



**A GUIDE FOR COMPANIES IN EMERGING MARKETS**

# STRENGTHENING ETHICAL CONDUCT & BUSINESS INTEGRITY

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**CENTER FOR INTERNATIONAL  
PRIVATE ENTERPRISE**

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# Introduction

**Strengthening Ethical Conduct & Business Integrity: A Guide for Companies in Emerging Markets** highlights a decade of lessons learned and observations collected by the staff of the Center for International Private Enterprise (CIPE) while supporting ethical business practices among companies in emerging markets.

This guide aims to help companies in emerging markets in **three main ways**:

1. Make company leaders confident that behaving ethically will not put their company at a disadvantage compared to competitors that continue unethical, “business as usual” practices.
2. Equip individuals who champion business integrity within their company with better guidance on how to implement a business integrity program.

3. Offer practical suggestions to interested business leaders who are still at an early or exploratory phase in their approach to business integrity. This guide outlines principles that can be approached in different ways, allowing business leaders to take into consideration the unique set of risks and challenges that their companies face.

In CIPE’s experience, business integrity and compliance are often new concepts to companies in emerging markets. Sometimes the issue is translation. Many languages lack direct equivalents for “integrity” and “compliance,” and instead use terms that mean “honesty” or “following the law.” While these substitutes capture part of the idea, integrity and compliance go even further. Applied to individuals, integrity is defined as “strict adherence to a moral code, reflected

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in transparent honesty and complete harmony in what one thinks, says, and does.”<sup>1</sup> Applied to an organization, this means setting up an organizational code of conduct and ensuring that standards are consistently applied and upheld. Another definition of integrity is the “state of a system where it is performing its intended functions without being degraded or impaired by changes or disruptions.” Fraud, bribery, and other forms of corruption are disruptive and damaging to business operations. Business integrity means implementing rules and processes that make it harder for bad actors to get away with harmful and dishonest behavior, resulting in strengthened operations and reduced costs.

CIPE has seen interest in business integrity and compliance rise as more private sector partners have attended CIPE-supported integrity and compliance training sessions and more individual companies have sought out CIPE’s help to develop business codes of conduct. Interest in this area appears to be on the rise globally as cross-border trade has expanded and anti-corruption laws such as the U.S. Foreign Corrupt Practices Act (FCPA) have applied pressure on companies around the world to do business ethically. CIPE’s efforts in this area have built on a growing collection of free anti-corruption resources developed by reputable international

organizations including the Organization for Economic Co-operation and Development (OECD), United Nations Office on Drugs and Crime (UNODC), Organization for Security and Co-operation in Europe (OSCE), the World Bank, Transparency International, and others. However, companies introducing business integrity programs still face many practical challenges.

This guide seeks to address these challenges by focusing on common issues that many companies, particularly small- and medium-sized enterprises (SMEs), face when developing or upgrading their business integrity programs.

Furthermore, CIPE recognizes that practicing business integrity requires companies to develop a culture of integrity that goes deeper than merely following rules, laws, and regulations. Businesses that embrace integrity will be better able to avoid a harmful

**“You should only proceed with a compliance and ethics program if you are serious about doing the right thing. A sham program is worse than none at all.”**

- JOSEPH MURPHY

practice known as “paper” compliance. This occurs when a businesses’ emphasis is only placed on following policies and superficially checking various compliance boxes. This practice can breed cynicism and mistrust among employees and other stakeholders, making meaningful change more difficult to achieve. While this guide uses the terms business integrity and anti-corruption compliance interchangeably, CIPE encourages businesses to recognize that business integrity means not only doing things right, but also doing the right thing. In his popular book, “A Compliance & Ethics Program on a Dollar a Day,” Joseph Murphy warns, “You should only proceed with a compliance and ethics program if you are serious about doing the right thing. A sham program is worse than none at all.”<sup>2</sup>

During this guide’s development, the global economic fallout from the COVID-19 pandemic has devastated the operations of SMEs around the world. Faced with decreased resources to run their businesses, some

**Business integrity means not only doing things right, but also doing the right thing.**

**The value of building and reinforcing a culture of integrity and compliance remains compelling.**

company leaders may wonder if there are still benefits to be gained from committing to anti-corruption compliance and ethical behavior. Yet the value of building and reinforcing a culture of integrity and compliance remains compelling. Many private sector actors have observed that ethical businesses can respond more quickly and efficiently in a crisis due to previously established risk frameworks, trusted and loyal employees, and clear guidance on ethical behavior.

For its part, CIPE is committed to helping companies make ethical decisions, act with integrity, and gain and maintain public trust. Consequently, this guide is organized into eight sections that correspond to the steps required to create an anti-corruption integrity and compliance program. As the guide progresses, 28 questions highlighting common implementation challenges are raised and addressed. Specific examples draw on publicized cases of corruption and CIPE’s own experience helping emerging

<sup>1</sup> BusinessDictionary.com, 2020. Retrieved from <http://www.businessdictionary.com/definition/integrity.html>

<sup>2</sup> Joseph Murphy, *A Compliance & Ethics Program on a Dollar a Day: How Small Companies Can Have Effective Programs*, Society of Corporate Compliance and Ethics, 2010. Retrieved from <https://assets.corporatecompliance.org/Portals/1/PDF/Resources/CEProgramDollarADay-Murphy.pdf>

market SMEs and other companies build and implement integrity and compliance programs. These sections and questions are referenced by page number in the Table of Contents.

CIPE hopes this guide will be of practical use to businesses and compliance practitioners around the world and stresses that building and reinforcing a company culture of integrity is not only very valuable, it is the right thing to do.



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# Gain Management Commitment

The first step in assembling a business integrity program is getting the company's leadership engaged and on board. To do this, company leaders need to establish and formalize their commitment to anti-corruption and ethical business practices. For example, company directors and managers can sign a Declaration of Intent to develop a business integrity program that reflects the company's commitment to honest behavior and practices. Next, company leaders need to decide how they will set the tone from the top and establish a standard of ethical culture for the entire company. A company's Chief Executive Officer (CEO) should inform the rest of the company about the decision to establish a business integrity program as well as related commitments such as developing a code of ethics and a code of conduct.

It is critical for all company senior leaders to understand that establishing a business

integrity program is not simply a formality or a box-checking exercise. It should be viewed as a full commitment to pursuing ethical business practices that will be incorporated into all the organization's decisions and practices. In addition, company leaders should understand that a robust business integrity program serves as an excellent risk management tool that allows companies to detect, respond to, and prevent corrupt and other illegal and unethical activities by employees, business partners, and third parties.

## **Challenge No. 1** How to Get Company Leadership to See the Need for a Business Integrity Program?

It can sometimes be challenging to persuade company leaders to see the benefits of a



business integrity program. It is often easier to achieve when there is external pressure such as an investigation of the company itself or one of its peers, or a new government regulation that requires companies to implement integrity standards. An opportunity may also arise when a leadership change occurs since new leaders are often more eager to embrace novel initiatives.

When no obvious opportunities exist to create a business integrity program, compliance champions – employees who seek to convince their management to introduce a business integrity program – should be prepared to make a strong business case for compliance. Such business cases should emphasize that companies that implement integrity programs can typically reduce the cost of doing business as a result of improved transparency in both

**Compliance champions seeking to convince their company executives to introduce a business integrity program should focus on making a strong business case for compliance.**

business relations and transactions. Since these programs introduce new controls and require continuous monitoring, companies that implement them will waste less money on bribes, lower risks of legal consequences due to fraud or fiscal mismanagement and use their resources more effectively. Better monitoring also tends to lead to improved product and service quality, and a reputation for honesty and integrity can help attract business partners and investors. Lastly, since such programs can protect employees from mistreatment or retaliation when reporting malfeasance, companies may find it easier to retain valuable employees.

The following arguments can help integrity champions make a strong business case for ethics and compliance:

#### **#1 Integrity Benefits the Bottom Line**

Business integrity programs that introduce comprehensive risk assessments and robust internal controls can help companies save money and resources that are otherwise lost to fraud. According to the Association of Certified Fraud Examiners' *2020 Report to The Nations*, organizations lose five percent of their revenue to fraud every year.<sup>3</sup> The report also indicates that the median loss

**Organizations lose five percent of their revenue to fraud every year.**

during 2018-2019 among small businesses that lack a business integrity program is roughly \$150,000. Meanwhile, businesses that implement a comprehensive business integrity program experience a 50 percent or greater reduction in fraud losses (see Figure 22 and 23).<sup>4</sup>

#### **#2 Multinational Corporations Often Require Partners To Have Compliance Protocols**

It is increasingly common for multinational companies to expect that local companies have a business integrity program established before they will move forward with a partnership. Therefore, having a business integrity and compliance program is an advantage for companies that are seeking to expand internationally or find international partners. Below are real examples of the huge consequences that multinational

companies have had to bear due to inadequate due diligence and/or monitoring of local partner companies:

- VimpelCom and MTS paid \$835 million to enforcement authorities to settle bribery allegations. The company was discovered to have paid more than \$865 million in bribes to the daughter of the former president of Uzbekistan in order to secure her assistance in entering and maintaining their business operations in Uzbekistan's telecommunications market.<sup>5</sup>
- Teva Pharmaceuticals paid a \$519 million penalty for bribery offenses in Ukraine, Russia, and Mexico. The company was penalized after it paid bribes to senior government officials to facilitate both the sale and registration of its products in local markets.<sup>6</sup>
- Walmart paid \$138 million to United States (U.S.) enforcement authorities to settle violations of the FCPA. Despite multiple red flags and corruption allegations, the company allowed subsidiaries in Brazil, China, India,

<sup>4</sup> Id. at 33-34.

