

PRACTICAL TOOL

OVERVIEW OF ANTI-CORRUPTION COMPLIANCE STANDARDS AND GUIDELINES

SECOND REVISED EDITION

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Overview of Anti- Corruption Compliance Standards and Guidelines

SECOND REVISED EDITION

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Introduction

The first edition of the Overview of Anti-Corruption Compliance Standards and Guidelines was published in 2019 and received very positive feedback from the professional anti-corruption community.

Since that time, anti-corruption become one of the priorities in the global international agenda. The first ever Special Session of the United Nations General Assembly on challenges and measures to prevent and combat corruption and strengthen international cooperation took place in New York on 2-4 June 2021.

In the political declaration entitled “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation” adopted on 2 June 2021, the United Nations General Assembly stated that “no country is free of corruption and that, overall, while progress in preventing and combating corruption has been made, those efforts are not enough, and we commit to doing more to address remaining gaps and existing and emerging challenges and difficulties, in particular in the implementation of the Convention”.

Among other initiatives, states agreed to encourage ethical behaviour, anti-corruption and anti-bribery compliance efforts, integrity, accountability and transparency measures in all enterprises, and support and promote initiatives to ensure that private sector entities are well equipped to conduct business with integrity and transparency, particularly in their relations with the public sector.

In 2020-2022, international organizations and other stakeholders published several new guidelines on various anti-corruption compliance policies. In 2021, the OECD published new Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. The Recommendation contains sections on incentivising anti-corruption compliance by companies and protection of whistleblowers. Annex II provides companies with good practices on internal control, ethics and compliance. In 2022, ICC revised its 2008 Guidelines on Whistleblowing. The new edition was prepared taking into account the ISO 37002 Guidelines on Whistleblowing Management System and the 2019 European Directive on Whistleblower Protection. The U.S. Department of Justice and the French Anti-Corruption Agency updated guidelines for companies and other important documents.

NAVEX Global published several new definitive guides and benchmarking reports. The definitive guides covered some of the existing gaps and provided companies with valuable recommendations on the development of codes of conduct.

The second edition of the Overview of Anti-Corruption Compliance Standards and Guidelines was developed in the framework of the IACA's Research Programme. The overview accumulated new ideas from guidelines and benchmarking reports that had been published in 2019 – 2022.

The Overview considers the principles, standards and recommendations from major intergovernmental and non-governmental organizations, including UNODC, World Bank, OECD, ICC, ISO.

Besides of standards and guidelines on anti-corruption compliance, relevant provisions from the Financial Action Task Force's (FATF's) anti-money laundering/countering financing of terrorism standards and guidelines on identification of third parties, beneficial owners, politically exposed persons (PEPs), risk assessment, and suspicious transactions were taken into account.

The Overview sometimes refers to guidelines and benchmarking reports published by internationally recognized private consultants. It is important to consider that these documents are not of the same importance as documents of international organizations. At the same time, recommendations of private consultants can fill in particular gaps or provide readers with additional clarifications.

The Overview provides readers with the following types of data contained in colored boxes:

International standards and guidelines published by international intergovernmental organizations, public-private initiatives, non-governmental organizations, chambers of commerce, and international business associations (Internet links or excerpts from the texts) – in blue boxes

Guidelines and benchmarking reports published by internationally recognized law firms and consultants (Internet links or excerpts from the texts) – in grey boxes

Domestic guidelines from selected jurisdictions (Internet links or excerpts from the texts) – in green boxes

Useful Internet links in light red boxes

Each paragraph provides readers with a list of standards and guidelines with hyperlinks relevant for a corresponding part of an anti-corruption compliance programme. All

paragraphs contain descriptions of and quotations from standards and guidelines, and some paragraphs also brief comments from the author.

The Overview can be helpful first of all for SMEs as many of them have limited human and financial resources necessary to analyze and implement numerous legal sources. However, it can be used by all types of organizations, and by Collective Action initiatives to support designing, implementing, evaluating, and benchmarking anti-corruption compliance programmes.

The Overview does not establish any legal obligation for organizations, nor does it intend to set new standards or replace standards or guidelines developed by international organizations or other stakeholders.

Part I. General Overview

In the last decades, anti-corruption compliance emerged as a growing field in the general framework of compliance. Organizations have been implementing anti-corruption compliance management systems to do business in accordance with the high ethical standards, and prevent involvement into corruption offences. In some jurisdictions, an effective anti-corruption compliance programme allows an organization to avoid corporate liability or reduce fines.

To design and implement an effective anti-corruption compliance programme, organizations consider ethical principles and values, applicable laws and regulations, assess existing risks, and available resources.

International standards and guidelines published by various stakeholders summarize best practices in anti-corruption compliance. These standards and guidelines describe general framework of an anti-corruption compliance programme, contain a lot of useful practical information, and should be taken into consideration.

Domestic standards and guidelines, adopted in the countries, whose anti-corruption laws have extraterritorial reach, are also useful sources, even for organizations that are not subjects to those laws.

There are several possible classifications of anti-corruption compliance standards and guidelines based on different criteria.

International and domestic standards and guidelines differ in geographical application. Comprehensive international standards and guidelines are addressed to organizations in any country. There are a few regional standards. Domestic standards and guidelines are addressed to organizations which are subjects to particular domestic legislation. As a rule, government agencies and/or business associations adopt standards and guidelines to support the implementation of domestic anti-corruption laws in the business sector.

Standards and guidelines adopted by various stakeholders. We can identify standards and guidelines adopted by international intergovernmental organizations, bodies and public-private initiatives, non-governmental organizations, chambers of commerce, business associations, and private companies, e.g., law firms and consultants. In the Overview we analyze 21 standards and guidelines adopted by international intergovernmental organizations and bodies, 6 guidelines published by NGOs, 8 guidelines developed by international business associations, and 7 guidelines published by a private company.

General and topic-specific standards and guidelines differ in terms of the scope of regulation. General standards and guidelines contain provisions on the anti-corruption compliance programme as a whole and cover all key anti-corruption policies and procedures. Specific standards and guidelines refer to one or several elements of anti-corruption

compliance programmes. In the Overview we analyze 14 general and 28 specific international standards and guidelines.

General and sector-specific standards and guidelines. As a rule, international and domestic standards and guidelines are addressed to all types of organizations. The exception is the Wolfsberg Group’s Guidance for financial institutions.

Standards and guidelines that consider specificities of compliance in small and medium-sized enterprises (SMEs). There are five guidelines that focus on SMEs or refer to the specificities of SMEs. The UNODC’s Guide analyzes after each chapter challenges and opportunities for SMEs (UNODC, 2013). Transparency International formulated business principles for countering bribery in a special edition for SMEs. The OECD Guidance for African companies identified the specific challenges confronted by SMEs in implementing an anti-bribery policy, related compliance measures and insights on ways to overcome some of those obstacles (OECD, 2016). The ICC published a special Guide for SMEs on anti-corruption third party due diligence (ICC, 2015). The Annex II to the recently adopted OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions mentioned that this Guidance is flexible, and intended to be adapted by companies, in particular small and medium sized enterprises (hereinafter “SMEs”), according to their individual circumstances (OECD, 2021, p.20).

The Template 1 includes international standards and guidelines analyzed in this Overview.

| Standards and guidelines developed by international intergovernmental organizations bodies and public-private initiatives | | |
|---|--|----------------------|
| Organization | Standard/guideline | General/ Specific |
| UNODC | An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide | General |
| UN Global Compact | Reporting Guidance on the 10th Principle Against Corruption | Specific |
| | Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training | Specific |
| | A Guide for Anti-Corruption Risk Assessment | Specific |
| | Stand Together Against Corruption: A Practical Guide to Help Prevent Corruption in the Supply Chain | Specific |
| | Supply Chain Sustainability: A Practical Guide for Continuous Improvement. Second Edition | Specific |
| | A Practical Guide for Collective Action Against Corruption | Specific |

| | | |
|--|--|----------------------|
| OECD | Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions | General |
| | Principles for Integrity in Public Procurement | Specific |
| | Anti-Corruption Ethics and Compliance Handbook for Business (joint Guidance with UNODC and World Bank) | General |
| | Anti-Bribery Policy and Compliance Guidance for African Companies | General, regional |
| OSCE | Handbook on Combating Corruption | General |
| World Bank Group | Integrity Compliance Guidelines | General |
| FATF | International Standards on Combating Money Laundering, the Financing of Terrorism and Proliferation (the FATF Recommendations) | General |
| | A Reference Guide and Information Note on the Use of the FATF Recommendations to support the fight against Corruption | Specific |
| | Guidance: Politically Exposed Persons | Specific |
| | Guidance on Transparency and Beneficial Ownership | Specific |
| | Digital Identity | Specific |
| | Money Laundering and Terrorist Financing Red Flag Indicators Associated with Virtual Assets | Specific |
| G20 | High-Level Principles on Beneficial Ownership Transparency | Specific |
| APEC | APEC Anti-Corruption Code of Conduct for Business | Specific |
| Standards and guidelines developed by international non-governmental organizations | | |
| Organization | Standard/guideline | General/ Specific |

| | | |
|---|---|----------------------|
| ISO | Standard 37001 Anti-Bribery Management Systems - General Requirements with Guidance for Use | General |
| | Guidelines 37002 Whistleblowing Management Systems | Specific |
| Transparency International | Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition | General |
| | Business Principles for Countering Bribery | General |
| World Economic Forum | Global Principles for Countering Corruption | General |
| | Good Practice Guidelines on Conducting Third Party Due Diligence | Specific |
| Standards and guidelines developed by international business associations | | |
| Organization | Standard/guideline | General/ Specific |
| ICC | Guidelines on Agents, Intermediaries and Other Third Parties | Specific |
| | Rules on Combating Corruption | General |
| | Anti-Corruption Clause | Specific |
| | Guidelines on Gifts and Hospitality | Specific |
| | Anti-Corruption Third Party Due Diligence: a Guide for Small and Medium Size Entities | Specific |
| | Guidelines on Conflicts of Interest in Enterprises | Specific |
| | Guidelines on Whistleblowing | Specific |
| Wolfsberg Group | Anti-Bribery and Corruption (ABC) Compliance Programme Guidance | General |

The Template 2 presents guidelines published by international consultants.

| |
|---|
| Guidelines developed by international consultants |
|---|

| Organization | Guideline | General/ Specific |
|--------------|--|----------------------|
| NAVEX Global | Definitive Guide to Policy and Procedure Management | Specific |
| | Definitive Guide to Third Party Risk Management | Specific |
| | Definitive Guide to Ethics and Compliance Training | Specific |
| | Definitive Guide to Compliance Programme Assessment | Specific |
| | Definitive Guide to Ethics and Compliance Programs | General |
| | How to Conduct an Ethics & Compliance Risk Assessment: A 12-Step Guide | Specific |
| | Definitive Guide to Your Code of Conduct | Specific |

The Template 3 includes European Union guidelines and selected domestic guidelines.

| European Union guidelines and domestic guidelines from selected jurisdictions | |
|---|---|
| European Union | Guidelines on non-financial reporting (methodology for reporting non-financial information) |
| Country | Guideline |
| France | Guidelines to help Private and Public Sector Entities to Prevent and Detect Bribery, Influence Peddling, Extortion by Public Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism of 2020 |
| United Kingdom | Guidance about Procedures which Relevant Commercial Organisations Can Put into Place to Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010) |
| United States | A Resource Guide to the U.S. Foreign Corrupt Practices Act. Second Edition |
| | Evaluation of Corporate Compliance Programs |

According to our study, the following components of anti-corruption compliance are most developed in international and domestic standards and guidelines: risk assessment, third party due diligence and risk management, gifts and hospitality, charitable donations and sponsorship, political contributions, and reporting misconduct.

In the last four years, the protection of whistleblowers become one of the main priorities for international organizations and legislators.

The Code of Conduct is a cornerstone for an effective anti-corruption compliance programme. The Code defines main ethical principles and corporate values, positions of shareholders and senior managers regarding anti-corruption to be implemented in corporate policies. Surprisingly, international standards and guidelines do not pay attention to the Code of Conduct. At the domestic level, the most meaningful recommendations can be found in the Guidelines published by the French Anti-Corruption Agency. The definitive guide on code of conduct published by NAVEX Global is another useful source of information.

Many standards and guidelines just mention an importance of conflict of interest disclosure but do not provide recommendations on the prevention and managing of conflicts of interest. For a long time, the UNODC Guide was a rare exception (UNODC, 2013, p.p. 49-53). The ICC Guidelines on Conflicts of Interest in Enterprises were published in 2018 and filled this gap.

The anti-corruption compliance requirements for mergers and acquisitions are presented only in the Wolfsberg Group's Guidance for financial institutions (Wolfsberg Group, 2017, p.p. 9-10) and in A Resource Guide to the U.S. Foreign Corrupt Practices Act (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020). However, general recommendations regarding due diligence and risk management are also applicable to mergers and acquisitions.

International standards and guidelines demonstrate a different understanding of the correlation between third party due diligence and risk management. According to the ISO Standard 37001, where the organization's bribery risk assessment has assessed a more than low bribery risk in relation to: b) planned or on-going relationships with specific categories of business associates, the organization shall assess the nature and extent of the bribery risk in relation to specific transactions, projects, activities, business associates and personnel falling within those categories. This assessment shall include any due diligence necessary to obtain sufficient information to assess the bribery risk (ISO Standard 37001, p. 15). According to the WEF Guidelines, third party risk assessment and risk mitigation are parts of the due diligence process (WEF, 2013, p. 7). The OECD Guidance uses the term "risk-based due diligence" (OECD, 2021, p. 21).

In the author's opinion, the definitions proposed by NAVEX Global may be considered to identify the scope of due diligence and risk management. According to NAVEX Global, 'third-party risk management is the process of assessing and controlling reputational, financial and legal risks to organization posed by parties outside organization. Third-party due diligence is the investigative process by which a third party is reviewed to determine any potential concerns involving legal, financial or reputational risks. Due diligence is disciplined activity that includes reviewing, monitoring and managing communication over the entire vendor engagement life cycle' (NAVEX Global, 2017b, p. 2).

At any way, there is no doubt that due diligence and risk management are closely connected as due diligence provides the information basis for risk assessment and mitigation.

Benchmarking reports are useful instruments for designing, implementing and evaluating anti-corruption compliance programmes. They summarize best practices.

The idea of benchmarking was developed and pioneered by Xerox Corporation in the late 1970s (Elmuti and Kathawala, 1997, p. 229).

There are two most comprehensive definitions of the benchmarking. According Kelessidis, 'benchmarking is as the process of improving performance by continuously identifying, understanding, and adapting outstanding practices and processes found inside and outside an organization' (Kelessidis, 2000, p.2). According Stapenhurst, the benchmarking is 'a method of measuring and improving our organizational performance by comparing ourselves with the best' (Stapenhurst, 2009, p. 6).

There is a number of studies on compliance benchmarks in general or anti-corruption compliance benchmarks mostly conducted by international consultants and law firms providing professional services in compliance.

There are several interesting general studies:

- Compliance Essentials (The multi-stakeholder study conducted by the Konstanz Institute on Corporate Governance in 2017)
- Definitive Risk & Compliance Benchmark Report (Navex Global, 2020a, 2021)
- Global Integrity Report (EY, 2022)
- The State of Compliance Survey (Deloitte, 2020)

Many other studies focused on several components of anti-corruption compliance. The key topics of the benchmarking studies are:

- Leadership, tone at the top (PwC, 2016)
- Third parties due diligence (Compliance Week and Kroll, 2020)
- Risk management (PwC, 2017; NAVEX Global, 2020b)
- Oversight and responsibility (PwC, 2016)
- Hotlines & Whistleblowing (NAVEX Global, 2022b)

The FCPA Blog published several benchmarking alerts and provided readers with anti-corruption and anti-bribery policies from leading companies (<https://fcpablog.com/>).

