

Protect your business!

ANTI-CORRUPTION HANDBOOK for
THE NORWEGIAN BUSINESS SECTOR



Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in governments, business and civil society to develop and implement effective measures to tackle it.

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Foreword

Corruption is a threat to business and society in all countries. A large part of the corruption in the world is fuelled by companies. Being on the supply side of bribery, they have a large responsibility in the fight against corruption.

Norwegian companies have been involved in corruption at home and abroad. These cases have raised awareness of the negative effects of corruption. The risks to companies and individuals are real and the consequences can be serious. Therefore, countering corruption is not only a legal obligation and an ethical standpoint. It is in the companies' self-interest to take a strong stand against it.

Some Norwegian companies have developed programmes to counteract corruption, while others are planning to follow suit. Thorough in-house implementation and follow-up is essential for such programmes to work. Transparency International Norway encourages more companies to adopt anti-corruption programmes, at a faster pace, and with more rigorous implementation.

This Handbook is a contribution to this work. I hope that Norwegian businesses will find it useful as a practical guide in developing and improving their anti-corruption programmes.

Finally, I would like to thank TI Norway's secretariat for having prepared this Handbook, which has been a major undertaking during the last few years.



Sven Bang Ullring
Chairman of the Board
Transparency International Norway

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It should be noted that the comments offered by these persons may or may not reflect the views of the organisations they represent. Furthermore, they have not been asked to comment, or approve, the final version of the Handbook. Selection of the comments implemented has been at TI-N's own discretion.

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1. INTRODUCTION

1.1 WHY THIS HANDBOOK?

Transparency International's (TI's) objective in working with the private sector is to influence companies to develop and raise standards of practice in countering corruption. With this aim, TI has created tools to help companies develop effective anti-corruption programmes. These tools constitute the main basis for the information and recommended practices which are provided in this Handbook.

The purpose of the Handbook:

- To help Norwegian companies *understand why corruption is detrimental to business*, and the rationale for companies to have anti-corruption policies and practices,
- to make companies aware of *how Norwegian and international laws address corruption*,
- to encourage management to raise awareness amongst all employees that corrupt activities, in addition to being against company rules, may also constitute criminal offences for which managers and staff could incur *personal liability and make the company criminally liable*, that could result in imprisonment, fines and compensation for damages,
- to increase the understanding and standard of *how to deal with issues* such as facilitation payments, gifts, hospitality and interaction with business partners, and
- to advise Norwegian companies on *how to establish effective rules, procedures and other measures* to reduce the risk of involvement in corruption at home and abroad.

1.2 WHO IS THE HANDBOOK FOR AND HOW TO USE IT?

The Handbook is primarily intended for Norwegian companies. It is relevant for:

- *Senior management*, in understanding the facets of corruption, its detrimental effects, business risks, possible consequences, why an anti-corruption programme is needed, and what to do to initiate the development of a programme. This information is found in *Chapters 2 to 4*.
- *Those responsible for leading the development and implementation of a company's anti-corruption programme*, by providing concrete and practical advice for programme development, its content, and how to implement it. This information is found in *Chapters 4 to 7*.
- *Business people*, who can use the Handbook's recommendations directly in dealing with issues if their companies do not yet have their own anti-corruption programme. This information is found in *Chapters 5 and 6*.

The Handbook may also be useful for Norwegian public sector entities and other organisations, both in respect of their own anti-corruption efforts and in understanding the challenges and expectations that companies are faced with.

Furthermore, large parts of the Handbook may be useful for companies and Transparency International chapters outside Norway.



2. CORRUPTION AND CONSEQUENCES



2.1 WHAT IS CORRUPTION?

Corruption includes a wide variety of activities, all with the aim to obtain illicit benefits. When a public or private sector position is abused for private benefit, this may involve bribery, nepotism, favouritism or other forms of corruption. The most common form of corruption is bribery, and bribery itself occurs in many different forms and disguises.

For the purpose of this Handbook, corruption is defined in the same way as in the Norwegian Penal Code:

To request or receive an improper advantage or accept an offer thereof in connection with a position, office or assignment

Or

To give or offer an improper advantage in connection with a position, office or assignment

The following are descriptions of various types of corruption to help gain an understanding of its nature. These are not exhaustive, mutually exclusive, or intended as definitions of corruption.

Grand corruption

This expression includes the most dangerous and covert type of corruption where external interests illegally abuse the highest levels of a political system to achieve private ends. Grand corruption is the distortion of central functions of government by senior public officials. It is found where public officers, in the process of making decisions of significant economic value, demand bribes or kickbacks for ensuring that contracts are awarded. It is often called *corruption by greed*. It also includes the practice of bypassing bureaucratic and/or political hurdles to achieve business results. Proponents see it as a customary means of doing business rather than as a crime; cynics have little regard for the good of the country or its people, and accept that decisions are governed by private gain which is fuelled by bribes from companies.

Small corruption

Corruption which in each instance involves small values is a widespread practise in many countries. It is often called facilitation payments, grease money or petty corruption and is the use of public office and position for private benefit in the course of delivering a public service. The public servant, who is often seriously underpaid, abuses his/her position by demanding or accepting a benefit for what is a routine transaction, service or approval. It is often called *corruption by need*, but should not be condoned. Both as a matter of principle, and because of the large scale of systematic small corruption encountered in many places, it is just as bad as grand corruption. The direct victim of this abuse of power is the citizen. Inexpensive corruption for rich foreign companies and individuals is expensive corruption for poor citizens.

Public sector and private sector corruption

These are often two sides of the same issue. In public-private business relationships, public sector officials normally act as the *demand side* of bribery and private companies are usually the *supply side*. Several large corruption cases in Norway in recent years have involved bribes paid by private sector companies to municipal sector employees.

Private-to-private corruption

Corruption where the private sector is both the demand side and the supply side is treated in the same manner as private to public sector corruption in Norwegian law and in many other countries' laws. An example is when a purchaser in a privately-owned company accepts a bribe from a supplier in return for favourable treatment in a bidding competition.

Corruption versus other economic crimes

Sometimes corruption cannot be easily distinguished from other types of economic crimes such as fraud, embezzlement, theft, money laundering, tax evasion and insider trading. Such criminal acts often occur together in large and complex cases.

2.2 HOW IS CORRUPTION DAMAGING?

Damage to companies and employees

The consequences for companies and for individuals involved in corruption, whether directly or indirectly, are potentially very serious and damaging:

- *Damages companies*, resulting in tendering uncertainty, wasted tender expenses, increased project costs, financial loss, lost project opportunities, extortion and black-mail, criminal prosecutions, fines, blacklisting/debarment, and/or loss of reputation. Corruption leads to competitive bribery instead of fair competition based on price, delivery time and quality.

- *Damages individuals*, resulting in reduced ethics and less loyalty to the company, bad reputation, termination of employment, criminal prosecution, fines and/or imprisonment.

There is now greater pressure for corruption to be detected and prosecuted. Unlike in the past, there is a far greater likelihood that wrongdoing will be punished. This is also the case where corruption crosses national borders and involves both corporate actors from industrialised countries and government actors in developing countries.

Damage to societies

Corruption has the potential to create *dysfunctional societies*, which leads to a plethora of economic, political and social problems. It can result in a population not supporting its leaders (loss of political legitimacy and public trust) and disrespect for the rule of law, allowing institutions to erode. This could ultimately lead to the collapse of a society. Corruption fosters human rights abuse. As corruption increases, regimes become more secretive, and basic social and economic rights are threatened.

Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.

– Preamble, Council of Europe Criminal Law Convention on Corruption

Cross-border damage

It used to be said that bribery is the price to pay for doing business abroad, and in many countries bribes paid were previously treated as tax deductible expenses (Norway included).

Laws and attitudes are changing and there is a fast growing awareness of the harm caused by cross-border business corruption. Cross-border corruption is detrimental to all markets and countries, but is particularly *devastating for developing countries*.

Cross-border corruption:

- Results in development projects which are unnecessary, unproductive, unreliable, of inferior quality, dangerous and over-priced. This can lead to loss of life, poverty and serious social and economic damage.

- Raises the cost of goods and public services in developing countries, increases national debt, and leads to a lowering of standards through purchasing of goods and services that are of low quality, inadequate, inappropriate and unnecessary.
- Interferes with and hampers trade and investments in the countries affected.

In cases of cross-border grand corruption, substantial wealth is acquired by ruling elites. World Bank estimates of the wealth which corrupt African leaders have stashed away in European banks stand at hundreds of billions of US dollars. Laundering money across borders conceals the proceeds of corruption; the money is siphoned into tax havens or invested in industrialised countries. Individuals involved in corruption escape law enforcement efforts by leaving the country where the investigations or prosecutions are taking place or where a court judgement has been passed.

Poverty increase

Social and economic development, stability and security are adversely affected by corruption. Grand corruption (corruption by greed) is a cause of poverty, rather than a result of it. Small corruption (corruption by need) that people encounter in the course of their everyday lives is often caused by poverty.

Bribing companies are actively undermining the best efforts of governments in developing nations to improve governance, and thereby driving the vicious cycle of poverty.

- Huguette Labelle, Transparency International's Chairperson

2.3 WHICH COUNTRIES AND INDUSTRIES ARE MOST AFFECTED?

Corruption occurs in all markets and in all business sectors. TI regularly surveys and analyses situations and trends in a large number of countries and industries and publishes results in reports and indexes.

Corruption Perceptions Index (CPI)

The CPI ranks countries according to the perceived level of corruption. It is a composite survey of business people and assessments by country analysts. The perceptions gathered make the CPI a helpful contributor to the understanding of different levels of corruption from one country to another.

Australia and countries in Western Europe and North America rank best, while countries in Africa, South America, Eastern Europe and Asia are represented at the lower part of the index.

Companies which are ethical and compliant may choose not to have business in, or to withdraw from, countries where corruption is serious and widespread. This does not solve the problem, as other companies with lower standards will take over the business. Companies with high standards should rather see themselves as part of the solution by acting as a role model, using their sphere of influence with authorities, suppliers and business partners, initiate collaboration with other actors and support civil society organisations. By helping societies to function properly, companies are actually helping themselves.

Global Corruption Barometer (GCB)

The GCB is the only worldwide survey on views and experiences of corruption. As an opinion poll of the general public, it provides an indicator of how corruption is affecting individuals on a national level and how efforts to curb corruption around the world are viewed on the ground.

The GCB includes a variety of corruption-related questions including which institutions are seen as most corrupt and how respondents rate their governments in the fight against corruption. It also provides an insight into people's experiences with bribery, gathering information on how frequently citizens are asked to pay bribes when interacting with public services.

Bribe Payers Index (BPI)

The BPI measures cross-border business corruption through active business bribery in foreign markets. The BPI ranks leading exporting and foreign investment countries according to the degree to which their companies are perceived to be paying bribes abroad.

The index indicates clearly that foreign bribery by companies is common. Companies from the wealthiest countries generally rank in the best part of the BPI, but still pay bribes, particularly in developing countries. Companies from the emerging economies like India, China and Russia rank among the worst.

The BPI shows that all industries and sectors are affected. Sectors where bribes are most likely to be offered and accepted, or extorted, include:

- Public works contracts and civil construction generally
- Arms and defence industry
- Power (including petroleum and energy)
- Telecoms

Bribes are also very likely to occur in banking, finance and agriculture.

Motivations and "justifications"

The BPI concludes that corruption is most likely to occur when governments rather than markets allocate resources, when civil servants are underpaid, when procedures are unclear and very bureaucratic, and when discovery and punishment of corrupt behaviour is unlikely. The existence of any of these conditions inspires corruption, making it a low risk, high profit opportunity.

Why are some companies willing to offer bribes? Some justifications, or rather rationalisations, used to defend corruption are:

- *The need for being competitive argument* – if any one bidder believes that one of the competitors is paying a bribe, this can be seen as a justification to do the same.
- *The need to develop or secure business argument* – some contracts are so large that they can ensure a successful future for the winning bidder. Conversely, failure to win such a contract can result in large losses for the company and the owners, and possibly mass lay-offs. This can be translated into a "valid reason" to pay bribes.
- *The good investment argument* – disregarding all ethical considerations, some see bribery as an excellent investment. They believe that paying for the award of a contract is much more cost-effective than marketing and competitive bidding.

Thousands of Norwegian firms operate internationally. Their approach in foreign countries has to be just as ethical as at home. However, some business people seem to justify bribery with the culturally relativistic argument, suggesting that corruption is part of the culture of many developing countries, a cultural phenomenon as unique in character as local art, music and other forms of expression. Some companies claim that they pay attention to the cultural dimension of facilitation payments, gifts and hospitality, referring to the need to respect local customs. However, culture must not be used as an excuse for violating ethical business practice. Bad practice must never be confused with or justified by cultural differences.

2.4 WHY SHOULD COMPANIES COMBAT CORRUPTION?

Companies combat corruption primarily because it is illegal and may result in severe penalties. Businesses fight corruption and other illegal and unethical practices for reasons of sheer corporate self-interest. This is why companies increasingly analyse their business, both domestically and internationally, to identify key corruption risks relating to the type of business being conducted, and implement preventive measures.

Corporate attitudes and beliefs

In a PricewaterhouseCoopers (PwC) survey – *Confronting Corruption, 2008*; survey of 390 executives worldwide, 57 % of respondents said their company always considered the risk of corruption when making significant business decisions. However, only 47 % described the corruption risk assessment in their company as rigorous. Almost 45 % of the respondents said they had decided not to enter a specific market or to pursue a particular opportunity because of corruption risk. 42 % said their competitors paid bribes. 39 % said their company had lost a bid because of corrupt officials.

Businesses lose to corrupt competitors. A survey by the consultancy firm Control Risks and the UK law firm Simmons & Simmons (*International Business Attitudes to Corruption – Survey 2006*) showed that almost half of all companies believed that they had failed to win new business because a competitor had been willing to pay a bribe. Companies in the construction, oil and gas, and mining sectors seemed the most likely to lose business to corrupt competitors. Two main factors are at play: The high value of projects increases the temptations of bribery, and the companies in these business sectors very often rely on a license or approval from a government office for their projects and they may sometimes be involved in direct negotiations with government officials who have extensive discretionary power.