<sup>5</sup> Agence France-Presse, "VimpelCom pays \$835m to US and Dutch over Uzbekistan telecoms bribes," *The Guardian*, February 18, 2016. Retrieved from <https://www.theguardian.com/world/2016/feb/19/vimpelcom-pays-835m-to-us-and-dutch-over-uzbekistan-telecoms-bribes>. See also [https://www.traceinternational.org/TraceCompendium/Detail/625?class=casename\\_searchresult&type=1](https://www.traceinternational.org/TraceCompendium/Detail/625?class=casename_searchresult&type=1)

<sup>6</sup> U.S. Securities and Exchange Commission, "Teva Pharmaceutical Paying \$519 Million to Settle FCPA Charges," 2016. Retrieved from <https://www.sec.gov/news/pressrelease/2016-277.html>

<sup>3</sup> Association of Certified Fraud Examiners, *Report to the Nations: 2020 Global Study on Occupational Fraud and Abuse*, 2020. Retrieved from <https://acfe-public.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf>

and Mexico to employ third-party intermediaries who made payments to foreign government officials in order to expand business growth in these countries.<sup>7</sup>

- Two heads of the Bangkok International Film Festival were sentenced to six months imprisonment, three years of supervised release, and were ordered to pay \$250,000 in restitution for FCPA violations. The pair paid \$1.8 million in bribes to the Governor of Thailand's Tourism Authority in order to secure contracts to host the film festival.<sup>8, 9</sup>

### #3 Business Integrity Can Lead to Increased Business Growth and Borrowing Opportunities

Borrowing funds is an essential part of business growth, and a demonstrated commitment to business integrity and compliance is likely to make companies more appealing to lenders. This is because many lenders—including venture capital firms, federal or commercial banks, microfinance firms, and governments—are required to mitigate their own regulatory and

integrity risks. These entities lower these risks by conducting due diligence on potential borrowers to ensure that investments will not be used for illegal or unethical purposes, or lost as a result of mismanagement, fraud, or corruption. A robust business integrity department will be able to mitigate lender concerns and strengthen confidence that debts incurred will be repaid. Furthermore, compliance helps companies establish more rigorous financial management systems which are also frequently required by banks in assessing loans.

For example, UniCredit, one of the largest commercial lenders to Eurasian businesses, ensures its partners comply with local anti-corruption and bribery laws. The money lent out by UniCredit and its subsidiaries, whether

**Sustainable business expansion includes company leadership realizing the essential value of business integrity and compliance principles in their operations.**

through microfinance or traditional loans, is tied both to compliance with UniCredit's robust Global Policy on Anti-Bribery and Anti-Corruption and to the integrity and due diligence standards of the European Bank for Reconstruction and Development (EBRD). Given UniCredit's emphasis on compliance, companies hoping to secure loans from the bank are required to establish business integrity and compliance principles within their operations.

### #4 Ethical Businesses Build Stronger Trust with Stakeholders

Business ethics and integrity standards can have positive spillover effects that go beyond internal company policies. Organizations implementing business ethics and integrity standards will strengthen trust with employees, customers, partners, and government counterparts. They will also raise expectations for ethical conduct among stakeholders in their society.

Consider the example of Lithuania's first business integrity initiative, Clear Wave, that has united more than 60 national

companies committed to transparent and ethical business practices in the last 13 years. Almost 40 percent of Lithuanians surveyed in 2017 stated that they recognized the logo of the initiative displayed on the products and offices of service providers and are aware of the mission of the initiative.<sup>10</sup> In addition, many businesses outside the membership of Clear Wave are becoming less tolerant of corruption and oppose the idea that bribes can be beneficial.<sup>11</sup>

### #5 Businesses with Ethical Reputations Can Increase Future Business Opportunities

The COVID-19 pandemic is an example of a global event that disrupted established international supply and value chains. At the same time, the pandemic created new opportunities for international partnerships in regional markets around the world not previously included in the global supply chains.<sup>12</sup>

A 2020 survey covering 3,000 firms reported that in 10 out of 12 global industries (including automobiles and medical equipment), companies had shifted, or

7 U.S. Securities and Exchange Commission. "Walmart Charged with FCPA Violations," 2019. Retrieved from <https://www.sec.gov/news/press-release/2019-102>

8 Eriq Gardner, "Two Hollywood Producers Can't Escape Foreign Bribery Penalty," *The Hollywood Reporter*, 2013. Retrieved from <https://www.hollywoodreporter.com/thr-esq/two-hollywood-producers-cant-escape-58397>

9 U.S. Department of Justice, "Film Executive and Spouse Found Guilty of Paying Bribes to a Senior Thai Tourism Official to Obtain Lucrative Contracts," 2009. Retrieved from <https://www.justice.gov/opa/pr/film-executive-and-spouse-found-guilty-paying-bribes-senior-thai-tourism-official-obtain>

10 [http://bit.ly/GoogleTranslate\\_PressRelease\\_LithuanianPopulationSurvey2017](http://bit.ly/GoogleTranslate_PressRelease_LithuanianPopulationSurvey2017)

11 The survey of businesses by the Special Investigation Service of the Republic of Lithuania, December 2019, Retrieved from <https://www.stt.lt/lt/doclib/sfm49iyuw6lbswnfymr6zwbj216tntbx>

12 Neil Irwin, "It's the End of the World Economy as We Know It," *The New York Times*, April 16, 2020. Retrieved from <https://www.nytimes.com/2020/04/16/upshot/world-economy-restructuring-coronavirus.html>

planned to shift, at least part of their supply chains from current sources.<sup>13</sup> This transition is occurring at a time when social media and online databases allow customers and other stakeholders to track companies' conduct, including breaches of integrity during the COVID-19 pandemic. This increased scrutiny makes it more likely that companies exploring new supply chains will seek ethical business partners, especially as doing so affords them increased public trust and brand loyalty.<sup>14</sup>

## Challenge No. 2 What Does an Ethical Company in an Emerging Market Look Like, and How Can Your Business Become One?

A mid-sized IT company, Adrian Group Kenya Limited, offers a compelling example of an ethical company successfully operating in an emerging market with high corruption risks.<sup>15</sup> Since starting its operations in 2009 as a sub-contractor for Nokia Siemens, Adrian Group has become a direct supplier for Safaricom, a leading telecommunication

services company in Kenya. By 2016 it had generated revenues of more than \$6 million and employed some 300 people. In addition, Adrian Group has been able to attract global partners such as American Tower, Oracle, ENaTEL, and General Electric due to its reputation for quality and integrity.

The founder and managing director of Adrian Group, Bernard Njoroge, once admitted: "We have turned down many business opportunities due to ethical concerns. We believe that corruption only finds its way in mediocrity, especially when an enterprise does not merit the opportunity."

The company's continuous success has been attributed to the following factors:

- In 2017, Adrian adopted a board of directors comprised of seven professionals with diverse experience as executives and board members in the corporate sector, both locally and internationally. The board provides an advisory and oversight role over the operations of the company.
- Adrian Limited has chosen to do business in accordance with global best practices

in anti-corruption. The CEO has the ultimate responsibility for compliance and sets the tone from the top. The company upholds anti-corruption and ethical compliance through a part-time risk committee that comprises two units: a compliance unit and a risk management unit that conducts investigations, field risk, and safety management, as well as overall company security.

- Adrian Limited is legally registered and compliant with mandatory requirements for doing business in Kenya. The company is a signatory to the UN Global Compact Principles, as well as the Code of Ethics for Businesses in Kenya and Safaricom Supplier Code of Conduct. Adrian provides an Employee Handbook to all employees and has encouraged them to report any form of misconduct through the Human Resources (HR) department.
- Adrian's Managing Director/CEO, the Head of Business Governance and Sustainability, and the Procurement Officer attend Safaricom's supplier forums, while compliance and risk management personnel receive anti-corruption compliance training. HR regularly communicates to staff through email and internal memos. In addition,

Adrian holds monthly staff meetings where departments provide progress updates and conduct awareness sessions.

- Finally, the company has put in place plans to formalize reporting structures, including an independent whistleblowing channel separate from reports to HR. Adrian continues to work closely with Safaricom's Ethics and Compliance officers on anti-corruption compliance to help identify gaps and improve their level of compliance. The company is also actively using training opportunities for its employees, especially from anti-corruption compliance experts.

## Challenge No. 3 How Can Management Create a Successful Business Integrity Environment, i.e. "Set the Tone from the Top"?

Setting the tone from the top means that there is strong, explicit, visible, and active support and commitment from the company's board of directors (or a similar governing body) and senior management for the company's business integrity and compliance program and its implementation. Various sources recommend that small companies without an existing board of

<sup>13</sup> Don Lee, "As coronavirus cripples global supply lines, more U.S. firms are looking to leave China," The Los Angeles Times, March 4, 2020. Retrieved from <https://www.latimes.com/politics/story/2020-03-04/spreading-coronavirus-tears-apart-global-supply-chains>

<sup>14</sup> Aaron Nicodemus, "For some Companies in the Age of Coronavirus, Ethics Pays," Compliance Week, March 17, 2020. Retrieved from <https://www.complianceweek.com/ethics-and-culture/for-some-companies-in-the-age-of-coronavirus-ethics-pays/28625.article>

<sup>15</sup> Center for International Private Enterprise, "Managing Third-Party Corruption Risk: The Case of Safaricom and Its Suppliers," 2018. Retrieved from [https://www.cipe.org/wp-content/uploads/2020/08/Safaricom-Case-Studies\\_FINAL.pdf](https://www.cipe.org/wp-content/uploads/2020/08/Safaricom-Case-Studies_FINAL.pdf)



directors appoint one or two advisors to provide expertise and ensure the independence of the compliance function.<sup>16, 17</sup> Such advisors can follow up on the program's implementation and make sure it remains effective over time. They can also help guide a company's senior leadership team and help them understand the long-term benefits of a robust integrity program. The presence of these advisors may be particularly crucial to support companies discontinuing unethical practices or cutting reliance on political connections to acquire business opportunities or other advantages.

