribery initiated by an enterprise as part of its operations and bribery carried out by an employee without the enterprise's knowledge.

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

NO CHANGE: This clause addresses the risks from bribery related to the enterprise and its activities. It establishes the broadest possible scope for bribery. This is bribery in any form, whether passive or active, kick-backs, cash or in-kind, made directly by the enterprise or carried out indirectly by a third party acting on behalf of the enterprise.

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.

NO CHANGE: The previous clause covered bribery in any form. Most bribery is carried out by employees and third parties on behalf of the enterprise, such as bribes made to win contracts and without direct benefit to the employee or third party, although the meeting of sales targets or ensuring continuation of employment in a role could constitute an indirect benefit. This clause covers bribery where the employee receives or gives bribes, not for the enterprise's benefit but for that of the employee. Kick-backs are the most common form.

Implementation aspects

- **Implement an anti-bribery programme:** Benchmark against the provisions in these Business Principles to design the anti-bribery Programme.
- **Collective action:** This is a further way of addressing entrenched and pervasive bribery, whether it is for demands for large bribes in public contracting or for small bribes and facilitation payments in logistics or other transactions. Collective action is a way in which enterprises and sometimes other organisations such as NGOs come together to

tackle a specific issue related to bribery or to build consensus or action on wider societal and corporate integrity and anti-corruption commitments.

Further information

Integrity Pacts, Transparency International

www.transparency.org/whatwedo/tools/integrity_pacts

Fighting Corruption through Collective Action: A guide for business, The International Bank for Reconstruction and Development, The World Bank Group, Transparency International and others, 2008

http://info.worldbank.org/etools/docs/antic/Whole_guide_Oct.pdf

Foreign bribery report An Analysis of the Crime of Bribery of Foreign Public Officials, OECD, December 2014

www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm

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 unfair advantage in business transactions.

MODIFIED CLAUSE: The clause has been modified to include lobbyists to recognise that they could make contributions acting on behalf of an enterprise. Also, 'unfair' has been inserted to clarify that the clause covers only improper use of political contributions.

Enterprises can legitimately make political contributions with the aim of influencing a favourable environment in which to carry out business or to support the democratic process. However, political contributions can be vulnerable to abuse, with contributions made improperly to influence winning contracts or to shape legislation favourable to the enterprise. There are recurring scandals concerning politicians or their parties receiving illegal political donations. There is no agreed definition of what constitutes a political contribution, and enterprises must ensure employees or intermediaries do not inadvertently make contributions in breach of the enterprise's policy regardless of whether it allows or prohibits them. Political contributions should be managed in the context of other politically related expenditure and activities, including lobbying, 'revolving doors' in employment, secondments, memberships of business associations, and support for politically aligned research bodies and think tanks.

Implementation aspects

- **Define:** Define what constitutes a political contribution.

- **Comprehensive:** Manage political contributions with reference to other related political activities, including lobbying, memberships of business associations, secondments and 'revolving doors'.
- **Obtain shareholder authorisation as appropriate:** This will be according to whether local laws require authorisation of political contributions and should protect against making inadvertent political contributions.
- **Design internal controls:** Design and implement these even if your enterprise prohibits political contributions. This is to prevent contributions being made deliberately in breach of the policy or through negligence.

5.3.2 The enterprise should publicly disclose all its political contributions.

NO CHANGE: Report publicly details of all political contributions made or report that none have been made. Include subsidiaries and cover not only the past year but previous years.

Further information

Handbook on Corporate Political Activity: Emerging Corporate Governance Issue, The Conference Board, November 2010

This handbook offers an overview of the legal rules and standard practices related to political activity, as well as a discussion of internal oversight of political spending.

www.conference-board.org/publications/publicationdetail.cfm?publicationid=1867

Lobbying the EU institutions, Library of the European Parliament, 2013

www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130558/LDM_BRI%282013%29130558_REV1_EN.pdf

Lobbying: influencing decision making with transparency and integrity, OECD, July 2012

www.oecd.org/cleangovbiz/toolkit/50101671.pdf

Transparency and Integrity in Lobbying, OECD, 2013

www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf

Cabs for Hire? Fixing the Revolving Door between Government and Business, Transparency International UK, May 2011

www.transparency.org.uk/our-work/publications/10-publications/132-cabs-for-hire-fixing-the-revolving-door-between-government-and-business

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.

NO CHANGE: Charitable contributions and sponsorships are different types of activity but present similar risks of bribery and improper influence. Separate departments may be responsible for charitable contributions and sponsorships, and the transaction procedures may also differ. Both forms of activity involve transactions where there is likely to be no 'market rate' or benchmark for the payments. This can provide scope for kick-backs, where it is left to the responsible business function to determine or negotiate the value of a contribution or sponsorship. A further risk is that contributions or sponsorships may be made to a favourite cause of someone who the enterprise wishes to influence, whether to win a contract or gain a favourable decision such as approval of a licence by a public official. Hospitality is often associated with sponsorships and can present a further risk.

Implementation aspects

- **Define:** Ensure clear policies and criteria for charitable contributions and sponsorships.
- **Different activities:** Recognise the difference between charitable contributions and sponsorships when designing procedures.
- **Implement controls:** Design and implement detailed procedures that prevent risk of the transactions being used as bribes, including designated levels of approval, controls, evaluation and regular overall review by an oversight function.
- **Due diligence:** Carry out due diligence on potential recipients to ensure that charitable contributions or sponsorships will not be a conduit for bribery and could not be seen as improper influence. It should also be verified that recipients are bona fide and not a 'front organisation' and that recipients themselves are not engaged in bribery.
- **Public officials:** Implement checks to ensure public officials do not benefit from or could be influenced improperly by a contribution or sponsorship.
- **Prevent improper use:** Design checks within the review and approval procedures so that when making a contribution or sponsorship any conflict of interest is managed and there is no influence that could affect a current contract negotiation or material transaction, such as a bid for a government licence.
- **Record accurately:** Document all contributions and sponsorship, cash or in-kind.
- **Follow-up:** Evaluate how contributions and sponsorships have been used.

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

NO CHANGE: Transparency is one of the main controls for charitable contributions and sponsorships. It can deter those considering bribery and improper payments or benefits; and it allows stakeholders to assess the causes and activities supported by the enterprise and question dubious transactions.

Implementation aspects

- **Publish:**
 - Aims and criteria for contributions and sponsorships.
 - How payments and in-kind support relate to the policies and criteria.
 - Financial details of all contribution payments and in-kind contributions – this need not be onerous as the payments in the books can be readily extracted from the accounting records and communicated through web-based reporting.

- Details of recipients of sponsorships but not the financial information as these will be commercial transactions.

5.5. FACILITATION PAYMENTS

5.5.1. Recognising that facilitation payments are bribes, the enterprise should prohibit them.

MODIFIED CLAUSE: This clause is strengthened by stating explicitly that enterprises should prohibit facilitation payments and no longer providing for a progressive approach to their elimination.

The 2009 edition attempted to deal with the complex issues posed by facilitation payments by allowing a progressive approach to their elimination by using the wording ‘. . . the enterprise should work to identify and eliminate them.’ The tightening of the clause recognises changes in the legal landscape and growing awareness by enterprises of the risks and adverse business impacts of facilitation payments. Moreover, the introduction of the UK Bribery Act has made enterprises more aware of the risks of facilitation payments. There has also been a narrowing interpretation in US settlements by the Department of Justice and Securities and Exchange Commission (SEC) of the facilitation payment exception in the Foreign Corrupt Practices Act (FCPA). Many enterprises now prohibit facilitation payments and are initiating strategies to eliminate them, such as collective action.