Fewer places to hide

Thanks to the Internet and public awareness and scrutiny, the ability of corporations to keep information hidden is declining fast. The amount of information available in the public domain about every aspect of a publicly quoted company's business is rising. The number of investigations into corporate corruption cases is increasing. The sophistication and activity levels of pressure groups seeking to influence companies to reform and be more transparent are growing. Tax havens and offshore financial centres are coming under pressure from governments, media and civil society to disclose information on ownership, accounts and transactions. These forces compel companies to realise that the number of places to hide is decreasing quickly.

Reputation risk

Reputation damage affects share prices and future business opportunities. Companies with a reputation for unethical practices are increasingly considered to be undesirable business partners. They lose customers and find it more difficult to attract good staff. High-profile corporate scandals of recent years have raised company awareness. Coupled with growing expectations of accountability from authorities and society at large, this adds pressure on companies to live up to ethical business practices.

In the PwC survey, 55 % answered that if corruption was discovered, the most severe impact would be to corporate reputation. This was a greater percentage than the combined total of those who said that legal and financial impacts would be the most severe.

Financing risk

The risk of not being able to raise finance and attract investors is real. Companies found to be involved in corruption may be debarred from receiving loans from national and international finance institutions, including multilateral development banks. Loan agreements with export credit and export finance institutions may lapse if the guarantee recipient and/or exporter have acted corruptly, in violation of the law. Norwegian export credit (GIEK) and export finance (Eksportfinans) institutions have included anti-corruption requirements and information about the legal consequences of bribery in their application forms, exporter statements, commitment letters and loan agreements.

Legal risk

Corruption constitutes a significant legal risk, both for companies and individuals: The risk of incurring civil liability, criminal liability, contract termination and liability for business partners acting on behalf of the company. The risk of prosecution in Norway is real. Most companies anticipate that enforcement of the law will increase. This includes prosecutions in Norway for the bribery of foreign public officials in other countries. For companies having business outside Norway, there is an additional risk of prosecution under other countries' laws.

Costs of bribes

Paying bribes is a costly affair. The earlier mentioned survey conducted by Control Risks and Simmons & Simmons (*International Business Attitudes to Corruption - Survey 2006*) shows how much corruption might increase the cost of international projects. A quarter of the respondents said that it was up to 5 %. However, 10 % said that corruption could amount to up to half of the total project costs, and 7 % said it could be even higher. The companies estimating maximum corruption at more than a quarter of the total project cost were most likely to come from the construction (29 %), defence industry (25 %) and finance (18 %) sectors.

A company's cost of involvement in corruption cases may be substantial in terms of fines, disgorgement, compensation for damages, and lawyer fees. In the worst instance, a corruption case may threaten the very existence of a company.

Deters international investment

Companies are reluctant to make attractive investments abroad because of host countries' reputations for corruption. It is less costly not to make an investment than to pull out of an ongoing project. Withdrawals occur, but are usually not announced publicly out of fear of jeopardising future relationships if the situation

improves. The host countries lose out; the investors that they attract to replace those who exit are likely to have lower standards, both of integrity and of professional competence. Corrupt practices penalise companies that play fair and seek to win contracts through the quality and price of their products and services.

The success of Norwegian companies internationally depends heavily on their ability to compete on a fair level playing field. Corruption tilts the playing field and creates unfair advantages for those willing to engage in unethical or illegal behaviour, although often in the short term perspective and at a high risk.

Increasing awareness

Low levels of awareness of corruption legislation in society and in the business community will most certainly imply an inefficient impact of such legislation. To serve as a deterrent to corrupt activity, the level of awareness of the legal provisions must be high and scepticism about their effectiveness low. Corruption can be prosecuted after the fact, but first and foremost, what is required is prevention.

Fortunately, the corruption provisions in Norway's Penal Code, as well as more information and training on the issue of corruption, and greater media attention to corruption cases, brings a shift in the position of actors in the private and the public sector, from ignorance to the realisation that they can be faced with liability of corruption and that the consequences may be serious.

Norwegian diplomatic missions are in a unique position compared to other governmental bodies with regard to raising awareness of, and collecting information on, foreign bribery offences. The Ministry of Foreign Affairs (MFA) has instructed all diplomatic missions to report suspected corruption involving Norwegian citizens or companies, directly to the Norwegian police authorities.

The Norwegian government, and particularly the MFA, is increasingly engaging in raising awareness in its own organisation and towards Norwegian businesses. Examples are:

- Establishment of a central control unit for monitoring compliance with internal MFA rules and procedures.
- Establishment of a whistle-blowing facility.
- Financing of the website "Business Anti-corruption Portal".

Corruption is one of the focus areas in the government white paper "The Social Responsibility of Business in a Global Economy (Næringslivets Samfunnsansvar i en Global Økonomi), St.meld. nr. 10, 2008-2009. The white paper clearly states that the government expects Norwegian companies to counteract corruption, establish whistle-blowing mechanisms, develop internal rules and guidelines, and to inform about their anti-corruption programmes internally and externally.

As an OECD member, Norway is committed to the OECD Guidelines for Multinational Enterprises. These guidelines contain recommendations on what multinationals should do to combat corruption. The Guidelines have a complaint mechanism, and the MFA is the reporting point for complaints.

2.5 OPINION POLL AMONG THE NORWEGIAN PUBLIC

An opinion poll was carried out for Transparency International Norway and Innovation Norway in September 2009. The report is found on TI-N's website: www.transparency.no.

The purpose was to investigate opinions about various aspects of corruption in Norway:

- How widespread it is
- How serious it is
- Whether it is an increasing or decreasing problem
- Which sectors that are most corrupt
- What the main reasons for corruption are

The most important findings were:

- A small majority (55 %) considered corruption not to be a serious problem in Norway, while a large minority (37 %) thought that it is.
- Most people (69 %) believed that corruption is just as serious as other economic crimes, and some (24 %) considered it to be more serious.
- A large majority (69 %) believed that corruption had increased in Norway the later years, and a majority (61 %) expected it to increase in the future.
- A majority thought that the oil and gas industry is most corrupt, followed by banking and insurance.
- Most people believed that "greed" is the main reason for corruption, closely followed by "small risk of being caught".

TI-N's main conclusions from the opinion poll were:

- *The Norwegian government should prioritise the fight against corruption higher and provide sufficient resources for this* since a large part of the population believes that corruption has increased in Norway in the later years, will increase in the future, and is at least as serious as other economic crimes, while "small risk of being caught" is rated as an important reason for corruption.
- *State, municipal, private and voluntary enterprises should to a larger extent implement and inform about preventive measures against corruption to avoid incidents and improve their reputations* since a large part of the population believes that corruption is a problem in these sectors.

2.6 SURVEYS AMONG NORWEGIAN COMPANIES

A survey was carried out for Transparency International Norway and Innovation Norway in September 2009. The report is found on TI-N's website: www.transparency.no.

The purpose was look into various aspects that are important to counter corruption in business:

- Legislation and risk awareness
- Use of codes of conduct and systematic measures against corruption
- Trends over the last five years
- What the main reasons for corruption are

The most important findings were:

- A large majority (69 %) answered that corruption is not a relevant risk for the company.
- A large minority (35 %) believed that cultural differences fully or partly could justify different practices abroad.
- Most companies (53 %) did not know that Norway's corruption legislation is among the strictest in the world.
- 64 % of the companies had codes of conduct, and 37 % had systematic measures against corruption.
- New legislation, media-cases, and court-cases during the last five years had increased awareness among a minority of the companies (41 %), and had caused new systematic measures among some (20 %).
- A majority (60 %) did not have systems for whistle-blowing.
- Most companies believed that "greed" is the main reason for corruption, closely followed by "small risk of being caught".

TI-N's main conclusions from the survey were:

- *Norwegian companies should increase their awareness of risk, legislation and consequences related to corruption* since the survey shows serious weaknesses on these accounts. Many companies have not increased their awareness during the last five years, i.e. since the new corruption provisions in the Penal Code came into force.
- *Norwegian companies should to a larger extent implement codes of conduct and systematic measures to counter corruption* since many companies are lacking this. Many have not implemented new systematic measures during the last five years, i.e. since the new corruption provisions in the Penal Code came into force. Many companies do not have systems for whistle-blowing, even though this has been a legal requirement since the amendment of the Working Environment Act in 2007.

Another survey was carried out for TI-N by PricewaterhouseCoopers AS (PwC) in June-September 2009 about the extent to which the 25 largest companies listed at the Oslo Stock Exchange had information available on their public websites about their values (including a position against corruption), codes of conduct, and anti-corruption programmes. The main results of this survey are described in Chapter 4, Section 4.4.

3. INTERNATIONAL LAW AND NORWEGIAN LAW



3.1 ANTI-CORRUPTION CONVENTIONS

International conventions are agreements between states that are negotiated and signed by governments, ratified by parliaments and come into force when a sufficient number of states have ratified them.

There are a number of international conventions dealing with corruption in the public, private and political sectors. A common feature of conventions is that they require the signatory states, through their national legislation, to launch a comprehensive and concerted attack on corruption. States are required to criminalise corrupt acts, step up enforcement, increase legal and judicial cooperation with other states, and strengthen preventive measures. Unfortunately international conventions lack effective monitoring mechanisms for ensuring compliance

by signatory states, and many countries lag behind in implementing conventions which they have ratified.

When offenders, victims, instruments and proceeds of corruption are located in or pass through several jurisdictions, the traditional law enforcement approach, focused at the national level, shows itself to be limited. The cross-border features of corruption mean that the phenomena must be addressed on an international basis. Anti-corruption conventions provide frameworks for this. When corruption and other types of trans-national crime seem to be increasing, no country is immune and states must therefore assist each other in the fight against corruption and other international crime. When rapid advances in technology and the cross-border mobility of people, capital and commodities are taken advantage of by offenders, law enforcement must not fall behind.

In a nutshell, the anti-corruption conventions are useful because:

- The conventions set standards for international cooperation, which, in turn has a unifying effect on national corruption laws.
- The conventions respect the differences and specificities of diverse legal traditions and cultures, while at the same time promoting a common language and helping to remove some of the barriers against effective international collaboration.
- Exporters and investors benefit from the purpose of the conventions to reduce corruption in the international marketplace.
- The conventions are key instruments for holding governments, companies and civil society accountable to international anti-corruption standards.

Norway has ratified and implemented the following anti-corruption conventions:

- The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – is a common framework for establishing equal competitive conditions for companies in all Convention countries.
- The 1999 Council of Europe Criminal Law Convention on Corruption – encompasses active and passive corruption in both the private and the public sector.
- The 1999 Council of Europe Civil Law Convention on Corruption – deals with the civil law aspects of corruption. Its measures include enabling persons who have suffered damage as a result of corruption to claim compensation.
- The 2003 UN Convention against Corruption – is the first global convention to deal with preventive measures, criminalisation, international cooperation and asset recovery.

3.2 PROVISIONS AGAINST CORRUPTION IN THE NORWEGIAN PENAL CODE

Before the amendments in 2003, corruption was not a prominent issue in the Norwegian Penal Code. The word "corruption" was not used anywhere in the Code. There were provisions dealing with bribery of public officials in Norway and abroad, but the provisions used terms such as "threats", "consideration" and "offers of advantages". Corruption not involving public officials was mainly dealt with in the general provisions on fraud.

In 2003, the Penal Code was significantly strengthened on the subject of corruption, by the implementation of the Council of Europe Criminal Convention on Corruption, and by the addition of three new provisions on corruption. Today, Norway's corruption legislation is among the strictest legislation in the world.

The Penal Code has three sections on corruption, covering:

- Corruption
- Gross corruption
- Trading in influence

Both the person who offers an improper advantage (*active corruption*) and the person who accepts it (*passive corruption*) may be prosecuted for corruption under the Penal Code. The Code criminalises:

- Corruption involving *Norwegian public officials and private actors*
- Corruption involving *foreign public officials and private actors*
- *Complicity* in corruption

The provisions apply to Norwegian companies and citizens, and also to foreign companies and citizens residing in Norway, for corruption committed in Norway and abroad, regardless of whether the act is a criminal offence in the other country.

It is not necessary for the prosecutors to provide evidence that the active briber has achieved the objective of the corrupt act, i.e. that he or she obtained the advantage or that the passive briber did what he or she was paid or induced to do. To offer or give an improper advantage, and to request, receive or accept an offer of an improper advantage, in connection with a position, office or assignment will suffice.

The Penal Code also applies to bribes paid indirectly through agents, consultants or other intermediaries. For instance, a payment, fee or commission will be at risk of being an improper advantage, if, for example, the payment is a disproportionate, large payment for the services, or if the services are either non-existent or not clearly defined.

Corruption

The Penal Code provision on *corruption* covers "ordinary" corruption. The penalties are fines or imprisonment of up to three years.

Any person who

- a) for himself or other persons requests or receives an improper advantage or accepts an offer thereof in connection with a position, office or assignment, or*
- b) gives or offers any person an improper advantage in connection with a position, office or assignment shall be liable to a penalty for corruption.*

– Norway's Penal Code, section 276 a

Gross corruption

The Penal Code provision on *gross corruption* covers "serious" corruption. The penalty is imprisonment of up to 10 years.

In deciding whether the corruption is gross, importance shall be attached to, inter alia, whether the act has been committed by or in relation to a public official or any other person in breach of the special confidence placed in him as by virtue of his executive position, office or assignment, whether it has resulted in a considerable economic advantage, whether there was a risk of considerable damage of an economic or other nature, or whether false accounting information has been recorded, or false accounting documents or false annual accounts have been prepared.

– Norway's Penal Code, section 276 b

Trading in influence

The Penal Code provision on *trading in influence* covers corrupt acts between two persons for influencing a third person. The penalties are fines or imprisonment of up to three years.