There are several ways to set the tone from the top, including:

- Statements issued to company employees and business partners from the CEO on a regular basis regarding the company's values of business integrity and compliance.
- Requiring compliance with the business ethics and compliance program from all company directors and managers.

- Providing compliance standards materials such as manuals, videos, and training sessions and regularly evaluating performance on these standards.
- Ensuring that compliance personnel can directly report to the company's board of directors or independent advisors; or, in case the company does not have a board of directors or independent advisors, to the senior management.

The significance of a clear and consistent message from top management (i.e. the CEO) in support of business ethics and integrity efforts cannot be overestimated. In CIPE's experience, business support organizations and companies in the emerging markets that attempt to implement business integrity programs but fail to gain executive buy-in are much less successful. Consequently, this step is critical. Afterward, companies should follow through by creating a clear and comprehensive business integrity plan or framework.

<sup>16</sup> Beatrice Ballini, "Every Family Business Needs an Independent Director," Harvard Business Review, January 27, 2020. Retrieved from <https://hbr.org/2020/01/every-family-business-needs-an-independent-director>

<sup>17</sup> Faith Ikade, "Delay in the 2020/21 Budget Presentation Leads to Cash Crisis for EAC," Ventures Africa, June 30, 2020. Retrieved from <http://venturesafrica.com/delay-in-the-2020-21-budget-presentation-leads-to-cash-crisis-for-eac>

## STEP 2

# Set Up A Business Integrity Framework (i.e., Compliance Function)

Before setting up a business integrity framework, a leader in the organization must be made responsible for it. CIPE recommends that a company's business integrity and compliance program be overseen by a trusted senior manager or ethics officer who enjoys strong rapport with top management and company employees. This person should be autonomous and have sufficient resources and authority to implement an effective program. For example, some organizations have established a Chief Ethics and Compliance Officer (CECO)—a senior manager position—who commands unambiguous responsibility and authority. A board member may also be assigned to oversee the program's implementation. This guide refers to the person responsible for a company's integrity program as the integrity and compliance officer.

A company's leadership team should meet with the designated senior manager and discuss how they want to design and fund their business integrity framework. They should ask:

- How will the designated manager ensure that employees understand applicable local and international anti-corruption laws and regulations?
- Who will prepare business integrity and compliance reports? Who will the reports go to, and how often will they be filed?
- Should a new department be created to handle the required advisory and complaints function, or can existing departments cope with these demands (legal department, internal audit, ethics officer, etc.)?
- Is there a procedure for the senior manager to periodically report the

results of program reviews to the audit committee, governance committee, or the entire board?

- Is there a procedure for promptly reporting any unethical or integrity issues or concerns to senior management and the board?
- What type of training is needed for employees to understand and comply with the policies?

#### Challenge No. 4

### How Much Does Establishing a Business Integrity Program Cost?

Many CIPE partners have found that business integrity and compliance programs are cost-effective compared to the reputational and financial harm that can result from companies' non-compliance. Furthermore, compliance resources and trainings are often available for free or for a small fee and can be accessed online. For example, CIPE's Self-Evaluation Checklist, also known as the "Self-Evaluation Tool for Countering Bribery," can be used by companies as a basis for internal audit and external assurance.<sup>18</sup>

Smaller companies can establish a compliance position by assigning part-time

**Business integrity and compliance initiatives are cost-effective compared to the reputational and financial harm that can result from companies' non-compliance.**

responsibility to a staff member serving in a similar role, such as in a legal, financial, human resources, communications, security, or a project management role. The designated implementer can attend compliance trainings offered by other entities, as well as draw on in-house and external expertise as necessary. Additionally, outside compliance professionals can be hired on a fixed contract basis as needed.

Budgets for a business integrity and compliance program should reflect the specific risks each company faces. For example, a larger company that conducts cross-border trade and engages dozens of third parties may require a larger budget for such a program than a smaller company that only operates domestically and works with a handful of business partners.

<sup>18</sup> Center for International Private Enterprise, *Self-Evaluation Tool for Countering Bribery*, 2020. Retrieved from <https://www.cipe.org/resources/self-evaluation-tool-for-countering-bribery>

#### Challenge No. 5

### How Does a Company Find the Right Person to Lead Its Business Integrity Program?

The integrity and compliance officer should ideally be someone who knows the company well, is trained on compliance best practices, and has a reputation for trust and integrity. It is helpful if this person has a background in law, human resources, accounting, and/or finance. However, CIPE's experience suggests that an advanced professional degree is not necessary to be successful in this role.

It is helpful for the integrity and compliance officer to have participated in local Ethics and Compliance Clubs or to have attended compliance training events sponsored by CIPE or other organizations. Above all, the integrity and compliance officer should be enabled to work autonomously and independently. "Dynastic appointments," or situations where family members or close friends are placed in oversight positions, must be strictly avoided.

#### Challenge No. 6

### How Can a Company Gain Employee Buy-In for Its Business Integrity Program?

For a compliance program to be effective, company leaders must be serious about it

from the start. A business integrity and compliance program cannot succeed if it is not respected by senior leaders and managers, or if the integrity and compliance officer is not seen as a trusted advisor.

A company can demonstrate the authority of its business integrity and compliance program by making sure the designed manager of the integrity and compliance program (or CECO) is a senior executive. The integrity and compliance officer should lead compliance and integrity meetings and have the CEO's full support. The integrity and compliance officer should also regularly interact with employees in order to raise the visibility of the compliance function.

#### Challenge No. 7

### How Can a Company Ensure the Independence of Its Business Integrity and Compliance Function from Management?

To ensure independence, the integrity and compliance officer should report directly to the company's board of directors or other governing body. In cases where an integrity and compliance officer reports to a CEO, the company board should also have oversight.

## STEP 3

# Conduct a Risk Assessment

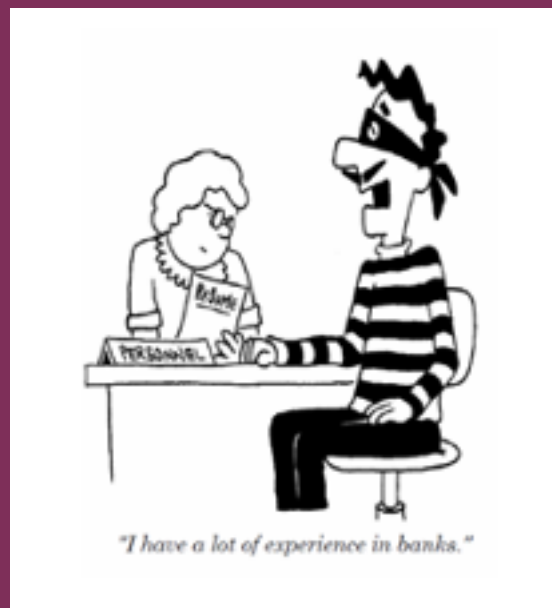
A business integrity and compliance program helps a company identify and manage the risks of non-compliance. In order to know what risks the company faces, a comprehensive risk assessment should be conducted. This assessment should consider bribery risks as well as other types of corruption such as fraud, nepotism, and cronyism.

**Risk assessment** looks at:

- What may go wrong
- The areas in the organization that may be most vulnerable to corruption
- The likelihood of corruption occurring and the possible impact of it does.

**Risk management** then looks at what could or should be done about these corruption risks.

After the initial risk assessment, the integrity and compliance officer and other senior managers should periodically review and update the compliance program's design to ensure it fully addresses the identified risks. They also should consider relevant best practices in the field of compliance and evolving international and industry standards. The company should also take reasonable steps to prevent shortcomings by making



timely modifications to the compliance program to ensure it is kept up to date.

## Challenge No. 8 How Should Companies Approach the Integrity Risk Assessment?

Companies conducting integrity risk assessments should carefully examine operations, practices, and organizational structures to anticipate where the risks of bribery and fraud are most likely to arise. Once these risks are identified, controls can be implemented to prevent possible misconduct.

One possibly helpful approach for companies conducting risk assessments is to use the following four-step methodology developed by CIPE and the multinational law firm Baker McKenzie. It is listed and explained below:

### #1 Information gathering: Collect and review key documents

#### What Information Should be Gathered?

Information about the company's operations and practices, including:

- Its business model
- Interactions with government
- Use of third parties
- Existing policies and procedures

#### Document Inventory

Documents for review may include: (1) business plans, annual reports, and other materials describing operations and strategic initiatives; (2) company charts reflecting management responsibilities; (3) conflict of interest policy.

### #2 Interviews: Employees and Stakeholders

#### Who Should be Interviewed?

Conduct interviews of employees and stakeholders with knowledge of the company's operations, as well as company leadership.

#### Interview Questions

Questions can include whether the company operates a whistleblowing hotline or has another means of receiving allegations of non-compliance or wrongdoing; how it handles gifts, donations, sponsorships, and relations with government officials and third parties.

### #3 Evaluation: Create a risk profile

#### How to Develop a Risk Profile?

Evaluate the information gathered and develop a risk profile of the company.

- Risk profile is a function of the unique risks and circumstances of each company.
- This assessment serves as a gap analysis to determine needed or improved controls, policies, and procedures.

**List of Risks**

Risks may include compliance program deficiencies, government touchpoints, reputational concerns, and questionable circumstances.

