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PRIVATE SECTOR ANTI CORRUPTION GUIDE



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PRIVATE SECTOR
ANTI CORRUPTION
GUIDE

Transparency International Turkey which was established in 2008 with voluntary efforts intends to create awareness on transparency, integrity and accountability principles on all segments of the society in order to contribute democratic, social and economic development of the country. Transparency International grounds on cooperating with public sector, business sector, industrial unions, universities, trade bodies and civil society organizations within the context of its researches on combatting corruption. Transparency International requires from all persons and entities that compose the social structure and/or who possesses the public force to act in compliance with openness, integrity, legal, ethical, accountability principle where it also conducts its activities within the context of such principles.

Transparency International Turkey shares the principles and objectives of and works in cooperation with Transparency International- TI which conducts its activities in more than 100 countries, globally.

Authors: E. Oya Özarslan, Özlem Zingil, Emre Dönmez

Project Team: Ezgi Kayar, İremgöl Utlu, L. Defne Mete, Nazlı Şenyaprak, Ömer Akalın, Yalın Hatipoğlu

Editör: Peter Wilkinson

Design: Kurtuluş Karaşın

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19 Mayıs Mah. Operatör Raif Bey Sk.

Niyazi Bey Apt. No:30/3 Şişli İstanbul

Telefon/Faks: +90 212 240 52 81

www.seffaflik.org



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FOREWORD

“The Effective Anti Corruption Programme on Business Sector” which is ongoing approximately for two years within Transparency International Turkey has been initiated with the purpose of designing an anti-corruption programme for the companies in order to increase the competition power and efficiency in private sector in the international arena and to enable companies to become more corporate and accountable.

Even though the general public perceives government as the main subject of the concept named corruption, the profit-oriented companies may, from time to time, become subject to corruption regarding its relationship with the government, during the business sector activities and during their internal activities. In addition to the destructive effects of corruption on social and political systems, it should be considered that it damages the corporate reputation, prevents entrepreneurship, weakens free market and threatens economic stabilization within the context of private sector.

Due to international effects of Foreign Corrupt Practices Act (“FCPA”) dated 1977 which entered into force in the United States of America and United Kingdom Bribery Act (“UKBA”) dated 2010 which was accepted in the United Kingdom, Corruption, becoming a global factor and gaining value within advanced or emerging economies from day to day, became substantial for certain companies which engage in business within the borders of Turkey and such circumstance has necessitated a settled anti corruption culture.

We, as Transparency International Turkey, believe that establishing a transparent and accountable structure in the private sector may become possible by raising awareness and the commitments of the senior management in addition to designing and implementing effective anti corruption programmes. Within the context of “The Effective Anti Corruption Programme on Business Sector” which was initiated for the mentioned purposes, we intended to contribute to the establishment of a strong business world with stiffened ethic values. Furthermore, we, within the context of the project, committed ourselves to deliver trainings on compliance, ethics, transparency, good governance principles and developing anti corruption programmes to create awareness in companies.

This “Private Sector Anti Corruption Guide” which was prepared as a result of a rigorous research within the context of “The Effective Anti Corruption Programme on Business Sector” and which includes all necessary and detailed information in relation to designing, implementing and developing an effective anti corruption programme in the companies, has the characteristics of a guideline of which the senior management, legal departments, human resources departments and compliance officers may take advantage.

We, as Transparency International Turkey who fights against all aspects of corruption, wish that this “Private Sector Anti Corruption Guide” may enable companies to come one step closer to transparency, accountability, good governance principles and ethical business culture.

1

INTRODUCTION

1.1

MOTIVATION FOR PREPARING THE MANUAL

Besides the devastating effects of corruption on social and political systems, it is equally important to note the challenges corruption brings to the private sector by eroding corporate reputation, inhibiting investment, weakening the free market and threatening economic stability. According to a study conducted by the IMF in which the amount of investment in countries with high levels of corruption is compared to investment in countries with low levels of corruption, the former countries were observed to have five per cent less investment.¹

Taking a closer look at Turkey, it can be observed that corruption is a problem both for the public and the private sector. According to the Global Corruption Barometer Index published by Transparency International, 50 per cent of those surveyed in Turkey believed that the private sector was corrupt.² A study conducted in 2015 by Transparency International Turkey also revealed that 61 per cent of the population believed that the private sector had undue influence on public processes and legal arrangements through bribes, gifts and other illicit payments³. In accordance with these results, another study⁴ published in 2014 by TÜSİAD, a leading business association in Turkey, which consisted of a sample of 801 leading figures within the Turkish business community, revealed that, after costs, taxation and unrecorded transactions, corruption was the biggest problem that Turkish businesses faced.⁵ Furthermore, 46 per cent of those surveyed believed that corruption would increase in the future.⁶

¹ <http://www.oecd.org/cleangovbiz/49693613.pdf>

² <http://www.transparency.org/gcb2013/country/?country=turkey>

³ For the full report, see: http://www.seffaflik.org/wp-content/uploads/2015/03/TURKCE_yolsuzlukara%C5%9Ft%C4%B1rma-sonu%C3%A7lar%C4%B1.pdf

⁴ For Gönenç Gürkaynak's study, see <http://www.tusiad.org/bilgi-merkezi/sunumlar/is-dunyasi-bakis-acisiyla-turkiyede-yolsuzluk-seminer/>

⁵ 7 per cent of those surveyed within the sample believe bribery and corruption is the biggest problem within the private sector, following unrecorded transactions with 10 per cent, costs with 13 per cent and taxation with 14 per cent.

⁶ While 10 per cent of those surveyed stated they had no opinion, those who believed it would decrease constituted 16 per cent of the sample, while those who believed it would stay the same constituted 28 per cent of the sample.

How is the corruption, which is seen as a severe problem and predicted to increase in the near future, defined by the business world in Turkey? A survey carried out by TÜSİAD shows that the business community has difficulty in understanding what constitutes bribery and corruption. A question included in TÜSİAD's study, which listed a number of practices and asked whether respondents believed these acts to be corrupt or not, revealed that only a minority of the respondents believed facilitation payments as constituting corruption, an alarming observation.

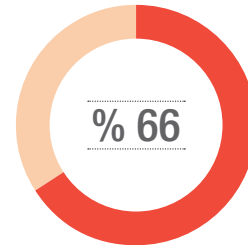
Although the business world seems to have some difficulties in understanding of what corruption and bribery refer to, once the negative effects of corruption occur in private sector, it can be quite observable. When the participants are asked in what ways they believed corruption affects private sector, 66 per cent stated that they believed corruption caused unfair competition, 65 per cent believed that it decreased investor confidence, 64 per cent believed that it decreased the public trust in the business community and 63 per cent believed that it weakened the legal instruments of the state.

Given that the private sector sees corruption as a factor which economically diminishes competition and trust, and socially degenerates trust and ethical values, it would be expected that the business world would define corruption as a risk and develop certain mechanisms to take precautions against this risk. One of the most substantial changes in the new Turkish Commercial Code which entered into force on July 1, 2012, is the obligation of preparing an annual activity report which is the indicator of transparency and accountability. The content of this report includes certain risk factors such as Operational risks, financial risks, legal risks, IT risks, Emergency Case Action Plan. As can be seen, there is no explicit regulation set forth regarding reporting the corruption risks in the annual report. However, as per Article 6 titled Corporate Governance Compliance Reports of the Communiqué on Determination and Implementation of Corporate Governance, the publicly held companies are required to state the following items in their annual activity reports;

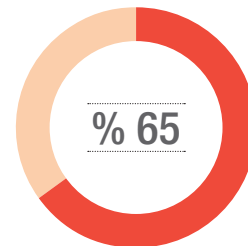
- ▶ Whether the principles stated in Corporate Governance Policies which is the annex of the Communiqué, are being implemented or not;

We asked the participants about the effects of corruption on private sector;

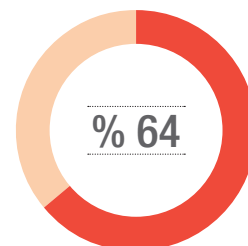
▶ *Corruption leads to unfair competition.*



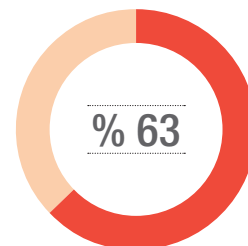
▶ *Corruption breaks investors' trust.*



▶ *Corruption breaks society's trust on business sector.*



▶ *Corruption weakens the rule of law.*



- ▶ If not, a thorough explanation in this regard;
- ▶ The conflicts of interest which occur due to not complying with the principles and explanations whether a plan is made to make changes on governance practices of the company within the frame of the principles

The method and minimum components shall be determined by the Board.

Taking a look at the Turkish private sector, it can be observed that reporting is not the case. An analysis of the TÜSİAD survey results shows that the lack of information provided by companies on ethics and compliance and the lack of a comprehensible and accessible document defining the scope of bribery and corruption (a code of conduct), are the two main reasons behind this; 46 per cent of the businesses of those included in the survey do not have a code of conduct outlining ethical conduct.

Concurrently, at the time of these results being shared with the public, TI-Turkey conducted the research "Transparency in Corporate Reporting". This research aimed to reveal how transparent Turkish companies in the BIST-100 index were in providing information on their websites about their anti-corruption programmes.

The results of the study, which were announced in the first quarter of 2015, revealed that a significant proportion of companies in BIST-100 index are not sharing adequate information regarding their anti-corruption efforts with the public, and lacked transparency in their reporting procedures. A significant number of companies included within the index performed poorly within this study; only 9 companies out of 100 had mentioned the existence of an anti-corruption programme on their websites, while only 10 companies had mention of anti-corruption within the personal message of the CEO or top management, an indicator which would normally signify a strong commitment to anti-corruption.

Our broader assessment reveals that the BIST-100 companies scored significantly lower than the world average for the transparency of corporate anti-corruption programmes; the scores being 28 per cent and 70 per cent respectively. TÜSİAD's study reveals the reasons behind this gap, and in this respect it can be easily stated that the findings and evaluations of both studies are compatible and they complete each other.

As TI-Turkey, we had stated that that we would provide improvements for areas that were revealed to be problematic in our research, which we had made public through our report. This guide, which has been prepared as part of the "Effective Anti-Corruption Programmes for the Private Sector" project, aims to achieve the following:

- ▶ Raise awareness of anti-corruption programmes
- ▶ Provide good practice guidance for businesses which wish to establish or improve their anti-corruption programmes in an innovative way

1.2

HOW TO UTILIZE THIS MANUAL

The intended audiences for this guide are board directors, top and mid-level management, as these are the actors who are primarily responsible for determining and adopting company policies. Additionally, those employees who would like to be informed on how their actions may prevent or cause corruption within their companies may also utilize this guidebook.

Our objective in preparing this guide is to increase the capacity of companies who wish to establish or improve their own anti-corruption programme, and thus become a reference guidebook in anti-corruption for the Turkish business community. It is therefore advised to complete the checklist provided in the appendix before studying this guidebook. The control list has been prepared by Transparency International over a number of years and with the collaboration of multiple actors with the aim of aiding businesses in developing, comparing and improving their anti-corruption programmes, and is based on the following components:



- 1 Commit to an anti-corruption programme 'from the top'
- 2 Assess the current status and risk environment
- 3 Plan the anti-corruption programme
- 4 Act on the plan
- 5 Monitor controls and progress
- 6 Report internally and externally on the programme

These components (or steps) constitute the foundation of numerous anti-corruption regulations, such as the United Nations Convention against Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UK Bribery Act.

Using the control list provided in the appendix of this document, companies will be able to assess their approach to anti-corruption. Components which are answered with "yes" indicate areas within which the companies are developed, whereas those answered with "no" or "partially" indicate the improvable areas.

2

ANTI-CORRUPTION PROGRAMMES

2.1

THE NEED FOR ANTI-CORRUPTION PROGRAMMES

There are many reasons for businesses to develop and implement anti-corruption programmes. The most important reason among these is the fact that corrupt practices are also illegal. Even though there is no legal framework which encompass the entire Turkish private sector, some various local legislations do have extraterritorial effect on Turkey due to the fact that the country is also a part of global market.

Efforts to combat corruption has gained momentum within the period between the Foreign Corrupt Practices Act (FCPA) which entered into force in 1977 as the first local legislation with extraterritorial effect, up until today.

A new era in anti-corruption efforts came about with the development of the UK Bribery Act which came into force in 2011. The Act is notable for the below areas:

- ▶ Extra-territorial reach: it applies to any company that that carries on business or part of their business in the UK irrespective of where the bribe takes place.
- ▶ It encompasses all forms of bribery: bribery of public officials, private-to-private bribery and active and passive bribery.

The UK Bribery Act opened a new era in anti-corruption, an era in which businesses, regardless of their size or origin, are expected to have and implement effective anti-corruption programmes.

The effects of the Organization of Economic Collaboration and Development (OECD) Anti-Bribery Convention and United Nations Convention Against Corruption (UNCAC) are also quite significant since the implementation of the laws are strongly based on these conventions.

Apart from the destructive effect of corruption on social and political systems, it has to be taken into consideration that corruption;

- ▶ Prevents entrepreneurship,
- ▶ Weakens the open market,
- ▶ Threatens economic stabilization,
- ▶ Increases legal costs within the company due to potential investigations and procedures
- ▶ Causes the degeneration of social values

There is no doubt that a damaged reputation can have destructive effects on a company. In this context, it is ultimately be in the interest of businesses to develop and implement anti-corruption programmes. Effective anti-corruption programmes designed on the basis of risk assessments enable companies to implement policies and procedures to mitigate and manage prioritised risks.

2.2

DEFINING CORRUPTION

The definition of corruption which is used by Transparency International is as follows:

“The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.”