Part II. Standards, Guidelines and Benchmarking Reports on Main Components of an Anti-Corruption Compliance Programme

1. Developing an Anti-Corruption Compliance Programme

1.1. Standards and guidelines on developing an anti-corruption compliance programme

An anti-corruption compliance programme consists of policies and procedures that address the risk of corruption (UNODC, 2013, p. 25).

There are several general international standards and guidelines containing recommendations on developing an anti-corruption or anti-bribery compliance programme, and describing key steps and processes.

Transparency International published a special edition of Business Principles of Countering Bribery for small and medium-sized enterprises (SMEs). This edition provides SMEs with the rather detailed description of main steps to be taken to develop a programme for countering bribery. The UNODC Guide also pays special attention to challenges and opportunities for SMEs.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD/UNODC/World Bank, 2013. Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- OECD, 2021. Annex II. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>>
- World Bank Group, 2010. Integrity Compliance Guidelines Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <<https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>>
- ISO, 2016. Standard 37001 Anti-bribery management systems – Requirements with guidance for use

- TI, 2008. Business Principles for Countering Bribery. Small and Medium Enterprise (SME) Edition. Available at: https://images.transparencycdn.org/images/2008_BusinessPrinciplesSME_EN.pdf
- TI, 2013. Business Principles for Countering Bribery. Available at: https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery
- WEF, 2016. The World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at: http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf

According to general international standards and guidelines, an organization should conduct assessment of corruption risks (UNODC, 2013, p. 8; OECD, 2021, p.20; WEF, 2016, p. 8), define applicable laws (UNODC, 2013, p. 25; APEC, 2007, p. 4), and principles and values of an organization (UNODC, 2013, p. 20; APEC, 2007, p. 4) for developing an anti-corruption compliance programme. As mentioned in several guidance, to be effective, such a programme should be interconnected with the organization's overall ethics and compliance framework (UNODC, 2013, p. 18; OECD, 2021, p. 20).

The detailed recommendations on risk assessment can be found in the special UN Global Compact Guide.

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

Organization can also find useful information on policy and procedure management, and risk assessment in the definitive guides published by NAVEX Global.

- NAVEX Global, 2017a. Definitive Guide to Policy and Procedure Management. Available at: https://www.navexglobal.com/en-gb/node/1841/thank-you?RCAssetNumber=152&token=ouCYsUs93skM6JOmCD5mjVqoYUh_R2kCG0q8t3EGxXQ
- NAVEX Global, 2021. How to Conduct an Ethics & Compliance Risk Assessment: A 12-Step Guide. By Cherepanova, V. Available at: <https://www.navex.com/en-us/resources/ebooks/12-step-guide-how-to-create-an-ethics-compliance-risk-assessment/?RCAssetNumber=8509>

Organization should consider applicable domestic standards and guidelines. Several examples are in the box below.

- Agence Française Anticorruption, 2020. Guidelines to help Private and Public Sector Entities to Prevent and Detect Bribery, Influence Peddling, Extortion by Public Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism. Available at: <https://www.agence-francaise-anticorruption.gouv.fr/files/files/French%20AC%20Agency%20Guidelines%20.pdf>
- UK Ministry of Justice, 2011. Guidance about Procedures which Relevant Commercial Organisations Can Put into Place to Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010). Available at: <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

- Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020. A Resource Guide to the U.S. Foreign Corrupt Practices Act. Second Edition. Available at: <<https://www.justice.gov/criminal-fraud/file/1292051/download>>
- Criminal Division of the U.S. Department of Justice, 2020. Evaluation of Corporate Compliance Programs. Available at: <<https://www.justice.gov/criminal-fraud/page/file/937501/download>>

1.2. Risk assessment

The assessment of corruption risks (risk assessment) is the foundation for designing and implementing an anti-corruption compliance programme. Some guidance, e.g., the French Anti-Corruption Agency's Guidelines, use the similar term 'risk mapping' instead of the 'risk assessment'.

According to the U.S. Department of Justice and the U.S. Securities and Exchange Commission, there is no one-size-fits-all compliance programs. Compliance programs that employ a "check-the-box" approach may be inefficient and, more importantly, ineffective. Small and medium-size enterprises likely will have different compliance programs from large multinational corporations, a fact DOJ and SEC take into account when evaluating companies' compliance programs. (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 58).

The aims of the risk assessment are to identify and assess the risks of corruption, to identify persons and/or structural subdivisions facing these risks, and to define and implement in an anti-corruption compliance programme appropriate mitigation measures.

The risk assessment can be conducted by organization's personnel or external consultants (UNODC, 2013, p. 11). For larger enterprises, a good strategy is also to have operating unit/regional location ownership of the anti-corruption risk assessment (OECD/UNODC/World Bank, 2013, p.14).

Risk assessment process

The risk assessment process is described in detail in:

OECD/UNODC/World Bank, 2013, p.p. 10-15

UN Global Compact, 2013

The French Anti-Corruption Agency's Guidelines provides organizations with a six-step method of risk mapping (Agence Française anticorruption, 2020, p.p. 18-21)

NAVEX Global offers a 12-steps framework for ethics and compliance risk assessment (NAVEX Global, 2021)

According to general international standards and guidelines, the following key groups of risks should be considered in the process of risk assessment:

Geographical risks (UNODC, 2013, p. 10). Organization can consider the higher risks of corruption existing in countries and territories with significant deficiencies in national anti-corruption and AML/CFT systems. Organization can face the higher corruption risks by doing business or having business associates in such countries. The reports and indices published by international intergovernmental and non-governmental organizations can be helpful for an assessment of geographical risks.

- Transparency International's Corruption Perceptions Index <<https://www.transparency.org/en/cpi/2021>>
- The FATF lists of high-risk and other monitored jurisdictions <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-march-2022.html>>
- Basel AML Index <<https://baselgovernance.org/publications/basel-aml-index-2021>>
- Corruption Risk Forecast <<https://www.corruptionrisk.org/>>

International organizations and other institutions regularly update their indices and reports. It is recommended to check the latest versions.

Industry specific risks (UNODC, 2013, p. 10). Organization can consider the higher risks of corruption existing in particular industries. The industry specific risks can vary depending on country. National risk assessment reports and criminal statistics can be used for an assessment of industry specific risks.

Industries which may be considered as high risk industries can be found in:
Transparency International Bribes Payers Index Report 2011
<<https://www.transparency.org/research/bpi/overview>>

Risks in specific processes. There are specific processes that are vulnerable to corruption, such as procurement, sales, import and export of goods, government interaction, political support, security protocols, social programmes, charitable contributions and sponsorship (UN Global Compact, 2013, p.p. 24-26).

Risks related to a business model of an organization. The use of intermediaries and subcontractors, and participation in big business projects as one of the subcontractor can increase corruption risks (UNODC, 2013, p. 10).

Risks related to organizational structure. Organizations with a decentralized structure may have lower control over the operations of their branches and subsidiaries (UNODC, 2013, p.10).

Risks related to personnel of an organization. Staff members which fall within the definition of family members or close associates of politically exposed persons (PEPs) may be considered for the purposes of risk mitigation.

Risks related to the organizational culture and to an incentive system of an organization. The strong competitiveness between staff members, low levels of trust, low integrity, and system of bonuses for the financial achievements can create corruption risks (UNODC, 2013, p. 10).

Commonly encountered risks

UK Ministry of Justice, 2011, p. 26

Organizations can consider:

Checklist 8. Getting started with bribery risk assessment

OECD, 2016, p. 18

Risk scale

The risk scale may include several levels of risks. It should consider the impact of occurrence and the probability of occurrence.

The impact of occurrence means all legal (applicable criminal, administrative and civil law should be considered), financial, commercial, and reputational consequences.

The probability of occurrence means the likelihood that a corruption-related risk will actually occur in a foreseeable timeframe.

A simple qualitative scale could be used to classify each set of controls that mitigate a risk or scheme as either (i) effective/low risk, partially effective/medium risk or ineffective/high risk, or (ii) very effective/very low risk, effective/low risk, partially effective/medium risk, somewhat effective/high risk and ineffective/ very high risk, or a quantitative scale with numerical-value scores applied to each scheme could be used (OECD/UNODC/World Bank, 2013, p.11).

See samples of risks assessment matrix and other related documents:

UN Global Compact, 2013, p.p. 51-72

Documentation of results

The results of risk assessment can be documented in detailed spreadsheets, database templates or heat maps.

See samples of risk register and heat map:

OECD/UNODC/World Bank, 2013, p.p.13-14

According to the ISO standard, the organization shall retain documented information that demonstrates that the bribery risk assessment has been conducted and used to design or improve the anti-bribery management system (ISO 37001, p.7).

The French Anti-Corruption Agency's Guidelines underlines that the risk mapping should take the form of written and structured documentation with a detailed description of the methods used to produce the map, the measures taken to manage the risks and the roles and responsibilities of the different stakeholders (Agence Française anticorruption, 2020, p. 18).

According to the UNODC Guidance, organizations should publicly report on their risk assessment activities. However, this reporting does not include the actual results of the risk assessment, but rather a description of the risk assessment process (UNODC, 2013, p.p. 13-14).

Review the risk assessment

The international standards and guidelines recommend reviewing the risk assessment:

- on a regular basis, e.g. annually (OECD/UNODC/World Bank, 2013, p.14; WEF, 2016, p. 8)
- in the event of a significant change to the structure and activities of the organization (OECD/UNODC/World Bank, 2013, p.14; ISO 37001)

In the author's opinion, it is also important to review the risk assessment in the event of adopting new anti-corruption or other relevant laws, applicable to the organization.

1.3. Identifying applicable laws

Identifying applicable laws is an important step in designing an anti-corruption compliance programme (APEC, 2007, p. 4; TI, 2013, p. 6).

The UNODC recommended organizations to conduct comprehensive research on the different laws and regulations of the countries in which they operate (UNODC, 2013, p. 25).

The Legal Library of United Nations Convention against Corruption contains anti-corruption laws and jurisprudence from over 180 jurisdictions worldwide.

<http://www.track.unodc.org/LegalLibrary/Pages/default.aspx>

It is important to consider laws and regulations which have extraterritorial reach.

The Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 2016 (Sapin II, France).

UK Bribery Act of 2010.

U.S. Foreign Corrupt Practices Act of 1977, PL 95-213, Title 1; 91 Stat 1494, Dec 19, 1977.

1.4. Defining principles and values

Defining the main principles and values of an organization is another prerequisite for developing the code of conduct and the anti-corruption compliance programme (TI, 2013, p. 6).

International standards and guidelines promote “zero tolerance” of all forms of corruption (UNODC, 2013, p. 20). It is important to underline that facilitation payments are prohibited under United Nations Convention against Corruption (UNCAC) and under domestic laws in many jurisdictions, and considered “small bribes” (UNODC, 2013, p. 39; OECD, 2016, p. 12; WEF, 2016, p. 8). According to the UN Global Compact, facilitation payments are typically small payments made to secure or expedite the performance of a routine or necessary action to which the payer is entitled, legally or otherwise (UN Global Compact, 2013, p. 12). The UNODC Guide recommends organizations to apply prohibition of facilitation payments even in countries where facilitation payments are not illegal (UNODC, 2013, p. 40).

However, organizations should consider pressing situations where an employee cannot avoid paying a bribe or facilitation payment. This can include situations where an employee’s health, security or freedom is put at risk. Organization may qualify payments in dangerous situations as duress payments and develop a special policy regarding such payments (UNODC, 2013, p. 40; OECD, 2016, p. 12). When developing such policies, organizations should consider applicable domestic laws as they may have stricter requirements.

Does the FCPA Apply to Cases of Extortion or Duress?

Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 27

According to the UNODC, the “tone from the top” should reflect irrevocable support and appraisal of the company’s fundamental values, such as integrity, transparency and accountability (UNODC, 2013, p. 20).

The World Bank Group underlined the role of individual responsibility (World Bank Group, 2010, p. 2).

Small and middle-sized enterprises can consider principles suggested by Transparency International.

Annex A Suggested Principles for SMEs

TI, 2008, p. 12

Organization may include other principles and values taking into consideration priorities of shareholders, historical and cultural traditions of countries where the code of conduct and an anti-corruption compliance programme should be applied.

The ICC Rules recommend including the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met and specifically against the compliance with the Enterprise’s anti-corruption policy (ICC, 2011, p. 11).

The UK Ministry of Justice's Guidance recommends organizations to consider six principles by developing procedures to prevent bribery: proportionate procedure, top-level commitment, risk assessment, due diligence, communication (including training), and monitoring and review. The Guidance provides organizations with descriptions of relevant procedures, and a series of case studies (UK Ministry of Justice, 2011, p.p. 20-43).

1.5. Assessment of available resources

The organization should realistically assess the human, physical and financial resources available for the maintenance an anti- corruption compliance programme.

In the U.S., in assessing whether a company has reasonable internal controls, the Department of Justice and the Securities and Exchange Commission typically consider whether the company devoted adequate staffing and resources to the compliance program given the size, structure, and risk profile of the business (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 60).

1.6. Defining the design of an anti- corruption compliance programme

Anti-corruption compliance function may be a separate function or a part of the general compliance function. Respectively, an organization can draft anti-corruption compliance documents or include anti-corruption compliance provisions in general compliance documents.

An anti-corruption compliance programme should include policies, relevant for an organization. There is no need to implement all the policies recommended in international guidelines.

The guidance is written to cover the many situations where bribery can occur, so if you find one which is not relevant to your business, for example, giving political donations, then move on to the next one (TI, 2008, p. 4).

At the same time, an organization should conduct a periodical review of an anti-corruption compliance programme, and implement new policies if necessary.

1.7. Drafting internal documents

The main anti-corruption documents in an organization are code of conduct and an anti-corruption compliance programme.

An anti-corruption compliance programme should be adopted as an internal legal document and establish legal obligations for personnel. It is important to consider company law, labor law, and other laws defining requirements for internal legal documents and procedures in a country in which an anti-corruption compliance programme should be applied.

Anti-corruption and other provisions necessary for implementing a code of conduct and an anti-corruption compliance programme can be included in organization's internal documents.

1.8. Communication an anti- corruption compliance programme

The proper communication of a code of conduct and an anti-corruption compliance programme to all relevant stakeholders, including personnel, business associates, governmental authorities and civil society is of significant importance for effective implementation.

A Resource Guide to the U.S. Foreign Corrupt Practices Act underlines that a compliance program should be available in the local language so that employees in foreign subsidiaries can access and understand it (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 59).

Code of conduct and anti-corruption policies should be easily accessible on organization's website and intranet or other means used to communicate to employees and external parties (OECD, 2016, p. 8).

1.9. Reports relevant for benchmarking an anti- corruption compliance programme

- Control Risk Report, 2017. International Business Attitudes to Compliance. Available at: <<https://www.controlrisks.com/our-thinking/insights/reports/international-business-attitudes-to-compliance>>
- Deloitte, 2020. The State of Compliance Survey. Available at: <<https://www2.deloitte.com/content/dam/Deloitte/au/Documents/audit/22012021-state-of-Compliance-Survey-Publication-5.pdf>>
- EY, 2022. Global Integrity Report. Available at: <[file:///C:/Users/profe/Downloads/ey-global-integrity-report-2022%20\(1\).pdf](file:///C:/Users/profe/Downloads/ey-global-integrity-report-2022%20(1).pdf)>
- Konstanz Institute on Corporate Governance, 2017. Compliance Essentials (In German). Available at: <https://www.htwg-konstanz.de/fileadmin/pub/ou/kicg/Compliance_Essentials.pdf>
- NAVEX Global, 2018. EMEA & APAC Culture and Compliance Benchmark Report. Available at: <http://trust.navexglobal.com/rs/852-MYR-807/images/NAVEX-Global-2018-Culture-Compliance-Report.pdf?_ga=2.175834022.586507620.1526565005-1856680563.1492775907>
- PwC, 2016. State of Compliance Study. Laying a strategic foundation for strong compliance risk management. Available at: <<https://www.pwc.com/us/en/risk-assurance/state-of-compliance-study/assets/state-of-compliance-study-2016.pdf>>

2. Code of conduct

There are few provisions on a code of conduct in general international guidelines.

