



# THE 2010 UK BRIBERY ACT ADEQUATE PROCEDURES

Guidance on good practice procedures  
for corporate anti-bribery programmes  
TRANSPARENCY INTERNATIONAL

SUPPORTED BY:



**Transparency International (TI)** is the world's leading non-governmental anti-corruption organisation. With more than 90 Chapters worldwide, TI has extensive global expertise and understanding of corruption.

**Transparency International UK** is the UK chapter of TI and is dedicated to combating corruption in the public and private sectors. We build constructive partnerships with the private sector and develop practical tools to tackle corruption.

**AUTHOR:**

Peter Wilkinson

**CO-ORDINATION OF THE REPORT:**

Chandrashekhar Krishnan, Executive Director, Robert Barrington, Director of External Affairs, Transparency International UK.

**EDITORIAL PANEL:**

Robert Barrington, Julian Glass, Neil Holt, Chandrashekhar Krishnan, Ian Trumper

**PUBLISHER:**

Transparency International UK

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# FOREWORD

The newly passed UK Bribery Act is a major step forward by the UK in joining the international community under the auspices of the OECD Anti-Bribery Convention to fight bribery and corruption, which does so much damage, particularly within developing nations and to international business. There have been many organisations which have worked tirelessly to improve the anti-bribery laws and FTI Consulting and Halcrow wish to take this opportunity to recognise in particular the efforts of Transparency International UK (TI-UK) which has led this movement for many years.

The new Act is very broad in scope, capturing both bribery within the private sector and bribes paid to overseas government officials. Its jurisdictional reach is also very long, allowing almost no hiding place for companies which for some misguided reason decide to pay bribes. While the public consciousness of good corporate governance is forever improving and becoming more demanding and many companies are raising their anti-bribery standards, it is a sad truth that there is no sign that bribery in its many forms is decreasing. Governments have sought to respond by the use of criminal sanctions, led by the US Department of Justice (DoJ) through the Foreign Corrupt Practices Act (FCPA) and much more recently by the UK Serious Fraud Office (SFO) using past UK anti-bribery legislation which dated back to the late 19th century. The new Act will strengthen the hand of the SFO and quite naturally, companies and directors are anxious for advice on what constitutes bribery and what they need to do to show that they have adequate procedures in place to stop bribes being paid.

FTI Consulting, along with Halcrow, is pleased to support this Guidance by TI-UK based upon the Business Principles for Countering Bribery, an initiative led by TI. FTI Consulting has worked with corporations and the DoJ on many FCPA investigations. Halcrow is well known and highly regarded for its construction consultancy work on international infrastructure projects. Together we have provided some support and advice to TI-UK on this manual. We would also like to express our appreciation to all the other contributors, in particular to Clifford Chance which has long supported TI-UK.

FTI Consulting recognises that companies require practical advice on how best to manage risk of non-compliance with anti-bribery legislation and what to do should they be faced with some very difficult dilemmas. We believe that this Guidance should prove to be a very useful aid to any company in its quest to conduct business in a profitable and ethical manner.

Neil Holt  
Group Board Director  
Halcrow Group

Ian Trumper  
Senior Managing Director  
FTI Consulting

# CONTENTS

<b>1</b>	<b>INTRODUCTION</b>	<b>4</b>
<b>2</b>	<b>THE BRIBERY ACT</b>	<b>7</b>
2.1	General	7
2.2	Important considerations for companies	7
2.2.1	Penalties	7
2.2.2	Debarment risk	7
2.2.3	Jurisdictional reach	9
2.2.4	Foreign public officials	10
2.2.5	Liability risks for directors and senior officers	10
2.2.6	Associated person	10
2.2.7	Facilitation payments	11
2.2.8	Promotional expenses	11
2.3	Foreign Corrupt Practices Act	11
<b>3</b>	<b>TONE FROM THE TOP: THE CONTROL ENVIRONMENT</b>	<b>13</b>
3.1	Corporate culture and the control environment	13
3.1.1	Corporate culture	13
3.1.2	Control environment	13
3.2	No-bribes policy	14
3.3	Anti-bribery programme	14
3.4	Compliance with laws	14
3.5	Responsibilities of the board	15
3.5.1	Board and senior executive oversight, responsibilities and leadership	15
3.5.2	Board and management demonstration of commitment	15
3.6	Human Resources	17
3.6.1	Recruitment	17
3.6.2	Performance and appraisal	18
3.6.3	Sanctions on employees	18
<b>4</b>	<b>RISK ASSESSMENT</b>	<b>21</b>
<b>5</b>	<b>DETAILED POLICIES AND PROCEDURES</b>	<b>27</b>
5.1	Prevalent forms of bribery	28
5.1.1	Facilitation Payments	28
5.1.2	Promotional expenditures: gifts	33
5.1.3	Political contributions	41
5.1.4	Charitable contributions	44
5.2	Operational functions	48
5.2.1	Contracting and purchasing	48
5.2.2	Contracting by the company	49

<b>6</b>	<b>IMPLEMENTATION</b>	<b>53</b>
6.1	Introduction	53
6.2	Training	53
6.3	Raising concerns and seeking guidance	56
6.4	Communication	57
6.4.1	Internal communication	58
6.4.2	External communication	59
6.5	Support functions	60
6.6	Collective action	60
6.7	Internal controls	61
6.8	Documentation	62
6.9	Accurate books and records	62
6.10	Dealing with incidents	63
<b>7</b>	<b>BUSINESS PARTNERS: APPLYING DUE DILIGENCE</b>	<b>65</b>
7.1	The Bribery Act and 'associated parties'	65
7.2	Due diligence	66
7.3	Policy to apply the company's programme to business associates	66
7.4	Subsidiaries	66
7.5	Significant investments	67
7.6	Agents and other intermediaries	68
7.7	Joint ventures and consortia	71
7.8	Contractors and suppliers	75
<b>8</b>	<b>MONITORING AND REVIEW</b>	<b>77</b>
8.1	Continuous monitoring and improvement	77
8.2	Oversight and monitoring responsibilities	77
8.3	Monitoring process	78
8.4	Internal audit	78
8.5	Review and improvements	78
8.6	Self-reporting	79
8.7	Learning from incidents	79
8.8	External verification and assurance	80
<b>9</b>	<b>NEXT STEPS</b>	<b>83</b>
<b>10</b>	<b>GLOSSARY</b>	<b>84</b>
	<b>LIST OF RESOURCES AND LINKS</b>	<b>87</b>
	<b>ANNEXES 1-8</b>	<b>97</b>
1	Bribery Act 2010	
2	Business Principles for Countering Bribery	
3	Clean Business is Good Business: the Business case for Countering Bribery	
4	Global Compact-TI Reporting Guidance on the 10th Principle against Corruption	
5	TI Corruption Perceptions Index 2009	
6	TI Bribe Payers Index 2008	
7	OECD Good Practice Guidance Internal Controls, Ethics and Compliance	
8	Resisting Extortion and Solicitation in International Transactions	

# ONE INTRODUCTION

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

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"Organisations such as Transparency International ... have published impressive anti-bribery strategies on their websites, which, if adopted by commercial organisations, would go a long way to eradicating bribery."

LORD BACH, THE THEN PARLIAMENTARY UNDER SECRETARY OF STATE, MINISTRY OF JUSTICE, DECEMBER 2009

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## Heightened risks for companies, boards and management

The Bribery Act is legislation of great significance for commercial organisations and partnerships ('companies') incorporated in or carrying on business in the United Kingdom. It presents heightened liability risks for companies, directors and individuals. To avoid corporate liability for bribery, companies must make sure that they have strong, up-to-date and effective anti-bribery policies and systems. The Bribery Act unlike previous legislation places strict liability upon companies for failure to prevent bribes being given (active bribery) and the only defence is that the company had in place adequate procedures designed to prevent persons associated with it from undertaking bribery<sup>1</sup>. While the Bribery Act provides that the government must publish guidance about what constitutes adequate procedures<sup>2</sup> it is expected that such guidance will only set out general principles for anti-bribery programmes supported by illustrative cases studies and scenarios and will not provide detailed descriptions of the design and implementation of anti-bribery policies and procedures.

## A benchmark for good practice

A company using this Guidance to benchmark or develop its anti-bribery programme will be able to take reasonable assurance that it has aligned to what is generally viewed as current good practice and thereby represents 'adequate procedures'. However, it should be cautioned that what actually constitutes 'adequate procedures' remains the preserve of the courts. TI views this Guidance as representing 'adequate procedures' as it is based upon the Business Principles for Countering Bribery, an anti-bribery code widely recognised as a benchmark for good practice and developed through a broad multi-stakeholder process, initiated and led by TI, by a steering committee of companies, NGOs, academia and unions and validated through field tests and public consultation. The Guidance also draws on TI's extensive global and UK experience in anti-bribery, working with the private sector, governments and anti-corruption initiatives and also through the development of a range of TI anti-bribery tools tested in numerous workshops and field studies.

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1. Bribery Act section 7: Failure of commercial organisations to prevent bribery

2. Bribery Act section 9: Guidance about commercial organisations preventing bribery

### **Zero tolerance of bribery and a robust and consistent anti-bribery programme provide the strongest defences**

This Guidance is based on the premise that a company's anti-bribery programme is more likely to be regarded as constituting 'adequate procedures' if it is based on good practice rather than an approach that solely uses compliance with laws to determine the structure of the programme. The business case for countering bribery extends beyond complying with laws. A company committed to countering bribery communicates a strong message that it is determined to act responsibly. It will have a more resilient business, be an employer of choice for recruiting and can gain a competitive advantage as a preferred choice of ethically concerned customers, investors, suppliers and other stakeholders<sup>3</sup>.

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"...a company's anti-bribery programme is more likely to be regarded as constituting 'adequate procedures' if it is based on good practice rather than an approach that solely uses compliance with laws to determine the structure of the programme."

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The Bribery Act presents some uncertainties in areas such as promotional expenditure and the definition of an associated person. The approach in this Guidance should enable companies to achieve adequate procedures and address these uncertainties.

#### **Enforcement in the UK**

Enforcement in the UK has been increasing to the extent that the UK is now rated by TI<sup>4</sup> in the 'active enforcement' category of signatories to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ('the OECD Convention'). The lead enforcement agency in the UK for foreign bribery is the Serious Fraud Office (SFO) whose prosecutorial functions are proposed to be transferred to the new Economic Crime Agency (ECA). It is yet to be seen how actively the Bribery Act will be enforced but prosecutors say it will be much easier to build a case with the new law.

#### **Objective of this Guidance**

This Guidance from Transparency International is intended to provide larger companies with a comprehensive view of what constitutes adequate procedures. TI's objective in doing so is to help companies implement a policy of zero tolerance of bribery throughout their operations. Small and medium enterprises (SMEs) can also draw on this Guidance although they need guidance relevant to their size, resources and needs. TI hopes to produce a separate SME Guidance.

The primary audience for this Guidance are persons in larger companies who are charged with putting in place 'adequate procedures' such as those from compliance, risk, legal, audit, corporate responsibility or ethics departments. For smaller companies, a director or senior operational manager may fulfil these functions. The Guidance is intended to be used in its entirety or selectively, depending on the needs, business model and risk profile of the company.

The Secretary of State is required, by section 9 of the Bribery Act, to provide official guidance. This Guidance from TI aims to complement the official guidance by providing greater detail such that a company could use it as the basis of designing a new anti-bribery programme if none exists. The Guidance will also allow companies with systems already in place to cross-check and benchmark their procedures against a good practice standard.

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3. See Annex 3 for the brochure *Clean Business is Good Business: the Business case for Countering Bribery*

4. 2010 Progress Report OECD Anti-Bribery Convention, Transparency International

**Checklists of adequate procedures**

Self-evaluation checklists with indicators of adequate procedures are provided throughout this Guidance. As with all checklists, those included in this Guidance should not be used as a 'tick-box approach' to compliance. Every company's circumstances are different and aspects such as corporate culture and tone from the top are vital in ensuring an effective anti-bribery programme. These factors can never be fully reflected in a checklist and being able to tick every box does not in itself constitute an adequate procedure. The company must have a genuine intent from top level down to operate a zero tolerance policy.

**Comments and suggestions for improvements will be welcomed**

Transparency International UK hopes that companies will find this Guidance valuable when they review their anti-bribery programmes for compliance with the Bribery Act. By necessity, we cannot cover the specific needs, risks and circumstances of individual companies but we believe that this Guide based on our experience over many years of engaging with companies represents a practical approach. We will be delighted to hear from companies on the ways in which they have used the Guidance and to receive comments and suggestions for improvement.

**Acknowledgements**

Many persons and organisations have helped to make this publication possible. In particular, I would like to thank FTI and Halcrow for supporting this project; Peter Wilkinson for bringing his extensive expertise to bear in drafting this Guidance; the members of the Editorial panel – Robert Barrington, Julian Glass, Neil Holt and Ian Trumper – for their advice and due diligence; Roger Best and Patricia Barratt of Clifford Chance for their advice on the legal aspects of the text; Jermyn Brooks, Lindi Jarvis, Robynne Limoges and Alison Taylor for their important contributions; and Robert Barrington for shouldering most of the burden for co-ordinating this project.

Chandrashekhhar Krishnan, Executive Director  
Transparency International UK

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5. See Annex 1 for the full text of the Bribery Act

6. Sections 1, 2 and 4 of the Bribery Act

7. Section 6 of the Bribery Act

8. Section 7 of the Bribery Act

# TWO THE BRIBERY ACT

## 2.1 GENERAL

The Bribery Act 2010<sup>5</sup> was introduced to update and enhance UK law on bribery including foreign bribery in order to address better the requirements of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. It is now among the strictest legislation internationally on bribery. Notably, it introduces a new strict liability offence for companies and partnerships of failing to prevent bribery. The introduction of this new corporate criminal offence places a burden of proof on companies to show they have adequate procedures in place to prevent bribery. A company is guilty of an offence if an 'associated person' carries out an act of bribery in connection with its business. A person will be 'associated with' the company where that person performs services for or on behalf of an organisation (this could include an employee, subsidiary, intermediary or supplier). The Bribery Act also provides for strict penalties for active and passive bribery by individuals as well as companies.

The Bribery Act creates four prime offences:

- Two general offences<sup>6</sup> covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage;
- A discrete offence of bribery of a foreign public official<sup>7</sup>; and
- A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business<sup>8</sup> or a business advantage (should an offence be committed, it will be a defence that the organisation has adequate procedures in place to prevent bribery).

## 2.2 IMPORTANT CONSIDERATIONS FOR COMPANIES

The Bribery Act contains some provisions of particular significance for companies and these are discussed below.

### 2.2.1 Penalties

The penalties for companies, boards and individuals are raised significantly. The Bribery Act provides that an offence committed by a body is punishable by a fine (which is unlimited if the company is convicted on indictment). An individual guilty of an offence would be liable on conviction on indictment to imprisonment for a term not exceeding ten years or to a fine, or to both.

### 2.2.2 Debarment risk

If a company is reliant on selling to EU governments it should not ignore the risk of debarment arising from a conviction under the Bribery Act. Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. If the 2006 Regulations are amended to include the crime of failure to prevent bribery then this could result in a severe sanction for companies found guilty of such an offence. While the risk of such a severe penalty may suggest that companies reliant on public contracts will be reluctant to report any incidents they discover for fear of conviction and subsequent debarment, this approach is not advised. In the case of detecting an issue or offence, the company should consult its lawyers about self-reporting. It can be expected that the authorities will not take a light view of any incident they find where a company was aware of an incident but avoided reporting. Self-reporting on the other hand does provide the chance that authorities will approach with leniency those cases where companies report evidence of bribery as soon as it was discovered. There is no guarantee of this but the non-reporting route is high risk.

Table 1 : Scope and application of the Bribery Act

BRIBERY OFFENCE			
	General offences: Sections 1 and 2	Foreign public official: Section 6	Failure to prevent bribery: Section 7 (if guilty of an offence under sections 1 or 6)
<b>Individuals</b>	‘Closely connected’ with the UK, e.g., British citizen or ordinarily resident		
<b>Company</b>	Incorporated in the UK: (nationality, connection or place of incorporation are irrelevant if the act or omission which forms part of the offence took place in the UK)		Company incorporated in or carrying on a business or part of a business in the UK
<b>Company senior officers</b>	The offence is committed with the consent or connivance of the officer who must have a close connection with the UK (nationality, connection or place of incorporation are irrelevant if the act or omission which forms part of the offence took place in the UK)		
<b>Bribe location</b>	Anywhere in the world		Anywhere in the world if performed by an associated person who performs services for the company, even if operating through a subsidiary, agent, joint venture or other intermediary
<b>Penalties: companies (conviction on indictment)</b>	Unlimited fine Potential consequences a) : a contract which has been obtained as a result of a bribery offence is likely to be found void on grounds of public policy, b) perpetual debarment from competing for public contracts		
<b>Penalties: individuals (conviction on indictment)</b>	Imprisonment for up to ten years or an unlimited fine or both		

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"If a company is reliant on selling to EU governments it should not ignore the risk of debarment arising from a conviction under the Bribery Act."

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### 2.2.3 Jurisdictional reach

The Bribery Act has extra-territorial reach both for UK companies operating abroad and for overseas companies with a presence in the UK.

#### UK COMPANIES DOING BUSINESS OVERSEAS

Companies registered in the UK must take note of the extra-territorial reach of the Bribery Act. A company can commit an offence under section 7 of failure to prevent bribery if an employee, subsidiary, agent or service provider ('associated persons') bribes another person anywhere in the world to obtain or retain business or a business advantage.

A foreign subsidiary of a UK company can cause the parent company to become liable under section 7 when the subsidiary commits an act of bribery in the context of performing services for the UK parent. If the foreign subsidiary were acting entirely on its own account it would not cause the UK parent to be liable for failure to prevent bribery under section 7 as it would not then be performing services for the UK parent. However, the UK parent might still be liable for the actions of its subsidiary in other ways such as false accounting offences or under the Proceeds of Crime Act 2002.

#### SCENARIO 1: LIABILITY FOR A SUBSIDIARY'S ACTIONS ABROAD

A company registered in the UK has a wholly-owned Malaysian subsidiary. The subsidiary pays a bribe to win a private sector contract in Malaysia.

##### Comment

The UK company could be held to have committed an offence under section 7 of the Bribery Act of failure to prevent bribery if it could be established that the subsidiary was at the time performing services for or on behalf of the UK parent and the bribe was to obtain or retain business for the parent company. Whether or not the Bribery Act applies, the parent company's anti-bribery programme should be implemented in its subsidiaries.

#### FOREIGN COMPANIES WITH OPERATIONS IN THE UK

The Bribery Act has important implications for foreign companies which do business in the UK as its territorial scope is extensive. The corporate offence set out in Section 7 of failure to prevent bribery in the course of business applies to any relevant commercial organisation defined as a body incorporated under the law of the United Kingdom (or United Kingdom registered partnership) and any overseas entity that carries on a business or part of a business in the United Kingdom<sup>9</sup>. A foreign company which carries on any part of its business in the UK could be prosecuted for failure to prevent bribery even where the bribery takes place wholly outside the UK and the benefit or advantage to the company is intended to accrue outside the UK. The Bribery Act does not define what constitutes 'or part of a business'<sup>10</sup> and until this is clarified in the law courts, a company should exercise caution. A representative office or UK agent may be sufficient to engage the Act. The company's only statutory defence would be to prove the existence of adequate systems and controls.

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9. Sub-section 7 (5)

10. Sub-section 7 (5) (b)

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"A foreign company which carries on any part of its business in the UK could be prosecuted for failure to prevent bribery even where the bribery takes place wholly outside the UK and the benefit or advantage to the company is intended to accrue outside the UK."

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Thus, even if a company is not registered in the UK but operates in the UK, it should assess carefully how the Bribery Act may apply and ensure that it has adequate procedures for its worldwide operations that are compliant with the Bribery Act.

#### 2.2.4 Foreign public officials

While the Bribery Act defines a foreign public official<sup>11</sup> (FPO), there is uncertainty as to the reach of the Act's definition. Unlike the Foreign Corrupt Practices Act (FCPA), the Bribery Act's definition of an FPO does not include foreign political parties or candidates for office. Because of the risk of an offence under section 6 of the Bribery Act a company must apply good practice and due diligence in its business relationships. An FPO could be viewed to include executives of companies running outsourced services for government such as prison or health services or private architects or engineers retained by government agencies to design or supervise the construction of public buildings. It is uncertain if control of a company by the government, such as a national airline or a bank, makes its employees FPOs. Until clarification emerges from the law courts, the company should assume the widest definition of an FPO.

Even if the company has defined explicitly what it means by an FPO it may be unclear that an FPO is involved in a given business transaction and the company must carry out due diligence to check whether an FPO is involved with a business associate be it as an officer or a consultant. For example, an FPO may be a trustee of a charity to which the company is making a donation and at the same time the company is bidding for a contract with the FPO's ministry. Another example is the provision of hospitality for the directors of consortium partners and an FPO is a director of one of the partners.

#### 2.2.5 Liability risks for directors and senior officers

Directors and senior officers of the company need to be apprised of section 14 of the Act. This provides that if an offence under sections 1, 2 and 6 (bribes given or received) is proved to have been committed by a body corporate with the consent or connivance of a director or senior officer, then the director or officer would be guilty of an offence as well as the body corporate which paid the bribe. If the offence is committed wholly outside the UK, then the director may only be prosecuted if he or she has 'a close connection with the UK'<sup>12</sup>. In addition, directors should note that they could be vulnerable to civil claims and regulatory action for failure to maintain 'adequate procedures'.

#### 2.2.6 Associated person

The corporate offence of section 7 of failure to prevent bribery is engaged when a person associated with a company bribes another person intending to obtain or retain business for that company. The associated person must be providing services to the company and could cover employees, agents, other forms of intermediaries and subsidiaries. It is not necessary for the person performing the services to have been convicted of the bribery offence for the company to be held liable<sup>13</sup>. The Act provides that an associated person will be determined by reference to all relevant circumstances and not merely to the relationship between the person and the company<sup>14</sup>.

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11. "Foreign public official" means an individual who—

(a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),

(b) exercises a public function —

(i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or

(ii) for any public agency or public company of that country or territory (or subdivision), or

(c) is an official or agent of a public international organisation.

The Bribery Act leaves uncertainty about whether a parent company would be liable for an offence committed by a subsidiary if the subsidiary was acting on its own account and not providing services to the parent company. Notwithstanding this uncertainty, this Guidance proposes that as good practice, a company that has effective control of a subsidiary, regardless of the location of the subsidiary or the nationality of its decision-making management, should require the same level of implementation of its anti-bribery programme in its subsidiaries as in its own organisation.

### 2.2.7 Facilitation payments

One of the important consequences of the Bribery Act is that facilitation payments remain illegal. They are most likely to fall within the section 6 offence, bribing a foreign public official, though they could also fall within the section 1 offence. This in turn would trigger the section 7 offence of failing to prevent bribery. Although facilitation payments are illegal, it is uncertain if offences will be prosecuted unless the facilitation payments are seen as systemic or symptomatic of a wider lack of adequate procedures. The Crown Prosecution Service would take into consideration such matters as the amount of the payment, the options facing the payer, whether it was a single or repeated incident, whether the payment was solicited in circumstances that were tantamount to extortion and whether the court would be likely to impose a nominal penalty. Even if such payments are unlikely to be pursued in the courts, this Guidance advises that as good practice, companies, if they have not already done so, should prohibit facilitation payments and work to identify and eliminate them<sup>15</sup>.

