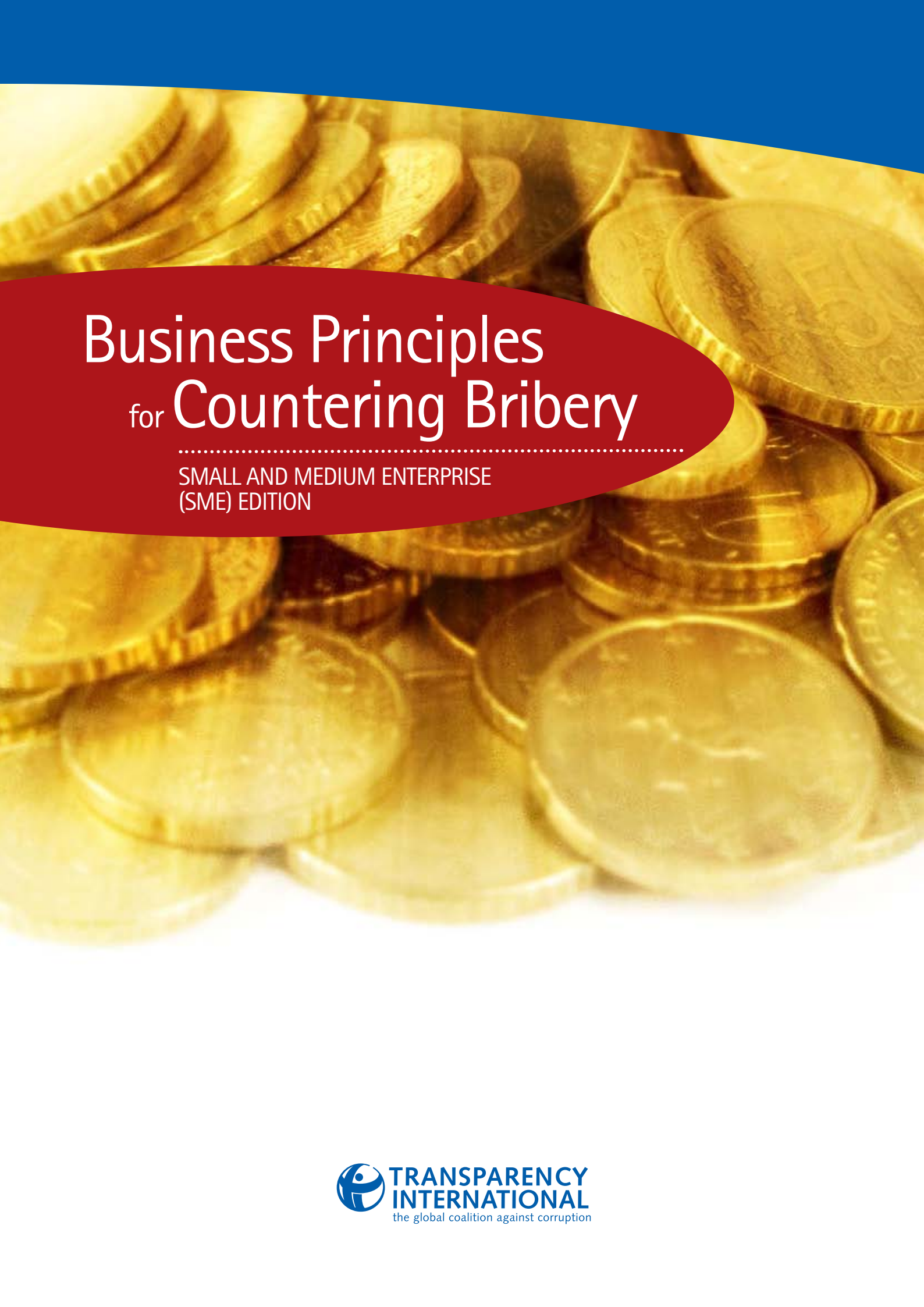


The background of the cover is a close-up photograph of numerous gold coins, likely Euro coins, stacked and scattered. The coins are in sharp focus in the foreground and become blurred towards the top. A solid blue curved shape is at the very top of the page, and a large red curved shape is positioned behind the title text.

Business Principles for Countering Bribery

SMALL AND MEDIUM ENTERPRISE
(SME) EDITION

Transparency International (TI) 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.

Acknowledgements

Transparency International acknowledges with thanks the help and support given by the Association of Chartered Certified Accountants, The Center for International Private Enterprise and TI National Chapters in developing this tool.

FOREWORD

Transparency International is delighted to introduce this version of the Business Principles for Countering Bribery for use by small and medium enterprises (SMEs).

Much of the world's business is carried out by small and medium enterprises, especially in emerging economies. This edition recognises that SMEs in many societies are frequently confronted with the problem of bribery. As smaller companies with limited resources SMEs face challenges in resisting and countering such pressures. Also, there are growing requirements made by large international companies for their suppliers to show evidence they have appropriate anti-bribery policies and systems in place.

This edition aims to set out in a clear and direct manner the process by which smaller businesses can develop an anti-bribery programme relevant to their size and resources. Countering bribery is good business practice. It can help build reputation, especially with customers, and it can reduce risks. By building strong anti-bribery cultures SMEs can successfully challenge and resist bribery.

Transparency International and the Steering Committee which oversaw the development of the Business Principles hope that businesses of all sizes will find the SME Edition to be of value, both for SMEs to counter bribery and for large businesses seeking to encourage good anti-bribery practices in their suppliers.

A BUSINESS COUNTERING BRIBERY IS A BUSINESS TAKING CONTROL

1



Jermyrn Brooks
Director, Private Sector Programmes
Transparency International



A WORD FROM THE BUSINESS PRINCIPLES STEERING COMMITTEE

The Business Principles for Countering Bribery were developed by a Steering Committee of leading companies and organisations under the Chairmanship of Transparency International and are supported by a TI Guidance Document, which remains the sole responsibility of TI. Both documents were drafted with larger, mainly public companies primarily in mind, but the support of smaller and medium-sized enterprises, which account for much of business world-wide, will clearly be crucial to success in the global fight against corruption.

