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Anti-corruption Guide for SMES



Ministry of Economic Affairs
and Employment of Finland



This guide is also available in Finnish and Swedish.

Disclaimer:

This guide is based on material prepared by the Belgian National Contact Point for the OECD Guidelines for Multinational Enterprises, International Chamber of Commerce Belgium, Federal Public Services Belgium, Economie Belgium, and Federation of Enterprises Belgium. It was adapted to the Finn-ish context by the Ministry of Economic Affairs and Employment.

The information in this guide

- is purely general in nature
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- does not comprise legal advice
- does not replace expert advice
- does not guarantee secure protection.

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Foreword

Finland has made efforts to tackle corruption both in domestic and international trade for many years.

The fight against corruption today no longer only applies to the activities of the company itself but also to the practices of its suppliers of goods and services and other business partners. Corruption creates difficulties for many companies and is one of the most complex problems they face. Rather than only concerning businesses, however, the fight against corruption is a moral duty of society as a whole. Corruption is a major obstacle to economic development and the eradication of poverty, and it exacerbates the consequences of economic and social inequalities. Corruption also hampers the realisation of human rights.

By means of this guide, Finland wishes to raise awareness among companies, especially small and medium enterprises, which operate in the domestic and/or in international market, and warn them of the many risks of corruption and their consequences. The guide also provides companies with practical tools for and concrete examples of dealing with corruption as well as support for establishing their own anti-corruption codes of conduct. Responsible management makes a clear distinction between permissible and unacceptable practices. The management must make a clear stand against corruption. In practice, this means that the management assumes responsibility for developing and adopting appropriate internal controls, an internal whistle-blower channel, ethical guidelines and compliance programmes for preventing and detecting corruption, and communicates about this externally.

We would like to thank our Belgian colleagues for providing the basic material for this guide. Our warmest thanks also go to all those who commented on the draft version of the guide, especially the Finnish Commerce Federation, the Finnish Forest Industries Federation, Anne Vanhala and Tytti Saarinen.

LINDA PIIRTO
Ministry of Economic Affairs and Employment
8th of May 2020

PS. If you are busy and cannot delegate the reading of this guide to anyone else, skip to page 40 for a summary of what your company should do to combat corruption.

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Introduction

For more than half a century, the Organisation for Economic Cooperation and Development (OECD) has promoted policies aiming to improve economic and social well-being around the world. Under the OECD Anti-Bribery Convention, the member states are required to criminalise bribery of foreign public officials¹. This Convention has been ratified by all OECD member states and eight other countries². OECD Guidelines for Multinational Enterprises on responsible business conduct³, on the other hand, contain recommendations issued by states to companies, also those concerning the combat against corruption.

Regardless of international cooperation and national efforts, corruption continues to occur globally. According to Transparency International's Corruption Perceptions Index, more than two thirds of the world's 180 countries score less than 50 points in the index where 0 points means a high level of corruption and 100 points a corruption-free country.⁴ While the level of corruption in most cases reflects the country's level of democracy⁵, many European politicians and businesses have also been involved in corruption scandals. Among other things, these scandals have been associated with abuse of influence or public money.⁶ Finland ranks third in the Corruption Perceptions Index as one of the least corrupt countries in the world.⁷ However, an international comparison indicates that corruption appears to be a bigger problem in Finland than before. In Finland, these concerns are particularly related to the freedom of the press and unclear boundaries between public and private interests.⁸

As far as the economic impacts of corruption are concerned, corruption is estimated to cause losses of at least EUR 120 billion a year to the EU economy, which is only slightly less than the annual budget of the European Union.⁹ According to a study carried out by the European

1 OECD (1997), OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: <https://bit.ly/2gAA3LA>.

2 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, <https://bit.ly/1YYZ2BN>.

3 OECD (2011), OECD Guidelines for Multinational Enterprises, in Finnish: <https://bit.ly/2J8xoke> and English: <http://mneguidelines.oecd.org/guidelines/>.

4 Transparency International: Corruption Perceptions Index 2018, <https://www.transparency.org/cpi2018>.

5 Visual Capitalists: Visualizing Corruption Around the World, <https://bit.ly/2tagR8h>.

6 Transparency International: Why corruption matters in the EU elections, 23.5.2019, <https://bit.ly/2yXN85y>.

7 Transparency International: Finland, <https://www.transparency.org/country/FIN>. Referred to on 13 August 2019.

8 Transparency Finland: Kansainvälinen vertailu: Korruptio Suomessa aiempaa isompi ongelma, <http://www.transparency.fi/cpi2017/>.

9 EU Anti-Corruption Report, COM(2014) 38 final, European Commission, 2014, <https://bit.ly/2uKhXqx>.

Parliamentary Research Service, corruption costs the EU between EUR 179 bn and EUR 990 bn in GDP terms on an annual basis.¹⁰

It can therefore be said that corruption occurs more or less everywhere and that it has significant negative impacts on the economy. Why should we care? Because corruption is like a disease tormenting both people and society. Corruption reduces trust in other people and society, and it does not exactly encourage people to participate in democratic processes. Corruption also has a negative effect on the authorities' and public organisations' operating conditions. It additionally slows down economic growth and increases economic inequalities and environmental damage. All in all, corruption thus has negative effects on people's quality of life, our natural environment, the operating environment of businesses and healthy competition.

By means of due diligence, companies can avoid the damage and losses caused by corruption. In practice, this means that companies need to develop and adopt appropriate internal controls, ethics guidelines and measures and protect whistle-blowers in order to prevent and detect corruption. When the system of internal controls is based on a risk assessment, covers the necessary financial and accounting procedures, and is regularly monitored and reviewed, it will help ensure that the company cannot be used for corrupt purposes or hiding corruption.

It is important to notice that merely introducing an ethics programme in the company is not enough to modify its culture. While the inputs of all departments of the company are needed, the ethical guidelines must be supported by internal communications and human resources management, in particular. Personnel training is also essential to ensure that the guidelines are translated into action.

The purpose of this guide is to help Finnish enterprises launch internal measures for limiting their exposure to the risk of corruption when operating in Finland and overseas. The measures taken, in particular for “small and medium sized enterprises, must be adapted to their individual circumstances, including their size, legal structure and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate”¹¹.

10 European Parliamentary Research Service (2016): The Cost of Non-Europe in the area of Organised Crime and Corruption. Annex II – Corruption, <https://bit.ly/2REy9Zb>.

11 OECD (2010), Good Practice Guidance on Internal Controls, Ethics, and Compliance: <https://bit.ly/2KHV8g3>.

Who? What?
Why?

1

1.1 Who is this guide intended for?

This guide is intended for companies, especially small and medium size enterprises, to provide them with guidance and support for promoting good business practices and corruption-free business relations both in Finland and abroad. It is naturally also useful for NGOs, labour market organisations, business organisations, public officials and researchers. It contains a practical overview of corruption phenomena and provides guidance for company management and employees on what they can do to prevent and avoid corruption in their business relationships.

Corruption is an international phenomenon that occurs everywhere in the world, including in Finland. However, the forms of corruption vary from one country to another.

1.1.1 Definition of corruption and its many forms

Corruption¹² is defined as the abuse of public or private office for personal gain. Corruption is generally associated with bribery, which means giving money, a service or some other pecuniary or other advantage to one or more persons who can influence decision-makers in the hope of receiving a favour in return, or asking for an improper advantage in exchange for a favour. However, bribery is only one form of corruption.

Corruption is a wide-ranging phenomenon, and actions are categorised as corruption based on whether they meet the criteria for malfeasance, bribery, fraud, embezzlement, money laundering, insider trading or accounting and auditing offences. Crimes related to misuse of a position of trust and inappropriate use of business secrets may also have features of corruption. The identification and prevention of corruption are hampered in part by the fact that corruption is difficult to define unambiguously.