- OECD/UNODC/World Bank, 2013. Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>>

NAVEX Global published a definitive guide to support the development of codes of conduct.

- NAVEX Global, 2022a. Definitive Guide to Your Code of Conduct. Available at: <<https://www.navex.com/en-us/resources/definitive-guides/definitive-guide-code-of-conduct/?RCAssetNumber=3325>>

According to the French Anti-Corruption Agency, an anti-corruption code of conduct is an expression of senior management's decision to commit the company to bribery prevention and detection (Agence Française anticorruption, 2020, p. 22).

NAVEX Global suggested things that organization should and shouldn't include in the code of conduct (NAVEX Global, 2022a, p. 4).

The French Anti-Corruption Agency's Guidelines provides organizations with detailed recommendations on contents, scope, form, and dissemination of the anti-corruption code of conduct. The Guidelines also recommend incorporating a code of conduct into the employment regulations and to update it periodically.

Anti-Corruption Code of Conduct

Agence Française anticorruption, 2020, p.p. 22-24

Organizations can consider recommendations, presented in A Resource Guide to the U.S. Foreign Corrupt Practices Act. According to the Guide, company's code of conduct is often the foundation upon which an effective compliance program is built. As DOJ has repeatedly noted in its charging documents, the most effective codes are clear, concise, and accessible to all employees and to those conducting business on the company's behalf. Indeed, it would be difficult to effectively implement a compliance program if it was not available in the local language so that employees in foreign subsidiaries can access and understand it. When assessing a compliance program, DOJ and SEC will review whether the company has taken steps to make certain that the code of conduct remains current and effective and whether a company has periodically reviewed and updated its code (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 59).

NAVEX Global recommends a review and re-approval of a code by the board every year, and a deep-dive review of a code every three years. There are also some events that could necessitate a code update: acquisitions and mergers, new CEO, new risk areas to cover, globalization, regulatory changes and employee feedback (NAVEX Global, 2022a, p. 6).

Case Study 2: A medium-sized company encourages compliance with its policy of prohibition of bribery by using local business input to update and strengthen its Code of Conduct

OECD/UNODC/World Bank, 2013, p.p. 20-21

3. Anti- Corruption Compliance Programme

3.1. Anti- corruption compliance management system

3.1.1. Standards and guidelines on an anti- corruption compliance management system

An anti-corruption compliance management system can be stand-alone or integrated part of a compliance management system in an organization.

General international standards and guidelines contain recommendations on establishing and maintaining an anti-corruption (anti-bribery) management system.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- OECD, 2021. Annex II. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <<https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>>
- WEF, 2016. the World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at: <http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf>

Financial institutions can consider the Wolfsberg Group’s Guidance.

- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <<http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>>

3.1.2. Tone from the top and tone from the middle

International standards and guidelines mention the tone from the top as a key factor for implementation of an effective anti-corruption compliance programme. The governing body and senior management should set the tone and demonstrate ownership of an anti-corruption compliance programme (UNODC, 2013, p.p. 19-20; OECD, 2021, p. 21; APEC, 2007, p. 4).

Senior management needs to make it clear that corruption is prohibited at all times

and in any form, whether small or large, direct or indirect, active or passive. Support and commitment from senior management must not be seen as a one-off activity at the time of

the launching of an anti-corruption programme. It is rather an ongoing demonstration of the company's norms and values (UNODC, 2013, p. 20).

Top-level commitment is one of the six principles defined in the UK Ministry of Justice Guidance. The Guidance provides organizations with description of relevant procedures.

Principle 2. Top-level commitment.

UK Ministry of Justice, 2011, p.p. 23-24

Middle management should also promote business integrity and zero tolerance of corruption, and play an important role in delivering the key messages of the company's training and communication (UNODC, 2013, p. 69; OECD, 2016, p. 8).

Commitment of management to the anti-corruption compliance programme should be visible and properly documented.

Checklist 1. How management can demonstrate leadership and commitment to the company's anti-bribery policy.

OECD, 2016, p. 9

3.1.3. Shareholders

Shareholders may be involved in implementation of an anti-corruption compliance programme especially if governing body was not established (e.g., in SMEs).

According to the APEC Anti-Corruption Code of Conduct, the findings of independent assessment of the adequacy of the anti-corruption compliance programme should be disclosed in the Annual Report to shareholders (APEC, 2007. P. 6).

3.1.4. Governing body

Governing body is a board of directors or equivalent body of an organization. It should be considered that not all organizations have governing bodies.

The functions of a governing body are described in:

UNODC, 2013, p.p. 29-32

ISO 37001, 2016, p.p. 8, 20

If an organization does not have a governing body, top management should take responsibility for an anti-corruption compliance programme.

In the author's opinion, it is important to mention that anti-corruption activities of a governing body (e.g., discussion on the anti-corruption compliance programme's monitoring

report at the governing body's meeting) should be properly documented. In case of investigation, these documents can be used as serious evidences of the real implementation of an anti-corruption compliance programme.

3.1.5. Top management

The UNODC Guide defines the role of top management in implementing an effective anti-corruption compliance programme.

According to the UNODC, the senior management should:

ensure commitment throughout the company

establish responsibilities

provide sufficient resources

define scope and extent of the programme

put support and commitment into action

UNODC, 2013, p.p. 20-21

The ISO Standard 37001 provides organizations with the detailed list of top management functions with respect to the anti-bribery management system.

ISO, 2016, p.p. 8-9

The French Anti-Corruption Agency defines the commitment of senior management as the first pillar of an anti-corruption program.

This requires senior managers to:

to show exemplary personal behaviour in both word and deed with regard to integrity and

to promote the anti-corruption programme through personal communication;

to implement the necessary resources to build an effective and efficient programme.

to be accountable for proper oversight of the programme;

to comply with the programme in their own decision-making;

to ensure that appropriate and proportionate sanctions are imposed in the event of violations of the code of conduct or conduct that could qualify as corrupt.

Agence Française anticorruption, 2020, p. 4

3.1.6. Anti- corruption compliance function

Depending on the size and structure of an organization anti-corruption compliance function may be exercised by:

- Anti-corruption compliance officer
- Anti-corruption compliance unit/department
- Compliance unit/department
- Another unit/department

The Wolfsberg Group recommended financial institutions to have an independent unit with the requisite expertise and authority. This unit should be part of a control function such as Compliance, Legal or Risk (Wolfsberg Group, 2017, p. 4).

In small organizations anti-corruption compliance function may be exercised on the part-time base.

3.1.7. Anti- corruption compliance officer

Anti-corruption compliance officer should have appropriate education and experience. Considering applicable laws and the organizational ethical framework an organization may define special requirements for the anti-corruption compliance officer's position. These requirements may include but not be limited to particular degree, absence of criminal records, business reputation, professional certification, relevant work experience.

In the U.S., experience and qualification of compliance personnel is one of the questions by the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2020, p. 12).

To define functions of an anti-corruption compliance officer, organizations can consider ISO standard 37001.

Anti-bribery compliance function

ISO 37001, 2016, p.p. 10, 27-28

According to the French Anti-Corruption Agency's Guidelines, a compliance officer may set up an anti-corruption compliance network with their compliance contacts in the company to help design, deploy and control anti-corruption programme(s). In addition to their recurring tasks, the compliance officer is involved in implementation of strategic projects and decisions made affecting the structure of the company, such as signing new contracts, mergers and acquisitions, major investments, seeking or engaging in new partnerships, and designing and marketing new products or services. (Agence Française anticorruption, 2020, p. 15).

The compliance officer coordinates the risk mapping exercise, guiding the company in the identification of its processes and corruption risks, in the ranking of these risks and in the definition and implementation of risk management measures. The compliance officer is responsible for drawing up the corruption risk map and submits each risk map update and action plan monitoring report to senior management. (Agence Française anticorruption, 2020, p.p. 18-19).

Anti-corruption compliance officer should report directly to CEO or comparable authority. He/she should have right to report, if necessary, to the governing body or to a specially delegated committee of the governing body (WEF, 2016, p. 8).

In the U.S., direct reporting lines to anyone on the board of directors and/or audit committee is one of the questions by the evaluation of corporate compliance programs (Criminal Division of the U.S. Department of Justice, 2020, p. 12).

Summarizing the provisions of international and domestic standards and guidelines, it may be recommended to define in an anti-corruption compliance programme formal requirements to, and main functions, powers and responsibilities of an anti-corruption compliance officer.

3.1.8. Business partners (business associates)

International standards and guidelines use different terminology to define partners with whom an organization has various types of business relationships.

The UNODC Guide uses the term “business partner” which covers entities over which an organization has effective control as well as partners over which an organization does not have effective control. All the business partners are divided in five main categories: subsidiaries, affiliates, joint ventures, agents and intermediaries, contractors and suppliers (UNODC, 2013, p. 54).

The ISO Standard 37001 uses the terms “controlled organization”, “business associate” and “third party”. According to the Standard, an organization has control over another organization if it directly or indirectly controls the management of the organization (ISO 37001, 2016, p. 16). Business associate means external party with whom the organization has, or plans to establish, some form of business relationship (ibid., p. 5). Third party means person or body that is independent of the organization. All third parties are business associates but not all business associates are third parties (ibid., p. 6).

Many guidelines use the term “third party” that includes various types of partners over which an organization does not have effective control (OECD, 2016; OECD, 2021; WEF, 2013; APEC, 2007; ICC, 2010; ICC, 2015).

In this and following chapters of the Overview we use the widely spread term “third party” to define all possible business partners (business associates) over which an organization does not have effective control, and the term “entities over which an organization has control”.

3.1.8.1. Entities over which an organization has control

Anti-corruption compliance management system in an organization and in entities over which an organization exercises control should be based on the principles and values common to all of them.

OECD mentioned as a good practice that ethics and compliance programmes or measures designed to prevent and detect foreign bribery are applicable to all entities over which a company has effective control, including subsidiaries (OECD, 2021, p. 3). According to TI, an

organization should implement its programme in all business entities over which it has effective control (TI, 2013, p. 8).

Organizations can consider UNODC recommendations regarding subsidiaries

UNODC, 2013, p. 55

3.1.8.2. Third parties

The WEF Guidelines contain the following not exhaustive list of third parties:

- Joint venture partner
- Consortium partner
- Agent
- Adviser and other intermediary (e.g., legal, tax, financial adviser or consultant, lobbyist)
- Contractor and sub-contractor
- Supplier/vendor
- Service provider
- Distributor
- Customer (WEF, 2013, p.8)

Some international guidelines mention other categories: brokers (APEC, 2007, p. 4), resellers, and franchisees (ICC, 2011, p. 6).

Organizations can consider UNODC recommendations regarding affiliates, joint ventures agents, intermediaries, contractors, and suppliers

UNODC, 2013, p.p. 55-57

In an anti-corruption compliance programme organizations can use a general term “third parties” instead of developing an exhaustive list of all possible categories. If necessary, an organization can mention the categories of third parties that are most common for its type of business but keep this list open for other categories.

3.1.9. Reports relevant for benchmarking an anti- corruption compliance management system

The reports below present the outcomes of general studies on anti-corruption compliance in organizations and can be helpful for benchmarking an anti-corruption compliance management system.

- PwC, 2016. State of Compliance Study. Laying a strategic foundation for strong compliance risk management. Available at: <<https://www.pwc.com/us/en/risk-assurance/state-of-compliance-study/assets/state-of-compliance-study-2016.pdf>>
- PwC, 2017. State Risk in Review. Available at: <<https://www.pwc.com/us/en/risk-assurance/rir2017/pwc-2017-risk-in-review-study.pdf>>

- Thomson Reuters, 2021. Costs of Compliance 2021: Shaping the Future. By Hammond S. and Cowan M. Available at: <<https://legal.thomsonreuters.com/en/insights/reports/the-cost-of-compliance-2021/form>>

3.2. Anti- Corruption Clause

3.2.1. Standards and guidelines on anti- corruption clause

Anti-corruption clause is a useful tool to mitigate third parties risks.

There are particular provisions on anti-corruption clause in general ICC guidance.

- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>

The detailed recommendations can be found in special ICC guidance.

- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-paries-ENGLISH-2010.pdf>>
- ICC, 2012. Anti-Corruption Clause. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2012/10/ICC-Anti-corruption-Clause.pdf>>

According to the ICC Rules, an organization should include in its contracts with business partners a provision allowing it to suspend or terminate the relationship, if it has a unilateral good faith concern that a Business Partner has acted in violation of applicable anti-corruption law (ICC, 2011, p. 7).

The OECD Guidance point out among the essential elements of ethics and compliance programmes adequate mechanisms to address incidents of foreign bribery by business partners, including for example contractual termination rights (OECD, 2021, p. 22).

According to the French Anti-Corruption Agency's Guidelines, specific clauses that are in compliance with legal requirements may be included in contracts to rescind or not renew business relationships in the event of cases of corruption or failure to comply with the organisation's directives in these matters. (Agence Française anticorruption, 2020, p. 9).

3.2.2. Content of the anti- corruption clause

The ICC anti-corruption clause refers to the ICC Rules on Combating Corruption of 2011. Three options are possible: either a short text with the technique of incorporation by reference of Part I of the ICC Rules on Combating Corruption 2011 (Option I) or the incorporation of the full text of the same Part I of the ICC Rules on Combating Corruption 2011 in their contract (Option II), or a reference to a corporate compliance programme, as

described in Article 10 of the ICC Rules on Combating Corruption (Option III) (ICC, 2012, p. 2).

ICC Guidelines on Agents, Intermediaries and Other Third Parties provide organizations with anti-corruption provisions, representations, warranties, and covenants which can be included in contracts with Third parties:

- The Third party is not a public official, and does not have any official status. The Third party will notify the enterprise of any changes to these representations;
- The Third party does not have any relationship with a current official or any immediate relative or close associate of an official who would be in a position to influence a decision in favour of the enterprise, and the Third party will notify the enterprise of any changes to this representation;
- The Third party will comply with all applicable anti-corruption and anti-money laundering laws;
- The Third party is not and has not been the subject of a criminal investigation and has not been convicted under the laws of the relevant countries for facts related to bribery, corruption, money laundering or for violations of laws or regulations in force governing business enterprises;
- The Third party will comply with the enterprise's codes and Guidelines, in particular, the enterprise's rules on gifts and hospitality or has its own code or Guidelines with equivalent standards and will comply therewith;
- The Third party represents that no payments, offers, or promises to public officials or other third party beneficiaries have been, or will be made, directly or indirectly, for an improper purpose;
- The Third party agrees to comply with enterprise Guidelines and limits for reimbursement of expenses;
- The enterprise has the right to suspend or terminate the contract immediately upon unilateral good faith concern that there has been a violation of any applicable anti-corruption law or provision of the agreement without paying any compensation to the Third party, and the Third party agrees to indemnify the enterprise for expenses related to violations of the anti-corruption laws;
- The Third party agrees to a clearly defined scope of work that limits the Third party's ability to act on the enterprise's behalf;
- The Third party agrees to regularly report on its activities on the enterprise's behalf, and to provide detailed invoices and detailed supporting documentation for its expenditures;
- The Third party agrees to provide audit rights to the enterprise related to activities undertaken on the enterprise's behalf in the previous three years;
- The Third party agrees to submit the retention of subcontractors or other persons or entities designated to perform similar services to the enterprise for prior approval, if the subcontracted activity is of a 'high risk' nature, as defined in chapter IV above;
- The Third party is prohibited from assigning the contract or the compensation to be paid;
- The Third party agrees to payment provisions that include the safeguards identified in chapter XI below.
- The Third party is required to update the information supplied during the due diligence review;

- The Third party is required to maintain accurate books and records and appropriate internal controls; and
- The Third party is required to cooperate with any investigation into alleged breaches of the compliance provisions, including the requirement to provide access to documents and personnel.

