

Business Principles for Countering Bribery: Guidance Document

Transparency International

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Whilst this Guidance Document to the Business Principles for Countering Bribery is published by Transparency International, the contents do not necessarily constitute, and do not purport to constitute, definitive statements of TI policies on the wide range of important business practice topics covered. Many of these issues continue to be discussed within the TI family and policy will continue to evolve over time, making it inappropriate to try to establish definitive policies in such a rapidly developing area.

Foreword

Transparency International is pleased to provide this Guidance to the Business Principles for Countering Bribery to assist those wishing to implement an anti-bribery programme or to review their own practices.

The development of the Business Principles was facilitated by Transparency International in partnership with Social Accountability International as part of TI's commitment to foster greater probity in both the private and public sectors. TI, by working in coalition with a variety of partners, aims to seed and develop practical approaches to fighting corruption. The Wolfsberg anti-money laundering principles and the TI Integrity Pact are examples of current parallel projects.

TI has been active in encouraging anti-bribery international instruments and welcomes the recent signing of the UN Convention Against Corruption and the introduction of the UN Global Compact Tenth Principle against Corruption. These are important developments though it will take some time for the Convention to result in changes in national legislation and then for this to be enforced in all signatory countries.

Nevertheless, the UN Convention, other conventions such as the OECD Convention and initiatives such as the Global Compact 10th Principle are signals to the private sector that corruption cannot be tolerated and that companies must examine critically how they implement their systems to counter bribery. Too few companies have effective systems and, recognising that companies need tools to help them break the cycle of corruption, the Business Principles provide for the first time a comprehensive approach to countering bribery by companies. The approach ranges from internal policies and practices to how to deal with business partners and the supply chain. The Business Principles have been tested widely through field-tests and workshops and have been endorsed or adopted by leading multinationals.

The development of the Business Principles follows TI's approach of working in coalition and is seen by TI as the first stage of a long-term process in working with the private sector to develop and raise the standards of practice in countering bribery. The development of the Business Principles was undertaken by a Steering Committee drawn from companies, academia, trade unions and other non-governmental bodies and the Steering Committee continues, with additional members, to oversee the initiative. The Business Principles reflect the consensus view of the Steering Committee but do not necessarily reflect the policies of its individual members on particular topics. The members of the Steering Committee for the feasibility study are listed in the Business Principles document.

The content of the Business Principles is pitched in a pragmatic way at a level of good practice so that most enterprises will find value in applying the framework and will not be deterred by the complexity of the task or concern about the demand it might place on resources. The welcome given to the Business Principles as a practical tool to aid companies in a difficult business area has been very encouraging. International demand in both North and South and from different industry groups shows that a tool emphasising how to implement a no-bribes policy is really needed. With the adoption

of the 10th Anti-Corruption Principle in the Global Compact in June 2004, this need has become even more urgent.

The Business Principles will continue to be developed and strengthened as experience is gained and standards of practice rise. They will also evolve to meet increasing demands from civil society and stakeholders for greater governance and probity in business. The practices of the very best companies may exceed in some areas the requirements set out in the Business Principles. Over time these practices may become the norm for most businesses and perhaps eventually be incorporated in the Business Principles. It is also hoped that the Business Principles will provide a basis for sharing information on best practice.

The present Guidance Document will prove useful to companies in understanding the background and content of the Business Principles including practical guidance for an implementation process.

TI will continue to encourage the public and private sectors in their efforts to counter bribery and looks forward to developing the use of the Business Principles by companies.

Jermyn Brooks
Transparency International
Chairman, Steering Committee, Business Principles for Countering Bribery

November 2004

1 Introduction

Transparency International (TI) has produced this Guidance Document to the Business Principles for Countering Bribery to provide background and clarification to the Business Principles and to assist enterprises implementing or reviewing their anti-bribery Programmes.

Bribery presents an issue of huge magnitude. According to the World Bank, bribes cost the global economy over US\$1 trillion every year¹. During the last few years the need for an implementation framework for businesses to counter bribery has heightened dramatically. The legislative environment has changed significantly with the introduction of the international conventions, notably the OECD Convention² in 1997 which criminalised the bribery of foreign public officials and recently the signing in December 2003 of the first global anti-corruption convention, the UN Convention against Corruption. The UN Convention paved the way for the introduction in June 2004 of a 10th Anti-Corruption Principle in the UN Global Compact. These developments have taken place against a background of growing public concern about high profile corporate scandals, the governance and accountability of business and the probity of corporate executive behaviour. The role of political donations has come under scrutiny and the tragic events of September 11th added urgency to the anti-corruption movement by identifying the links between corruption and terrorism.

The Business Principles initiative was started in 1999 as TI and its partners believed the work could complement the OECD anti-bribery Convention and also in response to suggestions from companies and civil society. It was decided to carry out a feasibility study and a Steering Committee was then formed, drawn from representatives of business and civil society, to work together to consider whether a consensus framework could be produced for use by the private sector.

In recent years, there have been increasing requirements placed on the private sector in relation to business ethics and the wider concept of corporate responsibility. In a market economy, business seeks to maximise returns to its shareholders but the notion that "the bottom line alone justifies everything" has been challenged by the realisation that a short-term focus on the "bottom line" needs to be replaced by a longer-term orientation to the demands of stakeholders as a prerequisite for corporate sustainability.

Corrupt business practices pose a serious risk to the longer-term sustainability of business and can seriously undermine reputation and shareholder value. In response to the changing business environment of increased stakeholder pressure for broader accountability and sounder business practices, companies are moving beyond strict

¹ World Bank, April 2004

² OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997

law abidance to develop codes of conduct and business principles with the purpose is to implement internal policies based on clear ethical standards.

The recent international conventions and the UN Global Compact Tenth Principle against Corruption have created a momentum in the movement to contain corruption. It is no longer possible for companies or employees to resort to corrupt practices and bribes without risking serious domestic and international consequences. The private sector must meet the new requirements being placed on it and recognise the business case for effective anti-bribery practices. The Business Principles for Countering Bribery offer enterprises a practical tool to help them with implementation of their anti-bribery programmes.

A framework for business

The Business Principles are intended for use by enterprises both as a tool that reflects good anti-bribery practice and for benchmarking an enterprise's own practices. They should be used as a starting point for assessing or developing practice. Countering bribery is not only an expression of an enterprise's values but is a risk management exercise. Different enterprises will be subject to varying levels of risk and will need to place varying levels of emphasis on the topics covered by the Business Principles. The Business Principles are specific to the question of bribery and therefore in no way replace a full Code of Conduct but represent a detailed elaboration of one aspect of issues covered by a Code of Conduct.

Focus on countering bribery

The Business Principles focus on bribery and not corruption in general. Corruption is a far broader concept and addressing this would have required additional topics beyond the broad range included in the initiative. The Business Principles include all the main topics which are recognised as part of the wider corporate agenda for countering bribery, with the exception of money laundering.

The definition of bribery used for the Business Principles is: "An offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something which is dishonest, illegal or a breach of trust, in the conduct of the enterprise's business."³

This is a broad definition related to enterprises. It covers the abuse of office, breach of trust or illegal acts by an employee or a third party acting on behalf of the enterprise. Bribery can occur both actively and passively. In active bribery, the employee or representative of the enterprise may act corruptly by giving or attempting to make a bribe. Conversely, in passive bribery, an employee or representative of the enterprise may act corruptly by seeking, agreeing to accept or accepting a bribe.

The UK's Law Commission provided a useful definition of corruption in a draft Bill on Corruption in 2000⁴. The definition (amended slightly for this Guidance Document) said: "The essential concept [of corruption] is that of influencing someone to act, in the

³ Definition developed by the Steering Committee.

⁴ Legislating the Criminal Code: Corruption, No. 248, March 1998

belief that he or she will probably do so *primarily* in return for the conferring of an advantage (offering a bribe) on that person or a third party.

Thus, a person who confers an advantage should be regarded as doing so corruptly if he or she intends a person, in performing his or her functions, to do an act or an omission, and he or she believes that if the person did so, it would probably be *primarily in return for the conferring of the advantage*.

Similarly, 'acting corruptly' is also accepting an advantage, believing that it was offered corruptly (accepting a bribe), or acting as the result of such an advantage (acting on a bribe). In every case, it is immaterial whether it is the person being bribed, or a third party, who receives the advantage. It is also immaterial whether or not the person accepting the bribe actually acts, or fails to act, as required; the accepting in itself is corrupt.

Embedding values and a culture for countering bribery

A key consideration in developing the Business Principles was the balance between a values-based approach and a compliance-based approach. It is insufficient to rely entirely on a detailed set of rules requiring compliance by employees and business partners. Compliance is usually understood as ensuring observation of legal requirements. For any international enterprise, a legally based compliance programme can quickly become unmanageable because of the different laws in operation in each country. Many enterprises have therefore fostered values and overall business policies so that their anti-bribery strategies can be carried out effectively. To achieve this, enterprises need to embed a culture of avoiding bribery into their business functions whereby employees and business partners do more than just comply with rules but are motivated by ethically based business policies and given the leadership, skills and resources to make the enterprise's anti-bribery processes effective.

The Business Principles contain the elements of both a values based and a compliance based approach in an attempt to achieve an effective balance. This is dealt with later on in some detail.

Good practice versus best practice

The Business Principles are positioned at good rather than best practice level to ensure that they have potential for wide spread adoption by enterprises. The three field tests that were conducted in India, Azerbaijan and Switzerland tested the Business Principles against real-life situations and confirmed that this approach was sensible. We envisage the Business Principles being further strengthened over time but at this stage they are designed to ensure that they are of immediate value and of practical use to a wide range of enterprises, including smaller ones.

Private-to-private bribery

The Business Principles cover bribery in any form, whether of public officials or private-to-private bribery. From an enterprise's perspective, it makes no difference whether the other party is a public official or in the private sector. Bribery may even occur within an enterprise such as an employee making a bribe to win a promotion or to obtain an appointment for a friend or relative.

The potential for bribery in the private sector is as great as in the public sector. The largest international companies generate revenues exceeding the GDP of many countries. The division between the public sector and the private sector has also become blurred through privatisation, public finance initiatives, joint ventures, transfer of responsibilities to executive agencies and outsourcing of activities. The changes are providing opportunities for evading prohibitions that apply only to bribery of public officials. In a global economy, bribery within the private sector crosses borders, just as bribery of public officials has become international.

For these reasons the Business Principles do not distinguish how bribery takes place, whether it is private-to-private bribery or bribery of the public sector.

Domestic and international bribery

While the focus of recent regulatory effort has been to criminalise bribery of foreign public officials, the Business Principles extend equally to domestic bribery. The role of the Business Principles will be to assist enterprises to develop their policies and processes to counter the risk of bribery both at home and abroad.

Size of enterprise

The Business Principles are intended for use by enterprises of all sizes.

Enterprises of all sizes must abide by the laws relating to bribery. The consequences of bribery for a small enterprise can be relatively as severe to its operations as to those for a larger enterprise. Small and medium enterprises when first presented with the Business Principles might feel that they are tailored for the use of larger enterprises as they present a comprehensive approach to countering bribery that could appear to be beyond the needs and resources of SMEs. However, even a small enterprise can make the application of the Business Principles manageable by tailoring the Programme to the specific risks of its activities. TI is planning to produce tools tailored for SMEs to assist them in the implementation of the BPCB.

The value of the Business Principles is to provide a ready-made framework to which SMEs can refer.

Forms of enterprise

The term “enterprise” is used throughout the Business Principles rather than “company” to recognise the varying forms of structures that exist in the private sector. “Enterprise” as used in the Business Principles includes any private sector commercial entity such as, public or private limited joint stock companies, sole proprietorships, government-owned executive agencies, partnerships, limited liability partnerships and joint ventures. The legal structure of an enterprise will shape its approach to governance and accountability. A public company will be accountable to shareholders or a professional firm to its partners.

Family owned businesses

The public limited joint stock company is commonly perceived as the dominant form for larger companies particularly those in the West but the family controlled business is the most common business model world-wide.

Enterprises wholly owned or controlled by a family, may have different approaches to governance and transparency from enterprises that have a wide spread of share ownership and have pressures to maintain the share price and deliver short-term earnings. Whilst family-run enterprises may have an advantage that they can take a longer view, research shows that for US companies dominated by families, those with strong family control and weak non-executive directors do less well than those with strong non-family directors.⁵ Like joint stock companies, family firms, cannot afford poor governance and controls. The Business Principles are thus equally important for family companies as for other forms of enterprise.

Assurance, verification and certification

The Business Principles are not a standard and they do not place specific requirements on enterprises for performance or to seek certification from an external body. However, they are capable of being used by enterprises as a starting point for developing systems for assessing performance that can be verified. Such assessment can span the range from internal audit to third party independent assurance, verification and certification. Enterprises may choose to gain experience and spread costs by applying assessment in a staged process e.g. a multinational corporation may begin with one of its subsidiaries or a domestic operation will start with an operating division. The specialist certification agencies will have a key role in developing the reporting context for such verification. Experience in other sectors suggests that some enterprises will wish to seek external verification or assurance of their compliance with their Programme and the Business Principles Steering Committee is examining the potential for this.

Structure of the Guidance Document

The Guidance Document provides comment on each section of the Business Principles and, for ease of reference, the relevant section of the Business Principles is stated before each section in the Guidance Document. A three part format is used consisting of background, implementation and, for some sections, questions and answers on key topics. Some sections provide case studies of good practice, examples of bribery cases and issues. A reading list is provided in Section 7. Links to websites are also given, either placed with relevant text or in a list in section 8, sections 9 and 10. Section 11 provides examples of current cases and concerns and a Glossary of key terms is given in Section 12.

⁵ Ronald Andersen, American University and David Reeb, Temple University.

2 The Business Principles

The Business Principles state:

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

These Business Principles are based on a commitment to fundamental values of integrity, transparency and accountability. Enterprises shall aim to create and maintain a trust-based and inclusive internal culture in which bribery is not tolerated.

The Programme is the entirety of an enterprise's anti-bribery efforts including values, policies, processes, training and guidance.

Background

The Business Principles are founded on the two Principles stated in this section. The use of "shall" emphasises the need for enterprises to meet the requirements of the Principles.

The first Principle makes clear that enterprises must prohibit, not tolerate, any form of bribery. The use of the words "direct or indirect" means that the enterprise shall not only prohibit bribery (or attempts to bribe) within its operations in direct contact with third parties but must also not tolerate bribery carried out through intermediaries.

