

ANTI-CORRUPTION GUIDE FOR BELGIAN ENTERPRISES OVERSEAS

GUIDE FOR CONFORMING TO THE RULES ON
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS
IN INTERNATIONAL BUSINESS TRANSACTIONS

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IN INTERNATIONAL BUSINESS TRANSACTIONS



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Cette brochure est aussi disponible en Français | Deze brochure is ook verkrijgbaar in het Nederlands

This brochure is also available in English

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Publisher: Jean-Marc Delporte
rue du Progrès 50
1210 Brussels

Legal deposit: D/2016/2295/55



Federal Public Service
Justice



Foreword

Belgium, conscious of its central position within the European Union, has been engaged for many years in the fight against corruption while doing trade, nationally and internationally. The fight against corruption is a priority of the Belgian Government, enshrined in the National Security Plan 2016-2019.

Today, the fight against corruption no longer applies only to the activities of the company itself but also to the practices of its suppliers and other businesses involved. For many Belgian companies operating abroad, corruption creates real difficulties and is one of the most complex problems they face. The fight against corruption does not only involve business, it is a moral duty to society as a whole. Corruption represents a major obstacle to economic development and the eradication of poverty, worsening the consequences of economic and social inequalities.

With this brochure, Belgium wants to raise awareness among companies doing business in international markets for goods and services, by warning them of the many risks and their consequences. It is also about providing them with practical tools and concrete examples to deal with corruption as well as possible ways to help them establish their own code of conduct. Responsible Management implies a clear distinction between allowed practices and unacceptable practices. The management of the company must adopt a clear position on this matter.

This brochure is the result of the cooperation between the National Contact Point for the OECD Guidelines for Multinational Enterprises established in the Federal Public Service Economy and the FPS Justice on the one hand, and the organizations representing the interests of businesses in our country on the other hand, the Federation of Enterprises in Belgium and the Belgian Committee of the International Chamber of Commerce.

Kris Peeters,
Minister for
Economic Affairs



Koen Geens,
Minister of Justice



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Introduction

For more than half a century, the Organisation for Economic Cooperation and Development (OECD) has promoted policies that aim to improve economic and social well-being around the world, and, for almost twenty years, it has benefited from a tool to help member states punish corruption by their citizens overseas¹. 2016 is also the fortieth anniversary of its “Guidelines for Multinational Enterprises”², for the responsible management of companies in the global economy, with a specific focus on the fight against corruption.

However, allegations of corruption are a common occurrence in the global economic press: Alstom in the United Kingdom, Unaoil in the Middle East, Petrobras in Brazil, 1MDB in Malaysia, etc. The names of large multinationals are often associated, as well as those of influential but less well-known smaller enterprises and individuals. Transnational corruption networks are global and sophisticated. They include private and public stakeholders and, above all, they cost the community money.

A study commissioned by the European Parliament³ and published in March 2016 estimates the cost of corruption in Europe to be as much as 990 billion euros in terms of loss of Gross Domestic Product.

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- 1 OECD (1997), Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.
 - 2 OECD (2011), OECD Guidelines for Multinational Enterprises, 2011: <https://www.oecd.org/corporate/mne/48004323.pdf>.
 - 3 van Ballegooij W., Zandstra T. (2016), The Cost of Non-Europe in the area of Organised Crime and Corruption. Annex II - The Cost of Non-Europe in the Area of Corruption, Research paper by RAND Europe, PE 579.319, European Added Value Unit, March: http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS_STU%282016%29579319_EN.pdf.

Also, compliance professionals from around the world all agree that the risk of corruption will increase in 2016 for their enterprise⁴. This can be explained by international expansion and growth in the number of third parties which intervene in business relations throughout the supply chain. 2015 was a record year for merger-acquisition activities and represented a value exceeding 4,195 billion euros.

The sanctions for corruption can cost enterprises a lot of money. At the start of 2016 alone, the German firm SAP agreed to a settlement of 3.7 million USD with the American authorities for corruption activities in Panama, while VimpelCom, a telecommunications operator based in Amsterdam, was forced to accept a record settlement of 795 million USD to drop American and Dutch charges against it concerning corruption in Uzbekistan.

Not only large enterprises are found guilty. Much smaller entities have also recently been convicted by European courts, with suspended sentences of several years and fines of up to 1.5 million euros for inappropriate “gifts” or bribes to foreign civil servants.

The aim of this guide is to offer Belgian enterprises a starting point for internal measures which they may take in order to limit their exposure to the risk of corruption overseas. The measures taken, in particular for “small and medium sized enterprises, must be adapted to their individual circumstances, including their size, type, legal structure and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate”⁵.

4 Kroll, Ethisphere Institute (2016), Anti-Bribery and Corruption Report: A Year of Global Expansion and Enforcement (the “ABC Report”): <http://www.kroll.com/2016-abc-report>

5 OECD (2010), Good Practice Guidance on Internal Controls, Ethics, and Compliance: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>.



1. Who? What? Why?

1.1. Who is targeted by this guide?

In their international business relations, companies with an activity outside their borders run the risk, sometimes involuntary, of violating regulations in force concerning the fight against the corruption of foreign public officials.

Definition of corruption⁶

The Conventions of the Organisation for Economic Cooperation and Development, the Council of Europe and the United Nations do not describe the precise details of “corruption” which criminal law should punish. They tend to describe the type of behaviour which should be punished under the term corruption. However, international definitions of corruption for the purpose of public action are much more common.

One definition often used which covers a wide range of activities tarnished by corruption is **“the abuse of public or private office for personal gain”**.

⁶ OECD (2008). Corruption. A Glossary of International Standard in Criminal Law: <http://www.oecd.org/daf/anti-bribery/41194428.pdf>

Who are the “foreign public officials”?

Here, a “public official” should be understood as:

- any person holding a legislative, administrative or judicial office at any level of government, whether national, regional, or local;
- international civil servants;
- employees of a public company (company over which the government has a dominant influence), on the sole condition that this company operates commercially on its market as a private company;
- by extension, employees of a private company with an activity of public interest, such as customs’ inspections or tasks subcontracted via a public tender.

This guide targets all Belgian company directors active on an international level, as well as all their executives, employees and, when necessary, their business partners which are active both in Belgium and overseas.

However, it should be understood that it is not a case of one size fits all. Each company will have to adapt its approach to corruption according to its own specific features.

1.2. Which rules apply to Belgian companies?

1.2.1. Organisation for Economic Cooperation and Development (OECD)

The first international instrument to establish legally binding standards aiming to make the corruption of foreign public officials in international business transactions a criminal offence has been, since its entry into force on 15 February 1999, **the OECD Anti-Bribery Convention**. This was completed by the Guidelines for Multinational Enterprises, for the responsible management of companies in the global economy, with a specific focus on the fight against corruption.

1.2.2. United Nations

The United Nations Convention against Corruption⁷ came into force on 14 December 2005. The text goes further than earlier instruments in that it not only targets basic forms of corruption such as bribery and misappropriation of public funds, but also trading in influence and the concealment or laundering of the proceeds of corruption.

⁷ United Nations Office on Drugs and Crime, UNODC (2004), United Nations Convention against Corruption, Vienna: http://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.



1.2.3. Europe

The Council of Europe's Criminal Law Convention on Corruption⁸ of 1999 contains provisions on active and passive corruption in the public and private sectors. Belgium ratified this convention in 2004 and is also part of GRECO (Group of States against Corruption), which controls the convention's application in member states.

The Council of Europe's 1999 Civil Law Convention on Corruption⁹ considers the civil aspects of corruption. Belgium ratified it in 2007.

