



Business Principles for Countering Bribery

.....
A MULTI-STAKEHOLDER INITIATIVE LED BY
TRANSPARENCY INTERNATIONAL



Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

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FOREWORD

The risks from bribery are a growing concern for both large and small companies which can be confronted with demands for bribes, faced with competitors acting corruptly or undermined by employees violating their codes of conduct.

The increasing enforcement of foreign bribery laws, the imposition of record fines and the threat of criminal penalties for company directors and employees are giving enterprises pause for thought. New pressures are coming from socially responsible investment funds and indices which are adding anti-bribery criteria to their screening procedures. In addition, development banks and export credit agencies are stepping up their due diligence and introducing debarment sanctions for companies engaging in corrupt behaviour. As a result, responsible companies understand the need to guard and promote their reputation for integrity and responsibility as stakeholders become less tolerant of lapses.

Companies can respond positively to these growing risks and mitigate these threats with the help of robust policies that are implemented effectively and supported by transparent processes.

To assist companies in the design and implementation of effective anti-bribery policies, Transparency International (TI) and Social Accountability International joined forces to launch the Business Principles for Countering Bribery in 2003. The development of the Business Principles was carried out through a multi-stakeholder exercise undertaken with the co-operation and support of a Steering Committee drawn from international business, academia, trade unions and other non-governmental bodies.


Since their introduction, the Business Principles have encouraged the development of other anti-bribery codes. Companies and researchers now look to them as a benchmark. The Business Principles have been translated into more than ten languages and introduced through seminars and workshops to corporate and governmental audiences in countries around the world.

This revised edition reflects developments in anti-bribery practice and incorporates improvements to the original text based on the experience gained in the past five years. The Steering Committee, which has remained active since the inception of the Business Principles, has contributed its knowledge and expertise to this process.

Current surveys indicate that whilst companies are adopting anti-bribery policies their full implementation is a process that remains incomplete and a challenge for many. With this in mind, TI is developing tools to help companies with implementation. In addition to a comprehensive Guidance Document for the Business Principles, TI has created the TI Six Step Implementation Process, which provides a roadmap for the development and implementation of a programme, as well as a *Self-Evaluation Tool*¹, which aims at helping companies evaluate the comprehensiveness and robustness of their anti-bribery programmes. To address the needs and particular circumstances of smaller enterprises, TI has published an *SME Edition* of the Business Principles.

¹ Available at: <http://www.transparency.org>





TI has also been working with the accounting profession to develop an assurance process that will help companies to assess and enhance the strength and credibility of their anti-bribery programmes.

Consultations, field testing and workshops have enriched the Business Principles and the supporting suite of tools, and have proven their value. It is our hope that companies will increasingly use the Business Principles, resulting in a higher and more uniform standard of anti-bribery practice worldwide. We also hope that stakeholders, as part of their relationship with companies, will look for evidence of adequate anti-bribery programmes.



Jermyn P. Brooks, Director, Private Sector Programmes
Transparency International
February 2009



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STAKEHOLDER DEVELOPMENT

The 2009 edition of the Business Principles for Countering Bribery was produced with the input and guidance of the initiative's Steering Committee. The Business Principles for Countering Bribery reflect the views of the Steering Committee and not necessarily those of its individual members on particular topics. This edition is an update of the original 2003 version which was produced with a multi-stakeholder Steering Committee and subjected to field tests and a public consultation.

STEERING COMMITTEE MEMBERSHIP

Corporate members

- BP plc
- F&C Asset Management plc
- HSBC
- General Electric
- Norsk Hydro ASA
- Organización Corona SA
- PricewaterhouseCoopers
- Rio Tinto plc
- SAP
- Shell International
- SGS
- Sika AG
- Tata Sons Ltd

Others

- AccountAbility
- The Conference Board
- European Bank for Reconstruction and Development
- International Federation of Consulting Engineers
- International Federation of Inspection Agencies
- Social Accountability International
- Transparency International

Chairman of the Steering Committee

- Jermyn P. Brooks, Transparency International

1 INTRODUCTION

The Business Principles for Countering Bribery were originally developed through an extensive multi-stakeholder process involving companies, non-governmental organisations and trade unions as a tool to assist enterprises to develop effective approaches to countering bribery in all of their activities.

Enterprises should implement anti-bribery programmes both as an expression of core values of integrity and responsibility, but also to counter the risk of bribery. Risk will vary across different industries and specific companies, but no enterprise can be sure that that it will be free of risk. An effective anti-bribery programme strengthens reputation, builds the respect of employees, raises credibility with key stakeholders and supports an enterprise's commitment to corporate responsibility.

The Business Principles represent a good practice model for corporate anti-bribery policies and programmes. They apply both to bribery of public officials and to private-to-private transactions. The purpose of the Business Principles is to provide practical anti-bribery guidelines for all enterprises to help create a more level playing field. TI has prepared a Guidance Document², which provides the rationale for the provisions of the Business Principles, some advice for implementation and detailed discussion and information on key topics.