The Principle requiring that the enterprise implement a Programme is a means to implement the first Principle. It is of such importance that it has been listed as a Principle though strictly speaking it is not a Principle but a process requirement. The term "Programme" as used in the Business Principles is the entirety of an enterprise's anti-bribery efforts including values, policies, implementation, processes, activities and guidelines.

3 Aims

The Business Principles state:

The aims of the Business Principles are to:

Provide a framework for good business practices and risk management strategies for countering bribery.

Assist enterprises to:

- eliminate bribery*
- demonstrate their commitment to countering bribery*
- make a positive contribution to improving business standards of integrity, transparency and accountability wherever they operate.*

Background

The key aim – ensuring that business is conducted in a context free of bribery – is a business objective and places the emphasis on the benefits of applying the Business Principles as being part of a business case.

Bribery is part of the wide range of risks that the Board and management of an enterprise have to assess and take steps to minimise.

Evidence of the application of the Business Principles can be a pre-qualification requirement in major contracts. The World Bank in September 2004 introduced a requirement that companies bidding on large Bank-financed projects must certify that they “have taken steps to ensure that no person acting for [them] or on [their] behalf will engage in bribery”.

The application of the Programme does not mean that an enterprise is proof against bribery – any enterprise could be subject to an exceptional act of bribery. If a prosecution arises from a violation, the presence of a Programme can in some jurisdictions be pleaded in mitigation of a court judgement or sentence.

Demonstrating commitment is important as it provides leadership to employees and business partners and sends a message to those that might seek to act corruptly in their dealings with the enterprise. It is also a useful part of a reputation enhancement strategy.

Finally, enterprises are given the aim of building anti-bribery capacity wherever they operate. It is in an enterprise’s interest to build the integrity of the environments within which it operates. By working with other enterprises, with governments, civil society and the general public, anti-bribery systems can be strengthened and cultures encouraged which reduce bribery.

4 Development of a Programme for Countering Bribery

The Business Principles state:

4.1 An enterprise should develop a Programme reflecting its size, business sector, potential risks and locations of operation, which should, clearly and in reasonable detail, articulate values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control.

4.2 The Programme should be consistent with all laws relevant to countering bribery in all the jurisdictions in which the enterprise operates, particularly laws that are directly relevant to specific business practices.

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

4.4 The enterprise should ensure that it is informed of all matters material to the effective development of the Programme by communicating with relevant interested parties.

Section 4.1 requires that an enterprise develop a Programme tailored to its particular circumstances to assess the specific risk of incidents of bribery. This will form part of the enterprise's wider risk assessment process. The development of a Programme is not a one-off exercise but a continual improvement process of implementation, monitoring, reporting and improvement.

Section 4.2 recognises that an enterprise operating in several countries will necessarily be subject to the anti-bribery laws in each of them. However, the principles elaborated in the Programme should be applied universally in all countries.

The basis for Section 4.3 is that an effective Programme will depend on the cooperation, motivation and the skills of the enterprise's employees. Such successful involvement of employees will be achieved effectively when the process is genuinely interactive and employees contribute to the development of the Programme. This will have the advantage of setting realistic policies and an appropriate process and will reinforce the communication of the Programme through the interaction with the employees.

Trade unions and other employee representative bodies, where they exist, should be involved both through informal discussions and a formal consultation process. Departmental meetings, appraisals and surveys should also focus on the development of the Programme. This will ensure the robustness of the process and will help particularly in areas such as training, establishing effective complaints channels, sanctions and disciplinary processes. Training could be given to union officials as well as employees. The involvement of trade unions will encourage them to promote the enterprise's Programme and thereby add their authority to the anti-bribery efforts.

Section 4.4 recognises the growing importance for enterprises to take account of the expectations of "stakeholders". Consulting with interested parties is an important way for the enterprise to detect not only whether external perceptions of its operations are consistent with its internal perceptions but to obtain information on how it might improve its practices.

4.1 International conventions and their main implications for the private sector in countering bribery⁶

UN Convention against Corruption

This is the first anti-corruption global convention and was negotiated and agreed among approximately 129 nations. It was signed in Mexico in December 2003 and is not expected to enter into force until at the earliest by end of 2005. It covers public and private sector corruption and has a wide interpretation of corruption offences, including domestic and foreign bribery; embezzlement; trading in influence and money laundering. The Convention is significant in recognising the role of the private sector and of private sector ("private-to-private") corruption as part of the corruption problem

⁶ The information in this section has been drawn largely from an overview prepared by Gillian Dell of Transparency International for the Utstein Anti-corruption Resource Center: <http://www.u4.no/document/conventions/intro.cfm>

and in introducing provisions on asset recovery. For the private sector, it sets out the need to prevent corruption and a range of measures. These include effective disclosure, improved accounting and auditing standards, and a mandatory provision to disallow the tax deductibility of bribes. The weaknesses of the Convention are that there are no concrete provisions on a monitoring mechanism and a current lack of resources for implementation. Also, many provisions are non-mandatory, creating risk of a failure to develop common standards e.g. political party funding, private sector corruption or whistleblower protection. There is also a lack of mandatory requirement of nationality jurisdiction and very limited coverage of officials of international organisations

The OECD Convention on Countering Bribery of Foreign Public Officials in International transactions

The Convention was signed in Paris in 1997 and entered into force on 15 February 1999. It is open to all 30 OECD countries and five non-member countries (Argentina, Brazil, Chile, Bulgaria and Slovenia). Additional accessions are under consideration. Instruments of ratification or acceptance of the convention have been deposited by 35 signatory countries and all have passed laws making foreign bribery a crime. The Convention was introduced in an attempt to eliminate the "supply" side of bribery in the greatest area of concern – public contracts and is exclusively focused on the supply side of the bribery of foreign public officials and the sanctions for such activity. The Convention provides a broad, clear definition of bribery, makes it a crime to offer, promise or give a bribe to a foreign public official in order to obtain or retain international business deals. The aims for its introduction were to reduce the flow of corrupt payments, to set high standards for fighting corruption and to promote policy change and corporate culture change. Monitoring of enforcement is in process but is taking longer than envisaged and so far there have been few prosecutions outside the USA resulting from the Convention. There are some loopholes in the Convention and these include that it does not cover subsidiaries operating in non-OECD countries and there is inadequate coverage of foreign political parties and party officials, private-to-private bribery is not covered (but this topic is now under consideration) and it excludes coverage of facilitation payments.

The Organization of American States (OAS) Inter-American Convention Against Corruption

This was the first multilateral anti-corruption treaty instrument negotiated in the world. It represents regional consensus about what states should do in the areas of prevention, criminalisation, international cooperation and asset recovery.. It covers public sector corruption, supply and demand sides. It has a wide interpretation of corruption offences, including bribery, domestic and foreign; illicit enrichment; money laundering and concealment of property. Parties commit to criminalise a wide range of corrupt acts; step up enforcement; enhance legal and judicial cooperation; and strengthen preventive measures, such as codes of conduct for public officials, disclosure of assets, and whistle blower protection. The main weaknesses are a) that there are no provisions on an implementation process, or, more specifically, on monitoring; this was only developed later and there is a current lack of resources for a follow-up mechanism b) that the provisions on preventive measures are drafted very broadly, allowing for wide interpretation and discretionary practice c) the requirement of sanctions against

businesses is limited to a provision on trans-national bribery and there are no specific standards for sanctions.

The African Union Convention against Corruption

The African Convention on Preventing and Combating Corruption (AU Convention) was adopted in Maputo on 11 July 2003. It represents regional consensus on what African states should do in the areas of prevention, criminalisation, international cooperation and asset recovery. It covers public and private sector corruption and a wide range of offences including bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property. The Convention concentrates on four main approaches to combating corruption: prevention, punishment, co-operation and education.

The Convention guarantees access to information and the participation of civil society and the media in monitoring that access. Other articles outlaw the use of funds acquired through illicit and corrupt practices to finance political parties and require state parties to adopt legislative measures to facilitate the repatriation of the proceeds of corruption.

The main weaknesses of the AU Convention are that the access to information provision is too limited; there are no provision on statutes of limitation; there is no requirement of liability of companies and no provision on sanctions. Importantly, there is no real peer review process envisaged and there is a current lack of resources for a follow-up mechanism.

Council of Europe Conventions

The Criminal Law Convention on Corruption

This Convention was adopted in November 1998 and opened for signature on 27 January 1999. Up to now it has been signed by 30 countries and ratified by one. It is open to the accession of Council of Europe Member States and of non-member States that participated in its drawing up (US, Japan, Canada, Mexico). Becoming a party to the Convention implies automatic submission to monitoring procedures.

It is one of the most comprehensive of the anti-corruption conventions. It covers public and private sector corruption and a broad range of offences including bribery (domestic and foreign), trading in influence, money laundering and accounting offences.

In addition, the Convention deals with substantial or procedural issues, such as jurisdiction, sanctions and measures, liability of legal persons, setting up of specialised authorities for the fight against corruption, co-operation among authorities responsible for law enforcement and control, and protection of witnesses and persons co-operating with the judicial authorities. Finally, it provides for enhanced international co-operation in the prosecution of the corruption offences defined thereon, in particular regarding extradition, mutual judicial assistance and the exchange of spontaneous information.

The main weaknesses are that there are few preventive measures, there is no provision on statutes of limitation and parties may make reservations to the Convention in relation to some provisions.

Council of Europe Civil Law Convention on corruption

In 1997, a feasibility study showed that it was possible to conceive a number of scenarios in which the use of civil law remedies might be useful against given forms of corruption. On the basis of this study, the Council of Europe elaborated a Civil Law Convention on corruption. The Convention was adopted in Strasbourg on 4 November 1999. It is the first attempt to define common international rules in the field of civil law and corruption. In particular, it provides for compensation for damages as a result of acts of corruption. It covers public and private sector (private-to-private) corruption and the corruption offences covered use a broad definition "requesting, offering, giving or accepting of a bribe or any other undue advantage or the prospect thereof", which gives the Convention a relatively wide scope. The convention provides civil law remedies for injured persons, compensation for damage from corruption; invalidity of corrupt contracts (null and void) and whistleblower protection.

The main benefits of the Convention include:

- Providing for civil remedies for persons who have suffered damage as a result of acts of corruption, including compensation for a broad range of damages
- Requiring that the State or appropriate authority is liable to compensate for the corrupt act of a public official
- Requiring whistleblower protection of employees
- Requiring measures ensuring accounts present a true and fair view of the company' s financial position and that auditors b required to confirm this

The main weakness is that there is no restriction on the use of banking secrecy.

The European Union Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States

This Convention is an attempt on the part of the European Union to address forms of malfeasance which are harmful to its own financial interests. It deals only with conduct on the part of officials of the European Community and its Member States. The conduct to which it applies is essentially bribery and similar offences which States Parties are required to criminalise. It does not deal with fraud, money laundering or other corruption-related offences.

5 Scope of the Programme

The Business Principles state:

In developing its Programme for countering bribery, an enterprise should analyse which specific areas pose the greatest risks from bribery.

The Programme should address the most prevalent forms of bribery relevant to the enterprise but at a minimum should cover the following areas:

Background

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

The TI Corruption Perceptions Index, the TI Bribe Payers Survey and the TI Global Corruption Barometer all published by Transparency International, can assist enterprises in identifying countries and sectors where high risks of bribery exist. The TI Global Corruption Reports, published annually, provide an overview of the state of world corruption. The 2004 report focuses on political corruption and presents 34 country reports.

The scope of the Business Principles is confined to countering bribery and Section 5 identifies and provides guidance for the specific areas most likely to pose dangers of bribery or for which it may be difficult to determine whether an act constitutes bribery.

Money laundering, although it poses a significant risk, is not referenced specifically in the Business Principles. The more complicated position for banks, particularly with reference to other organisational and reputational risks, is covered by the Wolfsberg Principles.

5.1 Bribes

The Business Principles state:

5.1.1 The enterprise should prohibit the offer, gift, or acceptance of a bribe in any form, including kickbacks, on any portion of a contract payment, or the use of other routes or channels to provide improper benefits to customers, agents, contractors, suppliers or employees of any such party or government officials.

5.1.2 The enterprise should also prohibit an employee from arranging or accepting a bribe or kickback from customers, agents, contractors, suppliers, or employees of any such party or from government officials, for the employee's benefit or that of the employee's family, friends, associates or acquaintances.

Background

Section 5.1 expands on the Principle stated in section 2 – that the enterprise should prohibit bribery in any form. The section distinguishes between bribery initiated by an enterprise as part of its operations and bribery carried out by an employee without the enterprise's knowledge.

The core of an enterprise's Programme must be the prohibition of bribery – a clear statement backed up by systems and practices that the enterprise will not tolerate its employees, or third parties representing the enterprise, from being involved in bribery whether by offering, soliciting for, demanding or accepting bribes. The enterprise

should extend this requirement to its dealings with business partners such as contractors and suppliers.

“Kickbacks” are a particular form of bribery and typically have two distinguishing features. A kickback is often initiated and received by a corrupt employee without the knowledge of the employer and it usually occurs simultaneously with or after the completion of a business transaction.

5.2 Political contributions

The Business Principles state:

5.2.1 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.

5.2.2 The enterprise should publicly disclose all its political contributions.

Background

The intent of this section is to prevent political contributions being used as bribes to win contracts or to purchase access to and influence policy-makers to achieve a specific benefit for the enterprise. The section does not require enterprises to prohibit political contributions as they can serve a legitimate purpose in supporting democratic processes in some countries. However, some enterprises have prohibited all political contributions as they can be misused to buy unfair advantages, may lead to corruption of political processes and present an area of risk of damage to the enterprise's reputation. A survey by Ashridge Business School, England, in 2002 found that 52% of 700, mainly senior executives questioned said that companies should be stopped from funding politicians.⁷

The Enron affair highlighted the pervasiveness of political contributions and the risks of soft contributions. Like many US companies, Enron used political contributions to gain access to politicians. In the 2000 US Presidential Campaign, Enron gave \$2.5 million in contributions to the Democrats and Republicans and these were weighted nearly three-quarters to Republicans. Through hundreds of smaller donations, Enron contributed to nearly half of the 435 members of the US House of Representatives and almost three-quarters of the 100 member US Senate. Even so, Enron ranked only 36th among corporate political contributors. As a result of the Enron affair, the US campaign financing system was changed radically with a ban on soft contributions.⁸

Some countries do not require disclosure of political contributions but as transparency is the best defence against malpractice, the Business Principles require that any political contributions should be disclosed to further the aim of countering bribery.

The Business Principles do not specify how the public disclosure should be made but the method of disclosure should provide easy public access.