In order to materialise the European Union's contribution, in June 2011, the Commission adopted a communication on fighting corruption in the European Union establishing an "EU Anti-Corruption Report"¹⁰ for monitoring and evaluating member states' efforts in this field in order to encourage them to strengthen their political commitment to an effective fight against corruption. On 3 February 2014, the Commission published its first "EU Anti-Corruption Report"¹¹, which presents the situation of member states and recommends areas for improvement for each one of them.

Finally, the European Union imposes the reporting of non-financial information, in particular on the fight against corruption, in the frame of a directive¹² which will be transposed into Belgian law in 2017.

8 Council of Europe (1999) Criminal Law Convention on Corruption, STE 173, Strasbourg: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f3f5>

9 Council of Europe (1999) Civil Law Convention on Corruption, STE 174, Strasbourg: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f3f6>

10 Communication from the Commission to the European Parliament, the Council and the Social and Economic Committee, Fighting Corruption in the EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011DC0308>.

11 http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

12 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

1.2.4. Belgian law

Beyond our borders, Belgian criminal law was recently amended so that the punishment of both the active and passive bribery of or by a person who exercises a public function in a foreign state or in an international public organization is considerably more severe¹³. Furthermore, Belgian tax law has also been adapted in order to bring it into line with criminal law and, therefore, now excludes tax deductibility for illicit commissions paid in the frame of export contracts¹⁴.

On Belgian soil, corruption offences are governed by the law against corruption¹⁵ and by the law which establishes the criminal liability of legal persons¹⁶. Belgium has since drawn up legislation in the field of public and private corruption which enables not only an individual but also a legal entity to be tried and sentenced. These two laws constituted the first two major steps by Belgium in the fight against corruption¹⁷.

1.2.5. Extra-territoriality

The regulations of certain states concerning the fight against corruption in companies have an extra-territorial vocation and cover business transactions around the world. This is the case, among others, in the United States, with the “Foreign Corrupt Practices Act”, or FCPA) and in the United Kingdom with the “UK Bribery Act”, or UKBA).

This means that, for the FCPA, for example, subjected companies are not only American companies but also:

- Belgian companies present in the United States,
- Belgian companies listed on the stock exchange in the United States,
- individuals located on American soil,
- the non-American subsidiaries of these companies, which are also concerned,
- non-American joint-ventures and their non-American associates.

13 Law of 5 February 2016 amending the criminal law and criminal procedure and laying down miscellaneous provisions on justice

14 Article 7 of the law of 10 February 1999 concerning the repression of corruption completes article 58 of the Income Tax Code 1992 laying down that authorisation of deductibility of “secret commissions” allowed under Article 58 of the Code “to obtain or retain public procurement contracts or administrative authorisations may not be granted”.

15 Law of 10 February 1999 concerning the repression of corruption

16 Law of 4 May establishing the criminal liability of legal entities

17 FPS Justice (2010), La corruption ? Pas dans notre entreprise : <http://justitie.belgium.be/sites/default/files/downloads/La%20corruption.pdf>

Furthermore, the FCPA forbids any non-American from committing an act which participates in a pattern suggestive of corruption. Therefore, many international business transactions may potentially be the subject of an investigation by the American administration, sometimes even if, on first sight, no American entity appears to be present.

Beyond the regulations, many ethical codes have been set up by companies.

Some examples concerning the FCPA

- A Belgian company opened a showroom in the United States: the activities of its Belgian sales representatives for winning a public procurement contract in Africa may be investigated by the American authorities.
- During a stay in the United States, the head of a Belgian company issues an order for his staff in Belgium concerning a negotiation in Asia: owing to the fact that he is on American soil, this negotiation must comply with American anti-corruption regulations.
- A Belgian company makes a payment to the Middle East via an American financial establishment: it is advised to be in compliance with the FCPA.
- For the implementation of a contract in the Pacific, a Belgian company enters briefly into an association with a French partner engaged in a joint-venture with an American company: its activities should comply with the FCPA.

Theoretically, the situation is the same with the UKBA, to which all companies exercising an activity in the United Kingdom are subject. However, the American administration has much more resources and results since it collects millions of dollars in fines, returns, confiscations, etc. Also, American investigations have resulted in serious prison sentences for overseas corruption for American and foreign citizens.

1.3. Why comply?

1.3.1. Limit judicial risks

A growing number of states, whether they belong to the OECD or not, are increasing their resources and repressive efforts in order to detect, identify and punish transnational corruption, which lays great responsibility on companies by virtue of the various anti-corruption laws.

On the one hand, there is a growing consensus almost everywhere in the world, including in a large number of developing democracies, about the fact that corruption is an obstacle to the development of prosperity. Thus, growing awareness of the planet's environmental and social challenges have increased the effect of corruption on how we coexist.

Also, the legislative arsenal and maturity of the services of the authorities in charge of fighting international corruption have improved - making the search for offences more effective and clemency less common. Indeed, many justices around the world now deem that companies have had time to adapt their business and financial management in order to comply with regulations concerning the fight against corruption.

1.3.2. Strengthen its reputation

In general, the reputation of a company is now, more than ever, part of its values. It is important not only for its clients and investors, but has also become an essential aspect for its employees - in the search for talent, which is essential for companies, when a company's values vie increasingly with salary conditions.

In terms of the fight against international corruption, no grey areas are possible. It is not possible for legal reasons, but above all, in the case of a programme concerning corporate social responsibility (CSR), it is the integrity of its image and its entire credibility which may suffer if it is found to be failing to comply with transnational anti-corruption regulations. In a sustainability context, no business can tolerate any form of corruption.

The existence of a good ethical code concerning corruption and a programme for its application in the company, including communication and effective controls, are guarantees for good management and a means of showing one's credentials within the community.

1.3.3. Improving company management

Is it really necessary to refer to the uncertainty of arrangements made by way of corruption and the great difficulty in defining the amount to pay for a bribe? Naturally, an agreement reached through bribery has no legal validity and may not be presented before the courts. However, it exposes the company engaged in such practices to extortion by those who have knowledge of such activities.

Furthermore, it is forbidden to enter sums paid for bribes into account books. If these sums were to be entered into the account books under a different heading, there would be a modification of the sincere nature of this entry. And the control of slush funds which supply corruption usually end up being overlooked by management, moreover, with parallel solidarities between corrupted parties and the payment of back-dated commissions to employees.



2. How?

2.1. Assessing ethics and compliance risks

The assessment of ethics and compliance risks¹⁸ often covers two particularly sensitive subjects for companies: anti-corruption rules and competition rules. A simple infringement in compliance with one of these fields may cast the company, its employees and its shareholders into a catastrophic spiral of legal, financial and reputational damages.

The aim of this guide is to focus on the fight against transnational corruption, but most of the principles in this risk assessment are valid for both fields. For further information about compliance with competition rules, we refer companies, in particular, to the “ICC Antitrust Compliance Toolkit”¹⁹.

In general, the assessment of ethics and compliance risks is an ongoing and global process which helps to understand a company’s exposure to ethics and compliance risks, and to be able to regularly make the changes needed to correct shortcomings or improve procedures which control and reduce risks in the main business cycles.

The assessment of ethics and compliance risks will adapt to the company’s industrial sector and will be in proportion to its size, as well as the geographic scope of its activities.