We, the members of the Steering Committee, therefore welcome the initiative of TI to produce an edition of the Business Principles and an accompanying guidance document aimed primarily at the managers and owners of SMEs who will be looking for a maximum of practical effect with a minimum of bureaucracy. We commend this new publication accordingly and hope that it will prove of practical use both to businesses which have yet to introduce anti-bribery programmes of their own, and to larger companies which are seeking to encourage the commitment of supply chain and other business partners.

The Business Principles Steering Committee:

Corporate members

- BP p.l.c.
- F&C Asset Management p.l.c.
- General Electric
- HSBC
- Norsk Hydro ASA
- Organización Corona SA
- PricewaterhouseCoopers
- Rio Tinto p.l.c.
- SAP
- SGS
- Royal Dutch Shell
- Sika AG
- Tata Sons Ltd

Others

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

TABLE OF CONTENTS

FOREWORD	1
A WORD FROM THE BUSINESS PRINCIPLES STEERING COMMITTEE	2
INTRODUCTION - THE BUSINESS CASE	4
BUSINESS PRINCIPLES FOR COUNTERING BRIBERY – SME EDITON	7
The Business Principles	7
Aims.....	7
How to Develop a Programme for Countering Bribery.....	7
Key Bribery Issues	8
Gifts and Entertainment	8
Conflicts of Interest	8
Charitable Contributions and Sponsorship.....	9
Facilitation Payments	9
Political Contributions.....	9
Implementation Requirements.....	10
Organisation and Responsibilities.....	10
Business Relationships	10
Employees.....	10
Training.....	10
Raising Concerns and Seeking Guidance.....	11
Communication.....	11
Internal Controls and Monitoring.....	11
ANNEX A SUGGESTED PRINCIPLES FOR SMEs.....	12
ANNEX B SUGGESTED RULES ON GIFTS AND ENTERTAINMENT	13
GUIDANCE DOCUMENT	
Agree your Principles.....	16
Set the Business Aims.....	17
Develop your Programme.....	19
Decide who should be involved.....	19
Decide the Scope of your Programme.....	19
Bribes.....	19
Gifts.....	20
Hospitality and Entertainment.....	20
Business Travel Expenses for Customers	21
Facilitation Payments	22
Favours.....	22
Contract Payment Terms.....	22
Political Contributions.....	23
Charitable Donations.....	23
Sponsorship.....	23
Conflicts of Interest	24
Implementation.....	24
Employees or those working in the Business.....	25
Business Relationships	25
Entering into Business Relationships.....	25
Raising Concerns and Seeking Guidance.....	26
Communication.....	26
Internal Controls and Monitoring.....	27
Conclusion.....	28

INTRODUCTION – THE BUSINESS CASE

"The most common form of corruption is bribery, which is defined as the giving or receiving of money, a gift or other advantage as an inducement to do something that is dishonest, illegal or a breach of trust in the course of doing business."

4

You are reading this because something has made you think about bribery and how it can damage your business.

Corruption is defined as the misuse of power by someone to whom it has been entrusted, for their own private gain. The most common form of corruption is bribery, which is defined as the giving or receiving of money, a gift or other advantage as an inducement to do something that is dishonest, illegal or a breach of trust in the course of doing business.

Transparency International (TI) introduced the Business Principles for Countering Bribery in 2002, primarily for large companies. Since then, the Business Principles have become recognised as a leading anti-bribery standard and a model for anti-bribery programmes. An edition of the Business Principles more relevant to small and medium sized businesses (SMEs) has now been developed, together with guidelines which give practical advice to help those organisations with fewer resources of time, money and people, through the process of developing an anti-bribery strategy to suit their size and structure.

An SME may be as small as a sole trader or a partnership of three or four people. It may be a family business or a private limited company with a number of employees, perhaps as many as five hundred. Unlike a large company, an SME may not have a Board of Directors, a Human Resources Department or the resources of time and money to appoint a committee to oversee the introduction of Business Principles.

These Business Principles are the values by which business can be conducted with integrity. The Guidance Document is written for you as an owner or manager of an SME wishing to develop an anti-bribery strategy to introduce these principles into your business, whether small or medium in size. Each stage of the process is outlined and explained by highlighting what you need to think about. The Guidance Document will give you help on how to develop an anti-bribery Programme which will be appropriate for you. 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. The advice is there for businesses to which it is relevant. It is also good to understand these issues as they may become relevant to you as your business grows.

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 organisations, 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.

BRIBERY DAMAGES BUSINESS!

There are clear advantages to having an anti-bribery Programme, and also risks to not having one. These will already be understood by you, but as an aid to your planning and discussion with your business colleagues, the benefits and risks are listed on the following page.

BENEFITS

- A reputation as a business that trades ethically increases your chances of selection as a supplier to large multinationals in their supply chain, and better access to international markets.
- A record of integrity will enhance your opportunities to acquire government business.
- With a good anti-bribery Programme in place, your business and your associates will be better protected against legal penalties, loss of licenses and blacklisting.
- If you are considering selling your business, a good reputation will be more attractive for acquisition.
- A business with ethical standards is a good place to work and will encourage good working relationships and morale.
- Your business will be more attractive to financial organisations.
- You, and not some bribe payer or bribe receiver, will be in control of your business decisions. Your organisation will save money which might otherwise be squandered on bribes, gifts and inducements.

RISKS

- Bribery is illegal in most countries, and therefore a criminal offence which carries severe financial penalties and even the risk of imprisonment for responsible directors and managers.
- Even if the country in which you operate or to which you sell, does not have anti-bribery laws, you may be selling into other countries which can enforce penalties for corruption.