Corruption takes the form of giving and accepting unethical benefits, conflicts of interest and favouritism as well as unethical decision-making outside of the formal decision-making structures. A typical feature of corruption in Finland is that while the perpetrator operates in compliance with the law, their actions are still unethical. Research indicates that corruption risks in Finland are more often connected to structural corruption than to petty corruption in daily life, or so-called street corruption.¹³ In structural corruption a public organisation, such as a municipality or city, is used to promote private interests. The activities are hidden

12 OECD (2008). Corruption. A Glossary of International Standard in Criminal Law: <https://bit.ly/2buh1NG>.

13 Johanna Peurala & Vesa Muttilainen (2015): Korruption riskikohteet 2010-luvun Suomessa. Reports of the Policy University College, <https://bit.ly/2sjiVOU>.

and comprise exerting inappropriate influence on decision-making. Rather the perceiving them as wrong-doing, however, they are seen as accepted, long-standing ‘standard practices’. Consequently, they become a systematic feature embedded in the organisation structure.¹⁴ This is where the term structural corruption is derived from; its risks are often manifested on the interface between the public and the private sector.

The most significant risk areas for corruption in Finland are the construction sector, public procurement and competitive bidding, city planning, political decision-making, and financing. Other areas susceptible to corruption include international trade and sports. A European Commission analysis indicates that urban development, construction and environmental planning are particularly vulnerable to corruption at the European level, too. This analysis also identified healthcare as a potentially susceptible sector.¹⁵

1.2 Which rules apply to Finnish companies?

1.2.1 Finnish legislation

What constitutes criminal conduct under the legislation?

Provisions on bribery offences are laid down in the Criminal Code of Finland. It divides bribery offences into two categories, giving of bribes to public officials or acceptance of bribes (Chapters 16 and 40 of the Criminal Code) and giving or acceptance of bribes in business (Chapter 30 of the Criminal Code)¹⁶.

Giving of bribes to public officials or persons in a similar position and members of parliament is a criminal offence. This legislation seeks to protect public officials and members of parliament from attempts to influence them inappropriately. Bribery of public officials has generally been considered particularly condemnable, as it erodes the public’s trust in the fairness of the authorities’ actions.

Bribery in the private sector is governed by legislation which aims to protect the trust between an entrepreneur and their employees and confidence in appropriate conduct of business in general.

14 Ari Salminen: Rakenteellinen korruptio. Kartoitus riskitekijöistä ja niiden hallinnasta Suomessa. Studies and reports of the University of Vaasa 203, https://www.univaasa.fi/materiaali/pdf/isbn_978-952-476-619-7.pdf. Referred to on 9 August 2019.

15 EU Anti-Corruption Report, COM(2014) 38 final, European Commission, 2014, <https://bit.ly/2uKhXqx>.

16 Criminal Code 1889/39, <https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L16>. Referred to on 1 April 2019.

What is punishable conduct? Under the legislation, punishable conduct can comprise giving or even offering an improper advantage to a public official, member of parliament, or a person working for an entrepreneur. Punishable conduct can be active, including situations where someone offers a bribe or something of value to someone, or passive in situations where someone receives a bribe or something of value, in each case with the purpose of persuading this person to do, or refrain from doing, their duty. In other words, both giving and receiving bribes are punishable acts.

The scale of sanctions for bribery vary from a fine to a maximum of two years of imprisonment. If the bribe is exceptionally valuable, the conduct may be regarded as an aggravated offence. A situation where the value of the bribe is relatively low but there are other aggravating circumstances may also constitute an aggravated offence. The punishments for an aggravated bribery offence can range from four months to four years of imprisonment.

The bribery legislation applies to conduct in Finland and, in some cases, also abroad.

A foreign public official may also be a party to a bribery offence. Such officials include:

- a person with a legislative, administrative or judicial office at any level of government, either national, regional, or local;
- an international public official;
- the employees of a public company (a company in which the government has a controlling influence), provided that this company operates commercially in the market as a private company; or
- in some cases, the employees of a private company acting in the public interest; this includes customs inspections or similar tasks outsourced following a public tendering process.

Under a recent amendment to the Criminal Code of Finland, more severe punishments are imposed for both active and passive bribery when a foreign public official is party to the offence.

Other offences related to bribery

Other penal provisions related to the abuse of public office, violation of official duty and other abuses can also be applied to corruptive conduct. Sanctions related to white-collar crime, or financial and money-laundering offences, also aim to work as a deterrent for corruption. Additionally, the Criminal Code contains provisions on criminal liability of a legal person, under which a company or other organisation may be held liable.

Other legislative anti-corruption tools

To promote a level playing field in the labour market, a legal obligation to check the background of their contracting parties using temporary agency work or subcontractors before entering into a contract with them also applies to companies in Finland. For details of this obligation and other key regulations related to the fight against corruption, see the following sections.

ACT ON THE CONTRACTOR'S OBLIGATIONS AND LIABILITY WHEN WORK IS CONTRACTED OUT

The purpose of the Act on the Contractor's Obligations and Liability when Work is Contracted Out¹⁷ is to promote a level playing field and compliance with statutory employment conditions.

The Act enables contractors to ensure that their partners comply with their statutory requirements. Contractors must obtain the reports referred to in the Act from all of their partners before signing any agreements on subcontracting or temporary agency work. These reports must also be obtained from foreign partners. To fulfil this obligation, contractors must obtain the same reports from both their Finnish and foreign partners.

For more information, see the websites of the Ministry of Economic Affairs and Employment¹⁸ and the Occupational Safety and Health Administration¹⁹.

ACT ON PUBLIC PROCUREMENT AND CONCESSION CONTRACTS

The Act on Public Procurement and Concession Contracts²⁰ lists the criteria for excluding a supplier from a competitive tendering process. If any grounds for doing so arise, the contracting entity may exclude the supplier from the process. The Act on Public Contracts also lists the mandatory grounds for exclusion²¹; if these criteria are met, the contracting authority has the obligation to exclude the tenderer. Mandatory exclusion criteria include certain economic and labour offences, such as a final sentence for corruption. If any exclusion criteria apply to the tenderer, or persons in a managerial role or other responsible positions employed by the tenderer, the contracting entity must as a rule exclude the tenderer from the competitive tendering process, and no contract may be concluded with that supplier.

17 Act on the Contractor's Obligations and Liability When Work Is Contracted Out: <https://bit.ly/2TjOuSq>.

18 Ministry of Economic Affairs and Employment: The purpose of the Act on the Contractor's Obligations and Liability is to ensure that the terms of employment are observed: <http://tem.fi/en/contractor-s-obligations-and-liability>.

19 Occupational Safety and Health Administration: Contractor's obligations and liability: <https://www.tyosuojelu.fi/web/en/grey-economy/contractor-s-obligations-and-liability>; Fulfilling the obligations under the Act on the Contractor's Obligations and Liability in case of companies registered abroad (in Finnish); <https://bit.ly/2MzLEnQ>.

20 Act on Public Procurement and Concession Contracts 1397/2016, <https://www.finlex.fi/fi/laki/alkup/2016/20161397>. Referred to on 1 April 2019.

21 List of mandatory exclusion criteria: section 80 of the Act on Public Procurement and Concession Contracts (1397/2016).

Despite the mandatory exclusion criteria, the candidate or the tenderer may submit evidence of their reliability. Such evidence may include an account showing that the candidate or tenderer has undertaken to pay compensation for all damage caused by the criminal offence, error or neglect, or details of the measures concerning its organisation or personnel that can prevent further punishable acts. If the contracting entity finds the evidence adequate and the tenderer sufficiently reliable, it may decide not to exclude the candidate or tenderer in question from the competitive tendering process.