In order to identify the key risk factors, it is necessary to be able to review the company’s business transactions and all the parameters of its activity: products,

18 Read also: Lainé, J.-D. (2013), “Chapter 5: Risk Assessment” in ICC Ethics and Compliance Training Handbook, Vincke F., Kassum, J. (ed.), ICC Publication No. 741E, ICC

19 Available free of charge from the Belgian committee of the International Chamber of Commerce (ICC Belgium): info@iccvbo.be, +32 2 515 08 44.

services, clients, sales networks, geographic markets - as well as its management and governance and its history. That is why the assessment of ethics and compliance risks is often included in a general assessment of the company's risks.

External factors

Country risk

Some countries (or some regions) suffer from a higher perceived risk of corruption as a result of a lack of anti-corruption legislation, a lower level of application, weak public institutions or an overall lack of transparency.

Sector risk

Some sectors of industry are sometimes considered to be more prone to corruption than others. Particular attention should be paid to infrastructure projects over a certain size.

Business partner risk

Business partnerships, such as joint ventures, consortiums, agents, intermediaries, sub-contractors, and all other types of third parties constitute a risk factor.

Internal factors

The company's structure

Although the number of employees provides an indication of the company's size, it is also advisable to obtain a much more detailed image about the shareholders and groups to which it is related. Pay special attention to subsidiaries or any other entity which is not under the company's direct management or which is under joint control.

The company's organisation

Is the company a centralised or decentralised organisation? The group's entities located outside of Belgium, or when their reporting obligations are limited, increase risk.

Management and governance

It is necessary to focus closely on entities with an unconventional operating model. For example, when management bodies are not located in Belgium.

History of complaints, disputes and external enquiries

In the event of present or past legal problems, it is necessary to analyse their impact and recurrence (with the support of the company's internal or external legal experts).

After assessing key factors, it is time to assess the likelihood of these risks and their potential consequences. In this way, it will be possible to define, implement and monitor the appropriate limitation measures.

The way in which a company manages the identified risks and sets up procedures to reduce them will depend on its structure and its organisation. According to the risk, a centralised or decentralised approach may be chosen. Nevertheless, it is always recommended that the central management maintains control over the third parties with which the company has relations and that it keeps track of their identity, the terms of their commitment and the sums which have been paid to them.

It is necessary for the management to be able to have access to the relevant resources for implementing the proper supervision of the measures taken - including the adoption of a code of conduct (see next paragraph), the strict regular internal control of procedures and a well-organised notification system.

2.2. Developing a code of conduct

The company's code of conduct ²⁰ is the text which establishes its own specific standards for self-regulation. A company may opt for a different title, such as "Charter of Ethics", or "Company Values"; naturally, this does not have any influence on the document's value, which will be judged on the basis of its content rather than on its title.

²⁰ Read also: Lamoureux D. (2013), "Chapter 7: Codes of Conduct" in ICC Ethics and Compliance Training Handbook, Vincke F., Kassum, J. (ed.), ICC Publication No. 741E, ICC.

The code is the backbone around which the commitment of the board of directors and the management of ethical practices will be based as much as the recommendations of the company's main stakeholders. It submits to all of the employees, agents or third parties a non-exhaustive and evolutive list of rules which should sharpen their minds and guide them on a daily basis rather than serving as a coercive instrument.

Furthermore, since this guide focuses on rules for fighting corruption, we will not analyse other areas which may be covered in the company's code of conduct. Among other things, this concerns respect for privacy, the fight against discrimination and harassment, compliance with intellectual property and respect for health, safety and hygiene standards.

The starting point for upstanding business practices for the code is compliance with the laws and regulations which apply in the country where the company is active and compliance with standards established by the United Nations, OECD and ILO - especially in the fields of anti-corruption, competition and employment. Any violation of the law may have serious consequences for companies and their employees. That is why it is necessary for them to be sufficiently informed about the rules necessary to comply with in their activities.

Guidelines for a code of conduct

- Always respect Belgian laws as well as local laws in force;
- Honest and upstanding business practices;
- Zero tolerance of any form of corruption.

Some illustrations concerning guidelines for a code of conduct

"Laws are different in each country (...). Therefore, it will always be necessary to **be aware of the laws of a given country and adapt to them** if necessary."

"Since the original integrity policy used the term "integrity" in a specific manner and not that of compliance or ethics and since integrity has a more general impact than compliance, it is suggested that the term the [company's] **Integrity policy** is used."

"**Corruption is a serious crime.** Influencing people or being influenced by people for financial or other sorts of gains in order to obtain a favourable decision for the company is forbidden by law."

Code of conduct

“The Group places an emphasis on **integrity** in its business activities and **compliance** with the law and its values because it is the best way to proceed.”

“Each Staff Member, regardless of where he is based, must comply strictly (...) **with all the laws and regulations in force** as well as the Group’s policy in the field.”

“The Group forbids (...) any form of corruption.”

Code of conduct

“The code of conduct (...) aims mainly to guarantee that all people (...) carry out their activities in accordance with ethics, **laws and regulations** (...).”

“6.2. **Corruption**, gifts and privileges

You will refrain from offering, promising or providing a civil servant (or third person) with any inappropriate advantage designed to encourage this person to carry out or not carry out an act in the frame of his official functions in order to conclude a deal, maintain a business relationship or obtain or preserve any other inappropriate advantage in the management of business affairs.”

Code of conduct

“Always act with **honesty and integrity**. This applies to the management of records - especially financial records - and our business relations with clients, competitors, suppliers and others.

Also comply with all laws which govern these relationships and activities.”

“Business **corruption**

(...) **You should not ask for, receive, give, or offer anything regardless of its value in the form of bribes or discounts.** This unethical practice is not acceptable even if “everybody does it” or it is “necessary in order to be competitive” on a specific market.”

Code of professional conduct

In order to lay the foundations of the entire company’s collective and sincere adhesion, the drafting of a code of conduct should bring together contributions from all the departments and involve the most varied profiles in terms of profession, culture and diploma.

The document will be the responsibility of the board of directors which should validate it; and it will be the legal and human resource services which will have many decisions to take, often in order to decide between different points of view between contributions from staff members as varied as subsidiary directors, marketing managers, internal auditors, accountants, treasurers and all those involved in the company's integrity on a daily basis.

The code of conduct reflects the company's identity and its drafting should not be entrusted to consultants or external experts who are unfamiliar with its culture. However, according to its size, it may be useful for the company to refer to a larger entity, such as a professional federation, a sectorial association or another industrial or commercial partner.

The code should be drafted in a way which is easy to read and understand by every individual. It must avoid the use of legal or other jargon and it is recommended to have it translated into the main languages used in the company, including languages from all the countries in which the company is active.

Questions which employees may ask themselves in the event of doubt

- Is it legal?
- Is it ethical?
- Is it in line with the code of conduct?
- Am I setting an example?
- Do I want to see this published in the media?
- Can I consult someone else?
- What would my mentor think about this way of doing things?
- Could it affect our shareholders?

In the case of doubt, the golden rule is to speak out and discuss things openly with superiors or another person of confidence.

2.2.1. Excluding any form of corruption

The code of conduct should clearly explain that any direct or indirect form of corruption or trading in influence is excluded for each of the company's employees or staff members. Especially in the following circumstances:



Relations with civil servants

The company's business activities may lead to forming relationships with civil servants or official government representatives, and this may also be the case overseas. Transactions related to these relationships are covered by different conditions from those which govern business between private companies, and certain employees of private companies exercising an activity of public interest may, by extension, also be considered to be public officials.

Relationships with clients and suppliers

A company's relationship with its clients and suppliers is of prime importance. Each employee or staff member is expected to treat these partners in a way which he expects to be treated himself, regardless of whether they are private or public entities. Concerning suppliers, it should be expected that their relationship with the company does not in any way contradict the principles of its code of conduct. The person responsible for each of the relationships with a supplier should make adhesion to the code of conduct a condition of any supply contract.

