

# DEVELOPING AND IMPLEMENTING AN ANTI-CORRUPTION ETHICS AND COMPLIANCE PROGRAMME IN THE AFRICAN ENVIRONMENT

AA Ndedi\*

## Abstract

This article discusses the development and implementation of anti-corruption ethics and compliance programme in the African business environment. In the past decade, an international legal framework has been developed to tackle corruption both in public and private sectors. This framework includes the United Nations Convention against Corruption (UNCAC), which entered into force in 2005, and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force in 1999. These instruments mandate that State Parties must criminalise and punish a variety of corrupt practices. Relevant domestic laws have a direct impact on business, especially in States Parties instruments that require the establishment of liability of legal persons for corrupt acts. The African Union Convention also requires States Parties to establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights. The paper details various steps needed to efficiently and effectively implement anti-corruption ethics and compliance programme in the African context. The first part of the paper develops the primary objective of the corruption risk assessment which is to better understand the risk exposure so that informed risk management decisions may be taken. A structured approach for how enterprises could conduct an anti-corruption risk assessment will be outlined in this first section. The author argued in this same first section that each enterprise's own risk assessment exercise is unique, depending on that enterprise's industry, size, location, and other factors inherent to that organisation. The second part of the paper drafts the development and the implementation of an anti-corruption programme. The paper concludes by stating that an anti-corruption and compliance programme is not a panacea for fighting all the ills on corruption and fraud problems that a certain country or company is facing.

**Keywords:** Ethic, Compliance, Fraud, Corruption, Africa

*\*Professor School of Business and Public Policy, Saint Monica University*

## 1 Introduction

The primary objective of the corruption risk assessment is to better understand the risk exposure so that informed risk management decisions may be taken. A structured approach for how enterprises could conduct an anti-corruption risk assessment is outlined in the steps below. It is important that each enterprise's own risk assessment exercise is unique, depending on that enterprise's industry, size, and location. (UNODC, 2013) The paper is based on three sections, with each of them explaining the concept of the anti corruption ethics and compliance programme.

## 2 Understanding the risk assessment approach

There are six steps in understanding the risk assessment approach. They include the following:

### 2.1 Establish the process

An understanding of corruption risks, schemes, and potential legal consequences is a prerequisite for an effective risk assessment. Therefore, it is useful to raise awareness with key member firm stakeholders that will be involved in the process. An introductory workshop prepared by the owner of the anti-corruption policy/programme (e.g. legal, risk management, ethics and compliance) — and, if possible, senior management — might be considered to explore the corruption risks in more detail. The objective is to address the (sensitive) topic of corruption, acknowledge that the enterprise might be exposed to corruption risks, and identify the steps to explore the risk exposure.

### 2.2 Identify the risks

In this step, an enterprise would identify risk factors (e.g. why would corruption occur at our enterprise?)

and risks and schemes (e.g. how would corruption be perpetrated at our enterprise?). During this step, the enterprise might ask questions such as: where in our business processes is there exposure to corruption risks, what type of transactions and arrangements with government employees and third parties could result in creating corruption risks, and what locations where we do business pose a greater corruption risk than others? There are many different ways for an enterprise to collect relevant data and information on why and how corruption risks may occur. These can include: reports from the internal audit function on compliance risks, past incidents of noncompliance, and common corruption risks, external sources, such as research on corruption cases or allegations in the industry and country profiles, interviews with individuals from functions such as legal, risk management, ethics and compliance, internal audit and procurement, as well as with senior management of business/divisions at the country, regional, or local level.

### **2.3 Rate the inherent risk**

In order to allocate resources efficiently and effectively to an enterprise's identified corruption risks and the associated schemes, one good practice is to rate both the probability that each scheme might occur and the corresponding potential impact of that occurrence. The aim is to prioritise the responses to these corruption risks in a logical format based on a combination of their probability of occurrence and their potential impact should they occur. There is some subjectivity in this assessment, and the ratings will be influenced by the experience and backgrounds of individuals involved in the ratings. A simple qualitative scale could be used to classify each scheme's probability or potential impact as either (i) high, medium, or low, or (ii) very high, high, medium, low, and very low, or a quantitative scale, with scores applied judiciously to each scheme, could be used.