“Grand corruption” is defined as “Acts committed at a high level of government that distort policies or the function of the state, enabling leaders to benefit at the expense of the public good.”⁷ “Petty corruption” is defined as Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.⁸ “Political corruption” is defined as “Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.”⁹

“Different definitions are made by international institutions due to the fact that it is not easy to provide a generally accepted definition of corruption, while the socio-economic, political and corporate substructures and other factors are considered. Corruption is;

- ▶ Misconduct of public service to derive special benefits (Definition of the World Bank),
- ▶ Misconduct of public service through bribery, extortion, favoritism, fraud, embezzlement (Definition of the United Nations Development Programme).

⁷ Ibid p.23

⁸ Ibid p.33

⁹ Ibid p.35

As per Article 2 of Anti Corruption Private Law Agreement of the Council of Europe dated January 4,2009, Corruption is defined as follows;

"... to require, offer, give or accept bribery and all other illegal interests which cause deviations in legally fulfilling the duties or conducts of the person who directly or indirectly receives bribery or illegal advantage".

Transparency International defines corruption as misconduct of any duties including but not limited to "the public power" for personal interests.¹⁰

An important function of anti-corruption programmes is increasing employee awareness of the different manifestations of corruption. The different aspects of corruption, as well as its manifestations and different types should be addressed as part of the anti-corruption programme. One important aspect that should be considered when developing the programme is to include not only different types of corruption, such as bribery and embezzlement, but also other factors which facilitate corruption such as the obstruction of justice or influence peddling.

As corruption is a complex phenomenon with multiple manifestations, causes and effects, there exists no simple definition for it in anti-corruption conventions and agreements, thus any crime that is considered to be corruption is governed by their legal authority. In the Turkish legal system, legal arrangements concerning anti-corruption exist in a punitive manner in various criminal codes (such as the Turkish Criminal Code, Penal Procedure Code, Misdemeanor Code etc.). In this context, corruption constitutes a category that encompasses many crimes, including bribery.

BRIBERY

According to the definition provided by the Turkish Criminal Code, bribery is an informal agreement between both the payer and public official, and thus constitutes a crime for both parties. Those who encourage and indirectly benefit from bribery are also subject to punitive measures under the Turkish Criminal Code. In the 8th sub clause of this Article, those who will be punished under it are identified.

Bribery

Article 252- (Amendment: 2/7/2012-6352/87 article) - (1) An individual who provides a benefit (directly or through intermediaries) for a public official (or to any other individual designated by the public official) for them to carry out or neglect to carry out a task related to their duty, will be sentenced to prison for a period of four to twelve years.

¹⁰ <http://www.seffaflik.org/yolsuzluk/yolsuzluk-nedir/>

EMBEZZLEMENT

Embezzlement is another form of corruption which is considered a criminal act. Embezzlement, which is regulated in the 247th Article of the Turkish Criminal Code, does not encompass the private sector. The act of embezzlement is reconstituted in the private sector as abusing a position of trust, and is regulated in the 155th Article of the Turkish Criminal Code.

➔ Abusing a Position of Trust

Article 155 - (1) An individual who seizes or denies entrustment of property, which has been entrusted to them to protect or carry out their duty, in order to benefit (or provide benefit for others) in a manner contrary to the purpose of the entrustment, will be sentenced to prison for a period of six months to two years.

FACILITATION PAYMENTS

Facilitation payment is a term used to describe a small bribe made to obtain or speed up a service from a public official to which the company or person is legally entitled. Providing a payment for the facilitation of a legally entitled service (in short, bribery or facilitation payments) is regulated in the Turkish Criminal Code, which defines it as defalcation; only the public official receiving the payment is penalized within the context of this crime.

➔ Defalcation

Article 250- (Article 250- (1) (Amendment: 2/7/2012-6352/86 article) A public official who abuses a given position of trust in order to benefit or provide benefit for others, or to compel any individual for the provision of such benefits, will be sentenced to prison for a period of five to ten years. If the individual feels under duress to provide a benefit to a public official, for fear of not receiving the due service (or receiving this service on time) as a result of the public official's unfair conduct.

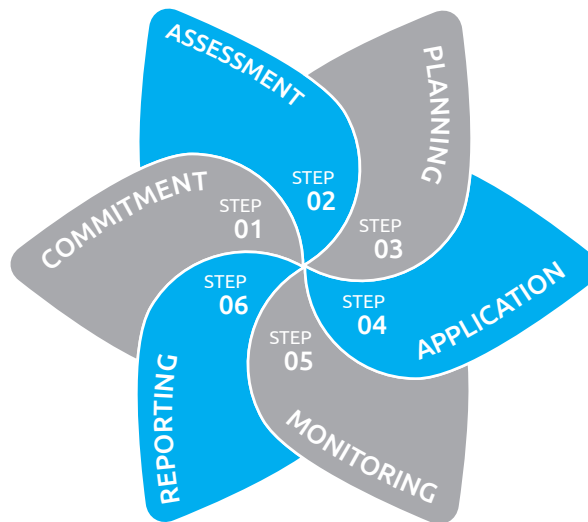
(...)

2.3

PREPARING ANTI-CORRUPTION PROGRAMMES

Anti-corruption programmes are the manifestation, in the form of policies and procedures, of a strong commitment from top management who heed integrity and responsibility as important principles. There is no definite time period, however, in which anti-corruption programmes are considered to be complete, and this process is one that is always ongoing. In the face of ever changing circumstances in trade and, more importantly, the different manifestations of corruption, the process of developing anti-corruption programmes should be subject to periodical reviews.

Transparency International proposes a 6 step model for companies to assist them with implementing and developing effective anti-corruption programmes.



STEP 1

COMMITMENT

A clear commitment from the board and top management to the principle of “zero tolerance” to corruption:

The leadership of the board and top management is an essential part of creating a corporate culture committed to integrity and transparency. Top management should clearly state its commitment to the principle of “zero tolerance” of corruption to all of its stakeholders. Through their statements, personal messages and behaviour, top level managers will display their leadership and commitment by identifying anti-corruption, transparency and integrity as fundamental principles of their business.

Without the clear commitment of top management to anti-corruption, the most well designed anti-corruption programme may be ineffective in countering corruption risks. In aligning the practices of employees and third parties to the programme, a clear and open commitment from top management plays a vital role. The business' strong commitment to the "zero tolerance to corruption" policy should be pronounced in the code of conduct. It should be supported by a public statement by top level management, such as the CEO or board of directors, and put into practice through an anti-corruption programme. In such statements, it should be made clear that the business does not tolerate corruption, regardless of its magnitude, form or the parties involved.

A single statement of the company's commitment to anti-corruption will be insufficient. The commitment to anti-corruption, which should be considered a key principle within the organization, should be frequently renewed and reiterated. Reminding employees and stakeholders of the commitment the business has to anti-corruption will encourage them adopt the business' norms and principles and increase awareness regarding the consequences that may be faced in the event of a violation. The commitment to anti-corruption should also be emphasized in internal and external events, such as employee trainings, shareholder meetings and conferences. Commending an employee who refused to pay a bribe but lost a business opportunity, in the presence of other employees and stakeholders, is a good example of emphasizing and promoting anti-corruption practices in the workplace.

The attendance of top level management in anti-corruption and workplace ethics based trainings is also important in signifying their commitment, and reinforces their image as role models for employees and stakeholders. The implementation of policies which allow for investigating potential violations committed by top level management will also facilitate trust in the programme among employees. In In this regard, international supervisory mechanisms, and compliance to international market requirements will not only intensify the trust among employees but will also serve to strengthen companies' competitive capacity.

It is important to mention the business' anti-corruption policy in activity, continuity and corporate responsibility reports. Actively engaging in global initiatives such as the United Nations Global Compact is also an effective way of signalling a strong commitment to anti-corruption.

STEP 2

ASSESSMENT

Assessment of the current situation, risks, opportunities and the effects of these:

YRisk assessments are the basis for developing anti-corruption programmes. The aim of risk assessment is to determine risk areas, prioritize these risks and assess the effectiveness of current preventive measures and design any additional controls to mitigate risks.

Risk assessments are the basis for developing anti-corruption programmes. A risk assessment process gives the company a systematic view of where bribery risks lie and as a result it can design detailed policies and procedures accordingly. Through a continuous process

of risk assessment the programme will be maintained to meet changing conditions and risks. Companies generally avoid formal risk assessments, considering them to be taboo. Companies are apprehensive about the negative implications and speculations associated with using the word risk, and thus tend to avoid risk assessments.

The approach to risk and risk management of a company is guided by the method named "Risk Appetite". Risk Appetite is defined as the level of risk that an organization is prepared to accept in pursuit of its objectives. Levels of risk appetite are as follows:

- ▶ **Averse** - Avoidance of risk and uncertainty is a key organisation objective.
- ▶ **Minimal** - Preference for ultra-safe options that are low risk and only have a potential for limited reward.
- ▶ **Cautious** - Preference for safe options that have a low degree of risk and may only have limited potential for reward.
- ▶ **Open** - Willing to consider all potential options and choose the one most likely to result in successful delivery, while also providing an acceptable level of reward and value for money.
- ▶ **Hungry** - Eager to be innovative and to choose options offering potentially higher business rewards, despite greater inherent risk.

By defining its risk appetite, an organization can arrive at an appropriate balance between uncontrolled innovation and excessive caution. It can guide people on the level of risk permitted and encourage consistency of approach across an organisation.

Main areas of risk appetite are financial, health, recreational, ethical and information.

THE CONSEQUENCES OF CORRUPTION

In the event of a member of management or employee being suspected of committing an act of corruption and this suspicion being made public, the company may face a number of consequences. These consequences can be grouped under three general headings:

- ▶ **Legal risks:** Criminal punishments imposed by judicial authorities such as fines, indemnities or imprisonment and civil actions.
- ▶ **Commercial and operational risks:** Obstacles which hinder day to day business such as being banned from entering public contracts facing stricter conditions when receiving financing, the financial costs of dealing with investigations and disruption from loss of management, employees and third parties.
- ▶ **Reputational risks:** Investor concern, decrease of investment in the company, M&As cancelled, reduced access to finance, loss of customers, decreased employee motivation due to the company name being associated with corruption and stakeholder criticism.

It is possible to state more risks under the three titles stated above. The risk assessment, which we can define as identification and prioritization process of such risks, constitutes the basis of the anti corruption programme.



A Case of Corruption: Volkswagen

Volkswagen, a world renowned automobile company, was sentenced on September 18, 2015, in the light of a report issued by the US Environmental Protection Agency, for having manipulated carbon emission levels in relevant tests and installed a misleading software to show the figures below the determined standards of public health and environment.

The firm faced financial, operational and reputational consequences due to poor management of “minimizing potential quality issues”, a prominent risk area within the company. The poor management of this risk area not only affected management and employees, but also other stakeholders within the company. The company faced risks in many different areas, starting from the installation of manipulating equipment to the company acknowledging the corruption allegations. The most prominent risk the company faced is the tarnishing of its reputation for customers worldwide. The claim that “European cars are high quality and safe”, a claim that comes to mind when one mentions the German automobile industry, became severely discredited. The company has recalled many of its vehicles, encompassing a number of different models, which were installed with the emission manipulating software since 2008; the company also faced a large fine estimated to be around 20 million dollars. This incident has also rendered many customers victim to the scandal. Subject to the relevant legal framework, vehicles which failed the emission tests were prohibited from being sold in the market.

In addition to its shares losing significant value in the stock market, Volkswagen has also been overshadowed by its competitors (Ford, Toyota etc.), which has been causing a significant decrease in demand for Volkswagen vehicles. With sales dropping in different areas around the globe, small to mid-size enterprises dependent on Volkswagen have had to consider laying off employees to balance out costs. 800 employees have been laid off at Volkswagen’s subsidiaries in Brazil, where even more Volkswagen vehicles are sold than Germany, due to diminishing sales caused by the ongoing crisis. More employees are expected to be laid off as sales decrease even further.

As a consequence of Volkswagen vehicles failing the emission tests, the prospects of diesel being an environmentally source of fuel has come into question. The effects of the company’s policy of transparency are yet to be revealed. Nevertheless, it is evident that Volkswagen should learn from similar crisis experienced by other multinational companies (such as BP).

RISK FACTORS TO BE CONSIDERED WHEN UNDERTAKING RISK ASSESSMENTS

The sectors and locations in which the company operates should be taken into account when undertaking risk assessments. Different risks arise based on the company’s organizational structure, size, business model and location; as such, there is no single anti-corruption programme which is suitable for all companies. Different legal frameworks, business cultures and levels of competition cause the company to be exposed different risks. If a company is looking to operate in a country in which customs officials are working for low wages and the relevant anti-corruption laws are not being effectively implemented, this company should define facilitation payments as a risk. If, on the other hand, the company operates in a country where there is intense competition among suppliers, the company should always bear in mind that illegal payments may be demanded by employees or managers working in procurement departments.

The business model of the company is another factor which determines its risk areas. Companies with business models which require working with third parties, such as sales agents

or subcontractors, should pay special attention to corruption risks associated with these third parties. Where companies are required to obtain permission or licenses from public institutions, risks associated with public officials should be given special consideration.

The organizational structure of a company is one other factor which determines its risks. Because it is difficult to exercise control over partner companies or subsidiaries, the risks for companies with such relationships increase.

One final factor which is important to consider is organizational culture. If the non-written organizational culture of the business is not based on the principles of integrity and trust and promotes fierce competition within the workplace, corruption risks are likely to be high. Therefore, incentive mechanisms for employees should also be considered within this context.

ROLES AND RESPONSIBILITIES

Businesses should plan the process. This includes assigning clear responsibilities for carrying out risk assessments and deciding the scope. The company management should assign an expert in related field and authorise him/her to perform the task. A key point in performing risk assessments is to include those departments which are particularly susceptible to corruption risks (such as sales, procurement, finance, human resources etc.) in the process. The role of monitoring whether the risk assessment procedure is followed to plan should be determined beforehand. This role should also encompass the monitoring of assessment results and risk management strategies.