Offer of gifts and hospitality

Although gifts and hospitality are ways of expressing a feeling of friendship or a way of welcoming guests, as is common practice, they may also be used as corruption ploys. Thus, hospitality seen as being natural in one country may be deemed illegal by the justice authorities in another.

Gifts are the donation of objects, or, in some cases, money. Gifts are offered on certain special occasions, such as a New Year celebration, a birth or a birthday, a wedding, or in order to express gratitude or friendship. In the business world, gifts are made to clients or between business relations in order to strengthen ties.

Excessively large gifts, beyond which is socially normal or acceptable, may be a corruption ploy in that they create a moral requirement to reciprocate a favour. Regular and generous gifts create a climate favourable for preferential treatment when the recipient has to make a decision which affects the donor.

Hospitality involves spending for the entertainment of guests, for example, inviting them to a luxury restaurant or prestigious sports or cultural events, or even covering the costs of their travel and stay. Excessive hospitality may also be a corruption ploy.

Many countries have strict rules concerning the gifts and hospitality from which public officials may benefit. Companies concerned are advised to seek information about these rules, for example by contacting the economic and commercial attachés on site.

Three basic principles concerning gifts and hospitality in the code of conduct

- Employees or third parties may not receive or offer gifts when these risk to inappropriately influence the recipient's judgement or may give that impression.
- Employees may only accept or offer reasonable meals and gifts of a symbolic value which are adapted to the circumstances. No employee may accept or offer a gift, meal or form of entertainment if he suspects a pernicious attempt to influence the relationship.
- When assessing the pros and cons of a situation, the employee should consult the person concerned in the company before accepting or offering any generous gift.

In order to facilitate the application of these principles, the code of conduct should, whenever possible, define concrete rules on the subject.

Some illustrations concerning gifts and hospitality

"Gifts or invitations made in the frame of a negotiation in progress, which may be viewed as creating an advantage, should not be accepted.

We should abstain, in all circumstances, from requesting favours or offering cash gifts (money, vouchers, gift vouchers, travel vouchers, etc.).

(...) Gifts in the frame of the company's activities, which help to build a positive and considerate working relationship for [the company] may be offered or accepted

if they are modest (below a value of 100 euros) and occasional.

However, in order to ensure complete transparency, it is advised that you inform your line managers about this gesture."

Code of conduct

"Under no circumstances is the exchange of cash or cash-in-kind (dividends or gift vouchers, for example) acceptable. So-called "facilitating" payments (small sums of money designed to secure or accelerate an administrative process) are not authorised by [the company].

Disguising gifts or entertainment as charitable gifts constitutes an infringement of this Code and the Group's policy on this subject and is not acceptable."

Code of conduct

"These gifts and other favours may only be offered or granted to business partners if they are modest as much in terms of their value as their frequency and provided that the place and timing of them are appropriate. Even if these gifts comply with good local business practices in force, you are not entitled to accept favours from business partners in the form of cash or any other form which may influence or appear to influence your integrity or your independence.

As a staff member or a representative of the [company], you are not allowed to accept favours from business partners in the form of cash or any other form which may influence or appear to influence your integrity or your independence. Gifts and other favours may only be accepted if they are modest as much in terms of their value as their frequency and provided that the place and timing of them are appropriate.

If such favours, which are larger than usual courtesy gifts, are offered or granted to you, you will immediately inform your line manager or the head of the Corporate Legal Department."

Code of conduct

“The main policy points concerning gifts are as follows:

- You must not ask for gifts for your own personal benefit in the frame of your employment for [the company].
- [the company] indicates the total annual limits concerning the type, value and nature of unsolicited gifts which may be accepted.
- The acceptance of personal discounts or free services from suppliers may also be forbidden if you are in charge of obtaining these same types of products or services for [the company]. They may be seen as discounts.
- Avoid frequently accepting gifts, even if they are not extravagant and, individually, are within the limits recommended by [the company].
- Refuse gifts otherwise permitted by the [company] policy if you know or suspect that the gift would contravene the policies of the employer of the person who is offering it.
- The [company] policy strictly forbids accepting money other than standard tips to associates who generally receive them in the frame of their employment.

Know the policies; use your good sense

In addition to complying with the [company] policy, use your good sense when it comes to giving or accepting gifts in the frame of business relations. Do not accept any gift which might compromise your objectivity when you make decisions for [the company], that might create an impression of irregularity or that might infringe the law.”

Code of professional conduct

Conflicts of interest

Conflicts of interest are a specific form of corruption which occurs when an individual or a group of individuals benefit from an advantage by exercising a power of decision, whether this advantage is for themselves or for a close relative or friend. This type of corruption is very often found in the recruitment of close relatives or friends, or the privileged treatment of close relatives or friends when selecting suppliers of goods or services.

According to the International Chamber of Commerce (ICC) Rules on Combating Corruption²¹, enterprises should closely monitor and regulate actual or potential conflicts of interests, or the appearance thereof, of their directors, officers, employees and agents. The text also stipulates that they should not take advantage of conflicts of interests of which other companies are guilty.

Accounting and finance

The reliability of account recording is an essential aspect of the legal, honest and effective management of a company. Companies are obliged to ensure that its accounts are reliable and complete and that they comply with rules in force as well as internal procedures.

Ensuring that every accounting operation is irreproachable is a responsibility shared by each individual and not just that of the accounting and financial department. The accuracy of accounting documents and reports and compliance with legislation concerning investments creates an image for the reputation and credibility of the company and helps it to fulfil its duties in terms of compliance with the law and regulations.

Some examples concerning the responsibility of all when it comes to accounting accuracy

An employee might receive a reimbursement of expenses from which, unknown to the company, a civil servant or similar person has benefited.

Falsified invoices are a method used to remove money from an entity and sometimes supply a slush fund.

The information provided by an employee to cover a dubious debt may be incorrect.

No employee should ever engage in a fraudulent operation or dishonest conduct of any sort which is in relation to the property, assets, accounts or relationships of the company or a third party. On the contrary, employees are required to provide information which is as accurate and complete as possible in their preparations and communications. Thus, since to err is human, only deliberate acts designed to distort or incorrectly record transactions or falsify an accounting entry should be considered as an infringement of the code of good conduct.

21 ICC (2011). ICC Rules on Combating Corruption. Available free of charge from the Belgian committee of the International Chamber of Commerce (ICC Belgium): info@iccwbo.be.

2.2.2. Responding to infringements of the code of conduct

It should be possible for a director or an employee who discovers or suspects unethical or illegal conduct to inform their line manager or seek advice. For this, the director or employee should be able to contact either their immediate line manager, an executive with whom he feels in confidence, or a representative of the legal or human resources department.

Any reporting in good faith of suspicious behaviour which may involve a breach of the code of good conduct should, naturally, be honest and precise - and should be made as soon as possible. It is then up to the company to manage the problem and take the necessary steps to avoid, as much as possible, that it results in an infringement of the law or is harmful to the health and safety of employees, or harmful to the company's reputation.

Disciplinary sanctions

The code of conduct should clearly stipulate that all those who work for the company - whether they are directors, executives or employees, should comply with the code's standards and that they are all subject to prosecution in case of a violation. It is necessary to clearly stipulate that there are no exceptions, privileges or immunities on this subject.

When one of the code's provisions is not complied with, it is up to the management to apply the appropriate, proportionate and dissuasive disciplinary sanctions and remedy the situation. When a repeat case of non-compliance is discovered, measures should be taken to ensure that there is no repeat occurrence. Serious and persistent infringements of the code, which may seriously damage the company's reputation, may be punished by the dismissal of the person directly involved, as well as the person responsible for his supervision.