Combining the probability and potential impact assessments for each corruption scheme produces an assessment of inherent corruption risk. The inherent risk represents the overall risk level of each scheme without consideration of existing controls. It is these areas where mitigating controls will likely be most important in mitigating corruption schemes.

### **2.4 Identify and rate mitigating controls**

Once the corruption risks and schemes have been identified, the risk assessment team should consider undertaking the process of mapping existing controls and mitigating activities to each risk and scheme. This is important because the controls should be commensurate with the probability and potential outcomes of misconduct. In documenting controls, an enterprise should differentiate between scheme-specific controls and general (entity-level) controls,

and preventative versus detective controls. Most identified controls can be labelled as either preventative or detective, though some may serve dual purposes. Information about relevant controls can be obtained through a variety of means. While the review of control and process documentation is typically a key step, relevant controls can also be identified via interviews and targeted surveys with stakeholders who can help identify the appropriate controls. In addition, during this step, the team or individual leading the anti-corruption risk assessment effort could also assess with the business process owners whether the mitigating controls and programmes identified are indeed functioning as per the policy and process. It is common for several controls to be selected as mitigation for each risk and scheme. At the end of this step, the enterprise would likely have identified relevant mitigating controls, if any, for each of the risks and schemes identified in step 2.

There are many different ways to rate and communicate the design and effectiveness of the mitigating controls. 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.

### **2.5 Calculate the residual risk**

Residual risk is the extent of risk remaining after considering the risk reduction impact of mitigating controls. In spite of anti-corruption programmes and their internal controls for mitigating the risk of corruption schemes' occurring, it is usually still possible for such risks to occur. As a result, there will normally be some level of residual risk for each corruption scheme. An assessment of residual risk is thus an important consideration as it can be used to assess whether existing controls are effective and proportionate to the level of inherent risk. As with inherent risk, there is an element of judgment involved in assessing the residual risk of each corruption risk/scheme. If a qualitative scale, such as high/medium/low, was used for the inherent risk and controls risk ratings, then a similar scale can readily be used for residual risk. On the other hand, should strong controls be identified to mitigate the high inherent risk scheme, the control risk would be low and the residual risk would likely then be determined to be low. If a quantitative scale is used to determine inherent risk and the control risk ratings, then residual risk could be calculated as a function of inherent risk and control risk. Score ranges would need to be assigned to determine whether the residual risk is low, medium, or high.

## **2.6 Develop an action plan**

An enterprise can evaluate the residual risk of each corruption scheme to determine whether a corruption risk response is needed and, if so, what the desired elements of that plan would be. A key determinant of the response plan is the level of risk tolerance for risk appetite, which will vary from enterprise to enterprise. For any corruption scheme that has a residual risk within the risk tolerance set by management and approved by those charged with governance, no further risk mitigation is required. Management may choose to implement additional risk mitigation if it believes the cost-benefit ratio to be attractive, but this is not essential. For any corruption scheme that has a residual risk greater than the risk tolerance set by management and approved by those charged with governance, action is necessary to reduce the risk until it is within the tolerance threshold. For these items, a corruption risk response plan is needed.

## **3 Documentation of results**

The document of results is done through the risk registers, or the heat maps.

### **3.1 Risk registers**

Anti-corruption risk assessments are often documented using detailed spread sheets or database templates such as a risk register. Each risk factor, risk, and scheme can be documented individually in a risk register. This register can also be used to document the ratings for each risk and scheme as well as for the programmes and controls that mitigate each risk.

### **3.2 Heat maps**

Heat maps can also be an effective tool to summarise the results of a corruption risk assessment. A corruption risk heat map shows risks identified by the enterprise, placed according to their likelihood and potential impact, on a background of multiple colours with each colour representing a different overall level of risk. Simple heat maps typically have sections that are red, yellow, or green, denoting high-risk, medium-risk, and low-risk, respectively.