Facilitation payments are among the most intractable bribery risks for enterprises and employees. The payments are common in countries where corruption is prevalent, and are typically demanded in functions such as in immigration, border crossings, customs and shipping, including in canals and ports. The demands may be systemic and difficult to eradicate. Demands for facilitation payments are based on coercion or extortion and may be accompanied by threats to life, limb or liberty. Consequences for companies can be significant where refusal to pay leads to substantial delays, damage to goods and production and associated costs. If enterprises permit facilitation payments they are faced with various issues and anomalies including:

- Endorsing payment of bribes.
- Uncertainty about what constitutes a facilitation payment – there is no absolute definition.
- Risking breaking laws as such payments are illegal in most countries.
- Confusing the anti-bribery message to employees and third parties.
- Slippery slope, i.e. exposing the enterprise to potentially larger bribes.
- Perpetuating a culture of corruption in the countries in which small bribes are paid.
- Books and records paradox – this occurs where facilitation payments must be recorded according to law, such as under the US FCPA.

Implementation aspects

- **Counter small bribes in their entirety:** This applies to facilitation payments as well as other forms of small bribes.
- **Strategic approach:** Commit to a strategy for elimination of small bribes including facilitation payments through a programme of internal controls and collaborative action.
- **Analyse:** Research and assess where facilitation payments are occurring and if systemic, such as in a customs operation, how they can best be countered.

- **Pinch points:** Eliminate or circumvent these in ways such as dealing directly with customs rather than through an agent.
- **Board:** Provide commitment and oversight to a strategy for elimination of small bribes.
- **Communicate:** Give information, guidance and training to employees and third parties so they know the policies and procedures and how to avoid or resist demands when encountered. Make clear the enterprise allows payments where there is a genuine threat to life, limb or liberty.
- **Due diligence and monitoring on third parties:** Use due diligence to ensure that third parties are not using small bribes when engaged in your activities.
- **Collective action:** Consider using collective action to tackle entrenched demands for facilitation payments.
- **Document:** Record accurately in books and records any facilitation payments made.

Further information

Countering Small Bribes: Principles and good practice guidance for dealing with small bribes including facilitation payments, Transparency International UK, 2014

www.transparency.org.uk/rss/15-publications/1096-countering-small-bribes/1096-countering-small-bribes

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 improperly the outcome of business transactions.

MODIFIED CLAUSE: The clause has been strengthened by adding a provision for developing a policy and procedures and clarifying when gifts, hospitality and expenses should be prohibited. The use of 'bona fide' is to make clear that such activities must be legitimate and not a subterfuge for bribery to influence a business outcome or favourable decision such as legislation.

Gifts and hospitality are often used by enterprises as a way of building relationships and in some societies they are required behaviour. Expenses, meaning travel and associated expenses, can be a legitimate contribution to achieving a business outcome. For example, an enterprise pays the travel and associated costs for representatives of a potential customer to visit a facility or installation or to attend an exhibition, event, conference or training. There are risks attached to these activities. An employee or agent may build favour corruptly with prospective or current clients to win contracts or with public officials and politicians to win approval for concessions, licences, planning decisions or influence legislation. Gifts, hospitality and expenses may be used by corrupt third parties to manoeuvre the enterprise's employees into a position of obligation either for a specific immediate purpose such as winning a contract or to pave the way for larger bribery or other corruption. There are particular risks under laws, such as the UK Bribery Act, attached to giving benefits to public officials with the intent of influencing them or retaining or obtaining an advantage in the conduct of business, if they confer an advantage directly or indirectly upon the official.

Implementation aspects

- **Design and implement policies and procedures based on risk assessments:** The policies define the circumstances in which the payments can be made and restrict them to defined values to ensure that transactions meet the test of being bona fide.
- **Due diligence:** Require checks on the rules of governmental, public bodies or enterprises related to gifts, hospitality and expenses.
- **Check legislation:** Monitor and assess the relevant laws in the jurisdictions in which the enterprise operates and ensure that these conform to local policies, procedures, controls and guidelines.
- **Implement controls:** These include checks and balances, such as thresholds tailored to account for local customs and the varying financial value of such expenses in different countries. A matrix of values can be helpful guidance for employees and third parties acting for the enterprise.
- **Document benefits given or received:** Board members, employees and third parties acting on behalf of the enterprise are required to record in registers any gifts, hospitality or entertaining received or given and to report to management immediately any violations of policy.

6. PROGRAMME IMPLEMENTATION REQUIREMENTS

6.1. ORGANISATION AND RESPONSIBILITIES

MODIFIED SECTION: This has been revised to remove duplicated wording in clauses and to clarify the Board's responsibility for providing oversight, accountability and tone from the top as well as the role of the Chief Executive Officer in having overall responsibility for the Programme and assigning responsibilities for its implementation.

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

MODIFIED CLAUSE: The clause has been refocused on the Board of Directors by omitting the reference in the 2009 edition to the Chief Executive Officer and senior management. The revision emphasises the critical oversight and accountability role of the Board and the importance of the Board in providing 'tone from the top'.

Leadership is critical in setting the culture of organisational integrity for the enterprise and shaping the control environment for implementing an effective anti-bribery Programme. The reference to an equivalent body provides for other forms of governing bodies such as supervisory boards in two-tier Board systems, owner managed companies or partnerships. Leadership expressed as 'tone from the top' by the Board members and also the senior management supports creation of a culture in which it is clearly understood by all employees, Board members, business associates, the public and other stakeholders that the enterprise is committed absolutely to integrity and has zero tolerance of unethical behaviour including bribery. Enterprises in which the leadership is ambivalent about expressing integrity or fails to live by ethical standards undermine the anti-bribery Programme and can weaken the integrity reputation of the enterprise, thereby exposing the enterprise to bribery risks. First and foremost, leadership is expressed through the way governance of integrity is carried out with oversight and commitment of the Board, and supported by senior management.

Implementation aspects

- **Tone from the top by all:** Members of senior management support the leadership of the chair and Board members by stating internally and publicly their commitment and ensuring that the Programme is actively promoted and implemented throughout the enterprise and its activities. Managers at all levels convey the enterprise's commitment to preventing bribery, including providing advice to their staff.
- **Statements:** The Chair and Chief Executive Officer make statements on the website and in the Annual Report and Sustainability Report affirming the enterprise's commitment to prohibition of bribery.
- **Recognition:** The leadership endorses awards and recognition activities associated with ethical conduct and improvement of the Programme.

- **Location visits:** Leaders visit the enterprise's locations and overseas business units, agents and suppliers to convey the enterprise's no-bribes message.
- **High-level anti-corruption initiatives:** The chair and senior management lead or take part in high-level corporate integrity initiatives.

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

NO CHANGE: This clause places responsibility for implementation of the Programme unequivocally on the Chief Executive Officer or person with an equivalent role. The Chief Executive Officer will be accountable to the Board and will ensure that responsibilities are assigned across the enterprise for implementing the Programme. This will include specific responsibilities for General Managers of subsidiaries and business units and the support functions for implementing the Programme, including legal, ethics and compliance, corporate affairs, communications, finance, human resources and internal audit. Apart from responsibilities being assigned for implementation, it should be the aim of senior management to embed the anti-bribery Programme in the enterprise such that every manager and employee accepts a personal commitment to the Programme and its effective implementation.

Implementation aspects

- **No gaps:** Documented assignment of responsibilities.
- **Functional roles are defined:** Job descriptions related to the Programme are precise.
- **Appraisal:** Effective implementation of the Programme is a criterion for appraisal and remuneration.
- **Annual reviews:** General managers of subsidiaries and business units make an annual statement of the progress of implementation of the Programme and any successes, concerns and issues.

Further information

Principles of Corporate Governance, OECD

The OECD Principles are part of the 12 key standards for international financial stability of the Financial Stability Board and form the basis for the corporate governance component of the Report on the Observance of Standards and Codes of the World Bank Group.

www.oecd.org/corporate/oecdprinciplesofcorporategovernance.htm

The UK Corporate Governance Code, Financial Reporting Council, September 2014

www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-2014.pdf

Partnering against Corruption Initiative, World Economic Forum

www.weforum.org/community/partnering-against-corruption-initiative-0

6.2. BUSINESS RELATIONSHIPS

REVISED SECTION: The whole of this section has been reordered to identify in one section the common approaches to be applied to any form of business relationship. The other sections then cover the main forms of business relationship. Some clauses are self-explanatory and no commentary is provided.

6.2.1. General

The content of the following section applies to all business entities.