After determining roles and responsibilities, the following stages of the risk assessment should be clearly laid out and formally written:

- ▶ Work programme
- ▶ Frequency of recurrence (ideally to be repeated annually)
- ▶ Sources used in defining 'risk'
- ▶ Data collection
- ▶ Risk assessment procedures (e.g. how are risks quantified?)
- ▶ Participants (employees, business partners, external stakeholders etc.)
- ▶ Data analysis (organizing gathered data and producing results)
- ▶ Sharing the results

For effective time management and efficient use of resources, the corruption risks assessment procedure could be incorporated into existing assessment procedures, such as financial planning or other relevant risk assessment procedures (e.g. work and safety assessments). To perform effective risk assessments, the business could choose to work with a consultant who has previously managed risk assessment procedures. Additionally, companies may wish to consult risk assessment guides prepared especially for businesses¹¹.

¹¹ An example of a risk assessment guide prepared especially for businesses is the "Guide for Anti-Corruption Risk Assessment", prepared by the UN Global Compact. The guide may be accessed through: <https://www.un-globalcompact.org/library/411>

DEFINING RISKS

Both external and internal sources may be used when determining risks. The legal framework which governs the operational area of the company is a primary source within this context. By reviewing the relevant legal arrangements, the company may determine which actions and procedures constitute corruption. It is important to be familiar not only with the relevant legal framework of the country in which the company is based, but also that within which the company operates. It should be noted that laws and acts which have extra-territorial jurisdiction in matters of corruption, such as the UK Bribery Act and US Foreign Corrupt Practices Act (FCPA), must be taken into account when determining corruption risks.

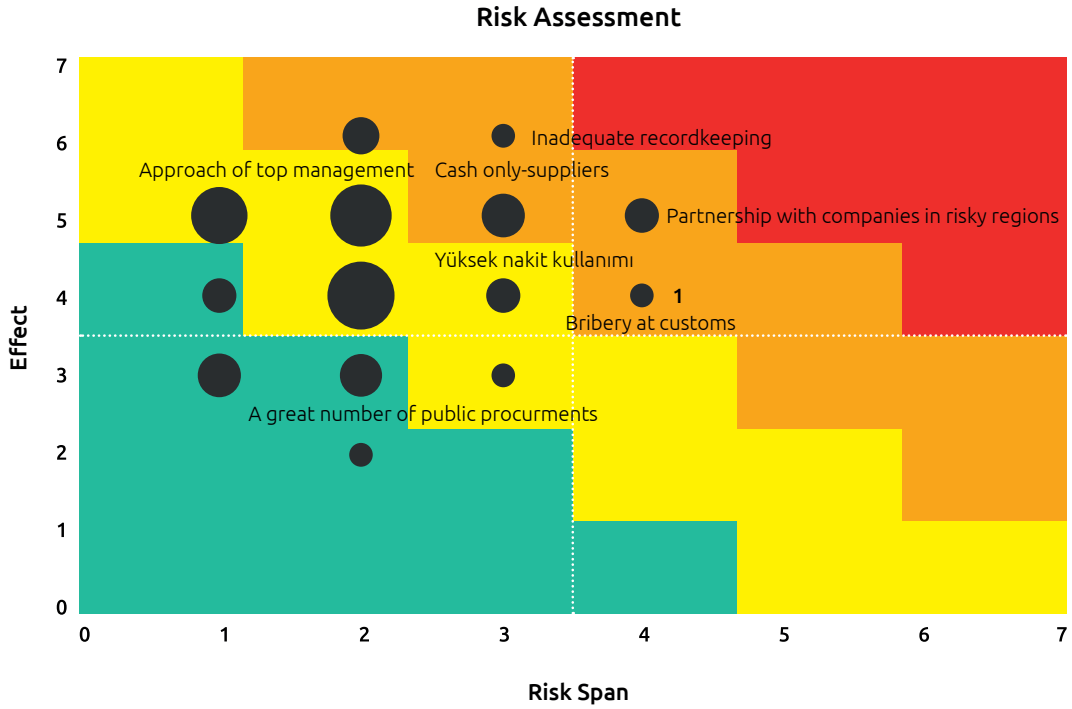
Companies may also consult with internal stakeholders, such as employees, and external stakeholders, such as business partners, business leaders and Turkish Embassies when determining risks. Brainstorming with employees during the risk assessment process is a good way to find out the risks at local level.

PRIORITIZING RISKS

In order to prioritize the risks determined, these risks need to be examined. At this stage, in the risk assessment process, the likelihood and effect of each risk need to be determined. Undesirable outcomes, such as fines, commercial losses and deterioration of the company's reputation due to bad publicity, should be considered. The costs of legal consultation and dedication of time and resources to the investigation by management should also be considered in the impact analysis.

The probability of a risk is the likelihood of encountering its negative outcomes within the foreseeable future, such as the 12 to 24 month period following the event. To determine a risk to be highly probable, the likelihood of facing its negative outcomes needs to be high.

Inherent risk exposure can be determined quantitatively by assigning numerical values to the probability and impact of a risk. Risks which have high probability and high impact are consequently high priority. To have a general overview of the risks the company is exposed to, the company may develop a risk map. Prioritisation of risks with the allocated resources for supervisory mechanisms should also be an important part of the anti-corruption programme. Companies should have a comprehensive risk analysis in order to efficiently designate resources for implementing anti-corruption programmes.



RISK MITIGATION

Having prioritised the risks, the company must assess to what extent these risks are adequately countered by existing controls and what further controls will be needed. Various measures to counter the impact of risks, which have been determined and prioritized, may be taken. Examples of measures that may be taken are as follows:

- ▶ Increasing the decision making power of management in procuring a third party employee representing the company (four-eye principle)
- ▶ Developing a tailored training programme for logistics managers on countering demands for bribery from customs officers
- ▶ Top level management's addressing of corruption in their speeches in order to strengthen mid-level management's commitment to fighting corruption.
- ▶ Analyzing payments subject to long term and sophisticated contracts through automated internal control mechanisms
- ▶ Performing due diligence on major investors and suppliers
- ▶ Joining sector based and regional associations in line with the principle of collective action

In the case of the above measures being insufficient to prevent corruption, changing or ceasing to do business in operational areas of the company where it is highly likely to face corruption are also options which may be considered. In order not to face risks, the company may chose to avoid entering one-tier transactions or projects and entering markets with high risks of corruption and employing intermediaries.

To periodically review the risk assessment process and gather information and experience for future risk assessments, the risk determination, prioritizing and impact mitigation procedures must be formally documented and records of these procedures must be kept.



Risk Assessments in SMEs

Although SMEs are smaller in scale, they still face the risk of encountering the negative impact of corruption experienced by larger companies. It is therefore also important for SMEs to perform risk assessments and manage these risks with anti-corruption programmes.

The relative scarcity of financial and human resources are the primary obstacles for SMEs in assessing risks and developing anti-corruption programmes. To overcome this, SMEs may utilize resources covering risk assessment process which are free, such as guides and toolkits.

The fact that SMEs have fewer employees and more basic business models makes it easier and less costly for them to perform risk assessments. It is possible, for instance, to gather information in this regard by communicating with employees directly. Additionally, SMEs may choose to cooperate in order to make the risk assessment procedure more efficient and effective. Organizations such as chambers of commerce and industrial and business associations may be considered platforms for cooperation in this respect.

STEP 3 PLANNING

Determining objectives, strategies and policies:

The next after performing a risk assessment is developing an action plan. Anti-corruption policies and programmes should be developed based on this action plan.

Although the existence of an anti-corruption programme does not necessarily eradicate the risk of corruption, it signals top level management's awareness of corruption risks, and their commitment to managing these risks effectively (tone at the top). Anti-corruption programmes act as road maps to management, employees and stakeholders in managing these risks.

The planning stage is the stage in which the programme's general outline is determined, and special consideration should be given its following aspects:

- ▶ **Compliance with the Law:** The companies are required to have a clear policy of compliance with legal framework in order to indicate the company's commitment to stakeholders in addition to providing the impetus for the company to ensure that it monitors and complies with the laws. When determining the content of the anti-corruption programme, one of the primary goals is to identify the relevant legal framework in all

countries within which the company operates and develop policies and procedures in accordance with these legal requirements. In line with this goal, the company should perform thorough examinations on the relevant legal frameworks, and when developing the programme TI and the company should work in harmony. Special consideration should be given to legal regulations with extraterritorial application. Companies operating in more than one country and thus subject to more than one legal regulation, should develop policies which comply with all relevant legal regulations. If, for instance, an implementation is legal in one jurisdiction, but illegal in another, then such implementation must be banned in the company's anti-corruption policy. If not, employees in both countries may face dilemmas and make wrong decisions due to the company practicing double standards. When preparing anti-corruption policies for companies operating in multiple jurisdictions, it is advised to examine publicly available websites which compile the relevant legal regulations for each jurisdiction or request assistance from a legal advisor for monitoring laws.

- ▶ **Participation of stakeholders:** The first requirement in making all stakeholders of the company, such as employees, shareholders, business partners, suppliers, intermediaries, auditors and others, aware of the programme is to include them in the development process of the programme. In order for all stakeholders to commit themselves to the programme, the company may organize meetings, or request from stakeholders their opinions on the programme in written form. By doing this, the company will be able to identify challenges that may be raised against the programme and prepare it in light of these challenges.
- ▶ **Joint Responsibilities:** It should be made clear that the policies and procedures within the programme apply to all employees and management equally. It is essential for the trustworthiness of the programme that no perceptions are caused regarding the flexibility or double standard in accordance with the positions of the employees in the company.
- ▶ **Accessibility:** The programme must be both easily accessible on the company's official website and internally communicated throughout the whole company. The company may establish a helpdesk or helpline to make sure employees within the company are able to clearly understand the programme and are able to voice their questions and concerns with regards to it.
- ▶ **Comprehensibility:** Documents pertaining to the programme should be legible and intelligible. Avoiding the use of abbreviations and legal and technical terms will make it easier for employees to understand the programme. Using examples and case studies is also an effective way to achieve clarity within these documents.
- ▶ **Trust-based approach:** Developing an effective and comprehensive programme should not require exercising excessive control and pressure over employees. On the contrary, it should be noted that one of the objectives of the programme is to promote a business culture based on trust and help employees make decisions in the face of challenging situations.

- ▶ **Applicability:** The programme should be applied not only to company employees, but also to third parties who conduct business with the company. It should be noted that the company may be held responsible for the actions of not only its own employees, but also for the actions of its business associates. It is therefore important to include third parties with which the company works (such as suppliers and intermediaries) in trainings and communication activities related to the programme.
- ▶ **Continuous improvement:** Developing an anti-corruption programme is not a one-off process; it should be periodically assessed, revised and improved in light of feedback, implementation results and external and internal audits. The key to developing an effective anti-corruption programme is to constantly improve it in light of changing circumstances.
- ▶ **Resources:** Special care should be taken to ensure an optimum level of required resources and personnel is used and overuse of resources is avoided when developing the programme. Neglecting the costs of implementing and developing the programme may threaten its adequacy. The board and management will decide the level of resources according to the risk approach and the nature of the prioritised risks. If risks cannot be mitigated within the existing resources then the board and management must decide if more resources need to be applied.

STEP 4 IMPLEMENTATION

Putting words into action - Implementing the programme:

Implementation of the anti-corruption programme which was constituted during planning phase should be integrated with the business processes of the company and partners of the company in the value chain should become a part of this programme.

The implementation of the programme is a key stage as Transparency International's experience is that many companies which have well developed anti-corruption policies do not implement them effectively.

The effective implementation of the programme rests on internalizing integrity and responsibility within the practices of the company. What is most overlooked by companies is the integration of the programme to its supporting functions, such as the human resources, finance, procurement, supply chain management, internal audit and the legal department, and encouraging company management, employees and all stakeholders within the value chain to act in accordance with the programme.

➔ **Internalizing and Promoting Business Ethics within the Company**

The human resources department is the first point of engagement for employees. As per the Business Principles for Countering Bribery ("BPCB") of Transparency International, Good practice human resources ('HR') are critical to implementing an effective anti-corruption programme, as the success of the programme is inevitably built on the behaviour of directors and employees. HR policies and procedures are needed to attract the right people; build their skills, understanding and motivation; and provide both incentives and sanctions related to the anti-bribery Programme. This is the primary reason for it to be actively engaged in the implementation stage of the anti-corruption programme.

Emphasizing that the anti-corruption programme is a vital part of the company's values in job interviews, communication of the programme in detail during the orientation process, development of trainings and awareness raising activities for employees regarding the programme and implementing incentive mechanisms that help internalize the programme should all be under the responsibility of the human resources department.

➔ **See:** Key Areas To Be Considered When Preparing Anti-Corruption Programmes: Human Resources

The key focus areas of the implementation stage of the anti-corruption programme are internal systems and the conduct of managers and employees. However, whilst third parties (intermediaries, consultants, representatives etc.) authorized to act on behalf of the company have a direct effect on the company; stakeholders (suppliers, subcontractors etc.) providing goods or services for the company under contractual agreements influence the company indirectly. The corrupt transactions and dealings of these parties also have consequences for the company. The effect of third parties on the company are especially significant, since the company can be held responsible for their actions. For this reason, it is important that the business relations the company establishes are also regulated by the anti-corruption programme.

➔ **See:** Key Areas To Be Considered When Preparing Anti-Corruption Programmes: Relationship with Other Stakeholders

STEP 5 MONITORING

Implementing the anti-corruption programme, monitoring its effects and measuring to what extent it has fulfilled set goals:

The company should monitor whether their anti-corruption programme, developed using the risks identified in the “Assessment” stage and the road map established during the “Planning” stage, is implemented effectively. This monitoring process should also include an assessment and analysis stage in which the strengths and weaknesses of the programme are identified.

“Enterprises operate in dynamic environments and should keep the anti-bribery Programme under continuous review to ensure it remains effective and valid and to ensure that necessary improvements are made. It is the responsibility of the Board as part of corporate governance to oversee that the Programme is working and effective. Employees and other stakeholders with a material interest in the enterprise need to be assured that the enterprise has a well-designed Programme that is working effectively. A procedure for continuous monitoring is the way of obtaining assurance on the degree to which the Programme is working over a defined period. Monitoring and review should extend to all the activities of the enterprise, those of the enterprise itself and its controlled entities, its intermediaries and other business relationships.”