Heat maps can be used both to illustrate a consolidated enterprise-wide view and to illustrate views by location or function. Heat maps are flexible by design and can be developed for individual risks or can show categories that include multiple different types of risks.

## **4 Developing and implementing an anti-corruption ethics and compliance programme**

This section aims to bring together the main internationally recognised business instruments on

anti-bribery. These include, in alphabetical order:

- Anti-Corruption Code of Conduct for Business (APEC: Asia-Pacific Economic Co-operation)
- Business Principles for Countering Bribery (TI: Transparency International)
- Good Practice Guidance on Internal Controls, Ethics and Compliance (OECD: Organisation for Economic Co-operation and Development)
- Integrity Compliance Guidelines (World Bank)
- Principles for Countering Bribery (PACI: World Economic Forum Partnering Against Corruption Initiative)
- Rules on Combating Corruption (ICC: International Chamber of Commerce)

To develop and implement an anti-corruption ethics and compliance programme, there are a number of initiatives that must be taken; initiatives that are explained in this section.

### **4.1 Support and commitment from senior management for the prevention of corruption**

Here is the compilation of references to international business principles. This sub section reviews what the prescriptions within these various institutions are.

*APEC Anti-Corruption Code of Conduct for Business:*

Leadership: The Board (or equivalent) and the CEO should play a role in the launching of the Programme and demonstrate ownership and commitment to the Code and Programme.

*Business Principles for Countering Bribery*

2. The Business Principles:

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

6.1.1 The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's programme.

*ICC Rules on Combating Corruption*

Part III: Elements of an Efficient Corporate Compliance Programme

...

Article 10 (Elements of a Corporate Compliance Programme):

...

Each Enterprise should consider...

a) expressing a strong, explicit and visible support and commitment to the Corporate Compliance Programme by the board of Directors or other body with ultimate responsibility for the Enterprise and by the Enterprise's senior management ("tone from the top").

*OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:*

A.1. [Companies should consider] ... strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for

preventing and detecting foreign bribery.

*PACI Principles for Countering Bribery:*

Principle 5.1.3: The Board of Directors (or equivalent body), Chief Executive Officer (or executive board) and senior management should demonstrate visible and active commitment to the implementation of the PACI Principles.

*World Bank Group Integrity Compliance Guidelines:*

2.1 Leadership: Strong, explicit, visible, and active support and commitment from senior management, and the party's Board of Directors or similar bodies, for the party's Integrity Compliance Programme (Programme) and its implementation, in letter and spirit.

#### **4.2 Developing an anti-corruption programme**

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

2. The enterprise, in consultation with employees, should develop a programme, reflecting its size, business sector, potential risks and locations of operation 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. The Programme should be consistent with all laws relevant to countering bribery in all the jurisdictions in which the enterprise operates. It should apply to all controlled subsidiaries, foreign and domestic.

4.e. Human resources (par. 2). The human resource policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, and employee representative bodies, as appropriate.

*Business Principles for Countering Bribery:*

2. The Business Principles:

- The enterprise shall prohibit bribery in any form, whether direct or indirect
- The enterprise shall commit to implementing a Programme to counter bribery. The programme shall represent 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.

3.1. 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.

3.3. The Programme should be consistent with all laws relevant to countering bribery in each of 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 and other relevant stakeholders.

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 stakeholders.

*ICC Rules on Combating Corruption:*

Part III: Elements of an Efficient Corporate Compliance Programme

Article 10 (Elements of a Corporate Compliance Programme):

Each Enterprise should consider...

d) Making it the responsibility of individuals at all levels of the Enterprise to comply with the Enterprise's policy and to participate in the Corporate Compliance Programme;

*OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:*

A.3 [Companies should consider] ... compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company.

*PACI Principles for Countering Bribery:*

2. The enterprise shall commit to the continuation or implementation of an effective Programme to counter Bribery. An effective Programme is the entirety of an enterprise's anti-bribery efforts, specifically including its code of ethics, policies and procedures, administrative processes, training, guidance and oversight. This commitment is to develop and administer an internal compliance Programme that effectively makes an enterprise's anti-corruption policy an integral part of daily practice.