The main change in section 6.2 is to bring together, in clause 6.2.1, the provisions applicable to all forms of business relationships. These are set out in eight sub-clauses, which cover the following:

- Applying the Programme to controlled entities.
- Influencing entities where the enterprise does not have effective control to implement equivalent anti-bribery Programmes.
- Performing due diligence on third parties, as well as in mergers and acquisitions and investments.
- Avoiding dealing with entities known or suspected to be involved in bribery.
- Monitoring, including the right of inspection of books and records.
- Documenting the relationships.
- Correcting deficiencies in third parties' Programmes.
- Exercising the right of termination of contracts.

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

MODIFIED CLAUSE: This clause and 6.2.1.2 were contained in one clause in the 2009 edition. They have been split to clarify the distinction in approaches between entities where there is effective control and those where there is not control.

This clause covers entities where there is effective control achieved by a controlling equity interest or exercised by other means, such as the right to nominate members of the Board of Directors. If control exists, regardless of the location of the subsidiary, the parent or holding company should require implementation of its Programme. Sometimes, holding companies may not require an identical Programme in subsidiaries. However, there can be risks in this as the Programme may not be applied uniformly or effectively; there may be gaps, and oversight, monitoring and auditing may prove more complex because of the variations in Programmes.

Implementation aspects

- **Identify:** Maintain an up-to-date register of controlled entities and a record of the status of the application of the Programme in each entity.
- **General managers of subsidiaries:** These people are the visible face for the Programme for controlled entities and their commitment should drive the Programme's implementation.
- **Branches:** These may be set up domestically or in countries away from the main seat of the enterprise. Although they may have a separate legal status, they can be regarded as an extension of the main enterprise and under its full control. As such, ensure that all branch

operations are integrated into the anti-bribery Programme, with their employees being treated for this purpose as if they were employees of the enterprise.

- **Local ownership laws:** A particular problem exists in certain developing countries, many of which may be exposed to corruption, which is that foreign investors are not allowed to hold a controlling interest in local business entities. Before engaging in such investments, emphasise and discuss the anti-bribery standards of the investing enterprise with the local investors and partners, and where appropriate with the government agencies approving the investment.

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.

MODIFIED CLAUSE: This clause and 6.2.1.1 formed one clause in the 2009 edition. The wording has not changed.

Where effective control does not exist, the enterprise must rely on whatever influence it can bring upon the other entity. Influence can be contractual, such as for intermediaries and suppliers or through persuasion for such as joint ventures or consortia.

Implementation aspects

- **Investments:** It may not be possible to insist on implementation of a Programme identical to that of the investing company. The size of investment does not necessarily determine the extent to which the enterprise seeks to apply its Programme to the investment. Apply attention on a proportionate basis, informed by risk assessment and the materiality of identified risk.
- **Encourage:** The implementation of an equivalent Programme should be encouraged through discussions with the directors of the associated company or investment, as well as offers of help in implementing and perhaps monitoring the equivalent Programme. This may often result in a satisfactory commitment by the other entity to conform to similar anti-bribery standards.
- **Where there are concerns:** In the extreme case that concerns exist about the investee or related enterprise being involved in bribery and corrupt practices, contact the authorities. Decide whether to retain the investment and attempt to encourage change in the management and practices of the investee or disengage from the investment.

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.

NEW CLAUSE: Mergers and acquisitions can present difficulties for the acquiring companies to carry out adequate due diligence. This is because the transactions are often conducted to a tight schedule and investees may be reluctant to disclose the necessary information. Only when a company has been acquired can full due diligence be carried out.

Due diligence means applying appropriate levels of checking before entering into business relationships, investments or acquisitions, and repeating the due diligence periodically once a relationship has been entered. The extent of due diligence on an entity should be reasonable, taking into account the risk approach of the enterprise and the costs of the exercise, and proportionate to the likely inherent risks.

The aims of anti-bribery due diligence should include determining:

- That the third party is sound and its activities not distorted by bribery.
- The integrity of the Board and senior management.
- That the entity has an effective anti-bribery Programme meeting the standard set by the enterprise's own Programme.
- That no corrupt individuals or entities are associated with the entity.
- Whether any publicly exposed people are associated with the entity – politicians or public officials.
- Whether there are any past or current legal cases involving corruption related to the entity or its owners, Board or senior management.
- Whether there are red flags.
- In the case of mergers and acquisitions, whether there are potential successor risks or inherited liability from bribery with resultant criminal and/or civil penalties, loss in business value or other consequences.

Implementation aspects

Address and mitigate any issues identified through due diligence before entering the relationship.

In the case of mergers and acquisitions where pre-acquisition information will be limited, carry out full due diligence immediately after purchase and implement its Programme in the entity urgently.

Further information

Anti-bribery due diligence for transactions, Guidance for anti-bribery due diligence in mergers, acquisitions and investments, Transparency International UK, 2012.

www.transparency.org.uk/our-work/publications/10-publications/227-anti-bribery-due-diligence-for-transactions

Conducting Third Party Due Diligence Guidelines, World Economic Forum, 2013

www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf

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

MODIFIED CLAUSE: This wording was in the 2009 edition in the section covering contractors and suppliers. It has been reworded to cover all forms of business associates.

For evident reasons, such as breach of its own anti-bribery policy, legal risks and risk of rupture of the supply chain, an enterprise should avoid entering into an association with an entity involved in or suspected of using bribery. But there are situations where the enterprise might enter such a relationship.

- **Sole source:** If an associate is the sole source of a vital product or service, ensure that no bribery is attached to any part of the supply process for the product or service. This means identifying the boundaries and stages of the relevant supply chain process and implementing controls and checks to ensure that bribery is prevented from entering the process.
- **Merger and acquisition:** The enterprise will be able to eliminate bribery once an entity has been acquired, and it should do this rapidly by first carrying out due diligence and then carrying out remedial actions. There may be legal successor risks for past bribery in some jurisdictions, and consultation with the relevant authorities should take place before making the acquisition. There can be societal benefit through acquisition by an enterprise of high integrity of an enterprise engaged in corruption as the purchaser will bring its standards to the acquired entity and eliminate any existing corruption.

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

NEW CLAUSE: Due diligence should have established as part of the appointment process that the business associate operates to the enterprise's requisite anti-bribery standard. However, once the associate has been appointed, work must continue with monitoring to check that the associate continues to meet this standard. An enterprise may have many contracts with intermediaries, suppliers and clients; it will have to decide how and when it will select enterprises to monitor and to what depth. The clause refers to significant business relationships, which can mean the size and length of the contract, exposure to bribery risks, and criticality of the supplier or customer. Consideration should also be given to the materiality of bribery risk, as a bribery incident, though small in size or involving a minor supplier, might have substantial adverse consequences such as media coverage and reputational damage. Repeating due diligence periodically will form part of the monitoring process.

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

NEW CLAUSE: Care should be taken to document the significant aspects of the relationship with a business associate. The extent of the documentation will depend on the due diligence outcomes and the risk attached to the business sector or form of relationship. The aims of documentation include:

- Ensuring that required legal documents are recorded as having been arranged and where they can be located.
- Providing an audit trail.
- Recording that the procedures in the anti-bribery Programme, including due diligence, are being applied and in a timely way.
- Providing evidence in the event that the third party makes allegations of incorrect behaviour by the enterprise – the documentation will include notes of meetings, discussions and negotiations.

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 entity's Programme and the application of sanctions.

NEW CLAUSE

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.

MODIFIED CLAUSE: This clause appeared in two places in the 2009 edition – in the section covering contractors and suppliers and the one covering agents and other intermediaries. The clauses have been consolidated into one clause.

6.2.2. Joint ventures and consortia

6.2.2.1. 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 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.

MODIFIED CLAUSE: The clause has been changed to be specific about the appropriate actions the enterprise could take.

Joint ventures and consortia are risk areas for the enterprise depending on the behaviour of its partners. If they bribe as part of the venture's activities, the enterprise faces legal liability.

