



**UNODC**

United Nations Office on Drugs and Crime

An Anti-Corruption Ethics  
and Compliance Programme  
for Business:  
A Practical Guide

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# Foreword

Corruption represents a major threat to rule of law and sustainable development the world over. It has a disproportionate, destructive impact on the poor and most vulnerable, but it is also quite simply bad for business.

Corruption stifles economic growth, distorts competition and presents serious legal and reputational risks. It drives away investors by acting as a hidden “tax” or illegal overhead charge, thereby increasing costs for companies, and further down the chain, their customers.

Corrupt practices are detrimental to all businesses—large and small, multinational and local. Corporate scandals have rocked financial markets and undermined investor confidence. Such incidents also receive enormous attention from the public and the media, and hit the reputations of more than just the particular entity or persons involved.

Calls for greater private sector accountability have led many businesses, particularly among the world’s largest corporations, to implement principles to guard against corruption, thus protecting their corporate image as well as the interests of their investors, workers and customers.

The United Nations Convention against Corruption, the world’s strongest and most comprehensive legal instrument in the fight against corruption, addresses action with the private sector. The 167 States that are currently States Parties to the Convention have pledged to take measures to prevent corruption involving the private sector, enhance accounting and auditing standards and, where appropriate, provide penalties for failure to comply.

The Convention further recognizes that States alone cannot fight corruption. Companies clearly have a critical role to play as allies for change.

That is why the United Nations Office on Drugs and Crime has developed this practical *Guide* on the steps companies may take to establish an effective anti-corruption ethics and compliance programme.



While actions will vary from company to company, the *Guide* focuses on basic common elements businesses should address, with a particular emphasis on the challenges and opportunities for small and medium-sized enterprises.

The *Guide* does not create new standards. Rather, it builds on the Convention and other regional and international initiatives, standards and principles that have been developed over the years to support businesses in their efforts to be good corporate citizens.

I encourage business leaders to actively make use of the *Guide* and strengthen our collective efforts to support fair markets and stamp out the menace of corruption.

A handwritten signature in black ink, appearing to read 'Yury Fedotov', followed by a horizontal line.

Yury Fedotov  
Executive Director  
United Nations Office on Drugs and Crime

# Message from the authors

Over the years, a number of regional and international initiatives, standards and principles have been developed to provide guidance for companies on how to fight corruption in their operations by upholding enhanced integrity standards. The present *Guide* provides advice on how to put such initiatives, standards and principles into practice. The *Guide* is primarily based on the United Nations Convention against Corruption (UNCAC) (2005), but is also inspired by the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption Code of Conduct for Business (2007); the International Chamber of Commerce (ICC) Rules on Combating Corruption (2011);<sup>1</sup> the Organisation for Economic Co-operation and Development (OECD) Good Practice Guidance on Internal Controls, Ethics and Compliance (2010); the World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery (2005); Transparency International's (TI) Business Principles for Countering Bribery (2009);<sup>2</sup> and the World Bank Group Integrity Compliance Guidelines (2010).

The *Guide* provides practical considerations on the various steps companies may take to prevent corruption in their operations by establishing an effective anti-corruption ethics and compliance programme.<sup>3</sup>

This *Guide* is the product of a project carried out by the Corruption and Economic Crime Branch of UNODC in line with its Thematic Programme entitled Action against Corruption, Economic Fraud and Identity-related Crime (2012-2015).

UNODC wishes to thank Mr. Sven Biermann who provided substantive contributions to the drafting of this *Guide*. UNODC is also grateful to all those who provided comments and feedback.

UNODC expresses profound gratitude to the Government of the Russian Federation for its generosity in providing funding for the development of this *Guide*.

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<sup>1</sup>2011 ed. (first published in 1977).

<sup>2</sup>First ed. 2003; 2<sup>nd</sup> ed. 2009 (light revisions). The Business Principles for Countering Bribery, SME Edition.

<sup>3</sup>Throughout the *Guide*, this term is abbreviated as anti-corruption programme or programme.







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# Introduction

Neither governments nor companies can fight corruption alone. The private and public sectors must work together in this effort. To this end, the most significant international anti-corruption instrument—the United Nations Convention against Corruption (UNCAC)—considers the private sector’s engagement as essential to the fight against corruption.

It is now generally accepted that businesses have a responsibility to act as good corporate citizens. This tenet is increasingly complemented with evidence and understanding among companies that fighting corruption makes good business sense and that a well-executed anti-corruption ethics and compliance programme yields greater value over time.

The evolving international legal framework and the rapid development of rules of corporate governance around the world are now prompting companies to focus on anti-corruption measures as an essential component of their mechanisms to protect their reputation and the interests of their investors and shareholders. Increased costs due to corrupt payments, unfavourable dependencies between the supply and demand side of a corrupt act (resulting in continuous extortion requests) or missed business opportunities in distorted markets are further examples of the negative consequences of corruption for companies. But most of all, corruption is illegal and companies face serious consequences for violating the law. Such consequences, going beyond legal penalties, have a strong impact on companies, including, most prominently, on their reputation.

Companies that understand that countering corruption requires more than complying with domestic laws and avoiding negative consequences are increasingly encouraged to set themselves apart from their peers.

Recent developments in the global anti-corruption movement have further highlighted the important role business must play in fighting corruption, notably the adoption in November 2010 by the G20 leaders of an Anti-Corruption Action Plan that specifically calls for closer “public-private partnerships” against corruption. Within the context of this plan, the French Presidency of the G20 and the OECD



hosted a high-level anti-corruption conference for the private sector in April 2011, where companies noted that the bringing together of the many anti-corruption compliance standards in a practical way could help them meet today's anti-corruption compliance challenges. In May 2011, the G20 Anti-Corruption Working Group, which is charged with overseeing the implementation of the G20 Anti-Corruption Action Plan, acknowledged the work by the Organisation of Economic Co-operation and Development (OECD), World Bank and the United Nations Office on Drugs and Crime (UNODC), in consultation with other relevant organizations, "to bring together existing guidelines and related material on private sector anti-corruption compliance in one, easily accessible, location".

As welcomed by the G20 Anti-Corruption Working Group, an *Anti-Corruption Ethics and Compliance Handbook* was jointly developed by the OECD, World Bank and UNODC. Consultations were held and input received from organizations with rich expertise in this area, including the International Bar Association (IBA), the International Chamber of Commerce (ICC), the World Economic Forum Partnering against Corruption Initiative (PACI), Transparency International (TI), the Basel Institute on Governance, and the Business and Industry Advisory Committee to the OECD (BIAC).

The *Anti-Corruption Ethics and Compliance Handbook* by the OECD, the World Bank and UNODC compiles such guidelines and related material on private sector anti-corruption compliance into one easy-to-use publication. Following a comprehensive structure, the Handbook outlines principles from major organizations and complements them with anonymous, real-world cases.

The present *Guide* published by UNODC builds on the comprehensive structure of the joint Handbook. Each chapter or section outlines practical considerations for developing, implementing and continuously improving an anti-corruption ethics and compliance programme. While the approach to how an anti-corruption ethics and compliance programme is developed may vary from company to company, there are some basic common elements which a company should address. Challenges and opportunities for small and medium-sized enterprises (SMEs) are emphasized throughout this *Guide*. In addition, practical information for companies of all sizes regarding public disclosure of their anti-corruption endeavours to demonstrate commitment to the fundamental values of integrity, transparency and accountability is given.

Each chapter or section of the *Guide* concludes with a practical checklist to begin implementation or benchmark existing anti-corruption programmes. These checklists are by no means an encouragement for users to engage in a box-ticking exercise, but rather provide an easy way to look at relevant considerations at a glance. The checklists should thus be seen as a summary of the major considerations described in the respective chapters or sections and should be read together with the descriptive information of each chapter.

The *Guide* is not intended to create new standards or represent any form of legally binding requirement for businesses. It has been developed to serve as a useful, practical tool for companies seeking advice in developing, implementing and continuously improving an anti-corruption ethics and compliance programme.

## The United Nations Convention against Corruption and the private sector

The United Nations Convention against Corruption (UNCAC) is the only universal legally binding anti-corruption instrument.<sup>a</sup> The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem.

The key objectives of UNCAC are to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption (including in asset recovery) and to promote integrity, accountability, and proper management of public affairs and property.<sup>b</sup> These objectives are highlighted in the five major areas of the Convention:

Major areas of UNCAC	Articles of UNCAC
Prevention	Chapter II (Articles 5–14)
Criminalization and law enforcement measures	Chapter III (Articles 15–42)
International cooperation	Chapter IV (Articles 43–50)
Asset recovery	Chapter V (Articles 51–59)
Technical assistance and information exchange	Chapter VI (Articles 60–62)

UNCAC is an innovative anti-corruption instrument as it addresses not only major manifestations of corruption, such as bribery and embezzlement, but also acts carried out in support of corruption, such as obstruction of justice, trading in influence and the concealment or laundering of the proceeds of corruption.<sup>c</sup> Furthermore, it addresses not only corruption in private-to-public relationships (business relationships with public officials, including state-owned enterprises), but also private-to-private relationships (relationships among companies only).

Like all international treaties, UNCAC is legally binding on States that have ratified or acceded to it. States that are parties to the Convention are required to implement its provisions through the adoption and enforcement of national legislation, policies and practices. However, UNCAC contains a number of provisions that, while addressed to States, will have a direct impact on the corporate community. Furthermore, while UNCAC is legally binding only on countries that have ratified it, its values and principles are applicable to the widest spectrum of society, including the private sector. The principles enshrined in UNCAC do not only impact the countries in which businesses operate, but can also directly serve as inspiration for companies adopting or reviewing their anti-corruption

<sup>a</sup> The Convention was adopted by the United Nations General Assembly in October 2003 (Resolution 58/4) and entered into force in December 2005. As of June 2013, the Convention had 167 States parties, thus approaching at a brisk pace universal adherence. For more information please visit <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

<sup>b</sup> United Nations Office on Drugs and Crime, "Technical Guide to the United Nations Convention against Corruption", 2009.

<sup>c</sup> United Nations Office on Drugs and Crime, "Legislative Guide for the Implementation of the United Nations Convention against Corruption", 2006.

policies and procedures. The overall goal of these provisions of UNCAC is to avert market distortions and combat unfair competition.

Article 12(1) of the Convention calls on States parties to “... take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.” Other areas that are directly relevant to the private sector include: public procurement (article 9); money-laundering (article 14); criminalization of offences of corruption (articles 15-19, 21-25); liability of legal persons (article 26); protection of witnesses, experts and victims (art. 32); protection of reporting persons (article 33); consequences of acts of corruption (article 34); cooperation with law enforcement authorities (article 37); cooperation between national authorities and the private sector (article 39); and bank secrecy (article 40).

The private sector has a vested interest in contributing towards universal ratification and implementation of UNCAC. Companies operating in highly competitive markets need to be assured of the fairness and equity of their business relations. By working in partnership with States and international organizations and by investing in countries that need assistance, businesses can help achieve these competitive, but fair markets.



# CHAPTER I.

The international legal framework  
for combating corruption

In the past decade, an international legal framework has been developed to tackle corruption. This framework includes the United Nations Convention against Corruption,<sup>4</sup> or the UNCAC, which entered into force in 2005 and has currently 167 parties, and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,<sup>5</sup> which entered into force in 1999 and includes 40 States parties.

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

- Inter-American Convention Against Corruption,<sup>6</sup> which entered into force in 1997 and whose Parties include the member countries of the Organization of American States;
- African Union's Convention on Preventing and Combating Corruption,<sup>7</sup> which was adopted in 2003 and has 33 African members;
- Council of Europe's Criminal Law Convention on Corruption<sup>8</sup> (adopted in 1998) and Civil Law Convention on Corruption<sup>9</sup> (adopted in 1999);
- European Union's anti-corruption policy outlined in article 29 of the Treaty on European Union and carried out via two main instruments: the Convention on the Protection of the European Communities' Financial Interests (1995) and the Convention against Corruption Involving European Officials or Officials of Member States of the European Union<sup>10</sup> (1997).

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

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

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

<sup>4</sup>[www.unodc.org/unodc/en/treaties/CAC/index.html](http://www.unodc.org/unodc/en/treaties/CAC/index.html)

<sup>5</sup>[www.oecd.org/investment/daf/anti-bribery/oecdantibriberyconvention.htm](http://www.oecd.org/investment/daf/anti-bribery/oecdantibriberyconvention.htm)

<sup>6</sup>[www.oas.org/juridico/english/Treaties/b-58.html](http://www.oas.org/juridico/english/Treaties/b-58.html)

<sup>7</sup>[www.africa-union.org/root/AU/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf](http://www.africa-union.org/root/AU/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf)

<sup>8</sup><http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm>

<sup>9</sup><http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>

<sup>10</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0625%2801%29:EN:HTML>





# CHAPTER II.

Risk assessment

Preventing and fighting corruption effectively, and proportionately, requires an understanding of the risks an enterprise may face.<sup>11</sup> The foundation for implementing and maintaining an anti-corruption programme is therefore the assessment of corruption risks. Such an assessment enables the identification and prioritization of risks. Corruption risks differ among companies according to their distinctive characteristics such as size, structure, geographical operations or business model. Corruption risks also depend on companies' internal operations, such as procurement, sales and marketing. Consequently, there is no "one-size-fits-all" anti-corruption programme. In order to effectively and efficiently decrease corruption risks, anti-corruption programmes need to be adapted to the specific requirements of individual companies.

This risk-based approach should be a major underlying principle for every element of an anti-corruption programme, as outlined in the subsequent chapters.

**This chapter outlines typical corruption-related risk areas for companies and describes how risks can be identified and mitigated.**

## Responsibilities and processes

Risks are often perceived as negative. Some companies therefore prefer to abstain from a formal risk assessment in order to prevent negative perceptions or speculations.

It should be recognized that no company is immune to the risks of corruption, and that risks are only negative if they remain neglected and cause unexpected consequences. A pro-active position towards risks involves their identification, assessment and mitigation with tailored policies and procedures.

Before conducting a risk assessment, companies are advised to define operational roles and responsibilities, operational processes and oversight for these activities.

*Operational roles and responsibility:* Qualified personnel need to be appointed and empowered to manage and execute the risk assessment. In large and decentralized companies, employees from headquarters as well as local entities may be assigned to conduct this exercise. It is also important to engage employees who are potentially exposed to the risks of corruption (e.g. local sales representatives, procurement officers).

*Operational processes:* Operational activities and parameters need to be clearly defined and documented, comprising the following areas:

- Timing of risk assessment;

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<sup>11</sup> United Nations Global Compact, "A Guide for Anti-Corruption Risk Assessment", 2013.

- Frequency of risk assessment;<sup>12</sup>
- Sources of risk identification;
- Collection of data;
- Procedures for risk assessment (e.g. quantification of risks);
- Persons included in the risk assessment (e.g. internal employees, business partners, external stakeholders);
- Identification, compilation and aggregation of information; and
- Internal and external reporting of outcomes.

Conducting a risk assessment may be most effective and efficient when embedded in existing processes, such as financial forecasting or other risk assessment exercises within the company (e.g. health and safety). This approach also helps to recognize the relation between compliance and operational activities.

*Oversight:* The identification of oversight responsibilities is important to ensure that the risk assessment is carried out as defined in the operational processes. The initial definition of an overall risk tolerance, the review of the outcomes and the evaluation of mitigation strategies is also the responsibility of the oversight function.<sup>13</sup>

## Corruption-related risk areas for companies

Companies and their employees are increasingly facing a variety of negative consequences for failing to prevent corruption, such as:

- Legal risks, relating to legal sanctions for corruption (e.g. criminal fines, compensatory damages, imprisonment);<sup>14</sup>
- Commercial and operational risks, relating to negative impacts on day-to-day activities, such as buying, producing, selling, hiring, investing (e.g. debarment from public tenders, unfavourable financing conditions);
- Reputational risks, relating to the standing of a company and its employees among peers, family, friends and the general public. A negative reputation often triggers additional consequences, typically commercial sanctions (e.g. decrease in sales or lower attractiveness for investments).

Such consequences are not only limited to the present location of the company. For example, some national legislation, particularly relating to the bribery of foreign

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<sup>12</sup> It is advisable to conduct a formal risk assessment at least on an annual basis. However, the velocity of change in today's world may require establishing risk assessment as an ongoing process. Senior management must assess the overall risk exposure and adjust risk priorities accordingly.

<sup>13</sup> More information on oversight for the entire anti-corruption programme can be found in chapter III, section C.

<sup>14</sup> The United Nations Convention against Corruption calls for the criminalization of various manifestations of corruption and acts carried out in support of corruption, such as bribery of national and foreign public officials, embezzlement, illicit enrichment, laundering of proceeds of crime (Chapter III of the Convention).

public officials, may have extra-territorial reach, impacting both companies from that country that operate abroad as well as overseas companies that operate in the country's territory.

The extent to which companies face the above-mentioned consequences may differ. A company's location, its modus operandi, its interaction with business partners and its structure are factors that influence the scope and impact of the negative consequences.

When tailoring an anti-corruption programme, companies should take into account the industries and geographical locations in which they operate. Some industries and geographical areas are generally exposed to higher levels of corruption that need to be addressed in the company's policies and procedures. Furthermore, the industry and geographical location may influence the market dynamics that companies face. This, in turn, may affect the degree of competitiveness, norms and customs as well as expectations from stakeholders, such as suppliers, customers and public officials.

The business model of a company can affect the risk of corruption. Some business models require the support of business partners such as sales agents or subcontractors. These relationships may pose an increased risk of corruption to the company due to lower degrees of control. Other factors may include high volatility of personnel, dependency on critical licences, complex contracts or short-term financial focus.

The organizational structure may have an impact on the level of corruption risk. Companies with a decentralized structure may have lower control over the operations of their branches and subsidiaries.

The organizational culture can also affect the likelihood of corruption in a company. Organizational culture is determined by prevailing social norms and expressed in informal rules of conduct. Companies with an organizational culture based on strong competitiveness, low levels of trust and low integrity are likely to be more corruption prone than companies where honesty, participation and ethical values are strongly encouraged.<sup>15</sup> The company's incentive system should therefore be included in the risk assessment (as outlined in chapter III, section I).

## Identifying the risks of corruption

Companies face a variety of legal, commercial, operational and reputational risks, due to the way they do businesses, their locations of operations, industry and business partners. Consequently, companies should utilize a variety of internal and external sources to identify corruption-related risks.

Legal requirements and other measures are a major source of information. Companies are advised to get fully acquainted with the national laws and regulations of the

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<sup>15</sup> R. E. Reidenbach, Donald P. Robin, "A Conceptual Model of Corporate Moral Development", *Journal of Business Ethics*, 1991, Vol. 10, No. 4.

countries in which they operate.<sup>16</sup> Legal requirements and other regulatory measures can indicate which types of transactions and operations may involve risks of corruption. For instance, operations that require critical licences but face a high level of administrative bureaucracy may entail possibilities for corruption (e.g. use of facilitation payments). Legal requirements and other regulatory measures may also show where legal grey areas exist and where companies may have to take a proactive stance to avoid ambiguous practices.

The identification of risks should further include consultations with internal employees and, where appropriate, external stakeholders such as trade unions and business partners. Those employees who are potentially exposed to corruption may provide useful information to identify and mitigate risks. Brainstorming with a variety of different employees may also help in thinking “out-of-the-box”, as the identification of risks should not be seen as a box-ticking exercise. Corruption risks often exist where they were not expected.

Information on previous corruption cases can provide valuable information on the occurrences of corruption, circumstances and opportunities for prevention. Companies may not only look at their internal statistics, but can also learn from peers and business partners within their environment.

Companies may choose to hire external consultants to conduct the risk assessment. Having experience with a number of different companies, external consultants may be able to identify risks that would have gone undetected by internal assessments.

Companies may also review good practice risk assessment guidelines to learn from and to benchmark against recognized processes and activities and typical risk areas, such as “A Guide for Anti-Corruption Risk Assessment” developed by the United Nations Global Compact.

## Assessing the risks of corruption

Companies may identify a variety of corruption-related risks that require different prioritization. In this respect, companies should assess their inherent risk exposure in qualitative and/or quantitative terms. The quantification of inherent risks may be more challenging in practice, but facilitates the communication of results. The inherent risk exposure is often defined through a combination of the impact of occurrence and the probability of occurrence.

- The impact of occurrence relates to an estimation of all negative legal, commercial and operational, and reputational consequences for the company. This should include direct monetary and non-monetary consequences (legal fine, debarment

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<sup>16</sup> The United Nations Office on Drugs and Crime has launched the web-based anti-corruption portal TRACK (Tools and Resources for Anti-Corruption Knowledge). The portal features a Legal Library, providing a unique gateway to an electronic database of legislation and jurisprudence relevant to UNCAC from over 175 States systematized in accordance with the requirements of the Convention. For more information please visit [www.track.unodc.org](http://www.track.unodc.org).

from a market and/or negative press) but also indirect costs such as legal support fees or management time spent on the case; and

- The probability of occurrence relates to the likelihood that a corruption-related risk will actually occur in a foreseeable timeframe (e.g. in the next 12-24 months). High levels of risks mean that direct and indirect consequences of corruption are very likely.

A quantitative determination of the inherent risk exposure can then be calculated by combining numeric values for the impact of occurrence and the probability of occurrence. Identified risks with a high likelihood of occurrence and a high degree of impact should be prioritized. Further, it may be helpful to visualize the overall risk exposure in a “Risk Heat Map”.<sup>17</sup> This helps to understand and communicate the risks throughout the company.