### 2.2.8 Promotional expenses

Promotional expenses include gifts, hospitality and expenses. Companies have expressed concern that section 6 of the Bribery Act relating to bribery of Foreign Public Officials is too widely drawn and leaves companies having to rely on prosecutorial discretion. Section 6 provides that an offence is committed if financial or other advantage is given to the FPO with the aim of retaining or obtaining an advantage in the conduct of business. There is no need to show improper performance of a function or activity. As such, a company that gives modest hospitality, gifts or travel expenses to foreign public officials could be committing an offence under the Act by providing an advantage to an FPO if the gifts are intended to influence the FPO, and to obtain or retain business or a business advantage. Transparency International's view is that good practice permits such expenditures where they are transparent, proportionate, reasonable and bona fide. If companies follow this good practice then such expenditures are unlikely to be considered an offence by the authorities whether under the general offences or section 6 but companies must ensure they have implemented adequate policies and procedures<sup>16</sup>.

## 2.3 FOREIGN CORRUPT PRACTICES ACT

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**"Companies must recognise that although their anti-bribery programme may be compliant with the Foreign Corrupt Practices Act this does not ensure that it represents adequate procedures under the Bribery Act."**

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Companies must recognise that although their anti-bribery programme may be compliant with the Foreign Corrupt Practices Act (FCPA) this does not ensure that it constitutes adequate procedures under the Bribery Act. The Act differs in several respects from the FCPA. A comparison of both Acts is given in Table 2.

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12. Sub-section 14 (3) of the Bribery Act

13. Sub-section 7 (3) of the Bribery Act

14. Sub-section 8 (4) of the Bribery Act

15. See Guidance section 5.1.1

16. See Guidance section 5.1.2

**Table 2: comparison of main provisions of the Bribery Act and FCPA**

Provisions	Bribery Act	FCPA
Bribery of foreign public officials	Yes (section 6).	Yes, the FCPA applies only to bribery of foreign officials. (15 U.S.C. §§78dd-1(a) and (f)(1)).
Private-to-private bribery	Yes, the main provisions of the Bribery Act apply to the private sector as well as the public sector except for the FPO offence.	No.
Receipt of a bribe	Yes (section 2).	No.
Intent	Mixed: Intent is required for some 'cases' of the section 1 and 2 offences. No 'corrupt' or 'improper' intent is required in the FPO offence, section 7.	In alleging violations of the bribery provisions of the FCPA, the government must show that the defendant had the requisite state of mind with respect to his actions i.e., negligence, recklessness, intent (15 U.S.C. § 78dd-1(f)(2)).
Facilitation payments	The Act does not permit an exception for facilitation payments.	Permitted under very limited circumstances when paid to foreign officials in order to expedite or secure the performance of a 'routine governmental action'. This excludes a decision by a foreign official to award new business or to continue business with a particular party e.g., to obtain a license or be granted a concession (15 U.S.C. §78dd-1(b) and §78dd-1(f)(3)).
Promotional expenses	The Act makes no specific provision for promotional expenses.	Yes, affirmative defence if they are reasonable and bona fide business expenses that are directly related to the promotion, demonstration or explanation of products or services (e.g., demonstration or tour of a pharmaceutical plant) or in connection with the execution of a particular contract with a foreign government.
Extra-territorial application	Yes, persons are liable for sections 1, 2 or 6 offences committed outside the UK if they have a 'close connection' with the UK. The 'failure to prevent bribery' offence applies to: (i) UK entities that conduct business in the UK or elsewhere; and (ii) any corporation, wherever formed, which carries on business or part of a business in the UK (section 7(5)).	Yes, the FCPA applies to violative acts by US issuers, domestic concerns and their agents and employees that occur wholly outside US territory, and to acts by US citizens or residents, wherever they occur.
Third parties	Yes, liability for acts of associated persons who perform services for or on behalf of the company.	Yes, the FCPA prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. The term 'knowing' includes conscious disregard and deliberate ignorance. Intermediaries may include joint venture partners or agents.
Failure to keep accurate books and records	Covered by other legislation.	Yes.
Criminal penalties	Individuals: up to ten years sentence and unlimited fines; Companies: Unlimited fines.	Corporations and other business entities are subject to a fine of up to \$2,000,000 per violation. Officers, directors, stockholders, employees and agents are subject to a fine of up to \$250,000 per violation and imprisonment for up to five years. Under the Alternative Fines Act, the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment. Fines imposed on individuals may not be paid by their employer or principal.



# THREE TONE FROM THE TOP: THE CONTROL ENVIRONMENT

## THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

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

### 3.1 CORPORATE CULTURE AND THE CONTROL ENVIRONMENT

#### 3.1.1 Corporate culture

The board of directors or equivalent body is responsible for establishing a culture within the company in which bribery is never acceptable, and for ensuring that there is effective design and implementation of a programme to counter bribery. It is the board of directors' responsibility to ensure that management, employees and any relevant external actors are aware of its policy and commitment in respect of the policy of zero tolerance of bribery. It is the role of the board of directors to make a clear statement about the culture which it expects, and the consequences of breaching the provisions of the programme.

A corporate culture in which it is clearly understood by all employees that there is a zero tolerance policy towards bribery is fundamental to an effective anti-bribery programme. Many companies that have been investigated and prosecuted for bribery have had in place tick-box systems, but these were inadequate and their systems not supported by a culture and tone from the top or values embedded in the company.

#### 3.1.2 Control environment

The control environment sets the tone of an organisation. The foundation for the control environment will be a clear public commitment by the company to a policy of zero tolerance of bribery supported by tone from the top. The management and board will create a control environment which comprises the following:

- Integrity and ethical values are made clear as fundamental and non-negotiable;
- Employees and business partners know what is expected of them and acknowledgement of this is required;
- Strategy and anti-bribery control objectives are set and implemented by management;
- Organisational structures for countering bribery are designed and responsibilities assigned;
- Employees and business partners are given the information, skills and resources they need to comply with the policy of zero tolerance of bribery; and
- It is made clear that the company, management and board are prepared to forego contracts rather than pay bribes and will support employees in sales and marketing when faced with losing sales owing to refusal to pay bribes.

### 3.2 NO-BRIBES POLICY

The company's anti-bribery programme must be based on a policy of zero tolerance of bribery. This will be a clear, written statement that the company prohibits bribery and that it will not tolerate its directors, management, employees or third parties in their relationship with the company, being involved in bribery, whether by offering, promising, soliciting, demanding, giving or accepting bribes or behaving corruptly in the expectation of a bribe or an advantage.

#### Example no-bribes policy

The company has a zero tolerance of bribery and corruption. This policy extends to all the company's business dealings and transactions in all countries in which it or its subsidiaries and associates operate. This policy is given force in a detailed anti-bribery programme which is regularly revised to capture changes in law, reputation demands and changes in the business. All directors and employees are required to comply with this policy.

The policy should include the company's definition of bribery as this will define the scope for developing the programme and the risk assessment. The definitions of bribery in the Bribery Act will help the company identify the scope of risks. The Business Principles for Countering Bribery defines bribery as: 'The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.'

### 3.3 ANTI-BRIBERY PROGRAMME

The company must give substance to its policy of zero tolerance of bribery through developing and committing publicly to a detailed anti-bribery programme. The commitment should be made formally with written approval by the board and supported by management as this will set out the company's aims for implementing its no-bribes policy.

Management should design detailed policies<sup>17</sup> and procedures based on risk assessment to provide reasonable assurance that its no-bribes policy and specific objectives for countering bribery are achieved. The no-bribes policy, objectives and the detailed policies and procedures will comprise the anti-bribery programme.

The board should endorse this process for developing a detailed programme and make clear that it attaches strategic importance to the implementation process. The endorsement should be made public as this will serve to emphasise the importance that the company attaches to implementing its policy. The board will have oversight of the anti-bribery programme and a senior manager should be responsible for its implementation. A project manager should be appointed for the detailed implementation of the programme. Only in smaller companies is it likely that the CEO will take responsibility for detailed implementation.

### 3.4 COMPLIANCE WITH LAWS

Compliance with all relevant laws, including relevant anti-corruption laws, is a legal obligation and not an option for companies. However, it is usual for a company to state publicly its policy to comply or be consistent with laws and regulations in all the countries in which the company and any subsidiaries operate. This can serve to remind employees and others that the company is absolute about being law abiding and signal that the programme will carry through into its operations. Thus it should be made clear to employees and intermediaries that they also should make it their business to understand what the Bribery Act and other relevant laws provide and the risks and sanctions that apply. They should be alerted where relevant to the extra-territorial reach of the Bribery Act and other anti-bribery laws such as the FCPA. Before

<sup>17</sup> See section 3.3 of the Guidance for an example of a policy for political contributions.

introducing policies and procedures the company should make sure they are consistent with laws in the jurisdictions in which it operates. There should be a procedure to keep the company informed about laws and related developments. Bribery also gives rise to money laundering issues; the company should ensure employees understand the company's anti-money laundering policies and UK obligations to file suspicious activity reports (in larger companies this will usually be made by the company's Money Laundering Reporting Officer).

### **3.5 RESPONSIBILITIES OF THE BOARD**

This section describes adequate procedures related to responsibilities and leadership of board members and senior executives. These, if implemented, can mitigate the risk of legal liability for board members or senior officers of organisations resulting from sub-section 14 (2) of the Bribery Act ('consent or connivance' provision).

#### **3.5.1 Board and senior executive oversight, responsibilities and leadership**

The board of directors or equivalent body is responsible for the stewardship of the company. The board's responsibilities will include approving and monitoring the company's ethical values, monitoring management control and evaluating senior management. The board will be responsible for oversight of the anti-bribery programme and receive regular reports and it is common for the oversight to be delegated to the audit committee.

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**"The board must be knowledgeable about the programme and alert to the risks of bribery."**

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The board must be knowledgeable about the programme and alert to the risks of bribery. This means that countering bribery should be a standing item on the board agenda and the board should receive regular reviews on the implementation of the programme, reports on any incidents or allegations of bribery and actions taken to correct deficiencies. This could include reviews of any concerns regarding issues raised by annual letters submitted by country or general managers attesting to their implementation of the programme and commenting on any particular risks or issues. This would also serve as ensuring the transparent accountability of these senior managers. The board should test the CEO and management on the reviews and challenge any areas where the board feels concern. The board should also assess the competence, judgement and attitudes to integrity of the CEO and senior management.

#### **3.5.2 Board and management demonstration of commitment**

Board and management commitment means that more should be done than the provision of stated commitment and oversight. Members of the board, senior management or the owner-manager should be seen by employees and business partners to be active in the support of the programme. This requires not only acting clearly with integrity but speaking at employee and external events, communicating through internal and external channels and above all providing leadership and example

## Checklist: tone from the top

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
1	There is a public policy of zero tolerance of bribery							
2	The policy of zero tolerance of bribery has been formally approved by the board or equivalent body							
3	The company has a definition of what it means by bribery							
4	The definition is comprehensive and is consistent with the Bribery Act and other relevant legislation.							
5	The company has a high level public statement such as a Corporate Values statement which includes a commitment to business integrity							
6	The company has a Code of Conduct or equivalent policy document which includes an explicit statement of the no-bribes policy							
7	The board of directors or equivalent body has formally approved the programme							
8	The board of directors or equivalent body provides oversight to the programme							
9	Board members have received written guidance on their responsibilities related to the programme including the expectations for their own integrity							
10	There is a procedure for dealing with breaches of the programme by directors							
11	The board is knowledgeable about the programme							
12	Anti-bribery is a standing item on the board agenda							
13	The board receives regular reports on the implementation of the programme							
14	The Chief Executive is responsible for ensuring that the programme is carried out consistently with clear lines of authority							
15	A senior manager has responsibility for implementing the programme							
16	A project manager has responsibility for the detailed implementation of the programme							
17	Unambiguous responsibility and authority is assigned to managers for carrying out the programme							
18	The Chairman and Chief Executive Officer demonstrate visible and active commitment to implementation of the programme							
19	The board and senior management provide an example for transparency and integrity through their own behaviour							
20	There is a policy for the company to be consistent with all relevant anti-bribery laws in all the jurisdictions in which the company transacts its business							
21	There is a procedure to ensure the programme is consistent with all relevant anti-bribery laws in all the jurisdictions in which the company transacts its business							
22	The board and senior management are familiar with the provisions and requirements of the Bribery Act							
23	The company or its legal adviser maintains a register of anti-bribery laws and monitors changes law and court decisions							

### 3.6 HUMAN RESOURCES

#### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- Human resources practices including recruitment, promotion, training, performance evaluation, remuneration and recognition should reflect the enterprise's commitment to the Programme.
- The human resources policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, trade unions or other employee representative bodies as appropriate.
- 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.

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**"Implementation of an anti-bribery programme touches on all aspects of Human Resources management."**

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Implementation of the anti-bribery programme touches on all aspects of Human Resources (HR) management. The programme will succeed only if it has the support and commitment of employees. This section describes how HR policies and procedures should support the programme. These include recruitment, induction/orientation, training, performance appraisal, recognition, promotion and sanctions procedures. Success depends also on the involvement of employees in forming the initial programme and its continuing improvement.

#### 3.6.1 Recruitment

The company should conduct its recruitment practices in a way that is fair and transparent. This avoids distortions in the recruiting process that could lead to risks with unethical or unsuitable candidates being selected. If the local environment is susceptible to corruption, it will be important for the company to demonstrate to the public that its recruitment processes are untainted by bribery, favouritism or nepotism. The company should apply objective criteria for advertising and interviewing, and should document applications and the selection process. Appropriate due diligence should be applied when appointing board members and selecting recruits, especially senior management and employees who are likely to be placed in positions of risks from bribery. New employees should receive full information about the company's programme and this should form part of induction or orientation training. This is particularly important where a company is taking on large numbers of new employees whether through rapid growth, a major project or merger or acquisition.

#### EMPLOYMENT CONTRACT

The company should make adherence to the programme a condition of employment and require employees to attest in writing that they have read, understood and will observe the requirements of the programme. This will be done when employees join the company and employees should be required to re-affirm the requirement periodically. This may be achieved annually, in the form of business conduct guidelines or a handbook on the programme to refresh employees' awareness of the programme and to take account of any changes that may have been made. However, in making employees attest and sign, the company should take care to make sure that the documents are easily accessible and not couched in legalistic terms, use local languages and reflect local cultures. It is also helpful to provide a communication channel to which

employees can turn for advice in the event of any query about the document or the programme itself. Managers may be involved in this process and departmental meetings can be used to inform about the programme.

The company should implement appropriate and continuing training throughout the organisation as described in section 6.2 of this Guidance. Ways should be provided by which the views and comments of employees can be incorporated informally and formally into the initial development of its programme and its continuing improvement.

As described in section 6.3 of this Guidance, anti-bribery communications channels ('whistleblowing' channels, hot-lines or help lines) can be important routes through which concerns can be raised and suggestions for improvements in the programme expressed.

### **3.6.2 Performance and appraisal**

Employees' performance in relation to the programme can form part of their performance appraisals, supported by recognition and compensation awards and be factored into performance related merit or bonus schemes. This will reinforce the importance that the company attaches to its programme and will also assist in moving the employee and company focus from one of compliance to active implementation and improvement of the programme.

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**"One of the highest risk areas of bribery for a company lies in sales and marketing."**

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One of the highest risk areas of bribery for a company lies in sales and marketing where employees and agents will have sales targets against which they are under pressure to perform. They may also be subject to demands for bribes from officials and employees of potential customers and contracting bodies that request bribes to award contracts, or the offering of bribes to secure contracts. A further pressure for employees and agents is that competitors may be prepared to pay bribes to secure competitive advantage. The programme should make clear that employees and agents will not suffer if they decline to pay bribes and lose contracts as a result. At the same time, the company should take care that employees do not use the programme as an excuse to cover poor sales performance – this could damage the effectiveness of the programme by devaluing it in the eyes of sales management.

### **3.6.3 Sanctions on employees**

The company should provide and communicate clearly to employees the appropriate sanctions that would be applied in the event of violation of its programme. These sanctions must be seen to be applied openly and consistently.

Minor violations will occur undoubtedly, such as employees inadvertently failing to get advance approval for receipt of a gift that exceeds a permitted value by a modest amount. In such cases, management may not wish to apply sanctions. However, the breach should be documented and care should be taken that such toleration does not become commonplace as it could be inferred as a wider lack of vigilance by management in applying the programme and thus create a climate where violations of greater severity also could be perceived as justifiable. Whether a violation is minor or severe, management must make clear that it will not tolerate violations of the anti-bribery programme.

It is common for a company in dealing with an incident of bribery to feel it preferable to ask the employee to resign rather than apply dismissal proceedings. This may be to avoid making public the violation, to avoid the risk of subsequent litigation by the dismissed employee or because the company has struck a deal on recovery of assets. The company should resist using the option of resignation as this sends out a distinct signal to employees that the company is not stringent in applying sanctions. In this context, the company must decide if it wishes to communicate internally that an employee has been dismissed for violating the company's anti-bribery. Doing so can help reinforce the message to employees that the company is serious about countering bribery.

The message can be further reinforced by external reporting of actions taken. For example, a company may announce that a quoted number of employees in a given region have been dismissed for breaches of the company's code of ethics.

Sanctions should be applied consistently and there should be an established process for review and an opportunity for appeal of any decision. The ethics officer or an ethics sub-committee could be used in such an appeal process. The legitimacy of any sanctions will be determined by the degree to which employees have been fully made aware of the company's expectations, the appropriateness of the level of sanction and the consistent application of fair processes.

## Checklist: Human Resources

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
24	The company's human resources practices including those for recruitment, training, performance evaluation, remuneration, recognition and promotion reflect the company's commitment to the programme							
25	There is a procedure for the human resources practices relevant to the programme to be developed and undertaken in consultation with employees, trade unions or other employee representative bodies as appropriate							
26	The recruitment process includes procedures to ensure that it is fair and transparent and free from bribery							
27	Appropriate due diligence is carried out on recruiting board members and employees							
28	It is the company's policy that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if such refusal may result in the company losing business							
29	There are procedures to make clear through communications that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if such refusal may result in the company losing business							
30	There is a policy to make compliance with the programme mandatory for employees							
31	There is a procedure to implement the policy for employees of mandatory compliance with the programme							
32	Employees are required to read and sign annually that they have read the company's business conduct guidelines							
33	The company has procedures to communicate clearly to employees including those of subsidiaries the sanctions that would be applied in the event of violation of its programme							
34	Employees are appraised on their commitment to the programme							
35	There are procedures to apply appropriate sanctions to employees in the event of breach of the programme up to and including termination in appropriate circumstances							



## FOUR RISK ASSESSMENT

### 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 enterprise should ensure that it is informed of all internal and external matters material to the effective development and implementation of the Programme, and, in particular, emerging best practices including engagement with relevant interested parties.
- The enterprise should analyse which specific areas pose the greatest risks from bribery and design and implement its Programme accordingly.
- The enterprise should be open to receiving communications from relevant interested parties with respect to the Programme

#### Why is risk assessment important?

As in any management systems approach, risk assessment is the foundation for the design of an adequate anti-bribery programme. A risk assessment process gives the company a systematic view of where bribery risks lie and as a result it can design detailed policies and procedures accordingly. Through a continuous process of risk assessment the programme will be maintained to meet changing conditions and risks.

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"A risk assessment process gives the company a systematic view of where bribery risks lie and as a result it can design detailed policies and procedures accordingly."

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### Can bribery risk be reduced to zero?

Every company faces a range of bribery risks that must be assessed to enable it to design an adequate anti-bribery programme. The Bribery Act has a strict corporate liability provision, making the company liable for bribery by employees. However, the company must necessarily compromise between managing all risks and committing resources to countering significant risks, recognising that it cannot practically reduce risks of bribery to zero. For example, an oil company that operates in the North Sea and West Africa is likely to prioritise training and monitoring in its West African operations because of the significantly higher bribery risk than in the North Sea, although bribery risk also exists in the UK such as illegal information brokering related to the North Sea operations or actions by rogue employees. Ultimately, as noted in COSO<sup>18</sup>, 'there is no practical way to reduce risk to zero' – this applies to bribery as much as any other aspect of corporate risk management.

### Is anywhere too high risk?

In some markets, the risk of exposure to bribery is extremely high, particularly in certain sectors and certain types of activity. Risk analysis may sometime persuade a company to avoid certain markets or potential business partners altogether because the possibilities of becoming involved in bribery are judged too high. At other times risk analysis will help the company to secure business ethically and operate in markets where risks of corruption exist precisely because it is equipped to know the key risks and will have the necessary programme to counter these risks. For some sectors, notably the extractive industries, companies have to go where the oil or mineral resources are located and this will expose them to some locations where corruption is rife. It is essential that the company consults employees operating in high risk environments about the 'real' as opposed to the perceived risks. Depending on the openness of the corporate culture, employees may find it easier to speak to an external party engaged by the company for that purpose.

### Decide on oversight and responsibility

In designing its anti-bribery programme the company should assign the responsibilities for oversight and implementation of risk assessment. The board will be responsible for oversight of the risk assessment process and should require regular reports. The CEO or a senior manager will have responsibility for leading the risk assessment process.

### Set control objectives and identify risks

Next, the company should set out a range of objectives for countering bribery such as ensuring compliance with the laws relevant to countering bribery in all jurisdictions where the company operates or enforcing anti-bribery policies by applying sanctions. The risk assessment will then comprise the identification and analysis of relevant risks to achievement of the objectives, forming a basis for determining how the risks should be managed. A risk assessment will look at business activities; location of business activities; industries; local business conditions and customs and corruption risks inherent in those activities. The assessment will attempt to estimate the likelihood of the occurrence of the risks and their impacts on the company.

#### Potential impacts of bribery on the company include:

- Fines
- Debarment
- Civil lawsuits
- Cost of professional fees
- Diversion of board and management time
- Reputational damage,
- Loss of customers or potential contracts
- Reduced market capitalisation
- Demotivation of employees
- Liabilities for officers and employees

Risk assessment probably works best if integrated into the overall corporate strategy as the information gathered through assessments will be useful for commercial as well as compliance reasons. By incorporating risk assessment into overall strategic considerations, the anti-bribery programme is embedded further in the commercial practices and structure of the organisation. The company should carry out its risk assessment with reference to:

- Countries in which it operates;
- Local business conditions and customs;
- Business sectors including competitors' practices;
- Dependence on critical licences;
- Business practices of the company;
- Employees e.g., untrained or large numbers of new hires;
- Operational functions of the business e.g., marketing and sales;
- Processes e.g., time pressures, contract variations; and
- The form and nature of its local business relationships with agents, distributors, suppliers, joint venture and consortia partners and the extent of interaction with public officials, all of which can radically alter the company's risk profile.

The organisational structure of the company will be a major consideration. Different risks will be presented according to whether the company is highly centralised or decentralised, whether it is a holding company or fully integrated. The company will also need to obtain detailed intelligence on the political structure of the country, the networks between politicians and business people and who knows whom. The company needs to take care to find out if it is dealing with Politically Exposed Persons (PEP) and even if they are not FPOs as defined by the Bribery Act, PEPs may be potential routes to influence officials.