Any person who

- a) for himself or other persons, requests or receives an improper advantage or accepts an offer thereof in return for influencing the conduct of any position, office or assignment, or*
- b) gives or offers any person an improper advantage in return for influencing the conduct of a position, office or assignment shall be liable to a penalty for trading in influence.*

– Norway's Penal Code, section 276 c

This provision deals with the case where a person gives or offers a middleman an improper advantage in return for exercising influence on a decision-maker, without the decision-maker receiving any advantage. A central point

in the assessment of the legality of the behaviour is the extent to which the middleman has been open about his activities, relationships and intentions.

This provision covers trading in influence both in the private and the public sector. Lobbying activities are one form of trading in influence that in certain cases may be considered improper and illegal, for instance if concealed.

Improper advantage

A key issue in the Penal Code is:

Which actions, contributions or services may constitute "an improper advantage" and hence incur liability for corruption?

An "advantage", according to the preparatory works leading up to the 2003 amendment of the Penal Code, is "everything that the passive party finds in his/her interest or can derive benefit from". This broad definition covers:

- *Economic advantages*, such as money in cash or in bank accounts, cars, free trips, entertainment and shares in a company.
- *Non-economic advantages* with no direct material value, e.g. the passive party is awarded an honour, is promised a future holiday or a contract, is admitted to an association with restricted membership, receives sexual services, or where his/her child is accepted by a private school.

A number of factors will count in the assessment, on a case-by-case basis, of the impropriety of the advantage. These may include:

- The purpose of the advantage.
- The positions (public official, executive, etc.) of the giver (active briber) and the receiver (passive briber).
- The value and nature of the advantage.
- Whether or not the principal (of the giver or receiver) is aware of the advantage offered or received.
- Whether or not there has been a breach of internal rules (code of conduct, etc.) or a contract.

Facilitation payments

The practice of making or requesting facilitation payments, i.e. payment for a service to which one is already entitled or has a legal entitlement to without extra payment, is a form of corruption covered by the Penal Code, even though it does not specifically mention the term "facilitation payment". If a facilitation payment constitutes or intends to create an improper advantage, then criminal sanctions apply. In the preparatory works to the 2003 amendment of the Penal Code, it is stated that facilitation payments for services that an individual has an entitlement to will not always constitute an improper advantage under the Penal Code, and hence not necessarily be corrupt.

Extortion

The business community at times points out that payments that might fall under the heading of corruption are actually payments made in response to extortion (blackmail), a threat to life and health, or a risk of significant economic loss. The Penal Code provisions on self-defence may then apply. Whether or not payment under such circumstances is prohibited will depend on an individual assessment of the actual case. The person who is the victim of the extortion or who acts in self-defence may have a defence argument against corruption charges if the threat is of severe consequences.

No person may be punished for any act that he has committed in order to save someone's person or property from an otherwise unavoidable danger when the circumstances justified him in regarding this danger as particularly significant in relation to the damage that might be caused by this act.

- Norway's Penal Code, Section 47

No person may be punished for an act of self-defence.

- Norway's Penal Code, Section 48

Corporate liability

The Penal Code also covers criminal liability for legal entities in general. A wide range of legal entities may be held liable and sanctioned, such as a company, society or other association, one-man enterprise, foundation, estate or public enterprise. This of course also includes state-owned enterprises and foreign companies established in Norway.

The penalties for legal entities are fines.

When a penal provision is contravened by a person who has acted on behalf of an enterprise, the enterprise may be liable to a penalty. This applies even if no individual person may be punished for the contravention.

- Norway's Penal Code, Section 48 a

A Norwegian company can be prosecuted for acts committed by a foreign subsidiary provided that the subsidiary, and anyone employed by the subsidiary or acting for the subsidiary, acted on behalf of the company.

3.3 NORWEGIAN CORRUPTION LAW ENFORCEMENT

Økokrim (the National Authority for Investigation and Prosecution of Economic and Environmental Crime) and the local police districts are responsible for investigating and prosecuting corruption offences. Information on an offence can be reported to Økokrim or to local police districts. Økokrim has a particular responsibility for investigating and prosecuting cases that are substantial, complex and/or of a fundamental nature, and cases that have ramifications for other countries. When investigating corruption cases, Økokrim has the opportunity to use unconventional methods (phone tapping, etc.). Økokrim has a specialised anti-corruption team and a hot-line ("tipstelefon") at www.okokrim.no.

Since the Penal Code amendments on corruption came into force in 2003, a number of corruption cases have appeared before the Norwegian courts. As more cases are tried by the courts and case law develops, it will be easier for companies to assess how the courts interpret the limits for criminal liability and what constitutes an "improper advantage".

Even a strict law will have little effect unless the enforcement authorities have the necessary resources and commitment to investigate and prosecute. The OECD has on numerous occasions encouraged the Norwegian government to ensure that sufficient financial and human resources are allocated to Økokrim and the economic sections of police districts in order to retain full ability to carry out international investigations in cases of trans-national corruption. This issue has also been emphasised by the Norwegian government in its action plan against economic crime.

3.4 OTHER RELEVANT NORWEGIAN LAWS

There are other Norwegian laws that also deal with different aspects of corruption. The most important ones are:

- Act on Compensation for Tort (Skadeserstatningsloven)
- The Working Environment Act (Arbeidsmiljøloven)
- The Law on Public Procurement (Lov om offentlige anskaffelser)
- The Public Administration Act (Forvaltningsloven)
- The Competition Law (Konkurranseloven)
- The Anti-Money Laundering Law (Hvitvaskingsloven)

3.5 OTHER COUNTRIES' LAWS

Norwegian companies doing business abroad must respect the laws in each country of operation. They are advised to base their anti-corruption standards on the most stringent corruption legislation that they are exposed to and to apply them in all countries. Using the Norwegian legal standard is a good start, but companies should also secure local legal advice to enable them to be observant of the differences in what is illegal and what the penalties are in other countries.

Some countries (like Norway) have laws that criminalise corruption committed abroad and allow for the prosecution of both its own and other countries' citizens and companies in such cases. One such law that is important for many Norwegian companies is the USA's Foreign Corrupt Practices Act.

3.6 THE US FOREIGN CORRUPT PRACTICES ACT

The Foreign Corrupt Practices Act (FCPA) was created in 1977 as a result of 400 US companies admitting to making questionable or illegal payments to foreign government officials, politicians and political parties.

The FCPA describes the anti-bribery provisions as follows: "It is a crime for any US person or company to directly or indirectly pay or promise anything of value to any foreign official to obtain or retain an improper advantage."

The definition of "US person or company" is:

- Citizens, residents and nationals, wherever located
- Entities organised under US law
- Issuer of securities in the US
- Employees, officers and directors of US issuers and entities
- Any person while located in the US

Non-US companies can be responsible for FCPA violations if a payment or authorisation of payment has links to the US:

- Payments in US dollars
- Travel to the US
- E-mails

The FCPA can therefore apply to Norwegian companies and employees in many instances:

- Norwegian companies listed at a US stock exchange
- US subsidiaries of Norwegian companies
- Norwegian subsidiaries of US companies
- Norwegian companies trading in the US
- Norwegian companies transacting through the US
- US employees of Norwegian companies
- Norwegian nationals while in the US

The FCPA has three primary provisions:

- Accounting requirements:
Make and keep books, records and accounts, which are reasonable in detail and accurately reflect transactions and the disposition of assets.

- Anti-bribery provisions:

It is a crime to directly or indirectly pay or promise anything of value to any foreign official to obtain or retain any improper advantage.

- Internal control requirements:

Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded appropriately and in accordance with rules and regulations.

There are five elements, which must be met to constitute a violation of the FCPA:

Who -- The FCPA applies to *any* individual, firm, officer, director, employee or agent of a company and any stockholder acting on behalf of a company. Individuals and companies may also be penalised if they order, authorise or assist someone else in violating the anti-bribery provisions or if they conspire to violate those provisions.

Intent -- The person making or authorising the payment must have a corrupt intent and the payment must be intended to induce the recipient to misuse his official position to direct business wrongfully to the payer or to any other person. Note that the FCPA does not require that a corrupt act *succeeds* in its purpose.

Payment -- The FCPA prohibits paying, offering, promising to pay (or authorising to pay or offer) money or anything of value.

Recipient -- The prohibition extends only to corrupt payments to a *foreign official*, a *foreign political party official*, or any candidate for foreign political office. A "foreign official" means any officer or employee of a foreign government, a public international organisation or any department or agency thereof, or any person acting in an official capacity.

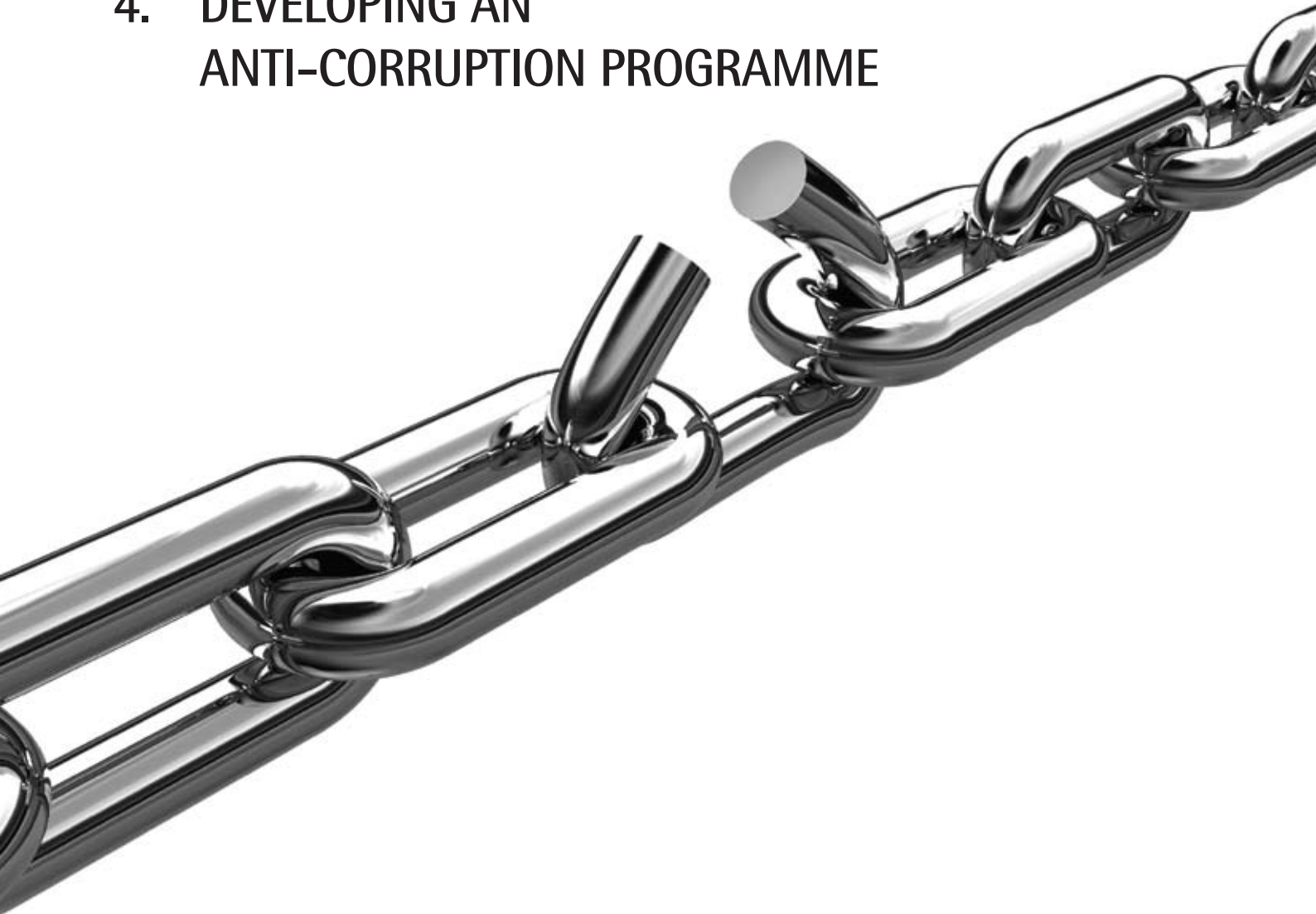
NB. A foreign official must be a person, and can not be a party or an organisation:

- Political party candidates and employees
- Government employees
- Employees of government-owned companies
- Employees of public international organisations
- Any other official capacity

Business Purpose -- The FCPA prohibits payments made in order to assist the company in *obtaining or retaining business* for or with, or *directing business* to, any person. The Department of Justice interprets "obtaining or retaining business" broadly, such that the term encompasses more than the mere award or renewal of a contract.

While facilitation payments are permitted under the FCPA, two risk areas should be considered. Firstly, the FCPA requires companies to account for these payments accurately. Secondly, the payments may violate the laws of the country in which they are made or in the home country of the company or its parent company, outside the USA.

4. DEVELOPING AN ANTI-CORRUPTION PROGRAMME



4.1 WHY IS A COMPANY PROGRAMME NECESSARY?

Some companies argue that they can trust their employees to exercise their judgement on what is acceptable/unacceptable and what is legal/illegal, and that a programme for countering corruption is unnecessary. This is ill-conceived for several reasons:

- People's knowledge and judgement of what is acceptable varies widely; obviously different people will have different views, but an individual's view can also change radically due to circumstances – actually being offered a gift can alter previously held views.
- There will always be a risk that an individual goes too far and commits corruption – how is he or she to be disciplined when there are no rules which he or she has failed to follow?
- Joint venture partners, agents, contractors, suppliers and other parties need to know that the company has a programme and which rules are governing for the company.

An anti-corruption programme helps to create a common platform for making decisions on behalf of the company, thereby reducing the risk of corrupt decisions. With no guidance from a programme it can be difficult to draw a line and declare that something is unacceptable. With no rules or guidance, who is to say at what point a dinner becomes lavish or how much a corporate gift can cost before it becomes excessive?

Tackling the problem of corruption can only be effective by focusing on both sides of the corruption equation; the supply side and the demand side. Only then can anti-corruption initiatives be effective and sustainable. Companies usually represent the supply side. The role that companies can play in countering corruption is therefore essential.