## Mitigating the risks of corruption

Having identified and assessed corruption-related inherent risks, companies need to determine their best course of action to handle and ideally minimize these risks. Seeking to reduce the risks through a variety of mitigation activities should be the first option. Mitigation activities form a part of the elements of an anti-corruption ethics and compliance programme and do not necessarily consist of additional activities on top of or outside the existing programme.<sup>18</sup> Mitigation activities are tailored measures to decrease the probability of occurrence and/or the impact of corruption risks, for instance:

- Increased managerial oversight (e.g. four-eyes principle for approvals<sup>19</sup>) for hiring of external agents;
- Tailored training for transportation managers facing extortion requests from public customs officials;
- Intensified engagement of middle management (e.g. speaking at company events);
- Automated internal controls to analyse payment streams for long-term, complex contracts;
- Increased due diligence on key suppliers or major investments; and
- Engagement in collective action initiatives (e.g. industry peer groups).

The United Nations Convention against Corruption recognizes the importance of preventive measures for the private sector. Article 12 of the Convention calls on States parties to—where appropriate—provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

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<sup>17</sup>See for instance: United Nations Global Compact, “A Guide for Anti-Corruption Risk Assessment”, 2013.

<sup>18</sup>It should be recognized that even with well-designed and implemented mitigation activities, the inherent risk of corruption may not be reduced to zero. A residual risk may remain. Identifying such residual risks will help the company’s oversight to assess where remaining risk exposure still exists.

<sup>19</sup>The four-eyes principle refers to a requirement that at least two people approve the decision.

In cases where the mitigation activities cannot reduce the inherent risk below the company's risk tolerance, additional activities need to be considered.

- Companies can avoid risks by changing or abstaining from business operations which are deemed to involve corruption. For instance, a company can avoid risks by not conducting individual transactions and projects, not entering into a high-risk market or by abstaining from the engagement of external agents.
- Companies can transfer risks by shifting the responsibility of managing or executing particular measures to another party. For example, a company can avoid the risk on insufficient due diligence on its suppliers to a dedicated external party service provider.

The outcomes of the risk assessment, including prioritized risks and determined mitigation strategies, should be documented to enhance the quality of evaluation and provide a basis for future assessments. Even if companies choose to accept minor or residual risks related to the lack of implementation of the programme, it is recommended that the rationales and current circumstances that have resulted in this decision are documented.

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

The need to assess corruption risks is independent of the size, outreach or complexity of companies. SMEs face similar negative consequences to large companies. They may be even more vulnerable to the actual occurrence of corruption, for instance due to extortion requests from business partners of public officials. It is therefore important that SMEs identify relevant risks and ensure that their anti-corruption programme addresses these risks.

SMEs may have fewer human and financial resources to assess risks. However, they also have a lower number of employees and a lower level of complexity which makes the identification of risks through direct inquiries easier than in large companies. SMEs can utilize publicly available tools, guides and supportive information to conduct their own risk assessment.

SMEs are also advised to collaborate with other SMEs or with chambers of commerce, business associations and trade unions in their geographical location or industry to accumulate information on related corruption risks and identify mitigation options.

### Public reporting on risk assessment

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact—Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on their risk assessment activities to:

- Describe risk assessment procedures<sup>20</sup> (e.g. how often it is carried out, who is in charge, which parts of the company are covered, how results are dealt with); and
- Describe the business units and subsidiaries for which a risk assessment has been undertaken.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

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<sup>20</sup>This does not include the publication of the actual results of the risk assessment, but rather a description of the steps undertaken and the results that have been generated throughout the process. In general, companies should be cautious to avoid stating any information that may be misleading or compromising.



## Checklist

RISK ASSESSMENT	YES	NO	IN PROGRESS
The company conducts a standard risk assessment on a regular basis (at least annually).			
The company identifies operational roles and responsibilities in charge of conducting the risk assessment.			
The company defines and documents operational processes for conducting the risk assessment.			
The company defines oversight responsibilities.			
The company embeds risk assessment in existing processes.			
The company is aware of the negative consequences of failing to prevent corruption (legal, commercial and operational, reputational risks).			
The risk assessment includes all major areas of risk (e.g. industry and geographical location).			
The company identifies corruption-related risks by using internal and external sources.			
The company defines priorities based on the overall risk exposure.			
The company develops a risk strategy to minimize the overall risk exposure and identified residual risks.			
The company documents the outcomes of the overall risk assessment.			
The company reports publicly on its risk assessment.			





# CHAPTER III.

Developing and implementing an  
anti-corruption ethics and  
compliance programme

An increasing number of companies are demonstrating leadership by implementing effective anti-corruption ethics and compliance programmes within their companies. To be effective, such a programme should be interconnected with the company's overall ethics and compliance framework.

As outlined in the previous chapter, before companies start developing their own programme, they need to assess the risks relevant to their business. When developing an anti-corruption ethics and compliance programme, companies should ensure that it meets legal requirements under the international legal framework, including the United Nations Conventions against Corruption.

Article 12(1) of the United Nations Convention against Corruption calls on States parties to "... take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures."<sup>21</sup>

In the spirit of article 12, this chapter of the *Guide* provides practical considerations on the various steps companies may take to prevent corruption in their operations by establishing an effective anti-corruption ethics and compliance programme. Throughout this chapter, various cross-references are included to underscore the importance of designing and implementing an integrated programme with all elements closely linked to each other (instead of a set of stand-alone measures).

Article 12 does not dictate to companies how this should be done and thus the following sections do not seek to impose mandatory requirements. The guidance provided in this chapter is derived from the principles from major organizations,<sup>22</sup> including UNODC, and recognizes that there are differences in how companies are governed.

Companies of all sizes should publicly report on their anti-corruption efforts. Public reporting is an important way of demonstrating the sincerity and seriousness of the company's dedication to prevent and counter corruption and their commitment to the fundamental values of integrity, transparency and accountability. Publicly communicating the status and performance of the anti-corruption compliance and ethics programme to employees, business partners, and other stakeholders (e.g. labour

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<sup>21</sup>Other areas that are directly relevant to the private sector include: public procurement (article 9); money-laundering (article 14); criminalization of offences of corruption (articles 15-19, 21-25); liability of legal persons (article 26); protection of witnesses, experts and victims (article 32); protection of reporting persons (article 33); consequences of acts of corruption (article 34); cooperation with law enforcement authorities (article 37); cooperation between national authorities and the private sector (article 39); and bank secrecy (article 40).

<sup>22</sup>The Asia-Pacific Economic Cooperation (APEC) Anti-Corruption Code of Conduct for Business (2007); International Chamber of Commerce (ICC) Rules on Combating Corruption (2011); Organisation for Economic Co-operation and Development (OECD) Good Practice Guidance on Internal Controls, Ethics and Compliance (2010); World Economic Forum Partnering Against Corruption Initiative (PACI) Principles for Countering Bribery (2005); Transparency International (TI) Business Principles for Countering Bribery (2009); and World Bank Group Integrity Compliance Guidelines (2010).

unions, civil society organizations) strengthens the internal anti-corruption programme through increased transparency and enhances the company's reputation and credibility. It also provides a common basis for measuring progress, benchmarking, and learning from peers. Public reporting may also deter wrongdoers and facilitate open discussion and the improvement of good practice anti-corruption standards. Reporting may be done through dedicated reports or as part of regular sustainability or corporate citizenship reports. In this *Guide*, public reporting is addressed in relation to various steps of the establishment of an effective anti-corruption ethics and compliance programme.

## A. Support and commitment from senior management for the prevention of corruption

An effective anti-corruption programme must be based on the strong, explicit and visible support and commitment from the senior management of the company. Even a well-defined programme will fail to reduce the risk of corruption if employees and business partners perceive that senior management is not committed to preventing corruption.

This commitment must start at the top of the company. Senior management should clearly articulate zero-tolerance of corruption, supported by policies and procedures that will put this commitment into action. Such a commitment plays a critical role in establishing a culture which is based on fundamental values such as integrity, transparency and accountability.

This section addresses the importance of a visible and active commitment of the company's senior management towards zero-tolerance of corruption and the development and implementation of an anti-corruption programme.

### The "tone from the top"

The support and commitment of senior management, also referred to as "tone from the top", is an essential determinant of the organizational culture. The "tone from the top" influences norms and values by which the company operates and to which all employees and relevant business partners are expected to adhere. The "tone from the top" is set by the senior management of the company, such as its owner(s), Chief Executive Officers, the Board of Directors, or an equivalent body.<sup>23</sup>

The "tone from the top" should demonstrate ownership of the anti-corruption programme. This implies that senior management regards the prevention of corruption as its own responsibility.

<sup>23</sup>In two-tier management schemes, major responsibilities of a company are divided in a management board and a supervisory board. Consistency of the "tone" from both boards is crucial in order to express strong, explicit and visible support and commitment.

The “tone from the top” should reflect irrevocable support and appraisal of the company’s fundamental values, such as integrity, transparency and accountability. As part of this, senior management must clearly articulate that corruption is not tolerated.

Putting this into practice, the commitment of senior management to prevent corruption must include the following two major elements:

- Public policy on zero-tolerance of corruption; and
- Development and implementation of an anti-corruption programme.

Senior management needs to make it clear that corruption is prohibited at all times and in any form, whether small or large, direct or indirect, active or passive. The prohibition should be publicly documented by a formal statement on zero-tolerance of corruption. It should be emphasized during internal and external events (e.g. employee trainings, shareholder meetings, conferences). Additionally, the overall statement needs to be supported by an effective anti-corruption programme, comprising detailed policies<sup>24</sup> and procedures.<sup>25</sup>

Support and commitment from senior management must not be seen as a one-off activity at the time of the launching of an anti-corruption programme. Support and commitment is rather an ongoing demonstration of the company’s norms and values.

### The role of senior management

Senior management must put the “tone from the top” into action, ensuring that zero-tolerance of corruption and the supporting detailed policies and procedures are understood by all employees and relevant business partners.

*Ensure commitment throughout the company:* It is the responsibility of senior management to ensure that every employee and relevant business partner is aware of the company’s values and norms, including the consequences of non-adherence to the company’s zero-tolerance of corruption policy.<sup>26</sup> In large companies, senior management will not be able to engage regularly with every employee. It is therefore important that senior management ensures that the overall “tone from the top” is well understood and expressed on all hierarchical levels within the company (e.g. middle management). Middle managers, inspired and mobilized by the “tone from the top”, must demonstrate tangible ownership for the anti-corruption ethics and compliance programme, as they often have the highest and most frequent visibility for “their” employees at business entities.

*Establish responsibilities:* Senior management has the overall responsibility for implementing and continuously improving the anti-corruption ethics and compliance

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<sup>24</sup>More information on detailed anti-corruption policies can be found in chapter III, sections D and E.

<sup>25</sup>More information on anti-corruption practices can be found in chapter III, sections F-L.

<sup>26</sup>More information on addressing violations can be found in chapter III, section K.

programme. As stated above, in large companies senior management may not be able to engage in day-to-day operational activities. It may thus assign responsibilities to key personnel within the company (e.g. compliance managers). This should include not only the operational responsibilities for the implementation and ongoing maintenance of the anti-corruption ethics and compliance programme, but also the oversight responsibilities of the programme.<sup>27</sup>

*Provide sufficient resources:* A key means to express the significance of the programme and the sincerity of senior management is to provide sufficient resources for the implementation and ongoing improvement of the programme. This includes sufficient human resources with relevant skill levels as well as financial resources. Senior management may consider hiring and/or consulting subject matter experts in order to support high quality of the programme.

*Define scope and extent of the programme:* While the key elements of an anti-corruption ethics and compliance programme are described by regulatory standards or good practice principles (contained in the joint *Anti-Corruption Ethics and Compliance Handbook for Business* by the OECD, World Bank, and UNODC), senior management must define the scope and extent of some of the programme's elements, such as:

- The level of public reporting;
- Whether the programme will undergo some form of independent evaluation or assessment; or
- Whether the company will engage in voluntary initiatives (e.g. United Nations Global Compact) or participate in collective action initiatives.

*Put support and commitment into action:* Senior management should demonstrate the “tone from the top” by actively engaging in the programme's implementation and improvement process. This is especially important since the establishment of such a programme may trigger questions, concerns or even resistance among employees or business partners. Visible and active commitment and support from senior management helps to overcome such challenges. This can be accomplished by:

- Joining a voluntary initiative, such as the United Nations Global Compact, World Economic Forum Partnering Against Corruption Initiative (PACI), Extractive Industries Transparency Initiative (EITI), Construction Sector Transparency Initiative (CoST);
- Speaking at employee meetings about the rationales and importance of the programme;
- Praising publically those employees who applied the company's values in practice, even if this resulted in the loss of a business opportunity for the company (e.g. turning down a contract that could be obtained only through corruption);

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<sup>27</sup> More information on responsibilities for the anti-corruption programme can be found in chapter III, section C.

- Addressing relevant business partners (such as joint ventures, agents, suppliers) and other external stakeholders (e.g. investors);
- Citing the anti-corruption commitment in external publications, such as the annual report or the company's corporate social responsibility report;
- Participating in training and communication activities; and
- Behaving as a role model.

Behaving as a role model is of utmost importance. Various studies indicate that the behaviour of superiors was ranked as the most influential factor in employees' decision-making process. When facing a challenging situation, employees generally imitate the behaviour and actions of their superiors as these are perceived as the best course of action.<sup>28</sup>

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

Strong, explicit and visible support and commitment by senior management is equally important in very large and very small companies. Senior management of SMEs must communicate a strong "tone from the top" and demonstrate ownership of the anti-corruption programme.

Lacking the size and complexity of large companies, the support and commitment from senior management, which may sometimes be represented by a single person, can be demonstrated in a more direct and personal way. This allows senior management of SMEs to avoid typical challenges of indirect communication to employees. Senior managers must be aware that their behaviour as a role model is even more important. Employees in SMEs may have more interaction with senior management which enables them to better scrutinize their behaviour. In this way, employees observe how senior management react in challenging situations, decide how to allocate resources, communicate with business partners and seek regular updates on the status of the anti-corruption ethics and compliance programme. Since employees and business partners can observe the actions of senior management more easily, it can be expected that the "tone from the top" has an even stronger importance for the success of the anti-corruption programme in SMEs.

### Public reporting on support and commitment from senior management to preventing corruption

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact-Transparency International "Reporting Guidance on the 10th Principle Against*

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<sup>28</sup>To further underscore the responsibility of senior management, companies may establish policies that require that any investigation of a senior manager (no matter the outcome) be brought to the attention of the Board of Directors, or equivalent body.



*Corruption*”, can assist companies to report on the support and commitment from senior management to:

- Provide the company’s statement of zero-tolerance of corruption;
- Describe where the statement can be found publicly (e.g. website, corporate citizenship report);
- Describe procedures and efforts with regard to that statement;
- List voluntary initiatives or collaborative actions in which the company participates. Examples are sector initiatives, chamber of commerce or trade association initiatives, inter-governmental and national working groups, international initiatives.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

## Checklist

SUPPORT AND COMMITMENT FROM SENIOR MANAGEMENT TO PREVENTING CORRUPTION	YES	NO	IN PROGRESS
Senior management demonstrates strong, explicit and visible support and commitment for the company's anti-corruption programme.			
Senior management expresses zero-tolerance of corruption through a publicly stated formal statement.			
Senior management establishes an anti-corruption ethics and compliance programme to support the statement of zero-tolerance of corruption.			
Senior management ensures commitment throughout the company.			
Senior management establishes clear operative and oversight responsibilities for the anti-corruption ethics and compliance programme.			
Senior management provides sufficient human resources for the implementation and ongoing improvement of the programme.			
Senior management defines the scope and extent of the programme, such as public reporting or engagement in voluntary initiatives.			
Senior management demonstrates active commitment to the programme, e.g. speaking at employee meetings about the rationales and importance of the programme.			
The company publicly reports on its support and commitment from senior management.			

## B. Developing an anti-corruption programme

Senior management's strong, explicit and visible support and commitment, expressed in a formal public statement of zero-tolerance of corruption, needs to be supported by an anti-corruption programme. Such a programme, consisting of detailed policies and procedures, puts commitment into action.

When establishing and continuously improving an anti-corruption programme, companies are encouraged to consider a set of underlying characteristics that enable the programme to be effective, efficient and sustainable. These characteristics should be reflected in all elements of the anti-corruption programme as outlined in the following sections and applied in the development and continuous improvement of the programme.

This section outlines the different characteristics that generally provide the basis for an anti-corruption programme.

### Characteristics of an anti-corruption programme

An anti-corruption ethics and compliance programme consists of policies and procedures that address the risk of corruption. The development and ongoing improvement of policies and procedures must reflect the following characteristics:

- *Consistency with all applicable laws:* Companies may conduct comprehensive research on the different laws and regulations of the countries in which they operate. Companies may also assign legal experts to review the design of the programme with respect to its consistency with national and international laws.<sup>29</sup> Special attention should be given to the extraterritorial requirements of some national laws.
- *Adaption to specific requirements:* The anti-corruption programme should be adapted to the individual nature of the company. Outcomes of the company's risk assessment determine the extent of the risks and the specific areas that the anti-corruption measures should target. Other requirements may include the organizational culture, preferences or customs. For instance, the preferences of employees may indicate the best way to deliver trainings (e.g. computer-based trainings for technology companies).
- *Participation of stakeholders:* A participatory approach in the implementation and ongoing improvement of the programme creates a sense of ownership among stakeholders. It supports the recognition and acceptance of the anti-corruption programme. A participatory approach can be pursued by:

<sup>29</sup>The United Nations Office on Drugs and Crime has launched the web-based anti-corruption portal TRACK (Tools and Resources for Anti-Corruption Knowledge). The portal features a Legal Library, providing a unique gateway to an electronic database of legislation and jurisprudence relevant to UNCAC from over 175 States, systematized in accordance with the requirements of the Convention. For more information please visit <http://www.track.unodc.org>.

- *Interactive processes:* Providing information and requesting feedback, enabling informal discussions, or formal consultation rounds with employees.
- *Involvement of all relevant stakeholders:* Inviting trade unions, auditors or even investors or business partners to comment on the anti-corruption programme.

Participatory approaches establish trust and understanding among the individuals affected by the programme. This helps to reduce objections or resistance to the programme. For instance, increasing the understanding for the need of a strong system of internal controls to safeguard a company's assets can prevent obstacles from arising in implementation.

- *Shared responsibility:* Compliance with the anti-corruption programme is mandatory and must apply to all levels, functions and areas of the company. It is crucial to avoid the impression of double standards and flexibility in the interpretation of the policies and procedures. Rules and principles must be the same for directors, top managers and front line employees. Consistency in the application of the programme should especially be reflected in the company's human resources policies.
- *Accessibility:* Information on the anti-corruption programme and supporting material should be easily accessible. Companies may consider publishing information on the company's website and in newsletters, publications and other communication vehicles. Accessible information enables the promotion of the programme among employees and business partners. Dedicated measures, such as a support and advice helpdesk, may be offered to address questions and concerns, and to increase the understanding of the company's programme.
- *Readability:* The content of the anti-corruption programme should be easy to understand. It is thus preferable to avoid acronyms or technical terms. Policies and supporting information (e.g. training material) may be translated into the main operating languages of the company. Understanding can be further increased by providing real-world examples, guidance and convenient tools, which make generic policies relevant on a practical level.
- *Promoting a trust-based internal culture:* An anti-corruption programme should promote a culture which favours trust over excessive control. A trust-based culture enables the translation of anti-corruption policies into values, norms and principles. It creates a favourable environment for honest and ethical employees who seek advice in difficult situations and do not take decisions which may lead to an infringement of anti-corruption policies.
- *Applicability:* The anti-corruption programme should not only be applicable to the company's employees but also to relevant business partners and external stakeholders.<sup>30</sup> The involvement of external parties in communication strategies, trainings and other measures can help to achieve a higher level of understanding and reduce the risk of corruption (e.g. corrupt requests from suppliers).

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<sup>30</sup>More information on addressing third parties can be found in chapter III, section F.

- **Continuity:** Establishing an anti-corruption programme should not be seen as a one-time project but rather as an ongoing process. The programme must be continuously adapted to changing business environments and internal learning.
- **Efficiency:** The anti-corruption programme should use the company's resources adequately. If financial and human resources are applied inefficiently, the company incurs unnecessary costs and burdens. This can ultimately lead to a decrease in the effectiveness of the overall programme, jeopardizing its sustainability. The programme should therefore be continuously optimized.

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

SMEs should consider the characteristics shown above when implementing and improving their anti-corruption programme. Fewer hierarchical levels and close interactions between senior management, employees and business partners may allow SMEs to observe these characteristics with less effort than large companies require.

### Public reporting on developing an anti-corruption programme

Companies of all sizes should publically report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact–Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on the development of a programme to counter corruption to:

- Provide a public written statement that the company is committed to being in compliance with all relevant laws and indicate where this statement is published;
- Describe procedures and efforts with regard to that statement;
- Report on the existence and the elements in the anti-corruption programme;
- Describe how the company implements effective personnel policies and processes that support the anti-corruption commitment, including references to how these were developed (e.g. including consultation with employees).

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

## Checklist

DEVELOPING AN ANTI-CORRUPTION PROGRAMME	YES	NO	IN PROGRESS
The anti-corruption programme is consistent with all applicable laws.			
The anti-corruption programme is adapted to specific requirements of the company.			
The implementation and ongoing improvement of anti-corruption policies and procedures is based on a participatory approach, involving employees and external stakeholders.			
Compliance with the anti-corruption programme is mandatory to all levels, functions and areas of the company.			
Information on the anti-corruption programme and supporting material is easily accessible.			
The policies and procedures of the anti-corruption programme are easy to understand (e.g. avoidance of acronyms and technical terms).			
The anti-corruption programme aims to promote a trust-based and inclusive internal culture.			
The anti-corruption programme is directed at employees as well as relevant business partners.			
The anti-corruption programme is continuously adapted to changing business environments and internal learning.			
The company publicly reports on its anti-corruption programme to counter corruption.			