Enterprises facing higher risks in connection with Third parties may wish to consider the following additional safeguards:

- Require the Third party to submit certain actions to the enterprise for prior approval (e.g., interactions with public officials);
- Include provisions that limit the Third party's ability to act on the enterprise's behalf in relation to government contracts; and
- Require, as appropriate, provisions for transparency of the relationship to local authorities.

ICC, 2010, p.p. 6-7

3.3. Third Party Due Diligence

3.3.1. Standards and guidelines on third party due diligence

According to the International Chamber of Commerce, due diligence is a term used to describe background investigation conducted on a third party which an organization is considering contracting with. It is a process of examining the background of a potential business partner in an effort to assess and mitigate risks of corruption (ICC, 2015, p. 6).

General international standards and guidelines on anti-corruption compliance underline that organizations should carry out third party due diligence before entering into business relationship and on on-going base (UNODC, 2013, p. 57; OECD, 2021, p. 21; ISO, 2016, p. 15).

According to the French Anti-Corruption Agency, the purpose of due diligence is to inform the decision to enter into a relationship with a third party, or to maintain a relationship or end it (Agence Française anticorruption, 2020, p. 26).

In the UK, the application of due diligence procedures is one of the six principles, which organizations should put in place to prevent bribery (UK Ministry of Justice, 2011, p.p. 27-28).

In the U.S., the third party management including due diligence is an important part of the evaluation of corporate compliance programs (Criminal Division of the U.S. Department of Justice, 2020, p.p. 7-8).

General international standards and guidelines contain recommendations on conducting third party due diligence.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at:

<https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf p.p. 57-59>

- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use. p.p. 15-16, 32-34
- OECD/UNODC/World Bank, 2013 Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>>

There are also five special international guidelines on third party due diligence.

- UN Global Compact, 2013b. Stand Together Against Corruption: A Practical Guide to Help Prevent Corruption in the Supply Chain. Available at: <https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fsupply_chain%2FStandTogether.pdf>
- UN Global Compact, 2015a. Supply Chain Sustainability: A Practical Guide for Continuous Improvement. Second Edition. Available at: <https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fsupply_chain%2FSupplyChainRep_spread.pdf>
- WEF, 2013. Good Practice Guidelines on Conducting Third Party Due Diligence. Available at: <http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf>
- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-paries-ENGLISH-2010.pdf>>
- ICC, 2015. Anti-Corruption Third Party Due Diligence: a Guide for Small and Medium Size Entities. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2015/07/ICC-Anti-corruption-Third-Party-Due-Diligence-A-Guide-for-Small-and-Medium-sized-Enterprises.pdf>>

Organizations can also find useful information in the Guide and Benchmark Report published by NAVEX Global.

- NAVEX Global, 2017b. Definitive Guide to Third Party Risk Management. Available at: <<https://www.navex.com/en-us/resources/definitive-guides/definitive-guide-third-party-risk-management/?RCAssetNumber=1880>>

For identification of third parties, representatives of third parties, beneficial owners of third parties, third parties who are public officials, public officials' family members or close associates, and their sources of wealth and funds the FATF standards and guidance, and G20 Principles can be helpful.

- FATF, 2012. International standards on combating money laundering, the financing of terrorism and proliferation (the FATF Recommendations). [pdf] FATF. Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf>
- FATF, 2013. Guidance: Politically Exposed Persons. Available at: <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>>

- FATF, 2014. Guidance on transparency and beneficial ownership. Available at: <<http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>>
- FATF, 2020. Digital Identity. Available at: <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-on-Digital-Identity.pdf>>
- G20, 2014. High-Level Principles on Beneficial Ownership Transparency. Available at: <https://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf>

3.3.2. Due diligence function in an organization

According to international guidelines, due diligence function can be partially exercised by business units, and partially by anti-corruption compliance officer.

Business units can collect data in the framework of standard initial due diligence and on-going due diligence. The search in special compliance databases, and conducting enhanced initial due diligence will likely require input from anti-corruption compliance officer (WEF, 2013, p. 11).

The French Guidelines mentioned three levels of due diligence participants within organizations:

- Staff responsible for due diligence collect the information and documents useful for due diligence on the third parties with which the company has a relationship or a prospective relationship. They issue a first appraisal. This appraisal counts as a decision in cases judged to be low risk;
- The staff member or department in charge of the anti-corruption programme (or any other designated individual or department) provides expertise and advice to the staff in charge of due diligence and assists the operational staff with appraisals of and decisions on high-risk cases;
- Senior management decides on further action to be taken with respect to the highest-risk cases referred to it by the departments concerned

Agence Française anticorruption, 2020, p. 27

According to the WEF Guidelines, organization may use an external service provider to carry out or to assist in carrying out due diligence, especially of high-risk third parties (WEF, 2013, p.11, p.13). The use of external consultant and other service providers is also foreseen in domestic guidance (Agence Française anticorruption, 2020, p.27; UK Ministry of Justice, 2011, p. 27).

3.3.3. Collecting and analyzing data

Organization can collect and analyze third party data necessary to:

- Identify a third party, representative of a third party, shareholders, and beneficial owners of a third party
- Identify geographic location
- Identify business areas

- Identify contacts with public officials and/or authorities
- Determine conflict of interest of personnel from a third party
- Find out whether there is any history of unethical business practices, corruption or other criminal activity
- Evaluate business reputation
- Identify sources of wealth and funds
- Evaluate financial statement
- Evaluate an anti-corruption compliance programme

Factors which organization may find useful to evaluate can be found in:

ISO 37001, 2016, Annex A, p.p. 32-33

OECD, 2016, Checklist 9. Mitigating third party bribery risk, p. 19

UNODC, 2013, p. 58

According to the UN Global Compact, it is recommended to identify not only direct suppliers, but enable visibility of your supply chain beyond the first tier (UN Global Compact, 2013b, p. 9; UN Global Compact, 2015a, p.p. 29-30).

Preventing corruption in the supply chain:

UN Global Compact, 2013b, p.p. 9-12

Sources of data

Organization can use data, provided by a third party, data from organization's units/departments, data from publications in the Internet and media, available official sources of data, and commercial databases.

Data, provided by a third party. Organization can develop questionnaires to conduct face-to-face or virtual interviews with the third party's managers and staff members.

Standard questionnaires can be helpful to structure the interview:

Sample external due diligence questionnaire

WEF, 2013, Appendix B, p.p. 32-42

Anti-Corruption Questionnaire to send to Third Party

ICC, 2015, Annex B, p.p. 32-39

Organization can foresee visiting the office of a third party to verify whether management and staff members are located at the declared address,

Data from organization's units/departments. Organization can use data from internal units/departments.

Enterprises can collect information from the Sponsoring Department by:

Requiring the Sponsoring Department to complete an application form. Often, the employee proposing the engagement of a Third party has an interest in the hiring of the candidate Third party or the success of the deal. Because such interests have the potential to obscure the risks posed by a particular Third party, this employee alone should not be allowed to make the final decision on the engagement of the candidate Third party. Thus, a first step in the process should be to require the Sponsoring Department to submit written information regarding the candidate Third party. Such information can be provided in a form that sets forth the business need for employing a Third party, the business justification for the proposed compensation, an evaluation of the commercial and technical competence of the candidate Third party (e.g. his knowledge of the enterprise's products and services), specific information regarding the candidate Third party's reputation for integrity, details on how the candidate Third party was identified, whether any other Third parties were considered, and why the candidate Third party was proposed. The form can also contain a confirmation by the employee that, to the best of his or her knowledge, the candidate Third party is qualified and suitable for engagement. The form can also provide information on the services that the candidate Third party shall provide; the main terms of the contractual arrangement to be entered into with the candidate Third party; a description of the amount of the proposed compensation payments; and an assessment of why the proposed compensation is reasonable and appropriate in relation to the services to be performed.

ICC, 2010, p. 4

Data from publications on the Internet and media. Organization can use data from the Internet and media (ISO 37001, 2016, Annex A, p.33). In the author's opinion it should be considered that those data are not always correct and should be verified.

Official sources of data. In the author's opinion, the following official sources of data can be useful for conducting due diligence:

- Registers of companies/organizations
- Registers of beneficial owners
- Registers of lost and stolen passports
- Registers of disqualified persons
- Registers of real estate
- Registers of vehicles, air planes, helicopters, and yachts
- Databases of court decisions
- Criminal and administrative records
- Databases of tax authorities
- Debarment lists of organizations that are restricted or prohibited from contracting with public or government entities kept by national or local governments or multilateral institutions

The availability of mentioned above and other official databases depends on domestic laws and regulations.

Commercial databases. As a rule, the use of commercial databases is entirely at the discretion of the organization.

3.3.4. Initial due diligence

The aim of initial due diligence is a creation of a base for taking decision regarding entering/not entering into a business relationship, for identification potential conflict of interest, for conducting risk assessment, for defining risk mitigation measures if necessary.

How to conduct Due Diligence?

ICC, 2015, p.p. 14-21

Case Study 10: Company K conducts due diligence on its third parties

OECD/UNODC/World Bank, 2013, p.p. 43-45

Due Diligence Content

Agence Française anticorruption, 2020, p.p. 26-31

Sample Third-Party Due Diligence Process Map

NAVEX Global, 2017b, p. 11

3.3.4.1. Standard due diligence

Standard due diligence can include the following procedures:

- Identification of a third party, representative of a third party, and beneficial owner of a third party
- Identification of third parties who are public officials, public officials' family members or close associates
- Collecting and analyzing data available from the legitimate sources
- Identification of indicators (red flags) which require an enhanced due diligence
- Preparing report for the following decision regarding conducting an enhanced due diligence if necessary, entering/not entering into a business relationship, assessment of corruption risks and defining risk mitigation measures if necessary

Identification of a third party, and a representative of a third party. Organization can define in an anti-corruption compliance programme the lists of documents acceptable in accordance with domestic laws and regulations for identification of domestic and foreign natural persons, and legal entities.

Organization may include an opportunity of electronic identification if such form of identification is allowed in domestic laws and regulations.

Organizations can consider the FATF Guidance on Digital Identity

FATF, 2020

Identification of beneficial owners. The following sources of data can be used for identification of beneficial owners:

- Information provided by a third party
- Registers of companies/organizations
- Registers of beneficial owners available in some jurisdictions

Organization may take reasonable measures allowed in the applicable national laws to verify the beneficial ownership of third parties.

The FATF Guidance can be helpful for identification of beneficial owners

FATF, 2014

Identification of public officials, their family members and close associates. Organization can take reasonable measures to identify third parties who are public officials, public officials' family members or close associates, or have other direct or indirect links with public officials.

It can be useful to check definitions of the public official in applicable laws considering that definitions may vary significantly.

In the author's opinion, the following sources of data can be used for identification of public officials, their family members and close associates:

- Information provided by a third party
- Information from the Internet, including information from the websites of public agencies, public enterprises and other relevant authorities
- Information from commercial databases

The FATF Guidance can be helpful for identification of public officials

FATF, 2013, Chapter V, p.p. 13-19

Indicators (red flags) which require an enhanced due diligence. Domestic guidelines underline the importance of risk-based due diligence (UK Ministry of Justice, 2011, p. 27; Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 62).

Organization can conduct enhanced due diligence when a third party has a link/links to high-risk jurisdictions and/or industries, public authorities, public officials, their family members and close associates, when a third party was involved in unethical business practices, corruption or other criminal activity, or when other high-risk indicators were identified.

The value of contract can be also considered when making a decision regarding conducting an enhanced due diligence.

The following countries can be considered as high-risk jurisdictions:

- A country perceived to be a high-risk country for corruption

- Transparency International's Corruption Perceptions Index. Available at: <<https://www.transparency.org/en/cpi/2021>>

- A country has strategic deficiencies in anti-money laundering/countering the financing of terrorism measures

- The FATF lists of high-risk and other monitored jurisdictions <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-march-2022.html>>

- Basel AML Index <<https://baselgovernance.org/publications/basel-aml-index-2021>>
- Corruption Risk Forecast <<https://www.corruptionrisk.org/>>

- Industries which may be considered as high risk industries can be found in: Transparency International Bribes Payers Index Report 2011 <<https://www.transparency.org/research/bpi/overview>>

ICC Guidelines foresees additional criteria of high risk third parties.

These categories of high risk Third parties, and any others identified by the enterprise, can be subjected to a thorough due diligence review prior to retention:

Any Third party that will be engaged to deal directly with a public official on behalf of the enterprise where that official has discretionary authority over some matter impacting or involving the enterprise, and, in particular, such Third parties that are located or doing business in a country with high levels of bribery;

Any Third party engaged to interact with public officials that is compensated on the basis of their success in securing a contract, permit or increased business; Similarly, the enterprise will also try to identify the circumstances in which Third parties are the most exposed to private-to-private bribery.

Any Third party that is engaged to seek information that is not publicly available;

Any Third party that may be, or may have been, a public official or an enterprise in which a public official holds an economic interest (e.g., as an owner, shareholder, employee, or director);

Any Third party who is or may be a relative or close associate of a present or former official, or a Third party that has a relative of a present or former official as an owner, shareholder, employee, director; and

Any Third party that is owned or controlled by or closely linked to a government agency.

ICC, 2010

Organizations can also consider the Wolfsberg Group Guidance for financial institutions.

Appendix A. Examples of Corruption Red Flags

There are many red flags which may warrant enhanced due diligence or review. These red flags may be identified during various business activities discussed in this Guidance, including Intermediary engagement, acquisition or investment in a Target company, general business activity, gifts and entertainment, charitable contributions, among others. The following is a non-exhaustive selection:

- Little to no relevant experience regarding the services to be provided
- Flawed background or reputation (including, for example, prior corruption or a negative reputation for integrity)
- Recent senior Public Official of the same government department or business responsible for the award of the contract or matter at issue or who worked in a procurement or decision-making position
- Transaction or Intermediary suggested by a Public Official, particularly one connected to the business or matter at issue
- Close business, personal or family relationship with a Public Official who has discretionary authority over the business or transaction at issue
- Party to a transaction or contract makes unreasonable/unsupported objections to ABC due diligence or representations or warranties being included in the agreement
- Party does not reside or have a significant business presence in the country where the service is to be provided
- Use of a shell company or some other non-transparent corporate structure
- Requires payment of a commission, or a significant portion thereof, before or immediately upon award of the contract
- Requests for unusual contract terms
- Requests for payment in cash, advance payments, payment to an individual or entity that is not the contracting individual/entity, or payment into a country that is not the contracting individual/entity's principal place of business or the country where the services are performed
- Anticipates payments that cannot plausibly be commercially justified vis-à-vis the role undertaken
- Adjustment of remuneration demand during the course of the engagement, particularly in close proximity to the award of business

- Vague or unsupported bookkeeping
- Heavy reliance on cash

Wolfsberg Group, 2017, p. 16

The WEF Guidelines provide organizations with the red flag checklist.

WEF, 2013, p.p. 44-46. Appendix C: Red Flag Checklist

3.3.4.2. Enhanced due diligence

Enhanced due diligence may include collecting and analyzing data on:

- Business reputation
- Financial statement
- Sources of wealth and funds
- An anti-corruption compliance programme and other anti-corruption efforts, e.g., participation in Collective Action
- The whole chain of suppliers or subcontractors involved in the business project

How to conduct Due Diligence?

ICC, 2015. p.p. 14-21

If a third party is public official, public official's family member and close associate organization as a rule should take reasonable measures to identify sources of wealth and funds of.