PENDING LEGISLATION: BETTER LEGAL PROTECTION FOR WHISTLE-BLOWERS

In autumn 2019, the Council of the European Union adopted a Directive on the protection of persons who report breaches of Union law.²² Corruption is also included in the irregularities that can be reported. The new directive requires companies and legal entities in the public sector to establish safe reporting channels for breaches of law. This obligation applies to all enterprises having 50 or more workers, operators in the financial service sector irrespective of their size, as well as central, regional and local governments and other public sector actors.²³ The directive also contains provisions on protecting whistle-blowers against retaliation, dissemination of information to citizens by public authorities, and training for public servants on this theme. Member States shall transpose the Directive into their national legislation by 17 December 2021.

1.2.2 International legal instruments

The Finnish legislation on bribery is based on various international legal instruments, such as the OECD Anti-Bribery Convention²⁴, the United Nation's Convention against Corruption²⁵, the Council of Europe's Criminal Law Convention on Corruption²⁶ and the Council of Europe's Civil Law Convention on Corruption of 1999²⁷.

22 Directive of the European Parliament and of the Council on the protection of persons who report breaches of Union law 2019/1937 (23 October 2019), <https://bit.ly/2SJP5wN> Referred to on 12 March 2020.

23 European Parliament: Protecting whistle-blowers: new EU-wide rules approved (16 April 2019), <https://bit.ly/35DNnIG>. Referred to on 9 August 2019.

24 OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transaction (1997), <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>. This convention was complemented by the OECD Guidelines for Multinational Enterprises (2011), which promote responsible business conduct in the global economy. One of the Guidelines' themes is combating corruption.

25 United Nations Office on Drugs and Crime, UNODC (2004), United Nations Convention against Corruption, Vienna: <https://bit.ly/2Pb4gdM>.

26 Council of Europe (1999) Criminal Law Convention on Corruption, STE 173, Strasbourg: <https://bit.ly/2QnA8Av>. Finland ratified this Convention in 2002 and is also a part of the GRECO (Group of States against Corruption), which monitors the Convention's application in member states.

27 Council of Europe (1999) Civil Law Convention on Corruption, STE 174, Strasbourg: <https://bit.ly/2A9ljKS>.

Additionally, a European Union Directive²⁸ contains the obligation to report non-financial information, particularly in the context of the fight against corruption. This directive was transposed into Finnish legislation in 2016²⁹.

1.2.3 Foreign legislation may be applicable to corruption cases

In the context of business corruption, the anti-corruption regulations of certain states have an extra-territorial dimension and cover business transactions around the world. These states include the United States and its 'Foreign Corrupt Practices Act' (FCPA), and the United Kingdom and its 'UK Bribery Act'. The extra-territorial dimension means that such legislation as the FCPA applies not only to American companies but also:

- Finnish companies operating in the United States
- Finnish companies listed on the stock exchange in the United States
- persons in American territory
- non-American subsidiaries of these companies, where relevant, and
- non-American joint ventures and their non-American associates.

Under the FCPA, all non-American persons are prohibited from participating in acts with a pattern suggestive of corruption. This is why many international business transactions may potentially be the subject of an investigation by the American administration, sometimes even if no American entity appears to be involved in it on first sight. In other words, if a company has a subcontracting relationship with another company subject to the FCPA or the UK Bribery Act, this can in practice mean that the provisions of these laws apply to a Finnish company, at least in part.

1.3 Why fight corruption?

1.3.1 Improving corporate governance

All arrangements involving corruption add uncertainty by reducing the company's ability to control its operations. Contracts involving corruption expose the company to extortion by those who know about such activities.

28 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups: <https://bit.ly/3doOKat>.

29 Ministry of Economic Affairs and Employment: CSR reporting; <https://tem.fi/en/csr-reporting>.

Additionally, sums received or given as bribes cannot be entered in the company's books. If these sums were to be entered into the books under a different heading, the entry would be false.

1.3.2 Strengthening the company's reputation

A company's reputation is an increasingly prominent part of its value. In addition to being important for clients and investors, it has also become an essential aspect for employees. In the search for key talent, the importance of the company's reputation and values has increased, in addition to pay.

From the perspective of the company's reputation, no grey areas are possible in the fight against corruption. Failing to comply with anti-corruption regulations would be fateful, not only for legal reasons but also because of the damage to the company's reputation. In terms of business sustainability, no company can tolerate any form of corruption.

The existence and introduction of a good ethical anti-corruption code in the company, including communication and effective controls, are guarantees for good management and proof of the company being a trustworthy member of its community.

1.3.3 Limiting judicial risks

A growing number of states, whether they belong to the OECD or not, are increasing their resources and repressive efforts in order to detect, identify and punish transnational corruption. This imposes a significant responsibility to comply with anti-corruption laws on companies.

On the one hand, there is a growing consensus almost everywhere in the world, including in a large number of developing democracies, about corruption being an obstacle to the development of prosperity. Growing awareness of the planet's environmental and social challenges has also increased the understanding of the global harms of corruption.

The legislative tools and implementation measures at the disposal of the authorities fighting international corruption are constantly improving, enabling them to uncover corruption and trace illegal funds more effectively and ensuring that clemency is less common. The view of many judges around the world today is that companies have had enough time to adapt their business and financial management to the requirements of anti-corruption regulations.

**How can a company
combat corruption?**



In practice, an SME can combat corruption by a few simple steps. The first step is making a public commitment to zero-tolerance for corruption and communicating about it to employees, business partners, and all other stakeholders. The commitment then needs to be embedded in the company culture by means of an ethics programme. This programme should cover all business activities potentially susceptible to corruption as well as gifts and hospitality. The programme should be based on a risk assessment which takes into account the company's sector, its size, and the geographic scope of its operations. The risk assessment should also include appropriate due diligence measures when checking and selecting new business partners. The personnel need to be given training related to compliance with the ethics programme.

Additionally, the company needs to make sure that every employee has the opportunity to report any suspicions of corrupt or unethical behaviour to the management, also anonymously and without fear of retaliation. The company must communicate to the employees about this possibility. The management then needs to handle these reports in a transparent and convincing way to nurture the anti-corruption culture of the company. The final step is creating a follow-up system which helps the company monitor and improve its anti-corruption work.

See the following sections for detailed information on how to complete these steps.

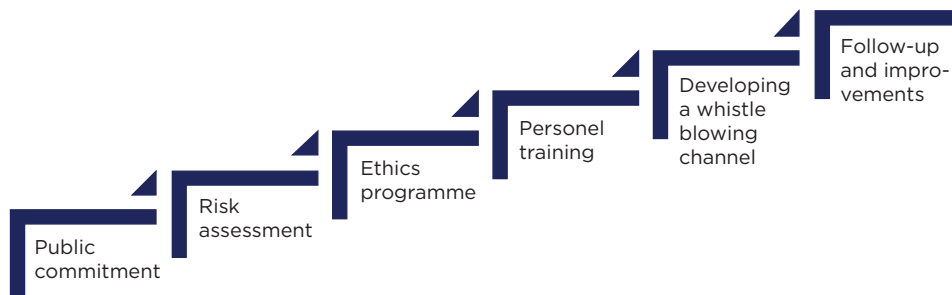


Figure 1. The steps of combating corruption

2.1 Commitment to fight against corruption

The commitment to the fight against corruption is not effective if no one knows about it. It is therefore crucial that the company makes a public stand against corruption, for example by publishing an anti-corruption commitment signed by the management on its website. To ensure

transparency, such documents as the company's code of conduct, which describes the company's practical anti-corruption actions, could be attached to the commitment. This gives the reader an idea of how the company operates and what it expects of its management, employees and business partners. If the company has a policy of zero tolerance for corruption, mentioning it here would be a good idea.