## C. Oversight of the anti-corruption programme

The development and implementation of an anti-corruption programme require the active participation of every employee and relevant business partner. In order to manage the engagement of the entire organization on the programme, a number of specific responsibilities should be assigned. The responsibilities should ensure that the programme is implemented, executed and overseen on an ongoing basis. Oversight is important to guarantee that every employee and relevant business partner of the organization complies with and supports the programme. Oversight of the programme is also important to ensure that the different elements of the anti-corruption programme are carried out effectively and efficiently.

This section identifies the different responsibilities for the implementation, execution and ongoing oversight of the anti-corruption programme.

### Responsibilities for the anti-corruption programme

Responsibility for the oversight of the programme lies with the Board of Directors or equivalent body of the company. The Board of Directors may appoint a Compliance, Audit or Ethics Committee in order to support Board Members in fulfilling this responsibility.

Responsibility for the implementation and execution of the programme lies with the senior management of the company (e.g. Chief Executive Officer or other senior corporate officer). Senior management needs to monitor whether policies and procedures are applied on a day-to-day basis and whether the overall programme performs according to defined performance levels. Furthermore, senior management should provide status information to the Board of Directors or equivalent body.

In larger companies, senior management may appoint an independent internal unit, such as a compliance or legal department. This unit must have the knowledge and expertise to assess the daily activities related to policy and procedural implementation of the anti-corruption programme. The form of this unit (its set-up, resources, roles and responsibilities, etc.) depends on the complexity, structure and size of a company and hence may differ from company to company. It should be organized in a way that avoids internal conflicts (e.g. by separating the activities of “defending employees” and “investigating allegations”). This unit gathers documentation on the various activities related to the anti-corruption programme (e.g. training, internal controls, incidents) and reports it directly to senior management.

Depending on the size and complexity of the company, responsibilities for implementation, execution and oversight may be delegated to different hierarchical and functional levels (e.g. business units and regional units).

## Oversight responsibilities

The Board of Directors or equivalent body needs to ensure that the anti-corruption programme is carried out by:

- Embracing anti-corruption as a priority for the company, e.g. making it a standing item of the Board's agenda or reflecting it in the Board's assurance of an adequate level of human and financial resources for the anti-corruption programme.
- Monitoring senior management regarding the implementation and execution of anti-corruption policies and procedures throughout the company. For this, the Board of Directors should obtain regular status reports on the programme and be informed on cases of major incidents and corrective actions.
- Assessing the overall adequacy of the programme through the review of senior management's status information and independent assessments. Where necessary, the Board of Directors needs to determine or prescribe corrective actions.
- Reacting to immediate irregularities or serious challenges throughout the entire company (e.g. an incident involving senior management or the misuse of the company's reporting hotline).

A formal policy may be adopted that outlines the responsibilities of the Board Members related to the oversight of the programme. This may also state the company's expectations towards each Board Member's own behaviour and their active support for and commitment to the anti-corruption programme.

## Challenges and opportunities for small and medium-sized enterprises (SMEs)

The need for oversight of the anti-corruption programme is independent of the size of a company. SMEs may find it difficult to install separate units for the oversight and execution of a programme or to appoint a full-time employee to engage in the monitoring of the anti-corruption programme. Furthermore, SMEs may be governed by a single individual (owner) or a group of managers, making it challenging to separate implementation and execution from the oversight function. While it may not be possible for some SMEs to have separate people or units assigned to the execution and the oversight of the anti-corruption programme, they should—as a minimum—ensure that one person is given responsibility for these functions.

In establishing effective oversight of the anti-corruption programme, SMEs often have the advantage of lower internal complexity, especially in gathering information about the status and performance of the overall anti-corruption programme. Due to the stronger degree of interpersonal interactions, oversight of the anti-corruption programme may occur as a natural side product of internal meetings and discussions. Nevertheless, operational responsibility should be established and the results of meetings and discussions should be documented. If there are insufficient resources to separate the operational responsibility from the oversight of the programme, SMEs may engage external advisors to support an independent assessment.



## Public reporting on oversight of the anti-corruption programme

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact–Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on the oversight of the programme to:

- Describe how responsibilities are assigned in the company structure;
- Describe the assignment of responsibility to oversee and implement the anti-corruption programme;
- Provide, if possible, specific reporting indicators used to support responsibility and accountability for the implementation of the anti-corruption commitment or policy.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

## Checklist

OVERSIGHT OF THE ANTI-CORRUPTION PROGRAMME	YES	NO	IN PROGRESS
A clear, visible and accessible policy is in place which outlines the roles and responsibilities for implementation, execution and continuous improvement of the anti-corruption programme.			
The Board of Directors or equivalent body has the ultimate responsibility for the oversight of the anti-corruption programme.			
The Board of Directors or equivalent body has appointed a Compliance, Audit or Ethics Committee which supports the Board in its oversight function.			
Senior management monitors whether policies and procedures are applied on a day-to-day basis.			
Senior management has appointed a separate unit to provide expertise on the implementation of the anti-corruption programme.			
The Board of Directors or equivalent body receives regular status reports and evaluates senior management's performance regarding implementation, execution and continuous improvement of the anti-corruption programme.			
The Board of Directors or equivalent body assesses the overall adequacy of the anti-corruption programme through status information and independent assessments, and where necessary, determines or prescribes corrective actions.			
The Board of Directors or equivalent body reacts to immediate irregularities and/or serious challenges relating to the anti-corruption programme.			
The company publicly reports on its oversight of the anti-corruption programme.			

## D. Clear, visible and accessible policy prohibiting corruption

The commitment of senior management to preventing corruption, the development of an anti-corruption programme and its oversight, need to be translated into a policy prohibiting corruption. The clear, visible and accessible policy prohibiting corruption represents the operational foundation for all other practical elements of the anti-corruption programme. It prescribes principles and rules to which all employees and relevant business partners need to adhere. A policy prohibiting corruption formalizes the company's engagement to prevent corruption.

This section summarizes the main manifestations of corruption according to the United Nations Convention against Corruption. It describes how detailed policies can be provided and how companies can deal with different jurisdictions.

### Definition of corruption

Corruption may encompass a variety of illegal acts, making it challenging to establish a universally acceptable and understandable definition. During the negotiations of the United Nations Convention against Corruption, United Nations Member States carefully considered whether to develop a legal definition of corruption. It was concluded that any attempt at a comprehensive definition would inevitably fail to address some forms of corruption. As a consequence, the international community reached consensus on certain manifestations of corruption while leaving each State free to go beyond the minimum standards set forth in the Convention.<sup>31</sup>

### Manifestations of corruption

The United Nations Convention against Corruption is innovative as it addresses not only major manifestations of corruption, such as bribery and embezzlement, but also acts carried out in support of corruption, such as obstruction of justice, trading in influence and the concealment or laundering of the proceeds of corruption.<sup>32</sup> Furthermore, the Convention covers not only corruption in private-to-public relationships (business relationships with public officials, including state-owned enterprises), but also private-to-private relationships (relationships among companies only).

The Convention calls on States parties to establish a number of offences as crimes in their domestic law. Companies that operate in countries which have become parties to the United Nations Convention against Corruption should therefore address the following manifestations of corruption and acts supporting corruption in their anti-corruption policies:

<sup>31</sup>The Convention lists offences that State Parties must establish as crimes (mandatory criminalization) as well as offences that States parties are required to consider establishing. The Convention introduces minimum standards, but States parties are free to go beyond them. It is indeed "recognized that States may criminalize or have already criminalized conduct other than the offences listed in this chapter as corrupt conduct" (United Nations Office on Drugs and Crime, "Legislative Guide for the Implementation of the United Nations Convention against Corruption", 2006).

<sup>32</sup>United Nations Office on Drugs and Crime, "Legislative Guide for the Implementation of the United Nations Convention against Corruption", 2006.

- Bribery of national public officials;
- Bribery of foreign public officials and officials of public international organizations;
- Bribery in the private sector;
- Embezzlement of property in the private sector;
- Trading in influence;
- Abuse of function;
- Illicit enrichment;
- Laundering of proceeds of crime;
- Concealment of proceeds of crime; and
- Obstruction of justice.

A policy which provides information on manifestations of corruption and the scope of application of the policy helps to translate the overarching commitment of zero-tolerance of corruption into concrete and understandable elements. This approach further reduces the room for misinterpretation (e.g. by defining a “public official”<sup>33</sup> or facilitation payments).

A policy addressing the above shown manifestations of corruption should be comprehensive in covering different forms and challenges. For example, bribery can take on a variety of forms (such as kickbacks, extortions or facilitation payments). Legitimate expenditures can also be misused as a subterfuge a corrupt act (e.g. gifts, hospitality, travel payments, entertainment, sponsorship, charitable contributions and/or political contributions).

Companies need to consider that while the United Nation Convention against Corruption addresses a variety of manifestations of corruption, countries have the discretion to go beyond the scope of this Convention and could establish additional corruption-related offences, such as collusion.

### Clear, visible and accessible policy prohibiting corruption

In order to provide a clear, visible and accessible anti-corruption policy, companies may wish to consider the following aspects:<sup>34</sup>

<sup>33</sup>According to article 2 of UNCAC, “ ‘Public official’ shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a ‘public official’ in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of the Convention, ‘public official’ may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.”

<sup>34</sup>More information on the underlying characteristics of an anti-corruption programme can be found in chapter III, section B of this *Guide*.

- The policy should be formally documented, for example as part of a Code of Conduct, Code of Ethics or similar document. Embedding the policy into such documents emphasizes the importance of anti-corruption related to day-to-day activities.
- The language of the policy should be clear and easy to understand (i.e. avoidance of acronyms and technical expressions). The policy should be translated into all major languages of the different operating localities.
- The policy should be visible to all parties within and outside the company. The company's overarching zero-tolerance of corruption policy as well as a detailed anti-corruption policy should be clear, visible and accessible to shareholders, directors, officers and employees at all levels within the company. The policy should also be visible to business partners, such as subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other business partners.<sup>35</sup> Visibility and accessibility of the policy reinforce the anti-corruption programme among employees and enhance both awareness and reputation. Visibility and accessibility also strengthen the deterrence of corruption.
- The policy should be further supported by real-world examples or generic case descriptions to enhance the understanding of how these policies apply to day-to-day work situations.

### Multiple legal jurisdictions

Companies operating in international environments may face the challenge of needing to comply with multiple legal jurisdictions when establishing a policy prohibiting corruption. A practical example where such a challenge may arise is due to the varying legal treatment of facilitation payments. A company may operate in one country where facilitation payments are strictly forbidden and in another country where facilitation payments are allowed under certain circumstances.

Companies may establish a global anti-corruption policy standard. This global standard implies that it is equally and stringently applied across all of the jurisdictions in which companies are operating. This may result in a policy that goes beyond national mandatory regulations of some countries in which the company is operating. A global standard offers a variety of benefits, such as to:

- Strengthen the commitment and reputation of a zero-tolerance policy of corruption as being independent of the underlying national legal jurisdiction;
- Set clear expectations for all employees and business partners, independent of their country of operation. This also facilitates the adaption of the company's policy among a mobile workforce; and
- Avoid the impression of an opportunistic motivation to apply the anti-corruption policy.

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<sup>35</sup>More information on addressing business partners can be found in chapter III, section F.

Based on its risk assessment, the company should define the global anti-corruption policy standard. International conventions and good practice standards can help to define an appropriate basis for the individual business.

An overview of anti-corruption legislation in more than 175 different jurisdictions is provided by the Legal Library of United Nations Convention against Corruption which can be accessed by the web-based anti-corruption portal “Tools and Resources for Anti-Corruption Knowledge” (TRACK).<sup>36</sup> TRACK also provides for an anti-corruption learning platform which offers a common space where anti-corruption practitioners can communicate and exchange experiences and knowledge. This platform can help companies to improve expertise in dealing with different legislation concerning topics such as facilitations payments.

Companies must also closely monitor updates and changes in legal jurisdictions and evaluate if the company’s global anti-corruption policy needs to be modified (e.g. in the case of new public reporting requirement, or additional or more stringent legal obligations, such as data protection laws).

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

Just as large companies, SMEs need to establish a policy prohibiting the various manifestations of corruption. Based on their risk assessment, SMEs may need to address fewer manifestations than larger companies. SMEs with fewer international operations may also find it easier to establish a global policy for the various manifestations of corruption.

While SMEs may tend to have less formalized and documented business processes, it is important that they formally document and publish their anti-corruption policy. A formal policy helps to clarify the expectations between employees and business partners. In order to establish a clear, visible and accessible policy prohibiting corruption, SMEs may use existing anti-corruption policy templates (e.g. such as those provided by non-governmental organizations) and tailor them to their specific requirements. SMEs may also find support and guidance from local chambers of commerce, business associations, trade unions, or sector initiatives, when developing such a policy.

### Public reporting on a clear, visible and accessible policy prohibiting corruption

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact-Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on policies prohibiting corruption to:

- Report on the existence of and the elements in the anti-corruption programme;

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<sup>36</sup><http://www.track.unodc.org>

- List the areas of potential risk which are covered by a detailed anti-corruption policy;
- Describe procedures and efforts with regard to that policy; and
- Describe where this policy can be found and how it is made available to all employees and business partners concerned.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

### Checklist

CLEAR, VISIBLE AND ACCESSIBLE POLICY PROHIBITING CORRUPTION	YES	NO	IN PROGRESS
The policy prohibiting corruption addresses relevant manifestations of corruption (based on the company's risk assessment).			
The policy prohibiting corruption provides further information on various forms and challenges of corruption (e.g. extortion requests).			
The policy prohibiting corruption is formally documented and publicly available to all employees and business partners.			
The policy prohibiting corruption is articulated in a clear and easy-to-understand language and is translated into all major operating languages.			
The policy prohibiting corruption is supported by real-world examples or generic case descriptions.			
The policy prohibiting corruption is equally applied in all jurisdictions in which the company operates (one global standard).			
The policy prohibiting corruption is regularly reviewed and, if necessary, adapted.			
The company publicly reports on its policy prohibiting corruption.			



## E. Detailed policies for particular risk areas

As noted, the United Nations Convention against Corruption requires States parties to address various manifestations and supporting acts of corruptions in their national legislation. As a result, these manifestations become particularly relevant for companies operating in countries that have become parties to the Convention.

It is both an important and challenging endeavour to address the various manifestations of corruption through policies and procedures. Not all activities are clear-cut, such as bribing a public official to win a contract. However, it is especially difficult in cases where the borderline between legal practices and corrupt ones is blurred. For instance, while in some environments providing gifts in order to maintain good business relationships is common practice and allowed, gifts that influence a decision are strictly forbidden. Hence, there may exist many grey areas. Some cases may in fact constitute a corrupt act but not be perceived as such. Furthermore, different customs and business practices in different geographical locations make it difficult to distinguish between legal and illegal practices.<sup>37</sup> Companies should address these grey areas by drawing a clear line between legitimate and non-legitimate business practices.

When differentiating between legitimate and non-legitimate business practices, companies often face the following challenges:

- Business practices that are illicit but perceived as normal or even required (e.g. facilitation payments).
- Business practices that are legal but bear the risk of being misused to disguise corruption (e.g. misuse of political contributions, gifts or hospitality as a bribe for a national public official).
- Business practices that are based on biased decisions (conflicts of interest).

The following subsections address particular risk areas of corruption by outlining how companies can support employees and business partners to differentiate between legitimate and non-legitimate actions and act accordingly.

### E.1 Facilitation payments

Facilitation payments are unofficial, improper, small payments made to a low level official to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment is legally entitled.<sup>38</sup> Facilitation payments are typically paid to public officials to obtain licences, certificates and other forms of public services. However, such payments can also be made to commercial service providers (such as an electricity or gas provider). Facilitation payments are bribes and therefore prohibited under the United Nations Convention against Corruption.<sup>39</sup>

<sup>37</sup>United Nations Industrial Development Organization, United Nations Office on Drugs and Crime, “Corruption prevention to foster small and medium-sized enterprise development”, 2007.

<sup>38</sup>International Chamber of Commerce, “Rules on Combating Corruption”, 2011, article 6.

<sup>39</sup>Articles 15, 16, 21 in combination with article 30(9).

When tolerated, facilitation payments undermine the organizational culture of zero-tolerance of corruption.

### Mitigating the risk of facilitation payments

The major challenge of facilitation payments is that in various countries such payments may be considered normal practice or even necessary to do business. In such environments, companies that abstain from facilitation payments may face initial competitive disadvantages, especially if their competitors continue to pay. Nevertheless, companies need to be aware that such payments can constitute a corruption offence under the respective country's legislation. Companies are therefore advised to address the risk of facilitation payments in their anti-corruption programme.

As a starting point, a clear definition combined with a detailed policy prohibiting facilitation payments should be provided. It is recommended that this policy applies to the entire company, even if it operates in countries where facilitation payments are not illegal or where such payments are illegal but enforcement is very low.

The detailed policy needs to be supported by comprehensive practices to identify the risks and implement mitigation options.

In order to generate information on the different regional vulnerabilities, companies should conduct a detailed risk assessment. Such an assessment should identify areas where facilitation payments are most likely to occur (e.g. passport controls, customs, setup of new facilities or ventures) and where the business environment makes the implementation of mitigation options challenging.

A profound understanding of the risks of facilitation payments allows companies to provide tailored trainings and guidance materials to deal with concrete challenges (e.g. how to identify a foreign public official, or how to handle a public custom official's demand for a facilitation payment for on-time clearance of perishable goods). Standardized training guidance may help to raise awareness among employees and business partners that such payments are illegal. However, it may not provide the necessary skills to handle solicitation or extortion in a way that complies with the company's anti-corruption policy.<sup>40</sup> In order to address these issues, companies should consider establishing specialized measures such as role-based training to teach employees and business partners how to respond to these kinds of requests.

It is also advisable to prepare employees for situations where a request for facilitation payment is accompanied by a threat, especially when concerning their own security and safety. Companies may address such difficult situations by opting to include an exemption clause in the policy on facilitation payments, allowing facilitation payments in those situations when they are necessary in order to prevent serious harm.

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<sup>40</sup>Trainings may include the discussion of real-world scenarios for solicitation and extortion. See for instance: International Chamber of Commerce, World Economic Forum, Transparency International, United Nations Global Compact, "Resisting Extortion and Solicitation in International Transactions", 2011.

Companies that hold considerable market power are strongly advised to use their influence by supporting the prohibition of facilitation payments in countries where no relevant law has been enacted or enforcement is lacking.

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

Despite the tremendous challenges of addressing facilitation payments, all companies—independent of their size—need to acknowledge that facilitation payments are bribes and therefore illegal under most national jurisdictions.

Dealing with facilitation payments is particularly challenging for SMEs. Some companies may even perceive that it is not possible to sustain business operations without these payments. SMEs may also find it more difficult to absorb any negative consequences resulting from a refusal to a solicitation or extortion, such as delays in operations. In such cases, companies may be tempted to pay small amounts to avoid disproportionate losses. Furthermore, SMEs have limited possibilities to reduce demands as they typically lack the market power needed to exert a political leverage for change.

SMEs are advised to establish similar policies and procedures to prepare their own employees in resisting facilitation payments. SMEs should establish clear processes on how to proceed when facing solicitation or extortion requests (e.g. seeking advice from the company's owners). Guidance and training material is often available from non-governmental organizations or business associations free of charge. Furthermore, SMEs are advised to encourage employees to exchange experiences with employees of other companies or to seek joint actions with business partners. SMEs may also find support and guidance from local chambers of commerce, business associations, trade unions or sector initiatives when developing and implementing such a policy.

### Public reporting on policies and procedures prohibiting facilitation payments

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact—Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on policies and procedures prohibiting facilitation payments to:

- List the areas of potential risk of corruption which are covered by detailed anti-corruption policies;
- Describe procedures and efforts with regard to these policies; and
- Describe where these policies can be found and how they are made available to all employees and business partners concerned.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

## Checklist

FACILITATION PAYMENTS	YES	NO	IN PROGRESS
A clear, visible and accessible policy prohibiting facilitation payments is in place.			
The policy contains a comprehensive definition of facilitation payments.			
The policy recognizes situations where facilitation payments cannot be avoided (e.g. when health, security of safety is at risk) and defines clear procedures on how to handle such situations.			
A detailed risk assessment is carried out to understand the situations and practices in which facilitation payments can occur.			
The outcomes of the detailed risk assessment are reflected in the policy and procedures to mitigate the risk of facilitation payments.			
The policy and procedures are communicated to employees and relevant business partners.			
Adherence to the company's policy and procedures is monitored.			
Employees and relevant business partners are trained and receive guidance on dealing with facilitation payments.			
In cases where facilitation payments cannot be avoided (e.g. threat to personal security and safety), they need to be documented in the company's books and records.			
The company uses its influence to support the prohibition of facilitation payments (where applicable).			
The company's oversight body regularly reviews policies and procedures prohibiting facilitation payments.			
The company publicly reports on its policies and procedures prohibiting facilitation payments.			

## E.2 Special types of expenditures

When addressing the various manifestations of corruption, companies will find that some legitimate business activities may be misused to disguise a bribe or as trading in influence. This typically relates to expenditures of the following three types:

- Gifts, hospitality, travel, and entertainment
- Political contributions
- Charitable contributions and sponsorships

Companies are advised to address the potential misuse of special types of expenditures in their policies to underline the overall commitment to zero-tolerance of corruption. Due to the general legitimacy of such expenditures, companies may have to invest considerable effort to communicate the related risks and the necessity of complying with the policy and supporting procedures. Such procedures should help employees to differentiate between legitimate and appropriate use and a misuse to generate undue advantages. For instance, employees should be sensitized that a political contribution may be used or perceived as another way to provide an undue advantage to a public official.