The following sources of data can be used for identification of sources of wealth and funds:

- Information provided by a third party
- Information from the declarations of incomes and assets, if publicly available on the websites of public agencies, public enterprises and other relevant authorities
- Registers of companies/organizations
- Registers of beneficial owners
- Information from commercial databases

The FATF Guidance can be helpful for identification of sources of wealth and funds

FATF, 2013, Chapter V

3.3.5. Ongoing due diligence

Ongoing due diligence (monitoring) shall be conducted periodically and in cases of receiving new information regarding third party's suspicious activities. Organization can define in an anti-corruption compliance programme how often due diligence has to be conducted (e.g. every year or every six months).

The aim of on-going due diligence is a creation of a base for taking decision regarding continuation/non-continuation of a business relationship, for revision of risk category, and for defining risk mitigation measures if necessary.

Depending on the level of risk exposure, the company will decide upon the relevant approach to monitoring the business partner, which may consist of one of the following approaches:

Self-assessment: Companies may require that business partners provide information on the status of their anti-corruption programme through a self-assessment form;

Own investigations: Companies may conduct their own analysis to assess the extent and level of the quality and scope of a partner's anti-corruption programme, either based on research and background information or through direct engagement with the partner; and

Independent evaluation/assessment: Companies may decide to obtain or require some form of an independent evaluation or assessment from trusted third parties (e.g., accountant, independent expert) that assess the extent and level of quality and scope of the partner's anti-corruption programme.

UNODC, 2013, p. 59

Conducting on-going due diligence includes the following procedures:

- Periodical updating identification data
- Periodical updating and evaluating available data to find illicit activities linked to corruption
- Preparing report for the following assessment of corruption risks and defining risk mitigation measures if necessary

3.3.6. Identification of suspicious transactions

Organization should consider that even well-established third party due diligence and staff recruiting processes not always allow to identify persons involved in corruption relationship.

Careful analysis of payment schemes and transactions can form a second line of defense.

A Resource Guide to the U.S. Foreign Corrupt Practices Act recommends considering payment terms compare to typical terms in that industry and country, as well as the timing of the third party's introduction to the business. Moreover, companies may want to confirm and document that the third party is actually performing the work for which it is being paid and that its compensation is commensurate with the work being provided. (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 62).

The French Anti-Corruption Agency recommends the finance and accounting staff alert the compliance officer or any other designated person when unusual payment methods are demanded, such as cash payments, payments to a third party or to a new bank account in an uncooperative or embargoed jurisdiction. (Agence Française anticorruption, 2020, p. 30).

Organizations can find useful information on identification of suspicious transactions in the FATF guidance and reports.

- FATF, 2011. Report on Laundering the Proceeds of Corruption. Available at: <<http://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf>>
- FATF, 2012b. Specific Risk Factors in Laundering the Proceeds of Corruption. Available at: <<http://www.fatf-gafi.org/media/fatf/documents/reports/Specific%20Risk%20Factors%20in%20the%20Laundering%20of%20Proceeds%20of%20Corruption.pdf>>
- FATF, 2020a. Money Laundering and Terrorist Financing Red Flag Indicators Associated with Virtual Assets. Available at: <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/Virtual-Assets-Red-Flag-Indicators.pdf>>

3.3.7. Organizing and archiving documents

Organization can adopt standard forms of documents to collect data of third parties. The period of records-keeping should be defined considering the applicable laws if any.

3.3.8. Use of IT- solutions for conducting due diligence

As mentioned in several guidelines, the use of modern technologies and IT-solutions can increase the effectiveness of third party due diligence and risk mitigation significantly (WEF, 2013, p. 10; NAVEX Global, 2017b, p.p. 18-20).

The following due diligence processes can be fully or partially automated:

- Checking against watch lists, data bases and other resources
- Certification of acceptance of policies
- Organizing and archiving documents

3.3.9. Reports relevant for benchmarking third party due diligence

- Compliance Week and Kroll, 2020. Anti-Bribery & Corruption Benchmarking Report. Available at: <<https://www.complianceweek.com/download?ac=11276>>

3.4. Third Party Risk Management

3.4.1. Standards and guidelines on third party risk management

Many international standards and guidelines do not differentiate third party due diligence and risk management or do not pay attention to this question. According to the WEF Guidelines, third party risk assessment and risk mitigation are steps of the due diligence process (WEF, 2013, p. 7). The OECD Guidance underline an importance of the “risk-based due diligence” (OECD, 2021, p. 21).

To clarify the difference, NAVEX Global’s definitions can be used as an additional source. According to NAVEX Global, third-party risk management is the process of assessing and

controlling reputational, financial and legal risks to organization posed by parties outside organization. Third-party due diligence is the investigative process by which a third party is reviewed to determine any potential concerns involving legal, financial or reputational risks. Due diligence is disciplined activity that includes reviewing, monitoring and managing communication over the entire vendor engagement life cycle (NAVEX Global, 2017b, p. 2).

Third party risk management consists of two parts: risk assessment and risk mitigation.

In the policy on third party risk management organizations usually define the risk scale, the lists of corruption risk indicators/red flags, the correlation between the results of risk assessment and approval of entering into a business relationship with a third party, the revision of risk category, and measures for risk mitigation.

General international standards and guidelines contain recommendations on third party risk management.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>

Several special guidelines on due diligence may be considered for designing and implementing the policy on risk management.

- WEF, 2013. Good Practice Guidelines on Conducting Third Party Due Diligence. Available at: <http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf>
- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-parties-ENGLISH-2010.pdf>>

Organizations can also find useful information in the guidance published by NAVEX Global.

- NAVEX Global, 2017b. Definitive Guide to Third Party Risk Management. Available at: <https://www.navexglobal.com/en-gb/node/1881/thank-you?RCAssetNumber=1880&token=f9aGtcgkry_b_avbdLihKdDr7hBWSLc3NzVQLEkzDc>

3.4.2. Risk assessment

As a rule, organizations conduct corruption risk assessment before entering into a business relationship with a third party and periodically revise the risk category.

Risk scale

Organization may select three-tier risk scale (low, medium and high risk) or more detailed scale. Some organizations may choose to design and apply a numerical system to the risk indicators to make the assessment more systematic. Other organizations may employ a risk matrix looking at the likelihood or potential impact of risk, or decide to prioritize risk indicators which must always take precedence in deciding the risk category of a third party. Whatever method is used, it is important that organizations use objectivity and judgement as core principles in the implementation of the risk assessment process (WEF, 2013, p. 9-10).

Risk indicators/red flags

International standards and guidance define the key risk groups and risk indicators/red flags that organizations may use to assess the risk of corruption.

Geographic location

The following countries may be considered as high-risk jurisdictions:

- A country perceived to be a high-risk country for corruption (Transparency International's Corruption Perceptions Index)

- Transparency International's Corruption Perceptions Index. Available at: <<https://www.transparency.org/en/cpi/2021>>

- A country has strategic deficiencies in anti-money laundering/countering the financing of terrorism measures (the FATF lists of high-risk and other monitored jurisdictions, Basel AML Index)

- The FATF lists of high-risk and other monitored jurisdictions <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-march-2022.html>>
- Basel AML Index <<https://baselgovernance.org/publications/basel-aml-index-2021>>

- A jurisdiction known to have high levels of bank secrecy and presenting a high risk for facilitating illicit financial flows (WEF, 2013, p.9)

The Tax Justice Network's Financial Secrecy Index. Available at:
<<https://www.financialsecrecyindex.com/>>

- A jurisdiction that encourages or requires organizations to hire local agents to transact business for the government (WEF, 2013, p. 9)

The French Anti-Corruption Agency recommends to consider:

- The list of countries subject to financial and international sanctions published by economy and finance ministries;
- Monitoring reports on the implementation of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions in the signatory countries;
- Investigations and indices on public sector corruption;
- Incorporation of the third party in an uncooperative jurisdiction or a country without equivalent legislation, which may be defined as a risk factor when assessing the third party's risk level.

Agence Française anticorruption, 2020, p. 29

Industry

The following industries may be considered as high-risk industries:

- The industry with which the third party conducts business transactions is perceived to present a high risk for corruption (WEF, 2013, p. 9)

Industries which may be considered as high risk industries can be found in:

Transparency International Bribes Payers Index Report 2011. Available at:
<<https://www.transparency.org/research/bpi/overview>>

- The third party belongs to an industry with a history of anti-corruption enforcement scrutiny in a country of incorporation (WEF, 2013, p. 9)

Background and identity of the third party

- Initial Internet searches and use of news services have revealed glaring problems related to the third party's reputation for integrity

- The third party, or any of its senior officials, has previously been subject to regulatory action or legal proceedings as a result of alleged breaches of anti-corruption laws
- The third party, or any of its senior officials, appears on a denied parties/persons list in consequence of national or international sanctions or as a result of past misconduct
- The third party has little or no experience in the relevant industry sector and/or is unknown to the organization (WEF, 2013, p. 9)

Connection with government officials, authorities or state-owned enterprises

- The third party, in the course of doing work for your organization, will have frequent interaction with government officials (including customs officials), governmental agencies or government-controlled entities
- The third party is wholly or partly (directly or indirectly) owned by a government official/entity or has direct or indirect links with government officials/entities
- The third party has previously worked for government, or is closely connected with the political elite (WEF, 2013, p. 9)

Compensation structure of the proposed arrangement

- The third party's compensation is to be based on performance (i.e., success fees, bonus fees and other contingency fees)
- The third party requires payment by unusual means (e.g., deviating from standard practice, to multiple accounts, with upfront payments, split into small amounts, in cash or similar, in a country or currency that is different from that of the third party's domicile or the country where the work will be performed)
- The third party's compensation is to take the form of a political or charitable contribution (WEF, 2013, p. 9)

Additional factors related to the scope of the services to be rendered

- The third party's role is to enhance the organization's chances of winning commercial and/or government contracts
- The third party requests discretionary authority to handle local matters alone (WEF, 2013, p. 9)

Selection of the third party

- The third party was recommended by a customer
- The retention of this specific third party was encouraged or required by a government official (WEF, 2013, p. 9)

The ICC recommends to consider the following examples of “red flags”:

- A reference check reveals the Third party’s flawed background or reputation, or the flawed background or reputation of an individual or enterprise represented by the Third party
- The Third party is suggested by a public official, particularly one with discretionary authority over the business at issue
- The Third party objects to representations regarding compliance with anti-corruption laws or other applicable laws
- The Third party has a close personal or family relationship, or business relationship, with a public official or relative of an official
- The Third party does not reside or have a significant business presence in the country where the customer or project is located
- Due diligence reveals that the Third party is a shell company or has some other non-transparent corporate structure (e.g. a trust without information about the economic beneficiary)
- The only qualification the Third party brings to the venture is influence over public officials, or the Third party claims that he can help secure a contract because he knows the right people
- The need for the Third party arises just before or after a contract is to be awarded
- The Third party requires that his or her identity or, if the Third party is an enterprise, the identity of the enterprise’s owners, principals or employees, not be disclosed
- The Third party’s commission or fee seems disproportionate in relation to the services to be rendered
- The Third party requires payment of a commission, or a significant portion thereof, before or immediately upon the award of a contract
- The Third party requests an increase in an agreed commission in order for the Third party to “take care” of some people or cut some red tape
- The Third party requests unusual contract terms or payment arrangements that raise local law issues, payments in cash, advance payments, payment in another country’s currency, payment to an individual or entity that is not the contracting individual/entity, payment to a numbered bank account or a bank account not held by the contracting individual/entity, or payment into a country that is not the contracting individual/entity’s country of registration or the country where the services are performed

ICC, 2010, p.p. 5-6

Checklist 9. Mitigating third party bribery risks

OECD, 2016, p. 19

In the author's opinion, organizations should consider that no one list of indicators/red flags is comprehensive and foresees all possible scenarios of corruption. It can be useful to update the list on the regular base considering new reports of international organizations and other relevant stakeholders on corruption risks, schemes and typologies, benchmarking reports, and organization's own experience in preventing corruption.

Revision of risk category

Organization can revise the risk category based on new data obtained in a framework of on-going due diligence.

Risk assessment and approval of entering into a business relationship

The system of approval of entering into a business relationship with a third party should be connected with the results of risk assessments.

The WEF Guidelines recommend:

- For low-risk third parties, it is appropriate for the management of the business unit to be responsible for approving the business relationship.
- For medium- to high-risk third parties, there should be a minimum of two business units involved in the approval process:

the management of the business unit, and

another level of management which has nothing to gain from the selection of the third party (e.g., the compliance or legal department) (WEF, 2013, p. 13).

3.4.3. Risk mitigation

If an organization decided to enter into a business relationship with medium-risk or high-risk third parties, appropriate mitigation measures can be defined.

The UN Global Compact recommends developing a Supplier Code of Conduct that includes anti-corruption (UN Global Compact, 2013b, p. 9).

According to the WEF Guidelines, organizations can apply contract protections and mitigating measures to mitigate the risks.

Contract protections

Organizations may request to include the following provisions, representations and warranties in their contractual agreements with third parties:

- A written agreement by the third party to comply with the organization's anti-corruption policies and programmes (or other materially equivalent policies and programmes) and/or with applicable laws and regulation
- A written confirmation that the third party has read the organization's Supplier Code of Conduct and agrees to satisfy its requirements
- A "right to audit" provision, providing access to the third party's relevant records

- A provision obligating the third party to maintain accurate books and records, and an effective system of internal controls
- A contractual right of termination in case of breach of anti-corruption laws
- Provisions limiting the third party's ability to act on behalf of the company and/or to have interactions with government officials
- A contractual obligation by the third party to report on services rendered

Monitoring measures

Organizations may consider undertaking the following monitoring activities to supervise the conduct of their third parties on an ongoing basis:

- A periodic renewal or update of the risk assessment and due diligence processes
- Recurring Internet and database searches to identify new red flags
- Implementing a post-approval assurance programme, including training activities and periodic and/or risk-based audits of the third party
- A request for the third party to submit an annual certification of compliance with applicable anti-corruption laws
- A periodic review of the third party's payment requests and payments
- Tracking unusual or excessive expenses by the third party

WEF, 2013, p. 14

An organization can use anti-corruption clause to mitigate the risks (See: 3.2. Anti-Corruption Clause).

According to the ICC, an organization might consider including the following anti-corruption provisions, representations, warranties, and covenants in contracts with Third parties:

- The Third party is not a public official, and does not have any official status. The Third party will notify the enterprise of any changes to these representations
- The Third party does not have any relationship with a current official or any immediate relative or close associate of an official who would be in a position to influence a decision in favor of the enterprise, and the Third party will notify the enterprise of any changes to this representation
- The Third party will comply with all applicable anti-corruption and anti-money laundering laws
- The Third party is not and has not been the subject of a criminal investigation and has not been convicted under the laws of the relevant countries for facts related to bribery, corruption, money laundering or for violations of laws or regulations in force governing business enterprises
- The Third party will comply with the enterprise's codes and Guidelines, in particular, the enterprise's rules on gifts and hospitality or has its own code or Guidelines with equivalent standards and will comply therewith

- The Third party represents that no payments, offers, or promises to public officials or other Third party beneficiaries have been, or will be made, directly or indirectly, for an improper purpose
- The Third party agrees to comply with enterprise Guidelines and limits for reimbursement of expenses
- The enterprise has the right to suspend or terminate the contract immediately upon unilateral good faith concern that there has been a violation of any applicable anti-corruption law or provision of the agreement without paying any compensation to the Third party, and the Third party agrees to indemnify the enterprise for expenses related to violations of the anti-corruption laws;
- The Third party agrees to a clearly defined scope of work that limits the Third party's ability to act on the enterprise's behalf
- The Third party agrees to regularly report on its activities on the enterprise's behalf, and to provide detailed invoices and detailed supporting documentation for its expenditures
- The Third party agrees to provide audit rights to the enterprise related to activities undertaken on the enterprise's behalf in the previous three years
- The Third party agrees to submit the retention of subcontractors or other persons, or entities designated to perform similar services to the enterprise for prior approval, if the subcontracted activity is of a 'high risk' nature
- The Third party is prohibited from assigning the contract or the compensation to be paid
- The Third party agrees to payment provisions that include the safeguards identified in chapter XI
- The Third party is required to update the information supplied during the due diligence review
- The Third party is required to maintain accurate books and records and appropriate internal controls; and
- The Third party is required to cooperate with any investigation into alleged breaches of the compliance provisions, including the requirement to provide access to documents and personnel.