**#4 Recommendations****How to Prepare Recommendations?**

Develop recommendations on how to address these risks through enhancing the company's compliance program.

The company should implement those recommendations in a timely manner, as well as share them publicly and internally.

**Five Essential Elements of Compliance**

1. Leadership
2. Risk Assessment
3. Standards & controls
4. Training & communication
5. Monitoring, auditing, & response

**Challenge No. 9****How Can a Company Ensure that Most of its Integrity Risks are Addressed?**

Companies can make their risk assessments comprehensive by ensuring the evaluation of the following areas:

1. Interactions with government officials, close associates, and family members

2. Business operations in sectors susceptible to bribery
3. Countries of operation where corruption is prevalent
4. Subsidiaries and branches
5. Joint ventures
6. Third party agents, representatives, and other intermediaries
7. Procurement processes and supply chains
8. Due diligence and monitoring of business partners
9. Public contracts
10. Business operations that are dependent on government licenses or certification
11. Certain types of transactions, such as those related to mergers and acquisitions (M&A)
12. Employees with greatest risk exposure.

The integrity and compliance officer should also obtain substantial input from operations, procurement, shipping, sales, marketing, finance, and human resources staff, as appropriate to the company. It is best practice to approach front-line employees in addition to consulting with senior managers to gain a better understanding of a company's potential risk exposure.

**STEP 4****Establish Policies and Procedures**

The company must develop a standard set of policies and procedures defining ethical and compliant behavior. The resulting program should be informed by the risk assessment program and designed to prevent, detect, investigate, and remediate all forms of misconduct.

These policies and procedures should be published in a Business Ethics Manual, Code of Conduct and/or Anti-Corruption Manual that is distributed to all company employees.

Company leadership should identify the best way to roll out these policies and procedures so that all employees are aware of and understand them. For example, a CEO can announce the change in an all-staff meeting where the company's new business ethics manual is distributed or organize a special event to introduce these new values, policies, and procedures.

**Develop a set of policies and procedures defining ethical and compliant behavior.**

Training programs are also essential to ensure the policies and procedures are fully understood and implemented.

**#1 Code of Conduct**

The Code of Conduct reflects the company's commitment to business integrity and compliance with top-down support from the highest levels of leadership. It should guide management and employees on:

- The values and principles of the company
- Acceptable and unacceptable behaviors



- Courses of action to take in ambiguous or difficult circumstances
- Venues and procedures for seeking advice
- Incentives for adhering to the code and penalties for unethical practices.

A company's code should be tied to its risk assessment. It is also imperative that all

employees and management be well-trained on the code's provisions.

### Challenge No. 10

## How Can a Company Develop a Code of Conduct?

A Code of Conduct can be developed by following the steps outlined in the chart below:

CHART 1

#### 1. FORM A WORKING TEAM

- Provide content expertise
- Become "Champion" for the code

#### 2. SET CLEAR OBJECTIVES FOR THE CODE

- Compliance
- Corporate social responsibility
- Suppliers/Partners
- Value-based

#### 3. DRAFT CONTENT

- Provide a rationale to explain the need for the code
- Provide a clear definition of the issue
- Provide a clear guidance so that employees understand their responsibilities
- Discuss additional resources for information
- Preliminary review of draft
  - Are standards clearly written?
  - Is the rationale of the code sufficient?
  - Does the code provide enough guidance to the average employee?
  - Is the code culturally sensitive and effective?

#### 4. HOLD FOCUS GROUP AND FINALIZE CONTENT

#### 5. GRAPHIC DESIGN (COLORS, SYMBOLS, PHOTOS)

#### 6. TRANSLATION

### #2 Anti-Corruption Manual

An Anti-Corruption Manual is a collection of internal policies to guide both employees and business partners. The policies in the manual typically cover the following areas:

- Responsibilities for compliance with the Code of Conduct
- Internal controls
- Employee and manager training
- Auditing procedures
- Description of a company's business integrity function
- Recordkeeping and proper documentation practices
- Incentives for adhering to the Code of Conduct and penalties for violations/unethical practices
- A policy or statement on non-retaliation
- Due diligence for business partners
- Escalation processes for reporting ethics and compliance violations

### #3 The Three R's

Company employees should follow the Three R's by **Reporting**, **Responding**, and **Recording**

incidents when integrity standards are violated. This incident management protocol is critical for companies and employees to be able to detect and respond appropriately to corruption and compliance violations:<sup>19</sup>

- **Respond:** employees should always be aware of any corruption risks related to their role and be fully informed by the company about how to respond and react to them. This knowledge and capacity should be gained by the training, communication, and support from the designated integrity and compliance officer.
- **Report:** employees should be aware of and have access to at least two reporting channels including a confidential reporting method to report about suspected or actual incidents of violations or corrupt activity involving company employees. Employees should feel confident and be capable of using the available channels without fear of reprisals. Companies must (1) ensure that there are measures in place to combat retaliation against those who make confidential reports and (2) make sure these measures are strictly followed.

- **Record:** employees should be instructed and capable of safely retaining records of

<sup>19</sup> Center for International Private Enterprise, Tanzania Business Integrity Code, 2020.



suspected or actual incidents of corrupt activity or violations and transmitting these records accurately and securely to the designated compliance unit or officer in the company in line with compliance guidance. As part of the daily business function, employees handling high-risk business activities should also be aware of methods for keeping regular business records daily.

## Due Diligence of Employees

Companies must have a policy to vet current and future employees to determine whether they have engaged in misconduct or other actions that are inconsistent with the provisions of the anti-corruption compliance and business integrity program.

Company hiring policies should also include provisions to prevent conflict of interest, "revolving door" incidents, and patronage. A conflict of interest occurs when a person with a duty to the organization has a duty or commitment that challenges or is incompatible with their work in the organization. Having a conflict of interest is not in itself corruption, but concerns can arise when a director or employee breaches his or her responsibility to the company by prioritizing another interest. The "revolving door" situation describes the movement of high-level employees from public sector

jobs to private sector jobs and vice versa. In these cases, loyalty to a former employer can compromise the impartiality and integrity of public service, or loyalty to a political leader or party can compromise loyalty to a company. Finally, patronage (including cronyism, nepotism, and favoritism) describes a situation in which a person is selected for a job because of affiliations or connections and without regard to qualifications or merit.

## Challenge No. 11 How Thoroughly Should a Company Vet Employees Upon Hire?

Companies can start to vet an employee by reaching out to references and doing online research. Many larger companies are also expected to run a background check on employees using searches provided by reputable companies such as LexisNexis, or full background checks run by specialized companies.

Companies should also limit the opportunity and risk of corruption by implementing the following mitigating measures:

- Establish a policy that restricts recruitment of former public officials in high-risk positions to prevent "revolving door" incidents.
- Conduct thorough due diligence on employees, especially in high-risk positions

- Limit possibilities for an employee to be involved in projects that include their previous employer(s) to prevent collusion and conflict of interest.
- Conduct training, communicate, and remind employees of their responsibility and the company's ethical standards.

## Gifts, Hospitality, Entertainment, and Travel Expenses

Bribes disguised as gifts and other legitimate business expenses frequently appear in the FCPA enforcement actions. For example, in 2019, Ericsson admitted to violating the FCPA by paying tens of millions of dollars to agents, consultants, and service providers to fund gifts, travel, and entertainment for government officials.<sup>20</sup> In many cultures, gift exchanges in business relationships are common; therefore, it is important for companies to understand what gifts and other related expenses are considered appropriate and what could be interpreted as bribes. Certain controls and procedures can help companies to ensure that gifts, hospitality, entertainment, travel, and other business expenses are reasonable, do not improperly sway the outcome of a business

transaction, or otherwise result in an improper advantage.

## Challenge No. 12 How Can a Company Determine What is a Reasonable Gift?

A company can determine what is "reasonable" by providing policies such as the following: (1) set a monetary value limit for gifts, entertainment, or hospitality, (2) allow giving and receiving only promotional items that carry a company logo; and (3) require that employees pay agents and other business partners only amounts that cover services provided under the contract.

Some companies have a policy that their employees cannot give or accept gifts valued above \$20. Other companies have a policy that allows employees to accept gifts as long as they declare the gifts in the company gift register.

Examples of unreasonable gifts could include:

- A company leader, bidding for a government contract, offers a rare bottle of expensive wine to the head of the procurement committee while the tender is still open or after submitting a bid.

<sup>20</sup> Jay Holtmeier et al., "\$1 Billion Ericsson Resolution, Three Jury Verdicts Cap Off Busy Fourth Quarter for US FCPA Enforcement," WilmerHale, 2019. Retrieved from <https://www.wilmerhale.com/en/insights/client-alerts/20191230-1-billion-ericsson-resolution-three-jury-verdicts-cap-off-busy-fourth-quarter-for-us-fcpa-enforcement>

- A company leader accepts lodging for family members as gifts from a prospective business affiliate while on an overseas business trip.

To determine whether a gift or other related expense is reasonable, employees should keep in mind the following questions:

- Is the gift or entertainment reasonable in value, consistent with normal business practice, and appropriate to the occasion or the situation?
- Could this be seen as influencing a decision?
- Am I, or is somebody else, benefiting personally?
- Does the gift adhere to company limits, approval thresholds, and recording requirements?
- How would the company or the public react if the gift or other related expense was cited in the newspaper?

## Political Contributions, Charitable Donations, and Sponsorships

Companies should follow all applicable laws when making contributions to political

parties, party officials, and candidates. They should also take appropriate steps to publicly disclose all political contributions, donations, and sponsorships (unless secrecy or confidentiality is legally required). Additionally, companies must take measures to ensure that charitable contributions are not used as subterfuge for bribery.