2.2 The company's ethics programme

When a company has a solid ethical foundation to which the management is committed, it has a better ability to deal with and recover from crises than other companies which are less well prepared. In this, the ethics programme is in key role. It comprises three actions: **prevent, detect and respond**.

The company's ethics programme should also cover other risks than those resulting from corruption. Most programmes also address the following:

- prevention of money laundering
- conflicts of interest
- export and import controls
- competition law.

Depending on the company's structure and sector, the ethics programme may also take into account other areas, including:

- human rights
- privacy protection
- prevention of discrimination and harassment
- protection of whistle-blowers
- respecting intellectual property rights
- compliance with health, safety and hygiene standards
- information and communication controls and procedures (ICCP)
- insider trading.

Whereas companies' ethics programmes generally focus on legal compliance, they are often complemented with documents which describe the company's values. The purpose of this is encouraging employees and business partners to adopt the highest ethical standards in their everyday professional activities. The following sections describe the implementation of the ethics programme. The tools for this include assigning responsibilities, assessing ethics risks, developing a code of conduct, responding to infringements of the code, management procedures, procedures for controlling the company's third parties, controlling the terms of business partnerships, internal information activities, informing the customers and stakeholders, and regularly verifying the programme's effectiveness.

2.3 Living up to the commitment – who should be responsible for the company’s ethics programme?

Creating the company’s ethics programme is the responsibility of the top management. Responsibility for the programme contents belongs to the company’s board of directors, and the entire management team must stand behind the company’s ethical values. As we will see later, clear internal and external communication against corruption is essential to ensure employees’ and business partners’ commitment to anti-corruption work in their daily duties.

It is essential that the top management approves and is committed to complying with the company’s ethics programme and the valid requirements. The top management also needs to be informed of major infringements of or problems related to the company’s ethics. The management must also be kept regularly informed of specific risks as well as the effectiveness of the ethics programme in helping to reduce these risks.

The management should assign responsibility for the ethics programme to a person who has a realistic possibility of dedicating time to developing the company’s activities. It is recommended that companies appoint one or more senior executives (full time or part time) to supervise and coordinate the company’s compliance programme and put at their disposal sufficient resources, authority and appropriate independence.

The manner in which the company’s ethical aspects are managed should be considered carefully, as it should remain coherent with the general management of the company, in addition to being compatible with the specific features or product range of the company.

Consequently, companies operating in highly regulated industrial sectors often appoint a single manager who is responsible for the implementation, supervision and deployment of the ethics programme. Others, on the other hand, assign responsibility for preparing the code of conduct to the manager of a certain administrative branch (such as the legal, financial and human resources department), whereas responsibility for implementing and supervising the programme is entrusted to line managers. In this case, a person responsible for ethical issues may be appointed in the company, whose tasks include providing instructions and support and preparing reports.

In any case, it should be understood that there is no universally applicable model and that the company’s ethics model should be chosen in cooperation between line managers, supervisors, auditors and the person appointed to carry responsibility for ethics and compliance in the company.

2.4 Assessing ethics and compliance risks

Assessing ethics and compliance risks is an ongoing process which helps to understand the company's exposure to such risks and to reduce them by regularly making any changes needed to the business processes and correcting any shortcomings discovered in them.

Assessing ethics and compliance risks should be adapted to the company's industrial sector, its size, and the geographic scope of its activities. Assessing both the company's internal and external risks and their key risk factors is always recommended. Risk assessment can be carried out internally or relying on external expertise.

In order to identify key risk factors, it is important to look at the company's business activities: products, services, customers, sales networks, geographic location of the markets as well as its management, governance and history. This is why assessing ethics and compliance risks is often included in the company's overall risk assessment.

What are the external risk factors of corruption?

Country risk

Some countries (or regions) are seen as having a higher risk of corruption as a result of inadequate anti-corruption legislation, a low level of enforcement, weak public institutions or an overall lack of transparency. Publicly funded sources, such as the Business Anti-Corruption Portal, provide free detailed information on country profiles³⁰.

Sector risk

Some sectors of industry are considered more susceptible to corruption than others. As we noted earlier, the most significant risk areas for corruption in Finland are sectors related to public procurement and urban planning. According to the OECD, on the other hand, the prevalence of corruption in international business is the highest in mining, construction, transport and storage, telecommunications and manufacturing industries.³¹

Business partner risk

Business partnerships, such as joint ventures, consortiums, agents, intermediaries, subcontractors, and all other types of third parties constitute a risk factor, as in such partnerships the decision-making power becomes distanced from the company.

30 Business Anti-Corruption Portal, <https://www.business-anti-corruption.com/country-profiles/>.

31 OECD: Inventory of OECD Integrity and Anti-Corruption Related Data, http://www.oecd.org/cleangovbiz/Inventory_of_Integrity_and_Anti-Corruption_Related_Data.pdf. Referred to on 12 August 2019.

Regulatory environment

Operating in a highly regulated sector, which requires authorisation from the central government or other authorities, can pose a risk for corruption in some countries. These sectors may include oil and gas, mining, energy production and transfer, or pharmaceuticals and healthcare.



Figure 2. External risk factors of corruption

What are the external risk factors of corruption?

Company structure

It is advisable to find out in detail about a partner company's structure and its related parties to obtain a clear picture of its shareholders as well as the groups and individuals associated with it. Particular attention should be paid to subsidiaries or any other entities which are not under the company's direct management or which are under joint control.

Company organisation

Is the company's organisation centralised or decentralised? Does it have branch offices? If a group has undertakings located outside Finland or their reporting obligations are limited, this increases the risk.

Management and governance

If the company’s managers and/or management bodies are located outside Finland, special attention should be paid to anti-corruption practices.

History of complaints, disputes and external enquiries

If the company has present or past legal problems, their impact and potential recurrence should be analysed (with the support of internal or external legal experts).

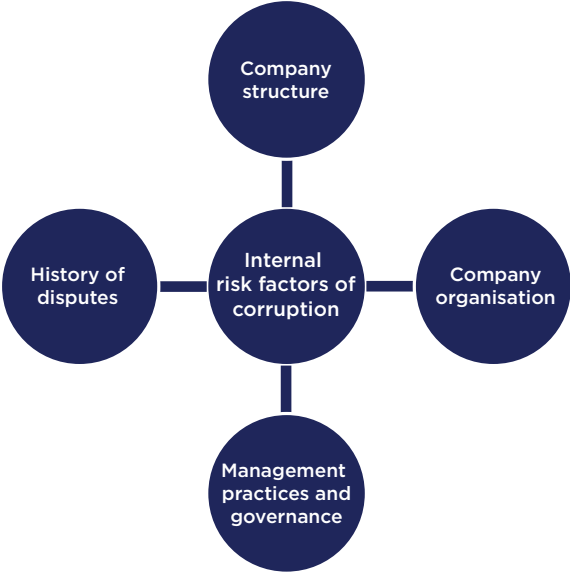


Figure 3. Internal risk factors of corruption

Once the key risk factors have been assessed, it is time to evaluate the likelihood of their realisation and the potential consequences of this, making it possible to identify, implement and monitor appropriate risk mitigation measures.

The way in which the company manages and reduces the identified risks depends on its structure and organisation. Depending on the risk, a centralised or decentralised approach can be chosen. Nevertheless, it is always recommended that the management maintains control over any third parties with which the company has relations. The management must keep track of the identity of such third parties, the terms of their commitment and the sums which have been paid to them.