The objective of monitoring the programme is to maintain the relevance and currency of the policies and procedures it contains to make improvements as necessary. The monitoring process should be in depth and a continuing process.

Changes and improvements to the programme may be carried out in numerous ways, and new controls may be developed in light of the results of the monitoring process. Improvements may also be made to existing measures. An example for such an improvement is to increase the scope of an existing training programme. The monitoring process may also reveal that the implementation procedure needs to be reviewed. In light of this revision, the company may choose, for instance, to use podcasts instead of e-mail's to communicate with its employees.

➔ Responsibility for Monitoring the Programme

Responsibilities and tasks regarding the implementation and improvement of the programme should be clearly stated within it. The responsibility of overseeing the compliance of managers, employees and stakeholders to the programme should be placed with the board of directors, or with a position of equal authority within the company. The responsibility of monitoring whether anti-corruption policies and procedures are implemented correctly in day-to-day processes should rest with the CEO, representing the board of directors, or a member of top-level management; this person should also periodically report their findings to the board of directors.

The company's legal or compliance department may also be given this responsibility. The department should keep a written record of all procedures within the programme (such as trainings, internal audits, cases etc.) and report directly to top management. The board of directors should promptly resolve any issues or difficulties that are addressed within these reports.

➔ See: Key Areas To Be Considered When Implementing Anti-Corruption Programmes: Monitoring

A performance evaluation should be conducted following the monitoring process in order to determine which areas should be improved. In order for a successful assessment process to be achieved, three key criteria should be considered:

- ▶ **Impact:** To what extent have the policies and procedures contained within the programme fulfilled its objectives? (e.g. Have the risks facilitation payments decreased?)
- ▶ **Efficiency:** Have the costs of implementing the programme been kept within budgets while decreasing legal, commercial and reputational risks?
- ▶ **Continuity:** Is the outcome of the programme continuous? Does this outcome yield a positive impact in the long-run?

STEP 6 PUBLIC REPORTING

Making the Anti-Corruption Programme and its Implementation Publicly Available:

The company should prepare periodic reports and provide the public with information regarding its anti-corruption programme. This publicly available report should include information on the programme's principles, implementation process and the assessment carried out during the monitoring phase.

The integration of the company's anti-corruption commitment into its strategies and procedures signifies its proactive efforts to define its responsibilities with regards to anti-corruption and its willingness to fulfil these responsibilities. The strength of this signal depends on whether the company shares its anti-corruption programme and efforts with the

public. Such that most global companies started to publish sustainability and corporate responsibility reports as a result of the increasing comprehensive approach to reporting integrity and anti-bribery commitments and implementation measures. Unless the anti-corruption programme and efforts are made public, the company's commitment to anti-corruption remains only an internal policy.

The process of disclosing the programme to the public should be transparent. Although transparent reporting is not sufficient itself in fighting corruption, it is considered to be an important indicator of anti-corruption commitment.

and is an effective tool in managing corruption risks. In order for reporting to be transparent, it should be easily accessible and clear, while also being made available to all who wish to access it on the company's website.

➔ **Transparency in Corporate Reporting**

Public access to the company's activities is made possible by the company providing more information in an open and clear manner to all who wish to access this information. This approach, conceptualized as "Transparency in Corporate Reporting", is considered to be a fundamental and preventive measure in anti-corruption efforts and is manifested most clearly through effective use of the internet. The transparent disclosure of information enables others to monitor and measure the company's activities, and also compare its activities with others. In other words, it makes the company more accountable.

➔ **See:** Key Areas To Be Considered When Implementing Anti-Corruption Programmes: Corporate Reporting

2.4

KEY AREAS TO BE CONSIDERED WHEN PREPARING ANTI-CORRUPTION PROGRAMMES

2.4.1

Conflict of Interest

A conflict of interest does not necessarily involve improper or corrupt behaviour. However, a director, employee or contracted party can become vulnerable to bribery through being involved in a conflict of interest.

A conflict of interest is a situation in which an employee, manager or third party has a secondary interest to that of the company which that person is representing. If for instance, an automobile company sponsors a sports team, and a relative of the company's manager responsible for sponsorship sits on the board of this sports team, this constitutes a conflict of interest. Companies often may be exposed to such situations; these situations do not necessarily lead to improper behaviour and the aim of the company should be to obtain declaration of any potential conflicts of interest and set out procedures for employees and third parties so that conflicts can be managed should they actually occur.

Although they do not always have negative consequences for the company, conflicts of interest nevertheless may pose corruption risks. If a conflict of interest exists and is not declared, an employee may then be made vulnerable to bribery solicitation for the failure to act according to the conflicts of interest policy or may be encouraged to act improperly in other ways. There is also the risk that if the conflict of interest is exposed, that this will be seen unfavourably by the public or other stakeholders.

Not all conflicts of interest should be considered as posing corruption risks for the company. It is possible for an employee to consider the interests of the company before their own. It is also possible for an employee to act both in the interest of the company and their own.

EXAMPLES OF CONFLICT OF INTEREST

An employee occupying a position outside of the company may result in a conflict of interest. If a member of senior management in a construction company also sits on the board for a small IT firm, and this IT firm becomes the supplier of computers for the construction company without conducting a needs analysis, a conflict of interest arises.

A director or employee may also be prioritizing their interests over those of the company through their investment choices. A purchasing manager who has invested a considerable amount in the shares of a company may decide to purchase from them instead of other companies which in fact provide more favourable conditions.

A recruitment manager may find that a relative or friend applies for a position for which the executive is making the selection.

Working with former or current public officials also raises a red flag with regards to conflicts of interest. Although it is not illegal to benefit from the knowledge and expertise of public officials, it is important to ensure this professional relationship doesn't provide the company with an unfair advantage, or provide access to inside information which the company would not be able to obtain otherwise. Bearing these concerns in mind, company management should closely observe any relationship with public officials in order to prevent potential misconduct.

In politics, this is commonly referred to as 'the revolving door'. The company should have a policy on recruiting former politicians or public officials. As per the Transparency International-UK guidance on political engagement, 'The term 'revolving door' refers to the movement of high-level employees between the public and private sectors. These movements can be in either direction and they bring risks of improper access or influence, whether intentional or inadvertent. Movements tend to be from the public sector to the private

sector. But in the USA, it is common for private sector leaders to enter the executive and later return to the private sector. In the UK, all public agencies and government departments must have a board similar to the board of a company which includes non-executive directors mostly drawn from the private sector. Movements in either direction should be managed by companies within the wider framework of policies and procedures for political engagement.

TAKING MEASURES TO PREVENT CONFLICTS OF INTEREST

- ▶ **Policy and procedure:** These should be designed and implemented for managing conflicts of interest. Various measures can be taken to reduce the risk of conflicts of interest arising. As a first step, a pre-assessment should be undertaken in order to determine potential conflicts of interest.
- ▶ **Prevention:** The most effective way of dealing with conflicts of interest is to prevent situations in which they may arise. Members of senior management should not hold other positions within the company which may cause a conflict of interest. In some cases, however, these conflicts may be inevitable. If a purchasing manager has a personal relationship with a supplier who specializes in a specific product or service, and is the only supplier who provides this product or service, then a conflict of interest may not be avoidable.
- ▶ **Requirement for conflicts of interest to be declared:** all employees and external stakeholders such as consultants, intermediaries, representatives and auditors should be required to inform of any potential conflicts which may prevent them from making impartial decisions with regards to their responsibilities to the company. Departments such as sales and marketing, finance, human resources and purchasing demand special attention in this respect.

The company may request members of top management and board members to provide financial declarations. All income sources such as wages, real estate, savings, investments and substantial gifts and other benefits gained should be provided within this declaration. Depending on the risk level of the company, members of top management and executive board would also be required to provide financial declaration for their family members.

- ▶ **Due diligence:** During important business transactions or deals, conflicts of interest may be determined through due diligence processes. A due diligence process exercised on suppliers, for instance, may reveal a non-professional relationship between the company's purchasing staff and the suppliers. The due diligence process can be extended to include business partnerships, franchising and mergers and acquisitions.
- ▶ **Avoidance:** The company may choose to remove an employee from a certain position within the company to avoid a conflict of interest. However, this may not be feasible if, for instance, a sales representative is the only contact of a customer, or if the company lacks the resources to find another employee for this position. If this is the case, the company may choose to designate a third party assigned with the task of closely observing both parties of a transaction to make sure neither of them benefit from an unfair advantage.

Political Donations

Globally, it is increasingly a common practice for companies to donate to political parties, candidates or other political organizations in order to support the democratic environment of the country they operate in. Under The Turkish Political Parties Code, the companies are allowed to donate to political parties up to a certain value. However, it has to be considered that these political donations can pose various risks. Political donations may be abused in order to conceal the corruption or to gain advantage of unfair competition during the process of making political decisions. Donations made to NGOs with substantial political connections should also be considered in this context.

➔ It is legally forbidden for all natural persons and legal entities, except those organizations, corporations and legal entities stated within the 66th article of the Political Parties Code, to donate more than 32.240,11 TL in the same year to a political party, in kind, in cash or through broadcasting services above the aforementioned value. The same article states that non-Turkish natural persons or legal entities are legally forbidden from donating to political parties within Turkey, in kind or in cash.

Donations:

Article 66 – (Amendment: 12/8/1999 - 4445/7 article)

Administrations with national or annexed budgets, local administrations, public economic enterprises, banks and other organizations established based on special statutes, organizations not considered public enterprises but are financed in part by the state or the organizations, administrations, enterprises, banks and institutions mentioned within this article, are legally forbidden from donating or providing gratis effects, property or cash, or from granting rights; unless otherwise stated under the relevant provisions, the aforementioned organizations are legally forbidden from transferring real rights to political parties. Professional organizations with public institution status, labour unions, employers' unions and their governing bodies, non-governmental organizations, foundations and cooperatives may provide monetary aid or donate to political parties, provided they abide by their own legal codes.

When developing an anti-corruption programme, a policy for political donations should be made.

Transparency International advocates that companies should not make political donations other than in exceptional circumstances where they provide general support for a genuine democratic process, with full transparency and full explanation.

If companies do have a policy allowing political donations, the following approach should be considered:

- ▶ Establish a policy and criteria for donations

- ▶ Control the timing of donations: Prohibit donations being made on the eve of important political decisions or award of public contracts.
- ▶ An upper threshold for such donations should be determined.
- ▶ The company should keep a record of all political donations.
- ▶ Employees' and business partners' relations with politicians, candidates, political organizations and agents should be checked, in order to avoid conflicts of interest.
- ▶ Approval procedures should be developed (e.g. four eye principle).
- ▶ Political donations should be monitored.
- ▶ Unless forbidden to do so by law, report publicly on all political donations made.

2.4.3

Donations made to Charitable Organizations and Sponsorships

Donations made to charitable organizations are legitimate payments made in order for companies to fulfil their social responsibility goals and sponsorships are commercial activities made to promote the reputation of the brands and products. Donations can be made to variety of areas ranging from sports, arts and cultural activities to education and scientific research. These donations and sponsorships can also be used to support various activities and events. They may be made both in cash and in kind. Membership fees paid to NGOs should also be considered under this heading.

Such payments may be vulnerable for use as bribery or be at risk of kickbacks. Donations and sponsorships should be planned according to strategic aims with clear policy and criteria. The company should implement the following:

- ▶ Regulating the payments - Such payments should not, for instance, be made to personal bank accounts.
- ▶ The terms and expectations set by the beneficiary should be analysed in detail.
- ▶ Donations or sponsorships should not be discussed or committed made during sensitive periods, such as bidding phases.
- ▶ The relationship between employees and business partners and potential benefactors should be assessed.
- ▶ Approval procedures should be implemented (e.g. four eye principle).
- ▶ The company should keep a record of all donations and sponsorships, should periodically monitor these payments and also inform the public of these payments.
- ▶ Follow up on donations and sponsorships to check that the causes or projects are valid and they have fulfilled what was expected of them.
- ▶ Public disclosure of donations and sponsorships

(The following scenario is not a donation or sponsorship.)



Scenario: In the course of the performance of a contract, you have arranged a training session in the company's home country for the benefit of designated customer representatives. Prior to the trip, the head of delegation asks for a check-up in a prestigious hospital during his/her stay.

Description: In the course of the performance of a contract, you have arranged a training session in the company's home country for the benefit of designated customer representatives. Prior to the trip, the head of delegation asks for a check-up in a prestigious hospital during his/her stay.

Demand prevention: How to reduce the probability of the demand being made?

- ▶ Define a clear company policy for gifts, hospitality and personal expenses such as pre-approval and control mechanisms.
- ▶ Clearly state publicly this policy on your company website or any other appropriate means for internal and external purposes
- ▶ Train your personnel on how to implement this policy.
- ▶ Provide in the contract detailed provisions describing eligible expenses according to their nature and amount and consistent with the company's gift and hospitality policy.

Response to bribery demand: How to react if the demand is made?

- ▶ State your gift and hospitality policy and show that you are not allowed to give in to this request
- ▶ Explain that this practice may violate international conventions (such as OECD and UNCAC) and applicable laws.
- ▶ If appropriate, offer logistical support to arrange the visit, but without paying for any expenses
- ▶ Ask for a formal written request by a superior, which should be enough to put an end to the solicitation process.

2.4.4

Facilitation Payments

A facilitation payment is defined as a small bribe, also called a 'facilitating', 'speed' or 'grease' payment; made to public officials to secure or expedite the performance of a routine or necessary action to which the payer has legal or other entitlement. Requests for facilitation payments are usually made for licensing and certification services or permission documents, or for the provision of utilities such as electricity or water¹².

Facilitation payments are bribes and such payments should be explicitly forbidden in the company's anti-corruption programme. Ignoring such payments jeopardizes the company's "zero tolerance to corruption" policy.