### Challenge No. 13 How Can a Company Make Sure that Political and Charitable Contributions are not Used as Bribes or for Other Misconduct?

Refer to the following questions from CIPE's "Self-Evaluation Tool for Countering Bribery":<sup>21</sup>

- Is there a written policy that defines political contributions, whether made directly or indirectly?
- If the policy is to not make political contributions, does the company have procedures to prevent political contributions from being made?
- If the policy is to allow political contributions, does the policy specify that political contributions shall be in accordance with applicable laws?

<sup>21</sup> Center for International Private Enterprise, Self-Evaluation Tool for Countering Bribery, 2020. Retrieved from <https://www.cipe.org/resources/self-evaluation-tool-for-countering-bribery>

- If the policy is to allow political contributions, is there a review and approval procedure with designated levels of approval?
- Is there a written policy that defines charitable contributions?
- Are there procedures and controls to ensure that charitable contributions are not used as a subterfuge for bribery?
- Is there a review and approval procedure for charitable contributions with designated levels of approval?
- A description of who is responsible for overseeing the company's charitable giving efforts and how the oversight process works within the organization.
- Specific criteria for determining what types of organizations and causes the company will choose to support.
- If there are certain types of causes or requests that the company will not consider.
- If the company has one or more focus areas that it targets for donations.
- Is the charity affiliated with the government or with politically exposed persons?
- Instructions regarding how eligible organizations should approach requesting financial support from the company.

During the COVID-19 crisis and its aftermath, having such policies in place can also support companies against pressures to donate to COVID-19 relief charities that have close ties to government officials, so called "crony charities."<sup>22</sup>

There are many online sources available for companies to guide them through developing effective policies on charitable contributions. One example suggests that policies should contain the following:<sup>23</sup>

- An overview of the company's approach to charitable giving.

## Facilitation Payments

Facilitating or expediting payments are made to secure or speed up routine tasks performed by public officials. These types of payments may be known under other names depending on the context and country (e.g. "tea money" in Kenya or "baksheesh" in Egypt).<sup>24</sup>

<sup>22</sup> Richard Cassin, "At Large: Will Covid-19 'cronies' trigger the next wave of FCPA fumbles?" FCPA Blog, May 7, 2020. Retrieved from <https://fcpablog.com/2020/05/07/at-large-will-covid-19-cronies-trigger-the-next-wave-of-fcpa-fumbles>

<sup>23</sup> Mary Gormany White, "Charitable Donations Policy," 2020. Retrieved from <https://charity.lovetoknow.com/charitable-donations/charitable-donations-policy>

<sup>24</sup> Transparency International UK, Facilitation Payments, 2018. Retrieved from <https://www.antibriberyguidance.org/sites/default/files/8.%20Facilitation%20Payments.pdf>

These often occur at ports and border crossings to speed up clearing and other customs processes by local officials. While U.S. FCPA rules still allow these payments in certain circumstances, facilitating payments are considered small bribes in many countries and should be avoided.<sup>25</sup>

### Challenge No. 14 How Can a Company Determine When an Expediting Payment has Turned Into Bribery?

In order to understand whether expediting payments are potential acts of bribery, you can ask the following questions:

- What is the justification for the payment?
- Why is the service being delayed?
- What is the rationale for requiring additional documents?

Expediting payments become bribes when:

- They are paid directly to government officials instead of an agency.
- There is no receipt.
- A government official threatens delay and red tape if they are not paid .

<sup>25</sup> Transparency International UK, Countering Small Bribes, 2014. Retrieved from [https://www.transparency.org.uk/sites/default/files/pdf/publications/Countering\\_Small\\_Bribes.pdf](https://www.transparency.org.uk/sites/default/files/pdf/publications/Countering_Small_Bribes.pdf)

<sup>26</sup> Graph derived from: International Chamber of Commerce et al., *Resisting Extortion and Solicitation in International Transactions: A Company Tool for Employee Training*, 2011. Retrieved from [https://images.transparencycdn.org/images/2001\\_RESIST\\_EN.pdf](https://images.transparencycdn.org/images/2001_RESIST_EN.pdf)

### Standard policy should be to make no facilitation payments

- The payments are made in small amounts at regular intervals.
- The payments are not publicly available information and are not the same for all companies.

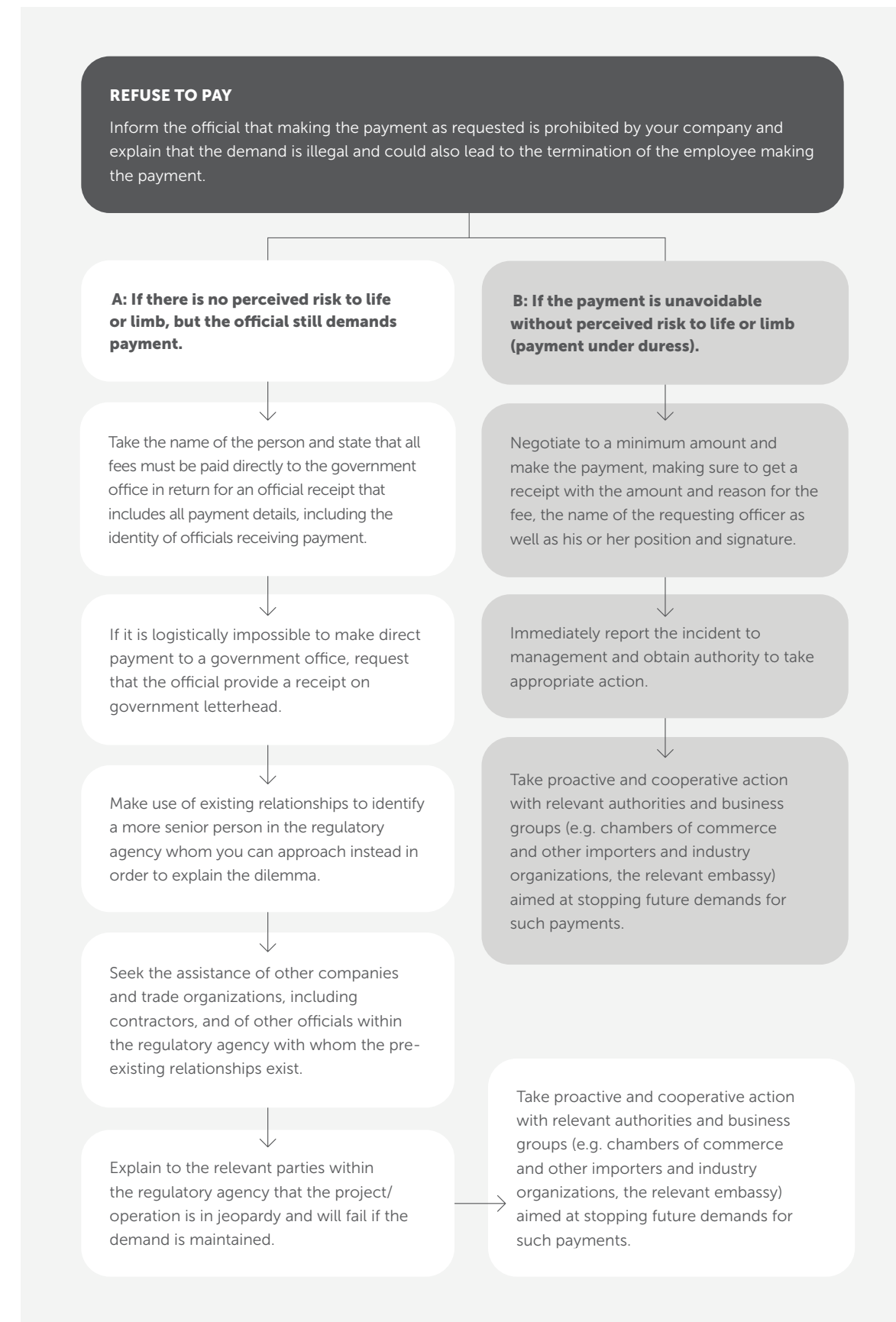
### Challenge No. 15 How Should a Company Respond When a Regulatory Agency Demands a Facilitation Payment?

When solicited for a bribe, including a facilitation payment, from a regulatory agency, company employees should follow the responses outlined in the boxes on the following page.<sup>26</sup>

### Challenge No. 16 How Can a Company Interact Ethically with Customs Officials?

The company and its employees should follow certain steps to prevent solicitation

CHART 2



for a facilitation payment from a customs official and to respond appropriately if such a demand is made. These steps are listed in the best practice guide, “Resisting Extortion and Solicitation in International Transactions: A Company Tool for Employee Training,” developed by the International Chamber of Commerce, Transparency International, United Nations Global Compact, and World Economic Forum.<sup>27</sup>

These steps include:

- Order goods early to avoid time pressures on delivery.
- Keep a reserve supply of parts and consumables that have to be imported.
- Whenever possible, purchase goods locally.
- Become informed about common causes for customs clearance delays: if potential delays are a result of it being a traditionally busy part of the week, month, or year, then whenever possible try to schedule the shipment of your company’s goods during periods when customs offices are less busy.
- Perform due diligence on customs procedures at various points of entry to the country to determine which ones pose the greatest corruption risks; find out the usual amount of time required to clear goods; determine primary and alternative import routes accordingly.
- Switch to an alternative import route and point of entry if delays or problems arise at the primary point of entry.
- Research official customs procedures and familiarize necessary personnel with import/export procedures; contact customs authorities to clarify procedures that might be unclear.
- Double and triple check your customs clearance paperwork to ensure there are no mistakes.
- Verify whether customs procedures provide for any official expedited services. If so, verify the fees for such services: never pay for any such services without an invoice and/or receipt.
- Ensure that any payment made is recorded in the company’s accounting system in the correct amount, together with the invoice/receipt and an explanation of the purpose of the payment.
- If the customs procedures do not provide expedited services, are not clear

<sup>27</sup> Ibid.

on the fees for such services, and refuse to provide an invoice or a receipt:

- Clearly inform the customs officer that payment to public officials for a service to which one is already entitled is against company policy and illegal;
- Refuse to pay facilitation payments to expedite customs clearance of goods;
- Once a day, demand to know why the goods are stuck and insist that measures be taken to move the goods;
- Do not reveal that you are under a time crunch;
- Ask for the name and position of the customs officer and request to meet his/her superior; and
- If the customs clearance delays have impacts on the company’s business relationships, inform business partners of the situation and of the potential consequences; explore if and how you and partners can jointly approach the customs authority.