⁷ Ashridge Corporate Responsibility Survey 2002

⁸ Financial Times, 16 January 2002

Definition of political contributions

Political contributions include any contribution, made in cash or in kind, to support a political cause. Contributions in kind can include gifts of property or services, advertising or promotional activities endorsing a political party, the purchase of tickets to fundraising events and contributions to research organisations with close associations with a political party. The release of employees without pay to undertake political campaigning or to stand for office could also be included in the definition.

Implementation

Conditions to apply if an enterprise chooses to make political contributions

The enterprise should set out its policy and criteria for political contributions. The enterprise should seek to avoid situations where the contribution could create the perception that the intention is to obtain a business contract or advantage as a direct result of the contribution.

If an enterprise 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 enterprises follow the practice of giving contributions to several competing parties, seeking to support the democratic process in the country rather than to obtain any advantage, short or long term.

If an enterprise wishes to support the political process on a non-partisan basis an example of such 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 at the last election. Enterprises could choose to make the payments at arms-length using an intermediary body or a committee comprised of non-executive directors.

Fees paid to politicians as consultants need to be reviewed carefully to ensure that these are not excessive for the work undertaken and that they will not create a conflict of interest. The giving of Board or other positions by an enterprise to politicians leaving office should be included in any review of practice. Enterprises should also review any benefits in-kind or privileges that are made available to politicians such as transport, provision of property, facilities and facilities on other than commercial terms.

Questions

Why are political contributions not prohibited in the Business Principles?

An outright prohibition of political contributions remains the exception rather than the rule. Since the Business Principles are pitched at the level of good practice, they do not prohibit political contributions. There is a further argument that it would be wrong to prohibit political contributions as they can support the democratic process by providing necessary funds to enable political parties to develop or survive. Nevertheless, political contributions made by enterprises are vulnerable to abuse and recent major scandals in many countries confirm this. The controversies associated with political donations have led to debate whether political parties should receive state funding.

What constitutes a political organisation or individual?

Political organisations or individuals, other than political parties, include election committees, party affiliated organisations, party aligned research bodies, pressure or lobby groups, causes that are politically aligned, party officers and candidates.

Why are employees specified?

This is to exclude employees being used by an enterprise to make political contributions using funds provided by the enterprise as remuneration e.g. special bonuses.

Can an enterprise make contributions in jurisdictions in which it is not legally incorporated?

The Business Principles at present do not exclude this but enterprises should observe applicable laws. The enterprise should take into account the laws of both the enterprise's home country and of the country where the political contribution is made.

How do the International Conventions and the FCPA treat political contributions?

The UN Convention only makes specific mention of political funding in the section on Public Sector but it is unsatisfactory in not directly requiring corruption in political party finance to be a mandatory offence.

It requires that "each State Party shall consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."

The OECD Convention has been criticised as it does not directly prohibit bribery of foreign political parties or their officials except in circumstances such as a politician holding public office or de facto performing a public function such as that of a political party official in a state dominated by a single party. This also applies to the Inter-American Convention against Corruption.

The EU Criminal Law Convention on Corruption requires parties to criminalise bribery of members of domestic, foreign and international public assemblies.

The African Union Convention on Preventing and Combating Corruption defines a public official as including those who have been selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State at any level of its hierarchy. Further, it requires each State Party to adopt legislative and other measures to (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (b) incorporate the principle of transparency into funding of political parties.

The FCPA in its basic anti-bribery prohibition makes it unlawful for US Corporations to pay, offer or promise to pay a bribe to a foreign political party, party officials or candidates for foreign political office with the aim of obtaining or retaining business.

5.3 Charitable contributions and sponsorships

The Business Principles state:

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

5.3.2 The enterprise should publicly disclose all its charitable contributions or sponsorships.

Background

The Business Principles seek to prevent indirect as well as direct bribery. Appropriate caution should be exercised to prevent charitable contributions and sponsorships being used for indirect bribery through “front” charitable, sporting or philanthropic organisations.

Reporting charitable contributions and sponsorships openly in an accessible manner is a way of enabling public scrutiny to take place.

Definitions of charitable contributions and sponsorships

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

Sponsorship is a transaction where the enterprise makes a payment, in cash or in kind, to associate its name with an activity or other organisation and receives in consideration for the sponsorship fee, rights and benefits such as the use of the sponsored organisation’s name, advertising credits in 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.

Implementation

Policies and processes

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. This is particularly true when charitable contributions form part of a social investment programme. Enterprises should arrange to have designated levels of approval of contributions with appropriate counter checks and reporting.

As a normal business transaction, sponsorship should be approved and paid within the normal purchasing process. Enterprises should ensure that sponsorships are not made where they could influence a current bidding situation.

Due diligence

Enterprises should ensure that when making a charitable payment or sponsorship there is no potential conflict of interest that could affect a material transaction. This could occur where a person who can 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.

Equally, employees and business partners of the enterprise should be given guidance on avoiding conflicts of interest arising from contributions or sponsorships made to organisations with which they have links.

The enterprise should take care to apply "know your business partner" standards to dealing with charitable organisations and recipients of sponsorship to ensure that the recipient organisation is not a conduit for bribery. The enterprise should review the viability of the recipient organisation, its ability to perform the activity for which the donation or sponsorship is given and require that it 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.

Monitoring, documentation and reporting

The enterprise 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 policy and guidelines.

Enterprises which prefer to make their charitable contributions in a discreet way may have concerns that reporting publicly could be taken as seeking favourable publicity for their contributions activities but if the contributions are reported in a functional way e.g. listed in the Annual or Social Reports then this concern may be overcome.

Bribery example

Use of charitable contributions was a particular favourite of Imelda Marcos when she was first lady of the Philippines. In the 1980s, she told a Canadian businessman who wanted to receive a large construction contract in the Philippines that it would help his chances if he donated money for the construction of a new hospital in the country. He agreed - until she asked him to send the money to a charity she controlled. Suspecting this was actually a request for a bribe, he refused, and focused all his efforts on winning the contract legitimately. Although it took much longer, and cost more than originally budgeted, he eventually won the contract.⁹

5.4 Facilitation payments

The Business Principles state:

5.4.1 Recognising that facilitation payments are a form of bribery, the enterprise should work to identify and eliminate them.

Background

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, can be out of all proportion to the small payment demanded.

Such payments are illegal in most countries but they are nevertheless widespread. This section encourages enterprises to eliminate facilitation payments in all the jurisdictions in which they operate.

The issue of facilitation payments should be addressed, however difficult this might be. Enterprises can strengthen their anti-bribery behaviour and their impact on their social environment by being totally committed through their anti-bribery Programmes to dealing with bribery in all its aspects including facilitation payments.

TI opposes all forms of bribery, large as well as small, whether initiated by corrupt officials or corrupt companies, whether it takes place in the public sector or the private sector. The corrupting influence of pervasive facilitation payments can be insidious and part of a wider climate of systemic corruption. Thus there should be no distinction, as often is made, between the approaches to countering petty and grand bribery.

Issues raised by facilitation payments

Facilitation payments present a number of issues for enterprises and sometimes they are not easy to resolve.

An official may make an extortionate demand where the consequences of not paying can be significant to the enterprise. Where life or health is threatened, then the priority for an enterprise must be the well being of the person concerned. Where the issue is

⁹ CA Magazine, Canada October 2001

one of significant loss, of money or time, the enterprise must resist going for the short-term benefit of making payments and work to applying a policy of not paying. Although the short-term payment may appear easier, the enterprise should recognise the issues of doing so. They can include:

Paying facilitation payments can make it difficult to refuse demands for further payments and lead public officials to rely on them as part of their income.

The dividing line between facilitation payments and bribes is not easily drawn and can weaken the enterprise's ability to implement its anti-bribery Programme. Employees, business partners and public officials may take it as a signal of inconsistency and weakness in approach. Conversely, if an enterprise does prohibit facilitation payments but does not implement this effectively, this could also be taken as a weakness in the anti-bribery Programme and a lack of resolve in management.

Enterprises tolerating facilitation payments in overseas markets are exhibiting contradictory values. They would not carry out such practices in their home markets and yet they may be endorsing illegal practices and fostering corruption in vulnerable societies. The enterprises are placing their values and reputations at risk.

As facilitation payments are illegal in most jurisdictions, enterprises may face contradictions in identifying and recording facilitation payments. In the many jurisdictions where such payments are illegal, enterprises incorporated in the jurisdictions will have a statutory requirement to report such bribes so the expense can be disallowed. The paradox for the enterprise is that if it provides accounting systems to enable recording and reporting of facilitation payments, then it could be alleged that it is formalising an illegal act. On the other hand, if the enterprise hides facilitation payments by recording them under another expense category, it may also be guilty of accounting irregularity or tax evasion. These contradictions provide a further argument for enterprises to seek to eliminate and prohibit facilitation payments.

Looking at the benefits of a prohibition of facilitation payments can act as an encouragement for enterprises considering introducing a policy. There is evidence that it can lead to a positive effect on the bottom line. When enterprises carry out the process of identifying and recording facilitation payments they find that the value of such payments aggregated over their activities is substantial and far more than they anticipated. The value of payments not made may exceed the cost of implementing the policy.

The long-term social benefit to vulnerable societies should be considered. By encouraging better remuneration and ethical practices for public officials, enterprises are strengthening the economies of those countries by reducing a cost levied on the poor and providing greater opportunities for business to take place.

Definition

Such bribe payments are also called "facilitating", "speed" or "grease" payments (some languages do not have a word for facilitation payments). They are any payment made as a bribe to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

The Business Principles cover facilitation payments made to any person, whether in the public or private sector.

Implementation

Identifying and eliminating facilitation payments

The difficulties in identifying and eliminating facilitation payments should not be understated.

Identifying payments

When implementing a policy of prohibiting facilitation payments, it may not be possible to counter demands when first presented, as there could be serious business consequences if preparatory work has not been undertaken to manage the risk. The enterprise should first assess in which countries, and the nature and extent of facilitation payments taking place in its business operations. For purposes of managing the issue, some businesses place a maximum value on the bribes they recognise as facilitation payments.

The information on payments of facilitation payments 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, because they are illegal, payments will usually be hidden within expense or other accounts. It is important to have an idea of the types of processes and activities in which the payments occur so that enterprise can plan for ways to eliminate them.

Confidential interviews may be held with employees; internal audit and the enterprise's security department may have information. Other enterprises may provide information about local conditions.

If facilitation payments are made, then they must be recorded accurately in the books. This is both to assist in identifying and tracing such payments but also to report such expenditures correctly if they are disallowed for tax purposes.

Countering facilitation payments

The options open to an enterprise to counter such payments can include analysing the occasions in which the most typical payments are made and brainstorming internally how to reduce them in particularly repetitive instances.

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. The issue on the demand side must be dealt with by action on several fronts.

National and local governments can ensure that appropriate legislation is in place supported by means to change attitudes, structures and remuneration of officials and employees. The enterprise may wish to consider reaching out to the organisations from which demands originate and raise the issue at the highest level, pointing out that

the demands expose the enterprise's employees to sanctions from criminal laws of both the local country and, where applicable, the enterprise's home country.

From the supply side, enterprises operating in societies where facilitation payments are prevalent, can work with other enterprises to reduce demands from public sector employees by encouraging government agencies to implement control systems, provide adequate remuneration and build employee capacities. A medium term solution is to mobilise private sector action from similarly placed businesses and to approach government bodies in joint action, sometimes also using official diplomatic representatives.

Enterprises that prohibit facilitation payments or are aiming to eliminate them can communicate their policy widely and through the actions of employees and agents, demonstrate that such payments will not be made.

Providing guidance, training and support to employees

The enterprise's policy should be communicated to employees who should receive training on how to handle demands. Employees can be told where they can obtain advice when faced with a situation. Case studies and examples can usefully be provided.

In many countries employees will also be faced with demands for facilitation payments in their private life. The enterprise can support employees in this too. Employees can be encouraged to report instances of demands and enterprises can work to mobilise private sector action from similarly placed businesses and apply joint action.

Applying the Programme to business partners in respect of facilitation payments

This is an area of particular difficulty for enterprises as such payments being small are difficult to detect when made by an agent or joint venture partner.

The issue may be made worse when enterprises, in eliminating such payments from within their organisation, tacitly or unwittingly transfer such payments into the hands of a third party such as an agent.

An enterprise must ensure that its business partners are made fully aware of its policy to prohibit or eliminate facilitation payments and its determination to achieve this. A signed acknowledgement by business partners is often used. Enterprises can apply due diligence to detect allegations of such payments and use communication channels such as "hot lines" to encourage suppliers, customers and others to report any allegations of payments.

Questions

Facilitation payments result from extortion demands so why are they viewed as bribes?

Facilitation payments occur when a person holding office, whether public or private, uses a position of strength (authority to perform a normal action or service) to demand a bribe for either carrying out what the person was appointed to do, to do it faster or to omit doing a required action. The person or enterprise needing the action performed

(or omitted to be done) is very often in a position of weakness and it is argued that as such, facilitation payments are extorted payments and should not be treated as bribes. Even though such payments may be small in absolute terms for the payer, the loss or inconvenience arising from refusal to pay may be out of all proportion to the sum demanded.

Whether extorted or not, facilitation payments are bribes, albeit small in business terms and at the lower end of the spectrum of bribery. The extortion argument should not allow the true nature of facilitation payments as bribes to be obscured.

How do international conventions and instruments treat facilitation payments?

The UN Convention makes no reference to facilitation payments. Other international instruments and guidelines have found difficulty in dealing with the issue of such payments and have tended to regard them as petty corruption, not condoning such payments but also not prohibiting them.

The OECD Convention does not expressly permit "facilitating" or "grease" payments but the Commentary accompanying the Convention indicates that they are permissible since it says in paragraph 9, that "Small 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are not an offence."

The African Union and the Inter-American Convention make no reference to facilitation payments.

The FCPA was amended in 1988 to provide an explicit exception for facilitation payments in order to recognise, from its perspective, that in many countries such payments are expected, and even necessary, at lower levels of government employment. The exception in the FCPA provides for "facilitation or expediting payment . . . the purpose of which is to expedite or to secure the performance of a routine governmental action." For facilitation payments to be legal under US law they must be documented and reported although, as discussed above, this does not escape the contradiction that such payments will normally be illegal in the countries where they are paid.

Facilitation payments are not condoned by the ICC Rules of Conduct which state that an effective programme against extortion and bribery may have to be implemented in stages. The ICC Rules argue that the highest priority should be directed to ending large-scale extortion and bribery involving senior officials and facilitation payments represent a lesser problem. The view taken in framing the Business Principles is that such payments whilst apparently petty may be part of or help create systemic corruption.

