IACA
INTERNATIONAL ANTI-CORRUPTION ACADEMY

PRACTICAL TOOL

OVERVIEW OF ANTI-CORRUPTION COMPLIANCE STANDARDS AND GUIDELINES

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Overview of Anti-Corruption Compliance Standards and Guidelines

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Introduction

Designing and implementing an anti-corruption compliance programme is challenging, especially for SMEs. In many countries domestic laws and regulations define in very general terms, or do not define at all, formal requirements to anti-corruption compliance. International standards and guidelines developed by various stakeholders are called upon to compensate the lack of legal regulations and to support the implementation of anti-corruption compliance.

There are a significant number of standards and guidelines on anti-corruption compliance developed by intergovernmental organizations, non-governmental organizations, chambers of commerce, and business associations. Some of the existing guidelines provide organizations with general descriptions of an anti-corruption compliance programme and/or an anti-corruption compliance management system. Other guidelines cover one or several elements of compliance programmes. There are specific detailed guidelines on particular elements of an anti-corruption compliance programme, e.g. third party due diligence. Some elements of an anti-corruption compliance programme are not very well developed or just mentioned in compliance standards and guidelines. It is very challenging for organizations to navigate through numerous standards and guidelines developed in various periods of time by various stakeholders.

The proposed 'Overview' is a practical tool that should simplify the use of existing standards and guidelines for designing, implementing and evaluating anti-corruption compliance programmes. The Overview considers the principles, standards and recommendations from major international organizations and bodies, including the UNODC, the World Bank, the OECD, the ICC, and the ISO.

Besides standards and guidelines on anti-corruption compliance, relevant provisions from the FATF's anti-money laundering/countering financing of terrorism standards and guidelines on identification of third parties, beneficial owners, politically exposed persons (PEPs), risk assessment, and suspicious transactions were taken into account.

The Overview sometimes refers to guidelines and benchmarking reports published by internationally recognized private consultants. It is important to consider that these documents are not of the same importance as documents of international organizations. At the same time, recommendations of private consultants can fill in particular gaps or provide readers with additional clarifications.

The Overview also refers to domestic laws, standards and guidelines of several jurisdictions whose anti-corruption legislation has extra-territorial reach.

The Overview provides readers with the following types of data contained in colored boxes:

International standards and guidelines published by intergovernmental organizations, public-private initiatives, non-governmental organizations, chambers of commerce, and international business associations (Internet links or excerpts from the texts) – in blue boxes.

Guidelines and benchmarking reports published by internationally recognized law firms and consultants (Internet links or excerpts from the texts) – in grey boxes.

Domestic guidelines from selected jurisdictions (Internet links or excerpts from the texts) – in green boxes.

Useful Internet links in light red boxes

Each paragraph provides readers with a list of standards and guidelines with hyperlinks relevant for a corresponding part of an anti-corruption compliance programme. All paragraphs contain descriptions of and quotations from standards and guidelines, and in some places brief comments from the author.

The Overview can be helpful first of all for SMEs, as many of them have limited human and financial resources necessary to analyze and implement numerous legal sources. However, it can be used by all types of organizations, and by Collective Action initiatives to support designing, implementing, evaluating, and benchmarking anti-corruption compliance programmes.

The Overview does not establish any legal obligation for organizations, nor does it intend to set new standards or replace standards or guidelines developed by international organizations or other stakeholders.

Part I. General Overview

In the last decades, anti-corruption compliance emerged as a growing field in the general framework of compliance. Organizations have been implementing anti-corruption compliance management systems to do business in accordance with high ethical standards, and prevent involvement into corruption offences. In some jurisdictions an effective anti-corruption compliance programme benefits to avoid corporate liability or reduce fines.

To design and implement an effective anti-corruption compliance programme, organizations consider ethical principles and values, applicable laws and regulations, existing risks, and available resources.

International standards and guidelines published by various stakeholders summarize best practices in anti-corruption compliance. These standards and guidelines describe the general framework of an anti-corruption compliance programme, contain a lot of useful practical information, and should be taken into consideration.

Domestic standards and guidelines adopted in the countries whose anti-corruption legislations have extra-territorial reach, are also important sources, even for organizations that are not subjects to these legislations.

There are several possible classifications of anti-corruption compliance standards and guidelines based on different criteria.

International and domestic standards and guidelines differ in geographical application**.** Comprehensive international standards and guidelines are addressed to organizations in any country. There are a few regional standards. Domestic standards and guidelines are addressed to organizations which are subjects to particular domestic legislation. As a rule, governmental agencies and/or business associations adopt standards and guidelines to support the implementation of domestic anti-corruption laws in the business sector.

Standards and guidelines adopted by various stakeholders. We can identify standards and guidelines adopted by intergovernmental organizations, international bodies and public-private initiatives, non-governmental organizations, chambers of commerce, business associations, and private companies, e.g. law firms and consultants. In the Overview we analyze 17 standards and guidelines adopted by intergovernmental organizations and bodies, four guidelines published by NGOs, eight guidelines developed by international business associations, and four guidelines published by a private company.

General and topic-specific standards and guidelines differ in reference to the scope of regulation. General standards and guidelines contain provisions on the anti-corruption compliance programme as a whole. Specific standards and guidelines refer to one or several

elements of anti-corruption compliance programmes. In the Overview we analyze 12 general and 21 specific international standards and guidelines.

General and sector-specific standards and guidelines. As a rule, international and domestic standards and guidelines are addressed to all types of organizations. The exception is the Wolfsberg Group's Guidance for financial institutions.

Specific standards and guidelines for SMEs. There are only three guidelines that take into account the specificities of SMEs. The UNODC's Guide analyzes challenges and opportunities for SMEs at the end of each chapter (UNODC, 2013). The OECD Guidance for African companies identified the specific challenges confronted by SMEs in implementing an anti-bribery policy, and related compliance measures and insights on ways to overcome some of those obstacles (OECD, 2016). The ICC published a special Guide for SMEs on anti-corruption third party due diligence (ICC, 2015).

Template 1 includes international standards and guidelines analyzed in this Overview.

Standards and guidelines developed by intergovernmental organizations, bodies and public-private initiatives		
Organization	Standard/guideline	General/ Special
UNODC	An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide	General
UN Global Compact	Reporting Guidance on the 10th Principle Against Corruption	Special
	Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training	Special
	A Guide for Anti-Corruption Risk Assessment	Special
OECD	Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions	Special
	Principles for Integrity in Public Procurement	Special
	Good Practice Guidance on Internal Controls, Ethics and Compliance	General
	Anti-Corruption Ethics and Compliance Handbook for Business (joint Guidance with UNODC and World Bank)	General
	Anti-Bribery Policy and Compliance Guidance for	General,

	African Companies	regional
OSCE	Handbook on Combating Corruption	General
World Bank Group	Integrity Compliance Guidelines	General
FATF	International Standards on Combating Money Laundering, the Financing of Terrorism and Proliferation (the FATF Recommendations)	General
	A Reference Guide and Information Note on the Use of the FATF Recommendations to support the fight against Corruption	Special
	Guidance: Politically Exposed Persons	Special
	Guidance on Transparency and Beneficial Ownership	Special
G20	High-Level Principles on Beneficial Ownership Transparency	Special
APEC	APEC Anti-Corruption Code of Conduct for Business	Special
Standards and guidelines developed by international non-governmental organizations		
Organization	Standard/guideline	General/ Special
ISO	Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use General	General
Transparency International	Business Principles for Countering Bribery	General
World Economic Forum	Global Principles for Countering Corruption	General
	Good Practice Guidelines on Conducting Third Party Due Diligence	Special
Standards and guidelines developed by international business associations		
Organization	Standard/guideline	General/ Special
ICC	Guidelines on Whistleblowing	Special
	Guidelines on Agents, Intermediaries and Other Third Parties	Special

	Rules on Combating Corruption	General
	Anti-Corruption Clause	Special
	Guidelines on Gifts and Hospitality	Special
	Anti-Corruption Third Party Due Diligence: a Guide for Small and Medium Size Entities	Special
	Guidelines on Conflicts of Interest in Enterprises	Special
Wolfsberg Group	Anti-Bribery and Corruption (ABC) Compliance Programme Guidance	General

Template 2 presents guidelines published by international consultants.

