



**TRANSPARENCY
INTERNATIONAL UK**
fighting corruption worldwide

GLOBAL ANTI-BRIBERY GUIDANCE

**BEST PRACTICE FOR
COMPANIES IN THE UK
AND OVERSEAS**

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at www.antibriberyguidance.org.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit <http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

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1. CULTURE & TONE FROM THE TOP

QUICK READ

Corporate Culture: “The beliefs and ideas that a company has and the way in which they affect how it does business and how its employees behave.”

- Cambridge English Dictionary

A corporate culture of ethics and integrity creates the enabling environment which provides the setting in which the anti-bribery programme operates. Without such an environment, the anti-bribery programme will operate in isolation without an ethical compass of corporate values or impetus for action. The key contributing factors to an enabling environment are tone from the top, ethical leadership and employees who understand how they should act when faced with ethically challenging situations, and are motivated to do so.

Key Elements:

- **Culture of ethics and integrity:** Employees know what is right and will know how to act when faced with ethical challenges. The company encourages and supports employees to do the right thing.
- **Alignment:** The anti-bribery policy and programme are an expression of the corporate values.
- **Tone from the top:** The board and management carry the anti-bribery commitment throughout the company through their support, statements, behaviour and activities.
- **Incentives:** Design remuneration and incentives so that they do not inadvertently reward behaviour which undermines the company’s anti-bribery commitment.
- **Speak-Up:** Encourage a speak-up culture and provide confidential advice and speak-up lines for employees.
- **Reward:** Ensure good behaviour and speaking up is visibly rewarded and bad behaviour is visibly penalised.

BEST PRACTICE

- **Culture of ethics and integrity:** Employees know what is right and will know how to act when faced with ethical challenges. The company encourages and supports employees to do the right thing.
- **Alignment:** The anti-bribery policy and programme are an expression of the corporate values.
- **Assess impact:** Take a systematic approach to assessing corporate culture, identifying indicators, monitoring performance and reporting on progress. As part of this, consider the impact of tone from the top. For example, by surveying staff, third parties and other stakeholders and monitoring media and social media to understand the ways in which messages from the leadership are received and translated into norms and expectations.
- **Recruit ethical leaders:** Assess ethical attributes when recruiting board members and senior management. Those at the top of the organisation need to live up to the values that they champion.
- **Tone from the top:** The board and management carry the anti-bribery commitment throughout the company through their support, statements, behaviour and activities.
- **Tone from the middle:** Managers at all levels convey the company's commitment to preventing bribery. They provide advice to their staff and recognise examples of ethical conduct and contributions to improving the anti-bribery programme.
- **Spread the word:** The board and senior management visit business units, local offices, overseas operations, key agents and suppliers to convey the company's anti-bribery commitment and ensure messages are not lost through remoteness from the head office.
- **Use a range of channels:** The board and senior management communicate the nature of the company's commitment to integrity and zero tolerance of bribery in the Annual and Sustainability Reports, as well as through company and external events, social media, speeches, articles and interviews.
- **Demonstrate commitment:** The board and senior management publicly commit to the anti-bribery programme, for example, by attending trainings, visiting locations, reviewing implementation and taking part in high-level corporate integrity initiatives.
- **Incentives:** Design remuneration and incentives so that they do not inadvertently reward behaviour which undermines the company's anti-bribery commitment.
- **Punish misconduct:** The board and senior management are firm on transgressions and ensure sanctions are applied appropriately, consistently and openly.
- **Reward:** Ensure good behaviour and speaking up is visibly rewarded and bad behaviour is visibly penalised.
- **Speak-Up:** Encourage a speak-up culture and provide confidential advice and speak-up lines for employees.

GUIDANCE

Culture of ethics and integrity

Numerous corporate scandals have been attributed to failures in corporate culture and attention should be directed to the role of culture in supporting a company's anti-bribery programme. A culture of ethics and integrity can be distilled down to the company and its employees knowing what is right according to universally accepted norms including fairness, honesty, respect for people and the environment and that they observe these values.

There is no generally accepted definition of such a culture and its core elements, and this provides an opportunity for boards, employees and stakeholders to define what a culture of ethics and integrity means in their company.

The anti-bribery programme will be most effective when there is the positive enabling environment of an embedded culture of integrity. Management and employees cannot live by rules and policies alone. They need to have a personal commitment to do things the right way and to be given the knowledge and support to behave correctly. This includes being able to recognise what is improper behaviour, knowing what to do, when to seek advice and having the skills to deal with the issue. The substantial challenge is that a culture of integrity is amorphous, the levers for change are uncertain, employee understanding and commitments hard to build and measure. Results can be degraded by misaligned incentives and at risk from employees determined to act corruptly or from external threats such as third parties soliciting or extorting bribes.

An effective compliance program promotes 'an organizational culture that encourages ethical conduct and a commitment to compliance with the law.'

- A Resource Guide to the U.S. Foreign Corrupt Practices Act (DoJ and SEC 2015) p. 56

Companies should take a systematic approach to assessing corporate culture, identifying indicators, monitoring performance and reporting on progress. Various attitudinal research techniques can be drawn on, including staff and third party surveys, interviews and focus groups. As part of this, companies should consider the impact of tone from the top. For example, by surveying staff, third parties and other stakeholders and monitoring media and social media to understand the ways in which messages from the leadership affect behaviour and attitudes.

Often responsibility to oversee the development and implementation of a culture of integrity lies at the executive level. This would include developing the values and the code of conduct and ensuring proper resources. Human resources should contribute to this process, for example, by advising on clear assignment of responsibilities, recruitment of the right people and assessing employee performance. HR can also advise on optimising communications, training, incentives and appraisal and disciplinary procedures.

Notable scandals where a culture of integrity has been shown to be wanting

- Banks: manipulation of the LIBOR rate¹, subprime mortgages.
- Enron: a wide range of forms of corruption including financial misstatements, off-the books accounts and market manipulation.
- Siemens: bribery to win large contracts.
- Tesco: misstatement of financial accounts.
- Volkswagen: manipulation of emissions tests results.
- Wells Fargo: creation of false deposit and credit-card accounts.
- WorldCom: financial misstatements and inflated reporting of assets.

Tone from the Top

Leaders must communicate the highest standards of ethical behaviour across the company and demonstrate a high level of personal integrity if the anti-bribery programme is to succeed.

Leadership set the ethical standards and promotes a culture of integrity throughout the company and its operations. If board members and senior management do not provide strong, visible and continuing support to countering bribery, then even the best designed anti-bribery programme will falter. The tone from the top should be aligned with the organisation's culture to ensure staff are receiving a consistent message. Middle Management amplify the "Tone from the Top" through "Tone from the Middle".

Tone from the top is critical to the success of the anti-bribery programme. It is the way the top leadership – the chair, board members, CEO and senior management – communicate and support the anti-bribery programme through their behaviour and actions. Tone from the top not only influences employees but also shapes stakeholder views, building confidence in the company's measures to counter bribery and providing reassurance in the event of a bribery incident. Tone from the top starts with the board and integrity should be a key criterion when the board appoints the CEO, who will be responsible for driving the anti-bribery commitment throughout the company.

¹ London Interbank Offered Rate: This, is the average interest rate at which banks can borrow from one another and a huge number of investments and trades are referenced to it. These transactions involve small businesses, large financial institutions and public authorities as well as individuals affected by the interest rates attached to a wide range of contracts including loans, savings rates and mortgages.

‘The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.’

- UK Ministry of Justice, Guidance to the UK Bribery Act 2010

The anti-bribery tone does not stop at the top. It should be expressed equally by middle and first line management. Further, tone from the top will only succeed where the leadership are seen to live by the standards they advocate. All too often in corporate scandals the leadership has fallen short of the standards they professed to follow and exhorted others to live up to.

‘Within a business organization, compliance begins with the board of directors and senior executives setting the proper tone for the rest of the company. Managers and employees take their cues from these corporate leaders. Thus, DOJ and SEC consider the commitment of corporate leaders to a “culture of compliance” and look to see if this high-level commitment is also reinforced and implemented by middle managers and employees at all levels of a business.’

- A Resource Guide to the U.S. Foreign Corrupt Practices Act (DoJ and SEC 2015) p.57

Incentives and remuneration

Incentive schemes are an important way of encouraging desired behaviour from directors and employees. Extensive guidance on this topic is provided in the TI-UK publication [*Incentivising Ethics: Managing incentives to encourage good and deter bad behaviour.*](#)

Employees are incentivised, assessed and recognised using a variety of measures such as achievement of business key indicators or on less tangible measures of personal achievements assessed during the appraisal process. Scandals in many sectors have shown that misaligned incentives have been one of the drivers of corrupt practices. For example, incentives to meet targets have led to corrupt behaviour including fraud, mis-selling, falsification of records, manipulation of accounts, anti-competitive practices and bribery.

US Federal Sentencing Commission Compliance Guidelines

‘The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.’

Chapter 8.B.2 (6).

Business units should work together to advise management and the board on setting remuneration, bonuses, commissions and benefits (good governance practice requires that a board delegates authority to a board remuneration committee). The challenge for the company is to design structures that encourage and reward employee and board members’ performance but do not lead to incentivising improper behaviour or pressurising employees to make bribes or other improper behaviour.

‘Boards of listed companies will need to ensure that executive remuneration is aligned to the long-term success of the company and demonstrate this more clearly to shareholders. Executive directors’ remuneration should be designed to promote the long-term success of the company. Performance-related elements should be transparent, stretching and rigorously applied.’

[The UK Corporate Governance Code, The Financial Reporting Council Limited, September 2014.](#)

For incentives to work, the company must have an open integrity and ethical culture in which employees are encouraged to do the right thing and feel able to challenge management on targets they think are unethical or dysfunctional and feel able to speak up without fear of repercussions. Ethical behaviour should also be incentivised in appraisal.

Speak up and advice lines

Speak up and advice channels are for employees and others to seek advice and raise concerns about issues, including bribery. Speaking up or, as it is sometimes called, whistleblowing, has brought to light many significant bribery cases.

Advice channels allow employees to clarify policies, and receive guidance about how to handle sensitive situations. Such channels are most effective when there is a strong corporate culture of integrity so that employees trust that requests for advice or speaking up will be handled promptly, thoroughly and fairly. Advice can be given in many ways and the company should explore and develop an integrated range of routes by which employees can receive support. Please see Chapter 15.

RESOURCES

- [*Incentivising Ethics: Managing incentives to encourage good and deter bad behaviour.*](#)
Transparency International UK, October 2016.

2. GOVERNANCE & COMMITMENT

QUICK READ

The board should provide oversight of the implementation of the anti-bribery programme, ensuring it receives regular reports from management and the results of internal and external audits and direct that necessary changes are made.

The role of the board is critical in ensuring the establishment of a control environment in order to ensure the anti-bribery programme is effective. The control environment is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. The control environment provides the setting in which the anti-bribery programme operates. Without such an environment, the anti-bribery programme will operate in isolation without an appropriate organisational framework and suitable systems.

The control environment is also supported by an anti-bribery commitment, a process to identify and comply with anti-bribery and related laws, clear assignment of responsibilities for the anti-bribery programme and ensuring that the programme takes into account the company's organisational structure.

Key Elements:

- **Commitment:** The board commits to ethics and integrity values and to ensuring a corporate culture that lives up to them.
- **Alignment:** The board ensures the anti-bribery policy and programme are an expression of the corporate values.
- **Oversight:** Governance and oversight is provided by the board to the anti-bribery programme.
- **Structure:** The organisation structure, systems and management approaches support the implementation of corporate values and the anti-bribery programme.

BEST PRACTICE

- **Stated commitment from the top:** The board ensure that management, employees and stakeholders know its commitment to the anti-bribery policy and the anti-bribery programme. This includes making high profile commitments, internally and externally, on the company's ethical values, and committing to the anti-bribery programme. Statements can be made on the website, external reports and publications affirming the company's collective commitment to prohibition of bribery and the measures it takes to ensure that values are embedded in the company and bribery risks are countered.
- **Compliance with laws:** The company commits to being compliant with relevant anti-bribery legislation and has a procedure for this. It may seem superfluous to state that a company should comply with laws but making it an explicit commitment focuses attention and actually achieving compliance is complex and requires a systematic process.
- **Accountability and transparency:** The board is accountable to shareholders and other stakeholders on how well the company is meeting its commitments to doing business ethically (including being free from bribery). Accountability is expressed through oversight and reports to stakeholders and engagement.
- **Knowledge and vigilance:** The board ensures it is knowledgeable and vigilant about corruption risks, emerging issues, advances in best practice and changes to relevant legislation and the design and implementation of the anti-bribery programme.
- **Skilled:** The board is adequately equipped to fulfil its responsibilities relating to the anti-bribery policy through receiving training and briefings. These should be provided to board members on appointment and then on a regular basis.
- **Clear assignment of responsibilities:** The board ensures that authority and responsibilities for implementing the anti-bribery programme are assigned clearly throughout the company.
- **Independent oversight:** Independent assessment of the implementation of the anti-bribery programme should be provided by non-executive directors through a board sub-committee which oversees the commitment to ethics and integrity. A consideration here is how the chief compliance officer should report to the board.
- **Risk approach:** The board decides the risk approach for bribery.
- **Organisational:** Clear responsibilities and accountability for implementation of the anti-bribery programme should be assigned to staff and there should be supporting organisational structures and procedures.
- **Review:** Countering bribery should be a standing item on the board agenda with the board receiving regular reviews on the implementation of the programme and the ever-changing external environment of new laws, emerging practices, societal changes and new technologies. This will ensure it remains alert to the specific risks of bribery for the company. Reports should be received on any incidents or allegations of bribery and actions taken to correct deficiencies.

- **Awareness of legal risks for directors and officers:** Directors should be aware of the growing criminal and civil risks for directors and officers attached to bribery offences. Directors are expected both legally and in codes for corporate governance to exhibit sound judgment in fulfilling their fiduciary responsibilities of corporate governance and oversight, including overseeing the company's efforts to prevent bribery and effectively manage company risks.

GUIDANCE

2.1 Anti-Bribery Commitment

Formal commitment to a policy of prohibiting bribery is a foundation of the anti-bribery programme

Commitment by the board and senior management to a policy of prohibition of bribery is the bedrock for countering bribery. The board and senior management should make a public commitment to prohibiting bribery in the company's operations. The board should also commit to supporting the implementation of an anti-bribery programme, by providing oversight and assigning a senior manager to implement the programme. In doing so the board should inform themselves of the risks and appropriate policies and procedures required.

Corporate value statements, and accompanying guidance, should also support the company's stance, and be publically available to allow wide communication of the company's commitment.

The commitment is expressed by encoding it in values, tone from the top (see Chapter 1) and resourcing the design and implementation of the anti-bribery programme. The commitment can also be shown by public reporting and engagement (see Chapter 18).

2.1.1 Corporate value statements

When deciding on or reviewing the anti-bribery policy, the board should create, or review, the company's value statement to ensure it supports the anti-bribery commitment. It is vital that the values emphasise zero tolerance of bribery and corruption and emphasise acting ethically and with integrity.

For examples of values statements related to integrity, click [here](#).

2.1.2 Code of conduct

Corporate values need to be translated into a code of conduct, supported by accompanying guidance. The code of conduct should be made public and reviewed and updated regularly. It also needs to be specified who the guidance applies to (directors, employees and third parties). All directors and employees should be required to attest annually that they have read and understood the code.

The code should be supported by guidance. This may be within the code of conduct or in a separate guidance publication such as business conduct guidelines. Large companies may also produce codes of conduct and guidance for specific audiences such as third parties.

For examples of codes of conduct with statements on ethical commitment, [click here](#).

2.1.3 Board commitment to the anti-bribery policy

The board should commit to a zero-tolerance policy to bribery. Carrying out this formal process is important as it requires the board to:

- Understand the legal context
- Understand the risks
- Understand the controls needed to mitigate the risks
- Consider the work and resources needed
- Consider the oversight responsibilities of the board
- Set the scope of the anti-bribery commitment

The board should also ensure it understands the definition of bribery and the forms it may take as this will define the scope for developing the programme. The definitions of bribery in laws such as the UK Bribery Act will help the company identify the scope of risks. For guidance on bribery risk assessment see Chapter 4.

Example policy

The company prohibits bribery. It will not tolerate its directors, management, employees or third parties, being involved in bribery, whether by offering, promising, soliciting, demanding, giving or accepting bribes or behaving corruptly in the expectation of a bribe or an advantage. This policy extends to all the company's business dealings and transactions in all countries in which it, or its subsidiaries and associates, operates. The company expects those third parties acting on its behalf to act in accordance with this policy.

This policy is implemented by a detailed anti-bribery programme, which is revised regularly to capture changes in law, stakeholder expectations and changes in the business.

The company should also explicitly state that it supports employees who resist paying bribes. It should be made clear that the company is prepared to forego contracts, sales or other business advantages if required.

It is best practice that anti-bribery commitment should also be integrated with other values and with corporate responsibility and sustainability commitments made by the company, to ensure it becomes embedded practice.

2.1.4 Board commitment to implementing an anti-bribery programme

The board should give substance to its zero tolerance policy by supporting the implementation of an anti-bribery programme. Best practice includes:

- A commitment to support the implementation of the programme is made formally with written approval by the board.
- The endorsement is made public as this will serve to emphasise the importance that the company attaches to implementing its policy.
- Management should design (or improve) detailed policies and procedures based on recurring risk assessments.
- The board provide oversight to the anti-bribery programme and a senior manager is given clear responsibility for its implementation.

2.1.5 Public communication of the company's anti-bribery commitment

The board should require that the anti-bribery commitment is public, easily accessible and actively publicised, so that all relevant parties are aware of the company's stance on ethics, integrity and countering bribery.

A way for the company to show its commitment to its no-bribes policy is to initiate or support anti-corruption initiatives. These can be led by a variety of organisations such as business chambers, NGOs, sector bodies or ad hoc working groups. Examples of global anti-corruption initiatives are the Extractive Industries Transparency Initiative (EITI), the OECD's Business and Industry Advisory Committee (Policy Group on anti-bribery and corruption) and the UN Global Compact. National examples are the Convention on Business Integrity (Nigeria) and the Coalition against Corruption (Thailand). See also the guidance on public reporting and engagement (Chapter 18).

2.1.6 Best practice: Commitment

- **Formal commitment:** The board formally commits to a public anti-bribery policy and to implementation of an anti-bribery programme.
- **Corporate values:** The values should support the anti-bribery policy and emphasise acting ethically and with integrity.
- **The anti-bribery policy:** Zero tolerance of bribery and corruption should be part of the code of conduct and should be supported by a guidance document.
- **Resistance to bribery is supported:** The company policy should also explicitly state that it supports employees who resist paying bribes, even if this incurs a disadvantage to the business, such as a loss of sales.
- **Tone from the top:** The board and senior management should demonstrate a sustained anti-bribery commitment through their tone from the top.
- **Oversight:** The board should provide active oversight of the implementation of the anti-bribery policy and programme and should ensure adequate resources are provided to carry out the anti-bribery programme.
- **Anti-corruption initiatives:** The leadership should initiate or support anti-corruption initiatives.

2.2 Governance

The board of directors provides ethical stewardship of the company. This means defining the corporate values, setting the board's expectations and then ensuring that the values are carried throughout the company's activities with tone from the top, management leadership, clear assignment of responsibilities and adequate resources.

Oversight can be carried out directly by the board but more often it is through a board committee such as risk or audit. The committee should provide independent review and this will be achieved by the composition of its members being all or mostly non-executive directors. Many companies have formed compliance committees to provide increased focus on the anti-bribery programme.

Whatever the committee, it should be a means of providing the board with confidence that oversight is being carried out expertly and carefully but should not substitute for the board's responsibility to provide oversight. The board must receive results of reviews and make its own conclusions.

In a small company the distinction between governance and management roles may need to be modified, with owners or executive directors taking a more hands-on role in the company's anti-bribery activities.

'The board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met.'¹

The UK Corporate Governance Code, Financial Reporting Council

2.3 The control environment

The role of the board is critical in ensuring the establishment of a control environment in order to ensure the anti-bribery programme is effective. The control environment is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization.

The control environment provides the setting in which the anti-bribery programme operates. Without such an environment, the anti-bribery programme will operate in isolation without an appropriate organisational framework and suitable systems. It is defined in the COSO Internal Controls Framework as follows:

'The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure. Control environment factors include the integrity, ethical values and competence of the entity's people; management's philosophy and operating style; the way management assigns authority and responsibility, and organizes and develops its people; and the attention and direction provided by the board of directors.'²

2.4 Compliance with laws

Compliance with all applicable laws and regulations, including relevant anti-corruption laws, is a legal obligation. A formal commitment to compliance with laws signals that the company is absolute about being law-abiding and that this carries throughout its operations. Non-compliance with laws places a company at risk of reputational, administrative, civil and criminal consequences, including internal costs, investigations, prosecutions, fines, loss of contracts and possible debarment from public contracts.

² *Internal control – Executive Summary* (The Committee of Sponsoring Organizations 2013)

http://www.coso.org/documents/990025P_Executive_Summary_final_may20_e.pdf

The commitment also serves to focus the company's attention on the complex task of identifying and staying up to date with relevant laws. A company operating in various jurisdictions, will necessarily be subject to varying anti-bribery laws. These will be local laws in the jurisdictions in which it operates and it may well fall also under the extra-territorial provisions of laws such as the UK Bribery Act.

Realistically it may be easier to set the bar high internally by reference to the UK Bribery Act, the FCPA and China anti-bribery laws and related laws and regulations and monitor local laws to ensure there are no stricter provisions or other developments that might require adjustments. This will allow a more coherent global approach to ensuring that employees understand what is or is not permitted by the company and that a consistently high ethical standard is maintained in all markets.

Communication of the policy

It is usual for companies to state publicly a policy to comply or be consistent with laws and regulations in all the countries in which the company operates. The code of conduct should state the company's policy to comply with applicable laws and set out the expectation that employees and associated third parties will comply with laws and regulations related to the company's activities. It should be made clear to board members, relevant employees and intermediaries that they should make it their business to understand what relevant laws provide, the risks and sanctions that apply and that they should seek guidance from management and legal if unsure. They should be alerted to the extra-territorial reach of the UK Bribery Act, the FCPA and other anti-bribery laws. A process for ensuring compliance with laws and regulations also brings the benefit that the company will know the rights and protection to which it is entitled.

The risks of non-compliance

Non-compliance with laws places a company at risk of reputational, administrative, civil and criminal consequences, including internal costs, investigations, prosecutions, fines, loss of contracts and possible debarment from public contracts. Officers and employees of the company may face fines and imprisonment if convicted of an offence.

The challenge of monitoring laws

The challenge for companies is that monitoring and complying with laws is an extensive and continuing task. Bribery and corruption laws vary across jurisdictions, changes must be tracked and as well as specific bribery laws there are related laws. These include, amongst others, laws covering anti-money laundering, proceeds of crime, asset recovery, financial services, public procurement and debarment, lobbying, transparency, market regulation, competition, data security, privacy and whistleblowing.

Companies may rely on professional firms for monitoring laws but should also look to their legal functions, central and local, to keep informed of changes.

2.4.1 Best practice: Compliance with laws

- **Commitment:** Public commitment to be compliant with laws and regulations.
- **Code of conduct:** The code sets out the policy for compliance with laws and require that directors and employees and third parties will comply with laws and regulations related to the company's activities.
- **Procedure:** A systematic approach is applied with a procedure for identifying and monitoring laws and implementing necessary actions to ensure compliance.
- **Responsibility:** Responsibility is assigned clearly for ensuring that the company monitors and is compliant with laws and regulations.
- **Professional advisers:** Consider using professional legal advisers to help in monitoring and ensuring compliance with laws.
- **Review:** The board and senior management should be briefed regularly on requirements of laws and implications of proposed changes in anti-corruption and related laws.

2.5 Organisational structure and responsibilities

Organisational planning is a strategic component of the anti-bribery programme

Corporate organisational structures can be complex and formats may vary across the operations. This presents a challenge in ensuring that the anti-bribery programme is embedded across an organisation.

2.5.1 Aligning to the organisational structure

The organisational structure of a company will be the product of diverse factors; its business strategy, history, culture, management style, locations and markets. Other organisational factors are the number of subsidiaries and controlled entities, types of country and business units and the use of outsourcing and third parties. For instance, compliance may be combined with other roles. The aim must be for the anti-bribery programme to be implemented in a systematic way whatever the size or structure of company.

Embedding the programme

When designing the anti-bribery programme and planning its implementation, consideration should be given to how the programme can be embedded in the processes of the company within the organisational framework. Human resources will have an important role here as implementation will touch on many human resources areas including assigned responsibilities, job descriptions, reporting lines, inter-departmental working, dedicated compliance and ethics officers, appraisal and recognition and disciplinary procedures.

Centralised and decentralised considerations

The company structure can pose challenges for implementing the anti-bribery programme. A centralised business may send out strong consistent messages but at a risk that the programme will be rigid and not reflect the needs of local operations resulting in a loss of local commitment. A decentralised structure can bring local input in to the design of the programme and create buy-in from employees and managers – but policies and messages from the centre may be weakened or distorted. Powerful or autonomous subsidiaries, business units or functions operate may resist oversight and management from the centre. For these reasons, the board, CEO and the chief compliance officer (CCO) must drive the anti-bribery programme across the business, negotiate buy-in where necessary, and require adjustment of organisational structures which block the effective implementation of the programme.

Accountability

Good governance requires that top management are accountable to the board and there should be direct access to the board by the chief compliance officer or equivalent manager. There should also be clear allocation of accountabilities and responsibilities so managers and employees know what their role is, what is expected of them and they are assessed on this.

2.5.2 Assigning responsibilities

2.5.2.1 Chief Executive Officer

Responsibility for ensuring the corporate integrity culture and implementation of the anti-bribery programme should be placed unequivocally on the CEO. The CEO should be accountable to the board and should ensure that responsibilities are assigned across the company for implementing the programme. The CEO should provide tone from the top and it should be the aim of the CEO and senior management to embed the programme in the company such that every manager and employee accepts a personal commitment to the programme and its effective implementation.

2.5.2.2 Chief Compliance Officer (CCO)

The CCO is responsible for the day-to-day operation of compliance. In large companies, functional responsibility for the programme is commonly assigned to a CCO but can often be placed in legal and occasionally in internal audit or risk management. The CCO must consider how to build the right team to launch and implement the anti-bribery programme. In a large company, the CCO will be responsible for a network of compliance officers, located throughout the business. In small companies the compliance function may be only part of the job of a human resources professional, a legal officer or finance manager.

The CCO should have responsibility for leading the design and implementation of all aspects of the anti-bribery programme. The CCO will be the face of the company's commitment to integrity and important in providing tone from the top. Clearly, the CCO must be a person of evident integrity and command the respect of employees.

The CCO's responsibilities may include the design and provision of anti-bribery communications and training though this may be led by the communications and human resources functions for general

communications and training of which the anti-bribery messages will only be part. Specialised or tailored training should be the responsibility of compliance or legal functions. The compliance function should provide reports to management and the board on the implementation of the programme, results of risk assessment, emerging practices, issues and concerns, and recommendations for improvements or additional resources.

The reporting line for the CCO is a significant decision for the board. Best practice is for the Officer to report directly into the board or a board committee such as an integrity, audit, risk or compliance committee. The Officer should make regular written reports and presentations to the board meetings and this could be at least every quarter.

2.5.2.3 Legal function

Along with the CCO, the Legal function has a key role in implementing the anti-bribery programme. Legal advises the board on the legal context for bribery and related laws and regulations, and on any emerging laws. The function should be responsible for ensuring that the company has procedures in place for monitoring relevant laws in the jurisdictions in which it operates and for ensuring that the company is compliant with them. It should also ensure that the programme meets the requirements of data and privacy laws in its due diligence.

2.5.2.4 Other functions

The anti-bribery team, which may be part of a wider compliance function, should work closely with other functions in ensuring that the no-bribes policy and the anti-bribery control objectives are met. The anti-bribery roles of some support functions are described briefly below:

- **Ethics officer:** The role may sometimes be combined with that of the CCO. The ethics officer's role will be to develop, communicate the company's commitments to ethics and values and build an ethical culture across the company. Activities will include communications and publications, contributing to training on ethics, anti-corruption and conflicts of interest. The ethics officer may also act as an adviser and counsellor to employees on ethical concerns.
- **Human resources:** The human resources function has a critical and central role in the design of the anti-bribery programme including organisational and personnel planning. The role of human resources is a core element of the anti-bribery programme. See Chapter 16 for full guidance on the role of Human Resources.
- **Internal audit:** The internal audits are part of the internal financial controls (see Chapter 7) but the role of the internal audit function extends beyond audits as it can provide advice on the design and monitoring of the anti-bribery programme, act as a source of advice for employees, and function as a speak up channel.
- **Security and investigation:** The security function supports the work of compliance. It will comprise security officers and investigators who will work with compliance on investigation of allegations and confirmed case of bribery. In large companies, the work may include covert security.

- **Corporate affairs:** The corporate affairs function will usually be responsible for corporate communications and also internal communications. Corporate affairs, working with other support functions should develop an incident response plan and then manage the communications should an incident occur. At a continuing operational level, corporate affairs or the communications function if separate, should manage internal and external communications on the programme, including public reporting. Corporate affairs may also manage functions which are risk areas for bribery such as charitable contributions, community investments, corporate and business sponsorships, public affairs and political engagement.

2.5.3 Best practice: Organisational structure and responsibilities

- **Provide leadership:** The CEO should be given overall responsibility for compliance with the no-bribes policy implementation of the anti-bribery programme.
- **Assign senior manager responsibility:** A manager is appointed by the CEPO to implement the anti-bribery programme – this will likely be the CCO.
- **Plan the implementation:** Systematic design how the programme should be integrated across the company's activities and the organisational framework.
- **Assign clear responsibilities:** Responsibility for the anti-bribery programme should be assigned across the company, with precisely defined roles and job descriptions.

CHAPTER APPENDIX

2.6.1 Examples of business integrity values statements

Axiata

Uncompromising Integrity: Always doing the right thing and fulfilling promises made to earn the trust of our stakeholders. We are committed to upholding the highest standards of lawful and ethical conduct, and in demonstrating honesty, fairness and accountability in all of our dealings.

http://axiata.listedcompany.com/misc/FlippingBook_PDF_Publisher/Publications/HTML/ar2015/files/assets/basic-html/page10.html

BP

Respect: We respect the world in which we operate. It begins with compliance with laws and regulations. We hold ourselves to the highest ethical standards and behave in ways that earn the trust of others.

<http://www.bp.com/en/global/corporate/about-bp/people-and-values/our-values.html>

Diageo

We're proud of what we do - we act sensitively with the highest standards of integrity and social responsibility. We enjoy and benefit from diversity.

<http://www.diageo.com/EN-US/OURBUSINESS/ABOUTUS/Pages/our-values.aspx>

Tata

Integrity: We will be fair, honest, transparent and ethical in our conduct; everything we do must stand the test of public scrutiny.

<http://www.tata.com/aboutus/articlesinside/Values-and-purpose>

Unilever

Always working with integrity: Doing business with integrity has always been at the heart of our corporate responsibility commitments. Integrity defines how we behave, wherever we are. It guides us to do the right thing for the long-term success of Unilever.'

Accessed March 2017

2.6.2 Examples of codes of conducts with statements of ethical commitment

H&M

At H&M, we make it a rule to act with integrity at all times. Our business principles commit us to comply with all rules and regulations in each country where we operate and to not accept any form of corruption.

We implement this commitment through our Code of Ethics, which has been in place since 2003. The Code of Ethics states a zero tolerance policy on corruption and demands compliance with all relevant laws and our own business principles. It states, among other things, that business partners should not provide any kind of gifts or favours to H&M employees. In the same way, H&M employees must not ask for or accept any personal advantage from a business partner.

<http://sustainability.hm.com/en/sustainability/commitments/be-ethical/anti-corruption.html>

Accessed 27 February 2017

Intel

A Culture of Uncompromising Integrity

Since the company began, uncompromising integrity and professionalism have been the cornerstones of Intel's business. In all that we do, Intel supports and upholds a set of core values and principles. Our future growth depends on each of us understanding these values and principles and continuously demonstrating the uncompromising integrity that is the foundation of our company.

The Code of Conduct sets the standard for how we work together to develop and deliver product, how we protect the value of Intel and its subsidiaries (collectively known as 'Intel'), and how we work with customers, suppliers, distributors and others. All of us at Intel must abide by the Code, our Employment Guidelines, and other applicable policies when conducting Intel-related business.

Bribery and Anti-Corruption

Intel strictly prohibits all forms of bribery. Intel's policy is to comply with all anti-corruption laws and to accurately reflect all transactions in Intel's books and records. We must never offer or accept bribes or kickbacks and must not participate in or facilitate corrupt activity of any kind. Many countries' laws define facilitation payments made to government officials as bribes. We do not make facilitation payments on behalf of Intel to any government official. Intel's prohibition against offering, promising or paying bribes also applies to third parties who provide services or act on Intel's behalf, such as suppliers, agents, contractors, consultants and distributors. We must never engage a third party whom we believe may

attempt to offer a bribe in connection with company business. Our anti-corruption expectations for third parties are set out in our Third Party Anti-Corruption Policy and Gifts, Meals, Entertainment and Travel ("GMET") Policy for Third Parties. When doing business with governments, consult with Legal to be certain you are aware of any special rules or laws that apply. Obtain the required approvals in our Worldwide Business Gifts, Meals, Entertainment, and Travel Policy ("GMET Policy") before providing anything of value to a Government Official.

Intel Code of Conduct, January 2017.

Vodafone

Ethics: Our Code of Conduct explains what is expected of everyone working for and with Vodafone, including employees, contractors, subsidiaries, joint ventures and suppliers. It also sets out Vodafone's responsibilities to our people, partners and shareholders. Available in 14 languages, the Code requires employees to act ethically, comply with legal requirements, apply our Business Principles and speak up if they suspect any breaches of the Code. It is designed to be a one-stop shop to help employees understand all our key policies and it is clearly linked with working in The Vodafone Way. We regularly review the Code to ensure it remains relevant to our business and will next update it in 2015/16. We are also members of the Institute of Business Ethics and Transparency International and use this to benchmark our ethics and compliance programmes against best practice.

Sustainability Report 2014/2015, p. 131

<https://www.vodafone.com/content/sustainabilityreport/2015/index/operating-responsibly/ethics.html>

Accessed 6 March 2017

RESOURCES

[*Business Principles for Countering Bribery*, Transparency International, 2013](#)

[*Commentary on the Business Principles for Countering Bribery*, Transparency International, 2015](#)

3. ENABLING FACTORS

QUICK READ

The commitment to anti-bribery and anti-corruption more generally can be enhanced by the company supporting several strategic areas. These are termed 'enabling factors' in this guidance and are as follows:

- [Stakeholder engagement](#)
- [Corporate community investment](#)
- [Sustainable development](#)
- [Collective action](#)
- [Business systems](#)

GUIDANCE

3.1 Enabling factor: Stakeholder engagement

Stakeholder engagement is a way for the company to fulfil its accountability and to communicate its anti-bribery programme. Stakeholders are individuals, groups of individuals or organisations that have a material interest in the company. Materiality means that the stakeholders could affect the company's activities or be affected by them. Stakeholder engagement will work best if committed to by the leadership and the process is carried out with genuine intent and use of the results.

Engagement is a systematic process where the company identifies its significant stakeholders related to a particular topic and consults and interacts with them to exchange views, to learn and to communicate positions and messages. The real value lies in two-way communication.

Responsibility for stakeholder engagement can be placed in functions such as corporate or public affairs, a dedicated stakeholder engagement function or sustainability management.

The roles of stakeholder engagement

- **Accountability:** As part of accountability, communicating on the anti-bribery programme to key stakeholders.
- **Designing the programme:** Determining the external perceptions and expectations of stakeholders, identifying emerging trends and issues, using this knowledge to design and improve its anti-bribery programme.
- **Risk assessment:** Obtaining information for use in risk assessment and due diligence.
- **Communicating:** Providing messages on the importance which the company attaches to countering bribery and reinforcing or enhancing the positive reputation of the company. Contributing to an open and transparent approach by the company.
- **Monitoring:** Monitoring the context for anti-bribery practice and detecting emerging trends and expectations.

Pointer:

Use scenario planning and brainstorming to identify emerging issues and opportunities to supplement the feedback from the stakeholder engagement process.

Good practice example: Corporate stakeholder approach – from the Swarovski sustainability report 2015, [click here](#).

Approach to consulting stakeholders on the anti-bribery programme

The anti-bribery discussion will likely form part of wider stakeholder engagement on corporate responsibility and sustainability or other interest areas. Through engagement the company can learn how its anti-bribery measures are perceived, discuss concerns, hear suggestions for improvements and detect emerging trends and issues. Care should be taken that stakeholder engagement is not seen as a bolt-on exercise to provide content for public reporting but is managed as a genuine and substantial exercise used to shape the way the company plans and operates.

Channels for engagement

Engagement can take various forms from written communications, one-to-one meetings, group meetings, focus or scenario planning groups and roundtables. Web blogs and social media are ways in which stakeholders' views and concerns also can be monitored and used as communication and engagement channels. Sessions with stakeholders can be open-ended, covering the whole of the company's activities or may focus on the material topics identified by stakeholders or selected by the company. Stakeholder consultation can be linked to the company's risk assessment process and the key stakeholders and topics will be shaped by the company's definition of materiality and its assessments of risks. An independent facilitator can be useful in helping drawing out honest opinions on the company.

Accountability: Reporting back to stakeholders and to the board

The company should ensure that it responds to topics raised and reports back to contributing stakeholders on actions taken or an explanation if actions have not been taken. The company should report publicly in formal communications such as annual reports or dedicated web pages on the stakeholder consultation policy and process, the topics identified, actions and results related to the integrity commitment and the anti-bribery programme. The board and senior management should review the results of stakeholder engagement.

Signpost: Consider appointing a stakeholder advisory panel which comments annually directly to the board on the company's stakeholder engagement results and its public reporting.

3.1.1 Best practice indicators: Stakeholder engagement

- **Identify:** Research and identify the key stakeholders and the topics and significant issues on which they are likely to have an interest. Stakeholders can include, management, employees, customers, consumers, suppliers, civil society organisations, community representatives, business associations, international organisations, subject experts.
- **Decide on method:** Consider the range of methodologies which can be used for consultation such as web, social media, stakeholder forums, panels, surveys, focus groups, scenario planning, individual interviews.
- **Be systematic:** Use a systematic procedure for regular stakeholder consultation including confidentiality of inputs, documentation, act on the consultations and ensure feedback to those who took part in the consultations.
- **Report on stakeholder engagement:** Report publicly on the process, the topics and concerns identified, and the progress of subsequent actions to address concerns.

- **Review by leadership:** Make periodic reports to senior management and the board on the results of stakeholder engagement.

3.2 Enabling factor: Corporate community investment

What is corporate community investment?

Corporate community investment (CCI) is the way a company acts to benefit a local community or society more widely. It can include charitable donations, employee secondments and fundraising, sponsorships with community impacts, training and work placements, small business support, educational activities and other activities judged as benefiting societies. CCI can also support the company's efforts to contribute to achieving the anti-corruption provisions of Sustainable Development Goals (see section 3.3 on sustainable development).

A related area to CCI is community benefit which is an activity made for commercial contract reasons but based on benefit to a society. It occurs when a company, in order to win a contract from a public body, agrees to provide a community benefit such as funding an educational or medical facility. To protect the interests of stakeholders and to prevent corruption in the transaction, the agreement has to be made fully transparent and subject to a set procedure by both the government and the company (which should include public consultation).

How CCI it can be used to build integrity in societies and markets

Corporate community investment offers a significant way in which a company, acting on its own or more likely, in partnership with others, can support initiatives which build the integrity in a society. This can include training of local employees, raising anti-corruption standards of third parties, training of third parties and public officials. Also included are initiatives which develop citizens' knowledge and skills to resist corruption and contributing to activities which counter the factors leading to corruption such as collective action initiatives.

Examples of CCI activities

- Collective action
- Social enterprises
- SME training to build anti-corruption commitment and expertise
- Anti-corruption training of public officials
- Education of school children
- Business school education
- International scholarships for tomorrow's leaders
- Government and public sector short term placements
- Two way secondments between companies and the public sector
- Employee fundraising and volunteering e.g. teaching in schools

Measuring and reporting on societal impacts

The aim of an effective CCI programme should be to achieve impacts benefiting societies and in doing so, creating a more favourable environment in which to carry out business. Measuring and reporting

societal impacts of CCI for countering corruption is difficult given the hidden nature of corruption. Proxy indicators including qualitative indicators can be used such as quality of training given, and anecdotal evidence. Macro indicators such as the TI Pillars of National Integrity or the World Bank Governance Indicators can also be referred to.³

Few, if any, global companies have committed to strategic corporate community investment to address the issues of corruption in societies in which they operate

Lack of corporate attention to CCI and countering corruption

Few if any global companies have committed to strategic corporate community investment to address the issues of corruption in societies in which they operate. This is surprising given that corruption is pervasive in many markets and the commitments made by many companies to international initiatives such as the UN Global Compact.

‘Nigeria has the largest economy on the African continent. Ironically, the country also harbours some of the poorest people in the world with as many as 69 percent of the population living below the poverty line.’

Study of the Relationship between Poverty and Corruption in Nigeria, ActionAid 2015

The impacts of bribery and corruption on societies and business

Bribery leads to damage in societies in many ways and the results are costly for business. It underlies most of the major societal issues: preventing or damaging sustainable development, child labour, improper safety certificates, abuse of planning regulations, illegal logging, trafficking, organised crime and terrorism, environmental and biosphere degradation. Bribery keeps some communities in poverty, leads to illness and deaths and destroys democracy and the rule of law. Markets are distorted, businesses operations are inefficient and the costs to customers and users are higher and the goods and services are inferior. Contracts are not won on merit and logistics are made inefficient and transportation delayed.

For these and many other reasons, best practice should include consideration of how a global CCI programme can incorporate tackling the corruption issues in societies and building integrity.

³ TI's National Integrity System is a tool for evaluating key 'pillars' in a country's governance system, both in terms of their internal corruption risks and their contribution to fighting corruption in society at large. TI analyses pillars in country National Integrity System assessments. The Worldwide Governance Indicators (WGI) project reports aggregate and individual governance indicators for over 200 countries and territories over a period, for six dimensions of governance.

‘While most respondents believe companies should set long-term goals for their community activity, less than a quarter felt that their organisation currently does this. This impact–aspiration gap presents a big challenge for companies. It reflects a gulf between what companies aspire to achieve and what they actually deliver.’

Hard outcomes or hollow promises? Realising the true impact of corporate community investment,

Corporate Citizenship, 2016

3.2.1 Best practice indicators: Corporate community investment

- **Research and plan:** Identify the significance of bribery and other corruption in the markets in which the company operates. Define and understand the potential of CCI, research opportunities in the markets in which the company operates, develop a strategic approach and involve local stakeholders in this. Establish KPIs and measure impact.
- **Integrate:** Align the anti-bribery programme to the company’s corporate responsibility and sustainable development commitments including labour, human rights or bio diversity initiatives and supporting achievement of the UN Sustainable Development Goals (SDGs). Encourage the corporate trust or foundation (if there is one) to consider support.
- **Collaborate:** Develop partnerships with other companies, national and local governments, inter-governmental organisations and NGOs.
- **Invest and contribute:** Contribute to anti-corruption initiatives in societies to counter prevailing corruption and thereby create a more favourable environment not only for communities but for the company’s operations.
- **Support the SDG commitment:** Companies support their commitment to sustainable development and the SDGs through their efforts in countering bribery. This could be through leadership, research, advocacy, supporting or initiating anti-corruption initiatives, collective action, community investment, SME training, business schools education, supporting teaching in schools on corruption and how it can be tackled.
- **Report publicly:** Promote what the company has achieved, its plans and issues. Recognise local achievements by business units and employees.