- There are a number of global initiatives working to eliminate bribery. The United Nations Convention against Corruption, UNCAC, which came into force in 2005, is the first global convention covering all forms of corruption and will grow increasingly important as it becomes law and is enforced. The Organisation for Economic Cooperation and Development (OECD) fights bribery in international business through its Anti-Bribery Convention. It has been incorporated into the laws of 37 countries which have signed up to the Convention and allegations of bribery can be reported to the relevant embassies. As it states: **"Corruption is no longer business as usual."**
- If you are hoping to do business with the supply chains of large companies, they will want to know if you have an anti-bribery Programme in place, because multinational companies are subject to particular laws and disclosure requirements which extend to their suppliers. Many large companies now have due diligence review processes, and if you have no anti-bribery Programme, your business is less likely to be selected, either that, or you may have to sign up to their programmes.
- A conviction for bribery can mean loss of export licenses, not to mention large fines.
- Bribery will taint a business and bring the inevitable loss of reputation and even blacklisting with particular organisations. Banks, auditors and lawyers must report any unexplained or irregular accounting under laws passed to counter money laundering and terrorism.
- Business decisions influenced by bribery are not based on business sense and will probably lead to poor results. The money paid out in bribes is a loss to the organisation, and once started down the path of bribery, it will be more difficult to go back.

A BUSINESS RUN ON BRIBERY IS A BUSINESS NOT IN CONTROL OF ITSELF



BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

SME EDITION

The Business Principles for Countering Bribery (Business Principles) were developed by a group of private sector interests, non-governmental organisations and trade unions as a tool to assist companies to develop effective approaches to countering bribery in all of their activities.

This version is a simplification of the processes written to help smaller organisations with fewer resources, through clarification of the issues and practical examples. The values held by the Business Principles are unchanged.

"The aims of these Business Principles are to help you to ensure you use good business practices, to protect your reputation and to suggest ways to minimise the risk from bribery."

1. THE BUSINESS PRINCIPLES

These are the business values by which you will do business. An example of how you can record your commitment to these Principles is attached at Annex A.

Your business commits to:

- Conducting its business fairly, honestly and transparently;
- Not making or offering bribes, whether directly or indirectly, to gain business advantages;
- Not accepting bribes, whether directly or indirectly, to give business advantages;
- Developing a Programme to implement and support these Principles.

7

2. AIMS

The aims of these Business Principles are to help you to ensure you use good business practices, to protect your reputation and to suggest ways to minimise the risk from bribery.

To achieve these Aims, your business should:

- Agree the values and practices by which your business operates;
- Look at your business and decide where the risks are;
- Agree as a business, the practices by which you can counter the risk from bribery;
- Outline the processes by which your business will do this.

3. HOW TO DEVELOP A PROGRAMME FOR COUNTERING BRIBERY

These are the practical steps you can take to decide how your business will keep to the Business Principles and achieve the Aims. Examples of where you can gather information are: embassies, trade organisations, and local TI National Chapters.

Assess your Risk

- Check if the countries in which you do business are at high risk from bribery
http://www.transparency.org/policy_research/surveys_indices/cpi.
- Evaluate the sectors in which your company trades, on their exposure to bribery.
- Review your contracts with agents and other business partners, and check that the payment terms and commissions are clear and appropriate for the services given.
- Determine what checks need to be made to assess the integrity of your suppliers, partners and customers.
- If you are working in a supply chain, understand what your customers expect you to do to counter bribery.
- Understand the laws and regulations which affect the business where you are operating; bribery is illegal in most countries.

BRIBERY IS ILLEGAL IN MOST COUNTRIES

Agree an anti-bribery Programme

Based on your risk assessment, your business can now develop a Programme for countering bribery and make sure that your business always acts honestly and openly.

4. KEY BRIBERY ISSUES

These are the main issues which may directly affect your business and which you need to assess and prioritise.

A bribe may take many guises other than money. It can be paid directly or as part of a 'commission' in a contract, but it can also be disguised as a gift, a benefit, a favour or a donation. Bribes may also be paid without your knowledge by agents or third parties working on behalf of your business or company.

Gifts and Entertainment

An expensive gift or the offer of lavish entertainment may be perceived as bribes under local laws, and can all be used as bribes, more subtle than cash, but made with the deliberate intention of improperly gaining a business advantage and perhaps preparing the way for more extensive bribery. On the other hand, reasonable gifts and entertainment offered openly in the normal course of business to promote good relations and mark special occasions are not bribes. So it is important that everyone understands the difference. To protect your business and the people working with you, agree on when gifts and entertainment may be given and accepted and what records need to be kept. Make sure your business partners know your rules.

An example of Rules on Gifts and Entertainment can be found at Annex B

Conflicts of Interest

A conflict of interest is when a personal interest or relationships is put before the business interests. Conflicts of interests can warp judgment and lead to actions which are not honest and open. These can sometimes lead to a situation where individuals act against their better judgment and give or accept a benefit which may damage your business. The way to deal with this is to have rules on how to manage situations where a conflict might happen. Even without malpractice, conflicts of interest may be seen as corrupt activities. This can be just as damaging as actual malpractice.

Charitable Contributions and Sponsorships

Bribes may be disguised as charitable contributions or sponsorships. Make sure that money paid to a charity is not dependent on, nor made to win, a business deal. Always give the money to the organisation and not an individual.

Sponsorship is where the business makes a payment, in cash or in kind, so as to be able to link its name to a popular event, for example a sports activity, or a well known person, such as a singer. The benefit to the business is association of its name with the well known and famous, but the sponsorship should bring real, measurable benefits to the business such as more publicity and a stronger brand. Make sure sponsorships are made for the benefit of the business and not used as cover for bribery.

Facilitation Payments

Facilitation payments are just another form of bribery and, as such, are illegal in nearly all countries. They may be small amounts demanded by providers of services to secure or 'facilitate' services to which you are entitled, such as connecting a telephone or obtaining a visa, or they may be amounts that are offered to customs, immigration and other officials to 'speed up' the granting of services and permits. They are unfortunately so common in many countries that they are seen as 'normal' or 'unavoidable' but as they are illegal, they should and can be avoided. Having a clear plan on how to ensure against making facilitation payments will help you and your colleagues to deal with the problem.

Political Contributions

Bribes may be disguised as political contributions. If your business wants to make a contribution to a political party, it is important that this decision is made openly. If you have a Board of Directors, it should be recorded as a resolution. If you are a small business, it can be written into notes of your management meeting. Make sure everyone in the organisation knows that the decision to make a political contribution on behalf of the business must be made with the agreement of the business, and should never be a decision made by one person without full agreement of the management. Be sensitive to timing. If you are in negotiation for a government contract or a licence, such as planning permission, or you have a sensitive issue which the government is reviewing, contributions to the government or local party may be seen as a bribe. Never give a contribution directly to an individual.