Examples of enterprises' explicit prohibition of facilitation payments

BP

"In February 2002, we reinforced our policy to state that BP will never offer, pay, solicit or accept bribes in any form, including those transactions known as facilitation payments. Facilitation payments are small payments made to low-level officials to obtain routine levels of service. Following the policy change, we initiated a systematic

review of our business transactions in countries where facilitation payments were known to exist. Action plans were implemented to eliminate these payments before the end of the year. By taking a firm stance with officials, we found that payments could be stopped without significant impact on our business. Our ethics certification exercise at the end of the year confirmed that most facilitation payments involving BP staff had been eliminated, except for a few minor items. Our aim is to eliminate these early in 2003.”¹⁰

Example of prohibition of facilitation payments where illegal under local law

Raytheon

<http://www.raytheon.com/ethics/fcpa.htm>

“Facilitating payments to expedite or secure the performance of ‘routine governmental action’ are exempt from the FCPA. Listed below are examples of what is included under ‘routine governmental action’:

- Obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
- Processing governmental paper (e.g., visas, work orders);
- Providing police protection, mail pickup, and delivery;
- Scheduling inspections associated with contract performance or related to cross-country transit of goods;
- Providing phone service, power, and water supply;
- Loading and unloading cargo or protecting perishable products or commodities from deterioration.

Even though the above practices may not be subject to the FCPA, Raytheon policy prohibits facilitating payments that are prohibited by local law. Raytheon will make no such payments unless those payments are also lawful in the country where they are made! All such payments, even if lawful, require advance written approval from Raytheon International, Inc. (RII).”

Case study

BP - Eliminating Facilitation Payments in Indonesia

Indonesia is one of the world's most challenging places in which to conduct business. BP Indonesia has been operating a local ethics governance board since 2000 when the scale of our business was increased considerably following the purchase of Arco. Significant effort has been made to ensure that staff understand BP's Ethical Policies and the changes made in 2002. All aspects of our business have been examined to identify where facilitation payments might occur, then plans were put in place to eliminate them. There have been many examples where actual and potential payments were identified and then stopped. For example:-

- a ‘meet and greet’ service at Jakarta airport
- ‘meeting fees’ for government officials where these are not covered by government policies

¹⁰ BP 2002 Environmental and Social Review, p5

- payments to speed up the process of granting forestry permits in connection with our activities in Papua where our major gas field, Tangguh, is located
- excessive gifts and entertainment, including traditional gifts at Lebaran. These are still given in accordance with local custom and practice but have been much reduced and now conform with the local gifts and entertainment policy
- contracts with some agents were not renewed after it was suspected that they used facilitation payments to provide their service

By the end of 2002 there were no known payments made directly by BP employees. Indeed, there have been several examples where employees have reported that third parties (contractors) have attempted to give them cash, either as a 'reward' for giving them business or as an incentive to direct business their way. This gives some reassurance that the policies are reaching deep into the organisation. We hope that the firm stance on facilitation payments will have a positive effect on behaviour outside the workplace and hence a positive effect in the wider community and business environment. BP is a leading member of Indonesia Business Links (IBL), an independently sponsored cross-business forum. IBL aims to improve the transparency of corporate governance and behavioural practices of its members. In 2002, working with other international oil and gas companies, BP Indonesia helped draft a 'code of conduct' for the oil and gas sector which included guidelines on ethics'

5.5 Gifts, hospitality and expenses

The Business Principles state:

5.5.1 The enterprise should prohibit the offer or receipt of gifts, entertainment or expenses whenever such arrangements could affect the outcome of business transactions and are not reasonable and bona fide expenditures.

Background

Business gifts, hospitality and expenses whilst not part of the process for business transactions, are often an accepted form of behaviour, but practice varies across societies. There can often be uncertainty in what is a reasonable transaction and there is potential for development of bribery if practices are not made clear by enterprises.

The Programme of the enterprise can be flexible in recognising and accommodating local customs and cultural differences but should set out clearly policy, processes and guidance and be 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.

Implementation

Definitions of gifts, hospitality and reimbursed expenses

Gifts are money, goods, services or loans given ostensibly as a mark of friendship, or appreciation. They are professedly given without expectation of consideration or value in return. Gifts may be used to express a common purpose and the hope of future business success and prosperity. 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 enterprise by incorporating a logo or message on a promotional item such as a calendar.

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 a 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.

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

Policies and processes

The enterprise should have a policy for gifts, hospitality and expenses that reflects the particular risks of such activities being used as a subterfuge 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, public bodies or private sector organisations with which it deals.

The policy should give guidance on or 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. Many enterprises maintain a register of gifts, hospitality and expenses received. Such a register should be reviewed regularly.

Some enterprises auction gifts received with the proceeds being given to charity.

The arguments for hospitality are made on business grounds. One argument is that providing hospitality or entertainment offers relaxed, neutral, environments in which business relationships and activities can be started, fostered and information imparted. Another argument is that these favours do not have a durable or lasting value. Justification may be made for hospitality associated with fund raising events held by worthy causes such as arts and charitable bodies, that the enterprise is assisting the causes by purchasing tickets or introducing potential supporters. It is important that the enterprise has a clear policy and guidelines to enable employees to know how to handle such invitations.

For expenses, the policy should restrict the giving or receipt of such expense except in exceptional circumstances. Often, such expenses are incurred in travel arrangements to an enterprise's facilities to view a manufacturing plant or a research laboratory but as a rule this should be seen as unacceptable. If an enterprise requires an employee to visit a supplier's plant, then it should pay for the travel.

Determining if gifts, hospitality or expenses are appropriate

The enterprise should consider the criteria listed below to determine if gifts, hospitality or reimbursed expenses comply with its Programme:

- *Made for the right reason:* the gift or hospitality should be given clearly as an act of appreciation;
- *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 then the purpose will be suspect;
- *Accords with stakeholder perception:* the transaction would not be viewed unfavourably by stakeholders if it were made known to them;
- *Reported:* the gift, hospitality or expense should be recorded and reported to management;
- *Reasonable value:* the size of the gift is small; 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;
- *Legality:* it conforms to the laws of the country where it is made;
- *Conforms to the recipient's rules:* the gift, hospitality or reimbursement of expenses meets the rules or code of conduct of the receiving organisation;
- *Infrequent:* such giving or receiving is not a regular happening between the giver and the recipient.

Providing guidance, training and support

The enterprise should communicate its Programme and the policy, procedures and guidance for gifts, hospitality and expenses to employees, business partners and suppliers so there is no misunderstanding or difference in perceptions of what is permissible within the policy. The guidance should provide advice how gift giving and hospitality should be handled with particular respect to local customs and culture.

Questions

What is an acceptable level of gift or hospitality?

The enterprise's policy should set out the upper value of gifts and hospitality that can be given and received – the amount for gifts should be kept to a low value but it may have to be varied in countries to reflect local custom and values for gifts. Where an enterprise operates in many countries, it could usefully develop a template for gifts that provides a framework for giving guidance on gift giving and for reporting gifts made.

What should be done when refusal of a gift or hospitality would cause offence?

Refusal of a gift or hospitality may cause offence in some countries and in such circumstances the policy should allow some flexibility. The enterprise should judge if what is being offered, is reasonable in comparison with accepted standards in the society and the behaviour of its peer companies. The individual recipient should inform management when a gift is received outside the permitted level. The enterprise could choose to return the 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. The enterprise should not permit the giving or receipt of gifts, hospitality or expenses which are made or may be perceived as being made as an inducement to act in breach of duty or as a reward for having already carried out an act favourable to the giver.

How do international conventions and instruments treat gifts, hospitality and expenses?

The UN Convention only covers these subjects in respect of public officials, requiring them “to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.”

The OECD Convention does not deal specifically with these subjects.

The FCPA allows a payment or gift to an official where its is a reasonable and *bona fide* expenditure, such as travel and lodging expenses and “is (i) directly related to the promotion, of products or services or (ii) the execution or performance of a contract with the country’ s government or an agency thereof.” This covers legitimate promotional expenses that are reasonable in the context of the business transactions sought or being performed. Payment of travel and lodging expenses to enable a customer to inspect a supplier’s facilities in the United States, and small gifts of samples of the U.S. company’ s products are common examples of reasonable and *bona fide* expenditures. All payments or gifts must serve a *bona fide* business or promotional purpose. Any gifts should be appropriate in the context of the business transaction in question.

6 Programme Implementation Requirements

The Business Principles state:

The following section sets out the requirements that enterprises should meet, at a minimum, when implementing the Programme.

6.1 Organisation and responsibilities

The Business Principles state:

- 6.1.1 The Board of Directors or equivalent body should base their policy on the Business Principles and provide leadership, resources and active support for management's implementation of the Programme.*
- 6.1.2 The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.*
- 6.1.3 The Board of Directors, Chief Executive Officer and senior management should demonstrate visible and active commitment to the implementation of the Business Principles.*

Background

An effective Programme will provide for oversight and backing by the Board of Directors. Just as vigilant Board oversight and leadership is necessary for successful implementation of a Programme, so too is effective oversight and leadership by management. The Board may appoint a Compliance, Audit or Ethics Committee to provide oversight of the implementation of the Programme and disciplinary actions.

The Board of Directors will be unable to provide responsibility for day-to-day management and supervision of the implementation of the enterprise's Programme and therefore this responsibility should be placed on the Chief Executive Officer.

Clear lines of responsibility are needed to avoid omissions or errors in carrying out the Programme and to assign objectives and performance standards.

Increased responsibilities are being placed internationally on Boards and management. For example, an effective compliance and ethics program has been a fundamental component of the US organisational sentencing guidelines promulgated by the United States Sentencing Commission in 1991. In April 2004, the Commission made the standards for the compliance and ethics programme more rigorous and put greater responsibility on boards of directors and executives for the oversight and management of compliance programs. In particular, directors and executives now must take an active leadership role in respect of the content and operation of compliance and ethics programs. Companies that seek reduced criminal fines must demonstrate that they have identified areas of risk where criminal violations may occur, trained high-level officials as well as employees in relevant legal standards and obligations, and given their compliance officers sufficient authority and resources to

carry out their responsibilities. Under the revised guidelines, if companies hope to mitigate fines and penalties, they must also promote an organisational culture that encourages a commitment to compliance with the law and ethical conduct by exercising due diligence in meeting the criteria. This indicates the value that implementation of a Programme as required by the Business Principles could offer enterprises seeking mitigation for a violation of compliance with law.

The Business Principles do not suggest or specify the appointment of an Ethics Officer or person with overall responsibility for the Programme as there are differing views on the value of such an appointment. Many enterprises appoint Ethics Officers whilst others take the view that an enterprise's Programme will be more effective if it is integrated within the enterprise, requiring all employees to take responsibility for anti-bribery performance. Such enterprises consider that appointing an Ethics Officer can give the impression to employees that anti-bribery performance is a specialised function sitting outside the mainstream of business. Those enterprises that appoint Ethics Officers argue that the demands of an anti-bribery Programme are specialised and require the expertise and drive of a specialist manager with dedicated responsibility. Also, the Ethics Officer can play a key role in implementation by leading or instituting training programmes and acting as a counsellor or neutral person when employees need advice or "blow the whistle".

6.2 Business relationships

The Business Principles state:

The enterprise should apply its Programme in its dealings with subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has business relationships.

Background

Whilst the focus of the enterprise's Programme will be on its internal systems and the attitude and behaviour of its employees and contract staff, the enterprise should recognise that this will be insufficient in carrying out an effective anti-bribery Programme. Bribery can take place through agents and intermediaries, or the enterprise's employees offering inducement to third parties. Employees too can be subject to approaches and offers. Therefore, the enterprise should seek to encourage anti-bribery performance in its business activities involving related enterprises and third parties. This could even extend to working within the communities and countries in which it has operations to build the capacity, structures and attitudes that will foster improvement in an anti-bribery culture. The TI Integrity Pact is an example of such an approach.¹¹

¹¹ The TI Integrity Pact concept is designed to safeguard public procurement from corruption. At its core, the Integrity Pact is a binding agreement between the procurement agency and all bidders for a project. The Integrity Pact has been implemented in several countries and in large-scale infrastructure projects ranging from telecommunications to public transport. www.transparency.org/building_coalitions/integrity_pact/i_pact.pdf

Implementation

The enterprise can follow three main strands – firstly, it should communicate its Programme to all those with whom it has business relationships; secondly, it should require the take up of its Programme or alignment with the Programme by subsidiaries, joint ventures and agents and thirdly, it should work to build the capacity of its business associates by helping with training, communication and development of systems.

6.2.1 Subsidiaries and joint ventures

6.2.1.1 The enterprise should conduct due diligence before entering into a joint venture.

6.2.1.2 The enterprise should ensure that subsidiaries and joint ventures over which it maintains effective control adopt its Programme. Where an enterprise does not have effective control it should make known its Programme and use its best efforts to monitor that the conduct of such subsidiaries and joint ventures is consistent with the Business Principles.

Background

Enterprises can establish branches or operate through investments in separate legal entities. The key question is therefore the extent to which enterprises' Programmes or equivalent Programmes can or should be implemented in separate entities through which they operate.

Implementation

Branches

Branches may be set up domestically or in countries away from the main seat of the enterprise. Although they may have a separate legal status, be registered, pay their own taxes, etc., the principal enterprise remains responsible for their actions, operational and financial, so that they can be regarded as an extension of the main enterprise and under the latter's full control. As such, the principal enterprise should ensure that all branch operations are integrated into the anti-bribery Programme with employees being treated for this purpose as if they were on the payroll of the principal company.

Subsidiaries

A subsidiary is defined as a separate legal entity in which the parent company has a controlling equity interest or exercises a de facto controlling interest by other means, such as the right to nominate members of the board of directors.

Where such control exists, and regardless of the location of the subsidiary or the nationality of the decision-making management of the company, the parent company must insist on the same level of implementation of its Programme as in its own

organisation. This includes therefore, the extension to the subsidiary of employee training, monitoring, sanctions and anti-bribery communications channels including whistleblowing provisions. With respect to communications channels, it can be advantageous to establish a hot-line structure for the whole group, rather than separately for each legal entity, but consideration needs to be given to language and cultural sensitivities and the risk that a group hotline may be remote from the needs of a local operation.

An enterprise should obtain regular written assurance from the General Managers of subsidiaries of which it has effective control that the enterprise's Programme is implemented. The enterprise should apply sanctions to management as appropriate in cases of misreporting of compliance or insufficient compliance with the Programme.

The enterprise should include reports on its subsidiaries' Programmes in any reports it makes publicly on its own Programme.