3.3 Enabling factor: Sustainable development

Companies should consider how they can integrate their commitments to integrity and prohibition of bribery and corruption with their commitment to sustainable development (if this has been made). This can include working to support achievement of the anti-corruption Target 16.5 of the Sustainable Development Goals.⁴

The term, *sustainable development*, was made widely known by *Our Common Future*, a report published by the World Commission on Environment and Development in 1987. Also known as the Brundtland report, it defined sustainable development as: ‘development which meets the needs of the present without compromising the ability of future generations to meet their own needs.’

Sustainable development is a material issue for most companies and will be reflected in values and commitments. Yet, corporate sustainable development strategy is not commonly linked to or integrated with the corporate anti-bribery programme despite the significant and sometimes devastating adverse effects on societies resulting from bribery. There is no reference to the topic in either the Ministry of Justice Guidance to the UK Bribery Act or in the FCPA Resource Guide.

Bribery, if not reduced in societies, will remain an underlying impediment to achieving many of the SDGs. These include, poverty, water, healthy lives, education, affordable energy, economic growth, resilient infrastructures, climate change, sustainable use of oceans seas and marine resources, ecosystems - forests and land - peaceful and just societies. What does this mean for business? Bribery is rampant in many of the markets where companies operate. Democracy and rule of law may be weak, licenses and large public contracts are not awarded on merit, small bribes pervade logistics, deforestation destroys land and the ecosystem, labour and safety standards are flouted.

A best practice anti-bribery programme can make a contribution to sustainable development by reducing bribery risks attached to the company’s operations but the company should also consider how it could extend its anti-bribery efforts strategically to address bribery related to sustainability issues in markets where bribery is rife and to strengthen pillars of integrity in societies. This can be through leadership, research, advocacy, supporting or initiating anti-corruption initiatives, collective action and corporate community investment.

3.3.1 Best practice indicators: Sustainable development

- **Commit publicly:** Commit to support the achievement of the UN Sustainable Development Goals (SDGs).
- **Develop an SDG strategy:** Consider how the company can support its commitment to sustainable development and the SDGs through efforts in countering bribery and corruption.
- **Leadership commitment:** Board and senior management should show commitment to sustainable development and countering corruption should be seen as part of this.

⁴ The Sustainable Development Goals (SDGs) are an inter-governmental commitment plan of action for sustainability for the period up to 2030 made in a UN Resolution in September 2015 signed by all 193 UN Member States. The SDGs Resolution set 17 Goals and 169 Targets.

- **Integrate:** Relate the anti-bribery commitment to sustainable development commitments and integrate the activities for these commitments where appropriate.
- **Plan and measure:** Develop measures and targets for the company's anti-corruption efforts related to sustainable development through building integrity in societies and reducing corruption.
- **Work through collective action:** Recognise the value of working with others through collective action to achieve strategic sustainable development results.
- **Report:** Report publicly on progress.

3.4 Enabling factor: Collective action

Collective action is a long established methodology for companies and others to work together to counter corruption and build integrity and anti-corruption standards through the success. The term *collective action* is in fact a grouping of varying methodologies with different aims. The common elements are that companies and stakeholders join in an initiative and usually there is a neutral convenor or facilitator such as an NGO.

The benefits of collective action include:

- Mobilising societies to resist and counter bribery
- Creating safe environments for business
- Levelling the playing field to achieve fair competition
- Tackling intractable bribery issues such as embedded corruption in a port
- Benchmarking and learning
- Global and large local companies can provide support for SMEs to resist bribery demands

Collective action is more likely to succeed where:

- The need is real and pressing
- There is real multi-stakeholder commitment
- There is high level political support
- The local community approve and are engaged
- There are clear objectives and practical ways identified for achieving them
- The project facilitator is trusted and skilled
- There is commitment to a long-term project – quick wins are rare

Collective action may fail, risks include:

- Lack of political will or where there is political antagonism
- The political sponsor loses office, participants move on
- Politician's and officials' support is rhetorical
- Bribery is systemic and pervasive with resistance from entrenched networks
- Costs of the venture and demands on time of participants
- The length of time needed to achieve change
- There is resistance from management and employees in public sector functions

- Public sector officials distort the project to benefit themselves

The four main forms of collective action are:

- **A commitment-based or mobilising initiative:** Companies and organisations come together to declare publicly a commitment to integrity and no toleration of corruption. This may include work to advocate and advance integrity in sectors or societies. They may often include benchmarking, learning and advocacy activities. Examples are the UN Global Compact and the Thailand Private Sector Collective Action on Action Coalition against Corruption. [Click here](#) for details.
- **Integrity Pact:** This is [a tool developed in the by Transparency International](#) to prevent corruption in public contracting. Integrity Pacts have been applied in more than 15 countries and 300 separate situations. To see the components of an Integrity Pact [click here](#).
- **Industry or sector initiatives:** Companies come together to advance anti-corruption practice including benchmarking, learning and development of codes and tools or transparency. An example is the [Extractive Industries Transparency Initiative](#).
- **Specific anti-corruption objectives:** This recognises that bribery issues often cannot be resisted or dealt with by a company acting on its own. Companies come together, often with the relevant government ministry or function and work over time to eliminate the bribery issue. An example is [the Maritime Anti-corruption Network](#) which is working to eliminate demands for small bribes in maritime logistics. [Click here for details](#).

For a list of collective action initiatives visit the [Basel Institute's International Collective Action Initiative](#).

3.4.1 Best practice indicators: Collective action

- **Understand:** Research and benchmark how collective action is used in countering bribery.
- **Apply:** Identify and act on opportunities for your company to deal with intractable bribery risks or to contribute to reducing corruption in societies.
- **Integrate:** Consult with stakeholders about collective action initiatives, consider how they can be involved in your company's initiatives.
- **Utilise skills:** Involve employees working at the front line as they can bring practical expertise.
- **Plan and measure:** Develop measures and targets for collective action and track outcomes.
- **Report:** Report publicly on progress.

3.5 Enabling factor: Business systems

The company's approach to use of business systems and new technology will contribute to an enabling control environment.

- **Innovation:** Embrace innovation and new technology. Experience and skills in use of systems and existing systems will enhance countering bribery and corruption.
- **Continuous improvement:** Integrate the anti-bribery programme into the quality or excellence management system.
- **Change management:** Apply this to revamping the anti-bribery programme when new attitudes need to be developed and new systems and ways of working introduced.
- **New technology:** Use new technology systems comprehensively such as big data management, automated workflows, business intelligence software, and statistical quality control. These are becoming essential for global companies in achieving effective anti-bribery programme. There are many opportunities including due diligence, bribery detection, forensic analysis, audits, analysis of social media, and communications to employees and third parties.

3.5.1 Big data

'Big data' is the term for systematic management of large volumes of aggregated data and cloud storage. It can be used in due diligence and monitoring, on PEPs and on potential and appointed third parties. Information can be obtained from specialist providers and open source platforms. An electronic workflow system uses software tools to gather centralised information on transactions. They enable automation and monitoring of anti-bribery procedures and controls. These are powerful tools that can provide visibility and analysis of a range of high risk transactions. Although a global system is an ideal, companies in practice may not be able to implement unified global data workload systems for historic organisational or systems reasons, cost or the need to observe data protection laws in varying jurisdictions. Some of the main uses are:

- **Onboarding:** Recruitment of employees and appointment of third parties.
- **Relationship management:** Documenting, analysing and progressing relationships with potential and current third parties.
- **Planning:** Planning, implementation, modelling innovation and monitoring, including risk management and due diligence.
- **Tracking performance and compliance:** Data analytics can contribute to continuous improvement through risk analysis, process simplification, identification of red flags and trends, reduction and improvement of anti-bribery controls. This can cover training, third parties, gifts, hospitality and expenses, key indicators for internal controls, red flags and non-compliance.
- **Incident management:** Place all reports in a centralised incident management system to enable an accurate and complete view of incidents and a basis for analysis and investigation.

- **Audit trail:** Evidence is recorded and is accessible should there be any investigations by auditors or the authorities.

3.5.2 Business intelligence systems

Managing very large data sets is becoming critical to anti-bribery management. Companies need to consider what data they have or could obtain and how this could be used to manage and improve their anti-bribery programme for third parties. Supply chain control towers are an example of a tool to manage the large volumes of data in the supply chain.

Business intelligence systems allow data analysis and data mining, for a variety of purposes, of large volumes of information drawn primarily from the aggregated data and process workflow systems.

Data mining is the analysis of large quantities of data, including text, to draw out significant and otherwise unidentifiable patterns such as bribery risks within the stages and transactions of a supply chain, for example hidden linkages between third parties and high-risk people. Tools can incorporate visual analytics. **Data analytics** can be used to explore processes, and for modelling and scenarios.

Data are the lifeblood of decision-making and the raw material for accountability. Without high-quality data providing the right information on the right things at the right time; designing, monitoring and evaluating effective policies becomes almost impossible.

A World that Counts Mobilising the Data Revolution for Sustainable Development, United Nations, 2016

3.5.3 Other systems and technology applications

Monitoring, analysis and reporting systems: Systems to monitor anti-corruption controls which apply real-time analyses of transactions, detect anomalies and patterns. They can raise red flags, generate suspicious transaction reports and stop transactions.

Statistical quality control: This is used in risk assessment, due diligence and monitoring to provide control samples of third parties and transactions. This is to provide a check to the focus on high risk transactions and third parties to make sure risks have not been overlooked and that controls are working.

The internet of things: This is equipping physical assets with sensors to give an information system the ability to track the assets, capture, communicate, and process data. For example, by controlling assets in this way, bribery can be reduced in the supply chain, transactions can be monitored for red flags, vehicles tracked, access to assets and facilities controlled and monitored.

Blockchain: This is an emerging technology with potential to reduce corruption. Blockchain is an internet based, decentralised public ledger technology, a record of online events. The ledger is shared among all the different parties on a network – nodes on the blockchain. It can only be updated by consensus from a majority of the users. It can be used for instance, to help increase the transparency and efficiency of a

process such as public procurement or to counter money laundering. Global companies that provide finances to developing countries could implement a blockchain that would track exactly where the funds are spent.

Information everywhere: Global, integrated information can be processed centrally and made accessible to employees locally according to need through web, supply chain control towers and mobile devices. Access can be given to all employees so that they know which third parties are registered or accredited, or access can be restricted by function or geography. Employees may be given access through their laptop or smart device, wherever in the world they happen to be. In such case it is helpful if the process workflow system can recognise more than a singular entry of one third party and assign overall lead responsibility to a particular function or division so as to prevent duplication of effort.

Mobile technology: Consider if apps could be used for applications such as providing on the spot information and support to employees when travelling or Q&As on the anti-bribery programme. Mobile devices can be also used to monitor third parties, logistics and projects.

- Example of practice: Tesco supplier app. Click [here](#).
- Example of practice: Indonesia anti-corruption app provides anti-bribery information. Click [here](#).

Web and social media tracking: Monitoring the web and social media can reveal information for due diligence, trends and particular issues related to the company.

‘Data analytics is a massive trend and it is not going away. As the amount of available open source and syndicated material becomes available – I am also talking about social media – the ability of a risk professional to comb through that material is diminished unless they have advanced data analytics and aggregation tools. As the state of technology grows, the ability to mine effectively must be used with data aggregation and data analytic techniques. You will be able to see a bigger slice of the pie, you are going to be able to do it quicker and you are going to have a cleaner set of third parties.’

Interview: professional adviser, 2016

3.5.4 Best practice indicators: Business systems

- **Innovate:** Consider how business systems and new technology can be utilised in the anti-bribery programme. Be open minded and innovative.
- **Integrate:** Integrate the anti-bribery programme into the excellence or quality management system.

CHAPTER APPENDIX

3.6.1 Example stakeholder approach: from Swarovski sustainability report 2015

Factsheet 4, Stakeholder engagement: Stakeholder engagement: Listening and responding to stakeholder expectations

Engaging with our stakeholders and taking their views into account is critical to our success as a business. Our key stakeholders include: our shareholders, employees, customers and business partners, suppliers, national and regional governments, regulators, non-governmental organizations (NGOs), industry associations and local communities. We regularly engage with all of these groups, directly and indirectly, through events, partnerships, one-to-one meetings, surveys, digital and social media channels.

1. IDENTIFY:

Based on the issues identified through our 2012 internal consultation and assessment, and cross-checking against GRI G4 guidelines and peer benchmarking, we compiled a long list of CSR issues for consideration in our materiality assessment.

2. PRIORITIZE:

Using set criteria, we invited representatives from diverse stakeholder groups to score the issues in terms of relative importance, from low to very high. These groups included: employees, customers, consumers, suppliers, NGOs, industry associations, multi-stakeholder organisations (e.g. the United Nations), and CSR experts. We did this via a combination of in-depth interviews, an electronic survey, and an online consumer focus group. We also undertook a 'social media listening' exercise to understand which issues were being discussed most prominently on social media (e.g. Twitter, Facebook) and digital channels (e.g. blogs, news websites), giving a high score to issues sparking a lot of conversation, and vice versa. We collated and analyzed all the scores to reach an average score for each issue. From the original list of approximately 40 CSR issues identified, we consolidated the issues that ranked as 'high' in importance to both the business and our stakeholders. Through this process, we selected nine issues that we consider to be the most relevant to SCB and our stakeholders.

3. VALIDATE:

We held an internal workshop to review and validate the prioritization of issues on a materiality matrix. The finalised matrix was then signed off by our senior leaders. We have focused our reporting on these material issues, as reflected in the content of our 2015 Sustainability Report factsheets and our GRI G4 index. The table overleaf provides further detail on issue definitions and boundaries, stakeholder interest, GRI aspects, and topics covered with our 2015 Sustainability Report.

3.6.2 Example of use of new technology: Tesco supplier app

Tesco launched a new app for suppliers in 2016 that allows them to connect to the supplier network and all its services from mobile devices. Launched in 2015, the Tesco supplier network is an online community designed to link suppliers and producers.

The app provides a more accessible version of the network, with services including instant notifications on the latest updates from Tesco contacts, upcoming supplier visits, online presentations and industry conferences. Suppliers can also keep track of discussions and respond easily, as well as read, watch and download all of the network's insights while on the move. Since the launch of its supplier network website in January 2015, membership had grown to over 5,000 with representation from over 50 countries by April 2016. A survey found that 94 per cent of respondents said that they felt the network was helping to develop their relationship with Tesco.

Tesco, April 2016⁵

3.6.3 Indonesia anti-corruption App provides anti-bribery information

Indonesia's anti-corruption agency launched a mobile app in 2016 with graphics and games to educate the public and officials about bribery. The app, available for free on iPhones and handsets using the Android operating system, features a virtual theme park where animated graphics teach people about how to avoid giving out or receiving payments that could be considered bribes. It also incorporates quizzes to test people's knowledge of the issue. 'Many state officials and entrepreneurs are not aware that giving gifts and free services constitutes corruption and is an offence,' said Johan Budi, a spokesman for Indonesia's corruption eradication commission spokesman.⁶

3.6.4 Collective action: The Maritime Anti-Corruption Network

The [Maritime Anti-Corruption Network](#) (MACN) is a global business network in the maritime industry with the aim of achieving a maritime industry free of corruption. MACN's work is based on multi stakeholder collaboration.

Established in 2011, MACN is comprised of vessel -owning companies within the main sectors of the maritime industry and other companies in the maritime industry including cargo owners and service providers. Members have adopted MACN Anti-Corruption Principles and activities include communicating progress on implementation, sharing best practices, and creating awareness of industry challenges.

The essence of the MACN collective action approach is that successful, lasting changes in the operating environment will take effect only if they are enabled and supported by and beneficial to key stakeholders. As such, key stakeholders must be involved in both assessing the challenges and devising the solutions. Further, the collective action approach assumes that interventions have to be targeted at barriers and that the stakeholders relevant to eliminating corruption are often situation-specific. The approach also

⁵ <https://www.tescopl.com/tesco-and-society/latest-updates/2016/new-tesco-supplier-app/>

⁶ <https://www.theguardian.com/global-development/2014/oct/03/indonesia-corruption-eradication-commission-app>

stresses the importance of transparency throughout the process of engaging in collaborative efforts. Stakeholder inclusiveness, local ownership, and transparency are thus fundamental to this approach.

Example project: Nigeria, 2012: Face-to-face integrity training, harmonizing regulations, establishing grievance mechanisms.

MACN identified Nigeria as one of the most challenging countries to do business, with requests for facilitation payments posing a major risk to member companies, and with cases of extortion, harassment, and threats of violence. Moreover, regulations and procedures in ports were lacking in detail and consistency, giving authorities wide discretionary powers. Surveys of MACN members suggest that the initiative is having a positive effect on the operating environment. The waiting time for vessels has decreased, and terminal operators and agents have been actively assisting MACN members in rejecting facilitation payment demands.

MACN Impact Report 2016

3.6.5 Case study: Thailand Private Sector Collective Action on Action Coalition against Corruption (CAC)

Thailand's [Private Sector Collective Action against Corruption \(CAC\)](#) was founded in 2010 and is an initiative by the Thai private sector to take parts in tackling corruption by collective action. The CAC aims to bring effective anti-corruption policy and mechanism into implementation by companies in order to create an ecosystem of clean business community.

The CAC was co-founded by the country's eight leading organisations in the private sector including the Thai Chamber of Commerce, the Joint Foreign Chambers of Commerce in Thailand, the Thai Listed Companies Association, the Federation of Thai Industries, the Federation of Thai Capital Market Organizations, the Thai Bankers' Association, the Tourism Council of Thailand, and the Thai Institute of Directors Association (IOD), which also serves as its secretariat and takes a leading role in driving the program.

As at 14 November 2016, CAC had 748 member companies of which, 200 had undertaken a self-evaluation based on a tool developed by Transparency International. Prospective members must sign a declaration of intent and then submit a self-evaluation of their anti-bribery programme. This is checked by a CAC auditor and if satisfactory, certified membership is approved by the CAC Council. The certification process is repeated every three years.

3.6.6 Integrity Pacts

Components

- It contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain the contract, or while carrying it out.
- Bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract.
- Sanctions will apply when violations occur.
- Level playing field. It allows companies to refrain from bribing in the knowledge that the competitors are bound by the same rules.
- It restricts opportunities for corruption in a particular project, typically public project. Eventually helps to reduce the high cost of corruption on procurement, privatization and licensing. Also, helps to reduce the distortionary impact of corruption.
- It requires maximum transparency all along the various steps leading to the contract and throughout its implementation. This includes extensive and easy public access to all the relevant information of the project or contract.

It includes a monitoring system typically led by civil society groups. Very often this is a TI Chapter. Integrity Pacts have been applied in more than 15 countries and 300 separate situations.

4. RISK ASSESSMENT

QUICK READ

Focus on the real risks, but what are they?

Preventing and countering bribery cannot be carried out effectively without knowing the range of bribery risks facing the company and deciding which are the most significant to address. The risk assessment process is a systematic way of assessing bribery risks and is used to design the anti-bribery controls forming the anti-bribery programme.

Key elements

- **Focus on the highest risks:** Resources are necessarily limited so concentrate on the risks that are judged highest.
- **Evaluate bribery risks realistically:** Use a framework and criteria to make realistic and consistent assessments of likelihood and impact.
- **Repeated process:** Conduct periodic risk assessments to ensure the controls remain adequate for any changes that may affect the business and position this as part of a continuous improvement process.

BEST PRACTICE

An effective risk assessment will:

- Have the full **support and commitment from the Board** and other senior management
- **Involve the right people** to ensure a sufficiently informed and complete overview of the business and its risks
- **Be comprehensive**, taking account of all activities of the business which may create significant bribery risk
- **Avoid preconceptions** about the effectiveness of controls or the integrity of employees and third parties, and therefore focus on inherent risk
- **Identify and describe** bribery risks in appropriate detail
- **Evaluate** bribery risks by reference to a realistic assessment of likelihood and impact
- **Prioritise** bribery risks to the extent that this is practical and meaningful
- **Be documented** in such a way as to demonstrate that an effective risk assessment process has been carried out
- **Be regular**, performed at appropriate intervals and otherwise in the event of significant changes affecting the business
- **Be communicated** effectively, and designed in a way that facilitates effective communication and the design of appropriate policies, programmes and controls

Download TI-UK's [*Diagnosing Bribery Risk*](#) publication

GUIDANCE

4.1 Introduction

Risk assessment is the foundation for the design of an effective anti-bribery programme. It is a continuing procedure which gives a company a systematic and prioritised view of where the significant inherent bribery risks lie. The results of risk assessments are used to design the controls to mitigate the prioritised bribery risks. The process is critical as the information gained through risk assessment will shape the design of the anti-bribery programme and ensure through repeated risk assessments that the design is always valid and being improved. Most large companies will have well established risk assessment procedures and anti-bribery programmes and therefore the process described in this section of the portal should be viewed as a means of gap analysis and continuous improvement.

A best practice risk assessment procedure gives a company a systematic and objective view of bribery risks

All companies face bribery risks to some degree but companies cannot be sure if they have taken the appropriate risk approach and designed the right controls if they do not know the scale of the risks, where the risks lie, how bribery can take place, which are the largest risks for the company and what makes bribery risks more likely.

Risk assessment is a methodology to be undertaken by all sizes of companies and the difference lies in scale and depth of the process. The common guiding principles for risk assessment are:

- **Methodical:** It is a systematic and recurring procedure.
- **Vigilance:** It demands brainstorming, open mindedness and vigilance to be alert to risks.
- **Completeness:** It covers the whole of the activities of the company.
- **Focused:** Resources are not infinite and the focus should be on the real, most significant, risks.

A best practice risk assessment procedure gives a company a systematic and objective view of bribery risks. This enables the company to:

- Obtain a realistic and comprehensive overview of the key areas of bribery risks in its operations.
- Focus attention and effort on those business activities and relationships which are considered to be most risky.
- Provide a basis for the design of mitigating anti-bribery controls or restructuring business activities to eliminate risks e.g. reduce or remove the use of sales agents.
- Identify where there may be an excessive controls burden in relation to relatively low risk activities and to reduce effort in those areas and rebalance resources to where there is greater need.

- Design the level of risk-based due diligence that will be appropriate for particular third parties, building on an informed appraisal of the risks associated with the activities such parties are being asked to undertake.
- Support continuous improvement by identifying opportunities for efficiency.
- Support the promotion of risk awareness generally and a structured, informed approach to ethical decision making in the organisation.

4.2 Six stages of a risk assessment exercise

Six stages are identified for the anti-bribery risk assessment process:

1. **Ensure top level commitment and oversight:** Top level commitment is key to effective risk management. The board and senior management provide leadership and commitment to drive adequate and continuing risk assessment and ensure the process does not falter or lose quality.
2. **Plan, scope and mobilise:** The planning stage prepares the ground for the risk assessment process. A planning team should consider the following aspects: appointing the project lead, defining stakeholders, allocating team responsibilities, identifying information sources drafting plan for risk assessment, communicating plan and requirements to those involved in the exercise.
3. **Gather information:** Create a comprehensive catalogue of inherent bribery risks to which the company could plausibly be exposed by virtue of the nature and location of its activities.
4. **Identify the bribery risks:** The objective of this stage is to identify and examine the activities and risk factors that could increase the company's exposure to bribery risk.
5. **Evaluate and prioritise the risks:** The risk evaluation stage analyses and prioritises the forms of bribery identified in stage 3 taking into account the risk factors in stage 4. Common practice is to apply two variables to prioritise risks: likelihood of occurrence and the potential adverse impact.
6. **Use the output of risk assessment:** The results of risk assessments are applied to a review of the anti-bribery programme and the extent to which existing controls need modification or additions.

Examples of guidance from authorities

The risk assessment approach is one of the key areas enforcement agencies look at in a bribery investigation. There are clear messages from authorities on the importance of risk assessment.

UK Bribery Act: Ministry of Justice Guidance

The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.

US Foreign Corrupt Practices Act: DoJ/SEC Resource Guide

Assessment of risk is fundamental to developing a strong compliance program. . One-size fits all compliance programs are generally ill-conceived and ineffective because resources inevitably are spread too thin . . . 'DOJ and SEC will give meaningful credit to a company that implements in good faith a comprehensive, risk-based compliance program, even if that program does not prevent an infraction in a low risk area because greater attention and resources had been devoted to a higher risk area.

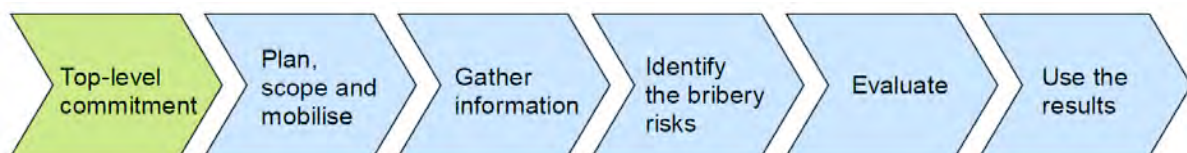
Brazil: Guidelines for private companies, Office of the Comptroller 2015

The structuring of an Integrity Program depends not only on the company profile analysis but also on an assessment of risks that takes into account the characteristics of the markets in which the company operates (local culture, level of government regulation, corruption case history). The assessment must take into consideration mainly the likelihood of perpetration of frauds and acts of corruption within public bidding processes and procurement, and the impact of these wrongful acts on the company's activities. The rules, policies and procedures to prevent, detect and remedy the commission of any undesirable acts will be based on such identified risks. The mapping of risks must be periodic, so that new risks can be identified, whether arising out of changes to the statutes in force or the issuance of new regulations, or out of internal changes in the company, such as entering new markets or business areas or opening new branches.

Pointer: Do not ignore passive bribery risk

Where the company or persons connected with it give a bribe, this is generally termed 'active bribery' and when an individual receives or acts on the expectation of receipt of a bribe, it is called 'passive bribery.' Active and passive bribery are distinct risks. Both are of concern to any company. Attention is commonly given by companies to active bribery but passive bribery risk must not be overlooked. Passive bribery takes place most often in contracting and procurement fraud, when employees accept kickbacks for awarding contracts. As shown by the Petronas scandal, the consequences of passive bribery can be very serious. Passive bribery can occur in other functions such as recruitment, sponsorship or allocating services or supplies where goods or raw materials are in high demand and short supply.

4.2.1 Stage 1: Ensure top-level commitment and oversight



Aim: To obtain leadership support and commitment to drive an effective risk assessment process.

Top level commitment is key to effective risk management. The board and senior management should provide leadership and commitment to drive adequate and continuing risk assessment and ensure the process does not falter or lose quality. This commitment is a facet of tone from the top (see Chapter 1) described elsewhere in this portal but specific reference is made here to emphasise its role in ensuring the risk assessment process is given appropriate attention and resources. Full leadership commitment requires the following aspects:

- **Provide board oversight:** The board or a board committee should be responsible for oversight of the risk assessment process. Board and board committee members will need appropriate levels of understanding of bribery risks – board briefings and training will contribute to this.
- **Assign responsibilities:** Responsibilities for anti-bribery assessments should be assigned clearly with overall responsibility given to a senior executive.
- **Allocate appropriate resources:** The board should ensure allocation of the necessary resources to conduct effective continuing risk assessment. This is more than a matter of simply appointing the right person to carry out the task. The risk assessment process requires the allocation of time, potentially from a number of people. In a large, multi-national company, this may be a substantial number of people, who are called upon to provide information and generally contribute to the process. The board should review regular reports on the implementation of the risk assessment process including information about key risks and their mitigation and any residual risks.

- **Set control objectives:** Setting control objectives is a precursor to the risk assessment process. A failure to recognise how a broad range of business objectives might be affected by bribery risk is likely to result in an underestimation of the significance of bribery as a risk. Examples of control objectives that could be threatened by bribery include:
 - Maintenance and enhancement of corporate reputation
 - Compliance with the company's values and with applicable laws and regulations
 - Revenue, profitability and share value targets.
- **Decide the risk approach:** The board should approve the company's risk approach ('risk tolerance'). The COSO Framework states that risk tolerance can be defined as: '*. . . the acceptable level of variation in performance relative to the achievement of objectives.*' Risk approach is thus linked to attainment of control objectives and should be considered when establishing the objectives. The risk approach will vary depending on the nature of the risk. For many business risks, it is legitimate and quite normal for different companies to have varying positions on the level of tolerance of the same risk.
- **Balance to other risks:** Companies are faced with many types on risks and decisions on risk approach will need to be balanced within the overall context of risks facing the company.

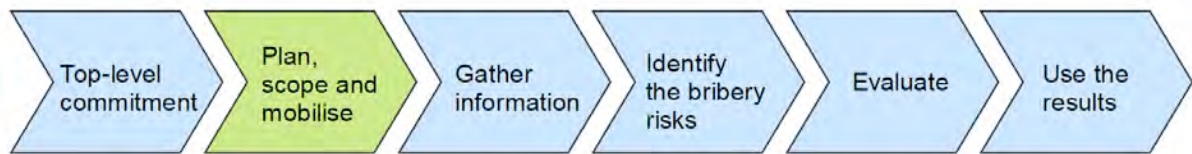
Can bribery risk be reduced to zero?

When designing their anti-bribery programme companies face a critical decision in knowing where to draw the line on the risks to be mitigated. The UK Bribery Act has a strict corporate liability provision, making the company liable for bribery by employees or third parties providing it with services.

However, companies cannot practically reduce risks of bribery to zero and must compromise by focusing attention and resources proportionate to identified significant risks. This applies to bribery as much as any other aspect of corporate risk management. There will always remain some residual risk as a result of a combination of:

- The decision in the risk approach to manage a risk down to an acceptable level but not to seek to eradicate it completely;
- The inherent fallibility of people and the controls they operate; and
- The remaining risk that those responsible for the operation or oversight of controls may deliberately seek to undermine or circumvent them for some reason (sometimes referred to as the risk of 'management override').

4.2.2 Stage 2: Plan, scope and mobilise



Aim: To plan the risk assessment process and individual risk assessment exercises so they are implemented efficiently and effectively.

In this stage, form a planning team. The team should consider the following aspects:

- **Bribery scope:** The company will need to make sure it has a good idea of the types of bribery risk and where these lie. It should use this knowledge to set out expectations for the risk assessment process, the type of information required and to design the process.
- **Organisational scope:** Risk assessments can be structured at different levels. They can be at global and regional levels, and also by business division, and crucially, activity. Reasons for structuring can be to spread the costs of risk assessments or to address specific concerns or opportunities.
- **Organisational buy-in:** Support will be needed across the company for the aims of the risk assessment process as it may place demands and even concerns on people across many functions as well as third parties.
- **Appropriate resources:** Adequate resources will be needed for the risk assessment process and the backing of the board and senior management will be crucial in this. Further resources may have to be sought if the risk assessment reveals levels of risks that demand more extensive work.
- **Sources of information:** Good sources of information on bribery risks should be identified. Those who contribute information to the risk assessment should be capable of providing a reasonably comprehensive overview of the business and its bribery risk profile.
- **Learning for future risk assessments:** Risk assessment is a continuing and iterative process and the allocated resources may need adjusting as experience is gained.
- **Roll-out:** Consideration should be given to how risk assessment will be rolled out and then carried out on a continuing basis realistically in time, geography and resources across the company's activities and third parties.
- **Documentation of the risk assessment process:** During the planning stage, it should be decided how the risk assessment will be documented. This is to provide a reference for future risk assessments and for any reviews and discussions on the risk assessment approach. Importantly, documentation will provide evidence to authorities in the event of an investigation on the adequacy of the company's risk assessment process. A risk register may be used, which records information gathered and the sources, description of the bribery risk, the assessment and rating of the risk and the measures and controls to mitigate risks.

4.2.3 Stage 3: Gather information

Aim: Gather sufficient information to identify how bribery could occur.

An information gathering stage is required to map out the forms of bribery that could be a risk for the company.

Scoping and brainstorming

Before gathering information, broad consideration should be given to the forms of bribery that might occur in the company's activities and where they might occur. The scope should be explicit that it covers both active and passive bribery.

Desktop research

Desktop research is an effective starting point for gathering information. It can provide a range of information and also help guide the process of obtaining original information through interviews and surveys. External and internal resources can be used including:

- Public domain and open source information
- Past experience of bribery issues
- Past assessments, if any
- Experience brought by board members and employees from other companies.
- Country and market insights from management and employees in different countries. Market insights include knowledge about local culture and business practices, customer and competitor behaviour, knowledge of local laws and regulations from the in-house legal team or local management; and whistleblowing or similar reports
- Due diligence reports on third parties
- Reports from use of advice and speak up lines
- Findings from internal audit
- Allegations reports
- Investigation reports
- Findings from compliance reviews
- Employee opinion surveys
- Looking forward to expected changes in sources of business revenue

Get different perspectives

A comprehensive bribery risk assessment needs to look at the business and activities of the organisation in the round and draw upon multiple perspectives, from leadership to those working on the front line. Those conducting the risk assessment must ask themselves where they will obtain the necessary information and insight to identify all relevant risks. A combination of approaches for gathering information can be used and in smaller companies one or more meetings might suffice.

Sources of additional information on bribery risks include:

- Workshops, brainstorming, focus groups, departmental meetings.
- Internal interviews with staff and line management, employees working in vulnerable areas.
- External interviews with professional advisers, stakeholders, experts, NGOs, trade associations, embassies.

- Questionnaires sent out to business units, functions and third parties requiring answers to standard questions or to complete a risk assessment template.

Assess the quality of the information

The value of the information obtained will depend on the degree to which the informant buys in to and understands the purpose of the exercise and the nature of bribery risk itself. Those gathering the information should consider whether it is both complete and reasonable based on their own understanding of the business. Those responsible for the conduct of the risk assessment process should use their expectations scoped in the planning stage about likely areas of risk to evaluate and challenge the input they are receiving.

Address threats to the information gathering process

While the company may approach the risk assessment process with commitment and thoroughness, the following threats could affect the review and should be considered when planning the information gathering:

- Overconfidence about the effectiveness of current anti-bribery controls.
- Operating on a culture of trust or 'family' and assuming trust will not be breached.
- Accepting current practices – 'it has always been done this way'.
- Resistance from managers and employees – 'implying there could be bribery is a personal affront'.
- Other factors unconnected to the review which create resistance or suspicion.

4.2.4 Stage 4: Identify the bribery risks

Aim: Create a comprehensive risk register of inherent bribery risks, risk factors and bribery schemes to provide the basis for evaluation of risks in stage 5.

Designing the register

Cataloguing risks requires identifying activities subject to bribery risks and the related risk factors. For instance, bidding for public contracts is an activity likely to be vulnerable to bribery and the risk is heightened if it takes place in a country known to have high levels of corruption. This could be exacerbated if it is in a sector known to be vulnerable to bribery. Thus the company needs to identify, based on information gathered in the previous stages, which of its activities could be subject to bribery risks and what are the risk factors that could make bribery more likely. The sections below look at the three aspects: activity, risk factors and channels for bribery.

In this stage the company designs and populates a comprehensive risk register which captures and organises the information gathered in the previous stage 3. The register will provide the basis for the next stage of assessing and prioritising the identified risks. The aim here is to record the main forms of bribery risk that the company could be exposed to as broad evaluations and not related to particular contracts or third party relationships.

Vulnerable activities

The register should record the activities identified as vulnerable to bribery. A list of activities where bribery commonly can take place, with examples, is given below.

- **Sales and marketing:** Bribes made to win orders or to gain insider information such as specification of tender specifications before they are released for tendering.
- **Procurement and contracting:** Contracts awarded to a supplier who then pays a kickback to reward the buyer who made the decision.
- **Project management:** On projects, the majority of the funds for paying a kickback have to be generated through the implementation of the project in ways such as rush orders, changes of specification, substitution of inferior materials.
- **Supply chain management:** Acceptance of bribes from suppliers and intermediaries, payment of bribes in logistics, obtaining regulatory approvals, port and canals clearances.
- **Human resources:**
 - Bribes paid to human resources employees or outsourcing contractors to influence recruitment, appointments, promotions and disciplinary actions.
 - Bribery of public officials to circumvent regulations related to human resources practices or quotas for local nationals or members of certain local tribes or communities.
 - Human resources is complicit with sales and marketing to favour employment of customers' relatives.
 - Bribery of or by union officials.
- **Corporate affairs:** Undue political engagement, donations to politicians and political parties. See Chapter 10 on political engagement.
- **Facilities and assets management:**
 - Bribes received by employees for awarding contracts or providing access to facilities and assets.
 - Bribes paid to officials to obtain planning permission or supply of utilities.
 - Assets used to influence public officials.
- **Financial functions:** Bribes received for providing personnel and other information, or enable criminality such as data theft, fraud or robbery.
- **Financial trading and services:** Bribes received to steer recommendations for products and suppliers, insider trading.
- **Mergers and acquisitions:** Bribery to obtain insider information, provide favourable terms.

- **Safety and quality management:** Acceptance of bribes to falsify records or overlook non-compliance.
- **Research and development:** Bribery of researchers to falsify results or of officials to obtain regulatory approvals.
- **Security:** Bribery to circumvent the company's security controls, or to provide information such as data on customers or research and technology information.
- **Goods inwards:** Bribes to falsify documentation such as falsely certifying goods received or to allow deliveries at the goods inward gate to jump the queue.
- **Functions where regulatory licenses or critical services are required:** Bribery of officials to obtain approvals or other services. Examples include research and development (testing and approval of drugs), telecommunications, casinos and lotteries, facilities management (water, power, building and plant planning approvals).

Risk factors

Risk factors are broad contextual factors which make bribery more likely to occur, such as country of operation. Once the company understands its risk factors, it can then assess how these affect risk relating to specific activities, such as procurement.

Commonly identified risk factors are described below:

[Country risk](#)

[Sector risk](#)

[Incentive](#)

[Complexity](#)

[Legal risks](#)

[Third parties](#)

Country risk

The starting point for many in considering country risk are [Transparency International's Corruption Perceptions Index \(CPI\)](#) and the World Bank Governance Indicators. The CPI measures perceptions of corruption of public officials. It does not measure country corruption nor corruption of the private sector. The risk score from the CPI is a good example of the limitation of a risk factor – it tells you something about the level of perception of risk, but nothing about the nature of the risk. Clearly, a proper consideration of country risk needs to go further. There may be a broad sense of the level of risk, but the risk score on its own does not explain why a particular country carries a higher risk, let alone how the risk might manifest itself or even whether the country score is relevant to the company's particular activities.

Another factor to consider is that corruption happens in all countries, and so even a country that scores well on the CPI may present risks. A 2014 OECD Foreign Bribery Report analysed enforcement actions in 427 bribery cases and found that almost half involved bribery of public officials from countries with

high (22%) to very high (21%) levels of development.⁷ Some of the largest bribery cases have involved bribery taking place in developed countries with low perceptions of corruption. The CPI should be only one guide and as the company progresses in experience of risk assessments it may develop its own country ratings.

Sector risk

Certain business sectors typically have been associated with higher levels of bribery risk than others. The OECD Foreign Bribery Report found that two-thirds of the foreign bribery cases occurred in four sectors: extractive (19%); construction (15%); transportation and storage (15%); and information and communication (10%).⁸ As with country risk, sector risk is an approximation of risk as a company in a high risk sector may well face low risk because of the particular circumstances of its business. Conversely, a company in a low risk sector should not be lulled into thinking of itself as low risk without proper analysis that this is really true.

Incentive

Activities with high value or critical significance such as award of a major infrastructure project, telecommunications licence, mining concession, regulatory or planning approval can create incentive for bribery.

Complexity

Complexity will often go hand in hand with higher transaction value. Complexity may arise because of the number of parties involved in a project, including consortium partners, sub-contractors, intermediaries or similar. The more third parties involved, the higher the risk that one or more of them could act in a manner which creates legal – or at least reputational – exposure for the company. Alternatively, complexity may relate more to the duration and/or number of phases of the project in question. The more complex the project itself in terms of inputs, interactions, phases and/or outputs, the greater the potential for breakdowns in accountability and control over expenditures at some point.

Legal risks

The legal and regulatory framework for jurisdictions in which the company operates can be seen as a risk factor to be accounted for. Broadly, anti-bribery approaches are quite similar across jurisdictions but there can be significant local variations which may bring risks and will require tailoring of policies and procedures. A notable example is China where the boundaries for laws can be hard to determine and also, the interpretation of laws by the authorities may be hard to predict.

Third parties

Many of the major bribery scandals have involved the use of third parties, especially sales agents and consultants and many companies decide to no longer use sales agents because of their attached risks. As such, use of high risk forms of third parties should be included in the list of risk factors.

⁷ OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials, OECD Publishing, 2014.
<http://dx.doi.org/10.1787/9789264226616-en>

⁸ *OECD Foreign Bribery Report, An Analysis of The Crime of Bribery of Foreign Public Officials*, OECD Publishing, 2014.

<http://dx.doi.org/10.1787/9789264226616-en>

Interaction with public officials

In many countries, any dealing with government officials is likely to carry a higher level of risk. Laws that comply with the OECD Anti Bribery Convention, such as the UK Bribery Act and the FCPA, have explicit prohibitions on the bribery of foreign public officials. One of the challenges – which must be addressed as part of the risk assessment exercise – is to identify who is a government official. This may not be absolutely clear-cut in some countries where there is a degree of uncertainty about whether particular organisations belong in the public or private sectors. The risk assessment should identify the extent of government business or other interactions with the government such as licence or regulatory applications and where this is located to help determine the significance of the risk factor.

Bribery schemes

This section identifies some of the ways in which bribery is given or received. When making its risk assessment the company should identify the vulnerable processes and address the prioritised processes with anti-bribery controls.

The company should use an open minded approach and ask probing questions. A key question to ask at this stage is how could someone fraudulently get something of value, in order to pay a bribe, whether active or passive? For instance, an employee might agree an inflated fee for a sales agent to create room for bribery payments. Or a buyer might be complicit in approving rush orders to generate funds for kickbacks to be given for awarding the contract. Blindness to new forms of bribery is another risk. Sometimes, employees may initiate activities that they do not realise is bribery. An example is where banks provided internships for employees of senior Chinese officials.

There are some activities which are particularly vulnerable to bribery schemes and these are listed below. See the relevant chapter describing the activity risk and the anti-bribery controls.

- Gifts, hospitality and expenses (Chapter 8)
- Political Engagement (Chapter 10)
- Charitable donations (Chapter 11)
- Managing third parties (Chapter 12)
- Procurement and contracting (Chapter 13)

4.2.5 Stage 5: Evaluate and prioritise the risks

Aim: Produce a prioritised list of bribery risks to be mitigated

The risk evaluation stage assesses and prioritises the bribery risks identified in the risk register prepared in stage 4. Common practice is to apply two variables to prioritise risks: likelihood of occurrence and the potential adverse impact. Depending on the nature of the risk in question, these variables may be expressed in either quantitative or qualitative terms, or a combination of both. A qualitative approach is generally more appropriate as bribery risks are difficult to quantify and it can be impractical to stratify them into more than a limited number of categories or levels. Also, using quantitative methods may give generate unwarranted confidence in the results. A qualitative method using say a three level system of high, medium or low to indicate the likelihood will keep the expectations of those using the assessments within bounds.