¹² In some cases, these services are provided by private enterprises on behalf of public institutions. Payments of similar nature made to the employees of such enterprises should also be classed as facilitation payments.

To assess how likely the company is to face the risk of facilitation payments in different regions, a risk assessment should be conducted. The likelihood of facing this risk may be higher for passport and customs procedures, or during the process of establishing a new business. This risk assessment will enable the company to develop training modules or guides focusing on high risk areas or regions. These modules or guides may provide in depth information on questions such as “how do we determine foreign public officials?” or “how should an employee approach a payment demanded by a foreign public official in order for company goods to clear customs?”

➔ **The UK Bribery Act** makes no provision for facilitation payments and they are implicitly bribes and therefore illegal. The FCPA, on the other hand, permits facilitation payments in some cases entailing the approval to be secured and the process to be accelerated. However, licenses or concessions provided to a foreign public official in order for them to conduct or continue to conduct business with a certain company are forbidden under this act. Although there is no legal instrument which forbids the provision of facilitation payments in Turkey, these payments may be considered to be bribes, depending on the parties involved.

Role-playing exercises may be included in the trainings that have been incorporated into the anti-corruption programme, and especially for employees to understand what facilitation payments are. If a company representative or employee faces a reasonable threat if a facilitation payment isn't made, then the company should allow the company representative or employee to make the payment. In this case, a written record of the payment should be kept and reported to company management. For further information see Transparency International UK's guidance on countering small bribes.¹³

2.4.5

Gifts, Hospitality and Other Payments

Giving and receiving gifts, providing hospitality for company guests, making payments for travel and event costs and providing sponsorships are common and accepted business practice but may sometimes be illicit or inappropriate. It is important to make sure that these payments are not used to gain an unfair advantage or to conceal any illegal financial transactions. This distinction should be made clear in the anti-corruption programme of the company. To make sure company representatives and employees make sound decisions within this context, guides which include control lists should be developed. These guides should include the following components:

- ▶ Acceptable gifts and hospitality, travel and entertainment costs
- ▶ An upper limit on the monetary value of such payments

¹³ Countering Small Bribes: Principles and good practice guidance for dealing with small bribes including facilitation payments (Transparency International UK, 2014) <http://www.transparency.org.uk/rss/15-publications/1096-countering-small-bribes/1096-countering-small-bribes>

- ▶ Points to consider when employees are offered such payments
- ▶ The nature of such payments, both when receiving and providing
- ▶ The nature of the business relationship
- ▶ Understanding and observing the rules of business associates especially those of public officials and customers
- ▶ Documenting expenditures
- ▶ Participation to entertainment, culture and sports events

In order to avoid confusion regarding these policies, an approval procedure should be implemented for gifts and similar payments. In cases where public officials are on the receiving end of such gifts and payments, a dual approval mechanism may be implemented. A written record of all such transactions should be kept.

2.5

KEY AREAS TO BE CONSIDERED WHEN IMPLEMENTING THE ANTI-CORRUPTION PROGRAMMES

2.5.1

Ethics and Compliance Officer

Although the commitment of senior management is key in internalizing the anti-corruption programme, having someone employed who is dedicated to monitoring and reporting on the programme is an open statement that the company is determined to put this commitment into practice.

The ethics and compliance officer is responsible for classifying, assessing, updating and creating a database of all policies and procedures implemented by the company, starting with the riskiest areas. When forming a database of such policies and procedures, a simple table with consistent classifications may suffice. Although the ethics and compliance officer is not responsible for all the policies implemented by the company¹⁴, they should have working knowledge of these policies and their objectives, application and implementation schedule.

It is important for ethics and compliance officers to command knowledge of company policies and procedures so they can communicate these policies, design training modules

¹⁴ The responsibility of overseeing certain policies may (in most cases) only rest with human resources, internal controls or IT, for instance.

around them, inspect and observe their implementation and review and revise those which are redundant or out of date.

The ethics and compliance officer is determined by senior management with the approval of the board of directors. Whether a suitable candidate is chosen is determined by the ethics committee, which is comprised of members of the board of directors. The person chosen to fulfill this task should have both extensive knowledge of the company and a reputation for being trustworthy and honest.



Ethics and Compliance Officers in SMEs

It is much easier for SMEs to communicate their commitment to anti-corruption than larger companies. Because SMEs have less employees, management's commitment to the policy of "zero tolerance to corruption" may be communicated to them directly by the general manager. SMEs may have a better opportunity to portray their manager as a role model.

It is common for ethics and compliance officers to specialize in law, human resources or finance, and as such, these officers are usually employed from these departments within the company. However, it is not necessary for an ethics and compliance officer to specialize in these areas, or any specific area for that matter. What is important is that the person holding this position has working knowledge of the company and the risks it faces, is self-confident and is able to determine and assess the risks and violations within the company in tandem with other employees and management.

Depending on the size of the company, the ethics and compliance officer (and other employees acting under this capacity) should, either independently or with the department they are employed under, be responsible for the coordination of whistleblowing mechanisms and training programmes, the conducting of investigations and issuing of reports, while also being open to consulting to employees regarding compliance issues. In order for the ethics and compliance officer to maintain their independence, they should report to the board of directors as opposed to senior management. If the ethics and compliance officer is to report to the CEO, means of communication between a member of the board and the ethics and compliance officer should always be available. Periodic reports, which should ideally take place at least 4 times a year, should include an informative presentation and meeting regarding the aims of the anti-corruption programme; the reports should also include any important developments with regards to the implementation of policies contained within the programme, and information regarding any violations, if any have taken place. Routine reports notwithstanding, the ethics and compliance officer should report any issues they believe to be serious to the board of directors.

The ethics and compliance officer should work in collaboration with internal auditing, which conducts independent auditing in internal controls and finance and reports their findings to the board of directors. The findings of internal auditing are a valuable source of information for the ethics and compliance officer, as they indicate the company's weaknesses and areas that may require special attention. External auditing, which generally

takes place on an annual basis, also provides the ethics and compliance officer with important findings regarding the internal controls of the company.

It is important to distinguish between the roles and responsibilities of management and the ethics and compliance officer. To avoid any conflict of responsibilities, the company may designate a compliance department tasked only with implementing measures which aim to prevent violations within the company. In this case, the task of determining violations and taking penal measures against them could then lie with the legal, auditing, finance or human resources department of the company. The head of each department, together with the ethics and compliance officer, may then form a compliance committee which would be responsible for the coordination, reporting and assessment of the programme. The compliance officer should report the board by submitting the prepared report to the board committee. Preparation and submission of the report by the compliance department and the compliance officer is of importance in terms of independency and objectivity.

The members of this committee should be reputable and honest individuals from different departments, and, owing to their diverse professional backgrounds, should be able to determine a diverse range of compliance issues. The committee should have a written code of conduct which states the terms of membership, conditions for the cancellation of membership and rules for rotation. A clause which requires the rotation of all members every 2 or 3 years, for instance, could be included within the code of conduct in order to serve this purpose.

THE IMPORTANCE OF MID - LEVEL MANAGEMENT

Because it is difficult for top-level management and employees to be in direct communication, mid-level management plays a key role in facilitating communication between these two parties. The responsibility of implementing and developing an anti-corruption programme can be delegated to a compliance officer. Not only will this person be responsible for the programme's implementation and development, but also for monitoring the programme. To facilitate this role of the compliance officer, top-level management should provide the necessary financing and human resources. In addition to this, top-level management should also be responsible for implementing external auditing on anti-corruption within the company.

➔ **See:** Important Areas To Be Considered When Implementing Anti-Corruption Programmes: Ethics and Compliance Officer

2.5.2

Training and Communication

Providing training and strengthening communication with regards to anti-corruption practices helps companies promote the principle of "zero tolerance to corruption" among employees, all levels of management and all stakeholders more clearly and effectively. Efforts to promote this principle should include providing relevant information regarding the policies and procedures within the programme, while also stating clearly the implementation

procedures and reasoning behind it. The commitment of senior management is vital to showing their support for the anti-corruption programme.

It is useful to include case studies and practical approaches within training and communication efforts. The correct actions taken by an employee or manager in the face of a potential major corruption scandal may be included as examples for such cases.



Training and Communication in SMEs

SMEs may find it difficult to develop and implement their own training programmes, mainly due to financial restrictions. Participating in trainings provided by larger partner companies (for which they may be subcontractors or suppliers) could help SMEs overcome this difficulty. They may also be able to participate in free trainings provided by NGOs or consulting firms. Various guides prepared in order to address anti-corruption issues may be available for free online. Another option SMEs have is to have an employee receive training on teaching anti-corruption material, and have this employee provide in-house education to other employees. One final initiative SMEs can pursue is to prepare joint training programmes with other SMEs in order to decrease costs.

Individual training and communication methods are widely employed by companies to increase anti-corruption related knowledge. Websites, e-mails, e-bulletins or computer based training modules provide easily accessible self-learning tools for employees, managers and stakeholders. These tools can be very cost effective and easy to access.

Special training programmes can be given to employees who are engaged in high risk business procedures. Employees who are likely to face demands of bribery from public officials can be given applied training on how to deal with such demands. Special training programmes can be developed for external stakeholders. In this context, suppliers may be provided with training on due diligence procedures or how to align their practices with the relevant competition law.

Despite the fact that the legislations of the countries vary from each other, anti-corruption practices should be made by considering the conditions of global market and by using a universal language. Furthermore, awareness of senior management regarding the local practices is a substantial value.

2.5.3

Human Resources

INCENTIVE MECHANISMS

It is important to encourage company management, employees and stakeholders to align their practices with those prescribed in the anti-corruption programme. If incentive mechanisms are not made operational within the company, the anti-corruption programme runs the risk of being ineffective.

Anti-corruption incentive mechanisms that can be divided into: financial incentives and non-financial incentives. Wage increases, bonuses, promotions, premiums or gifts can be classified as financial incentives, whereas encouragement awards, appraisal in the company bulletin, opportunity to participate in executive training, appraisal by company management or appraisal by fellow employees can be considered non-financial incentives.

Incentives should be specified so as to reflect the corporate culture of the company. Providing non-financial incentives for anti-corruption efforts in a company which normally provides financial incentives to its employees and stakeholders may not have the desired effect. In some cases, the opposite may be true. The company may find it useful to develop an incentives catalogue which outlines clearly and openly under which circumstances different types of incentives should be provided.

PERFORMANCE EVALUATIONS FOR INCENTIVES

In order for the incentive mechanisms within the company to be effective, they should be implemented within the human resources policies and performance evaluation procedures. To this end, the company should first determine ethics and compliance performance objectives. The evaluation criteria needed in order to measure whether each objective has been fulfilled and the type and degree of each incentive should be clearly and openly determined, and should be recorded as part of human resources policies.

In order to achieve a fair outcome, the incentives given should be based on impartial and measurable criteria. Examples for such criteria could be attending and successfully completing anti-corruption training programmes, active involvement in the development and implementation process of the anti-corruption programme, showing considerable knowledge of company norms and values or preventing a corrupt practice from taking place.

Managers and supervisors may assess the performance of employees according to the criteria determined by the company. In some cases, incentives can be designed so as to be implemented to a department as a whole. This enables employees to have social control over each other and helps them develop a collective approach to anti-corruption. Incentives may also be provided for external stakeholders. A supplier may be provided with a gift, for instance, if they perform the due diligence procedures before the given time limit.

IMPORTANT POINTS TO CONSIDER WHEN DEVELOPING INCENTIVE MECHANISMS

When developing incentive mechanisms in the context of ethics and compliance, certain incentive mechanisms in place may have to be re-evaluated. If, for instance, due diligence procedures are rushed due to incentives provided for quicker purchasing procedures, this incentive may be revised, or may have to be removed from the programme completely. Companies should also be careful not to have discrepancies between production performance assessment criteria and compliance performance assessment criteria.

One other point which companies should consider is how proportionate incentives are to the performance criteria. The general rule should be as follows: the larger the incentive provided, the more difficult it should be to fulfill the criteria in order to achieve that incen-

tive. A small incentive provided in return for great effort may not motivate employees to put in such effort. In addition, companies should refrain from providing incentives for practices which are commonplace. Companies should only provide incentives for exclusive performances in the workplace to encourage employees to take this behavior as a role-model.

The company should make sure that the performance criteria is impartial and understandable. Failure to develop such criteria may be met with disappointment and lack of motivation to commit good practices. The company should also make sure that these incentive mechanisms are open to everyone within the company. All employees and external stakeholders should be able to benefit from incentives, not just members of senior management.

Providing incentives for whistleblowers is also one other point companies should give special consideration to. If it is too easy to benefit from incentives for whistleblowing activities, the company faces the danger of having employees falsely accuse colleagues in order to benefit from these incentives. This may in turn create an insecure work environment. The company may wish to evaluate what employees think about whistleblowing, which will then influence the risk assessment procedure and the development of preventative measures.



Incentive Mechanisms for SMEs

SMEs may develop their own incentive mechanisms. SMEs may have less financial resources to allocate for incentives, and thus may wish to develop incentives which are non-financial. Because such incentives require less bureaucratic procedures, they are much easier to implement and provide. As the number of staff is much less than in larger companies, they may be provided in a non-official manner and rather than establish incentives as standard procedures, SMEs can create a more sincere environment in this manner. If non-financial incentives are opted for, then it is important for the company not to give the impression that these incentives are less significant than financial ones.

2.5.4

Business associates

Although external stakeholders such as suppliers, intermediaries, subcontractors and business partners are not directly under the control of the company, it is nevertheless important for them to comply with the policies and procedures outlined in the anti-corruption programme. It should be noted that a corruption investigation filed against a business partner may also implicate the company. Even if the company is not implicated, the lack of trust against the business partner as a result of the investigation may have reputational consequences for the company.



Secenario: A customer representative demands a fee that was not previously agreed as a condition to a contract change.

Description: Your company has signed a contract with a customer to carry out a project. During project implementation, your company asks for a legitimate change to the contract to secure a justified market rate increase in your price, as a result of a necessary change in the scope of work. The representative of the customer informs you that the contract modification will not be signed unless your company makes a payment to the said representative.