#### Consultation and information gathering

Management and employees, particularly at local level, will have a good idea where the risks of bribery lie and the assessment should include consultation with employees who are on the front line for the company and thus know specific risks and deficiencies. Discussions with management and risk interviews with leaders of the finance team and business unit leaders directing global activities can provide insights on country risks. Important functions to consult include sales, procurement, HR, finance and legal as well as more junior employees exposed to the day-to-day realities.

Business associates and other stakeholders should be consulted, including organisations and business people in the company's markets where corruption is prevalent. The company should define its key interested parties which can include opinion formers and stakeholders such as investors, customers, peer companies, business partners, the business community and associations, civil society, governments, community leaders. Embassies, High Commissions, local chambers of commerce and non-governmental agencies (NGOs) can provide advice about risks in markets. Consultancies and research agencies are a further source for information on market risks. Such research may be more objective if conducted confidentially by a third party. However, open consultation of this kind by the company can send an important signal about the company's commitment to no-bribes.

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18. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) is a voluntary private-sector organisation, established in the United States. COSO provides guidance to executive management and governance entities on critical aspects of organisational governance, business ethics, internal control, enterprise risk management, fraud, and financial reporting designed to improve organisational performance and governance and to reduce the extent of fraud in organisations. COSO's integrated framework for internal control is widely used by companies and organisations to assess their control systems.

### Resources for mapping bribery risk

There are a number of resources that can be referred to in mapping risks. Transparency International provides surveys listed below of aspects of corruption perceptions which can be consulted for evaluation of corruption risks in the countries and business segments in which the company is doing business. These can be downloaded at [www.transparency.org](http://www.transparency.org):

- TI Corruption Perceptions Index (annex 5)
- TI Bribe Payers Index (annex 6)
- TI Global Corruption Barometer;
- TI National Integrity Studies.

The World Bank Governance Indicators<sup>19</sup> are a further source for identifying country risks. They report aggregate and individual governance indicators for over 200 countries and territories for six dimensions of governance including control of corruption. Industry risks also need to be mapped including a focus on local relationships.

### Minimising risk

Having identified the relevant areas of risk, the company should develop detailed policies and procedures that address the potential areas of bribery. It is important in risk assessment for countering bribery to keep an open mind and not make assumptions where bribery occurs. There are continuing examples of companies being surprised by bribery in areas that they had not considered or experiencing incidents related to deficiencies in their policies and procedures that they had judged as adequate. Further, management may be complacent or overly optimistic about the quality and effectiveness of their anti-bribery controls.

Risk assessments should be repeated regularly to reflect changing circumstances. The results of risk assessment should be reviewed by senior management and any concerns identified. A report should be made regularly to the audit committee and the board on the review.

### Transparency of the risk assessment process

It is good practice for the company to disclose publicly its risk assessment process, including the results of any stakeholder consultations, to describe the significant risks identified as well as the actions being taken to mitigate the risks. Disclosure will act as an impetus to risk assessment. It will enable stakeholders to judge material issues, form a view on whether the company is managing the issues adequately and if need be, enter into discussion with the company if concerns arise. Finally, the process of regular disclosure in itself will encourage the company to strive for improvement and to live up to its previous commitments and targets.

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19. <http://info.worldbank.org/governance/wgi/index.asp>

## Checklist: risk assessment

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
36	The board or equivalent body has oversight of the risk assessment process							
37	Responsibility for risk assessment for bribery is assigned							
38	There is a procedure for regular risk assessment for bribery							
39	The procedure for regular risk assessment for bribery extends to all operations under the company's effective control							
40	The risk assessment process identifies and prioritises risks from bribery							
41	Detailed policies and procedures to counter bribery are developed and improved based on the assessed risks							
42	The risk assessment process is carried out on a continuous basis to assess and prioritise the risk of bribery							
43	The company reports publicly on its risk assessment process							
44	The company reports publicly on the risks identified							
45	The anti-bribery programme when developed was benchmarked against the Business Principles for Countering Bribery							
46	There is a procedure by which the views and comments of employees are incorporated into the continuing improvement of the programme							
47	There is a procedure by which the views and comments of employee representatives such as unions or works councils (where such bodies exist) are incorporated into the continuing improvement of the programme							
48	There is a procedure for identifying key external stakeholders by researching and assessing which are most affected by the company's activities in relation to the programme							
49	The company has a procedure to ensure that it is informed of all internal and external matters material to the effective development and implementation of the programme, and in particular, emerging best practices							
50	The company publishes the results of its engagement with relevant interested parties							
51	The company reports publicly on its risk assessment process							





## FIVE DETAILED POLICIES AND PROCEDURES

Once the company has decided its policy of zero tolerance of bribery and committed to introducing a programme it must give substance to this by developing a detailed anti-bribery programme as suggested by the framework of the Business Principles for Countering Bribery. The development of the programme is not a one-off exercise but a continuous process of implementation, monitoring, reporting and improvement.

**"The policies and procedures must be assigned to a responsible manager and be clear and accessible, documented and kept up-to-date."**

The company must develop detailed policies and procedures to provide reasonable assurance that it will achieve its objectives for countering bribery and thereby comply with the Bribery Act. The policies and procedures will be designed to mitigate risks identified by risk assessment, a continuous process described in the previous section which identifies, assesses and prioritises risk. The policies and procedures must be assigned to a responsible manager and be clear and accessible, documented and kept up-to-date. They should apply to the whole company including all entities over which the company has effective control. The policies and procedures should be available on the intranet or in a regularly updated employee guidance document and be issued in the main languages of employees.

This section sets out adequate procedures for two areas of risk: prevalent forms of bribery and operating functions most typically at risk. The company's business relationships comprise a third area of high risk and are discussed in section 8 of the Guidance.

### Checklist: policies and procedures

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
52	The programme clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under the company's effective control							

## 5.1 PREVALENT FORMS OF BRIBERY

### 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 no-bribes policy should prohibit all forms of bribery and the programme should provide specific policies and procedures to deal with the risk areas of facilitation payments, political contributions, charitable donations and sponsorships, hospitality, gifts and expenses. These areas are reviewed below.

#### 5.1.1 Facilitation Payments

### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

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

#### THE BRIBERY ACT AND FACILITATION PAYMENTS

One of the important consequences of the Bribery Act is that facilitation payments remain illegal. They are most likely to fall within the section 6 offence, bribing a foreign public official, though they could also fall within the section 1 offence. This in turn would trigger the section 7 offence of failing to prevent bribery.

Facilitation payments 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.'<sup>20</sup> A company, even if it has a policy to prohibit facilitation payments, needs to recognise the strict provisions of the Act and to review its policy and procedures regarding facilitation payments.

Facilitation payments are bribes under section 1 of the Bribery Act as they provide an advantage, usually a small cash payment, to induce or reward a person, usually a public official, to give preferential treatment or to refrain from or perform a task improperly. If the recipient of the payment is a public official then an offence may occur under sub-section 6 (2) (b) of the Act if the payment is to obtain or retain an advantage in the conduct of business. If a bribe is paid by an employee or an associated person then an offence of failure to prevent bribery would occur under section 7 of the Act. The Bribery Act goes further than the FCPA which provides exemptions allowing a facilitation payment to a foreign public official if it covers any payment, the purpose of which is to expedite or secure the performance of a routine governmental action.

This Guidance advises companies that as good practice, if they have not already done so, they should prohibit facilitation payments and work to identify and eliminate them.

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**"A company, even if it has a policy to prohibit facilitation payments, needs to recognise the strict provisions of the Act and to review its policy and procedures regarding facilitation payments."**

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#### THE ISSUES PRESENTED BY FACILITATION PAYMENTS

Facilitation payments invariably occur by the recipient extorting the payment using the power of his or her official position and where the consequence of not paying, such as failure to clear goods from customs, may be out of all proportion to the small payment demanded. Usually the facilitation payments are demanded by public officials but they can also be solicited by employees of commercial providers of services such as telephones or cable supply. The private sector risk grows as services are increasingly outsourced to executive agencies or are privatised.

Facilitation payments are one of the most problematic areas for companies related to countering bribery as demands for such payments, often associated with extortion, remain widespread and present a range of issues that are not easy to resolve. Facilitation payments may take place when the employee is travelling and remote from support or may be paid on behalf of the company by agents or other similar intermediaries.

The adverse effects of facilitation payments on societies should be recognised. There is no dividing line between a facilitation payment and a bribe. The influence of pervasive facilitation payments can be insidious and provide a climate for wider systemic corruption. Such payments can place a heavy burden on the poorest citizens of developing countries. Often, facilitation payments are not isolated acts by low-level and poorly paid officials but rather part of organised extortion schemes that funnel the gains from the lowest level to the top. By paying small bribes, companies undermine controls and procedures and encourage corrupt public officials. These weaknesses may be exploited by criminal organisations engaged in such as protection rackets or smuggling contraband or arms or by terrorists to obtain passports or identity documents.

An argument is made that the prohibition of facilitation payments results in adverse consequences because in some markets it is impossible to travel or get business done without these types of payment. Sanctioning employees for such payments merely drives the bribes out of sight and leaves employees without recourse of support from the company. However, apart from the legal risks presented by such arguments, a practice of making facilitation payments can leave a company more vulnerable to bribery. It sends a message to employees and business partners of inconsistency and weakness in approach to the no-bribes policy and can create dependency among public officials to rely on facilitation payments as part of their income. An associated advantage of a clear policy on facilitation payments is the potential saving of substantial sums even though companies will need to bear the short term costs and train employees to deal with extortion demands in this form.

#### ELIMINATING FACILITATION PAYMENTS

Transparency International, in concordance with the Bribery Act, defines facilitation payments as bribes but recognises that companies cannot eliminate such payments overnight. Companies need to develop procedures and training and gain commitment from employees to deal with this difficult issue and, where possible, especially in larger companies, to use their influence and reputation to counter payments in markets where demands for such payments are rife. This will include encouraging and supporting developments in the countries to reduce the demands for facilitation payments.

The company's armoury against paying facilitation payments, in addition to citing the UK Bribery Act, will be a clear public policy prohibiting facilitation payments, an implemented plan to identify where payments are made and then to eliminate them through communication, training, controls, monitoring and documentation. It should also ensure that any employees paying facilitation payments are unable to claim reimbursement from the company. While it is illegal under the Bribery Act to make facilitation payments, an adequate anti-bribery programme should recognise that there may be exceptional emergencies where an employee is under threat of violence or personal harm. If the company has started on the route of eliminating facilitation payments, it will be some time before they can be fully eliminated as significant

necessary ground work needs to be achieved. The only mitigation will be that the company is implementing a plan to eliminate them and that such payments are neither systemic nor facilitating wider bribery.

This Guidance recommends that countering facilitation payments be a twin track approach. The company should work vigorously on prevention of demands with the aim of ultimate elimination of facilitation payments. At the same time, the company will need to provide employees and agents with the training, skills and resources to counter any demands for facilitation payments.

#### **ESTABLISH A CLEAR PUBLIC POLICY PROHIBITING FACILITATION PAYMENTS**

First, the company must agree a policy prohibiting facilitation payments – this will provide the platform for procedures to eliminate facilitation payments. A clear policy aligned to the overall no-bribes policy that is published and supported by procedures and actions to eliminate the payments will not only comply with the Act and taxation law but reinforce the anti-bribery message to employees and third parties. A company's definition of facilitation payments should be precise and unambiguous in order to help clarify how to handle demands for such bribes.

#### **Example policy**

Our company prohibits 'facilitation' or 'grease' payments as these are bribes and illegal. Facilitation payments are small payments made to secure or speed up routine actions, usually by public officials, such as issuing permits, immigration controls, providing services or releasing goods held in customs. It is also our policy that we work to ensure that our agents and other intermediaries, joint ventures and consortia, contractors and suppliers do not make facilitation payments on our behalf. If you have doubts about a payment and suspect that it might be considered a facilitation payment, only make the payment if the official or third party can provide a formal receipt or written confirmation of its legality. If practicable, obtain senior management/legal approval for the payment or consult the corporate helpline. If the demand is accompanied by immediate threat of physical harm then put safety first, make the payment and report immediately to senior management/legal department the circumstances and amount of the payment.

#### **DEVELOP DETAILED PROCEDURES AND CONTROLS**

It is important for a company to have an idea of the risks, types of processes and activities in which the payments occur so that it can plan ways to eliminate them. If it has not already fully eliminated them, it will need to carry out preliminary work to assess the risks and develop the detailed procedures. Identify in which countries facilitation payments are most typically paid, how they are paid, including any payments being made by intermediaries on the company's behalf, and where they are recorded. Information will not be readily available or easily obtained. They are small payments from the point of view of the payer and nearly always take the form of cash payments. The transactions when they take place, even if observed, may be hard to prove and if they have been previously prohibited or discouraged, will be hidden within expense or other accounts. As part of the review, confidential interviews may be held with employees; internal audit and the company's security department may have information about examples of instances. Other companies may provide information about local conditions. Once the information has been obtained it can be assessed for risks and issues. For the purpose of managing the risks, it may be helpful to place a maximum value on the bribes defined as facilitation payments. The survey will include discussing with employees, agents and suppliers about any issues they face and obtaining their suggestions for creative solutions. An assessment should then be made of the risks and appropriate controls put in place.

**COMMUNICATE, TRAIN AND PROVIDE RESOURCES**

All employees and agents should be made aware of the company's policy of prohibiting facilitation payments. Employees at identified risk with regard to facilitation payments should be given training, including negotiation skills on how to resist demands. Leaflets or cards can be provided in the local languages where the employees travel, explaining that the company does not make such payments. The company should recognise that it may have to incur some costs and delays as part of introducing and implementing the process of resisting demands. It should consider building time into projects to allow for delay at customs as a consequence of the refusal to pay; employees may have to miss flights to make their point with airport officials or be prepared to incur the delay of a visit to a police station when a bribe is demanded for an alleged traffic offence.

**COLLABORATIVE ACTION**

Companies by working together can address particular prevalence of facilitation payments in local markets such as customs demanding payments to release goods or officials at the airport asking for payments for 'incorrect' visas. Companies may be able to make representations jointly to the authorities and ask for action. Embassies, High Commissions and chambers of commerce may be able to assist too.

**DOCUMENT INCIDENTS**

Provision should be made to capture experience of incidents and to help develop approaches to deal with them. Employees should be required to report such payments (and also payments successfully resisted) as the company will learn from incidents. The record of payments made and resisted should be reviewed by senior management and a report made periodically to the board with corrective actions made as necessary.

Even though facilitation payments are prohibited by the company and illegal, payments may still occur as a result of error, violation of the policy by an employee or in circumstances where there is a threat to personal safety. Companies that make facilitation payments not only break the law but may also violate taxation laws if they do not record such payments. Such a failure to record facilitation payments could make a company or its officers liable for offences under The Theft Act 1968, the Companies Act 2006, or under taxation regulations as bribes are disallowable expenses. A paradox is that if the company provides accounting systems to enable recording and reporting of facilitation payments, then it is formalising an illegal act.

**MONITOR AND REVIEW**

Management should review payments made and determine if there is progress in reaching the company's aim of elimination. This will include checking whether efforts by employees to resist payment are working and the degree to which payments are still occurring.

**CASE STUDY 1: SYSTEMIC USE OF FACILITATION PAYMENTS TO SUPPORT OTHER BRIBERY**

The US DoJ agreed a settlement in 2008 with Westinghouse Air Brake Technologies Corp. (Wabtec). According to the DOJ's and the Securities and Exchanges Commission's (SEC) allegations, Wabtec's Indian subsidiary, Pioneer Friction Ltd., paid \$137,400 to officials of the Indian Railway Board (IRB) in order to influence the IRB to award it new contracts and approve new prices under Pioneer's existing contracts. In addition, the DOJ alleged that Pioneer made improper payments to several railway regulatory boards and to the Indian Customs authority to facilitate pre-delivery inspections, to secure compliance certificates, and to put a stop to excessive tax audits. The individual payments were as small as \$31.50 per month, but they totalled more than \$40,000 over one year. While Wabtec paid an \$87,000 civil penalty and disgorged \$288,351 profits from its contracts with the IRB, it also agreed to pay a \$300,000 fine and take remedial steps for the elimination of facilitating payments as part of a non-prosecution agreement. In this case the prosecutors brought an action based on the payments made to win contracts and amend prices on existing contracts.

**Comment**

This case illustrates the risks that companies may incur through systemic or unchecked use of small bribes. It also shows how these small payments can total significant amounts and facilitate larger bribes.

### SCENARIO 2: FACILITATION PAYMENT DEMANDED FOR ENTRY TO A COUNTRY

An immigration official demands a \$50 'entry fee' from an employee at an airport used frequently by company employees to be allowed entry to the country, even though the employee's passport and visa are all in order.

Demand prevention:

- The employee has been given training for this situation as the airport is known for this risk;
- The company has produced a guide of the airport showing the localities, methods by which officials make attempts to obtain bribes and suggested counter measures to use;
- If the company is a large global company it provides a 24 hour hot line from which employees can seek advice;
- The company is in discussion with other overseas companies about making a representation to the airport management about the prevalence of bribe demands and if need be to make representation to the ministry; and
- The issue of these persistent demands has been raised with the UK Embassy/High Commission.

Resisting the demand – the employee is trained to:

- Use negotiation skills, be calm despite provocation or harassment;
- Take detailed notes of related conversations – with whom and what was said;
- Ask the immigration official where the requirement for the 'entry fee' is displayed;
- Refuse to pay if the official cannot supply official validity of the 'entry fee';
- Make the point that paying such a 'fee' would be against UK law, and the employee would be subject to company and legal actions on return to the UK (and can provide a card supporting this);
- If the official still demands the payment, ask to see the official's supervisor;
- If that is refused, or if the supervisor also asks for payment and the employee is told that if he does not pay the fee, he will be denied entry to the country, agree to pay the fee subject to being given an official receipt – a formal document that identifies the immigration official's name and relevant identification number;
- If the official refuses to provide a receipt, restate willingness to pay the fee but not without a receipt;
- If no receipt is forthcoming then the employee should telephone the local embassy and make clear to the official he is doing so and will wait until he is given entry;
- He should then seek advice from the company's 24 hour hot line if there is one; Having exhausted all methods and still not having gained entry the employee will then decide whether to make the payment or risk being returned to his original destination by the airport authorities; and
- If he decides to pay, then the employee must report the incident to the company as soon as possible. The company will then decide whether or not to report the incident to the authorities in the country concerned and/or report the incident to the British Embassy, and take its advice;

Comment

The decision as to whether or not further action should be taken, and the extent of that action, should include due regard for the personal security of the employee (and other employees of the company) while working in the country. Payment of the demanded 'entry fee' reflects an 'on the spot' judgement by the employee about his/her personal security.

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21. Even if the policy prohibits facilitation payments some such payments may be made by employees consciously or negligently violating the policy or because of extortion involving threats to their safety or health.

**Checklist: facilitation payments**

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
53	There is a written policy prohibiting facilitation payments							
54	The policy includes a definition of facilitation payments							
55	A survey and risk assessment has been carried out to determine how and where facilitation payments have been paid							
56	There are detailed procedures and controls based on a risk assessment to implement the facilitation payments policy							
57	Preparatory work has been carried out to deter demands from such payments							
58	Training and guidance is provided to employees likely to encounter risks of facilitation payments on how to deal with them							
59	The policy on facilitation payments is made clear to agents and other intermediaries							
60	Implementation of the policy on facilitation payments is monitored							
61	There is a procedure to record accurately in the books any facilitation payments made							
62	Senior management reviews regular reports on implementation of the no-bribes policy to facilitation payment and details of any recorded as being paid							

**5.1.2 Promotional expenditures: gifts****THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY**

- 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.

For many companies, gifts and hospitality are part of building relationships and in some societies they are required behaviour. Promotional expenses are seen by most companies as essential to showcase and advertise products. Travel expenses are incurred in enabling visits to see benchmark installations and the quality of a company's facilities and personnel.

**THE BRIBERY ACT AND PROMOTIONAL EXPENSES**

Such expenditures may be offences under section 1, potentially giving rise to corporate liability under section 7 (if the company does not have adequate procedures in place designed to prevent these expenses being used as bribes). Further, they are illegal under the provisions of section 6 if they are made with the intent to influence a foreign public official with the aim of retaining or obtaining an advantage in the conduct of business and if they confer an advantage directly or indirectly on an official<sup>21</sup>.

The risk for companies is that it is often hard for employees to know where to draw the line between what is a reasonable and bona fide expenditure and what is unreasonable expenditure made to influence an official. Also, these activities can often draw an employee unwittingly into a situation where improper behaviour subsequently results.

Transparency International's view is that good practice permits promotional expenditures where they are transparent, proportionate, reasonable and bona fide. If companies follow this good practice then such expenditures are unlikely to be considered an offence by the authorities whether under the general offences or section 6 of the Bribery Act. However, companies in making such expenditures must ensure they have implemented adequate policies and procedures.

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“...good practice permits promotional expenditures where they are transparent, proportionate, reasonable and bona fide.”

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#### **PROMOTIONAL EXPENSES IN THE CONTEXT OF SECTION 1 OF THE BRIBERY ACT**

Gifts include 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. They may be given in appreciation of a favour done or a favour to be carried out in the future. Gifts have no role in the business process other than that of marking and enhancing relations or promoting the giver's company by incorporating a logo or message on a promotional item such as a calendar or pen.

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 with business people or other third parties. Hospitality requires the host to be present, if not, the expenditure is a gift. The argument for hospitality is often made that it provides a relaxed, neutral, environment in which business relationships and activities can be started, fostered and information imparted. Hospitality can also be associated with fund raising events held by worthy causes such as arts and charitable bodies with the company assisting the causes by purchasing tickets or introducing potential supporters. Abuses occur with hospitality when it is excessive in value, given too often, or leaves the recipient in a position of obligation .

Expenses are the provision or reimbursement by the company of travel and other related expenses incurred by a prospective client, customer or business partner, such reimbursement not being specified as part of a contractual agreement. Typically, these are costs of activities such as travel to view a manufacturing plant, benchmark installation or to attend a company conference or training event. Abuses typically occur where the travel or events are accompanied by excessive hospitality, luxurious accommodation, low levels of business content or provision of expenses for family and friends of the business person.

Gifts, hospitality and expenses present significant risks related to bribery. They may be used by corrupt third parties to groom the company's employees to a position of obligation and prepare the way for bribery or may be made corruptly by an employee to build favours with prospective clients. Negligence, inexperience and ignorance can equally be risks when giving or receiving gifts, hospitality and expenses. In some societies the business culture includes gift giving and entertaining and it may prove difficult for employees to know how to manoeuvre through the various social customs and balance the desire not to cause offence while on the other hand not violating the company's no-bribes policy.

#### **ESTABLISH CLEAR POLICIES SUPPORTED BY DETAILED PROCEDURES**

The company should have a clear written policy that is absolute in prohibiting any giving or receipt of gifts, hospitality or other expenses that could influence or be perceived to be capable of influencing a contractual or material transaction. It should reflect the particular risks of the activities being used as a subterfuge or preparation for bribery. The policy should be published and readily accessible and should be consistent both for giving and receiving. The policy should require observance of the rules governing gifts, hospitality, or

expenses relating to governmental departments, public bodies or private sector organisations with which the company is dealing. For expenses, the policy should restrict the giving or receipt of travel to activities which meet transparent criteria.