Guidelines developed by international consultants		
Organization	Guideline	General/ Special
NAVEX Global	Definitive Guide to Policy and Procedure Management	Special
	Definitive Guide to Third Party Risk Management	Special
	Definitive Guide to Ethics and Compliance Training	Special
	Definitive Guide to Compliance Programme Assessment	Special

Template 3 includes European Union guidelines and selected domestic guidelines.

European Union guidelines and domestic guidelines from selected jurisdictions	
European Union	Guidelines on Non-Financial Reporting (methodology for reporting non-financial information)
Country	Guideline
France	Guidelines to Help Private and Public Sector Entities Prevent and Detect Corruption, Influence Peddling, Extortion by Public Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism
United Kingdom	Guidance about Procedures which Relevant Commercial Organisations Can Put into Place to

	Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010)
United States	A Resource Guide to the U.S. Foreign Corrupt Practices Act
	Evaluation of Corporate Compliance Programs

According to our study, the following components of anti-corruption compliance are most developed in international and domestic standards and guidelines: risk assessment, third party due diligence and risk management, gifts and hospitality, charitable donations and sponsorship, political contributions, and reporting misconduct.

The Code of Conduct is a cornerstone for an effective anti-corruption compliance programme. The Code defines main ethical principles and corporate values, and positions of shareholders and senior managers regarding anti-corruption to be implemented in corporate policies. Surprisingly, international standards and guidelines do not pay attention to the Code of Conduct. At the domestic level, the most meaningful recommendations can be found in the recently published French Guidelines (Agence Française anticorruption, 2017, p.p. 8-9).

Many standards and guidelines just mention the importance of conflict of interest disclosure but do not provide recommendations on the prevention and management of conflicts of interest. For a long time, the UNODC Guide was a rare exception (UNODC, 2013, p.p. 49-53). The ICC Guidelines on Conflicts of Interest in Enterprises were published in 2018 and filled this gap.

The anti-corruption compliance requirements for mergers and acquisitions are presented only in the Wolfsberg Group's Guidance for financial institutions (Wolfsberg Group, 2017, p.p. 9-10) and in A Resource Guide to the U.S. Foreign Corrupt Practices Act (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 62). However, general recommendations regarding due diligence and risk management are also applicable to mergers and acquisitions.

International standards and guidelines demonstrate a different understanding of the correlation between third party due diligence and risk management. According to the ISO Standard 37001, where the organization's bribery risk assessment has assessed a more than low bribery risk in relation to: b) planned or on-going relationships with specific categories of business associates, the organization shall assess the nature and extent of the bribery risk in relation to specific transactions, projects, activities, business associates and personnel falling within those categories. This assessment shall include any due diligence necessary to obtain sufficient information to assess the bribery risk (ISO Standard 37001, p. 15). According to the WEF Guidelines, third party risk assessment and risk mitigation are parts of the due diligence process (WEF, 2013, p. 7). The OECD Guidance uses the term "risk-based due diligence" (OECD, 2010, p. 3).

In the author's opinion, the definitions proposed by NAVEX Global may be considered to identify the scope of due diligence and risk management. According to NAVEX Global, 'third-party risk management is the process of assessing and controlling reputational, financial and

legal risks to an organization posed by parties outside the organization. Third-party due diligence is the investigative process by which a third party is reviewed to determine any potential concerns involving legal, financial or reputational risks. Due diligence is disciplined activity that includes reviewing, monitoring and managing communication over the entire vendor engagement life cycle' (NAVEX Global, 2017b, p. 2).

In any way, there is no doubt that due diligence and risk management are closely connected as due diligence creates an informative base for risk assessment and mitigation.

Benchmarking reports are useful instruments for designing, implementing and evaluating anti-corruption compliance programmes. They summarize best practices.

The idea of benchmarking was developed and pioneered by Xerox Corporation in the late 1970s (Elmuti and Kathawala, 1997, p. 229).

There are two most comprehensive definitions of the benchmarking. According to Kelessidis, 'Benchmarking is as the process of improving performance by continuously identifying, understanding, and adapting outstanding practices and processes found inside and outside an organization' (Kelessidis, 2000, p.2). According to Stapenhurst, benchmarking is 'a method of measuring and improving our organizational performance by comparing ourselves with the best' (Stapenhurst, 2009, p. 6).

There are a number of studies on compliance benchmarks in general or anti-corruption compliance benchmarks mostly conducted by international consultants and law firms providing professional services in compliance. Kroll and NAVEX Global have been conducting benchmarking studies and publishing reports on a regular basis.

There are two interesting general studies:

- Anti-Bribery & Corruption Benchmarking Report – 2017 (Kroll and Ethisphere Institute)
- Compliance Essentials (The multi-stakeholder study conducted by the Konstanz Institute on Corporate Governance in 2017)

Many other studies are focused on several components of anti-corruption compliance. The key topics of the benchmarking studies are:

- Place of compliance in the corporate structure (EY, 2014)
- Leadership, tone at the top (Kroll and Ethisphere Institute, 2016; PwC, 2016)
- Third parties due diligence (Kroll and Ethisphere Institute, 2016)
- Risk management (PwC, 2017)
- Oversight and responsibility (PwC, 2016)
- Training and communication (NAVEX Global, 2017c)
- Hotlines & Whistleblowing (NAVEX Global, 2015, 2017a)
- Monitoring and evaluation (KPMG, 2015)

Part II. Standards, Guidelines and Benchmarking Reports on Main Components of an Anti-Corruption Compliance Programme

1. Developing an Anti-Corruption Compliance Programme

1.1. Standards and guidelines on developing an anti-corruption compliance programme

An anti-corruption compliance programme consists of policies and procedures that address the risk of corruption (UNODC, 2013, p. 25).

There are several general international standards and guidelines containing recommendations on developing an anti-corruption or anti-bribery compliance programme, and describing key steps and processes. The UNODC Guide pays special attention to challenges and opportunities for small and medium-sized enterprises (SMEs).

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2010. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>
- OECD/UNODC/World Bank, 2013. Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ISO, 2016. Standard 37001 Anti-bribery management systems – Requirements with guidance for use
- World Bank Group, 2010. Integrity Compliance Guidelines Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>

- TI, 2013. Business Principles for Countering Bribery. Available at: <https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery>
- WEF, 2016. The World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at: <http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf>

According to general international standards and guidelines, an organization should conduct assessment of corruption risks (UNODC, 2013, p. 8; OECD, 2010, p.2; WEF, 2016, p. 8), define applicable laws (UNODC, 2013, p. 25; APEC, 2007, p. 4), and principles and values of an organization (UNODC, 2013, p. 20; APEC, 2007, p. 4) for developing an anti-corruption compliance programme. As mentioned in several guidance, to be effective, such a programme should be interconnected with the organization's overall ethics and compliance framework (UNODC, 2013, p. 18; OECD, 2010, p. 2).

The detailed recommendations on risk assessment can be found in the special UN Global Compact Guide.

- UN Global Compact, 2013. A Guide for Anti-Corruption Risk Assessment Available at: <https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf>

An organization can also find useful information on policy and procedure management in the Guide published by NAVEX Global.

- NAVEX Global, 2017a. Definitive Guide to Policy and Procedure Management. Available at: <https://www.navexglobal.com/en-gb/node/1841/thank-you?RCAssetNumber=152&token=ouCYsUs93skM6JOmCD5mjVqoYUh_R2kCG0q8t3EGxXQ>

An organization should consider applicable domestic standards and guidelines. Several examples are in the box below.