Likelihood of bribery is essentially driven by the presence of risk factors. The likelihood rises depending on the significance and number of risk factors associated with a particular activity where bribery might occur. Some risk factors may apply to more than one - and possibly all - areas of risk. For example, a general culture of corruption in a particular location is likely to increase the bribery risk associated with many, if not all, business activities carried out in that location.

There is no right answer as to how to measure the accumulation of risk factors. Depending on the circumstances of each company and their existing approaches, possibilities might include:

- Taking the presence of any one or more specific risk factors as evidence of heightened risk;
- A simple count, with the greater number of risk factors indicating greater levels of risk;
- Giving each risk factor its own weighting such that some count for more than others.

See TI-UK's [*Diagnosing Bribery Risk*](#) guidance for an illustrative risk assessment template in Annex 2.

The other dimension of risk assessment is adverse impact which is a measure of the potential adverse effect of the bribery event on the achievement of objectives. The company can factor in aspects such as the varying impact of active compared to passive bribery risk, the financial value or opportunity loss of transactions, the financial value of sanctions including fines and debarment risk or issues with other contracts if bribery is discovered. The range of fallouts from a bribery incident can be difficult to predict as it will likely have implications across a wide front, touching on financial, legal, regulatory, commercial and reputational aspects. As such the company may choose to grade impacts by a small number of levels such as low, moderate and severe.

The output of the risk evaluation stage should be a comprehensive and up-to-date map of prioritised bribery risks across the company's activities. A matrix can be produced which covers the following:

- Activity description
- Form of bribery: How and where it can happen, active or passive or both
- Where: Business units and functions including third parties
- Risk factors: Defined and assessed for their likelihood
- Bribery schemes: A description of how typically bribes are paid or received and the vulnerable company activity

4.2.6 Stage 6: Use the output of risk assessment

Aim: Design anti-bribery controls to mitigate the priority risks and then address any residual risks.

The results of risk assessments are now applied to a review of the anti-bribery programme and the extent to which existing controls need modification or additions. The design of controls will need to be balanced from a resource perspective. All companies face a range of significant risks across many issue areas and bribery risk mitigation must be balanced against the need to address key risks other than bribery. This means targeting bribery risk management efforts at those particular risks which are most likely to have a significant adverse impact on the achievement of business objectives.

Steps at this stage:

- **Map:** Once all the insights on bribery risks have been collected, structure and prioritise them. Next assess them against existing controls to check that the risks are being mitigated. Data analytics, a risk matrix or 'heat map' can be used for this.
- **Identify the gaps:** Identify gaps in existing controls in terms of risks inadequately addressed or for which there are no adequate controls.
- **Mitigate:** Design and implement controls to mitigate the risks. The new controls should address identified gaps or modify existing controls. The controls can be specific to the identified bribery risk or general controls to strengthen the anti-bribery programme. It should also be considered that an anti-bribery programme does not operate in isolation but is part of a wider anti-corruption programme and may also rely on controls which address not only bribery risks but other risks. Examples are the code of conduct, communication, speak up and advice lines, training and controls over payment transactions.
- **Improve:** Amend or drop existing controls identified as no longer needed or inadequate.

Resources

[*Diagnosing Bribery Risk, Transparency International UK, 2013.*](#)

A practical guide to bribery risk assessment which provides specific, practical advice based on real-life experience on how to conduct an effective bribery risk assessment.

[*Bribery Risk Guide, IRM and Transparency International UK, 2016*](#)

This guide is intended to help anyone involved in managing risk identify and evaluate their exposures to the risk of bribery. It also explains how risk assessment fits into the development and maintenance of an organisation's wider anti-bribery programme.

5. WHAT IS BRIBERY?

QUICK READ

TI defines bribery as the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. This covers 'active bribery' whereby an employee of the company offers, promises or gives an advantage, and 'passive bribery' which is when an employee requests, agrees to receive or accepts an advantage.

It is important to understand the key definitions and types of bribery in order to assess and mitigate the risks. For example 'Kickbacks' which have an elements of both active and passive bribery, are a particular risk in procurement and purchasing.

GUIDANCE

5.1 Defining bribery

There is no universal definition of bribery but all definitions have in common that it involves someone in an appointed position acting voluntarily in breach of trust in exchange for a benefit. The benefit does not have to involve cash or a payment exchanging hands. It can take many forms such as lavish gifts, hospitality and expenses, access to assets or a favour made to relative, friend or favoured cause.

TI defines bribery as: the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of money, gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc.).

5.2 Active and passive bribery

When a person offers, promises or gives a bribe, it is called ‘active bribery’ and when a person requests, receives, or accepts a bribe, it is called ‘passive bribery’. Both forms are of concern to companies and are outlawed in most countries. Until the advent of the UK Bribery Act, the focus of anti-bribery legislation had been on active bribery of foreign public officials as this is the main arena for bribery because of the harm it brings to societies and the way it undermines fair trading. For example, the OECD Anti-bribery Convention and the U.S. Foreign Corrupt Practices Act (FCPA) address only active bribery.

Examples of active bribery

- Bribing a public official in order to:
 - Be awarded a contract in the briber’s favour.
 - Obtain an inspection report or to be awarded a license.
 - Circumvent planning or safety controls. For a case study, [click here](#).
- Channelling bribes to win public contracts through a consultant.
- Payment of small bribes to customs officials to expedite passage of goods through a port.
- Employing a public official’s son to influence award of contracts.
- Providing sponsorship fees and excessive travel expenses for doctors to influence them to prescribe a pharmaceutical company’s products.

Examples of passive bribery

Passive bribery takes place most often in certain operating functions; examples of instances are below:

- **Security:** A security officer in a company accepts a bribe from criminals to allow access for theft.
- **Purchasing and procurement:** A procurement executive demands a 'kickback' to award a contract. This involves a portion of the contract fee being given back to the individual who made the decision to award the contract. The consequences of such bribery can include financial loss through overpaying for goods, projects or services and purchase of sub-standard, counterfeit or otherwise non-compliant goods or services. See the UK retailer case study.
- **Allocation of goods and services:** An employee favours a customer by expediting delivery at the expense of other customers or giving preferential allocation of goods or services.
- **Recruitment:** An executive demands a bribe to appoint or promote a person who would otherwise not have been selected. A senior buyer awards a contract on the strength of promise of a lucrative appointment with the supplier after a suitable interval.
- **Insider fraud:** A bank employee accepts a bribe to provide details of the bank's customers. See case study.
- **Illegal information brokering:** An executive accepts a bribe to provide contract specifications to be used in a tender ahead of time. Bribery might also be accepted to alter the specification in favour of a bidder.

CHAPTER APPENDIX

5.3.1 Case study: The deadly consequences of bribery to avoid planning and safety rules

A Chinese court in 2016 gave the head of a logistics company a suspended death sentence and a fine of more than 700,000 yuan (about U.S. \$100,000) over a massive explosion on 12 August 2015 at a chemical warehouse in the eastern port city of Tianjin that killed 173 people. The dead included 99 firefighters and 11 police officers. Another 798 people were injured, largely because the company illegally built its warehouse too close to residential apartments. The cost of damage was estimated to be U.S. \$1 billion according to a report by the Chinese government.

The court ruled that Ruihai International Logistics Chairman Yu Xuewei paid bribes to obtain permission to illegally store more than 49,000 tons of sodium cyanide and other highly toxic chemicals at the company's warehouse in the city's port between 2013 and 2015. The explosion was among China's deadliest industrial accidents in recent years and the resulting investigation was directly overseen by the Cabinet.

Various other Tianjin courts gave lesser sentences to 48 other people. They included 25 local government officials and workers accused of dereliction of duty, abuse of power and bribe taking, 12 other Ruihai employees accused of taking part in the scheme and 11 employees of a company that provided phoney certificates supporting the company's operations.

5.3.2 Case study: Passive bribery by bank employees: Bank's customers robbed of £113 million

Along with his accomplices, Feezan Choudhary stole £113 million from a UK bank's customers. He paid a £250 bribe every time corrupt staff at a UK bank provided information about the bank's customers. In September 2016, he was jailed for 11 years and a total of 19 people were convicted including three of the bank's employees.

5.3.3 Case study: Passive bribery in a UK retailer

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

RESOURCES

How to Bribe: A Typology of Bribe Paying and How to Stop It, Transparency International UK, 2014

6. SMALL BRIBES

QUICK READ

Small bribes are commonly demanded in certain transactions or activities, typically during travel, logistics or seeking approval of some kind such as a visa, licence or regulatory approval. Typically a public official demands a bribe for a service to which a person or company is entitled. They may also be demanded by police or other officials backed by a threat of a fine or other adverse consequence.

Countering small bribes can be exceptionally challenging for companies. Resisting these bribes can have costs for the business and demands for small bribes are often made at times of operational vulnerability. The factors which create demands for small bribes are often entrenched and pervasive and the payments can be hard for management to detect, especially when they are made by third parties and deliberately concealed. However, the legal, reputational and operational impacts of not addressing the challenge can be substantial.

Key elements:

- **Assess the risks:** The company identifies and assesses the risks that small bribes are demanded or paid in its activities and operations, and the factors that cause them.
- **Policies and procedures:** A programme is implemented comprising detailed policies and procedures to counter small bribes.
- **Communications and training:** As part of the programme, communications and training make clear the company's policy of prohibition of small bribes and give requisite information and advice to employees on how to anticipate and resist demands, seek advice and to report concerns or instances of small bribes.
- **Third parties:** As part of the programme, the company has in place appropriate procedures for third parties including due diligence, contract terms, communication, training and monitoring.
- **Accounting controls:** As part of the programme, the company's internal accounting controls are modified and extended to counter small bribes.

BEST PRACTICE

- **Understand:** Understand and define what small bribes are and know the provisions of laws. Recognise that systemic use of small bribes is to gain business advantage and can amount to substantial sums.
- **Assess the risks:** Through risk assessments identify if small bribes are a significant risk for the company.
- **Policy:** Make clear that the company's policy of prohibition of bribery includes small bribes.
- **Strategy:** If identified as a significant risk, obtain management and board commitment to a strategy to counter small bribes.
- **Anti-bribery controls:** Design and implement anti-bribery controls to counter the specific risks of small bribes.
- **Communication and training:** Provide tailored guidance and training to directors, employees on how to anticipate and resist demands, seek advice and to report concerns or instances of small bribes.
- **Protection of employees:** Make clear that the company's priority is the safety of employees and others. Where there are genuine threats to life, limb or liberty, demands for small bribes should be met. Provide a procedure for emergency guidance and support.
- **Books and records:** If small bribes are paid, ensure these are recorded accurately in the accounts and supported by documentation.
- **Influence the operating environment:** Where small bribes are a concern, invest in methods to counter the underlying factors that create the conditions for bribery demands. This is best carried out by making representations to the authorities where the problem lies in a specific area such as a port and by working collaboratively with other companies and civil society.
- **Incident management:** Appropriate actions are taken if small bribes are detected. There is a procedure to deal with any incidents including investigation and review, disciplinary action and consideration of reporting systemic payments to the relevant authorities.
- **Monitoring:** Monitor and audit for the presence of small bribes. Management and board review regularly the issue of small bribes as part of a wider review of the implementation of the anti-bribery programme.

GUIDANCE

6.1 Introduction

Small bribes, commonly termed ‘facilitation payments’, are typically demanded in everyday transactions, for example at border crossings. There is growing international recognition that facilitation payments are not easily separated from other forms of bribe and increasingly, companies are following a zero-tolerance policy throughout their global operations, with no exemptions for facilitation payments.

Characteristics of small bribes

- **Situational:** They occur in situations where a public official demands a bribe for a service to which a person or company is entitled. They may also be demanded by police or other officials backed by a threat of a fine or other adverse consequence.
- **Transactional:** Small bribes are commonly demanded in certain transactions or activities, typically in travel, logistics or seeking approval of some kind such as a visa, licence, certificate, utility service or regulatory approval.
- **Private sector risk:** Small bribes can be also demanded by private sector employees especially as a consequence of privatisation.
- **Many forms:** Small bribes can take the form of cash, vouchers, pre-paid phone cards, alcohol, perfume, cigarettes, and tickets to events.

6.1.1 Terminology

Small bribes are given various names depending on context and country; for example, ‘tea money’ in Kenya or ‘baksheesh’ in Egypt. The term *facilitation payment* originates from the FCPA and usually covers payments made to officials to obtain or speed up routine services which the officials are required to provide. It does not include payments made directly to obtain or retain business. Facilitation payments are allowed as an exception in the bribery laws of only four countries: Australia, New Zealand, South Korea and the USA. These laws apply only when they are made abroad and paradoxically, remain illegal in their own domestic laws. It should be noted that as facilitation payments are often hidden in the books, they can lead to a books and records offence under the FCPA. The UK Bribery Act makes no exception:

Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes. There was no exemption for such payments under the previous law nor is there under the Bribery Act.’

Guidance to the UK Bribery Act, UK Ministry of Justice, 2010

Transparency International UK uses the term *small bribes* rather than *facilitation payments* as this expresses the true nature of such transaction, provides precision of definition and gives a basis for countering this form of bribery transaction.

6.2 The risks of small bribes

The guidance that follows is based on TI-UK's publication [Countering Small Bribes: Principles and good practice guidance for dealing with small bribes including facilitation payments.](#)

Countering small bribes can be exceptionally challenging for companies. Resisting these bribes can have costs for the business and demands for small bribes are often made at times of operational vulnerability. The factors which create demands for small bribes are often entrenched and pervasive and the payments can be hard for management to detect, especially when they are made by third parties and deliberately concealed.

Often, small bribes are made systemically and business operations are dependent on them being made. However, consequences of not addressing the challenge can be substantial. The company may face the following risks:

- **Legal:** Legal risks (including criminal prosecution, settlement and investigation costs).
- **Reputational:** Reputational damage (including market and financing issues, loss of confidence by business partners, and increased vulnerability to bribe solicitation and demands).
- **Operational:** Operational impacts (including the cost to the business of systematically paying small bribes, market distortion, entrenching a corrupt bureaucracy and putting employees at risk).
- **Threat to personal safety:** The bribery demands may be accompanied by threats to staff safety.

6.3 The damage from small bribes

At a broad level, making small bribes feeds a climate of corruption, creating an unstable operating environment for companies. It destroys trust in government and public administration, undermines the rule of law, impacts human rights and distorts business transactions. Small bribes are not confined to demands made to companies, as there are no boundaries for officials and others who demand bribes. The effects in countries with high levels of corruption can be widespread. In such circumstances, businesses and citizens may face daily demands for payments for essential transactions, increasing the costs of living to citizens and adding costs and uncertainties to business, often the smaller and vulnerable SMEs. Small bribes are part of a cycle of bribery that corrodes public and business standards and provides a climate for larger public sector bribery and state theft.

Although many companies ask how they can be expected to operate in certain markets without paying small bribes, growing numbers are adopting a policies and strategies to eliminate the practice. They are now finding that their reputation for not paying bribes means they are no longer asked; whereas those that pay small bribes can be subject to an ever-increasing spiral of demands.

6.4 How small bribes are demanded

Typically, a bribe demander will use explicit or implied threats of delay, inconvenience, business cost or some other undesirable outcome. Bribes can also be solicited by an official with the inducement of a faster service, overlooking incomplete paperwork, or some other benefit, and may also be offered by the bribe payer to obtain such benefit. Payments made in response to genuine threats to life, limb or liberty are payments made under duress, and this may provide a legal defence for the payment. Economic or other coercion such as travel delay, however costly or inconvenient, may appear valid reasons for making a payment but are not legal grounds for paying a small bribe.

What constitutes 'small' is clearly relative. A bribe of \$20 paid to a passport official may seem small to the business traveller, but the average daily wage in the country may be only \$2. A bribe of \$200 in a developed country may be relatively small. A single bribe may be small in itself, but – very often – small bribes are paid regularly and over time the amounts can be considerable and amount to large-scale systemic bribery. A company might easily discover that it is paying hundreds of thousands of pounds each year in so-called facilitation payments or small bribes.

Case study: Small bribes were systemic and aggregated to U.S. \$2 million over 2.5 years. [Click here.](#)

6.5 Eight challenges of small bribes

- **Resisting has costs:** Refusing to pay bribes may be costly; for example, by creating delays in moving goods, especially if shipments are time-sensitive. There may be competitive disadvantage if competitors continue to pay small bribes and move goods faster.
- **Entrenched and pervasive:** Small bribes originate from underlying structural and cultural issues which do not easily lend themselves to change.
- **Systemic:** Demands for small bribes are not usually isolated instances. A company can find that it is facing continuing demands, which aggregate to substantial costs. Systemic bribery means the company's operations are effectively underpinned by bribery.
- **Hard to detect:** Small bribes can easily be hidden in expense claims or invoices especially those made by third parties.
- **Books and records:** Such bribes are miscoded and hidden in the books, exposing a company to an offence under books and records provisions in FCPA.
- **Driving underground:** Prohibiting small bribes may drive the practice underground with payments paid by employees out of their own pockets.
- **Vulnerability:** Demands are often related to urgent issues when employees may not be able to obtain advice or support in time.
- **SMEs at particular risk:** SMEs can be more vulnerable to demands to pay bribes and have less influence if they want to promote change.

Case studies: Caught unawares

1. An employee lost their departure card, paid a fine at the border but did not get a receipt. The employee later thought about it and realised it was an unofficial payment. The employee reported the incident to management.
2. An employee was travelling back from a large company convention held abroad and was in a long queue at the airport check-in desk. A representative of the agency organising the convention came up and surprised the employee by taking her to the head of the queue. Subsequently, the employee wondered how this favoured treatment could have taken place. Was it a formal agreement with the airport authorities or a 'special arrangement' by the convention organiser? She reported the incident to her management.

6.6 Countering small bribes

See the TI-UK guidance [Countering Small Bribes](#) for full description of the topics summarised below.

6.6.1 Assess the risks

Through risk assessment, the company can identify and prioritise the risks from small bribes, and then design and implement mitigating controls.

The next step in the risk assessment is to gather information to identify where small bribes are happening or could happen, and finds out how employees and third parties are dealing with demands when made. It will be important to use the knowledge of front-line employees who are encountering the demands for small bribes.

The risk assessment process could be assigned to the country business unit to carry out. This can have the benefit of not only bringing local knowledge, but also bringing the local management into the process for developing the controls. Surveys and questionnaires can be supplemented by face-to-face interviews which will also bring out areas which people may be reluctant to put into print.

6.6.2 Develop a strategy and plan

Having assessed the scale and nature of the issue, a strategy and plan should be developed for countering and, where possible, eliminating small bribes. This may involve changing routes to market, supply chains or even business processes.

The strategy should be supported by a long-term commitment to countering small bribes, from the board and senior management and with provision of adequate resources. Employees should be encouraged to resist bribes so that responsibility is embedded across the company. The leadership should make clear they will not penalise employees who resist bribes and thereby incur delay or losses in operations.

An implementation plan should be prepared and then rolled-out which will provide for:

- Design of anti-bribery controls, roll-out the plan across the company.
- Communication and training for employees and third parties on how to resist demands for small bribes.
- Creation of task forces or local teams to deal with particular issues.
- Accurate recording of payments in the books.
- Influencing the operating environments (see below).
- Monitoring review and improvement.

6.6.3 Influence the operating environment

Factors that create demands for small bribes are likely to be deep-rooted – involving poverty, poorly paid officials, grasping senior officials and politicians and institutional corruption as well as corrupt companies seeking to gain advantage. The company should consider addressing these structural factors by working in collaboration to achieve fundamental change. Work can be at macro level – discussions with governments and addressing societal issues such as poor pay - or more commonly, at micro level; tackling an issue in depth in a particular government function or process. Most commonly, this will be done best through collective action. A key tool in collective action is obtaining changes in processes so that opportunities to extract small bribes are removed. This can be achieved in ways such as:

- **Standardising and simplifying:** Pressing for clarity of procedures and reduction in red tape: unclear or complex procedures can be exploited by officials to create reasons for payments.
- **Redesigning and automation of government processes:** Encouraging use of new systems and technology to remove officials from processes, and automate decisions and transfer of payments.
- **Transparency of rules and procedures:** Public functions and relevant private sector functions should be encouraged to publish their rules and charges; this removes uncertainties which can be exploited, and allows companies and the public to know their rights, enabling them to stand up to demands for bribes.
- **Contracts for non-standard services:** If public officials demand money or other benefits to cover additional services such as policing or certification or to compensate them for lost income, expenses, poor salary or overtime, formalise the arrangement by a transparent documented contract with the public body.

Implement internal financial controls: Internal controls should be designed with the aims that:

- Payments of small bribes are prevented.
- There are no miscellaneous expenses: No reimbursement for expenses categorised as 'miscellaneous' and audit of any existing expenses categorised as such.
- Payments for transactions and expenses are for what they are said to be and not a cover for payment of small bribes.

- Transactions are accurately recorded: All expenses are recorded accurately in clearly categorised accounting codes.
- Transactions are supported by documentation.
- When small bribes are paid they are:
 - Likely to be detected
 - Not mischaracterised or inappropriately recorded in the company's books and records
 - Reviewed by management
 - Reported to the board
 - Reported appropriately to the authorities

6.6.4 Give employees the skills and knowledge

Tailored training should be given to employees identified as being at risk of demands for small bribes to make them aware of when and where demands could happen and how to handle them. The emphasis in the training should be on providing the practical skills and knowledge to resist such demands. Case studies, scenarios, dilemmas and red flags can be used in training. Incorporating experienced employees in training groups can help to bring extra relevance and a degree of reality to the training. Emphasise to employees that they will not be penalised for refusing to pay small bribes even if this results in delay and costs. The input and comments of those taking part in training should be captured as this can be valuable in contributing to the company's knowledge about risks and ways of tackling bribe demands.

A key aspect of training is guidance on how to negotiate situations and role playing. Click [here](#) for a model approach.

6.6.5 Monitor to check how controls are working

This means examining expenses documentation and the books and accounts for red flags and talking to front-line employees and third parties to ask for honest feedback on the challenges they are facing. For a list of red flags, [click here](#). Absence of evidence of payment of small bribes can be an indicator of an issue especially where activities or transactions are taking place in countries known for risks of small bribes.

Annual certifications by business units and third parties on implementation of controls with reports on any issues can be helpful to focus attention on small bribes. Internal audits can be used as a check and also audits of intermediaries' books and records but it may be difficult to detect evidence of small bribes. Management should review the results of monitoring and make regular reports to the board as part of their reporting on the anti-bribery programme.

6.6.6 Public reporting

As part of public reporting on the anti-bribery programme, if the company has identified that small bribes are an issue for the sector and it has adopted a strategy, it should report on progress. For an example from the maritime sector, [click here](#).

CHAPTER APPENDIX

6.7 Case study: Small bribes aggregated over time to U.S. \$2 million

In October 2016, the German authorities reached a settlement with logistics provider DB Schenker over allegations that it bribed Russian customs officials in the port of St Petersburg. Schenker agreed to a fine of €2m (U.S. \$2.19 million) in settlement of the matter. The relatively low penal element was said by the prosecutor to be mostly due to the very high level of cooperation during the investigation and to the fact that the case was started by a report by DB Schenker's parent, Deutsche Bahn, to the Public Prosecutor's Office. As a result of the scandal, 30 Schenker executives lost their jobs in 2013.

The bribery scheme allegedly involved payments made to speed up the extremely slow customs clearing process in Russia for delivery of supplies to the nearby Ford plant. It was alleged that DB Schenker paid local tax collectors a 'service fee' for fast clearance. The money was not handed over to the customs officers directly. Instead, Schenker paid a 'service fee' to a Russian agency who then transferred the funds to accounts in Switzerland and Cyprus belonging to a financial holding entity, registered in the Caribbean and owned by the Russian agency. DB Schenker was said to have transferred up to €2.25 million to the Russian agency over 2.5 years.

6.8.1 Model negotiation steps for resisting demands

If the employee feels it is safe to do so some or all of the following steps can be followed when a demand is made. If the demand is accompanied by a threat to life, limb and liberty of the employee or others working in a country then the employee should not resist the demand.

- Use negotiation skills and remain calm.
- Clarify what is being asked for.
- Question the legitimacy of the request and ask the official where the requirement for the 'fee' is displayed or stated.
- Ask a colleague or fellow traveller to stand nearby as this may discourage the approach if the discussion is being listened to by another.
- If the discussions are in your facility such as a meeting room or on your ship consider video recording all transactions and inform the official that you do this as standard practice.
- Take detailed notes of conversations – with whom and what was said.
- Keep any papers or documents given to you.
- Refuse to pay if the official cannot supply official validity of the 'fee'.

- Make the point in a personalised and soft way that making such a payment would cause problems for the employee: 'I'll get into real trouble' etc.
- If the official still demands the payment, ask to see the official's supervisor.
- If that is refused, or if the supervisor also asks for payment and it is clear there will be no movement by the officials on the demand, offer to pay the fee subject to being given an official receipt - a formal document on official paper that identifies the official's name and relevant identification number if appropriate.
- If the official refuses to provide a receipt, restate willingness to pay the fee but only with a receipt.
- If no receipt is forthcoming, telephone the local embassy and make clear to the official demanding the bribe that this is being done.
- Having exhausted all methods and still not having gained approval from the official then, with the prior support given by management for such an outcome, decide to accept the consequences of delay or loss of goods.
- If possible, get written statements corroborating the demand of a payment as this may be needed if the official claims the employee initiated the attempt to bribe.
- Report the incident to the company as soon as possible.
- Record any payment made accurately in the accounts with a clear description of its purpose.

6.8.2 Red flags for small bribes

Transactions

- Pattern of small payments in repeated situations such as customs, taxation, per diems.
- Expense claims which have no supporting documentation and lack explanation of purpose.
- Cash advances made to employees for no apparent valid purpose.
- Expense payments made in round sums.
- Payments made under self-prepared vouchers rather than third party documents
- Miscellaneous or unspecified sums included in invoices and unchallenged by the company.
- Expenses appear excessive for the activities.
- Evidence of payments that are not recorded in financial records.
- Expenses cannot be satisfactorily explained.
- Petty cash use is excessive.

Evidence from outcomes

- Undue favourable treatment by government officials or private sector companies such as telecommunications or utility companies.
- Agent moves employees quickly through passport control in groups.
- Speedy entry into a country despite known demands and delays at border controls.
- Your company moves goods quicker through ports and customs than competitors.
- Expenses patterns differ between employees in similar circumstances or activities.

Absence

- No anecdotal evidence or reports are made to management related to difficulties regarding small bribes despite operating in an environment where demands for such payments are commonplace.
- No small bribes are reported or recorded in the books as having been made.
- Local contacts and peer companies identify concerns about small bribes demanded by particular government departments but no reports have been made by your company's employees or intermediaries.
- The agent or other third party does not wish your company's employees to be present at negotiations or interactions with officials.
- The agent or other third party shows lack of commitment or interest in countering small bribes.

6.8.3 Example: Reporting on small bribes in the maritime sector

A P Moller-Maersk: 2016 Sustainability Report

“Although the risk of large-scale corruption is low, our shipping businesses constantly liaise with port authorities, customs officials and other inspectors. These encounters can carry a high risk of demands for facilitation payments.”

- **Why this matters to society:** Social and economic development suffers when corruption is present. Societies cannot grow and prosper equitably when fair business is impeded.
- **Why this matters to A.P. Moller-Maersk:** Failure to mitigate the risk of corruption brings

both financial and reputational damages to A.P. Moller - Maersk.

- **Our ambitions:** To always conduct our business in an upright manner and to eliminate facilitation payments within the foreseeable future.
- Our progress
 - 87% reduction in facilitation payments for Maersk Line, compared to 2015.
 - 59% reduction in facilitation payments across our vessel operating and logistics businesses, compared to 2015
- **Next steps:** Continued focus on facilitation payment reduction and integration of compliance into daily operations.”

RESOURCES

- [Countering Small Bribes: Principles and good practice guidance for dealing with small bribes including facilitation payments, Transparency International UK, 2014](#)
- [Transparency International's Global Corruption Barometer: Indicates the likelihood of demand for small bribes by country](#)

7. FINANCIAL CONTROLS

QUICK READ

Effective financial controls restrict opportunities for using the company's cash or other assets for bribery

Corporate bribery incidents often involve lax or inadequate financial controls, most commonly in relation to how transactions are recorded in the books and records of the company. Well-designed anti-bribery financial controls act as checks and balances to deter improper behaviour by raising the risk of detection and capturing information to enable investigation.

Key elements of best practice

- Design controls based on information obtained from risk assessments
- Apply checks and balances consistently across operations
- Record transactions accurately in the books and records
- Implement audits to check that the controls are working effectively

BEST PRACTICE

- **Understand:** The company analyses and understands the role of financial controls in the anti-bribery programme including benchmarking against guidance from anti-bribery authorities, accounting and other professional bodies.
- **Design:** Based on risk assessment, the financial controls are designed to address prioritised bribery risks.
- **Implement checks and balances:** These are core to countering bribery. Steps should be taken to ensure they work well and are applied consistently throughout the company's operations.
- **Improve:** Have an approach of continuous improvement and encourage those on the ground to make suggestions to improve financial controls.
- **Train:** Those responsible for initiating, approving and implementing financial transactions are trained, encouraged and assessed on their vigilance and ability to scrutinise transactions for bribery and corruption risks.
- **Record transactions:** Implement procedures to make sure all transactions are recorded accurately in the books and records and implement regular checks that this is happening for high risk transactions.
- **Keep accurate books and records:** Keep complete and accurate accounting records and books that provide requisite information with supporting documentation for audits and investigations including those by the authorities in the event of a bribery incident.
- **Monitor:** Check that the financial controls are being implemented effectively.
- **Use new technology:** If suitable, new technology can be used to monitor transactions, detect trends and red flags as well as carry out forensic analysis.
- **Ensure review by leadership:** Reports are provided regularly to senior management and the board on the effectiveness and quality of implementation of anti-bribery financial controls.

GUIDANCE

7.1 Introduction

Ensuring that transactions are properly recorded in the books and records counters bribery risks by safeguarding the assets of the company, ensuring they are used properly.

Financial controls are an essential element of the anti-bribery programme. Bribes, as transfers of advantage or value, often require access to company assets, and related transactions will typically be disguised in the financial records of a company. Effective financial controls should ensure that company assets are used properly, by requiring appropriate approval processes and that transactions are properly recorded in the books and records.

Examples of risks countered by financial controls

- Unauthorised use of assets or services offered or given as bribes.
- Expense claims are inflated to create funds to facilitate bribery such as providing gifts, travel and cash payments.
- Rush orders or emergency measures which may otherwise enable a transaction to operate outside the approved financial controls and funds are then generated to make bribes.
- False invoices submitted for services not provided or companies that do not exist.

Financial controls are just one aspect of an internal control system. An internal control system comprises the policies and procedures designed to provide reasonable assurance that operations are effective, financial reporting is reliable, and that the company complies with applicable laws, regulations and its own corporate governance policies. A weak internal control system has contributed to various instances of corporate bribery.

‘[The company’s] lax internal control environment enabled its subsidiary to pay millions of dollars to a politically-connected front company for the [political party] to win contracts with the government. [The company] then unlawfully mischaracterized those payments in its books and records as consulting fees and other legitimate payments.’

Enforcement Division, SEC, Press Release

7.2 The roles of financial anti-bribery controls

Financial controls play various important roles in preventing bribery.

- **Ensuring proper access to funds:** Controls can prevent unauthorised access to assets that could be used by individuals to facilitate bribery. They consist of approval processes, checks and balances, well-designed systems for work flows, documentation and accurate books and records.
- **Enabling the business to obtain a more detailed understanding of transactions:** Financial controls should record detailed information on the nature of a transaction and the rationale for it. A company should be able to use this information to assess if a payment was made for a genuine business purpose and whether the transaction complies with anti-bribery legislation and other applicable regulations.
- **Monitoring, auditing and review:** The threat of detection by monitoring and audits is a powerful preventive measure. Monitoring also allows management the opportunity to judge where controls are working effectively and where improvements need to be made.
- **Detering bribery:** The presence of effective financial controls can act as a deterrent to those contemplating facilitating bribery.
- **Evidence for investigations:** Controls provide documentary evidence in the case of investigations or court proceedings when enforcing anti-bribery policies and laws.
- **Accurate books and records:** Internal financial controls will improve the accuracy of books and records. Many instances of bribery have come about as a result of record-keeping failings.

7.3 Key concepts within financial controls

Financial controls should be designed to counter the bribery risks identified through risk assessment (see Chapter 4) exercises. When designing financial controls it is helpful to consider the following four key concepts:

- **Segregation of duties:** The segregation of duties ensures that no one individual has access to cash and other company assets. By ensuring no one person has exclusive control over an area of financial operations the risk that company assets can be misused can be limited. For example, if several employees are required to participate throughout the procurement to payment cycle for a new third party vendor, it is harder for an individual to set up a shell company in order to facilitate bribery.
- **Control over assets:** Controlling access and use of physical assets to prevent theft, improper use, bribery and corruption.
- **Delegation of authorities:** Where a process is deemed to represent a higher risk to the company, for example if a payment is above a certain agreed threshold, responsibilities should be assigned to those with the appropriate competency.

- **Documentation:** A requirement to provide and retain sufficient, appropriate supporting documentation for financial records increases the transparency of transactions. Requiring supporting documentation for financial transactions can mean it is more difficult for company assets to be exploited for illegitimate purposes.

7.4 Principal financial controls

The principal financial controls are described below.

- [Checks and balances](#)
- [Cash controls](#)
- [No off-the books accounts](#)
- [No off-shore payments](#)
- [Control of assets](#)
- [Accurate books and records](#)
- [Third parties](#)
- [New technology](#)
- [Monitoring](#)

7.4.1 Checks and balances

Checks and balances are an important part of financial controls as they ensure accuracy, reduce errors and prevent improper behaviour. The key checks and balances are listed below.

- Assignment of authorities: Designation of the scope of authority.
- Separation of functions: Internal checks should be maintained to ensure that no one employee has responsibility for more than one step in a transaction from completion to review. Operational functions should be kept separate from record keeping functions (recording transactions and reconciling accounts). Purchasing functions should be kept separate from payables functions.
- Counter signatures.
- Financial thresholds for approvals.

7.4.2 Cash controls

Cash controls are vital for addressing bribery risk.

Preventive

- Eliminate cash use wherever possible.
- Restrict access to cash to named personnel.
- Set an upper limit on the value of physical cash held.
- Use company credit cards for the payment of expenses.
- Set limits on individual transaction values.

- Control cash *per diems* (daily allowances for expenses). Where they are required by a public official, specify the level of *per diems* in the contract and require receipts from the officials.
- Document expenses and any other cash transactions.
- Control petty cash.
 - Set limits on the types of expenditure that can be paid from petty cash.
 - Include payments from petty cash in company books and records such that there is an accurate document trail of the substance of the transactions.
 - Obtain and file receipts and other supporting documentation for all payments made from petty cash.

Detective

- Regular reconciliations of petty cash balances and physical counts of cash.
- Review of petty cash reconciliations by a senior person.
- Scrutiny of unauthorised or undocumented cash payments.
- Carry out spot checks of petty cash held and the associated records.

7.4.3 No off-the books accounts

Bribery scandals have frequently involved payments out of 'slush funds' i.e., funds that have been accumulated in bank accounts from commissions, kickbacks or other receipts and not recorded in official books and records. Consequently, there must be an absolute rule that all transactions are truthfully recorded in the official books and that there are no 'off-the-books' accounts. Controls should be implemented that include regular bank account reconciliations and segregation of duties. Independent checks on bank accounts and agents, including communications with the company's bank are also necessary controls. Controls are also needed in relation to the approval process for discounts, rebates and credit notes outside the sales function. Risks can also arise in relation to 'shell companies' and special purpose entities. They may be created specifically for corrupt activities and used to hold slush funds for paying bribes or to receive monies obtained via corruption. Whilst such entities may legitimately hold substantial assets and liabilities of a business, they may be opaque and hide the underlying beneficial ownership.

7.4.4 No off-shore payments

Payments for transactions should be in the country of operation of the country of location of the responsible business unit. Payment in another jurisdiction may be an indicator of improper activity and potential money laundering. Controls should be implemented during the process of on-boarding of third parties, including identification of the location of the relevant bank account.

7.4.5 Control of assets

Controls should be implemented in relation to the use, movement, write-off or deaccession of assets and inventory. There should be a procedure for approval and tracking of assets. Documented checks should be carried out to ensure that the procedure is working. The use of an automated system will help in this.

7.4.6 Accurate books and records

Accurate accounting and record keeping is of the utmost importance to the anti-bribery programme as it allows checks to be made that proper procedures are followed. It can also provide documentary evidence in the case of investigations or court proceedings undertaken to enforce anti-bribery policies and laws.

Books and records controls

- Books should be maintained on a current basis.
- Transactions should be recorded chronologically and supported by original documents which can be cross-referenced in relation to each stage of the workflow or transaction.
- Ideally there should be a comprehensive automated filing system although in practice, companies may find this hard to achieve as it can be difficult to consolidate a mix of automated systems but also because of the scale of the task of maintaining comprehensive records.
- The aim should be that an audit trail of each transaction from origin to completion is provided.
- Ensuring compliance with anti-bribery rules follows largely the same process as that used for combating fraud.
- Initiating the transaction, the physical handling of goods and of cash, authorising or receiving payments and recording the transaction in the books of account should be performed by different employees. This procedure is normally described as segregation of duties.
- Spot checks on the internal accounting control process should be part of the supervisory function in the purchasing, sales, stores, production and accounting departments.

7.4.7 Third parties

Master file data integrity

Controls should be implemented in relation to allowing changes in vendor master file details and detection controls requiring review of changes in bank accounts as well as the use of off-shore vehicles.

Third parties: contractual provisions, rights and monitoring

The company's controls will only be as good as those of its third parties. Third party contracts should require that adequate anti-bribery controls are in place and that the company has the right to inspect books and records, and to carry out inspections and audits including spot checks. The company should carry out due diligence and monitoring of high risk third parties including checks on the design and implementation of their anti-bribery programmes. For detailed guidance, see the TI-UK publication [Managing Third Party Risk](#).

7.4.8 New technology

An emerging area is the use of forensic software systems to monitor financial transactions and red flag unusual transactions, for example, an unduly high number of purchase orders placed by an employee just below an approval level requiring a counter signature. Electronic dashboards can provide the management with information on the progress of contracts as well as analytical tools for reviewing and highlighting trends in high risk transactions such as expenses claims.

7.4.9 Monitoring

Continuous monitoring

Responsibility for financial controls monitoring should be implemented at all levels of the company. For example, supervisors and managers should scrutinise expenses payments and reconcile transactions such as by checking that orders have been recorded as received. Training should emphasise the need for all employees and particularly those involved in high risk transactions, to be alert to signs of fraud, bribery or other corruption and to know what to do in such situations. Employees and third parties should be encouraged and assisted to suggest improvements to financial controls.

Spot checks and observation

Spot checks of the internal accounting control process should be applied in the purchasing, sales, stores, production, and accounting departments. When dealing with high risk operations such as the use of agents or remote business units, it might be necessary to place an employee in agent's office or the business unit to monitor and observe practices.

Internal audit

Internal audit is both an internal financial control and an essential part of a company's monitoring and improvement process. Usually, an internal auditor reports directly to a board audit committee and internal audit reports are also reviewed by senior management. The role of internal auditors is to conduct operational as well as financial audits. Internal audit forms part of the anti-bribery programme as its purpose is to examine risks, assess the effectiveness of financial controls, contribute to improvement and detect bribery. Some points to consider are:

- As with anti-bribery risk assessments and due diligence, the focus of the auditor's efforts should be on high risk areas.
- The frequency of internal audits will be shaped by the relevant risks. Some areas may be subject to annual reviews whilst others, such as training provision, may be less frequent, perhaps every three years. The available resources will also be a factor in how the audits are scheduled. A rolling programme of audits will spread the demand on budget and people resources.

Transaction testing: Transaction testing checks should be carried out to ensure that controls are working correctly. These should focus on the high risk transactions for bribery identified during the risk assessment process. For a list of some key elements of transaction testing, click [here](#).

Support functions and professional advisers: Internal audit reviews can be supported by both internal and external providers. Internal functions that may offer such assistance include supply chain, excellence and quality management. External provision includes the appointment of external auditors, reviews by anti-bribery professional advisers and external independent assurance.

CHAPTER APPENDIX

Some key elements of transaction testing:

- There are appropriate controls such as segregation of duties and these are applied.
- Extraction and reconciliation of accounting data with careful analysis to determine that there is adequate supporting documentation.
- Checking that financial transactions are properly accounted for and that bribes are not hidden by misallocating to account codes or by being incorrectly described.
- Analytical tests on data and then examination of samples (this includes a review of supporting documentation) of:
 - High risk payments to distributors, subcontractors, and/or consultants.
 - High risk transactions paid for using cash.
 - Checks for movement of funds to off-the books accounts.
- 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.
- Detailed scrutiny of books and records including electronic data and analysis of accounts in sufficient detail, for example:
 - Expense transactions are recorded in a way that enables the substance of the transaction to be identified, including nature of product or service, price, provider and beneficiary of payments.
 - Sales transactions are recorded in such a way that the substance of the transaction can be identified, including the goods or services sold, the customer and the price.
 - Payments for high risk expense types (includes visas, customs, taxes, government certificates, licences, bonuses, commissions, gifts, entertainment, travel, donations, marketing).
 - Employee expense reports for high risk transactions.
 - High risk revenue side transactions including price setting, discounts, credit notes and free of charge goods.

8. GIFTS, HOSPITALITY, AND EXPENSES

QUICK READ

Gifts and hospitality and travel expenses (together called ‘promotional expenses’ in this section) are a high risk area for bribery and have figured in a large number of FCPA cases. They present a challenge for companies to manage as most laws do not define boundaries while in many societies there are deep rooted customs relating to gifts and hospitality.

Best practice permits promotional expenses where they are transparent, proportionate, reasonable and *bona fide*. If companies follow this approach such expenditures are unlikely to be considered an offence by authorities or criticised by stakeholders. However, companies must ensure they have implemented adequate policies and procedures and tested their design against stakeholder expectations and applicable laws.

Key elements

- **Set limits:** The company should place an upper limit for the values of gifts, entertainment or expenses that can be received or given, such values being nominal and appropriate to general business practice. The financial limits are proportionate in value to the markets in which the gift or hospitality is being offered or taken. A matrix of values for gifts, hospitality and expenses will help in tailoring the programme to cultures, varying economic differences, and country and/or sector corruption risk.
- **Public officials:** Close attention should be given to promotional expenses given to public officials. This includes requiring prior approval for expenditures that present concerns or uncertainties, expenditures involving public officials and employees of state-owned enterprises.
- **Training:** Employees should receive communications and training which include training on gifts, hospitality and expenses and ideally role playing exercises. Tailored training is given to functions most at risk such marketing, purchasing and corporate affairs.

BEST PRACTICE

Set a clear policy

- The company policy includes clear definitions of gifts, hospitality and expenses.
- The company has a clear written policy that such promotional expenses should be reasonable, proportionate and *bona fide*. It prohibits any giving or receipt of gifts, hospitality or other expenses that could influence, or be perceived to be capable of influencing, a business decision.
- The policy requires should cover public officials, governmental departments, public bodies and the private sector.