#### **DEVELOP DETAILED PROCEDURES AND CONTROLS**

The company should provide guidance on and place an upper limit for the value of gifts, entertainment or expenses that can be received or given, such a value being small and appropriate to general business practice. The financial limits should be proportionate to the markets in which the gift or hospitality is being offered or taken, and there should be clear guidance regarding the cumulative impact of several small gifts especially since they might breach the overall limits. A matrix setting out the levels of gifts and hospitality by country can be helpful. Some companies auction gifts received with the proceeds being given to charity or display them in offices.

Guidelines for hospitality should state when it is appropriate and provide financial limits. It should be made clear that a host must be present when hospitality is given or received.

The company should communicate its policy, procedures and guidance for gifts, hospitality and expenses to employees, business partners and suppliers to prevent misunderstanding or differences in perceptions of what is permissible within the policy. The guidance should provide advice on how gift giving and hospitality should be handled with particular respect to local customs and culture. The guidance can be flexible in recognising and accommodating local customs and cultural differences for gifts and hospitality but should set out clearly policy, processes and reporting guidance.

#### **Example criteria to test if gifts, hospitality or reimbursed expenses comply with the anti-bribery programme:**

- Made for the right reason: if a gift or hospitality, it should be given clearly as an act of appreciation, if travel expenses then for a bona fide business purpose;
- No obligation: the gift, hospitality or reimbursement of expense does not place the recipient under any obligation;
- No expectations: expectations are not created in the giver or an associate of the giver or have a higher importance attached to it by the giver than the recipient would place on such a transaction;
- Made openly: if made secretly and undocumented then the purpose will be open to question;
- Accords with stakeholder perception: the transaction would not be viewed unfavourably by stakeholders if it were to be made known to them;
- Reasonable value: the size of the gift is small and the value of the hospitality or reimbursed expense accords with general business practice;
- Appropriate: the nature of the gift, hospitality or reimbursed expense is appropriate to the relationship and accords with general business practice and local customs;
- Legality: it is compliant with relevant laws;
- Conforms to the recipient's rules: the gift, hospitality or reimbursement of expenses meets the rules or code of conduct of the recipient's organisation;
- Infrequent: the giving or receiving of gifts and hospitality is not overly frequent between the giver and the recipient;
- Documented: the expense is fully documented including purpose and approvals given and properly recorded in the books; and
- Reported: the gift, hospitality or expense is recorded and reported to management.

**CONTROLS**

Controls can include thresholds for the value of gifts, hospitality and expenses including designated levels of approval and can be made flexible to account for local customs, the varying financial value of such expenses in different countries and the propensity for corruption locally.

The individual recipient should inform management when a gift or hospitality is received outside the permitted level. The company could choose to return a gift with a note explaining its policy or if this would cause offence within the context of local custom, it might choose to donate the gift to a local charity.

Of utmost importance is that gifts and hospitality and expenses, whether received or given should be fully documented.

**FOREIGN PUBLIC OFFICIALS (FPOs)**

Any expenditure on FPOs should be appropriate, reasonable and bona fide. If intended to influence the FPO in his capacity as such, the FPO must be permitted or required by written law so to be influenced. If it does not fulfil those criteria, it is likely to contravene section 6 of the Bribery Act. The company should establish procedures and criteria to cover such expenditures for an FPO. Guidance should be given on levels of expenditure for specified countries. There should be designated levels of approval by senior management for travel expenses and periodic reviews by senior management and the board.

**Checklist: gifts, hospitality and expenses**

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
63	The company has written policies covering gifts, hospitality and expenses							
64	The policies prohibit the offer or receipt of gifts, hospitality or expenses whenever these could affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide expenditures							
65	The policies reflect the particular risks of gifts, hospitality and expenses being used as a subterfuge for bribery							
66	There are procedures and controls, including thresholds and reporting procedures, to ensure that the company's policies relating to gifts, hospitality and expenses are followed							
67	There is a procedure to ensure that gifts, hospitality and expenses conform to the laws of the countries where they are made or received							
68	There is a procedure to ensure that gifts, hospitality and expenses made to FPOs conform to the rules of the public bodies							
69	There are clear guidelines to enable employees to know how to handle the giving or receiving of gifts, hospitality and expenses							
70	There is a procedure to communicate to employees the guidelines for gifts, hospitality and expenses							
71	Tailored training is given to employees on the rules for gifts, hospitality and expenses							
72	There is a procedure to communicate to business partners the guidelines for gifts, hospitality and expenses							
73	Gifts, hospitality and expenses given are recorded accurately in the books							
74	Gifts, hospitality and expenses given or received are documented and reviewed by management to ensure compliance with the policies							

### SCENARIO 3: DINNER WITH FOREIGN PUBLIC OFFICIALS

A UK company is bidding for a large electrical power contract in an Asian country. The sales manager is visiting the country to discuss the bid and has a one day meeting scheduled with a senior official at the Ministry of Water and Energy. The official suggests that as the sales manager has arrived the day before and will be alone, they should meet for dinner the evening before the conference to get to know each other and discuss the schedule for the next day. The official says he knows a restaurant offering typical food of the region. The sales manager duly arrives at the restaurant which he finds indeed to be offering local cuisine but is also one of the most exclusive in the capital. He is greeted by the official who leads him to a long table in an alcove where eight men are already seated. The official introduces them as his subordinates and says he thought it would help the sales manager to meet his team. A long evening ensues with much alcohol and many toasts and finally, the waiter approaches and places the bill for the evening firmly in front of the sales executive. It is clear that the officials have no intent of offering to pay or contributing to the bill and are already preparing to make their farewells. The manager feels he has no choice but to pay the bill.

Key issues to note:

- The company is covered by the Bribery Act as it is based in the UK;
- The hospitality could be assessed as an offence under section 6 of the Act as it is an advantage provided to public officials with the intent to obtain business; and
- The hospitality cannot be regarded as reasonable with nine officials having been given dinner in an expensive restaurant with a large bill for alcohol.

Comment

The sales manager put himself in a position where he inevitably had to pay for hospitality that was excessive. He should have anticipated the risk. There is always a chance that entertaining might be suggested on such a visit and he should have prepared as a matter of course by identifying potential restaurants and, in the event, making the booking himself rather than leaving it to the official. He should also have explained to the official that because of UK law and company policy, while he would be delighted to meet the official, there were rules on entertaining which he had to abide by. In this scenario, the sales executive has exposed the company under the Bribery Act and should inform his management and the company's legal department immediately.

#### SCENARIO 4: TRAVEL EXPENSES PAID FOR FOREIGN PUBLIC OFFICIALS TO VIEW A COMPANY FACILITY

A US registered company has an off-shore drilling subsidiary in Aberdeen, Scotland and is a world leader in an aspect of drilling technology through its long experience of the difficult conditions of the North Sea. The company is negotiating sale of the technology to a Chinese state owned oil company drilling in the China Sea and it is agreed that a party from the Chinese company should visit a rig in the North Sea to see the technology in action with a view to purchasing it. The technology can be best assessed by seeing it in operation. The US company will cover the travel costs including economy class air fares of a party of three engineers to visit Scotland for five days. As the business programme extends over the week-end, arrangements are made to pay for their stay at a hotel for two days including visits to local sights but incurring only modest expenses. Otherwise, the officials meet their own expenses.

##### Key issues to note

- Many reasonable and bona fide business practices may be encompassed by section 6 of the Bribery Act;
- The US company is covered by the Act as it associated with the a company carrying on a business in the UK and providing services to the parent company; and
- The Chinese executives are employed by an SOE and likely to be viewed as public officials. If so, the US company is potentially committing an offence under Section 6 of the Act by providing an advantage to FPOs to obtain business.

##### Comment

Transparency International considers that the expenses for the visit are not bribes but are proportionate, reasonable and bona fide. However, the UK subsidiary has provided the SOE officials with tourism so this may be viewed as an advantage.

To support its case for the provision of such expenses, the company must have implemented an anti-bribery programme that is well designed and equivalent to 'adequate procedures' with policies and procedures covering travel expenses. The travel should not be part of a pattern of undue hospitality and travel given to the officials of the Chinese company though it may be necessary for such contract bids for a series of technical visits to be made. The visits must be clearly documented including the reasons, approvals, details of the visits and a post visit assessment. The company's position will be improved if the expenses for the visit are pursuant to an agreement with the state owned enterprise. The issue here is whether the payment or expenses relate to improper performance by the recipient.

**SCENARIO 5: HOSPITALITY GIVEN TO FOREIGN PUBLIC OFFICIALS AT A COMPANY'S UK OFFICE**

A UK registered company is receiving a visit from some foreign public officials visiting the UK. The visit is part of a tour and the UK company is not paying the travel expenses. The officials are visiting the head office of the company as they are contemplating buying some medical equipment. The visitors stay for the morning, receive presentations and meet technical staff. They are given light refreshments on arrival of coffee and pastries and then coffee and biscuits later during the morning.

## Key issues to note

- The company is covered by the Bribery Act as it is based in the UK;
- The hospitality could be assessed as an offence under section 6 of the Act as it is an advantage provided to public officials; and
- Many reasonable and bona fide business practices may be encompassed by section 6.

## Comment

Transparency International considers that the refreshments for the visit to the office are modest, reasonable and bona fide.

**SCENARIO 6: PHARMACEUTICAL COMPANY HOSTING A MEETING OF DOCTORS AT ITS OFFICE**

A UK office of an international pharmaceutical company provides meeting rooms for the monthly afternoon meetings of the local regional General Practitioner sub-committee as the local health council does not have suitable meeting rooms. The company provides luncheon and coffee before the meeting starts, has a marketing table in the room and issues promotional literature. One of the doctors has expressed privately to the company that he feels uncomfortable with the arrangements.

## Key issues to note

- The company is covered by the Bribery Act as it is based in the UK;
- This would be a section 1 offence only if the pharmaceutical company intends the refreshments or the meeting room to induce the GPs to perform a function improperly; and
- If a section 1 offence, then it is a section 7 offence unless the company has adequate procedures.

## Comment

The company as a good local corporate citizen is offering office facilities but to do more may be considered as offering inducements to doctors. The use of the occasion to market the company's products is inappropriate as indicated by one or more of the doctors being uncomfortable with the arrangements. The offer of use of the meeting room should be for a finite period; the company should be cautious and merely offer the use of the room, providing coffee and biscuits but no more. The invitation, arrangements and expenses should be documented and properly recorded in the books and records and no marketing or promotional materials should be offered or displayed.

**SCENARIO 7: PHARMACEUTICAL CONFERENCE AT OVERSEAS RESORT**

A UK pharmaceutical company has launched a new drug and arranges a conference for European doctors at Cannes. The event lasts two days and all expenses are paid including travel, generous cash per diems and stay at a five star hotel. Lectures are provided during the days about the drug and delegates can hear from independent experts, the company's experts and the marketing director. All delegates receive 'goody bags' with substantial value gifts and samples. There is no compulsion on doctors to attend the conference lectures.

## Key issues to note

- The company is covered by the Bribery Act as it is based in the UK;
- This could be an offence under section 7 of the Act (but there would have to be an offence under sections 1 or 6 first) as the company may be considered as failing to prevent bribery i.e., inducements have been offered to doctors in an attempt to influence them;
- It may be an offence under Section 6 if the European doctors include doctors who are foreign public health officials; and
- It may also be a section 1 offence because it is known that some of the doctors are not permitted to accept such gifts or hospitality or because it is intended to induce them to perform their duties improperly.

## Comment

This may be an offence under Section 7 of the Act as the company is failing to prevent bribery by offering excessive expenses and hospitality to doctors. The conference is clearly being held to influence doctors to buy the product, not through its technical merits but by entertaining them. The conference lacks business validity as the doctors are not required to attend the educational events. Some of the doctors may feel uncomfortable with the arrangements and public perception of the event would likely be unfavourable if the arrangements were to become public. The company should have a clear public policy on conferences and education for doctors that includes requiring doctors to attend the full conference programme and that the event arrangements are modest and do not include lavish expenditure such as the expensive hotel accommodation, dinners or 'goody bags'.

**SCENARIO 8: HOSPITALITY TRIP ABROAD FOR PRIVATE SECTOR CLIENTS**

A UK-regulated investment bank is selling emerging market securities to broker-dealers. The bank arranges a three-day trip for 20 of its team's top clients to the capital city of one of its markets. The programme includes an afternoon seminar about the local capital market, a wine-tasting evening in the countryside, accommodation, tickets to a Formula One Grand Prix race and fine dining. After the trip, the team calls the clients offering them deals on which the margins the bank would earn are well above market rates.

## Key issues to note

- If there is an offence under sections 1, there is a risk of an offence under section 7 of the Bribery Act of failure to prevent bribery made with the intent to obtain business.

## Comment

The business content for this trip is low and the hospitality is lavish. Whether or not there could be an offence under the Bribery Act, such high levels of hospitality do not represent the requirements of a good practice anti-bribery programme.

### 5.1.3 Political contributions

#### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- 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.

Political contributions could potentially constitute offences under sections 1 or 6 of the Bribery Act. The definition of 'foreign public official' in section 6 of the Act does not include foreign political parties or candidates for foreign political office<sup>22</sup> but it does include any individual holding a legislative function so the definition will include members of legislative chambers outside the UK. Companies should take care when dealing with politicians as they may have legislative functions and in many countries they can exercise significant influence over public officials. Companies must also aim to ensure compliance with relevant legislation on political contributions.

The risks arising from political contributions are that they may be used by a company as a subterfuge for bribery to retain or obtain a business advantage such as to win a contract, obtain a permit or licence, or shape legislation favourable to the business. Fees paid to politicians to retain them as advisers might also be construed as an advantage if related to retaining or obtaining business. In the related area of political advocacy ('lobbying') companies can legitimately communicate their views and expertise on public policy issues often through an intermediary lobbyist. However, they should take action to avoid abuse of advocacy through payments, gifts and hospitality made corruptly to obtain advantage or trade in influence.

Political contributions can be a legitimate way for a company to support the democratic process by providing financial and other support to assist political parties to carry out their roles but laws and practices vary between countries. Some companies prohibit all political contributions because of the risks attached, the potential to damage reputation and the uncertainty over what can be defined as a political contribution. However, an outright prohibition of political contributions in all countries remains the exception rather than the rule.

#### DEFINE POLITICAL CONTRIBUTIONS

The company, whether it makes political contributions or not, should take care to define what it means by a political contribution to ensure that any such payments are covered by its political contributions policy and associated procedures. A political contribution is a contribution, financial or in kind, to support a political cause. However, definitions of contributions and political causes can be broad. Financial contributions can include both donations and loans. In-kind contributions can include gifts or loans of property, provision of services, advertising or promotional activities endorsing a political party, purchase of tickets to fundraising events and contributions to research organisations or 'think-tanks' with close associations to a political party. The release of employees without pay to undertake political campaigning or to stand for office could also be included in the definition. A political cause can be widely defined and may include political parties, election committees, party affiliated organisations, party aligned research bodies, pressure or lobby groups, causes that are politically aligned, party officers and candidates.

#### CLEAR POLICY

The company should set out clearly its policy and criteria for political contributions. The use of politicians as consultants and the giving of board or other company positions to politicians or public officials leaving office should be addressed in the policy and should be consistent with local laws and codes of conduct. The policy should also cover any benefits in-kind or privileges that are made available to politicians such

<sup>22</sup> Sub-section 6 (5) of the Bribery Act

as transport and communications, provision of property and facilities on other than commercial terms. The policy should be group wide. In line with a movement toward enhanced shareholder activism around the globe, listed companies should give very serious consideration to the option of requiring shareholder approval for any political contributions (this may be required by law) to cover the eventuality that the company inadvertently makes a contribution owing to the inherent uncertainty of what comprises a political donation. The policy should also cover political contributions by company employees acting in a personal capacity. The company has no control over such contributions, but it should make it clear that any such contributions must be at the discretion of the individual, and the company will not reimburse the individual in any way or form, for making such contributions.

### Example policies

#### Company that makes political contributions

Our policy is to allow political contributions in countries where we operate subject to compliance with applicable laws. We disclose publicly all political contributions that we make. We will not make political contributions related to obtaining or retaining business. The company will not reimburse any employee in any way or form for making political contributions.

#### Company that does not make political contributions

Our policy is not to make political contributions in any form whether to political parties, causes or to support individual candidates. To protect the company from any inadvertent violation of the law, our shareholders have approved funds within strict aggregate financial limits to cover certain categories of political expenditure which could possibly be defined as political contributions under the UK's definition of a political donation or expenditure. Nonetheless, the company does not intend to make political contributions.

### MAKING CONTRIBUTIONS

If the policy is to make contributions, the company should make sure to avoid situations where a contribution could create the perception that the intention is to retain or obtain a business contract or gain advantage as a direct result of the contribution.

If a company wishes to support one particular political party then a contribution should not be made when there is a prospect of business contracts or benefits arising in the short or medium term from the party being in government. Some companies follow the practice of giving contributions to several competing parties, seeking to support the democratic process in a country rather than to obtain any advantage, short or long term. If the company wishes to support the political process in a non-partisan way, an approach could be the use of a formula such as the relative size of the principal political parties reflected by the number of seats won or votes cast at the last election.

### POLITICIANS AS CONSULTANTS

If the company uses politicians or former politicians as consultants, it should require such appointments to be approved by senior management, make checks that they comply with local laws and rules and set criteria for reasonable fees appropriate to the services rendered. The company should have a procedure to review regularly fees paid to ensure that they are not excessive for the work undertaken and that a consultancy will not create a conflict of interest for the consultant

### CONTROLS

Any contributions made should be in accordance with a procedure providing for review and approval by a designated level of management usually senior management. The board should review regularly a report on all contributions made and consultancy agreements with politicians.

**TRANSPARENCY**

As transparency is the best defence against malpractice, the company should disclose its political contributions policy publicly. If the policy allows political contributions the company should normally publish how this is in practice implemented, the procedures and controls in place, details of contributions made and any politicians acting as consultants to the company and list publicly its main advocacy topics.

**Checklist: political contributions**

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
75	There is a written policy covering political contributions whether made directly or indirectly							
76	There is a definition of political contributions							
77	If the policy is not to make political contributions, the company has procedures to prevent political contributions being made							
78	The policy covers 'revolving doors'							
79	The policy and procedures reflect the particular risks of political contributions being used as a subterfuge for bribery							
80	The policy covers making political contributions directly or indirectly in jurisdictions in which it does not have a presence							
81	If the company uses politicians as consultants, it has procedures for their appointment and checks that fees paid represent appropriate and justifiable remuneration for the services							
82	There are procedures and controls to ensure that political contributions are not used as a subterfuge for bribery							
83	There are procedures to ensure that those retained to advocate on the company's behalf know and observe the company's policy on contributions and responsible advocacy							
84	If the policy is to allow and make political contributions, it covers making political contributions directly or indirectly in jurisdictions in which the company does not have a presence							
85	If the policy is to allow and make political contributions, the policy specifies that political contributions shall be in accordance with applicable law							
86	If the policy is to allow and make political contributions, there is a review and approval procedure with designated levels of approval							
87	The review and approval procedures include checks to ensure that political contributions are not made directly or indirectly to political parties, organisations or individuals engaged in politics as a way of obtaining advantage in business transactions							
88	There is a procedure to record any political contributions made accurately in the books							
89	The company publishes details of all political contributions made by the company and its subsidiaries or a statement that it has made none							
90	The company publishes details of the top issues on which it makes advocacy							

#### 5.1.4 Charitable contributions

##### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery.
- The enterprise should publicly disclose all its charitable contributions and sponsorships.

Risks are associated with charitable contributions and sponsorships as they may be used as a subterfuge or route for bribery and present opportunities for kickbacks. Such payments fall under section 7 and also the general offences sections of the Bribery Act but may also fall under section 6 if a foreign public official is associated in some capacity as an officer of the recipient body. Charitable contributions and sponsorships both involve payments or contributions where there can be flexibility in determining the amounts given and in the choice of recipient. Charitable contributions are given 'for the love of god' without tangible business return. Sponsorships are made for business promotional objectives. Both often lack benchmarks for what a reasonable payment should be.

##### Risks related to charitable contributions and sponsorships:

- Charitable contributions and sponsorships are poorly managed and decisions are made on an 'ad hoc' basis opening the door for improper payments;
- Vulnerability to kickbacks;
- Lack of benchmarks for the level of payment commensurate with the activities thus allowing room for inflation of payments which can create the funds for bribery;
- Can be steered for corrupt purposes to 'front' organisations;
- Can be used for undue influence such as donating to or sponsoring the favoured cause of a political decision-maker or customer;
- If made through an intermediary the contribution or sponsorship can be subject to less control and follow-up;
- If the company has a foundation or trust, its actions may fall outside the company's programme, donations might be made without adherence to the company's programme and seen by stakeholders as an attempt to gain undue influence on a decision maker for a potential contract; and
- Hospitality is often tied into sponsorship and brings with it the risks detailed in section 5.1.2.

##### SET OUT POLICIES AND CRITERIA

Setting out policies, criteria and processes is not only good practice for countering bribery, but forms part of effective management of contributions and sponsorship activities. The company should have a precisely documented policy for contributions and sponsorships supported by formal selection criteria made public.

##### CONTROLS

There should be designated levels of approval of contributions and sponsorships with appropriate counter checks and reporting mechanisms. As sponsorships are promotional activities, they should be approved and paid within the normal purchasing process. All payments should be properly recorded in the books. No payments should be made in cash.

The company should ensure that when making a charitable contribution or sponsorship there is no potential conflict of interest that could affect a material transaction. They must not be made where they could influence a current bidding situation or be given subsequently as a 'reward' for the awarding of a contract. One example of risk is where a person who could influence the decision in a material transaction has an interest in or a family association with the organisation receiving the donation or sponsorship, and the person's judgement or influence on the transaction could be perceived as being affected by the contribution or sponsorship or the potential of such an event. Another example of risk is sponsorship of a senior representative of a client running in a charity marathon to raise money for a good cause. Guidance should be given to employees on the criteria and approvals needed for such situations, the documentation of approvals and instructions on how the amount should be accurately recorded and reported. Equally, employees and business partners of the company should be given guidance how to avoid conflicts of interest arising from contributions or sponsorships made to organisations with which they have links.

The company should take care to apply 'know your business partner' standards to dealing with a charitable or sponsored organisation to make sure it is a valid body and also to determine whether there is any associated foreign public official where section 6 could apply. The company should review the viability of the recipient organisation, its ability to perform the activity for which the charitable donation or sponsorship is given and require that the recipient will report back on its performance. Donations to individuals should be avoided but if such payments are made, the payments should be approved and monitored closely by management and fully recorded.

#### **MONITORING**

The company should monitor and track charitable contributions and sponsorship payments to make sure that they have been applied to the intended purpose. Charitable contributions and sponsorships should be recorded accurately and regular reviews should be held by management to ensure payments fall within the policies and guidelines.