- Agence Française anticorruption, 2017. Guidelines to Help Private and Public Sector Entities Prevent and Detect Corruption, Influence Peddling, Extortion by Public Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism. Available at: <https://www.economie.gouv.fr/files/files/directions_services/afa/French_Anticorruption_Agency_Guidelines.pdf>
- UK Ministry of Justice, 2011. Guidance about Procedures which Relevant Commercial Organisations Can Put into Place to Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010). Available at: <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>
- Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012. A Resource Guide to the U.S. Foreign Corrupt Practices Act. Available at: <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>

- Criminal Division of the U.S. Department of Justice, 2019. Evaluation of Corporate Compliance Programs. Available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>

1.2. Risk assessment

The assessment of corruption risks (risk assessment) is the foundation for designing and implementing an anti-corruption compliance programme. Some guidance, e.g. the French Anti-Corruption Agency's Guidelines, use the similar term 'risk mapping' instead of the 'risk assessment'.

According to the U.S. Department of Justice and the U.S. Securities and Exchange Commission, one-size-fits-all compliance programmes are generally ill-conceived and ineffective (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 58).

The aims of the risk assessment are to identify and assess the risks of corruption, to identify persons and/or structural subdivisions facing these risks, and to define and implement in an anti-corruption compliance programme appropriate mitigation measures.

The risk assessment can be conducted by an organization's personnel or external consultants (UNODC, 2013, p. 11). For larger enterprises, a good strategy is also to have operating unit/regional location ownership of the anti-corruption risk assessment (OECD/UNODC/World Bank, 2013, p.14).

Risk assessment process

The risk assessment process is described in details in:

OECD/UNODC/World Bank, 2013, p.p. 10-15

UN Global Compact, 2013

The French Anti-Corruption Agency's Guidelines provides organizations with a six-step method of risk mapping (Agence Française anticorruption, 2017, p.p. 15-18)

According to general international standards and guidelines, the following key groups of risks should be considered in the process of risk assessment:

Geographical risks (UNODC, 2013, p. 10). An organization can consider the higher risks of corruption existing in countries and territories with significant deficiencies in national anti-corruption and AML/CFT systems. An organization can face the higher corruption risks by doing business or having business associates in such countries. The reports and indexes published by intergovernmental and non-governmental organizations can be helpful for an assessment of geographical risks.

- Transparency International's Corruption Perceptions Index <https://www.transparency.org/cpi2018>
- FATF lists of high-risk and other monitored jurisdictions <http://www.fatf-gafi.org/countries/#high-risk>
- Basel AML Index <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf>

Industry specific risks (UNODC, 2013, p. 10). An organization can consider the higher risks of corruption existing in particular industries. The industry specific risks can vary depending on the country. National risk assessment reports and criminal statistics can be used for an assessment of industry specific risks.

Industries which may be considered as high risk industries can be found in:

Transparency International Bribes Payers Index Report 2011 <https://www.transparency.org/research/bpi/overview>

Risks in specific processes. There are specific processes that are vulnerable to corruption, such as procurement, sales, import and export of goods, government interaction, political support, security protocols, social programmes, charitable contributions and sponsorship (UN Global Compact, 2013, p.p. 24-26).

Risks related to the business model of an organization. The use of intermediaries and subcontractors, and participation in big business projects as one of the subcontractor can increase corruption risks (UNODC, 2013, p. 10).

Risks related to organizational structure. Organizations with a decentralized structure may have lower control over the operations of their branches and subsidiaries (UNODC, 2013, p.10).

Risks related to the personnel of an organization. Staff members which fall within the definition of family members or close associates of PEPs may be considered for the purposes of risk mitigation.

Risks related to the organizational culture and to an incentive system of an organization. The strong competitiveness between staff members, low levels of trust, low integrity, and system of bonuses for the financial achievements can create corruption risks (UNODC, 2013, p. 10).

Commonly encountered risks

Source: UK Ministry of Justice, 2011, p. 26

Organizations can consider:

Checklist 8. Getting started with bribery risk assessment

Source: OECD, 2016, p. 18

Risk scale

The risk scale may include several levels of risks. It should consider the impact of occurrence and the probability of occurrence.

The impact of occurrence means all legal (applicable criminal, administrative and civil law should be considered), financial, commercial, and reputational consequences.

The probability of occurrence means the likelihood that a corruption-related risk will actually occur in a foreseeable timeframe.

A simple qualitative scale could be used to classify each set of controls that mitigate a risk or scheme as either (i) effective/low risk, partially effective/medium risk or ineffective/high risk, or (ii) very effective/very low risk, effective/low risk, partially effective/medium risk, somewhat effective/high risk and ineffective/ very high risk, or a quantitative scale with numerical-value scores applied to each scheme could be used (OECD/UNODC/World Bank, 2013, p.11).

See samples of risks assessment matrix and other related documents:

UN Global Compact, 2013, p.p. 51-72

Documentation of results

The results of risk assessment can be documented in detailed spreadsheets, database templates or heat maps.

See samples of risk register and heat map:

OECD/UNODC/World Bank, 2013, p.p.13-14

According to the ISO standard, the organization shall retain documented information that demonstrates that the bribery risk assessment has been conducted and used to design or improve the anti-bribery management system (ISO 37001, p.7).

The French Anti-Corruption Agency's Guidelines underlines that the risk mapping should take the form of a structured written document which must be ready for immediate submission to officials from the French Anti-Corruption Agency (Agence Française anticorruption, 2017, p. 14).

According to the UNODC Guidance, organizations should publicly report on their risk assessment activities. However, this reporting does not include the actual results of the risk assessment, but rather a description of the risk assessment process (UNODC, 2013, p.p. 13-14).

Review the risk assessment

The international standards and guidelines recommend to review the risk assessment:

- on a regular basis, e.g. annually (OECD/UNODC/World Bank, 2013, p.14; WEF, 2016, p. 8)
- in the event of a significant change to the structure and activities of the organization (OECD/UNODC/World Bank, 2013, p.14; ISO 37001)

In the author's opinion, it is also important to review the risk assessment in the event of adopting new anti-corruption or other relevant laws, applicable to the organization.

1.3. Identifying applicable laws

Identifying applicable laws is an important step in designing an anti-corruption compliance programme (APEC, 2007, p. 4; TI, 2013, p. 6).

The UNODC recommended organizations to conduct comprehensive research on the different laws and regulations of the countries in which they operate (UNODC, 2013, p. 25).

The Legal Library of United Nations Convention against Corruption contains anti-corruption laws and jurisprudence from over 180 jurisdictions worldwide.

<http://www.track.unodc.org/LegalLibrary/Pages/default.aspx>

It is important to consider laws and regulations which have extraterritorial application.

The Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 2016. Text in French available at:
<https://www.cjoint.com/doc/16_12/FLknuHuFltM_loisapin2.pdf>

UK Bribery Act of 2010. Available at:
<http://www.legislation.gov.uk/ukpga/2010/23/contents>

U.S. Foreign Corrupt Practices Act of 1977, PL 95-213, Title 1; 91 Stat 1494, Dec 19, 1977. Available at: <https://www.gpo.gov/fdsys/pkg/STATUTE-91/pdf/STATUTE-91-Pg1494.pdf>

1.4. Defining principles and values

Defining the main principles and values of an organization is another prerequisite for developing the code of conduct and the anti-corruption compliance programme (TI, 2013, p. 6).

International standards and guidelines promote "zero tolerance" of all forms of corruption (UNODC, 2013, p. 20). It is important to underline that facilitation payments are prohibited under the United Nations Convention against Corruption (UNCAC) and under domestic laws in many jurisdictions, and are considered "small bribes" (UNODC, 2013, p. 39; OECD, 2016, p. 12; WEF, 2016, p. 8). According to the UN Global Compact, facilitation payments are typically small payments made to secure or expedite the performance of a routine or

necessary action to which the payer is entitled, legally or otherwise (UN Global Compact, 2013, p. 12). The UNODC Guide recommends organizations to apply the prohibition of facilitation payments even in countries where facilitation payments are not illegal (UNODC, 2013, p. 40).