Create procedures

- Procedures should be designed and implemented on the basis of a risk assessment of whether promotional expenses are being used as a subterfuge or preparation for bribery.
- Guidelines should state when hospitality is appropriate to be given or received and provide financial limits. It is obligatory that a host be present, otherwise it will count as a gift.
- The company should place an upper limit for the values of gifts, entertainment or expenses that can be received or given, such values being nominal and appropriate to general business practice. The financial limits are proportionate in value to the markets in which the gift or hospitality is being offered or taken. A matrix of values for gifts, hospitality and expenses will help in tailoring the programme to cultures, varying economic differences, and country and/or sector corruption risk.
- There is clear guidance regarding the cumulative impact of promotional expenses especially since they might breach the overall limits.
- Checks and due diligence are applied as necessary to ensure that there are no circumstances that could raise concerns when planning to make promotional expenses. This includes checking local laws and regulations as well as policies of the recipient's organisation or government department
- A procedure should be designed to deal with cases where gifts cannot be declined or have been received and cannot be returned. Ways can include auctioning the gifts in aid of charity or displaying them in offices. Another option, requiring sensitivity, is to return a gift with a note explaining the policy not to accept gifts.
- The guidance provides advice on how gift giving and hospitality should be handled with particular respect to local customs and culture. The guidance can be flexible in recognising and accommodating local customs and cultural differences for gifts and hospitality but should set out clearly policy, processes and reporting guidance.

- Close attention is given to promotional expenses given to public officials. This includes requiring prior approval for expenditures that present concerns or uncertainties, expenditures involving public officials and employees of state-owned enterprises.

Communicate and train

- The company should communicate its policy, procedures and guidance for gifts, hospitality and expenses to employees, business partners and suppliers to prevent misunderstanding or differences in perceptions of what is permissible within the policy.
- Employees receive communications and training which include training on gifts, hospitality and expenses and ideally role playing exercises. Tailored training is given to functions most at risk such as marketing, purchasing and corporate affairs.

Put in place controls

- Gifts and entertainment given to public officials should be restricted and any to be made, should require pre-authorisation and review. If there is a current bid or business discussion involving the public official or his/her department, promotional expenses should not be used at all.
- All promotional expenses given and received over a nominal value should be documented by employees including recipient, giver, value, nature of the transaction and business reason for the activity. Receipts for gifts must be retained on file to prevent them being given to officials with the gift which can then be returned to the retailer for cash. Any violations of policy must be reported to management and documented.
- Employees who receive gifts or hospitality should inform management in writing when the value is above the permitted level.
- There should be accurate recording of promotional expenses given using designated accounting codes.
- Use of gift cards or cash gifts should be prohibited. Petty cash should be tightly controlled, expenses restricted and claims scrutinised. This prevents cash being diverted by marketing, intermediaries or other employees to fund bribes in the form of promotional expenses.
- Reviews are carried out regularly of registers to check that they are being maintained, up-to-date and record the required information.
- Line management are responsible for monitoring expense claims thoroughly and questioning claims which appear problematic.
- Close scrutiny is given by internal audit to promotional expenses including looking for evidence of hiding or miscoding expenditures. Examination will be made of the transactions of third parties acting on behalf of the company. Spot checks can help in this respect. The audit process should be fully documented in case of an investigation.
- Management regularly reviews promotional expenses given and received, and makes reports to the board periodically.

Give special consideration to local customs

- Understanding is developed and appropriate respect applied for the subtleties of local customs related to gifts and hospitality.
- Tailored approaches are designed and implemented to ensure gifts and hospitality conform to local customs but meet the anti-bribery policy – gifts can be modest yet convey respect.
- Due diligence is carried out on intermediaries to check their record on gift giving, hospitality and integrity approach.
- Local communications and training are given in local languages to emphasise the company's commitment to its anti-bribery policy.
- The legal, regulatory and anti-corruption environment should be monitored as this is likely to be fast-changing and the company needs to make sure it does not breach any new laws or government strategies. Arrange spot-check visits.

GUIDANCE

8.1 Introduction

Gifts, hospitality and expenses are vulnerable to being used for bribery. They can be used as bribes on their own but they also pave the way for bribery by entrapping a person. They can also be used build or maintain relationships during a bribery scheme.

Gifts and hospitality and travel expenses (together called ‘promotional expenses’ in this section) are a high risk area for bribery and have figured in a large number of FCPA cases. They are troubling for companies to manage as most laws do not define boundaries while in many societies there are deep rooted customs relating to gifts and hospitality.

Best practice permits promotional expenses where they are transparent, proportionate, reasonable and *bona fide*. If companies follow this approach such expenditures are unlikely to be criticised by stakeholders or considered an offence by authorities. However, companies must ensure they have implemented adequate policies and procedures and tested their design against stakeholder expectations and applicable laws.

8.2 Understanding promotional expenses

To manage the risks from promotional expenses, companies must first have a clear definition of what they constitute. Suggested definitions are given below.

Gifts: These are money, vouchers, goods or services, which, if given appropriately, are a mark of friendship or appreciation. They should be given without expectation of consideration or value in return. They may be given in appreciation of a favour done or a favour to be carried out in the future though care should be taken that this does not stray into being made with intent to achieve improper influence. Gifts should have no business roles other than marking and enhancing relations or promoting the giver’s company by incorporating a logo or message on a promotional item.

Hospitality or entertaining: This is given or received to initiate, cement or develop relationships. It includes meals, receptions, tickets to entertainment, social or sports events. Hospitality requires the host to be present; if not, the expenditure is a gift. Often an argument for hospitality is made that it provides a relaxed, neutral, environment in which business relationships and activities can be started, fostered, information imparted and respect and trust shown. Hospitality can also be associated with fund-raising events held for charitable causes with the company assisting the causes by purchasing tickets or introducing potential supporters.

Expenses: These are the provision or reimbursement by the company of travel, lodging and other expenses incurred by a prospective client, customer or business partner. Expenses can be a legitimate contribution to achieving a business outcome. For example, a company pays the travel and associated costs for representatives of a potential customer to visit a facility or attend an exhibition, event, conference or training.

‘Bona fide hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour.’

UK Ministry of Justice guidance to the UK Bribery Act guidance

The challenge of knowing where to set the line

The challenge for companies in designing anti-bribery controls for promotional expenses is to know where to draw the line given the widely varying circumstances in which the transactions can take place. Is a different level of expense suitable when dealing with a director or when operating in a country where gifts are an important aspect of business relationships? Misuse of promotional expenses and violation of a no-bribes policy may not always be a deliberate act but can occur through negligence, inexperience or ignorance. Training should aim to mitigate these risks.

Use these tests to decide if gifts, hospitality or expenses are appropriate:

- **Bona fide:** Made for the right reason: if a gift or hospitality, it should be given clearly as an act of appreciation, if travel expenses then for a *bona fide* business purpose.
- **No obligation:** The activity will not create any obligation or expectation on the recipient.
- **No undue influence:** The expenditure will not be seen as intended for, or capable of, achieving undue influence in relation to a business transaction or public policy engagement.
- **Made openly:** It will not be performed in secret and be undocumented – if it is, then the purpose becomes questionable.
- **Legality:** It is compliant with relevant laws.
- **Accords with stakeholder perception:** The activity would not be viewed unfavourably by stakeholders were it made known to them.
- **Proportionate:** The value and nature of the expenditure is not disproportionate to the occasion.
- **Conforms to the recipient's rules:** The gift, hospitality or reimbursement of expenses will meet the rules or code of conduct of the recipient's organisation.
- **Infrequent:** The giving or receiving of gifts and hospitality is not overly frequent between the giver and the recipient.

- **Documented:** The expense will be fully documented including purpose, approvals given and value.
- **Reviewed:** The records of promotional expenses and the effectiveness of the policy and procedures are reviewed by management with a regular report to the board or a board committee.

8.3 Public officials and anti-bribery laws

Promotional expenses for public officials present particular risks under bribery laws. For example, section 6 of the UK Bribery Act provides that it is an offence to offer, promise or give any financial or other advantage directly or through a third party to a public official with the intent of influencing them or retaining or obtaining an advantage in the conduct of business. The UK Ministry of Justice Guidance does however advise that it may be in some circumstances that hospitality or promotional expenditure in the form of travel and accommodation costs does not amount to 'a financial or other advantage' to the relevant official because it is a cost that would otherwise be borne by the relevant foreign Government rather than the official themselves.

The FCPA prohibits the corrupt 'offer, payment, promise to pay, or authorisation of the payment of any money, or offer, gift, promise to give, or authorisation of the giving of anything of value to' a foreign official.

The authorities are unlikely to be interested in nominal value, reasonable gifts, hospitality and expense but guidance from the authorities on what is appropriate under bribery law is broad and does not give the certainty which companies seek. To provide further detail to companies, the SFO gave updated guidance on hospitality as part of its [Full Code Test](#).

Some guidance is also given in the [FCPA Resource Handbook](#):

'Some hallmarks of appropriate gift-giving are when the gift is given openly and transparently, properly recorded in the giver's books and records, provided only to reflect esteem or gratitude, and permitted under local law.'

8.4 Examples of bribery risks from promotional expenses

There are significant bribery risks attached to promotional expenses. Here are some examples:

- An employee or agent tries to build favour by giving improper entertaining and gifts to prospective clients to win contracts or to influence public officials. See [Buckingham Palace case study](#).
- Entertainment, gifts and travel are used by a bidder to manoeuvre a company's employees into a position of obligation either for a specific immediate purpose such as winning a contract, to gain insider information or to pave the way for larger bribery or other corruption.

- Promotional expenses are given to public officials and contravene laws such as the UK Bribery Act or the FCPA. Click [here](#) for a case involving hospitality of foreign public officials at the 2008 Summer Olympics.
- Lavish travel and entertaining with little business content being used to bribe executives or public officials. A specific example is sponsorship of medical experts attending conferences with little business content and substantial travel and hospitality benefits.

Very often, promotional expenses involve grey areas where it can be difficult to judge the appropriate level of hospitality or expenses. An employee may have to make a snap judgement and is then drawn unwittingly into an inappropriate situation which may be judged as a breach of the company's no-bribes policy. In some societies, the business culture involves gift giving and entertaining and employees may be uncertain how to manoeuvre through the nuances of customs while balancing a desire not to cause offence and yet stay within the company's no-bribes policy.

Bribery cases incorporating abuse of gifts and hospitality are not limited to large companies.

SMEs also need to understand the risks from promotional expenses and ensure they have policies and procedures in place. Click here for [FLIR Systems case study](#).

8.5 Local customs

The local customs for gifts and hospitality in some societies, do not sit easily with the provisions of policies and anti-bribery laws.

In China, for example, the custom of gifts and favours called 'guanxi' is used to build relationships. Such customs create and strengthen networks which can take on added importance in countries where the rule of law is weak. While gifts and entertainment support relationship building, they can degrade into bribery with ever larger gifts.

China itself has been engaging in a crackdown on corruption, including tightening the regulations governing state officials' ability to accept gifts. A correlated slump in sales of luxury goods has been attributed to the changes.

Similarly in South Korea, there is a culture of gift giving and the government introduced a law in 2016 to restrict 'jeopdae,' which is the term for entertaining business colleagues, government officials and journalists.

South Korea: law restricting gifts to public officials

The Anti-Corruption and Bribery Prohibition Act, commonly known as the Kim Young-ran law, took effect on 28 September 2016. The Act has a strict liability offence prohibiting the provision of a benefit to a public official where the benefit is:

- valued in excess of 1 million won (about U.S. \$900); or,
- when aggregated with other benefits from the same source, is in excess of 3 million won (about U.S. \$2700) over a one year period.

There is corporate criminal liability for a payment or benefit provided to a public official by employees unless the corporation exercised due care and supervision to prevent such misconduct. The law sets limits for congratulatory or condolence cash gifts to public officials at KRW 100,000 won (about U.S. \$90), gifts at KRW 50,000 (\$45) and meals at KRW 30,000 (\$27).

Companies must understand local customs and consider how their procedures should be applied in this context. However, companies are not applying policies in isolation – local competitors may not be observing the same standards and will be gaining competitive advantage. Managing the challenge of observing anti-bribery policies laws and yet maintaining competitiveness is not an easy task. The continuing prosecutions of companies for abusing gifts and hospitality shows the risk that local employees may transgress policies in order to win contracts and this may lead to wider bribery and other corruption.

CHAPTER APPENDIX

8.6.1 Case study: Buckingham Palace - Facilities management bribery

A former deputy property manager at the Royal Household who accepted more than £100,000 in bribes to award contracts for work at royal residences was sentenced to five years imprisonment in 2016. He was responsible for maintaining Buckingham Palace, the Queen's main London home, and other historic buildings. He accepted payments or gifts from the directors of companies who were then given large contracts for maintenance of the buildings. In sentencing the former manager, the judge told him that he was a 'hard-working, apparently loyal team player, admired and trusted by ... colleagues' but he was also 'dishonest and greedy. . . But nobody could have guessed that a trusted insider such as yourself could think of going to the lengths that you did to corrupt the system for personal gain. Your betrayal of your colleagues' trust and your lack of remorse at what you did are both remarkable.'

8.6.2 Case study: Company fined for failing to maintain internal controls related to Olympics hospitality

In May 2015, the SEC charged BHP Billiton with violating the FCPA when it sponsored the attendance of foreign government officials at the 2008 Summer Olympics. BHP Billiton agreed to pay a \$25 million penalty to settle the SEC's charges.

The SEC found that BHP Billiton failed to devise and maintain sufficient internal controls over its global hospitality program connected to the company's sponsorship of the 2008 Summer Olympic Games in Beijing. BHP Billiton invited 176 government officials and employees of state-owned enterprises to attend the Games at the company's expense, and ultimately paid for 60 such guests as well as some spouses and others who attended along with them. Sponsored guests were primarily from countries in Africa and Asia, and they enjoyed three- and four-day hospitality packages that included event tickets, luxury hotel accommodation, and sightseeing excursions valued at U.S. \$12,000 to \$16,000 per package.

According to the SEC's order, BHP Billiton required business managers to complete a hospitality application form for any individuals they sought to invite to the Olympics, including government officials. However, the company did not clearly communicate to employees that no one outside the business unit submitting the application would review and approve each invitation. BHP Billiton failed to provide employees with any specific training on how to complete forms or evaluate bribery risks of the invitations. Due to these and other failures, BHP Billiton had extended Olympic invitations to government officials connected to pending contract negotiations or regulatory dealings such as the company's efforts to obtain access rights.

“A ‘check the box’ compliance approach of forms over substance is not enough to comply with the FCPA,” said Antonia Chion, Associate Director of the SEC’s Division of Enforcement. “Although BHP Billiton put some internal controls in place around its Olympic hospitality program, the company failed to provide adequate training to its employees and did not implement procedures to ensure meaningful preparation, review, and approval of the invitations.”

Comment: BHP Billiton had designed a control but it was not carried out adequately. The underlying issue was that the business managers did not recognise what should have been an evident issue. They should have been trained to be sensitive to such a bribery issue. The failure was compounded by that the business unit’s form was a rote exercise and not reviewed outside the function.

8.6.3 Case study: FLIR Systems: Falsification of records to promotional expenses given as bribes

Two former employees of FLIR Systems, a U.S. defence contractor, agreed in 2014 to pay the SEC fines of U.S. \$50,000 and \$20,000, respectively, to settle FCPA charges arising out of the alleged provision of gifts of watches, travel, and entertainment to Saudi officials including a ‘world tour’. The two employees later falsified records in an attempt to hide their misconduct and directed FLIR’s local third-party agent to provide false information to the company to back up their story that the original submission was merely a mistake. The employees also falsely claimed that FLIR’s payment for the world tour had been a billing mistake by FLIR’s travel agent, and again used false documentation and FLIR’s third-party agent to bolster their cover-up efforts.

Comment: This shows the need for reviews and audits to carefully scrutinise documentation and records related to promotional expenses.

9. CONFLICTS OF INTEREST

QUICK READ

Conflicts of interest arise when the various interests, duties or commitments that a person may have; family, friends, work, voluntary work or political interests, come into conflict (or are very likely to). These conflicts do not necessarily involve improper or corrupt behaviour, although they can lead to it.

An employee who is a director or shareholder of another organisation could compromise his or her duty to the company for example. An employee awarding a contract to a company in which he or she has a financial interest or has some other connection with, such as a relative or friend, would be another example of conflict of interest.

Key elements

- **Register:** Maintain an up-to-date register of conflicts of interest. Employees should declare any conflicts of interest or the likelihood of a future conflict in the register. A statement regarding declaration of conflicts of interest of directors and board members could be included in an annual statement.
- **Recruitment:** Screen potential board members and key employees for conflicts of interest.
- **Mitigate:** Require employees recuse themselves whenever there is a potential or perceived conflict of interest if it cannot be resolved.

BEST PRACTICE

- **Define:** Define conflict of interest and identify examples supporting the definition.
- **Scope and assess risks:** Research and identify where there might be particular concerns for the company related to conflict of interest. For instance, if the company's work structure means employees may have work patterns with extended days off, then there could be a risk that they have secondary employment or their own commercial activities.
- **Design procedures and controls:** Based on assessment of risks, design and implement a policy and procedure for managing actual, perceived and potential conflicts of interest. Include the policy in the Code of Conduct and expand on this in the employee handbook or equivalent guide.
- **Directors:** Identify actual and potential conflicts interest relating to directors and submit a list for board or shareholder approval.
- **Register:** Maintain an up-to-date register of conflicts of interest. Employees should declare any conflicts of interest or the likelihood of a future conflict in the register. A statement regarding declaration of conflicts of interest of directors and board members could be included in an annual statement.
- **Recruitment:** Screen potential board members and key employees for conflicts of interest.
- **Contract:** Require employees and relevant third parties to disclose any conflicts of interest before recruitment or appointment and then following appointment to advise the company of any changes.
- **Communicate and train:** Include conflict of interest in the code of conduct and the employee handbook. Cover the topic in training. Help employees identify conflicts and know what to do when one occurs.
- **Jobs:** Avoid placing employees in jobs where there is risk of conflict of interest. Provide clear policies regarding second jobs or private commercial ventures.
- **Mitigate:** Require employees recuse themselves whenever there is a potential or perceived conflict of interest if it cannot be resolved.
- **Channels:** Encourage employees to seek advice or raise concerns with their line management or the compliance / ethics officer.
- **Monitor:** Check that the procedures are working and improve them in the light of any incidents.

GUIDANCE

9.1 Defining conflict of interest

Conflicts of interest arise when the various interests, duties or commitments that a person may have; family, friends, work, voluntary work or political interests, come into conflict (or are very likely to). They are common given the number of interests people inevitably have, and they do not necessarily involve improper or corrupt behaviour, although they can lead to such behaviour.

9.2 Risks from conflicts of interest

A conflict of interest creates corruption risk when an employee or contracted third party breaches the duty due to the company by acting in regard to another interest and does not advise the company of this. This improper behaviour, if serious enough, could expose the person to extortion demands or be the first step to criminal behaviour including bribery. Even where there is no improper behaviour from a conflict of interest, the public perception might be otherwise. It is best practice for the company to be transparent about its policies and operations to avoid risk of public suspicion of conflicts of interest. Generally, weak identification and management of conflicts of interest will undermine the company's reputation for integrity.

Examples of conflicts of interest and corruption risks

- An employee awarding a contract to a company in which he or she has a financial interest or a connection such as a relative or friend.
- An employee being a director, shareholder or consultant of another organisation that could compromise his or her duty to the company.
- Employees running their own companies or involved in external activities such as political or community organisations.
- Secondary employment: Part-time employment with or consultancy to another company. Even if this is contractually allowed it can be a significant source of conflict.
- An employee recruiting a relative or friend or recruiting individuals in order to secure a business advantage. See the [JPMorgan case study](#) as an example of where such practices have led to issues.
- Insider trading - corporate 'insiders' buy or sell their company's stock on the basis of information that is not available publicly.
- An employee planning to take up a position with another organisation and acting in its favour in breach of duty to his existing employer.

9.3 Mitigating risks

The company should identify where risks for conflicts of interest could lie and implement a policy and procedure to manage potential and actual conflicts of interest. This will include a process for maintaining an up-to-date register and adopting preventive measures related to recruitment and procurement. Employees and relevant third parties should be required to disclose any conflicts of interest before recruitment or appointment and then following appointment to advise the company of any changes. Staff should receive training on understanding and identifying conflicts of interest, and knowing what to do when they arise. Employees should also be encouraged to discuss potential conflicts of interest with their management.

CHAPTER APPENDIX

9.4.1 Case study: JPMorgan - Jobs for princelings were bribes

JPMorgan agreed in November 2016 to pay U.S. \$264 million to settle a U.S. probe into its practice of hiring well-connected Chinese 'princelings' to win business. 'Princelings' are the children of high-ranking Communist party officials, but the term is often applied more generally to the sons and daughters of China's elite.

Andrew Ceresney, director of the SEC's enforcement division said: 'JPMorgan engaged in a systematic bribery scheme by hiring children of government officials and other favoured referrals who were typically unqualified for the positions. JPMorgan employees knew the firm was potentially violating the FCPA yet persisted with the improper hiring programme because the business rewards and new deals were deemed too lucrative.'

'The so-called Sons and Daughters Program was nothing more than bribery by another name,' said assistant attorney-general Leslie Caldwell. 'Awarding prestigious employment opportunities to unqualified individuals in order to influence government officials is corruption, plain and simple.'

Beginning in 2006, the bank's princelings initiative defied an internal prohibition on such hiring, according to the DoJ agreement. JPMorgan bankers created spreadsheets to track the hiring of Chinese officials' relatives, 'which has an almost linear relationship' with new business in China, according to a 2009 email cited in the agreement.

10. POLITICAL ENGAGEMENT

QUICK READ

Corporate political engagement is a significant risk area for bribery and corruption, while public perceptions of lobbying and corporate influence in the political process threaten reputational damage.

Companies engage with the political process with the aim of benefiting the business and meeting the interests of stakeholders. Companies may, for example, be seeking to improve the business and economic environment, create new markets and opportunities, and improve, modify or even prevent commercially damaging legislation.

Despite the strong business case, corporate political engagement is a significant risk area for bribery and corruption, and public perceptions of lobbying and corporate influence in the political process threaten reputational damage. The consequences of improper, negligent or inadvertent engagement in political activities can be substantial. This includes exchanges of people between the public and private sector, such as secondments or senior hires (the 'revolving door'). Careful stewardship and transparency about these activities is needed to ensure there is no attempt at improper influence and that therefore stakeholder trust is not lost.

Amid growing legislation and pressure from investors, often sparked by political scandals, companies are becoming increasingly transparent about their political activities. Many companies have prohibited political contributions, and some are beginning to participate in policy debates more openly, for example by including government consultation submissions on their website.

The foundation of this guidance is that responsible corporate political engagement is carried out within a framework of good corporate governance and commitments by the board to integrity, accountability and transparency. By designing and implementing policies and procedures, companies that interact with the political process can ensure their activities contribute to the democratic process, benefit their business, and are carried out with integrity.

Key elements

- Ensure the board has oversight of the company's political engagement and the CEO or a senior manager has responsibility for managing political activities as a whole.
- Integrate the approach to managing all forms of political activity, even where different functions are responsible for different activities.
- Be transparent about your principles, policies and procedures for political engagement, as well as your public policy positions, political donations and lobbying activities.

BEST PRACTICE

- **Define the scope:** Define political engagement and all the forms of political activities that fall within this definition. Identify those activities that are relevant to your company.
- **Integrate your approach:** Ensure there is an integrated approach to managing all forms of political engagement even where different functions are responsible for different activities. These may include corporate responsibility, sustainability, public affairs, communications, compliance, legal and internal audit, as well as functions interested in a particular public policy area, such as a regulatory issues.
- **Ensure board oversight:** Ensure the board is accountable for the company's political engagement, providing direction and oversight and assigning overall responsibility for implementation to the chief executive or a senior manager.
- **Make a public commitment:** The company's leadership commits to responsible political engagement. The commitment is supported by guiding principles and policies.
- **Design controls:** Design and implement controls to ensure that transactions related to political activities are bona fide, effective and free from improper practice.
- **Report publicly:** Shareholders and other stakeholders with material interests in the company's operations need to know that the company is managing its political engagement responsibly and effectively. Report regularly on the company's guiding principles, objectives, political expenditures, lobbying activities and any other issues.

GUIDANCE

10.1 Introduction

This guidance outlines various types of political activities and related risks, and sets out TI-UK's view of best practice to ensure responsible political engagement and counter bribery. It draws on the TI-UK publication [Wise Counsel or Dark Arts? Principles and Guidance for Responsible Corporate Political Engagement \(2016\)](#).

Political engagement is a legitimate activity and can contribute to the development of high quality laws and regulations and an economic and social environment in which businesses and societies can prosper. While most large companies engage to some extent in political activities, the extent of engagement will vary according to a company's circumstances. Even if companies decide not to engage with the political process, they will nevertheless need to enforce a policy of non-engagement and be prepared to respond should they be drawn into a public policy debate.

When not managed properly, the consequences can be substantial:

- Reputational damage
- Public campaigns against the company
- Media attention and investigations
- Legal fines and associated costs
- Debarment from public contracts
- Market and financing issues
- Loss of confidence by business partners
- Increased vulnerability to bribery demands
- Damage to employee trust and morale
- Loss of key board members or executives

10.1.1 Increasing scrutiny and expectations

There is growing investor attention to how companies interact with politicians and the risks that such interactions may bring. Increasingly, shareholder resolutions are demanding that companies prohibit political donations and declare their policies and expenditures for political activities.

Laws are increasingly restricting political expenditure and some countries, such as France, Brazil and Chile, have banned corporate political contributions altogether. In the UK, The Political Parties, Elections and Referendums Act 2000 controls donations received by political parties. Some countries have introduced voluntary or mandatory lobbyist registers. The USA has legislated at both federal and state levels for disclosure of expenditures on lobbying. The revolving door - the movement of politicians, public officials and business executives between the public and private sectors - is being regulated too with Germany, the UK and the USA among the countries which have introduced new rules and laws.

10.2 Political donations and indirect political expenditure

In drawing up a policy for political donations and indirect political expenditure, the company must decide their scope since laws provide only broad definitions. By definition, a donation is a gift made without expectation of return and any political contributions must not be linked in any way to a direct business benefit. Corporate political donations can be general party support or campaign funding to support a party, politician or a candidate. Political expenditure can be to support or oppose a party, candidate or referendum issue. The board needs to decide its position by considering the purpose, benefits, risks and boundaries of this type of expenditure.

A principle of this guidance is that companies should not make political donations. Even if a company does prohibit them, it should understand that uncertainty about what constitutes a donation and the risks of improper, inadvertent or negligent behaviour require that controls are put in place to prevent the policy being breached. Also, consideration should be given to how the policy on political donations extends to personal donations by directors and employees. The company will need to balance respect for the rights of individuals to their political views and affiliations with the need to manage potential conflicts with the company's political position.

If, in exceptional circumstances, political donations are made, they should be only as an expression of corporate responsibility, providing general support on a balanced and proportionate basis to the main political parties to support a genuine democratic process. This will typically be in emerging or fragile democracies when there is agreement by the international community that funding for fledgling parties would strengthen the democratic process.

How political contributions are made:

- Financial donations
- Secondments to political parties
- Loans of money at less than market interest rates
- Discounted fees or rates for products, services or loans
- Sponsorship of an event or publication
- Subscriptions or affiliation payments
- Free or discounted use of facilities or services such as offices, transport, printing, telecommunications, advertising and media coverage
- Sponsorship or support for fundraising events, such as a fundraising dinner

Grey areas

- Release of employees without pay for political campaigning
- Travel for public officials on company planes or vehicles
- Purchasing a stand or event at a party conference

- Honoraria for politicians or civil servants to speak at company events or sponsored events
- U.S. Political Action Committees

Case Study: Tata Group policy of political non-alignment

The Tata Group in India has a policy of political non-alignment and gives to political parties based on the ratio of seats held. Donations are made through the Tata Sons Electoral Trust, one of the biggest trusts in the country and the largest contributor to the two largest national parties.

Extract from the Tata Code of Conduct, Tata Group

Clause 7: A Tata company shall be committed to and support the constitution and governance systems of the country in which it operates. A Tata company shall not support any specific political party or candidate for political office. The company's conduct shall preclude any activity that could be interpreted as mutual dependence/favour with any political body or person, and it shall not offer or give any company funds or property as donations to any political party, candidate or campaign.

10.2.1 Political contributions: best practice

- **Prohibit political contributions:** Corporate political contributions should not be made other than in exceptional circumstances where they provide general support for a genuine democratic process, with full transparency and full explanation or are required by law.
- **Communications and training:** Provide guidance and tailored training on political contributions covering any "grey areas", such as attending a fundraising event or purchasing a stand at a political conference.
- **Limit leadership donations:** Ensure that board directors or senior managers are prohibited from making personal political donations in their capacity as representatives of the company.

10.3 Lobbying

Lobbying, whether directly or through intermediaries such as trade associations, is the main way in which companies engage with and influence the political process. Lobbying can be carried out through a wide range of activities involving both formal and informal contact with politicians and senior public officials by in-house lobbyists, consultant lobbyists and professional firms, as well as board members and management.

When carried out responsibly, lobbying is a legitimate and beneficial activity, allowing companies to provide policy makers with information, expertise and resources and stimulate or contribute to public debate. On the other hand, the scale, pervasiveness and opacity of lobbying, compounded by scandals and abuses by companies and politicians, have created deep public suspicion that companies have privileged access and behave improperly. One of the aims of a responsible approach to political engagement must be to build public trust in the company's approach and activities, including lobbying.

Lobbying abuses can take many forms:

- Use of bribes, gifts and excessive hospitality
- Use of front organisations and covert support for research reports, community movements and social media activity ('astro-turfing')
- Manipulation of data, research and reports to support a policy position
- Hiding lobbying activities and expenditures by working through professional advisers
- Drafting legislation for a politician which favours the company (a heightened risk if it can be linked to political donations made *quid pro quo*)
- Trading in influence (including via the 'revolving door')

10.3.1 Trading in influence

Trading in influence occurs when someone close to a key decision maker improperly exchanges the influence they have over that person for some advantage. An example would be a senior civil servant accepting gifts and hospitality from a lobbyist in order to influence a government minister. Another risk area is a variation of the [revolving door](#) where a public official has retired or left office and uses influence with former colleagues.

Trading in influence can be complex and hard to prove. For this reason, many countries have not enacted laws to cover this form of corruption. It can be a particular risk in lobbying particularly in countries where power is concentrated and companies wishing to influence decisions must go through intermediaries.

For a note on laws on trading in influence, [click here](#).

10.3.2 Lobbying: best practice

- **Define lobbying:** Define what is meant by lobbying and who might be classed as a lobbyist. This may include in-house lobbyists, such as public affairs personnel, and consultant lobbyists, such as lobbying agencies, political consultants, PR firms, law firms and politicians, as well as agents who have dealings with political actors. Make a record of anyone lobbying on the company's behalf.
- **Conduct due diligence:** Conduct due diligence on consultant lobbyists before appointment and repeat the process at regular intervals. This will include checking the reputation and standards of the lobbyist, the level of their anti-bribery programme and the reputation of their other clients to ensure there are no conflicts or risks.
- **Manage conflicts of interest:** A consultant lobbyist will most likely act for multiple clients whether on a particular issue or in meetings and relationships with politicians and public officials. This

may lead to conflicts of interest or confusion in external perceptions of the company's stance on a topic.

- **Implement policies and procedures:** Design and implement a policy and procedure for ensuring that anyone who lobbies on the company's behalf adheres to its values and principles. Manage and monitor consultant lobbyists to ensure that, when acting for the company or other clients, they do not cause the company to be associated with practices that conflict with its anti-bribery programme.
- **Communications and training:** Through tone from the top, communications and training, ensure that all those who lobby on behalf of the company, formally or informally, understand and implement the company's policies on responsible political engagement.
- **Design controls:** Design and implement controls to check that lobbyists' fees are appropriate for the services rendered and that any gifts and hospitality provided by lobbyists accord with the company's policies. Ensure that all transactions are fully documented and accurately recorded.

10.4 Trade associations and business chambers

Trade associations and business chambers of commerce are a common route for corporate lobbying. They bring several advantages, including access to politicians, expertise, authority, research, resources and collective power. Depending on their approach, trade associations can provide an independent and impartial viewpoint. Lobbying through a trade association, when properly aligned with the company's objectives, may have greater legitimacy as it is in the collective interest and not only that of a single company. It may also be more effective, as government is more likely to listen to a group of companies than a single voice. Trade associations can be attractive as a shield to protect from the glare of attention that a company attracts when it lobbies on its own.

That said, lobbying by trade associations can be opaque and may conflict with either the anti-bribery and responsible lobbying standards or the public policy positions of the member company. Trade associations may make political contributions in contravention of the company's policy not to make them. Finally, the opacity of their lobbying activities and spending may not live up to the company's commitment to transparency.

One of the main risks of lobbying through a trade associations is that the association's lobbying position may contradict that of a member company:

- It might represent the view of those members most fiercely opposed to an issue
- It might represent the view of its largest members
- It might represent the "lowest common denominator" among its members
- It might not reflect the nuances in a member's policy position
- It might have an array of positions on a key issue, causing the company's position on the issue to become confused

Other risks include:

- Membership of several trade associations with contradictory positions on an issue
- Difficulties tracking and monitoring the lobbying positions of trade associations

- A trade association might not have controls to ensure responsible lobbying or counter corruption to the same standards as the member company
- A trade association's advocacy on a topic might associate the company with an issue unrelated to the company, but which nevertheless brings reputational damage

10.4.1 Trade associations: best practice

- **Conduct due diligence:** Check that a trade association has appropriate standards, policies and procedures for lobbying and an anti-bribery programme equivalent to that of the company.
- **Assign responsibilities:** Assign a relationship manager for each trade association membership. Appoint a senior manager with responsibility for memberships as a whole.
- **Manage relationships:** Monitor the lobbying activities of trade associations and manage relationships to ensure that they align with the company's guiding principles for responsible political engagement. Require or encourage trade associations to be transparent about their lobbying activities and expenditure. Implement a procedure for managing conflicts between a trade association's policy position and that of the company.

10.5 The 'revolving door'

Movements of people between the private and public sectors are a valuable way for actors in both sectors to build and access skills and knowledge, and facilitate understanding and cooperation. They can also be used by companies to further their lobbying aims but, if not managed to acceptable criteria and transparency, they run risks of public mistrust, scandal or even outright corruption.

The main forms of such movements are described below. They are not limited to moves between the public sector and the company directly but also include moves of a politician or public official to a consultant lobbyist position or to a professional firm advising a company.

Revolving door: The term 'revolving door' refers to the movement of high-level employees between the public and private sectors. These movements can be in either direction and they bring risks of improper access or influence, whether intentional or inadvertent. Movements tend to be from the public sector to the private sector.

The main risks of the revolving door are:

- Ministers and public officials favour the company with a view to securing future employment
- Current or former politicians and public officials who have accepted a role in a company:
 - Influence their former colleagues to make decisions that favour their new employer
 - Use confidential information to benefit their new employer
 - Trade in influence by providing introductions to and securing favours from their former contacts
- Directors or employees who move to public office from a company may:
 - Favour their previous employer
 - Allow the lobbying agenda of their previous employer to influence their government work
 - Bring insider information with them if they return to their former company

Secondments: These are temporary placements of managers or employees in another organisation and can be two-way between the public and private sectors. Their benefits include the training and development of people, providing essential technical and specialist skills for particular projects or providing resources to expedite completion of a project or programme of activity. Short-term assignments are used to give parliamentarians or business people an understanding of how a particular sector works. Risks include (real or perceived) undue influence and potential conflicts of interest, e.g. secondees from industry being instructed to design specifications for contract tenders.

Board membership and consultant roles: In some countries, elected politicians are permitted to sit on boards or receive fees for consultancy work as long as it is declared and does not involve lobbying. Risks can include conflicts of interest, trading in influence and public perception or suspicion of improper influence or access to knowledge.

10.5.1 The 'revolving door': best practice

- **Implement policies and procedures:** Implement policies and procedures for hiring people from the public sector and interacting with former employees in public office (or running for public office). This will include checking whether a cooling-off period is required by law.
- **Manage conflicts of interest:** Set a procedure for managing potential conflicts of interest. This may include conflicts of interest arising from negotiations with the company before an official leaves office and once they take up their role with the company. It might also cover conflicts of interest caused by continued ties to the company (whether financial or personal) once an individual has entered public office. The company must ensure it is not at risk of using - or being perceived as using - a former employee or board member to gain improper access or influence.

CHAPTER APPENDIX

10.7 Laws on trading in influence

There is a recommendation in the United Nations Convention against Corruption (UNCAC), that countries should consider creating a criminal offence of trading in influence when committed intentionally. Article 18 UNCAC states:

- (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;
- (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

There is also a provision in the Council of Europe Convention and some national laws such as in France and Sweden but not in UK law. While UNCAC provides that countries should enact laws, in practice many have not followed this route because of concern that an offence would be difficult to prove and it would be hard to draw a line between undue influence and use of legitimate influence such as advocacy and lobbying. The Council of Europe Convention recognises the need for this distinction by criminalising only the trading of improper influence, *i.e.*, the person trading influence must have a corrupt intent. Similarly, the offence under the UN Convention only covers those who 'abuse' their influence.

RESOURCES

- [*Wise Counsel or Dark Arts? Principles and guidance for responsible corporate political engagement*, Transparency International UK, 2015.](#)
- [*Corporate Political Engagement Index 2015: Assessing the UK's Largest Public Companies*](#)

11. CHARITABLE DONATIONS, COMMUNITY INVESTMENTS AND SPONSORSHIPS

QUICK READ

Charitable donations, community investments and sponsorships can all be used as bribes. They can be made to support the pet cause of a public official with decision-making power over contracts or regulations that affect the company. They can be used to channel funds to front organisations controlled by a bribery recipient. They also present opportunities for employees to make inflated donations or sponsorship fees and receive money back from the recipients as kickbacks. Bribery can be difficult to detect due to the absence of benchmarks or 'market rates' in many instances.

Charitable donations, community investments and sponsorships differ in their form and purpose. Donations and community investments are given without expectation of a tangible business return, although the fact that community investments are often tied to specific contracts, providing support to project-affected communities, results in a heightened bribery risk. Sponsorships, on the other hand, are a marketing expense. In anti-bribery practice, though, they are often dealt with together as many of the controls are the same.

Key elements

- Have a strategy for making donations and sponsorships and ensure that all proposals fit within the strategy and meet established criteria.
- Conduct due diligence on all proposed recipients to check whether they are affiliated with public officials or existing or potential customers, among other anti-bribery red flags.
- Implement controls, including approval thresholds and counter-signatures, to counter the risk of kickbacks. Monitor payments and check that procedures are being followed.
- Be transparent about your donations and sponsorship strategy, procedures and, where possible, payments.

BEST PRACTICE

- **Set strategy and criteria:** Set a strategy and specify criteria for making donations, community investments and sponsorships. Ad hoc proposals that fall outside the strategy and do not meet the criteria should be reviewed by a senior manager. Require a clear business case and set specific objectives for all sponsorship payments.
- **Manage conflicts of interest:** Notify employees and relevant third parties of the company's conflicts of interest policy and provide guidance on avoiding and managing conflicts arising from contributions and sponsorships.
- **Avoid current bids and pending decisions:** Donations and sponsorships should not be made where they could influence a current bid or where a decision is being sought from a public official, such as approval of a licence or resolution of an issue such as a tax dispute or investigation.
- **Conduct due diligence:** Conduct risk-based due diligence on all recipient organisations. Check for red flags such as past integrity issues, a pre-existing or potential business relationship with the company or an affiliation with a public official. Assess the legitimacy, capability and financial viability of the recipient organisation. This will include a review of annual reports and financial statements and, for higher risk transactions, checks on the recipient's anti-bribery programme. Check that proposed community investment schemes are transparent and open to public consultation.
- **Set approval thresholds:** Designate levels of approval for donations and sponsorships of different values and/or risk levels, and require counter-signatures. Limit approvals where possible to a small number of functions, such as community affairs, corporate affairs or a marketing communications unit. Sponsorships are commercial transactions and best approved and paid within the normal purchasing process.
- **Obtain compliance sign-off:** Obtain compliance approval for donations and sponsorships above a threshold or where a red flag is detected.
- **Plan for emergencies:** Sometimes an urgent decision may be needed, such as a grant to a disaster appeal. There should be a procedure for fast-track approval with appointed signatories according to a value threshold, as well as subsequent review by management and, for high value donations, by the board.
- **Provide guidance and training:** Provide guidance to employees on the criteria and process for making donations and sponsorships, including the approvals needed, and provide tailored training to those responsible for managing them.
- **Benchmark payments:** To counter the risk of kickbacks, benchmark the value of transactions against similar donations, sponsorship payments and fees. For transactions above a threshold, involve more than one employee in negotiations.

- **Keep a register:** Document donations and sponsorships according to their size, nature and level of risk. This register will be used to determine the necessary approvals, as well as the nature and extent of relationship management, monitoring and post-completion review and reporting.
- **Monitor and review:** Monitor payments to make sure that they have been used for their intended purpose and the objectives have been met. Require the recipient to report back on progress and delivery. Conduct checks to ensure all donations comply with the policy and criteria and that procedures are being followed. Make reports to senior management and the board on donations and sponsorships, including how anti-bribery and corruption controls have been applied.
- **Keep accurate books and records:** Record payments and in-kind contributions or sponsorships accurately in the books and records. The records will be needed for internal audit and in the event of a bribery investigation (and will be required by tax authorities as there will be varying treatments for donations and sponsorships).
- **Report publicly:** Publish the policy, criteria and procedures for contributions and sponsorships and disclose those made on a regular basis. This allows stakeholders to check that the company is behaving honestly and to question or raise any concerns.

GUIDANCE

Charitable contributions, community investments and sponsorships are risk areas as they are convenient routes for channelling bribes. There is also a risk that employees with decision-making power over contributions and sponsorships receive kickbacks from recipients. For an example of where donations and sponsorships have been used as bribes, see [the VimpelCom case study](#).

11.1 Definitions

Companies should be clear about what constitutes a charitable contribution, community investment or sponsorship, as they will each have unique characteristics and be subject to different laws and tax treatments. The terms community or social investment are often used interchangeably to describe a range of activities, including charitable contributions, employee fundraising and volunteering, secondments of people to charities and social enterprises, community sponsorships and donations by company foundations.

Sponsorships are a commercial activity. They can have a social purpose, such as supporting a local sports team, but the bulk of sponsorships are used to promote a company's reputation, brands, products and services. For anti-bribery purposes, sponsorship is commonly grouped with community contributions because the controls are similar. Sponsorships are often used as platforms for corporate hospitality and this brings its own risks. See the guidance on hospitality, gifts and expenses in Chapter 8.

11.2 Bribery risks

Inflated payments to hide bribes or kickbacks: It can be difficult to benchmark charitable donations to establish what a reasonable payment should be. This creates room for employees to inflate payments, resulting in "slush funds" that can be used to pay bribes or be paid back as kickbacks. While some sponsorship items will have a standard value (for example sponsoring a football shirt), others may not (for example sponsoring a major global sports tournament). The related promotional and marketing activities such as rights for media, ticket sales and hospitality can also be routes for channelling funds.