### Mitigating the risk of gifts, hospitality, travel, and entertainment expenses

Giving gifts or providing hospitality are legitimate expenditures and common business practices for building relationships or to express appreciation. Similarly, a company may cover travel and entertainment expenses in order to demonstrate a company's capabilities by attending a conference or visiting a production location.

The risk of gifts, hospitality, travel and entertainment expenses does not stem from the expenditure itself but from situational factors and disproportionality. Inviting a public official with whom a public tender is currently being negotiated to an all-inclusive expensive weekend trip clearly raises suspicion of providing undue advantages. Companies are advised to address gifts, hospitality, travel and entertainment expenses as special types of expenditures in their anti-corruption programme.

As a starting point, a clear definition for such expenditures combined with detailed policies should be provided. It is recommended that these policies apply to the entire company, underscoring the overall spirit that such expenditures should not be used to obtain undue advantages or as subterfuge for illegal transactions. Since customs and business practices may differ in how these expenditures are perceived, companies should provide detailed guidance material that takes into account different local customs and economic circumstances

The detailed policies need to be supported by comprehensive procedures to identify the risks and implement mitigation options.

It is a major challenge for companies to provide detailed and practical guidance for its employees and relevant business partners. The assessment as to whether an

expenditure is regarded as reasonable and bona fide or as an improper attempt to influence the company's counterpart depends on a variety of situational factors. Companies may establish detailed guidelines (e.g. in the form of checklists or decision trees) to clarify whether it is appropriate to accept or to offer gifts, hospitality, travel and entertainment expenses. Such guidelines may be established as a positive-list,<sup>41</sup> setting clear and transparent boundaries, for instance regarding:

- Types of gifts, hospitalities, travel modes or entertainment types that are acceptable;
- Limits of monetary value;
- Reimbursement from the counterpart;
- Characteristics of the counterpart;
- Nature of the business relationship; and
- Occasion

Information materials should be adapted to the specific local circumstances (e.g. monetary thresholds for gifts).

Besides giving employees detailed guidance on assessing whether expenditures are reasonable and bona fide, companies may also establish activities to mitigate the risks that employees—intentionally or unintentionally—misinterpret the policies and guidance material. Such practices can include approval procedures (e.g. multiple approvals for benefits involving public officials), defined responsibilities (e.g. who needs to be informed) and documentation requirements (e.g. what needs to be recorded).

### Mitigating the risk of misusing political contributions

Contributions to political parties, party officials, candidates, organizations or individuals engaged in politics can be used by companies to support democratic processes.

The risks of political contributions are several. Contributions may be illegal under national law. Furthermore, contributions can be misused to influence political processes and decision-making for undue advantage. Contributions may also be misused as a subterfuge for a corrupt act. In some jurisdictions, political contributions are subject to strict laws to prevent their misuse. Companies are advised to address political contributions as a special type of expenditures in their anti-corruption programme.

As a starting point, a clear definition of political contributions combined with a detailed policy should be provided. This should clarify what kind of contributions

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<sup>41</sup>Positive criteria determine when benefits are allowed, while negative criteria determine when benefits are not allowed. Positive criteria have been shown to signal trust and to be more easily received and applied by employees than negative criteria (M. Kaptein, J. Wempe, "Twelve Gordian Knots When Developing an Organizational Code of Ethics", *Journal of Business Ethics*, 1998, 17 (8); D.-M. Driscoll, M. Hoffman, "Ethics Matters: How to Implement Values-Driven Management", Bentley College, 1999).

(financial or in kind) are allowed and under which circumstances. The policy on political contributions can also provide guidance on the possible types of political or social goals that a company wants to support. For instance, a policy on political contributions may allow promotional activities to support a political party but prohibit the provision of loans to public officials who are currently involved in a tendering process. It may also restrict support to organizations which have close relations to a political party. As customs and business practices may differ in how political contributions are perceived when assessing an undue advantage, guidance material needs to take different local customs and economic circumstances into account.

The detailed policy needs to be supported by comprehensive procedures to identify the risks and to implement mitigation options. Companies may develop risk mitigation activities in order to decrease the probability that political contributions are misused. Such activities require efforts to:

- Ensure appropriate timing of political contribution (e.g. not during a major political decision-making process);
- Set thresholds for political contributions;
- Maintain accurate books and records;
- Assess employees and business partners with respect to their relation with political parties, officials, candidates, politically exposed persons (to identify conflicts of interest);
- Establish approval procedures (e.g. four-eyes principle to approve contributions);
- Conduct regular reviews of political contributions; and
- Disclose political contributions to enable public scrutiny (unless secrecy or confidentiality is legally required).

Companies can also legitimately promote their views and expertise on public policy issues through political advocacy or lobbying for which they can engage an intermediary lobbyist. Companies are advised to ensure that advocacy is not abused through payments, gifts or hospitality to obtain an undue advantage.

### Mitigating the risk of misusing charitable contributions and sponsorships

Charitable contributions and sponsorship can be part of companies' legitimate efforts to engage as socially responsible citizens and to promote their identity, brands and products. Charitable contributions include anything of value donated by companies to support charitable causes or activities in the areas of sports, arts, culture, education and science. Sponsorship relates to the support of events, activities or organizations which grants rights and benefits to the sponsoring company. For instance, the sponsoring company may have the right to use the sponsored organization's name and advertising credits in media, events and publications. Charitable contributions and sponsorships may be cash or in kind, including goods or services. Fees for memberships in social and charitable organizations are also considered as donations.

The risk of charitable contributions and sponsorship is that they can be used to generate an undue advantage or as a subterfuge for a corrupt act. The expenditures may either create an expectation or an acceptance of a business advantage in return or be used as a means of transferring benefits to the corrupt counterpart. Companies are advised to address charitable contributions and sponsorship as a special type of expenditures in their anti-corruption programme

As a starting point, a clear definition of charitable contributions and sponsorships combined with a detailed policy should be provided. This should clarify what kind of contributions are allowed and under which circumstances. For instance, the policy should prohibit charitable contributions when payments are to be transferred to private accounts. As customs and business practices may differ in how charitable contributions and sponsorships are perceived when assessing an undue advantage, policy and procedures need to take different local customs and economic circumstances into account.

The detailed policy needs to be supported by comprehensive procedures to identify the risks and to implement mitigation options. Companies may develop risk mitigation activities in order to decrease the probability that charitable contributions or sponsorships are misused either to grant undue advantages or to disguise a corrupt act. Such activities require efforts to:

- Understand the counterpart's own provisions regarding charitable contributions and sponsorships;
- Ensure appropriate timing of charitable contributions and sponsorships (i.e. not during a tendering process);
- Define strategies and objectives for charitable contributions and sponsorships (e.g. what kind of activities should be supported);
- Assess employees and business partners with respect to their relation with charitable organizations or sponsored parties (e.g. to identify conflicts of interest);
- Establish approval procedures (e.g. four-eyes principle to approve sponsorships);
- Maintain accurate books and records;
- Conduct regular reviews of charitable contributions and sponsorships;
- Disclose charitable contributions and sponsorships to enable public scrutiny (unless secrecy or confidentiality is legally required).

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

SMEs face similar risks to those of larger companies when making the above expenditures. Consequently, SMEs need to establish clear policies and procedures to ensure that these expenditures are used in a legitimate way. The size of SMEs does not present particular challenges in regard to establishing clear policies and procedures relating to undue advantages and special types of advantages. However, SMEs may



need to pay special attention to the effective implementation of these policies and procedures, as SMEs tend to have a higher degree of solidarity and integration with their local environment.

SMEs may find support and guidance from local chambers of commerce, business associations, trade unions or sector initiatives when developing and implementing such a policy.

### Public reporting on policies and procedures addressing special types of expenditures

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact–Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on policies and procedures addressing special types of expenditures to:

- List the areas of potential risk of corruption which are covered by detailed anti-corruption policies;
- Describe procedures and efforts with regard to these policies; and
- Describe where these policies can be found and how they are made available to all employees and business partners concerned.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

## Checklist

SPECIAL TYPES OF EXPENDITURES (I.E. GIFTS, HOSPITALITY, TRAVEL, ENTERTAINMENT EXPENSES, POLITICAL CONTRIBUTIONS, CHARITABLE CONTRIBUTIONS AND SPONSORSHIPS)	YES	NO	IN PROGRESS
Clear, visible and accessible policies prohibit the misuse of special types of expenditures in order to obtain advantages in business transactions or as a subterfuge for a corrupt act.			
The policies contain comprehensive definitions of the various types of expenditures.			
A detailed risk assessment is carried out to understand the situations and practices in which these special types of expenditures are illegal or can be misused.			
The outcomes of the detailed risk assessment are reflected in the policies and procedures.			
The policies and procedures are communicated to employees and relevant business partners.			
Practices to mitigate the risks associated with special types of expenditures are established (e.g. approval procedures, responsibilities, transparency and documentation requirements).			
Employees and relevant business partners are trained and receive guidance on dealing with such special types of expenditures.			
Adherence to the company's policies and procedures is monitored.			
The company's oversight body (e.g. Board of Directors) regularly reviews policies and procedures and major occurrences of special types of expenditures.			
The company publicly reports on its policies and procedures addressing special types of expenditures.			

### E.3 Conflicts of interest

Companies may also face risks when business decisions are based on conflicting interests. A conflict of interest exists if an individual in a company has professional, personal or private interests that diverge from the interests that the individual is expected to have when representing the company: in short, the individual interest conflicts with the company interest. For instance, a marketing manager of a beverage distributor who is responsible for sponsorships of sports events may face a conflict of interest by holding the position of a Board Member in a sports club that is being considered for sponsorship.

Similar to the special types of expenditures listed in the previous section, conflicts of interest may not necessarily result in negative consequences for a company. However, conflicts of interest pose a risk when a company's representative is tempted to choose his or her private interest over the organizational interest and make decisions that are not in the best interest of the company. Conflict of interest could also pose a risk when a company's representative actually does make the best business decision (because it offers better value, better exposure, etc.), but it is not made in a transparent manner demonstrating that objective criteria were applied. Other employees may perceive this decision as having been made merely out of private interest. Companies are therefore advised to address conflicts of interest in their anti-corruption programme.

#### Sources of conflicts of interest

Conflicts of interest occur in every organization, but they are not per se negative. Therefore, the term should not be used to imply illegitimate behaviour or even a corrupt act. An employee who is facing conflicts of interest may decide in the company's best interest. An employee may also engage in outside activities which are legal and beneficial for the company and his or her own interest. However, such situations can be easily misinterpreted and cast doubt on the objectivity of a particular decision. Companies should be aware of the various types of conflicts of interest and address them appropriately with policies and procedures (e.g. a clear communication and documentation strategy in case of conflicts of interest).

*Gifts, benefits and hospitality* can lead to conflicts of interest if employees feel the obligation to reciprocate gifts, benefits and hospitality by giving an undue advantage which is not in the interest of the company. Alternatively, employees may take decisions in favour of the party that has provided gifts, benefits and hospitality because the employee expects similar personal advantages in future. Studies have shown that reciprocal giving and receiving strongly motivate behaviour.<sup>42</sup> For instance, an

<sup>42</sup>E. Fehr, S. Gächter, "Fairness and Retaliation: The Economics of Reciprocity", Working Papers of the Institute for Empirical Research in Economics, 2000, No. 40.

A. Falk, U. Fischbacher, "A theory of reciprocity", Working Papers of the Institute for Empirical Research in Economics, 2000, No. 06.

S. Gächter, B. Herrmann, "Reciprocity, culture and human cooperation: previous insights and a new cross-cultural experiment", *Phil. Trans. R. Soc. B.*, 2009.

employee receiving regular benefits from a service provider may prefer this company in relevant business decisions.

*Outside appointments* can lead to conflicts of interest if a company representative is engaged in more than one organization and has to make decisions which result in a trade-off between advantages for the two (or more) organizations. As an example, a senior manager of a construction company may also serve as a Board Member of a large public hardware store chain. The senior manager may appoint the hardware store chain as the preferred supplier for the construction company, without conducting a thorough competitive analysis.

*Parallel internal positions* can lead to conflicts of interest when employees have competing professional duties within their company. For instance, an employee who performs an executive and a controlling function at the same time can face situations in which the objectives of the executive role conflict with the objectives of the controlling function. In these situations, an employee may prioritize performance or profit over ensuring that the control functions are properly performed.

*Financial investments* can lead to conflicts of interest when employees may favour business relationships with companies in which they have invested. For instance, employees may favour a particular supplier in which they own a substantial number of shares over more qualified suppliers during procurement tenders.

*Employment of relatives* can lead to conflicts of interest when employees may favour family members or close acquaintances over other qualified individuals due to a perceived moral obligation. Conflicts of interest may result in favouritism (nepotism) and negative consequences for the company.

*Engagement of public officials* can lead to conflicts of interest. Although companies may benefit legitimately from the experience and knowledge of former and current public officials, their engagement should be closely monitored. Actual or perceived claims of obtaining an undue advantage or using insider information through the employment of a public official may result in negative consequences for the company. These risks need to be monitored in both directions—in relation to government officials working for the company and in relation to company representatives working for governmental institutions. Current or former public officials may represent private interests on a matter for which they are/were publicly responsible.

### Mitigating the risks of conflicts of interest

As a starting point, a clear definition of conflicts of interest combined with a detailed policy should be provided. Due to the fact that conflicts of interest are not per se illegitimate, it is important that the policy is further illustrated by examples which outline the risks of such situations. As some conflicts of interest include an external party (gifts, benefits or outside appointments), it is important that the company's policies and procedures are not only known to employees but also to its business partners and other external stakeholders.

## Identifying potential conflicts of interest

Based on an initial risk assessment, the disclosure of possible conflicts of interest may be requested from all employees and relevant business partners (including consultants, intermediaries and auditors), or only from selected representatives.

All parties should be expected to disclose any interests (direct and indirect) which may be perceived as undermining the objective judgment and decision-making of employees in carrying out their responsibilities. This is particularly important in the business areas of finance, sales and marketing, procurement and human resources.

Rules of disclosure may require the disclosure of assets by senior managers or Board members. Disclosure of assets may include financial information on sources of income and on assets such as remunerations, ownership, investments, substantial gifts and benefits.<sup>43</sup> The disclosure of assets can indicate possible conflicts of interest and help to avoid situations which may lead to an inadvertently or intentionally biased decision. Depending on their own risk tolerance, companies may also consider requiring the disclosure of assets of the family members of employees who are subject to the rule of asset disclosure.

Companies should also consider conducting due diligence in major operational processes and implement procedures to identify conflicts of interest. For instance, due diligence of suppliers can reveal former or present personal relationships with the company's procurement officers. Similarly, due diligence can reveal conflicts of interest in other types of business relationships (joint ventures, vendors, mergers and acquisitions).

## Addressing potential conflicts of interest

While it is important that companies put in place practices that identify potential conflicts of interest, it is equally important to have practices that address the situation properly.

The simplest way to address a potential conflict of interest is to avoid the situations that may cause it. A senior manager does not accept an additional outside appointment at a company that may put his or her personal and organizational interests in conflict. In practice, however, this option may not be feasible. For instance, a company may rely on a specialized supplier to which the company's procurement officer has personal relationships. In such a case, the company cannot simply avoid business with the supplier.

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<sup>43</sup>It has been generally recognized that asset disclosure can help to manage conflicts of interests because it substantially increases transparency and public control. To date, efforts to increase insights into income, assets and interests have focused mainly on the public sector. The Stolen Asset Recovery (StAR) Initiative of the World Bank and the United Nations Office on Drugs and Crime for instance, studies the importance of disclosure by public officials for the fight against corruption. The deterrence effects of public disclosure may also be used to avoid embezzlement of illicit enrichment by private sector representatives. A number of initiatives towards more transparency in the income structure of senior private sector actors have been established. Among other institutions, the Commission of the European Union and the OECD recommend the disclosure of compensation to individual board members and executives.

Another option would be to remove the employee facing the conflict of interest from the particular situation. Again, this may pose practical challenges if the company's sales manager is the single point-of-contact for a particular client or if a company does not have sufficient resources.

In such cases, the company needs to establish practices to reduce the risk that a business activity will be perceived as biased due to a conflict of interest. For example, a contract that is being negotiated by an employee exposed to a conflict of interest could be assessed by an internal or external third party to demonstrate that the negotiated contract terms are what would be expected by an arbitrary third party and that the company has not been prejudiced by the contract.

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

Conflicts of interests are pervasive and affect companies of all sizes. SMEs may face conflicts of interest even more often than large companies due to factors such as close relationships within the community or ownership structure (e.g. family businesses) which can contribute to a higher occurrence of these risks. Furthermore, it may not be a practical option for an SME to avoid such situations or to remove employees that face a conflict of interest from particular business activities.

SMEs need to establish a clear conflicts of interest policy and related procedures, in particular on evaluating and disclosing conflicts of interest that cannot be avoided or where the removal of employees from a decision is not possible. SMEs may also find support and guidance from local chambers of commerce, business associations, trade unions or sector initiatives when developing and implementing such a policy.

### Public reporting on policies and procedures addressing conflicts of interest

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact-Transparency International "Reporting Guidance on the 10th Principle Against Corruption"*, can assist companies to report on policies and procedures addressing conflicts of interest to:

- List the areas of potential risk of corruption which are covered by detailed anti-corruption policies;
- Describe procedures and efforts with regard to these policies; and
- Describe where these policies can be found and how they are made available to all employees and business partners concerned.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

Checklist

CONFLICTS OF INTEREST	YES	NO	IN PROGRESS
A clear, visible and accessible policy addressing conflicts of interest is in place.			
The policy contains a comprehensive definition of conflicts of interest and outlines possible sources (such as outside appointments).			
The policy addresses the disclosure of possible conflicts of interest by employees and relevant business partners.			
The policy requires the disclosure of incomes and assets by senior management (e.g. remunerations, ownership, investments, substantial gifts and benefits).			
The disclosure of assets is extended to family members of senior management.			
The policy recognizes situations where conflicts of interests cannot be avoided and defines clear procedures to address such situations.			
A detailed risk assessment is carried out in order to understand the situations and practices in which conflicts of interest can occur.			
The outcomes of the detailed risk assessment are reflected in the policy and procedures to mitigate negative consequences arising from conflicts of interest.			
Due diligence for conflicts of interest is exerted in major operational processes such as procurement, sales, or production.			
Adherence to the company's policies and procedures is monitored.			
The company's oversight body (e.g. Board of Directors) regularly reviews policies and procedures and major occurrences of conflict of interest.			
The company publicly reports on its policies and procedures addressing conflicts of interest.			

## F. Application of the anti-corruption programme to business partners

Companies operate in complex environments, engaging on a daily basis with a variety of business partners, such as suppliers, contractors, agents, subsidiaries and joint ventures. The level of interaction with these partners varies, and could include informal relationships, single contractual relationships, or the tight integration of business activities. The level of influence that a company has on its partners also varies. While some business partners remain fully independent, others may act on behalf of the company or are financially related in the form of minor or major investments.

While engaging with business partners is a necessity for doing business, it may also present a considerable risk for companies with respect to corruption. Companies that engage with business partners having lower anti-corruption standards may face the risk of corruption inquiries or even be held accountable for the inappropriate behaviour of their partners. Companies should not turn a blind eye to the corruption of its business partners. National laws<sup>44</sup> increasingly hold companies liable for the misconduct of their business partners. Additionally, a company's reputation can suffer considerably if it is associated with a corrupt partner.

This section outlines the various types of business relationships and highlights key practices that companies should establish in order to reduce the risk of corruption from such relationships.

### Types of business relationships

Companies engage with a variety of business partners over which they have different degrees of control or determining influence. The type of relationship influences both the risk exposure and the level of influence on partners to comply with anti-corruption policies and procedures. This section describes five major types of business relationships:<sup>45</sup>

- Subsidiaries<sup>46</sup>
- Affiliates
- Joint ventures
- Agents and intermediaries
- Contractors and suppliers

The categorization of different types of relationships enables companies to adequately assess the related risks of each type of relationship and to establish mitigation

<sup>44</sup>See for instance: United Kingdom Bribery Act, 2010, Chapter 23, Provisions 7 and 8.

<sup>45</sup>The names and categories of these business arrangements should be seen as examples only. Different names and categories may apply in different contexts.

<sup>46</sup>Please note that a subsidiary is part of the company and not a business partner. However, for the ease of reading, this relationship is referred to as a business partner throughout this *Guide*.



practices for each one. In general, companies are advised to establish policies that require similar standards from business partners over which they have effective control and determining influence. Companies should further encourage other partners to adopt such standards. Due diligence practices for selecting and monitoring business relationships as well as processes to support the adaptation of standards should be clearly defined and based on the identified risks (as shown in chapter II). All business partners should be aware of the company's policies and procedures and the consequence of non-compliance with them.

The identification of different types of business partners also facilitates an effective reaction in case a business partner's non-compliance is detected.

### Subsidiaries

Subsidiaries, over which a parent company has effective control, constitute the strongest form of a business relationship. Consequently, subsidiaries imply a high level of responsibility for the parent company. Companies have effective control if they have considerable decision-making and/or managerial power over the conduct of the subsidiary. For instance, effective control is granted if companies can determine the composition of the Board of Directors or influence major business decisions. Companies should require that their subsidiaries follow the same anti-corruption policies and procedures, irrespective of the geographical location of the subsidiary. The anti-corruption programme may be tailored to the specific risk profiles of the subsidiaries.

### Affiliates

Affiliates are business partners of which a company owns a minor share of stocks (typically less than 50 per cent) and has limited control over its business conduct. Consequently, companies have a smaller leverage to require equivalent anti-corruption policies and procedures in affiliates.<sup>47</sup> Nevertheless, companies should communicate their commitment to zero-tolerance of corruption to their affiliates. Due diligence should be conducted before and during the investment period. In case of actual or perceived risks, companies should encourage the affiliate to enhance the effectiveness of its anti-corruption programme. Companies may also offer support to improve the programme. If an affiliate resists anti-corruption efforts, a company should consider withdrawing from the relationship.