Corruption is one of the most significant risks facing business. Many Norwegian companies have standards, policies and guidelines that address various aspects of corporate governance. However, too few companies have such documents that deal with corruption specifically and comprehensively.

With more actors in business implementing anti-corruption programmes, good practice is reinforced. The ultimate goal is to achieve a fair, level playing field in which companies in all sectors can operate in an honest and transparent manner. In the PwC survey mentioned earlier (*Confronting Corruption, 2008*), more than 70 % of the business executives believed that a better understanding of corruption would help them compete more effectively, make better decisions and make them enter new markets. 65 % percent of respondents believed that a fair, level playing field was crucial to their company's future business activities.

A well-implemented, high quality programme for countering corruption engenders a strong ethical culture and communicates behavioural expectations in key risk areas. It also protects the company against the adverse consequences of corrupt acts by employees. The risk to the company of being convicted for corruption and penalised with fines and compensation for damages will be considerably reduced or disappear if the company has implemented a good anti-corruption programme.

In brief, the purpose of an anti-corruption programme is to counteract corrupt practises which may be committed:

- *deliberately* for personal or corporate gain,
- *reluctantly* in the belief that they are necessary to remain competitive,
- *erroneously* under the assumption that they are normal business behaviour and not criminal offences, and
- *accidentally* through a lack of awareness and understanding by:
 - providing rules, guidelines and training,
 - increasing the understanding of corruption, and
 - helping managers and staff to identify potential corrupt practices in time to prevent crimes from being committed and hence preventing individual and corporate liability.

A good anti-corruption programme helps to:

- increase investor trust and the company's market value,
- limit business disruption and the distraction of management focus caused by non-compliance issues,
- protect and enhance the company's reputation, brand image and operational effectiveness,
- increase employee and investor confidence in the company's stability and performance,
- minimise the risk of litigation
- prevent prosecution of the company and its employees,
- support the company's ability to attract and retain talent,
- hold employees and everyone acting on behalf of the company accountable to ethical standards of business conduct, and
- reduce expenses and losses.

4.2 THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY AND RELATED TOOLS

The Business Principles for Countering Bribery (BPCB) was developed as a multi-stakeholder initiative led by Transparency International (TI). It was published initially in 2003 and was updated in 2009. Its purpose is to raise the standards of business practice in counteracting bribery.

THE BUSINESS PRINCIPLES

- The enterprise shall prohibit bribery in any form whether direct or indirect
- The enterprise shall commit to implementing a Programme to counter bribery

The BPCB specifically addresses bribery, which is the most common form of corruption. The concrete recommendations in this and the following chapters in this Handbook, which are mainly based on the BPCB, are also useful in counteracting and avoiding other forms of corruption.

The BPCB document is a tool for helping companies to develop comprehensive anti-bribery programmes. Whilst many companies have a no-bribes policy, too few implement it effectively. TI-N encourages companies to use the BPCB and this Handbook as starting points for:

- Developing company programmes
- Benchmarking and upgrading existing ones
- Implementing programmes
- Monitoring programme performance

The BPCB or this Handbook cannot be "adopted" as they are only frameworks and starting points for companies wishing to develop their own tailor-made programmes. In developing or amending their programmes, companies must take account of the specific nature of their activities and relevant corruption risks. The emphasis that a company places on different elements in its programme should be based on its own needs and vulnerabilities.

Enterprises should implement anti-bribery programmes both as an expression of core values of integrity and responsibility, but also to counter the risk of bribery. Risk will vary across industries and specific companies, but no enterprise can be sure that it will be free of risk.

- The Business Principles for Countering Bribery

BPCB – SME Edition

TI has published (2008) a special edition of the BPCB for small and medium-sized enterprises (SME). More than 95 % of the world's business is carried out by SMEs, and they are just as vulnerable to the risks of corruption as large companies. The SME edition is based on the same values and principles as the BPCB. It provides practical guidance for developing anti-bribery programmes that suit the size and structure of SMEs. Larger companies can use the SME Edition to encourage SMEs in their supply chain to implement no-bribes policies and practices.

Other TI tools

Other TI tools related to the BPCB that aim at supporting companies in their task of designing and implementing anti-bribery programmes, include:

- **The BPCB Guidance Document:**
A comprehensive guide giving background to the BPCB and practical information for those wishing to implement the BPCB or review their own anti-bribery processes.
- **The Six Step Implementation Process:**
A how-to guide for companies that are in the early stages of designing and implementing an anti-bribery programme.
- **The Self-Evaluation Tool:**
A tool that enables companies to appraise the strength, completeness and effectiveness of their anti-bribery programmes, against the framework of the BPCB.

A separate tool called "Integrity Pact" has been developed by TI specifically for public construction and infrastructure projects. The Pact acts as a contract and provides guidance for project owners, funders, construction contractors and consulting engineering firms.

All of the TI tools can be downloaded free of charge from www.transparency.org. They save companies time and money once they have the will to develop an anti-corruption programme.

Other initiatives

Transparency International cooperates with two global initiatives which Norwegian companies may consider joining to obtain advice and help, access to networks, and to demonstrate their commitment to combating corruption:

- UN Global Compact – with its principle no. 10 on fighting corruption
- Partnering Against Corruption Initiative (PACI) – by the World Economic Forum

4.3 WHAT IS AN ANTI-CORRUPTION PROGRAMME?

The Programme is the whole of an enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

- The Business Principles for Countering Bribery

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

- The Business Principles for Countering Bribery

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

- The Business Principles for Countering Bribery

An effective anti-corruption programme should:

- Focus on the most important risks:
 - Conduct a risk assessment to identify high-risk areas.
 - Adapt processes based on the nature and source of the risks.
- Create an environment with the right tone and structure:
 - Install a compliance "tone at the top".
 - Adopt zero tolerance policies.
 - Embed compliance into human resources processes (training, hiring, performance evaluation, promotion and disciplinary action).
- Include control activities to minimise the risk of non-compliance:
 - Adopt control procedures, protocols and monitoring programmes for high corruption risk areas.
- Have processes and systems supporting compliance:
 - Ensure effective reporting to key corporate governing bodies.
 - Embed compliance into IT systems.
- Communicate and enforce:
 - Conduct mandatory training for all levels of personnel.
 - Install discipline and incentives.

- Stay current and relevant:
 - Address changes in regulations, financial and operational policies and procedures.
 - Address changes necessary to cater for new markets and business segments.

4.4 MANAGEMENT SYSTEMS

Companies' anti-corruption programmes typically involve written commitments embodied in company mission, vision or value statements. Such statements are elaborated further in company codes of conduct (or codes of ethics) and address diverse audiences:

- The Board of Directors
- The management team
- Employees
- Regulators and public authorities
- Business relations
- The general public

Company values

In addition to values related to the company business objectives, one of the company values should cover a commitment to counter corruption. This should be made clear in the description of what the value includes and what it means. The value statements and explanation of the content should be shown on the company's public website.

Code of conduct

At the core of the company programme is the code of conduct which sets legal compliance and ethical requirements for the board, management, employees and consultants working in the company. A code of conduct usually contains a variety of ethical and legal issues, with anti-corruption as a significant element. The code should never, under any circumstances, be set aside to permit special actions by executives (the Enron Board, for example, twice waived the corporate code of conduct with a formal vote).

The code is most effective and visible if it is placed high in the hierarchy of the company's governing documents, at the level below the company's by-laws. The "owner" of the code should be the President/CEO. Companies should show their codes of conduct on their public websites.

The code of conduct should set the company's ethical standards on the safe side of any laws that the company is subject to. It should apply universally for the entire company and not be adjusted to specific cultures or countries.

The code of conduct should be reviewed regularly, for example every three years, and should be improved as required.

Rules and guidelines

Company values and the code of conduct must be accompanied by the adoption of management systems and implementation measures designed to help management and employees honour the compliance requirements in their day-to-day operations to ensure understanding, embedding and follow-up of the policies and standards.

If the code of conduct is not sufficiently detailed and specific on the various anti-corruption issues, it needs to be supplemented with written rules and guidelines building on the code, but going into more detail and being more prescriptive and practical for the employees. Recommended content for rules and guidelines is described in Chapters 5 and 6.

Written rules and guidelines are not enough

Company managers and other employees will meet situations and face dilemmas which are unfamiliar and where they need to use judgement. Rules and guidelines are helpful in preparing for such situations.

However, it is also necessary to develop and implement complementary activities such as communication, training, whistle-blowing mechanisms and control measures tailored to ensure understanding, embedding and follow-up of the rules and guidelines. These and other elements, which are also part of a company's anti-corruption programme, are described in Chapter 7.

Survey among Norwegian companies

In June–September 2009, PricewaterhouseCoopers AS (PwC) carried out an investigation for Transparency International Norway about to which extent the 25 largest companies listed at the Oslo Stock Exchange had expressed values which included a position against corruption, codes of conduct, and programmes to counteract corruption that were available to the public on the companies' websites.

The main findings were:

- Several of the companies had information on their websites on these subjects that were difficult to find and were unclear.
- 64 % of the companies had descriptions confirming or implying that anti-corruption was included in their values.
- 52 % of the companies showed their codes of conduct on their public websites.
- 44 % of the companies showed information indicating that they had anti-corruption programmes or elements of a programme. It seemed that very few of the companies had comprehensive programmes.

These were disappointing results. It is TI-N's opinion that particularly the large companies should have expressed values that take a position against corruption, a code of conduct that contains essential anti-corruption elements, and a programme for counteracting corruption that contain work process requirements, guidelines, training, controls and other appropriate preventive measures.

Furthermore, it is TI-N's opinion that the companies should have this information available on their websites, and that the information should be easy to find and clear. By having this information publicly available, the companies would demonstrate that they take corruption risk seriously and that they handle it in a good manner, and thereby build trust with employees, business partners, investors, authorities and in the civil society.

The report on this survey can be found on TI-N's webpage: www.transparency.no.

5. SCOPE OF THE PROGRAMME: CORRUPTION ISSUES

5.1 BRIBERY

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

- The Business Principles for Countering Bribery

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

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

- The Business Principles for Countering Bribery

Stringent ban

Norwegian law forbids all forms of corruption, including bribery and also facilitation payments when these constitute or intend to create an improper advantage.

The company programme must reflect the ban, and insist that paying or receiving bribes, directly or indirectly, whether for personal gain or for the benefit of the company's business, will not be tolerated and will result in disciplinary action, reporting to police authorities, criminal legal action and/or civil legal action against the individuals involved.

Knowing the risk

Employees, and others acting on behalf of the company, need to be made aware of the risks associated with bribery and other forms of corruption, and of the possible consequences for the company and the individuals. The risk depends on a number of factors - the countries where the company operates, the nature of the company's business, the job responsibilities of the individuals, etc.



A bribe may take many guises other than money. It can be paid directly or as a part of a "commission" in a contract, but it can also be disguised as a gift, a benefit, a favour or a donation. Bribes may also be paid without your knowledge by agents or third parties working on behalf of your business or company.

- The Business Principles for Countering Bribery, SME Edition

Fundamental to countering bribery is understanding and recognising the various guises in which a bribe may come, and having in place processes for dealing with these.

- The Business Principles for Countering Bribery, SME Edition

There is always a risk of an employee receiving a bribe for private gain. However, experience shows that Norwegian companies run the greatest risk of an employee paying a bribe on behalf of the company to enhance the company's business. Also, it is most common that such bribery is designed, suggested and demanded by the receiving party.

Bribes are often demanded by another party to prevent harm or a disadvantage rather than to gain an advantage. They may be requested for services or actions to which the person or business was already entitled, including ensuring the timely delivery of services, for avoidance of a harmful action, or for payments for services already rendered.

An important objective of the company programme is to train the employees in recognising and avoiding corruption risks and corruption schemes.

Consistent application

It is neither possible for a company to operate with different anti-corruption standards in different countries, nor is it desirable. The legal regimes of many countries are converging, and countries around the world are upgrading, reinforcing and coordinating their legislation, making more forms of corruption illegal and increasing the penalties.

EXAMPLES OF PAYMENTS AND ACTIVITIES USED IN BRIBERY:

- Money gifts – cash or cash equivalent (like shares).
- Contributions in the form of work on the recipient's property or materials delivered to one's house.
- Gifts with conditions attached.
- Free use of another company's apartment or car.
- Return commissions (kickbacks).
- Promise of additional business.
- Gifts that can have an influence on a situation where you are about to make an offer or enter into negotiations.
- Expensive travel, accommodation and events with very little/no professional content.
- Expenses covered for you and/or a family member by someone other than your employer.
- Hospitality, entertainment or events provided in order to influence a negotiation or a purchase.
- Sexual favours.
- A cash payment without statements and documentation.
- The covering of expenses other than normal accommodation costs via the hotel bill.
- Payment of personal expenses, like travel expenses.
- Loans from suppliers, properly supported by loan agreements, but never repaid.

Also, in an increasing number of countries (USA, Norway and others) anti-corruption legislation has extra-territorial reach, i.e. felonies committed abroad may be prosecuted in the company's and the individual's home country and/or in a third country, in addition to the country where the corruption took place.

Some countries have stricter rules for public officials (i.e. for gifts, hospitality and expenses) than what is common in the private sector. Under the legislation of some countries, employees of fully and partly government-owned companies are regarded by the law as being public officials.

Hence the necessity to be consistent and to apply a programme based on the highest standards of any anti-corruption legislation that the Norwegian company is subject to; in other words, Norwegian law.

Types of bribes

Many Norwegian companies operating in developing countries and emerging markets need a better understanding of the kinds of bribe demands they are likely to encounter and from whom they may be demanded. They may not be well prepared to respond adequately to demands for bribes. Requests for and expectations of hospitality, gifts and similar favours are among the most difficult areas. Many companies have a blind spot when it comes to hospitality and gifts because they may have a respectable and common appearance, especially in business circles.

Bribes may come in many forms and disguises. It is not possible to describe exhaustively in this Handbook, nor in a company programme, all possible types of bribes.