In some sectors, by tradition, for risk sharing or to meet local laws, it is common to conduct business through the formation of joint ventures or consortia. The legal structure may be formalised by investments of several joint venture partners in a legal entity or it may be less formal, linking capital investment and sharing of results under contractual arrangements. Joint ventures and consortia may be short term, limited to the completion of one project, or be permanent establishments set up for the long term. The risk for the enterprise is that it is dependent on the behaviour of its partners in these ventures. Due diligence can provide some confidence when entering into a venture but continuing efforts must be made to ensure that bribery does not enter into the venture during the course of its life.

In some industries, especially the extractive industries, one of the joint venture partners may be designated as the managing partner and control the day-to-day activities of the joint venture. In such case, the enterprise will be able to implement an effective Programme. In all other cases, insisting on the anti-bribery standards of just one partner will be more difficult and requires persuading the partners to agree on the anti-bribery Programme for the venture.

Sometimes, persuasion will be insufficient and partners may exhibit inadequate approaches or enter into activities that breach or do not accord with the enterprise's anti-bribery policies. The enterprise cannot be exposed in this way and must seek to persuade its partners to change their ways. If this fails, then the enterprise should have already in place a viable plan for exiting the venture, recognising that this may be complex and not necessarily achievable.

Implementation aspects

- **Contractual requirements:** Ensure that joint venture and consortia agreements include specific anti-bribery requirements.
- **Local compliance:** If the enterprise is the managing partner, retain responsibility for compliance with local laws, as a local partner may not operate to a necessary standard for knowing or complying with local laws.
- **Key positions:** Ensure high-level representation with an employee on the Board of the venture and others in senior roles in critical functions such as contracting.
- **Local language:** Use managers and employees who speak the local language, as this will enable them to negotiate directly and also check how local employees of the venture are acting.
- **Jurisdiction:** Choose the legislative jurisdiction under which contracts will operate with a view to which will be best at allowing dispute resolution and exit if needed.

6.2.3. Agents, lobbyists and other intermediaries

MODIFIED CLAUSES: The only change to the clauses remaining in this section, after removal of clauses to the general section above, is that 'lobbyists' has been inserted into each clause. The insertion of 'lobbyists' is to address the particular risks attached to using intermediaries in political advocacy.

Intermediaries, particularly agents and distributors, form a high risk area for bribery. There are legal and reputational risks when an intermediary engages in bribery on behalf of its principal.

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

NO CHANGE: Intermediaries are among the most common vehicles used by enterprises for paying bribes and kick-backs, and are often used to keep bribe payments off the books. An intermediary may also use bribery on its own account without the principal's knowledge.

6.2.3.2. The enterprise should undertake properly documented due diligence before appointing agents, lobbyists or other intermediaries.

NO CHANGE: While due diligence has been listed among the common elements for business relationships, the clause is repeated here because of the importance of due diligence in relation to intermediaries.

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

NO CHANGE: Approval by management should be seen as the culmination of an appointment procedure. Because of the risks attached to use of intermediaries, a procedure should require a business case to ensure that appointment of an intermediary is for a legitimate business reason and not as a way of creating a channel to influence decisions improperly. The appointment process will define criteria, search for candidates and apply due diligence. Then approval should be sought from the management, with specific responsibility and threshold levels for approval for intermediary appointments. In a global company there may be many managers with this responsibility.

Implementation aspects

Eliminate ‘pinch points’: Consider whether intermediaries are really needed especially where there are ‘pinch points’ – transactions known to present high risks of corruption involving intermediaries.

Appoint shadows: Where there are known to be high risks such as an agent appointed in accordance with local laws or who operates in sectors prone to bribes such as logistics, consider appointing a shadow, an employee of the enterprise who visits or is located in the agent’s office.

Register of intermediaries: Maintain a register of intermediaries at global and local levels and use the register to document the relationship.

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

NO CHANGE: The fees and commissions paid to the intermediary should be reasonable in relation to the services provided and not allow room for the intermediary to create the funds to pay bribes. Evaluation of what is reasonable can be complex, as it will reflect not only time spent but also the quality and expertise of the intermediary and its reputation in the market.

Implementation aspects

- **Benchmark:** Compare the contract terms and fees within the enterprise’s own organisation e.g., between divisions or subsidiaries.
- **No cash accounts:** Avoid local petty cash accounts that could be used to create funds for facilitation payments.
- **Monitor payments:** Require and scrutinise detailed documentation for all expenditure with itemisation and description of expenditure. Use audit rights to check the veracity of the accounting.

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

NO CHANGE

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.

NO CHANGE

6.2.4. Contractors and suppliers

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

NO CHANGE: Contracting and purchasing are among the operational functions most vulnerable to bribery and kick-backs. The enterprise should be vigorous and thorough in ensuring that its Programme is communicated to and endorsed by all its contractors and suppliers, as well as honouring contractual commitments. A clear public commitment to operating fairly and transparently, supported by a public policy of prohibition of bribery, can make clear to potential contractors and suppliers the enterprise's determination to resist bribery.

Implementation aspects

- **Communicate:** When issuing tenders, communicate the anti-bribery Programme and that the tendering process will be operated fairly and transparently.
- **Employee risks:** Counter risks that employees will be bribed during the tendering process in areas such as gaining prior knowledge of specifications, tailoring specifications in favour of the briber, or accepting kick-backs for awarding contracts.
- **Implementation:** Monitor the contract implementation phase for bribery, as this is where corruption may take place in order to generate the funds to pay the kick-back by which the contract was won.
- **Transparency:** Be open about the process by which contracts of major interest to stakeholders have been notified to potential bidders and awarded.
- **Pre-qualification:** Use pre-qualification anti-bribery criteria for selecting shortlists of those invited to tender for contracts.

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

NEW CLAUSE: The enterprise needs to know which are its contractors and suppliers in order to record and monitor how the Programme is being applied to them.

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

NEW CLAUSE: Based on risk assessments the enterprise will define how far down the supply chain it goes to monitor contractors and suppliers and also the extent of monitoring of each supplier. In some industries such as engineering and contracting or extractives the assessment may extend down several tiers. Monitoring systems will include initial and periodically repeated due diligence, database management, analytics, relationship management, and documentation of the management of the relationship.

Implementation aspects

- **Relationship management:** Train relationship managers in the anti-bribery Programme and use them to monitor key contractors and suppliers.
- **Materiality:** Recognise that the size of a contract does not necessarily correspond to the risk. A small bribe or bribe involving a minor supplier might have significant adverse consequences such as media interest and reputational damage.
- **Sampling:** Where there are large numbers of contractors and suppliers, use statistical sampling methods for selecting control samples for monitoring.

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.

NEW CLAUSE

6.3 HUMAN RESOURCES

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

NO CHANGE: Good practice human resources ('HR') are critical to implementing an effective anti-bribery Programme, as the success of the programme is inevitably built on the behaviour of directors and employees. HR policies and procedures are needed to attract the right people; build their skills, understanding and motivation; and provide both incentives and sanctions related to the anti-bribery Programme.

Implementation aspects

- **HR as a key player:** Involve the function in all aspects of development, design monitoring and improvement of the anti-bribery Programme.
- **Recruitment due diligence:** Ensure the hiring of people who will observe and enhance the enterprise's ethical and integrity standards through use of due diligence and tailored recruitment methodologies.
- **Fair and transparent recruitment practices:** These help counter the risk of bribery in the recruitment process.

- **Guidance:** Issue Board members and employees with contracts of employment that require observance of the anti-bribery policy, and also provide detailed guidance on the anti-bribery policies and procedures.
- **Build the integrity culture:** Move the employee focus from one of compliance to that of commitment to integrity and active implementation and improvement of the Programme.
- **Appraisal and recognition:** Appraise employees on how they understand and are meeting the integrity and anti-bribery standards of the enterprise, as well as how the employee presents a positive approach such as being a good representative of the company or making suggestions for improvement of the Programme.

6.3.2. The human resources policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, trade unions or other employee representative bodies as appropriate.