### Joint ventures

In a joint venture, a number of different business partners collaborate by, *inter alia*, combining existing business operations, exploring business opportunities in new markets, or establishing research and development relationships. Such ventures can take the forms of a new legal entity or less-formal relationships. Companies that are a part of a joint venture may be liable for any inappropriate behaviour of the overall

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<sup>47</sup>The actual level of investment may determine the extent to which the investing company has leverage to ensure an effective anti-corruption programme on the side of the affiliate.

joint venture. Consequently, companies should seek to apply their own or similar anti-corruption standards to the joint venture. The major principles of the anti-corruption programme of the joint venture should be defined prior to launch. If an agreement cannot be reached between the company and its business partners, the company should consider not joining the venture. If the joint venture has already been established and the business partners cannot be persuaded to apply similar anti-corruption standards (depending on the level of control the company has over the joint venture), the company should consider exiting the joint venture.

### Agents and intermediaries

Agents and intermediaries can be defined as separate organizations or individuals that act on behalf of a company and where the company has a determining influence.<sup>48</sup> Such partners are often used for the execution of day-to-day business activities, such as obtaining licences, permits or other authorizations, as well as for business development. Agents and intermediaries, such as business development consultants, sales representatives, customs agents, lawyers, accountants, are typically local partners with a high knowledge of local business customs and practices and an extensive personal network.

Companies may rely on the specialized skills or personal networks of agents and intermediaries to enter into new markets or to interact with other business partners and governmental agencies. This dependence also creates a major risk for companies. Agents and intermediaries may act on their own and engage in corrupt acts without the knowledge of the company. Agents can also be used to channel corrupt payments to counterparts, seeking to keep such transactions off the company's books. A detailed policy needs to be established, clearly defining these relationships and outlining supporting practices for managing them, such as:

- Conducting due diligence in the selection of agents and intermediaries (as shown below);
- Communicating the company's policies and procedures to agents and intermediaries;
- Obtaining a formal, written commitment from the agent or intermediary to the company's anti-corruption programme (e.g. as part of the overall contract);
- Establishing detailed processes regarding the remuneration, documentation of expenditures, and record keeping of agents and intermediaries;
- Supporting agents and intermediaries in adhering to the company's policies and procedures (e.g. training);

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<sup>48</sup>International Chamber of Commerce, "Guidelines on Agents, Intermediaries and Other Third Parties", Document 195-11 Rev2 Final EN VS/zse, 2010. Respectively, determining influence can be interpreted as a company's power over the decision-making of the business partner. In contrast to subsidiaries, affiliates or joint ventures, this power does not stem from official share of corporate control. Determining influence stems from negotiating power, market power or from the dependency structure of the business partners. Since agents and intermediaries act on behalf of the company, the company has determining influence as representing the role of the client.

- Monitoring the agent's and intermediary's behaviour on an ongoing basis; and
- Applying sanctions and incentives to agents and intermediaries in case of non-compliance/compliance.

The scope of these practices should depend on a risk assessment for agents and intermediaries, requiring, for example, a more stringent management of high-risk relationships (e.g. agents with high governmental interactions or work in high risk industries, such as aerospace and defence, or construction).

### Contractors and suppliers

Contractors and suppliers are important business partners and are necessary for conducting a successful and sustainable business. Similar to agents and intermediaries, companies may engage with contractors and suppliers in close working relationships, but do not necessarily have determining influence over these partners. This again may create areas of corruption risks for a company, for instance when contractors and suppliers seek to influence the company with inappropriate measures to make decisions in their favour. Increasingly, companies also face negative reputational consequences by being associated with a corrupt contractor or supplier. The reliance on contractors and suppliers further creates vulnerability for the company's business operations in cases where a partner is convicted of a corrupt act and becomes unable to fulfil its contractual duties. A practical challenge for managing relationships with contractors and suppliers is the number of partners a company deals with, which easily reaches thousands of partners for large companies.

In order to minimize these risks, companies must clearly express their expectations to all contractors and suppliers in detailed policies (e.g. as part of a Code of Conduct for Suppliers) and establish effective and efficient mitigation practices. Such practices may be similar to the ones for managing agent and intermediary relationships that were outlined above. The large number of possible partners creates implementation challenges in practice. In this respect, companies may seek to identify synergies with other partners in managing contractor and supplier relationships (e.g. conducting joint anti-corruption trainings).

### Managing the risks of business relationships

Managing the risk of business partners regarding corruption can be a challenging and time consuming endeavour. Companies should apply due diligence in selecting a business partner as well as in monitoring the relationship.<sup>49</sup>

### Selection of business partners

Companies should carry out due diligence when selecting a business partner, including for mergers and acquisitions. This should not only apply to strategic, commercial,

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<sup>49</sup>However, the employees responsible for the oversight and control of the company over its business relationships may need to factor anti-trust considerations and risks into their planning and risk management activities.

operational and reputational aspects, but also to risks of corruption. Selection of a business partner should be based on a clear process, complemented with stringent documentation requirements, to prevent irregularities (e.g. conflicts of interest when selecting suppliers).

Due diligence should be carried out before engaging with a business partner in order to identify existing problems, potential risks, and mitigation activities to minimize these risks. The scope and intensity of due diligence for selecting partners may be determined by the company's overall risk assessment. For instance, suppliers in a particular high-risk industry or country may undergo a more thorough due diligence before establishing a relationship. Other factors include, *inter alia*, the type, scope and importance of the relationship and the familiarity with the business partner. Conducting due diligence may include typical checks on corruption-related risk areas (as outlined in chapter II), but may also include checks on more detailed relationship-specific risk areas, such as:<sup>50</sup>

- Checks on legal status and type of organization of the business partner, including jurisdiction of incorporation;
- Assessment of the financial or organizational dependencies and ownership structures of the business partner (e.g. company partly owned by the government);
- Determination of any conflict of interests of key personnel from the business partner;
- Assessment of anti-corruption commitment from senior management of the business partner (e.g. active participation in voluntary anti-corruption initiatives);
- Accumulation of reputational information on the business partner (e.g. through consultations with other partners, local business associations, embassies);
- Review of corruption-related track record (e.g. past incidents, debarment cases); and
- Evaluation of the quality of the existing anti-corruption programme of the business partner.

The due diligence should enable the initial identification of red flags that hint at legal, commercial and operational, and reputational risks of engaging with that business partner.

Based on the initial due diligence and the level of risk exposure, companies must establish relevant mitigation activities to minimize the risks. Such measures can be a formal, written commitment of the business partner to the company's Code of Conduct, the participation in trainings or the provision of information on the business partner's anti-corruption programme.

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<sup>50</sup> A variety of guides and material exists on conducting due diligence on business partners. For instance, the United Nations Global Compact Guide "Fighting Corruption in the Supply Chain" contains a Supplier Due Diligence form on background, qualification and reputation of a prospective supplier.

In cases where the company is not able to obtain sufficient information or cannot encourage the potential business partner to engage in risk mitigating activities, the company should not engage with this partner and should seek alternatives.

### Monitoring of business partners

Based on the information from the initial due diligence, the extent, frequency and approach for monitoring business partner arrangement behaviour can be determined.

The extent of monitoring may vary significantly, depending on the overall risk exposure of the partner. Simple checks on the existence of a formal, written statement to comply with the company's standards from suppliers in low-risk countries may be sufficient. In high-risk areas, or when engaging with critical partners, companies may even opt for conducting an intensive analysis of the partner's anti-corruption programme, including stakeholder interviews and expert assessments.

Depending on the level of risk exposure, the company will decide upon the relevant approach to monitoring the business partner, which may consist of one of the following approaches:

- **Self-assessment:** Companies may require that business partners provide information on the status of their anti-corruption programme through a self-assessment form;
- **Own investigations:** Companies may conduct their own analysis to assess the extent and level of the quality and scope of a partner's anti-corruption programme, either based on research and background information or through direct engagement with the partner; and
- **Independent evaluation/assessment:** Companies may decide to obtain or require some form of an independent evaluation or assessment from trusted third parties (e.g. accountant, independent expert) that assess the extent and level of quality and scope of the partner's anti-corruption programme.

Monitoring should be conducted on a regular basis, as risks identified by the initial assessment may change. Additionally, companies may conduct ad hoc monitoring of high risk business partners.

Companies should assign clear responsibilities for the selection and monitoring of business partners. The primary responsibility for the selection and monitoring lies within the operational business functions, supported by a dedicated team of legal, financial and other experts (if deemed relevant and depending on the size of the company). Companies may also consider including a representative of the Audit Committee to oversee these processes. Alternatively, companies can engage external consultants for the assessment of business partners. In either case, the aggregated results of the selection and ongoing monitoring should be documented and reported to the Board of Directors, the Audit Committee or an alternative oversight body of the company.

## Motivating business partners to adhere to the company's standards

Business partners, over which a parent company has effective control, may be required to comply with the parent company's anti-corruption standards. For other business partners, where a company does not have a significant influence over the other to require adherence to its standards, measures need to be considered that encourage partners either by penalizing non-adherence to anti-corruption standards (sanctions) or by rewarding adherence or exceeding the standards (incentives). Companies may consider a variety of options, as outlined below, which can be applied either directly to the businesses partners or in a joint effort with other stakeholders:<sup>51</sup>

- Commercial sanctions for business partners can include the termination of relationships (e.g. cancellation of supply contract), exclusion from business opportunities (e.g. debarment from contracting) or the assignment of unfavourable conditions (e.g. higher financing costs due to an increased risk premium). Commercial incentives for business partners can include access to business opportunities (e.g. preferred supplier status) and the assignment of favourable conditions (e.g. reduced monitoring frequency of the business partner).
- Legal sanctions are primarily applied by the State. Such sanctions include fines, compensatory damages or even imprisonment of representatives. However, companies can also seek to utilize the legal system to apply sanctions to business partners. For instance, a customer can impose a contractual penalty on a supplier due to an infringement of an anti-corruption contract clause. Likewise, the same customer can choose to claim compensatory damages. Legal mitigation incentives, offering companies a reduction of a sanction due to certain behaviour, are also primarily applied by the State.
- Reputational incentives and sanctions are typically not directly applied by companies to their business partners, but rather through civil society organizations. Such measures can include the publication of a corruption-related event (e.g. in the form of a campaign or article) or the analysis of comparative business performance (e.g. ranking of companies according to the public reporting on their anti-corruption programme).<sup>52</sup>

In cases where companies apply sanctions to its business partners for violating its anti-corruption policies and procedures, mitigation incentives should be considered to rehabilitate businesses that demonstrate improved anti-corruption behaviour.

## Challenges and opportunities for small and medium-sized enterprises (SMEs)

The application of the anti-corruption programme to business partners is equally important for SMEs as for large companies.

<sup>51</sup>HUMBOLDT-VIADRINA School of Governance, "Motivating Business to Counter Corruption—Using sanctions and incentives to change business behavior", 2013.

<sup>52</sup>See for instance: Transparency International, "Transparency in Corporate Reporting", 2012.

Due to their size, economic power and dependencies on continuous business relationships, SMEs typically have a smaller scope of influence on their business partners. Therefore, SMEs may have difficulties in enforcing their anti-corruption standards through measures such as the termination of the business relationships.

Nonetheless, SMEs are advised to conduct similar due diligence as described above, as legal liability, commercial disadvantages, or loss of reputation affect them as well. SMEs that lack expertise in due diligence may engage external consultants to conduct the initial risk assessment. Alternatively, SMEs may use a number of tools available, such as checklists, flowcharts of due diligence processes and possible red flags.<sup>53</sup> SMEs may also enhance their influence by engaging in collective action with other SMEs. This is also relevant as SMEs are mostly seen as business partners to larger companies, facing multiple compliance requests from their own partners. Engaging in a constructive dialogue (e.g. as part of a sectoral initiative) may help SMEs to decrease the burden of complying with multiple standards.

### Public reporting on the application of the anti-corruption programme to business partners

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact–Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on the application of the anti-corruption programme to business partners to:

- Outline the definition and scope of business partners (e.g. suppliers, agents, joint ventures);
- Describe how the company’s anti-corruption commitment extends to business partners as well as how anti-corruption commitments from its business partners extend to the company;
- Describe identified high-risk business partners by industry (e.g. public sector);
- Describe the coverage of the supply chain related to the extension of the anti-corruption policy (identified sizes or types of suppliers, producers);
- Specify detailed policies for business partners;
- Describe specific communication measures and actions, such as training taken to encourage business partners to implement anti-corruption programmes; and
- Describe the process of monitoring the effectiveness of such communication measures and actions.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

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<sup>53</sup>See for instance: Business Anti-Corruption Portal (Due Diligence Tools).

## Checklist

APPLICATION OF THE ANTI-CORRUPTION PROGRAMME TO BUSINESS PARTNERS	YES	NO	IN PROGRESS
All business partners are made aware of the company's anti-corruption policies and procedures.			
Subsidiaries over which a parent company has effective control are required to implement an equivalent anti-corruption programme.			
Affiliates are encouraged to implement an equivalent anti-corruption programme and mitigation options for the remaining risks are defined (including exit scenarios).			
The company should seek to apply its own or similar anti-corruption standards to the joint venture. Mitigation options for the remaining risks are defined (including exit scenarios).			
Agents and intermediaries are addressed by specific policies and procedures.			
Contractors and suppliers are addressed by specific policies and procedures.			
Due diligence is applied when a new business partner is selected.			
The scope and intensity of the due diligence is determined by the company's overall risk assessment as well as relationship-specific risk areas.			
Business partners are continuously monitored, with the extent, frequency and approach to this monitoring being determined by the risk assessment.			
Business partners are motivated to adhere to the company's standards by commercial, legal and reputational incentives and sanctions.			
The company publicly reports on the application of the anti-corruption programme to business partners.			



## G. Internal controls and record keeping

Business conduct should be based on mutual trust. Trust between a company's management and its employees is essential for a motivating work environment. In a similar way, it is important that there be trust between a company and its business partners. Management, employees and business partners should conduct their activities in accordance with the company's ethical values, even in situations that are not clearly defined by policies and procedures.

A company should ensure that all of its business activities are executed properly, especially those in high-risk processes such as financial reporting, procurement, sales and marketing. However, relying completely on trust that business processes and activities are properly executed may expose the company to the risk of significant negative consequences, such as severe legal fines due to the commission of corrupt acts by a single rogue employee. Negative consequences can also occur due to carelessness, lack of awareness or simple human error. In order to mitigate these risks, companies should not only continuously strive to foster a working environment that is based on its ethical values, but also establish a system of internal controls.<sup>54</sup> The main objective of a system of internal controls is to provide reasonable assurance as to the effectiveness and efficiency of a company's operations, the reliability of its financial reporting, and its compliance with applicable laws, regulations, and internal policies.<sup>55</sup>

As part of the overall anti-corruption programme, the system of internal controls helps to ensure that anti-corruption policies and procedures are carried out as intended by the senior management of the company. Internal controls are therefore not only a means of reducing the risk of corruption, but also a way to support management's responsibility to safeguard a company's assets and protect its employees and business partners from negative consequences.

This section describes major considerations as well as key elements of a system of internal controls. It addresses the responsibilities within the company to design, establish and evaluate the systems. Furthermore, it highlights the importance of maintaining accurate books and records as a part of an anti-corruption programme.

### Elements of a system of internal controls

The company's senior management and oversight bodies need to strike the right balance between a system of internal controls and trust in its employees and business partners. A balanced system needs to be risk-based and should avoid either excessive or insufficient controls. Excessive controls can have a negative effect on the organizational culture by signalling distrust to employees and possibly delaying business processes, while insufficient controls leave a company vulnerable to corruption.

<sup>54</sup>Biermann S. et al., "Compliance Intelligence", 2009.

<sup>55</sup>Committee of Sponsoring Organizations of the Treadway Commission, "Internal Control—Integrated Framework", 1992.

A system of internal controls should be established in all companies, even those with a strong and integrative organizational culture based on trust and integrity.

While the definition and composition of a system of internal controls may differ among companies, industries or countries, the underlying objective of such a system is typically the same: prevention and early detection of corruption. Such a system may consist of measures that are directly integrated into the underlying business processes (e.g. procurement) as well as measures that are applied to entire business units, departments or business partners. A system of internal controls often contains the following two elements:

- **Organizational measures:** Organizational measures are typically integrated into the underlying business processes, seeking to prevent corruption through policies and procedures related to the execution of day-to-day activities. Such measures include role descriptions, approval limits, separation of responsibilities (e.g. the approval of invoices is separated from the release of payments) and restricted access to sensitive business activities (e.g. approval of new suppliers).
- **Controls:** Controls are either applied to an overall entity (e.g. monitoring the execution of training or the existence of policies and procedures of a subsidiary) or integrated into the underlying business processes. Controls seek to prevent as well as detect corruption by supporting and monitoring the adherence to organizational measures.<sup>56</sup> Prevention controls restrict or deter incidents of corruption from occurring. For instance, the requirement to obtain an additional authorization before releasing a financial contribution to a political party is a prevention control. In contrast, detection controls seek to identify weaknesses and irregularities after the execution of work activities. Detection controls, for example, may be set up to monitor double or split payments to the same vendor in order to identify overpayments or circumventions of approval limits.

Controls can either be executed manually (e.g. counting of physical inventory) or automatically (e.g. computer-based access control).

Addressing risks of corruption often requires the interaction of different types of controls. For example, computer-based restrictions to circumvent payment limits (automated prevention control to avoid payment of charitable contributions over policy limit) can be complemented by physical checks of bank account information during monthly closing (manual detection control).

The elements of a system of internal controls, the determination of those responsible for its implementation and the information obtained during the execution of the system (e.g. detected violations and failures of controls) need to be adequately documented. Documentation enables learning and improvements of the system of internal controls.

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<sup>56</sup>Defining internal controls needs to be based on the identified risks during the overall risk assessment or due diligence activities (e.g. selection of business partners). The identified risks provide the basis to define control objectives and the actual control activities, which need to be executed. Risks, control objectives and derived control activities should be clearly defined, documented and assigned to a process owner in order to assess status, performance and identify improvement opportunities.

## Responsibilities for the system of internal controls

*Designing, implementing and maintaining the system of internal controls:* The senior management of the company is responsible for establishing and maintaining effective organizational measures and controls to prevent and detect corruption. Management may delegate tasks to designated departments, such as risk management, finance or procurement, particularly in relation to process-integrated measures. For this, management should assign “internal control owners”. For instance, whereas the compliance department may be responsible for executing manual and prevention controls in relation to the adherence to the company’s compliance training policy, the finance department may execute financial and organizational checks and balances over the company’s accounting and record keeping practices.

*Evaluating the system of internal controls:* The internal audit department (and external auditors) evaluate the reliability of internal controls on a periodic basis. The internal audit department is an independent department within the company whose main objective is to review the effectiveness, efficiency and balance of the established organizational measures and controls.<sup>57</sup> The independence of the internal audit department is fundamental to enable an objective and reasonable evaluation of the system of internal controls. Findings of the department should be reported to the Board of Directors (or to the Audit Committee).

*Oversight of the system of internal controls:* Responsibility for the assurance of the effectiveness of the system lies with the Board of Directors or similar governing body.

## Accurate books and records

A system of internal controls requires the maintenance of accurate books and records. The books and records are the basis on which checks and balances are performed under detection controls. These documents are also important to provide evidence in case weaknesses or irregularities are identified.

The term “books and records” does not only relate to the documentation of financial transactions (although this is of utmost importance, as described below). The term also includes other related records that document business relations or activities such as contracts or delivery receipts. A company should have a clear policy and supporting procedures (including internal controls) for maintaining accurate books and records, which include the following elements:

- All transactions, assets and liabilities should be accurately and fairly reflected in the company’s books and records, described in reasonable detail, and supported by original documentation.
- All transactions should be recorded only in the official books of the company. Off-the-books accounts should be prohibited.
- Transactions, assets and liabilities should be recorded on time and in chronological order.

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<sup>57</sup>More information on the topic of evaluation can be found in chapter III, section L.

- Books and records must be safeguarded to prevent intentional or unintentional destruction, improper or unauthorized alterations, or disclosures.
- Books and records should not be destroyed prior to the expiry of any time limit imposed by legal regulations.
- Every transaction should be consistently recorded from origin to completion.
- Transactions should have a genuine, legitimate purpose.
- Electronic records should be kept in a form that is non-erasable and non-rewriteable, be organized and immediately be produced or reproduced.

Corrupt payments are often made out of bank accounts or cash stocks that are not documented in a company's financial books and records (i.e. off-the-books accounts). Monetary cash in- and outflows should therefore be seen as a risk area that needs to be mitigated with proper books and record policies and supporting procedures such as internal controls for payment reconciliations and checks on payments to tax havens.

The United Nations Convention against Corruption highlights in article 12(3) the importance of maintaining books and records in order to prevent corruption by prohibiting a variety of acts such as the establishment of off-the-books accounts, the recording of non-existent expenditure, or the use of false documents. Books and records should be available for inspection by the Board of Directors or a corresponding body, as well as to internal and external auditors. Internal and external auditors may also scrutinize the company's bank accounts and the relations between company representatives and bank representatives (in order to assess potential conflict of interests).

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

SMEs need to establish an effective, efficient, and balanced system of internal controls. They should also have policies and procedures in place for maintaining books and records to reduce the risk of corruption.

Some SMEs may however lack the understanding of the benefits related to a system of internal controls. Rather, they may regard internal controls as a signal of distrust or as an expense that does not add value. SMEs may find it also difficult to ensure the effectiveness and efficiency of their measures, due to their more limited human and financial resources. For example, it may be difficult for SMEs to recruit individuals with the required financial or technical skills to establish and maintain internal controls and accurate books and records. Further, the senior management in SMEs often has the ability to override existing policies and procedures. SMEs often have less time and fewer resources for formal documentation, especially for organizational measures such as policies and role descriptions.<sup>58</sup>

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<sup>58</sup>Committee of Sponsoring Organizations of the Treadway Commission, "Internal Control over Financial Reporting—Guidance for Smaller Public Companies", 2006.