Enterprises facing higher risks in connection with Third parties may wish to consider the following additional safeguards:

- Require the Third party to submit certain actions to the enterprise for prior approval (e.g., interactions with public officials)
- Include provisions that limit the Third party's ability to act on the enterprise's behalf in relation to government contracts; and
- Require, as appropriate, provisions for transparency of the relationship to local authorities

ICC, 2010, p.p. 6-7

3.4.4. Use of IT- solutions for risk management

According to the WEF Guidelines, technology can help make a traditionally paper-based process more efficient. Several compliance software programmes providing for direct data input, work-flow management and red-flag alerts are now available in the market (WEF, 2013, p. 10).

3.4.5. Reports relevant for benchmarking third party risk management

• NAVEX Global, 2020b. Third Party Risk Management. Top Market Trends & Analysis. Available at: <<https://www.navex.com/en-us/resources/benchmarking-reports/2020-third-party-risk-management-top-market-trends-analysis/?RCAssetNumber=6634>>

3.5. Mergers and Acquisitions

The most of international standards and guidance do not pay special attention to mergers and acquisitions. Particular recommendations can be found in the Wolfsberg Group's guidance.

- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <<http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>>

Organizations can also consider recommendations of the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission.

Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 66-67

3.6. Staff Recruitment, Promotion, and Performance Evaluation

3.6.1. Standards and guidelines on staff recruitment, promotion, and performance evaluation

As underlined in international guidelines, staff recruitment as well as promotion, training, and performance evaluation should reflect organization's commitment to the anti-corruption compliance programme (APEC, 2007, p. 5).

There are several general international standards and guidelines that contain recommendations on staff recruitment, promotion, and performance evaluation.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- World Bank Group, 2010. Integrity Compliance Guidelines Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>
- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <<http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>>
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <<https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>>

The French Anti-Corruption Agency’s Guidelines provide organizations with a list of main corruption risks associated with human resources management (Agence Française anticorruption, 2020, p. 80).

3.6.2. Staff recruitment

International standards and guidelines recommend to consider ethical norms in the recruitment process, conduct due diligence of applicants and employees, and apply preventive anti-corruption measures by hiring former public officials.

The World Bank Group’s Guidelines recommend organizations to conduct due diligence of employees, and apply restricting arrangements with former public officials. Restrictions should be imposed on the employment of, or other remunerative arrangements with, public officials, and with entities and persons associated or related to them, after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure or those functions over which they were or continue to be able to exercise material influence. (World Bank Group, 2010, p. 2).

In order to prevent offers of employment or other work experience from being used improperly, the Wolfsberg Group recommends financial institutions to consider the following:

- A consistent recruitment process
- Merit-based hiring procedures designed to ensure that candidates are qualified/eligible and do not receive special treatment based upon relationships with a Public Official, or an employee of a customer or potential customer. Messaging about these procedures should be provided to appropriate employees
- Heightened scrutiny (including additional approvals) for candidates referred by a Public Official or an employee of a customer or potential customer, particularly if the FI is (or soon will be) engaged with the employer of the referring person on business opportunities or legal/regulatory matters

- Monitoring or testing procedures (e.g., review of communications regarding referred candidates described above)
- The effectiveness of governance and supervisory control of hiring Programmes

Wolfsberg Group, 2017, p. 12

The ICC Rules provide guidance regarding hiring former public officials. If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Where applicable, restrictions imposed by national legislation shall be observed (ICC, 2011, p. 9).

For developing recruitment procedures organizations can consider:

ISO, 2016, p.p. 12-13, 29

3.6.3. Promotion, and performance evaluation

According to the UNODC Guide, incentives for ethical and compliance-driven behavior should be integrated into these human resources policies and performance evaluation processes (annual reviews, feedback sessions, or periodical assessments) (UNODC, 2013, p. 75).

Incentive schemes should exclusively apply to evaluations based on objective criteria which are comparable and measure performance regarding the anti-corruption programme, such as:

- Participation and performance in compliance trainings
- Level of active support and development of the company's anti-corruption programme
- Compliance-related approvals
- Knowledge of the company's values and norms (e.g., Code of Conduct)
- Willingness to question or reject dubious conduct or proposals

Evaluations that seek to measure criteria such as personal values, impressions or perceptions should be avoided since these relate to personal character and mindset. The evaluation of these kinds of criteria is necessarily subjective and susceptible to unfairness and arbitrariness.

UNODC, 2013, p. 75

The French Anti-Corruption Agency's Guidelines recommend considering compliance when setting annual objectives and conducting performance reviews. Managers' initiatives to promote corruption prevention and detection with their teams should be encouraged and highlighted (Agence Française anticorruption, 2020, p. 13).

A Resource Guide to the U.S. Foreign Corrupt Practices Act underlines the role of positive incentives which can drive compliant behavior. It provides organizations with examples of good practices such as making adherence to compliance a significant metric for management's bonuses so that compliance becomes an integral part of management's everyday concern (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p.p. 60-61).

The ICC Rules recommend to conduct regular evaluation of key personnel in areas subject to high corruption risk, and also consider the rotation of such personnel (ICC, 2011, p. 9).

3.7. Conflict of interest

3.7.1. Standards and guidelines on conflict of interest

A conflict of interest exists if an individual in a company has professional, personal or private interests that diverge from the interests that the individual is expected to have when representing the company: in short, the individual interest conflicts with the company interest (UNODC, 2013, p. 49).

The UNODC Guide and the ICC Rules on Combating Corruption contain recommendations on conflict of interest.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>

There are also special guidelines on conflict interest published by ICC.

- ICC, 2018. Guidelines on Conflicts of Interest in Enterprises. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2018/08/icc-conflicts-of-interest-guidelines-july-2018.pdf>>

The French Anti-Corruption Agency recommends addressing conflict of interest in the Code of Conduct (Agence Française anticorruption, 2020, p. 8).

3.7.2. Policy on conflict of interest

Conflict of interest is not a corruption offence but can pose a risk of corruption. According to international standards and guidance, it is important for organizations to have clear policies and procedures to identify and address conflicts of interest (TI, 2013, p. 7; ICC, 2011, p. 9).

The ICC Guidelines recommended key elements to be included in a policy:

- Objective: first, the prevention of conflict of interest, and if nevertheless they do arise, dealing with them, disclosing them and finally mitigating the risks of them arising;
- Scope: applicable and binding for all directors, officers, managers, employees, agents and representatives (associates) of the enterprise;
- Definitions
- Provisions (ICC, 2018, p.p. 1-2)

For developing policy on conflict of interest organizations can consider:

Checklist on the conflict of interest

UNODC, 2013, p. 53

3.7.3. Identification of conflict of interest

According to the UNODC Guide, the typical sources of conflict of interest are:

- Gifts, benefits and hospitality
- Outside appointments
- Parallel internal positions
- Financial investments
- Employment of relatives
- Engagement of public officials (UNODC, 2013, p.p. 49-50)

The ICC Guidelines provides organizations with types of conflicts of interest with examples (ICC, 2018, p.p. 7-8)

The Guide recommends several methods of identification of conflict of interest:

- Disclosure of possible conflicts of interest by all employees, relevant business partners, or only by selected representatives
- Disclosure of assets by senior managers or Board members
- Due diligence

According to the ICC Guidelines, organization can foresee disclosure of conflict of interest:

- for job applicants and newly hired or appointed staff members immediately during the hiring or appointment process
- for members of senior management at least annually update

- for all staff members immediately when essential circumstances changed (ICC, 2018, p.p. 1-2)

Depending on their own risk tolerance, organizations may also consider requiring the disclosure of assets of the family members of employees who are subject to the rule of asset disclosure (UNODC, 2013, p. 51).

Information presented in an assets declaration can be compared with data from various available databases.

The ICC Rules on Combating Corruption pay special attention to the hiring former public officials. If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Restrictions for employment of former public officials imposed by national legislation shall be observed (ICC, 2011, p.9).

3.7.4. Addressing conflict of interest

The UNODC Guide describes several options to address conflict of interest. The simplest way to address a potential conflict of interest is to avoid the situations that may cause it. Another option would be to remove the employee facing the conflict of interest from the particular situation. Finally, a contract that is being negotiated by an employee exposed to a conflict of interest could be assessed by an internal or external third party to demonstrate that the negotiated contract terms are what would be expected by an arbitrary third party and that the company has not been prejudiced by the contract (UNODC, 2013, p.p. 51-52).

The ICC Guidelines contain several scenarios illustrating conflict of interest situations (ICC, 2018, p.p. 14-20). These scenarios can be useful for developing policies and conducting trainings for staff members.

3.8. Gifts, Hospitality and Entertainment

3.8.1. Standards and guidelines on gifts, hospitality and entertainment

The policy on gifts, hospitality and entertainment should prevent the use of gifts, hospitality and entertainment as a first step towards establishing corrupt relationships.

General international standards and guidelines contain recommendations on gifts, hospitality and entertainment.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>

- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>
- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <<http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>>
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <<https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>>
- TI, 2008. Business Principles for Countering Bribery. Small and Medium Enterprise (SME) Edition. Available at: <https://images.transparencycdn.org/images/2008_BusinessPrinciplesSME_EN.pdf>

The detailed recommendations can be found in special ICC guidance.

- ICC, 2014. Guidelines on Gifts and Hospitality. Available at: <<https://www.icc-austria.org/fxddata/iccws/prod/media/files/ICC%20Guidelines%20on%20Gifts&Hospitality.pdf>>

3.8.2. Policy on gifts, hospitality and entertainment

In general, giving gifts or providing hospitality are legitimate expenditures and common business practices for building relationships or to express appreciation. Similarly, organization may cover travel and entertainment expenses in order to demonstrate a company's capabilities by attending a conference or visiting a production location.

International guidelines recommend prohibiting the offer or receipt of gifts, hospitality or expenses whenever such arrangements would be in violation of applicable domestic law (APEC, 2007, p. 4; TI, 2008, p. 13).

Where gifts and hospitality are not illegal organization may choose to give gifts and hospitality or to adopt a complete ban on the provision of gifts and hospitality (OECD, 2016, p. 12).

If gifts and hospitality are not prohibited in an organization it is important to develop an effective policy and guidelines, and mitigate the risk of disguising bribe as a gift or hospitality. It can be considered that the risk of gifts, hospitality, travel and entertainment expenses does not stem from the expenditure itself but from situational factors and disproportionality.

As mentioned in the ICC Guidelines, there is no uniform standard but rather each jurisdiction has its own rules, regulations and enforcement methods with regard to gifts and hospitality (ICC, 2014, p.2).

According to the ICC Rules, procedures covering the offer or receipt of gifts and hospitality should ensure that such arrangements (a) comply with national law and applicable international instruments; (b) are limited to reasonable and bona fide expenditures; (c) do not improperly affect, or might be perceived as improperly affecting, the recipient's independence of judgement towards the giver; (d) are not contrary to the known provisions of the recipient's code of conduct; and (e) are neither offered or received too frequently nor at an inappropriate time (ICC, 2011, p. 8).

The ICC Guidelines recommend recording gifts and hospitality fairly and accurately, and to consider the culture and the standard of living in the country or region where the advantage is given or received (ICC, 2014, p. 3).

No gifts or hospitality should be provided nor received in the form of cash or cash equivalent, such as vouchers, pre-paid cards or free services of the organization (ICC, 2014, p. 3).

Guidance may be established as a positive-list setting clear and transparent boundaries, for instance regarding:

- Types of gifts, hospitalities, travel modes or entertainment types that are acceptable;
- Limits of monetary value;
- Reimbursement from the counterpart;
- Characteristics of the counterpart;
- Nature of the business relationship; and
- Occasion

UNODC, 2013, p. 44.

The presence of one or more of the following risk factors can affect the appropriateness of a gift or business hospitality:

- The recipient is a Public Official and therefore subject to more stringent rules relating to the receipt or provision of gifts and hospitality (e.g. transparency letters, lower thresholds or restrictions)
- The recipient is: 1) a customer in his/her individual capacity (e.g. private wealth customer); 2) an employee of a wholesale customer with attendant duties owed to that customer (e.g. a CFO); 3) a relative or close associate of a wholesale customer employee or 4) both a customer in his/her individual capacity and an employee of a wholesale customer
- For a recipient associated with wholesale customers, the recipient's employer is not aware of any high value gifts or hospitality and/or the provision of less common benefits such as the extension of an invitation to the recipient's guests/family members
- The value (event specific or in the aggregate) and/or frequency of gifts and hospitality could at a minimum create the appearance of being lavish or excessive in relation to the recipient(s)
- Proximity of the gifts and hospitality to an award of business or other action by the recipient that may benefit or appear to benefit the FI (e.g., recent or pending business activity)

Wolfsberg Group, 2017, p. 11.

For developing policy on gifts and hospitality organizations can consider:

Clause A.15

ISO, 2016, p.p. 39-41

Checklist 4. Rules on gifts and hospitality

OECD, 2016, p. 13

The UK Ministry of Justice's Guidance provides organizations with the description of case study on hospitality and promotional expenditure.

Case study 4 – Principle 1 and 5. Hospitality and promotional expenditure.

UK Ministry of Justice, 2011, p. 36

Organization should make clear that rules on gifts and hospitality extend to any persons acting on behalf of the organization (OECD, 2016, p. 12).

Organization should also include in the policy provisions on gifts and hospitality receiving. A Policy could foresee that the giving or receiving of a gift or hospitality, the value of which exceeds nominal value, needs to be reported and that, if the value exceeds a certain defined level, it needs to be approved by a manager or a designated officer (ICC, 2014, p. 4).

Transparency International recommends not give or accept lavish or frequent entertainment, or entertainment which is not hosted (TI, 2008, p.p. 13, 20-21).

Communication of the policy to business associates and other stakeholders may allow to avoid uncomfortable situations.

3.9. Charitable donations and sponsorship

3.9.1. Standards and guidelines on charitable donations and sponsorship

The aim of policy on charitable donations and sponsorship is to prevent offering or provision of donations and sponsorship which is, or could be perceived as, corruption.

General international standards and guidelines contain recommendations on charitable donations and sponsorship.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf

- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- World Bank Group, 2010. Integrity Compliance Guidelines. Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- TI, 2008. Business Principles for Countering Bribery. Small and Medium Enterprise (SME) Edition. Available at: <https://images.transparencycdn.org/images/2008_BusinessPrinciplesSME_EN.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>

3.9.2. Policy on charitable donations and sponsorship

According to international standards and guidelines, organizations should implement relevant policies and procedures to prevent misuse of charitable donations and similar benefits for purposes of corruption and bribery (ISO, 2016).

Charitable contributions and sponsorships should be transparent and in accordance with applicable law (ICC, 2011, p. 8).

The policy on charitable donations and sponsorship can regulate procedure of selection of donations recipients, forms of donations, follow-up measures, and public disclosure of donations.

Transparency International recommended to be wary if you are asked to give a donation to a particular charity as part of a business agreement (TI, 2008, p. 23).

The World Bank Group recommended public disclosure of all charitable contributions and sponsorships unless secrecy or confidentiality is legally required (World Bank Group, 2010, p. 2).