Use of 'front' organisations: Donations or sponsorships may be directed to a "front" organisation set up as a route for channelling bribes. Unlike commercial contracts where the choice of suppliers is governed by specifications and other criteria, there is often flexibility in choosing a recipient for donations and sponsorships and the selection process can be manipulated. For instance, an official responsible for a contract decision may create a trust, charity or event for the specific purpose of receiving bribes in the form of donations or sponsorship.

Involvement of a potential client or public official: A sponsorship or donation may be made to an organisation with the aim of benefiting or influencing a decision maker on a contract or other matter of importance to the company. The benefit can be that the decision maker has an interest in or a family association with the recipient organisation or the recipient body or it is a favoured cause such as a sports club. For an example of donations used in this way, see the [Schering Plow case study](#).

11.3 Policies and procedures

Policies and procedures should be established for charitable contributions, sponsorships and related activities. While these procedures will differ for each type of activity, there will also be many common elements.

- Strategies and criteria for review and selection should be established and made public whenever possible. These will be anti-bribery controls to prevent ad hoc proposals being made that fall outside the strategy, do not meet the relevant criteria and where the real purpose is to influence a decision maker.
- Ad hoc transactions should be prohibited unless they receive senior management approval.
- Due diligence should be carried out on recipients on a risk basis and financial controls implemented.
- Larger contributions and sponsorships should be monitored for performance against projected outcomes and checks made that funds have reached the intended destination and have been spent properly.

11.4 High risk forms of donations and sponsorships

11.4.1 Expert sponsorships

Expert sponsorship is where an expert is sponsored to attend a convention, conference, education or other event and is paid fees and travel expenses. It has been prevalent in the pharmaceutical sector and is often associated with other corruption, including healthcare fraud. What is required from the attendee at the event is often minimal and the fees and expenses inflated. The expert benefits from travel and money and the company benefits from the expert's endorsement or influence in the marketing or prescription of their products.

For an example of where expert sponsorships have gone wrong, see the [Warner Chilcott case study](#).

Controls for expert sponsorships

- **Make the business case:** Avoid expert sponsorships. If this is not possible, ensure there is a clear business case that is properly reviewed before approval.
- **Require counter signatures:** Require counter signatures for all approvals of expert sponsorships.
- **Calculate appropriate fees:** Calculate fees and expenses using an established matrix and review them again after the fact.
- **Check IDs:** Conduct checks to verify that recipients of fees and expenses are the approved persons.

- **Verify the agenda:** Check beforehand that the event contains a full programme of legitimate business related activities.
- **Include anti-bribery clauses in contracts:** In contracts with sponsored speakers, include a requirement to comply with the company's anti-bribery policy and a termination clause providing for fees to be clawed back in case of a breach.
- **Review:** Require the recipient and the responsible employee to report back to the company on the sponsorship, supported by documentation from the event.
- **Report:** Publish the company's sponsorship policy and procedure.

11.4.2 Community investments

As part of its bid for a contract, a company may commit to funding the construction of a public facility or similar benefit. The value of these community investments can be very high, and in some countries they are required by governments. This direct link to a contract and high financial and often political value makes them high risk. An EU Procurement Directive for contracting authorities sets out provisions for community investments, defined as 'special conditions relating to the performance of a contract [which] may, in particular, concern social and environmental considerations', and provides rules such as transparency, non-discrimination to the bidder and objective scoring of bids to counter risk.⁹

For an example of where community investments have gone wrong, see the [Imelda Marcos case study](#).

Risks of community investments

- The recipient organisation has been set up or is controlled by an official or relative of an official.
- The size or value of the benefit unfairly influences the decision to award a contract.
- The facility is unnecessary and does not meet the needs of the community; e.g. a "vanity" project by a public official.
- The benefit is for a community in the political constituency of the elected official negotiating the contract.
- The contract payments are siphoned off by the official.
- A lack of consultation and transparency means the investment is perceived by the public as improper, misdirected or unnecessary.

Controls for community investments

- Verifying that the proposed project has a valid business rationale.
- Checking whether environmental or community adverse impact or loss will result from the contract.
- Ensuring a transparent process, including a public planning review.
- Conducting due diligence on the body to which the funds are to be paid to check whether any public officials are involved and that the funds are not likely to be misdirected.

⁹ Article 26, *The Consolidated Directive*

11.4.3 Company foundations

If your company has a foundation or trust, it is probably an independent entity. However, it is likely to be linked to the company in some way. For example, it may share the company name, the company may be the sole or principal funder, company executives may sit on the foundation's board, or the foundation's strategy may be influenced by the company's business sector. As a result, the public may see the charity as an arm of the company, creating a reputational risk.

Controls for company foundations

- **Ensure independence:** Ensure the foundation operates independently of the company and this is communicated publicly.
- **Apply anti-bribery standards:** Ensure the foundation operates to a desired anti-bribery standard.
- **Implement controls:** Implement controls to ensure that the foundation could not be used (or seen to be used) as a conduit for bribery or undue influence on behalf of the company.

11.4.4 In-kind benefits

Instead of financial support, a company may provide in-kind benefits such as the use of company facilities or resources. While this may be reasonable in some cases, it can also create risks of bribery and undue influence, whether real or perceived. These are demonstrated in the real-life examples below.

Examples of in-kind benefits and risks

Use of company accommodation: A senior tax inspector was visiting the region where the head office of a global Indian company was located. He was the main official contact for the company. He asked the company if it would accommodate him and his family in one of its staff bungalows over the weekend as he was taking a holiday in the region. Due to the risks of negative perceptions of bribery and/or undue influence and potential reputational damage, the company declined to assist.

Use of company aircraft: A US company bidding for a critical and very large technological contract in a regulated UK sector provided the regulator with travel on the company jet to see their system operating in the US. The jet was taking company executives to the facility to meet the regulator and he joined them for the flight. He accepted on the grounds that they were going anyway and it would save public funds. The trip attracted substantial public and parliamentary criticism that the company was receiving improper access and influence. The regulator was reprimanded by the government after a review to decide whether he should resign from office.

Free parking: British Airports Authority, which then owned Heathrow and six other UK airports, gave 475 MPs, 78 MEPs and 284 members of the House of Lords passes worth £1,300 each every year for free parking at BAA airports. BAA was lobbying for expansion of airports at the time and a White Paper was being prepared on the subject. BAA stopped the practice in 2004 in response to pressure from shareholders.

Source: [Wise Counsel or Dark Arts? Principles and Guidance for Responsible Corporate Political Engagement](#), Transparency International UK

CASE STUDIES

11.5.1 Donations and sponsorships as bribes: VimpelCom

In 2016, telecommunications provider VimpelCom Ltd entered a global settlement with the Securities and Exchange Commission, the US Department of Justice and Dutch regulators that required it to pay more than US\$795 million to resolve violations of the Foreign Corrupt Practices Act (FCPA). From 2006 to at least 2012, VimpelCom offered and paid bribes to a government official in Uzbekistan in connection with its Uzbek operations. During the course of the bribery scheme, VimpelCom made (or caused to be made) at least US\$114 million in improper payments in order to obtain and retain business that generated more than \$2.5 billion in revenues for VimpelCom¹⁰

The payments in some instances were made under the guise of legitimate charitable contributions or sponsorships. These included making ostensibly charitable payments to improperly influence a local partner (Local Partner A) who was an Uzbek government official and also a close relative of a high-ranking Uzbek government official. Representatives of Local Partner A directed VimpelCom to make at least US\$502,000 in payments to charities directly affiliated with him.

From 2009 and through 2013, VimpelCom's local subsidiary, Unitel LLC ('Unitel'), paid approximately US\$38 million in sponsorships and charitable contributions in Uzbekistan. Despite the presence of red flags, these transactions were not vetted to ensure that they were not improperly benefitting government officials. Further, Unitel had insufficient internal accounting controls and maintained inaccurate books and records regarding its charitable contributions.

11.5.2 Use of front organisations: Imelda Marcos

Using charitable contributions to solicit bribes was a favourite method of Imelda Marcos when she was first lady of the Philippines. In the 1980s, she told a Canadian businessman who wanted to win 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.

¹⁰ See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-34.pdf>

11.5.3 Involvement of a potential client or public official: Schering-Plough

In 2004, the former US pharmaceutical company Schering-Plough was charged by the US Securities and Exchange Commission (SEC) in relation to its operations in Poland. Schering-Plough settled the case without admitting or denying the allegations.¹¹

According to the SEC complaint, between February 1999 and March 2002, Schering-Plough Poland paid US\$75,860 to the Chudow Castle Foundation, a charitable organisation whose founder and president was also the director of the Silesian Health Fund, a regional government health authority. Although these payments were donations to a bona fide charity, they were allegedly intended to induce the official to allocate health fund resources for the purchase of Schering-Plough's products by hospitals and other entities. The oncology unit manager who made the payments reportedly did not view them as charitable, but as 'dues' to secure assistance from the Director.

The case revealed several issues with the company's procedures, as well as a deliberate effort to circumvent existing controls. Employees at that time were not required to determine prior to making charitable donations whether government officials were affiliated with proposed recipients (although in any case the official's involvement was known). Some of the payments were structured so that they were at or below the oncology unit manager's approval limit, apparently for the purpose of concealing the nature of the payments. Moreover, the oncology unit manager provided false medical justifications for most of the payments on the documents that he submitted to the company's finance department. All of the payments to the Foundation were classified in the company's books and records as donations.

11.5.4 Expert sponsorships: Warner Chilcott

In October 2015, the US Justice Department announced that pharmaceutical company Warner Chilcott had agreed to plead guilty to felony in relation to a health care fraud scheme and pay US\$125 million to resolve criminal liability and False Claims Act allegations. It was alleged that Warner Chilcott employees, at the direction of company management, provided payments, meals and other remuneration associated with so-called 'Medical Education Events' which included dinners, lunches and receptions.

These events, which were often held at expensive restaurants, often contained minimal or no educational component and were instead used to pay prescribing physicians in an attempt to gain a 'competitive advantage' over other companies. Warner Chilcott also enlisted high-prescribing physicians as 'speakers' for the company. These so-called 'speakers' often did not actually speak about any clinical or scientific topics and, instead, the payments were primarily intended to induce them to prescribe the company's products. In fact, 'speakers' who were not prescribing at a high volume were told they would not be sponsored to attend subsequent events unless their prescription volumes increased.

¹¹ See: <https://www.sec.gov/litigation/complaints/comp18740.pdf>

12. MANAGING THIRD PARTIES

QUICK READ

Third parties can represent a considerable bribery risk for companies. They may not operate to the standards of the company and can be used by corrupt employees as channels for bribery. Intermediaries, in particular, are high risk; many of the largest settled cases have involved intermediaries paying bribes to public officials. The guidance found on this web portal abbreviates TI-UK's 2016 full publication: [Managing Third Party Risk: Only as Strong as Your Weakest Link](#).

Key elements

- **Integrate:** Develop and implement a risk based, integrated and consistent approach to anti-bribery management of third parties across the company's operations. Clearly assign responsibilities for each stage of the company's relationship with its third parties.
- **Due Diligence:** Collect, analyse and store relevant information about all your third parties, including their ownership, how they operate, their integrity and anti-corruption standards and any significant bribery and corruption risks.
- **Be systematic:** Apply a comprehensive and consistent approach to registering, conducting due diligence on and appointing third parties and to the management and monitoring of the relationship.
- **Focus on your highest risks:** Based on risk assessments, categorise and segment your third parties by risk. Focus your due diligence and other anti-bribery efforts on the highest risk third parties.
- **Build trust and constructive relationships:** Aim to develop an environment in which integrity can be fostered and bribery countered.

BEST PRACTICE

- **Integrate your approach:** Develop and implement an integrated and consistent approach for managing third parties across the company's operations. Clearly assign responsibilities for third party management and ensure a cross-functional working and risk-based approach.
- **Build trust and constructive relationships with third parties:** Foster positive relationships with third parties and shared goals to enable better understanding and identification of risks.
- **Identify all your third parties:** Identify and register all your third parties and collect, analyse and store relevant information about them, including their ownership, how they operate, their integrity and anti-corruption standards and any significant bribery and corruption risks.
- **Use a risk assessment process for addressing third party risks and ensure the level of resources provided is commensurate with the level of risk:** Use a risk assessment process to identify, segment, mitigate and monitor the risks and risk factors attached to different types of third parties and use this information to design the criteria used in due diligence and to design and/or improve the overall anti-bribery programme.
- **Apply a systematic procedure for engaging third parties:** Adopt a comprehensive and consistent approach to registering, screening and engaging third parties to ensure that engagements are made to desired standards and that procedures are tailored to the different types of identified risks.
- **Carry out an appropriate level of pre-engagement due diligence on third parties:** Carry out due diligence proportionate to risks identified for different types of third parties, with a focus on those of highest risk. Use pre-defined risk criteria to assess individual third parties for inherent risk and vary the level of due diligence accordingly.
- **Use tailored communications and training, together with advice and reporting mechanisms, to manage third party relationships:** Provide tailored communications and training to third party relationship managers and third party employees, commensurate with the level of risk. Provide third parties with access to confidential advice and speak-up channels and follow up any credible reports.
- **Implement rigorous monitoring procedures to deter and detect bribery incidents and breaches of the anti-bribery programme:** Require high risk third parties to self-certify annually that they have complied with the anti-bribery programme. Repeat due diligence periodically for existing third parties. For high risk parties and where there is a significant bribery concern, exercise contractual audit rights.
- **Review and evaluate the effectiveness of the third party anti-bribery programme periodically:** Report on the performance of the anti-bribery third party management programme to the board and senior management periodically, together with recommendations for improvements.
- **Report publicly on your anti-bribery management of third parties:** Provide up-to-date information in an accessible manner to communicate to stakeholders your company's anti-bribery commitment and anti-bribery measures related to third parties.

GUIDANCE

12.1 Introduction

Increasing exposure to third party bribery risk

Third parties and intermediaries in particular are the single greatest area of bribery risks for companies. These risks are growing as companies move into new markets and put ever more of their operations in the hands of third parties. In this dynamic and challenging arena, anti-bribery programmes need to be tested regularly to provide confidence that they are suitable for countering third party risks and are working effectively.

Wide scope of third party bribery risk

It is important to recognise that bribery risks are attached to many kinds of third party relationships. Companies may think that some types of third parties fall outside bribery legislation. In fact, there is no distinction between different types of third parties under the UK Bribery Act or the US Foreign Corrupt Practices Act (FCPA). Under the FCPA, companies have been held liable or put under investigation for improper actions involving various types of third parties.

Although the focus of this guidance is on preventing bribery originated by or arising from lax controls of third parties, there is another significant source of risk: that originating within the company itself. Invariably, interest by companies in third party anti-bribery management centres on risks originating with their associates, but the reality is that [the top 10 FCPA settlements](#) have all involved bribery instigated from within companies and channelled through third parties, including through consultants, agents and joint venture partners.

Third parties provisions in UK and US anti-bribery legislation

UK Bribery Act: Section 1 and Section 6 of the Act expressly prohibit bribes made through third parties. Section 7 makes companies liable for bribery intended to benefit them by associated persons, defined as persons who perform services for or on behalf of the company. Section 8 states that the capacity in which such services are performed does not matter, though there is a rebuttable presumption that employees are associated persons.

The US Foreign Corrupt Practices ACT (FCPA): The Act expressly prohibits corrupt payments made through third parties or intermediaries. The fact that a bribe is paid by a third party does not eliminate the potential for criminal or civil FCPA liability. The FCPA expressly states that a company or individual may be held directly liable for bribes paid by a third party if the principal has knowledge of the third party's misconduct. It is unlawful to make a payment to a third party, while "knowing" that all or a portion of the payment will go directly or indirectly to a foreign official. The term "knowing" includes "conscious disregard" and "deliberate ignorance". Intermediaries may include joint venture partners or agents. Third parties and intermediaries themselves are also liable for FCPA violations.

A Resource Guide to the U.S. Foreign Corrupt Practices Act (Department of Justice, November 2012), pp. 21-2312

¹² <https://www.justice.gov/criminal-fraud/fcpa-guidance>

12.2 The enabling environment

12.2.1 Organising for anti-bribery management

Integrate your approach

Develop and implement an integrated and consistent approach for managing third parties across the company's operations. Clearly assign responsibilities for third party management and ensure a cross-functional working and risk-based approach, supported by tone from the top.

Managing third party relationships is complex and involves many different functions spread across the company's operations. Misaligned processes and undefined responsibilities can lead to bribery risk. The company should therefore ensure that the anti-bribery programme reaches across the company and is applied to a consistent and required standard.

There are many organisational challenges attached to managing third parties and countering bribery risk. Above all, management and the board may not have a complete picture of the company's activities for countering third party bribery risks and may lack understanding of the risks or fail to give them the required level of attention. A further challenge is integrating the management of bribery risk with other forms of third party risk, such as financial, human rights, data privacy and cybersecurity risks.

An integrated approach – examples of good practice

- **Allocate responsibilities:** Give overall responsibility and accountability for third parties to a senior manager and assign clear managerial responsibilities across the company. Business units should have responsibility for managing relationships with third parties and embedding the anti-bribery programme into their activities.
- **Integrate your approach to risk management:** Apply consistent standards, policies and procedures across the organisation, including coherent automated data systems and tools. A central risk management function may be used to guide risk management across the company, including countering bribery in third parties.
- **Involve and empower support functions:** Ensure that functions such as compliance, legal, finance, procurement, internal audit, risk management, security, human resources and corporate affairs are fully appraised of the bribery risks attached to third parties. Clearly communicate their roles in supporting line management and countering bribery in the supply chain and ensure they are adequately resourced to carry this out.
- **Ensure cross-functional working:** Ensure that country and business units and support functions work together. This will involve integrating the approach to managing risks attached to other issue areas within compliance and sustainability.
- **Guide local decision-making:** Ensure there is local application of third party anti-bribery measures. Local management know the local culture and risks and are best able to respond to changing circumstances. At the same time, there will be a balance between central and local management and the company will need to ensure that local management itself is supported to manage risks such as misinterpreting or failing to implement policies and procedures - or even acting improperly. It can do so, for example, through risk-based visits by legal and compliance, enhanced communication for high-risk units and periodic “check-ins”.

12.2.2 Building trust in your relationships

Build trust and constructive relationships with third parties

Foster positive relationships with third parties and shared goals to enable better understanding and identification of risks.

Bribery risk can arise from dysfunctional relationships with third parties, where misaligned objectives and communication gaps can lead to third parties dismissing corporate integrity standards in favour of quicker and cheaper performance. Anti-bribery compliance can easily be seen as a burden by the third party and addressed on a tick-the-box basis, undermining the effectiveness of training, contractual provisions and other controls.

Companies can manage these risks of misunderstanding and compliance fatigue by working to ensure that employees and third parties have agreed on common goals and strive together for excellence and corporate standards of integrity.

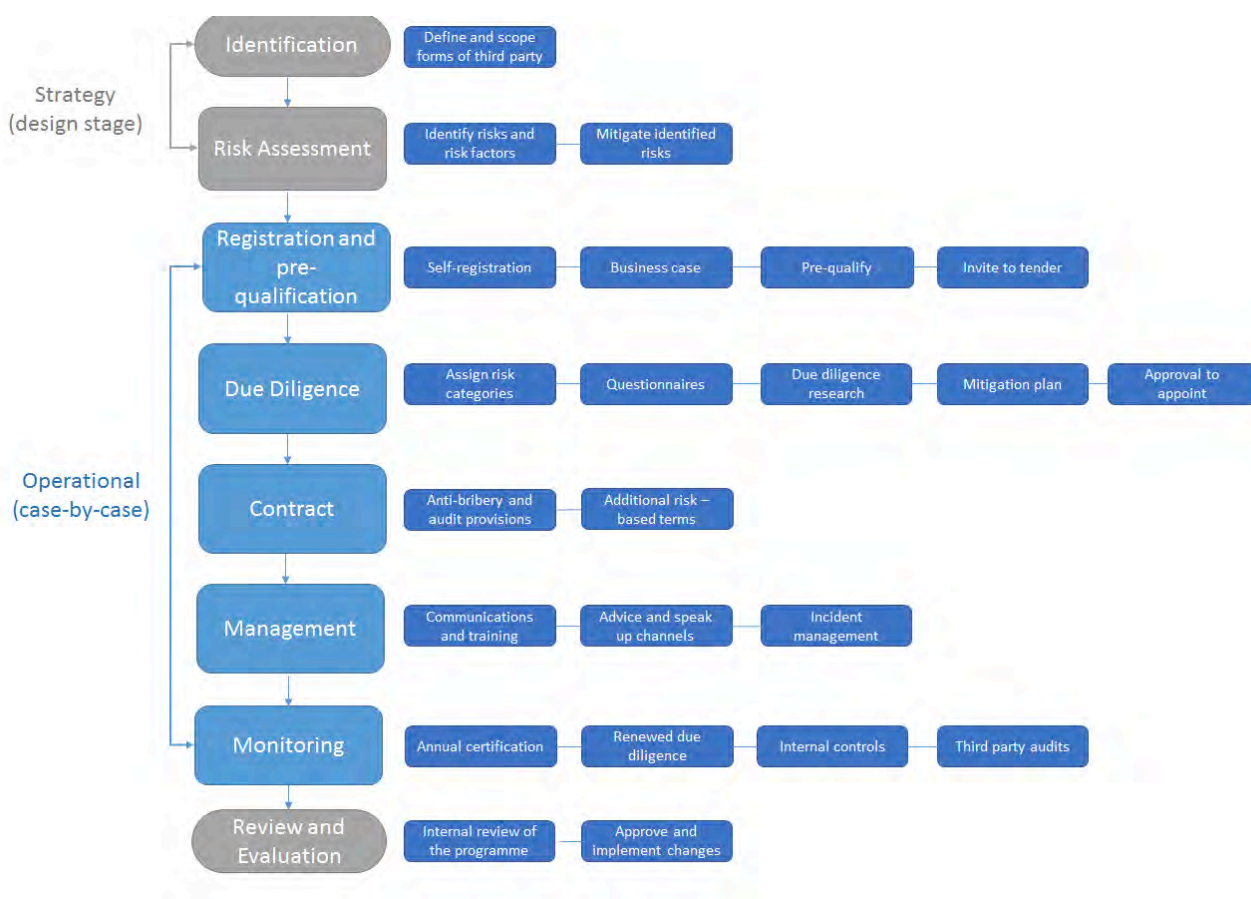
Countering bribery in third parties is more likely to be effective when the company operates positive relationships and builds trust with third parties, aligning objectives and working towards shared goals. Relationship management is a critical tool: the relationship manager is the link between the company and a third party and they should not only manage the contractual aspects but also promote the business value of complying with the company's standards, including the anti-bribery policy.

Building trust – examples of good practice

- **Align your expectations:** Align anti-bribery communications to third parties with wider corporate expectations on integrity, professionalism and quality.
- **Assign formal responsibility:** Give relationship managers formal responsibility in relation to anti-bribery due diligence, training and monitoring of high risk third parties. For example, responsibility can be addressed through job titles, appraisals and performance reviews.
- **Ensure consistency:** Establish initiatives for quality management of integrity and consistency in approach to relationship management. For example, create “ambassadors” or working groups dedicated to anti-bribery third party management and provide tailored anti-bribery resources and training to relationship managers.

12.3 The third party anti-bribery framework

This section sets out seven components that form the core of good practice in third party anti-bribery management: a systematic process for identifying, engaging and managing third parties. This process is outlined in the diagram below:



12.3.1 Identification

Identify all your third parties

Identify and register all your third parties and collect, analyse and store relevant information about them, including their ownership, how they operate, their integrity and anti-corruption standards and any significant bribery and corruption risks.

To achieve effective procedures to counter bribery, the company should have a clear understanding of its third party population. Depending on the size and type of business it conducts, a company may have a handful, hundreds or thousands of third parties and the types of third parties can be homogenous or vary widely.

A third party is any associate with which a company carries out its activities.¹³ The company's third party population¹⁴ can include:

- Vendors/suppliers
- Distributors/resellers
- Joint venture partners/consortium partners
- Advisors and consultants (tax, legal, financial, business)
- Service providers (logistics, supply chain management, storage, maintenance, processing)
- Contractors/subcontractors
- Lobbyists
- Marketing and sales agents
- Customs or visa agents
- Other Intermediaries

The highest bribery risk lies with agents, as they are authorised to represent the company. However, bribery risk is also associated with other forms of intermediary, such as lobbyists and law firms. Suppliers can also bring substantial risks, such as bid-rigging and kick-backs.

In order to obtain a high-level view of the risk profile of its third party population, a company should gather basic information on all its third parties, which will be used in the next step of risk assessment. This information gathering step applies to all existing third parties and policies need to be adopted and procedures designed for the systematic gathering of this information for all new third parties.

The information to be gathered includes information about the country in which the third party is based and where the services are provided, the volume of business with the third party and the nature of the work it performs. Categories of work posing higher risks include representing the company before government agencies or other third parties, performing services on behalf of the company and having contacts with government officials.

Identification – examples of good practice

- **Define third parties:** Have a clear understanding and definition of third parties. Label and describe what each type of third party does for the company.
- **Think ahead:** Keep in mind the needs of risk assessment and due diligence, which will rely on an accurate and complete picture of your third party population. Make an initial decision on what information you will need to gather at each stage. This will range from basic data for all third parties to extensive information for the highest risk third parties. Identify what suitable information you already hold.
- **Create a centralised database:** Create a centralised database where all information on third parties will be stored. Ensure enough flexibility to allow for additional categories of information to be added.
- **Plan the process:** Set out a clear process for gathering information and populating the database. Information can be gathered in various ways, such as accounts payable records, contracts held by legal departments and contracting functions and surveys of operating

¹³ In this guidance we do not treat subsidiaries as 'third parties' because, as controlled entities, subsidiaries should be subject to the company's anti-bribery programme. See *Business Principles for Countering Bribery* (Transparency International, 2013), p.8.

¹⁴ *Good Practice Guidelines on Conducting Third Party Due Diligence* (Geneva: WEF, 2013) contains descriptions of each of the types of third parties listed here.

functions to find out who they see as their third parties and the nature of the relationships.

- **Map out lower tiers:** When describing and categorising your third parties, consider the extent to which they in turn rely on associates to conduct their business. If they are highly dependent on subcontractors, lower tiers in the supply chain or Politically Exposed Persons (PEPs), this will be relevant to the risk assessment process and information on these parties should be recorded.
- **Comply with laws:** Review the requirements of compliance with data and privacy laws for the jurisdictions which you and your third parties may fall under. There may be restrictions on the types of data you are allowed to collect, store or disseminate, or the manner in which you are permitted to do so.

12.3.2 Risk assessment

Use a risk assessment process for addressing third party risks and ensure the level of resources provided is commensurate with the level of risk

Use a risk assessment process to identify, segment, mitigate and monitor the risks and risk factors attached to different types of third parties and use this information to design the criteria used in due diligence and to design and/or improve the overall anti-bribery programme.

A third party risk assessment process allows companies to develop a proportionate approach capable of identifying and responding appropriately to higher risk third parties. It does this by identifying and assessing factors driving third party bribery risk and using this information to devise risk categories based on types of third parties and other pre-defined criteria. These criteria are then used in the due diligence process, described at section 12.3.4.

The results of risk assessments should also be used by management to decide the scale of resources to be allocated to due diligence, third party management and monitoring. Management can also use the results of risk assessments to design the approach to phasing and prioritising types of third parties and other risk factors.

Risk assessments should be repeated periodically to allow senior management and the board to judge what is working effectively, understand emerging risks and make amendments to the anti-bribery programme. As risk assessment is used to design criteria for due diligence, periodic risk assessments may also lead to new due diligence requirements for different forms and risk levels of third party, described at section 12.3.8.

Steps in third party risk assessment

Bribery risk assessment is critical to an effective and efficient third party anti-bribery framework. The key objective is to understand the risk factors associated with different types of third parties in enough detail to allow consistent categorisation and proportionate risk mitigation.

The steps set out below focus on third party risk, drawing upon TI-UK's publication [Diagnosing Bribery Risk](#) which gives a comprehensive description of anti-bribery risk assessment methodology.

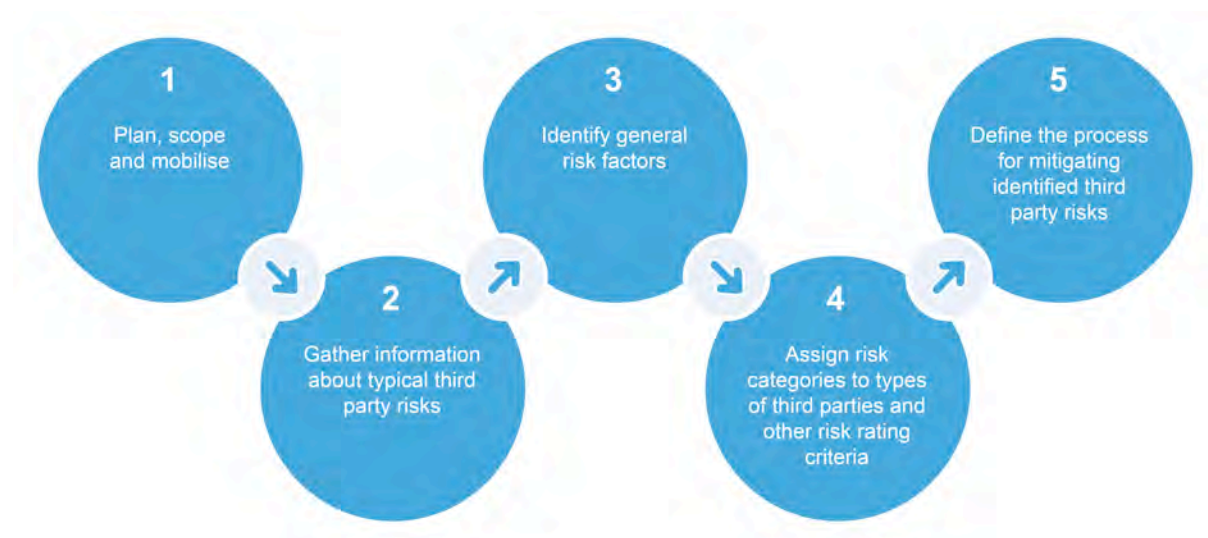


Figure 1: Steps in the third party bribery risk assessment process

Risk assessment step 1 - Plan, scope and mobilise: The methodology and reporting lines for third party bribery risk assessment should be aligned with the risk assessment process for other risk areas (such as sustainability, labour and security). Decisions also have to be made about scope, including the extent to which the process will be applied to lower tier third parties, such as sub-contractors.

Risk assessment step 2 - Gather information about typical third party risks: Obtain sufficient information to form a comprehensive view of the bribery risks related to the types of third parties used by the company (i.e. the ways in which bribery might take place, especially where differing by type of third party). Key information sources are listed in the table below.

Risk assessment - sources of information on risks

- Internal documentation, such as due diligence records, incident reports, whistleblowing reports and audit reports
- Internet research, such as reports of bribery law enforcement
- Company's management and employees, especially those operating locally and those responsible for contracting with and managing relationships with third parties
- Support functions, such as compliance, purchasing and contracting
- Professional advisors and anti-corruption consultants
- The company's third parties
- Trade associations and chambers of commerce, such as reports on sectoral or market corruption issues
- Embassies and High Commissions

In addition, interviews should be held with key third parties, such as major suppliers and contractors operating in high risk jurisdictions and/or sectors, to get perspective on attitudes to due diligence, monitoring and audits, and any cultural considerations related to the subject of bribery and corruption. These interviews should be conducted with the most senior personnel possible at the relevant third party to obtain as informed and complete a view as possible.

Risk assessment - risks and risk factors

A risk is the possibility that an event will occur and adversely affect the achievement of objectives. Third party bribery risk is the risk of offering, paying or receiving a bribe through an intermediary or any third party (individual or corporate) acting on the company's behalf, exposing the company to potential legal and reputational damage.

Some examples of risks posed by third parties are:

- A distributor pays bribes to customs officials to move goods across borders.
- An agent uses part of its fees to bribe procurement officials to award a contract to the company.
- A supplier offers a kick-back to a company employee to award it a contract.

A risk factor is a circumstance, internal or external to the company, which heightens the likelihood of a risk. The difference can be broadly characterised in the questions 'What could go wrong and how might it happen?' and 'Why might it happen and how likely is it to do so?'

Some examples of third party risk factors are:

Risk assessment step 3 – Identify general risk factors: Analyse the information to draw up a comprehensive definition and description of the bribery risk factors attached to the types of third parties used by the company (i.e. the reasons why bribery might be more likely to take place).

For example, the company will want to identify the typical risk factors to which third parties operating in different sectors are exposed. The OECD Foreign Bribery Report of concluded foreign bribery cases identified that two-thirds of the cases occurred in four sectors: extractive (19 per cent), construction (15 per cent), transportation and storage (15 per cent) and information and communication (10 per cent),

although this does not mean that a company in sectors other than those listed will not have a high level of risk.¹⁵ The table below illustrates some sector-specific risks and risk factors:

Risk assessment step 4 - Assign risk categories to different types of third parties and other risk criteria:

This step links the general risk assessment process with the due diligence process for assessing individual third parties, described at section 12.3.4.

Allocate each type of third party used by the company to a risk category, based on the typical risk factors associated with this type of third party. The most common framework is to use three levels of risk - high, medium and low – but companies may decide this framework does not work for them. The numbers allocated to each category will vary significantly by sector and by company. Keep in mind that the approach is to stratify third parties to focus attention on those of highest risk. This means keeping an eye on the numbers in the high risk category to make sure they are manageable given the dedicated amount of resources.

Decide whether additional risk criteria are required for the due diligence process to identify high risk third parties. Depending on the typical bribery risks identified for the company's sector and business model, this may include criteria to identify a range of different issues; such as whether the third party has links with local government, whether the proposed relationship includes a long-term and exclusive contract, whether the type of service to be provided will involve extensive and unsupervised interaction with public officials or whether the payment method or amount is unusual.

Risk assessment step 5 – Define the process for mitigating identified third party risks: Once the company's third party bribery risk profile is understood, the company should decide how it can best mitigate these risks, including by tailoring actions for certain types of third parties and for specific risk factors.

This process starts with the design of the third party anti-bribery framework (described at sections 12.3.1 to 12.3.8). A critical first step is to define the methodology for due diligence, working up from the risk categories for types of third parties and any additional risk criteria for risk rating individual third parties (described at section 12.3.4). Depending on the risks identified, the company may decide to take additional actions.

For instance, as a result of identifying new or changed third party risks the company could enhance its enabling environment (described at sections 12.2.1 to 12.2.2). This could include a range of different activities; such as new communications with a greater focus on certain risk factors, introducing enhanced cross-functional monitoring of certain types of high risk third parties or providing additional support for managing relationships with third parties used in certain markets.

The company may decide to eliminate or reduce the use of certain high risk parties, such as agents and consultants, with special approval processes where they are required by local laws. Companies may also reduce the number of third parties they have to improve oversight and manage risks more effectively. Care needs to be taken to manage the impact of such rationalisation on other strategic objectives, such as by monitoring for disproportionate impact on smaller or local suppliers.

Some risks may require additional mitigation through action external to the company, such as collective action or working with governments or intergovernmental bodies.

¹⁵ OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials (OECD, 2014), p.8.

Risk assessment – examples of good practice

- **Focus on high risks:** Focus your efforts and resources on identifying and mitigating the inherently highest risks. This may require, for example, devoting more human resources and budget to gathering information on identifying risk factors in high risk locations, sectors or relationships, and seeking external help where the company itself is unable to gather the necessary information to make an assessment of risk factors and best mitigating responses to risks.
- **Take a comprehensive approach:** Ensure a unified approach across operations with cross-functional working, avoiding silos.
- **Integrate your approach:** Align the risk assessment process with those for other issue areas. This can be achieved through inter-company exchanges between different risk owners, or through a central risk function that sets standards and processes.
- **Stay alert:** Avoid falling into habits of routine or rote approaches to risk assessments and being blind to the real or emerging risks. Use checks and validation methodologies to identify emerging issues such as risk scenario modelling, brainstorming, forensic data analysis, statistical quality control and the expertise of employees. Proactively identify new sources of information on the various risk factors.
- **Be open-minded:** Have an open mind about high risk types of third parties. For example, in a 2010 action under the FCPA, six oil and gas companies had to pay a total of US\$236.5 million in fines for bribes made on their behalf by their freight forwarder (Panalpina) and for falsely recording the payments as legitimate business expenses.¹⁶ Years ago, freight forwarders may have been seen as low risk. Today, they are commonly subject to heightened due diligence and monitoring procedures.
- **Gain buy-in:** Build the commitment of employees and third parties to the risk assessment process by involving them in its development and through communication and training.
- **Document the process:** Document the risk assessment. This will help guide further risk assessments and will be important for audits and for investigation of incidents. It will also serve as evidence of the adequacy of the process for regulatory investigations.

12.3.3 Registration and pre-qualification

Apply a systematic procedure for engaging third parties

Adopt a comprehensive and consistent approach to registering, screening and engaging third parties to ensure that engagements are made to desired standards and that procedures are tailored to the different types of identified risks.

Bribery risk can arise from third parties being engaged through variable and incomplete processes, leaving the company unable to apply efficient and appropriate controls due to silo working and unreliable

¹⁶ <https://www.justice.gov/opa/pr/oil-services-companies-and-freight-forwarding-company-agree-resolve-foreign-bribery> [accessed 22 June 2016].

standards. Specific risks range from company procedures being undermined by local work-arounds for urgent requirements to deliberate falsification of third party documentation.

To mitigate these risks, a company should devise a policy and procedures to be followed in advance of entering into any future business relationships. These should describe the steps that employees must follow when engaging with third parties, including renewal of such engagements, and should be consistently applied across the entire organization. The policy and procedures may include: a definition of third parties and other relevant terminology (e.g. PEPs, public officials) and relevant examples; a description of the onboarding process; guidance on the responsibilities of different departments, including for approvals/sign-offs; and information on monitoring requirements.

Consistent registration of all potential third parties is the first stage in ensuring that the company is associated only with third parties that meet required standards, including those for integrity and no toleration of bribery. Though beyond the scope of this guidance, general procurement policies and controls can provide an initial basis for building bribery-specific procedures for engaging third parties.

The process outlined in this section relates specifically to new third parties. However, existing third parties also need to be brought in line with the company's standards and the process can be adapted for this purpose, described at section 12.3.7.3.

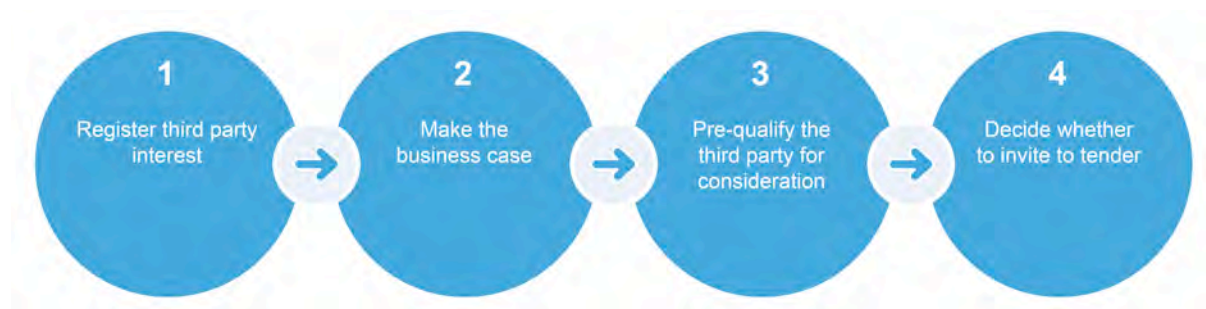


Figure 2: Steps in the registration process

Registration step 1 - Register third party interest: This is the initial point at which a potential third party is recorded in the company's system. It can be an unsolicited online registration by a company wishing to record its interest in becoming a third party or when the company invites a third party to tender. The purpose is to identify and record basic information on those who have or might have a relationship with the company. The registration webpage can also provide a point at which the company first communicates its expectations of third parties.

Registration step 2 - Make the business case: Before inviting companies to bid for a contractual relationship, a business justification is approved by management, with counter signatures and approval thresholds. Any known risks might be highlighted at this point. This stage may not be necessary for third parties being considered for low value, low risk contracts.

Managers should ask questions to challenge the business case put forward and determine the process by which the third party was selected to identify any early risks. For example:

- What is the nature of the services to be provided?
- Is there an alternative to using an external third party?
- Is there already an approved third party that provides the same type of service in the jurisdiction?
- Who introduced the third party to the company?

Registration step 3 - Pre-qualify third party for consideration: Potential third parties are required to provide basic information to allow the company to assess their suitability for being considered further.

The majority of this information will relate to the company's general procurement procedure but some aspects will be directly relevant to bribery risk management. Typically the company will require the potential third party to complete a Pre-qualification Questionnaire (PQQ), covering basic information such as:

- Financial information
- Ownership, directors and officers
- Summary of credentials and capabilities
- Any required certifications or third party attestations, for example related to information security, environmental performance and anti-bribery systems (such as certification under the forthcoming ISO 37001)
- Any past litigation or public administrative sanctions against the company or management, including any related to corruption

If satisfactory information is supplied, the third party is recorded as suitable for invitation to bid but not yet approved for engagement. If the third party proceeds to the due diligence stage then this may involve requests for further information (the overlap between pre-qualification and due diligence is described at section 12.3.4, step 2).

The company may choose to rely on external providers for some of the pre-screening information. For instance, Supplier Ethical Data Exchange (Sedex) is a not-for-profit organisation that gathers data on suppliers globally on sustainability issues and gathers information using extensive questions on business ethics which are completed by suppliers and validated by Sedex audits.¹⁷

Registration step 4 – Decide whether to invite to tender: Data from the PQQ is evaluated for quality and accuracy before entering into discussion with the third party or inviting bids. Medium and high risk third parties and companies tendering for a large contract may need to satisfy some preliminary due diligence before they can be invited to tender. The due diligence process is described in detail at section 0.

12.3.4 Due diligence

Carry out an appropriate level of pre-engagement due diligence on third parties and repeat periodically

Carry out due diligence proportionate to the risks identified for different types of third parties, with a focus on those of highest risk. Use pre-defined risk criteria to assess individual third parties for inherent risk and vary the level of due diligence accordingly.

Due diligence screens third parties for red flags to enable the company to avoid association with third parties which could lead to reputational damage or legal liability. It is a systematic, periodic process carried out when entering into or renewing a contract or agreement with a third party. It commonly receives the greatest attention in countering bribery in third parties.

¹⁷ <http://www.sedexglobal.com/>
[accessed 22 June 2016].

Even so, companies struggle to design and implement an effective due diligence process due to large numbers of third parties, variations in their forms and activities, the multiplicity of risks and uncertainty on how best to assess risks.

The due diligence process

Companies must find a suitable methodology for screening their third parties to ensure they obtain the right information to discover red flags and assess the level of integrity and compliance of a third party against consistent criteria. While focused on identifying high risk third parties, the due diligence methodology should be capable of managing large numbers of third parties within the available resources and without disproportionate time and effort for the majority of low risk third parties.

The company can reach a deeper level of understanding of higher risk third parties through a deeper level of diligence. Depending on the circumstances, this may include in-person meetings with senior officials of the third party, a site visit, obtaining information on the third party and principals from specialised databases and engagement of in-country experts to provide additional due diligence. If a decision is made to proceed with the third party, the engagement should be commensurately controlled and monitored, as described at sections 12.3.6 and 12.3.7.