The management must have access to the necessary resources for supervising anti-corruption measures appropriately, including a code of conduct (see next section), strict regular internal control of procedures, and a well-organised whistle-blowing system.

2.5 Developing a code of conduct

The company's code of conduct is a document in which it sets out its self-regulation standards. While a company may opt for a different title, such as 'Charter of Ethics' or 'Company Values', this does not affect the document's significance, which will be judged on the basis of its content rather than on its title. The company may have an internal code of conduct as well as a code it expects third parties, such as suppliers, to comply with.

The code of conduct is the backbone on which the commitment of the board of directors and the management to ethical practices is based. It also contains recommendations of the company's key stakeholders. Its purpose is to serve as a constantly evolving code which directs the attention of employees, agents and third parties to the right things and guides them in their daily work. The code of conduct is not intended as a coercive instrument.

As this guide focuses on tackling corruption, it does not deal with other areas which the code of conduct may cover (for a list of these areas, see section 2.2).

In the code of conduct, the starting point of ethical business is compliance with the laws and regulations of the country in which the company operates and the UN, OECD and ILO standards, in particular regarding fight against corruption, competition and employment relationships. Any violation of the law may have serious consequences for companies and their employees. This is why it is important for companies to be sufficiently familiar with the statutes to comply with them in the operations.

Guidelines for a code of conduct

- always observe Finnish laws as well as local laws of the destination country when operating abroad (in every country where the company operates)
- follow honest and upstanding business practices
- have zero tolerance for corruption.

To enable the entire company to sincerely commit to the code of conduct, personnel members from all departments representing different occupations, cultures and levels of education should participate in its preparation.

The responsibility for preparing a code of conduct rests with the board of directors, and the board should also validate it. During this process, the legal and human resource departments have to make many decisions, which are often related to personnel representatives' different points of view – subsidiary directors, marketing managers, internal auditors, accountants, financial managers and all those who influence the company's integrity on a daily basis may not always see eye to eye.

The code of conduct reflects the company's identity, and its drafting should not be entrusted to external experts who are unfamiliar with the company culture. In some cases, however, it would be useful for the company to contact such actors as a central organisation of the sector, a sectorial association or an industrial or commercial partner for advice.

The code should be drafted in a way which is easy to read and understand by every employee. Legal or other jargon should be avoided, and it is advisable to have the code translated into the main languages used in the company, including the languages of all the countries in which the company is active.

Questions which employees may ask themselves in the event of doubt

- Is this legal?
- Is this ethical?
- Is this in line with the ethics programme?
- Am I setting an example?
- Would I like to see this published in the media?
- Could I consult somebody?
- What would my family, friends and colleagues think about this?
- Can this affect our company's shareholders?
- What are the legal requirements and the legal system of the country in which we operate like?

In case of doubt, an employee should always speak out and discuss the matter with their superior, the shop steward or some other similar person.

2.5.1 Preventing all corruption

The code of conduct should make it clear that any direct or indirect form of corruption or inappropriate influence are prohibited to all employees of the company. In particular, this applies to the following situations:

Relationships with public officials

A company may need to establish relationships with public officials or official government representatives for business purposes, both at home and abroad. However, inappropriate means of influence aiming for favouritism and private benefit rather than public interest should never be used in relations with public officials. Inappropriate means of influence may, for example, be associated with lavish hospitality, owing favours or offering various benefits to public officials or persons close to them.

It should also be noted that in certain situations, the employees of publicly owned companies may be considered public officials if they exercise public power.

Relationships with customers and suppliers

A company's relationship with its customers and suppliers is extremely important. The company should, separately for the relationship with each customer or supplier, ensure that it does not conflict with the code of conduct. The person responsible for supplier relationships should make compliance with the code of conduct a precondition for concluding all supply contracts.

Gifts and hospitality

While gifts and entertainment are common ways of expressing courtesy and hospitality and welcoming guests, they may also be used as corruption ploys. Hospitality taken for granted in one country may thus be deemed illegal in another.

Gifts may be objects or sometimes money. In the world of business, gifts are given to clients or exchanged between business partners to strengthen the ties between them.

Excessively large gifts beyond what is socially normal or acceptable may be a corruption ploy aimed to create a moral obligation to return the favour. Regular and generous gifts create a climate favourable for preferential treatment when the recipient has to make decisions affecting the donor.

Hospitality means entertaining guests by, for example, offering them a dinner or tickets to sports or cultural events, or even covering travel and accommodation costs. Excessive hospitality may also be a corruption ploy.

Many countries have strict rules concerning gifts and hospitality that public officials may accept, and it would be advisable for companies to find out about these rules.

To make applying these principles easy, the code of conduct rules concerning gifts and hospitality should thus be as concrete as possible. In the interest of clarity, limits in euro amounts

Four basic principles concerning gifts and hospitality

- Employees may not receive or give gifts when the gift could have an inappropriate influence on the recipient's judgement or decisions, or give the impression of having such influence.
- Employees may only accept or offer reasonable meals and gifts of a symbolic value which are suitable for the situation. No employee may accept or offer a gift, a meal or a form of entertainment if they suspect an attempt to influence the relationship.
- The company must specify in its code of conduct or other policy what a reasonable gift or hospitality means.
- Before accepting or offering a gift, the employee should assess the situation and discuss the matter within the company.

should be set. Otherwise defining these limits is left to individual employees and the practice may become inconsistent.

Conflicts of interest and dual roles

Conflicts of interest and dual roles are a specific form of corruption which occurs when an individual or a group of individuals benefit from exercising their decision-making power, whether this benefit is for themselves or for a close relative or friend. This type of corruption is very often found in the recruitment of close relatives or friends, or their privileged treatment when selecting suppliers of goods or services. In this context, privileged treatment means that the company selects a person or supplier who is not the best applicant or tenderer. It is therefore not in the interest of the company to do so. In a dual role, on the other hand, the same person is a decision-maker and beneficiary in different organisations where one of them supervises or makes procurements from the other. A person in a dual role should identify situations where a conflict of interest, or an impression of such a conflict, may arise and refrain from taking part in decision-making at that time.

According to the International Chamber of Commerce (ICC) Rules on Combating Corruption³² enterprises should closely monitor and regulate actual or potential conflicts of interests, or apparent conflicts, of their directors, officers, employees and agents. The rules also prohibit taking advantage of conflicts of interests between other parties. For the part of dual roles, the rules state that if their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office.

32 ICC (2011): ICC Rules on Combating Corruption, <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>. Referred to on 5 April 2019.

Financial reporting

The reliability of financial reporting is an essential aspect of legal, honest and effective business management. Companies have a duty to keep true and fair accounts which comply with the rules in force as well as internal procedures. In Finland, even smaller companies must select an auditor if two of the following thresholds are exceeded: a turnover of EUR 200,000, a balance sheet value of EUR 100,000, and average number of personnel of over 3. An auditor is responsible for auditing the company's accounts, financial statements and administration, and for referring to any essential irregularities in the audit report³³. Additionally, if an auditor or accountant notes suspicious transactions in their customer's accounts, they are obliged to report them to the Financial Intelligence Unit of the National Bureau of Investigation. The company's managing director carries legal responsibility for true and fair accounting and the board of directors for supervising the accounting.³⁴

However, ensuring irreproachable financial reporting is a responsibility shared by each employee rather than only concerning auditors, financial administration staff and the management. The accuracy of financial reporting and its compliance with legislation support the reputation and credibility of the company and help it fulfil the requirements of acts and regulations.

No employee should ever engage in a fraudulent operation or dishonest conduct of any sort in relation to the property, assets, accounts or relationships of the company or a third party.