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 corporate culture, taking into account such factors as size, nature of the business, potential risks 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 operates.

3.4 The enterprise should involve employees in the implementation of the Programme.

3.5 The enterprise should ensure that it is informed of all matters material to the effective development and implementation of the Programme, including emerging industry practices, through appropriate monitoring activities and communications with relevant interested parties.

*World Bank Group Integrity Compliance Guidelines:*

2. Responsibility: Create and maintain a trust-based, inclusive organizational culture that encourages ethical conduct, a commitment to compliance with the law and a culture in which Misconduct is not tolerated. (...)

2.2. Individual Responsibility: Compliance with the Programme is mandatory and is the duty of all individuals at all levels of the party.

4. Internal Policies: Develop a practical and effective Programme that clearly articulates values, policies and procedures to be used to prevent, detect, investigate and remediate all forms of Misconduct in all activities under a party's/person's effective control.

*UN Convention against Corruption (UNCAC):*

Article 12.2. – Private sector

Measures to achieve these ends may include, inter alia:

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector 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;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

### **4.3 Oversight of the anti-corruption programme**

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

4.i. Organisation and responsibilities: The Board (or equivalent) should be satisfied that an effective programme has been developed and implemented.

The Board (or equivalent) should also be satisfied that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken.

The Chief Executive Officer (or equivalent) is responsible for seeing that the Programme is implemented effectively, with clear lines of authority. Depending on the size of the enterprise, consideration should be given to making the day to day operation and breaches of the code the role of a senior officer of a company.

*ICC Rules on Combating Corruption:*

Part III: Elements of an Efficient Corporate Compliance Programme

Article 10 (Elements of a Corporate Compliance Programme):

Each Enterprise should consider...

e) appointing one or more senior officers (full or part time) to oversee and co-ordinate the Corporate Compliance Programme with an adequate level of resources, authority, and independence, reporting periodically to the Board of Directors or other body with ultimate responsibility for the Enterprise, or to the relevant committee thereof;

*OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:*

A.4 [Companies should consider] ... oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority;

*PACI Principles for Countering Bribery:*

5.1.1 The Board of Directors (or equivalent body) is responsible for overseeing the development and implementation of an effective Programme.

5.1.1.1 The Programme should be based on the PACI Principles and the Board (or equivalent body) should provide leadership, resources and active support for management's implementation of the Programme.

5.1.1.2 The Board (or equivalent body) should ensure that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken.

5.1.2 The Chief Executive Officer (or executive board) is responsible for seeing that the Programme is carried out consistently with clear lines of authority. Authority for implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.

5.1.2.1 Authority for implementation of the Programme should be assigned to senior management

with direct line reporting to the Chief Executive Officer or comparable authority.

*World Bank Group Integrity Compliance Guidelines:*

2.3. Compliance Function: Oversight and management of the Programme is the duty of one or more senior corporate officers, with an adequate level of autonomy and with sufficient resources and the authority to effectively implement.

#### **4.4 A clear, visible, and accessible policy prohibiting corruption**

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

1. Prohibition of bribery: The enterprise shall prohibit bribery in any form. Bribery is offering, promising or giving, as well as demanding or accepting any pecuniary or other advantage, whether directly or indirectly, in order to obtain, retain or direct business to a particular enterprise or to secure any other improper advantage in the conduct of business.

Instances of bribery which are the subject of these principles may involve transactions by, or in relation to, subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or employees with (including but not limited to) a public official, family members and close associates of a public official, a political candidate, party or party official, any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), or a third party.

*ICC Rules on Combating Corruption:*

Part I: Anti-Corruption Rules

Article 1: Enterprises will prohibit the following practices at all times and in any form, in relation with:

A public official at international, national or local level;

A political party, party official or candidate to political office; and

A director, officer or employee of an Enterprise, whether these practices are engaged in directly or indirectly, including through Third Parties:

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

Bribery often includes (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting party, their close relatives, friends or Business Partners or (ii) using intermediaries such as agents, subcontractors, consultants or other Third Parties, to channel

payments to government or party officials, or to employees of the other contracting party, their relatives, friends or Business Partners.