However, organizations should consider pressing situations where an employee cannot avoid paying a bribe or a facilitation payment. This can include situations where an employee's health, security or freedom is put at risk. An organization may qualify payments in dangerous situations as duress payments and develop a special policy regarding such payments (UNODC, 2013, p. 40; OECD, 2016, p. 12). When developing such policies, organizations should consider applicable domestic laws as they may have stricter requirements.

Does FCPA Apply to Cases of Extortion or Duress?

Source: Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 27

According to the UNODC, the "tone from the top" should reflect irrevocable support and appraisal of the company's fundamental values, such as integrity, transparency and accountability (UNODC, 2013, p. 20).

The World Bank Group underlined the role of individual responsibility (World Bank Group, 2010, p. 2).

An organization may include other principles and values taking into consideration priorities of shareholders, historical and cultural traditions of countries where the code of conduct and an anti-corruption compliance programme should be applied.

The ICC Rules recommend including the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators, but also against the way the targets have been met and specifically against the compliance with the Enterprise's anti-corruption policy (ICC, 2011, p. 11).

The UK Ministry of Justice's Guidance recommends organizations to consider six principles by developing procedures to prevent bribery: proportionate procedure, top-level commitment, risk assessment, due diligence, communication (including training), and monitoring and review. The Guidance provides organizations with descriptions of relevant procedures, and a series of case studies (UK Ministry of Justice, 2011, p.p. 20-43).

1.5. Assessment of available resources

The organization should realistically assess the human, physical and financial resources available for the maintenance of an anti-corruption compliance programme.

In the U.S., in assessing whether a company has reasonable internal controls, the Department of Justice and the Securities and Exchange Commission typically considers whether the company devoted adequate staffing and resources to the compliance programme given the size, structure, and risk profile of the business (Criminal Division of

the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 58).

1.6. Defining the design of an anti-corruption compliance programme

Anti-corruption compliance function may be a separate function or a part of the general compliance function. Respectively, an organization can draft anti-corruption compliance documents or include anti-corruption compliance provisions in general compliance documents.

1.7. Drafting internal documents

The main anti-corruption documents in an organization are a code of conduct and an anti-corruption compliance programme.

An anti-corruption compliance programme should be adopted as an internal legal document and establish legal obligations for personnel. It is important to consider company law, labor law, and other laws defining requirements for internal legal documents and procedures in a country in which an anti-corruption compliance programme should be applied.

Anti-corruption and other provisions necessary for implementing a code of conduct and an anti-corruption compliance programme can be included in organization's internal documents.

1.8. Communicating an anti-corruption compliance programme

The proper communication of a code of conduct and an anti-corruption compliance programme to all relevant stakeholders, including personnel, business associates, governmental authorities and civil society is of significant importance for effective implementation.

A Resource Guide to the U.S. Foreign Corrupt Practices Act underlines that a compliance programme should be available in the local language so that employees in foreign subsidiaries can access and understand it (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 57).

The code of conduct and anti-corruption policies should be easily accessible on the organization's website and intranet or other means used to communicate to employees and external parties (OECD, 2016, p. 8).

1.9. Reports relevant for benchmarking an anti-corruption compliance programme

- Control Risk Report, 2017. International Business Attitudes to Compliance. Available at: <https://www.controlrisks.com/our-thinking/insights/reports/international-business-attitudes-to-compliance>
- Deloitte, 2015. Compliance in Motion. A Closer Look at the Corporate Sector. Available at: <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/risk/deloitte-nl-risk-compliance-in-motion-a-closer-look-at-the-corporate-sector.pdf>

- Konstanz Institute on Corporate Governance, 2017. Compliance Essentials (In German). Available at: <https://deutschland.taylorwessing.com/documents/get/1154/compliance-studie-von-kicg-und-taylor-wessing.pdf/show_on_screen>
- Kroll and Ethisphere Institute, 2017. Anti-Bribery & Corruption Benchmarking Report – 2017. Available at: <https://www.kroll.com/en-us/abc-report-confirmation>
- NAVEX Global, 2018. EMEA & APAC Culture and Compliance Benchmark Report. Available at: <http://trust.navexglobal.com/rs/852-MYR-807/images/NAVEX-Global-2018-Culture-Compliance-Report.pdf?_ga=2.175834022.586507620.1526565005-1856680563.1492775907>
- PwC, 2016. State of Compliance Study. Laying a strategic foundation for strong compliance risk management. Available at: <https://www.pwc.com/us/en/risk-assurance/state-of-compliance-study/assets/state-of-compliance-study-2016.pdf>

2. Code of Conduct

There are few provisions on the Code of Conduct in general international guidelines.

- OECD/UNODC/World Bank, 2013. Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>

According to the French Anti-Corruption Agency, the anti-corruption code of conduct testifies to the top management's decision at the highest level to commit the organization to prevent and detect corruption (Agence Française anticorruption, 2017, p. 6).

The French Anti-Corruption Agency's Guidelines provides organizations with detailed recommendations on the contents, scope, form, and dissemination of the Anti-Corruption Code of Conduct. The Guidelines also recommend incorporating the Code of Conduct into the employment regulations and updating it periodically.

Anti-Corruption Code of Conduct

Source: Agence Française anticorruption, 2017, p.p. 8-9

Organizations can consider recommendations, presented in A Resource Guide to the U.S. Foreign Corrupt Practices Act. According to the Guide, a company's code of conduct is often the foundation upon which an effective compliance programme is built. As DOJ has repeatedly noted in its charging documents, the most effective codes are clear, concise, and accessible to all employees and to those conducting business on the company's behalf. Indeed, it would be difficult to effectively implement a compliance programme if it was not available in the local language so that employees in foreign subsidiaries can access and understand it. When assessing a compliance programme, the DOJ and SEC will review whether the company has taken steps to make certain that the code of conduct remains current and effective and whether a company has periodically reviewed and updated its code (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p.p. 57-58).

Case Study 2: A medium-sized company encourages compliance with its policy of prohibition of bribery by using local business input to update and strengthen its Code of Conduct

Source: OECD/UNODC/World Bank, 2013, p.p. 20-21

3. Anti-Corruption Compliance Programme

3.1. Anti-corruption compliance management system

3.1.1. Standards and guidelines on an anti-corruption compliance management system

An anti-corruption compliance management system can be stand-alone or integrated part of a compliance management system in an organization.

General international standards and guidelines contain recommendations on establishing and maintaining an anti-corruption (anti-bribery) management system.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2010. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>
- WEF, 2016. the World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at: <http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf>

Financial institutions can consider the Wolfsberg Group's Guidance.

- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>

3.1.2. Tone from the top and tone from the middle

International standards and guidelines mention the tone from the top as a key factor for the implementation of an effective anti-corruption compliance programme. The governing body and senior management should set the tone and demonstrate ownership of an anti-

corruption compliance programme (UNODC, 2013, p.p. 19-20; OECD, 2010, p. 2; APEC, 2007, p. 4).

Senior management needs to make it clear that corruption is prohibited at all times and in any form, whether small or large, direct or indirect, active or passive. Support and commitment from senior management must not be seen as a one-off activity at the time of the launching of an anti-corruption programme. It is rather an ongoing demonstration of the company's norms and values (UNODC, 2013, p. 20).
Top-level commitment is one of the six principles defined in the UK Ministry of Justice Guidance. The Guidance provides organizations with description of relevant procedures.

Principle 2. Top-level commitment.

Source: UK Ministry of Justice, 2011, p.p. 23-24

Middle management should also promote business integrity and zero tolerance of corruption, and play an important role in delivering the key messages of the company's training and communication (UNODC, 2013, p. 69; OECD, 2016, p. 8).
The commitment of the management to the anti-corruption compliance programme should be visible and properly documented.