Associated companies

Where the investing enterprise does not exercise control over another enterprise, but may still hold a significant interest, it may not be possible to insist on implementation of a Programme identical to that of the investor enterprise. The investing enterprise should encourage the implementation of an equivalent Programme to its own and it can do this through discussions with the directors of the associated company, offers of help in implementing and perhaps monitoring the equivalent Programme. This may often result in a satisfactory commitment by the associated company to similar anti-bribery standards. In the extreme case that concerns exist whether the associated company is involved in bribery and corrupt practices, the investor may need to contact law enforcement agencies or to disengage from the investment.

A particular problem exists in certain developing countries, many of which have a poor record in relation to corruption, in that foreign investors are not allowed to hold a controlling interest in local business entities. Before engaging in such investments, the anti-bribery standards of the investing enterprise should be communicated to and discussed with the local investors and partners, and where appropriate with the government agencies approving the investment. The no tolerance policy towards bribery needs to be explained, also relating to employees or contract personnel of the investing company delegated to work in the local operation. Receptiveness to these explanations by the local entity will be an important criterion in the decision whether or not to make the investment.

Joint ventures

In some industries, by tradition, for risk sharing or to meet local laws, it is common to conduct business through the formation of joint ventures. The legal structure may be formalised by investments of several joint venture partners in a legal entity or it may be less formal, linking capital investment and sharing of results under contractual arrangements. Joint ventures may be short term, limited to the completion of one project, or be permanent establishments set up for the long term.

Where a joint venture is being established, enterprises should assess the existence and scope of issues that could affect the parties or the operation of the joint venture. It

is possible to make implementation of an effective anti-bribery Programme a condition of joining the venture (and not to join in the absence of satisfactory commitment from the other partners). The Programme of the Joint Venture should specifically address or cure any potential issues discovered in the pre-assessment.

In some industries, especially the extractive industries, one of the joint venture partners may be designated as the managing partner which, while subject to consultation with the other investors, nevertheless controls the day-to-day activities of the joint venture. Where a partner in the joint venture has effective control over the day-to-day operations of the business, that partner is in a position to implement an effective anti-bribery Programme and should do so. In all other cases, insisting on the anti-bribery standards of just one partner will be more difficult and requires discussion among the partners to agree on the policies to be made effective in this area.

Where a decision is to be made on investing into an existing joint venture the same due diligence and upfront discussion will be necessary as described under associated companies above.

Enterprises should develop a viable exit strategy from a joint venture project in the event that misconduct by any joint venture party is uncovered and satisfactory remedial action is not taken.

Question

What do international conventions and instruments say about subsidiaries and joint ventures?

Good practice, as required by the Business Principles, goes beyond the legal requirements set out in the UN and OECD Conventions and the FCPA.

The UN Convention and OECD Conventions do not expressly refer to subsidiaries or joint ventures.

The FCPA also does not expressly reach foreign subsidiaries or joint ventures. However, if a foreign affiliate either engages in prohibited conduct while in the United States or is deemed to be an “issuer” because their securities are SEC registered, liability may attach. In addition, a U.S. parent or joint venture partner may be held liable for the acts of a foreign affiliate if the U.S. person either knowingly participates in or condones the corrupt act or it has working control of the affiliate. A U.S. person may also have liability if the affiliate is deemed to be an “agent” of such person, in which event the U.S. person does not have to have actual knowledge of the corrupt practice. Finally, under the accounting provisions of the FCPA, a U.S. issuer may be held liable for failing to establish adequate internal controls or to keep accurate books and records.

The OECD Guidelines for Multinational Enterprises do not seek a precise definition of multinational enterprises. The Guidelines are addressed to all the entities within a multinational enterprise (parent companies and/or local entities) whatever the structure. According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.

The OECD Principles of Corporate Governance Compliance advise that compliance programmes should also extend where possible to subsidiaries.

6.2.2 Agents

The Business Principles state:

6.2.2.1 The enterprise should not channel improper payments through an agent.

6.2.2.2 The enterprise should undertake due diligence before appointing an agent.

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

6.2.2.4 The relationship should be documented.

6.2.2.5 The agent should contractually agree to comply with the enterprise's Programme.

6.2.2.6 The enterprise should monitor the conduct of its agents and should have a right of termination in the event that they pay bribes.

Background

Agents and other intermediaries are one of the most common channels through which bribes are made. This can occur either by an enterprise intentionally using agents to channel improper payments or agents acting on their own account corruptly to achieve their contractual obligations, particularly in "difficult" countries where an enterprise may not be directly represented and has to rely on intermediaries.

Use of agents is often key to an enterprise's marketing and sales structure. Agents represent enterprises and are responsible for promoting their products, services and reputation. They are used by enterprises because they bring expertise, local knowledge, sales and support structures and in some countries, notably in the Middle East, local laws may require their use. Agents are remunerated usually by a commission on sales.

The risks for enterprises in using agents occur because agents are independent enterprises and may not observe the same values or have an anti-bribery Programme equivalent to that of enterprises. Agents will frequently be based locally and their culture and operating standards will then reflect those of the country in which they operate. This presents risks if the country has a high level of corruption. Further, agents will be keen to earn their commission and may be tempted to resort to bribery to secure a sale.

Definition

"Agent" means 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.

Implementation

The enterprise's aim in applying its Programme to agents should be to minimise the risk of bribery. There are a number of key elements that can be put in place:

Assessing the need for the agent

The need for an agent should be assessed. The appointment should be for a legitimate business reason and not as a way of influencing decisions illicitly. Business reasons can be such as to:

- gain representation in a market in which it does not have local employees or existing representation;
- gain access to skills or facilities;
- expand resources to fulfil a marketing opportunity or contract;
- meet local law that requires use of a local agent;
- gain access to a customer list or range of contacts;
- gain access to market knowledge, information and an understanding of trends;
- gain knowledge about competition;
- be able to communicate in the local language;
- expedite operations;
- meet local laws, standards, directives and codes of practice.

Agents are often appointed because of their range of marketing and sales contacts and their ability to gain access to key people and customers. This area of access to contacts should be treated with particular diligence. If the appointment is made because the agent knows and has access to key persons responsible for deciding on or influencing a contract decision then the fee or commission should be commensurate with the work undertaken. Due diligence should be taken to make sure that no part of the fee is transferred onward to the persons responsible for the contract decision.

Selection of an agent

The enterprise should if possible, obtain competitive quotations from prospective agents. The enterprise should select its agent against criteria to meet the relevant business need and should apply due diligence in checking that the agent is a reputable enterprise or person. The enterprise in carrying out due diligence should:

- consult and benchmark with other enterprises operating in the market;
- obtain references;

- check the ownership of the agency and ensure that the owners that have influence in the management of the agency do not include government officials or those who have responsibility for contracts for which the enterprise will bid;
- check that none of the agent's partners, owners, principals or staff members, or their families, are officials, officers, or representatives of any government or political office within the geographic area covered by the Agreement;
- carry out a search for evidence of any past exposure to bribery by the agent;
- require the agent to disclose any prior relevant issues including incidents of bribery, fraud, civil litigation, criminal convictions and allegations made against the agency of corruption, however unfounded they may be.

Appointment of an agent

The agent before being appointed should be informed fully of the enterprise's Programme and what is expected of the agent in meeting the Programme's requirements.

The enterprise should make it a contractual requirement for the agent to observe the enterprise's Programme and for the enterprise to have the right of termination in the event of violation.

The fees and commissions paid to the agent should be reasonable in relation to the services provided. Evaluation of what is reasonable does present some difficulty as it will reflect not only time spent but also the quality and expertise of the agent and its reputation in the market. There may be competition for the agent's services and this too will be reflected in the fees. The enterprise could benchmark the contract terms and fee both with other companies and within its own organisation e.g. between divisions or subsidiaries.

Managing the relationship

The relationship with the agent should be fully documented.

The enterprise should provide support and training to the agent to enable the agent to carry out the requirements of the Programme.

Monitoring performance

The performance of the agent in meeting the requirements of the Programme should be monitored and remedial action taken where performance falls short.

Agents' agreements may remain in place for many years and the enterprise should undertake regular audits of contracts to ensure that the contracts remain valid in supporting the enterprise's current Programme and that the agent is in compliance with the Programme's requirements.

A particular concern relating to agents is that it may be difficult to detect if the agent is paying small bribes or facilitation payments, as the amounts can be hidden within the commission payments. Enterprises should make known to their agents that they will not tolerate such payments being made.

An enterprise may have its Programme subverted by agents being used to make payments that would not conform to the requirements of the Programme e.g. paying a “consultancy” fee to a retired customs official to expedite a delivery held up in customs. Such practices should be resisted within the Programme.

Link

TRACE: Trace is an international non-profit membership organisation working to reduce corruption in transactions involving business intermediaries: agents, representatives, consultants, distributors and subcontractors. The Trace Standard is an international standard of doing business with intermediaries around the world.
info@TRACEinternational.org
www.TRACEinternational.org

6.2.3 Contractors and suppliers

The Business Principles state:

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

6.2.3.2 The enterprise should undertake due diligence in evaluating major prospective contractors and suppliers to ensure that they have effective anti-bribery policies.

6.2.3.3 The enterprise should make known its anti-bribery policies to contractors and suppliers. It should monitor the conduct of major contractors and suppliers and should have a right of termination in the event that they pay bribes.

6.2.3.4 The enterprise should avoid dealing with prospective contractors and suppliers known to be paying bribes.

Background

The enterprise should be vigorous and thorough in ensuring that its anti-bribery measures (the totality of its Programme) are communicated to and respected by all its contractors and suppliers.

Contractors perform work on behalf of the enterprise and their practices should be aligned with the enterprise’s Programme. This is increasingly important with the trend for enterprises 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.

The enterprise should apply its Programme thoroughly to key suppliers, applying due diligence and working with the suppliers to implement its requirements and monitor performance.

Contractors and suppliers may have their own Programmes relating to countering bribery and these should be aligned to that of the enterprise for implementation of its contracts with them.

The enterprise should be equally vigorous relating to the processes for award and management of contracts by its employees. Corrupt employees will have four key aims:

- a) to manipulate the process for awards of contracts so that corrupt contractors will be selected
- b) 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
- c) to create opportunities for the corrupt contractor to improve its margins, earn additional fees and to pay for its bribes.
- d) to create a climate for encouraging corrupt contractors to repeat their bribes for other contracts and to penalise honest contractors so that they are persuaded to enter the corruption arena

Blacklisting

Transparency International is pressing the international development banks to require companies bidding on projects they finance, to have anti-bribery codes and programmes, and to implement other bribery-prevention tools to blacklist companies that have been convicted of bribery. The World Bank in September 2004 announced that it would require companies bidding on large Bank-financed projects to certify that they “ have taken steps to ensure that no person acting for [them] or on [their] behalf will engage in bribery”.

Implementation

Making the procurement policy transparent.

When awarding major contracts, the enterprise should take account of external perceptions by communicating and demonstrating that its purchasing and procurement processes are carried out using objective business criteria, apply a consistent and systematic review process and are free from bribery.

The enterprise 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.

Awarding contracts

The enterprise's purchasing and contract processes should be designed to remove opportunity for employees to distort the process to create ways in which they can steer the award of a contract to a particular bidder.

Equal notice should be given to all tenderers – 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 bid. Where bids are to be solicited through advertising and other channels, the enterprise should review 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 opportunity to revise their bids.

An area of potential bribery is in the issue of tender documents. Potential bidders may be asked for a bribe and those who pay bribes may be given previews of the documents. Corrupt tenderers may be given information that is not available to other tenderers such as details of those bidding, the value of the budgets and technical information.

Contracts should have specifications of the services or supplies required. When setting the specifications for a contract, the enterprise 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 other potential suppliers. Specifications should be drawn up to encourage as wide a range of tenders as possible.

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

Enterprises 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 by increasing the margins for the contract through delivery of reduced quality services and products or by variations in the contract after the award of a contract including increases in fees due to changes in technical specifications. The enterprise 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.

The enterprise 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 enterprise needs to carry its Programme throughout the contracting and purchasing process, 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 enterprise the right to apply sanctions including termination, in the event of a violation relating to bribery.

The enterprise should ensure that the contractors' employees understand both the contractor's Programme, if it has one, and the requirements of the contract with the enterprise to observe the enterprise's Programme.

The enterprise should work in partnership with the major contractors, sub-contractors and suppliers in developing anti-bribery practices. It should meet them periodically, hold performance reviews and encourage focus on ethics. The meetings can inform participants of developments in the enterprise's Programme and voice any concerns or suggestions for improvement. It should help them develop systems, give them information about risks from bribery and exchange information.

A number of leading enterprises are now working with contractors and suppliers, to ensure that the employees of the major contractors, sub-contractors and suppliers receive continuing anti-bribery training and communication.

There may be constraints on some enterprises in carrying their Programme to suppliers. These will arise where:

- enterprises have thousands of contractors and suppliers and their supply chain is extensive in depth;
- their purchases represent only a small proportion of a contractor's or supplier's output and the enterprise's influence on the contractor or supplier is thereby slight;
- products are purchased as commodities e.g. through a purchasing hub or an intermediary;
- contracts are one-off, small and brief in length.

It will not be possible in such circumstances to apply the Programme in the supply chain to the same level as a major supplier. Nevertheless, all contractors and suppliers should be made aware of the enterprise's Programme.

Strengthening systems

Systems should be examined rigorously to identify areas where risk of bribery applies and improvements should be put in place such as strengthening monitoring systems, controlling rush orders or order changes.

Use of new technology such as RFID (radio frequency identification) tags and Supply Chain Event Management Systems to detect aberrant events has an important role in strengthening systems. It can enable movement of goods in the supply chain to be

tracked and reduce risks of goods being stolen or scrapped falsely to create funds to be used for bribery. New technology can enable all traffic messages to be recorded and, through data mining, aberrant patterns can be identified.

Monitoring anti-bribery performance in an enterprise'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 with valid criteria 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 enterprise 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;
- 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.

Applying the Programme to contractors for outsourced activities

For the purpose of the enterprise’s Programme, contractors’ employees carrying out outsourced activities should be treated as if they were effectively employees of the enterprise.

The enterprise should ensure that such employees receive induction and continuing training and they receive and have access to all relevant communications.

The Integrity Pact

Enterprises when bidding for a contract should consider whether the Integrity Pact concept could be applied. The Integrity Pact¹² (IP) is a tool developed in the 1990s by TI to help governments, businesses and civil society prepared to fight corruption in the field of public contracting but the IP is applicable across all contracting. The IP helps enhance public trust in government contracting and hence to contribute to improving the credibility of government procedures and administration in general. The IP aims to enable the bidders, or the contractor implementing the contract, to abstain from bribing, and to reduce the high cost and distorting effect of corruption.