5.2 FACILITATION PAYMENTS

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

Facilitation payments: Also called "facilitating", "speed" or "grease" payments, these are small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

- The Business Principles for Countering Bribery

Not different from "real" bribes

Traditionally a bribe has been regarded as being a payment made to someone to act in a way in which he or she should not (for example, by awarding a contract to the active briber, or releasing him or her from a legal obligation), whereas a facilitation payment has been regarded as being a payment made to a person to do something which he should already be doing (for example, issuing a visa or clearing goods through customs) or for undertaking such tasks more quickly.

Although facilitation payments are smaller than "real bribes" in terms of value, they are in principle the same. The traditional distinction made between bribes and facilitation payments is on most occasions academic, as many countries have criminalised the payment and receipt

of both forms. In Norway, no distinction is made between bribes and facilitation payments; facilitation payments are considered as bribes and are illegal when such payments constitute or intend to create an improper advantage.

Facilitation payments are just another form of bribery and, as such, are illegal in nearly all countries. They may be small amounts demanded by providers of services to secure or "facilitate" services to which you are entitled, such as connecting a telephone or obtaining a visa, or they may be amounts that are offered to customs, immigration and other officials to "speed up" the granting of services and permits. They are unfortunately so common in many countries that they are seen as "normal" or "unavoidable", but as they are illegal, they should and can be avoided.

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Transparency International – its Board of Directors, its National Chapters, its Individual Members, its Advisory Council and the representatives of TI to other organisations, reiterate its opposition to the use of "facilitation payments". Accordingly, TI will boldly voice its opposition to such payments. It will call on companies to cease making such payments immediately. It will also encourage all of its chapters to join with the Secretariat in campaigning for revisions in international agreements, treaties and conventions that permit "facilitation payments" and it will also advocate, where appropriate, for revisions of national and international laws.

Extract from "Resolution on facilitation payments", adopted by the Transparency International Annual Membership Meeting, 28 October 2007

Facilitation payments have come under intense scrutiny in recent years, in Norwegian and international business circles. By Norwegian economic standards, facilitation payments in many countries are usually small sums. They are usually paid to lower rank public officials with low salaries. In some countries, however, facilitation payments are organised in a system, are institutionalised, and reach all the way to the top of the government.

Resorting to facilitation payments supports a practise which is more expensive for local business and individuals who also are exposed to it, and it therefore underpins poverty.

The US Foreign Corrupt Practices Act (FCPA) is one of the rare examples where facilitation payments are explicitly excluded from a statutory definition of bribery. The major-

ity of US companies, however, now appear to believe that facilitation payments are unacceptable.

Defending facilitation payments is defending double standards where one set of values applies in Norway, while other standards apply in other countries.

From a business point of view, facilitation payments can create more problems than they solve. In theory they buy time, but in practice they can actually cause delays by giving officials an incentive to create obstacles so they can be paid off for removing them. Facilitation payments can therefore actually slow down service, impeding both efficiency and the overall legitimacy of public institutions. Also, it remains a fact that facilitation payments encourage more and larger demands at the next opportunity, and a lenient practice towards facilitation payments therefore results in an aggravation of the problem.

Most people working to reduce inappropriate payments of all kinds agree that a strong and consistent message from a company is an important first step. A company that clearly and publicly declines to pay bribes will find, in time that bribes are no longer demanded. It is embarrassing to ask for a bribe and be turned away empty-handed.

Therefore the large number of small demands provides an opportunity to send that message over and over again. Word will spread more quickly if every petty bribe demand is refused. A simple, blanket refusal to grease palms gives the company a far greater opportunity to send a message of good governance to a broader audience, each member of which has only a few dollars at stake.

Can companies credibly explain to their employees that they cannot do business in some countries without making payments to the large number of low-level officials with their hands out, but that the company remains confident it won't have to pay off senior officials to win business? A company can't say 'yes' to a junior customs official, but plan to say 'no' to a minister of defence or the senior-ranking official responsible for petroleum contracts.

It's hypocritical for these companies to tell their employees that the company can do business in a clean and transparent manner at the highest level, but then not follow through with demands of low-level bureaucrats. Isn't it simpler to rebuff the demands of low-level officials than those of senior officials?

- Alexandra Wrage, President, TRACE International

It is no excuse that the practice is common and tolerated in a country or that the recipient is of low seniority. These payments are still bribes and they contribute towards corroding the fabric of law, good governance and democracy in many nations.

Emerging good practice

In the past there were strong diverging views between companies about whether company policy should tolerate facilitation payments. There appears to be a growing and general distaste for them, and more companies are banning them entirely.

Some companies explicitly tolerate these payments – "facilitation payments are discouraged, but our policy allows them to be made at local management discretion". Others set forth transparency mechanisms (e.g. requiring that such payments be disclosed and properly recorded).

A good practice for dealing with small corruption incidents tends to set a company's standards for the handling of larger cases. Good practice is to never condone facilitation payments, and always try to avoid and eliminate them. Payments should only be acceptable in exceptional circumstances, i.e. when a demand for payment is associated with expressed or perceived threat to life or health, the demand is extortion rather than a facilitation payment and payment is an act of self-defence.

Those companies that are exposed to facilitation payments, but choose not to ban them entirely, must address how to deal with them in their anti-corruption programme, such as:

- Analyse the risk of occurrence, including the risk of extortion.
- Assess the legality and the risk of legal prosecution.
- Plan how to eliminate them.

- Decide how demands should be reported to the police or other authorities.
- Make any payments in full transparency.
- Ask for receipts for all sorts of payments.
- Keep correct books and records of any payments.
- Never disguise facilitation payments as something else.
- Report internally.
- Process and analyse incidents internally.
- Make plans for avoiding situations with risk of payment demands.
- Design responses for handling future demands.

When patterns of facilitation payments are uncovered, companies should consider whether it is possible to track the way in which the proceeds are dispersed. Frequently, the front-line officials are not the principal villains, but are manipulated by their superiors.

5.3 POLITICAL CONTRIBUTIONS

Political contributions include any contribution, made in cash or in kind, to support a political cause. Contributions in kind can include gifts of property or services, advertising or promotional activities endorsing a political party, the purchase of tickets to fundraising events and contributions to research organisations with close associations with a political party. The release of employees to undertake political campaigning or to stand for office could also be included in the definition.

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

The enterprise should publicly disclose all its political contributions.

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Cases of political contributions could be direct support at national or local level, to a governing party or a party in opposition, to candidates or persons holding office, or they may be indirect support made through organisations or associations which financially support political parties and/or politicians.

A political contribution is not the same as bribery, but is clearly a risk area. A contribution made, or perceived to be made, for the purpose of influencing a decision in favour of a company or an individual is regarded as bribery. A contribution should not be made if a connection to the company obtaining licences, concessions, permits or contracts from the government is suspected.

Many companies impose an outright ban on any contributions to political parties.

For political contributions, charitable contributions and sponsorship, the company programme should require that:

- Decisions are approved at a high management level.
- Decisions are documented.
- Payments are made to organisations, not to individuals.
- The arrangements are covered by written agreements and receipts.
- Adequate efforts are made to ensure that there are no personal conflicts of interest on the part of the payer or the receiver, and that payments are not used for private gain.
- The employees are informed about political contributions, charitable contributions and sponsorships.
- The company communicates its political contributions, charitable contributions and sponsorships externally on its website and/or in its annual report.

5.4 CHARITABLE CONTRIBUTIONS

Charitable contributions are payments made for the benefit of society, for charitable, educational, social welfare and similar causes – the payments are made without demand or expectation of a business return.

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

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

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Be careful who the charity officials are. If anyone is related to someone to whom you are currently marketing, then it would be wiser not to make the donation.

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Sponsorship is a transaction where the enterprise makes a payment, in cash or in kind, to associate its name with an activity or organisation and receives in consideration for the sponsorship fee, rights and benefits such as the use of the sponsored organisation's name, advertising credits in the media, events and publications, the use of facilities and opportunities to promote its name, products and services. It is a business transaction and part of promotion and advertising.

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A charitable contribution may be a gift to a charitable or philanthropic organisation, or a social investment in a community where the company has or is developing business.

A charitable contribution is not the same as bribery, but is a risk area. A contribution made, or perceived to be made, for the purpose of influencing a decision in favour of a company may be regarded as bribery.

To the extent that payments are made to bona fide charities, this raises few problems. The concern is that in some cases charities are in reality fronts for decision-makers in government or business or individuals connected to them. Also, the representative of the charitable organisation may hold other positions (i.e. public office or business partner) that have other relationships with the company and its business.

5.5 SPONSORSHIPS

Sponsorship is not the same as bribery, but is a risk area.

Corruption may be connected with a sponsorship if there are conflicts of interest on the part of the payer or the receiver.

There may be return favours from sponsorships. If these are granted to one or a few selected individuals and without transparency, they may be considered as improper advantages. Return favours such as event tickets for business relations are not usually a problem if there is openness about them, if the values are small and if tax regulations are respected.

5.6 GIFTS, HOSPITALITY AND EXPENSES

The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever they could affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide.

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Companies use a variety of terms and concepts to provide guidance to employees about those instances where gifts, hospitality and expense coverage are not allowed, for example, if they:

- are excessive in value
- exceed normal business customs
- are an inducement to create or maintain business
- violate the law
- are offered without transparency
- are recorded in the accounts as something else
- have an appearance of impropriety
- are damaging to the reputation of the company

Some companies have zero tolerance for gifts, hospitality and expense coverage, some have value limits, while others do not specify limits but have descriptive requirements

for what is acceptable and unacceptable. Some companies have zero limits for certain situations and certain business contexts (i.e. Christmas gifts and events, proximity to a contract award, etc.).

The path from a Christmas gift to an outright bribe might become a "slippery slope". At the top end of the slippery slope, and at stages along it, are gifts and corporate hospitality, with escalating values and frequencies.

Companies are advised to establish detailed rules and guidelines for gifts, hospitality and expense coverage. If value limits are used, this should be done with care, as fixed values may be considered to be proper or improper depending on the circumstances.

It should be noted that in many countries public officials are governed by stricter rules relating to gifts, hospitality and expense coverage than private enterprises both in legislation and internal rules. Also, employees of fully and partly-owned state companies may be regarded as public officials.

It should also be noted that gifts, hospitality and expense coverage may be taxable for the receiver and may need to be reported to the tax authorities by the giver.

Many of the same principles and advice apply for gifts, hospitality and expense coverage.

The Confederation of Norwegian Enterprise (NHO) publication "..... crossing the line?" gives guidance on gifts, hospitality and expenses and is also a tool for internal company workshops.

Gifts

Gifts are money, goods, services or loans given ostensibly as a mark of friendship or appreciation. They are professedly given without expectation of consideration or value in return. Gifts may be used to express a common purpose and the hope of future business success and prosperity. Gifts have no role in the business process other than marking and enhancing relations or promoting the giver's enterprise by incorporating a logo or message on a promotional item such as a calendar.

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Think about the value, appropriateness and frequency of the gifts. At what point does a gift start to create an obligation and influence judgement?

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The trend is that gifts are playing a decreasing role in a business context in many countries, especially in Western Europe, yet gifts are still considered important in others.

The line between acceptable business practice and bribery is fuzzy. Indeed, it is difficult to be conclusive on a general basis about which instances of offering/receiving a gift are illegal, unethical or acceptable. However, these thumb rules may help:

- Gifts should be modest in terms of value and frequency, and the circumstances should be appropriate. The safest practice is to use gifts of little commercial value, such as the company's promotional articles.
- Gifts should be offered and received in a transparent manner and should never place the recipient under any obligation. Gifts should not be used to gain a business advantage, nor be perceived to do so.
- The same principles and practices should apply to both giving and receiving gifts.
- The same principles should apply to management and other employees. If differences are necessary and acceptable, then the rules should be transparent. Non-transparent practices may undermine the rules and the entire anti-corruption programme.
- The same gift policy should apply in all countries and markets.
- Gifts should never be offered or received in situations of contract bidding, evaluation or awards. Gifts after contract award should also be considered with care, as they can be seen as deferred kickbacks, or connected with approval of change-orders or new contracts.
- Gifts of value given to a business associate should be properly recorded in the books and records, and should not be hidden in the accounts as something else.

Also remember:

- Gifts of value received in a business context are the property of the company. The receiver acts in the capacity of being a representative of the company and not as a private person. Gifts of value should be reported to the superior. The company should decide how to deal with the gift.
- If it is inappropriate to refuse the gift, it may be returned later to the giver with an explanation, or given to charity with the giver being informed.

- Giving gifts of value to persons who are bound by strict rules on this subject, or receiving gifts which are outside the limits of your own company's policy, will lead to awkward situations. It would therefore be useful to exchange information about gift policies with business associates up-front.

Finally:

- If gifts are acceptable, it makes it easier for employees to deal with the issue if value limits are specified, but such limits often disregard other important circumstances such as frequency and context (i.e. contract bidding and awards). The company anti-corruption programme should describe the value, circumstances and kind of gifts that are acceptable, and should specify the approval process if limits are exceeded, and in cases of doubt.

Hospitality

Hospitality includes entertaining, meals, receptions, tickets to entertainment, social or sports events, participation in sporting events, such activities being given or received to initiate or develop relationships between business people. The distinction between hospitality and gifts can blur, especially where the giver of the hospitality does not attend and act as a host.

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Corporate hospitality (or entertainment) can have different purposes and interpretations. A day at the golf course can be a valuable opportunity to cement a working relationship. However, bribery can simply be dressed up as corporate hospitality, to satisfy the letter, but not the spirit of ethical guidelines.

Within reasonable expenditure, corporate hospitality is acceptable as a means of:

- Imparting information to a client about the host company.
- Cementing existing relationships.
- Providing an opportunity for new relationships to be formed.

Corporate hospitality is unacceptable where the aim is for the receiver of the hospitality to decide to favour the host company in return for an enjoyable occasion.