Response to Bribery Demand: How to react if the demand is made?

In case of facing such a bribery demand, you should directly refuse to make a payment in addition to using all available channels to inform the head office or the parent company as well as your compliance officer, supervisor or other relevant manager. All legal, technical and financial consequences of your refusal to pay the bribe must be examined, the reaction of local authorities and the assistance of legal authorities must be analyzed. The evidence wherever feasible to prove solicitation should be collected in cooperation with authorities (e.g. police or other relevant authority). In circumstances where financing is extended or insured by the World Bank, other multilateral development banks and/or other bilateral agencies, you should immediately seek the support of these institutions in resisting the solicitation. Furthermore, demanding contractual remedies such as a notice to the customer of the suspension, cancellation or termination of contract, claim for compensation, indemnity etc. in accordance with the contract terms and conditions as recommended above and giving thorough consideration to the criminal implications of such solicitation by the customer representative should be considered in addition to anticipating and managing the reputational impact deriving from the rejection of such solicitation (e.g. possible reprisal through media coverage).

You should approach local business associations and/ or your embassy to expose the situation and obtain support; if appropriate, to seek additional support from relevant NGOs that may help expose the problem of solicitation.

Demand Prevention: how to reduce the probability of the demand being made?

Performing a due diligence on the past record of the customer with respect to incidents of bribery (“know your customer”) and developing relations with external parties who may help while you carry out the due diligence process as well as during contract implementation (e.g. local embassy, business associations, etc.) should be considered prior to signing the contract due to the fact that once you have signed the contract, you are committed to complete the project on time and within the agreed price; therefore, your company is highly vulnerable if the contract does not include safeguards addressing the risk of bribe solicitation. You should also develop an overall action plan, including security issues, to deal with the possibility of retaliation against company staff, contractors and company assets in the event of a refusal to pay bribes wherever your company operates. Consider collective action among competitors and customers through integrity undertakings promoting ethical behaviour; first, ensure that such undertakings do not violate applicable antitrust or procurement laws

Besides the likelihood of demands for bribes at each stage of the project should be re-evaluated. If the pressure to pay a bribe becomes too strong, you should assess the consequences of terminating the project.

Within this context, the nature of the relationship the company has with external stakeholders can be classified as follows:

- ▶ Affiliate companies
- ▶ Subsidiaries
- ▶ Joint ventures and Consortiums
- ▶ Agent and other intermediaries
- ▶ Suppliers and subcontractors

The policies and standards set out by the company should be required of to by third parties. Due diligence should be undertaken when business partners and procedures are being determined and monitored, in line with the risks that have been identified. All third parties should be informed about company policies and the consequences that may be faced in case of a violation.

In order to increase the effect on the customers and contracting authorities, the affiliates and subsidiaries should also be subject to anti-corruption programmes of the parent companies.

SUBSIDIARIES AND INVESTMENTS

Both affiliate and subsidiary refer to the degree of ownership that a parent company holds in another company. In most cases, the term affiliate is used to describe a company whose parent only possesses a minority stake in the ownership of the company.

A subsidiary, on the other hand, is a company whose parent is a majority shareholder. Consequently, in a wholly owned subsidiary the parent company owns 100 per cent of the subsidiary.

The parent company takes most of the responsibility of any actions undertaken by affiliate companies, since it normally owns a majority of their shares. The parent company has considerable control over the management and decision-making processes of the affiliate company; this makes it easier for parent companies to make sure that all of its affiliate companies, whether they operate in foreign jurisdictions or not, are aware of and are fully implementing the anti-corruption programme. Risks associated with having affiliate companies should also be taken into consideration during the development phase of the programme.

The “zero tolerance to corruption” principle should be clearly communicated with subsidiaries. Due diligence should be undertaken both before and after investments made in subsidiaries. Subsidiaries should be encouraged to act according to the policies outlined in the anti-corruption programme, and support should be given to subsidiaries where needed.

JOINT VENTURES AND CONSORTIA

In joint ventures, which are established by multiple legal entities coming together through a business agreement, all parties to the agreement are liable for any corrupt practices com-

mitted by the joint venture. Primarily for this reason, companies should implement their own anti-corruption programmes within the joint venture. It could be useful to outline anti-corruption principles to abide by before establishing the joint venture. In the event that the other partners within the venture show little interest in anti-corruption efforts, the company may choose not to join this venture. If the venture has already been established and the partners within the venture are not interested in implemented anti-corruption measures, the company may wish to leave the joint venture. There should be a plan for exiting a venture in this eventuality.

AGENTS AND OTHER INTERMEDIARIES

Since agents act on behalf of the company, it is much easier to maintain control over them. Intermediaries company may include business development experts, sales representatives, customs agencies, lawyers, accountants or other local stakeholders. Intermediaries commonly aid the company in activities such as sales, consultancy, obtaining licenses, permits, lobbying, professional services or conducting research. They can present significant risks as it is common for them to be in contact with public officials. In some cases, illicit payments may be made by intermediaries, but a record of such payments may not show up in company records.

It should be underlined that intermediaries may be used by companies as a channel for bribery. For the reasons stated above and for clogging the way to indirect bribery, the company should establish extensive anti-corruption policies based on risk assessments for agents and other intermediaries and designate extra measures in their anti corruption programmes by paying attention to internal controls covering the use of third parties.

Industries in which direct communication with public officials is common, such as the defence, construction and aircraft industries, entail higher risks in this respect

- ▶ Precautionary measures, such as conducting due diligence procedures and communicating company policies and procedures, should be taken.
- ▶ A clause included in the written contract requiring intermediaries and agents to comply with anti-corruption policies of the company may be outlined,
- ▶ Trainings which encourage third parties to comply with anti-corruption policies could be provided,
- ▶ Detailed criteria for wages, expenditure sheets and accounting records should be developed and these transactions should be monitored.
- ▶ Violations of policies and procedures may be penalized; likewise, efforts to adhere to these policies and procedures could be commended.

Even though suppliers and subcontractors have close relationships with the company they work under, their partner company may not be able to command much control over them. A supplier which wishes to win a bidding round may, for instance, offer illicit payments. The company's reputation may be damaged as a result of this, and in some cases, the company may even face legal sanctions.

One other risk associated with external stakeholders is their possible failure to fulfill contractual obligations they have with the company due to ongoing corruption investigations. These kinds of risks become more threatening if the company is working with a number of suppliers or subcontractors. In addition to the suggestions given for working with intermediaries, the company may also wish to develop special measures to alleviate the aforementioned risks, and develop training programmes for suppliers and subcontractors.

RISK MANAGEMENT IN RELATIONS WITH THIRD PARTIES

All transactions and procedures related to third parties, including mergers and acquisitions, should be subject to due diligence procedures. This helps identify any legal, operational, reputational and trade related risks associated with interacting with third parties. While conducting the due diligence procedures the companies should focus especially on the highest risk third parties. The risk analysis is quite substantial in such cases since the large-scale companies having many third parties, cannot measure these procedures and as a result of the risk analysis the priorities and real risks may be determined.

The company should pay special attention to the following aspects of the due diligence procedure:

- ▶ The nature of the partnership
- ▶ The partner's legal status
- ▶ Financial, organizational and shareholding structure
- ▶ Conflicts of interest faced by key employees
- ▶ Senior management's commitment to the programme
- ▶ Trade register information and reputation within the industry
- ▶ Track record on anti-corruption efforts
- ▶ Current anti-corruption programme

New practices can be developed according to the risks specified in the due diligence procedure. Business partners may be asked to provide official written commitment that they will fulfill the requirements of the programme, or may be requested to take part in trainings related to the programme's requirements. The company may also request detailed information on the partner's anti-corruption programme. In the event that any external stakeholder is not willing to cooperate or does not seem interested in taking up anti-corruption practices, the company may wish to end all relationships with this partner.

MONITORING THIRD PARTIES

The nature of the monitoring process, how the monitoring process should be implemented and how frequently monitoring should take place should all be based on the results of the due diligence procedure. The corruption risks associated with various regions and industries should also be taken into consideration. An official written statement signifying the partner's commitment to anti-corruption may be enough in a region where corruption risks are relatively low. When working with partners located in high risk areas, on the other hand, the company may wish to conduct an in depth analysis of the partner's anti-corrup-

tion programme or have experts interview their employees to see how committed they are to anti-corruption.

The assessment of how effective and extensive the stakeholder's anti-corruption programme is can be carried out in various ways. The company could ask the stakeholder to fill out a self-assessment form, or may wish to carry out the assessment themselves. A third party, such as an external auditor, may also be hired to conduct the assessment. As the results of the initial assessment will vary over time, it is important to frequently monitor the stakeholder's anti-corruption programme for any major changes. Special monitoring procedures may be developed for high-risk stakeholders.

The company should clearly designate an employee/employees who will undertake the responsibility of choosing which stakeholder to work with and monitoring the chosen stakeholder. Depending on the size of the business, the finance, legal, compliance and other relevant departments may be included in this process. It may be useful to include a member of the auditing board within this team. External consultants may also be given this responsibility. The results of the stakeholder assessment should be presented to the board of directors or other relevant bodies of equal standing.

SANCTIONS FOR THIRD PARTIES

Together with providing incentives for the appropriate conduct of third parties, it is also important to impose sanctions on behaviour which is contrary to the company's anti-corruption programme.

Sanctions, such as terminating all business relations with the stakeholder, excluding them from future business opportunities or imposing strict conditions for partnership, may be effective by means of discouraging stakeholders from committing corrupt practices. In this context, a supplier's contract may be annulled, or the supplier may be blacklisted in future transactions.

In some cases, stakeholders may have to be subject to legal sanctions. Court ordered fines, imprisonment or compensation are among the measures that may be taken against stakeholders who engage in corruption. Companies may also apply sanctions through their own internal legal systems. Imposing a fine on a supplier for the violation of a policy included in the anti-corruption programme is an example of such sanctions.



SME Relations with Third Parties

It is unlikely that SMEs will have considerable influence over their relationship with third parties, as they generally conduct business within the limits of contractual agreements and have limited resources. Nevertheless, it is useful for SMEs to undertake due diligence procedures for stakeholders in order to take precautions against legal, reputational and trade related risks. If the company does not have the necessary expertise with regards to risks associated with stakeholders, they may wish to hire external consultants. They may also reinforce due diligence procedures by preparing control lists or assessment diagrams.

Sanctions and incentives may also work on a reputational level. Although the company cannot impose or provide these directly, they may receive help from media outlets or NGOs. A report which compares the performance of various companies with regards to anti-corruption, for instance, may have reputational consequences for stakeholders.

2.5.5

Monitoring

For a comprehensive monitoring procedure to take place, information from various sources has to be compiled and analyzed. Monitoring should be conducted periodically and in special circumstances, such as when a major violation takes place. The anti-corruption programme of the company, in order to remain effective and valid and to keep pace with the dynamic environment of the business sector, should be a renewable programme. The effectivity, validity and update needs of the programme should be followed up by the Board periodically. When an update or a renewal is needed in the anti-corruption programme, such update or renewal should include all activities of the company as well as its subsidiaries, affiliates, intermediaries and other business partners.

The company should utilize all information sources when reviewing and developing its anti-corruption programme. Results obtained from internal monitoring procedures provide an extensive array of information for the assessment stage. For example, monitoring the anti corruption trainings of the company is substantial in terms of assessing the perception of the employees regarding the trainings, the changes that the trainings made on the employees and in terms of reaching crucial information regarding the weaknesses in internal control, irregularities and the system. Internal and external audits are invaluable sources of information for assessing the effectiveness of the company's policies and procedures, and also aid senior management in assessing the effectiveness of the anti-corruption programme. Risk assessments conducted before the development of the programme can provide valuable information for the assessment of policies and procedures in place. In addition, whistleblowing mechanisms utilized during the implementation stage of the programme may also provide important information.

Internal and external stakeholders may provide valuable resources that the company may not be able to access in its monitoring and auditing processes. Feedback provided on the anti-corruption programme may be useful for assessing how much command and knowledge stakeholders have of the programme. Preparing and disseminating surveys among stakeholders and employees and encouraging employees to provide comments and ask questions about the programme are effective ways of receiving feedback.

INTERNAL CONTROLS AND RECORD KEEPING

The main purpose of internal controls is to improve the effectiveness and efficiency of the company's operations, strengthen the reliability of financial reports and ensure the company is adhering to the relevant laws, regulations and internal policies. The nature of internal controls not only makes them important for the strengthening of the anti-corruption programme, but also for the protection of company assets.

A successful internal controls procedure does not necessarily require in depth analysis, but assessment based on risk. This approach enables the company to have an internal controls mechanism which maintains a balance between excessive controls and an inadequate controls system. Excessive controls may put undue pressure on employees and stakeholders, and make it difficult to maintain a trust-based work environment. Inadequate controls, on the other hand, may expose the company to various corruption risks.



Monitoring in SMEs

SMEs may not have the time and resources available to conduct extensive monitoring. Consequently, SMEs may use readily available information and feedback they receive on a smaller scale in order to decrease costs.

Internal controls are vital tools for detecting and preventing corruption.

Internal controls can be said to have two distinct components. Organizational precautions, on the hand, encompass key functions such as determining responsibilities, determining limits on expenditure, division of responsibilities (e.g. distinguishing between invoice approval and payment procedures) and authorization procedures related to key business transactions or deals (e.g. approval of contracts signed with new suppliers). Controls, on the other hand, comprise of monitoring company procedures, such as trainings and whether suppliers have the requisite policies and procedures in place.

Controls have both a preventative and risk determining function. Requesting approval from the relevant department before making a donation to a political party or charitable foundation can be considered a preventative measure. Risk identifying controls are directed towards detecting and uncovering illicit payments or corrupt practices after they have happened. Identifying the practice of dividing payments into smaller segments in order to circumvent the payment approval procedure is a risk identifying control. Controls can be conducted either manually or automatically through the use of computers.