Checklist 1. How management can demonstrate leadership and commitment to the company's anti-bribery policy.

Source: OECD, 2016, p. 9

3.1.3. Shareholders

Shareholders may be involved in the implementation of an anti-corruption compliance programme especially if governing body was not established (e.g. in SMEs).

According to the APEC Anti-Corruption Code of Conduct, the findings of independent assessment of the adequacy of the anti-corruption compliance programme should be disclosed in the Annual Report to shareholders (APEC, 2007. P. 6).

3.1.4. Governing body

Governing body is a board of directors or the equivalent body of an organization. It should be considered that not all organizations have governing bodies.

The functions of a governing body are described in:

UNODC, 2013, p.p. 29-32

ISO 37001, 2016, p.p. 8, 20

If an organization does not have a governing body, the top management should take the responsibility for an anti-corruption compliance programme.

In the author's opinion, it is important to mention that anti-corruption activities of a governing body (e.g. discussion on the anti-corruption compliance programme's monitoring report at the governing body's meeting) should be properly documented. In case of investigation, these documents can be used as serious evidence of real implementation of an anti-corruption compliance programme.

3.1.5. Top management

The UNODC Guide defines the role of top management in implementing an effective anti-corruption compliance programme.

According to the UNODC, the senior management should:

ensure commitment throughout the company

establish responsibilities

provide sufficient resources

define scope and extent of the programme

put support and commitment into action

Source: UNODC, 2013, p.p. 20-21

The ISO Standard 37001 provides organizations with the detailed list of top management functions with respect to the anti-bribery management system.

ISO, 2016, p.p. 8-9

The French Anti-Corruption Agency recommends that top management's commitment to a corruption prevention and detection policy be based on four pillars:

adopting a zero-tolerance policy for corruption risk

mainstreaming anti-corruption measures in policies and procedures

governance of the corruption prevention and detection programme

communication policy

Source: Agence Française anticorruption, 2017, p.p. 6-7

3.1.6. Anti-corruption compliance function

Depending on the size and structure of an organization anti-corruption compliance function may be exercised by:

- Anti-corruption compliance officer
- Anti-corruption compliance unit/department

- Compliance unit/department
- Other unit/department

The Wolfsberg Group recommended financial institutions to have an independent unit with the requisite expertise and authority. This unit should be part of a control function such as Compliance, Legal or Risk (Wolfsberg Group, 2017, p. 4).

In small organizations anti-corruption compliance function may be exercised on a part-time base.

3.1.7. Anti-corruption compliance officer

Anti-corruption compliance officers should have appropriate education and experience. Considering applicable laws and the organizational ethical framework an organization may define special requirements for the anti-corruption compliance officer's position. These requirements may include but not be limited to a particular degree, the absence of criminal records, business reputation, professional certification, and relevant work experience.

In the U.S., experience and qualification of compliance personnel is one of the questions by the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2019, p. 11).

To define functions of an anti-corruption compliance officer, organizations can consider ISO standard 37001.

Anti-bribery compliance function

Source: ISO 37001, 2016, p.p. 10, 27-28

According to the French Anti-Corruption Agency's Guidelines, a compliance officer should be responsible for overseeing the deployment, implementation, evaluation and updating of the anti-corruption compliance programme, in close collaboration with the organization's stakeholders (Agence Française anticorruption, 2017, p. 7). This officer oversees the elaboration of the risk map, by supporting the organization's audit of business lines, functions and processes, its identification of the corruption risks incurred and its implementation of the appropriate prevention measures (Agence Française anticorruption, 2017, p. 15).

In the process of due diligence a compliance officer should provide expertise and advice to the line managers. This officer should also provide line managers with support in the highest-risk cases (Agence Française anticorruption, 2017, p. 20).

Anti-corruption compliance officer should report directly to the CEO or comparable authority. He/she should have right to report, if necessary, to the governing body or to a specially delegated committee of the governing body (WEF, 2016, p. 8).

In the U.S., direct reporting lines to anyone on the board of directors and/or audit committee is one of the questions by the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2019, p. 11).

Summarizing the provisions of international and domestic standards and guidelines, it may be recommended to define in an anti-corruption compliance programme formal requirements to, and main functions, powers and responsibilities of an anti-corruption compliance officer.

3.1.8. Business partners (business associates)

International standards and guidelines use different terminology to define partners with whom an organization has various types of business relationships.

The UNODC Guide uses the term "business partner" which covers entities over which an organization has effective control, as well as partners over which an organization does not have effective control. All the business partners are divided in five main categories: subsidiaries, affiliates, join ventures, agents and intermediaries, contractors and suppliers (UNODC, 2013, p. 54).

The ISO Standard 37001 uses the terms "controlled organization", "business associate" and "third party". According to the Standard, an organization has control over another organization if it directly or indirectly controls the management of the organization (ISO 37001, 2016, p. 16). Business associate means external party with whom the organization has, or plans to establish, some form of business relationship (ibid., p. 5). Third party means person or body that is independent of the organization. All third parties are business associates but not all business associates are third parties (ibid., p. 6).

Many guidelines use the term "third party" that includes various types of partners over which an organization does not have effective control (OECD, 2010; OECD, 2016; WEF, 2013; APEC, 2007; ICC, 2010; ICC, 2015).

In this and following chapters of the Overview we use the widely spread term "third party" to define all possible business partners (business associates) over which an organization does not have effective control, and the term "entities over which an organization has control".

3.1.8.1. Entities over which an organization has control

The anti-corruption compliance management system in an organization and in entities over which an organization exercises control should be based on the principles and values common to all of them.

OECD mentioned as a good practice that ethics and compliance programmes or measures designed to prevent and detect foreign bribery are applicable to all entities over which a company has effective control, including subsidiaries (OECD, 2010, p. 3). According to Transparency International (TI), an organization should implement its programme in all business entities over which it has effective control (TI, 2013, p. 8).

Organizations can consider UNODC recommendations regarding subsidiaries

Source: UNODC, 2013, p. 55

3.1.8.2. Third parties

The WEF Guidelines contain the following not exhaustive list of third parties:

- Joint venture partner
- Consortium partner
- Agent
- Adviser and other intermediary (e.g. legal, tax, financial adviser or consultant, lobbyist)
- Contractor and sub-contractor
- Supplier/vendor
- Service provider
- Distributor
- Customer (WEF, 2013, p.8)

Some international guidelines mention other categories: brokers (APEC, 2007, p. 4), resellers, and franchisees (ICC, 2011, p. 6).

Organizations can consider UNODC recommendations regarding affiliates, joint ventures agents, intermediaries, contractors, and suppliers

Source: UNODC, 2013, p.p. 55-57

In an anti-corruption compliance programme organizations can use the general term "third parties" instead of developing an exhaustive list of all possible categories. If necessary, an organization can mention the categories of third parties that are most common for its type of business but keep this list open for other categories.

3.1.9. Reports relevant for benchmarking an anti-corruption compliance management system

The reports below present the outcomes of general studies on anti-corruption compliance in organizations and can be helpful for benchmarking an anti-corruption compliance management system.

- EY, 2014. Compliance-Studie Aktuelle Trends, Herausforderungen und Benchmarks (in German). Available at: <http://www.ey.com/Publication/vwLUAssets/Broschuere_-_EY_Compliance Studie_2014/$FILE/EY%20Compliance%20Studie_2014_05.pdf>
- PwC, 2016. State of Compliance Study. Laying a strategic foundation for strong compliance risk management. Available at: <https://www.pwc.com/us/en/risk-assurance/state-of-compliance-study/assets/state-of-compliance-study-2016.pdf>
- PwC, 2017. State Risk in Review. Available at: <https://www.pwc.com/us/en/risk-assurance/rir2017/pwc-2017-risk-in-review-study.pdf>
- Thomson Reuters 2018. Costs of Compliance 2018. Available at: <https://risk.thomsonreuters.com/en/resources/special-report/cost-compliance-2018.html>

3.2. Anti-corruption clause

3.2.1. Standards and guidelines on the anti-corruption clause

An anti-corruption clause is a useful tool to mitigate third parties risks.