#### **TRANSPARENCY**

Contributions and sponsorships should be made transparently. This means establishing policies and criteria communicated publicly for selection of contributions and sponsorships and reporting on those made by listing them in a publicly accessible manner such as on the company's website or in the Sustainability Report.

**CASE STUDY 2: CONTRIBUTION GIVING AN ADVANTAGE TO A FOREIGN PUBLIC OFFICIAL**

Schering-Plough settled this action with the Securities and Exchange Commission (SEC) without admitting or denying the following allegations of facts in the SEC's complaint. Between February 1999 and March 2002, Schering Plough Poland paid \$75,860 to the Chudow Castle Foundation, a charitable organisation, in order to induce the Foundation's president, who was also a Polish government official, to influence the purchase of Schering-Plough's pharmaceutical products; none of the payments to the charity was accurately reflected in Schering-Plough's books and records and Schering-Plough's system of internal accounting failed to prevent or detect the improper payments.

The President and founder of the charitable organisation receiving the payments was also the Director of the Silesian Health Fund, a regional government health authority. While the payments were described as charitable contributions and made to a bona fide charity, Schering-Plough made them to induce the official to provide money for the purchase of Schering-Plough's pharmaceutical products by hospitals and other entities through the allocation of health fund resources. Employees at that time were not required to determine prior to making charitable donations whether government officials were affiliated with proposed recipients.

**Key issues**

- This case illustrates the risks of making donations to charities where a public official is involved and a contract is in the offing;
- The donation was made to influence the official's decision on a contract;
- There is no evidence of an adequate approval process for the donation; and
- The donation was not recorded properly in the company's books and records.

**Comment**

If the UK Bribery Act had been applicable then there would have been offences under sections 1 and 6 (and a prima facie offence under section 7). Even if employees had made checks to determine the involvement of a public official, the SEC settlement was based on the finding that the donation was made as an inducement, thus such checks would have been irrelevant as the official's status was known.

**Checklist: charitable contributions**

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
91	There is a written policy covering charitable contributions							
92	There are procedures and controls to ensure that charitable contributions are not used as a subterfuge for bribery							
93	There is a review and approval procedure for charitable contributions with designated levels of approval							
94	There is a procedure to monitor charitable contributions to ensure that they are not used as a subterfuge for bribery							
95	There is a procedure for due diligence is carried out on recipient bodies that no FPO is associated with the body that will gain an advantage in the conduct of business							
96	There is a procedure to record charitable contributions accurately in the books							
97	If the company has a foundation or trust, its contributions are subjected to procedures and controls to ensure they are not used as a subterfuge for bribery to gain undue advantage for the company							
98	The company publishes details of all charitable contributions made by the company and its subsidiaries							

### CASE STUDY 3: PLANNING GAIN RELATED TO AN OVERSEAS OIL AGREEMENT

The overseas subsidiary of an UK oil company is bidding for a production sharing agreement with a North African country. It has been made clear to the bidders that the government would expect 'planning gain' with facilities to be provided for the local community to compensate it for the disruption of extraction and piping but also to counter any unrest adverse to the government because local communities will not benefit from the revenues. An amount of several million dollars for a hospital has been suggested. The payment for the community facility would be made as a donation to a charitable trust to be nominated by the minister for energy. No details of the trust have been provided so far nor how the payment would be made.

#### Key issues to note

- The UK oil company could be liable under section 6 of the Bribery Act if its subsidiary were to be judged as providing an advantage at the request or with the assent or acquiescence of a foreign public official;
- The advantage would be to the charitable trust and/or government politicians as they would be enhanced in their ability to stay in office and to avoid community unrest;
- It could also be an offence under section 7 of failure to prevent bribery as the donation for a hospital might be an inducement to the government to award the contract improperly;
- There is a risk to the company if the charitable trust has officers or involvement by public officials or their families; and
- It will not be an offence under section 6 (or section 7) if permitted by written law.

#### Comment

The company should have a clear public policy for planning gain solicitations including that the planning gain has a valid business rationale e.g., if environmental or community adverse impact or loss will result from the contract; the planning gain process should be transparent and include public planning review. Due diligence should be carried out on the body to which the funds are to be paid to check whether any public officials are involved and that the funds will not be applied to another purpose.

#### Checklist: sponsorships

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
99	There is a written public policy covering sponsorship							
100	There are procedures and controls to ensure that sponsorships are not used as a subterfuge for bribery							
101	There are procedures for approval and payment of sponsorships which are in line with the normal purchasing procedures							
102	There is a procedure for due diligence is carried out on recipient bodies that no FPO is associated with the body that will gain an advantage in the conduct of business							
103	There is a procedure to monitor sponsorships to ensure that they are not used as a subterfuge for bribery							
104	There is a procedure to record sponsorships accurately in the books							
105	A list of sponsorships made is published publicly							

## 5.2 OPERATIONAL FUNCTIONS

Operational functions should accept the value of the programme and carry it through their departments. The prime functions likely to be identified in the risk assessment are procurement, supply chain management, marketing and sales and also company operations, especially where these are remote or 'in the field'. Other operations presenting risks include functions where regulatory licenses or critical services are required. Examples of these include research and development (testing and approval of drugs), telecommunications, casinos and lotteries, facilities management (water, power, building and plant planning approvals). Human Resources may also be vulnerable in the recruitment process and especially where there are employment quotas for local nationals or members of certain local tribes or communities.

Contracting, purchasing and supply chain management may be at risk from private-to-private bribery which is covered by the general offences sections of the Bribery Act. Buyers may receive kick-backs on contracts. Employees in the contracting department may accept excessive hospitality and gifts and then be pressured by threat of exposure to provide advance details and specifications of forthcoming major tenders.

Marketing and sales is a frontline for bribery and will fall under the general offences sections of the Bribery Act and also sections 6 and 7. Many of the major bribery scandals have involved overseas public tendering processes often through the use of intermediaries.

The company should pay particular attention to the risks of these operating functions and implement the programme including:

- Developing tailored communications for the functions describing the anti-bribery programme, explaining how risks can reveal themselves in the operations of the functions and providing case studies and examples of dilemmas;
- Tailored training for employees assessed as operating in high risk areas;
- Detailed and full documentation of meetings and contract negotiations;
- Close monitoring and reviews; and
- Appraisal and remuneration based on integrity performance.

### 5.2.1 Contracting and purchasing

Contracting and purchasing are among the operational functions of highest vulnerability to bribery and kickbacks. The company should be vigorous and thorough in ensuring that its programme is communicated to and endorsed by all its contractors and suppliers.

A clear public commitment to operating fairly and transparently and a public written policy of zero tolerance of bribes will enhance the reputation of the company and can over time deter demands for bribes. The company's code of conduct or business principles should carry a statement that the company is committed to integrity and will operate transparently and fairly in its business dealings. When awarding contracts, the company should communicate and demonstrate that its contracting and purchasing procedures are carried out in line with this commitment. Checks should be made during the contract implementation phase as it is in this phase that the greater part of bribery takes place and then also in the contract implementation phase.

#### CASE STUDY 4: SUPPLIER BRIBES BUYERS TO CIRCUMVENT RETAILER'S TURNOVER RULE

A supplier and two former IKEA staff were found guilty in the UK in 2007 in a £1.3m bribes case to evade the retailers purchasing limits and to obtain orders for the supply of goods. The convicted parties set up a number of companies to supply goods to the UK operation of IKEA. IKEA operated a policy whereby it would not take more than 40 per cent of a supplier's turnover. This 'turnover rule' was designed to prevent suppliers being overly reliant on IKEA's business. In this case virtually the entire turnover of these companies was with IKEA. In addition, by supplying goods through the supplier's various companies the true extent of the scale of turnover of the supplier's business with IKEA was masked. To help keep this fact from being discovered and to ensure that the companies' supplies and invoices would be approved, corrupt payments were made to two IKEA executives in influential positions in purchasing and retail sales of £1,012,730 and £286,168 respectively which they admitted receiving. Later, the corrupt payments were linked to the quantity of goods ordered. Ultimately the position was reached where the supplier was dictating what would be ordered by IKEA according to what goods the supplier had available.

##### Key issues

- The supplier's owners would have committed an offence under section 1 of the Bribery Act and the two IKEA employees an offence under section 2
- The supplier would also have committed a corporate offence under section 7 of failure to prevent bribery.

##### Comment

This case shows the vulnerability in the high risk area of purchasing linked to the connivance of a retail sales employee and how bribery can infiltrate and distort a buying company's operations. In this case, bribery enabled the supplier to circumvent the supplier's controls and the 40 per cent limit such that IKEA took all its output. Ultimately it led to the extraordinary position of the supplier being able to dictate to IKEA what it bought. The aim of a good practice programme should be to counter such risk through due diligence and monitoring of suppliers and having checks and balances in purchasing and related functions.

#### 5.2.2 Contracting by the company

The company should be equally rigorous with regard to the processes for award and management of contracts by its employees. Corrupt employees will have four key aims:

1. To manipulate the process for awards of contracts so that corrupt contractors will be selected and bribes and kickbacks be generated;;
2. To arrange the contract management process including falsifying documentation to disguise any consequences of a contract awarded to a contractor that has bribed its way
3. To create opportunities for the corrupt contractor to improve its margins, earn additional fees and to pay for its bribes; and
4. To create a climate for encouraging corrupt contractors to repeat their bribes in other bidding for contracts and to penalise honest contractors so that they are persuaded to engage in corrupt behaviour.

When awarding major contracts, the company should take account of external perceptions by communicating and demonstrating that its purchasing and procurement processes are carried out using objective business criteria. The company should apply a consistent and systematic review process that demonstrates its processes are free from bribery. The company should be open about the process by which contracts of major interest to stakeholders have been notified and opened to potential bidders and awarded. It should notify unsuccessful bidders of its decisions and the basis for selecting winning contracts. The company's purchasing and contract processes should be designed to remove any opportunity for employees to distort the process to create ways in which they can steer the award of a contract to a particular bidder.

**INVITING TENDERS**

Equal notice should be given to all potential bidders – a common way of distorting the process is to tip off one supplier well ahead and to give others a short period in which to prepare their bid. Attention should be paid to the risk that employees may have been exposed to hospitality or other benefit to induce them to provide advance information of specifications and terms. Where bids are to be solicited through advertising and other channels, the company should ensure that such dissemination is carried out widely. There should be security for handling bids before and after opening so that corrupt bidders are not given information about competitors' bids and thus be given opportunity to revise their bids.

Contracts should have specifications of the services or supplies required. When setting the specifications for a contract, the company should have checks in the process to ensure that the specifications are not distorted to match one particular supplier's product or services thereby excluding or putting at a disadvantage other potential suppliers. Specifications should be drawn up to encourage as wide a range of tenders as possible.

**CASE STUDY 5: ILLEGAL INFORMATION BROKERING AND UK CIVIL SERVANT**

Michael Hale, 58, a senior official at the Ministry of Defence (MoD) was given concurrent sentences of two years in 2007 in the UK for receiving bribes of more than £217,000 in nine payments to ensure that Pacific Consolidated Industries, based in California, was awarded a £4.5 million contract by the MoD to supply the British Armed Forces with gas containers after Hale had provided confidential information.

When the bribing company was taken over by another company, attorneys in California carrying out due diligence uncovered a total of nine corrupt payments paid to Hale over the years. The prosecutor said: 'Here was an example of creeping corruption which started with some over-the-top and unsigned-for hospitality and graduated from small and then to substantial corrupt payments.' Hale enjoyed lavish hospitality from the company. Lee Smith, the company's vice-president, paid for Hale and his wife to fly to the United States, put them up in luxury hotels and entertained them on his yacht. The information Hale supplied included the amount allocated for the gas equipment and the specifications of the kit ordered in previous years. This put other companies bidding for the contract at a disadvantage for under tendering process interested companies would have received only the general specifications of what was needed to provide tenders.

Key issue:

- The US company would have committed an offence under section 1 of the Bribery Act as part of the offence took place in the UK; and
- The US company would have committed an offence under section 7 of the Bribery Act.

Comment:

The case illustrates the classic approach of illegal information brokering where an employee is corrupted by hospitality which then leads to the provision of information to enable the bidder to be given an advantage over other tendering companies.

**EVALUATION OF BIDS**

The evaluation process should be given close attention as corrupt employees can manipulate the evaluation criteria and weighting of decisions and unsuccessful bidders will be unaware of the deception. The period over which awards are valid should also be monitored to make sure that honest successful bidders are not caused to drop out through deliberate delay by corrupt employees in completing the award process. Due diligence should be carried out on contractors and suppliers and their agents. Special care should be taken in cases of sole or exclusive sourcing to ensure that the decision has been made as an exception, with due management checks with valid criteria and that bribery has not played a part in the decision.

**AFTER THE AWARD OF A CONTRACT**

The company should have processes that prevent corrupt employees generating the funds needed for the bidder to pay bribes or to give the supplier additional compensation. These can be achieved by increasing the margins for the contract through delivery of reduced quality services and products or by making variations in the contract after the award of a contract including increases in fees due to changes in technical specifications. The company should check that the goods or services delivered match the specification upon which the contract was awarded. The company should make sure that equipment and services are actually provided. Billing for essential work not specified in the contract is an indicator of collusion between the supplier and the employee responsible for awarding the contract. Failures or delinquencies on contracts should be examined and justified and local sanctions applied for any breaches of procedures.

The company should monitor the management of the contract to check whether honest contractors and suppliers are subjected to harassment or delays to bring them into line to make bribes either during the current contract or when bidding for new contracts. Conversely, corrupt contractors may be treated favourably to reward them for their bribery during the bidding process and to encourage further bribery.

**PROMOTING THE PROGRAMME TO CONTRACTORS AND SUPPLIERS**

The company needs to carry its programme throughout the contracting and purchasing process, as part of its supply chain. It should communicate its programme before placing a major contract and ensure that contractors and suppliers are willing to actively conform to it. Contracts should include a clause giving the company the right to apply sanctions including termination, in the event of a violation relating to bribery. The company should ensure that the contractors' employees understand both the contractor's programme, if it has one, and the requirements of the contract with the company to observe its programme.

The company should work in partnership with its major contractors, sub-contractors and suppliers in developing anti-bribery practices. It should meet them periodically, hold performance reviews and encourage ethics conformity. The meetings can inform participants of developments in the company's programme, help them develop systems, give them information about risks from bribery and exchange information. The company can work with its leading contractors and suppliers to ensure that the relevant employees receive continuing anti-bribery training and communication.

**STRENGTHENING SYSTEMS**

Systems should be examined rigorously to identify areas where there is risk of bribery and improvements should be put in place such as strengthening of monitoring systems, controlling rush orders or order changes. Software can be used to monitor red flags such as aberrant financial patterns or employees reluctant to take holidays. New technology such as RFID (radio frequency identification) tags and Supply Chain Event Management Systems have an important role in strengthening systems. Movement of goods in the supply chain can be tracked to reduce risks of goods being stolen or scrapped falsely to create funds to be used for bribery.

**MONITORING ANTI-BRIBERY PERFORMANCE IN A COMPANY'S SUPPLY CHAIN**

Special care should be taken in cases of sole or exclusive sourcing to ensure that the decision has been made as an exception, with due management checks and valid criteria met and that bribery has not played a part in the decision. There should be a process for reviewing price increases after a contract has been awarded.

The company should:

- Ensure that employees or officials with whom it deals on a bid for a contract are not offered employment (the 'revolving door') as an inducement;
- Obtain access to and assess contractors' and suppliers' reviews and audits of their anti-bribery programmes and help them to strengthen their practices;
- Survey the opinions of the business community about suppliers' and contractors' probity and obtain comments from other stakeholders including opinion formers and the community; and
- Establish secure and confidential communication channels (whistleblowing channels) for the use of contractors and their employees so that any concerns can be raised in confidence.

**Checklist: operational functions**

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
106	There are procedures to ensure that operational functions identified in the risk assessment have the knowledge, skills and resources to adhere to the programme							
107	There are procedures to examine sales and marketing procedures regularly where risks of bribery apply and to implement appropriate remedies							
108	There are procedures to examine contracting and purchasing procedures regularly where risks of bribery apply and to implement appropriate remedies							
109	The company has an explicit public statement of commitment to conduct its contracting and procurement practices in a fair and transparent manner							
110	The company has procedures to carry out its commitment to conduct contracting and purchasing in a fair and transparent matter to counter the risk of bribery							



## SIX IMPLEMENTATION

### 6.1 INTRODUCTION

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"...while many companies have well designed programmes they fall short on effective implementation."

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It is TI's experience that while many companies have well designed programmes they fall short on effective implementation. Companies may believe they have effective implementation of their programmes but it is easy to be over-confident about this. Previous sections of this Guidance have described the tone from the top and the commitment of the company, the role of risk assessment and the detailed policies and procedures related to various forms of bribery, operating functions and business associates. This section looks at how the programme should be embedded throughout the company so that board, management, employees and agents understand the requirements of the programme; that the entire company is committed to putting anti-bribery policies into action; and that there are adequate internal controls to counter the risks of bribery.

The company's tone from the top, the policy of zero tolerance of bribery and its incorporation into the Human Resources policies and procedures provide the context for employees to understand what the company stands for, what it expects and requires of board members and employees, the support and information it will give and the incentives and sanctions that will be applied. The anti-bribery commitment of the company needs translating into tailored communications, guidance and training for employees and also business associates. The risk assessments will form the basis for determining the tailoring of training and communications. The company will also want to ensure that there is reasonable assurance that its objectives for preventing bribery will be achieved. Internal controls supported by internal audits will provide assurance that bribery systems are effective. Thus this section discusses training, whistleblowing, advice channels, communication and internal controls.

### 6.2 TRAINING

#### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- Directors, managers, employees and agents should receive appropriate training on the Programme.
- Where appropriate, contractors and suppliers should receive training on the Programme.

Training is fundamental to obtaining the commitment of directors and employees to the programme and to providing employees with the skills needed to deal with situations which they may encounter. Most large businesses have a detailed code of conduct but audits show that these are not always properly understood or implemented. Simply asking employees to sign that they have read and understood the code of conduct or business conduct guidelines is not enough. The company needs to ensure through training that its anti-bribery policies are properly embedded in all procedures and working practices.

#### **TAILORED TRAINING**

Training should be given on a continuing basis to board members, recruits, employees and business partners appropriate to their needs and the potential risks relating to their functions. Different segments of operations and different countries of operation will require levels of training specific to their assessed needs. Operations of potential higher risk of bribery such as purchasing, contracting, distribution and marketing should receive particular attention for tailored training as will operations in countries where bribery is prevalent.

The company should ensure that recruits (including appointments to the board) are given training in the programme following joining the company or upon appointment in the case of agents. It should be mandatory for employees to comply with the programme and recruits should be trained in what this means in practice and the sanctions that could be applied in the event of a violation.

#### **TRAINING CONTENT**

The content of training should cover the policies and procedures and what this means in practice for employees. Case studies and dilemmas can be valuable in presenting issues and taking employees through the complexities of situations they may encounter. Negotiation training can be given where employees are likely to face demands or extortion. Clear guidance needs to be given on when exceptions may be justified (for instance when faced by physical threat). The training should explain how to use channels through which concerns can be reported or expressed and how to seek help or advice. Part of this training will help employees understand what issues are appropriate to raise. Employees can be informed of how they can obtain local support from chambers of commerce and embassies.

Training can take the form of classroom teaching, external courses, seminars and conferences supported by publications and training materials. E-learning is often provided by larger companies using interactive CD ROMs or on-line training. It is important that reliance is not placed entirely on self-teaching materials. The opportunity for employees to discuss with well-prepared instructors and experienced managers will ensure that the lessons are driven home and that the personal commitment to ethical behaviour is reinforced.

#### **TRAINING OF AGENTS**

Agents represent the company and the agent relationship is an area of high risk for bribery. The company should make it a contractual requirement for agents and other similar intermediaries to comply with its programme and will need to support this by regular training. Training should be given to new agents upon appointment. It may be an effective and useful training method to include agents in training courses given to employees so experience can be shared.

#### **TRAINING OF SUPPLIERS**

While the company may have its internal compliance with the programme satisfactorily managed, it may still be at risk if its contractors and suppliers do not have equivalent programmes. Education and training can play an important role in helping improve the programmes of contractors and suppliers, including those franchise operations where the business relationship is close or where the company's activities have been substantially outsourced or contracted. Contractors and suppliers should be encouraged to adopt similar training requirements to those of the company. The programmes of contractors and suppliers will be made more resilient and consistent through effective training and thereby will strengthen the no-bribes environment.

Training should be tailored to the needs identified through the risk assessment process and the receptiveness of the partners to receive such help. The purpose of the company in providing this support is to strengthen the programmes of the contractors and suppliers to prevent approaches and solicitations being made to the company. It will also help the contractors and suppliers themselves to resist bribery and will benefit the company as otherwise the corrosive effect of bribery on business partners may ultimately feed through to the company.

The company can offer or even require contractors and suppliers to participate in the company's anti-bribery training courses to understand the company's programme including sanctions policies and procedures and to provide confirmation that they will follow these in all their dealings with the company.

### Checklist: training

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
111	There are procedures to ensure appropriate induction/orientation training is given to recruits so that they clearly understand the company's programme, know the company's expectations and the sanctions procedure in the event of a violation							
112	There are procedures for continuing appropriate training of directors, managers and employees so that they clearly understand the company's programme, know the company's expectations and the sanctions procedure in the event of a violation							
113	The company tailors its training based on the risk assessment							
114	Directors and employees' records include documentation of anti-bribery training received							
115	The company assesses training activities on the programme periodically for effectiveness							
116	The company reports publicly on the extent and quality of its anti-bribery training							
117	There are procedures for continuing appropriate training of agents so that they clearly understand the company's programme, know the company's expectations and the sanctions procedure in the event of a violation							
118	There are procedures for providing continuing training where appropriate to contractors and suppliers on the programme							
119	There are procedures to train contract staff so they clearly understand the company's programme							
120	The company reports publicly on measures of training given to agents							
121	The company reports publicly on measures of training given to suppliers							

### 6.3 RAISING CONCERNS AND SEEKING GUIDANCE

#### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- To be effective, the Programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the company 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.

An effective programme will have a policy, procedures and channels for providing advice, encouraging suggestions for improvements and raising issues. Anti-bribery communication channels are usually termed help lines, hot lines or whistleblowing channels. They may not only be for the use by employees but can also be made available for use by business partners or the general public. Evidence suggests that although such channels are not heavily used, they are important in revealing significant abuses of a programme. The programme should encourage employees to seek guidance or discuss issues before making complaints. The complaints channels can be used for this but the company can consider providing other channels through which an employee can seek guidance.

It is important that the channels are managed by an independent staff unit, which reports on the management of channels to senior management or a board member. It could be decided that greater confidence would be provided to employees if the whistleblowing channel were to be provided by an independent provider appointed by the company.

Management must offer adequate protection to those who use whistleblowing or advice lines. The channels must conform to local laws. In this respect some jurisdictions do not allow anonymity but in all cases, such lines must provide security for employees that names will not be revealed beyond the function managing the lines. Security can be provided, for example by confidential telephone services or intranet 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 whistleblowing mechanisms must not provoke retaliation in the form of stalled promotions or non-payment of bonuses. Reports should be given periodically to senior management and possibly the board on the issues raised, the actions taken and the promptness with which inquiries were dealt. There should be a system in place for proper documentation and filing of the concerns raised; their handling and the outcomes.