2.3. Defining responsibilities and procedures

2.3.1. The company's ethics and compliance programme²²

Companies which have both a solid foundation in terms of ethics and directors devoted to the cause will be better equipped to deal with a crisis and will recover much more quickly than other companies which are less well prepared. The ethics and compliance programme is central and comprises three actions: prevent, detect and respond.

In the same way as we said earlier that “the assessment of ethics and compliance risks is often included in a general assessment of the company's risks”, the company's ethics and compliance programme will also be related to risks other than those resulting from corruption - most of the time the areas concerned are:

- repression of money laundering;
- anti-corruption;
- export and import controls²³;
- competition law.

According to the company's structure and its sector of activity, the company's ethics and compliance programme will also take account of additional fields such as:

- human rights;
- information communication controls and procedures (ICCP);
- insider trading.

Whereas the company's ethics and compliance programme generally focuses on legal compliance, it is often completed by documents which present the company's values, the aim of which is to encourage employees and business partners to adopt the highest ethical standards in their everyday professional activities.

²² Read also: Desmet C. (2013), “Chapter 8: The Ethics and Compliance Function and Its Interface with Management, Control, and Audit” in ICC Ethics and Compliance Training Handbook, Vincke F., Kassum, J. (ed.), ICC Publication No. 741E, ICC.

²³ See the export controls and economic sanctions new website, that was created by ICC Belgium and the FEB to offer businesses a coordinated European and American perspective on the matter: www.worldtradecontrols.com

Elements for a company's effective ethics and compliance programme

Extract from the ICC Rules on Combating Corruption (2011)²⁴

Each enterprise should consider including all or part of the following good practices in its programme. In particular, it may choose, among the items listed hereunder, those measures which it considers most adequate to ensure a proper prevention against corruption in its specific circumstances, no such measure being mandatory in nature:

- a) expressing a strong, explicit and visible support and commitment to the corporate compliance programme by the board of directors or other body with ultimate responsibility for the enterprise and by the enterprise's senior management ("tone at the top");
- b) establishing a clearly articulated and visible policy reflecting these rules and binding for all directors, officers, employees and third parties and applying to all controlled subsidiaries, foreign and domestic;
- c) mandating the board of directors or other body with ultimate responsibility for the Enterprise, or the relevant committee thereof, to conduct periodical risk assessments and independent reviews of compliance with these rules and recommending corrective measures or policies, as necessary. This can be done as part of a broader system of corporate compliance reviews and/or risk assessments;
- d) making it the responsibility of individuals at all levels of the enterprise to comply with the enterprise's policy and to participate in the corporate compliance programme;
- e) appointing one or more senior officers (full or part time) to oversee and coordinate the corporate compliance programme with an adequate level of resources, authority and independence, reporting periodically to the board of directors or other body with ultimate responsibility for the enterprise, or to the relevant committee thereof;
- f) issuing guidelines, as appropriate, to further elicit the behavior required and to deter the behavior prohibited by the enterprise's policies and programme;

²⁴ ICC (2011), ICC Rules on Combating Corruption. Available free of charge from the Belgian committee of the International Chamber of Commerce (ICC Belgium): info@iccwbo.be

- g) exercising appropriate due diligence, based on a structured risk management approach, in the selection of its directors, officers and employees, as well as of its business partners who present a risk of corruption or of circumvention of these rules;
- h) designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in or hiding of corrupt practices;
- i) establishing and maintaining proper systems of control and reporting procedures, including independent auditing;
- j) ensuring periodic internal and external communication regarding the enterprise's anti-corruption policy;
- k) providing to their directors, officers, employees and business partners, as appropriate, guidance and documented training in identifying corruption risks in the daily business dealings of the enterprise as well as leadership training;
- l) including the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met and specifically against the compliance with the enterprise's anti-corruption policy;
- m) offering channels to raise, in full confidentiality, concerns, seek advice or report in good faith established or soundly suspected violations without fear of retaliation or of discriminatory or disciplinary action. Reporting may either be compulsory or voluntary; it can be done on an anonymous or on a disclosed basis. All bona fide reports should be investigated;
- n) acting on reported or detected violations by taking appropriate corrective action and disciplinary measures and considering making appropriate public disclosure of the enforcement of the enterprise's policy;
- o) considering the improvement of its corporate compliance programme by seeking external certification, verification or assurance; and
- p) supporting collective action, such as proposing or supporting anti-corruption pacts regarding specific projects or anti-corruption long term initiatives with the public sector and/or peers in the respective business segments.

2.3.2. Responsibility for the company's ethics and compliance programme

Leadership ethic

It is up to the highest level of the company to give shape to the company's ethics and compliance programme, include it in the DNA of the company's practices and delegate authority so that it becomes effective. It is up to the board of directors to take responsibility for the content of the code of conduct and the entire management team must embody the company's ethical values. As we will see later, clear internal and external communication about anti-corruption is essential for an effective line of conduct on this subject by employees and business partners.

It is essential that the board of directors approves the company's code of conduct as well as all the standards in force, but also that it is informed about the main infringements or problems concerning the company's ethics and compliance, and is regularly kept informed about specific risks as well as the effectiveness with which the ethics and compliance programme helps to tackle these risks. The board of directors, its audit committee, or any other committee, should have direct and regular access to the head of compliance and ethics.

An appointed manager in the company

As presented in article e) of the previous inset, it is generally recommended for companies to "appoint one or more senior executives (full-time or part-time) to supervise and coordinate the company's compliance programme with resources, authority and the appropriate independence". Often, this position is called: "Chief Ethics and Compliance Officer". In a SME, it may concern a part-time position; in a large multinational, the department in charge may count up to several dozen, or hundred staff members.

However, the governance of the company's ethics and compliance, or its sharing, should be studied closely and remain coherent with the general governance, whether it is centralised or decentralised, in the same way as it should take account of all the specific features of the company or the specific range of products which it covers.

Consequently, companies active in highly regulated industrial sectors may decide more easily to appoint a manager in the company who is responsible as much for the ethics policy as for the implementation, supervision and application of the

programme; while others will prefer to entrust responsibility for the ethics policy on technostucture positions (such as the legal, financial and human resources department), with responsibility for the programme's implementation and control entrusted to line managers. In this case, a person may be appointed for ethics and compliance in the company, who is more in charge of providing guidance, support and preparing reports.

Whatever the case, there is not an ideal standard model and it should be remembered that the choice of the company's ethics and compliance model will depend on cooperation between line managers, controls, audits and the person appointed for ethics and compliance in the company.

2.3.3. Management procedures

Regular internal communication

The existence of (written) rules on the subject of ethics and compliance in the company should be the subject of regular communication. Each person in the company should also be able to constantly provide the essence of these rules in the simplest and most concrete terms: "No bribes", "Compliance with fair competition laws", "Put the company's interests before your own personal interests when you make professional decisions", etc.

The regular repetition of information concerning the current code of conduct or the announcement of changes to regulations, especially among certain sensitive positions, are a sure way to reinforce internal communication on the subject of compliance throughout the year. Indeed, repetition is only a method which participates in learning, it also demonstrates the company's consistency in the field and its commitment to helping its employees and its business partners adhere to the highest ethical standards.

Training and awareness raising

It is by training²⁵ its employees and its business partners that the company protects itself the best against corruption and other ethical risks. With regulations which govern business and international trade becoming more complex, organising training is the best strategy for communicating messages about compliance to staff and all the company's stakeholders.