There are particular provisions on anti-corruption clauses in general ICC guidance.

- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

The detailed recommendations can be found in special ICC guidance.

- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-paries-ENGLISH-2010.pdf>
- ICC, 2012. Anti-Corruption Clause. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2012/10/ICC-Anti-corruption-Clause.pdf>

According to the ICC Rules, an organization should include in its contracts with business partners a provision allowing it to suspend or terminate the relationship, if it has a unilateral good faith concern that a Business Partner has acted in violation of applicable anti-corruption law (ICC, 2011, p. 7).
According to the French Anti-Corruption Agency's Guidelines, contracts deemed to be risky might include anti-corruption clauses. Such clauses make it possible to terminate the contract in the event of a lapse of integrity (Agence Française anticorruption, 2017, p. 24).

3.2.2. Content of the anti-corruption clause

The ICC anti-corruption clause refers to the ICC Rules on Combating Corruption of 2011. Three options are possible: either a short text with the technique of incorporation by reference of Part I of the ICC Rules on Combating Corruption 2011 (Option I) or the incorporation of the full text of the same Part I of the ICC Rules on Combating Corruption 2011 in their contract (Option II), or a reference to a corporate compliance programme, as described in Article 10 of the ICC Rules on Combating Corruption (Option III) (ICC, 2012, p. 2).

ICC Guidelines on Agents, Intermediaries and Other Third Parties provide organizations with anti-corruption provisions, representations, warranties, and covenants which can be included in contracts with Third parties:

- The Third party is not a public official, and does not have any official status. The Third party will notify the enterprise of any changes to these representations;
- The Third party does not have any relationship with a current official or any immediate relative or close associate of an official who would be in a position to influence a decision in favour of the enterprise, and the Third party will notify the enterprise of any changes to this representation;

- The Third party will comply with all applicable anti-corruption and anti-money laundering laws;
- The Third party is not and has not been the subject of a criminal investigation and has not been convicted under the laws of the relevant countries for facts related to bribery, corruption, money laundering or for violations of laws or regulations in force governing business enterprises;
- The Third party will comply with the enterprise's codes and Guidelines, in particular, the enterprise's rules on gifts and hospitality or has its own code or Guidelines with equivalent standards and will comply therewith;
- The Third party represents that no payments, offers, or promises to public officials or other third party beneficiaries have been, or will be made, directly or indirectly, for an improper purpose;
- The Third party agrees to comply with enterprise Guidelines and limits for reimbursement of expenses;
- The enterprise has the right to suspend or terminate the contract immediately upon unilateral good faith concern that there has been a violation of any applicable anti-corruption law or provision of the agreement without paying any compensation to the Third party, and the Third party agrees to indemnify the enterprise for expenses related to violations of the anti-corruption laws;
- The Third party agrees to a clearly defined scope of work that limits the Third party's ability to act on the enterprise's behalf;
- The Third party agrees to regularly report on its activities on the enterprise's behalf, and to provide detailed invoices and detailed supporting documentation for its expenditures;
- The Third party agrees to provide audit rights to the enterprise related to activities undertaken on the enterprise's behalf in the previous three years;
- The Third party agrees to submit the retention of subcontractors or other persons or entities designated to perform similar services to the enterprise for prior approval, if the subcontracted activity is of a 'high risk' nature, as defined in chapter IV above;
- The Third party is prohibited from assigning the contract or the compensation to be paid;
- The Third party agrees to payment provisions that include the safeguards identified in chapter XI below.
- The Third party is required to update the information supplied during the due diligence review;
- The Third party is required to maintain accurate books and records and appropriate internal controls; and
- The Third party is required to cooperate with any investigation into alleged breaches of the compliance provisions, including the requirement to provide access to documents and personnel.
- Enterprises facing higher risks in connection with Third parties may wish to consider the following additional safeguards:
- Require the Third party to submit certain actions to the enterprise for prior approval (e.g., interactions with public officials);
- Include provisions that limit the Third party's ability to act on the enterprise's behalf in relation to government contracts; and
- Require, as appropriate, provisions for transparency of the relationship to local authorities.

- Source: ICC, 2010, p.p. 6-7

3.3. Third party due diligence

3.3.1. Standards and guidelines on third party due diligence

According to the ICC, due diligence is a term used to describe background investigation conducted on a third party which an organization is considering contracting with. It is a process of examining the background of a potential business partner in an effort to assess and mitigate risks of corruption (ICC, 2015, p. 6).

General international standards and guidelines on anti-corruption compliance underline that organizations should carry out third party due diligence before entering into business relationship and on an on-going basis (UNODC, 2013, p. 57; OECD, 2010, p.3; ISO, 2016, p.15).

According to the French Anti-Corruption Agency, if organizations fail to conduct due diligence with regard to the integrity of the third parties that they deal with, they may find themselves more or less directly implicated in corruption (Agence Française anticorruption, 2017, p. 19).

In the UK, the application of due diligence procedures is one of the six principles, which organizations should put in place to prevent bribery (UK Ministry of Justice, 2011, p.p. 27-28).

In the U.S., the third party management including due diligence is an important part of the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2019, p.p. 6-8).

General international standards and guidelines contain recommendations on conducting third party due diligence.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf> p.p. 57-59
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use. p.p. 15-16, 32-34
- OECD/UNODC/World Bank, 2013 Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>

There are also three special international guidelines on third party due diligence.

- WEF, 2013. Good Practice Guidelines on Conducting Third Party Due Diligence. Available at: <http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf>

- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-paries-ENGLISH-2010.pdf>
- ICC, 2015. Anti-Corruption Third Party Due Diligence: a Guide for Small and Medium Size Entities. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2015/07/ICC-Anti-corruption-Third-Party-Due-Diligence-A-Guide-for-Small-and-Medium-sized-Enterprises.pdf>

Organizations can also find useful information in the Guide and Benchmark Report published by NAVEX Global.

- NAVEX Global, 2017b. Definitive Guide to Third Party Risk Management. Available at: <https://www.navexglobal.com/en-gb/node/1881/thank-you?RCAssetNumber=1880&token=f9aGtcgkry_b_avbdoLihKdDr7hBWSLc3NzVQLEkzDc>
- NAVEX Global, 2017f. Ethics & Compliance Third Party Risk Management Benchmark Report. Available at: <https://www.navexglobal.com/en-us/resources/benchmarking-reports/2017-ethics-compliance-third-party-risk-management-benchmark-report?RCAssetNumber=2760>

For the identification of third parties, representatives of third parties, beneficial owners of third parties, third parties who are public officials, public officials' family members or close associates, and their sources of wealth and funds FATF standards and guidance, and G20 Principles can be helpful.

- FATF, 2012. International standards on combating money laundering, the financing of terrorism and proliferation (the FATF Recommendations). [pdf] FATF. Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf>
- FATF, 2013. Guidance: Politically Exposed Persons. Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>
- FATF, 2014. Guidance on transparency and beneficial ownership. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>
- G20, 2014. High-Level Principles on Beneficial Ownership Transparency. Available at: <https://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf>

3.3.2. Due diligence function in an organization

According to international guidelines, the due diligence function can be partially exercised by business units, and partially by an anti-corruption compliance officer.

Business units can collect data in the framework of standard initial due diligence and on-going due diligence. The search in special compliance databases, and conducting enhanced initial due diligence will likely required input from anti-corruption compliance officer (WEF, 2013, p. 11).