Part III: Elements of an Efficient Corporate Compliance Programme

...Article 10 (Elements of a Corporate Compliance Programme):

Each Enterprise should consider...

b) establishing a clearly articulated and visible policy reflecting these Rules and binding for all directors, officers, employees and Third Parties and applying to all controlled subsidiaries, foreign and domestic;

*OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:*

A.2 [Companies should consider] ... a clearly articulated and visible corporate policy prohibiting foreign bribery;

*PACI Principles for Countering Bribery:*

The enterprise shall prohibit Bribery in any form. Bribery ("Bribery") is the offering, promising or giving, as well as demanding or accepting, of any undue advantage, whether directly or indirectly, to or from a public official, a political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business.(...)

4.1.1: The enterprise should prohibit Bribery in all business transactions that are carried out either directly or through third parties, specifically including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective control.

4.1.2: The enterprise should prohibit Bribery in any form, including on any contract payment or portion of a contract payment, or by any means or channels to provide improper benefits to customers, agents, contractors, suppliers or employees thereof.

4.1.3: The Programme should provide guidance on the meaning and scope of this prohibition, with particular attention to areas of high risk to a company in its business sector.

*World Bank Group Integrity Compliance Guidelines:*

1. Prohibition of Misconduct: A clearly articulated and visible prohibition of Misconduct (fraud, corruption, collusion and coercive practices), to be articulated in a code of conduct or similar document or communication.

*UN Convention against Corruption (UNCAC):*

Article 12.1 – Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to

comply with such measures.

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

3. Scope and Guidelines:

A. Charitable Contributions: The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery, and all charitable contributions and sponsorships should be transparent and made in accordance with applicable domestic law.

B. Gifts, Hospitality and Expenses: The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements would be in violation of applicable domestic law.

C. Facilitation Payments: Recognizing that facilitation payments are prohibited under the anti-bribery laws of most countries, enterprises should eliminate them. Facilitation payments, also called 'facilitating', 'speed' or 'grease' payments, are small payments made to secure or expedite the performance of a routine action to which the enterprise is entitled.

D. Political Contributions: The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates, organizations or individuals engaged in politics, as a subterfuge for bribery. All political contributions should be transparent and made only in accordance with applicable law. The Programme should include controls and procedures to ensure that improper political contributions are not made

Business Principles for Countering Bribery:

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

5.1. Conflicts of interest

5.1.1. The enterprise should establish policies and procedures to identify, monitor and manage conflicts of interest which give rise to a risk of bribery, actual, potential or perceived, including those of its directors, officers, employees and contracted parties such as agents, lobbyists and other intermediaries.

5.2 Bribes

5.2.1 The enterprise should prohibit all forms of bribery whether they take place directly or through third parties.

5.2.2 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.

5.3 Political contributions

5.3.1 The enterprise, its employees, agents, lobbyists, or other intermediaries should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a

way of obtaining advantage in business transactions.

5.3.2 The enterprise should publicly disclose all its political contributions.

5.4 Charitable contributions and sponsorships

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

5.4.2 The enterprise should publicly disclose all its charitable contributions and sponsorships.

5.5 Facilitation payments

5.5.1 Recognising that facilitation payments are bribes the enterprise should work to identify and eliminate them.

5.6 Gifts, hospitality and expenses

5.6.1 The enterprise should develop a policy and procedures to ensure that all gifts, hospitality and expenses are bona fide. The enterprise should prohibit the offer, giving or receipt of gifts, hospitality or expenses whenever they could influence or reasonably be perceived to influence the outcome of business transactions.

*ICC Rules on Combating Corruption:*

Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules:

...

Article 4: Political and Charitable Contributions and Sponsorships

a) Enterprises should only make contributions to political parties, party officials and candidates in accordance with applicable law and public disclosure requirements. The amount and timing of political contributions should be reviewed to ensure that they are not used as a subterfuge for corruption.

b) Enterprises should take measures within their power to ensure that charitable contributions and sponsorships are not used as a subterfuge for corruption. Charitable contributions and sponsorships should be transparent and in accordance with applicable law.

c) Enterprises should establish reasonable controls and procedures to ensure that improper political and charitable contributions are not made. Special care should be exercised in reviewing contributions to organizations in which prominent political figures, or their close relatives, friends and Business Partners are involved.