Different control mechanisms should be implemented in order to prevent different types of corruption. Payments which exceed the given threshold may be prevented using computerised payment systems. As an example for implementing measures through computerised systems, the company may prevent a donation which exceeds the threshold amount defined within the system. This can also be done manually by monitoring company accounts monthly.

Determining who will be responsible for the internal control mechanisms and documenting results are effective ways of assessing and improving the control mechanisms. Doing this will help establish a knowledge base and improve learning opportunities.

RESPONSIBILITIES RELATED TO INTERNAL CONTROLS

For the effective operation of internal control mechanisms, the distribution of responsibilities can be determined according to the following criterias:

- ▶ Although senior management is responsible for the design, implementation and revision of controls, these responsibilities may be handed down to the relevant departments to ease the workload. Departments such as risk assessment, compliance, finance or purchasing may undertake some of the tasks related to controls. The compliance department may conduct training in compliance as part of the preventative measures related to controls, whereas the finance department may do the accounting and recordkeeping within this capacity.
- ▶ The responsibility for undertaking assessments lie with the internal auditing department of the company and external auditors. Although internal auditing is part of the company, it is an independent department responsible for assessing the effectiveness, efficiency and stability of organizational measures and controls. This department must be independent in order for internal controls to be impartial and based on reasonable grounds. The results and finding of the assessments should be reported to the board of directors or the auditing board.
- ▶ The board of directors, or other bodies of equivalent authority, are responsible for monitoring.

BOOKS AND RECORDS

Books and records keeping form the basis of control mechanisms and act as evidence in corruption investigations. Keeping books and records in a regular and organized manner paves the way to a more efficient corporate governance.

Cash flows within the company should be deemed as red-flags for corruption risks. All financial transactions should therefore be documented and recorded from start to finish. It may not be enough, however, to keep a record of financial transactions. Non-financial documents, such as contracts and official reports, should also be recorded for this purpose.

The company should make sure that all information and documents recorded are detailed, and that the originals may be reproduced when needed. The records should be kept in official record keeping documents. If these records are to be kept in electronic format, it should be ensured that they are well organized, are able to be reproduced quickly and cannot be deleted or altered.

Making sure that records are organised in chronological order helps make the examination procedure run smoother. They should also be stored in a secure manner so that they are not damaged (albeit unintentionally), altered or accessed without permission. Records should be kept till the end of the statutory time limit.

Since most illicit payments are made through unofficial company accounts and with company cash stocks, the company should ensure no unofficial accounts are used for transactions. Furthermore, records of payments which (for whatever reason) did not go through and of counterfeit documents should always be kept.



SMEs and Internal Controls

Due to limited resources it is possible to state that the SMEs might perceive the internal controls as an unnecessary expense however it should also be noted that such internal controls are quite substantial as they enable an efficient business performance and is an indicator corporateness. They may find it difficult to employ individuals responsible for internal controls and record keeping due to limited resources. Establishing an internal controls mechanism in SMEs is usually the decision of a member of senior management, and in most cases requires their support.

SMEs may develop internal control mechanisms with a risk based approach. If payments which exceed a certain threshold are considered risky based on the results of risk assessments, the responsibility of approving these payments may be given to a member of management within the company. Electronic or computer based systems may be used, for instance, to automate financial transactions. Although establishing such a system requires an initial investment, these systems are useful in the long run and provide sustainable and developable internal control mechanisms.

RAISING CONCERNS AND SEEKING ADVICE

The company should first and foremost provide means for its employees and stakeholders to access guidance and advice. A large proportion of compliance related work consists of providing this guidance and advice. In addition to giving this responsibility to the compliance department, the company could also establish a helpline. While this helpline can be established within the company, it may also be provided through an external service provider. Establishing such a helpline provides a channel for employees and stakeholders to address their questions and receive guidance with regards to the anti-corruption programme, while also providing feedback. The feedback and questions received through these helplines may also aid the company assess which areas to develop and implement corruption and compliance related trainings in. If the company receives a high number of questions with regards to its gifts policy, for instance, they may want to focus training in this area.

Identifying a violation of the company's anti-corruption programme policies and procedures does not necessarily indicate a weakness within the programme. In fact, the identification of a violation actually indicates that the programme is functioning effectively.

Both internal and external resources may be utilized in order to determine violations of programme policies. Internal controls investigations, audits and whistleblowing hotlines are examples of internal resources. External auditors, violation reports from stakeholders and the media are, on the other hand, examples of external resources.

WHISTLEBLOWING MECHANISMS

Whistleblowing can be defined as a way of reporting a violation to the relevant authorities within the company in case of or in suspicion of violation in the workplace.

Whistleblowing is an important source for the detection of violations within the company. As corruption can take many different forms, there is always the possibility that a violation can go undetected during controls or audits due to spoliation of evidence. Since whistle-blowers are generally from within the company, they are able to provide critical information that is normally difficult to access. Although in some cases the reporting itself cannot be considered evidence, it may indicate a violation and thus may require the company to open an investigation.

Violations can be reported to either the department the whistle-blower is in or to the compliance department. In order for whistleblowers to feel safe in the knowledge that their identity will not be exposed, the company should put in place mechanisms to ensure anonymity or confidentiality, such as having whistleblowers report to an independent department working in an impartial and confidential manner. Another mechanism which can be put in place is establishing a whistleblowing hotline. This unit can be established either within the company or outsourced using external service providers. Another mechanism which can be put in place is establishing a whistleblowing hotline. This unit can be established either within the company or outsourced using external service providers. The hotline should be supervised and assessed by an independent department in order to prevent the conflict of interest issues. The data collected as a result of the hotline should be used in internal evaluations in order to determine the risk areas and the matters which are subject to complaint.

It is crucial that the employee reporting a violation does not feel that they will face repercussions for reporting such violations. Employees may choose not to report if they feel that they will face discrimination or persecution, will be laid off or will be prevented from accessing various privileges or opportunities within the workplace. Companies should establish policies to make sure whistle-blowers are encouraged and do not feel threatened because of such reprisals.

Whistle-blowing is a sensitive issue due to cultural, legal and political reasons. It may be risky to cooperate with public authorities in a country which has no legal protection for whistleblowers. The company should be prepared for the social stigma which may arise due to whistle-blowing. The most effective way of preventing such social stigma is to ensure that whistle-blowing mechanisms are based on the principles of anonymity and confidentiality.

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It can be stated that there is no extensive law in public or in private sector due to the fact that whistleblowing is quite restricted in Turkey. Only the below listed Articles of relevant laws are regulated;

- ▶ Article 18 of the Law on Concerning the Declaration of Assets and Combating Bribery and Corruption No.3628 forbids to disclose the identity of a whistleblower without their consent.
- ▶ Article 74 of the Turkish Constitutional Law states that the petitions may be submitted against government with a complaint or interest for personal or public interests however it does not constitute a strong protection in terms of freedom from reprisal.
- ▶ Witness Protection Act sets forth some protection for witnesses to crimes who appear in criminal prosecution. Nevertheless, this protection is used for exceptional cases. It may only apply within the term of the criminal case and does not include civil remedies.
- ▶ In accordance with the Turkish Labour law which includes some further limited protection, employment cannot be terminated for seeking to enforce their rights before governmental authorities or the courts. The exception of this Article is the groundless basis for seeking to enforce the rights.

Any information which is provided through whistle-blowing mechanisms should be addressed swiftly and in a structured manner. The whistleblower should be informed of any issues relevant to them and assured of their safety and anonymity. If the whistleblower feels that the company will not address the violation in question, they may choose to use external resources for reporting, which may make it much more difficult for the company to deal with the situation.

INTERNAL INVESTIGATIONS

Establishing whether the reported violation has indeed taken place requires an internal investigation to take place. It should, however, be noted that such investigations may intimidate employees and decrease the level of trust in the work environment. It is therefore important for the company to run the investigation procedure as transparent as possible. In order to achieve this, the employees should be informed about various stages of the investigation and the personnel who are in charge of the investigation should also be introduced to the employees by a graph clearly showing how the process works. Informing the employees in this manner provides clarity for the investigation procedure and helps maintain trust within the work environment.

The different stages of the investigation should include the following:

- ▶ Initiating internal investigation process
- ▶ Preliminary investigation
- ▶ Planning the investigation process
- ▶ Conducting and reporting on investigation
- ▶ Legal assessment of investigation

It is important the investigation process is conducted according to legal requirements. Some of these requirements are the presumption of innocence, the right to be heard, the right to information and the right to objection. The confidentiality of information relating to the whistleblower and reported violation also ensure data privacy, which is a legal requirement in most jurisdictions.

INCIDENTS AND INVESTIGATIONS

How should companies manage the post-violation reporting process? The main objective of this stage of the reporting process should be to communicate the company's policy of "zero tolerance to corruption" to all of its stakeholders. This ensures that all employees and stakeholders will be assured of the programme's effectiveness. It should also be noted that the reporting process is an opportunity for the company to learn from this experience improve on its programme where required.

Sanctions imposed in the aftermath of investigations should be based on clear and transparent policies laid out prior to such violations taking place. Policies outlining disciplinary measures should be implemented without exception, including all employees and stakeholders, and should include the following:

- ▶ Sanctions and penalties catalogue
- ▶ Guide outlining responsibilities and procedures
- ▶ Right to objection

A list of the penalties and sanctions to be imposed in the case of a violation should be included within the sanctions and penalties catalogue. The penalties and sanctions within this catalogue should not only address corrupt practices within the company, but also violations of company policies in general. Some examples for such penalties and sanctions may be wage deductions, being transferred to a different position, being dismissed from the company or the annulment of a contract. These penalties should serve the following purposes:

- ▶ To create a disciplined and organized workplace
- ▶ Preventing the reoccurrence of such violations
- ▶ Preventing other employees and stakeholders from committing similar violations

A number of criteria should be considered when determining which penalties and sanctions to impose. First and foremost, these measures should be in line with existing legal requirements and best practice standards. The penalties should also be proportional and relevant to the violation which has taken place. If these penalties are too lax, they may not have the intended effect of discouraging others from committing similar violations. Penalties that are too harsh, on the other hand, may discourage employees or stakeholders from reporting violations. It is therefore important to have penalties and sanctions within the catalogue that cover a range of violations and are proportionate to the violation that has taken place. Requesting feedback from employees and stakeholders may be useful in this respect.

One criteria which is especially important when considering which penalties to impose is their practicality. Penalties and sanctions which remain only on paper will sooner or later be less deterring and will consequently weaken the effect of the anti-corruption programme. All penalties and sanctions should be imposed fairly and without exception, applying equally to senior management and employees.

The credibility of the programme depends on the company making sure that all employees and stakeholders know that violations won't go undetected. In this context, it is important that internal controls are implemented effectively. A successful anti-corruption programme requires that penalties and sanctions and internal controls are implemented in a complementary manner.

The guide outlining procedures and responsibilities should be prepared so that it enables an impartial, fair and transparent approach to violations. This guide should be openly available and communicated with all employees and stakeholders. The following areas should be covered by this guide:

- ▶ Criteria for determining the scale of the violation (e.g. magnitude, scope, whether the violation actually took place or was intended to be carried out)
- ▶ The relation between the scale of the violation and disciplinary measures (the violators track record, whether similar violations have been repeated)
- ▶ Measure to be taken if the violator confesses (mitigation or remission of penalty)
- ▶ Channels for appeal
- ▶ Determining who is responsible for the investigation procedures
- ▶ Legal requirements to be considered during the investigation (e.g. data privacy, labour law)
- ▶ Internal communications procedures in the case of violations (e.g. through the human resources department, or other relevant department)
- ▶ Working with the authorities
- ▶ Monitoring and documenting the investigation procedure

If the person who has committed the violation decides to cooperate with company management or decides to confess, mitigating or remitting the penalty should be considered. Penalties may be mitigated if, for instance, the perpetrator provides information which is important for the investigation that the company would not have access to otherwise. Policies and practices such as these may instil trust in the company and may discourage the perpetrator from committing violations in the future.

COOPERATING WITH THE AUTHORITIES

Cooperating with the relevant public authorities during the investigation of a corruption case may be beneficial for the company, as doing so may mitigate the reputational and commercial losses the company may suffer as a result of the corrupt act taking place. In addition, when bribery occurs or is suspected self reporting to authorities is another option.

In Turkey, even though the discretionary mitigating circumstances have not explicitly been regulated in Turkish legislation, self reporting, in practice is deemed one.

In some cases, if the company is able to prove that the corrupt act did not take place due to a deficiency within the anti-corruption programme, then legal penalties may be mitigated or even sometimes avoided completely. Article 7 of the UK Bribery Act is regulated in order for such cases;



Failure of commercial organisations to prevent bribery

(1) A relevant commercial organisation (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending—

- (a) to obtain or retain business for C, or
- (b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A—

- (a) is, or would be, guilty of an offence under section 1 or 6 (whether or not A has been prosecuted for such an offence), or
- (b) would be guilty of such an offence if section 12(2)(c) and (4) were omitted.

(4) See section 8 for the meaning of a person associated with C and see section 9 for a duty on the Secretary of State to publish guidance.

(5) In this section—

· “partnership” means—

- (a) a partnership within the Partnership Act 1890, or
- (b) a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

“relevant commercial organisation” means—

- (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
- (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,
- (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or
- (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom and, for the purposes of this section, a trade or profession is a business.”

Companies may work together with public authorities even well before the act of corruption has taken place. The company may even report itself to the authorities, and provide them with the relevant information and documentation proving any violations which have taken place. The company may then address any claims of corruption before it has happened, providing solid grounds for the possibility of mitigating any legal penalties. The company may not only provide information relating to itself, but also to its stakeholders. If a company encounters any irregularities or evidence of fraud during due diligence procedures or in any phase of its cooperation with a third party, they may relay this information to the relevant public authorities. Voluntary reporting of such violations could help companies mitigate the imposition of legal penalties.