The IP establishes mutual contractual rights and obligations. The contract and the IP may cover the planning, design, construction, installation or operation of assets by the

¹² www.transparency.org/building_coalitions/integrity_pact/i_pact.pdf

Authority, the privatisation sale of assets, the issuing by authorities of licenses and concessions, as well as corresponding services such as consulting services and similar technical, financial and administrative support. Whenever possible, the IP should cover all the activities related to the contract from the pre-selection of bidders, the bidding and contracting proper, through the implementation, to the completion and operation.

Questions

What should be done where there is no alternative to using a specialised contractor or supplier known for or suspected of having used bribery

There will be occasions when an enterprise is faced with using a contractor or supplier known to have had an association with bribery and there is no alternative supplier. In such a case, the enterprise should take particular care to implement monitoring processes and to make clear that the supplier must undertake to comply with the requirements of the enterprise's Programme. Sanctions in the event of violation of the Programme should form part of the contract.

What is a fair and transparent manner?

Fairness means operating so as to ensure level and equal terms and processes of competition and to avoid the distortion of the market place that arises when bribery is present. The system for purchasing and contracting should set out and publicise how bids and quotations are invited and assessed. This will include the criteria and specifications against which decisions are made and confirm that competitive bids are obtained for all larger contracts and full information is provided on the decision process.

Transparency is the guarantee of fairness. The enterprise should discuss its system with contractors and suppliers, including those that have failed to win contracts, and assure itself that its system is perceived as reasonable and even-handed in its application. A record should be kept to respond to any criticisms of the enterprise's system.

6.3 Human resources

The Business Principles state:

- 6.3.1 Recruitment, promotion, training, performance evaluation and recognition should reflect the enterprise's commitment to the Programme.*
- 6.3.2 The human resources policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, trade unions or other employee representative bodies as appropriate.*
- 6.3.3 The enterprise should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business.*

6.3.4 The enterprise should apply appropriate sanctions for violations of its Programme.

Background

The effectiveness of an enterprise' s Programme depends greatly on the understanding, commitment and performance of its employees (including quasi employees, those working under contract within the enterprise). This includes the involvement of employees in forming the initial Programme and its continuing improvement. Employee representatives can usefully be integrated with the project team developing the Programme.

A Programme will succeed only if it has the support and commitment of employees. The implementation of a Programme touches on all aspects of human resource management. The management of the enterprise should lead by showing their commitment to the Programme. The enterprise must place high priority on the quality of the recruitment, training and motivation of its employees in order to achieve an environment in which its Programme is likely to succeed. The enterprise should support the employees in applying the Programme, by providing relevant and continuing training, accessible and clear guidance and information, effective processes, adequate resources, recognition and appropriate sanctions.

Implementation

Recruitment

The enterprise should conduct its recruitment practices in a way that is fair and transparent. This avoids distortions in the recruiting process that could lead to desirable candidates not applying whilst less desirable candidates put themselves forward. In a society susceptible to corruption, it will be important for the enterprise to demonstrate to the public that its recruitment processes are untainted by bribery, favouritism or patronage and to keep records of the processes applied.

Employment contract

The enterprise should make adherence to the Programme a condition of employment and require employees to attest in writing on that they have read, understood and will observe the requirements of the Programme. This can be done as employees join the enterprise but enterprises may choose to ask employees to reread and attest at periodic intervals both to refresh their awareness of the Programme and to take account of any changes that may have been made. However, in making employees attest and sign, enterprises should take care to make sure that the document is accessible and not couched in legalistic terms and that it uses local language and reflects local culture. 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.

Induction

New employees should receive full information about the enterprise's Programme and this should form part of induction training.

Training

Enterprises should implement appropriate and continuing training throughout the organisation. This is covered in detail in section 6.4.

Monitoring and evaluation

As described in Section 4.3, the enterprise should provide for ways 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 6.5, anti-bribery communications channels ("whistleblowing" channels, hot-lines or help lines) can be important acting as a route through which concerns can be expressed and encouraging suggestions for improvements in the Programme.

Performance and appraisal

Employees' performance in relation to the enterprise's Programme should form part of employees' performance appraisals, supported by recognition and compensation awards and be factored into performance related merit or bonus schemes. This will demonstrate the importance that the enterprise attaches to its Programme and also moves the employee focus from one of compliance to active implementation and improvement of the Programme.

One of the highest risk areas of bribery for an enterprise lies in sales and marketing. Employees and agents will have sales targets against which they are under pressure to perform. They may also be subject to approaches from officials and employees of potential customers and contracting bodies that request bribes to award contracts. The employees and agents, as a further pressure, may be faced with competitors prepared to make such bribes. The enterprise's 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 enterprise 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.

Sanctions

The enterprise should provide and communicate clearly to employees, appropriate sanctions that would be applied in the event of violation of its Programme. These sanctions must be seen to be applied openly in appropriate cases.

Minor violations will occur undoubtedly such as employees inadvertently failing to get advance approval for receipt of a gift exceeding a permitted value by a modest amount. In such inadvertent and minor cases, management may not wish to apply

sanctions but care should be taken that such toleration is not commonplace as it could be inferred as a wider lack of vigilance by management in applying the enterprise's Programme and provide a climate where violations of greater severity could occur. However, whether a violation is minor or severe, the enterprise must make clear that it will not tolerate violations of its Programme.

It is common for an enterprise in dealing with a violation of its Programme to select a route of asking the employee to resign rather than apply a sanction of dismissal. This may be to avoid making public the violation, to avoid the risk of subsequent litigation by the dismissed employee or because the enterprise has struck a deal on recovery of assets. Enterprises should resist using the option of resignation as this sends out a weak signal to employees that the enterprise is not stringent in applying sanctions.¹³

Sanctions should be applied consistently and there should be an established process for review and 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 apprised of the enterprise's expectations, the appropriateness of the level of sanction and the consistent application of fair processes.

6.4 Training

The Business Principles state:

6.4.1 Managers, employees and agents should receive specific training on the Programme.

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

Background

Training is fundamental to obtaining the employees' and business partners' commitment to the enterprise's Programme. Training should be given on a continuing basis to employees and business partners appropriate to their needs and the potential risks relating to their work. Different segments of an enterprise's operations and different countries of operation will require levels of training specific to their assessed needs. Training related to the enterprise's Programme might need to be extended to agents and intermediaries, contractors, suppliers and customers such as franchise operations where the business relationship is close or activities have been substantially outsourced or contracted.

Implementation

An enterprise should carry out an assessment of risks from bribery for its operations and develop training programmes tailored to the level of risk and to the knowledge and experience of the employees and business partners.

¹³ P Wilkinson: Based on Field Test experience

Training should ensure that recruits, employees, contract staff and business partners clearly understand the enterprise's policies and practices, know the enterprise's expectations of their behaviour and the sanctions that may be applied.

Training should provide guidance on how to handle situations that might arise, how to use channels through which concerns can be reported or expressed and how to seek help or advice.

The expertise of the trainers will need to be developed and this can be obtained by recruiting qualified people or using specialist external providers.

Training for employees and business partners should be planned and should not be a one-off exercise. Training should be provided to employees related to the risks of bribery to which they could be exposed. Business partners should be encouraged to adopt similar training requirements and the enterprise could provide anti-bribery training to its business partners to support them in the training of their employees and sub-contractors. The training for people in areas of high risk could be an annual dedicated course or for those in low areas of risk it could be an occasional refresher course within a wider training course. Training records should be maintained for employees and business partners.

The costs of training may be substantial for small enterprises. An enterprise cannot afford to forgo anti-bribery training but there are ways of reducing the cost and this can be by focusing its activities on the areas of highest risk, buying in expert services and using communication and training techniques such as video and interactive media.

6.5 Raising concerns and seeking guidance

The Business Principles state:

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

6.5.2 These channels should also be available for employees and others to seek advice or suggest improvements to the Programme. To support this process, the enterprise should provide guidance to employees and others with respect to the interpretation of the Programme in individual cases.

Background

An effective Programme will have a policy, process and channels for communication of complaints, seeking advice and making suggestions for improvements in an enterprise's Programme.

Anti-bribery communication channels are usually termed "whistleblowing" channels, "hot lines" or help lines. They may not only be for the use by employees but can also be provided for use by business partners or the general public. Evidence suggests

that although such channels are not heavily used, they can be important in revealing significant abuses of a Programme.

Anti-bribery communication channels increase the risk to wrongdoers that their actions will be exposed; they give honest employees and business partners a way in which they can report and they assist in creating a culture of prevention and anti-bribery practice.

Anti-bribery communication channels can have an important role in providing advice to employees with questions about the enterprise's Programme and its implementation. This role can be extended to provide advice to business partners and other stakeholders interested in communicating with the enterprise about its Programme. Anti-bribery communication channels also have an important function in encouraging employees and others to suggest improvements to policy and processes.

Anti-bribery communication channels and help lines are part of the range of tools in an enterprise's practices for creating a culture and process for countering and preventing bribery. They should not be seen as substitutes for other communication and anti-bribery activities.

Definition

The common term used for anti-bribery communication channels is "whistleblowing" but anti-bribery communication channels also include help lines or hot lines. "Whistleblowing" is specifically the sounding of an alarm by an employee, Director, or external person, aiming to reveal neglect or abuses within the organisation's activities or that of one of its business partners that threaten public interest, the integrity of an enterprise's Programme and the reputation of the enterprise. Hot lines can function as "whistleblowing" channels and also be used for providing advice and receiving suggestions. The prime role of help lines is to be a point to which employees or others may turn to for advice but they can be used for receiving comments and suggestions.

Implementation

Policies and processes

The enterprise should establish a policy and process for handling complaints, requests for advice and suggestions which allows these to be raised outside the line management structure, by employees, business partners and other parties, including the general public, about abuses or implementation of the Programme.

The prime role of anti-bribery communication channels is to provide users with a secure channel to voice any concerns about possible violations of the Programme ("whistleblowing"). Employees should be made to understand that they have a responsibility to report any incidents or violations that they may be aware of or opportunities for improving the Programme and this is essential to the success of the enterprise in countering bribery. An acceptance of such responsibility should also be encouraged in business partners.

Anti-bribery communication channels need careful structuring and management as they present particular difficulties in building the trust necessary to make them effective.

Some employees may view use of “whistleblowing” or “hot lines” as informing on colleagues (help lines have a more favourable image). There may be cultural differences in attitudes to complaints channels in some countries, particularly those that are, or have been, subject to political repression.

The policy should aim to build confidence in the system among employees and business partners by providing secure and confidential channels of communication. The policy should make clear that the enterprise takes malpractice seriously and it should provide guidance on examples of malpractice and issues that could be raised.

Enterprises should provide education and training for employees and business partners to enable them to make reasonable judgements about when and how to complain.

Enterprises should provide feedback to complainants, where not anonymous, on action taken.

Protection of employees and complainants

An anti-bribery communication channel may be used where an employee, business partner or other person considers it impossible or difficult to reveal, raise or discuss a complaint or suggestion through normal organisational reporting lines.

Protection of those who complain is crucial to the successful functioning of an anti-bribery communication channel. A major concern for employees considering making complaints is that there is an understandable fear of consequences such as being penalised, suffering recrimination from colleagues, internal and public defamation, abuse, loss of job and sometimes loss of career. For business partners there may be concern about loss of contracts.

Enterprises must ensure that if they have communications channels to encourage reporting of concerns about bribery, they protect the career and reputation of the complainant and are seen to do so for all such complainants. Where a complaint has been made in accordance with the Programme, and in good faith, the enterprise should provide the employee with complete protection from discharge, demotion, or reduction in remuneration.

The enterprise must also protect its employees and business partners from channels being used for frivolous or malicious complaints.

A complainant should be encouraged to reveal, in confidence, his or her identity to management because it enables frivolous or malicious accusations to be more readily detected. The complainant will be protected further by being able to prove the complaint was made should there be harassment or accusation at a later date and where there is alleged criminality and the matter is reported to the authorities, the identity of the complainant needs to be revealed.

The enterprise should provide disciplinary review processes and sanctions for false and malicious allegations.

Expressing concerns to independent parties

There may be occasions where an employee, business partner or third party lacks confidence in the enterprise's anti-bribery communication channels. Therefore, the enterprise should consider providing an additional route through which complaints may be made to an independent review function or party such as a sub-committee of the Board formed from non-executive directors, an "ombudsman" or a professional organisation offering such a service.

If an enterprise does not provide such an additional channel, there is risk that a complainant might choose to voice concern to the media or to a public agency. From the enterprise's viewpoint, it is undesirable that complaints should be made externally in the first instance in this way. A complaint will only be revealed to the enterprise once published and the matter will be on a process and timetable outside the enterprise's control. This would lose the opportunity, both for the enterprise and the complainant, of handling the matter in a structured way with proper review. Further, complaints if made to media, may be influenced by other aspects such as financial reward or a desire for public recognition.

However, it must be recognised that the media can play an important role in exposing bribery in circumstances where corruption pervades an enterprise or society and complainants are likely to be intimidated, threatened or have no prospect of their complaint receiving a hearing.

Documentation and reporting

Documentation will help ensure that an anti-bribery communication channel process serves its function of assisting in countering bribery.

Senior management should receive regular reports about complaints, where well founded and of high significance. The Board or Audit Committee should review regularly the performance of the anti-bribery communication channels and the degree to which management is responsive to complaints made through the channels.

The enterprise is encouraged to report regularly and openly both internally and externally on the adequacy and effectiveness of its anti-bribery communication channels. However, evaluating the effectiveness of such channels presents difficulty. The identity of the complainants must be protected and to report on use brings a risk that the identity of the complainant could be detected by those against whom the complaint is made or by colleagues of the complainant. Therefore, in assessing the performance of anti-bribery communication channels, enterprises will have to accept indirect measures such as the frequency of use of the "hot line" or help line and aggregated figures for levels of satisfaction of complainants with the handling and outcome of their complaint.