Article 5: Gifts and hospitality: Enterprises should establish procedures covering the offer or receipt of gifts and hospitality in order to 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 judgment 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.

Article 6: Facilitation payments: Facilitation payments are unofficial, improper, small payments

made to a low level official to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment is legally entitled.

Facilitation payments are prohibited in most jurisdictions.

Enterprises should, accordingly, not make such facilitation payments, but it is recognized that they may be confronted with exigent circumstances, in which the making of a facilitation payment can hardly be avoided, such as duress or when the health, security or safety of the Enterprise's employees are at risk.

When a facilitation payment is made under such circumstances, it will be accurately accounted for in the Enterprise's books and accounting records.

Article 7: Conflicts of interest: Conflicts of interest may arise when the private interests of an individual or of his/her close relatives, friends or business contacts diverge from those of the Enterprise or organization to which the individual belongs.

These situations should be disclosed and, wherever possible, avoided because they can affect an individual's judgment in the performance of his/her duties and responsibilities. Enterprises should closely monitor and regulate actual or potential conflicts of interest, or the appearance thereof, of their directors, officers, employees and agents and should not take advantage of conflicts of interest of others.

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.

#### **4.5 The application of the anti-corruption programme to business partners**

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

4.a. Business relationships: The enterprise should prohibit bribery in all business transactions that are carried out directly or through third parties, including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective control

*ICC Rules on Combating Corruption:*

Part I: Anti-Corruption Rules

...

Article 2: Third Parties: With respect to Third Parties subject to the control or determining influence of the Enterprise, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Enterprise's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of

licenses, permits or other authorizations, or any actions that benefit the Enterprise or as subcontractors in the supply chain,

Part II: Corporate Policies to Support Compliance with the Anti-Corruption Rules

Article 3: Business Partners: Business Partners include (i) Third Parties and (ii) joint venture and consortium partners as well as contractors and suppliers.

*OECD Good Practice Guidance on Internal Controls, Ethics and Compliance:*

A.6 [Companies should consider] ... ethics and compliance programmes or measures designed to prevent and detect foreign bribery applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter "business partners"), including, inter alia, the following essential elements:

i. properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners;

ii. informing business partners of the company's commitment to abiding by laws on the prohibitions against foreign bribery, and of the company's ethics and compliance programme or measures for preventing and detecting such bribery; and iii) seeking a reciprocal commitment from business partners.

*PACI Principles for Countering Bribery:*

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

5.2.1 Subsidiaries

5.2.1.1 The Programme should be designed and implemented on an enterprise-wide basis, applicable in all material respects to controlled subsidiary entities.

5.2.1.2: The enterprise should undertake measures to see that the conduct of subsidiary entities is consistent with the PACI Principles.

5.2.2 Joint ventures (The provisions in 5.2.2 apply also to non-controlled subsidiaries, consortium partners, teaming agreements and nominated subcontractors).

5.2.2.1 Due diligence should be conducted before entering into a joint venture, and on an ongoing basis as circumstances warrant. The Programme should provide guidance for conducting due diligence.

5.2.2.2 The enterprise should undertake appropriate measures, including contract protections, to ensure that the conduct of joint ventures is consistent with the PACI Principles.

5.2.3 Agents, advisors and other intermediaries

5.2.3.1 The enterprise should undertake due diligence before appointing an agent, advisor or other intermediary, and on an on-going basis as circumstances warrant.

5.2.3.2 The Programme should provide guidance



for conducting due diligence, entering into contractual relationships, and supervising the conduct of an agent, advisor or other intermediary.

5.2.3.2.1 Due diligence review and other material aspects of the relationship with the agent, advisor or other intermediary should be documented.

5.2.3.2.2 All agreements with agents, advisors and other intermediaries should require prior approval of senior management.