However, when there is threat to personal safety, one should follow the steps outlined under the challenge 15, which are to make

the payment and, if possible, try to get documentation of the payment with the name and position of a requesting officer. In these cases, the incident should be immediately recorded and reported to company management for further action. The expense should be recorded in the company’s books as a payment made under the duress. Economic coercion short of additional threats does not amount to extortion.<sup>28</sup>

## Recordkeeping

A company must maintain up-to-date records as defined by the business integrity and compliance program, including when any payment is made for the matters or items listed above.

## Policies for Business Partners

Companies should include business partners within the scope of the business integrity and compliance program and require them to share a commitment to compliance. Business partners include agents, advisors, consultants, representatives, distributors, contractors, subcontractors, suppliers, joint venture partners, and other third parties.

<sup>28</sup> Richard Cassin, “That’s no bribe, it’s ransom money,” FCPA Blog, January 9, 2013. Retrieved from <https://fcpablog.com/2013/01/09/thats-no-bribe-its-ransom-money>



This set of policies should include guidelines on:

- Due diligence for all business partners
- Informing partners of the company's anti-corruption compliance and business integrity program
- Requiring reciprocal commitment to compliance from business partners
- Fully documenting relationships with business partners
- Appropriate remuneration
- Monitoring and oversight of all contracts to ensure, as far as it is reasonable, that there is no misconduct in business partner's execution of the contract.<sup>29</sup>
- Ownership structure, including both legal and beneficial ownership<sup>30</sup>
- Financial stability
- Whether any key employee or senior management member is related to a public official
- Whether any shareholder or partner of the third party is owned in whole or in part by a public official or a person related in any way to a public official
- Whether public officials or a member of a public official's family have any interest or stand to benefit as a result of the proposed agreement
- The existence of a Code of Conduct
- The existence of internal anti-corruption policies (for example, a whistleblower policy); whether there is

### Challenge No. 17

## How Should Companies Engage with New Business Partners?

Companies should collect the following information when engaging with a potential or current business partner:

- Contact information

**More than 90 percent of FCPA enforcement actions over the last 40 years has been due to third party misconduct.**

<sup>29</sup> Michael Volkov, *Classifying Your Third Parties: An Essential Third Party Due Diligence First Step*, Navex Global, June 2018. Retrieved from <https://www.navexglobal.com/blog/article/classifying-your-third-parties-an-essential-third-party-due-diligence-first-step>

<sup>30</sup> A beneficial owner is a person who enjoys the benefits of ownership even though his or her name may not be listed as an owner. It also means any individual or group of individuals who, either directly or indirectly, has the power to vote or influence the transaction decisions, such as decisions related to shares in a company.

a compliance function; whether there are internal compliance trainings; and whether there are internal audits in which compliance is featured as a topic.<sup>31</sup>

Existing market analysis and business intelligence service providers can support companies in their due diligence efforts.

### Challenge No. 18

## What are Common Red Flags When Selecting New Business Partners?

It is important to watch out for warning signs that a partner may be willing to engage in corrupt, illegal, or unethical activities. For example, if a company operates unethically and believes such conduct is acceptable because of certain "norms," it is not likely to follow strict compliance procedures as a partner and may not be the best choice.

At the same time, a company itself may become a subject of due diligence conducted by other local or foreign company. The list of red flags and other screening criteria

listed below can help such companies in the emerging markets to better understand and prepare for those procedures.

Companies can use the following factors to assess corruption risks resulting from working with a third party:<sup>32, 33</sup>

#### #1 The third party operates in an industry that:

- Is perceived to present a high risk for corruption (for example, see Transparency International's Bribe Payers Index)
- Has a history of anti-corruption enforcement scrutiny.

#### #2 The third party's connection with government officials or entities:

- The third party, in the course of doing work for your company, will have frequent interaction with government officials (including customs officials), governmental agencies, or government-controlled entities.
- The third party is wholly or partly (directly or indirectly) owned by a

<sup>31</sup> World Economic Forum, *Good Practice Guidelines on Conducting Third-Party Due Diligence*, Partnering Against Corruption Initiative, 2013. Retrieved from [http://www3.weforum.org/docs/WEF\\_PACI\\_ConductingThirdPartyDueDiligence\\_Guidelines\\_2013.pdf](http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf)

<sup>32</sup> Center for International Private Enterprise, *Anti-Corruption Compliance: A Guide for Mid-Sized Companies in Emerging Markets*, 2014. Retrieved from [https://www.cipe.org/wp-content/uploads/2014/01/CIPE\\_Anti-Corruption\\_Compliance\\_Guidebook.pdf](https://www.cipe.org/wp-content/uploads/2014/01/CIPE_Anti-Corruption_Compliance_Guidebook.pdf)

<sup>33</sup> Transparency International, Bribe Payers Index 2011. Retrieved from [www.transparency.org/research/bpi/overview](http://www.transparency.org/research/bpi/overview)



government official/entity, or has direct or indirect links with government officials/entities.

- The third party has previously worked for the government or is closely connected with the political elite.

### #3 The compensation structure of the proposed arrangement:

- The third party's compensation is based on performance, such as success fees, bonus fees, and other contingency fees, that may create incentives for unethical or illegal conduct.
- The third party requires payment by unusual means (e.g. deviating from standard practice, to multiple accounts, with upfront payments, payments split into small amounts, in cash or similar, in a country or currency that is different from that of the third-party's domicile or the country where the work will be performed).
- The third party's compensation takes the form of a political or charitable contribution.

### #4 How the third party was selected:

- The third party was recommended by a customer.

- The retention of this specific third party was encouraged or required by a government official.

### #5 Other:

- Initial internet searches and use of news services have revealed glaring problems related to the third party's reputation for integrity.
- The third party or any of its senior officials have previously been subject to regulatory action or legal proceedings as a result of alleged breaches of anti-corruption laws.
- The third party or any of its senior officials appear on a denied parties/persons list as a result of national or international sanctions, or as a result of past misconduct.
- The third party has little or no experience in the relevant industry sector and/or is unknown to the company.
- The third party's role is to enhance the company's chances of winning commercial and/or government contracts.
- The third party requests discretionary authority to handle local matters alone.

The example below of Safaricom, a Kenyan telecommunications company, shows how due diligence efforts by major companies

can influence smaller companies with limited resources to design their own due diligence procedures:

"Before award of business or prequalification for business, all suppliers and their directors are subject to a rigorous and objective due diligence process. The process involves examining potential suppliers against negative public references based on Safaricom's local knowledge, print and online news sources, and the supplier's history with the company. Other sources include the World Bank's and International Monetary Fund's debarment lists, as well as Dow Jones and Factiva watch list searches."

Safaricom repeats the due diligence annually by sending to suppliers a self-assessment questionnaire that includes questions regarding bribery and corruption before renewing their contracts. The responses to the self-assessment questionnaire are then compared to the official information provided by various departments that interact with the supplier on a daily basis.<sup>34</sup>

## Incentives

Companies should adopt appropriate incentives to encourage and provide positive

support for the observance of their business integrity and compliance programs by both employees and business partners.

## Challenge No. 19 How Can Companies Motivate Employees to Care About Business Ethics and Compliance?

One way to motivate employees to care more about business ethics and compliance is to provide employees with appropriate incentives, including recognition from bosses for employees who exceed expectations in their ethical conduct. Praise and recognition from managers are particularly important to setting the "tone in the middle" of the company.

In addition, companies can add goals related to ethics and compliance to the employee performance reviews and indicate that those who fail a compliance evaluation will not be promoted. These reviews are most effective when they reward long-term performance over short-term success.<sup>35</sup> Additionally, a suggestion portal can be set up and reviewed during staff meetings, and those who propose the best ideas for improvements related to integrity and compliance can be

<sup>34</sup> Center for International Private Enterprise, "Managing Third-Party Corruption Risk: The Case of Safaricom and its Suppliers," 2018. Retrieved from <https://www.cipe.org/resources/managing-third-party-corruption-risk-the-case-of-safaricom-and-its-suppliers>

<sup>35</sup> Richard Bistrong, "If you want performance, stop paying for it," FCPA Blog, March 1, 2016. Retrieved from <https://fcpcbog.com/2016/3/1/richard-bistrong-if-you-want-performance-stop-paying-for-it>

rewarded with incentives such as gift cards, bonuses, or paid time-off.

Companies can also encourage employees to report suspected violations of the ethics and compliance program by offering financial rewards. Typically, that reward is a percentage of the identified savings for the company. However, in some cases monetary rewards can create perverse incentives for employees. The pros and cons of this approach should be carefully considered.

Companies should also create disincentives for misconduct, making clear that employees risk being terminated, demoted, and/or denied compensation if they engage in non-compliant behavior.