NO CHANGE: Clause 2.3 provides that employees should be engaged in the development of the anti-bribery Programme as they will have to observe and carry out the policies and procedures. Consultation with employees will enable drawing upon the experience and insights of employees into where bribery risks lie and their suggestions for practical and effective procedures and checks. The process will also encourage their commitment to the Programme. The consultation will depend on the enterprise's personnel policies and its recognition of unions or other employee representative bodies. These bodies can assist, not only in the development of the Programme, but in its implementation by lending their weight to the management's anti-bribery messages.

Implementation aspects

- **Representative bodies:** Involve trade unions and other employee representative bodies, where they exist, through informal discussions and a formal consultation process.
- **Obtain employees' views:** Design processes and communication channels whereby employees can communicate their opinions on the Programme.
- **Training of union officials:** Offer training on the programme for officials of unions or representative bodies, as this may encourage them to promote the Programme and thereby add their authority to the anti-bribery efforts.

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.

NO CHANGE: One of the highest risk areas of bribery is sales and marketing, where employees and agents may have sales targets against which they are under pressure to perform. They may be subject to demands and solicitation for bribes from officials and employees of potential customers and contracting bodies. And they may be faced with competitors prepared to pay bribes to win orders. The enterprise should make it clear to employees and agents that they will not suffer penalties if they decline to pay bribes and lose contracts as a result.

Implementation aspect

- **Plan and budget for lost contracts:** With Board support, accept that contracts may initially be lost because of the policy protecting employees and agents who refuse to pay bribes – in the longer term the enterprise may become known for its policy and bribe demands no longer be a factor.
- **Avoid misuse of the policy by employees:** Take care that employees do not use the policy as an excuse to cover poor sales performance – this could damage the effectiveness of the Programme by devaluing it in the eyes of sales management.

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.

NO CHANGE: The enterprise should make adherence to the anti-bribery Programme a condition of employment. And it should require Board members and employees when they join the enterprise to attest in writing that they have read, understood and will observe the requirements of the anti-bribery Programme. This attestation should be repeated regularly.

The enterprise should provide and communicate clearly to Board members, employees and third parties the sanctions that would be applied in the event of violation of its anti-bribery Programme and the procedure for reviewing violations and applying sanctions.

Implementation aspects

- **Accessible language:** Make sure that the document setting out the requirements can be understood easily, uses the local language and is not couched in legalistic terms.
- **Consistency:** Ensure that sanctions are seen to be applied appropriately, consistently and openly.

6.4. TRAINING

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

NO CHANGE: Training, along with communication and guidance channels, is important in translating the policies and procedures into practical advice related to the everyday roles and activities of the Board members, employees and agents. However, attention should be given to training of other types of intermediaries and business associates that can present risks, such as distributors, lobbyists, joint ventures and consortia partners. The aim of anti-bribery training should be to support achievement of the enterprise's commitment to integrity and its no-bribes policy. Training should enable understanding of what constitutes bribery, improper practices and risks; aid recognition of how bribery demands take place, as well as risks and concerns; and prevent negligence or error. The training should support the development of skills to avoid or resist demands or solicitation for bribery. The training should also build employees' confidence and trust in the integrity of the

enterprise and motivate them to represent and promote the enterprise's commitment. Informed by risk assessments, tailored anti-bribery training should be provided to those in functions or business associates identified as facing particular risks.

Implementation aspects

- **Tailored training:** Design the training programme based on risk assessments of where bribery is most likely to be encountered by employees and agents.
- **Surveys and interviews:** Carry these out with employees and Board members to determine their perceptions and needs.
- **Recruitment:** Ensure that recruits (including appointments to the Board) are given induction training on the Programme and that intermediaries are also given training on their appointment. Recruits who will be working in areas of high risk should be given tailored training.
- **Guidance:** Provide guidance in training on how to handle situations that might arise and include use of case studies, role playing and dilemmas. Clear guidance needs to be given on situations when exceptions may be justified (for instance when bribe demands are accompanied by threat to life, limb or liberty of the employee or to another person).
- **Localise:** Tailor training to local cultures and needs. Senior management should visit countries and attend training sessions.
- **Stimulate thinking:** Scenarios, case studies and dilemmas are valuable in stimulating alertness to risks, along with thinking on approaches to use and how to deal with the grey areas likely to be encountered.
- **'Tone from the top':** Involve directors and senior management in the training to make clear the enterprise's commitment to integrity and countering bribery.
- **Use experts:** Draw on the expertise and real-life experience of managers, employees and industry experts.

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

NO CHANGE

Further information

Doing Business without Bribery, Transparency International UK, 2013

This free online learning module providing comprehensive anti-bribery training can also enable companies to benchmark their own training programmes against a best practice standard.

www.doingbusinesswithoutbribery.com/

www.transparency.org.uk/our-work/publications/94-ti-uk-doing-business-without-bribery-trainers-handbook

How to Bribe: A Typology of Bribe Paying and How to Stop It, Transparency International UK, 2014

Drawing upon Transparency International's global experience, this publication provides legal cases and real-life stories to illustrate how bribes are paid in practice. From excessive hospitality to offshore agreements, How to Bribe is designed to help individuals and companies anticipate, recognise, avoid, and resist bribery.

www.transparency.org.uk/our-work/publications/10-publications/833-how-to-bribe-a-typology-of-bribe-paying-and-how-to-stop-it

RESIST: Resisting Extortion and Solicitation in International Transactions. A company tool for employee training, Transparency International and others, 2012

www.transparency.org/whatwedo/pub/resist_resisting_extortion_and_solicitation_in_international_transactions

6.5. RAISING CONCERNS AND SEEKING GUIDANCE

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

NO CHANGE: Whistleblowing channels are important as they can provide a confidential safety valve for employees (and may be extended to third parties) and make the enterprise aware of wrongdoing or concerns. Whistleblowers may be concerned that they will be penalised; the enterprise should provide a channel that gives confidence to whistleblowers that they will not be exposed or penalised. This can be a confidential or anonymous channel depending on the laws of local jurisdictions. Employees should know that it is their duty not just to resist demands but to report any concern to senior management.

Implementation aspects

- **Build trust:** Encourage and build confidence of employees to seek guidance or discuss issues before raising concerns through the whistleblowing channel.
- **Train:** Explain through the training programme how to use the whistleblowing channel, what feedback will be received, how confidentiality is safeguarded, and how the employee will be protected.
- **Senior management review:** Report promptly up the line to senior management any critical issues raised and provide regular reports to senior management and the Board on use of the channels and any implications.
- **External provider:** Decide whether greater confidence will be provided to employees and third parties if the whistleblowing channel is provided internally or managed by an independent provider.

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

NO CHANGE: Although whistleblowing channels are important in exposing corruption, advice or help lines have a significant role and are likely to receive greater use than the whistleblowing channels. An advice line can be an important channel for communicating and providing interpretation of the

anti-bribery Programme or guiding on a specific issue or dilemma faced by an employee or third party.

Implementation aspects

- **Combined channels:** Whistleblowing channels and advice lines can be provided either as separate channels or combined.
- **Provide other channels:** These are other ways for employees to seek guidance, such as face-to-face discussions with line managers or the ethics or compliance officer. These other channels can be preventive by providing timely advice and allowing potential risks to be dealt with before they turn into actual instances of bribery.

Further information

Dodd-Frank Wall Street Reform and Consumer Protection Act

The Dodd-Frank Act provides powerful monetary incentives for whistleblowers to report securities and commodities law violations to the SEC and Commodity Futures Trading Commission, as well as strong protections for doing so.

<http://reaction.orrick.com/reaction/email/pdf/Dodd-Frank.pdf>

International Principles for Whistleblower protection, Transparency International, 2013

www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation

Whistleblowing in Europe: Legal protections for whistleblowers in the EU, Transparency International, 2013

http://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu

6.6. COMMUNICATION AND REPORTING

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

NO CHANGE: The main aims of internal communication should be that Board members, employees and third parties acting on behalf of the enterprise understand, fully support and act in accordance with the enterprise's commitment to integrity and zero toleration of bribery. Communications should provide details of the policies and procedures and be supported by general and risk-based, tailored training. The outcomes should be that Board members, employees and third parties know what is expected of them and how to act, have the knowledge and skills to recognise and counter bribery, and are made aware of the consequences of breaching the no-bribes policy.