5.2.3.2.3 The agent, advisor or other intermediary should contractually agree in writing to comply with the enterprise's Programme and should be provided with materials explaining this obligation.

5.2.3.2.4 Provision should be included in all contracts with agents, advisors and other intermediaries relating to access to records, co-operation in investigations and similar matters pertaining to the contract.

5.2.3.2.5 Compensation paid to agents, advisors and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered and should be paid through bona fide channels.

5.2.3.2.6 The enterprise should monitor the conduct of its agents, advisors and other intermediaries and should have a contractual right of termination in case of conduct inconsistent with the Programme.

5.2.4 Contractors, subcontractors 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 undertake due diligence, as appropriate, in evaluating contractors, subcontractors and suppliers to ensure that they have effective anti-bribery policies.

5.2.4.3 The enterprise should make known its anti-bribery policies to contractors, subcontractors and suppliers. It should monitor their conduct and should have a contractual right of termination in case of conduct inconsistent with the Programme.

*World Bank Group Integrity Compliance Guidelines:*

5. Policies re: Business Partners: Use party's best efforts to encourage all business partners with which the party has a significant business relationship or over which it has influence to adopt an equivalent commitment to prevent, detect, investigate and remediate Misconduct (and, in the case of business partners which are controlled affiliates, joint ventures, unincorporated associations or similar entities, to the extent possible obligate them to so adopt). This includes agents, advisers, consultants, representatives, distributors, contractors, subcontractors, suppliers, joint venture partners, and other third parties.

5.1. Due Diligence on Business Partners: Conduct properly documented, risk-based due diligence

(Including to identify any beneficial owners or other beneficiaries not on record) before entering into

a relationship with a business partner, and on an ongoing basis. Avoid dealing with contractors, suppliers and other business partners known or (except in extraordinary circumstances and where appropriate mitigating actions are put in place) reasonably suspected to be engaging in Misconduct.

5.2. Inform Partner of Integrity Compliance Programme: Make party's Programme known to all business partners and make it clear that the party expects all activities carried out on its behalf to be compliant with its Programme.

5.3. Reciprocal Commitment: Seek reciprocal commitment to compliance from party's business partners.

If business partners do not have an integrity compliance programme, the party should encourage them to adopt a robust and effective programme by reference to the activities and circumstances of those partners.

5.4. Proper Documentation: Document fully the relationship with the party's business partners.

5.5. Appropriate Remuneration: Ensure that any payment made to any business partner represents an appropriate and justifiable remuneration for legitimate services performed or goods provided by such business partner and that it is paid through bona fide channels.

5.6. Monitoring/Oversight: Monitor the execution of all contracts to which the party is a party in order to ensure, as far as is reasonable, that there is no Misconduct in their execution. The party should also monitor the programmes and performance of business partners as part of its regular review of its relationships with them.

6.2 Contractual Obligations: Employment and business partner contracts should include express contractual obligations, remedies and/or penalties in relation to Misconduct (including in the case of business partners, a plan to exit from the arrangement, such as a contractual right of termination, in the event that the business partner engages in Misconduct).

11. Collective Action: Where appropriate — especially for SMEs and other entities without well-established Programmes, and for those larger corporate entities with established Programmes, trade associations and similar organizations acting on a voluntary basis — endeavour to engage with business organizations, industry groups, professional associations and civil society organizations to encourage and assist other entities to develop programmes aimed at preventing Misconduct.

#### **4.6 Internal controls and record keeping**

a) Compilation of references to international business principles

APEC Anti-Corruption Code of Conduct for Business:

4.d. Financial Recording and Auditing: The enterprise should develop and maintain appropriate

financial reporting mechanisms that are accurate and transparent as well as internal mechanisms for monitoring and controlling of the financial reporting system in accordance with internationally recognised accounting standards.

*Business Principles for Countering Bribery:*

6.7.1. 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.

6.7.2. 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.

6.7.3. 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.