International Instruments

The OECD Principles of Corporate Governance 2004 introduced a new principle advocating protection for whistleblowers, including institutions through which their

complaints or allegations could be addressed and provided for confidential access to a board member. The OECD Principles state:

“Unethical and illegal practices by corporate officers may not only violate the rights of stakeholders but also be to the detriment of the company and its shareholders in terms of reputation effects and an increasing risk of future financial liabilities. It is therefore to the advantage of the company and its shareholders to establish procedures and safe-harbours for complaints by employees, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour. In many countries the board is being encouraged by laws or principles to protect these individuals and representative bodies and to give them confidential direct access to someone independent on the board, often a member of an audit or an ethics committee. Some companies have established an ombudsman to deal with complaints. Several regulators have also established confidential phone and e-mail facilities to receive allegations. While in certain countries representative employee bodies undertake the tasks of conveying concerns to the company, individual employees should not be precluded from, or be less protected, when acting alone. When there is an inadequate response to a complaint regarding contravention of the law, the OECD Guidelines for Multinational Enterprises encourage them to report their bona fide complaint to the competent public authorities. The company should refrain from discriminatory or disciplinary actions against such employees or bodies.”¹⁴

Whistleblowing Links

National Whistleblower Centre, Washington, USA: www.whistleblowers.org/

Public Concern at Work, UK: www.pcaw.co.uk/

6.6 Communication

The Business Principles state:

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

6.6.2 *The enterprise should, on request, publicly disclose the management systems it employs in countering bribery.*

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

Background

Communication is one of the keys to the success of an anti-bribery Programme.

Enterprises that make effective internal communication are in a better position to require adherence, achieve compliance, sanction non-conformance, and ultimately see that their actions live up to their values and policy.

¹⁴ OECD Principles of Corporate Governance 2004, Section 4 E

External communication should be used to make the enterprise's Programme transparent to stakeholders. This will assist the enterprise to strengthen its corporate reputation and can be useful in stimulating comment and feedback from stakeholders.

Implementation

The enterprise should be open to discussing its Programme with employees, business partners and other stakeholders with the aim of identifying valid concerns, areas where improvements can be made and building trust.

The enterprise 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. Channels can include websites, Intranet, CD-ROMs, postings on bulletin boards or walls, handbooks, employee manuals, newsletters, employee meetings, telephone "hot lines" and "help lines", Annual Reports and Social Reports.

The communications should be adapted in content and language to reflect varying audiences, localities and countries.

By making public its Programme and demonstrating externally its commitment to countering bribery, the enterprise will also reinforce its message to employees of the importance of countering bribery.

Internal communication

The role of effective internal communication in the enterprise's Programme is to make sure that the enterprise's own employees and employees of business partners are aware of the Programme, the importance placed on countering bribery and understand clearly the enterprise's policies and practices. Internal communication will provide employees with the information they need to carry out their activities and to handle any incidents that may arise. It will enable management to demonstrate commitment and leadership on the topic.

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

The use of anti-bribery communication channels, help lines and hot lines is described in section 6.5 and these are important communication tools for the Programme.

Plans and targets should be set for measuring employee understanding, awareness and attitudes to the Programme and monitoring achievement of the communication plans and targets for the Programme.

External communication

External communication should be used to inform stakeholders of the enterprise's policies, practices and performance and to obtain opinion and comments on the Programme.

If an enterprise chooses to make public its Programme, it should recognise that it will thereby be making a reputation and risk management statement, as it will have an implicit commitment to abide by its Programme. This can lead to public expectation for information about the enterprise's performance in applying its Programme and information about violations. If the enterprise makes available information about its performance, this can contribute to the monitoring and evaluation of the Programme as any inconsistencies between actual and reported performance may attract opinion and comment from relevant stakeholders.

Enterprises may report the number of dismissals for violations of their anti-bribery Programme but such numbers might be aggregated within a broader category. For example, BP and Shell report the numbers of employees dismissed for unethical behaviour.

6.7 Internal controls and audit

The Business Principles state:

- 6.7.1 The enterprise should maintain accurate books and records, available for inspection, which properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.*
- 6.7.2 The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme.*
- 6.7.3 The enterprise should subject the internal control systems, in particular the accounting and record keeping practices, to regular audits to provide assurance that they are effective in countering bribery.*

Background

Relevant 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 enterprise. Internal controls are broadly defined as 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.

Internal controls and audit practices are currently under critical review. The role of money laundering in international terrorism and recent prominent corporate frauds has generated legislation placing additional requirements on enterprises. The US Sarbanes-Oxley Act is the subject of debate on the effects it will have on accounting practices for international enterprises, particularly those listed in the US.

Implementation

Accurate books and records

In the fight against bribery and corruption in the business world, accurate accounting and record keeping is of the utmost importance:

- to allow checks to be made that proper procedures are followed and to identify how processes can be improved to increase efficiency and counter bribery;
- to provide hard evidence in the case of investigations or court proceedings when enforcing 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. bank accounts which have been accumulated “off-the-books” from commissions or other receipts not recorded in the official books of account. There must therefore 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, including contacts with an enterprise’s bankers are necessary precautions to reduce this risk.

Risks also relate to special purpose entities (SPEs) which may hold substantial assets and liabilities of a business but are not consolidated and where independent controls may be weak.

Ensuring compliance with anti-bribery rules follows largely the same process as 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 is normally described as a system of internal accounting control.

Feedback mechanisms and monitoring

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 Programme. 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 is to ensure a common approach and understanding by comparing and sharing good

practice, reviewing performance and identifying ways in which the Programme can be improved.

The audit function

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 employees receive appropriate induction, whether training programmes reach all employees, whether properly articulated policies exist in the areas covered in sections 5 and 6 of the Business Principles and whether these policies are followed in practice, how incidents of bribery are dealt with and which sanction are applied. In some enterprises 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. in the procurement function the risk of employees demanding and receiving kickbacks, and in the sales function the pressure on sales personnel and agents to achieve sales targets “regardless“. Where compliance letters are collected annually from staff most at risk to bribery, the internal auditor may be used to collect such returns and to investigate any exceptions reported.

External auditors also play an important deterrent and advisory role in relation to an enterprise’s anti-bribery Programme. They should have a good knowledge of international and local anti-bribery laws and ideally train their audit staff in forensic accounting techniques so that suspicions can be raised where documents may have been falsified or where prices are out of line with market rates. Auditors should be able to advise Boards and client staff on the implementation and monitoring of anti-bribery programmes. Where clients operate in high-risk industries or countries where corruption is prevalent, consideration of bribery issues should enter into the auditors’ assessment of risk and impact the scope of audit testing. Where suspected cases of bribery are discovered during an audit, top management and/or the Audit Committee should be notified and, where required by law, the appropriate law enforcement agency contacted.

In general, while external auditors have historically emphasised their inability to detect fraud (and by implication also cases of bribery) in the course of their audit of financial statements, this exclusion of responsibility tends not to be accepted by capital markets and courts of law where companies fail as a result of fraud. A more proactive approach to the detection of fraud and illegal acts, particularly when committed by management, would be in the interest of the public credibility of the audit profession. This is particularly the case since the corporate scandals of Enron and WorldCom and the demise of Arthur Andersen.

6.8 Monitoring and review

The Business Principles state:

6.8.1 Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report to the Audit Committee or the Board the results of the Programme review.

6.8.2 The Audit Committee or the Board should make an independent assessment of the adequacy of the Programme and disclose its findings in the Annual Report to shareholders.

Background

The Business Principles in the previous section, Internal Controls and Audit, require continuous improvement through evaluation and revision of the Programme. Section 6.8 places focus on the responsibility of senior management for monitoring and improvement of the Programme with ultimate review provided by the Audit Committee

Experience shows that even the best anti-bribery policies need to be reviewed periodically and in the case of larger enterprises, that the most enlightened policies developed at corporate headquarters often may not make their way down the system as effectively as they should.

Implementation

Monitoring by senior management

Senior management should carry out regular reviews of the Programme to ensure that it is being applied appropriately, to identify any deficiencies or risks that may not be dealt with adequately and to decide on actions to strengthen and improve the Programme. Senior management should also identify any successes in implementing the Programme and recognise employee and business partner performance accordingly. This forms part of the leadership role of senior management in implementing the Programme.

As part of their review, senior management should be advised of, and take action on, any serious deficiencies detected through monitoring of the Programme. The review by management should be subject to a further check through a requirement to further report to the Audit Committee. Recommendations to deal with any deficiencies should be developed and their implementation be monitored.

Responsibilities and roles of Boards, Audit Committees and non-executive directors

The responsibilities and roles of Boards, Audit Committees and non-executive directors are coming under increased focus following major corporate scandals and the introduction of new accountancy and governance legislation in many countries. The

roles of the Audit Committee and non-executive directors are being evaluated and refocused to provide increased responsibility and independence of view within the corporate governance of the enterprise including risk assessment and reporting. Enterprises still have work to do in this area. A UK report in 2003 found that one-third of UK FTSE100 companies gave no summary of the risk management process that boards and audit committees had applied in reviewing the effectiveness of their internal control systems.¹⁵

As part of the enterprise's risk assessment process, Boards, Audit Committees and non-executive directors should evaluate the Programme regularly to identify any significant risks of bribery and whether these are adequately countered within the existing Programme. If a review shows unacceptable risks then action should be taken to improve the Programme and introduce new controls and processes to minimise risks.

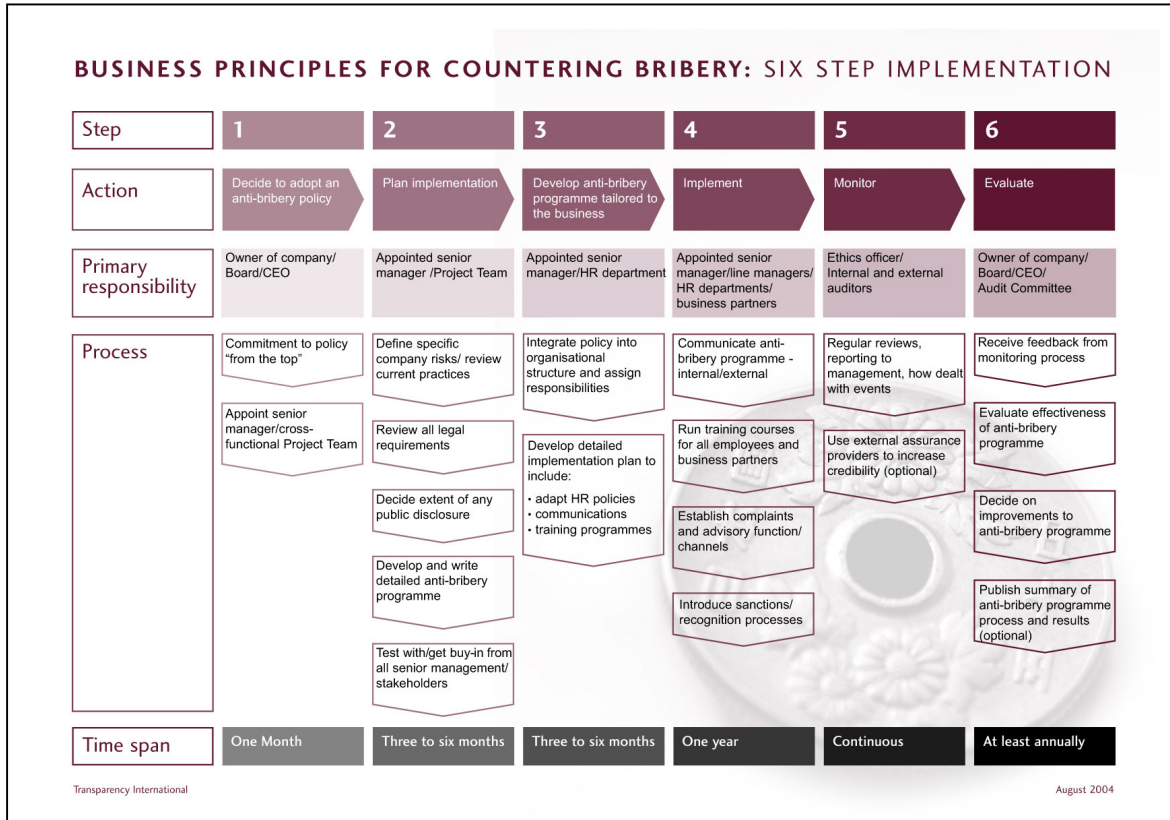
Reporting

Transparency is one of the values required by the Business Principles and information should be made available to stakeholders in an accessible and regular manner about the enterprise's Programme and performance. The Annual Report may form the best route for regular reporting but continuous reporting on the web and reporting in Corporate Social Responsibility Reports will develop as alternative ways of communicating performance. If the enterprise makes an annual or regular report to employees then this should include a reference to performance related to the Programme.

¹⁵ Grant Thornton: *2003 FTSE Corporate Governance Review*, November 2003

7 Implementation: The TI Six Step Process

The Guidance Document has described in the previous section, the background to the Business Principles. This section provides a guide to enterprises on how to implement an anti-bribery Programme. The chart below shows six stages for implementation and a narrative to the chart will be added to this Guidance Document in a revision of this edition due before end 2004.