That being said, corporate hospitality is seldom black or white. The following factors and advice may be useful:

- Business context – lunching or dining a prospective client is unlikely to raise eyebrows unless it is frequent or lavish. However, any hospitality provided/accepted with a business associate must be connected to the business between the parties and should be associated with a real business agenda, i.e. not an agenda created to justify the hospitality. The business agenda should be the main purpose and content.
- Presence of partners/spouses – once spouses are invited, the argument that the event is purely business-related is less convincing. Inevitably suspicion arises that the event is more of a gift and an improper advantage.
- Presence of hosts – hospitality with absent hosts is to be considered as a gift, and possibly an improper advantage. Free use of the donor's villa or ski chalet is one example.
- Proximity to a relevant commercial event – there is a difference between corporate hospitality which purely aims to enhance an ongoing business relationship, and one which is larger in scale and specifically related to an imminent commercial event such as the award of a contract.
- Other than for "work-session meals", hospitality should not be provided or received in situations of contract bidding, evaluation or awards. Hospitality after contract awards should also be considered with care, as it can be seen as a deferred kickback or connected with approval of change-orders or new contracts.
- Hospitality provided to a business associate should be properly recorded in the books and records, and should not be hidden in the accounts as something else.

Furthermore:

- Hospitality should be offered and received in a transparent manner, should not place the other party under any obligations, and should not be undertaken if it may be perceived to be used to gain a business advantage.
- Hospitality should be modest. Expensive hospitality may create a perception of a need for a return favour. The provision of free accommodation, weekend hospitality, use of company cars, benefits conferred on the recipient's spouse/partner are usually not acceptable.
- Modest hospitality with representatives of several companies participating reduces the risk of the event being perceived as improper.
- If different principles and practices for management and other employees are necessary and acceptable, then the rules should be transparent. Non-transparent practices may undermine the rules and the entire anti-corruption programme.

Finally:

- Having value limits makes it easier for employees to deal with the issue, but such limits often disregard other important circumstances such as frequency and context (i.e. contract bidding and awards). The company anti-corruption programme should describe the value, circumstances and kind of hospitality that are acceptable and unacceptable, and should specify the approval process if limits are exceeded, and in cases of doubt.

Expenses

Expenses are the provision or reimbursement by an enterprise of travel and other related expenses incurred by a prospective client, customer or business partner, such reimbursement not being part of a contractual agreement. Typically, these are costs of activities such as travel to view a manufacturing plant or a benchmark installation.

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Typical recipients of expense coverage are customers, central and local government employees, politicians, journalists, trade union representatives, investors and finance market analysts.

Some companies do not accept expenses for their own employees being paid by others, nor do they provide expense payments for employees of other companies or government representatives.

Good practice on expense reimbursement is to require each company or organisation to cover the expenses of their own employees and representatives. If the company allows expenses for others than its own employees, or expense coverage by others for its own employees, the following advice may be helpful:

- Any expense coverage for employees or representatives of a business associate should be specified in the contract with the business associate or in a separate written agreement.
- Any such expense reimbursement should be approved by the superior of those receiving the reimbursement.
- Reimbursed expenses should be modest, based on receipts, be relevant, be transparent and properly documented in the books and records.

Furthermore:

- Any expense coverage provided or accepted must be connected to the business between the parties and should be associated with a real business agenda. The business agenda should be the main purpose and content.
- Presence of partners/spouses – once spouses are included, the argument that the costs are purely business-related is less convincing. Inevitably suspicion arises that the expense coverage is more of a gift and possibly an improper advantage.
- Proximity to a relevant commercial event – there is a difference between expense coverage which purely aims to enhance an ongoing business relationship, and one which is larger in scale and specifically related to an imminent commercial event such as the award of a contract.
- Any expense coverage should be modest. It should not create a perception of a need for a return favour.
- Expense coverage should not be provided or received in situations of contract bidding, evaluation or awards. Expense coverage after contract awards should also be considered with care, as it can be seen as a deferred kickback or connected with approval of change-orders or new contracts.

Finally:

- Having value limits makes it easier for employees to deal with the issue, but such limits often disregard other important circumstances such as frequency and context (i.e. contract bidding and awards). The company anti-corruption programme should describe the value, circumstances and kind of expenses (class of travel, level of accommodation costs, number of persons, duration, etc.) that are acceptable for any expense coverage, and should also specify the approval process.

5.7 CONFLICT OF INTEREST

Most cases of corruption involve individuals yielding to temptation and taking undue advantage of a conflict that already exists between professional and private interests.

Conflicts of interest exist when an employee takes part in company activities and decisions that may benefit his/her own or his/her family members' or friends' private interests outside the company. This may be through financial interest in or part-time work with a competitor, supplier, customer or other business associates. The most common conflict of interest situations occur in connection with purchasing, contracting, sales, business development and recruitment. Benefits obtained through conflicts of interest

A conflict of interest is when a personal interest or relationship is put before the business interest. Conflicts of interest can warp judgement and lead to actions which are not honest and open. These can sometimes lead to a situation where individuals act against their better judgement and give or accept a benefit which may damage your business. The way to deal with this is to have rules on how to manage situations where a conflict might happen. Even without malpractice, conflicts of interest may be seen as corrupt activities. This can be just as damaging as actual malpractice.

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are improper and may be in breach of corruption provisions in the Norwegian Penal Code and other laws.

The programme for countering corruption should address whatever constitutes conflicts of interest and how to handle potential and actual conflict of interest situations.

Key elements should be:

- Dealing with potential situations up-front
- Transparency
- Decisions to be taken by others than the person involved
- Exit from the affected activities within the company
- Exit from the conflicting outside interests
- Documentation of the handling of cases

5.8 TAX HAVENS

Tax havens, or offshore financial centres, are jurisdictions that offer low tax or no tax, and often also privacy and non-transparency about the ownership of companies, and may therefore be an important attraction for customers.

In several instances the use of tax havens is legitimate, and in some business areas, such as shipping, the use of tax havens has for many years been the norm. However, these jurisdictions may also be used for illegal tax evasion and for terrorists, illegal arms traders, drug dealers, money launderers and others needing to hide. Tax havens are also used for transactions and safe deposits by corrupt individuals and regimes.

Without tax havens and their high levels of secrecy and often inadequate security arrangements, governments would find it much easier to crack down on organised crime and corruption.

Suspicious contractual arrangements and financial transaction channelled through tax havens upon request from a business associate should trigger a "red flag" and should be carefully considered before deciding on a contractual commitment.

"Facilitators of corruption" should trigger another "red flag". These may be professional intermediaries from many fields, such as bankers, lawyers and auditors who assist by establishing shell companies and bank accounts in offshore jurisdictions and thereby enable transactions that may be illegal. The use of legitimate intermediaries may assist in concealing illegal transactions by creating an impression of trust.



6. SCOPE OF THE PROGRAMME: BUSINESS RELATIONS

6.1 WHY BE CONCERNED ABOUT BUSINESS RELATIONS?

When working with third parties, it is no good committing not to pay or receive bribes, if they are doing it on your behalf.

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First of all make sure that those with whom your company has a business relationship are informed of your anti-bribery programme. Ask if they have an anti-corruption programme in place and get a copy. Business partners should understand that your anti-bribery programme also applies to them when doing business with you and on your behalf. Reflect your programme in the terms of your contracts and agreements, which should also allow for immediate termination if business partners pay or accept bribes.

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A company may be held liable for complicity in the corrupt activities of other parties with whom they have business relations.

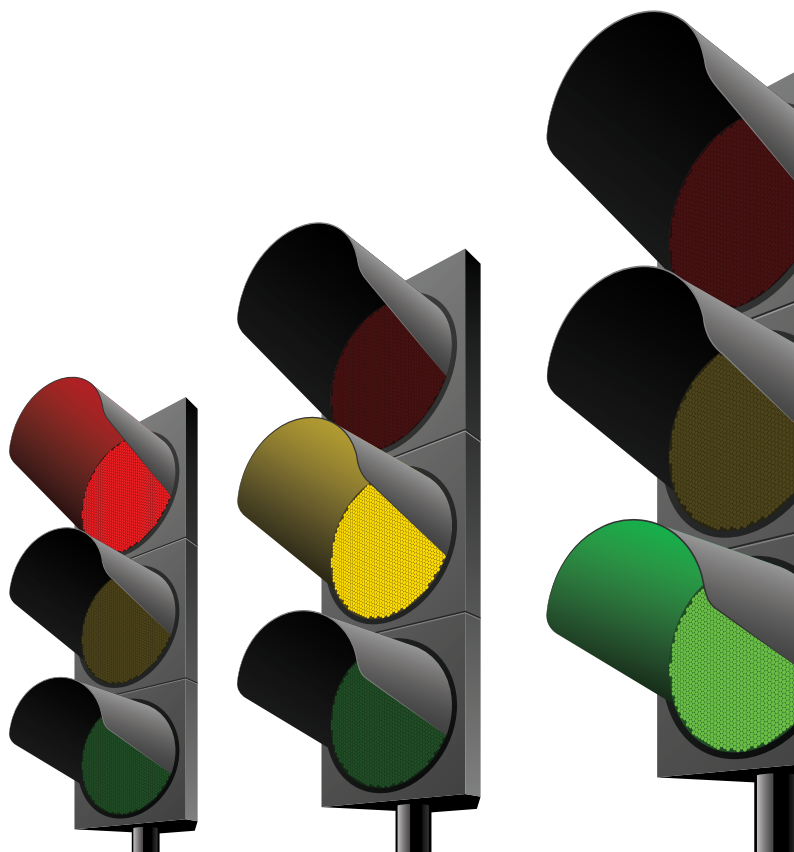
Many small and medium-sized companies in particular, do not require commitments regarding ethical conduct from their business associates. This may reflect a lack of awareness of the issue, the perception that corruption is not a material risk for their business or a reluctance to discuss the issue with business associates.

Larger companies, on the other hand, may have provisions that prohibit the use of agents, suppliers and business partners to carry out activities that the company is itself prohibited to engage in. They also bind subsidiary companies and entities in which they have effective control to comply with the same principles as their own, and some companies also encourage minority-owned entities to adopt and comply with similar principles.

Agents, contractors and other business relations represent large risks and hence companies should on a risk assessment basis consider conducting due diligence before engaging with them, i.e. taking all necessary precautions to ensure that they are forming a business relationship with reputable and qualified partners and representatives.

6.2 DUE DILIGENCE

Anti-corruption due diligence (often called integrity due diligence) can be described as the investigations and evaluations that a company undertakes of business associates to reasonably ensure itself that is not becoming involved in past, present and future corrupt activities through the business relationship.



It is most critical to carry out due diligence investigations of unfamiliar business associates before entering into contractual relationships with them, but it can also be relevant at later stages if new information warrants this.

For many companies it is impractical to conduct due diligence on all business associates. They should have guidelines with criteria for when to do it and how to prioritise. At least they should decide on a case-to-case basis when to conduct a due diligence and how thorough it should be.

A due diligence may be carried out with the cooperation of the company subject to the due diligence investigation, or without its knowledge. It may be performed by the company's own personnel or by a consultancy firm by undertaking information searches in open sources such as the Internet. It may also in critical and difficult cases be necessary to contract specialised consultancy firms that are able to investigate more in depth.

During the course of the due diligence, "red flags" may come up. Some of these may be:

- A public official (or a family member) owns company shares, has other interests in the company or is the real beneficial owner.
- Someone on the board of directors, in management or a key employee has an interest in another company that may be a competitor.
- The company declines to disclose the identity of the owners.
- The company declines to clarify owners', directors' or key employees' economic interests that are believed to constitute a conflict of interest.
- The company appears on a list of those debarred from bidding on contracts.
- Investigations uncover close associations with politicians, competitors or criminals.
- The company has a bad reputation for other reasons than those listed above.

Initial "red flags" should not necessarily cause an end to the relationship with the business associate. Issues may be resolved to become acceptable by gathering more information or through negotiations. If all "red flags" are not completely resolved, but sufficiently to go ahead with the relationship, then there is a residual element of risk involved, and the company should have a risk mitigation plan and should monitor the relationship closely.

The most common business relationships that are appropriate for considering corruption risk and due diligence are covered in the following sub-sections.

6.3 SUBSIDIARIES, PARTLY-OWNED COMPANIES, JOINT VENTURES AND CONSORTIA

The enterprise should implement its Programme in all business entities over which it has effective control and use its influence to encourage an equivalent Programme in other business entities in which it has a significant investment or with which it has significant business relationships.

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The enterprise should conduct due diligence before entering into a joint venture or consortium. The enterprise should ensure that joint ventures and consortia over which it maintains effective control have Programmes consistent with its own.

Where an enterprise does not have effective control of a joint venture or consortium it should make known its Programme to the other entities and encourage them to adopt a Programme for the venture that is consistent with its own.

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Companies' reputations may suffer if their partners in joint ventures, consortia and jointly-owned companies are known for lapses of integrity. It is becoming more common for companies to engage in a due diligence investigation before entering such relationships, but the practice is far from universal.

A business relationship with a corrupt partner may damage the company's reputation. If the partner has majority ownership, effective control and/or operating responsibility, the company may inherit a relationship with a corrupt agent and risk complicity. The company could risk complicity in corruption if it is knowledgeable or should have known about corrupt acts. Anti-corruption language in shareholder agreements and joint venture and consortia agreements, rights to information, and voting rules that allow for vetoing corrupt business arrangements are important.

The parent company programme should be implemented without limitations in subsidiaries and in partly-owned companies and joint ventures/consortia where the parent company has effective control through majority ownership, voting rules and/or operating responsibility.

For minority-owned companies and joint ventures/consortia in which the company does not have effective control, the company should use its influence to have these entities adopt programmes of acceptable standards. Anti-corruption performance should be included in the follow-up of the entities. The board members of partly-owned entities need to be observant about corruption risks. The company should exit such entities if their programmes or performance are found to be unacceptable and cannot be sufficiently influenced.

In partly-owned companies and joint ventures/consortia under its effective control, the company may be faced with requests for having an anti-corruption programme by minority partners that have a strong focus on anti-corruption.

Due diligence should be conducted on prospective partner companies (and their owners and key personnel) if these are unfamiliar to the company. Due diligence should also be carried out on partners that are known from previous business relationships and on partners in existing contractual relationships if new information or suspicions become available and makes this necessary.