5. IMPLEMENTATION REQUIREMENTS

To put your Programme in place, you should take the following actions, depending upon the size and structure of your business.

"Everyone in your business, or all your employees should understand that they each have a responsibility to make sure that the Programme is followed and works."

Organisation and Responsibilities

Agree a Programme with your business colleagues or employees, to ensure the Business Principles are followed. Depending upon the size of your business, you could appoint one person or group of people to administer the anti-bribery Programme.

Everyone in your business, or all your employees should understand that they each have a responsibility to make sure that the Programme is followed and works.

Everyone in your business should be encouraged to contribute to the discussion and agree to keep to the Programme.

Business Relationships

When working with third parties, it is no good committing not to pay or receive bribes, if they are doing it on your behalf.

Your business should ensure that its Programme is followed in dealings with business partners such as agents, suppliers and contractors. Check that they are legitimate and do not have a record of paying bribes.

Commission payments should be reviewed to check that they are in proportion to the services provided to your business. Make sure that the agent clearly understands your Business Principles, and agrees contractually to abide by them.

Keep clear records of all your decisions e.g. on commissions agreed and instructions given not to pay bribes. This will all help to protect your business.

Make sure your contractual terms require that third parties keep to your Business Principles and that your contracts give you the right to terminate the agreement if bribes are paid or accepted by your agents or intermediaries.

Employees

Make sure that no-one in your business will be penalised for losing business through not paying or accepting a bribe. Equally, it should be part of your Programme that anyone in the organisation found paying a bribe or receiving a bribe will be disciplined. To make it effective and enforceable, your people need to know that this is your policy. If you have a Human Resources manager, he or she will need to be closely involved.

Training

Make sure that all the elements of your Programme are discussed and agreed by everyone in your organisation, and those who join you later. They should also be understood and agreed by your suppliers, contractors and other business partners. Make clear in your rules that decisions must put the best interests of the business before personal interest or gain.

6. RAISING CONCERNS AND SEEKING GUIDANCE

This is an essential element in countering bribery. Your reputation will come from your business values. Decide how best your business can deal with questions and reports and how to learn from the experiences and make improvements to your Programme.

Agree with the people in your organisation, and where possible with your business partners, the best way in which concerns about bribery can be reported without fear of reprisal, and where advice can be found on how to handle incidents, before they become a problem.

7. COMMUNICATION

It's no good having Business Principles and a Programme if no-one knows about them.

Your business should make sure that the Programme is made known to everyone in your organisation, business partners and customers. This will have the positive effect of enhancing your business reputation as a business which acts with integrity to counter bribery, and also help to protect you and your colleagues if incidents of bribery arise.

8. INTERNAL CONTROLS AND MONITORING

It's no good having a Programme unless it is supported by controls and records. These are the checks and balances which will support your Programme and show that it is working. Although your business will not have the same disclosure and audit requirements as public companies, even the best run business can have problems, and good records are evidence of good anti-bribery practice if questions arise. Advertise your Programme on your website if you have one. Keep notes of meetings where decisions are taken.

Keeping accurate books and records which show all your financial dealings, is essential. You should make sure that there are no off-the-books accounts. Remember that laws on money laundering require accountants and lawyers to report anything which is not open and which looks irregular. Having accurate records will help to protect your business if there is ever a need to explain a transaction.

You need strong internal controls, capable of exposing irregularities. Such controls will only work if they are well integrated into your processes and followed by everyone in the business. Those administering the controls need to be properly trained.

Check from time to time that your processes are working, by carrying out a review. Do this regularly and keep records of what you do to sort out anything which is not working.

Review your Programme and discuss it regularly with everyone in the organisation, and with auditors as appropriate. Keep records of these discussion and any actions taken as a result. Make improvements to your Programme as you learn from experience.

"You need strong internal controls, capable of exposing irregularities. Such controls will only work if they are well integrated into your processes and followed by everyone in the business."

ANNEX A

SUGGESTED PRINCIPLES FOR SMEs

1. We will carry out our business fairly, honestly and openly.
(Example: transparent payment terms, clear records)
2. We will not make bribes, nor will we condone the offering of bribes on our behalf, so as to gain a business advantage.
(Example: no bribes to be paid by agents)
3. We will not accept bribes, nor will we agree to them being accepted on our behalf in order to influence business.
(Example: careful management of commission payments)
4. We will avoid doing business with others who do not accept our values and who may harm our reputation.
(Example: careful selection of business partners)
5. We will set out our processes for avoiding direct or indirect bribery, and keeping to and supporting our values.
(Example: a process for dealing with gifts and entertainment)
6. We will keep clear and updated records.
(Example: records of decisions on giving donations or how a demand for a bribe or conflict of interest was handled)
7. We will make sure that everyone in our business and our business partners know our Principles.
(Example: good communication and training; no excuse for not knowing)
8. We will regularly review and update our Programme and processes as needed.
(Example: learn from experience and networking with others)
9. We will keep to these Principles even when it becomes difficult.
(Example: not paying facilitation payments)



ANNEX B

SUGGESTED RULES ON GIFTS AND ENTERTAINMENT

BUSINESS COMMITMENT:

Our business has committed to not giving or receiving bribes. As gifts and entertainment could sometimes disguise bribes, or be misinterpreted as bribes, we have set out these rules which clearly define what we consider to be genuine and acceptable and what is not.

GIFTS

We may accept gifts of small items of limited value. We may not accept valuable items.¹

Although we may accept a gift now and then, we may not accept gifts which are given regularly or often.

Our business rule is that gifts we give must be of moderate value, legal under local law, and agreed by management.²

Valuable items received as gifts will be returned, or disposed of as agreed by management.³

ENTERTAINMENT

We may give and accept reasonable, hosted entertainment which is in the legitimate interests of the business.