The Case that Shook the Pharmaceutical Industry: Industry Leader in Handcuffs

In some places, corruption becomes a secret that everyone is aware of. When everyone believes corruption is inevitable, industries and even countries as a whole consider it a way of conducting business and thus a way of life. There is no doubt that this was the case in 2004, until one mid-level manager working in a pharmaceutical company decided to confess all he knew about a corruption case within his own company to a public prosecutor, a prime ministry inspector and the Turkish Competition Commission, either because he was disillusioned with the way his company conducted business or because he found it deeply against his own beliefs and principles.

The manager explained to authorities that his company had sold a pharmaceutical drug to a public hospital through a bidding process for three times the price they were provided to pharmacy warehouses. The company claimed he wanted higher wages and a better position within the company; he claimed that he could no longer ignore corrupt practices on such a grand scale. The Istanbul Chief Public Prosecutor's Office opened a legal investigation based on the evidence it had at hand. The Istanbul Organized Crime Control Unit raided the warehouse of the company and seized a substantial amount of documents providing evidence for illegal conduct. The CEO of the company appeared in public with handcuffs and other managers within the company, together with the pharmaceutical warehouse which did the bidding on behalf of the company and the public hospital which purchased the drugs, were put on trial. The company (which is based abroad) immediately expelled the CEO and initiated an internal investigation.

The public prosecutor decided to push for the court to come to a decision of price manipulation and public liability through organized crime. Similarly, the Competition Commission wanted the court to try those guilty with establishing a cartel with competitors and manipulating prices in bids. At the end of their investigation, the Commission ruled that the client, the competitor and the pharmaceutical company had used the same pharmaceutical warehouse during the bidding process. Both companies were faced with a fine which amounted to 3 per cent of their net sales.

The trials endured for years, and all claims dropped as the trial became time-barred. However, in March 2015, the Supreme Court of Appeals annulled this decision and reopened the case, ordering the defendants to stand trial in the High Criminal Court. Eventually in March 2016, 10 of the defendants were sentenced to a prison term of up to 4 years and 2 months.

It is also possible to work with the authorities after a violation has taken place. Companies may provide additional information or provide support to official investigations. The company's internal auditing team may be of particular help in this respect.

Companies considering working with the authorities should always discuss this with their legal consultants. Companies operating in a number of different countries and thus in various different jurisdictions may have to assess the outcome of such cooperation in each respective country.

IMPOSING PENALTIES ON VIOLATIONS

All violations, independent of their scale and scope, and regardless of the damage they have incurred on the company, should face penalties and sanctions. Even violations which appear to be on a small scale or which seem insignificant should be penalized so as to communicate the company's commitment to the principle of "zero tolerance to corruption". Imposing penalties only on large scale violations may give employees and stakeholders the impression that small scale violations are tolerated.

TYPES OF PENALTIES

The following penalties may be imposed on employees who violate the anti-corruption programme policies:

- ▶ Fines
- ▶ Wage deductions
- ▶ Excluding employees from promotion opportunities
- ▶ Transferring employee to lower-level position
- ▶ Termination of employment

The company should not hesitate to terminate the employment of an employee with high performance or even a member of senior management, if they have committed a violation. Requesting the resignation of the perpetrator instead of terminating their employment is also a practice that should be avoided. Practices such as these undermine the credibility and deterring nature of the disciplinary measures in place.

Penalties which may be imposed on suppliers, intermediaries and sub-contractors may include the following:

- ▶ Terminating all business relations
- ▶ Excluding these stakeholders from future business opportunities
- ▶ Imposing stricter conditions for partnership (e.g. higher due diligence standards)

MAKING IMPROVEMENTS BASED ON INCIDENTS

Incidents should be seen as opportunities to improve the company's anti-corruption programme.

Violations need to be analysed in order for the company to make improvements to its anti-corruption policies and practices. Based on this analysis, the company may need to redevelop internal control mechanisms, implement further training depending on the results of the analysis and review disciplinary policies.

In the event that a violation is detected by a source external to the internal control mechanism, the mechanism should be reviewed. Based on this review, the current internal controls may need to be carried out more frequently, in a more detailed manner or based on a different method.

Violations that occur too frequently may indicate a lack of commitment to the anti-corruption programme by senior management, or that communication of anti-corruption measures are not as effective as initially intended. In such cases the company may want to review the communication strategy of their anti-corruption programme, or improve internal communications procedures. If violations are committed more frequently by external stakeholders, the external communication mechanisms may need to be improved.

Keeping records of all violations committed enables the company to monitor, evaluate and improve its anti-corruption programme. The information gathered through these procedures makes it possible to make comparisons between departments, stakeholders and regions the company operates within, on the basis of violations. These records should also contain information on who the violation was reported to, and what kind of measures were taken to address the violation.



SMEs and Violation Reporting Mechanisms

SMEs may not have a communication channel dedicated to providing consultation and reporting, or an independent internal audit department. In order to overcome cost related issues, SMEs may choose to work with external service providers when establishing reporting mechanisms. As SMEs have less staff, it is easier for them to detect violations and maintain social control over employees.

AUDITING

Independent auditing is a part of the monitoring process and is primarily aimed at assessing high-risk areas. It provides independent verification that the anti-bribery programme is working, detects where policies and procedures are not being applied satisfactorily. Subject to the party undertaking the assessment, independent auditing can be classified as either internal or external. Internal audits, which are undertaken by a department dedicated solely to this task, are independent of the events and persons that are under assessment, and not the company itself. Internal audit is an essential part of the monitoring and

improvement process as an effective internal audit system can act as a significant deterrent to those contemplating bribery. External audits are undertaken by experts operating outside of the company. Although auditing is associated mainly with finances and finance departments within companies, they are valuable tools which are helpful in determining weaknesses and strengths in many different areas, including anti-corruption.

Senior management should be responsible for deciding whether the company undergoes auditing on anti-corruption related issues.

CHANGING CIRCUMSTANCES

Aside routine monitoring procedures aimed at increasing the effectiveness of the anti-corruption programme, changing circumstances within the industry or region the company operates in, or the changing nature of internal operations may require revisions to the programme. These revisions may include the following:

- ▶ Entering new markets, industries or operational areas
- ▶ Working with new suppliers, sub-contractors or intermediaries/agents
- ▶ Changing the organizational structure of the company based on new partnerships or newly established subsidiaries
- ▶ Changing operational procedures (e.g. receiving external support for purchases)
- ▶ Identifying new performance goals
- ▶ Keeping up on changes in the relevant legal framework or industrial standards
- ▶ Following any changes in the expectations and needs of stakeholders and the relevant social environment (e.g. changes in consumer preferences)
- ▶ Monitoring of corruption cases that occur within the industry the company is operating in, or within companies that have a similar organizational structure

2.5.6

Corporate Reporting

Corporate governance is founded on principles of equality, transparency, accountability and responsibility. Transparency makes it possible for companies and other organizations to communicate their values, policies and the implementation of these policies with their stakeholders including the public. Transparency provides evidence for how open, accessible and accountable a company is and its commitment to countering corruption. Through public reporting, companies provide information in a structured format on matters of material interest stakeholders.

Making the anti-corruption programme publicly available is a statement on behalf of the company that they are committed to fighting corruption and uphold the principle of “zero tolerance” to corruption in their relationships with all stakeholders.

Reporting is not to be confused with the existence of a verbal commitment to anti-corruption efforts or an anti-corruption programme, or the disclosure of company code of ethics or values. Reporting encompasses providing information on the implementation of the anti-corruption programme, the issues faced during this implementation process, the measures taken against such issues and assessments of performance.

Reporting also acts as a trust building mechanism between the company and the public, as the public is able to follow up on the company's commitment to anti-corruption and assess the measures they have taken to fulfil this commitment.

Reporting drives change as it encourages companies to act in accordance with their anti-corruption programmes.

ORGANIZATIONAL TRANSPARENCY AND COUNTRY-BY-COUNTRY REPORTING

All societies across the globe have the right to be informed of companies which operate, enter bids, purchasing agreements and other transactions, the taxes and other economic impacts and take advantage of tax exemptions within their country. As such, it is important for a company's entire commercial network to be transparent, in order to determine which companies hold ethical responsibility and to strengthen accountability mechanisms within that country.

To this end, companies should make public all partnerships and subsidiaries, explicate any shares they hold and provide information on the country of operation of all its subsidiaries or partners. Establishing organizational transparency is key to enabling national and international monitoring of financial flows and transfer in groups among parent companies and subsidiaries.

Another important reason why there is demand for companies to provide information on countries which they operate in is to monitor the financial transactions of companies operating abroad in order to benefit from tax exemptions, tax deductions or special financial support. Companies should not forget that they are responsible to the public in both the country they are based and those abroad in which they operate, and as such the public has a right to know which companies are operating in their country, and what kind of tax scheme these companies are benefitting from.

Country-by-country reporting is an effective tool which prevents companies (especially multinational corporations) from abusing legal loopholes in order to avoid tax obligations and capital from fleeing poorer countries. Using country-by-country reporting mechanisms, investors are able to assess the different risks associated with operating in different countries, such as politically unstable and conflict prone countries or tax havens. These mechanisms also enable the public and NGOs in developing countries to see which companies and multinational corporations are operating within their country and whether these companies are fulfilling their tax obligations, have any special exemptions or are any receiving incentives; it also enables them to hold authorities accountable if these companies are suspected of corruption.

Aside from assessing whether companies are in line with the relevant legislative framework, country-by-country reporting mechanisms also ensure the sustainability of a company's operations within a country and helps manage reputational risks associated with operating abroad. Making sure the company does not exploit the loopholes of a country's tax scheme bolsters that company's reputation before the authorities of that country, and also strengthens the company's reputation at a global level.

Although most companies are of the impression that they have to disclose financial information which they consider to be commercially sensitive and, as a result, face the risk of losing their competitive advantage, companies should also consider that their performance is not solely based on their financial standing, but on the strength of their brand, image and reputation. A company which would (supposedly) forego its competitive advantage by disclosing financial details may have the potential of gaining more of an advantage by displaying a corporate image based on valuing transparency and fighting corruption.

BENEFICIAL OWNERSHIP

Identifying the real shareholders behind a company is a major step in eradicating corruption throughout the globe. The disclosure of the beneficial owners of a company prevents the use of safe havens where illicit funds are retained and reveals how these funds are laundered.

Recent years have seen developments aimed at preventing companies or other entities from being used to evade legal or tax related obligations. Until recently, the OECD and the EU covered beneficial ownership as part of tax law; this has now changed and both cover beneficial ownership in the context of commercial law. In the 2014 G20 Brisbane Summit, leading politicians and representatives adopted the 'High Level Principles on Beneficial Ownership Transparency' and made a commitment to establishing a beneficial owners register in their respective countries. This important step to achieving transparency has also been addressed by other international organizations and institutions. In light of these developments, a legal obligation for companies to provide beneficial owners through their corporate reporting mechanisms does not seem too distant.

ANNEX-1

Control List

Where does your company stand on countering corruption?

		Yes	No	Partly	Planned
COMMITMENT					
1	Does your company have a published policy of prohibition of anti corruption in any form whether direct or indirect?				
2	Has your company committed to implementing a Programme to counter corruption?				
3	Is your programme consistent with all laws relevant to countering bribery in each of the jurisdictions in which you operate?				
IMPLEMENTATION					
4	Is your Programme designed and improved on the basis of continuing risk assessment?				
5	Does your Programme provide detailed policies and procedures to address the following:	Conflicts of interest			
		Corruption in any form?			
		Political contributions?			
		Charitable donations and sponsorships?			
		Prohibition of facilitation payments?			
	Gifts, hospitality and travel expenses?				
6	Does your Board of Directors demonstrate visible and active commitment to the implementation of the anti-corruption Programme?				
7	Is your CEO responsible for ensuring that the Programme is implemented consistently with clear lines of authority?				
8	Does your Programme cover business relationships as follows:	The Programme is implemented in all business entities over which your company has effective control?			
		An equivalent Programme is encouraged in business entities in which your company has a significant investment or with which it has significant business relationships including joint ventures or consortia?			
		The Programme requires agents, lobbyists and other intermediaries to agree contractually to comply with your company's anti bribery policies and procedures and provides them with appropriate advice and documentation?			
		The Programme is communicated to contractors and suppliers and your company works in partnership with major contractors and suppliers to help them develop their anti-corruption practices?			
9	Does your company undertake properly documented, reasonable and proportionate anti-corruption due diligence on business entities when entering into a relationship?				

10	Do your human resource practices reflect your company's commitment to the Programme (including recruitment, training, performance assessment, charging, rewarding and promotion)?					
11	Is the Programme committed to:	All directors, managers and employees?				
		Business associates?				
		Other stakeholders?				
12	Does your company provide secure and accessible channels through which employees and others can obtain advice or raise concerns ("whistleblowing") without risk or reprisal?					
13	Is tailored training provided to:	All directors, managers and employees?				
		Where appropriate, contractors and suppliers?				
14	Are there internal controls to counter corruption comprising financial and organizational checks over accounting and record keeping practices and other business processes related to the Programme?					
MONITORING AND REVIEW						
15	Are there internal control systems, in particular the accounting and record keeping practices, subjected to regular review and audit?					
16	Does your company perform reasonable and proportionate monitoring of its significant business relationships?					
17	Does your company have feedback mechanisms and other internal processes supporting the continuous improvement of the Programme?					
18	Is there regular assessment of the Programme by the leadership including:	Monitoring and periodic review by senior management of the Programme's suitability, adequacy and effectiveness?				
		Periodic reporting by management of the results of reviews to the Audit Committee or the Board with implementation of improvements as appropriate?				
		An independent assessment by the Board of the adequacy of the Programme?				
19	Where appropriate, does your company undergo voluntary independent assurance of the Programme?					
PUBLIC REPORTING						
20	Does your company publicly disclose information about:	The Programme including the management systems employed to ensure its implementation?				
		Material holdings of subsidiaries, affiliates joint ventures and other related entities?				
		Payment to governments on a country-by-country basis?				