Examples of typical irregularities in financial reporting

- An employee claims and receives a reimbursement for expenses incurred from giving a benefit to a public servant or persons close to them.
- An employee presents invoices which do not clearly and unambiguously show what they concern.
- An employee transfers company funds to external accounts by means of forged or exaggerated invoices.
- An employee has spent an exceptional amount of money on hospitality towards an external party.
- Financial reporting shows that money is missing, or more money has come in, without the employee reporting or justifying its origin.

33 The Auditing Act (1141/2015), <https://www.finlex.fi/fi/laki/alkup/2015/20151141>. Referred to on 13 August 2019.

34 Limited Liability Companies Act (624/2006), <https://www.finlex.fi/fi/laki/ajanta-sa/2006/20060624>. Referred to on 13 August 2019.

The invoice approval procedure is in key role in preventing abuses. For example, the company should consider who supervises who, how invoices are approved, who has access to reporting systems, who disables user rights when an employee moves to another organisation, and who can change suppliers' account numbers in the reporting system. Many risks can be avoided by preventing employees from acting alone.³⁵ The employees are required to provide information which is as full and accurate as possible on their actions and communication. On the other hand, to err is human, and only deliberate acts designed to blur or incorrectly record transactions, or to falsify an accounting entry, should be considered as an infringement of the code of conduct.

2.5.2 Responding to infringements of the code of conduct

It should be possible for a director or an employee who discovers or suspects unethical or illegal conduct to inform their line manager or seek advice without fear of reprimand or retaliation. This is why managers and employees should be able to contact either their immediate line manager, a director they trust, or a representative of the legal or human resources department.

Such reports made in good faith should be honest and precise, and they should be made as soon as possible. It is then up to the company to manage the problem and take the necessary steps to avoid any breach of the law, risk to the health and safety of employees, or damage to the company's reputation. It should also be noted that new legislation is about to enter into force on whistle-blower protection and whistle-blowing channels (see page 14).

Disciplinary measures

The code of conduct should clearly stipulate that all those who work for the company, directors, supervisors and employees alike, must comply with the code, and that they are all subject to disciplinary action if they violate it. The code should also clearly stipulate that there are no exceptions, privileges or immunities on this subject.

If one of the code's provisions is violated, it is up to the management to impose appropriate, proportionate and dissuasive disciplinary sanctions and remedy the situation. If further violations are discovered, measures should be taken to ensure that there is no repeat occurrence. The consequence of serious and recurring infringements of the code, which may seriously damage the company's reputation, may be the dismissal of the person directly involved as well as their immediate supervisor.

35 Profiitti (2/2019): Forensiikan Charlien enkelit, <https://www.suomentilintarkastajat.fi/julkaisut/profiitti-talous-tilintarkastus-lehti>. Referred to on 13 August 2019.

2.5.3 Management procedures

Regular internal communication

The company should regularly communicate about the existence of its written rules on the subject of ethics and compliance. Each person working in the company should also be able to repeat the essence of these rules in simple and concrete terms. ‘No bribes’, ‘Fair competition laws must be complied with’, ‘Put the company’s interests before your own personal interests when you make professional decisions’, etc.

The regular repetition of information concerning the code’s contents or changes to regulations is a sure way of maintaining awareness of how important compliance is, every day of the year. This is particularly important for those in sensitive positions. Repetition is the mother of all learning. It also demonstrates the company’s consistent commitment to ethical action and is a method of encouraging the employees and business partners to observe high ethical standards.

Training and awareness raising

The best way in which a company can protect itself against corruption and other ethical risks is providing training for its employees and business partners. As regulation on business and international trade becomes increasingly complex, organising training is the best strategy for communicating about the importance of compliance to the staff, partners and other stakeholders.

The training should help each participant understand the company’s ethical principles and compliance programme as well as their personal responsibility for observing them. The participants should also receive sufficient guidance on how to act in risk situations. The aim is to harmonise the company’s business operations and the code of conduct with legal provisions.

To be effective, the training should include realistic situations where the participants learn to choose the correct course of action. Every theoretical explanation should be illustrated by concrete cases taken from experience in the field. By offering the participants an opportunity to openly discuss their experiences, training also becomes a tool for assessing the company’s risks and facilitates the adoption of new practices if necessary.

In business environments where unethical behaviour is considered normal, avoiding undesirable conduct may be more difficult in daily professional life. Such situations may be related to bribery, resisting unethical requests or extortion, refusing to create secret accounts, turning down problematic gifts or hospitality, or refusing to provide illegal political support. Training based on concrete examples helps staff members to follow instructions also in these situations.

Supervision and self-assessment

The management has the responsibility to inform the employees or business partners of anti-corruption legislation and standards in force in the countries where the company operates and to verify that the company's practices are compliant with these laws and standards. The management must also monitor the effectiveness of the practices.

The person appointed to assume responsibility for ethics and compliance in the company reports to line managers in different situations, in particular when the company's practices change or there is a need to monitor their implementation. The impacts of these tasks and the workload they create depend on the level of responsibility associated with the role and the available resources.

A suitable combination of supervision and regular self-assessment builds up and strengthens trust in the ethics and compliance programme.

2.5.4 Procedures for controlling the company's third parties

Agents, intermediaries, and other third parties

Third parties are all those which provide the company with services or goods at any level. They include agents, business development consultants, trade representatives, multi-purpose consultants, retailers, subcontractors, franchise holders, lawyers, accountants, suppliers of goods or materials, partners with whom the company has teamed up, entrepreneurs in a joint venture, etc. Third parties may act in the company's name in marketing and sales tasks, contract negotiations, tasks related to obtaining licences or other authorisations, or any activity which benefits the company. They may also be subcontractors in the supply chain.

All these third parties represent a risk for the company. The third party risk may derive from the fact that a party or their close family member are government representatives or may have ties to public companies or similar institutions. Risks may also be related to the relationship between the parties and ways in which a third party liaises with the above-mentioned parties.

The contract between the company and its agents generally makes the company liable for the agents' actions while they are acting on the company's behalf. Under the rules which forbid transnational corruption, this liability also extends to other persons, in particular service providers. The main ways of limiting legal risks are preventive actions and identifying any fraudulent payments made by the business partners.

Prior verification

Introducing a prior verification method (also known as ‘due diligence’) is often difficult as it is seen as additional bureaucracy. The parties working with the company may also resist the verification for this reason, even if they are aware of its importance and are willing to cooperate.

Consequently, it is important that each step of the prior verification process has clear objectives. It is important that the company is able to prove to the third parties, who may have a different cultural background and/or a high position, that the due diligence is a standard procedure rather than an indication of distrust.

The verification should be flexible and proportionate to the level of risk in the region where the company or the third party will operate, or the nature of the partnership or the operation in question. The goal is being able to show that the company has paid attention to all the corruption risks in the relationship between the parties and that it has taken reasonable measures to control and eliminate these risks.

The person working on the verification in the company is usually the first person to be in contact with the third party and able to answer the following questions:

- Which company need does this new third party meet?
- How was the party identified?
- What are its commercial and technical competences?
- What is the commercial justification of the form and amount of the remuneration paid to the party?

Crucial documents to be collected by the person working on the prior verification:

Commercial information:

copies of all documents received, including the required registration certificates.

Ownership information:

does a the list of shareholders or directors include public servants or similar?

Compliance information:

code of conduct, certifications or other similar documents.

This information will be complemented by research, which can be carried out by a single person or a team composed of the company’s employees. If carried out by a single person, it is a

good idea to consider in advance how their independence can be ensured. The following information should be collected:

- past relationships between the third party and the company (in particular, the scope of any other contracts with the company, all previous payments made to the third party and their total amount for all contracts that the third party has with the company)
- background and reputation of the third party
- the remuneration to be paid to the third party should be compared to the company's internal guidelines and any external sources that may be available.