A further challenge for SMEs to implement preventive organizational measures is the centralization of responsibility. In contrast to large companies, critical business activities in SMEs may not be assigned to separate persons due to a lack of sufficient resources. This is not only relevant for day-to-day business activities, but also for the overall implementation and oversight of the programme. Since SMEs may be directed by only one central management, the effectiveness of the internal controls relies to a great extent on willingness and support from the top of the company.

A stringent risk-based approach may lessen the burden for SMEs, focussing even more on the effective and efficient implementation and execution of internal controls. The company may assign a dedicated manager to approve and review critical transactions and business activities (based on identified risk thresholds). Another option may be the utilization of automated control systems to execute routine checks and balances. Despite an initial investment, these systems may allow for cost savings over time as control activities are continuously executed. This automation may also permit a wider application of controls, reducing the likelihood of undiscovered discrepancies in sample audits.

One advantage that SMEs have due to their reduced complexity and the proximity among employees and business partners is that they may generally find it easier to detect wrongdoers. Closer interactions and a higher degree of interpersonal transparency can lead to a higher degree of social control.

### Public reporting on internal controls and record keeping

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact–Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on the system of internal controls and books and records to:

- Describe specific internal checks and balances such as approval policies and processes, audit plans, expense and invoicing guidelines, etc., aimed at detecting and/or preventing corruption and how these support the anti-corruption commitment;
- Describe how often these internal checks and balances are reviewed;
- Describe the internal controls policies and processes (e.g. frequency, scope of organizational coverage, degree of control automation, international frameworks used);
- Report whether internal and external audits have taken place; and
- Report on the specific mandates given to the audit function, internal and external where applicable.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

## Checklist

INTERNAL CONTROLS AND RECORD KEEPING	YES	NO	IN PROGRESS
A system of internal controls is put in place.			
The objectives of the system of internal controls are communicated to employees and business partners (e.g. safeguarding a company's assets).			
The system of internal controls is based on the company's individual risk profile and business circumstances.			
The system of internal controls strikes a balance, avoiding either excessive or insufficient controls.			
The system of internal controls consists of organizational measures and prevention, detection, manual and automated controls.			
The system of internal controls includes organizational measures and controls that are integrated into the underlying business processes and those that are applied to the overall company and business partners.			
The system of internal controls is designed, implemented and maintained by the company's senior management.			
The system of internal controls is evaluated by internal and external auditors on a regular basis.			
The effectiveness of the system of internal controls is assessed by the Board of Directors or a similar body.			
The elements of the system of internal controls, the determination of those responsible for its implementation and the information obtained during the execution of the system are documented.			
A formal policy outlines procedures to maintain accurate books and records (e.g. prohibition of off-the-books accounts).			
The company publicly reports on its system of internal controls and its practices in maintaining books and records.			

## H. Communication and training

Companies that establish an anti-corruption programme must not only ensure that their employees and relevant business partners are aware of their policies and procedures, but also that they have the necessary information and skills to identify and counter corruption-related challenges. Regular communication and training activities play a key role in increasing awareness and obtaining commitment to anti-corruption programmes.

This section describes considerations for conducting regular communication and training, and outlines the major types of such activities. The importance of public reporting is highlighted.

### Major considerations of communication and training

Communication and training on the company's anti-corruption policies and procedures should be directed at employees as well as at business partners over whom the company has effective control or a determining influence.<sup>59</sup> Companies may also consider including other relevant business partners, such as suppliers, in their communication and training activities to reduce the risk of corruption. For instance, a sales manager of an external supplier may seek to obtain an unfair advantage by offering a bribe to the company's procurement officer. Companies may consider making conformity with its anti-corruption programme a contractual obligation for high-risk business partners, and support this through communication and training activities.

Communication and training should also cover the internal recruitment and external hiring process. An awareness and understanding of the company's anti-corruption programme should be a criterion for recruitment or the initiation of a business relationship.

Communication and training should be provided on a regular basis. Based on its individual risk profile and tolerance, a company should decide whether to target all employees or only those that are likely to be exposed to corruption risks. Internal personnel may receive communications and participate in a mandatory standardized training at least once a year, so that the key messages of the programme remain high on everyone's agenda. Middle managers, having the highest and most frequent visibility for their employees, play an important role in delivering the key messages of the company's training and communication ("tone from the middle").

Employees and relevant business partners in high-risk processes such as procurement and logistics, high-risk industries or other risk areas may require more frequent and tailored communication and training. The specific requirements and frequency of communications and training should be based on the overall risk assessment.

<sup>59</sup>More information on addressing business partners can be found in chapter III, section F.

In addition to regular activities, communication and training can also be linked to special occasions or major events, such as:

- Updates on internal policies or external legal regulations;
- Organizational changes (e.g. a new Chief Compliance Officer);
- New internal guidelines or supporting tools;
- Annual meetings of shareholders;
- Seasonal events, e.g. special newsletter or training on gifts during the winter season;
- National or international anti-corruption events, e.g. International Anti-Corruption Day (9 December);
- Joining a voluntary initiative, such as the United Nations Global Compact, World Economic Forum Partnering Against Corruption Initiative (PACI), Extractive Industries Transparency Initiative (EITI), Construction Sector Transparency Initiative (CoST);
- News about anti-corruption initiatives of civil society organizations and business partners;
- Publication of the company's sustainability or corporate citizenship report.

Communication and training activities should be documented to enable the assessment of their effectiveness, efficiency and sustainability.<sup>60</sup> Records of the attendance of employees at training events should be kept to show in detail the amount of training each employee has received. This will allow the company to better defend itself if allegations of corruption occur.

### Types of communication and training

Communication and training activities on the company's anti-corruption policies and procedures should provide a clear and coherent message to employees and relevant business partners in the form of standardized communication and training. Companies should provide further tailored communication and training to address specific challenges and needs of particular groups (e.g. logistics officers facing extortion demands).

Standardized communication and training highlights the company's overall commitment to zero-tolerance of corruption. It should include information on policies and procedures as well as their underlying rationale, objectives and processes. Explanatory background information on the reasons for the programme itself should be provided to enhance the understanding for the need of such policies and procedures and the different situations in which risks of corruption may occur.

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<sup>60</sup> More information on the evaluation of the anti-corruption activities can be found in chapter III, section L.



Communication and training should be supported with messages from the company's senior management and oversight bodies. Practical examples are important to demonstrate the coherence between an individual's actions and the company's norms and values (e.g. by giving special recognition of an employee that successfully coped with a challenging situation).

Standardized communication and training often uses common media channels for self-study, such as websites, emails, newsletters or computer-based training courses.<sup>61</sup> These media channels allow for an easy and cost-effective distribution and documentation.

Ideally, standardized communication and training can be delivered to various audiences, adapted as needed in terms of language and media channels.

Tailored communication and training should be provided to selected employees and business partners, addressing their particular corruption-related challenges. This may include role-play training to enable employees to react properly to solicitation or extortion requests by a client, business partner or public authority. Additionally, companies may provide tailored training on due diligence processes for suppliers and information on local anti-competition or data protection regulations.

Certain elements of the standardized communication and training may also require a tailored approach that takes cultural or regulatory characteristics into consideration. A typical example is that the acceptance and use of whistle-blowing channels for reporting corruption concerns may vary greatly among regions, and thus may not be suited to a global, standardized communication and training approach.

Tailored communication and training activities also employ common media channels for self-study, but often require an increased interaction between colleagues and peers. Discussing challenging situations and individual experiences in classroom teaching, external courses, seminars and conferences can significantly increase the understanding and value of the overall communication and training.

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

Given the limited resources of SMEs, communication and training is of paramount importance for the success of their anti-corruption programmes. Personal communication from the company's management or their participation in training underlines the company's commitment to the programme. Training also offers opportunities to discuss concerns or challenges. SMEs should capitalize on their reduced complexity and make communication and training more direct in order to increase the understanding and acceptability of their policies and procedures.

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<sup>61</sup>See for instance: United Nations Office on Drugs and Crime and United Nations Global Compact e-learning tool for the private sector "The fight against corruption" (<http://thefightagainstcorruption.org>).

Nevertheless, SMEs may face resource constraints in developing the content and distribution channels for their communication and training activities. SMEs may consider a variety of options to ease such burdens:

- *Participate in supply chain trainings:* SMEs that are part of a supply chain of a larger company may request to participate in trainings or to receive communications. Attention should be paid to ensure that the training content suits the requirements of the SMEs anti-corruption programme.
- *Use communication and training material that is available free-of-charge:* The global anti-corruption community offers a rich set of guidelines, tools and training modules free of charge, such as the paper-based training tool “Resisting Extortions and Solicitations in International Transactions” (RESIST) or the e-learning platform “The Fight Against Corruption”,<sup>62</sup> developed by UNODC and the United Nations Global Compact, which offers interactive learning modules on a number of key topics, including facilitation payments or the use of middlemen and lobbyists.
- *Apply a train-the-trainer approach:* A small number of employees can attend an external anti-corruption training, and then convey the information to other internal colleagues.
- *Establish interest groups:* SMEs can jointly combine their efforts for trainings through collaboration with a local chamber of commerce or trade union.

Training and communication is often the most cost-effective way for SMEs to support the effective implementation of the anti-corruption programme.

### Public reporting on communication and training

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact-Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on communication and training to:

- Describe internal communication of the programme such as anti-corruption campaigns, management communications, departmental meetings, publications, business conduct guidelines, internet or intranet resources;
- Provide monitoring measures such as results of surveys of employee attitudes, publications in local languages;
- Describe the frequency of such communications (e.g. quarterly, annually);
- Describe anti-corruption training initiatives; and
- Explain whether the communications and/or the training resources have been translated into multiple languages and if so, describe the principal languages.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

<sup>62</sup><http://thefightagainstcorruption.org>

### Checklist

COMMUNICATION AND TRAINING	YES	NO	IN PROGRESS
Communication and training are directed at all employees and relevant business partners.			
Communication and training are included in the internal recruitment and external hiring process.			
Communication and training are provided on a regular basis.			
Communication and training are aligned to the outcomes of the risk assessment (e.g. regular review of content).			
Standardized communication and training provide information on the scope and relevance of the overall programme to employees relevant and business partners.			
Standardized communication and training use appropriate media channels, such as websites, emails, newsletters, company magazines and annual reports.			
Tailored communication and training address the challenges and needs of employees and relevant business partners engaged in high-risk processes, industries or locations.			
Tailored communication and training are conducted in an interactive approach (e.g. classroom teaching).			
Communication and training are documented, monitored and assessed for effectiveness and efficiency.			
Special occasions or major events (e.g. organizational changes, new internal guidelines, joining a voluntary initiative) are used to emphasize objectives and importance of the anti-corruption programme.			
The company publicly reports on its communication and training activities.			

## I. Promoting and incentivizing ethics and compliance

Commitment from employees and relevant business partners to the company's policies and procedures is a key determinant of the programme's success. In practice, companies often design and implement an anti-corruption programme according to good practice standards, but fall short in terms of encouraging employees and business partners to comply with its values and norms.

Incentive schemes are an option that can be employed to support the acceptance of the overall anti-corruption programme and sustain its major objective, to reduce corruption.

This section outlines the rationales and challenges for including an incentive scheme in a company's anti-corruption programme to motivate internal employees as well as relevant business partners.

### Rationales for incentivizing ethics and compliance

Incentives seek to increase desired behaviour and to improve performance. Incentives are a well-established practice throughout business operations, e.g. in the areas of sales or marketing. Incentives send strong signals about what the company regards as important. A company may consider including an incentive scheme in its anti-corruption programme to signal the importance of the programme and to promote commitment and support for it.<sup>63</sup>

Incentives can address employees as well as business partners such as key suppliers. Providing incentives can be especially helpful in order to encourage adherence to the anti-corruption programme by business partners over which the company has no effective control. Incentives, such as a preferential supplier status, can stimulate a business partner's compliance with the company's policies and procedures.<sup>64</sup>

### Types of incentives

Companies can combine financial and non-financial rewards in their incentive schemes to foster ethics and compliance.

- *Financial rewards* for employees can include pay increases, bonuses, promotions, gifts or vouchers. Financial rewards for business partners can consist of preferred access to business opportunities and preferential commercial conditions.

<sup>63</sup>Incentives as part of an anti-corruption programme have been included by several national standards. For instance, the US Sentencing Guidelines include the provision of incentives as a criterion for an effective compliance and ethics programme that can establish eligibility for mitigated punishment in sentencing (United States Sentencing Commission, "US Federal Sentencing Guidelines Manual and Supplement", 2010, Chapter 8—Sentencing of organizations, §8B 2.1, Effective Compliance and Ethics Program (6)).

<sup>64</sup>More information on addressing business partners can be found in chapter III, section F.

- *Non-financial rewards* can include recognition awards for employees and business partners, celebration of activities in company journals, access to executive education courses, personal acknowledgment by senior management or peer recognition.

The choice of incentives should reflect the organizational culture of the company. In order to ensure that the incentives encourage employees and business partners to comply with the programme, a company may seek to involve them in establishing a catalogue of financial and non-financial rewards.

### Assessing ethics and compliance

Existing human resources policies often link financial and non-financial rewards to some form of productivity performance targets such as financial goals, error reduction rates, productivity targets or the number of new customers. Incentives for ethical and compliance-driven behaviour should be integrated into these human resources policies and performance evaluation processes (annual reviews, feedback sessions, or periodical assessments). For this, performance targets concerning compliance and ethical behaviour need to be established. The performance targets, as well as evaluation criteria and the different levels and types of incentives, should be transparent and clearly documented in human resources policies.

Incentive schemes should exclusively apply to evaluations based on objective criteria which are comparable and measure performance regarding the anti-corruption programme,<sup>65</sup> such as:

- Participation and performance in compliance trainings;
- Level of active support and development of the company's anti-corruption programme;
- Compliance-related approvals;
- Knowledge of the company's values and norms (e.g. Code of Conduct);
- Willingness to question or reject dubious conduct or proposals.<sup>66</sup>

Evaluations that seek to measure criteria such as personal values, impressions or perceptions should be avoided since these relate to personal character and mindset. The evaluation of these kinds of criteria is necessarily subjective and susceptible to unfairness and arbitrariness.

<sup>65</sup>J. Murphy, "Building incentives in your compliance and ethics program", Society of Corporate Compliance and Ethics White Paper, 2009.

<sup>66</sup>The "willingness to question/reject dubious conduct or proposals" as a criterion for evaluating integrity and compliance implies that employees are rewarded for abstaining from deals involving corrupt practices. This presumes that employees do not experience any disadvantage for refusing to engage in corruption even if such refusal may result in the company losing business. The underlying challenge of this principle is the proof that the business was lost because of the rejection of corruption. The employee may be required to prove the demand for a bribe or other type of corrupt act from the part of the business partner.

Managers or supervisors should be evaluated according to the degree to which they promote the above-mentioned criteria among their subordinates. For instance, managers can be evaluated according to the number of subordinates who have completed the compliance training in a certain period.

Incentives can be offered to individuals as well as to internal or external teams, groups, or departments. For example, companies can recognize internal departments that have contributed extra effort to the anti-corruption programme or business partners that have completed their due diligence requirements ahead of time. Rewarding behaviour of teams and groups can be beneficial as it increases individual attention to the behaviour of colleagues and creates peer pressure. This may lead to a strengthened social control which can complement the system of internal controls.

Amendment of existing incentives schemes may be necessary if adherence to the anti-corruption programme results in “unbalanced” incentives. Unbalanced incentives may arise if existing productivity-based incentive schemes induce performance pressures that make it difficult to observe ethics and compliance. For instance, financial incentives encouraging a continuous reduction in the time taken to execute a sales transaction may cause employees to neglect or inaccurately execute due diligence policies. This may increase the risk that employees engage in ambiguous business transactions, especially if the financial incentive represents a substantial percentage of their overall remuneration. To avoid this risk, financial incentives should appraise both performance results and business practices.

### Challenges when incentivizing ethics and compliance

Implementing incentive schemes to encourage ethics and compliance is seen by some experts as controversial or even counterproductive. Companies that consider using incentives to strengthen the values and norms of their anti-corruption programme should, therefore, consider and address the following challenges:

- *Balancing performance targets and incentives.* Any incentive scheme bears the risk of abuse which needs to be addressed through adequate controls. The stronger the incentive, the stronger the controls that are needed. Although incentives need not be excessive in order to ensure that employees do not focus only on achieving performance targets, they should not be too weak either. A small reward for a great effort can easily be perceived as offensive. The selection of incentives that are relevant and proportionate to the desired performance is a key factor in the success of incentive schemes.
- *Rewarding expected behaviour.* When introducing incentives for ethics and compliance, companies may be confronted with the claim that behaviour which should exist anyway should not be rewarded. Although this may seem to be based on a high moral stance, the argument ignores practical aspects and fails to take local and cultural differences into consideration. Incentive schemes may support ethical and compliant behaviour which is not self-evident for every person and may help to foster behavioural standards and motivation. Incentive

schemes can also reward outstanding performance and activities which support the anti-corruption programme. Voluntary activities to further develop and promote the anti-corruption programme should not be expected as part of regular work tasks and thus can similarly be rewarded.

- *Reducing intrinsic motivation.* Some studies suggest that an incentive might be perceived as a bribe itself, when employees feel that the incentive requires them to behave in a way they would not normally do. It should be acknowledged that this argument has some validity in relation to financial incentives.<sup>67</sup> The positive effects of non-financial appraisals have been largely ignored in empirical studies. Furthermore, incentive schemes that have the effect of reducing intrinsic motivations are likely to have been designed inappropriately. It is also important that an incentive scheme exists in conjunction with an appropriate sanction scheme.<sup>68</sup>
- *Subjectivity in evaluating performance.* Employees and business partners should be aware of objective criteria that will be used to evaluate performance since subjective perceptions of compliance and ethical behaviour can differ. It is important to prevent situations where a reward is mistakenly expected for certain behaviour or performance as this may result in disappointment and discouragement. Transparent and objective evaluation criteria can mitigate this risk.
- *Unequal opportunities.* It is critical that the incentive scheme is not seen as unfair amongst employees and business partners. Equal opportunities should be given to engage in the anti-corruption programme and to receive recognition. Schemes that are not perceived to be fair and those that are limited to high-profile positions can lead to counterproductive effects.
- *Rewarding whistle-blowers.* The reason for rewarding persons who report acts of corruption is to ensure that employees and external parties are encouraged to take action when witnessing an infringement of the company's policies by a colleague or business partner. Individuals may refrain from reporting because they are afraid of retaliation. Encouraging whistle-blowers to use reporting channels to inform about misconduct may therefore reduce the fears of retaliation. However, rewarding whistle-blowing may also create the risk of leading employees to turn against each other by making false claims. It may also decrease the trust and morale among employees and business partners. Companies that choose to reward whistle-blowers should carefully analyse possible side effects, involve employees and other stakeholders in the risk assessment and define appropriate incentives for whistle-blowers.

<sup>67</sup>Non-financial incentives, e.g. personal recognition, integrity award or alike, are unlikely to be perceived as bribes because they are not based on the exchange of material benefit and are not perceived as a persuasive or coercive tool ("Rethinking rewards", Harvard Business Review, 1993, Nov/Dec, Vol. 71 Issue 6, p.37, A. Kohn, "Why incentive plans cannot work", Harvard Business Review, 1993, Sep/Oct, Vol. 71 Issue 5).

<sup>68</sup>More information on sanction schemes can be found in chapter III, section K.

## Challenges and opportunities for small and medium-sized enterprises (SMEs)

Promoting and incentivizing ethics and compliance are as important in SMEs as they are in large companies. The provision of financial incentives may imply a strong financial burden to SMEs. To address this concern, SMEs may focus on the provision of non-financial incentives for ethical and compliant behaviour. Because of the limited number of employees, SMEs generally enjoy a higher degree of familiarity and stronger personal bonds than large, multinational companies. Therefore, non-financial incentives can be a more effective way to recognize ethical and compliant behaviour of employees. The emphasis on non-financial rewards may also result in lower levels of financial and operational controls and less bureaucracy in providing rewards.

A smaller number of employees also make it easier for senior management to signal acknowledgement in an informal way. The lower degree of formality can have a stronger effect on employees as the incentive is not perceived as a standard procedure but rather as sincere and genuine gratitude and acknowledgment. The small number of staff also allows for the employees to be more involved in the choice of possible incentives, making the incentive scheme more appealing.

If non-financial incentives are selected to promote ethical and compliant behaviour, consideration should be given as to whether these are balanced with the incentives given by the company for performance. An overly strong emphasis on financial incentives for performance may impact negatively on the value of non-financial incentives for compliance.

All companies, independent of their size, need to ensure that their communication strategy clearly addresses the above-mentioned challenges, when establishing an incentive scheme for ethics compliance.

## Public reporting on promoting and incentivizing ethics and compliance

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact-Transparency International "Reporting Guidance on the 10th Principle Against Corruption"*, can assist companies to report on promoting and incentivizing ethics and compliance to:

- Describe how the company implements effective personnel policies and processes that support the anti-corruption commitment, including references to how these were developed (e.g. appraisal, remuneration and recognition procedures).

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.