For major corporations operating across multiple territories, it is an onerous task to ensure that someone somewhere is not involved in corruption. An effective whistleblowing process, that employees are not afraid to use, is a crucial management tool. Employees should know that it is their duty not just to resist demands but to report any concern to senior management. Companies must ensure that employees are not afraid to report wrongdoing or suspected violations of the programme.

**Checklist: complaints channels and advice lines**

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
122	The company encourages employees and others to raise concerns and report suspicious circumstances to responsible company officials as early as possible							
123	The company provides secure and accessible channels through which employees can raise concerns and report violations (whistleblowing) in confidence and without risk of reprisal							
124	The company provides secure and accessible channels through which employees can seek advice on the application of the programme							
125	There is full documentation of use, reviews and outcomes of complaints channels and advice lines							
126	The company reports publicly on the number and percentage of countries in which the company operates where whistleblowing channels and advice lines for employees are in place							
127	The company reports publicly on the number of whistleblower reports with number of reports investigated, closed or resulting in management action							
128	The company reports publicly on the percentage break-down by type of inquiries to whistleblowing channels and advice lines							
129	The company reports publicly on actions resulting from issues reported							
130	There are secure and accessible communication channels that encourage and allow business partners or other external parties to raise concerns and report violations (whistleblowing) in confidence and without risk of reprisal							
131	Senior management review reports on use of whistleblowing and advice lines							

**6.4 COMMUNICATION****THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY**

- 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.

Communication is one of the critical areas for the success of an anti-bribery programme. The company should identify the messages and information it wishes to communicate internally and externally and select the communications channels and methods that will be most effective in doing this. It should be recognised that internal communications can often be received externally and in turn external communications have an impact on the internal audience. Communication should be adapted in content and language to reflect varying audiences, localities, languages and countries. It can include websites, intranet, CD-ROMs, postings on bulletin boards, handbooks, employee manuals, newsletters, employee meetings, telephone hot lines and help lines, Annual Reports, corporate and sustainability reports.

#### 6.4.1 Internal communication

The main concern for internal communication will be to ensure that along with all other important messages for employees, the message on the no-bribes policy and how the employee should act remains high on each person's agenda. It will enable management to demonstrate commitment and leadership on the topic. Internal communication supported by training will provide employees with the information they need to carry out their activities and to handle incidents that may arise. Plans and targets should be set for measuring employee understanding, awareness and attitudes to the programme and monitoring achievement of the internal communication plans and targets for the programme.

The company should provide regular opportunities for employees to engage in free and open discussion of the programme and potential or likely risks of abuse or non-conformance. This can be accomplished through on-line training, scheduled meetings, education courses, focus groups or facilitated meetings and employee appraisals.

Companies that achieve effective internal communication will be in a better position to require adherence, achieve compliance, sanction non-conformance, and ultimately see that the employees', managers and board's actions live up to the company's values and no-bribes policy.

#### Checklist: internal communication

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
132	The company has procedures for communicating its programme in an accessible way to all its employees including those of subsidiaries							
133	There is a procedure to provide written guidelines on the programme to all employees including those of subsidiaries							
134	Business conduct guidelines are published in the main languages of employees							
135	The company publishes information on the results of surveys of employees' awareness and understanding of its programme							
136	The company publishes information on the results of surveys of employees' perception of the company's commitment to integrity and specifically to its no-bribes policy							
137	The company publishes information on the number/percentage of employees that have signed that they have read the company's anti-bribery guidelines							
138	The company publishes information on the number of languages in which the guidelines are published							

#### 6.4.2 External communication

Transparency, communication and public reporting are important aspects of adequate procedures. Transparency of policies and processes will show how the company operates in activities such as recruitment, that its procurement and tendering operations are carried out fairly and free from bribery and will show that the company allows such activities to be checked and questioned. Communication of the anti-bribery programme to business partners and other stakeholders will convey the company's tone from the top; explain how the company's anti-bribery programme operates and what the company expects in its business relations. Public reporting serves not only to reassure stakeholders that the company is operating properly but can also act as a deterrent to those intending to bribe or solicit bribes. Reporting together with information about the values, behaviour, opinion and performance of employees can enhance the credibility of its programme and can also assist the company in strengthening the programme .

TI's research and the experience of the Global Compact through its Communication on Progress process show that few companies report adequately on their anti-bribery or anti-corruption policies and systems. Consequently, TI and the Global Compact published in December 2009, the Global Compact-TI Reporting Guidance on the 10th Principle (see Annex 4) which provides comprehensive guidance on the topics related to anti-corruption on which companies should report. This Reporting Guidance is applicable to reporting of anti-bribery measures.

A description of the programme, particularly the policies, standards, code of conduct, business conduct guidelines and procedures should be made available on the company's external website and should actively be communicated not only to all business partners but also to government institutions and other key stakeholders with which the company has relationships.

If a company chooses to make public its programme, it should recognise that it will thereby be making a reputational and risk management statement, as doing so will be seen as an implicit commitment to abide by its programme and to meet any identified targets for progress. This can lead to public expectation for information about the company's performance in applying its programme and information about violations. If the company makes available information about its performance, this can contribute to more effective monitoring and evaluation of the programme as any inconsistencies between actual and reported performance may attract opinion and comment from relevant stakeholders.

As advocated in the Global Compact-TI Reporting Guidance, the company should also report on the existence of public legal cases. Apart from meeting any regulatory requirements, voluntary reporting of public legal cases is valuable as it can show that the company acts transparently and takes seriously any incidents or violations of its anti-bribery programme.

#### Checklist: external communication

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
139	There is a policy to publicly disclose information about the programme including the management systems employed to ensure its implementation							
140	The company reports on its anti-bribery programme aligned to the Global Reporting Initiative Sustainability Reporting Framework							
141	The company reports on its anti-bribery programme aligned to the Global Compact-TI Reporting Guidance on the 10th Principle							

### 6.5 SUPPORT FUNCTIONS

Because success in implementing the programme will depend greatly on the ability of support functions such as finance, legal, security and internal audit, the company should make sure employees or sub-contractors in these operational areas have the skills and resources required to implement the programme.

#### Checklist: support functions

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
142	There is a procedure to provide appropriate training and resources to support functions for the anti-bribery programme							

### 6.6 COLLECTIVE ACTION

If the company operates in markets where corruption is prevalent, it can seek to encourage initiatives that support the building of transparency and integrity. Examples at international level are the Extractive Industries Transparency Initiative and the Global Compact. The company can collaborate with other companies on sectoral or local anti-corruption initiatives and can support local anti-corruption organisations. The UK Anti-Corruption Forum for Infrastructure Construction and Engineering<sup>23</sup> is an example of collective action in an industry sector.

Larger companies, often by working collaboratively with other companies and bodies, may deal with the issues on the demand side on several fronts. For example, facilitation payments in many countries arise from the demand side, usually from lower level officials who often do not receive an adequate living wage and extort bribes to make ends meet. A company could consider reaching out to the organisations from which demands originate and raise the issue at the highest level, emphasising that the demands expose the company's employees to sanctions from criminal laws of both the local country and, where applicable, the company's home country. However, it must be noted that very often the payments are going up the chain to the top and representations at high level can backfire. To be successful such approaches need to be handled personally by senior management in the country and not delegated. National and local governments need to be encouraged to ensure that appropriate legislation is in place supported by requisite means to change attitudes, structures and remuneration of officials and employees. Where corruption is prevalent, for example in customs, a medium term solution could be to mobilise private sector action from similarly placed businesses and to approach government bodies in joint action, also using official diplomatic representatives.

#### Checklist: collective action

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
143	The company is a member of a sector anti-bribery initiative or working group							
144	The company is a member of or supports an anti-bribery initiative							
145	The company takes part in local collective action to counter bribery							

## 6.7 INTERNAL CONTROLS

### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

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

Internal controls systems are the policies and procedures that help ensure that the board's and management's directives are carried out and meet the corporate governance policies of the company. Internal controls are broadly defined as a process, implemented by a company's board of directors or equivalent body, management or other personnel, designed to provide reasonable assurance regarding the efficiency of operations, the reliability of financial reporting and compliance with applicable laws and regulations.

Audit is the process by which the reliability of internal controls, documentation and reported performance is checked and verified to provide assurance to management, investors and other stakeholders. Audit is an essential part of the monitoring and improvement process described in section 8 of this Guidance. The audit may be carried out by an internal audit function and may also be supported by external independent verification or assurance. The board is ultimately responsible for the system of internal controls although it is customary to delegate to management the task of establishing, operating and monitoring the system. To build the confidence of stakeholders, the board should be transparent and disclose an assessment of the effectiveness of the company's internal controls.

The company's internal controls must provide reasonable assurance that payments and receipts are properly authorised by management and ultimately by the board. A bribery incident represents a breach of the company's controls. The internal controls related to the programme should be designed and based on the assessment of risk of bribery in the company's operations. However, the company should recognise that controls alone are insufficient and responsibility for countering bribery should exist at all levels in its operations. Controls must be augmented by explicit appointed responsibilities of managers and employees to counter bribery supported by implicit understanding and commitment of all employees to act with integrity.

## 6.8 DOCUMENTATION

As with any management process, the anti-bribery programme should be fully documented with a system of document control for the principal policies and procedures which enables roles and responsibilities to be defined, with consistency of approach, policies and procedures to be tracked and kept up-to-date and an audit trail provided. Without a detailed documented programme anti-bribery systems may not identify and address vulnerabilities, procedures may be ad hoc with gaps and inadequacies or employees working to out-dated documents and when the sanctions procedures are applied they may be challenged.

### Checklist: internal controls

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
146	The company has a system of internal controls to counter bribery							
147	The internal controls include financial and organisational checks and balances over the company's accounting and record keeping practices and other business processes related to the programme							
148	There is an audit committee that provides oversight of internal controls, financial reporting processes and related functions including countering bribery							
149	The company ensures that there is appropriate separation of duties for financial transactions							

## 6.9 ACCURATE BOOKS AND RECORDS

Accurate accounting and record keeping is of the utmost importance to the anti-bribery programme as this allows checks to be made that proper procedures are followed and will identify how processes can be improved to increase effectiveness in countering bribery. It can also provide hard evidence in the case of investigations or court proceedings undertaken to enforce anti-bribery policies and laws.

Books should be maintained on a current basis; transactions should be recorded chronologically and supported by original documents fully cross-referenced. Care should be taken to establish a comprehensive filing system and the audit trail of each transaction from origin to completion must be guaranteed.

Traditionally, bribes have frequently been paid out of 'slush funds' i.e., funds that have been accumulated in bank accounts from commissions or other receipts not recorded in the official books of account. Consequently, there must be an absolute rule that all transactions are truthfully recorded in the official books and that no 'off-the-books accounts' are kept. Independent checks on bank accounts and agents, including contacts with the company's bankers are necessary precautions to reduce this risk. It should be noted that risks also relate to special purpose entities (SPEs). These may hold substantial assets and liabilities of a business but are not consolidated and independent controls over SPEs may be weak.

Ensuring compliance with anti-bribery rules follows largely the same process as that used for combating fraud. Internal checks should be maintained to ensure that no one employee has responsibility for more than one step in a transaction. Initiating the transaction, physical handling of goods and of cash, authorising or receiving payments and recording the transaction in the books of account should be performed by different employees. This procedure is normally described as a system of internal accounting control.

Spot checks of the internal accounting control process should be part of the supervisory function in the purchasing, sales, stores, production and accounting departments. Clear written instruction should exist, explaining the processes to be followed in complying with the separation of functions described above and regular feedback mechanisms should result in improved instructions being agreed upon and issued.

Cross-departmental meetings should take place regularly to review the effectiveness of internal control systems and the anti-bribery programme as a whole. The meetings should involve functions such as the Ethics Officer, Internal Audit, Legal, Human Resources, Corporate Affairs, Communications, Procurement, Supply Chain Management and Security. This will be to ensure a common approach and understanding by comparing and sharing good practice, reviewing experiences and performance and identifying ways in which the programme can be improved.

#### Checklist: accurate books and records

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
150	There is a procedure to implement accountability throughout the company and its subsidiaries to enforce internal controls and proper books and records							
151	There are procedures to maintain available for inspection accurate books and records that properly and fairly document all financial transactions							
152	There are cross-departmental meetings to review the effectiveness of internal controls systems							
153	There are procedures to ensure that there are no 'off-the-books' accounts, inadequately defined transactions or false entries							

#### 6.10 DEALING WITH INCIDENTS

The company should have a response plan which clearly details who will be responsible for the investigation in the case of an incident of alleged or discovered bribery. Unfortunately the discovery of one bribe often points the way to the existence of multiple additional problems. In the case of serious incidents the corporate affairs and communications functions will need to be involved. If an incident requires investigation this will be led by a specialist function such as legal, internal audit or security. Communication with the Chair, CEO and the board is essential. A special team may be established for the purpose or the task may be outsourced to use the expertise of a specialist in such incidents or to avoid potential conflicts that may arise due to the breakdown of controls. It is important that the persons reporting the incident and the persons subject to investigation are given the necessary confidentiality and legal advice. If bribery is suspected, then the company should consult its lawyers and the case should be reported where appropriate to the relevant authorities and the police. The review should recognise that in a few countries, bribery can be dealt with particularly harshly and even result in a death penalty.

#### Checklist: dealing with incidents

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
154	There is a procedure for dealing with incidents of bribery							
155	There is a procedure for reviewing and deciding whether to report incidents to the authorities							
156	The company reports publicly a description of public legal cases regarding bribery							





## SEVEN BUSINESS PARTNERS: APPLYING DUE DILIGENCE

### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- 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.

#### 7.1 THE BRIBERY ACT AND 'ASSOCIATED PARTIES'

The Bribery Act is drawn widely with respect to bribery carried out by another person associated with the company as it states that an associated person is one who provides services for on behalf of the company<sup>24</sup>. There will be a real risk that companies may become criminally liable under section 7 of the Act where an act of bribery has been committed by an associate such as an agent, joint venture or consortia partner, or by an intermediary of any sort, subject to the company being able to offer the defence of 'adequate procedures'.

There is uncertainty in relation to the Act whether a subsidiary or joint venture provides services. Associated parties could include parties with which there was no formal relationship, including the lead partner in a consortium. The decision of the courts is expected to take into account all the relevant circumstances, including the extent of the company's influence over the person paying the bribe.

Rather than recommending that the company shapes its anti-bribery programme according to its interpretation of these unclear areas of the Bribery Act, Transparency International recommends that companies follow the approach which underpins this Guidance document. Companies should observe good anti-bribery practice across all of their activities using the Business Principles for Countering Bribery as the benchmark. In this way, the concerns and ambiguities about subsidiaries and joint ventures no longer apply because the Business Principles provide clearly that the anti-bribery programme should be applied to these business relationships. This should represent adequate procedures for the purposes of the Act. The company needs not only to implement its programme to entities over which it has effective control but should also communicate its programme to its business partners. The company should make clear that it expects anti-bribery standards of them, equivalent to its own programme, and it should use its influence to make this happen. The policy should also provide for sanctions against parties failing to adhere to company policy. A critical aspect of relationships with business partners is the use of due diligence in selection and monitoring of partners. This section of the Guidance looks at the main forms of business partners and the particular adequate procedures for each of them based on the Business Principles for Countering Bribery.

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24. Clause 8 (1) of the Bribery Act

## 7.2 DUE DILIGENCE

There should be a policy and procedure for due diligence to be carried out before entering into a business relationship and for it to be repeated periodically. Anti-bribery due diligence is the research, investigation, assessment and monitoring that the company will carry out on business relationships to ensure that it is associated with companies and personnel that will behave in a manner consistent with the company's anti-bribery programme. As a company may have many business relationships it will have to apply a procedure to decide the scope and depth of due diligence for each. This could range from required in-depth due diligence on all agents being appointed in countries prone to corruption to selective due diligence assessed on the significance of a supplier to the continuity of business. Due diligence may be carried out by the company or consultants or a combination of both. The process will check on the capabilities of the business partner, the adequacy of its anti-bribery programme and whether there are any known concerns or 'red flags' such as the presence on its board of an FPO, 'shadow directors' or a history of past bribery.

## 7.3 POLICY TO APPLY THE COMPANY'S PROGRAMME TO BUSINESS ASSOCIATES

The scope of application of the policy will need to be decided and this will mean identifying the forms of the company's business relationships, whether they are controlled entities or associated such as agents, joint ventures, consortia, advisors, distributors, contractors, sub-contractors or suppliers. The assessment should include the identification of potential risks from bribery for each form of business associate and the extent to which the company can require and influence the associate's anti-bribery programme or behaviour in the case of individuals.

Management should then decide the extent to which its anti-bribery programme should be communicated to its business associates, what contractual requirements for anti-bribery are required, whether training should be given and what due diligence, supervision and monitoring will be needed. The particular aspects for the main types of business associate are described below.

### Checklist: business relationships policy

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
157	There is a policy to require or encourage the implementation of a programme equivalent to its own in entities with which the company has significant business relationships							
158	The company reports publicly that it extends the programme to its business relationships							
159	The company has procedures for applying due diligence to counter bribery risks in business relationships							

## 7.4 SUBSIDIARIES

### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- 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.

If a company has effective control of a subsidiary, regardless of the location of the subsidiary or the nationality of its decision-making management, the company should require the same level of implementation of its programme as in its own organisation. One particular problem that makes this requirement difficult to meet is that in some countries where anti-corruption efforts are weak, foreign investors are not allowed to hold a controlling interest in local business entities.

Apart from the risks under the Bribery Act that a company may be liable for bribery carried out by subsidiaries, a company's reputation is also at stake and dependent on the behaviour of all aspects of its operations including subsidiaries. In the extreme case that there are concerns that a subsidiary company is at risk from or involved in bribery or other corrupt practices, the company may need to contact law enforcement agencies or to disengage from the investment.

If the company has subsidiaries, the general managers are important to the implementation and credibility of the programme as they are the visible face for the programme for the subsidiary and it will be their commitment that will drive its implementation. The company should consider requiring general managers to make an annual commitment to the company's programme, a report on how this has been implemented and to identify any risks.

Mergers and acquisitions (M&As) can present considerable risks from bribery. When undertaking M&A, the company should carry out due diligence throughout the M&A procedure, assessing the risks related to the jurisdictions in which the target company operates, its sector and markets, the adequacy of its anti-bribery programme and verifying that the M&A will not bring with it 'legacy risks' related to past bribery. The company will wish to assure that the purchased company's business is viable and not sustained by bribery or other illegal acts. Finally, it will wish to know the cost of remedying any weaknesses in the acquired company's anti-bribery programme.

#### Checklist: subsidiaries

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
160	There is a policy to implement the company's programme in all business entities over which it has effective control							
161	There are procedures for applying this policy							
162	There is a procedure to carry out due diligence on 'legacy risks' for mergers and acquisitions							
163	The company reports publicly the extent to which the programme is implemented in all the entities under the company's effective control using measures such as numbers or percentage of employees, value of turnover, countries, business units							

### 7.5 SIGNIFICANT INVESTMENTS

It is unclear if significant investments fall under the category of business associate as defined in the Act. A significant investment is where the investee is not a subsidiary but the company has a substantial financial stake in the entity and has some influence. Transparency International's view is that an adequate anti-bribery programme should require due diligence to be applied to significant investments to determine if they are operating in a manner compliant with the programme. When a company is making a significant investment it might not be possible to insist on implementation of a programme equivalent to its own but the company will wish to ensure that the investee has an adequate programme of its own.

## Checklist: significant investments

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
164	The company carries out due diligence on its significant investments before entering into them							
165	There is a policy to encourage the implementation of a programme equivalent to its own in entities in which the company has a significant investment							
166	There is a procedure to encourage the implementation of a programme equivalent to its own in entities in which the company has a significant investment							
167	The company monitors its significant investments periodically to check that their anti-bribery programmes are adequate and working							
168	The company reports publicly on its policy for significant investments and how it is implemented							

## 7.6 AGENTS AND OTHER INTERMEDIARIES

## THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- The enterprise should not channel improper payments through agents or other intermediaries.
- The enterprise should undertake properly documented due diligence before appointing agents.
- All agreements with agents and other intermediaries should require prior approval of management.
- Compensation paid to agents and other intermediaries 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 contractually require its agents and other intermediaries to keep proper books and records available for inspection by the enterprise, auditors or investigating authorities.
- The relationship should be documented.
- 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.

## AGENTS AND INTERMEDIARIES: HIGH RISK AREAS FOR BRIBERY

This section of the Guidance applies to agents and similar intermediaries where there is a close relationship with the company such as that with advisers, consultants and distributors. The company's programme must be extended to agents and other intermediaries as they represent one of the high risk areas for bribery especially in any sector with heavy government involvement such as defence, extractives and construction. Agents and other intermediaries can be used by corrupt employees to keep bribe payments off the books. Also, agents acting on their own initiative may become involved in bribery and thereby implicate the company without its knowledge.

A particular activity presenting risks as it relates to agents is the use of offset where the company provides industrial, commercial or other economic benefits to the country awarding a contract as compensation for the main contract. This is common in the defence sector but can occur in other sectors. Companies will often employ agents or other intermediaries to assist them in both the development of an offset package as

part of the procurement process and in the subsequent delivery of individual projects. Offsets are a risk as they can provide ample opportunities for payments to be hidden and rewards given to those who corruptly award the main contract.

Where an agent is being used as a channel for bribes, funds will need to be generated for the agent to enable the bribes to be made. The funds can be created through a variety of methods such as inflated fees, false invoices for services not actually provided, expenses billed but not incurred or inflated contract prices with kickbacks.

The company should have consistent, detailed policies and procedures for managing all its agents and other intermediaries. The process for appointing and managing an agent should be underpinned by documentation and monitoring throughout the life of the relationship. The key processes are.

- Business case;
- Competitive selection;
- Due diligence;
- Identification and mitigation of 'red flags';
- Agreement of appropriate and justifiable compensation;
- Approval by senior management of appointments;
- Contractual requirement to observe the company's anti-bribery programme with a break clause if breached;
- Monitoring throughout the relationship; and
- Renewal of the contract at regular intervals with further due diligence.

#### **APPOINTING THE AGENT**

A process for review of the business case for appointing an agent using consistent criteria is the first step in appointing an agent. As a protection against agents being appointed for corrupt purposes or behaving corruptly, the selection of an agent should not be left to the personnel of the appointing function such as sales or marketing but should be reviewed and approved by a senior line-manager, and in the case of a high-risk country by the legal or compliance department. Contracts should be renewed periodically and should be subject to the same review procedure. This process must then be followed by scrupulous due diligence on the candidate agents.

#### **DUE DILIGENCE**

Full due diligence should be used when appointing an agent and once appointed, agents should be monitored regularly to check that they remain in compliance with the company's programme. The potential agent should be required to provide information including details of its shareholders, directors, other clients, any involvement of public officials and its resources and capabilities to perform the required service. This information then needs to be independently verified. This will provide a paper trail and also send a signal to the prospective agent about the company's business practices. Existing agents should continue to be subjected to due diligence as they may not have undergone the due diligence procedure originally or substantive changes since due diligence was last carried out.