The Business Principles were originally published in 2003. The 2009 edition is a light revision intended to accommodate developments in good practice in a few key areas and where appropriate, to align the Business Principles to other leading anti-bribery codes, such as the ICC Rules of Conduct and the PACI Principles for Countering Bribery. The most substantive changes are in the expanded clauses on joint ventures and consortia. Growing expectations for reporting and greater credibility are reflected in this new edition through greater emphasis on public reporting on anti-bribery systems and the introduction of a section on external assurance of anti-bribery programmes.

Bribery: the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.

² Available at: <http://www.transparency.org>



2 THE BUSINESS PRINCIPLES

- **The enterprise shall prohibit bribery in any form whether direct or indirect**
- **The enterprise shall commit to implementing a Programme³ to counter bribery**

These Business Principles are based on a Board commitment to fundamental values of integrity, transparency and accountability.

Enterprises should aim to create and maintain a trust-based and inclusive internal culture in which bribery is not tolerated.

³ The whole of an enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

3 DEVELOPMENT OF A PROGRAMME FOR COUNTERING BRIBERY

- 3.1 An enterprise should develop a Programme that clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control.
- 3.2 The Programme should be tailored to reflect an enterprise's particular business circumstances and culture, taking into account such potential risk factors as size, business sector, nature of the business and locations of operation.
- 3.3 The Programme should be consistent with all laws relevant to countering bribery in all the jurisdictions in which the enterprise transacts its business.
- 3.4 The enterprise should develop the Programme in consultation with employees, trade unions or other employee representative bodies.
- 3.5 The enterprise should ensure that it is informed of all internal and external matters material to the effective development and implementation of the Programme, and, in particular, emerging best practices including engagement with relevant interested parties.



4 SCOPE OF THE PROGRAMME

The enterprise should analyse which specific areas pose the greatest risks from bribery and design and implement its Programme accordingly.

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

4.1 Bribes

- 4.1.1 The enterprise should prohibit all forms of bribery whether they take place directly or through third parties.
- 4.1.2 The enterprise should also prohibit its employees from soliciting, arranging or accepting bribes intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances.

4.2 Political contributions

- 4.2.1 The enterprise, its employees or agents should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining advantage in business transactions.
- 4.2.2 The enterprise should publicly disclose all its political contributions.

4.3 Charitable contributions and sponsorships

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

4.4 Facilitation payments

- 4.4.1 Recognising that facilitation payments³ are bribes the enterprise should work to identify and eliminate them.

4.5 Gifts, hospitality and expenses

- 4.5.1 The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever they could affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide.

³ Facilitation payments: Also called 'facilitating', 'speed' or 'grease' payments, these are small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

5 PROGRAMME IMPLEMENTATION REQUIREMENTS

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

5.1 Organisation and responsibilities

- 5.1.1 The Board of Directors or equivalent body should commit to an anti-bribery policy and Programme based on the Business Principles and provide leadership, resources and active support for management's implementation of the Programme.
- 5.1.2 The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.
- 5.1.3 The Board of Directors or equivalent body, Chief Executive Officer and senior management should demonstrate visible and active commitment to the implementation of the enterprise's Programme.
- 5.1.4 The enterprise should make compliance with the Programme mandatory for directors and apply appropriate sanctions for violations of its Programme.

5.2 Business relationships

- 5.2.1 Subsidiaries and other entities

The enterprise should implement its Programme in all business entities over which it has effective control and use its influence to encourage an equivalent Programme in other business entities in which it has a significant investment or with which it has significant business relationships.



5.2.2 Joint ventures and consortia

- 5.2.2.1 The enterprise should conduct due diligence before entering into a joint venture or consortium.
- 5.2.2.2 The enterprise should ensure that joint ventures and consortia over which it maintains effective control have Programmes consistent with its own.
- 5.2.2.3 Where an enterprise does not have effective control of a joint venture or consortium it should make known its Programme to the other entities in the venture and encourage them to adopt a Programme for the venture that is consistent with its own.
- 5.2.2.4 The enterprise should monitor the Programmes and performance of joint ventures and consortia; in the case of policies and practices that are inconsistent with its own Programme, the enterprise should take appropriate action. This can include: requiring correction of deficiencies in the implementation of the Programme; application of sanctions; or termination of its participation in the joint venture or consortium.
- 5.2.2.5 Where the enterprise is unable to ensure that a joint venture or consortium has a Programme consistent with its own, it should have a plan to exit from the arrangement if bribery occurs or is reasonably thought to have occurred.