²⁵ Read also: Lagache C. (2013), "Chapter 5: Education and Training" in ICC Ethics and Compliance Training Handbook, Vincke F., Kassum, J. (ed.), ICC Publication No. 741E, ICC.

Learning new reflexes for avoiding bribes, resisting solicitation or extortion, refusing to create slush funds, refusing problematic gifts or hospitality, disapproving of illegal political support, etc. in everyday professional life may prove to be more complex than thought in environments in which some of this behaviour may be considered to be commonplace in business.

Through the training, all the participants should understand their individual responsibility as defined by the company's ethics and compliance programme and receive enough guidance in order to make a fair decision in the case of a risky situation. The aim is to reconcile the legal aspects of the code of conduct and regulations in force with the company's business transactions.

In order to be effective, training on this subject should be able to put participants in realistic situations and allow them to learn the correct reflexes. Every theoretical explanation should be illustrated by concrete cases taken from experience in the field. Furthermore, by offering participants the chance to openly discuss their experiences on the job, the training also becomes a tool for assessing the company's risks which enables, whenever necessary, the adoption of new measures.

Training: for whom, by whom and when?

For whom? All of the company's staff should participate in basic training on the subject of compliance, including the members of the board of directors. For some employees, according to their profession or the geographic area where they work, specific training may be programmed.

By whom? The smallest companies may have recourse to external training courses available on the market, but it is true that they risk not benefiting from realistic conditions for their sector of activity. Whenever possible, the company may choose its own trainers, who will be able to create a training programme adapted to the company's culture and activity.

When? The training should not be a formality and should be organised on a regular basis but should avoid repetition. All newcomers should be able to benefit from training in compliance within one month following their recruitment and any major changes to the code of conduct should be the subject of specific training.



Supervision and self-assessment

It is up to the management to inform employees or business partners about legislation and standards in force in the countries where the company operates and it is its duty to verify that these conditions are reflected in the company's operational procedures. It is up to management to execute regular controls to ensure that these procedures are effective.

The person appointed for ethics and compliance in the company reports to line managers at different moments, in particular when the company's policies and its rules are updated or in order to supervise the way in which they are implemented. Of course, its influence and the intensity of its activity will depend on its responsibility and the level of resources from which it benefits.

Finally, confidence in the ethics and compliance programme is built and strengthened around an appropriate combination of the monitoring and regular self-assessment of compliance controls.

2.3.4. Procedures for controlling the company's third parties²⁶

Agents, intermediaries, and other third parties

The company's third parties are all those which provide it with services or goods at any level. For example, agents, business development consultants, trade representatives, customs officials, multi-purpose consultants, retailers, subcontractors, franchise holders, lawyers, accountants and other intermediaries, as well as equipment or material suppliers, and partners with whom the company has formed a team or co-entrepreneurs in the frame of a joint-venture, etc. Third par-

²⁶ Read also: Battaglia R.J. (2013), "Chapter 14: Agents, Intermediaries, and Other Third Parties" in ICC Ethics and Compliance Training Handbook, Vincke F., Kassum, J. (ed.), ICC Publication No. 741E, ICC.

ties may act in the company's name for marketing, sales, contract negotiation, the obtaining of licences, permits or other authorisations, or any activity which benefits the company or as a subcontractor in the logistics chain.

With a view to comply with the rules in force concerning the corruption of foreign public officials, all these third parties represent a risk for the company active in transnational business activities. Some of them are so by nature because they may be government representatives or their close family, or may have ties to public companies or their equivalent. Others present a risk through the relationships and ways in which they are in contact with the first. The company's responsibility for the actions of these third parties depends on the nature of each relationship, but it generally frees it of the risk of responsibility resulting from the acts of others.

The contract between the company and its agents generally makes the company responsible for the agents' acts during the execution of their services on its behalf and the rules which forbid transnational corruption widen responsibility as a result of the acts to persons other than officials, in particular to service providers. Some regulations are stricter than others, such as those applied by the American authorities²⁷. Limiting legal risks mainly requires taking preventive measures and detecting any fraudulent payments made by its business partners.

In general, the International Chamber of Commerce's guidelines from 2010 concerning agents, intermediaries, and other third parties encourage companies to set up procedures to examine, train and control its (new) business partners in the frame of their relationship with the company and its anti-corruption compliance policy.

Prior verification method

The great difficulty in setting up a prior verification method, also known as "due diligence", is the resistance both in-house, to what may sometimes be seen as an additional administrative load, as of the parties involved, even when they are aware of the importance of the challenge and are willing to cooperate.

Consequently, it is important that each step of the prior verification process has clear objectives. Also, in order to anticipate possible indignant reactions of certain

²⁷ See point 1.2.4. "Extraterritoriality".

third parties with a different culture or in high-level positions, it is necessary to be able to prove that it is a standard procedure in the company and in no way a sign of defiance.

Naturally, the verification should be flexible and proportionate according to the level of risk in the region where the company or the candidate third party will operate, or the nature of the contacts or the activity which it will have. Throughout, the priority must be its final goal: to be able to show that the company has paid attention to identifying all the compliance risks in its relationship with the third party and that it has taken reasonable measures to control and eliminate these risks.

The person who will request the verification in the company is, most of the time, the first person to be in contact with the candidate third party and will be able to answer these questions:

- What company need does this new third party meet?
- How was it identified?
- What are its commercial and technical competences?
- What is the commercial justification of the format and amount of its remuneration?
- ...

Interesting documents to be provided by the person who submits a prior verification request for a third party:

Commercial information: copies of all documents received, including the company registration certificate.

Ownership information: does a public servant appear in the known list of shareholders or directors?

Compliance information: copy of a code of conduct, certifications, or other.

This information will be completed by research carried out by a person in charge of the prior verification method (in order to limit the risk of conflicts of interest and proceed more quickly, companies with more than 250 employees may form a team responsible for the method which comprises several people, sometimes assisted by external resources):

- past relationships between the candidate third party and the company (in particular the scope of any other contracts with the company, the amount of all previous payments and the total of the sums paid by the company to the candidate third party by virtue of all its contracts with the company);
- antecedents and reputation of the candidate third party;
- test the planned remuneration for the candidate third party against the company's internal guidelines on the subject and any available external references;
- ...

Key actions for internal verification

- Complete all the information that the person making a verification request was unable to provide.
- Verify any contradictions.
- Verify if the candidate third party and the main directors and shareholders do not appear on the list of individuals and entities which are subject to sanctions, or in databases for any past or current disputes.
- Verify the contract's compliance with the legislation in force in the country.
- If necessary, seek information from other customers or the business world.
- Put clauses about compliance and ethics, as well as the terms and conditions of payment, into the contract.

Finally, the candidate third party can contribute to the verification by answering a questionnaire and by supplying documents, declarations and guarantees about itself and its business practices, thus making a commitment to its future behaviour:

- basic information about the candidate third party and its qualifications (for example, its main directors, facilities, staff and product lines, as well as the nature and history of its activities);
- ownership and other forms of participation (for example, other companies affiliated to, owned, controlled or represented by the candidate third party);
- legal status (for example, information about the fact that the owners, directors or employees of the candidate third party are or were public servants);

- other ties with public servants (for example, family or other);
- financial data;
- current or previous legal actions concerning the candidate third party's activities;
- information about current or past legal investigations, sanctions, bans or convictions in accordance with local or foreign criminal law for acts related to corruption, money laundering or infringements of corporate laws or regulations;
- business references (any restrictions imposed by local legislation, for example the confidentiality of data regarding the candidate third party's employees, should be taken into account).