Organizations may develop the following risk mitigation activities:

- Understand the counterpart's own provisions regarding charitable contributions and sponsorships;
- Ensure appropriate timing of charitable contributions and sponsorships (i.e. not during a tendering process);
- Define strategies and objectives for charitable contributions and sponsorships (e.g., what kind of activities should be supported);
- Assess employees and business partners with respect to their relation with charitable organizations or sponsored parties (e.g. to identify conflicts of interest);
- Establish approval procedures (e.g., four-eyes principle to approve sponsorships);
- Maintain accurate books and records;

- Conduct regular reviews of charitable contributions and sponsorships;
- Disclose charitable contributions and sponsorships to enable public scrutiny (unless secrecy or confidentiality is legally required).

UNODC, 2013, p. 46.

For developing policy on charitable donations organizations can consider:

Checklist 5. Avoiding bribes disguised as charitable donations

OECD, 2016, p. 14

The UK Ministry of Justice's Guidance provides organizations with description of case study on community benefits and charitable donations.

Case study 8 – Principle 1, 4 and 6. Community benefits and charitable donations.

UK Ministry of Justice, 2011, p. 40

3.10. Political contributions

3.10.1. Standards and guidelines on political contributions

General international standards and guidelines contain recommendations on political contributions.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- World Bank Group, 2010. Integrity Compliance Guidelines. Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>

- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <<https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>>

3.10.2. Policy on political contributions

Organization may decide to contribute or not to political parties or organizations. Organization can declare in an anti-corruption compliance programme and in other relevant programmes and policies that it does not contribute to any political party or organization. All political contributions should be transparent and made only in accordance with applicable law (APEC, 2007, p. 4; ICC, 2011, p. 8). Organization should consider legal restrictions for political contributions existing in some countries, especially for foreign organizations.

If an organization does not exclude a possibility to contribute to political parties and/or organizations, relevant policies and procedures should be included in an anti-corruption compliance programme.

The policy on political contributions can regulate decision making procedure, forms of contributions, follow-up measures, and public disclosure of donations.

Organizations may develop the following risk mitigation activities:

- Ensure appropriate timing of political contribution (e.g., not during a major political decision-making process);
- Set thresholds for political contributions;
- Maintain accurate books and records;
- Assess employees and business partners with respect to their relationship with political parties, officials, candidates, politically exposed persons (to identify conflict of interest);
- Establish approval procedures (e.g., four-eyes principle to approve contributions);
- Conduct regular reviews of political contributions; and
- Disclose political contributions to enable public scrutiny (unless secrecy or confidentiality is legally required)

UNODC, 2013, p. 45.

The World Bank Group also recommended public disclosure of political contributions if such disclosure is not prohibited by law (World Bank Group, 2010, p. 2).

For developing policy on political contributions organizations can consider:

Clause A.15

ISO, 2016, p.p. 40-41

Checklist 6. Avoiding bribe disguised as political donations

OECD, 2016, p. 15

3.11. Reporting Misconduct and Hot Lines**3.11.1. Standards and guidelines on reporting misconduct and hot lines**

General international standards and guidelines contain recommendations on reporting misconduct and hot lines.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>
- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <<http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>>

Good practices on resisting extortion and solicitation can be found in the tool developed by UN Global Compact, ICC, WEF, and TI.

- UN Global Compact, ICC, WEF, TI, 2011. Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training. Available at: <https://www.transparency.org/whatwedo/publication/resist_resisting_extortion_and_solicitation_in_international_transactions>

ICC provided organizations with guidance on whistleblowing.

- ICC, 2022. Guidelines on Whistleblowing. Available at: <<https://iccwbo.org/content/uploads/sites/3/2022/02/icc-guidelines-on-whistleblowing-2022.pdf>>

3.11.2. Reporting misconduct

The policy on reporting misconduct should promote culture of whistleblowing and establish reporting channels. According to the ICC Guidelines, the purpose of a whistleblowing management system is to enable reporting through organized communication channels set out by the Enterprise to ensure that concerns of wrongdoing swiftly reach those that are most able to investigate the matter and empowered to remedy it (ICC, 2022, p. 2).

In the U.S., effectiveness of the reporting mechanism is an important part of the evaluation of corporate compliance programs (Criminal Division of the U.S. Department of Justice, 2020, p.p. 6-7). An effective compliance program should include a mechanism for an organization's employees and others to report suspected or actual misconduct or violations of the company's policies on a confidential basis and without fear of retaliation (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 66).

The French Anti-Corruption Agency recommends that the internal whistleblowing system specify the procedures for processing reports received, such as:

- the contact person designated to receive reports within the organization and, the person responsible for processing reports, if it is not the same person;
- the provisions made to ensure maintain the confidentiality of the whistleblower's identity, the contents of the report and the persons implicated, even when the investigation or processing of the report require communications with third parties;
- The procedures that the whistleblower needs follow to provide any information or documents to back up the report;
- The business information and documents that may be used in an internal investigation;
- The provisions for notifying the whistleblower of receipt of the report and, as the case may be, of the admissibility of the report, along with the processing time and any action taken to follow up the report;
- If the report does not give rise to any further action, the provisions for destroying any information on file that could be used to identify the whistleblower or the persons implicated, within two months of closing the investigation;
- If automated processing of reports is implemented, the provisions for ensuring compliance with data protection standards;
- Implementation of indicators to assess the quality and effectiveness of the whistleblowing system (including the number of reports received, shelved or processed, processing times, problems raised). These indicators are submitted to senior management, along with the most critical reports.

Agence Française anticorruption, 2020, p.p. 9-10

The ISO Standard 37001 contains requirement for procedures of raising concerns ISO, 2016, p.p. 17-18

Reporting channels can include but not be limited to:

- Personal report to superior
- Personal report to anti-corruption compliance officer
- Personal report to ombudsman
- Hot lines (UNODC, 2013, p. 82)

Staff members should have a right to report any misconduct directly to anti-corruption compliance officer or ombudsman without preliminary reporting to the superiors.

Organizations should maintain, to the fullest extent possible and at all times, the confidentiality of the data. A whistleblowing management system must be designed to ensure that the Whistleblower's identity as well as the identity of the accused and any other sensitive information disclosed in the whistleblower report are not disclosed to anyone beyond to personnel designated to receive or follow up on reports. (ICC, 2022, p. 2).

General international standards and guidelines recommend allowing anonymous reporting (ISO, 2016, p. 17). However, organizations should consider whether anonymous reporting is legally permissible (Wolfsberg Group, 2017, p.6).

Organization can receive two types of reports:

- Reports on attempted, suspected or actual corruption offences (criminal or administrative)
- Reports on other violations of the organization's anti-corruption compliance programme

The following actions depend on the type of report.

The reporting of violations may be a sensitive subject due to cultural, legal and political reasons (e.g., reporting persons may be perceived as traitors or informants). The social perception of reporting persons should be taken into account when companies seek to design reporting measures. Reporting channels should fit the specific organizational culture as well as the external social context of the organization.

Organizations may need to invest different degrees of effort to develop a positive image of the reporting of violations among its employees. In this respect, reporting should be included as a discussion subject in training courses and communication.

Organizations should ensure that the information provided by reporting persons is handled with a fast and structured follow-up procedure and that any further course of action undertaken is communicated to the reporting person. If individuals feel that reporting does not lead to any action, they may be discouraged from doing so in future cases or they may go outside the company to report (UNODC, 2013, p. 83).

If a whistleblower commits an offence or is complicit in an offence, or if the report is found to be knowingly false, the whistleblower cannot expect whistleblower protection or to be immune from disciplinary sanctions. It should, however, be abundantly clear that the sanction is not a form of retaliation, but a consequence of the offence committed (ICC, 2022, p. 4).

3.11.3. Reporting bribery solicitation and other urgent reporting

As mentioned in international guidelines, bribe solicitation can put staff members in a very difficult position. The policy on reporting misconduct should provide guidance on what to do when confronted with bribe demands by public officials (OECD, 2016, p. 16).

Staff members should have right and opportunity to report immediately any case of bribe solicitation to the anti-corruption compliance officer or other designated person in case of

compliance officer's absence. It is important to establish a clear procedure to react on such reports.

Organization can consider an opportunity to inform the law enforcement authorities immediately, especially in case of risk to life or personal safety of a staff member, or other serious negative consequences.

Responses to a bribery demand: How to react if the demand is made?

UN Global Compact, ICC, WEF, TI, 2011, p.p. 48-49

The French Anti-Corruption Agency's Guidelines underlines that In the event of grave, imminent danger or risk of irreversible harm, the report of a breach of Article 6 of the Act may be referred directly to the legal or administrative authorities or professional bodies. It may also be made public. (Agence Française anticorruption, 2020, p. 78).

3.1.1.4. Hot lines

Hot line may be:

- Phone number
- E-mail address
- Intranet
- Webpage

Organization may use an external service provider to manage the hot line.

ICC recommends to make reporting channels available in multiple languages, depending on the countries of operations, and create awareness of these reporting channels in the Enterprise's normal tools for communications (ICC, 2022. p. 2).

The OECD Guidance recommends promoting the whistleblowing hotline via organization's website, intranet, office circulars and other means of communication with employees (OECD, 2016, p. 21).

Case Studies 16 - 18 on whistleblowing hotlines

OECD/UNODC/World Bank, 2013, p.p. 62-66

3.1.1.5. Reports relevant for benchmarking reporting misconduct and hotlines

- NAVEX Global, 2022b. Risk & Compliance Hotline & Incident Management Benchmark Report. Available at: <<https://www.navex.com/en-us/resources/benchmarking-reports/2022-risk-compliance-hotline-incident-management-benchmark-report/?RCAssetNumber=10869>>

3.12. Internal Investigations and Addressing Violations

3.12.1. Standards and guidelines on internal investigations and addressing violations

General international standards and guidelines contain recommendations on internal Investigations and addressing violations.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2021. Annex II. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <<https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>>

3.12.2. Internal investigations

When an organization receives an information from internal or external sources about violation of an anti-corruption compliance programme or anti-corruption laws, it may decide to disclose this information immediately to law enforcement authorities or to carry out internal investigation.

Organization should consider provisions of criminal law and other applicable laws establishing legal obligation to report particular corruption offences to law enforcement authorities.

Internal investigation should be based on sound legal principles (UNODC, 2013, p. 81).

For developing policy on internal investigations and follow-up actions organizations can consider:

ISO, 2016, p.p. 18, 42-43

3.12.3. Addressing violations

When violations of the organization's anti-corruption compliance programme are reported or detected, it is crucial to address these violations in order to demonstrate the organization's commitment to zero-tolerance of corruption and reduce negative consequences. Organization should establish appropriate disciplinary procedures to address violations at all levels (OECD, 2021, p. 22).

According to the UNODC Guide, a disciplinary policy should include:

- A catalogue of sanctions
- Guidelines on procedures and responsibilities
- An opportunity to appeal (UNODC, 2013, p. 86)

Catalogue and application of sanctions

According to international guidelines, organizations should apply appropriate sanctions for violations of the anti-corruption compliance programme (APEC, 2007, p.5).

It should be mentioned that the catalogue of sanctions shall comply with applicable business, civil, human rights, and labor laws and regulations.

Sanctions for employees may include monetary fines, decreases in remuneration, nonpromotion, the transfer to a lower position. Sanctions may also include the termination of the employment contract in appropriate circumstances (APEC, 2007, p.5).

Organizations should avoid delaying the termination of employment for high performing staff or senior management. It is also suggested that organizations avoid the option of asking an employee to resign instead of terminating the employment, as this might send a weak signal as to the rigour of disciplinary actions (UNODC, 2013, p. 89).

Sanctions for business partners may include the termination of the relationship, exclusion from business opportunities (e.g. debarment) or the assignment of an unfavorable commercial and operational condition (e.g. higher due diligence requirements).

Organizations may also consider, on a case-by-case basis, making a public announcement of a sanction in order to send a strong signal to stakeholders and deter potential wrongdoers. Severe violations by employees should be communicated across the company, ensuring that all relevant departments are aware of the violation. (UNODC, 2013, p. 89).

Procedures and responsibilities

For defining procedures and responsibilities organizations can consider:

Guidelines on procedures and responsibilities

UNODC, 2013, p.p. 87-88

Opportunity to appeal

The opportunity to appeal disciplinary decisions is an important right which should

be provided to employees or business partners. Organizations may also consider setting out criteria to provide for opportunities to mitigate sanctions (e.g. for the provision of additional undetected information) (UNODC, 2013, p. 88).

3.12.4. Duress payments

Organizations should have a special policy for duress payments in the pressing situations where an employee cannot avoid paying a bribe or facilitation payment. Such payments should not be considered as misconduct.

Checklist 3. Addressing duress payments

OECD, 2016, p. 12

Does FCPA Apply to Cases of Extortion or Duress?

Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 27

3.13. Cooperation with Authorities

3.13.1. Standards and guidelines on cooperation with authorities

General international standards and guidelines contain recommendations on cooperation with authorities.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- TI, 2013. Business Principles for Countering Bribery. Available at: <https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery>

OECD recommended member countries to “implement measures to incentivise enterprises to develop such compliance programmes or measures, provide training and guidance to their relevant government agencies, on how internal controls, ethics and compliance programmes or measures are taken into consideration in government agencies’ decision-making processes, and ensure such guidance is publicised and easily accessible for companies” (OECD, 2021, p. 16).

The UK and U.S. laws and guidelines pay serious attention to various forms of cooperation with authorities.

- The Director of the Serious Fraud Office and The Director of Public Prosecutions, 2011. Bribery Act 2010: Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions. Available at: <<https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/bribery-act-guidance/>>
- Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020. A Resource Guide to the U.S. Foreign Corrupt Practices Act. p.p. 54-56. Available at: <<https://www.justice.gov/criminal-fraud/file/1292051/download>>
- The U.S. Department of Justice, 2020. Justice Manual. 9-47.120 – FCPA Corporate Enforcement Policy. Available at: <<https://www.justice.gov/criminal-fraud/page/file/937501/download>>

In the U.S., while the conduct underlying any FCPA investigation is obviously a fundamental and threshold consideration in deciding what, if any, action to take, both DOJ and SEC place a high premium on self-reporting, along with cooperation and remedial efforts, in determining the appropriate resolution of FCPA matters (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 54).

3.13.2. Self-reporting to the authorities

Organization should consider provisions of criminal law and other applicable laws establishing legal obligation to report particular criminal offences to law enforcement authorities. In all such cases organization shall immediately submit report and cooperate with authorized authorities.

In all other cases organization can decide to disclose relevant information and evidence of actual or possible violations to authorities before allegations have been raised against the organization or one of its representatives. Organization can consider that in some jurisdiction voluntary disclosure may allow to reduce monetary fines.

The disclosure may relate not only to internal information, but also to information regarding business partners (UNODC, 2013, p. 91).

In the UK, The SFO encourages corporate self-reporting, but offers no guarantee that a prosecution will not follow any such report (The Director of the Serious Fraud Office and The Director of Public Prosecutions, 2011, p. 5). However, in the Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions, a genuinely proactive approach involving self-reporting and remedial action is mentioned as one factors tending against prosecution (The Director of the Serious Fraud Office and The Director of Public Prosecutions, 2011, p. 7).

Under U.S. DOJ's Principles of Federal Prosecution of Business Organizations, federal prosecutors consider a company's cooperation in determining how to resolve a corporate criminal case. Specifically, prosecutors consider whether the company made a voluntary and timely disclosure as well as the company's willingness to provide relevant information and evidence and identify relevant actors inside and outside the company, including senior

executives (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 54).

According to the FCPA Corporate Enforcement Policy, if a criminal resolution is warranted for a company that has voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated, the Fraud Section of the DOJ:

- will accord, or recommend to a sentencing court, a 50% reduction off the low end of the U.S. Sentencing Guidelines fine range, except in the case of a criminal recidivist; and
- generally, will not require appointment of a monitor if a company has, at the time of resolution, implemented an effective compliance programme (The U.S. Department of Justice, 2019, p. 1).