The French Guidelines mentioned three levels of due diligence participants within organizations:

- line managers, who conduct due diligence and are accountable for it, should gather the information and documents concerning the third parties that they are or will be dealing with. These managers should submit their preliminary findings. These findings may constitute the final decision in low-risk cases;
- the compliance officer (or any other designated manager) should provide expertise and advice to the line managers. This officer should provide line managers with support in the highest-risk cases;
- top management should make the final decision in the highest-risk cases notified by the line managers.

Source: Agence Française anticorruption, 2017, p. 20

According to the WEF Guidelines, an organization may use an external service provider to carry out or to assist in carrying out due diligence, especially of high-risk third parties (WEF, 2013, p.11, p.13). The use of an external consultant is also foreseen in domestic guidance (Agence Française anticorruption, 2017, p.20; UK Ministry of Justice, 2011, p. 27). It should be mentioned that an organization may be requested by domestic authorities to explain the rationale of outsourcing and the mechanism of assessment the effectiveness of outsourced compliance functions (Criminal Division of the U.S. Department of Justice, 2019, p. 12).

3.3.3. Collecting and analyzing data

An organization can collect and analyze third party data necessary to:

- Identify a third party, representative of a third party, shareholders, and beneficial owners of a third party
- Identify the geographic location
- Identify business areas
- Identify contacts with public officials and/or authorities
- Determine conflicts of interest of personnel from a third party
- Find out whether there is any history of unethical business practices, corruption or other criminal activity
- Evaluate the business reputation
- Identify sources of wealth and funds
- Evaluate the financial statement
- Evaluate an anti-corruption compliance programme

Factors which organization may find useful to evaluate

Source: ISO 37001, 2016, Annex A, p.p. 32-33

Source: OECD, 2016, Checklist 9. Mitigating third party bribery risk, p. 19

Source: UNODC, 2013, p. 58

Sources of data

An organization can use data, provided by a third party, data from organization's units/departments, data from publications in the Internet and media, available official sources of data, and commercial databases.

Data, provided by a third party. An organization can develop questionnaires to conduct face-to-face or virtual interviews with the third party's managers and staff members.

> Standard questionnaires can be helpful to structure the interview:
>
> Sample external due diligence questionnaire
>
> Source: WEF, 2013, Appendix B, p.p. 32-42
>
> Anti-Corruption Questionnaire to send to Third Party
>
> Source: ICC, 2015, Annex B, p.p. 32-39

An organization can foresee visiting the office of a third party to verify whether management and staff members are located at the declared address,

Data from organization's units/departments. An organization can use data from internal units/departments.

> Enterprises can collect information from the Sponsoring Department by:
>
> Requiring the Sponsoring Department to complete an application form. Often, the employee proposing the engagement of a Third party has an interest in the hiring of the candidate Third party or the success of the deal. Because such interests have the potential to obscure the risks posed by a particular Third party, this employee alone should not be allowed to make the final decision on the engagement of the candidate Third party. Thus, a first step in the process should be to require the Sponsoring Department to submit written information regarding the candidate Third party. Such information can be provided in a form that sets forth the business need for employing a Third party, the business justification for the proposed compensation, an evaluation of the commercial and technical competence of the candidate Third party (e.g. his knowledge of the enterprise's products and services), specific information regarding the candidate Third party's reputation for integrity, details on how the candidate Third party was identified, whether any other Third parties were considered, and why the candidate Third party was proposed. The form can also contain a confirmation by the employee that, to the best of his or her knowledge, the candidate Third party is qualified and suitable for engagement. The form can also provide information on the services that the candidate Third party shall provide; the main terms of the contractual arrangement to be entered into with the candidate Third party; a description of the amount of the proposed compensation payments; and an assessment of why the proposed compensation is reasonable and appropriate in relation to the services to be performed.
>
> Source: ICC, 2010, p. 4

Data from publications in the Internet and media. An organization can use data from the Internet and media (ISO 37001, 2016, Annex A, p.33). In the author's opinion, it should be considered that those data are not always correct and should be verified.

Official sources of data. In the author's opinion, the following official sources of data can be useful for conducting due diligence:

- Registers of companies/organizations
- Registers of beneficial owners
- Registers of lost and stolen passports
- Registers of disqualified persons
- Registers of real estate
- Registers of vehicles, air planes, helicopters, and yachts
- Databases of court decisions
- Criminal and administrative records
- Databases of tax authorities
- Debarment lists of organizations that are restricted or prohibited from contracting with public or government entities kept by national or local governments or multilateral institutions

The availability of mentioned above and other official databases depends on domestic laws and regulations.

Commercial databases. As a rule, the use of commercial databases is entirely at the discretion of the organization.

3.3.4. Initial due diligence

The aim of initial due diligence is the creation of a base for taking decisions regarding entering/not entering into a business relationship, for the identification of a potential conflict of interest, for conducting risk assessment, and for defining risk mitigation measures if necessary.

How to conduct Due Diligence?

Source: ICC, 2015, p.p. 14-21

Case Study 10: Company K conducts due diligence on its third parties

Source: OECD/UNODC/World Bank, 2013, p.p. 43-45

Due Diligence Content

Source: Agence Française anticorruption, 2017, p.p. 21-23

Sample Third-Party Due Diligence Process Map

Source: NAVEX Global, 2017b, p. 11

3.3.4.1. Standard due diligence

Standard due diligence can include the following procedures:

- Identification of a third party, representative of a third party, and beneficial owner of a third party
- Identification of third parties who are public officials, public officials' family members or close associates
- Collecting and analyzing data available from the legitimate sources
- Identification of indicators (red flags) which require an enhanced due diligence
- Preparing a report for the following decision regarding conducting an enhanced due diligence if necessary, entering/not entering into a business relationship, assessment of corruption risks and defining risk mitigation measures if necessary

Identification of a third party, and a representative of a third party. An organization can define in an anti-corruption compliance programme the lists of documents acceptable in accordance with domestic laws and regulations for identification of domestic and foreign natural persons, and legal entities.

An organization may include an opportunity of electronic identification if such form of identification is allowed in domestic laws and regulations.

Identification of beneficial owners. The following sources of data can be used for the identification of beneficial owners:

- Information provided by a third party
- Registers of companies/organizations
- Registers of beneficial owners available in some jurisdictions

An organization may take reasonable measures allowed in the applicable national laws to verify the beneficial ownership of third parties.

FATF Guidance can be helpful for identification of beneficial owners

Source: FATF, 2014

Identification of public officials, their family members and close associates. An organization can take reasonable measures to identify third parties who are public officials, public officials' family members or close associates, or have other direct or indirect links with public officials.

It can be useful to check definitions of the public official in applicable laws considering that definitions may vary significantly.

In the author's opinion, the following sources of data can be used for the identification of public officials, their family members and close associates:

- Information provided by a third party
- Information from the Internet, including information from the websites of public agencies, public enterprises and other relevant authorities
- Information from commercial databases

FATF Guidance can be helpful for identification of public officials

Source: FATF, 2013, Chapter V, p.p. 13-19

Indicators (red flags) which require an enhanced due diligence. Domestic guidelines underline the importance of risk-based due diligence (Agence Française anticorruption, 2017, p.19; UK Ministry of Justice, 2011, p. 27; Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 60).

An organization can conduct enhanced due diligence when a third party has a link/links to high-risk jurisdictions and/or industries, public authorities, public officials, their family members and close associates, when a third party was involved in unethical business practices, corruption or other criminal activity, or when other high-risk indicators were identified.

The value of a contract can be also considered when making a decision regarding conducting an enhanced due diligence.

The following countries can be considered as high-risk jurisdictions:

- A country perceived to be a high-risk country for corruption

- Transparency International's Corruption Perceptions Index. Available at: <https://www.transparency.org/cpi2018>

- A country has strategic deficiencies in anti-money laundering/countering the financing of terrorism measures

- FATF lists of high-risk and other monitored jurisdictions <http://www.fatf-gafi.org/countries/#high-risk>
- Basel AML Index <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf>

- Industries which may be considered as high risk industries can be found in: Transparency International Bribes Payers Index Report 2011 <https://www.transparency.org/research/bpi/overview>

ICC Guidelines foresee additional criteria of high risk third parties.