External communication and reporting are powerful tools in countering bribery and work in several ways, including:

- Communicating to stakeholders the accountability and commitment of the enterprise to integrity, transparency and countering corruption and the effectiveness of measures being implemented.
- Creating a positive impact on employees as it strengthens their anti-corruption attitudes and trust in the enterprise.
- Deterring those who might wish to involve the enterprise in bribery.
- Providing a basis of engagement with stakeholders.
- Contributing to continuous improvement of the anti-bribery Programme, as the reporting process will depend on using measures of progress and improvement ('reporting drives change').
- Reducing, through organisational and financial transparency, the opportunity for bribery and corruption and allowing stakeholders to understand and monitor the enterprise's operations and activities.

Enterprises are increasingly recognising that they should take a comprehensive approach to non-financial reporting, including reporting on their integrity and anti-bribery commitments and implementation measures. Most global companies now publish sustainability or corporate responsibility reports. Standardised approaches have been developed, notably the Global Reporting Initiative Sustainability Reporting Framework, and new approaches are being developed, including integrated reporting and continuous reporting.

Corruption is very often aided by the use of opaque organisational structures and use of jurisdictions that allow secrecy and improper activities and transactions. The lack of disclosure on payments to governments and the use of offshore centres pose integrity risks for global companies and their stakeholders, as well as generating adverse effects for the local communities in which enterprises operate. For these reasons, momentum around these issues is growing.

The legislative context is advancing, with ever more countries passing laws covering sustainability reporting and considerable movement in the transparency requirements on enterprises, both voluntary and mandatory.

Implementation aspects

- **Integrated communications:** Integrate internal and external communications and reporting as they are mutually reinforcing. Internal messages will reach outside the enterprise and conversely external messages will be seen by employees.
- **Changing expectations:** Monitor and align to the rapidly changing expectations and regulations for transparency and reporting, including financial reporting.
- **Performance measures:** Develop communications performance measures such as targets for employees' perceptions of the enterprise's commitment to integrity, their trust in the enterprise and their understanding of the anti-bribery Programme.

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

MODIFIED CLAUSE: The change is insertion of 'the' before management systems'. This is to make clear that the enterprise should disclose information about the whole of the Programme and not just selected aspects.

The clause emphasises that the enterprise should report publicly on its commitments and policies for integrity and countering bribery and how its procedures and controls are being implemented.

Implementation aspects

- Commit to a policy to publicly disclose information about the Programme, as this will set the tone and leadership to drive public reporting.
- Recognise the interconnectedness of public reporting and stakeholder engagement.
- Identify key indicators for external reporting.
- Report qualitatively as well as quantitatively.
- Report on the anti-bribery Programme in alignment to international reporting frameworks such as the Global Reporting Initiative Sustainability Reporting Framework, the Global Compact–Transparency International Reporting Guidance on the 10th Principle against Corruption, and Transparency International reporting indicators.
- Align the reporting procedure and its indicators to the quality and excellence management processes.
- Commit to stakeholder engagement, as provided for in clause 6.6.3 below.

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

MODIFIED CLAUSE: The term ‘relevant interested parties’ has been replaced by ‘stakeholders’ as this gives greater specificity and aligns to the use of ‘stakeholders’ elsewhere in the Business Principles, in particular in clauses 3.4 and 3.5. Another change is that ‘and engaging with’ has been inserted to clarify that the enterprise should see relationships with stakeholders as a two-way process whereby the enterprise can learn how its anti-bribery measures are perceived and receive expressions of concerns or suggestions for improvements. The use of ‘open to receiving communications’ emphasises that the enterprise should approach relationships with stakeholders as a positive interactive process rather than a one-way channel for releasing the minimum necessary information.

Implementation aspects

- Identify through a continuing review procedure the key stakeholders with an interest in the implementation of the anti-bribery Programme.
- Apply a structured process for engaging with stakeholders.
- Report publicly on the stakeholder engagement process, the topics and concerns identified and the progress of subsequent actions to address concerns.
- Use the information gained from the stakeholder engagement process as an input into the risk assessment process and for continuous improvement of the Programme.

6.6.4. The enterprise should consider additional public disclosure on payments to governments on a country-by-country basis.

NEW CLAUSE: This clause encourages enterprises to be transparent and to report at country level on their payments to governments. Momentum, both legal and societal, is building for country-by-country reporting. Its importance was first recognised and advocated in the extractive sector to prevent misappropriation of resource revenues on a grand scale. The United States 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act will require companies registered on US stock exchanges to report payments to governments on a country and a project-by-project basis. In

a similar vein, in 2013, the European Parliament passed a directive requiring large listed companies operating in the extractive and logging industries to report the payments they make to governments. More recently, the Group of 20 finance ministers and central bank governors committed to implementing country-by-country reporting based on OECD recommendations. Additionally, in the financial sector, new reporting requirements have been put in place that will mandate EU credit institutions and financial firms to report on profits made, taxes paid and subsidies received for each financial year and geographic location. In respect of these issues, the 2013 Business Principles introduce new clauses, 6.6.4 and 6.6.5, providing for country-by-country and organisational transparency reporting.

Through country-by-country reporting, an enterprise provides key financial information in each country where it operates to be accountable to local as well as global stakeholders. Reporting can also assist investors and lenders as they need to be able to assess the local operations, both for the business performance and understanding of local circumstances and risks, including tax and banking regulations, economic, political and societal stability, and environmental and societal factors. By disclosing the basic financial data provided for in this clause, the enterprise can allow citizens and other stakeholders to understand its activities and to monitor the appropriateness of its payments to government.

Implementation aspect

- Consider the scope of country-by-country reporting by reference to legal requirements, frameworks such as those set out by Transparency International's reports on Transparency of Corporate Reporting, and consultations with stakeholders.

Further information:

Directive 2013/34/eu of the European Parliament and of the Council, Chapter 10, 26 June 2013

The directive requires large companies operating in the extractive industries to report the payments they make to governments in relation to their extraction activities.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:EN:PDF>

Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, OECD, 2014

www.oecd-ilibrary.org/taxation/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting_9789264219236-en

Transparency in Corporate Reporting, Transparency International, 2014

Transparency International publishes periodic reports on corporate reporting of anti-corruption practices as well as organisational transparency and country-by-country reporting.

www.transparency.org/whatwedo/publication/transparency_in_corporate_reporting_assessing_worlds_largest_companies_2014

Policy brief 02/2014: Ending secrecy to end impunity: Tracing the beneficial owner, Transparency International, February 2014

www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial

Global Compact–Transparency International Reporting Guidance on the 10th Principle against Corruption

The tool provides practical guidance on a broad set of reporting elements and is rooted in existing reporting practice.

www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf

GRI Sustainability Reporting Framework, 4th edition, Global Reporting Initiative, 2013

The Global Reporting Initiative Framework includes Sustainability Reporting Guidelines and sets out the Principles and Standard Disclosures organisations can use to report their economic, environmental, and social performance and impacts.

www.globalreporting.org/reporting/reporting-framework-overview/Pages/default.aspx

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.

NEW CLAUSE: Enterprises should make a commitment to accountability and transparency through comprehensive reporting on their corporate holdings. In line with this commitment, this clause encourages enterprises to disclose exhaustive lists of their material subsidiaries, affiliates, joint ventures and other related entities.

Organisational transparency is important for many reasons, not least because company structures can be made deliberately opaque for the purpose of hiding the proceeds of corruption. It is important also because it allows local stakeholders to know which companies are operating in their territories, bidding for government licences or contracts, or whether they have applied for or obtained favourable tax treatment. Fuller disclosure of corporate holdings can provide stakeholders with more complete knowledge of financial flows such as intra-company transfers and payments to governments. Other areas of development in corporate transparency are publication of names of organisations in supply chains and agents.

It is important to note that Transparency International, in its 2014 report *Transparency in Corporate Reporting – Assessing the World's Largest Companies*, advanced the standard of disclosure encouraged by the Business Principles in this clause, and only gave full points for the disclosure of all holdings regardless of their materiality.