## Checklist

PROMOTING AND INCENTIVIZING ETHICS AND COMPLIANCE	YES	NO	IN PROGRESS
Incentives for ethics and compliance are applied to employees and business partners.			
The incentive scheme includes financial and non-financial rewards.			
The incentive scheme is developed with the participation of employees and relevant business partners and reflects the organizational culture of the company.			
The incentive scheme is integrated into existing human resources policies and performance evaluation processes.			
Performance evaluation is based on objective and comparable criteria, and does not take personal values, subjective impressions or perceptions into account.			
Managers or supervisors are evaluated according to the degree to which they promote the anti-corruption programme among their subordinates.			
Incentives are offered to individuals as well as to internal or external teams, groups, or departments.			
Incentives for financial productivity do not conflict with incentive schemes for ethics and compliance.			
The incentive scheme is adequately controlled to prevent abuse of the scheme.			
The evaluation criteria are clearly articulated and transparent to all employees and relevant business partners.			
The incentive scheme addresses common challenges (e.g. subjectivity in evaluating performance, unequal opportunities).			
The company publicly reports on its measures to promote and incentivize ethics and compliance.			

## J. Seeking guidance—detecting and reporting violations

Even companies with effective anti-corruption programmes may face violations of their policies and procedures from employees or business partners. Recent years have also seen an increase in legal and reputational risks for companies which are associated with violations by business partners. Companies must therefore establish effective and efficient ways for detecting violations, while balancing risk and controls. Detecting and professionally investigating and sanctioning violations are central elements of an effective anti-corruption ethics and compliance programme. The detection of violations should therefore be seen as a positive indication that the programme is working and not as a failure of a perfect system.

Companies also need to provide opportunities for employees and business partners to seek guidance or to report violations, either committed by that person or by others. In many cases, providing guidance and support with policies and procedures forms an important part of the compliance department's daily tasks and work load.

**This section outlines internal and external measures to detect and report violations and to seek advice or suggest improvements to the anti-corruption programme.**

### Seeking guidance

Companies should provide a way for employees and business partners to raise questions, seek advice or suggest improvements to the anti-corruption programme. This can be accomplished either through the designation of a dedicated person or department within the company or through a designated hotline. Supporting employees and business partners in the practical interpretation of the company's policies and procedures facilitates communication and trust between compliance management and individual employees and business partners. It also helps to identify major areas of concern where additional support and training (e.g. in relation to the provision of gifts to business partners) may be needed.

Companies can establish an internal hotline that may be referred to as a help hotline or another similar neutral expression. A help hotline may also be provided by external services providers.

### Detecting violations

Companies can use a number of internal and external sources to detect violations of their anti-corruption policies and procedures.

Companies may prefer the detection of violations through internal sources to avoid possible negative consequences related to violations such as the damage to reputation from public reports on corruption. This may include the ability to respond to allegations of wrongdoing with its own fact-finding mechanism and related procedures. However, such internal investigations are often perceived as being invasive, both in the sphere of business and in the private sphere of the employees. They are therefore

often viewed with suspicion and fear. To counter this and other perceptions, it is sound practice to ensure as much transparency as possible surrounding the topic of investigations. This is best achieved by graphically mapping out a process that clearly depicts the key investigative steps and outlining who is responsible for each step, as well as demarcating the interphases with other departments. The steps may include obtaining a mandate to conduct an internal investigation, research and planning of the investigation, and the actual investigation and the reporting and legal evaluation (e.g. regarding the cooperation with authorities, as outlined in section L). This transparency serves to dispel any disquiet amongst the employees, and can also be used to explain to other stakeholders, management, trade unions, etc. what they can expect when an internal investigation is conducted. The mapping also facilitates clarity and guidance as regards the daily work of an investigator.

Internal sources for detecting possible violations or irregular practices	External sources for detecting possible violations or irregular practices
<ul style="list-style-type: none"> <li>• Internal controls</li> <li>• Internal investigations</li> <li>• Internal audit</li> <li>• Internal hotline for guidance and reporting</li> <li>• Ombudsman</li> </ul>	<ul style="list-style-type: none"> <li>• External auditors</li> <li>• Complaints and concerns from other external parties</li> <li>• Media reports</li> <li>• Ombudsman</li> </ul>

The investigation process should also be based on sound principles enshrined within the rule of law which include, for example, the presumption of innocence, the right to be heard, and the preservation of integrity of an investigation through the “need to know”.<sup>69</sup> The protection of the confidentiality related to persons or content also demonstrates respect for data privacy legal requirements. Finally, companies need to ensure that this preference for detection through internal sources does not impede the development of a trust-based environment.<sup>70</sup>

<sup>69</sup> A fundamental principle of professional investigations is that the integrity of the investigation must be protected in every instance; the protection in question relates not only to the information received during the investigation, but also to the people that are or may be involved. Hence, in adherence to this strict principle of confidentiality, information related to any investigation is only shared sparingly and in strict adherence to the “need to know” principle, i.e., only with those employees who in the ordinary course of their business require this information so as to avoid unnecessary disruption to the activities of the company. In the application of this principle usually only senior management is informed at the commencement of an investigation in their business area. However, during the investigation, should any risk to the business, the employees or the reputation of the company become apparent, senior management will be advised immediately in every case. In cases in which no imminent risk is identified, there is no “need” to advise the management until the final report is available and appropriate measures need to be taken. Adherence to this principle contributes to providing high levels of assurance to the employees of all ranks of the professionalism of an investigative office.

<sup>70</sup> More information on balanced controls can be found in chapter III, section G.

Senior management should receive periodic reports of detected misconduct or irregular practices, combined from internal and external sources.

### Reporting violations

The reporting of violations—often referred to as whistle-blowing—can be defined as the disclosure of information about actual or perceived corruption in the company to individuals or bodies believed to be able to effect action.<sup>71</sup> Reporting persons have been recognized as an important source for the detection of misconduct because corruption can involve a high degree of complexity and a sophisticated system to obscure evidence. The reporting of violations can be highly valuable in combating corruption as the reporting persons are usually insiders who can provide information which would not be detected or available through the company's internal control system. The information may not always constitute evidence but it may provide an indication of a wrongdoing and lead organizational authorities to launch an investigation. Companies can develop a set of support mechanisms in order to facilitate the reporting of violations.

Violations can be reported directly to superiors or to the company's compliance department. Alternatively, since employees may not always feel comfortable proceeding in this way, companies can designate a highly trusted person as an ombudsman. Companies can also establish an internal reporting hotline. Such a reporting hotline may also be provided by external service providers.

The compliance department, internal reporting hotlines or an ombudsman can encourage the reporting of violations by employees and business partners in confidence and without risk of retaliation. The latter point is of utmost importance when establishing effective reporting mechanisms. Companies need to address the risk of retaliation for those reporting misconduct by their colleagues, peers or superiors. Studies have revealed that the fear of retaliation, which could take the form of job loss, harassment by peers or restrictions on conditions and access in the work place, is the main reason why potential informants choose to stay silent.<sup>72</sup> In order to alleviate the fear of retaliation, companies can encourage reporting by establishing a policy clearly stating that the reporting of violations and incidents that are witnessed is expected. Such a policy should explicitly state that no employee or business partner will suffer discrimination or dismissal due to the lawful reporting on misconduct related to corruption.

This clear communication that reporting violations is expected and protected should be accompanied by the actual protection of reporting persons and their information. This requires that every report be taken serious and handled confidentially. If deemed appropriate, companies can provide anonymous and confidential channels to employees or business partners. The importance of the protection of witnesses, experts,

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<sup>71</sup>This definition has been derived from the definition proposed by Transparency International, "Alternative to Silence—Recommended Principles", 2007.

<sup>72</sup>M.P. Miceli, J.P. Near, "What makes whistle-blowers effective?" *Human Relations*, 2002, Vol. 55 (4); US National Business Ethics Survey, "Retaliation: The cost to your company and its employees", 2009.

victims and reporting persons (persons who report in good faith and on reasonable grounds) is also emphasized in the United Nations Convention against Corruption, articles 32 and 33.

The reporting of violations may be a sensitive subject due to cultural, legal and political reasons (e.g. reporting persons may be perceived as traitors or informants).<sup>73</sup> The social perception of reporting persons should be taken into account when companies seek to design reporting measures. Reporting channels should fit the specific organizational culture as well as the external social context of the company. Companies may need to invest different degrees of effort to develop a positive image of the reporting of violations among its employees. In this respect, reporting should be included as a discussion subject in training courses and communication.<sup>74</sup>

Companies should ensure that the information provided by reporting persons is handled with a fast and structured follow-up procedure and that any further course of action undertaken is communicated to the reporting person. If individuals feel that reporting does not lead to any action, they may be discouraged from doing so in future cases or they may go outside the company to report.

### Challenges and opportunities for small and medium-sized enterprises (SMEs)

SMEs should seek to promote the detection and reporting of violations as vigorously as large, multinational enterprises do.

SMEs may not have sufficient resources to establish their own help and reporting hotlines or an independent internal audit department. SMEs can commission external service providers to provide such hotlines.

The detection of incidents may rely more on self-reports or on external parties. This may increase the need for SMEs to establish a strong organizational culture based on trust and integrity, requiring that even more emphasis be placed on the “tone from the top”.

Due to their smaller number of employees, SMEs may have an advantage in detecting violations. The higher level of social control in this environment may decrease the risk of violations and also increase the probability that violations are detected.

### Public reporting on seeking guidance, detecting and reporting violations

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact—Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on seeking guidance, detecting and reporting violations to:

<sup>73</sup>Transparency International, “Alternative to Silence—Recommended Principles”, 2007.

<sup>74</sup>More information on training and communication can be found in chapter III, section H.

- Describe individual solutions already implemented or envisaged;
- Provide statistics of the use of the whistle-blowing, advice or hotlines; and
- Specify a break-down of the types of inquiries, provided this will not lead to a breach of confidentiality or security for the reporting employees.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

Checklist

SEEKING GUIDANCE—DETECTING AND REPORTING VIOLATIONS	YES	NO	IN PROGRESS
The company provides a secure and easily accessible help hotline or a dedicated person/ department to support employees and business partners in the practical interpretation and implementation of the company’s policies and procedures.			
All possible internal and external sources are identified that can be used to detect violations.			
Measures are put in place to ensure that disproportionate internal controls do not impede the maintenance of a trust-based culture.			
The company provides a secure and easily accessible reporting hotline and/or ombudsman to encourage the reporting of violations.			
It is clearly stated that employees and business partners are expected to report violations of the anti-corruption programme.			
It is clearly stated and communicated that employees and business partners do not suffer any discrimination or dismissal for reporting violations in good faith and on reasonable grounds.			
Persons reporting as well as the persons who are the subject of allegations or concerns are treated with confidentiality and have access to legal advice.			
The reporting of violations is addressed in trainings and communication.			
Senior management receives periodic reports of detected violations or irregular practices.			
The company publicly reports on its policies and procedures for seeking guidance, detecting and reporting violations.			

## K. Addressing violations

When violations of the company's anti-corruption policies and procedures are reported or detected, it is crucial to address these violations in order to demonstrate the company's commitment to zero-tolerance of corruption. How a company addresses violations or irregular practices determines the credibility of its anti-corruption programme among employees and business partners. Effective processes to deal with violations also help companies to avoid negative consequences by law enforcement and any reputational damage to the company. Companies should address violations as possible learning and improvement opportunities for their anti-corruption programme.

When violations are discovered, companies also need to decide whether to cooperate with law enforcement authorities, not only in the country where the alleged corrupt act has been discovered, but also with the authorities of other jurisdictions in which the company operates.

This section shows how companies can address violations to strengthen their overall commitment and to continuously improve their anti-corruption programme. This section also outlines the various possibilities for companies to cooperate with authorities, incentives for cooperation and challenges companies may face in doing so.

### Prepare for effective responses to violations

In order to deal with violations appropriately, companies should establish a clear and transparent disciplinary policy. A disciplinary policy ensures that violations are addressed in a fair, purposeful and accountable way. A disciplinary policy should address all employees and relevant business partners. It should contain:

- A catalogue of sanctions
- Guidelines on procedures and responsibilities
- An opportunity to appeal

#### Catalogue of sanctions

Sanctions that may be imposed to penalize employees and business partners who violate the company's anti-corruption policies and procedures need to be defined. Sanctions may include the forfeiture of compensation, transfer to another position, dismissal, or the termination of a contract. Sanctions should not only penalize the corrupt act itself, but also the lack of adherence to the company's practices (e.g. circumvention of critical internal controls). Appropriate sanctions serve the purpose of disciplining infringements, preventing and discouraging future violations of the wrongdoer and deterring others from engaging in similar misconduct.

A catalogue of sanctions may include both financial and non-financial sanctions. Several factors should be considered when establishing sanctions:



*Sanctions should be consistent with applicable laws.* Sanctions should be designed to deter potential wrongdoers from violating the company’s anti-corruption programme. Sanctions should be in compliance with applicable laws and good practice standards and designed to be dissuasive in nature and scope.

*Sanctions should be relevant and proportionate.* Sanctions that are too minor may be disregarded entirely. Sanctions that are too severe, in contrast, run the risk that employees will refrain from reporting irregularities. Ideally, companies would establish a sanction catalogue which lists possible sanctions for the different levels of severity of the infringements. Companies may request feedback on the catalogue by employees and business partners in order to establish relevant and proportionate sanctions.

*Sanctions should be applied in practice.* Companies which have established disciplinary policies should underscore their deterrent effect by making appropriate use of the sanctions in practice. Sanction schemes which exist only on paper undermine, rather than strengthen, the anti-corruption programme. If sanctions are not applied rigorously at all levels of the company, the overall programme will lose its credibility.

*Sanctions depend on effective controls.* Sanctions will only have a deterrent effect if the detection of violations is perceived as realistic. Companies should ensure that internal controls are effective and reliable in order to support credibility of sanctions. An anti-corruption programme must therefore contain both sanctions and a system of internal controls, as neither can function without the other.

*Sanctions should exist next to incentives.* The dual application of reward and punishment is commonly known as “carrot and stick” approach. It has been shown that policies and procedures that reward good behaviour with “carrots” and punish wrong behaviour with “sticks” are more effective than policies that only apply either sanctions or incentives.<sup>75</sup>

#### Guidelines on procedures and responsibilities

A guideline that sets out the relevant procedures and responsibilities supports a fair and transparent response to incidents, avoiding the subjectivity and arbitrariness of situational reactions. The guideline on procedures and responsibilities should address:

- Criteria for the determination of the level of severity of a violation (scale, scope, whether it was an attempt or a completed act);
- Link between the level of severity and the disciplinary sanctions (violator’s disciplinary history, including past misconduct in similar cases or a disregard for other policies or procedures);
- Mitigation of sanction for self-reporters (e.g. reduction of sentence or amnesty programme);

<sup>75</sup>HUMBOLDT-VIADRINA School of Governance, “Motivating Business to Counter Corruption—Using sanctions and incentives to change business behavior”, 2013.

- Assignment of the responsibility to investigate alleged or discovered violations;<sup>76</sup>
- Processes and regulations that are to be observed during the investigation (e.g. data protection rights, labour laws);
- Internal communication of the incident (e.g. by the human resources department);
- External cooperation with authorities (see below); and
- Monitoring of progress and documentation.

The guideline should be publicly available and communicated to all employees and relevant business partners.

#### Opportunity to appeal

The opportunity to appeal disciplinary decisions is an important right which should be provided to employees or business partners. The opportunity to appeal ensures fairness of sanctions and disciplinary procedures.

Companies may also consider setting out criteria to provide for opportunities to mitigate sanctions (e.g. for the provision of additional undetected information). Such mitigation incentives may be perceived as a signal of trust which can motivate violators to adhere to policies and procedures in the future.

### Respond to violations

Companies should adhere to their policy of zero-tolerance of corruption and penalize misconduct, independent of its scale and scope. Misconduct that is commonly perceived as small or inconsequential should be appropriately penalized to express that the company will not tolerate any wrongdoings. This may even be the case where the violation did not result in any financial or other loss, but where established practices have been neglected or circumvented. Tolerating small violations may signal that the company is only focused on avoiding large corruption schemes, and this can make it difficult for employees and business partners to determine whether a practice is tolerated despite its formal prohibition.

Whenever an attempted or completed violation is detected, companies need to respond unequivocally in accordance to their disciplinary policies by:

- Applying sanctions to employees and (if relevant) business partners;
- Notifying internal and external authorities; and
- Deciding on remedial actions.

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<sup>76</sup>Investigations may be assigned to a specialist function such as internal audit, legal or security experts depending on type of allegation. In certain cases, responsibility for the investigation may be outsourced to a special team such as an external auditor. This can be advantageous if special expertise and the avoidance of conflicts of interest is regarded to be helpful.

## Applying sanctions

*Sanctions for employees* may include monetary fines, decreases in remuneration, non-promotion, the transfer to a lower position, or the termination of the employment contract. Companies should avoid delaying the termination of employment for high performing staff or senior management. It is also suggested that companies avoid the option of asking an employee to resign instead of terminating the employment, as this might send a weak signal as to the rigour of disciplinary actions.

*Sanctions for business partners* may include the termination of the relationship, exclusion from business opportunities (e.g. debarment) or the assignment of an unfavourable commercial and operational condition (e.g. higher due diligence requirements).<sup>77</sup>

Companies may also consider, on a case-by-case basis, making a public announcement of a sanction in order to send a strong signal to stakeholders and deter potential wrongdoers. The application of sanctions must be based on the company's disciplinary policy, following objective and transparent processes.

## Notification of violations

Severe violations by employees should be communicated across the company, ensuring that all relevant departments are aware of the violation. In this way, a violation by an employee, detected by the company's compliance department, should be known to the human resources department or training department which may initiate disciplinary or remedial actions. Severe violations by business partners, detected by the internal audit department or other sources, should also be reported to the relevant functional departments (e.g. procurement, investor relations). Standardized internal reporting may facilitate the exchange of information across departments and regions.

In some cases, an internally detected violation may be referred to external law enforcement authorities and/or other related parties (e.g. contractual business partners). Proactive notification of violations may result in favourable treatment, such as the mitigation of sanctions. Companies should take the national legal regulatory framework into account when notifying external authorities of violations.

## Deciding on remedial actions

The detection of an attempted or actual violation should also be regarded as an opportunity to identify possible areas of improvement of the anti-corruption programme or even the underlying business processes. For example, a procurement violation such as an intentional fraudulent payment is a violation of the company's anti-corruption policies, but it may also indicate process deficiencies in procurement (i.e. inappropriate payment approvals or vendor management). Incidents should be analysed to determine remedial actions for the anti-corruption programme, which

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<sup>77</sup> More information on involving business partners in anti-corruption can be found in chapter III, section F.

could include improving the internal control environment, increasing training and communication or adjusting the overall disciplinary policy.

- The internal control environment may require a review if the violation was detected by sources other than the established internal financial and operational controls. Violations may indicate that existing internal controls should be more frequent, more in-depth, or designed differently. They may also indicate that existing controls are inefficient and need to be replaced with a set of new controls.
- Additional training and communication should be considered if the violations analysed indicate a stronger need for support. Responses to violations that indicate an unawareness of the wrongdoing (e.g. in the case of facilitation payments), should result in additional tailored training to increase awareness and knowledge. Analysis may also indicate that while an employee or business partner was aware of the wrongdoing, he or she was not able to act against an ethical dilemma (e.g. extortion request).

Frequent violations may indicate that the anti-corruption programme is not supported by an adequate “tone from the top” or that the formal communication does not correspond to the informal communication and perception of the programme. This needs to be corrected through strong and repetitive communication activities emphasizing that anti-corruption is the responsibility of all employees (e.g. by using practical cases as part of the training). In cases where the violations were incurred by business partners, a company may wish to review its external communication strategy and re-evaluate its effectiveness.

- The company’s disciplinary policy should also be reviewed, as the sanctions may not be persuasive enough to deter wrongdoings or the policy may be perceived as being weakly enforced.

All incidents should be documented in order to facilitate future monitoring (including improvement activities) and to enhance communication and training. Furthermore, documentation enables comparisons to be made across departments, regions, or even with external parties. Relevant documentation may include the source of the information, to whom it was reported within the company and how these individuals responded to the incident.

### Cooperate with authorities

While there may be no specific legal duty to report violations to authorities (e.g. law enforcement legal entities), States parties to the United Nations Convention against Corruption should encourage companies to report corruption-related crime to authorities (article 39).<sup>78</sup>

The role of companies in the prevention, detection and prosecution of actors involved in typically complex and covert corrupt practices cannot be underestimated. Anti-corruption authorities benefit from cooperation with companies in that they are able

<sup>78</sup>United Nations Office on Drugs and Crime, “Technical Guide for the Implementation of the United Nations Convention against Corruption”, 2009.

to learn how the corrupt act occurred, how it was initially covered up and how it was uncovered, allowing them to be more effective in their future investigations. Actors in the private sector may also be in a position to play a vital role in the identification of criminal proceeds and their return to legitimate owners.<sup>79</sup> A cooperative relationship between the private sector and authorities is thus instrumental to the effective fight against corruption and its adverse consequences.<sup>80</sup>

Companies can cooperate with authorities before the authorities are aware of the allegation of a corrupt act. Self-reporting refers to the disclosure of relevant information and evidence of actual or possible violations to authorities before allegations have been raised against the company or one of its representatives. The disclosure may relate not only to internal information, but also to information regarding business partners. For instance, a company may have conducted extensive due diligence with regard to a prospective joint venture partner which led to the discovery of information on an alleged violation. A number of national enforcement authorities as well as multilateral development banks, such as the World Bank, offer programmes for self-reporting that are often referred to as voluntary disclosure programmes.

Companies may also cooperate with national authorities after the authorities are aware of the corrupt act, independent of whether the violation was self-reported by the company or was originally identified by authorities. Companies can support the investigation process of authorities by disclosing additional relevant information or by providing investigative resources. For instance, companies can offer internal audit staff to support the investigation. Companies may also cooperate with authorities after allegations against the company or one of its representatives have been raised by undertaking other remedial measures such as:

- Voluntary restoration of damages or loss caused by the offence;
- Recovery of ill-gotten gains (e.g. proceeds of the corrupt act);
- Other voluntary restraints (e.g. abstention from bidding for public contracts);
- Acceptance of an external compliance monitor;
- Corrective organizational actions (e.g. removal or other disciplinary measures against responsible employees).