The methodology should be built on the results of the company's third party bribery risk assessment, making use of the risk categories for types of third parties and other bribery risk factors to structure decision-making for individual third parties (described at section 12.3.2, steps 4 and 5). These pre-defined risk criteria allow the company to assess individual third parties for inherent risk and vary the level of due diligence accordingly.

The methodology should also be shaped by the risk approach set by the board and matched against norms for due diligence, including guidance from regulators, professional advisors and anti-corruption initiatives. The company can also learn from past cases and releases by authorities such as the UK Serious Fraud Office, UK Financial Conduct Authority, the US Department of Justice and the US Securities and Exchange Commission.

The methodology suggested in this section can be adapted by companies according to their risk profile and the size and nature of their third party population.

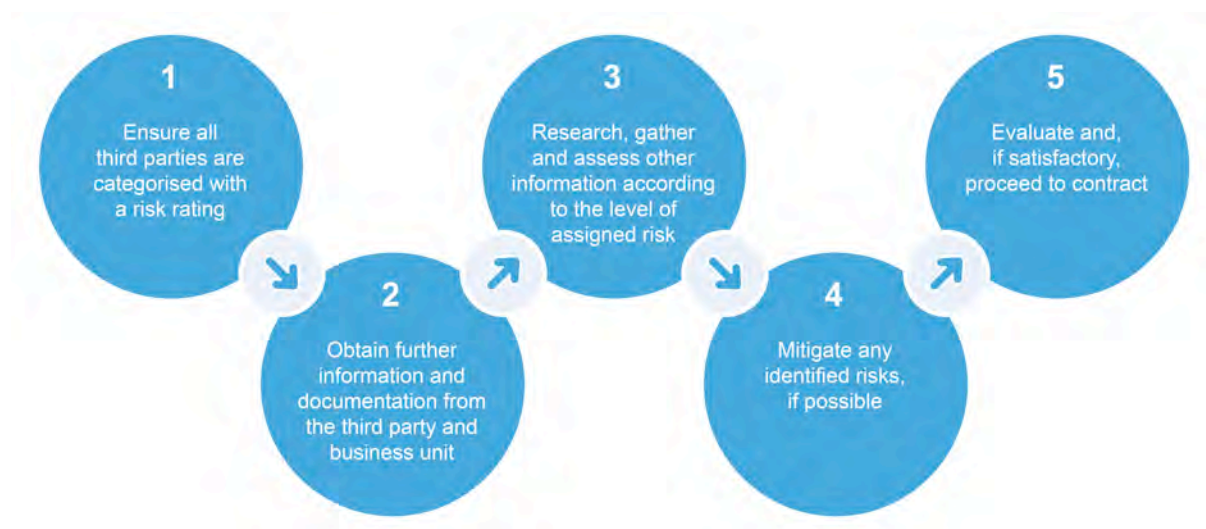


Figure 3: Steps in the due diligence process

Due diligence step 1 - Assign a risk rating: Assign overall risk ratings to third parties by scoring them against pre-defined criteria (developed through the risk assessment process and based on types of third parties and additional risk factors). For example, if using three levels of third party risk, decide in which level the particular third party belongs.

When assigning an overall risk rating to a particular third party, the company will check the type of third party and associated risk category and will also need to look for additional risk factors such as:

- How large is the contract the third party is bidding for?
- Is the contract in question unique/a one-off?
- What is the compensation structure for the third party? (e.g. sales commissions)
- What are the goods or services being provided? (e.g. lobbying, business development)
- How was the third party referred to the company? (e.g. by a public official)
- Does the third party have an anti-bribery programme and does the programme meet the company's own standards?

The overall risk rating assigned to a third party will determine the appropriate level of due diligence. For example:

- **High risk:** This category receives the most attention, with detailed information gathering from the third party and public record research, often supported by market intelligence gathering. This level will often require face-to-face interviews and on-site visits (sometimes called “boots on the ground” due diligence).
- **Medium risk:** This category will typically require some information gathering from the third party additional to the PQQ followed by public record research to verify the information and identify any significant legal, regulatory or reputational issues.
- **Low risk:** This category requires very limited or no further information beyond the initial PQQ. If the relationship owner is aware, either through the PQQ or dealings with the third party, of any issues, this could raise the risk rating to medium risk. Very small contracts or spot purchases up to a specified threshold are not subjected to due diligence unless the PQQ throws up a red flag such as a connection to a foreign public official or past improper behaviour.
- **Sampling:** Due diligence at the level higher than the assigned risk category is carried out on a statistically valid sample of the medium and low risk companies to provide a check that the methodology for assigning risk categories is working.

Due diligence step 2 - Obtain further information: For medium and high risk third parties, further information and documentation is requested using a third party questionnaire and business unit questionnaire. The level of detail of the questionnaires will correspond to the risk category of the third party. Use of an electronic workflow system will enable these and any other communications with the third party to be recorded centrally. It can also serve as a repository for documents provided by the third party, such as a code of conduct, anti-bribery policy or proof of registration. The company should be prepared for red flags or questions to emerge and to expand the gathering of information accordingly in step 3. Red flags may include obscure ownership structures, resistance to requests for information, negative media coverage and links to senior public officials or other PEPs.

It is important that the due diligence requirements imposed on the third party strike the right balance between the information required and the burden of providing this information. Designing a process that

requires a well-resourced in-house compliance department to comply with your requirements will make it too burdensome for small and medium enterprises (SMEs) and local companies where the primary language is different from that of the company, amongst others. Using existing standard forms or establishing them through industry bodies or initiatives may help reduce the burden on third parties. It is also worth noting that in some jurisdictions or sectors general awareness of and engagement with anti-bribery and corruption is very low, which has the effect of disadvantaging local companies competing for business. In these cases, the company may consider investing in education, for example through collective action initiatives, to increase awareness and to create a level playing field in jurisdictions where the company operates.

Due diligence step 3 - Research, gather and assess other information: Based on an analysis of the further information provided by the third party, more comprehensive information is sought through company resources and externally. More information may be collected on areas such as:

- Services being provided
- Corporate information (such as proof of ownership, if not requested or provided previously)
- Members of the third party's leadership and those who will be working with the company
- Governance structure
- References from peer companies
- Litigation/criminal or administrative actions disclosure
- Negative coverage in media
- Code of conduct (if not requested or provided previously)
- Anti-bribery programme including policy and training given to employees
- Adherence /alignment to the company's own policies
- Use of sub-contractors /other third parties (and any related policy documents)
- Appearance on sanctions/debarment lists
- Relationships with government officials including director and staff familial relations with PEPs and government officials and employment of PEPs and PEP-owned companies further down the supply chain

Due diligence step 4 - Mitigate any identified risks: Assess the results of due diligence and proceed to seek management approval if all is satisfactory. For high risk third parties, or where specific red flags have been identified for a medium risk third party (e.g. large or critical contracts, lobbying services), legal and compliance should be involved in the assessment.

Carry out further work to mitigate any significant risks identified or decide not to proceed. Mitigation of deficiencies in an anti-bribery programme can be made before appointment or it may be agreed that they will be implemented immediately after appointment by a set date, with a clear follow up mechanism in place.

Due diligence step 5 – Decide whether to proceed to contract: Subject to any identified risks being mitigated, the due diligence report is signed off by management as satisfactory and the necessary management approval is obtained to proceed to contract with the third party. For difficult decisions or where high residual risks remain, the decision whether or not to engage a third party may be referred to legal and compliance or to a special committee with representatives from legal and compliance.

Due diligence – examples of good practice

- **Do not rely wholly on others:** Do not assume that because a third party is used by a peer

company or has been certified by an accredited provider this obviates the need for adequate due diligence. Similarly, when third parties are acquired through M&A, do not rely on previous due diligence or a long pre-existing relationship with the acquisition.

- **Balance and integrate your approach:** Ensure due diligence is balanced and integrated with the other components of anti-bribery management of third parties, such as providing tailored communications and training.
- **Use sampling:** Use quality control sampling to provide reassurance that your methodology works and is picking up the high risks.
- **Allow time:** Finish the due diligence process in good time to give the business relationship holder and/or third party an opportunity to mitigate properly any risks identified.
- **Guide local decision-making:** Include the judgement of those close to the business activity, such as relationship managers, in decisions on the results of due diligence. The local decision responsibility needs to be balanced and the company will need to ensure that there is central functional input of setting and monitoring the standards and application of due diligence and that, based on the level of risk, management approval thresholds and counter signature requirements are in place to provide a compliance check.
- **Avoid over-burdening third parties:** Ensure your due diligence process does not over-burden and therefore lead to the unjustified exclusion of smaller and local third parties.
- **Involve legal and compliance:** Involve legal and compliance in decisions using a risk-based approach. Where risks remain high or for difficult decisions, the decision may be referred to a special committee.
- **Document the process:** In all cases, document the decision-making process to show it is thoughtful and thorough.
- **Make a qualitative assessment:** Make use of the judgement of management and employees such as third party relationship managers and compliance officers - this is critical to effective due diligence. Bribery can often occur in unexpected areas and an automated or 'tick box' approach can only follow established channels or flag trends. The company must remain alert to new risks. Those involved in due diligence on third parties should be encouraged to be challenging, questioning and innovative.
- **Deal with issues:** If due diligence has identified issues, consider appointing an external advisor to conduct further research. The issue may also be raised through a face-to-face meeting with management of the third party and a timetable established for correction or mitigation. Exploration and analysis of the risk area jointly by both sets of management can also eliminate risks. Discussions about bribery risk should be handled carefully as they will be sensitive to the third party and cultural differences may also lead to misunderstanding or offence.

12.3.5 Contract

The contract with the third party is more than an agreement – it is a critical anti-bribery control. It communicates explicitly the company's expectations on anti-bribery and ethical behaviour, establishes rights and specifies anti-bribery requirements and processes for monitoring, reappointment, remediation, termination and exit.

The anti-bribery provisions and rights included in a contract will be determined by the extent of the influence of the company in the relationship. As principal, the company will require contractually that its agents and similar intermediaries conform to its anti-bribery programme, but in other associations (such as suppliers, consortia and joint ventures) the company may have insufficient leverage to insist on conformity to all elements of its anti-bribery programme and may have to rely more heavily on due diligence to ensure ethical behaviour by selecting the right partners. In all cases the company should seek a contractual commitment that the third party will comply with anti-bribery and corruption laws and establish its own controls to prevent and detect breaches of this commitment.

As a key anti-bribery control, contractual clauses may also be used to mitigate specific bribery risks. For example, some companies apply additional provisions for high risk intermediaries interacting with government, including detailed record keeping requirements for meetings with officials and for gifts and hospitality.

Contract – examples of good practice

- **Set anti-bribery terms from the start:** Make the contractual anti-bribery terms known at the start of the appointment/selection process when there is still contention for the award of the contract. A third party is more likely to agree terms when its bid is still under consideration than in the final stages when the appointment is all but ready to go. This also makes it less likely there will be late surprises or sticking points in drafting the agreement.
- **Reference codes, standards and laws:** Consider requiring accordance with leading codes such as Transparency International's Business Principles for Countering Bribery, the ICC Rules of Conduct and anti-bribery certifications (such as the forthcoming ISO 37001). References to laws can also be made such as the UK Bribery Act and the FCPA.
- **Provide model contracts:** Provide those responsible for negotiating contracts with standard contracts and anti-bribery terms supported by a commentary and sound legal analysis. This is to ensure consistency and that anti-bribery terms are not deviated from during the course of negotiation and drafting whether through error, omission or external pressure.
- **Engage internally on contract terms:** Ensure cross functional consultation for the drafting of standard contracts and that management understands the provisions, rights and contractual issues related to key risks including bribery.
- **Extend rights to cover sub-contractors:** If the third party relies heavily on the use of sub-contractors, provide for rights extending to third parties, such as the right to be informed of or approve the appointment of all sub-contractors or to set criteria where a third party engages high-risk sub-contractors, engages with foreign public officials or has a past history of bribery incidents. The company may also require a first tier associate to require its own sub-contractors to conform to the company's anti-bribery requirements. Where a supply chain is deemed high risk and the company has sufficient leverage, it should ensure that it has full visibility over a first tier associate's suppliers. In exceptional cases where the supply chain is tightly integrated, this could include a contractual requirement that, in its own contracts with lower tier third parties, the

first tier associate will include audit rights for the company itself or its representatives. In any case, the company should assure itself that the first tier associate has in place and is able to exercise audit rights over its own third parties.

- **Update contract terms:** For long-standing relationships or those arising from acquisitions, do not overlook updating contract terms. For high risk third parties, implement a procedure for regular review of contracts by legal and compliance. Laws and regulations, business environments, needs and other circumstances are ever changing. For instance, the coming into force of the UK Bribery Act meant that many contracts were updated to reflect the Act's provisions. Over time, interpretations in legal cases relating to third parties may need to be reflected in third party contracts.
- **Define the process for responding to potential breaches:** To encourage open discussion of bribery risks, set out clear expectations of how the third party should handle bribery incidents. Depending on the company's leverage, define processes and timetables for the investigation, reporting and remediation of weaknesses in the third-party anti-bribery programme.
- **Create a detailed exit plan:** For significant contracts, prepare a plan on how the company will exit the contract in the event of a breach of the anti-bribery requirements. This is particularly important for joint ventures and consortia where an exit can be complicated.
- **Maintain comprehensive records:** Maintain complete and up-to-date inventory of third party relationships and contracts using an aggregated data system.

12.3.6 Management

Use tailored communications and training, together with advice and reporting mechanisms, to manage third party relationships

Provide tailored communications and training to third party relationship managers and third party employees, commensurate with the level of risk. Provide third parties with access to confidential advice and speak-up channels and follow up any credible reports.

Communications and training

The due diligence process should provide evidence of a satisfactory anti-bribery programme appropriate to a third party's risk profile. Even so, it cannot be certain that a third party's employees will have sufficient understanding and skills or even act in the desired way. Therefore, a company will need to communicate clearly and accessibly to third parties the importance it attaches to countering bribery, the ways it expects third parties' employees to act and how to recognise and deal with particular risks.

Contracts and communication of the code of conduct and expectations for third party business conduct are the platform for conveying the company's anti-bribery requirements of third parties.

“Education is key. That initial investment of time makes a big difference. We are an iconic company and want to make sure that we do not partner with a potentially damaging third party.”

Interview, senior compliance officer

Training should be a standard component in the toolkit for third party anti-bribery management and considered a requirement for high risk third parties, however, it is often neglected by companies.

Communications and training should focus on high risk third parties, such as sales agents, but it should not be assumed that large global companies do not need attention. Though they can be expected to have substantive anti-bribery programmes, continuing bribery enforcements involving large companies show that this is not a guarantee of good anti-bribery practice. The employees of large third parties and their sub-contractors may benefit from specialised training and tailored communications when working on behalf of a company.

Communications and training – examples of good practice

- **Take a risk-based approach to training:** For example, use customised and more frequent and face-to-face training (considered more effective) for higher risk levels and remote online training for low level risk, and a hybrid of both approaches for medium level risk.
- **Integrate your messaging:** Position anti-bribery communication and training in the context of corporate standards and processes, other sustainability issues and responsibility commitments. Anti-bribery communications must be precise and prominent among the many corporate communications for the message to get through.
- **Ensure tone from the top:** Involve third party senior management in training and communication as much as possible, such as appearing at the introduction to say a few words.
- **Make it accessible:** Communicate the anti-bribery requirements, guidance and training in local languages and in a style that explains clearly and in a non-legal manner what is expected of associates.
- **Train your employees:** Give regular tailored training for employees who engage with third parties – this should be consistent with identified third party risks and match the messages given to third parties.
- **Integrate employee and third party training:** For some third parties, such as sales agents, match training to that given to employees and consider extending it, through agreement with parties involved, to high risk lower tier subcontractors, such as customs brokers appointed by agents. Where appropriate, involve third parties in employee training sessions or modify in-house training – this can be cost effective.
- **Provide tailored codes of conduct or business conduct guidelines:** For example, publish a dedicated page on the company’s website which sets out guidelines for suppliers,

subcontractors and other third parties, including standards of conduct and expectations of suppliers in specific issue areas, such as gifts and entertainment and conflicts of interest.¹⁸

Advice and speak-up channels

Advice channels provide information and answer queries about the anti-bribery programme. Speak-up channels (also called whistleblowing channels, hotlines or helplines) are provided for employees to raise concerns or report instances of bribery. Less commonly, they are made available to business associates.

Companies should consider providing speak-up channels for third parties. Because whistleblowers often suffer from their actions, third party employees may be reluctant to report concerns. They can be encouraged by how well the company handles reports and deals with issues and by explaining confidentiality and protection. Use of an external provider for the speak-up channel may also encourage a third party to report their concerns in the knowledge that the line is being manned by an independent body. To further encourage use of the channels, the company should consider making them available both in English and relevant foreign languages.

Advice and speak-up channels – examples of good practice

- **Encourage third parties to speak up:** Extend internal speak-up channels to third parties.
- **Check for existing channels:** Include the presence of a speak-up process in the third party as a due diligence criterion.
- **Build trust in the process:** Overcome reluctance or concerns about reporting by third parties by building their trust in the procedure for speaking up by. For example, explaining and reminding about legal protections for whistleblowers, using an independent agency and/or reporting on number (not nature) of incidents and number of incidents resolved.
- **Provide training:** If the company provides tailored training for third parties' employees, include discussion of speak-up channels in the course. This will be subject to agreement with the third party as it may be a sensitive topic.
- **Encourage direct reporting:** Make clear that concerns should be raised through the company whether through the relationship manager, compliance manager or the whistleblowing channel.

Incident management

No anti-bribery programme will guarantee that a company will be free of bribery incidents in its supply chain. A procedure is necessary to anticipate and manage incidents promptly, thoroughly and efficiently. Incidents can be revealed through monitoring, audits, whistleblowing (including internal tips from speak-up lines or a report to authorities) and media allegations or by the authorities as a consequence of other investigations. The nature of the incident may vary from a suspicion to a high likelihood that bribery has occurred.

On receiving information or allegation of an incident, management should inform and consult the legal and compliance departments and flag the incident immediately to senior management. All alleged bribery

¹⁸ See, for example: <http://www.bechtel.com/supplier/ethics/> [accessed 20 June 2016].

incidents should go through triage to establish their credibility, as well as the scale and severity of the issues involved, which will determine the appropriate level of response. The company should have an internal and external communications and escalation plan and, in the case of a major incident, investors will need to be informed of the potential severity and the actions to be taken.

The company should investigate whether its controls failed and there is a potential exposure under bribery laws. As part of an investigation, the company will likely need to exercise its contractual third party audit rights, protect and review documentation and electronic files and conduct internal and third party interviews. This can involve the use of outside firm with investigatory expertise. If an employee(s) is alleged to have participated in bribery with the third party, the company may need to suspend them as appropriate.

Incident management – examples of good practice

- **Cooperate with the authorities:** Establish a policy and procedure to report to and cooperate fully with the authorities if it is likely that bribery has taken place, managed by your legal department.
- **Decide whether to continue or terminate the relationship:** Decide if the relationship can be continued during the course of the investigation or should be suspended. For example, you may decide to continue the relationship where the third party is a critical partner or the bribery incident is contained to one function of the third party and does not reflect the whole company. If the association is continued, end contact with those involved in the bribery allegations or investigation. The conclusion of a legal case against a company will likely be followed by remedial actions, including change of management and strengthening of the anti-bribery controls. Even so, you may decide to terminate an association with a third party where the conduct in question has been egregious and concerns remain. The decision making process should be thoughtful and documented.
- **Learn from incidents:** Once an incident has been concluded, improve your third party management in the light of any lessons learned.

12.3.7 Monitoring

Implement rigorous monitoring procedures to deter and detect bribery incidents and breaches of the anti-bribery programme

Require high risk third parties to self-certify annually that they have complied with the anti-bribery programme. Repeat due diligence periodically for existing third parties. For high risk parties and where there is a significant bribery concern, exercise contractual audit rights.

Rigorous monitoring procedures act as a deterrent to third parties and to employees contemplating bribery and are a way to bring to light suspicions or incidents of bribery.

A company should regularly collect new information on third parties by requesting updated information directly from them, requiring them to self-certify compliance with the company's anti-bribery programme,

conducting renewed due diligence, exercising audit rights and/or using technology to automate some of this process. A detailed account of third party audits is described at section 12.3.7.2.

The results of monitoring will be reported to management regularly and provide information for the company's public reporting on its anti-bribery measures.

Monitoring – examples of good practice

- **Update information:** Ask all third parties to complete an online questionnaire each year updating basic information about their company such as ownership, acquisition and annual reports.
- **Require annual certification:** Require an annual self-certification from a director or the chief executive of high risk third parties that a) their anti-bribery programme is implemented and has been subject to review during the year and b) there have been no bribery incidents. The certification can include a statement on any achievements, developments or issues that could touch upon the implementation of the programme.
- **Renew due diligence:** Subject all contracted third parties to periodic repeat of due diligence as well as on reappointment. For high risk third parties, a timeframe of every two to three years should be considered.
- **Use technology:** For certain types of high risk third party, consider monitoring their risk profile continuously using adverse media or broader data screening technology. Transaction monitoring and data analytics tools can also be used (described at section 0).
- **Showcase achievements:** Encourage third parties to showcase any achievements in countering bribery such as collective action. This builds the relationship and can also provide valuable learning to be applied across your third parties.

Internal controls

Once a contract is in place, the anti-bribery programme's controls need to be applied to all third party relationships, with a focus on those of highest risk. The company's anti-bribery programme will incorporate internal financial and accounting controls, such as approval thresholds, countersignatures and segregation of duties, but these may need to be refined for certain types of third parties to counter identified risks.

Third party transactions should be monitored against the controls during the course of the relationship. Technology systems can help monitor where activities are operating effectively and highlight where transactions or patterns of behaviour are out-of-line. For example, data analytics on procurement patterns can identify suspicious or anomalous payments and radio-frequency identification (RFID) tracking tools can be used to track high value goods and identify incidents of substitution, diversion, counterfeit or theft, activities that are often enabled by bribery.

Internal controls – examples of good practice

- **Check activities against company policies:** Check that activities invoiced conform to the company's policies for hospitality, travel expenses, gifts, donations, sponsorships and "facilitation payments".
- **Scrutinise high-risk expenditure:** Provide additional scrutiny around payments for high risk expense types (including visas, customs, taxes, government certificates, licences, bonuses, commissions, gifts, entertainment, travel, donations, marketing).
- **Test your controls:** Check controls by selecting transactions, making sure that reliable third party documentation is kept and transactions are recorded accurately.
- **Enforce thresholds and countersignatures:** Enforce thresholds and countersignatures for approvals of contracts, payments and transactions.
- **Implement checks and approvals:** Introduce and enforce for accounts receivable write-offs, third party credit terms and the re-purchase of inventory sold to third parties.
- **Limit jurisdictions:** Only make payments in the jurisdictions where the third party is based or operates.
- **Prohibit cash payments:** Do not make cash payments and enforce strong petty cash controls.
- **Segregate duties:** Ensure that no single employee handles every aspect of a relationship with a third party.
- **Check payments against goods and services rendered:** Check that payments are appropriate for the goods and services rendered.
- **Provide supporting documentation:** Ensure invoices for payments are supported by full documentation.

Third party audits

Audit rights are a standard part of agreements with all third parties, yet whether and how to audit third parties is a great concern for many companies. Surveys show that many companies do not exercise audit rights. A 2015 survey by KPMG found that more than half the companies surveyed with right-to-audit clauses did not exercise them (see: [Anti-Bribery and Corruption Global Survey 2015](#) KPMG, 2015, p.3.). Often, rights are only exercised when there is a serious issue with a third party and the relationship is likely to be terminated.

The lack of take up of audit rights often lies in the resources and costs needed to carry out audits, the demands of audits on other issue areas or resistance from third parties to the audits. There are also a number of challenges:

- Third parties can be adept at window dressing, manifesting good practice and telling auditors what they want to hear.
- Auditing first tier companies may be insufficient. First tier associates may channel bribes through sub-contractors or rely on suppliers and intermediaries for services where bribery is systemic such as in logistics or obtaining licenses.

- A satisfactory result does not guarantee integrity. Lessons can be drawn from heavily audited issue areas such as labour or safety where major incidents have occurred despite evidence of prior satisfactory audits.

For all this, audit rights are a useful deterrent, clearly signalling to third parties the company's commitment to anti-bribery and corruption. Further, while the main intent may be to heighten the attention that a third party gives to its anti-bribery programme, failure to exercise audit rights may be seen as a deficiency by the authorities in the event of an investigation.

Third party audits – examples of good practice

- **Focus on the highest risks:** Focus third party audits on higher risk third parties but consider auditing a control sample of lower risk third parties selected randomly.
- **Audits as due diligence:** See audits as a continuation of due diligence:
 - Applied consistently, periodically and in a proportionate way to all high risk third parties
 - Carried out on any third party where there is a significant bribery concern
- **Use external auditors:** Engage external auditors to obtain an independent view. They are able to draw on a wide experience of best practice and have greater credibility with stakeholders. They may also be more acceptable to third parties.
- **Consider lower tiers:** Consider relationships with subcontractors and keep in mind that the real risks may lie in the lower tiers.
- **Conduct on-site visits:** Remember that these are an important aspect of audits.
- **Manage the cost:** Lessen the pressure on resources by carrying out audits on a rolling basis spread across time, types of third parties, business units and locations. Using collective industry initiatives where appropriate, such as Sedex, can also lower auditing costs.
- **Counter resistance:** Where a third party provides arguments, delays or hurdles to resist an audit, try to find a workable solution to reassure the third party and enable an audit to take place. For example, a discussion can be held with the owner or chief executive to explain why the audit is needed, how it would take place and respect their concerns about intellectual property or market confidential information. Their interests could be protected by redacting information in reports or using an independent auditor.
- **Develop an audit plan and audit protocols:** Develop these based on your needs, experience and benchmarking best practice. If you use independent auditors they will have a model plan and protocols but you should evaluate these against your own to ensure the approach is suitable for your purposes. Examples can be found in guidance from professional bodies and advisors. An example is the Institute of Internal Auditors' Practice Guide, Auditing Anti-bribery and Anti-corruption Programs.¹⁹

¹⁹ Practice Guide: Auditing Anti-bribery and Anti-corruption Programs (IIA, 2014).

- **Be consistent:** Apply the same auditing standards across all issue areas. This prevents cherry picking, allows for sharing of best practice and increases confidence in the results of anti-bribery audits.
- **Make use of experience:** Use experienced interviewers and reviewers with knowledge of best practices and ability to recognise red flags.
- **Value substance over form:** When testing transactions the emphasis should be on reaching an understanding of the substance, or business purpose, of a transaction over its legal form.
- **Make connections:** In testing, connect financial to non-financial information.
- **Follow up:** Carry out follow-up interviews or requests as needed to obtain clarification.

Applying the framework to existing third parties

The framework described in the previous sections refers primarily to the process of engaging new third parties. However, once the policy and procedures for third party management have been set, they should also be applied retrospectively to the company's existing third party population. Further, existing third party relationships may need to be reviewed periodically as a result of changes to bribery risk criteria or enhanced anti-bribery programme controls.

Retrospective due diligence

During the identification and risk assessment process, the company will have gathered information on its existing third parties and used this to define categories of risk. The company should then assign a risk rating to each of its existing third parties using the same process described at section 0.

Once it has assigned risk categories to its existing third party population, the company should conduct retrospective due diligence on them. Relationship managers should explain the process to their third parties, issue them with PQQs and questionnaires, identify red flags and hold discussions with their management if and when potential issues are identified. They should communicate all changes to the anti-bribery third party management programme and new expectations and requirements that existing third parties are likely to face upon the renewal of a contract. Where significant issues are identified, mitigation plans should be put in place and, where residual risk is too high, a decision will be taken on whether to renegotiate a contract, terminate a relationship or simply not renew a contract after it expires. This decision should involve legal and compliance and, for difficult decisions, it may be referred to a committee.

The main challenge for the company will be allocating resources. For a company with a large third party population, this will be a major undertaking and it should take a risk-based approach, whereby conducting due diligence and mitigating risks for its highest risk third parties is a top priority and the focus of its resources.

Re-engagement due diligence

Due diligence should be repeated upon re-engagement of all high risk third parties and other third parties depending on the company's risk approach. However, where a third party has already been subject to pre-engagement or renewed due diligence and regular monitoring, it is not necessary to start from scratch. Rather, the company should review information held on the third party to check that it is up-to-date and complete and identify any potential issues or red flags. Where there is missing or inadequate information or the relationship manager has concerns, the company should conduct web searches, hold discussions with the third party's management and request information to address these issues and identify any developments, such as changes to the shareholding or management structure, anti-bribery programme or business model and any allegations, incidents or sanctions involving the third party that have not been reported to the company. These checks should be conducted for all high risk third parties; if significant issues are discovered, the company should consider conducting full due diligence, including "boots-on-the-ground" due diligence, and perhaps engaging an external due diligence provider.

Incorporating results of the risk assessment

Where the company's risk assessment has identified new third party risks that were not previously addressed by the company's third party management programme, or pre-existing risks that were not adequately categorised or mitigated, the company should apply the new due diligence criteria and, where possible, monitoring procedures – including audits – to existing third parties where the risks are highest. This may involve re-negotiating individual contracts.

Applying the framework to existing third parties – examples of good practice

- **Use a phased, risk-based approach:** Where higher bribery risks are associated with certain geographies or lines of business, phase the retrospective due diligence process in line with higher risk company structures and divisions.
- **Align with existing business processes:** For low and medium risk third parties, reduce duplication and improve resource efficiency by aligning retrospective due diligence with existing business processes, such as contract review cycles.

12.4 Public reporting

Report publicly on your anti-bribery management of third parties

Provide up-to-date information in an accessible manner to communicate to stakeholders your company's anti-bribery commitment and anti-bribery measures related to third parties.

Public reporting is a way in which companies can demonstrate to stakeholders that they manage third parties responsibly and have appropriate systems in place to counter risks, including corruption. This reinforces the anti-bribery messages being communicated in other ways by the company to its current and prospective employees and third parties. The business value of reporting should not be overlooked as it can drive reputation, quality, performance and change.

Anti-Corruption Policy for Representatives

“Microsoft Corporation, and all of its subsidiaries and joint ventures worldwide ('Microsoft'), requires its channel partners (for example, resellers, software advisors, original equipment manufacturers, and distributors), suppliers, vendors, consultants, lobbyists, and any other third-party representative (collectively, 'Microsoft Representatives') to comply with this Policy... Partners are responsible for training all employees who work on behalf of Microsoft. We provide online training free of charge and other resources in the materials to the left.”

Microsoft website²⁰

Public reporting – examples of good practice

- **Define key content:** Include a description of the anti-bribery programme, risk assessment processes, due diligence processes applied to third parties and the programme's contribution to sustainability. Key content can also include the commitments the company requires from its third parties, such as compliance with anti-corruption laws, a code of conduct, a conflicts of interest policy and a gifts and entertainment policy.
- **Engage with stakeholders:** Learn from stakeholders what they consider to be material and what they want to know about the company. Make this a valuable business process which is acted on rather than a superficial process designed purely for communication.
- **Define materiality:** When deciding what to report, bear in mind that material issues are those that are important to stakeholders and that can impact the company's ability to deliver its strategy.
- **Identify business value:** See reporting as a way to increase value. For example, by reinforcing confidence of investors, communicating key anti-bribery messages and driving quality and

²⁰ <https://www.microsoft.com/en-us/legal/compliance/anticorruption/default.aspx?Search=true>

performance.

- **Promote tone from the top:** Show the leadership's commitment to no toleration of corruption through messages and reports on their actions (e.g. site visits).
- **Monitor external expectations:** Monitor and align to the rapidly changing external expectations and regulations for transparency and reporting for both voluntary and mandatory reporting.
- **Integrate communications:** Integrate internal and external communications and reporting as they are mutually reinforcing.
- **Include performance measures:** Use and report on performance measures such as training given, collective action initiatives, availability and use of speak up lines, quality systems used, certifications, third party perceptions of the enterprise's commitment to integrity, contracts terminated, trust of third parties in the company and their understanding of the anti-bribery programme, audits, etc.
- **Tailor reporting:** Provide adapted public reports for your third parties. For example, focused on region, country or nature of relationship.
- **Make it accessible and up-to-date:** Report on third party management in annual reports, sustainability and social reports and dedicated webpages.

12.5 Information management and technology

12.5.1 Documentation

A documentation procedure for third party anti-bribery management is a key aspect of internal controls. It is important for a number of reasons, including:

- **Legal compliance:** In the event of a bribery investigation, the UK authorities will seek evidence of adequate procedures for documentation. Failing to keep adequate documentation is a frequent basis for enforcement under the accounting provisions of the FCPA.
- **Providing an audit or investigation trail:** A full record of transactions will be needed for audits and investigations of a bribery incidents by the authorities.
- **Detection of bribery:** Gaps in documentation, inadequate or falsified books and records of third party transactions are red flags for bribery.
- **Countering bribery:** A strong documentation system can deter bribery.
- **Tracking internal compliance:** Documentation can help track compliance with the anti-bribery programme.
- **Continuous improvement:** Records can provide information to simplify processes or improve controls.

Documentation – examples of good practice

- **Tailor your approach:** Tailor if necessary, the documentation policies and procedures to support third party anti-bribery management.
- **Integrate documentation and workflow:** Integrate the documentation system into the electronic workflow system.
- **Require alignment:** Require the documentation procedures of the third party to match those of your company and monitor their implementation.
- **Record risk assessments and due diligence:** Document fully the risk assessments and due diligence reviews.
- **Clarify accounts codes:** Ensure fully descriptive titles for accounts codes and accurate recording of vulnerable transactions, such as consultancy fees, hospitality, small bribes ('facilitation payments').
- **Maintain meeting records:** Record negotiations and meetings, including any significant informal discussions with third parties especially where they touch upon integrity or ethical behaviour.
- **Tailor retention periods:** For third parties where contracts or relationships extend beyond standard retention periods, consult with the legal department on needs related to anti-bribery and other legislation.

12.5.2 New technology and data management tools

Developments in technology are providing companies access to new sources and an increased amount of supplier data. New technology is speeding up the digitisation of most forms of company information and these are increasingly accessible through electronic means. However, the greatest developments are in the access to information that had hitherto been inaccessible; for example through social media and other forms of big data collection and analysis. This surfeit of data also presents challenges in terms of the technology and the human resources and expertise required to process and analyse the data and turn it into useful information.

The following categories show the various ways that new technology and data management can be used to support the management of third party relationships:

Due diligence on third party relationships

Official and unofficial data sources can be used to gain a more complete overview of a third party's business, directors and management, potential conflicts of interest, relationships with PEPs or other high risk individuals and ultimate beneficial owners. Depending on the perceived risk and availability of information, non-traditional sources including data in other jurisdictions, news aggregators and social media can be considered. Be aware of any local data-privacy restrictions (see "Data Protection Laws" below).

E-procurement systems and vendor management

Technology can also make it easier for third parties to comply with due diligence requirements through the use of self-service portals where the third party can fill in and upload the requisite data and update it

periodically. Such systems can greatly reduce the time and cost of preliminary due diligence for both parties. Supporting systems can pick up anomalies in any data entered and raise red flags.

Continuous monitoring of existing relationships

Automation of ongoing monitoring is often overlooked²¹ but, if well designed, a good system will pick up exceptions such as any changes of ownership, new allegations or court cases, breaking news stories (positive or negative) and any other information that may be relevant for the ongoing commercial management of the relationship. The level of sophistication of such a monitoring system should be in line with the size of the contractual relationship and the level of perceived risk.

Management of existing relationships

Good data management and storage will of course allow for better management of the ongoing relationship. In addition, such systems will be invaluable in the case of any bribery incident or investigation.

Examples of how such a system can be used:

- **Relationship management:** Documenting, analysing and tracking a relationship throughout its course, including contracts, transactions, meetings, negotiations and progress, performance and results, including audits.
- **Compliance:** Tracking compliance with the company's anti-bribery programme using key indicators for internal controls, red flags and non-compliance.
- **Audit trail:** Providing accessible records that can be used as evidence in the event of investigations by auditors or the authorities.

Data accessibility

Information can be processed centrally and made accessible to employees locally through the internet and mobile devices. Access can be given to all employees so that they know which third parties are registered or accredited, or access can be restricted by function or geography as appropriate.

Data protection laws

Due diligence and monitoring processes must comply with data protection laws in the jurisdictions where the company and its third parties operate. Data protection laws can be a significant constraint to carrying out due diligence by preventing companies gaining information on third parties. For example, the UK's Data Protection Act 1988 requires that personal data must not be kept for longer than is necessary. The EU Data Protection Directive provides that data should not be processed at all, excepting where conditions are met in three categories of transparency, legitimate purpose and proportionality. There will be some information that is protected under privacy protection laws and will be restricted to the compliance or legal departments. Some of the information held on a company's system will inevitably be sensitive, such as evidence of bribery risk, conflicts of interest, improper behaviour, weaknesses or red flags.

²¹ Kroll and Compliance Week, 2015, p.21

New technology and data management tools – examples of good practice

- **Consult legal advisors:** Involve legal advisors in the design and implementation of systems to ensure compliance with legislation.
- **Develop and apply new technology:** Decide whether to use commercial software systems, which are widely available for all sizes of company, or whether to design your own solutions. Discuss the design with those in the company who will use the system as well as third parties who may have to input data.

RESOURCES

[Managing Third Party Risk: Only as Strong as Your Weakest Link](#), TI-UK, 2016

13. PROCUREMENT & CONTRACTING

QUICK READ

Procurement and contracting are high risk areas for corruption. Corrupt employees in the procurement and contracting function may solicit or accept bribes and kickbacks from bidders and contractors. They can manipulate procurement processes to favour particular bidders, disguise the basis of decisions to award contracts and even generate funds to be paid to bidders to pay bribes or to be returned in kickbacks.

The company should ensure that it has effective procedures to counter bribery and corruption in its procurement and contracting processes. This will include tailored training for staff, financial controls over payments to contractors. The company should also communicate the anti-bribery programme to contractors and suppliers, and include anti-bribery provisions in contracts, and conduct rigorous monitoring of transactions and high-value contracts.

Key elements:

- **Publicly commit** to fair trading and demonstrate your commitment through your procedures to deter corrupt bidders from participating company tenders.
- Conduct **due diligence** on prospective bidders to identify red flags for bribery and corruption.
- Implement consistent and transparent **review processes** for major contracts to ensure they have not been awarded based on bribery.
- **Monitor** contracting processes, decisions and transactions to identify red flags for collusion between bidders and procurement staff.

BEST PRACTICE

- **Commit to fair trading:** The code of conduct should state that the company is committed to integrity and will operate transparently and fairly in its business dealings. This commitment and the policy of zero tolerance of bribery should be made clear to third parties. This will enhance the reputation of the company, set the tone for the bidding process and, over time, deter demands for bribes.
- **Demonstrate your commitment:** When awarding contracts, the company should communicate and demonstrate that its contracting and purchasing procedures are carried out in line with this commitment.
- **Assess the risks:** The procedures for tendering and contracting should be examined rigorously to identify areas where there is risk of bribery and improvements should be made, such as strengthening of monitoring systems, and controlling rush orders or order changes which heighten the risk of bribery.
- **Monitor:** Check for evidence of bribery or red flags during contract negotiations and in the contract implementation phase (it is in this phase that bribery typically takes place). Software can be used to monitor for red flags, such as unusual financial patterns or employees that are reluctant to take holidays (and hand over contractor relationships to colleagues).

GUIDANCE

13.1 Procurement and contracting

The procurement and contracting function manages the process of tendering for the supply of goods and services, awarding contracts and ensuring they run smoothly. It is one of the operational functions most vulnerable to corruption, particularly the solicitation and receipt of bribes and kickbacks.

Sales and marketing functions that participate in contract tenders are also vulnerable. For example, employees may pay bribes to win orders, gain insider information (such as tender specifications before they are released) or to influence tender specifications or procurement processes to make them more favourable to the company. [Click here](#) to see an example of bribery related to contract specifications.

The company should be rigorous in ensuring all staff engaged in sales, marketing and procurement activities receive appropriate anti-bribery training and are subject to anti-bribery controls, and that its anti-bribery programme and tendering procedures are communicated to and endorsed by all contractors and suppliers. Staff involved in procurement should not receive, or provide, gifts and hospitality from bidding companies.

13.2 Tendering

The company's purchasing and contracting processes should remove any opportunity for employees to steer the award of a contract to a particular bidder. For large contracts, the company should apply a consistent and systematic review procedure to demonstrate the process is free from bribery. The company should be open about the process by which contracts of interest to stakeholders have been opened and awarded. It should notify unsuccessful bidders of its decisions and the basis for selecting winning contracts.

Corrupt employees will have four key aims relating to tendering:

- To manipulate the process for awarding contracts so that corrupt contractors will be selected who are willing to pay bribes and kickbacks.
- To falsify documentation to disguise contracts awarded through bribery.
- To create opportunities for corrupt contractors to improve their margins and earn additional fees to fund kickbacks and further bribes.
- To encourage existing corrupt contractors to bid for other contracts and penalise honest contractors.

13.2.1 Inviting tenders

The company should give equal notice of tenders to all potential bidders (a common way of distorting the process is to tip off one supplier in advance and give others a short period in which to prepare their bid). It should check for red flags, such as the provision of hospitality to procurement staff by potential bidders.

Where bids are to be solicited through advertising and other channels, the company should ensure that they are disseminated widely.

There should be security for handling bids before and after opening so that corrupt bidders are not given inside information about specifications or competitors' bids.

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

13.2.2 Evaluating bids

The evaluation process should be subject to scrutiny, as corrupt employees can manipulate the evaluation criteria and weighting of decisions in favour of their preferred bidders. The bid validity period should also be monitored to make sure that corrupt employees are not deliberately delaying completion of the award process to force successful bidders to drop out. 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 and valid criteria, and that bribery has not played a part in the decision.

13.2.3 Post-tender monitoring

The company should have processes that prevent corrupt employees from generating funds for a bidder to pay bribes or otherwise giving them additional compensation. For example, an employee might help to increase the margins of a contract by accepting reduced quality services and products, or alter a contract after it has been awarded by including increases in fees due to changes in technical specifications. 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.

The company should make sure that equipment and services are actually provided and that they match the specification upon which the contract was awarded. Failures or delinquencies on contracts should be examined and sanctions applied for any breaches of procedures. The company should monitor the management of the contract to check whether honest contractors and suppliers are subjected to harassment or delays either during a contract or when bidding for new contracts. Conversely, corrupt contractors may be treated favourably to reward them for bribes paid during the bidding process and to encourage further bribery.

13.3 Communicating the programme to contractors and suppliers

The company should communicate its anti-bribery programme before awarding a major contract and ensure that contractors and suppliers are willing to conform to it. Contracts should include a clause giving the company the right to apply sanctions, including termination, in the event of a violation relating to bribery. The company should ensure that the contractors' employees understand both the contractor's programme, if it has one, and the requirements of the contract with the company to observe its own programme.

The company should work in partnership with its major contractors, sub-contractors and suppliers to help them develop anti-bribery practices. It should meet them periodically, hold performance reviews and encourage compliance and business integrity. These meetings can inform third parties of developments in the company's programme, help them develop systems, give them information about bribery risks and be used for exchanging information. The company can work with its leading contractors and suppliers to ensure that their employees receive regular anti-bribery training and communications.