We will not give or accept lavish or frequent entertainment, or entertainment which is not hosted.⁴

¹ You may wish to set a limit on the value, e.g. US \$30, or to give examples of small gifts such as promotional items, flowers or chocolates. Examples of valuable items are gold jewellery, expensive watches or airline tickets.

² There are usually laws or regulations on what government officials may accept. It will help you to discuss and decide what gifts to offer customers, rather than to leave it to one individual. Remember your customers may also have a gifts policy.

³ Sometimes it would be rude to refuse a gift, e.g. at a public event. It helps to have thought about this in advance and to have guidance prepared. In such cases the gift could be accepted, but returned later with a letter of explanation. Alternatively, its value might be donated to charity. The giver should be told what you have done and why, to avoid gifts of value being presented on other occasions.

⁴ Where no-one from the business offering the event attends to host guests, e.g. at a sporting event, this is then a gift, not entertainment, and falls under the rules on gifts. There ought to be an element of business involved, e.g. promoting good relations or following a business meeting. Lavish entertainment goes beyond what is appropriate, e.g. weekend accommodation at expensive hotels, and including spouses. It is fine to do this, but each business should pay its own travel and accommodation expenses.

Business Principles for Countering Bribery

SMALL AND MEDIUM ENTERPRISE
(SME) EDITION

GUIDANCE DOCUMENT



IMPLEMENTING THE BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

SME EDITION

"By adopting an anti-bribery Programme, you are also taking steps to protect your business and your people."

This document explains in more detail the various elements of the Business Principles and how to develop your Programme. It is best to try to agree and implement the Programme in one go, but if you can't manage that, suggested Steps are shown to help you complete it in stages.

STEP 1 AGREE YOUR PRINCIPLES

This first Step is making a firm commitment to counter bribery by setting out your business values to:

- Conduct business fairly, honestly and transparently;
- Not make or offer, bribes, whether directly or indirectly, to gain business advantages;
- Not accept bribes, whether directly or indirectly to give businesses advantages;
- Develop a Programme to implement and support these Principles.

16

THE CULTURE FOR COUNTERING BRIBERY IS SET FROM THE TOP

It is important that your Board, if you have one, partner, manager or owner, depending upon your size and structure, are firmly behind this commitment and are seen to be active in its implementation, as this involvement will set the business culture which comes from the top. By adopting an anti-bribery Programme, you are also taking steps to protect your business and your people.

The decision to take this first Step needs to be recorded. How this is done will depend upon your size and structure. If you have a Board of Directors, the proposal should be presented to the Board and agreed by resolution. If your business is very small, just have a discussion with your colleagues or partners and come to a general agreement to have an anti-bribery Programme.

The important point here is that the decision to adopt an anti-bribery Programme is recorded in writing. The importance of records is that they show your intentions, what you wanted to do and why. If ever you need to, you then have the means to protect your business against charges of bribery. As a small organisation you do not have to publish reports like large companies, so just keep a book or file in which you have recorded your decisions. An example of how you might make a commitment to anti-bribery in a written code is set out in Annex A.

SET THE BUSINESS AIMS

The Aims of the Business Principles are to set a framework for how you will do business honestly and counter bribery by good business practices and risk management.

Your business first needs to look at its own situation through a quick assessment of risk. At this stage set out what your business needs to think about.

- Look at where you do business. What are the laws in your home country and in the countries where you do business? Information on countries is available from embassies, trade organisations, local TI National Chapters and the TI Corruption Perceptions Index http://www.transparency.org/policy_research/surveys_indices/cpi shows the perception of the level of corruption in most countries. Are you operating in or planning to operate in countries seen as highly corrupt?
- Some industries are particularly vulnerable to bribery either because of the nature of their product or services, or where they mostly operate. Think about the oil industry, pharmaceuticals and construction industries for example. What kind of bribery schemes might you be exposed to? Evaluate the industries with which you do business and assess the risk to your business.
- Third parties such as distributors, and agents, may be vulnerable to bribery. Spot check the terms of your most important contracts and see if all the payments can be justified or if they involve complex or strange terms of payment. Look particularly at commission percentages, and check if they are appropriate for the services given. What exactly does a 'management fee' cover, what benefit does the 'management' bring you? It may be something very helpful, but think about what you expect to receive for that fee and make sure it is written into your agreement so that it is open and transparent. A commission of 5% may be justifiable, but what about 15%? Has the commission payment been introduced late in negotiations? If percentage costs are being added to the overall price, do you know what they are for and to whom they are being paid, i.e. an organisation or an individual? Who owns the account into which the fee is to be paid? Contract prices have been known to be increased to provide a kickback to an individual.



- If you have employees, they may be at risk from the practices of business partners who are unethical. Look at your business partners, i.e. suppliers, distributors, and customers, and assess if your relationships and agreements with them are open and transparent. What do you know about them? Are there any ways in which they operate or arrangements with them which are questionable or difficult to understand? For example, are the tendering processes or the payment terms open and clear? Look especially at anyone acting on your behalf. Have you checked their authenticity? Are they legitimate businesses? Were any background checks carried out on their reputations, both for commercial expertise and integrity? Do they have an office? Are payments being made offshore? This may seem daunting if you are a very small organisation, but you can get help from embassies, trade organisations, TI chapters, and the internet is a rich source of information.
- Has your business has been affected by bribery?
- Look at your internal processes such as purchasing and contract terms on payment. Are you sure that there are adequate checks and balances and are they being recorded?

This information will highlight areas which need to be strengthened and help you to work out where you need to develop processes to help your business keep to your Programme. As with your commitment to the Programme, record your decided Aims in writing.



STEP 2

DEVELOP YOUR PROGRAMME

In the first step you will have agreed to have an anti-bribery Programme and decided upon your Aims and where you need to strengthen your processes or put new ones in place. A Programme for countering bribery will also add to your reputation and will give your business an advantage with large companies looking for suppliers. It will also help you to minimise risks to your business, such as legal penalties and fines. You now need to put your Programme into effect. Agree what to do to minimise the risk from bribery for your business. This will give you the scope of your Programme. You will need to spend some time on this step. Start with the following two actions:

DECIDE WHO SHOULD BE INVOLVED

This will depend upon the size of your organisation. If you have a Board, it might appoint someone to be responsible for implementing your Programme.