Some countries, particularly in the Middle East, may require or 'strongly recommend' use of certain agents or other firms. This can present a challenge for a company as there may be substantial risks attached to the suggested agents. The process should be the same for any other agent appointment but with greater emphasis on certain aspects. Negotiations with the prospective agents and then the subsequent relationship of the appointed agent must be fully documented. Due diligence should be carried out to check if there are FPOs or ruling families associated with the recommended agents. Inquiries should be made with the local embassy and business contacts to find out any concerns and determine which agents are regarded highly or adversely and why. If a prospective agent refuses to provide information, is offended by the request, or is unwilling to meet the requirements of the company then this is a red flag in itself and the company should seek another prospective agent.

**CASE STUDY 6: LACK OF ADEQUATE DUE DILIGENCE ON AGENTS**

In December 2008 the FSA fined Aon Ltd £5.25 million in respect of a breach of Principle 3 of the FSA's Principles for Businesses. Two reasons were cited for the action:

- a) Failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems; and
- b) Failing properly to assess the risks involved in Aon's dealings with overseas third parties and failing to implement effective controls to mitigate those risks.

**Key issue**

There were several areas where Aon had not operated an effective anti-bribery programme and one of the areas of findings is of relevance to this section of the Guidance on business partners and due diligence. The FSA found that Aon Ltd's payment procedures did not require adequate levels of due diligence to be carried out either before relationships with overseas third parties were entered into or before payments were made.

**Comment**

Due diligence is essential when appointing agents and needs to be repeated at regular intervals. The due diligence will be shaped by the assessed risks and in this case the FSA concluded that Aon's authorisation process did not take into account the higher levels of risk that certain parts of its business were exposed to in the countries in which they operated.

**APPROPRIATE AND JUSTIFIABLE REMUNERATION**

There is no hard and fast rule on what constitutes appropriate remuneration for agents and other intermediaries. This is an area, however, that involves more than financial consideration. Past corruption cases illustrate how remuneration paid to agents is used as a route for bribes with no actual services being rendered. Fees, commissions and expenses paid to the agent should be reasonable in relation to the services provided. Evaluation of what are reasonable fees presents difficulty as it will reflect not only time spent but also the quality and expertise of the agent's services. The company will need to ensure that it benchmarks the fees against those paid to other agents and the norms in the country and industry in question.

**COMMUNICATING THE PROGRAMME**

To prevent bribes being made by agents, the company should ensure that agents are made aware of the company's programme and use its influence to ensure that agents behave according to its standards. The company should require that its agents commit contractually to observe its programme. Communicating the company's no-bribes programme and ensuring the presence of a termination clause will send a signal from the start of the relationship that the company is committed to no-bribes and will protect itself by enabling a swift severance from an agent if something goes wrong. The agent should be informed what the sanctions mean, the circumstances in which they would be applied and the procedure that would be followed including any right to appeal. If not properly informed, the agent may become involved in bribery because of making an assumption that the company tolerates bribery being used to support the company's business or by judging that the company is lax in its attitude towards bribery. Formal communication of the programme may be insufficient. Agents need to know the company's programme in depth, the areas of risk and how to handle situations and dilemmas such as approaches or solicitations for bribes. How agents are advised will depend on the assessed risk – it can be through visits by the company's management, documents, e-learning, classroom training. The company may also invite its agents to participate in its internal anti-bribery training. The company should capture knowledge gained to improve its training process.

**DOCUMENTATION**

The due diligence procedure should be fully documented to provide a trail for any inspections or audit and to protect the company in the event of an investigation. It is important to record the relationships with agents. This includes details of the agents, payments, reviews, meetings, inspections and audits. The documentation will help the company to assess the performance and any potential risks and can serve as evidence of the company's adequate procedures and diligence in the event of any investigation by authorities.

The company should maintain a register of its agents with details of checks made.

**BOOKS AND RECORDS**

As part of the controls for the relationship, the agent must keep proper books and records. These are needed for several reasons:

- Management accounting by the company;
- As an indicator of the good governance and business excellence of the agent;
- Assessment of performance against agreed business plans;
- Compliance with the company's internal controls;
- Enabling audited accounts to be produced;
- Providing assurance that funds are going to legitimate purposes;
- Being available whenever requested for inspection by the company or its auditors; and
- For use in investigations by authorities

**MONITORING THE RELATIONSHIP**

The company must be vigilant and monitor the performance of its agents in conformance to the company's programme. This means regular contacts, reviews and visits supported by audits. Agents' agreements may remain in place for many years so regular audits of contracts should be made to ensure that the contracts remain valid and continue to support the company's current programme and that the agent fully complies with the programme's requirements. The company should also periodically seek the views of the business community and other organisations in the local market to check current opinion of the agent's standing and integrity.

**7.7 JOINT VENTURES AND CONSORTIA****THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY**

- 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 in the venture and encourage them to adopt a Programme for the venture that is consistent with its own.
- The enterprise should monitor the Programmes and performance of joint ventures and consortia; in the case of policies and practices that are inconsistent with its own Programme, the enterprise should take appropriate action. This can include: requiring correction of deficiencies in the implementation of the Programme; application of sanctions; or termination of its participation in the joint venture or consortium.
- Where the enterprise is unable to ensure that a joint venture or consortium has a Programme consistent with its own, it should have a plan to exit from the arrangement if bribery occurs or is reasonably thought to have occurred.

## Checklist: agents and other intermediaries

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
169	There is a procedure to check there is a valid business case for appointing agents							
170	It is the company's policy to undertake due diligence before appointing agents and other intermediaries							
171	There is a procedure to undertake due diligence before appointing agents and other intermediaries							
172	The company has a procedure to properly document due diligence reviews							
173	The company reports publicly the number and or percentage of agents and other intermediaries that have been subjected to due diligence review							
174	There is a procedure for all appointments of agents and other intermediaries to require prior approval of senior management							
175	There is a policy that compensation paid to agents and other intermediaries is appropriate and justifiable remuneration for legitimate services rendered							
176	There is a procedure to ensure that compensation paid to agents and other intermediaries is appropriate and justifiable remuneration for legitimate services rendered							
177	It is the company's policy that compensation paid to agents and other intermediaries is paid through bona fide channels							
178	There are procedures to ensure that compensation paid to agents and other intermediaries is paid through bona fide channels							
179	It is the company's policy not to make payments to agents and intermediaries to off-shore accounts							
180	There are procedures to ensure that payments are not made to agents and intermediaries using off-shore accounts							
181	There is a policy to require agents and other intermediaries to contractually agree to comply with the company's programme							
182	There is a procedure to require agents and other intermediaries to contractually agree to comply with the company's programme							
183	There is a procedure to make provision in all contracts with agents, advisers and other intermediaries relating to the right of access to records, cooperation in investigations and similar matters pertaining to the contract							
184	There is a procedure to provide its agents and other intermediaries with advice and documentation explaining the obligation to comply with the company's programme							
185	There is a procedure to communicate clearly to agents and other intermediaries the sanctions that would be applied in the event of violation of its programme							
186	There is a procedure to contractually require agents and other intermediaries to keep proper books and records available for inspection by the company, auditors or investigating authorities							
187	The company has a procedure to properly document material aspects of the relationship with agents and other intermediaries							

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
188	There is there is a procedure to monitor the conduct of agents and other intermediaries							
189	There is a procedure for the company to have the contractual right of termination in the event that agents and other intermediaries pay bribes or act in a manner inconsistent with the programme							
190	The company has a procedure to apply sanctions to agents and intermediaries that pay bribes or act in a manner inconsistent with the programme							

By tradition, for financial risk sharing or to meet local laws, it is common in some sectors to conduct business through the formation of joint ventures or consortia. In the Middle East these companies are often run/owned by FPOs. A company entering into a joint venture or consortium ('venture') will be attaching its reputation to the venture and may also be liable criminally under the Bribery Act and in the civil courts for the venture's actions, including violations related to bribery. As such, it will be necessary for the company to carry out due diligence before entering into a venture and the company should have a procedure to assess the existence and scope of issues that could affect its partners or the operation of its ventures.

Ventures can be used to channel bribes and often one member may be paying bribes without the knowledge of the other partners. Therefore, monitoring the implementation of the anti-bribery programme of other partners is a critical task. There should be a formal procedure that provides for regular and thorough review of ventures and all parties and sets out the areas to be checked. Lack of an adequate procedure for regular review may lead to inadequacies in ventures' programmes or violations being undetected. All existing agents for ventures should be monitored and due diligence carried out on proposed agents. The company should reserve where possible the right contractually to veto any agent appointment.

#### WHERE THE COMPANY IS MANAGING PARTNER

In some industries, especially the extractive industries, one of the joint venture partners may be designated as the managing partner that, while subject to consultation with the other investors, nevertheless controls the day-to-day activities of the joint venture. A company may instigate a policy that in such circumstances it will require implementation of an effective anti-bribery programme as a condition of joining such a venture (and also not to join in the absence of satisfactory commitment from the other partners). The programme of the venture should specifically address or cure any potential issues discovered in the due-diligence.

Once due diligence has been carried out to provide assurance about the integrity of the prospective partners and agents to a venture the next step for ventures where a company has effective control is to implement the policy that the venture should have a programme equivalent to the company's.

#### IF THE COMPANY DOES NOT HAVE EFFECTIVE CONTROL

If a company does not have effective control then, following due diligence, the company should require that the venture has a programme that is consistent with that of the company's. Otherwise the company might be associated with activities run to a lesser standard than that it sets for itself. How this is accomplished will depend on the degree of influence that the company has and the willingness of its partners to accept a programme. There should be a procedure for negotiations on joint ventures and consortia that if a company is not the managing partner then it should work to persuade its partners to accept a programme for the venture consistent with its own. This can include: requiring correction of deficiencies in the implementation of the programme; application of sanctions; or termination of its participation in the joint venture or consortium.

#### PLANNING AN EXIT STRATEGY

If a company is unable to persuade the other partners that the venture should adopt a programme consistent with its own then, if the company decides to proceed with the arrangement, a strategy should

be planned for exiting the venture if a bribery incident occurs or there is reasonable suspicion that this has happened. The strategy will include contractual protection giving the right to carry out close monitoring of the activities of the venture and to exit the arrangement if bribery occurs. If deficiencies are found then actions can include requiring correction of deficiencies in the implementation of the programme; application of sanctions; or termination of the company's participation in the joint venture or consortium. Planning the exit strategy is important as exiting a venture can be extremely difficult in practice, especially in the Middle East or where a venture partner is politically connected.

#### DUE DILIGENCE

The company should apply due diligence when entering into a venture and repeat it periodically as part of continuous monitoring. Considerations when carrying out due diligence will include:

- 'Know-the-party' due diligence as a consistent procedure with checks made that the prospective partners and their intermediaries:
  - are reputable and financially sound;
  - have no past or current allegations of corruption, convictions or prosecutions involving the other parties, their boards, officers or employees;
- Checks that the assets partners bring to a venture do not have any questionable origins;
- Checks on agents of the other partners;
- Checks whether potential venture partners are government owned as distribution of payments to officials who act as directors or officers of the joint venture could be construed as improper payments;
- Consultation with people in relevant business sectors, embassies and business associations to see if they are aware of any potential issues or concerns; and
- Certification has been obtained from partners in cases where pre-existing contracts constitute part of the assets of the new venture that they were not obtained in violation of laws.

#### Checklist: joint ventures and consortia

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
191	There is a procedure to conduct due diligence before entering into a joint venture or consortium							
192	There is a policy to ensure that the joint ventures and consortia over which the company maintains effective control have programmes consistent with its own							
193	Where the company does not have effective control of a joint venture or consortium there is a procedure to make known its programme to the other entities in the venture and encourage them to adopt a programme for the venture consistent with its own							
194	Where due diligence shows that a joint venture or consortium does not have a programme consistent with that of the company, there is a procedure to establish contract protection							
195	The company has a procedure to monitor the programmes and performance of its joint ventures and consortia partners							
196	In the case of policies and practices that are inconsistent with its own programme, there is a procedure for the company to take appropriate action							
197	There is a procedure that where the company is unable to ensure a joint venture or consortium has a programme consistent with its own, it has a plan to exit from the arrangement if bribery occurs or may be reasonably thought to have occurred							
198	The company reports publicly the number of joint ventures and consortia terminated because of inconsistency with the company's programme							

## 7.8 CONTRACTORS AND SUPPLIERS

Contracting and purchasing are areas highly vulnerable to bribery and kickbacks. Contractors and suppliers fall under the Bribery Act as providers of services<sup>25</sup> and any company in the supply chain can potentially be a risk. Apart from the legal risk, corrupt suppliers are a risk to the business operations – they represent an unstable supply source with possibly loss of critical supplies owing to bribery investigations or even debarment, they cannot be relied on in business negotiations and they may attempt to corrupt employees.

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"A company may deal with many thousands of suppliers and the critical choice is how to apply appropriate due diligence within its risk approach and resources."

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The company should apply its programme thoroughly to key suppliers, applying due diligence and working with the suppliers to implement the programme's requirements and monitor performance.

A company may deal with many thousands of suppliers and the critical choice is how to apply appropriate due diligence within its risk approach and resources. The due diligence will be based on a systematic approach involving risk mapping, statistical sampling, broad and in-depth reviews and periodic reviews of all suppliers. Specialist anti-corruption and supply chain consultants can be used to carry out in-depth due diligence on major or high risk suppliers. Due diligence could include use of a supply chain data gathering organisation such as the Business Social Compliance Initiative<sup>26</sup> or Sedex<sup>27</sup> which gather basic information on thousands of suppliers globally, supported by self-assessment, site audits and capacity building. The field of labour standards is indicative of the way that certification of anti-bribery systems might develop. Social Accountability International<sup>28</sup> (SAI) provides an international standard and through an affiliate accredits qualified audit organisations to certify compliance. SAI's certification extends to some 1.2 million workers employed in over 2,100 SA8000 certified facilities in 63 countries, across 66 industrial sectors.

Companies known to pay or be suspected of paying bribes represent a risk and the company should where possible avoid dealing with such companies. However, this may not always be possible where a company is an important supplier or sole source for supply. Also, if the supplier has implemented changes to correct its approach and introduce adequate no-bribes policies and procedures then to debar the supplier would no longer be necessary. In such cases, the company should make clear its no-bribes policy to the supplier or contractor and take precautions to monitor that the supplier or contractor behaves correctly and that bribery does not enter into the business relationship.

Contractors perform work on behalf of the company and their practices should be aligned with the company's programme. This is increasingly important with the trend for companies to use external service providers (Business Process Outsourcing) for aspects of core functions such as accounting, payroll, information technology or facilities management, in addition to traditional contracting of engineering and construction work. Contractors and suppliers will likely have their own programmes relating to countering bribery and these should match or be aligned to that of the company for implementation of contracts with them. The company should ensure that its contractors' employees understand both their employer's programme and the requirements of the contract with the company to observe its programme. The company should provide opportunities for employees of such contractors to participate in the company's induction/ orientation and continuing training and that they receive and have access to all relevant communications.

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25. Clause 8 (1) of the Bribery Act

26. [www.bsci-eu.org/](http://www.bsci-eu.org/)

27. [www.sedex.org.uk/sedex/go.asp?u=/WebSite/home&pm=6&location=Home](http://www.sedex.org.uk/sedex/go.asp?u=/WebSite/home&pm=6&location=Home)

28. [www.sa-intl.org/](http://www.sa-intl.org/)

Consistent and thorough communication of the company's programme to suppliers supported by contractual requirements, tailored communications, training and monitoring will help mitigate risks in contracting and procurement. All suppliers and contractors should, as a result, be aware of the programme and know the expectations of the company.

The company should apply care to the monitoring of its significant suppliers and contractors to ensure that they remain compliant with their contractual commitments to observe the company's programme. Corrupt employees, contractors and suppliers may view lax monitoring as an encouragement to attempt bribery. The company should ensure job rotation among critical positions and apply checks for red flags such as undue receipt of hospitality.

A procedure to ensure that all contracts include a contractual right to terminate in the event of violation of the programme should provide a basis for swift termination of a contract without dispute by the offending entity. The right to terminate will communicate further to prospective contractors and suppliers the company's commitment to its programme.

#### Checklist: contractors and suppliers

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
199	There is a procedure for undertaking due diligence, in evaluating prospective contractors and suppliers to ensure that they have effective anti-bribery programmes							
200	The company has a procedure to avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes							
201	The company has a policy to make known its anti-bribery programme to contractors, subcontractors and suppliers							
202	The company has procedures to make known its anti-bribery programme to contractors, subcontractors and suppliers							
203	The company reports publicly on measures of training given to contractors and suppliers							
204	The company has procedures to monitor significant contractors and suppliers to ensure they have effective anti-bribery programmes							
205	There are procedures for the company to have the right of termination in the event that contractors and suppliers pay bribes or act in a manner inconsistent with the company's programme							
206	The company reports publicly on the number of contractors' and suppliers' contracts terminated for non-conformance with the company's programme							



## EIGHT MONITORING AND REVIEW

### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness, and implement improvements as appropriate.
- Senior management should periodically report the results of the Programme reviews to the Audit Committee, 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 enterprise's Annual Report to shareholders.
- 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.

### 8.1 CONTINUOUS MONITORING AND IMPROVEMENT

Monitoring establishes the degree to which an anti-bribery programme is working over time, thereby meeting the anti-bribery control objectives of the company and ensuring compliance with the Bribery Act and other laws. It applies to all anti-bribery activities within the company and its controlled entities, intermediaries and other business relationships. The programme must be under continuous review to ensure it remains effective and valid and to allow necessary improvements to be made. In countering bribery, the company operates within a dynamic environment. The company's business will change; it may make acquisitions or mergers, acquire new employees and new business partners. The external environment changes too with new regulations, new risks and changes in markets and existing business partners. Lessons will be learned from violations of the anti-bribery programme.

### 8.2 OVERSIGHT AND MONITORING RESPONSIBILITIES

In designing the programme it should be decided how the monitoring process is to be overseen and which department or function is responsible for carrying out the monitoring and improvement.

Responsibility for oversight may typically be given to the audit committee or an equivalent body such as an ethics, governance or corporate responsibility committee. However, the board must receive reports and provide ultimate oversight. This is important in light of the provision in sub-section 14 (2) of the Bribery Act concerning consent and connivance by directors and senior managers. A board committee's oversight in addition to assisting management to fulfil its responsibilities can also act as a deterrent to any senior management engaging in bribery.

### 8.3 MONITORING PROCESS

Monitoring will be accomplished through both continuous monitoring activities and individual evaluations. The scope and frequency of individual evaluations will depend primarily on an assessment of risks and the effectiveness of continuous monitoring procedures. An important feature of an effective anti-bribery tone from the top culture is that functional departments and business units should be required to self-monitor and identify deficiencies and improvements.

Checks should be made at all stages of the implemented anti-bribery programme. These include:

- Regular management and supervisory activities;
- Actions employees and contract personnel take in performing their duties; and
- Due diligence carried out on business associates.

Monitoring of employee suggestions, reports on use of whistleblowing channels and hotlines can provide information useful to evaluate and improve the programme.

### 8.4 INTERNAL AUDIT

It is usual for internal auditors to conduct operational as well as financial audits. In relation to anti-bribery programmes, this approach will require the internal auditor to conduct tests on:

- Whether new board members and employees receive appropriate induction/orientation;
- Whether training programmes reach all employees and sub-contractors performing out-sourced services;
- Whether properly articulated policies exist in the areas identified in the risk assessment;
- Whether these policies are followed in practice; and
- How incidents of bribery are dealt with and which sanctions are applied.

In some companies the internal auditor is also involved in an advisory capacity when employees have concerns about the propriety of a transaction or seek guidance.

In relation to checking financial transactions the internal auditor will need to understand the main areas of risk e.g., risk in the procurement function of employees demanding and receiving kickbacks, and pressure in the sales function on sales personnel and agents to achieve sales targets regardless of what actions are required to do so.

### 8.5 REVIEW AND IMPROVEMENTS

Reports on the results of regular monitoring and internal audits summarising the reviews and actions management has initiated, assessments, any identified deficiencies and recommendations should be submitted to the audit committee or equivalent body. The audit committee should also receive any external assurance or verification reports. It is the responsibility of the audit committee, in discussion with management, to decide whether actions taken are appropriate to deal with the risks and to improve the effectiveness of the anti-bribery programme and what further steps are necessary. Regular reports should be made to senior management and the board highlighting any deficiencies and serious matters. The board should then make its assessment and agree appropriate actions including any external report of its findings and assessment. Public reporting can emphasise the importance the company attaches to the programme, inform stakeholders of the programme's design and performance as assessed by the audit committee and may attract feedback from stakeholders. Such reports may also form part of any regulatory requirement for the board to report on risks as part of an operating and financial review or to meet integrated reporting requirements.

## 8.6 SELF-REPORTING

The company may become aware of allegations of bribery or identify occurrences of bribery in its operations or by associated entities. This knowledge can be gained in many ways but will include internal and external audits, self-assessment, hot lines and allegations made by employees and third parties. In such circumstance, the company must consult its legal advisers and decide if an allegation is of sufficient weight and credibility to merit reporting<sup>29</sup> to the SFO and if relevant to authorities in other jurisdictions such as the US Department of Justice<sup>30</sup>.

The SFO published guidelines on self-reporting in 2009<sup>31</sup> in which it indicated that it would encourage companies to self-report when they had evidence of or suspected misconduct by their own employees. While prosecution of bribery should be the norm, the SFO signalled that it aimed to approach with leniency those cases where companies reported evidence of bribery as soon as they discovered it.

The SFO guidelines said it would also look more favourably on companies if they cooperated with the authorities to reveal the extent of any corruption and agreed to reform internal policies appropriately. In particular, the SFO would aim to bring a civil rather than criminal law case, which would have the advantage for offending companies because they would not be debarred from bidding for future public works contracts. However, policy is evolving and there is no indication yet of the approach that the authorities will take.

In summary, if a company finds an incident of bribery it should upon legal advice discuss this with the SFO which will decide its approach taking into account whether the company reported the incident as soon as it was discovered and whether the company had adequate procedures in place.

## 8.7 LEARNING FROM INCIDENTS

Valuable information on how to correct deficiencies and improve the programme can be learned through the documentation and analysis of incidents and violations. All events which are caught by the controls of the programme should be documented, both attempted active bribery by the company's own employees and solicitation or extortion attempts by third parties, whether from the company's business partners, other private sector players or from government or public officials. Case histories of incidents should be written up and a data bank of experience built up. This will assist in dealing with future cases and improving the programme. The information can also be used in developing guidance documents for employees and business associates to form part of the training and communication activities. If such occurrences happen with some frequency, ethics, human resources and legal departments will be able to build up expertise on how to deal with situations.

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29. *Employees and others may also be obliged to report under money laundering regulations.*

30. [www.justice.gov/criminal/fraud/fcpa/](http://www.justice.gov/criminal/fraud/fcpa/)

31. *Approach of the SFO to dealing with overseas corruption, 21 July 2009*

## 8.8 EXTERNAL VERIFICATION AND ASSURANCE

### THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

- 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.
- Where such external verification or assurance is conducted, the Board or equivalent body should consider publicly disclosing that an external review has taken place, together with the related verification or assurance opinion.