8 Reading and resources

Links to corruption bibliographies

USINFO: http://usinfo.state.gov/ei/economic_issues/bribery/bribery_biblio.html

TI Bangladesh: www.ti-bangladesh.org/olddocs/research/Corrupt.htm

Corporate Governance

Cadbury, Sir Adrian	<i>Corporate Governance and Chairmanship</i>	Oxford	2002
Cadbury, Sir Adrian	<i>Family Firms and their Governance</i>	Egon Zehnder International	2000
MacAvoy Paul (Millstein, Ira M, Ed.);	<i>The Recurrent Crisis in Corporate Governance</i>	Palgrave MacMillan	2004

Corporate responsibility

Elkington, John	<i>Cannibals with Forks</i>	Capstone	1997
Leipziger, Deborah	<i>The Corporate Responsibility Code Book</i>		2003
Zadek, Simon, Ruzan, Peter, and Evans, Richard - Editors	<i>Building Corporate Accountability</i>	Earthscan	1997

Business Ethics

Moon, Chris and Bonny, Clive - Editors	<i>Business Ethics</i>	The Economist Books	2001
	<i>Harvard Business Review on Corporate Ethic</i>	HBS Press	2003

Countering corruption

Centre for Business and Public Sector Ethics	<i>Ethics and Anti-Corruption DVD and Videos</i> - the Modules are designed for use globally by government leaders, civil servants, businessmen, bankers, academics, and other interested persons and institutions. http://www.ethicscentre.org/	Cambridge, UK	2003
Cambridge, UK	<i>Fighting Corruption: A Principled Approach: The C Principles,</i>	Zicklin Center Working paper Series no. 00-04-21	2000
Mauro, P	<i>Corruption and Growth</i>	Quarterly Journal of Economics, 110 681	
Moody-Stuart, George	<i>Grand Corruption: How Business Bribes Damage Developing Countries</i>	World View Publishing, Oxford	1987
Naim, M	<i>The Corruption Eruption</i>	Brown Journal of World Affairs, 11: 245	
Schwartz, Peter, Gibb, Blair	<i>When Good Companies do bad things</i>	Wiley	1999
Oliver, Richard W	<i>What is Transparency?</i>	McGraw Hill	
Vincke, Francois, Heimann Fritz – Eds	<i>Fighting Corruption – A Corporate Practices Manual</i>	ICC Publishing SA	2003
Wei, S J	<i>Why is corruption so much more taxing than tax? Arbitrariness Kills</i>	National Bureau of Economic Research Working Paper no. 625	

Political contributions

<i>Handbook on Funding of Parties and Election Campaigns</i>	The International Institute for Democracy and Electoral Assistance (IDEA), www.idea.int	2003
<i>The Global Corruption Report</i>	Transparency International	2004

Facilitation payments

	<i>Facilitation Payments in the Legislation of Signatories to the OECD Anti-Bribery Convention</i>	Transparency International (UK)	2003
	<i>The High Cost of Small Bribes,</i>	TRACE, http://www.traceinternational.org/index.shtml	2003
	<i>Facilitation Payments: Whether considered custom or bribery, they put companies in a precarious position</i>	Article ID: 807 - ERC Fellows Program, Ethics Resource Center	2003
Kaufmann, Daniel and Wei, Shang-Jin	<i>Does "Grease Money" Speed Up the Wheels of Commerce?</i>	World Bank	

9 Web links

Anti-bribery and corruption	Transparency International: links to anti-corruption websites	http://www.transparency.org/site-tools/igo.html
	OECD Corruption	http://www.oecd.org/topic/0,2686,en_2649_37447_1_1_1_1_37447,00.html
	The Corner House	http://www.thecornerhouse.org.uk/subject/corruption/
Anti-bribery tools	Transparency International (UK): Preventing corruption in the official arms trade and construction and engineering industry projects	http://www.transparency.org.uk/
Blacklisting	World Bank List of Debarred Firms	http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984
Corporate Governance	France Mouvement des Entreprises de France: Daniel Bouton, «Pour un meilleur gouvernement des entreprises cotées» 23 September 2002;	http://www.medef.fr/staging/site/page.php?pag_id=303
	Germany: Corporate Governance Code	http://www.corporate-governance-code.de/index-e.html
	UK: Department of Trade and Industry - The Higgs Review, 2002 - Independent Review of Non-Executive Directors	http://www.dti.gov.uk/cld/non_exec_review/
	USA: Sarbanes-Oxley Act	http://www.sarbanes-oxley.com/
CSR	European Foundation for Quality Management CSR Framework	http://www.efqm.org/publications/exconeFW.htm
	Warwick Business School Corporate Citizenship Unit	http://users.wbs.warwick.ac.uk/group/ccu/

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Guides to International anti-corruption Conventions	Utstein Anticorruption Resource Center: Anti-corruption Conventions – an overview	http://www.u4.no/document/conventions/intro.cfm
	Anti-corruption instruments and the OECD Guidelines for multinational enterprises	oecd.org/dataoecd/0/33/2638728.pdf
International anti-corruption Conventions	UN Convention against Corruption	http://www.unodc.org/unodc/crime_convention_corruption.html
	Organization of American States: The Inter-American Convention Against Corruption	http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.upd.oas.org
	OECD Convention and other instruments	PDF file http://www.oecd.org/topic/0,2686,en_2649_34855_1_1_1_1_37447,00.html
	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	http://www.oecd.org/department/0,2688,en_2649_34859_1_1_1_1_1,00.html
	African Union Convention	http://www.africa-union.org/home/Welcome.htm
	Council of Europe Criminal Law Convention on Corruption	http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=173&CM=7&DF=06/07/04&CL=ENG
	Council of Europe Civil Law Convention on Corruption	http://conventions.coe.int/Treaty/EN/cadreprincipal.htm
International financial institutions	World Bank, anti-corruption strategy	www1.worldbank.org/publicsector/anticorrupt/topic2.htm
	World Bank Institute Governance and Corruption	www.worldbank.org/wbi/governance/
	Asian Development Bank	http://www.adb.org/Anticorruption/default.asp
	European Bank for Reconstruction and Development	http://www.ebrd.com/

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International principles, guidelines, reporting frameworks	UN Global Compact	http://www.unglobalcompact.org/Portal/Default.asp
	Global Reporting Initiative	http://www.globalreporting.org/
	Caux Round Table, Principles for Business	http://www.cauxroundtable.org/principles.html
	Global Sullivan Principles	http://globalsullivanprinciples.org/principles.htm
Excellence models	Baldrige Award	http://www.quality.nist.gov/scripts/site1/scout.html
	European Foundation for Quality Management	http://www.efqm.org/model_awards/model/excellence_model.htm
Business Associations	International Chambers of Commerce (ICC)	http://www.iccwbo.org/home/menu_extortion_bribery.asp
	International Federation of Inspection Agencies (IFIA) Compliance Code	www.ifia-federation.org/
	International Federation of Consulting Engineers (FIDIC); Integrity Management System	http://www1.fidic.org/resources/integrity/default.asp
Not-for-profit organisations	Business for Social Responsibility: Corruption and bribery	http://www.bsr.org/BSRResources/IssueBriefDetail.cfm?DocumentID=49621
	TRACE ¹⁶	www.TRACEinternational.org
Trade Unions	Unicorn ¹⁷	http://www.psiru.org/corruption/indexnew.asp

¹⁶ TRACE specialises in anti-bribery due diligence reviews and compliance training for international commercial intermediaries (sales agents and representatives, consultants, distributors, and suppliers). TRACE members are “pre-vetted” partners for multinational corporations seeking to do business with intermediaries who share their commitment to transparent and ethical business practices

¹⁷ A trade union anti-corruption network. Its overall mission is to mobilise workers to share information and coordinate action to combat international corruption

Business Principles for Countering Bribery: TI Guidance Document

10 Links to corporate practice

Business conduct	Bombardier: Code of Ethics	http://www.bombardier.com/index.jsp http://www.bombardier.com/en/0_0/0_0_1_7/0_0_1_7_4/pdf/ethics2004.pdf
	BP	http://www.bp.com/genericarticle.do?categoryId=27&contentId=2000422
	General Electric: Integrity	http://www.ge.com/en/commitment/social/integrity/index.html http://www.ge.com/files/usa/en/commitment/social/integrity/downloads/english.pdf http://www.ge.com/en/commitment/social/integrity/improper_payments.htm
	Motorola	http://www.motorola.com/code/code.html
	Norsk Hydro: Basic principles Code of Conduct Corporate Social Responsibility Principles	http://www.hydro.com/en/global_commitment/society/basic_principles/index.html http://www.hydro.com/library/attachments/en/global_commitment/hydro_code_of_conduct_en.pdf http://www.hydro.com/library/attachments/en/global_commitment/hydro_corporate_sr_principles_en.pdf
	Pfizer: values	http://www.pfizer.com/are/mn_about_vision.html
	Shell	http://www.shell.com/home/Framework?siteId=royal-en&FC2=/royal-en/html/iwgen/environment_and_society/commitment_policies_standards/business_principles/zzz_lhn.html&FC3=/royal-en/html/iwgen/environment_and_society/commitment_policies_standards/business_principles/business_principles.html
	Sika AG: Philosophy and Policies - ethics	http://www.sika.com/home/about/philo/about-philo-ethics.htm
	Tata Group: drivers Business Excellence Model	http://www.tata.com/0_b_drivers/index.htm http://www.tata.com/0_b_drivers/tbem.htm http://www.tata.com/0_careers/code_of_conduct.htm
	Pfizer	http://www.pfizer.com/are/mn_investors_corporate_ethics.cfm
Anti-bribery Programmes	BP http://www.bp.com/sectiongenericarticle.do?categoryId=79&contentId=2002369#2014687	
	Rio Tinto: Business integrity guidance http://www.riotinto.com/library/reports/PDFs/corpPub_BIGEnglish.pdf	
Management and employee guidance	Shell anti-bribery primer http://www.shell.com/static/royal-en/downloads/dealingwithbriberyprimer_final.pdf	
Reporting violations	BP http://www.bp.com/genericarticle.do?categoryId=2011495&contentId=2016875	

11 Recent news

This section provides examples of recent incidents which illustrate risks from bribery or dilemmas related to countering bribery. To allow frequent update, the section may become a separate document supporting the Guidance Document. Suggestions for content of this section will be welcomed and should be sent to the Editor, peter.wilkinson@transparency.org.uk

11.1 Gifts, hospitality and expenses

In 2004, the President of the German Bundesbank was forced to resign following an issue over corporate hospitality. It was reported that a leading German Bank had paid €7,661.20 for a four day stay in a luxury hotel for the President and his family in 2002 while he was attending an event it sponsored. There were also allegations that he had received other hospitality from companies. The resignation was viewed by the Bank's Governors "as inappropriate in view of the bank's reputation and the perception of its duties".

Also in 2004, the Governor of the Italian Central Bank was criticised for having flown to two of the world's most famous Catholic pilgrimage sites in an aircraft rented by the chairman of a bank that his institution regulated.

BAA, the UK airports operator was under criticism in 2004 from a group of shareholders over its granting of free airport car parking to UK politicians. BAA did not regard the car spaces as political contributions whereas the shareholders wished to have a resolution passed authorising BAA to have authority to make political contributions up to £1.25 million. The value of the car spaces was estimated by BAA to be £1.1 million a year.¹⁸

11.2 Corruption in the bidding process

Lesotho Highland Water Project

The Canadian engineering company Acres International of Ontario was found guilty in 2002 of paying bribes to win contracts on the Lesotho Highland Water Project dams. A further 14 other multinational companies stood accused of bribery. The Lesotho scheme was the biggest civil engineering project in Africa, intended to dam five sections of the Senqu river (Orange river in South Africa) over 30 years at a cost of \$8bn, to provide water to South Africa and electricity to Lesotho. One dam had been completed and a second was under construction.

Acres was found guilty of paying some US\$260,000 in bribes to Masupha Sole, a former chief executive of the project, through its local agent. In May 2002, Sole was jailed for 15 years for corruptly accepting more than US\$3m in the ten years from 1988. A second company was convicted at the end 2004, Lahmeyer International of Germany appealed against the conviction and a \$1m fine.

¹⁸ Financial Times, 2 June 2004

In a third trial, Schneider Electric of France pleaded guilty to 16 counts of bribery and was fined nearly £1 million after a plea bargain. It did not dispute that its corporate predecessor in Lesotho, Spie Batignolles, had also bribed Mr Sole. It was agreed by the court that Schneider's present managers were unaware of the bribes. Spie, subsequently part of Amec, was the lead firm in a consortium that included the UK's Balfour Beatty, which held a 16% stake. Although Balfour Beatty was not charged, it admitted that all the consortium members had paid a contribution to the agent who bribed Mr Sole but claimed that it was Spie executives who took all the secret commission decisions.¹⁹

Boeing, "revolving door" corruption

Darlene Druyun, a former senior U.S. Air Force acquisition official, was sentenced on 1 October 2004 to nine months in prison and seven months in a halfway house for arranging a \$250,000-a-year job for herself at Boeing Co. while negotiating contracts for the Air Force that were favourable to the company.

The length of the sentence was based in part on Druyun's failure to fully cooperate with federal investigators. According to court documents, Druyun failed a lie detector test and then admitted that Boeing's employment of her future son-in-law and her daughter in 2000, at her request, along with the her desire to be employed by Boeing, influenced her government decisions in matters affecting Boeing. She admitted that she had agreed to let the Air Force pay too much to Boeing on several contracts. On a \$29.8 billion deal to lease 100 tanker aircraft, Druyun said she agreed to an excessive price as a "parting gift to Boeing" before she left the Air Force and went to work for the company, according to the documents. Other over-priced contracts included a \$4 billion deal to upgrade C-130 avionics and a \$100 million deal to upgrade NATO airborne radar planes. Druyun told federal investigators that she approved the over-priced contracts for the C-130 and NATO aircraft upgrades in exchange for jobs with Boeing for her daughter and future son-in-law.

The tanker lease deal was scrapped and a substitute \$23.5 billion lease and purchase deal was put on hold by the Defense Department pending the completion of several studies. Druyun also acknowledged that during the tanker negotiations she provided Boeing with proprietary pricing information from Boeing's rival Airbus.

World Bank, Human Resources: sanctions policy

The World Bank terminated the employment in 2003 of a task manager for accepting payments from a consulting firm in exchange for influencing the firm's retention as a consultant on a Bank-financed project. The Bank has a zero tolerance policy for such activities, contained in its Staff Rule 8.01 which mandates termination for substantiated cases of misuse of Bank funds or abuse of one's position for financial gain. In that year, the Bank Group also terminated the employment of one other staff member for accepting payments in connection with a Bank-financed project. In addition, the Bank Group placed "no-hire" flags on the files of three former staff members for having

¹⁹ The Guardian, UK, 16 March 2004

engaged in fraudulent or corrupt activities in Bank-financed projects while employed by the Bank Group.²⁰

²⁰ World Bank, Human Resources, October 2003

12 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.

Bribery: an offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something which is dishonest, illegal or a breach of trust, in the conduct of the enterprise' s business.

Donation: see charitable contribution

Enterprise: any private sector commercial entity such as, public or private limited joint stock companies, sole proprietorships, government-owned executive agencies, partnerships, limited liability partnerships and joint ventures.

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

Facilitation payment: a small bribe, also called a "facilitating", "speed" or "grease" payment; it is a small payment 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.

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 such as a calendar.

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 a 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.

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.

Programme: The entirety of an enterprise's anti-bribery efforts including values, policies, processes, training and guidance.

Sponsorship: a transaction where the enterprise makes a payment, in cash or in kind, to associate its name with an activity or other organisation and receives in consideration for the sponsorship fee, rights and benefits such as the use of the sponsored organisation's name, advertising credits in 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.

Whistleblowing: The sounding of an alarm by an employee, Director, or external person, aiming to reveal neglect or abuses within the organisation's activities or that of one of its business partners that threaten public interest, the integrity of an enterprise's Programme and the reputation of the enterprise.

Transparency International

Transparency International is the leading international organisation devoted to curbing bribery. It was founded in 1993 with the mission to build coalitions of civil society, governments and the private sector to address the issue of corruption on a global basis. TI's work is based on the belief that corruption is a major threat to development, international trade and human rights and that containing corruption to manageable levels calls for the creation of a broad coalition. TI views engagement with the private sector as key to its mission.

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