If you are a smaller organisation with just a few people, it may be better for everyone to discuss and agree together how to run your Programme.

It is important that leadership comes from the top, but everyone should take responsibility.

Think about who else you may need to involve, depending upon how and where you operate. Some examples are trade unions, lawyers or auditors. You may also wish to include some of your key business partners.

However you organise it, it is essential that everyone in the organisation takes responsibility for your anti-bribery Programme as a core part of the business.

As an SME you may have limited resources but it is important that you spend some time to understand the existing laws on bribery. If for example you do business with governments or local government, there will be particular requirements. Most countries have anti-bribery laws, variously enforced. Countries which have signed up to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, will have laws to counter bribery, and small businesses can report any attempted bribery by a business from an OECD nation to their embassies. US companies are subject to the Foreign Corrupt Practices Act and the Sarbanes-Oxley Act which deal with bribery of government officials and reporting requirements, and will want to make sure that their suppliers are not a weak link in their supply chain.

DECIDE THE SCOPE OF YOUR PROGRAMME

Fundamental to countering bribery is understanding and recognising the various guises in which a bribe may come, and having in place processes for dealing with each. Consider how each form of bribery may impact your business and prioritise accordingly.

Bribes

In its simplest form, a bribe is an illegal transaction, where someone is abusing their position for personal benefit. It is usually a sum of money, but can be a benefit, given or received in order to gain an advantage. Benefits can be hospitality, gifts or a favour. Inducements may not even take the form of a direct bribe, but an indirect approach. They can influence judgment and place employees in a compromised position.

Gifts

Gift giving is an accepted practice in most countries but it can be open to abuse and may be used as part of a process of preparing for larger bribery, so it is important that you think about what you want your business to do about gifts. It is sensible to control both the giving and accepting of gifts so that there is a consistency in your approach. For example, you should be particularly careful when considering the giving of gifts during the entire commercial negotiations, from bid invitations to award of the business. Always be careful at any time of giving gifts to anyone with the power to award or influence business. Be aware that governments generally have strict rules on accepting gifts.

Think about the value, appropriateness and frequency of the gifts. At what point does a gift start to create an obligation and influence judgment? Chocolates or a pen may be fine, but what if the pen is gold or the gift is a pearl necklace valued at US \$1,000?

Thinking through your approach and being open about what you have decided is appropriate in gift giving and accepting for your business, is a way of making sure that you are protected from misunderstanding and exposure. It will also help your employees in dealing with such situations where they are offered gifts. For example, you may decide that an occasional gift at an appropriate occasion of up to e.g. US \$25 may be accepted, so make sure that everyone in your business and your business partners know your rules.

Set out what to do if someone in your business is offered more valuable or frequent presents. If refusal of the gift would cause offence, for example if it was presented at a public occasion, then give guidance on what to do, such as accepting it but recording the receipt of the gift, and perhaps giving it to a charity. Always politely inform the giver what you have done and why, otherwise you may be faced with the same situation at the next meeting. Perhaps you would prefer to play safe and not allow any gifts whatever their value.

Equally, you should think about gift giving. You may decide to give gifts only of items such as paperweights or pens which carry your business logo. There may be times when a more expensive gift may be more appropriate to the occasion. Whatever you decide make it clear, devise a system of approving and recording gifts, and ensure that everyone understands what to do.

An example of Rules on Gifts and Entertainment can be found in Appendix A to the Anti-Bribery Principles.

Hospitality and Entertainment

Entertainment can sometimes become a gift. Entertainment is always hosted by the organisation giving it, gifts are not. If a business partner invites you to a dinner or to a social event which their company is hosting for business purposes or simply to further good relations, that is entertainment and acceptable providing it is not lavish. A meal in a local restaurant once in a while is fine. Dinner with expensive food and an overnight stay with spouses at a five star hotel is lavish.

Tickets to a gala event for you to use as you wish, without being hosted, are a gift. It may be fine to accept them, but you need to review them under your company's gift policy, i.e. do they exceed the value of gifts which you have agreed can be accepted? If your rules give a limit of US \$30 and the tickets are worth US \$200, then it needs to be discussed with your organisation. If there is a good reason, the tickets may still be accepted, i.e. if the person has been particularly helpful to the customer and the tickets are to show appreciation, but that decision needs to be discussed, agreed and recorded within the business.

"Think about the value, appropriateness and frequency of the gifts. At what point does a gift start to create an obligation and influence judgment?"

Entertainment and gifts, if regularly accepted, can compromise and put you in a position where you are no longer free to use good judgment. Imagine having to tell a supplier that their standards are slipping or that you no longer want to buy from them, when you have just accepted from them tickets to a concert, which are very difficult to obtain. Again, you should decide on what is right for your business and how it should be approved. It is always prudent to make a record and, if appropriate to your size and structure, have someone in authority monitor what is being offered and accepted. Be aware that when offering hospitality, governments have strict rules, and your customers may also have their own policy on accepting entertainment. It may be fine to accept but just think about it first, why is it being offered, who will it benefit, will it incur obligations, is it in line with your agreed rules?

Business Travel Expenses for Customers

There may be occasions when your business wants to invite customers to a particular business event or to visit a factory or see an installation of a system. Equally, you may be invited by a customer. In both cases it is better that each meet their own travel expenses, unless there is a contractual agreement such as to give training on a product, where the travel costs are part of the agreement. If you feel it important to pay for customer travel, set down some simple guidelines such as the number of guests, class of travel, level of accommodation costs and length of time. If your customers want to bring their spouses, they should meet that cost personally. If your customer suggests that a weekend visit is added to the business trip, it is fine to help arrange it, but the customer should pay for their own expenses. As an example, if there is a strong business purpose, it may be fine to fly two or three of your customer's employees to your offices for a two day meeting, with reasonable entertainment such as dinner, included. To fly ten employees at your company's cost, first class for a two day meeting with a weekend at a five star hotel and a visit to a top sporting event would be excessive and open to question, particularly if it became public knowledge.