## Procedures to Address Misconduct

Procedures to address potential misconduct are an important element of a business integrity and compliance program. When misconduct is identified, the company

**Take appropriate disciplinary measures with all persons involved in misconduct at all levels of the company.**

should take reasonable steps to respond with appropriate corrective action and to prevent further or similar misconduct. Such steps should always include an accompanying internal review or investigation.

## Disciplinary Measures

Companies should handle misconduct and violations of compliance procedures by taking appropriate disciplinary measures in accordance with local labor laws, including termination of employment if necessary.

Disciplinary measures should be imposed at all levels of the company, including senior leadership, and should be uniformly enforced regardless of position or length of service.

## STEP 5

# Set Up a Reporting System

A company's Code of Conduct should contain provisions detailing how employees will address compliance concerns and report violations. These policies should cover the following areas:

1. **Duty to report:** All personnel have a duty to promptly report any concerns they may have about the compliance program, whether relating to their own procedures, roles, and responsibilities and those of others.
2. **Advice:** Adopt effective measures and mechanisms to provide guidance and advice to management, staff and, where appropriate, business partners, on complying with the business integrity program.
3. **Internal Reporting:** Provide channels for communication, including confidential channels, so those who are not willing to violate the program when ordered to do so by a colleague or supervisor can report it without penalty. The company should ensure that appropriate remedial actions are taken based on such reports.
4. **Periodic certification by decision-makers:** All personnel with decision-making authority or in a position to influence business results should certify in writing at least once a year that they have reviewed the company's Code of Conduct, followed the business integrity and compliance program, and communicated to the designated compliance officer any information they may have relating to a possible violation of the program by company personnel or business partners.

**Challenge No. 20****What Should Employees do When They Have Questions About the Company's Business Ethics and Compliance Program or Suspect a Compliance or Ethics Violation?**

One of the best ways for companies to address questions about their compliance program is to institute an open-door policy. Under this policy, everyone in the company understands that the business ethics and compliance officer is always available to answer questions and provide advice.

In terms of compliance and ethics violations, companies should provide trainings to all employees on when and where to report a compliance violation. These trainings should use specific business cases and role-playing scenarios, which are readily available online, to provide employees with a robust understanding of what is considered a violation and when they need to report it.<sup>36</sup>

<sup>36</sup> Markkula Center for Applied Ethics, *Confronting Corruption in the Workplace*, 2013. Retrieved from <https://www.scu.edu/ethics/focus-areas/business-ethics/resources/silicon-valley-business-ethics-cases/odd-one-out.html>

**Challenge No. 21****How Can a Company Ensure that Employees Feel Safe From Reprisal When Raising Business Integrity Concerns and Reporting Violations?**

The following suggestions can help ensure that employees are able to raise business integrity and compliance issues without suffering from retaliation. For example, placing a complaints box in a neutral location in the office can provide a secure and accessible channel for reporting integrity-related concerns. Another option is setting up a whistleblowing hotline or online reporting system that employees can call or log into anonymously. These systems can be set up internally, or the company can contract a third-party service provider. These channels will help employees feel confident that their concerns will be heard and responded to in a confidential and efficient manner. Information about these systems should be easily accessible to employees in a handbook or internet resource guide. Consideration should also be given to cultural and other potential obstacles that may prevent employees from raising concerns.

**Challenge No. 22****Who Should Handle Ethics and Compliance Complaints? How Should This Be Done?**

Integrity-related complaints should be handled by the compliance officer or other designated staff member. Depending on the nature of the complaint, representatives from the Legal and Human Resource Departments

should also be involved. It is important that oversight of this review is consistently provided to the company's general counsel, internal audit manager, or someone of similar stature. Moreover, there should be a system in place to ensure fairness and inform company leadership if the outcome of an investigation is improperly influenced. Above all, it is imperative that those who handle complaints are viewed by employees as trusted advisors.<sup>37</sup>

<sup>37</sup> Accuride Corporation, "Audit Committee Whistleblower Policy/Procedure," 2015. Retrieved from <https://www accuridecorp.com/sites/default/files/resources/2019-08/Whistle-Blower-Policy-02-24-2015.pdf>

**STEP 6**

## Develop Internal Controls

Companies must develop internal controls, rules, and procedures to prevent or detect misconduct and reinforce compliance policies and procedures. These internal controls serve as a set of checks and balances over a company's financial, accounting, and recordkeeping practices, as well as other business processes. Internal controls may also include contractual obligations, remedies, and/or penalties for misconduct in employment and business partner contracts.

Businesses should make sure to periodically test their internal controls to ensure they effectively detect and prevent misconduct. This includes regularly subjecting a company's internal control systems to independent internal and external audits.

### **Challenge No. 23** How Can Companies Monitor and Lower Integrity and Compliance Risks?

Companies can develop or adopt several practices to manage their integrity and compliance risks effectively. For example, since bribes are seldom solicited with two or more people present, a company can require at least two employees to be in the room when inspections are conducted. Or a company can place a termination clause in business partner contracts allowing them to stop all contractual relationships with a business partner if the partner engages in corrupt or other illegal or unethical activities.

Small companies can also reduce exposure to corruption by adopting a cashless payment structure where payments are made through a bank or a mobile money transfer service and authorized by the finance office. This ensures that bribes and corrupt deals are not facilitated through company payments. Additionally, a company can establish pre-negotiated standardized rates that will be paid for products and services to minimize negotiations that could create room for bribes.

### **Challenge No. 24** How Can Companies Ensure Their Controls Are Working?

It is recommended that companies engage an independent consultant to conduct regular reviews of their internal controls. During these reviews, a consultant should examine the adequacy of financial controls and accountability in the finance and accounting departments. The company should also engage external auditors to conduct regular audits to certify that the company's records are accurate and provide a true and fair view of the company's financial position.

**STEP 7**

# Periodic Training and Communication with Employees

A business integrity and compliance program's policies, procedures, and internal controls are only as good as the training and communications program that support them. If employees are not properly trained, they may mistakenly act in a way that is opposed to company policies and procedures.

Therefore, compliance programs should include reasonable, practical steps to periodically communicate expectations.

**A business integrity and compliance program's policies, procedures and internal controls are only as good as the training and communications programs that support them.**

They should also provide and document effective training for all employees, especially those involved in "high-risk" activities, and, where appropriate, for business partners. These communications and trainings should be tailored to the relevant needs, circumstances, roles, and responsibilities of employees and business partners. Management should also make statements in its annual reports or otherwise publicly disclose knowledge about its business integrity and compliance program.

For small businesses with a flat organizational structure and few employees in diverse functions, formal trainings may not always be possible. However, frequent communication remains critical and can be accomplished through emails and team briefings.

## Challenge No. 25 How Can Companies Make Integrity and Compliance Trainings Effective?

To make the integrity and compliance training relevant and effective, a company should adhere to the following steps:

1. Require all new hires to complete an orientation training to understand the company's values, business integrity, and compliance program, as well as become aware of the company's expectations and understand the sanctions procedure in the event of a violation.
2. Hold periodic trainings for directors, managers, employees, and business partners.
3. Implement procedures for communicating the program in an accessible way to all employees. For example, periodically distributing internal newsletters with case studies that address what went wrong and how the problem was addressed.
4. Require that written guidelines about the business integrity and compliance program are provided to all employees.
5. Periodically require employees and management to complete an assessment

that demonstrates their understanding of the company's business integrity program.

6. Conduct face-to-face trainings to supplement paper-based or online trainings.
7. Develop short, practical, and relevant trainings for each team that include the use of role-playing and scenarios.
8. Document, monitor, and evaluate participation in and feedback on trainings.

## Challenge No. 26 Who Should Perform Trainings?

Compliance trainings should be conducted by qualified internal or external compliance officers. These compliance officers must be trained by organizations that specialize in compliance training. For instance, Extra Dimensions, a small events firm in Kenya, does not host its own anti-corruption compliance trainings for employees. Instead, it regularly sends them to trainings hosted by larger business partners and civil society organizations. Alternatively, companies may also use online resources for employee compliance trainings, although these are most effective when complemented by in-person training as well. These online resources are often available for free or for a small fee.<sup>38</sup>

<sup>38</sup> See Appendix A for examples of such resources.



**STEP 8**

## Engage in Collective Action

Companies that are striving to establish or improve their existing business integrity and compliance programs may benefit from joining various private sector-led anti-corruption collective action initiatives. These initiatives provide opportunities to learn best practices from companies that are more experienced in business ethics and to participate in efforts to foster fairer and more transparent market rules.

A business integrity collective action initiative brings together private sector stakeholders, including companies and business associations, who commit to and verify compliance standards to eliminate corruption. Collective action initiatives provide “power in numbers,” strengthening and normalizing the integrity commitments of individual companies. Companies that participate in collective action initiatives

can get assistance and encouragement with developing their own business integrity programs. Furthermore, these coalitions can be more effective in drawing government attention to corruption issues experienced by businesses and therefore lead to more equal and fair market conditions.

### **Challenge No. 27** How Can Companies Find Other Businesses that are Interested in Engaging in a Business Integrity Collective Action Initiative?

Collective action coalitions usually begin with business associations or chambers of commerce that support their members by facilitating and bringing together companies interested in integrity and compliance initiatives. It is critical that the founders of a collective

The main objective of business integrity collective actions is to create equal and fair market conditions. Broadly, this reduces corruption risks across the marketplace.

action initiative are local, credible, and neutral. They should possess no political bias.

The chart below can help business associations and chambers of commerce identify and engage other stakeholders in

both the public and private sectors, as well as among multinational institutions.

### **Challenge No. 28** How Can Companies Benefit From Participating in a Business Integrity Collective Action Initiative?