Key actions in prior verification

- Obtain information that is as accurate as possible. Try to fill in any gaps.
- Check for any inconsistencies in the information.
- Check that the third party, or its top management and shareholders, do not appear on the list of individuals and entities subject to sanctions³⁶ or in databases on any past or current disputes.
- Verify that the contract is compliant with the legislation in force in the country.
- If necessary, seek information from other experts, clients or businesses.
- Include clauses concerning compliance and ethics, as well as the terms and conditions of payment, in the contract.

The third party can also contribute to the verification by completing a questionnaire and supplying documents, declarations and guarantees concerning itself and its business practices, thus making a commitment to appropriate conduct in the future:

- basic information about the third party and its qualifications (including top management, facilities, staff and product lines, as well as the nature and history of its activities)
- ownership and other forms of participation (including other companies affiliated to, owned, controlled or represented by the third party)
- legal status (for example, information about whether third party owners, directors or employees are or have been public officials);

³⁶ International sanctions mean restricting or suspending economic or commercial cooperation and, for example, transport and communications links or diplomatic relations, with a particular country or groups. Individuals may also be put on the sanctions list. The range of sanctions includes export and import restrictions, financial sanctions and travel restrictions. For more information, see the Ministry for Foreign Affairs website: <https://um.fi/international-sanctions>. Referred to on 2 April 2019.

- other ties with public officials (including family relationships or similar);
- financial data
- current or previous legal actions related to the third party's activities
- information about current or past legal investigations, sanctions, bans or convictions under local or foreign criminal law for acts related to corruption, money laundering or infringements of corporate laws or regulations
- business references (taking into account any restrictions imposed by local legislation, for example the confidentiality of data regarding third party employees).

Companies can also gather information from other external sources by:

- contacting, if possible, the third party's referees (including banks and business partners)
- researching the local press and publicly accessible sources of information, exercising source criticism
- checking online databases or requesting reports from independent companies which compile financial and other information on companies
- checking public authority databases and looking for parties on which sanctions have been imposed
- hiring a company that specialises in prior verifications
- consulting a local legal expert to find out whether the contract between the company and the third party is lawful under the local legislation and the conditions that should be included in the contract
- collecting information from independent sources and verifying it.

2.5.5 Controlling the terms of the relationship between business partners

The signing of the contract which seals an agreement between business partners should, among other things, officially confirm the agreement of the company's partner to compliance with anti-corruption laws in force³⁷ as well as the company's code of conduct throughout the duration of the contract. By signing the contract, the partner also confirms that they have never been involved in an activity inconsistent with the contract terms.

Rather than merely an administrative formality (if, for example, the partner is inclined to reject some of the contract terms, this is a warning sign in itself), this document provides protection in case of a dispute and a means of justifying any measures to be taken in case of a violation, including suspension of payments, termination of the contract, reporting to authorities, etc.

³⁷ National laws in Finland: <https://korrupziontorjunta.fi/en/national-legislation>.

Anti-corruption clause

Even if the candidate partner's references have been verified, the continuity of the contractual relationship needs to be protected. The introduction of an anti-corruption clause helps to protect the company's integrity and ensure that contract fulfilment will not involve any form of corruption or other fraudulent practices for which the company may be held liable, even indirectly.

At this point in the negotiations, it is advisable to resort to a clause developed in a neutral context, as proposed by the International Chamber of Commerce (ICC). It is known as the ICC Anti-Corruption Clause³⁸.

The Annex to this guide contains a concrete example of an anti-corruption clause which may be included in a contract.

ICC Anti-Corruption Clause

TWO CORNERSTONES

1. The parties' clearly expressed commitment to fighting corruption in their contractual relationship.
2. A desire to ensure mutual trust throughout the duration of the contract and thus prevent contract violations.

THREE OPTIONS

Option 1:

a compact version of the clause incorporating a reference to the provisions of Part I of the ICC Rules on Combating Corruption (2011)³⁹, which explains the reasons for the prohibition of corruption.

Option 2:

the full text of Part II of the ICC Rules on Combating Corruption (2011), which makes the commitment of the parties more explicit and is thus the optimal solution for longer, elaborate and complex contracts.

Option 3:

this option is based on another type of commitment. The parties declare that they have set up (or are about to set up) an anti-corruption compliance programme in their companies as described in the ICC Rules on Combating Corruption (2011).

38 ICC (2012), ICC Anti-Corruption Clause. Available at <https://iccwbo.org/publication/icc-anti-corruption-clause/>.

39 ICC (2011), ICC Anti-Corruption Clause.

2.6 Informing the company, customers and stakeholders

Internal communication

Merely introducing an ethics programme in the company is not enough to modify its culture. The management may be persuaded to believe that the existence of an ethics programme is sufficient to bring about the necessary changes in employees' attitudes. While the programme is essential, it must be supported by internal communication and actions by the human resources management. In the long term, a successful transition to ethical business practices will strengthen the company's future outlook and improve the staff's skills levels.

Communication to customers

A company may sometimes fear losing customers if it informs them of a new ethics programme and its possible consequences for past arrangements. This could possibly put the company in a more vulnerable position if major negotiations are underway. While waiting for the right moment might appear the best policy, practical experience has shown that when the products offered by the company are sufficiently unique and the business relationship is serious, most of the customers will remain loyal.

The aim is to stand firm with regard to the new code of conduct while being tactful and aiming to retain all customers, even if certain arrangements were in place.

If the customer has benefited from arrangements no longer permitted under the company's new code of conduct and compliance programme, clear communication about this is needed in the negotiations with the customer. The aim of the negotiations is to find a solution which allows the customer to save face when making it clear that certain past arrangements are no longer possible. 'We wish to continue doing business with you and allow you to be competitive, but we can no longer accept bribes.' No negotiations on smaller bribes, or any reduction or decrease in arrangements, can be accepted.

During the transition towards more ethically sustainable practices, it may also be advisable to use legal experts in order to verify the validity of the current contracts between the company and its customers. Past arrangements should not prevent new and healthy business relations.

Communication to the general public and stakeholders

Successful anti-corruption measures should be made public and communicated about to the general public and stakeholders.

Good external communication strengthens trust in the company's ethical standards and compliance.

It is also recommended that the company's anti-corruption guidelines are consistent with the company's other initiatives related to responsible business conduct.

The company's general message in relation to the introduction of its anti-corruption guidelines is that the management wishes the company to be a reliable, steady and long-term partner.

2.7 Ensuring programme effectiveness regularly

The ethics and compliance risks which have been identified and assessed, perhaps during a general risk assessment of the company, are certainly accurate at the time the assessment takes place. Twelve months later, it is possible that some of these risks will have changed. Worse still, it is possible that a risk which was assessed incorrectly now becomes a threat, or there is an actual incident.

Many events can have an influence on risks:

- the political situation of certain countries where the company is active may change, resulting in stricter ethics laws, or an environment more favourable for corruption
- an industrial sector in which the company operates modifies its ethical standards
- the company has taken on new projects or decided to participate in new competitive tendering processes
- there is a need to modify the sales network.

The following three steps help ensure the continued effectiveness of the company's ethics and compliance programme:

1. Firstly, the programme should be revised regularly. The more volatile and unpredictable the environment, the higher the risks of corruption. This means that the person in charge of compliance and ethics has to work harder to keep the ethics and compliance programme up to date. At the very least, the programme should be reviewed periodically or when changes occur in the operating environment.