In general, companies may also gather information from other external sources by:

- contacting, if possible, the third party's referees (for example, banks and business partners);
- researching the local press and publicly accessible sources of information;
- researching online databases or requesting reports from independent companies which compile financial and other sorts of information about business entities;
- researching public authority databases and identifying parties which have been exposed to sanctions;
- consulting, if possible, diplomatic staff and other governmental sources about the candidate third party and the region where it operates;
- hiring a company that specialises in prior verifications;
- consulting a local legal expert in order to find out whether the contract between the company and the third part is lawful with regard to local legislation and the conditions of the reference contract with the client;
- collecting and verifying information by independent sources.



2.3.5. Controlling the terms of the relationship between business partners

The written undertaking that seals the agreement between the business partners should, among other things, officially confirm the agreement of the company's partner to comply with anti-corruption laws in force throughout the duration of the contract, as well as the company's code of conduct and to allow it to confirm that it has never been involved in any practices which contravene the terms of the contract.

More than an administrative formality, about which the partner may be reticent - which would be a warning sign - this document provides protection in case of a dispute and a means of justifying any measures to be taken in case of a violation, whether concerning suspension of payment, termination of the contract, reporting to authorities, or other.

Anti-corruption clause

Even if the candidate partner's references have been verified, the future of the contractual relationship needs to be protected. The introduction of an anti-corruption clause²⁸ helps to protect the company's antecedents in terms of integrity and ensure the implementation of a contract which is free of any form of corruption or any other fraudulent practices for which the company may be held liable, even indirectly.

At this point in the negotiation, it is advised to resort to a clause developed in a neutral context, as proposed by the International Chamber of Commerce (ICC) with the ICC Anti-Corruption Clause²⁹.

28 Read also: Vincke F. (2013), "Chapter 16: The ICC Anti-corruption Clause (2012)" in ICC Ethics and Compliance Training Handbook, Vincke F., Kassum, J. (ed.), ICC Publication No. 741E, ICC.

29 ICC (2012), ICC Anti-Corruption Clause. Available online: <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/buisness-ethics-documents/icc-anti-corruption-clause/>.

ICC Anti-Corruption Clause

2 cornerstones

1. the parties' clear commitment to respect anti-corruption compliance in their contractual relationship.
2. the wish, in this context, to ensure the inviolability of contracts by guaranteeing mutual trust throughout the duration of the contract.

3 options

Option 1: a compact version of the clause, which incorporates a reference to the provisions of Part I of the ICC Rules on Combating Corruption (2011)³⁰, which explains the ban on any form of corruption.

Option 2: in the text of the contract, this version incorporates all the provision of Part II of the ICC Rules on Combating Corruption (2011), which makes the commitment of the parties more explicit and represents an optimal solution for longer, elaborate and complex contracts.

Option 3: this option is based on another type of commitment. The parties declare that they have set up (or are about to set up) an anti-corruption compliance programme in their company as described in the ICC Rules on Combating Corruption (2011).

In the annex of this guide, you will find a more complete example of an anti-corruption clause which may be included in a business contract.

³⁰ ICC (2011), ICC Rules on Combating Corruption. Available free of charge from the Belgian committee of the International Chamber of Commerce (ICC Belgium): info@iccwbo.be.



2.4. Informing the company, customers and stakeholders³¹

2.4.1. Within the company

The implementation of an ethics and compliance programme in the company is not enough to modify its culture of integrity. However, it may be tempting for the management to believe the contrary and imagine that the mere existence of an ethics and compliance programme is enough to bring about the necessary changes in people's mentalities. Although it is essential, the programme cannot achieve everything and must be supported as much by internal communication as by human resources. In the long term, a successful transition to upstanding business practices strengthens the company's future and improves the level of skills of its staff members.

For commercial teams, for example, the challenge sometimes is to transform a day-to-day culture of performance in which only one immediate result is taken into account by the management for calculating bonuses and other rewards into a genuine commercial strategy which targets the acquisition of market share in the long term and stable profits. Therefore, for sales staff and their management, this means more responsibility when selecting their partners, more care, and, sometimes, more patience.

This also means learning how to position oneself in the field more on the basis of the excellence of technical skills and a culture focused on customer service, rather than, as some competitors, on a tendency to tolerate corruption practices. It is good for the company to support technical sense in this sense, as well as training in sales techniques and negotiation tactics.

³¹ Read also: Burger-Scheidlin M. (2013), "Chapter 17: Managing the Transition to a Clean Commercial Policy" in ICC Ethics and Compliance Training Handbook, Vincke F., Kassum, J. (ed.), ICC Publication No. 741E, ICC.

Ultimately, this means communicating about the personal risks faced by those who participate in corruption and providing information about the resources available to help people to analyse for themselves the risks which honest or dishonest business practices may have on their own career, such as the FPS Justice website³², the United Nations website³³, the Belgian committee of the International Chamber of Commerce (ICC Belgium) or Transparency International Belgium and their tools and activities on this subject.

Sanctions applied in Belgium for people found guilty of corruption

Following Articles 246-249 of the Criminal Code (corruption of a Belgian civil servant), and according to the gravity of the infringement, which also depends on the type of act committed in the frame of corruption (the act may be described as lawful, unlawful or punishable), the guilty party may be sentenced to anything from 6 months to 15 years in prison and a fine of 600 to 600,000 euros (for legal entities, this may amount to a fine up to 2,16 million euros).

Under Article 250 of the Criminal Code (corruption of a foreign public official), the offender may be sentenced to imprisonment for a period of a few months up to 15 years and a fine between 1,800 euros and 3 million euros - as the minimum fines are multiplied by 3 and the maximum fines are multiplied by 5.

2.4.2. Among customers

Some companies may fear losing customers on certain markets if they inform them about a new ethics and compliance policy and the possible consequences on certain past arrangements. Indeed, it is possible that if major negotiations are underway, this could make its position more vulnerable. Although it may appear to be best to wait for the right moment, it has been seen that when products offered by the company are sufficiently unique and that the business relationship is serious, most of the customers will continue to do business.

The aim is to remain firm with regard to the new code of conduct but to be tactful and aim to lose as few clients as possible if certain arrangements were in place. To that end, it may sometimes be necessary, for example, to report certain past arrangements which existed with a stubborn purchasing manager, or to threaten to report them to the owner or the director of his company. Or, on

32 Section on corruption on the FPS Justice website: http://justice.belgium.be/fr/themes_et_dossiers/securite_et_criminalite/corruption.

33 Section on corruption on the UNODC website: <http://www.unodc.org/unodc/en/corruption/index.html>.

the contrary, to find solutions which will allow the person to save face. Or even to reorganise the sales team for a market by redistributing responsibilities in such a way that it is made clear that certain past arrangements are no longer possible.

The message during negotiations with a client who benefited from practices which are no longer tolerated by a new ethics and compliance programme should remain clear: “The company wants to continue to do business with you and allow you to be competitive, but there will be no more bribes”. No negotiations for smaller bribes, or any reduction or decrease in arrangements. There may be additional discounts provided that they are legally justified.

During a transition towards an integrity policy, it may also be advisable to employ the services of legal experts in order to verify the validity of current contracts between the enterprise and the clients of certain questionable markets. Past arrangements should not prevent new and healthy business relations.

2.4.3. The general public and stakeholders

A successful anti-corruption undertaking should be made public and communicated to the media, including social media, local and national press, sectorial federation communication channels and chambers of commerce.

Good external communication will only strengthen credibility about the company’s ethics and compliance on foreign markets.