Companies committed to ethical business practices can benefit by linking arms with other companies in a “certifying business coalition.” This type of collective action coalition is characterized by the following:

**CHART 3****PUBLIC SECTOR**

- Look for existing agencies geared at anti-corruption, finance, corporate governance, etc
- Look for former/current politicians and agency members with anti-corruption agendas and/or who possess strong understanding of the market

**COMPANIES**

- Look for companies with a strong compliance incentive that: (1) have expressed dissatisfaction with the corruption environment in the past; (2) are aiming to improve their reputation, and (3) are at high risk for corruption
- Look for companies that have attended business integrity events in the past (if applicable)

**INTERNATIONAL ORGANIZATIONS & BUSINESS SUPPORT ORGANIZATIONS**

- Reach out to multilateral development banks, associations, and institutions (e.g. World Bank, chamber of commerce, and regional/in-country banking, investment, or securities associations)

- Requiring member companies to publicly commit to adhere to integrity standards.
- Requiring compliance with shared principles for continued membership.
- Recognizing and promoting certified companies to customers and governments.
- Performing external audits of member companies to ensure membership requirements are kept.
- Requiring members to become certified or be excluded.

Certifying Business Coalitions provide companies without comprehensive compliance programs the opportunity to participate in best practice workshops and gain access to the materials necessary to establish their own compliance program. Being a member of a coalition also provides networking and benchmarking opportunities and gives businesses a chance to advocate for the coalition's collective agenda.

The Ukrainian Network of Integrity and

Compliance (UNIC) and the Collective Action Coalition Against Corruption (CAC) in Thailand are regional examples of such coalitions.<sup>39, 40</sup>

A business integrity collective action initiative may also have a branding system to recognize members that comply with the initiatives' standards. One such example is the Lithuanian Clear Wave Initiative that unites about 60 companies under the umbrella of the Lithuanian Investors' Association.<sup>41</sup> Members of the coalition can be recognized by customers by a small wave-shaped logo that is printed on products and packaging.<sup>42</sup>

Additional types of private sector collective action against corruption initiatives are described in the 2008 Guide for Business "Fighting Corruption Through Collective Action" developed by CIPE, the World Bank Institute, Transparency International USA, and Global Advice Network. The guide also provides additional instructions and examples of how these initiatives can be established.<sup>43</sup>

<sup>39</sup> <https://unic.org.ua/en>

<sup>40</sup> <https://www.thai-cac.com>

<sup>41</sup> <https://baltojibanga.lt>

<sup>42</sup> Ekaterina Lysova, "The Story of Lithuania's Clear Wave: Reinforcing Trust and Ethics through Collective Action," The Business of Integrity Blog, July 27, 2020. Retrieved from <https://acgc.cipe.org/business-of-integrity-blog/the-story-of-lithuanias-clear-wave-reinforcing-trust-and-ethics-through-collective-action>

<sup>43</sup> A Guide for Business: Fighting Corruption Through Collective Action, 2008, [https://baselgovernance.org/sites/default/files/2019-02/fighting\\_corruption\\_through\\_collective\\_action-15.pdf](https://baselgovernance.org/sites/default/files/2019-02/fighting_corruption_through_collective_action-15.pdf)

## Appendix A: Resources

The following is a list of easily accessible training sources for small and medium-sized companies:

### CIPE

[www.cipe.course.tc/ac-compliance/](http://www.cipe.course.tc/ac-compliance/)

- A 40-minute online training course that is interactive and self-paced; it also involves quizzes at the end of each module.
- The course is aimed at mid-sized companies in emerging markets and meant primarily for staff tasked with compliance but also very relevant for board members and managers who want to build effective anti-corruption systems in their companies and capitalize on the opportunities that access to global value chains offers.
- After successful completion of the course, participants will have an option to obtain a digital certificate of completion. While the course is free of charge, obtaining a certificate of completion involves a fee of \$20.
- Registration required.

### Transparency International Developed with SkillCast

[www.doingbusinesswithoutbribery.com](http://www.doingbusinesswithoutbribery.com)

- A 1.5-hour online learning module is a self-guided presentation that provides comprehensive information about corruption, the legal framework surrounding bribery, and ways to identify and counter bribery.

- Learning objectives:
  - Understand what constitutes bribery and the risks facing a company
  - Understand the legal framework
  - Understand the damage bribery can do to companies and society
  - Identify and counter bribery risks and how to respond to demands for bribes
  - Understand obligations as an employee or director and how to report concerns, suspicions or breaches related to bribery, or seek advice
- No registration/fee required

## UN Global Compact with UN Office on Drugs and Crime

[www.thefightagainstcorruption.org/certificate/](http://www.thefightagainstcorruption.org/certificate/)

- A 1-hour e-learning tool uses six interactive learning videos to further the audience's understanding of the UN Global Compact's 10th principle against corruption and the UN Convention against corruption as it applies to the private sector. Each module lasts about five minutes.
- Learning objectives:
  - Understand what kind of gifts and hospitality are allowed to take or give to others
  - Understand the concept of facilitation payment and its legality
  - Identify risks of engaging with intermediaries and lobbyists
  - How to act when asked to make social investment from government officials
  - Understand how to deal with insider information
- Registration required/No fee with certificate
- Available in 13 languages, including Russian, Bosnian, Hungarian, Kazakh, Ukrainian, Slovene, and Czech

## Institute of Business Ethics

[www.saynotoolkit.net](http://www.saynotoolkit.net)

A decision-making tool that has been designed to help organizations encourage employees to make the right decision in difficult situation. This toolkit delivers immediate guidance on a wide range of common business issues, especially those that could lead to accusations of bribery.

## United Nations Development Programme

[www.anti-corruption.org/Anticorruption\\_Course/](http://www.anti-corruption.org/Anticorruption_Course/)

- This online basic course for anti-corruption consists of 13 pages of animations and texts. The course is divided into four lessons:
  - Concepts/definitions and types of corruption and anti-corruption
  - Linkages between anti-corruption and development
  - Norms, standards and frameworks at the global, regional and country level to fight corruption
  - UN's niche in anti-corruption programming using UN Convention against Corruption as an entry point.
- No registration/ fee required

## Global Infrastructure Anti-Corruption Centre

[www.giaccentre.org/onlinetraining/index.php](http://www.giaccentre.org/onlinetraining/index.php)

- A 59 page-document, titled "Identifying and Avoiding Corruption in the Infrastructure Sector," is accessible online.
- This training course is aimed primarily at middle and senior management, particularly those involved in procurement, tendering, sales and marketing, design, project management, claims management, commercial management, financial management, legal, compliance and internal audit.
- No registration/fee required

## Marshall ACM

[www.marshallacm.co.uk/e-learning-products/bribery-act-2010-e-learning-updated/](http://www.marshallacm.co.uk/e-learning-products/bribery-act-2010-e-learning-updated/)

- A 30 minute-long Bribery Act e-learning training course developed from collaboration with international legal practice SNR Denton. It aims to be a useful resource for business of any size wishing to understand their obligations under the Act and provide clear and practical guidance.
- This course covers active and passive bribery, bribery of foreign public officials, facilitation payments and bribery prevention failure.
- Users have the option to bookmark progress and complete the course in chunks.

## United Nations on Drugs and Crime

[www.unodc.org/elearning/en/courses/course-catalogue.html#AC1](http://www.unodc.org/elearning/en/courses/course-catalogue.html#AC1)

This course is available in: English, Arabic, Spanish.

- It's divided into two segments:
  - An introduction to the United Nations Convention Against Corruption on what corruption is, the consequences it can have as well as the requirements for how corruption should be addressed (60-90 minutes).
  - An understanding of the United Nations Convention Against Corruption and explores how, as the only global, comprehensive and legally binding anti-corruption instrument, it can act as a framework for the fight against corruption across the globe. The module covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery and technical assistance and information exchange (60-90 minutes).
  - Registration required; No fee required

## U4 Anti-Corruption Resource Centre Training Courses

[www.u4.no/online-courses](http://www.u4.no/online-courses)

- Self-paced courses up to 1 hour, and expert-led courses up to 5 hours per week for 3-4 weeks.
- Registration required; no fee required.

## International Compliance Association

[www.int-comp.org/course-finder/](http://www.int-comp.org/course-finder/)

- All courses leading to ICA qualifications are available by distance learning and examinations can be taken in any country around the world. The association offers qualifications on anti-money laundering awareness, financial crimes prevention, and compliance awareness.
- Registration required; no fee required.

## CIPE and ICC Academy

[www.icc.academy/principles-on-combating-corruption/](http://www.icc.academy/principles-on-combating-corruption/)

- A free online training course aimed at guiding participants through the Principles on Combating Corruption for Business Associations, Chambers of Commerce and NGOs. It will also participants the business case for adopting these principles, regardless of their location, size, or membership model.
- Includes case studies on recent corruption scandals and covers best practices on preventing, detecting and mitigating corruption risks.

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## About CIPE

The Center for International Private Enterprise (CIPE) is a non-profit international affiliate of the United States Chamber of Commerce and a core institute of the National Endowment for Democracy. Founded in 1983, CIPE's mission is to strengthen democracy around the globe through private enterprise and market-oriented reform, fulfilling our vision of a world where democracy delivers the freedom and opportunity for all to prosper. CIPE does this by partnering with local business associations, chambers of commerce, universities, think tanks, and advocacy groups to advance democratic and economic reforms worldwide.

CIPE is headquartered in Washington, D.C. and currently has regional offices and representatives in more than a dozen countries, as well as a vast network of partners past and present. A wide range of donors directly support CIPE's work, and CIPE regularly collaborates with other international development and democracy organizations to carry out joint projects.



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