2. Secondly, it is necessary to assess the impacts of any changes within the company or in its ecosystem on the company's corruption risks. New legislation or regulations applicable to the company's operation, recruitment of new managers, new shareholders, expansion to new markets, or the creation of new roles should all be analysed also in terms of their effects on the company's ethics and compliance programme.
3. Thirdly, conclusions must be made on the data in the registry of ethics and compliance infringements; the person in charge of compliance and ethics must supervise the company's practices; and line managers must proceed to regular self-assessments concerning compliance.

What next?



Congratulations, you made it to the end of the guide! That was a lot of information to digest. So what should you do now?

1

Make a public commitment to the fight against corruption on behalf of your company. Ensure that the management, staff and partners are committed to it, not forgetting yourself.

2

Carry out a risk assessment and determine which corruption risks are relevant to your company's business.

3

Based on the risk assessment, develop an ethics programme. The purpose of the programme is to prevent, detect and respond to corruption. Publish the programme.

4

By means of personnel training, ensure that the employees understand what the programme means in practical daily work and different situations.

5

Create a whistle-blowing channel that can be experienced as reliable for reporting any unethical or illegal activities without fear of retaliation. Handle any reports that are received appropriately.

6

Identify and describe the actions the company will take if infringements of the code of conduct are detected.

7

Periodically assess and monitor any needs to update the programme, and complete all the previous steps to update it if necessary.

8

If necessary, make use of external expertise.

PROBLEM SITUATIONS

Despite of good advance preparation, things can sometimes go wrong. It is a good idea to think in advance about whom you should contact. When abroad, contact the Finnish mission in the country where the problem occurs. The Chamber of Commerce may also be able to provide vital information.

If you wish report fraud to the European Union, in particular, contact the European Anti-Fraud Office OLAF, OLAF has a dedicated website for this:

https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud_fi.

If you wish to report activities taking place in Finland, contact the following parties as appropriate:

Authority	Issue	Link
Police	Observation of suspected corruption	https://www.poliisi.fi/nettip
Ministry for Foreign Affairs	Suspected abuse of development cooperation funds	https://vaarinkayttoilmoitus.fi/#/?lang=en
Finnish Competition and Consumer Authority	Suspected cartels, restriction of competition and unlawful direct procurement	https://kuti.kkv.fi/Kutiweb/Kilpailu/Ilmoitus.aspx?k=3
Parliamentary Ombudsman	Corruption reports regarding authorities or public officials	https://www.oikeusasiamies.fi/en/web/guest/complaints-to-the-ombudsman

Useful information sources

- The Ministry of Justice's web service korruptiontorjunta.fi offers information and tools for fighting corruption.
- Global Compact: A Guide for Anti-Corruption Risk Assessment (2013): <https://www.unglobalcompact.org/library/411>
- Global Compact: Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers (2016), <https://www.unglobalcompact.org/library/153>
- Global Compact: Linking Human Rights and Anti-Corruption Compliance (2016), <https://www.unglobalcompact.org/library/5011>
- ICC Anti-corruption Third Party Due Diligence: A Guide for Small- and Medium-sized Enterprises (2015), <https://iccwbo.org/publication/icc-anti-corruption-third-party-due-diligence/>
- Association of Finnish Local and Regional Authorities: Corruption and ethics, <https://www.kuntaliitto.fi/laki/kunnan-toimielimet-ja-johtaminen/korruptio-ja-eettisyys>
- OECD Due Diligence Guidance for Responsible Business Conduct (2019), <http://urn.fi/URN:ISBN:978-952-327-421-1>
- RL 19.12.1889/39. 2019. Criminal Code of Finland Published on the Finlex web service maintained by the Ministry of Justice, <https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L16>
- Transparency International (2008): Business Principles for Countering Bribery – Small and medium enterprise (SME) edition, https://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery_sme_edition/1
- Ministry of Finance: Arvot arjessa – virkamiehen etiikka (2005), <https://bit.ly/2m7qpAM>

Annex 1

Example of an anti-corruption

Paragraph 1

Each Party hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

Paragraph 2

The Parties agree that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with and that they will take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with the following provisions:

Paragraph 2.1

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

- a public official at an international, national or local level
- a political party, a head of a political party or a candidate to a political function, and
- a director, executive or employee of one of the parties

Whether these practices are engaged in directly or indirectly, including through third parties:

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

Bribery often includes:

- i. kicking back a portion of a contract payment to government or party officials or to employees of the other contracting Party, their close relatives, friends or business partners,
or
 - ii. using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government or party officials, or to employees of the other contracting Party, their relatives, friends or business partners.
- c. Extortion or Solicitation is the demanding of a bribe, whether or not coupled with a threat if the demand is refused. Each Party will oppose any attempt of Extortion or Solicitation and is encouraged to report such attempts through available formal or informal reporting mechanisms, unless such reporting is deemed to be counter-productive under the circumstances.
- d. Trading in Influence is the offering or Solicitation of an undue advantage in order to exert an improper, real, or supposed influence with a view of obtaining from a public official an undue advantage for the original instigator of the act or for any other person.
- e. Laundering the proceeds of the Corrupt Practices mentioned above is the concealing or disguising the illicit origin, source, location, disposition, movement or ownership of property, knowing that such property is the proceeds of crime.

“Corruption” or “Corrupt Practice(s)”, as used in this ICC Anti-corruption Clause, shall include Bribery, Extortion or Solicitation, Trading in Influence and Laundering the proceeds of these practices.

Paragraph 2.2

With respect to third parties, subject to the control or determining influence of a Party, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Party’s behalf in connection with marketing or

sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Party or as subcontractors in the supply chain, Parties should instruct them neither:

- to engage nor to tolerate that they engage in any act of corruption;
- not use them as a conduit for any corrupt practice;
- only hire them only to the extent appropriate for the regular conduct of the Party's business; and
- pay them more than an appropriate remuneration for their legitimate services.

Paragraph 3

If a Party, as a result of the exercise of a contractually-provided audit right, if any, of the other Party's accounting books and financial records, or otherwise, brings evidence that the latter Party has been engaging in material or several repeated breaches of Paragraphs 2.1 and 2.2 above, it will notify the latter Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If the latter Party fails to take the necessary remedial action or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures, as described in Article 10 of the ICC Rules on Combating Corruption 2011, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organization.

If no remedial action is taken or, as the case may be, the defence is not effectively invoked, the first Party may, at its discretion, either suspend or terminate the Contract, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law.

Paragraph 4

Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with this anti-corruption clause.

Annex 2: Glossary

Open corruption

Open corruption refers to corruption in which a party offers money or goods in order to obtain an advantage that goes against public interest. Open corruption includes situations where a person who has been caught speeding gives the police money in order to avoid a fine, or a company offers a ski holiday at a company-owned chalet to public servants making a procurement decision related to the company's interests. Open corruption is also referred to as petty corruption and street corruption.

Dual role

In a dual role, the same person is a decision-maker and beneficiary in different organisations where one organisation supervises or makes procurements from the other. A person in a dual role should identify situations where a conflict of interest, or an impression of such conflict, may arise and refrain from taking part in decision-making at that time.

Structural corruption

In structural corruption, a public organisation, such as a municipality or city, is used to promote private rather than public interests. These activities comprise secret agreements behind the scenes and may also include exerting inappropriate influence on decision-making, including offering generous hospitality or benefits to decision-makers or persons close to them. Practices related to structural corruption are often not perceived as wrong-doing as they are seen as accepted, long-term 'standard practices' and part of maintaining good relations. Consequently, they become a systematic feature embedded in the organisation structure. This is where the term structural corruption is derived from; its risks are often manifested on the interface between the public and the private sector.

Favouritism

In this context, favouritism means that the company selects a person or supplier who is not the best applicant or tenderer. It is therefore not in the interest of the company to do so.

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Ministry of Economic Affairs
and Employment of Finland