6.4 AGENTS

It is common practice for companies to use agents, consultants and other intermediaries when operating in foreign markets. They are contracted to act on the companies' behalf to assist with sales, business development, government relations and various other tasks. Knowing local business negotiating conditions and traditions may be of vital importance to secure a contract. In most instances, companies use agents for legitimate reasons. In some countries the law prescribes the use of local agents.

The management of agents, consultants and other commercial intermediaries is a particularly sensitive issue because of the risk of bribery occurring on the company's behalf. In fact, agents have long been seen as the group of business relations associated with a high risk of corruption. The agent represents the company, but may consider bribery as a normal business practice. He may not be familiar with the company's anti-corruption programme or may simply ignore it.

Companies that turn a blind eye to the corrupt acts committed by an agent on their behalf or that deliberately use an agent to cover-up or "outsource" bribery may be held liable for corruption. Serious convictions of well-known companies are the evidence. Even if bribery by agents is

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

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

Compensation paid to agents should be appropriate and justifiable remuneration for legitimate services rendered.

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

The enterprise should monitor the conduct of its agents and other intermediaries and should have a right of termination in the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

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unwanted by or unknown to the company, it is still the company's responsibility to control its agents to ensure that bribery is not committed on its behalf. The Norwegian Penal Code prohibits corrupt payments being made through agents and other intermediaries. A company may be liable for bribery committed by the agent even when it denies having direct knowledge of such payments.

Recommended actions for controlling agents are:

- Due diligence before engaging the agent.
- Always use a written contract.
- Concrete contract description of the work tasks and the wanted achievements.
- Specific and reasonable budget lines for the tasks.
- Anti-corruption language in the contract.
- Audit rights.
- Contract language for termination in case of suspected corrupt behaviour.
- Signed commitment to comply with the company's anti-corruption programme.
- Anti-corruption training of the agent.
- Close monitoring of the agent.

During due diligence of an agent, a number of "red flags" may appear, including:

- Corruption concerns have been raised in the past concerning the agent.
- The agent does not reside in the same country as the customer or the project.
- The agent has little or no experience of the company's line of business or the type of work that he is to be engaged for.
- The agent is closely related through family members or friends with decision-makers, government officials, politicians, competitors or criminals.
- The customer suggests or requires that a bid or contract negotiations are arranged via a specific agent.
- The compensation requested is not proportional to the work.
- High success fee is demanded for obtaining the business objectives.
- The agent asks for payments in advance, to be made to another person, and/or to another country, such as a tax haven.
- The agent requires additional funds to "take care of some people", "get the business", or "make the necessary arrangements".

Further information on the scope for due diligence and "red flags" for agents and other intermediaries can be obtained from TRACE International (www.traceinternational.org). TRACE is an organisation that specialises in anti-bribery due diligence reviews and compliance training for international commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.). Membership gives access to the "TRACE Standard", training, case histories and a bribe reporting facility.

6.5 CONTRACTORS AND SUPPLIERS

In their role as customers, companies are to an increasing extent being held responsible for the conduct of their contractors and suppliers (hereinafter referred to as "suppliers"), both in the eyes of the public and by law enforcement agencies.

Sales of goods and services of significant value mostly happen through competitive bidding, and are covered by purchase orders or contracts. There are incentives for bribery in such sales, both in the bidding phase and afterwards in case of change orders and when the supplier is positioning himself for further contracts.

There is a risk of bribery both in the relationship between the company and the supplier and between the supplier and his sub-suppliers. Examples of innovative ways, which are created by the supplier or inspired by the responsible buyer in the customer's organisation, are:

- The supplier gives a well-paid job to a relative of the buyer.
- The supplier engages, without a proper business reason, a private company controlled by the buyer or by friends or relatives of the buyer, as a sub-contractor on the project when awarded.

The enterprise should conduct its procurement practices in a fair and transparent manner. The enterprise should avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes. It should undertake due diligence, as appropriate, in evaluating prospective contractors and suppliers to ensure that they have effective anti-bribery programmes.

The enterprise should make known its anti-bribery policies to contractors and suppliers.

The enterprise should monitor significant contractors and suppliers as part of its regular review of relationships with them and have the right of termination in the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

- The Business Principles for Countering Bribery

- The supplier undertakes work at the private home of the buyer, and issues heavily discounted invoices for this; sometimes the invoices are issued but never paid, or simply not issued.
- The supplier invites the buyer to a company event where a raffle is held – the result is fiddled so that the buyer wins the top prize.

These examples illustrate the vital importance of robust procurement and contracting procedures and of conducting due diligence on suppliers. Some reasons for choosing to perform a due diligence will be that:

- The supplier is unfamiliar to the company.
- Information that gives reason for concern is available.
- The country of operation scores low on TI's Corruption Perceptions Index (CPI).
- The home country of the supplier scores low on TI's Corruption Perceptions Index (CPI) and Bribe Payers Index (BPI).
- The contract has a high value.
- Extensive use of sub-suppliers is planned.
- The supplier needs to obtain authority permits and approvals.

As a customer in a competitive environment, a company is in a powerful position to demand that its suppliers have acceptable anti-corruption programmes and performance. Many companies in different industries have implemented systems for having suppliers commit to ethical and legal conduct on the subjects of corruption, human rights and labour standards. Ways in which to address corruption risk

KEY RECOMMENDATIONS IN THE PROCUREMENT OF GOODS AND SERVICES FROM SUPPLIERS

Procurement procedures

- Have robust procedures that are consistent with the law, regulations and company rules.
- Ensure compliance with procedures through information, training and internal audits.

Transparency

- Provide an adequate degree of transparency in the entire procurement process.
- Promote fair and equitable treatment of potential suppliers.
- Ensure that the scope of work or product, invitation to tender and model contract are not designed to fit one particular bidder.

Good management

- Ensure that funds are used in accordance with the intended purpose.
- Ensure that procurement personnel meet high professional standards of knowledge, skills and integrity.

Prevention of misconduct, compliance and monitoring

- Put mechanisms in place to prevent risks to integrity in procurement.
- Carry out due diligence before entering into relationships with suppliers.
- Co-operate closely with existing suppliers to maintain high standards of integrity.
- Use competitive bidding as a rule rather than an exception, and at least as required by laws and regulations.
- Provide specific mechanisms for the monitoring of procurement and the detection and sanctioning of misconduct.

Accountability and control

- Establish a clear chain of responsibility together with effective control mechanisms.
- Install checks and balances so that more than one person handles bidding, awards and change orders.
- Install checks and balances so that more than one person controls invoices against contracts and actual deliveries.
- Handle complaints from suppliers in a fair and timely manner.

with suppliers are to:

- Use anti-corruption as a bid evaluation criterion.
- Have contractual language and termination possibility in case of corrupt conduct.
- Have the supplier sign on to the company's programme or a separate anti-corruption commitment.
- Require and provide anti-corruption training.
- Follow up the supplier through audits and inspections.
- Have adequate internal controls in the procurement process.

6.6 CUSTOMERS

A supplier may be held accountable for a customer bribing a third party if he is actively involved and benefits from it and if the goods and services, or the payment for these, are connected with the corrupt act.

Suppliers may suffer reputation damage by being closely associated with corrupt customers. A company may want to carry out due diligence on potential customers with doubtful reputations, and may not wish to do business with such customers.

In its role as a supplier, the company may be requested by customers to provide documentation on its anti-corruption programme, and may be followed up on this.

It should also be noted that Norway's anti-money laundering law has requirements for checking customers.

6.7 MERGERS AND ACQUISITIONS

When a company plans to acquire another company or an asset, it is necessary to carry out integrity due diligence investigation of legal and financial matters concerning the acquisition object, its organisation and its owners. The purpose of a due diligence investigation is to obtain full information about the purchase object and to discover whether there are legal or financial problems that may discourage the purchase or necessitate further negotiations on the purchase price or specific conditions in the acquisition contract. It is always important in such a due diligence process to ascertain that the business to be acquired has complied with relevant laws and regulations, including of course applicable corruption legislation, to avoid inheriting responsibility for criminal acts and associated costs.

In the case of a merger, it will be appropriate to conduct due diligence on all the companies involved to reduce risks for the owners and for the organisation of the new company going forward.

Corruption cases often surface during mergers and acquisitions, and many such cases are connected with the use of agents and other intermediaries. The consequences are considerable for the companies and individuals involved. Merger and acquisition due diligence should therefore be conducted thoroughly with adequate time, resources and competence being devoted to it.

7. PROGRAMME IMPLEMENTATION

7.1 COMMITMENT FROM THE TOP

The Board of Directors or equivalent body should commit to an anti-bribery policy and Programme based on the Business Principles and provide leadership, resources and active support for management's implementation of the Programme.

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

The Board of Directors or equivalent body, Chief Executive Officer and senior management should demonstrate visible and active commitment to the implementation of the enterprise's Programme.

- The Business Principles for Countering Bribery

By adopting an anti-bribery programme, you are also taking steps to protect your business and your people.

- The Business Principles for Countering Bribery - SME Edition

Creating a culture of ethical practice may be challenging. The best companies are the ones that have an ethos of "this is how we do things around here" instilled throughout. This type of honest and frank culture is hard to create, and does not happen overnight. It requires both a value-based culture and a rule-based compliance culture. It also requires an effective communication strategy. And last, but not least, it requires strong ethical leadership by the top management.

Chief executive officers need to demonstrate at all times – not just in the midst of a scandal or directly thereafter – that doing the right thing is both a choice and a necessity.

The decision to implement an anti-corruption programme needs to come from either the Board of Directors or the President/CEO. The Board should approve the outline and main content of the programme. The President/CEO should approve the entirety of the programme.

The President/CEO and the top management need to speak, write and act in ways that support the programme and leave no doubt about the seriousness and priority of it. Visible and clear commitment to the programme from the top management is needed continuously during programme preparation, launch and subsequently.



The President/CEO and the top management should ask the business units for the status of programme implementation and how it is complied with, in regular reports and at decision points.

Companies with chief ethics officers need to ensure that they have genuine influence, with direct access to the President/CEO and also to the Board of Directors. They need to have a seat at the table, just like the corporate lawyers, when key corporate transactions are discussed. They should not be reporting via others, such as the legal department or the human resources department, but be recognised as performing a vital and independent senior management role.

The programme should include all relevant scope elements and should preferably be implemented in one go. However, if there are timing and resource constraints, the company may decide on a phased approach. This is better than not getting started at all.

It is recommended that TI's practical guide for preparing and implementing anti-bribery programmes is used: "Business Principles for Countering Bribery – TI Six Step Process". This can be downloaded free of charge from www.transparency.org.

7.2 MAPPING PRACTICES AND RISKS

The enterprise should analyse which specific areas pose the greatest risks from bribery and design and implement its Programme accordingly.

- The Business Principles for Countering Bribery

The enterprise should perform a regular assessment to determine the risk of bribery to its operations by reference to the countries in which it operates, its business sectors and its business practices. This will provide the basis for development of its programme and for tracking and measuring performance and improvements.

- The Business Principles for Countering Bribery – Guidance Document

Before developing the anti-corruption programme, or before upgrading and improving an existing one, the company should assess the practices and the corruption risks in the organisation, with its business relationships and

in the countries and markets where it has business or plans to have business. The programme should then be designed to focus on the greatest risks.

A range of alternative methods may be used for the risk analysis based on the collected information, from comprehensive numerical and statistical risk analyses to simple qualitative assessments. The most important thing is that the company chooses the methodology which seems most suited to its situation and in the best possible way provides guidance on what the programme needs to address and focus on.

One part is to map the current practices in the different parts of the organisation on such issues as facilitation payments, gifts, hospitality, expenses, extent of use of agents and control of these, etc. This can be done, for example, through interviews or by use of a questionnaire. Checks should also be made to ensure that relationships with agents and other critical business associates are covered by written agreements, whether these have anti-corruption content, and whether the terms and conditions give cause for concern.

Furthermore, assessments should be carried out to see which parts of the organisation are most exposed to corruption risks and in which forms. These could, for example, be the procurement department, the business development department and subsidiaries abroad.

TI's anti-corruption research publications may be consulted for evaluation of corruption risks in the countries and business segments in which the company is doing business. These can be downloaded from www.transparency.org:

- The Corruption Perceptions Index (CPI)
- The Bribe Payers Index (BPI)
- The Global Corruption Barometer (GCB)
- The Global Corruption Report (2009 edition focus on private sector)
- National Integrity Surveys (NIS)

The risks related to the anti-corruption legislation in the various countries of operation should also be assessed. The US Foreign Corrupt Practices Act (FCPA) is a special case which is important for many Norwegian companies.

Corruption risk analyses sometimes persuade a company to avoid certain markets or partners altogether because the possibilities of becoming involved in corruption are judged to be too high. At other times such risk analyses help the company to secure business ethically precisely because it is equipped to know the key risks and how to handle them, even when operating in a challenging environment where culture and business practices are unfamiliar.

7.3 ORGANISATION INVOLVEMENT

The enterprise should develop the Programme in consultation with employees, trade unions and other representative bodies.

- The Business Principles for Countering Bribery

Depending upon the size of your business, you could appoint one person or a group of people to administer the anti-bribery Programme.

- The Business Principles for Countering Bribery - SME Edition

Even if the rules, guidelines and other parts of the programme are developed with outside help, it is essential that the company's own organisation is deeply involved to ensure the necessary depth of ownership and commitment.

It is important that those appointed to administer the programme is a staff unit which is independent of the business line organisation and which reports to the President/CEO. This unit should be responsible for preparing the programme and launching it, and it could also have a role in following it up.

It is recommended that programme preparation and implementation is run as a project, with respect to how the work is organised, budgets, action plans and progress follow-up.

The plans for the programme and its intended content should be presented to the various organisational units in the company and to the trade unions at the work places. Comments and suggestions should be invited. Information about programme development should be communicated through the company's internal website or printed bulletins. Special emphasis should be placed on cooperation with organisational units that are believed to have valuable input to the programme, such as the legal, internal audit, and procurement departments. A review should be made of any relevant cases recorded through whistle-blowing.