THE PERCEPTION OF BRIBERY IS AS DAMAGING
AS BRIBERY ITSELF



Facilitation Payments

Facilitation payments, sometimes known as “grease” payments are generally illegal. These are small amounts demanded by providers of services to secure or ‘facilitate’ services to which you are entitled, such as connecting a telephone or obtaining a visa. Equally, they can be inducements that are offered by business people to customs, immigration and other officials to ‘jump the queue’ or ‘speed up’ the granting of services and permits. Either way they should not be offered or paid. The difference between a facilitation payment and paying for a faster service such as first class mail services is that a legitimate service will be advertised at a set tariff which is the same for everyone, be paid for transparently to an organisation or department and a receipt provided. The facilitation payment will be given to an individual and hidden. No receipts will be given. Occasionally such payments are demanded under threat of physical violence. If this happens, it is important that your people understand that if they are threatened with harm, they should pay and leave, without fear of recrimination. If facilitation payments are demanded or paid under duress, then record them and let your manager know. Look at what happened, for example where and what were the circumstances, and use the experience to see what plans you can make to reduce the risk of it happening again.

**FACILITATION PAYMENTS SHOULD NOT BE MADE –
THEY ARE SIMPLY ANOTHER FORM OF BRIBERY**

22

Favours

As a small business, you will probably know and be well known by your business associates, and good relationships will be a valuable part of your business life. For the most part giving or accepting a favour will be a straightforward expression of good will. Just keep in the back of your mind that favours incur obligations which in turn may put people into situations where their judgment is impaired and they may not act in the best interests of the business. Such favours may not always be straightforward, and could conceal dubious motives. Examples might be sponsoring a visit (not connected to business) to your country by writing a letter of invitation to allow a foreign national to obtain a visa. Another might be allowing the use of your address for delivery of an item, or agreeing to payment in a country other than where the supplier does businesses or where the transaction took place. Think through if there is any likelihood of risk before acting on a favour, and if unsure, take advice. For example, writing a letter of invitation to help someone get a visa to visit your country, could make you their sponsor and liable for whatever they do whilst in your country.

Contract Payment Terms

This seems very obvious, but you should be able to give clear commercial justification to all the payment terms in your agreements. The better everyone in your organisation understands the business policy on payment terms, the less likely you are to encounter ambiguous agreements. Commission fees should be balanced by measurable business value. Services supplied to your business by third parties should be clearly recorded and the terms understood. Payments need to be made in accordance with relevant tax laws. Payments should be made in the countries where the business takes place, and not offshore. They should be by cheque or bank transfer and not in cash. It is sensible to ensure that the financial terms are agreed, recorded and understood by the relevant people in your business. You need to set out who they are. Make sure your contract terms allow for immediate termination of the agreement if the other party pays or accepts bribes in connection with your business. Remember that auditors are obliged to report anything suspicious which might indicate money laundering.

“Commission fees should be balanced by measurable business value. Services supplied to your business by third parties should be clearly recorded and the terms understood.”

Political Contributions

Businesses may see the giving of donations to a political party as a way of contributing to the democracy of their country. Donations might be to party funds, or to help support an election campaign. They may be made to national parties or local initiatives. Such donations are governed by laws in some countries. If your business wants to make a contribution to a political party, check first what the local law requires, for example, there may be an upper limit. The granting of paid leave of absence to an employee (in addition to holiday allowance) to support a political group, perhaps in an election, may be regarded as a political contribution made by the business. If you decide to make a contribution, record it in writing and ensure the accounting is transparent. It is a good idea, if you have one, to publish it in your annual report and accounts (this may apply more to larger companies), if not, just keep a record in your books. If you do not want to make such contributions, record that decision in writing too.

You should not make contributions to a political party whilst in negotiations with a government over business, licenses, or any matter which affects your company. Never give a contribution directly to an individual

WRITTEN RECORDS GUARD REPUTATIONS WHEN MAKING DONATIONS

Charitable Donations

Bribes may even be disguised as donations to charity. If your business wants to make a donation, you should set out some simple guidelines to follow. A genuine charity will generally be registered under the local country's laws. Be careful who the charity officials are. If anyone is related to someone to whom you are currently marketing, then it would be wiser not to make the donation. Check if you can to find out to whom the money will go and for what purpose. Be wary if you are asked to give a donation to a particular charity as part of a business agreement. If you are engaged in a business bid and a customer has a connection with the charity or sponsored organisation, then you should not promise or make a donation or sponsorship until the contract decision has been made. Money should always be given to a charitable organisation and not to an individual. You might want to set an approval process for donations so there are counterchecks for any payments made.

Sponsorship

A business sponsors an organisation such as a sporting club, when it pays for the right to use the name of that club for its business purposes. For example a business making sports equipment could benefit from linking its name to the stars in that particular sport. In this case money may well be paid to an individual, but make sure there is an agreement in place which outlines what your business is paying in fees and what you expect to receive in return, for example your business name on posters at an event, the sports star wearing your business logo at an agreed number of events. Putting it in writing and keeping clear records will keep the arrangement transparent.

THINK THROUGH THE RISKS AND MAKE YOUR POLICY CLEAR

Conflicts of Interest

A conflict arises where personal interest is put before that of the business. An example might be when one of your business team has a cousin who runs a decorating business and who will give you a good price to do some work on the office. Providing the personal interest is declared, the selection process is transparent, and the business side is handled by someone other than the family member, no conflict arises. Your business should set out clearly how it wants to handle conflicts of interest and potential situations so as to avoid conflicts before they take place.

RAISE AWARENESS AND GIVE GUIDANCE ON WHAT TO DO

STEP 3 IMPLEMENTATION

You have now set your anti-bribery Programme. You have reviewed your situation and assessed the various areas of risk to your business. This exercise will have exposed any areas where you need to tighten up your processes or introduce new ones. Depending upon how you have decided to develop your Programme in Step 2, now is the time to set that in motion. Whatever organisation you have decided upon, it is very important that direction is seen to come from the top, i.e. the Chairman of the Board, the General Manager or simply the 'Boss'. It is key to the success of the Programme that everyone is involved and individually responsible and it is not a case of 'do as I say'.