Companies may also demonstrate their cooperation with authorities by strengthening anti-corruption programmes to eliminate the weaknesses that have led to the corrupt act.

<sup>79</sup>UNODC and the World Bank established the Stolen Asset Recovery Initiative (StAR Initiative) in 2007. The goal of the StAR Initiative is to encourage and facilitate the systematic and timely return of proceeds of corruption and to improve global performance in the return of stolen assets. For more information, please refer to <http://star.worldbank.org/star/>.

<sup>80</sup>The relationship between the private sector and authorities is recognized in the United Nations Convention against Corruption. It requires States parties to foster a cooperative relationship with the private sector and to institutionalize collaboration, in order to avoid cross-jurisdictional or other conflicts enterprises may face, related, for example to privacy, confidentiality or bank secrecy rules (United Nations Office on Drugs and Crime, "Legislative Guide for the Implementation of the United Nations Convention against Corruption", 2006).

## Rationales for cooperating with authorities

Companies—as well as their employees—that violate anti-corruption standards may face a variety of legal, commercial or reputational sanctions.<sup>81</sup> Such sanctions may also deter potential wrongdoers.<sup>82</sup>

In some jurisdictions, companies may benefit from cooperation with authorities in case of significant contributions to the efforts to identify or analyse a corruption allegation. Such benefits may result in reduced or even suspended sanctions under certain circumstances. For instance, a company may be able to obtain a reduced monetary fine if it voluntarily reported the misconduct to authorities and proves that the misconduct was based on a single rogue employee instead of a systematic failure of its anti-corruption programme. A company may also be able to obtain a reduction of an already applied debarment sanction by implementing significant improvements to its anti-corruption programme in order to avoid future occurrences.

In addition to underlining a company's strong commitment to a culture of zero-tolerance of corruption, the reduction or even suspension of possible sanctions is often a key motivational factor for companies to cooperate with authorities. Other motivational factors may include:

- Preserving confidentiality of discovered irregularities;
- Avoiding criminal prosecution and opting for civil proceedings instead;
- Allowing for out-of-court settlements;
- Rehabilitating convicted companies by publicly announcing improved behaviour (e.g. the implementation of a significantly improved anti-corruption programme).

The mitigation incentives for cooperating before authorities are aware of a corrupt allegation are often stronger than for cooperation afterwards. For instance, under the voluntary disclosure programme of the World Bank, parties that self-report can continue to compete for the Bank Group-supported contracts and remain anonymous as part of the confidentiality agreement which they sign with the Bank.<sup>83</sup>

While mitigation incentives can be strong motivational factors for companies, they may have adverse consequences. The possibility of strong mitigation incentives (e.g. complete suspension of a potential sanction) may reduce the initial deterrence effect of a sanction.

<sup>81</sup> Article 26 of the United Nations Convention against Corruption makes it obligatory for States parties to establish criminal, civil or administrative liability of legal persons and to make such liability independent of the criminal liability of the natural persons who have committed an offence of corruption.

<sup>82</sup> Companies that do not self-report and which continue to keep the proceeds of corruption may be committing money-laundering offences. This can apply to individuals as well as companies.

<sup>83</sup> World Bank, Department of Institutional Integrity, "Voluntary disclosure program—Guidelines", Chapter 3 and 5.7.2, 2006.

## Challenges for cooperating with authorities

Cooperation with authorities can involve a number of challenges. Companies are advised to consult with their legal experts in order to decide on the best course of action.

*Cross-jurisdictional prosecution:* Companies operating in a multitude of national jurisdictions need to take national differences relating to criminal prosecutions into account. When deciding to cooperate with the authorities in one country, companies may also need to consider the impact of the cooperation in other countries relevant to the company. This consideration should also include any potential consequences for individual employees.

*Protection of reporting persons:* Article 33 of the United Nations Convention against Corruption notes the importance of a country providing protection against any unjustified treatment of reporting persons.

*Protection of witnesses, experts and victims:* Under article 32 of the United Nations Convention against Corruption, countries are required to protect individuals possessing detailed knowledge or evidence of a corruption case from potential retaliation and intimidation.

*Potential data privacy violations:* Disclosing information to authorities may entail risks when such information is subject to data privacy obligations (e.g. bank secrecy, arms and defence contracts).

## Challenges and opportunities for small and medium-sized enterprises (SMEs)

In general, SMEs should deal with violations that are detected in the same way as large companies. Although the establishment of a policy that deals with violations may seem too formal for small companies, it is a necessary step as it sends a strong signal about the importance of the anti-corruption programme and ensures an objective baseline for application.

It may be particularly challenging for SMEs to apply sanctions in the case of severe violations where an appropriate response would mean the dismissal of an employee or business partner. SMEs may find it more difficult than large companies to find a replacement for the dismissed employee or business partner. While the immediate costs may appear considerable, SMEs should consider these costs as a short-term investment for lower legal, commercial and reputational risks in the long term.

As with large companies, SMEs should consider cooperation with authorities. Cooperation underscores the company's strong commitment to zero-tolerance of corruption and may also result in benefits, such as reduced sanctions for legal infringements.

Cooperation with authorities also includes a variety of challenges for SMEs. The expert advice (e.g. from a legal counsel) that is typically required before companies decide to engage in cooperation with authorities may create a substantial burden. SMEs may not have sufficient resources to either employ a dedicated legal expert in their own company or to hire external professionals to evaluate the best course of action. In such cases, SMEs may consult with their local business associations or seek a reduced-fee or even pro bono service which may be able to provide advice as to whether the company should engage a professional expert due to the complexity involved in a particular case.

### Public reporting on addressing violations

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact-Transparency International "Reporting Guidance on the 10th Principle Against Corruption"*, can assist companies to report on addressing violations to:

- State that there is a process in place for dealing with incidents including remedial steps;
- Describe the process;
- State the nature and number of incidents dealt with and number of disciplinary actions; and
- List in a corporate publication (such as the annual report or sustainability report or on the company's website) any current public investigations, prosecutions or closed cases.

Companies must take care to avoid stating any information that may be misleading, sensitive or compromising or impact ongoing investigations.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.



### Checklist

ADDRESSING VIOLATIONS	YES	NO	IN PROGRESS
A clear, visible and accessible disciplinary policy is in place, addressing employees and business partners.			
The disciplinary policy provides for a catalogue of sanctions, guidelines on procedures and responsibilities, and opportunities to appeal.			
Sanctions are relevant, proportionate and applied in practice.			
The guideline on procedures and responsibilities supports a fair and transparent response to incidents.			
A process is in place for notifying the relevant internal departments and external stakeholders in case of violations.			
Violations are analysed to determine remedial actions to strengthen the anti-corruption programme.			
The company discloses relevant information and evidence of actual or possible violations to authorities before allegations against the company or one of its representatives have been made.			
The company expresses its cooperation with authorities after allegations against the company or one of its representatives have been made (e.g. through enhancement of its anti-corruption programme).			
The specificities of national legislative and prosecutorial regimes are taken into account when considering cooperation with authorities.			
The protection of reporting persons, witnesses, experts and victims is addressed when cooperating with authorities.			
The company addresses potential violations of data privacy regulations.			
The company publicly reports on its policies and procedures for addressing violation and cooperating with authorities.			

## L. Periodic reviews and evaluations of the anti-corruption programme

The implementation of an anti-corruption programme should be regarded as a continuous learning and improvement process. Periodic reviews and evaluations keep policies and procedures up-to-date and relevant for employees and business partners.

Furthermore, reviews and evaluations help to identify shortcomings, weaknesses or opportunities to optimize and simplify the overall anti-corruption programme.

This section provides the rationales for conducting periodic reviews and evaluations, and lists sources of information that should be included. Review and evaluation criteria, responsibilities and frequency are briefly described, followed by considerations regarding subsequent activities.

### Rationales for conducting periodic reviews and evaluations

Reviews consist of the compilation of information and the analysis of single elements of the anti-corruption programme. For instance, a review can include the assessment of a specific process such as the participatory development of a code of conduct on sponsorships. A review is an in-depth study, conducted at a discrete point in the life cycle of a programme. An evaluation is the analysis of the results of the review. In contrast to reviews, evaluations have clear criteria against which the results are evaluated in order to identify a potential need for modifications and improvements. For instance, an evaluation may lead to the conclusion that the system of internal controls in a subsidiary of the company needs to be improved in terms of its effectiveness. Evaluations also allow for possible opportunities to improve efficiency.

The rationale for conducting periodic reviews and evaluations is to determine whether anti-corruption policies or procedures require modification. Modification of the anti-corruption programme could include the introduction of new measures (e.g. a new policy on prohibiting facilitation payments is required due to the company's extension of its business operations into a country known for such payments), additional existing measures (e.g. additional training courses), reduction of inefficiencies (e.g. removing redundant controls) or the adaptation of strategies (e.g. anti-corruption news communicated by senior management as podcasts instead of e-mails).

### Sources of information for reviews

Modifications may be required due to changes in the business environment or lessons learned from internal operations. Changes to the business environment can include internal and external events, such as:

- New markets and business operations (e.g. requiring the utilization of third-party agents);
- New business relationships (e.g. new suppliers);

- New organizational structures (e.g. a new subsidiary) and adopted processes (e.g. procurement outsourcing);
- New performance targets;
- New or updated legal requirements or industry standards;
- New or updated requirements from social environment and stakeholders (e.g. consumer);
- Corruption cases from peers within an industry or region.

Companies need to consider that some changes in their environment may have an impact on the anti-corruption programme that may not be immediately obvious. For instance, countries are increasingly adopting access to information legislation that allows for the disclosure of previously unreleased governmental information. This legislation is designed to make governments more transparent and accountable to their citizens. The application of these laws may result in the disclosure of information between companies and governmental institutions or officials, such as political contributions. Companies may want to consider the impact of this type of legislation on their own public reporting policies and procedures.

Learning from internal operations can identify weaknesses or improvement opportunities for the anti-corruption programme. A comprehensive review of anti-corruption policies and procedures requires extensive information input from a variety of sources, such as the following:

- *Results of internal monitoring* of relevant practices (including internal controls) by the company's management can provide extensive information on the overall quality of the programme. For instance, the monitoring of the company's anti-corruption training strategy may enable the assessment of the number of participating employees, perceived usefulness and knowledge. Monitoring internal controls offers valuable information on the effectiveness of internal controls (e.g. number of detected circumvention attempts of a preventive control) and also offers insights into weaknesses and irregularities that have been detected. Companies may monitor policies and procedures relating to the results of the anti-corruption risk assessment. The objectives and benefits of monitoring should be clearly communicated to employees and other relevant parties in order to prevent adverse effects such as raising suspicions or creating an impression of excessive control among employees.
- *Results of internal and external audits* provide an important and independent information basis on how effectively different policies and procedures are applied and interact with each other, or whether synergies may be generated by adopting other processes. Internal and external audits also help to review the management's assessment of the anti-corruption programme.
- *Feedback* from internal and external parties can also provide useful information for the review of the various policies and procedures. For instance, feedback on anti-corruption policies can provide information on internal and external parties' knowledge and understanding of the policies. Feedback can be generated by

sample-based surveys and by continuously motivating employees and business partners to comment or ask questions on the anti-corruption programme.<sup>84</sup> Feedback constitutes an extremely useful source of information that cannot be obtained through monitoring or audits.

- *Assessments* of employee skills, business partners, policies and risks can provide a comprehensive picture of the various elements of the anti-corruption programme. For instance, an assessment of the skills of employees who operate in high-risk areas can reveal whether training has been extensive enough. A risk assessment could indicate whether certain business areas have become more or less hazardous. Such an assessment should also include the role and visibility of senior management in leading the company's approach to anti-corruption.
- *Benchmarks or comparisons* with peer companies in respective industries can provide additional input to evaluate the company's anti-corruption policies and procedures. Such information can be obtained through own research or reports from civil society organizations.

The company's senior management and oversight bodies are advised to use all available sources of information as input to a comprehensive review of the corporate anti-corruption policy and programme. These reviews should be conducted on a regular basis as defined by the Board of Directors or equivalent body, complemented by ad hoc reviews where necessary (e.g. in cases of detected or alleged misconduct by employees or business partners).

### Evaluation criteria

Once a comprehensive review of the anti-corruption programme has been conducted by using the various sources of information, companies can evaluate the programme's performance to identify potential needs for modifications. A comprehensive evaluation may be accomplished by assessing the following three major criteria:

- *Effectiveness* refers to the extent to which the anti-corruption policies and procedures have contributed to the programme's specific objectives, for instance the minimization of risks of facilitation payments.
- *Efficiency* refers to minimizing the costs of the anti-corruption programme, while ensuring the benefits of the anti-corruption policies and procedures, including lower legal, commercial and reputational risks.
- *Sustainability* refers to the extent to which the anti-corruption policies and procedures and their related results help to minimize the risk of corruption in the long run.

The major elements of the anti-corruption programme should be reviewed and evaluated against these three criteria in order to generate an overall picture, as shown below.

<sup>84</sup>More information on seeking of guidance can be found in chapter III, section J.

Programme elements	Criteria		
	Effectiveness	Efficiency	Sustainability
Policies			
Training and communication			
Internal controls			
Incentive schemes			
Dealing with incidents			
...			

In cases where the evaluation shows that some programme elements do not meet the expected results, senior management and oversight bodies can decide on possible improvements. For instance, a review of the internal controls may show that internal controls are effective and sustainable because they address the risks appropriately and are well perceived by employees. However, an evaluation of efficiency may show that the internal controls are costly and redundant in some respects. In this example, it may be concluded that internal controls should be decreased and replaced by more resource-efficient solutions in order to optimize the programme.

### Follow-up activities

Whenever a review or an evaluation has taken place, companies should consider two follow-up activities.

*Opportunities for improvement* of the anti-corruption policy and procedures are identified and implemented to further increase effectiveness, efficiency and the sustainability of the programme. The successful implementation of improvement opportunities needs to become part of the next review and evaluation cycle. Significant improvement opportunities may be determined in conjunction with internal and external parties.

*Results of the evaluation* should be communicated to and discussed with employees and shareholders in order to further demonstrate the ongoing commitment of senior management to the programme. The results may include the identification of sources of information, evaluation outcomes, improvement activities and other operational factors such as timeline for implementation. Companies may also decide to officially report the results of their reviews and evaluations in an aggregated form to public stakeholders.

## Responsibilities for periodic reviews and evaluations

*Senior management* should conduct regular reviews of the anti-corruption programme and evaluate the best course of action to address modifications such as the reduction of inefficiencies. Aggregated results and recommendations need to be provided to the Board of Directors.

*The Board of Directors* or other equivalent body (e.g. Audit Committee) needs to evaluate and approve the chosen course of action by senior management. Further, the Board of Directors may ensure that reviews and evaluations are carried out in pre-determined intervals. The Board of Directors may also initiate additional ad hoc reviews and evaluations in cases where violations or allegations arise.

## Challenges and opportunities for small and medium-sized enterprises (SMEs)

Understanding that the implementation of an anti-corruption programme is not a one-time activity but an ongoing process is crucial for SMEs. This requires an ongoing commitment (including the provision of sufficient resources) from senior management to ensure that the programme is applied in day-to-day activities and kept up-to-date with changes to the business environment.

As SMEs may face financial and time constraints, evaluations may rely predominantly on feedback and documentation since these sources of information are often more efficient and may be less costly. SMEs may conduct reviews and evaluations on the basis of pre-set goals and compare the performance of the anti-corruption programme against them. Reviews and evaluations may be also conducted in the form of a general risk assessment, taking advantage of the synergy effects between those two activities. SMEs should clearly understand that a thorough and periodic review and evaluation of its programme can contribute significantly not only to its effectiveness, but also to its efficiency, which may result in reductions in the cost of the overall programme.

## Public reporting on periodic reviews and evaluations of the anti-corruption programme

Companies of all sizes should publicly report on their anti-corruption efforts. International good practice standards, such as the *United Nations Global Compact—Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies to report on periodic reviews and evaluations of the anti-corruption programme to:

- Describe the process in place to undertake monitoring and continuous improvement, who is responsible for the process, how often it takes place and how results are taken into account including review and oversight by senior management and/or the Board or appropriate Board committees;
- Describe the procedures for internal and external communication of the monitoring and improvement process and the results;

- Describe the oversight of the review process (e.g. who has ultimate oversight, who conducts the review, who reviews the results, frequency of reviews);
- Describe actions taken, including improvement results;
- State that an external independent evaluation or assessment of the anti-corruption programme has been carried out;
- Specify the nature and the scope of such an external independent evaluation or assessment, i.e. if evaluation or assessment has been on the programme design and/or effectiveness of the programme;
- Specify the scope of the engagement, e.g. company, subsidiary, business unit or function; and
- Describe if the outcomes of an external independent evaluation or assessment are publicly available.

Companies can provide qualitative and quantitative information and highlight practical actions undertaken or outcomes achieved.

## Checklist

PERIODIC REVIEWS AND EVALUATIONS OF THE ANTI-CORRUPTION PROGRAMME	YES	NO	IN PROGRESS
Senior management conducts regular reviews of the anti-corruption programme and evaluates the best course of action to address modifications.			
Reviews of the programme take into consideration both developments in the business environment and learning from internal operations.			
Reviews are conducted based on a variety of sources of information, such as input from internal and external audits, internal controls, monitoring, feedback, assessment and benchmarks.			
Evaluation of the programme is based on three major evaluation criteria: effectiveness, efficiency and sustainability.			
Opportunities for improvement are designed and implemented based on the results of the review and evaluation of the programme.			
Results of the review and evaluations (including defined opportunities for improvement) are communicated to employees and, where relevant, business partners.			
The Board of Directors or other equivalent body (e.g. Audit Committee) evaluates and approves the chosen course of action to modify the anti-corruption programme by senior management and ensures that reviews and evaluations are carried out at predetermined intervals.			
The company publicly reports on its reviews and evaluations of the anti-corruption programme.			





# CHAPTER IV.

From organizational change  
to collective action

Implementing and continuously improving an anti-corruption programme is a major achievement for companies—independent of their size. An effective anti-corruption programme provides a strong basis to counter corruption in the business environment.

However, companies may still face the risk of being bypassed by other competitors that do not adhere to the same anti-corruption standards. Companies may also face corruption-related solicitations and extortions from the public sector (demand side). These kinds of risks are particularly present for small and medium-sized enterprises, but are also relevant for even very large companies in a globalized and highly competitive environment.

One way for companies to address these risks is to engage in “collective action”<sup>85</sup> activities with other partners that may face the same challenges.

Collective action is 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 organizations and levels the playing field between competitors. Collective action can complement or temporarily substitute for and strengthen weak local laws and anti-corruption practices.<sup>86</sup>

Collective action is a proven method of fighting corruption, applied in various industries and countries. Collective action initiatives can take on various forms, ranging from short-term based agreements to long-term initiatives with external enforcement.

Companies that participate in the initiatives can pursue their common objectives much more effectively in a joint and concentrated effort than they can individually.

Collective action initiatives can be formed either within the private sector alone (e.g. SMEs requesting harmonized supplier standards from larger companies) or involve public-private partnerships (e.g. collectively addressing single challenges, such as facilitation payments, or advocating for an improved regulatory and business environment). National and international institutions, such as business associations, can play an important role in facilitating such initiatives.

With collective action, companies of all sizes can become meaningful agents of change in relation to anti-corruption policies and procedures, stimulating efforts in the private and public sector to decrease corruption and engage in effective reform.

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<sup>85</sup> Collective action is an area where a lot of work is being contemplated, in particular in the Business 20 (B20) context. Interested readers can follow the work of the B20 Task Force on Improving Transparency and Anti-Corruption.

<sup>86</sup> World Bank Institute, “Fighting Corruption through Collective Action—A guide for business”, Version 1.0, 2008.

# Annex.

## Elements for public anti-corruption reporting

Companies of all sizes should publicly report on their anti-corruption efforts to demonstrate their commitment to the fundamental values of integrity, transparency and accountability. International good practice standards, such as the *United Nations Global Compact–Transparency International “Reporting Guidance on the 10th Principle Against Corruption”*, can assist companies in their efforts to report on their anti-corruption ethics and compliance programme.

The following table aligns the reporting elements of the above mentioned Guidance to the chapters and sections of this *Guide*.<sup>87</sup>

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<sup>87</sup>The Guidance organizes reporting elements by basic and desired reporting elements. Basic elements (Bx) are considered to be the basic level of reporting of a company’s anti-corruption policies and procedures; desired elements (Dx) give the opportunity to report more extensively on policies and procedures. In addition, each reporting element includes an example of a reporting indicator from another initiative, such as the Global Reporting Initiative.

Chapter/section	Chapter title		Reporting element(s)
II.	Risk assessment	→	D3
A.	Support and commitment from senior management for the prevention of corruption	→	B1, B4, D1, D2, D11
B.	Developing an anti-corruption programme	→	B2, B3, B4, D8
C.	Oversight of the anti-corruption programme	→	D7, D12
D.	Clear, visible and accessible policy prohibiting corruption	→	B3, D4
E.1.	Facilitation payments	→	D4
E.2.	Special types of expenditures	→	D4
E.3.	Conflicts of interest	→	D4
F.	Application of the anti-corruption programme to business partners	→	D5, D6
G.	Internal control and record keeping	→	B6, D10
H.	Communication and training	→	B5
I.	Promoting and incentivizing ethics and compliance	→	D8
J.	Seeking guidance—detecting and reporting violations	→	D9
K.	Addressing violations	→	D13, D14
L.	Periodic reviews and evaluations of the anti-corruption programme	→	B7, D12, D15





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