5.2.3 Agents and other intermediaries

- 5.2.3.1 The enterprise should not channel improper payments through agents or other intermediaries.
- 5.2.3.2 The enterprise should undertake properly documented due diligence before appointing agents and other intermediaries.
- 5.2.3.3 All agreements with agents and other intermediaries should require prior approval of management.
- 5.2.3.4 Compensation paid to agents and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered.
- 5.2.3.5 Agents and other intermediaries should contractually agree to comply with the enterprise's Programme and be provided with appropriate advice and documentation explaining the obligation.
- 5.2.3.6 The enterprise should contractually require its agents and other intermediaries to keep proper books and records available for inspection by the enterprise, auditors or investigating authorities.
- 5.2.3.7 The relationship should be documented.
- 5.2.3.8 The enterprise should monitor the conduct of its agents and other intermediaries and should have a right of termination in the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

5.2.4 Contractors and suppliers

- 5.2.4.1 The enterprise should conduct its procurement practices in a fair and transparent manner.
- 5.2.4.2 The enterprise should avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes. It should undertake due diligence, as appropriate, in evaluating prospective contractors and suppliers to ensure that they have effective anti-bribery Programmes.
- 5.2.4.3 The enterprise should make known its anti-bribery policies to contractors and suppliers.
- 5.2.4.4 The enterprise should monitor significant contractors and suppliers as part of its regular review of relationships with them and have a right of termination in the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

5.3 Human resources

- 5.3.1 Human resources practices including recruitment, promotion, training, performance evaluation, remuneration and recognition should reflect the enterprise's commitment to the Programme.
- 5.3.2 The human resources policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, trade unions or other employee representative bodies as appropriate.
- 5.3.3 The enterprise should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if such refusal may result in the enterprise losing business.
- 5.3.4 The enterprise should make compliance with the Programme mandatory for employees and apply appropriate sanctions for violations of its Programme.

5.4 Training

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

5.5 Raising concerns and seeking guidance

- 5.5.1 To be effective, the Programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the enterprise should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations ("whistle-blowing") in confidence and without risk of reprisal.
- 5.5.2 These or other channels should be available for employees to seek advice on the application of the Programme.

5.6 Communication

- 5.6.1 The enterprise should establish effective internal and external communication of the Programme.
- 5.6.2 The enterprise should publicly disclose information about its Programme, including management systems employed to ensure its implementation.
- 5.6.3 The enterprise should be open to receiving communications from relevant interested parties with respect to the Programme.

5.7 Internal controls and record keeping

- 5.7.1 The enterprise should establish and maintain an effective system of internal controls to counter bribery, comprising financial and organisational checks and balances over the enterprise's accounting and record keeping practices and other business processes related to the Programme.
- 5.7.2 The enterprise should maintain available for inspection accurate books and records that properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.
- 5.7.3 The enterprise should subject the internal control systems, in particular the accounting and record keeping practices, to regular review and audit to provide assurance on their design, implementation and effectiveness.



5.8 Monitoring and review

- 5.8.1 The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness, and implement improvements as appropriate.
- 5.8.2 Senior management should periodically report the results of the Programme reviews to the Audit Committee, Board or equivalent body.
- 5.8.3 The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the enterprise's Annual Report to shareholders.

5.9 External verification and assurance

- 5.9.1 The Board or equivalent body should consider whether to commission external verification or assurance of anti-bribery policies and systems to provide enhanced internal and external assurance of the Programme's effectiveness.
- 5.9.2 Where such external verification or assurance is conducted, the Board or equivalent body should consider publicly disclosing that an external review has taken place, together with the related verification or assurance opinion.



CREDITS

The Steering Committee that produced the 2003 edition of the Business Principles for Countering Bribery comprised the following companies and organisations:

- AccountAbility
- The Conference Board
- Ethos, Brazil
- European Bank for Reconstruction and Development
- General Electric
- Institute for Business Ethics, Universiteit Nyenrode
- Norsk Hydro ASA
- PricewaterhouseCoopers
- Responsible Business Initiative, Pakistan
- Rio Tinto plc
- SGS
- Shell International
- Social Accountability International
- Tata Sons Ltd
- Trade Union Advisory Committee to the OECD
- Transparency International

Chairman of the Steering Committee (Feasibility Stage):


Laurence Cockcroft, Transparency International

Observer:

International Chamber of Commerce

The following companies and organisations submitted comments on the original consultation draft:

- BP plc
- Cambridge University Press
- The Caux Round Table
- Crédit Mutuel
- economiesuisse – Swiss Business Federation
- Ford of Europe GMBH
- France Télécom
- ISIS Asset Management plc (formerly Friends Ivory & Sime)
- General Motors Corp.
- GlaxoSmithKline plc
- International Federation of Consulting Engineers (FIDIC)
- Groupe Renault
- Société Générale
- Suez
- UBS AG
- Christine Parker, Professor of Law, University of New South Wales



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- BP Exploration (Caspian Sea) Limited, Azerbaijan
- Sika AG, Switzerland
- The Tata Iron and Steel Company Limited, India

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- The Members of the Steering Committee
- The Center for International Private Enterprise
- Open Society Institute (Feasibility Stage)

Transparency International

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