*ICC Rules on Combating Corruption:*

Part II: Corporate Policies to Support Compliance with Anti-Corruption Rules

Article 9: Financial and Accounting: Enterprises should ensure that:

- All financial transactions are adequately identified and properly and fairly recorded in appropriate books and accounting records available for inspection by their Board of Directors or other body with ultimate responsibility for the Enterprise, as well as by auditors;

- There are no "off the books" or secret accounts and no documents may be issued which do not fairly and accurately record the transactions to which they relate; there is no recording of non-existent expenditures or of liabilities with incorrect identification of their objects or of unusual transactions which do not have a genuine, legitimate purpose; cash payments or payments in kind are monitored in order to avoid that they are used as substitutes for bribes; only small cash payments made from petty cash or in countries or locations where there is no working banking system should be permitted; no bookkeeping or other relevant documents are intentionally destroyed earlier than required by law; independent systems of auditing are in place, whether through internal or external auditors, designed to bring to light any transactions which contravene these Rules or applicable accounting rules and which provide for appropriate corrective action if the case arises;

- All provisions of national tax laws and regulations are complied with, including those prohibiting the deduction of any form of bribe payment from taxable income.

Part III: Elements of an Efficient Corporate Compliance Programme

Article 10 (Elements of a Corporate Compliance Programme):

h) Designing financial and accounting procedures for the maintenance of fair and accurate books and accounting records, to ensure that they cannot be used for the purpose of engaging in or hiding of corrupt practices;

i) Establishing and maintaining proper systems of control and reporting procedures, including independent auditing;

#### **4.7 The Communication and training**

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

4.b. Communication: The enterprise should establish effective internal and external communication of the Programme. The enterprise should publicly disclose its Programme for countering bribery. The enterprise should be open to receiving communications from relevant interested parties with respect to the Programme.

4.h. Training: The enterprise should aim to create and maintain a trust based and inclusive internal culture in which bribery is not tolerated. Managers, employees and agents should receive specific training on the Programme, tailored to relevant needs and circumstances. Where appropriate, contractors and suppliers should receive training on the Programme. Training activities should be assessed periodically for effectiveness.

*Business Principles for Countering Bribery:*

6.4. Training

6.4.1. Directors, managers, employees and agents should receive appropriate training on the Programme.

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

6.6. Communication and reporting

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

6.6.2. The enterprise should publicly disclose information about its Programme, including management systems employed to ensure its implementation.

6.6.3. The enterprise should be open to receiving communications from and engaging with stakeholders with respect to the Programme.

#### **4.8 Promoting and incentivising ethics and compliance**

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

4.e Human resource (par. 1): Recruitment,

promotion, training, performance evaluation, and recognition should reflect the enterprise's commitment to the Programme.

*Periodic reviews and evaluations of the anti-corruption programme*

a) Compilation of references to international business principles

*APEC Anti-Corruption Code of Conduct for Business:*

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

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

## **5 Conclusion**

In conclusion, the Anti-Corruption Ethics and Compliance programme for Business is a platform developed to serve as a useful, practical tool for companies seeking compliance advice in one, easy-to-reference publication. It brings together the major business guidance instruments for companies. A good anti-corruption risk assessment allows enterprises to develop and maintain a compliance program that is tailored and risk-based. The risk assessment entails

understanding how various anti-corruption programmes and controls are working in an enterprise, as well as their effect on risks. Only then can the enterprise direct compliance resources to the best use. It has been demonstrated that for example, employee training is a critical part of any anti-corruption compliance programme, but it is not always logistically practical to provide all employees in a large enterprise with the same type or intensity of anti-corruption training. One solution might be to provide tailored and targeted training to the employees whose activities entail higher corruption risk areas. Training, like almost every other aspect of an effective anti-corruption program, must be targeted and one tool in making the trainings more targeted is to factor the results of the corruption risk assessment. The above mentioned initiatives were developed during this paper, but cannot be the panacea to all ills that companies are encountering.

## **References**

1. OECD (2013) Anti-Corruption Ethics and Compliance Handbook for Business. Publication jointly coordinated by the Secretariats of the OECD, UNODC, and World Bank.
2. UNODC (2013) An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Retrieved from: [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf). (Accessed on the 20th March 2015).