13.4 E-procurement systems and vendor management

Technology can also make the procurement process easier through the use of self-service portals where the third party can fill in and upload the requisite due diligence data and update it periodically. Such systems can greatly reduce the time and cost of preliminary due diligence for both parties. Supporting systems can pick up anomalies in any data entered and raise red flags. For more information, see Managing Third Parties (Chapter 12).

13.5 Integrity Pacts

Integrity Pacts were developed as a tool for preventing corruption in public contracting. An Integrity Pact is both a signed document and approach to public contracting which commits a contracting authority and bidders to comply with best practice and maximum transparency. A third actor, usually a civil society organisation (often one of our chapters), monitors the process and commitments made. Monitors commit to maximum transparency and all monitoring reports and results are made available to the public on an ongoing basis.

Integrity Pacts have been around since the 1990s, and have been applied in more than 15 countries and 300 separate situations. They help save taxpayer money, ensure that infrastructure projects and other public works are delivered efficiently, and close off avenues for illicit gain. An update to the Integrity Pact concept in 2016 has seen it draw on major advances in the areas of technology and civic participation.

The Integrity Pact is co-created by TI national chapters, or other civil society partners, and government officials responsible for a particular procurement process. Its clauses are drawn from both international open contracting principles as well as the local legal and social context. In this way the tool is constantly evolving based on lessons learned and best practice around the world as well as up-to-date analysis regarding the country and sector's corruption risk profile. In this way, the Integrity Pact avoids being a one-size fits all approach but rather a living tool that adapts to local opportunities and challenges.

For more information and tools please see [here](#).

CHAPTER APPENDIX

13.6.1 Case study: Bribery in contract specifications - Illegal information brokering by UK civil servant

A senior official at the UK Ministry of Defence (MoD) was given concurrent sentences of two years in 2007 in the UK for receiving bribes of more than £217,000 from Pacific Consolidated Industries (PCI), a US company, in return for providing confidential information to help PCI secure a £4.5 million contract to supply the British Armed Forces with gas containers. When PCI was taken over by another company, due diligence by the acquirer uncovered a total of nine corrupt payments paid over the years. The MoD official enjoyed lavish hospitality from the company: PCI's vice-president paid for the official and his wife to fly to the USA, put them up in luxury hotels and entertained them on his yacht. The information the official supplied included the amount allocated for the gas equipment and the specifications of the kit ordered in previous years. This put other companies bidding for the contract at a disadvantage under the tendering process as they would have received only the general specifications.

14. TRAINING & COMMUNICATION

QUICK READ

Engaging with employees in innovative and integrated ways will help maintain a culture of integrity

Internal communication and training are essential in providing the necessary information, knowledge and skills to directors and employees in relation to the anti-bribery programme. They should bring to life the provisions set out in the company's code of conduct and the anti-bribery policies and procedures.

Engagement with employees through surveys, focus groups and dialogue with line managers can further deepen the way the company interacts with employees on its anti-bribery programme. The company's leadership should reinforce messages with a strong tone from the top (see Chapter 1) and from line managers who have an important role in representing and communicating the anti-bribery programme.

Key elements of best practice

- **Integrated:** Take an integrated approach to all aspects of anti-corruption employee engagement to ensure that employees receive consistent messaging and advice across: training, advice and whistleblowing channels, line management and departmental communications, incentives, appraisal, and recognition.
- **Tailored communications and training:** Implement tailored communications and training based on risk assessments of where bribery is most likely to be encountered by employees. Tailor training to local cultures and needs.
- **Appropriate messages:** Convey anti-bribery messages that are seen by employees as appropriate, attainable and which will build confidence and trust in the company and its integrity.
- **Appraisal:** Build compliance with the anti-corruption programme and completion of training into the appraisal procedure and ensure personnel files document training needs and training received.
- **Continuous improvement:** Encourage employees to make suggestions for improving anti-corruption internal controls and procedures.

BEST PRACTICE

- **Integrated:** Take an integrated approach to all aspects of anti-corruption employee engagement including education, training, advice and whistleblowing channels, line management and departmental communications, incentives, and appraisals.
- **Consistent:** Provide consistent messages whatever the channel and this includes those given in external engagement and public reporting (see Chapter 18).
- **Practical:** Translate the anti-bribery programme into practical guidance and training relevant to all employees in their work.
- **Cross-functional working:** Ensure that legal, compliance, human resources, and business units work together in planning communications, training and delivery.
- **General training:** Ensure that all employees, board members and contractors receive a foundation level of anti-bribery communications and training.
- **Tailored communications and training:** Implement tailored communications and training based on risk assessments of where bribery is most likely to be encountered by employees.
- **Clarity:** State clearly, consistently and accessibly across the company, the values, anti-bribery policies, procedures and expectations.
- **Two-way:** Recognise that engagement with employees is a two way process.
- **Surveys and interviews:** Conduct interviews with employees and board members to determine their perceptions and needs.
- **Orientation:** Ensure that new recruits (including appointments to the Board) are given induction/orientation training on the anti-bribery programme and that intermediaries are also given training following their appointment.
- **Appropriate messages:** Convey anti-bribery messages that are seen by employees as appropriate, attainable and which build confidence and trust in the company and its integrity.
- **Positioning:** Keep the anti-bribery messages alive and at the forefront of employees' minds through means such as line management and departmental initiatives and promotions.
- **Use scenarios:** Use scenarios, case studies and dilemmas as these are valuable in stimulating alertness to risks, along with provoking thought on approaches to use and how to deal with the grey areas likely to be encountered.
- **Be clear on exceptions:** Clear guidance needs to be given on situations when exceptions may be justified (for instance when bribe demands are accompanied by the threat to life, limb or liberty of the employee or to another person).

- **Localise:** Tailor training to local cultures and needs. In addition, as part of tone from the top, board members and senior management will convey the corporate anti-corruption commitment in local communications and by attending local training sessions.
- **Tone from the top:** Involve directors and senior management in the training to reinforce the company's commitment to integrity and countering bribery.
- **Use experts:** Draw on the expertise and real-life experience of managers, employees and industry experts.
- **Evaluate:** Monitor systematically the delivery of training to find out what works and what could be improved.
- **Measure opinions:** Gather, evaluate and use information (including results of employee surveys) on awareness and understanding of the programme. Check employees' confidence in their ability to handle bribery risks, and views on the company's values.
- **Continuous improvement:** Provide incentive schemes for employees to make suggestions for improving anti-corruption internal controls and procedures.
- **Appraisal:** Build compliance with the anti-corruption programme and completion of training into the appraisal procedure and ensure employee records document training needs and training received.
- **Document:** Record the company's training given as this will shape future training plans and also serve as evidence of the adequacy of the company's anti-bribery programme.

GUIDANCE

14.1 Introduction

Aim: To develop an integrated approach for internal communications, training and engagement to support and facilitate the company's anti-bribery commitment.

Internal communication and training have traditionally been the main ways in which companies can convey the anti-bribery policy and programme to all employees. Now, companies are recognising the value of taking a comprehensive and integrated approach to employee engagement. An integrated approach brings together all aspects of engagement with employees across their activities with the company. For example, this includes the following aspects listed below:

- On-boarding
- Internal communications
- Training
- Encouraging quality, excellence and continuous improvement
- Remuneration and incentives
- Appraisal and recognition
- Access to advice and ability to raise concerns
- Disciplinary processes
- Exit or termination

Companies which integrate their anti-bribery engagement with employees in innovative ways are in a better position to expect that those employees' will act with integrity, which reduces the likelihood of bribery occurring. The compliance and/or legal functions, supported by human resources, should:

- identify the training needs of employees
- design training, including key messages
- maintain personnel records
- ensure appropriate employee recognition
- determine the role of line management in the engagement

The methods of anti-bribery communications and training are long-established with content and delivery generally developed in-house and/or by numerous external providers. Innovation is now taking place as companies explore how to shift the tone and focus of delivery. A 'command' approach can fall short as this method can fail to capture the interest or buy-in of employees. Instead, companies want employees to be committed to, and engaged with, the anti-bribery programme; to be proactive and creative in identifying weaknesses, suggesting improvements and conveying a strong message externally when representing the company.

The challenge for companies is how to enrich the content and delivery to ensure that the anti-bribery message is high on each person's agenda, among all other important messages for employees.

Codes of conduct, policies and procedures, and business conduct guidelines will set out the company's stance and expectations on values, standards and behaviour, but these are often not read fully or understood. Simply asking employees to sign that they have read and understood the relevant document is not enough. The company needs to ensure that its anti-bribery policies are properly embedded in its working practices and that continuous improvement is encouraged and recognised.

Internal communication and training should aim to ensure that employees:

- Know what bribery is and how to recognise it.
- Know about particular transactional risk areas and how to handle them.
- Understand the relevant laws.
- Know what to do when confronted with situations where bribes are requested.
- Understand the wider issues relating to bribery including the potential adverse impacts of bribery on: the company, employees and societies.
- Are committed to the company's culture of integrity.
- Will act in the right way.
- Understand what they must do contractually.
- Have trust in the company.
- Contribute to continuous improvement.
- Know they will be recognised by the company for their commitment.
- Know they will be measured on compliance when remuneration levels are evaluated.
- Understand the potential consequences for the company and for the employee when things go wrong.
- Are aware of how things can go wrong, including error and negligence.

- Know where and how to get more information.
- Know how to raise concerns.
- Understand that the company will protect and support employees who refuse to pay bribes or whistleblow.
- Are encouraged to take continuing interest in updates on this subject.
- Critically examine their day-to-day activities and propose solutions or improvements to processes.
- Understand the importance of their role as 'Integrity ambassadors for the company

It is crucial to measure the effectiveness of communications and training in order to then have a basis for improvement of these activities. Plans and targets should be set for measuring employee understanding of, and attitudes to: behaving with integrity, the anti-bribery programme, trust in the company, and the company's integrity.

Examples of corporate approaches to internal communication and training:

- Intel click [here](#)
- Vodafone click [here](#)

14.2 Internal communication

Internal communication, such as general communications, promotional materials and targeted campaigns, provides employees with essential baseline information on the company's anti-bribery commitment while also raising awareness and understanding of the anti-bribery programme. A wide range of channels can be used including: websites, intranet, social media, mobile technology, postings on bulletin boards or walls, handbooks, employee manuals, newsletters, employee meetings, suggestion schemes, advice and helplines. The content and language of communications should be adapted to reflect varying audiences, localities and countries.

14.3 Line management

The anti-bribery programme and related messages can be communicated by line management and this should also enable discussions on key issues. Feedback and concerns voiced at discussions should be noted and provided to the compliance function in order to contribute to improving the anti-bribery

programme. The approach should be to build the trust and confidence of employees in their right and access to voice and discuss concerns on anti-bribery issues with management.

In the first instance, the aim of the company should be to encourage employees to raise matters with their line manager or the compliance or ethics officer. This may be supplemented by giving the employees the right and protection to enable them to use a 'leapfrog' approach where they can jump management levels to voice and discuss concerns in situations where they are not comfortable speaking to their line manager. Regular opportunities should be provided to enable employees to engage in free and open discussion in relation to the anti-bribery programme and potential risks of non-conformance. This can be through online training, scheduled meetings, education courses, focus groups and employee appraisals.

14.4 Training

Basic training on the anti-bribery programme should be given to all employees and board members, most likely as part of wider training on the company's code of conduct. In addition, dedicated, and tailored anti-bribery training should be given to those in high risk functions.

Training should provide an understanding of what constitutes bribery, while also providing information in relation to improper practices and likely risk areas. It should aid recognition of how bribery demands take place and set out how to respond. The training should ultimately support the development of skills to avoid or resist demands or solicitation for bribery. The training should also build employees' confidence and trust in, and commitment to, the integrity of the company. In this way the company can encourage employees to act as 'integrity ambassadors', representing and promoting the company's commitment through their actions.

The delivery of training can be facilitated through a range of training methods including: intranet, remote e-learning, external courses, seminars and conferences, and publications and training materials. Face-to-face training is vitally important as it communicates directly the company's commitment, the significance of bribery risks and how to counter them, and is much more effective than remote e-learning. This can be delivered by either internal or external trainers. It is also important as it provides employees the chance to discuss topics and concerns with well-prepared instructors and experienced managers. The employee discussions can also contribute to the improvement of the anti-bribery programme. Suggestions and concerns should be captured and fed back to the compliance function. Employees should then be assessed at the culmination of the training (for example, by a multiple choice questionnaire) so that they can demonstrate their understanding.

Courses and other training delivery methods should also be evaluated to test the quality and value of the content, and whether it has led to any substantive changes in the way employees operate. This may be difficult to measure but feedback should be gained from managers as to whether they have seen any evidence of changes. The delivery of training should also be monitored and documented. The employees' personnel files should be updated to record their attendance at the training and a process should be put in place to ensure that they receive regular refresher training.

Free online training for SMEs

The costs of anti-bribery communications and training may seem prohibitive for SMEs but there are ways of reducing the cost. This can be by focusing activities on the areas of highest risk, and using communication and training techniques such as video and interactive media. Larger companies, particularly clients of SMEs, may be able to provide support.

Transparency International UK has also provided a free online training resource, available at <http://www.doingbusinesswithoutbribery.com/> This free 1.5 hour online learning module provides comprehensive anti-corruption training designed by leading experts in the field, and enables organisations to provide training for all their personnel.

14.5 Training the board

Training should also be provided to board members. This will be designed to reflect their fiduciary and statutory responsibilities and is vital in order to enable them to have the skills and knowledge to carry out their role in providing leadership, addressing risks, building the company's culture of integrity and governance and providing tone from the top. At the same time, the training will need to be sensitive to the time demands on board members while also being conscious that they may be over confident about their knowledge on these training topics.

Board training content can include:

- The external environment for anti-corruption including changes in legislation, recent cases (including fines) and emerging trends.
- The aspects of the main relevant laws, including any personal liability.
- Related statutory responsibilities of directors.
- High level discussion on topics such as integrity culture, B20 and other inter-governmental initiatives.
- Independent assessment role of the board and its committees.
- How the company culture is managed and assessments of its status.
- The implications of the company's risk approach.
- The risk assessment methodology.
- The results of assessments.
- The key identified risks and any residual risks.
- How risks are mitigated.
- The methodologies for reviews and audits and the results.
- Specific aspects of the anti-bribery programme related to directors' activities including conflicts of interest, the 'revolving door', gifts, hospitality and expenses, lobbying.
- Where to seek advice.

CHAPTER APPENDIX

14.6.1 Example: Intel's integrated anti-bribery engagement programme

'At Intel innovation is core to everything we do; our Ethics & Legal Compliance team strives to inspire our employees through cutting-edge educational programs.' Jo Levy, Chief Compliance Officer, Intel', 2016.

Intel arranges anti-corruption communication campaigns around International Anti-Corruption Day. In 2015, this engaged an employee population of approximately 110,000 with a multi-day campaign designed to empower employees to take a leadership role in the conversation about bribery and compliance. The program leveraged journalism, social media, employee-generated content, gaming and peer-group participation for immediate feedback and to socialize learning.

'Ethics and Compliance Business Champions serve as the liaisons for the Ethics and Legal Compliance group in business groups and sites across the company. They are responsible for advocating and monitoring ethics and compliance, helping drive corporate initiatives, and serving as local experts.

The 2015 anti-corruption awareness campaign included an online selfie contest open to all employees and generated over 20,000 unique views. The company arranges an Ethics and Legal Compliance Group speaker series and a newsletter which serves to educate Champions on trends in areas such as conflicts of interest, privacy and security, antitrust, insider trading, product regulations and standards, anti-corruption, and export compliance. Through an Intel Ethics and Compliance Excellence Awards program, launched in 2010, the company regularly recognises teams and individual employees for their contributions to ensure Intel's ethical and compliant environment. In 2015, five teams and individuals received the award. In addition, as part of an internal employee recognition program, employees regularly honour their peers for role modelling Intel values. Each quarter, thousands of employees recognize each other for demonstrating uncompromising integrity in their day-to-day work at Intel.'

Intel Corporate Responsibility Report 2015

14.6.2 Example: Vodafone's Doing What's Right programme

'We want to maintain a culture where employees do the right thing automatically, not just because they were told they have to or because they are afraid of potential consequences. Employees across the Group receive regular communications, online refresher training, face-to-face sessions and team briefings on various aspects of our compliance programme, depending on their role. The Code of Conduct learning and awareness programme, Doing What's Right, is designed to help employees across the Group understand their responsibilities to our people, partners and shareholders. Through this programme, employees complete e-learning courses every two years on the Code of Conduct, anti-bribery, privacy, competition law and customer data security. Line managers attend face-to-face briefings from our senior leaders on the key topics of Vodafone's Code of Conduct and their role as a people manager.

The Doing What's Right programme is rolled out to new employees as early as possible when they join Vodafone, so that they are clear on our standards from the start. This applies to employees joining us through acquisitions as well as new starters.'

Communication and training: 'Our anti-bribery policy is included in our Code of Conduct and promoted on a dedicated intranet page with clear and concise guidance. It is supported by a global training and communication programme that includes an anti-bribery e-learning tool available to all employees. Face-to-face workshops in all our markets help to ensure that employees working in higher-risk areas (such as procurement, enterprise and government relations) have a practical understanding of the key issues. In 2014/15, our global Doing What's Right programme included communications on our Code of Conduct and offered additional training for line managers on our main policies, including anti-bribery. To promote further engagement with our policies, we maintain a community webpage on our internal social media site, Circle, which allows users to post short updates and links to useful documents and websites and to seek advice where required.'

<https://www.vodafone.com/content/sustainabilityreport/2015/index/operating-responsibly/ethics.html>

Accessed 31 October 2016

RESOURCES

[*Doing Business without Bribery*, Transparency International UK, 2013.](#)

This is a free online 1.5 hours learning module providing comprehensive anti-bribery training designed by leading experts in the field. It also can enable companies to benchmark their own training programmes against a best practice standard.

[See also TI-UK's Trainer's Handbook](#)

[*How to Bribe: A Typology of Bribe Paying and How to Stop It*, Transparency International UK, 2014.](#)

Drawing upon Transparency International's global experience, this publication provides legal cases and real-life stories to illustrate how bribes are paid in practice. From excessive hospitality to offshore agreements, *How to Bribe* is designed to help individuals and companies anticipate, recognise, avoid, and resist bribery.

[*RESIST: resisting extortion and solicitation in international transactions. A company tool for employee training*, Transparency International and others, 2012.](#)

[*The Fight Against Corruption: E-Learning Tool*, UN Global Compact](#)

An online learning platform to obtain practical guidance on how to fight corruption in all forms through six interactive-video dilemma scenario

Training services from Transparency International UK

Effective anti-bribery and corruption training must resonate with staff. Employees need to understand what anti-corruption means and why it is important, and to make a personal commitment to behave in an ethical way.

As the world's leading anti-corruption NGO, TI-UK has been fighting corruption globally for more than 25 years and has a special insight into the impact of corruption on economies, societies and ordinary people's lives. TI-UK provides its experience and expertise to companies either as part of in-house staff training programmes or through stand-alone training courses.

We can assist you with general and tailored anti-bribery and corruption training

General anti-bribery and corruption training

For example:

- Staff training sessions, such as training for sales staff or inductions for other staff who might be exposed to corruption risks in their line of work
- Talks at staff conferences or team building events to help build awareness of the importance of countering bribery and corruption

Tailored training

Expert perspectives can be given on a range of topics, such as:

- Using agents and intermediaries
- Managing supply chains
- Performing due diligence for mergers and acquisitions
- Developing Adequate Procedures to comply with the UK Bribery Act

Typically, the specialist training courses are aimed at:

- Compliance teams, within organisations of all sizes and across all sectors
- Corporate affairs
- Senior and expatriate management

For more information on courses or to discuss training requirements, contact training@transparency.org.uk.

15. SPEAK UP & ADVICE CHANNELS

QUICK READ

Speak up and advice channels are for employees and others to seek advice and raise concerns about issues, including bribery. Speaking up or, as it is sometimes called, whistleblowing, has brought to light many significant bribery cases.

Advice channels allow employees to clarify policies, and receive guidance about how to handle sensitive situations. Such channels are most effective when there is a strong corporate culture of integrity so that employees trust that requests for advice or speaking up will be handled promptly, thoroughly and fairly. Advice can be given in many ways and the company should explore and develop an integrated range of routes by which employees can receive support.

Key elements of best practice

- **Open culture:** Build a culture of trust so that employees feel able to seek guidance or discuss issues with their managers or the relevant support functions and are confident to use speak up channels if they feel this is necessary.
- **Provide a range of channels:** Create a range of ways for employees to seek guidance. In addition to a hotline, companies should encourage discussions with line managers, or encourage management to have an open door policy. Opportunities to meet with compliance officers, personnel managers or relevant networks of employees should also be created.
- **Proper treatment:** Ensure that those who speak up are not harassed or penalised, but recognised or rewarded for their efforts.
- **Promptness:** Deal with matters raised promptly. Check case closure times as delays can weaken employees' trust in the process and the company's commitment to integrity. Delays may also have legal consequences.
- **Complete the process:** Ensure that every case follows the relevant process through to conclusion and that the employee is thanked for their commitment to upholding standards in using the channel. If possible employees should be asked to comment on their satisfaction with the process, although it should be noted that not every case will reach an outcome sought by an employee.
- **Analyse:** Monitor and analyse the use of advice and speak up channels as they can provide early warning signs, such as that the bribery programme may need attention. Capture data from all channels used to seek advice including discussions with management, compliance, HR and other functions.

BEST PRACTICE

- **Open culture:** Build a culture of trust so that employees feel able to seek guidance or discuss issues with their managers or the relevant support functions and are confident to use speak up channels if they feel this is necessary.
- **Consider an external provider:** Decide whether greater confidence will be provided to employees and third parties if a speak up channel is provided internally or managed by an independent provider.
- **Human resources is a key player:** Involve the human resources function in all aspects of development, design, monitoring and improvement of the advice and speak up channels.
- **Provide a range of channels:** Create a range of ways for employees to seek guidance. In addition to a hotline, companies should encourage discussions with line managers, or encourage management to have an open door policy. Opportunities to meet with compliance officers, personnel managers or relevant networks of employees should also be created.
- **Communicate:** Explain how to use the speak up channel, what feedback will be received, how confidentiality is safeguarded, and how the employee will be protected. This can be done through the training programme, for example.
- **Make the advice channels resources of choice:** Positioning and designing the advice line as a resource can increase its use and will help avoid employee error, misjudgement or improper conduct.
- **Promptness:** Deal with matters raised promptly. Check case closure times as delays can weaken employees' trust in the process and the company's commitment to integrity. Delays may also have legal consequences.
- **Complete the process:** Ensure that every case follows the relevant process through to conclusion and that the employee is thanked for their commitment to upholding standards in using the channel. If possible employees should be asked to comment on their satisfaction with the process, although it should be noted that not every case will reach an outcome sought by an employee.
- **Act on concerns:** Inform senior management promptly about speak up cases where they are well founded and of high significance.
- **Proper treatment:** Ensure that those who speak up are not harassed or penalised, but recognised or rewarded for their efforts.
- **Independent review:** Review the effectiveness of the channels whilst ensuring users' identities are protected.
- **Analyse:** Monitor and analyse the use of advice and speak up channels as they can provide early warning signs, such as that the bribery programme may need attention. Capture data from all channels used to seek advice including discussions with management, compliance, HR and other functions.

- **Ensure review by leadership:** Report critical issues promptly to senior management and provide regular reports to senior management and the board on the use of the channels including any implications.
- **Report publicly:** Let stakeholders know that your company operates with an open integrity culture, and that the company is trusted by, and trusts, employees. Reporting should detail how employees and others are encouraged to seek advice, raise concerns or blow the whistle. Report regularly and openly both internally and externally on the use, adequacy and effectiveness of the advice and speak up channels including information on the procedures, topics raised, handling and outcomes.

GUIDANCE

15.1 Introduction

Advice and 'whistleblowing' or 'speak up' channels are one of the routes by which employees and others can seek advice and feel able to raise concerns about issues including bribery. Whistleblowing is the term for when an employee or other person sounds an alarm to reveal knowledge or suspicion of wrongdoing or negligence within a company's activities. The employee may also be raising concerns about one of the company's third parties whose activities may negatively impact on the reputation of the company. Note that as 'whistleblowing' is a pejorative term in many cultures, the term 'speak up' is preferred, as this also better conveys what staff are expected to do when confronted by concerning issues.

Speak up channels are important; those who use them have revealed significant corporate bribery and other corruption. Employees should be aware that it is their duty to report any concerns they may have to senior management about contraventions of the anti-bribery programme. The contract of employment may make this a formal requirement however, its application will be subject to the legal and cultural context. The company should aim to ensure that the advice and speak up channels support the communication and implementation of the anti-bribery programme and form a positive component of the way the company respects and builds the trust of its employees.

15.2 Openness and trust

Advice and speak up channels succeed when there is a corporate culture of openness and trust and people feel able to seek advice and clarifications or to raise concerns without fear of retaliation. Openness means providing accessible channels and encouraging employees to use them and management being willing to respond to requests for advice. It also requires those dealing with requests to act with genuine commitment and ensure that action will be taken and carried through to conclusion. Not every use of the channel will necessarily be appropriate (for instance it might be a personal grievance) and not every review will result in an outcome that validates the allegation or concern, but it is important for building trust that concerns are engaged with and not dismissed early on.

Building trust in the channels will be supported by the tone from the top and positive behaviour from all management. This means:

- A willingness to engage with employees on sometimes complex and difficult topics.
- Building a track record built over time of a genuine commitment to the thorough treatment of requests for advice and speak up reports.
- Ensuring that those who speak up are not harassed or penalised, but recognised or rewarded for their efforts.
- Employees have positive attitudes based on their experience of using the channels.

- Leadership review of the use of hotlines, how effective they are, the attitudes of users and the outcomes. This acts as a check that the procedures are working and also allows the leadership to understand the nature of the requests and concerns being raised.

Further, trust should be built by the company having a clear policy for advice and speaking up underpinned by a commitment that no employee will be penalised for speaking up. The policy and procedures for use of channels should be communicated and promoted within the company and appropriate training given to employees and management.

Finally there is still a risk that employees view whistleblowing or speaking up negatively; as informing on colleagues, particularly in societies where informing on others is or was encouraged by repressive political regimes. Emphasising the help or advice aspect can create more favourable image in areas or sectors where these perceptions may be prevalent.

15.3 Provide a range of channels

Employees should be offered and encouraged to use a range of routes to seek advice and discuss issues. Apart from hotlines, other channels can also be effective and may include:

- Going to immediate line management.
- Direct access ('leapfrog') to higher management.
- Open door schemes for employees to voice concerns with management.
- Advice from trusted people such as an ethics or compliance officer, a trusted employee or union or an equivalent representative body.

The company can also establish an advice or support network which can present a human face as opposed to a formal hotline or management channel. For example, GSK has established a network of regionally based anti-bribery and corruption specialists who spend a significant amount of their time in its markets, speaking to people, delivering training and conducting reviews with a cross section of senior management. They handle significant numbers of queries each year which range from straightforward questions to intricate inquiries.

15.4 Effectively manage speak up and advice channels

Trust in speak up and advice channels is built through the confidence employees have in the function that manages the channels. Responsibility can be assigned to an independent function, such as a compliance or ethics officer, who reports on the management of channels to senior management. Reviews of the use of the channels and decisions made should be carried out (with appropriate controls implemented to protect identities of those using the channels). The reviews will serve to check the quality and effectiveness of the use of channels, and protect the interests of users by making sure that systems are not open to abuse.

Speak up channels can be run in-house but a company may judge that employees would have greater confidence in the channel if it was provided by an independent professional firm. Whatever the

assignment of responsibility, it must be ensured that the speak up and advice hotline conforms to the relevant policies of respect for the individual and data security and privacy.

The use of channels should be documented and a records retention policy applied for the period which documents are to be held. Documentation is important for several reasons:

- Providing a trail in the event of an audit, investigation or a further action by the employee.
- Recording timelines.
- Allowing analysis for improvement of the advice and speak up channels.
- Providing information for reviews by management and the board.
- Providing data for use in public reporting.

15.5 Importance of advice channels

Advice channels form part of the range of internal communication methods available to the company. Formal communications such as, the company's code of conduct, guidance handbook and detailed procedures cannot anticipate every situation or question; the implementation of an advice channel fills the gap by giving specific interpretation and advice. Countering bribery includes complex areas such as how to handle gifts and hospitality or decide when there is a conflict of interest and the company's communications and guidance may not be able to deal with the nuances or dilemmas of particular circumstances.

Advice lines are important as they allow sensitive questions to be raised in confidence. Employee or third parties may be reluctant to ask a manager for advice on a topic because although it may not concern an instance or suspicion of corruption, it may relate to a sensitive issue such as a potential conflict of interest involving a relative. The primary role of an advice channel is to be a point to which employees or others may turn to for advice but it may also be used as a route for receiving comments and suggestions for improvements to the anti-bribery programme.

15.6 Encourage issues to be raised internally

A company should encourage and facilitate employees to seek guidance or raise issues internally rather than seeking external recourse such as legal action or making a report to the media. Internally managed issues usually follow a set procedure but once an employee feels unable to trust the company to resolve an issue and goes outside, the path and resolution become unpredictable and can lead to adverse results for the company. This could result in a missed opportunity, both for the company and the whistleblower, to address the matter in a structured way with a proper review structure in place.

Employees should be informed of the company's policy regarding channels through communications and training. Employees should be aware of the advantage of using internal channels as well as their rights if they whistleblow externally. For instance, in the UK, the law provides that an employee may make a whistleblowing disclosure externally without losing their rights under the relevant law. In relation to external disclosures of this type, one option is to make the disclosure to a "prescribed person" (commonly a regulator, professional body or MP).

15.7 Security

The company must offer adequate protection to those who use whistleblowing or advice channels. Concerns about bribery are often sensitive and so the company should provide the option of reporting anonymously. The security provisions will vary according to the laws of local jurisdictions. In some countries such as the US, speak up channels must have the option that users be anonymous while others countries do not permit anonymity but require that they are suitably confidential and secure.

The process for handling whistleblowing should include provision for dealing with false and malicious allegations. This requires careful management as this may permit a review to be undermined or result in a whistleblower being penalised. The legitimate use of whistleblowing mechanisms must not provoke retaliation.

15.8 The legal & external context

Unfortunately, it remains common for those who speak up to be penalised and harassed by way of dismissal, stalled promotions, victimisation, non-payment of bonuses or attempts to restrict whistleblowing by terms in their employment contract. In such situations the employee may need to bring the issue to the attention of the authorities.

Recognising the unique and beneficial role of whistleblowing in exposing wrongdoing, some countries have introduced laws to protect and encourage whistleblowers. Many however do not have such protections; for instance, a Transparency International 2013 report on whistleblowing legislation in European Union countries found that that only four countries had advanced legal frameworks for whistleblower protection, 16 had partial legal protections and the remaining seven countries had either very limited or no legal frameworks.²²

Seven OECD countries encourage whistleblowing by providing financial incentives.²³ In the United States, the US Dodd-Frank Act and the False Claims Act provide for substantial rewards for whistleblowers. The Foreign Corrupt Practices Act also provides for rewards to whistleblowers up to 30 percent of the recoveries but only one award is believed to have been made under this provision, and the details have not been made public by the Securities and Exchange Commission (SEC).

Case study: Whistleblower penalised by management but ultimately rewarded by the law. [Click here.](#)

There is growing public awareness and support for whistleblowing, partly driven by continuing disclosures through leaks exemplified by the WikiLeaks, Panama Papers and Unaoil disclosures. In 2015, the US SEC received nearly 4,000 whistleblower tips, a 30 percent increase over the number of tips received in 2012.²⁴

²² Whistleblowing in Europe: Legal protections for whistleblowers in the EU, Transparency International, 2013. http://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu

²³ Committing to Effective Whistleblowing Protection in the Public and Private Sectors, OECD, March 2016

²⁴ 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program, U.S. Securities and Exchange Commission.

CHAPTER APPENDIX

15.9.1 Case study: Whistleblower penalised by management but ultimately rewarded by the law

In 2016 Tenet Healthcare resolved criminal charges and civil claims relating to a scheme to defraud the United States and to pay kickbacks in exchange for patient referrals. The Tenet scheme was to pay kickbacks to a medical facility to induce them to refer over 20,000 expectant mothers from the illegal immigrant community to Tenet medical facilities so Tenet could bill Medicare and Medicaid. The Tenet scheme was exposed by a whistleblower who was a subsidiary's chief financial officer. When he discovered the scheme, the CFO voiced his concerns about the fraudulent arrangement to company leaders but was then fired without reason.

Of the total fine of \$513 million, \$368 million related to the civil settlement made under the federal and Georgia False Claims Acts. The Acts permit whistleblowers to file suit for false claims against the government entities and to share in any recovery. Ultimately the whistleblower was rewarded by the law, and his share of the combined civil settlement amount was approximately \$84.43 million.

RESOURCES

- [*International Principles for Whistleblower protection*, Transparency International, 2013.](#)
- [*Whistleblowing in Europe: Legal protections for whistleblowers in the EU*, Transparency International, 2013.](#)
- [*Speak Up Report*, TI-Ireland, 2015](#)

16. ROLE OF HUMAN RESOURCES

QUICK READ

A company's culture of integrity and the quality of its anti-bribery risk management are only as good as its employees who, in turn, need to be motivated to uphold the company's values and trained to recognise and appropriately respond to bribery risks. The human resources function has a critical role to play here, and can work with other functions to design and implement key elements of the anti-bribery programme such as communications, training, and advice and speak up channels. A company's HR team also has a key role to play in recruiting the right people and ensuring that only those who demonstrate the right behaviours and values are promoted.

Key elements of best practice

- **Recruitment:** Recruit and appoint the right people. Build ethics and integrity factors into the recruitment process including enhancing due diligence and discussion on ethical decision-making and judgment. Make sure new recruits are fully trained in the anti-bribery programme.
- **Anti-bribery programme design:** Human resources should advise on the design and implementation of policies and procedures to ensure that they align to personnel practices, are workable and appropriate across the company's operations.
- **Incentivise, appraise and recognise:** Design remuneration and incentives so that they do not lead to misaligned compensation. Demonstrate to employees through appraisal that they will be rewarded for positive support of the anti-bribery programme e.g. recommendations for improving checks and controls, promotion of the anti-bribery commitment in external activities and communications. This moves the employee focus from compliance with the programme to the active implementation and improvement of the programme.
- **Discipline:** Apply sanctions fairly, consistently and, where appropriate, openly for violations of the anti-bribery programme.

BEST PRACTICE

- **Assess:** Review how the human resources policies support the anti-bribery programme.
- **Role of human resources:** Regularly review the integration of human resources in the design, implementation and review of the anti-bribery programme.
- **Anti-bribery programme design:** Human resources advises on the design and implementation of policies and procedures to ensure that they align to personnel practices, are workable and appropriate across the company's operations.
- **Employee input:** Employees and their representative bodies are consulted in the design, communication and monitoring of the anti-bribery programme.
- **Integrate:** Embed anti-bribery commitment in human resource spheres of influence including employee recruitment, induction / orientation, training, performance review and appraisal, promotion and recognition systems.
- **Monitor:** Regularly check human resource policies and procedures to determine how they need to be changed to actively support ethical and integrity behaviours of employees.
- **Protect:** Ensure employees will not be penalised, disciplined or dismissed for refusing to undertake business deals where bribes are solicited or demanded.
- **Recruitment:** Recruit and appoint the right people. Include assessment of ethical decision-making and judgment as part of the recruitment process. Where necessary used enhanced due diligence on senior hires or those in a high risk position.
- **Due diligence:** Appropriate due diligence is applied when appointing board members and selecting recruits for functions, particularly senior management and employees who are likely to be placed in high risk positions.
- **Revolving door policy:** Working with the company's government and public affairs functions to provide a policy to address personnel movements between the company and the public sector, in either direction.
- **Integrity in recruitment and appointment:** The recruitment processes should be transparent, objective and should itself have anti-bribery controls. If the local environment is prone to corruption, it may be important to demonstrate publicly that recruitment is systematic and untainted by bribery, conflicts of interest, favouritism or nepotism.
- **Induction and orientation:** Make sure new recruits are fully trained in the anti-bribery programme.
- **Contractual requirement:** Make compliance with the employee Code of Conduct, and ideally to the anti-bribery programme, a term of the contract of employment
- **Train:** Ensure there is regular training tailored to assessed risks and relevant to the relevant category of employee.

- **Recognise:** Demonstrate to employees that they will be rewarded for positive support of the anti-bribery programme e.g. recommendations for improving checks and controls, promotion of the anti-bribery commitment in external activities and communications. This moves the employee focus from compliance to active implementation and improvement of the programme.
- **Remuneration:** Design remuneration and incentives so that they are aligned with the company's anti-bribery programme.
- **Bonuses:** Link executive bonuses to anti-bribery performance in functions under their responsibility.
- **Discipline:** Apply sanctions for violations appropriate to the offence in a consistent and open fashion.
- **Promote:** Promote only staff that exhibit the right behaviours and attitudes and decline promotion to those that do not, even if they meet or exceed financial targets.

GUIDANCE

16.1 Introduction

A company's culture of integrity and its reputation as an ethical organisation depend on the behaviour of its directors and employees. As such, the human resources function has a vital role in building an embedded culture of integrity. Human resources should also contribute to the design and implementation of the anti-bribery programme and work closely with other anti-bribery support functions and operational functions such as marketing, purchasing and procurement.

Human resources should be consulted when the anti-bribery program is being designed and implemented across the company, particularly when there is a need to consider complex organisational structures, varying business units and the diversity of employees and cultures across the company's operations. The anti-bribery requirements for contractors carrying out outsourced functions such as procurement and financial administration will also need to be aligned to those for employees.

The goal must be that a company's directors and employees conduct themselves with the highest levels of ethical integrity and are given the knowledge, skills and support required to achieve this. A strong reputation for ethics and integrity will also give companies a positive reputation in their market and can assist the company in attracting employees who emphasise ethical conduct.

This section describes the various areas in which human resources can either support or lead in the design and implementation of the anti-bribery programme.

16.2 The supporting role of human resources

16.2.1 Corporate commitment to ethics, integrity and values

Human resources can support the board and senior management in embedding a culture of integrity across the company. This will include shaping corporate messages and incorporating these in personnel policies, communications and training.

Human resources can also contribute to the development of relevant corporate policies and the company Code of Conduct as these govern and influence the behaviour of employees and directors. Integrity and commitment to anti-bribery should be incorporated in the Code of Conduct and business conduct guidelines for directors, employees and third parties. Compliance with the Code of Conduct should form part of the employee employment contract and board member contract. The requirements and expectations in the Code of Conduct and employment contracts should be relevant, achievable, clearly worded and, where necessary, copies of these documents should be provided in local languages.

16.2.2 Design, implementation and improvement of the anti-bribery programme

Human resources has a central part to play in the design and implementation of the anti-bribery programme as they will have insights about the practical application of the programme to all employees and board members. Human resources should consider whether the programme:

- Is balanced with employee's objectives
- Is not undermined by current incentive structures
- Should be referenced in employee's appraisals
- Includes appropriate sanctions for violations

16.2.3 Organisational structures and human resources planning:

Organisational structures vary from company to company but, whatever the structure and its components, human resources should contribute to the following aspects:

- **Responsibilities defined:** Responsibilities for implementing the anti-bribery programme should be clearly allocated and job descriptions at all levels specify responsibilities and performance activities.
- **Equal treatment:** Care should be taken that the anti-bribery programme does not discriminate (and could not be seen to discriminate) against gender, nationalities, cultures or sectors of the workforce.
- **Managing employee concerns:** Specific controls may need to be applied to some transaction areas or markets and employees may have concerns about the requirements and implications. Consultation with the employees and representative employee bodies may be needed in such situations to explain the case for the controls and to address any concerns raised.

16.2.4 Communications

Anti-bribery communications should be developed through cross-working with HR, legal, compliance and business unit managers and also consultation with employees to ensure the messages are understood and communicated in an accessible way. These communications can take multiple forms, including printed documents, posters, information on the company intranet and website, and posts on social media.

16.2.5 Training

Human resources may well have overall responsibility for ensuring adequate anti-bribery training for employees. If so, the provision and content of anti-bribery training should be planned with input from Compliance and other support functions.

Considerations for human resources role are:

- To regularly review how responsibility for delivering anti-bribery training has been assigned, whether that training is being delivered effectively and whether those responsibilities could be better structured.
- Anti-bribery and corruption training will be included in induction training and regular refresher training, supplemented by tailored training where required by specific employees as determined by the results of risk assessments.
- Human resources will have overall responsibility for ensuring that employees receive basic training which is monitored, measured and that employee participation and performance are recorded on personnel files and forms part of annual assessments.
- For global companies, the challenge will be to ensure consistent delivery of key messages, information and standards of integrity in formats appropriate to local markets, cultures and needs.

16.2.6 Advice and whistleblowing channels

Advice and whistleblowing channels are ways in which employees can seek information or report, in confidence, suspicions or knowledge of bribery and corruption. The channels will likely cover more than bribery and corruption. Human resources may have an advisory role to play, but whatever the assignment of responsibility, human resources will wish to ensure that the channels align to personnel policies for respect for the individual, data privacy, employee contracts, ethical and line management, and disciplinary processes.

16.2.7 Incentives and remuneration

Incentive schemes are an important way of encouraging desired behaviour from directors and employees. Scandals in many sectors have shown that misaligned incentives have been one of the drivers of corrupt practices. Incentives to meet financial targets have led to corrupt behaviour including fraud, mis-selling, falsification of records, manipulation of accounts, anti-competitive practices and bribery. Extensive guidance on this topic is provided in the TI-UK publication [*Incentivising Ethics: Managing incentives to encourage good and deter bad behaviour*](#).

Incentives will need to be aligned to job objectives and human resources should work with business functions and units on this. Employees should be incentivised, assessed and recognised using a variety of measures such as achievement of key business indicators or on less tangible measures of personal achievements assessed during the appraisal process.

Human resources should advise on setting remuneration, bonuses, commissions and benefits for all employees and board members. Good governance practice requires that a board delegates authority to a board remuneration committee. The challenge for the company is to design structures that encourage and reward employee and board member performance without incentivising improper behaviour.

16.2.8 Anti-bribery controls

Human resources should contribute to the design and implementation of the control activities, (the policies and procedures that help ensure management directives are carried out and specifically, meet the company's objectives for compliance with the anti-bribery policy). They include activities such as, carrying out due diligence, ensuring that there is a segregation of duties within the company, obtaining the correct authorisations, implementing and carrying out checks and balances for transactions, obtaining counter-signatures for purchases, the management of petty cash and management of the procedures for gifts, hospitality and expenses. As such, the control activities affect every employee to some degree and human resources should work to ensure that they are workable, reasonable and acceptable to employees. Where possible employees should be consulted during the design stages, with new activities clearly communicated to employees before and during the implementation phase.

16.2.9 Disciplinary and sanctions procedures

Human resources should design and implement, in coordination with compliance, legal functions and internal audit, the policies and procedures relating to the investigation of employees under suspicion of breaching the anti-bribery programme, as well as the disciplinary actions and sanctions arising thereafter. The policies, procedures and sanctions should be stated in the contract of employment and supporting guidance such as an employee handbook.

16.3 Where human resources leads

This section describes a range of significant areas where human resources will lead on designing and implementing anti-bribery policies and procedures.