3.13.3. Providing documents and information by the request

In general, organization shall provide documents and information by the request of law enforcement authority in accordance with applicable laws and regulations.

In the author's opinion, before providing requested information and documents organization may check the following points:

- The authority has right to request these particular information and documents in accordance with applicable domestic laws and regulations
- The form of request including motivation and the communication channel used for request comply with applicable domestic laws and regulations
- The official signed the request is authorized to sign such categories of requests

3.13.4. Cooperation during the investigation

Organization should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions (TI, 2013, p. 11).

Organization can support the investigation process of authorities by disclosing additional relevant information or by providing investigative resources (UNODC, 2013, p. 91).

Organization can undertake remedial measures such as:

- Voluntary restoration of damages or loss caused by the offence
- Recovery of ill-gotten gains (e.g., proceeds of the corrupt act)
- Other voluntary restraints (e.g., abstention from bidding for public contracts)
- Acceptance of an external compliance monitor
- Corrective organizational actions (e.g., removal or other disciplinary measures against responsible employees)

UNODC, 2013, p. 92.

In the U.S. prosecutors may consider a company's remedial actions, including efforts to improve an existing compliance program or appropriate disciplining of wrongdoers (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 54).

3.13.5. Cooperation after settlement or court decision

Organization can cooperate with authorities after settlement or court decision. Organization can consider that in some jurisdictions such cooperation may allow:

- Rehabilitating convicted companies by publicly announcing improved behavior (e.g., the implementation of a significantly improvement anti-corruption programme)
- Obtaining a reduction of an already applied debarment sanction (UNODC, 2013, p. 92)

3.14. Communication and Training

3.14.1. Standards and guidelines on communication and training

International standards and guidelines underline an important role of communication and training for prevention corruption (UNODC, 2013, p. 69; OECD, 2010, p.3).

In the UK, communication (including training) is one of the six principles, which organizations should put in place to prevent bribery (UK Ministry of Justice, 2011, p.p. 29-30).

In the U.S., quality of policies and procedures on training and communication for relevant employees and third parties is one of the significant questions by the evaluation of corporate compliance programs (Criminal Division of the U.S. Department of Justice, 2020, p.p. 5-6).

General international standards and guidelines contain recommendations on training and communication.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <<https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>>
- WEF, 2016. the World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at:

http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Counteracting_Corruption.pdf

3.14.2. Communication

According to the OECD Guidance, senior management should regularly communicate the policy and reiterate the principles in internal meetings with staff as well as in external meetings, such as those with clients and business partners. It is also essential that management reaffirm its support for employees who have confronted bribe solicitation, refused to engage in business on such grounds, and reported the incident to management (OECD, 2016, p. 8).

According to the UNODC Guide, organizations should publicly report on their anti-corruption efforts. The Guide provides organizations with detailed recommendations on such reporting. The status and performance of an anti-corruption compliance programme can be communicated to employees, business partners and other stakeholders (UNODC, 2013, p. 18-19).

For developing the reporting system organizations can consider:

UN Global Compact – Transparency International, 2009. Reporting Guidance on the 10th Principle Against Corruption. Available at:

https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf

In addition to regular activities, communication and training can also be linked to special occasions or major events, such as:

- The recipient is a Public Official and therefore subject to more stringent rules relating to the receipt or provision of gifts and hospitality (e.g., transparency letters, lower thresholds or restrictions)
- Updates on internal policies or external legal regulations
- Organizational changes (e.g., a new Chief Compliance Officer)
- New internal guidelines or supporting tools
- Annual meetings of shareholders
- Seasonal events, e.g., special newsletter or training on gifts during the winter season
- National or international anti-corruption events, e.g., International Anti-Corruption Day (9 December)
- Joining a voluntary initiative, such as the United Nations Global Compact, World Economic Forum Partnering Against Corruption Initiative (PACI), Extractive Industries Transparency Initiative (EITI), Construction Sector Transparency Initiative (CoST)

- News about anti-corruption initiatives of civil society organizations and business partners
- Publication of the company's sustainability or corporate citizenship report

UNODC, 2013, p. 70.

Organizations, which are subjects of the EU law and EU Member States' laws, should consider the disclosure requirements for non-financial information apply to certain large companies with more than 500 employees.

• EU, 2017. Communication from the Commission No. 2017/C215/01 of July 5, 2017 "Guidelines on non-financial (methodology for reporting non-financial information)". Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017XC0705%2801%29>>

3.14.3. Training

General international standards and guidelines underline an important role of providing appropriate training to personnel (UNODC, 2013, p. 69; ISO, 2016, p. 13).

Training can be also provided for contractors, suppliers (UNODC, 2013, p. 69; APEC, 2007, p.6), and other relevant third parties (WEF, 2016, p. 9).

The NAVEX Global Guide identified 5 objectives an organization can achieve with trainings:

- Create a culture of ethics and respect
- Prevent misconduct
- Establish a legal defense in the event of a misstep
- Manage reputation
- Avoid litigation (NAVEX Global, 2017c, p. 1).

Trainings should be provided on a regular basis. In addition to regular activities, communication and training can also be linked to special occasions or major events.

Organizations can consider occasions and events mentioned in:

UNODC, 2013, p. 70

Organizations can combine standardized trainings with tailored trainings to selected employees and business associates (UNODC, 2013, p. 71).

3.14.4. Content of trainings

International standards and guidelines contain particular recommendations regarding the content of trainings.

For developing content of trainings organizations can consider:

ISO, 2016, p.p. 13, 31-32

The training programmes should include study of the Code of Conduct, anti-corruption compliance programme, applicable laws and regulations, anti-corruption tools and IT-solutions (if applicable).

Case Study 14: A multinational electronics company undertakes in-person training

OECD/UNODC/World Bank, 2013, p.p. 56-57

The programmes can also include schemes and typologies of corruption offences, case study, real-world examples, and recommendations how to recognize, prevent, avoid, and report corruption offences.

The training programmes shall be updated on a regular basis to reflect changes and amendments of anti-corruption compliance programme, and applicable laws and regulations.

The OECD Guidance recommends using role-based bribery dilemmas and case studies and refers to the tool developed by UN Global Compact, ICC, WEF, and TI (OECD, 2016, p. 17). The tool contains descriptions of 22 scenarios involving bribery dilemmas and suggests ways to respond to the solicitation.

- UN Global Compact, ICC, WEF, TI, 2011. Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training. Available at: https://www.transparency.org/whatwedo/publication/resist_resisting_extortion_and_solicitation_in_international_transactions

The French Anti-Corruption Agency's Guidelines contain detailed recommendations on the awareness and training (Agence Française anticorruption, 2020, p.p. 24-26)

Various common media channels can be useful for the self-study (UNODC, 2013, p. 71).

The International Anti-Corruption Academy (IACA) offers master degree programmes, open and tailor-made trainings, and online courses for anti-corruption and compliance professionals <https://www.iaca.int/iaca-programmes.html>

4. Monitoring, review and evaluation of an anti-corruption compliance programme

4.1. Standards and guidelines on monitoring, review and evaluation of an anti-corruption compliance programme

Various standards and guidelines recommend to monitor (ISO, 2016; TI, 2013; Agence Française anticorruption, 2020), assess (NAVEX Global, 2017d), review (UNODC, 2013; ISO, 2016; TI, 2013; Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020) and evaluate (UNODC, 2013; ISO, 2016; Agence Française anticorruption, 2020) an anti-corruption compliance programme.

According to the UNODC Guide, a review is an in-depth study, conducted at a discrete point in the life cycle of a programme. An evaluation is the analysis of the results of the review. In contrast to reviews, evaluations have clear criteria against which the results are evaluated in order to identify a potential need for modifications and improvements (UNODC, 2013, p. 96).

The ISO Standard 37001 defines monitoring as determining the status of a system, a process or an activity (ISO, 2016, p. 4).

International standards and guidelines do not provide any definition of assessment. Considering the content of organizations' obligations, we can assume that the term "assessment" has been using in the same meaning as the term "review".

General international standards and guidelines contain recommendations on monitoring, review and evaluation.

- OECD/UNODC/World Bank, 2013 Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>>
- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-bribery management systems - Requirements with guidance for use
- TI, 2013. Business Principles for Countering Bribery. <https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery>

Organization can also find useful information in the Guide published by NAVEX Global.

- NAVEX Global, 2017d. Definitive Guide to Compliance Programme Assessment. Available at: <https://www.navexglobal.com/en-gb/node/2113/thank-you?RCAssetNumber=2080&token=UZ6h0thNzXfE0oGQ0Z1XMzJSn_OStmNhMt01uZOdcoQ>

4.2. Rational for monitoring, review and evaluation

The implementation of an anti-corruption programme should be regarded as a continuous learning and improvement process. Periodic reviews and evaluations keep policies and procedures up-to-date and relevant for employees and business partners. Furthermore, reviews and evaluations help to identify shortcomings, weaknesses or opportunities to optimize and simplify the overall anti-corruption programme.

The rationale for conducting periodic reviews and evaluations is to determine whether anti-corruption policies or procedures require modification. Modification may be required due to changes in the business environment or lessons learned from internal operations (UNODC, 2013, p. 96).

In the author's opinion, modification may be required due:

- New legal requirements
- Implementing new organizational structures and/or processes
- Implementing new technologies
- New requirements from social environment and stakeholders
- Starting business in new markets
- Starting new business operations
- Reports on new schemes or typologies of corruption offences
- Feedback from internal and external parties
- Benchmarking against compliance standards or peer organizations
- Gaps in an anti-corruption compliance programme identified by auditors, internal or external investigators

The U.S. Department of Justice and the U.S. Securities and Exchange Commission evaluate whether companies regularly review and improve their compliance programs and not allow them to become stale (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2020, p. 66).

4.3. Conducting monitoring, review and evaluation

The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate (TI, 2013, p. 11).

For conducting review and evaluation organizations can consider:

ISO, 2016, p.p. 18 - 21

To define sources of information for a comprehensive review of an anti-corruption compliance programme organizations can consider:

UNODC, 2013, p.p. 97 - 98

The French Anti-Corruption Agency's Guidelines contain detailed recommendations on the monitoring and evaluation of an anti-corruption compliance programme (Agence Française anticorruption, 2020, p.p. 40-44)

The UNODC Guide provides organizations with evaluation criteria. A comprehensive evaluation may be accomplished by assessing the following three major criteria:

- Effectiveness refers to the extent to which the anti-corruption policies and procedures have contributed to the programmes specific objectives, for instance the minimization of risks of facilitation payments
- Efficiency refers to minimizing the costs of the anti-corruption programme, while ensuring the benefits of the anti-corruption policies and procedures, including lower legal, commercial and reputational risks
- Sustainability refers to the extent to which the anti-corruption policies and procedures and their related results help to minimize the risk of corruption in the long run

UNODC, 2013, p.p. 98-99.

Case Study 22: UK-based international company monitors implementation of a group compliance programme

OECD/UNODC/World Bank, 2013, p.p. 74 - 76

Senior management should periodically report the results of the Programme reviews to the Audit Committee, Board or equivalent body. The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the Annual Report to shareholders (TI, 2013, p. 11).

4.4. External verification and assurance

Where appropriate, the enterprise should undergo voluntary independent assurance on the design, implementation and/or effectiveness of the Programme. Where such independent assurance is conducted, the enterprise should consider publicly disclosing that an external review has taken place, together with the related assurance opinion (TI, 2013, p. 12).

4.5. Benchmarking

Organizations can use reports included in the Overview to benchmark anti-corruption compliance programmes and policies.

4.6. Reports relevant for benchmarking monitoring, review and evaluation processes

Control Risk Report, 2017. International Business Attitudes to Compliance. Available at: <https://www.controlrisks.com/our-thinking/insights/reports/international-business-attitudes-to-compliance>

5. Participation in Collective Action initiatives

According to the World Bank Institute, anti-corruption Collective Action is a collaborative and sustained process of cooperation amongst stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors (World Bank Institute, 2008, p. 4).

According to Transparency International, “bribery may be so much a part of a business culture in some places, that dealing with it can seem an overwhelming challenge, and no one business, especially a small one, can fight it alone. But by adopting an anti-bribery Programme, and by cooperating with other SMEs, business partners, authorities and trade organizations, as well as civil society to fight bribery, you have the opportunity to make a real difference by helping to create a culture of zero tolerance towards bribery” (TI, 2008, p. 4).

Several general international standards and guidelines pay special attention to the role of Collective Action initiatives, and call up organizations to join forces against corruption.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- World Bank Group, 2010. Integrity Compliance Guidelines Available at: http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

The World Bank Group underlined that Collective Action initiatives can support implementation of anti-corruption compliance. According to the World Bank Group Guidelines, where appropriate - especially for SMEs and other entities without well-established Programs, and for those larger corporate entities with established Programs, trade associations and similar organizations acting on a voluntary basis - endeavor to

engage with business organizations, industry groups, professional associations and civil society organizations to encourage and assist other entities to develop programs aimed at preventing misconduct (World Bank Group, 2010, p.4).

The UNODC Guide mentioned that organizations, especially SMEs may face the risk of being bypassed by other competitors that do not adhere to the same anti-corruption standards, or face corruption-related solicitations and extortions from the public sector. One way for organizations to address these risks is to engage in Collective Action activities with other partners that may face the same challenges (UNODC, 2013, p. 104).

According to the OECD Guidance, organizations can undertake the following initiatives to tackle corruption: identify stakeholders, issue declarations, sign integrity pact, develop an industry anti-bribery policy/code of conduct, undertake longer term measures (OECD, 2016, p.p. 22-23).

The UN Global Compact published a comprehensive Guide for Collective Action against corruption. The Guide contains analysis of the 28 Collective Action initiatives worldwide and practical recommendations for setting up Collective Action initiatives.

- UN Global Compact, 2015b. A Practical Guide for Collective Action Against Corruption. Available at:
<https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FCollectiveActionExperiencesGlobal.pdf>

Useful information about Collective Action against corruption can be found on:
<<https://www.collective-action.com/>>

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UN Global Compact

- UN Global Compact – Transparency International, 2009. Reporting Guidance on the 10th Principle Against Corruption. Available at: <https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf>
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List of Abbreviations


| | |
|---------|---|
| AML | Anti-Money Laundering |
| APEC | Asia-Pacific Economic Cooperation |
| APG | Asia/Pacific Group on Money Laundering |
| CFATF | Caribbean Financial Action Task Force |
| EAG | Eurasian Group on Combating Money Laundering and Financing of Terrorism |
| ESAAMLG | Eastern and Southern Africa Anti-Money Laundering Group |
| EU | European Union |
| FATF | Financial Action Task Force |
| FCPA | US Foreign Corrupt Practices Act |
| FIU | Financial Intelligence Unit |
| FSRBs | FATF-style regional bodies |
| GABAC | Task Force on Money Laundering in Central Africa |
| GAFILAT | Financial Action Task Force of Latin America |
| GIABA | Inter-Governmental Action Group against Money Laundering in West Africa |
| IBA | International Bar Association |

| | |
|----------|---|
| ICC | International Chamber of Commerce |
| ISO | International Organization for Standardization |
| MENAFATF | Middle East and North Africa Financial Action Task Force |
| MONEYVAL | Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism |
| OSCE | Organization for Security and Co-operation in Europe |
| OECD | Organisation for Economic Co-operation and Development |
| PEPs | Politically Exposed Persons |
| SFO | UK Serious Fraud Office |
| SMEs | Small and Medium-Sized Enterprises |
| UNCAC | United Nations Convention against Corruption |
| UNODC | United Nations Office on Drugs and Crime |
| UNGA | United Nations General Assembly |
| UNSC | United Nations Security Council |



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