Further information

Transparency in Corporate Reporting, Transparency International, 2014

Transparency International publishes periodic reports on corporate reporting of anti-corruption practices as well as organisational transparency and country-by-country reporting.

www.transparency.org/whatwedo/publication/transparency_in_corporate_reporting_assessing_worlds_largest_companies_2014

6.7. INTERNAL CONTROLS AND RECORD KEEPING

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.

NO CHANGE: Internal control systems are the policies and procedures that help ensure that the Board's and management's directives are carried out and meet the corporate governance policies of the company. Clause 6.7.1 specifically covers the enterprise's internal financial and accounting controls. These operate within a control environment set by the organisational culture and commitment to integrity, tone at the top, oversight and accountability, and monitoring and evaluation. The internal financial and accounting controls should allow monitoring of policies and procedures to check that they are followed, procedures are effective, control objectives are met (including the objectives for preventing bribery) and improvement needs can be identified.

Implementation aspects

Based on continuing risk assessment, design, implement and improve procedures to ensure that the enterprise:

- Implements checks and balances to counter bribery.
- Is likely to detect bribery if it occurs.
- Safeguards its assets.
- Keeps complete and accurate accounting records that:
 - Enable financial statements to be prepared.
 - Enable information to be prepared and disclosed in a timely and requisite manner for management reviews.
 - Provide requisite information for audits and investigations.
- Produces financial statements that are in conformity with generally accepted accounting principles, laws and regulations.
- Can conduct monitoring to identify and enable improvement 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.

NO CHANGE: Accurate accounting, documentation and due retention of records are required. This enables compliance with laws and regulations, including anti-bribery laws, as well as allowing management to undertake reviews, financial reports to be prepared and an audit trail to be provided for investigations to be carried out fully and effectively. The books and records should be comprehensive and enable true and accurate financial statements to be prepared. Off-the-books accounts have been used by enterprises to manipulate accounts or hide bribery transactions. Failure to keep proper books and records can lead to risk of prosecution. For instance, many of the bribery prosecutions in the US have been made under the FCPA books and records provisions.

Implementation aspects

- Maintain books on a current basis.
- Record transactions chronologically, supported by original documents that are fully cross-referenced.
- Establish a comprehensive filing system.
- Ensure an audit trail for each transaction from origin to completion.
- Monitor to ensure that all transactions and assets are documented in the books and not miscoded in error, disguised or hidden in 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.

NO CHANGE: Audit is the process by which the reliability of internal controls, documentation and reported performance is checked and verified to provide assurance to management, investors and other stakeholders. Internal audit is an essential part of the monitoring and improvement process described in section 8.2. But it is placed in the internal control section as the presence of an effective internal audit system can act as a significant deterrent to those contemplating bribery. Internal audits can be supported by independent external assurance, as described in section 6.10.

Implementation aspects

- Ensure that the results of internal audits are reviewed regularly by senior management and the Board.
- Use the results of internal audits to improve the anti-bribery programme.

Further information

Internal Control — Integrated Framework, Executive Summary, Committee of Sponsoring Organizations of the Treadway Commission, 2013

This is a high-level overview of internal control intended for the Board of Directors, Chief Executive Officer, and other senior management.

www.coso.org/IC.htm

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.

NO CHANGE: Enterprises operate in dynamic environments and should keep the anti-bribery Programme under continuous review to ensure it remains effective and valid and to ensure that necessary improvements are made. It is the responsibility of the Board as part of corporate governance to oversee that the Programme is working and effective. Employees and other stakeholders with a material interest in the enterprise need to be assured that the enterprise has a well-designed Programme that is working effectively. A procedure for continuous monitoring is the way of obtaining assurance on the degree to which the Programme is working over a defined period. Monitoring and review should extend to all the activities of the enterprise, those of the enterprise itself and its controlled entities, its intermediaries and other business relationships.

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

NO CHANGE: The credibility and effectiveness of the oversight and monitoring of the anti-bribery Programme will depend on a truly independent view. A Board Audit Committee or equivalent committee comprised of non-executive directors will be required by regulators to protect the interests of shareholders in relation to financial reporting and internal control, including the anti-bribery Programme. The Audit Committee will provide the necessary independent view, whereas independence cannot be provided adequately by a body containing executive directors linked to the management of the enterprise and the implementation of the Programme. An independent committee will be able to assess impartially and objectively the implementation of the Programme. To this end, it will need to understand the bribery risks identified by management and how those risks are monitored and controlled.

Implementation aspects

- **Independence:** Ensure the independence of the members of the Audit Committee by restricting compensation for their membership of the Board or committees and ensuring that they are free from conflicts of interest.
- **Perception:** The perception by stakeholders of independence is as important as the actual independence.
- **Challenging:** The Audit Committee should be vigorous in monitoring the Programme, questioning and challenging management, and assessing whether the Board and management are setting the right leadership and tone.
- **Staying on top of risks:** The Audit Committee should review the risk approach of the enterprise, the key identified risks, how they are mitigated and whether there are residual risks that cannot be dealt with by existing controls.
- **Immediacy:** The Audit Committee should stay close to management and make it known that management should bring any serious issue, concerns or risks to the committee's attention without delay and not wait for the review process to take its normal course.
- **Refresh:** To maintain the vigour of approach, membership of the Audit Committee should be refreshed regularly, but not at the expense of experience and continuity of approach.

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 Annual Report to shareholders.

NO CHANGE: The Committee will make a report to shareholders disclosing any material non-compliance in the Annual Report to shareholders. In a two-tier Board system, the Audit Committee or equivalent body may not be a legal requirement but it is increasingly being used.

Further information

Standards relating to listed company audit committees, SEC, 2003

www.sec.gov/rules/final/33-8220.htm

The King Code of Governance Principles and the King Report on Governance (King III), Institute of Directors Southern Africa, September 2009

www.iodsa.co.za/?kingIII

Guidance on Audit Committees, Financial Reporting Council, September 2012

www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Guidance-on-Audit-Committees-September-2012.aspx

6.9. COOPERATION WITH AUTHORITIES

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

NEW CLAUSE: This new clause encourages enterprises to cooperate with authorities related to bribery and corruption incidents. Cooperation supports the work of authorities to counter corruption and, depending on the jurisdiction, can speed up the process by using the resources and access to documents of enterprises being investigated. Further, they may benefit through mitigation in sentencing should the enterprise be convicted. The United Nations Convention against Corruption recognises this in Article 37 (2), which states that each State Party should consider providing for the possibility of mitigation of punishment where cooperation has been given. Cooperation can include being willing to answer questions, volunteering information, and providing ready access to documents, employees and witnesses.

The addition of this clause responds to a commitment made by Transparency International and others at the Second Conference of States Parties to the United Nations Convention against Corruption held in Bali in 2008. In a declaration, a commitment was made to work towards the alignment of business principles with fundamental values enshrined in the Convention³. Article 37 (1) of the Convention requires that each State Party shall take appropriate measures to encourage persons who participate or have participated in the commission of an offence established in accordance with the Convention to supply information useful to the competent authorities for investigative and evidentiary purposes.

³ www.unglobalcompact.org/newsandevents/news_archives/2008_02_22.html

Implementation aspects

- Commit to a policy and procedure to cooperate with authorities.
- Report publicly on how cooperation is taking place in the event of an incident.

Further information

Background to the United Nations Convention against Corruption, United Nations Office on Drugs and Crime

www.unodc.org/unodc/en/treaties/CAC/

6.10. INDEPENDENT ASSURANCE

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

MODIFIED CLAUSE: The clause has been strengthened in two areas, as follows:

Increased expectation for use: Firstly, the clause now provides that enterprises should use assurance rather than, as previously, that the Board should consider using assurance. The strengthened wording recognises there has been some modest progress in anti-bribery assurance. Examples of progress include the UK Ministry of Justice guidance on the UK Bribery Act, which suggests that organisations might consider seeking some form of external verification or assurance of the effectiveness of anti-bribery procedures, as well as the publication by Transparency International of its Framework for Voluntary Independent Assurance. However, enterprises have not yet taken up anti-bribery assurance and assurance practitioners have been reluctant to provide anti-bribery assurance owing to concerns about materiality and fears that stakeholders might misconstrue opinion reports. The potential cost of external voluntary assurance has also been a barrier. The 2013 edition recognises the caution of enterprises and practitioners by using the phrase 'where appropriate'. The Business Principles refer only to assurance but there has been greater progress in certification, with development of an ISO Anti-bribery certification standard and enterprises obtaining certification against other standards such as the BSI 10500 Anti-bribery Management System.