It is also recommended that the company’s anti-corruption policy is in line with other initiatives taken by the company on the subject of corporate social responsibility (CSR) with regard to climate challenges or in order to comply with new legislation.

The company’s general message in relation to its choice for an anti-corruption policy is the ambition of its decision-makers to be a reliable, stable and long-term partner.

2.5. Regularly verifying the programme's effectiveness

The ethics and compliance risks which have been identified and assessed, probably during a general risk assessment of the company, appeared to be relatively accurate at the time the assessment took place. Twelve months later, it is possible that some of these risks will have changed. Worse still, it is possible that the only risk which has been incorrectly assessed is the risk which becomes a threat or an incident.

So many events can have an influence on risks:

- the political situation of certain countries where the company is active may have changed resulting in stricter ethics laws, or an environment more favourable to corruption;
- an industrial sector in which the company is involved has modified its ethics standards;
- the company has committed to new projects or has decided to participate in new tenders;
- or even certain aspects of the sales network had to be modified ...

There are three ways of ensuring the effectiveness of the company's ethics and compliance programme:

- 1) Firstly, it should be revised regularly. The more volatile and unpredictable the environment, the higher the risks are of compliance, and the more the person in charge of compliance and ethics will have to keep the ethics and compliance programme up-to-date. At the very least, this programme should be reviewed at least once a year.
- 2) Secondly, it is necessary to assess any changes or developments within the company or in its ecosystem in terms of impact on the risk of compliance within the company. New relevant legislation or regulations, the hiring of new directors, or the arrival of new shareholders, the extension to new markets, or the creation of new positions should all be analysed for the effects they have on the company's ethics and compliance programme.
- 3) Finally, drawing conclusions from statistics taken from the registry of ethics and compliance infringements, the monitoring of procedures by the person in charge of compliance and ethics, and regular self-evaluation exercises for compliance controls by line managers.



3. You are not alone

On a Belgian level, the ICC Belgium and Transparency International Belgium regularly organise seminars, working sessions and round tables on the theme of transnational corruption.

On an international level, from its head office in Paris, the ICC, the world business organisation, organises the activities of its Anti-Corruption and Corporate Responsibility Commission, which offers all its members, including several representatives of Belgian companies, the opportunity to exchange their good practices and work together for the development of new tools in the field of managing ethics and compliance risks.

For further information about their risks, enterprises may seek advice from their partners:

- local Chamber of Commerce (Voka in Flanders, BECI in Brussels, the CCI in Wallonia and Industrie- und Handelskammer für Ostbelgien (IHK));
- International Chamber of Commerce in Belgium (ICC Belgium);
- Federation of Enterprises in Belgium (FEB);
- Transparency International;
- ...

In case of a problem overseas, Belgian companies are advised to contact the economic and commercial attachés at the Belgian Embassy in the country where the problem is being experienced. If necessary, it is also possible that the national committee of the ICC, the world business organisation, is able to provide useful information.

To report a prejudice for the European Union in particular, contact the European Anti-fraud Office (OLAF) on the dedicated page of its website: https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud_en

To report the behaviour of a Belgian entity in Belgium, contact the police and judiciary authorities.



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Some useful references

FPS Justice: http://justice.belgium.be/fr/themes_et_dossiers/securite_et_criminalite/corruption

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ICC (2015). Anti-Corruption Third Party Due Diligence: A Guide for Small and Medium Size Entities: <http://www.iccwbo.org/Data/Policies/2015/ICC-Anti-corruption-Third-Party-Due-Diligence-A-Guide-for-Small-and-Medium-sized-Enterprises/>

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ICC (2012). ICC Anti-corruption Clause: <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/buisness-ethics-documents/icc-anti-corruption-clause/> See also the version of this clause in English in the annex of this guide)

ICC (2011). ICC Rules on Combating Corruption: <http://www.iccwbo.org/Data/Policies/2011/ICC-Rules-on-Combating-Corruption-2011/>

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OECD, UNODC, The World Bank (2013). Anti-Corruption & Ethics Compliance Handbook: <https://www.unodc.org/documents/corruption/Publications/2013/Anti-CorruptionEthicsComplianceHandbook.pdf>

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OECD (2005). Belgium - Examination of the application of the Convention and Recommendation of 1997: <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/2385130.pdf>

RESIST (United Nations Global Compact, WEF, ICC, TI). Training tool designed for all companies, regardless of their size. E-learning version (also in French): <http://www.icc-france.net/>. Publication: http://www3.weforum.org/docs/WEF_PACI_RESIST_Report_2011.pdf

Transparency International. Corruption Perceptions Index: <http://www.transparency.org/research/cpi/overview>

UN Global Compact (2013). A Guide for Anti-Corruption Risk Assessment: https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf

United Nations (UNODC): <http://www.unodc.org/unodc/en/corruption/index.html>

United Nations (United Nations Global Compact and UNODC). Free e-learning tool (subtitled in French or Dutch) for a better understanding of the fight against corruption in enterprises: <http://thefightagainstcorruption.org/>

World Bank. Worldwide Governance Indicators (WGI): www.govindicators.org



Annex. Example of anti-corruption clause

Paragraph 1

Each Party hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

Paragraph 2

The Parties agree that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with and that they will take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with the following provisions:

Paragraph 2.1

Parties will prohibit the following practices at all times and in any form, in relation with:

- a public official at an international, national or local level
- a political party, a head of a political party or a candidate to a political function, and
- a director, executive or employee of one of the parties

whether these practices are engaged in directly or indirectly, including through third parties:

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

Bribery often includes:

- (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting Party, their close relatives, friends or business partners or
 - (ii) using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government or party officials, or to employees of the other contracting Party, their relatives, friends or business partners.
- b) Extortion or Solicitation is the demanding of a bribe, whether or not coupled with a threat if the demand is refused. Each Party will oppose any attempt of Extortion or Solicitation and is encouraged to report such attempts through available formal or informal reporting mechanisms, unless such reporting is deemed to be counter-productive under the circumstances.
- c) Trading in Influence is the offering or Solicitation of an undue advantage in order to exert an improper, real, or supposed influence with a view of obtaining from a public official an undue advantage for the original instigator of the act or for any other person.
- d) Laundering the proceeds of the Corrupt Practices mentioned above is the concealing or disguising the illicit origin, source, location, disposition, movement or ownership of property, knowing that such property is the proceeds of crime.

“Corruption” or “Corrupt Practice(s)”, as used in this ICC Anti-corruption Clause, shall include Bribery, Extortion or Solicitation, Trading in Influence and Laundering the proceeds of these practices.

Paragraph 2.2

With respect to third parties, subject to the control or determining influence of a Party, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Party’s behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Party or as subcontractors in the supply chain, Parties should instruct them neither:

- to engage nor to tolerate that they engage in any act of corruption;
- not use them as a conduit for any corrupt practice;
- only hire them only to the extent appropriate for the regular conduct of the Party’s business; and
- pay them more than an appropriate remuneration for their legitimate services.

Paragraph 3

If a Party, as a result of the exercise of a contractually-provided audit right, if any, of the other Party’s accounting books and financial records, or otherwise, brings evidence that the latter Party has been engaging in material or several repeated breaches of Paragraphs 2.1 and 2.2 above, it will notify the latter Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If the latter Party fails to take the necessary remedial action or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures, as described in Article 10 of the ICC Rules on Combating Corruption 2011, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organization. If no remedial

action is taken or, as the case may be, the defence is not effectively invoked, the first Party may, at its discretion, either suspend or terminate the Contract, it be-

ing understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law.

Paragraph 4

Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with this anti-corruption clause.