In adopting your Programme, you are undertaking to do business with integrity. This also impacts on others in your business orbit, i.e. employees, suppliers, contractors, and customers. It is no good agreeing not to pay or receive a bribe if your suppliers are doing it for you. It is therefore essential that everyone involved is aware of your the Principles and Programme.



Employees or those working in the Business

Make sure everyone understands why you are doing this and the risks involved in not having an anti-bribery Programme. Everyone should understand that they have an individual responsibility to implement it. Whatever the structure of your organisation, every employee or person working in the business needs to be aware of and understand the Programme. The anti-bribery Programme can be set out in a simple, easy to understand document given to each of your people. When hiring someone or asking a family member to do some work for you, make sure they have read the document and understand why it is important for your business.

Ensure that everyone in the business understands your processes for reporting and recording gifts and knows who to talk to and where to get advice about potential conflict of interest. How you approach this will depend upon the size of your organisation. If you have only a few people, this may be done in one training session, otherwise hold discussion in small groups. It is a good idea to open a register and to have everyone sign it as having attended training or a session which explained about your Programme. Those new to the business should also be recorded as having understood that your business has an anti-bribery Programme. Above all, make it clear that this is the framework for your business in countering bribery from now on, and that your Programme is now a day to day way of doing business. Make clear what the disciplinary consequences of violating the Programme will be. If you are a company with employees, make sure your Human Resources manager is involved in the discussions to make sure local employment laws are followed. For example, many countries require company policies, such as the anti-bribery Programme to be translated into the local language before they can be made enforceable.

It is equally important that your people know they will not be penalised if they walk away from a business opportunity where it is dependent upon bribery.

"Ensure that everyone in the business understands your processes for reporting and recording gifts and knows who to talk to and where to get advice about potential conflict of interest."

25

Business Relationships

This is one of the most important parts of your Programme and possibly the most difficult to implement as it involves other organisations and is less within your control, i.e. agents, contractors, suppliers and customers.

- First of all make sure that those with whom your company has a business relationship are informed of your anti-bribery Programme. Ask if they have an anti-corruption programme in place and get a copy.
- Business partners should understand that your anti-bribery Programme also applies to them when doing business with you and on your behalf.
- Reflect your Programme in the terms of your contracts and agreements, which should also allow for immediate termination if business partners pay or accept bribes.
- If you enter into a joint venture, make sure your Programme forms part of the business relationship.

Entering into Business Relationships

Your business has a responsibility when selecting its business partners to take reasonable steps to check that they are legitimate organisations working to good business practices and that they have their own anti-bribery Programmes.

Most importantly, it must be central to your business relationship that:

- Business will be conducted in a fair and transparent manner;
- Bribes will not be paid, offered or accepted.

"Implementing your anti-bribery Programme is very positive for your business, so make sure it is well communicated."

Before entering in a business relationship:

- Carry out a simple due diligence process when selecting your business partners to establish if there are any 'red flags'. This is a sensible precaution from a business perspective as much as from an ethical stance;
- Check the organisation's structure and ownership;
- Check the country or registration and place of payments;
- Look at its financial position;
- Ask around about its reputation;
- Speak to other business partners;
- Check if it has an anti-bribery policy;
- Ensure that payment terms are transparent;
- Record your due diligence review in writing. Review the relationship from time to time to see if anything has changed.

STEP 4

RAISING CONCERNS AND SEEKING GUIDANCE

How you decide to deal with concerns and the giving of guidance will depend on your size and organisation. To help you, here are some points for consideration:

- Your Programme should be seen as an 'evolutionary process', i.e. one which is continually developing. Open discussion is important to its success and should be encouraged as essential to this development through the experience gained from reviewing concerns and deciding on their handling;
- People need to feel able to discuss issues without fear of reprisal;
- Business partners may also have issues to raise;
- This is the point at which problems can be identified and dealt with early, providing they are recognised in time;
- Confidentiality will probably be important when considering how to handle reports of incidents of bribery and discussion on conflicts of interest. Think about how you will handle this. Reputations are at stake and some reports may be based on a misunderstanding. Always find out the facts before taking action.

COMMUNICATION

Implementing your anti-bribery Programme is very positive for your business, so make sure it is well communicated. In addition to the initial communication to employees and business partners, make sure to keep it current with people new to your business and your business partners. Post your anti-bribery Programme on your website if you have one.

**LEARN FROM YOUR EXPERIENCES AND USE THEM TO
IMPROVE YOUR ANTI-BRIBERY PROGRAMME**

INTERNAL CONTROLS AND MONITORING

Anti-bribery strategies are only as effective as those who implement them. Your business should consider what processes will best control your Programme and what checks and balances are needed to monitor them. A business of any size needs certain internal controls such as having more than one signature on the cheques, controlling expenses and signing off orders. Some points to take into consideration are:

- Financial controls (including internal accounting controls) are essential and when correctly implemented will pick up irregularities. Transparency and accuracy, including filing and retention of essential documents, are key;
- Contract terms, if well monitored, will highlight lack of transparency in payments or practice;
- Good management will identify irregularities with gifts, entertainment and expenses;
- Employee relations and company policies if well maintained will encourage openness and compliance;
- Example from the top sets the culture of the organisation;
- Regular review of the Programme is essential, perhaps have it as an agenda point on your Board or business meeting agenda;
- Accurate written records should be kept and available for inspection;
- Controls only work if processes are followed.



CONCLUSION

These guidelines are intended to help you implement your anti-bribery Programme which addresses your structure, business and risks. The suggestions made are to help you focus on the issues so that you may decide how best your business can address them.

The key to developing an effective Programme for countering bribery lies in:

- Recognising the benefits to your business;
- Identifying the risks;
- Agreeing a process to lower the risks, e.g. by having rules on gifts and entertainment;
- Communicating your Programme to your business partners;
- Keeping clear, accurate records, not only financial, but also of your decision to adopt your Programme and all your processes for countering bribery;
- Giving practical training on your Programme,
- Dealing effectively with incidents and concerns raised,
- Encouraging open discussion on issues arising,
- Continually reviewing your Programme for effectiveness.

DECIDE, COMMUNICATE, RECORD, TRAIN AND MONITOR





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