An independent review is a best practice procedure. It can provide valuable insight into the strengths and weaknesses of the design and implementation of an anti-bribery programme. As a first step, the company could consider asking an independent expert to comment on the programme for publication in its Corporate Responsibility or Sustainability Report. Once the company has gained experience of this, the board could then consider whether to commission external verification or assurance of the anti-bribery programme to provide enhanced internal and external assurance of the programme's effectiveness. This will offer additional benefits including enhanced credibility with stakeholders. Where such external verification or assurance is conducted, the board should consider publicly disclosing that an external review has taken place, together with the related verification or assurance opinion.

Independent external assurance will comprise an external, third-party assessment of the programme and comes in two forms:

1. Assurance of the adequacy of the design (and implementation) of the programme considering the nature of its business and the corruption risks that it is facing; and
2. Testing the effectiveness of measures in place. If the audit is to test performance of the programme then a company operating in many locations and countries may have to narrow the scope of work or phase it over time to spread the cost.

Assurance engagements can be carried out by various parties such as accountants, lawyers, consultants, inspection agencies and NGOs.

## Checklist: monitoring and review

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
207	Continuing and/or discrete evaluations are performed supporting the continuous improvement of the programme							
208	The company use key performance indicators to encourage and measure progress in improvement of the programme and its implementation							
209	Discussions are held with stakeholders especially suppliers and contractors to obtain their views on the programme							
210	The company benchmarks its programme internally between business units							
211	The company benchmarks its programme externally							
212	There is a procedure for ensuring that there is an adequate audit trail to support all recorded transactions							
213	There is a procedure to discuss the results of internal audits of the Programme with relevant operational personnel							
214	There is a procedure to address weaknesses identified through internal audits with a documented corrective action plan and a timetable for action							
215	External consultants are used to monitor and advise on the programme							
216	The company participates in anti-corruption initiatives and business sector groups to learn best practices to improve its programme							
217	Self-evaluations are carried out and the results applied to improve the programme							
218	There is a procedure to ensure that the internal control systems, in particular the accounting and record keeping practices, are subject to regular internal audits to provide assurance that they are effective in countering bribery							
219	There is a procedure for senior management to monitor the programme and periodically review its suitability, adequacy and effectiveness and implement improvements as appropriate							
220	There is there a procedure for senior management to periodically report the results of programme reviews to the audit committee, governance committee, board or equivalent body							
221	There is a procedure for prompt reporting of any issues or concerns to senior management and the board							
222	There is a procedure for the audit committee, governance committee, the board or equivalent body to make an independent assessment of the adequacy of the Programme							
223	There is a procedure for the audit committee, to report regularly to the board on its independent assessment of the adequacy of the programme							
224	There is a procedure to use the experience from incidents to improve the programme							
225	The company has a procedure for self-reporting bribery incidents as appropriate to the authorities							

		Y	N	Unclear	In plan?	Plan date	Comment	Evidence reference
226	The board or equivalent body has considered whether to commission external verification or assurance of the programme							
227	An external verification or assurance has been conducted							
228	The verification or assurance opinion has been published publicly							
229	The company publishes publicly a description of the scope and frequency of feedback mechanisms and other internal processes supporting the continuous improvement of the programme							
230	The company publishes publicly a description of the company's procedure for investigation and resolution of incidents							
231	The company publishes publicly details of public legal cases of bribery involving the company							

## NINE NEXT STEPS

This Guidance from Transparency International aims to provide a practical guide for companies on what constitutes a good practice anti-bribery programme and relating it to the Bribery Act. However, every company's circumstances are different and the Guidance can only be a benchmark for companies with existing anti-bribery programmes or a reference for companies that are starting to develop a programme. A fundamental assumption of this Guidance is that a company's anti-bribery programme is more likely to be regarded as constituting 'adequate procedures' under the Act if it is based on good practice rather than an approach that solely uses compliance with laws to determine its structure.

As laws become stricter and markets and business sectors grow more complex and global, the risks from bribery will increase. Companies must make sure they are aware of the complex issues they face and be confident that their policies and systems are appropriate to minimise these risks.

The list of resources and web links on page 87 indicates further resources to enable companies to benchmark their programmes.

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**"Transparency International UK is interested in learning from companies how they have used this Guidance and to receive suggestions for improvements."**

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Transparency International UK is interested in learning from companies how they have used this Guidance and to receive suggestions for improvements. TI-UK is also able to assist companies in designing and implementing anti-bribery programmes. This can include providing advice and training.

Suggestions for improvement of this Guidance should be sent to:

Adequate Procedures  
Transparency International UK  
Downstream Building  
1 London Bridge  
London SE1 9BG  
Phone: + 44 (0) 20 7785 6356  
[adequateprocedures@transparency.org.uk](mailto:adequateprocedures@transparency.org.uk)  
[www.transparency.org.uk](http://www.transparency.org.uk)

## TEN GLOSSARY

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

**Business Principles for Countering Bribery:** A good practice model for corporate anti-bribery policies and programmes developed through a multi-stakeholder process initiated and led by Transparency International. The Business Principles were first published in 2002 and a revised edition issued in May 2009.

**Corruption:** The abuse of entrusted power for private gain.

**DoJ:** Department of Justice, USA. The DOJ is the world's largest law office and the central agency for enforcement of US federal laws.

**Economic Crime Agency:** A new UK agency to be created in 2010 to investigate and prosecute white-collar crime.

**ECA:** see Economic Crime Agency.

**Expenses:** The provision or reimbursement by a company 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 benchmark an installation.

**Extortion:** An act of utilising, either directly or indirectly, a person's power or knowledge to demand unmerited cooperation or compensation as a result of coercive threats.

**Facilitation payments:** 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.

**FCPA:** See Foreign Corrupt Practices Act 1977.

**Foreign Corrupt Practices Act 1977 (FCPA):** A United States federal law (15 U.S.C. §§ 78dd-1, et seq.) generally prohibiting US companies and citizens and foreign companies listed on a US stock exchange from bribing foreign public officials to obtain or retain business. The FCPA also requires 'issuers' (any company including foreign companies) with securities traded on a US exchange to file periodic reports with the Securities and Exchange Commission to keep books and records that accurately reflect business transactions and to maintain effective internal controls.

**Foreign Public Official (FPO):** As defined in the Bribery Act, an individual who holds a legislative, administrative or judicial position of any kind, exercises a public function for or on behalf of a country or territory outside the UK or for any public agency or public company of that country or territory, or is an official or agent of a public international organisation. Unlike the FCPA, under the Bribery Act the term FPO does not include foreign political parties or candidates for foreign political office.

**FPO:** see Foreign Public Official

**Gift:** Money, goods, services or loans given ostensibly as a mark of friendship or appreciation. A gift is professedly given without expectation of consideration or value in return. A gift may be used to express a common purpose and the hope of future business success and prosperity. It may be given in appreciation of a favour done or a favour to be carried out in the future. A gift has no role in the business process other than that of marking and enhancing relations or promoting the giver's enterprise by incorporating a logo or message on a promotional item.

**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 host.

**Internal controls:** A process, implemented by an enterprise's board of directors or equivalent function, management or other personnel, designed to provide reasonable assurance regarding the efficiency of operations, the reliability of financial reporting and compliance with applicable laws and regulations.

**Kickback:** A payment or in-kind bribe given by a person, such as a salesperson or a banking customer, as a reward for an improper action such as in awarding a contract or a loan.

**Lobbying:** Any activity carried out to influence a government or institution's policies and decisions in favour of a specific cause or outcome.

**Nepotism:** A form of favouritism based on familiar relationships whereby someone in an official position exploits his or her power and authority to provide a job or favour to a family member even though the family member may not be qualified or deserving.

**PEP:** see Politically Exposed Person

**Political contribution:** 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 without pay from the employer to undertake political campaigning or to stand for office could also be included in the definition.

Politically Exposed Person: a person who has been entrusted with a prominent public function, is a senior political, or is closely related to such persons. By virtue of a public position and the influence it holds, a PEP may present a higher risk for potential involvement in bribery.

**Programme:** The whole of a company'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.<sup>32</sup>

**Revolving door:** The move of a person from public office to a company with the aim of exploiting his/her experience and contacts in public service for the benefit of the company.

**SEC:** See Securities and Exchange Commission.

**Securities and Exchange Commission (SEC):** The SEC is an independent United States agency which holds primary responsibility for enforcing the federal securities laws and regulating the securities industry, the nation's stock and options exchanges, and other electronic securities markets in the United States.

**Serious Fraud Office (SFO):** The SFO is an independent UK Government department which investigates and prosecutes serious or complex fraud, and corruption. It is part of the UK criminal justice system with jurisdiction in England, Wales and Northern Ireland but not in Scotland, the Isle of Man or the Channel Islands. It is likely to form part of a new Economic Crime Agency.

**SFO:** See Serious Fraud Office

**Solicitation:** The act of a person asking, ordering or enticing someone else to commit bribery or another crime.

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

**TI:** Transparency International.

**TI-UK:** Transparency International United Kingdom.

**Whistleblowing:** The sounding of an alarm by an employee, director or external person to express concerns about or to attempt to reveal neglect or abuses within the activities of a company



## LIST OF RESOURCES AND LINKS





### ANTI-BRIBERY IMPLEMENTATION TOOLS

Title	Content	Publisher	Year	Reference
Ti 6step Implementation process	Implementation process for companies starting on route of developing an anti-bribery programme. Will be revised 2010	Transparency International	2005	www.transparency.org
Ti ABC Anti-bribery checklist	Checklist of 20 questions on where your company stands – see Annex	Transparency International		www.transparency.org
Ti Self-evaluation Tool	Self-improvement tool – see Annex for TI-UK version	Transparency International		www.transparency.org
Curbing Corruption in Public Procurement	Handbook to overcoming corruption in the field of public procurement and relevant to corporate anti-bribery programmes	Transparency International		www.transparency.org

### CONVENTIONS, LAWS AND INTER-GOVERNMENTAL REGULATIONS

Title	Content	Publisher	Year	Reference
Anti-corruption regulation	Anti-corruption laws in 40 jurisdictions worldwide	Getting The Deal Through, Law Business Research	Annual	+44 20 7908 1188
Ti OECD Progress Report	Annual survey of progress of enforcement of the OECD anti-bribery Convention	Transparency International	Annual	www.transparency.org
United Nations Convention against Corruption	The global anti-bribery convention	UNODC	2005	http://www.unodc.org/unodc/en/treaties/CAC/index.html
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	The first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction	OECD	1997	http://www.oecd.org/document/20/0,3343,en_2649_34859_2017813_1_1_1_1,00.html
OECD Action statement bribery/export credits	2006 OECD Action Statement on Bribery and Officially Supported Export Credits agreed by the Members of the Working Party on Export Credits and Credits Guarantees; concluded on 9 May 2006.	OECD	2006	

## RISK MANAGEMENT

Title	Content	Publisher	Year	Reference
TI Corruption Perceptions Index	Annual ranking of countries by perception of their corruption	Transparency International		<a href="http://www.transparency.org">www.transparency.org</a>
TI Bribe Payers Index	Assesses the supply side of corruption and ranks corruption by source country and industry sector	Transparency International		<a href="http://www.transparency.org">www.transparency.org</a>
TI Global Corruption Barometer	Annual public opinion survey assessing general public attitudes toward and experience of corruption in dozens of countries.	Transparency International		<a href="http://www.transparency.org">www.transparency.org</a>
TI Global Corruption Reports	Series of reports by experts on an annual theme plus country and regional reports	Transparency International		<a href="http://www.transparency.org">www.transparency.org</a>
TI National Integrity System Assessments	Comprehensive country analyses of the anti-corruption provisions and capacities	Transparency International		<a href="http://www.transparency.org/policy_research/nis/nis_reports_by_country">http://www.transparency.org/policy_research/nis/nis_reports_by_country</a>
OECD Risk Awareness Tool for MNCs in weak governance zones	Tool addressing risks and ethical dilemmas that companies are likely to face in countries prone to corruption.	OECD		<a href="http://www.oecd.org/dataoecd/26/21/36885821.pdf">http://www.oecd.org/dataoecd/26/21/36885821.pdf</a>
World Bank Governance Indicators	Aggregate and individual governance indicators for 212 countries and territories over the period 1996–2008, for six dimensions of governance	World Bank Institute		<a href="http://info.worldbank.org/governance/wgi/index.asp">http://info.worldbank.org/governance/wgi/index.asp</a>

## REPORTING

Title	Content	Publisher	Year	Reference
TRAC: Transparency in reporting on anti-corruption	Global survey of some 500 companies' public reporting on anti-corruption	Transparency International	2009	<a href="http://www.transparency.org">www.transparency.org</a>
Promoting Revenue Transparency	Evaluation of leading international and national oil and gas companies based on the transparency of their reporting	Transparency International	2010	<a href="http://www.transparency.org">www.transparency.org</a>
Global Compact-TI Reporting Guidance to the 10 <sup>th</sup> Principle	Guidance on reporting on countering corruption	Global Compact / Transparency International	2009	<a href="http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/JUNGC_AntiCorruptionReporting.pdf">www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/JUNGC_AntiCorruptionReporting.pdf</a>
GRI Sustainability Reporting Guidelines	Global Reporting Initiative	Sustainability Reporting Guidelines that include reporting on key indicators for anti-corruption management systems, risk management, training and lobbying.	2008	<a href="http://www.globalreporting.org/Home">http://www.globalreporting.org/Home</a>

### GENERAL ANTI-BRIBERY GUIDANCE

Title	Content	Publisher	Year	Reference
Approach of the Serious Fraud Office to dealing with overseas corruption	Guidance on self-reporting	SFO	2009	<a href="http://www.sfo.gov.uk/media/28313/Approach%20of%20the%20SFO%20to%20dealing%20with%20overseas%20corruption.pdf">www.sfo.gov.uk/media/28313/Approach of the sfo to dealing with overseas corruption.pdf</a>
Business against Corruption, Global Compact	Case stories and examples on countering corruption.	Global Compact	2008	<a href="http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbo okFINAL.pdf">http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbo okFINAL.pdf</a>
Avoiding Corruption Risks in the City: The Bribery Act 2010	Overview of corruption risk for City businesses, focusing on the issues raised by the Bribery Act	City of London Corporation	2010	<a href="http://217.154.230.218/NR/rdonlyres/26DD8F2B-17D9-42B7-AB51-20F1D8542892/0/AvoidingCorruptionRisks.pdf">http://217.154.230.218/NR/rdonlyres/26DD8F2B-17D9-42B7-AB51-20F1D8542892/0/AvoidingCorruptionRisks.pdf</a>
Guidance document to the Business Principles for Countering Bribery	Guidance to the Business Principles for Countering Bribery – new edition due in 2010	Transparency International	2004	<a href="http://www.transparency.org">www.transparency.org</a>
Protect Your Business:	Anti-corruption handbook for the Norwegian business sector	Transparency International Norway	2009	<a href="http://www.transparency.no/">www.transparency.no/</a>
Resisting corruption: How company programs are changing	Survey based report offering solutions for developing effective anti-corruption systems.	The Conference Board	2006	<a href="http://www.conferenceboard.ca/documents.aspx?did=1834">http://www.conferenceboard.ca/documents.aspx?did=1834</a>

### SPECIFIC AREAS FOR ANTI-BRIBERY

Title	Content	Publisher	Year	Reference
The Ethics of Gifts and Hospitality	Ethical issues around corporate gifts and hospitality and outlines good practice in policy	Institute of Business Ethics	2006	<a href="http://www.ibe.org.uk/publications/Briefing_3.pdf">http://www.ibe.org.uk/publications/Briefing_3.pdf</a>
Open windows: how codes of conduct regulate corporate political spending	Information on issues of political corruption	Center for Political Accountability	2007	<a href="http://www.politicalaccountability.net">http://www.politicalaccountability.net</a>
Political corruption, U4 Issue Paper	Political finance regulations have been introduced in a majority of democracies to promote fair political competition, but all too often political party and campaign finance laws are breached with impunity.	U4	2006	<a href="http://www.cmi.no/publications/file/2565-political-corruption.pdf">http://www.cmi.no/publications/file/2565-political-corruption.pdf</a> <a href="http://www.transparency.org">www.transparency.org</a>
Standards on Political Funding and Favours	Relevance of the United Nations Convention against Corruption for African nations and its influence on business fighting corruption	Transparency International	2005	<a href="http://www.unpri.org/">http://www.unpri.org/</a>
Principles for Responsible Investment	Ethical issues relevant to procurement and purchasing	Principles for Responsible Investment	2006	<a href="http://www.ibe.org.uk/publications/Briefing_2.pdf">http://www.ibe.org.uk/publications/Briefing_2.pdf</a>
Procurement and Business Ethics	Anti-corruption handbook for the Norwegian business sector	Institute of Business Ethics	2009	<a href="http://www.transparency.no/">www.transparency.no/</a>
Protect Your Business:		Transparency International Norway		

## SECTOR INITIATIVES

Title	Content	Publisher	Year	Reference
CRJIP Principles	Voluntary code of Council for Responsible Jewellery Practices for sustainability practices including countering corruption.	Responsible Jewellery Council		<a href="http://www.responsiblejewellery.com/">http://www.responsiblejewellery.com/</a>
Business ethics, global companies and the defence industry	Report of the Woolf Committee on BAE Systems plc	Woolf Committee	2008	<a href="http://ir.baesystems.com/investors/storage/woolf_report_2008.pdf">http://ir.baesystems.com/investors/storage/woolf_report_2008.pdf</a>
Electronic Industry Code of Conduct	The Electronic Industry Code of Conduct includes provision for business ethics.	Electronic Industry Citizenship Coalition		<a href="http://www.eicc.info/EICC%20CODE.htm">http://www.eicc.info/EICC%20CODE.htm</a>
Defence offsets addressing the risks of corruption & raising transparency	Explores the issue of offsets and focuses on practical, preventive anti-corruption measures to increase their transparency and reduce the scope for abuse	Transparency International UK	2010	<a href="http://www.transparency.org.uk/all-press-releases/136-spotlight-on-offsets-in-the-defence-sector-a-groundbreaking-report">http://www.transparency.org.uk/all-press-releases/136-spotlight-on-offsets-in-the-defence-sector-a-groundbreaking-report</a>
ICMM Principles	International Council on Mining and Metals	Voluntary code of ten principles for sustainability including business ethics.		<a href="http://www.icmm.com/our-work/sustainable-development-framework/10-principles">http://www.icmm.com/our-work/sustainable-development-framework/10-principles</a>
FTSE4Good Countering Bribery Criteria	Anti-bribery criteria set by the SRI Index and based on criteria derived from the Business Principles for Countering Bribery	FTSE	2006	<a href="http://www.ftse.com/Indices/FTSE4Good_Index_Series/Downloads/FTSE4Good_Countering_Bribery_Criteria.pdf">http://www.ftse.com/Indices/FTSE4Good_Index_Series/Downloads/FTSE4Good_Countering_Bribery_Criteria.pdf</a>
OGP Reputational Due Diligence	Guidelines on managing risk in business relationships produced for Members of the International Association of Oil & Gas Producers	International Association of Oil and Gas Producers		<a href="http://www.ogp.org.uk/pubs/356.pdf">http://www.ogp.org.uk/pubs/356.pdf</a>
Wolfsberg Group Statement against Corruption combating bribery. Will be revised 2010.	Wolfsberg Group	The Statement identifies some of the measures financial institutions may consider in order to prevent corruption in their own operations and protect themselves against the misuse of their operations in relation to corruption.	2008	<a href="http://www.wolfsberg-principles.com/">http://www.wolfsberg-principles.com/</a>

Title	Content	Publisher	Year	Reference
International business attitudes to corruption		Control Risks	2006	<a href="http://www.controlrisks.com/PDF/corruption_survey_2006_V3.pdf">http://www.controlrisks.com/PDF/corruption_survey_2006_V3.pdf</a>
Facing up to Corruption in Nigeria		Control Risks	2009	<a href="http://www.controlrisks.com/PDF/nigeria_corruption_2009_final.pdf">http://www.controlrisks.com/PDF/nigeria_corruption_2009_final.pdf</a>
Overseas Bribery and Corruption Survey	Survey of survey 109 FTSE Allshare companies	KPMG	2009	<a href="http://rd.kpmg.co.uk/WhatWeDo/17489.htm">http://rd.kpmg.co.uk/WhatWeDo/17489.htm</a>
Confronting Corruption: evaluating risk in the international marketplace		Pricewaterhouse Coopers	2008	<a href="http://www.pwc.com/gx/en/forensic-accounting-dispute-consulting-services/business-case-anti-corruption-programme.jhtml">http://www.pwc.com/gx/en/forensic-accounting-dispute-consulting-services/business-case-anti-corruption-programme.jhtml</a>

## LINKS TO ANTI-BRIBERY RESOURCES

Organisation	Link	Tools	Codes	Reporting	Information and research	Corporate governance	Legal instruments	Sector
Asia-Pacific Economic Co-operation (APEC)	<a href="http://www.apec.org/apec/apec_groups/som_committee_on_economic/som_special_task_groups/anti-corruption.html">http://www.apec.org/apec/apec_groups/som_committee_on_economic/som_special_task_groups/anti-corruption.html</a>		■		■			
Basel Institute on Corporate Governance	<a href="http://www.baselgovernance.org/">www.baselgovernance.org/</a>				■			
Business anti-corruption portal	<a href="http://www.business-anti-corruption.com/">www.business-anti-corruption.com/</a>				■			
Business for Social Responsibility	<a href="http://www.bsr.org/">www.bsr.org/</a>			■	■	■		
Corner House, The	<a href="http://www.thecornerhouse.org.uk/subject/corruption/">www.thecornerhouse.org.uk/subject/corruption/</a>				■			
Dept. for Business Innovation & Skills	<a href="http://www.bis.gov.uk/anticorruption">www.bis.gov.uk/anticorruption</a>	■			■			
Defense Industry Initiative on Business Ethics and Conduct	<a href="http://www.dii.org/">www.dii.org/</a>		■		■			■
Department for International Development	<a href="http://www.dfid.gov.uk/">www.dfid.gov.uk/</a>				■			
Department of Justice	<a href="http://www.justice.gov/criminal/fraud/fcpa/">www.justice.gov/criminal/fraud/fcpa/</a>				■		■	
Extractive Industries Transparency Initiative	<a href="http://eti.org/">eti.org/</a>			■	■			■
EU	<a href="http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/133301_en.htm">http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/133301_en.htm</a>				■		■	
FCPA	<a href="http://www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html">www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html</a>						■	
International Chamber of Commerce	<a href="http://www.iccwbo.org/policy/anticorruption/">www.iccwbo.org/policy/anticorruption/</a>	■	■		■			
Global Reporting Initiative	<a href="http://www.globalreporting.org/Home">www.globalreporting.org/Home</a>			■				
Global Infrastructure Anti Corruption Centre, The (GIACC)	<a href="http://www.giaceentre.org/">www.giaceentre.org/</a>				■			
Global Witness	<a href="http://www.globalwitness.org/">www.globalwitness.org/</a>				■			



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Downstream Building  
1 London Bridge  
London SE1 9BG  
Phone: + 44 (0) 20 7785 6356  
E-mail: [adequateprocedures@transparency.org.uk](mailto:adequateprocedures@transparency.org.uk)  
[www.transparency.org.uk](http://www.transparency.org.uk)

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