Clarification of scope: Secondly, the clause provides greater specificity on the scope of assurance by specifying that it can be on the design and implementation of an anti-bribery Programme, on the effectiveness of implementation of the Programme, or on both.

Good practice requires continuous improvement of the anti-bribery Programme; assurance and certification as well as the process of public reporting can help in this. Moreover, enterprises are increasingly expected to report to stakeholders the measures and efforts deployed to counter and detect bribery. Independent assurance can lend more credibility to such reporting, build confidence in the enterprise's systems and efforts, and assist management in reviewing the effectiveness of the anti-bribery Programme and identifying areas for improvement.

There can be significant advantages for enterprises to seek voluntary independent assurance and these include:

- Improving the anti-bribery Programme.
- Providing confidence to the Board and management on the adequacy of its anti-bribery Programme.
- Increasing the credibility of the enterprise's public reporting on its anti-bribery Programme.
- Maintaining and/or enhancing the reputation of the enterprise for its commitment to high standards of integrity and transparency.
- Meeting pre-qualification requirements from clients and customers, lenders and funders.
- In the event of a bribery incident, contributing to a case for mitigation of sentencing in jurisdictions where this applies.
- Helping restore market confidence following the discovery of a bribery incident.

Implementation aspects

- **Board commitment:** The Board needs to understand the benefits and implications of assurance, commit to overseeing and supporting the process, and in particular decide on the extent to which the enterprise will be transparent about the engagement and resulting opinion.
- **Form of assurance:** Decide whether to use an assertion or discovery based approach:
 - In the assertion approach, as set out in the Framework for Independent Voluntary Assurance, the assurance review is made against an Assertion by management about the enterprise's anti-bribery Programme.
 - In the discovery approach, the assurance practitioner reviews the anti-bribery Programme and gives an opinion as well as recommendations for improvement.
- **Enterprise scope:** The assurance engagement can cover the whole of the enterprise, a business unit or a process.
- **Programme scope:** The review can address the design and implementation of the Programme and/or its effectiveness.
- **Intended users:** Management decides the intended users of the assurance opinion.
- **Public reporting:** The enterprise has the option to make public that it is undergoing assurance and will publish the assurance opinion.

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.

NO CHANGE: The conclusion of the assurance process is the provision by the assurance practitioner of an assurance opinion to its intended users. These may include, but are not restricted to, the Board, management and external stakeholders.

Implementation aspects

- **Transparency:** This should be the guiding principle for assurance. Enterprises should recognise the importance of assurance to stakeholders and be open about having commissioned external assurance, the opinion given by the assurance practitioner and any actions it will be taking as a result of the process.
- **Intended users of the opinion:** Agree these with the assurance practitioner before the assurance engagement starts.

- **Gain experience first:** When first undergoing assurance, an enterprise may decide not to make public that it is undergoing assurance and keep the assurance opinion internal, with distribution limited to the Board and senior management. This will be to gain confidence and experience of the assurance process.

Further information

Assurance Framework for Corporate Anti-bribery Programmes, Transparency International, 2012

www.transparency.org/whatwedo/pub/assurance_framework_for_corporate_anti_bribery_programmes

BSI 10500, Anti-bribery Management System

www.bsigroup.com/en-GB/BS-10500-Anti-Bribery/

DEFINITIONS

Agent: A representative who normally has authority to make commitments on behalf of the principal represented. The term ‘representative’ is being used more frequently since agent can imply more than intended and, in some countries, ‘agent’ implies power of attorney.

Anti-bribery programme: The whole of 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

Assurance: ‘The methods and processes employed by an assurance practitioner to evaluate an organisation’s public disclosures about its performance as well as underlying systems, data and processes against suitable criteria and standards in order to increase the credibility of public disclosure. Assurance includes the communication of the results of the assurance process in an assurance statement.’ (The AA1000 Assurance Standard, AccountAbility, 2008).

Board of Directors: A unitary Board of Directors, excepting where the reference in this Commentary specifically refers to dual Boards comprising supervisory and executive Boards.

Bribery: The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.

Charitable contribution: a payment or in-kind benefit gifted to a body having charitable or equivalent status and made without expectation of return.

Collective action: A collaborative and sustained process of cooperation among stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organisations and levels the playing field between competitors. Collective action can complement or temporarily substitute for and strengthen weak local laws and anti-corruption practices (World Bank Institute Guide to Collective Action).

Conflict of interest⁴: Situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests.

Country-by-country reporting⁵: Country by country reporting is a form of financial reporting in which multinational corporations produce certain financial data disaggregated by country and for each country in which they operate.

Facilitation payment⁶: A small bribe, also called a ‘facilitating’, ‘speed’ or ‘grease’ payment; made to secure or expedite the performance of a routine or necessary action to which the payer has legal or other entitlement.

⁴ http://www.transparency.org/glossary/term/conflict_of_interests

⁵ http://www.transparency.org/glossary/term/country_by_country_reporting

⁶ http://www.transparency.org/glossary/term/facilitation_payments

Integrity Pact⁷: A tool developed by Transparency International UK for preventing corruption in public contracting, comprising an agreement between the government agency offering a contract and the enterprises bidding for it that they will abstain from bribery, collusion and other corrupt practices for the extent of the contract. To ensure accountability, Integrity Pacts also include a monitoring system typically led by civil society groups (Transparency International definition).

Lobbying⁸: Any activity carried out to influence a government or institution's policies and decisions in favour of a specific cause or outcome. Even when allowed by law, these acts can become distortive if disproportionate levels of influence exist – by companies, associations, organisations and individuals.

Lobbyist: the US Lobbying Disclosure Act of 1995 defines a lobbyist as someone who:

- Makes more than one lobbying contact with a covered official.
- Receives financial or other compensation for services that include more than one lobbying contact.
- Spends at least 20% of work time per client or employer on lobbying activities.

Sponsorship: A business where the enterprise contracts with rights holders to promote its name, branding, products or services to a rights property. Rights properties include, amongst others, events, teams, individuals, community projects and stadia.

Stakeholder engagement: The process used by an organisation to engage relevant stakeholders for a purpose to achieve accepted outcomes (AccountAbility, 2013).

Stakeholder: Those groups who affect and/or could be affected by an organisation's activities products and services and associated performance. This does not include all those who may have knowledge of or views about the organisation. Organisations will have many stakeholders, each with distinct types and levels of involvement, and often with diverse and sometimes conflicting interests and concerns (AccountAbility, 2013).

Subsidiary: A separate legal entity in which the company (the parent or holding company) has a controlling equity interest or exercises a de facto controlling interest, by means such as the right to nominate members of the Board of Directors and thereby control the Board, founder/priority shares, preferred shares, a controlling foundation or other devices.

Trading in influence: Also called 'influence peddling', this is using undue influence with persons in authority, made usually in return for a payment or benefit in-kind, with the aim of obtaining favours or preferential treatment for another person or entity.

'Tone from the top': The way the top leadership communicates its commitment to integrity and supports the anti-bribery Programme by its actions and communications.

Whistleblowing: Making a disclosure in the public interest by an employee, director or external person, in an attempt to reveal neglect or abuses within the activities of an organisation, government body or company (or one of its business partners) that threaten public interest, its integrity and

⁷ <http://www.transparency.org/glossary/term/pacts>

⁸ <http://www.transparency.org/glossary/term/lobbying>

reputation. The term in English is largely positive although many languages lack a similar concept with the same connotation.⁹

⁹ <http://www.transparency.org/glossary/term/whistleblowing>

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