16.3.1 Employment Contract

Employment contracts should set out the requirements and expectations of the company for the employee related to the employee's conduct, and companies may consider referencing the anti-bribery policy and programme specifically. A list of provisions to be considered is given below.

Example employment contract provisions

- **Integrity:** Observance of the company values with specific focus on requiring integrity and honesty from the employee when s/he is acting on the company's behalf and engaging with the company's third parties including customers, subcontractors, suppliers, agents and other intermediaries, and with any public official.
- **Employee rights:** What rights the employee is entitled to in relation to issues such as data protection, privacy and respect within the workplace as well as the reporting mechanisms and support structures in are in place to allow the employee to voice concerns.
- **Code:** Adherence to the Code of Conduct and specifically to the company's anti bribery programme as a condition of employment.
- **Annual attestation:** Directors and employees are required to attest when they first join the company and then annually, in writing, that they have read, understood and will observe the requirements of the Code of Conduct or business conduct guidelines and in particular, the anti-bribery policy.
- **Authority to act:** Defining the employee's remit and situations where the employee has the authority to act.
- **Remuneration:** Provision for non-payment or return of bonus or commission where bribery and corruption has taken place.
- **Reporting breaches:** Subject to local laws, a clause requiring the employee to report bribes, suspicion of bribery or other breaches of the anti-bribery programme (either in relation to themselves or other fellow employees) using the relevant channels. Alternatively the company may include this requirement in its employee handbook. The advantage of this is that it allows the company a degree of flexibility when introducing or amending an anti-bribery programme or policy can introduce changes without having to renegotiate the contracts of existing employees.
- **Protection:** The company commits that it will not penalise an employee for refusing to make or receive a bribe even if such refusal may result in the company losing business.
- **Channels:** Specification of the procedures and channels that the employee should use for raising concerns or seeking advice. The company should commit that it will protect the identity and confidentiality of the employee. The reporting channels may include reporting to the employee's immediate line manager, a right for the employee to go above his/her line manager to a more senior manager, access to an ethics or compliance officer and use of whistleblowing channels.
- **Disciplinary procedures:** Any breach of the anti-bribery programme will be dealt with under the review and disciplinary procedure. Gross misconduct may lead to summary dismissal with termination of the employee's employment.

16.3.2 Recruitment and induction

The company's commitment to a culture of integrity should be carried through in the recruitment process by selecting people who exhibit the required standard of integrity. The level of due diligence human resources are required to undertake when selecting recruits should be proportionate to the role being filled and the sensitivity and risks of the position.

Communication of the anti-bribery programme starts when new employees and board members come on board. They should receive full documentation in appropriate languages including the Code of Conduct and the employee guidance or handbook detailing the anti-bribery programme. The documents should be written in plain English and not couched in legalistic terms, use local languages and reflect local cultures. New recruits should be given induction training which covers the anti-bribery programme. Induction on the anti-bribery programme is particularly important where a company is taking on large numbers of new employees whether through rapid growth, a major project or merger or acquisition, as an influx of new employees may act to weaken or confuse the existing integrity culture.

Bribery and other forms of corruption such as nepotism can be a risk within the recruitment process. The 'princeling' scandals associated with US banks, where children of government officials and other favoured referrals, who were typically unqualified for the positions, were recruited, demonstrate how the recruitment process is vulnerable to corruption.

16.3.3 The revolving door

An important aspect of the recruitment process, to be addressed by human resources, is the issue of the 'revolving door'. The term refers to the movement of high-level employees between the public and private sectors. These movements can be in either direction and may bring risks of improper access or influence, whether intentional or inadvertent.

Movements are two-way

- Public office to the private sector: Politicians, legislators, regulators, public officials or political advisers become directors, employees, lobbyists or consultants for the industries they once acted for as policy makers or regulators, or otherwise contracted with.
- Private sector to public office: Private sector leaders or specialists are appointed to government, a regulatory body or political party (e.g. as a special adviser).

The risks of the revolving door

- Ministers and public officials favour the company while in office, with a view to securing future employment with the company.
- Former politicians and public officials who have accepted employment in a company influence their former colleagues to make decisions that favour their new employer. They may also use confidential information to benefit their new employers, and trade in influence by providing introductions to and favours from their former contacts.

- Directors or employees who move to public office from a company favour their previous employer and may allow the lobbying agenda of their previous private sector employer to influence their government work.

Controls

In light of these risks, governments have sought to regulate the revolving door in several ways:

- **Employment cooling-off period:** A cooling-off period is a time-limited restriction on the ability of former public officials to accept employment in the private sector.
- **Restrictions on negotiating private sector employment:** Government officials and employees are required to report any continuing negotiations for subsequent private sector employment and to recuse themselves from any governmental matter where a conflict of interest arises.
- **Post-employment scrutiny:** Monitoring of post-employment behaviour to check that the individual complies with the law.
- **Restrictions on high-risk roles:** Restrictions on specific jobs or activities where risks of improper influence are high, including lobbying, roles in procurement and, in the USA, roles such as bank examiners.

16.3.4 Recognition and promotion

Human resources is usually responsible for managing a company's approach to performance. The appraisal and assessment of employees' integrity performance is an emerging area for corporate practice. More generally, leading companies such as Accenture, GE and Microsoft are beginning to drop formal annual performance reviews, appraisals and rigid rankings in favour of more flexible approaches. A flexible approach is appropriate for appraisal of integrity performance which does not lend itself to measurement or rankings. When appraising integrity performance, a company will typically be looking for:

- Evidence of positive attitude, commitment and knowledge.
- How the employee demonstrates his/her knowledge of the code of conduct, how s/he has attended and performed in training, his/her knowledge of the employee handbook and evidence that the employee has acted with integrity in all aspects of work.
- How the employee has dealt with bribery incidents, if any.
- Whether the employee has shown evidence or interest in continuous improvement in all areas including that of the anti-bribery programme. This would be important for functions at high risk of bribery such as procurement, contracting and marketing.
- Evidence which enables human resources to judge that the employee acts as an ambassador of the company's commitment to integrity.

The company should promote only staff that exhibit the right behaviours and attitudes and decline promotion to those that do not, even if they meet or exceed financial targets.

16.3.5 Monitoring and continuous improvement

Human resources should help keep the anti-bribery programme under review to ensure that it is being implemented effectively from a human resources perspective and that improvements to the programme are identified and implemented. Reports on the human resources aspects of the anti-bribery programme should be made to senior human resources management and to compliance.

RESOURCES

Incentivising Ethics: Managing incentives to encourage good and deter bad behaviour, Transparency International UK, October 2016

17. MONITORING & REVIEW

QUICK READ

Regular monitoring to ensure that the anti-bribery programme is effective is essential in order to drive continuous improvement, and to detect and deter bribery

Monitoring and review contributes to the continuous improvement of the anti-bribery programme. It checks that the design is sound, implementation is effective and identifies areas for improvement. In addition, through early detection of 'red-flags' and potential incidents of bribery, such monitoring can act as a deterrent to bribery.

Monitoring and review can draw on a wide range of sources including the views of employees, internal systems and controls and internal and/or external audits of the relevant business area. Senior management should regularly review how the anti-bribery programme is implemented and report on this to the Board of directors.

Key elements of best practice

- **Continuous improvement:** Through monitoring the anti-bribery programme, identify aspects which could be improved or where the process and procedures could be simplified to ensure that the programme is as effective and efficient as possible.
- **Focus:** Ensure close and regular monitoring of high risk functions and transactions. As a safety control, use statistical sampling to select spot checks to avoid risks being overlooked.
- **New technology:** Use technology to manage the monitoring process, enable collaborative working, record data and information, provide a monitoring/audit trail and carry out automated data analysis to monitor for red flags and suspicious transactions.
- **Independent review:** Engage external independent reviewers to test and provide confidence in the anti-bribery programme, as well as provide a different perspective on existing processes and procedures and where improvements can be made.
- **Review by leadership:** Report on results of monitoring to senior management and the Board and ensure that improvements are implemented where deficiencies have been identified.

BEST PRACTICE

- **Continuous improvement:** Through monitoring the anti-bribery programme, identify aspects which could be improved or where the process and procedures could be simplified to ensure that the programme is as effective and efficient as possible.
- **Assign responsibilities:** The Board provides oversight through an audit committee comprised of non-executive directors, the compliance or ethics function should be responsible for planning and implementing monitoring.
- **Plan:** Draft a monitoring plan which ensures that the entirety of the company's high risk activities are covered over time.
- **Test first:** Before rolling out the monitoring programme or when first undergoing assurance or certification, carry out pilot engagements.
- **Work with other functions:** Use cross-functional working. Compliance should work with other functions in designing and implementing the monitoring programme. These include internal audit, finance, human resources, quality and excellence management and professional advisers.
- **Focus:** Ensure the regular and close monitoring of high risk functions and transactions. As a safety control, use statistical sampling to conduct spot checks to avoid risks being overlooked.
- **New technology:** Use technology to manage the monitoring process, enable collaborative working, record data and information, provide a monitoring or audit trail, carry out automated data analysis to monitor for red flags and suspicious transactions.
- **Test for quality:** Check the results of monitoring to validate information received, check that data analysed provides the right quality and does not generate volumes of unusable data, provide control checks.
- **Spread the burden:** Save on cost; embed self-monitoring in functions, business units and even third parties; draw upon reports from line managers and relationship managers; and use a rolling programme.
- **Self-assess and benchmark:** Check your methods and results against peers and leadership practitioners.
- **Independent review:** Undergo an external independent review to provide confidence in the anti-bribery programme and bring a fresh perspective.
- **Review by leadership:** Report on results of monitoring to senior management and the Board and ensure improvements are implemented where deficiencies have been detected.
- **Document:** Document the monitoring process fully as this will aid future monitoring, provide an audit trail in the event of an investigation and will serve to show the quality of the monitoring process.

- **Act on concerns:** If suspicions or instances of bribery are detected, these are acted on promptly. The procedure for incident response management should be applied. Record and assess how incidents have been remediated.
- **Report publicly:** Report to stakeholders on the outcomes of monitoring and the key results.

GUIDANCE

17.1 Introduction

Managing an anti-bribery programme is a continuous, iterative process. It involves close scrutiny of the design of the programme to ensure that it is meeting its objectives. Effective anti-bribery monitoring will cover all activities within the company and its controlled entities as well as the activities carried out on its behalf by intermediaries and other third parties. The outcome of such monitoring activities and the reporting thereof to the Board, contribute to the adequacy of a company's overall governance and oversight procedures.

A company operates within a dynamic environment. The business products, service and markets may change; it may make acquisitions or mergers, acquire new employees and business partners. The external environment evolves too with new regulations and laws, societal changes, emerging risks and ever-advancing new technology. Risk assessment and monitoring work together to ensure that the anti-bribery programme remains valid for the key risks facing the company.

Reasons for monitoring

- Checking controls are working effectively
- Identifying and investigating red flags and mitigating risks
- Acting as a preventive measure
- Detecting bribery
- Driving continuous improvement
- Giving confidence to the senior management and the Board on the effective implementation of the programme
- Providing information for public reporting on the anti-bribery programme

17.2 Assign responsibilities

Responsibilities for monitoring should be appropriately allocated, for example, it may be appropriate for a manager to direct the overall monitoring programme at both country and business unit level.

Responsibility for carrying out monitoring and improvement is commonly assigned to the compliance function which should work with other functions to design and implement the monitoring programme.

Compliance should work with the internal audit team, external consultants and independent assurers on testing systems and identifying areas for improvement. Compliance should also draw upon other functions for monitoring including legal, finance, human resources and security. Ultimately, however, the

design of the monitoring programme and the allocated resources should be shaped by the company's risk approach and the results of risk assessments.

The responsibilities and roles of the Board, audit committee and non-executive directors have come under focus following several major corporate scandals and have led to the introduction of new accounting 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 whilst remaining independent within the governance structure of the company, including risk assessment and reporting.

Responsibility for oversight of monitoring will typically be given to the audit committee but may be assigned to other committees such as ethics, governance or corporate responsibility. The reviewing committee should be made up of non-executive directors that are independent of any influence or conflict of interest. However, the Board provides ultimate oversight.

17.3 Systematic approach

At first sight, the prospect of monitoring the entirety of a company's activities which pose a potential anti-bribery risk, may seem daunting but it can be manageable through the creation of a clear plan and process for systematic monitoring. It is good practice to:

- Allocate adequate resources, recognising that testing for effectiveness of implementation demands greater resources than evaluating the design of an anti-bribery programme.
- Focus on the highest risk business units, countries or transactions, such as contracting and procurement.
- Spread the demand on resources by a rolling programme across forms of transactional risk, geography and business unit or function.
- Ensure effective and consistent monitoring across the company with methods and results fully documented culminating in reports to senior management.
- Mobilise the contribution of functional departments and business units by self-monitoring and identifying deficiencies and improvements.
- Use technology to carry out automated monitoring, gather and store information, including audit trails, for use in future reviews, and for visualisation of results and generation of reports.
- Automate data analysis and transaction monitoring. This needs to be managed to avoid generating excessive numbers of flagged transactions. For automated data analysis, the company will need to ensure the quality and focus of the data. This means being precise in specifying what is being sought, making sure that the data addresses actual risks. The danger is that large volumes of poor quality and meaningless data will flood the process.
- Check for quality: Ensure the quality of data used is sufficient, carry out spot checks using a statistically valid approach.
- Detect and act: Act systematically and promptly in response to red flags and unusual activity and use 'lessons learned' to drive continuous improvement.

17.4 Monitoring activities

Keeping in mind the aim of focusing on the highest risks, the questions for the compliance manager to consider are:

- What to look for?
- What should be monitored?
- How should this be done?
- What do we do with the results?

17.4.1 What to look for?

The company should look to test that its systems and controls are working as intended. The compliance manager should carry out necessary checks to ensure that the anti-bribery procedures are being implemented effectively and efficiently across the business; that improvement areas are being accurately identified; and that red flags, unusual activity and violations of the anti-bribery policy are detected.

17.4.2 What should be monitored?

Anti-bribery is an area where detailed project management, technology tools and documentation will assist the company to make sure it covers the most vulnerable functions adequately. In particular, companies should ensure that it monitors vulnerable functions which will include the following:

- Procurement and contracting
- Sales and marketing, especially to public officials
- Mergers and acquisitions
- Third parties.
- Projects
- Logistics
- Recruitment and Board appointments
- Public or corporate affairs, especially in relation to political engagement
- Sponsorship management
- Community affairs: Charitable donations
- Finance, including accounts payable and assets management
- Facilities management
- Functions engaged in obtaining critical regulatory approvals

In addition, transactions should be regularly and systematically monitored, for example:

- **Financial systems and records:** Checks should include general ledger account review and samples of transactional records making sure that they are correctly accounted for in the books and supported by adequate documentation.
- **Cash disbursements:** Checks that the controls for cash payments are being implemented and recorded correctly.
- **Payments to high risk third parties:** Checks that the fees or payments to/from third parties are appropriate for the services, that the payments match contracts and are paid through appropriate channels, rather than off-shore accounts.

- **Transaction testing:** Checks should cover:
 - The nature and purpose of transactions
 - That adequate supporting documentation exists, including authorisation from management
 - Transactions are in accordance with controls, correctly described and recorded
 - There is sign-off of acceptance of services or goods in line with the contract
 - There are payment approvals and proper recording of the transaction in the company's books and records

17.4.3 How should this be done?

Companies can ensure effective monitoring is taking place by undertaking the following activities:

- Conducting interviews with management, employees, third parties. For an example of good practice, see [here](#).
- Obtaining feedback from training and exit interviews, manager appraisals, employee suggestions, reports on use of whistleblowing channels and hotlines.
- Conducting transactional analysis, which may lead to forensic investigations.
- Conducting internal operational audits: for example, checking whether new employees receive appropriate induction; that training programmes reach all employees; if policies exist and whether they are being followed in practice. Audits should also cover how incidents of bribery are dealt with, and whether appropriate sanctions are applied.
- Ensuring that all stages of high risk processes are checked
- Carrying out spot checks.
- Engaging external companies to provide independent review and assurance of the anti-bribery systems and controls in place.

17.5 Self-assessment and benchmarking

Apart from regular monitoring, audits and external reviews, the company can carry out periodic self-assessment and benchmark its programme against best practice in its respective industry.

- Self-assessment can be an informal process where the compliance function takes a fresh look at the anti-bribery programme or it can use a survey tool.
- Benchmarking allows a company to assess how its anti-bribery programme is positioned against best practice as well as promote inter-company discussion on how to improve. TI-UK has developed a [Corporate Anti-Corruption Benchmark](#) to help companies assess their programme.
- Collective action and industry groups working on anti-bribery practice can be used for benchmarking. For example, AIM-PROGRESS, a forum of leading Fast Moving Consumer Goods (FMCG) manufacturers and common suppliers working on business integrity.

- Consultants and professional advisers can provide tools and templates for continuous improvement and benchmarking initiatives.
- Codes and guidance publications can be used to check the programme against best practice frameworks such as Transparency International's [Business Principles for Countering Bribery](#) and the [Anti-Bribery Certification Standard ISO 37001](#).

17.6 Independent voluntary assurance and certification

Assurance and certification can form part of the monitoring process. Independent anti-bribery assurance is not current standard practice but it may well become so in the future. Anti-bribery certification is an established practice and was taken to a new level with the publication in October 2016 of the [ISO standard 37001](#).

When considering assurance or certification, a company may choose to pilot assurance or certification to make sure that any improvement areas or inadequacies are dealt with before going public. Audits can test the design of the anti-bribery programme and may extend to the actual performance of the programme. If a company is operating in many locations and countries, it may decide to narrow the scope of work or phase it over more than one year in order to contain the cost.

Whether using general financial audit assurance, specific anti-bribery assurance or carrying out certification, the external assurers or assessors should have a good knowledge of international and local anti-bribery laws. Ideally, the appointed assurers or assessors would 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. Where the company operates in high-risk industries or countries where corruption is prevalent, consideration of bribery issues should enter into the auditors' assessment of risk and influence 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 the appropriate law enforcement agency informed as necessary.

17.7 Assurance

Assurance is defined by [AccountAbility](#) as: 'The methods and processes employed by an assurance practitioner to evaluate an organisation's public disclosures about its performance as well as underlying systems, data and processes against suitable criteria and standards in order to increase the results of the assurance process in an assurance statement credibility of public disclosure. Assurance includes the communication of the results of the assurance process in an assurance statement.'

Anti-bribery assurance at present remains largely restricted to that exercised in examining the company's compliance with laws and requirements to maintain accurate books and records. Few companies verify their anti-bribery programme. This is in part due to the accounting profession not having developed an accounting approach yet for verification of anti-bribery programmes.

Related general assurance standards are the AA1000 Assurance Standard (AA1000AS) and the International Standard on Assurance Engagements (ISAE3000). These cover the quality and effectiveness of policies and procedures and provide for reporting on data relating to performance of the

procedures. The assured company can also comment on the materiality of reported information, its completeness and the company's responsiveness to stakeholders.

TI published an [Assurance Framework](#) in 2012. There are three issues which have prevented widespread take up of the Framework.

- **Difficulty in determining materiality of bribery:** Anti-bribery assurance is not the same as financial statement or operational auditing though aspects may cover some of the same ground. Most importantly, there is no materiality limit for bribery. A small bribe can have significant consequences. Monitoring and testing looks at areas beyond books and records systems and supporting documentation – it examines design of procedures and their implementation.
- **Credibility gap:** There is the danger that stakeholders may judge an assurance opinion as indicating that the assured company is free or will be free of bribery – there is a concern here for auditors about liability risks.
- **Cost:** The cost of an anti-bribery assurance engagement can be potentially quite high. An assurance of design of a programme could be contained within a manageable level but the cost of testing implementation of a programme could be substantial.

17.8 Certification

Certification is a seal of approval, from a third party body, that a company operates according to a recognised management system. Certification can be used to support a company's credibility and capability, for example, when bidding for contracts or to give stakeholders reasonable confidence in the company's systems. Certification is concerned with the quality of design of a process; it is not a monitoring tool but it can contribute to monitoring insofar as the process of obtaining certification from an external assessor can provide confidence in the design of a process if not in the effectiveness of its implementation.

Unlike assurance, anti-bribery certification has made progress. The *BSI Specification for an anti-bribery management system 10500* published in 2010 was replaced in October 2016 by ISO 37001. Click [here](#) to see the pros and cons of ISO37001.

17.9 Review by senior management and the Board

Senior management, through receiving regular reports, will be able to form a judgement as to whether the anti-bribery programme 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 third party performance accordingly. This forms part of the organisation's culture and tone from the top (See Chapter 1). Senior management should make regular reports to the audit committee on the monitoring of the programme. A procedure for regular reporting to the Board and audit committee will compel management to focus their attention on their responsibilities.

The culmination of the monitoring process, including both internal and any external assurance, should be contained in reports to a Board committee, such as the audit committee. The credibility and effectiveness of the company's oversight and monitoring of the anti-bribery programme will depend on a truly independent view provided by a Board committee, comprised of non-executive directors. This will protect the interests of shareholders and other stakeholders. To objectively assess the implementation of the programme, the Board committee will need to be informed about relevant anti-bribery legislation, what constitutes accepted best anti-bribery practice, understand the bribery risks identified for the business by management and how those risks are mitigated and the controls monitored.

The reports to the Board committee should include the results of both internal and external audits. The audit committee's oversight, in addition to assisting management to fulfil its responsibilities, can also act as a deterrent to any Board members or senior management engaging in bribery. The committee should report to the Board in a summary form and recommend any necessary actions. Senior management and Board reviews will assist the Board in exercising its governance responsibilities and to meet any legal requirements to report publicly on relevant risks to the company.

Reporting to management should be regular, for example, once a quarter, and at least once a year to the audit committee. Reporting should be comprehensive, covering the company's operations and should follow a consistent pattern to allow comparison between reports. The Board should then make its assessment and agree appropriate actions including any external report of its findings and assessment.

The reviews of the anti-bribery programme, by the Board, including the results of any external independent review, if disclosed publicly, will emphasise the importance that the company attaches to the programme and informing stakeholders of the programme's design and performance. Such reports may also form part of any regulatory requirement for the Board to report on risks as part of an operating and financial review.

CHAPTER APPENDIX

17.10.1 Some red flags for automated monitoring of transactions

High risk transactions: Using weightings, search for key risks words such as consultancy fee, gifts, facilitation, cash, per diem, miscellaneous and non-standard terms such as customer maintenance fees, customer cooperation fees, services rendered.

Gifts, hospitality and expenses: Identify frequent transactions, excessive aggregated amounts involving a third party or any transactions involving a PEP.

High risk countries: Transactions with third parties in high risk countries.

High risk third parties: These will have been identified in the risk assessments and due diligence processes.

Repeated transactions just below the counter signature threshold: For example, an employee breaks down an order into segments to avoid being required to have a counter signature in an attempt to place larger orders improperly.

Repeated amounts of rounded value: Identify employees with more than a defined number of even amount cash expense transactions above a specific amount threshold in a specified time period.

The dog that didn't bark: Absence of any records that would be expected e.g. hospitality, small bribes.

Overpaid purchase orders: Purchase orders where the total payment amount was greater than the total purchase order amount.

Contract variations: Orders or contracts by employee where variations or rush orders are frequent.

Invoice receipt greater than goods receipt: Invoices where the receipt amount is greater than the goods receipt amount.

17.10.2 The pros and cons of ISO 37001

Pros:

- Establishes a global standard and language for anti-bribery good practice.
- Can be an advocacy tool for good practice and advancing corporate anti-bribery practice.
- Can be a positive indicator for use in whitelisting, pre-qualification and due diligence.
- Has potential to advance anti-bribery standards in supply chains, especially where anti-bribery legislation or enforcement is weak.
- Provides a baseline for evolution and development of anti-bribery corporate practice.
- Provides a common basis for benchmarking against peers.
- Annual surveillance audits and renewal audits at three year intervals ensure continuous good practice.

Cons:

- For large companies with good practice anti-bribery programmes, the certification process would add little value to their programme.
- Certification can be demanding and costly.
- Certification is only as good as the accredited assessors and most assessors will not be anti-bribery experts, running the risk that the accreditation becomes a box-ticking exercise. Specific competency requirements have been issued for ABS auditors (ISO/IEC 17021-9, in addition to the general requirements of ISO 17021-1) but it is not sure that this will be sufficient to ensure consistent auditing.
- Certification may be less effective for testing implementation – it requires detailed guidance on procedures and expertise of assessors and can be costly,
- ISO 37001 is a copyright publication available only for a fee – this may restrict the diffusion of the standard among SMEs and in emerging markets.
- The standard does not provide comprehensive guidance.
- Meeting ISO 37001 requirements may not provide for meeting specific legal requirements of countries where a company operates e.g. section 6 of the UK Bribery Act which covers benefits given in certain circumstances to foreign public officials.

17.10.3 Good practice example: Novo Nordisk

Since 1997, Novo Nordisk has used experienced employees called facilitators, to visit Novo Nordisk units around the world, helping employees and managers translate the company's printed values into practical action. A facilitator's job is to evaluate how well a given unit lives up to the Novo Nordisk values statements – and to make sure that any problems in this area are solved. Today, Novo Nordisk has 12 full-time and 12 part-time facilitators who conduct 60-65 facilitations a year worldwide. At its heart, a facilitation is a series of confidential, one-on-one interviews with employees and managers in a particular unit. Interviewees do not need to prepare for this interview - all they need to do is provide honest answers about the successes and challenges of their workplace. Names of individual employees never appear in a facilitation report. If a facilitator sees a general trend or issue that needs to be addressed, he or she will mention it in a facilitation report. More importantly, the facilitator will agree with the unit manager on ways to fix the problem and follow up to make sure action is taken within an agreed deadline.

Facilitation interviews are supplemented by a variety of written documentation as well as statements from external stakeholders. Most departments, areas or affiliates will be facilitated every 3-5 years, but strategically important units or areas that are expanding will generally be facilitated more often. A copy of each facilitation report goes to the manager of the unit that has been facilitated; he or she will then share the contents with the other employees in the unit.²⁵

²⁵ Source: <http://www.novonordisk.com/about-novo-nordisk/novo-nordisk-in-brief/stories/workplace/from-printed-values-to-practical-action.html>

RESOURCES

[Anti-Bribery Certification Standard ISO 37001](#)

[Guidance on Audit Committees](#), Financial Reporting Council, September 2012

[Framework for Corporate Anti-bribery Programmes](#), Transparency International, 2012

[International Standard on Assurance Engagements \(ISAE\) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information](#), IFAC, 2016.

18. EXTERNAL ENGAGEMENT & PUBLIC REPORTING

QUICK READ

External engagement and public reporting build trust and drive improvement

Transparency International believes that comprehensive public reporting is a key component of the measures companies must take to address corruption and provide the transparency that is the basis for robust and accountable governance.

Global companies themselves increasingly understand the benefits of corporate reporting on a range of corporate responsibility issues, including their anti-corruption programmes, as an essential management tool rather than a burdensome and costly exercise that is carried out to satisfy stakeholders. The use of voluntary sustainability reporting guidelines such as those provided by the [Global Reporting Initiative](#) is on the rise.

Companies should ensure that clear and consistent messages are reaching stakeholders about its commitment to integrity and its anti-bribery policy and programme. In this way, public reporting can enhance the credibility of the anti-bribery programme. It can also help strengthen the programme, as good reporting will include information on targets and key indicators of progress. Intercompany comparisons and indices will also drive improvement.

There has been rapid progress in public reporting, including both voluntary efforts by companies and through laws and regulations. Methodologies are also evolving; these include standardised global reporting frameworks, continuous reporting and in-depth information on company websites.

Key elements

- **Integrate** the approach to external communications, public reporting and stakeholder engagement.
- Incorporate reporting on integrity and the **anti-bribery programme** in public reporting.
- Use public reporting as a means to **drive improvement**, making use of KPIs where possible.
- Provide **organisational transparency** and country-by-country reporting.
- Use **continuous reporting** to provide accessible, up-to-date information.
- Be transparent about **vulnerable processes**, such as contracting and procurement (subject to commercial confidentiality, privacy and data security laws).

BEST PRACTICE

- **Integrate your approach:** Adopt an integrated approach to external communications, corporate transparency, public reporting and stakeholder engagement to ensure consistent messaging. Align reporting to international reporting frameworks such as the Global Reporting Initiative, Sustainability Reporting Standards and the Sustainable Development Goals (SDG) targets and indicators.
- **Assign responsibilities:** Assign clearly who manages the input into the corporate reporting process and set responsibilities for setting and achieving targets and reporting progress.
- **Define the scope and methodology:** Define the key anti-bribery messages and information to be communicated, indicators for reporting, reporting frameworks to be used, stakeholders to be consulted and the methodology for consultation.
- **Use a range of reporting tools:** This will include annual reports, sustainability reports and supplements, newsletters and web pages. In the sustainability report, keep reports on the anti-bribery programme focused and short. Put full content on the website with a dedicated page for each key topic.
- **Include leadership statements:** Accompany reporting with keynote statements from the leadership.
- **Due prominence:** Anti-bribery reporting will form part of wider reporting on corporate responsibility but should be given appropriate attention according to the level of risk and stakeholder expectations.
- **Be transparent:** Provide organisational transparency and country-by-country reporting.
- **Monitor:** Monitor developments in public reporting. Check for changes in laws and regulations, seek feedback on your reporting, analyse web usage and monitor social media. Review how the company's communications and reporting meet its commitments to accountability and transparency.
- **Review by leadership:** Make periodic reports to senior management and the board on public reporting and stakeholder engagement, lessons learned and improvements.

GUIDANCE

18.1 Introduction

Legal requirements and stakeholder expectations are putting pressure on companies to be more open about their structures and operations. Shareholders, investors and third parties will feel confident in being associated with a company that can demonstrate that it operates to fair trading standards, has quality systems and has an effective anti-bribery programme. Communications about the anti-bribery programme may also deter those who might otherwise attempt to engage the company in bribery or other corruption.

To ensure transparency, laws and regulations have been introduced to require companies to report on risks and corporate responsibility commitments. With pressure from civil society, governments have also legislated for companies to provide details of their ownership and, in some industries, have mandated country-by-country reporting on income, profits, taxes and other payments to governments. While not part of the anti-bribery programme, these measures strengthen corporate commitments to integrity and reduce opportunities for bribery and corruption to flourish in countries prone to corruption.

18.2 Transparency

18.2.1 Reporting on the anti-bribery programme

The publication of the elements of an anti-corruption programme demonstrates a company's commitment to fighting corruption and increases its responsibility and accountability to stakeholders. Public reporting on anti-corruption programmes can also contribute to positive change as the process of reporting focuses the attention of the company on its own practices and drives improvements in policies and programmes.

Although public reporting by companies on their anticorruption programmes cannot be equated with actual performance, there is empirical evidence that reporting by companies does tend to reflect the measures they actually have in place within their companies. Indeed, a Harvard Business School study concluded that "on average, firms' self-reported anticorruption efforts reflect real efforts to combat corruption and are not merely cheap talk."²⁶

²⁶ Paul Healy and George Serafeim, Causes And Consequences Of Firms' Self-Reported Anticorruption Effort, Harvard Business School, November 2012: www.people.hbs.edu/kramanna/HBS_JAE_Conference/Healy_Serafeim.pdf

18.2.2 Organisational transparency

Large multinational companies operate as complex networks of interconnected entities involving subsidiaries, affiliates or joint ventures controlled to varying degrees by the parent company. These can be registered and operate in several countries, including secrecy jurisdictions or tax havens. If companies choose not to disclose these structures and holdings it can be very difficult to identify them and understand how they relate to each other.

Organisational transparency is full disclosure by a company of its ownership structure and beneficial ownership holdings. This includes reporting details of its shareholders, subsidiaries, significant investments, associates and joint ventures. For subsidiaries, associates and joint ventures, this will cover the percentage interest held by the company, countries of incorporation and countries of operation. Transparency can also be extended to include reporting on agents and suppliers.

Organisational transparency is important for many reasons, not least because company structures can be made deliberately opaque for the purpose of hiding the proceeds of corruption. But more fundamentally, it is important because it allows local stakeholders to know which companies are operating in their territories, are bidding for government licences or contracts, or have applied for or obtained favourable tax treatment. It also informs local stakeholders about which international networks these companies may belong to and how they are related to other companies operating in the same country. In addition, through full disclosure of corporate holdings, stakeholders, including investors, can gain more complete knowledge of financial flows such as intra-company transfers and payments to governments. Organisational transparency allows citizens to hold companies accountable for the impact they have on their communities.

Organisational transparency supports the anti-bribery programme by helping to build integrity in the markets in which the company operates, aiding due diligence on business associates and ensuring that the company's structures do not facilitate corruption.

Transparency International assesses organisational transparency in its periodic reports entitled '[Transparency in Corporate Reporting](#)' (TRAC) and only gives full points where there is disclosure of all holdings regardless of their materiality.

18.2.3 Country-by country reporting

The importance of country-by-country reporting was first recognised in the extractive sector as a way to ensure that revenues from natural resources are used to foster economic and social development rather than line the pockets of kleptocratic elites.

Country-by-country reporting provides a basic level of transparency needed for companies to be held accountable for their activities in a particular country. Disclosing key financial data enables citizens to evaluate whether the company is contributing in a manner appropriate to its level of activity and, in some instances, to provide entry points to identify potential cases of corruption. When stakeholders have information, they are able to research, question and challenge companies and governments on corporate operations, financial results and the extent to which companies contribute to the economies and societies where they make their wealth.

Furthermore, in light of the current debate on the practices of multinationals that shift profits to low-tax jurisdictions, it is increasingly recognised that country-by-country reporting of payments to governments

would not only make global companies more transparent but could also provide a path to tackle aggressive tax avoidance.

In addition, country-by-country reporting provides investors with more comprehensive financial information about companies and helps them address investment risk more effectively. The publication of key financial data provides citizens with the opportunity to understand the activities of a particular company in their country and to monitor the appropriateness of their payments to governments.

We recommend that companies disclose its payments to governments on a country-by-country basis across all of its operations and all relevant payment types, such as turnover, profit, income tax, royalties, and fees.

Sector CbC initiatives

Country-by-country reporting (CbC reporting) is public reporting by global companies of financial data for the countries in which they operate. Reporting obligations have come into force for the financial and extractives sectors but can be expected to be extended to other sectors. Basic reporting lines are revenues, sales, pre-tax income, tax paid and capital expenditure.

There are continuing legislative developments, notably for the **extractives and financial sectors**. In 2013, the European Parliament passed a directive requiring large listed companies operating in the extractive and logging industries to report the payments they make to governments.²⁷ The UK, in accordance with the EU Directive, introduced into law in December 2016 the Reports on Payments to Governments Regulations 2014. In the opinion of Publish What You Pay, an international civil society collation, the first year of reporting succeeded in making host governments more accountable to their citizens, with no evidence of competitive disadvantage to companies.²⁸ In the USA, however, in February 2017 Congress voted to 'disapprove' the rule implementing Section 1504 of the Dodd-Frank Act requiring CbC reporting by extractives companies.²⁹

In the **financial sector**, there have been developments related to *transfer pricing*, on which all OECD and G20 countries have committed to implementing CbC reporting. A 2014 OECD/G20 action plan requires multinational corporations to provide detailed income tax information on an annual basis for each country in which they do business.³⁰

Regardless of the legal obligations, Transparency International and other civil society organisations advocate that companies should be transparent about their operations at country level. The lack of disclosure on transactions between governments and companies and the use of offshore centres pose integrity risks for global companies and their stakeholders, as well as potentially robbing the local communities in which the wealth is generated. When communities and other stakeholders have information, they are able to research, question and challenge companies and governments on corporate operations, financial results and the extent to which companies contribute to their societies.

²⁷ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013

²⁸ Letter from PWYP to Margot James MP, Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility, 17 February 2017.

²⁹ The SEC approved in June 2016 Rule 13-q1 of the U.S. 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act which requires resource extractive companies registered on U.S. stock exchanges to report payments to governments on a country and a project-by-project basis. See [Release No. 34-78167](#); [File No. S7-25-15](#). RIN 3235-AL53. Disclosure of Payments, SEC., 27 Jun 2016. <https://www.sec.gov/rules/final/2016/34-78167.pdf>

³⁰ Base Erosion and Profit Shifting Project, Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting, OECD, 2014. http://www.oecd-ilibrary.org/taxation/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting_9789264219236-en

The process of CbC reporting is more than information disclosure. It succeeds when there is stakeholder engagement, as explored in Enabling Factors, Chapter 3. This is exemplified by the **Extractive Industries Transparency Initiative (EITI)** which has led the way in preventing wealth from extraction being stolen by bribery and other corruption. For instance, the Democratic Republic of the Congo had a five-fold increase in extractives industries revenues between 2005 and 2015 as a result of the application of EITI methodologies.³¹ Over 800 civil society organisations and 200 oil, gas and mining companies participated in this initiative. By taking part in collective action initiatives such as EITI and working with civil society, companies can contribute to eliminating opportunities for governments and corrupt individuals to carry out bribery and benefit from opaque transactions.

18.2.4 Operational transparency

Operational transparency is one of the best defences against corruption. It is where the company opens up key processes vulnerable to corruption, within the limits of commercial confidentiality, privacy, data protection and security. Processes include tendering, lobbying activities, community investment and recruitment processes.

Examples of transparency initiatives in community investment and sustainability include BP's Tangguh Independent Advisory Panel and Baku-Tbilisi-Ceyhan Advisory Group. Common aspects included transparency around the governance as well as operations and all included regular stakeholder consultations and external reporting.³²

Network Rail in the UK has also responded to stakeholders in relation to increasing transparency in its operations.³³ Another example from the public sector is the Open Government movement, which aims to open up government processes, documents and data for public scrutiny and involvement.³⁴

18.3 Public reporting

18.3.1 The growth of public reporting

Public reporting is a form of managed communication in which a company provides non-financial information on topics of material interest to its stakeholders. It can be on a voluntary basis but may be required under law. Material topics can be identified by stakeholder surveys and consultation, discussions with frontline employees, third party relationship managers, business units and support functions.

Most global companies' reporting is driven by legislation, peer behaviour, its inherent value and in response to advocacy by civil society. Public reporting on anti-bribery programmes is developing in a context of increasing legislation for non-financial corporate reporting on culture and corporate governance.

³¹ 2016 Progress Report, Extractives Industries Transparency Initiative.

³² See the following links for examples of what BP report externally:

http://www.bp.com/en_id/indonesia/press-center/documents.html

http://www.bp.com/en_ge/bp-georgia/press-and-reports.html

³³ <https://www.networkrail.co.uk/who-we-are/transparency-and-ethics/transparency/>

³⁴ See the Open Government Partnership, <https://www.opengovpartnership.org/>

Legislation and corporate reporting

- **Corporate governance:** Legislation and regulations require companies to report on their non-financial risks. For instance, the UK Companies Act 2006 requires the directors of a company to include in their annual report a description of the principal risks and uncertainties facing the company.³⁵
- **Organisational transparency:** EU legislation requires country-by-country reporting for the financial and extractive sectors. See the sections on [organisational transparency](#) and [country-by-country reporting](#).
- **Corporate responsibility:** Some countries have also introduced legislation on corporate social responsibility reporting. The UK Companies Act 2006 extends the scope of directors' duties by introducing a concept of 'enlightened shareholder value', requiring directors to have regard for the impact of the company's operations on the community and the environment, and for maintaining a reputation for high standards of business conduct.³⁶ In 2007, Indonesia became the first country to adopt a mandatory approach to corporate responsibility.³⁷ Denmark passed a law in 2008 requiring companies to report on CSR or explain why they are not reporting, and Norway introduced legislation in 2013 requiring large companies to provide information on how they integrate social responsibility into their business strategies.

18.3.2 The scope of public reporting

Bribery can be a risk to any company and there should be always a basic level of reporting on the anti-bribery programme. That said, reporting on countering bribery is one of many issues of material interest to stakeholders and the compliance function may have to negotiate for space to report on the programme. The extent of reporting will be shaped by the view of the leadership, stakeholders and the level of risk to the company. For instance, a company may judge that bribery risks are being mitigated satisfactorily and that stakeholders are comfortable with its approach. As such, the space in the annual reports will be modest.

The company website is the most accessible way to publish in-depth information on a continuous basis. The pages on the website should provide a range of information, including the company's values, commitment to integrity, code of conduct, no-bribes policy, the design of the anti-bribery programme and corporate governance arrangements. This information will be fairly static and should be supported by dynamic reporting on risk assessments, training, collective action and community impacts.

KPIs and targets should be used in public reporting. This will enable the company to demonstrate both ambition and progress and drive change internally.

³⁵ UK Companies Act 2006, section 417. *Contents of directors' report: business review.*

³⁶ UK Companies Act, section 172, *Duty to promote the success of the company.*

³⁷ Law No. 40 on Limited Liability Companies

18.3.3 Voluntary reporting initiatives

Recognising that individual reporting approaches by companies can confuse and overwhelm stakeholders and encourage cherry-picking and spin, global frameworks have been introduced to standardise reporting and ensure a high and consistent quality. The main initiatives for shaping anti-corruption reporting include:

- **[Global Reporting Initiative \(GRI\)](#):** The GRI was formed in 2000 to encourage sustainability reporting. GRI upped its approach in 2016 by moving from a reporting framework to a range of Global Sustainability Reporting Standards. An overarching standard covers mandatory reporting on ethics and integrity and basic elements of an anti-corruption programme. This is supported by a specific standard for anti-corruption reporting.³⁸
- **[UN Global Compact \(UNGC\)](#):** The UNGC requires signatory companies to commit to its ten principles, including the 10th Principle against Corruption. Signatories are required to make an annual Communication on Progress, which includes reporting on anti-corruption. The UNGC, in partnership with Transparency International, has published a guide to reporting on the 10th Principle.

18.3.4 Indices and reports

As voluntary disclosures have increased, indices have been developed to measure performance and allow for intercompany comparisons.

- **[Transparency International \(TI\)](#):** TI has been at the forefront of assessing companies' reporting on anti-bribery programmes. TI publishes [periodic Transparency in Corporate Reporting \(TRAC\)](#) indices which assess different groups of companies (e.g. by size, industry and jurisdiction) against a set of indicators. These reports use proxy measures to determine whether companies have designed and implemented certain anti-bribery policies and procedures. They do not attempt to evaluate the effectiveness of companies' programmes.
- **[Transparency International UK \(TI-UK\)](#):** TI-UK measures public reporting through the Defence Companies Anti-Corruption Index and the Corporate Anti-Corruption Benchmark. It also measures public reporting on political activities in the Corporate Political Engagement Index.
- **[FTSE4Good](#):** This series of indices assesses environmental, social and governance practices, and includes anti-corruption indicators.
- **[The CPA-Zicklin Index](#):** This index is published annually and benchmarks the political disclosure and accountability policies and practices of leading U.S. public companies.

³⁸ GRI 102: General Disclosures, section 3, *Ethics and Integrity*, GRI, Amsterdam, 2016.

Pointer: These frameworks are evolving and companies should consider engaging with the reporting organisations and NGOs to contribute to the development of reporting standards and indicators.

18.4 External communication

External communication should inform stakeholders of the company's integrity and fair trading commitments and of the design and implementation of the anti-bribery programme.

Communication can be through a range of channels including the website, social media, annual reports and promotional literature. Tailored communications can inform third parties about the company's expectations, requirements and operating procedures. These can be set out in specific publications, such as supplier codes of conduct, or dedicated channels, such as a supplier intranet.

RESOURCES

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