It could also be useful to meet companies that have implemented anti-corruption programmes, to draw on their experiences. Cooperation with trade unions, the Confederation of Norwegian Enterprise (NHO) and civil society organisations, such as Transparency International Norway and its network of national chapters, is encouraged. In many

parts of the world, business is partnering with civil society to prevent corrupt practices, strengthen public institutions and foster an anti-corruption culture in society.

7.4 WRITTEN POLICIES AND STANDARDS

Written policies and standards constitute the core of the company's programme for countering corruption. They should cover all necessary corruption issues (ref. Chapter 5) and all types of business relationships (ref. Chapter 6) that are relevant for the company, based on the results of the mapping of risks and practices.

These written policies and standards should contain distinctions of what are acceptable and unacceptable practices and clear requirements for handling issues, and they could also contain guidelines and advice. The content should be sufficiently detailed, concrete and without ambiguities so that it is practical and easy to use by employees and others who are required to comply with them. Distinction between mandatory rules and work procedures versus recommendations and advice should be made as clear as possible.

It should be clear who has the authority to approve any deviations from the policies and standards (if not in breach of the law) and who should decide in cases of doubt. Furthermore, there should be a system for documenting and filing such cases.

7.5 TRAINING PROGRAMMES

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

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

- The Business Principles for Countering Bribery

At the launch of the anti-corruption programme, a substantial information and training effort is required. This should include the entire organisation, but it should be dimensioned and focused differently for various units depending on challenges and risks based on an evaluation of which organisational units and positions are most exposed and how.

The training should cover all elements in the programme and should include discussions of cases and dilemmas. Use of concrete examples experienced by the organisation and dilemmas which are relevant for the business is most effective. The training may be achieved through meetings, workshops and team-building events, and may be in the form of a web-based training programme, or a combination. Dilemma training through group work or plenary discussions contributes to building a good company culture. It creates engagement, common understanding and calibration of the ethical standards in the organisation.

Managers and organisation units most exposed to corruption risk should receive thorough training. Seminars and case workshops with both internal and external speakers and facilitators may be used for this purpose. Personnel in high risk positions should be given "in-person" training and should be tested or examined after training completion.

Records should be kept to keep track of who has received the training. Follow-up training should be tailored to cater for organisation changes, new employees, new countries of business and new products and services. Anti-corruption training should not be treated as a "one-off" event; it needs to be a continuous effort. It is recommended that anti-corruption training is repeated every two years.

Based on an evaluation of criticality, training should also be provided to agents, consultants, contractors and suppliers.

7.6 INTERNAL CONTROLS AND AUDITING

A robust financial control system is fundamental for being able to prevent and detect corruption. Necessary elements are:

- Detailed and accurate accounting practices
- Traceable payments
- No off-the-books accounts
- Monitoring of contract terms
- Good documentation and filing practices

Auditing of programme implementation and performance need to be included in the audit plans of the internal audit function. Organisation units and themes to be audited should be determined based on a risk evaluation.

The company should have a system for internal reporting of the programme implementation process and performance. A periodical self-assessment reporting system may be used.

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

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

- The Business Principles for Countering Bribery

It's no good having a programme unless it is supported by controls and records. These are the checks and balances which will support your programme and show that it is working.

- The Business Principles for Countering Bribery - SME Edition

7.7 WHISTLE-BLOWING MECHANISMS

To be effective, the programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the enterprise should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations ("whistle-blowing") in confidence and without risk of reprisal.

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

- The Business Principles for Countering Bribery

Anti-corruption programmes may be of limited value if employees do not know where to turn if there is a problem. Over the last few years there has been an increase in the number of companies that have introduced whistle-blowing mechanisms that employees can use for that purpose.

Whistle-blowing

Bottom-up mechanisms, like whistle-blowing, supplement the top-down commitment to counter corporate corruption.

Management must offer adequate protection to those who wish to come forward to report deviations from ethical and legal corporate standards. This can be done, for example, via confidential telephone services or intranet and internet sites through which employees and business partners can address concerns or pass information. To make such services effective, genuine concerns must be listened to and acted upon in a timely manner by responsible key personnel. The legitimate use of whistle-blowing mechanisms must not provoke retaliation in the form of stalled promotions or cancelled bonus payments.

It is recommended that companies have the whistle-blowing channel available not only for employees, but also accessible for business associates and for the general public.

A company having a channel for questions and concerns may have to revitalise and adjust it in connection with launching the programme for countering corruption. If the company does not have such a channel, it needs to establish one as a part of its programme.

It is important that:

- The channel is managed by an independent staff unit, which reports to the President/CEO.
- There is opportunity to report anonymously.
- The cases are handled confidentially with adequate protection and fair handling of the person reporting and the person reported on.
- The cases are investigated and brought to conclusion, including debriefing of the individuals involved.
- There is a system in place for proper documentation and filing of the concerns raised, the processing and the conclusions.

Complaints and concerns from employees have increasingly been a source of allegations of violation of anti-corruption legislation in Norway in recent years. According to Norwegian enforcement authorities, auditors and corporate employees are the main sources of reports they receive on bribery and other economic crimes committed by companies.

Guidance on whistle-blowing can be found in the Confederation of Norwegian Enterprise's (NHO) publication: "Når sant skal sies – en veileder fra NHO om åpen bedriftskultur og varsling".

Encourage and protect

The most important concern is that management and the Board of Directors ensure that whistle-blowers are protected and encouraged. When an employee observes misconduct, then she or he should be encouraged to report it. As a matter of fact, companies are legally bound to enable and encourage employees to use their right to notify.

In 2007, Norway amended its Working Environment Act with provisions for whistle-blowers. The provisions, applicable both in the public and private sector, require that companies have systems for whistle-blowing. Whistle-blowing is a legal act protected against retaliation under the law. Protection extends to external reporting, such as to governmental supervisory bodies, the police and the media, not just internal reporting. However, statutory protection is not entirely satisfactory. The whistle-blower must have acted with "justification", which may be subject to widely different interpretations by the parties involved in a particular case.

In foreign bribery cases

It can be difficult to gain information about foreign bribery cases. In many parts of the world, businesses are becoming more proactive in asking their respective home and host governments to assist their efforts to create anti-corruption mechanisms to root out systemic corruption.

If a Norwegian company or an employee has encountered corrupt practices in a country, or has been particularly disadvantaged by bribery perpetrated by a competitor or by another company, or if a foreign official solicits a bribe, this should be reported to the local Norwegian Embassy, or it can be reported to Økokrim (the National Authority for Investigation and Prosecution of Economic and Environmental Crime) at www.okokrim.no.

7.8 INVESTIGATING INCIDENTS

A corruption case may come to the surface in many ways, such as through:

Reactive:

- Government investigation
- Government subpoena
- The press
- A competitor
- A supplier
- A customer
- Management self-reporting
- Whistle-blower
- Disgruntled employee

Proactive:

- Self-assessment and certification
- Compliance reviews
- Due diligence
- Internal and external audits
- During evaluation and upgrading of the anti-corruption programme

An investigation will often include the following elements:

- Interviews with employees and third parties
- Review of contracts and payments
- Review of bids and evaluations
- Prioritised review of accounts
- Analysis of financial data
- Review of e-mails and hard-copy files

When a concern is raised through the whistle-blowing channel, it is the organisation unit that manages the channel that in the first instance is responsible for deciding how to deal with it.

If the case needs to be investigated, the organisation unit that is responsible for the channel may carry this out, a special team may be established for the purpose, or the task may be outsourced, for example to a law firm. It is important that the person who reported the matter and the persons investigated are given the necessary confidentiality and legal advice.

Communication with the President/CEO and the Board of Directors is essential. If an illegal act is suspected, the case must be reported to the police.

7.9 ACCOUNTABILITY AND CONSEQUENCES

Even though an independent staff unit is given the task of preparing, launching and administering the programme, it should be made clear that it is the responsibility of the entire organisation and every employee to implement the programme and to comply with it. The programme must therefore be mainstreamed and internalised throughout the organisation.

The programme is most likely to be successful if the anti-corruption measures are intimately blended into the normal course of the business, i.e. into the annual business plans and budgets, project approval criteria, investment decisions, project execution plans, procurement procedures, human resources policies and procedures, reporting, etc.

Everyone in your business or all your employees should understand that they each have a responsibility to make sure that the Programme is followed and works.

- The Business Principles for Countering Bribery - SME Edition

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

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

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

- The Business Principles for Countering Bribery

Different methods may be used to strengthen implementation, such as written confirmation by managers that the programme material has been received together with a commitment to implement, annual self-evaluation on the status of implementation, and annual assurance letters or certificates where managers sign a statement about compliance with the programme.

Communication by management and human resource policies should make it clear that the use of bribery for private gain or to obtain business goals is unacceptable and will result in disciplinary actions. Breaches of the programme's mandatory requirements should lead to sanctions such as a warning or reprimand in writing, demotion and a transfer to a different position or dismissal, depending on the seriousness of the violation. Furthermore, the company is responsible for reporting incidents which could be illegal to the police.

Companies should consider carrying out integrity background checks on applicants for critical and exposed job positions. Anti-corruption wording may be used in employment contracts or compliance with the company's code and policies can be a specific obligation in the contract. Performance in programme implementation and compliance should be included in appraisal dialogues between managers and employees, and in the evaluation of employees for salary raises and promotion. Bonus incentive schemes for programme implementation and good performance may be used.

7.10 INFORMATION AND COMMUNICATION

It is no good having business principles and a programme if no-one knows about them.

- The Business Principles for Countering Bribery - SME Edition

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

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

The enterprise should be open to receiving communication from relevant interested parties with respect to the Programme.

- The Business Principles for Countering Bribery

Simply communicating the programme and the company rules prohibiting corrupt activity can have a very direct preventive effect – quite a few offences are due to a sheer lack of awareness or ignorance.

Internal communication

During preparation of the programme, during its launch and subsequently, information about programme plans, content and requirements should be communicated regularly to all employees.

One organisational unit should be responsible for receiving and processing comments to and suggestions for the programme, both from internal and external sources, and provide information and advice upon request.

The President/CEO should report regularly on the operational effectiveness of the programme to the Board.

Internal communication measures in the organisation include:

- Websites – intranet
- Training of employees
- Management training events
- Workshops
- Team-building events
- Management team meetings
- Ethical helpline
- E-mails to employees
- Information from legal counsel, compliance officer, ethical officer

External communication

Unfortunately, many companies do not have policies or programmes dealing explicitly with corruption, and many that do are disinclined to publish them. This could reflect a lack of awareness of the issue, reluctance to discuss the issue publicly, the misconception that it increases risks, concern about the downside in case of an incident, or the perception that corruption is not a material risk for their business.

However, the written parts of the programme, particularly the policies, requirements, procedures and guidelines, should be available on the company's public websites and should actively be made available to all business partners and also to government institutions that the company has relationships with.

Annual reporting

Companies are recommended to use the Global Reporting Initiative (GRI) standard for annual reporting. GRI is a widely accepted standard for reporting social and ethical issues, including aspects related to corruption.

In the conviction that it helps their reputation, attracts investors, attracts talented employees, and is beneficial for their share prices, many companies choose to report social responsibility (including anti-corruption) performance to rating agencies and to be listed in indexes such as the Dow Jones Sustainability Index and FTSE 4Good.

The company should report on the preparation, implementation progress, content and performance of the anti-corruption programme in its annual report and/or sustainability/CSR report/website.

Companies are recommended to be transparent about payments made to governments in the form of taxes and other dues, and to report such payments on a country-by-country basis in their annual reports and on their public websites.

Reporting on practices

Companies should also report good and bad practices and any incidents experienced. Reports on company performance against anti-corruption commitments are not yet common, but highly desirable, and companies should not only include corruption-related material in their reports, but also on their public websites.

Companies may feel reluctant, still, to report corrupt business practice and see little "upside" in reporting corruption. It is a matter of time before companies do this out of necessity. While there was a time when reporting on environmental performance was perceived to be difficult, today companies are at ease with reporting on these matters. With the increased availability of standards and guidance that facilitates anti-corruption reporting, it will become easier and more common for companies to undertake such reporting.

Companies should consider reporting key information from their whistle-blowing channel, such as:

- Number of cases reported
- Number of cases investigated
- Number of unsubstantiated cases
- Number of cases resulting in sanctions

7.11 PROGRAMME REVIEW AND ADJUSTMENT

The organisational unit responsible for the launch and follow-up of the programme should periodically produce reports that describe experiences with the programme. There should also be a system for collecting incidents, dilemmas and suggestions for further development of the programme.

In order to obtain a thorough insight into the quality of the programme and how it is functioning in the organisation, the company should at regular intervals establish a team that carries out an internal review. The TI Self-Evaluation Tool (SET) is recommended for this purpose. It can be downloaded free of charge from www.transparency.org.

Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate.

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

The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the annual report to the shareholders.

The Board or equivalent body should consider whether to commission external verification or assurance of anti-bribery policies and systems to provide enhanced internal and external assurance of the Programme's effectiveness.

- The Business Principles for Countering Bribery

In addition, it is recommended that the company at intervals contracts a consultancy firm to carry out an external review of the programme and how it works.

The results and recommendations from all sources of information on programme performance and effectiveness should be reported to the President/CEO and the Board of Directors.

The information gathered should be used to adjust and improve the programme.



Afterword

Companies take considerable risks by not having an anti-corruption programme of some sort. On the other hand, the recommendations for a programme offered in Chapters 4 to 7 in this Handbook may seem overwhelming for a company that is about to start this work.

However, it should be noted that:

- The programme only needs to cover the risk areas and need not include elements that are irrelevant to the company.
- It is better to get started with an incomplete and imperfect programme that tackles the most serious risks, and to amend it over time, than not to have any programme at all.

This Handbook is a part of TI Norway's efforts in the fight against corruption, by helping Norwegian companies to help themselves in avoiding and counteracting it. TI Norway will continue to be of assistance to Norwegian companies in this regard and hopes that Norwegian companies will support TI Norway in these efforts.

References and information sources

A list of references for this Handbook and further sources of information are provided on TI Norway's website (www.transparency.no).

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