These categories of high risk Third parties, and any others identified by the enterprise, can be subjected to a thorough due diligence review prior to retention:

Any Third party that will be engaged to deal directly with a public official on behalf of the enterprise where that official has discretionary authority over some matter impacting or involving the enterprise, and, in particular, such Third parties that are located or doing business in a country with high levels of bribery;

Any Third party engaged to interact with public officials that is compensated on the basis of their success in securing a contract, permit or increased business; Similarly, the enterprise will also try to identify the circumstances in which Third parties are the most exposed to private-to-private bribery.

Any Third party that is engaged to seek information that is not publicly available;

Any Third party that may be, or may have been, a public official or an enterprise in which a public official holds an economic interest (e.g., as an owner, shareholder, employee, or director);

Any Third party who is or may be a relative or close associate of a present or former official, or a Third party that has a relative of a present or former official as an owner, shareholder, employee, director; and

Any Third party that is owned or controlled by or closely linked to a government agency.

Source: ICC, 2010

Organizations can also consider the Wolfsberg Group Guidance for financial institutions.

Appendix A. Examples of Corruption Red Flags
There are many red flags which may warrant enhanced due diligence or review. These red flags may be identified during various business activities discussed in this Guidance, including Intermediary engagement, acquisition or investment in a Target company, general business activity, gifts and entertainment, charitable contributions, among others. The following is a non-exhaustive selection:

- Little to no relevant experience regarding the services to be provided
- Flawed background or reputation (including, for example, prior corruption or a negative reputation for integrity)
- Recent senior Public Official of the same government department or business responsible for the award of the contract or matter at issue or who worked in a procurement or decision-making position
- Transaction or Intermediary suggested by a Public Official, particularly one connected to the business or matter at issue
- Close business, personal or family relationship with a Public Official who has discretionary authority over the business or transaction at issue
- Party to a transaction or contract makes unreasonable/unsupported objections to ABC due diligence or representations or warranties being included in the agreement

- Party does not reside or have a significant business presence in the country where the service is to be provided
- Use of a shell company or some other non-transparent corporate structure
- Requires payment of a commission, or a significant portion thereof, before or immediately upon award of the contract
- Requests for unusual contract terms
- Requests for payment in cash, advance payments, payment to an individual or entity that is not the contracting individual/entity, or payment into a country that is not the contracting individual/entity's principal place of business or the country where the services are performed
- Anticipates payments that cannot plausibly be commercially justified vis-à-vis the role undertaken
- Adjustment of remuneration demand during the course of the engagement, particularly in close proximity to the award of business
- Vague or unsupported book keeping
- Heavy reliance on cash

Source: Wolfsberg Group, 2017, p. 16

The WEF Guidelines provide organizations with the red flag checklist.

WEF, 2013, p.p. 44-46. Appendix C: Red Flag Checklist

3.3.4.2. Enhanced due diligence

Enhanced due diligence may include collecting and analyzing data on:

- Business reputation
- Financial statement
- Sources of wealth and funds
- An anti-corruption compliance programme and other anti-corruption efforts, e.g. participation in Collective Action
- The whole chain of suppliers or subcontractors involved in the business project

How to conduct Due Diligence?

Source: ICC, 2015. p.p. 14-21

If a third party is a public official, a public official's family member and close associate, an organization as a rule should take reasonable measures to identify sources of wealth and funds of.

The following sources of data can be used for identification of sources of wealth and funds:

- Information provided by a third party
- Information from the declarations of incomes and assets, if publicly available on the websites of public agencies, public enterprises and other relevant authorities
- Registers of companies/organizations

- Registers of beneficial owners
- Information from commercial databases

FATF Guidance can be helpful for identification of sources of wealth and funds

Source: FATF, 2013, Chapter V

3.3.5. Ongoing due diligence

Ongoing due diligence (monitoring) shall be conducted periodically and in cases of receiving new information regarding third party's suspicious activities. An organization can define in an anti-corruption compliance programme how often due diligence has to be conducted (e.g. every year or every six months).

The aim of the on-going due diligence is the creation of a base for taking decisions regarding the continuation/non-continuation of a business relationship, for the revision of the risk category, and for defining risk mitigation measures if necessary.

Depending on the level of risk exposure, the company will decide upon the relevant approach to monitoring the business partner, which may consist of one of the following approaches:

Self-assessment: Companies may require that business partners provide information on the status of their anti-corruption programme through a self-assessment form;

Own investigations: Companies may conduct their own analysis to assess the extent and level of the quality and scope of a partner's anti-corruption programme, either based on research and background information or through direct engagement with the partner; and

Independent evaluation/assessment: Companies may decide to obtain or require some form of an independent evaluation or assessment from trusted third parties (e.g. accountant, independent expert) that assess the extent and level of quality and scope of the partner's anti-corruption programme.

Source: UNODC, 2013, p. 59

Conducting on-going due diligence includes the following procedures:

- Periodical updating identification data
- Periodical updating and evaluating available data to find illicit activities linked to corruption
- Preparing report for the following assessment of corruption risks and defining risk mitigation measures if necessary

3.3.6. Identification of suspicious transactions

An organization should consider that even well-established third party due diligence and staff recruiting processes not always allow to identify persons involved in corruption relationship.

Careful analysis of payment schemes and transactions can form a second line of defense. A Resource Guide to the U.S. Foreign Corrupt Practices Act recommends considering payment terms and how those payment terms compare to typical terms in that industry and country, as well as the timing of the third party's introduction to the business. Moreover, organizations may want to confirm and document that the third party is actually performing the work for which it is being paid and that its compensation is commensurate with the work being provided (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 60).

The French Anti-Corruption Agency recommends the financial staff alert the compliance officer or any other designated person when unusual payment procedures are requested (e.g. cash payments, or a change in the location of a bank account to a non-cooperative jurisdiction) (Agence Française anticorruption, 2017, p. 24).

Organizations can find useful information on identification of suspicious transactions in FATF guidance and reports.

FATF, 2011. Report on Laundering the Proceeds of Corruption. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf>

FATF, 2012b. Specific Risk Factors in Laundering the Proceeds of Corruption. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Specific%20Risk%20Factors%20in%20the%20Laundering%20of%20Proceeds%20of%20Corruption.pdf>

3.3.7. Organizing and archiving documents

An organization can adopt standard forms of documents to collect data of third parties. The period of records-keeping should be defined considering the applicable laws if any.

3.3.8. Use of IT-solutions for conducting due diligence

As mentioned in several guidelines, the use of modern technologies and IT-solutions can increase the effectiveness of third party due diligence and risk mitigation significantly (WEF, 2013, p. 10; NAVEX Global, 2017b, p.p. 18-20).

The following due diligence processes can be fully or partially automated:

- Checking against watch lists, data bases and other resources

- Certification of acceptance of policies
- Organizing and archiving documents

3.3.9. Reports relevant for benchmarking third party due diligence

Kroll and Ethisphere Institute, 2017. Anti-Bribery & Corruption Benchmarking Report – 2017. Available at: <https://www.kroll.com/en-us/abc-report-confirmation>

3.4. Third party risk management

3.4.1. Standards and guidelines on third party risk management

Many international standards and guidelines do not differentiate third party due diligence and risk management or do not pay attention to this question. According to the WEF Guidelines, third party risk assessment and risk mitigation are steps of the due diligence process (WEF, 2013, p. 7). The OECD Guidance underline an importance of the "risk-based due diligence" (OECD, 2010, p. 3).

To clarify the difference, NAVEX Global's definitions can be used as an additional source. According to NAVEX Global, third-party risk management is the process of assessing and controlling reputational, financial and legal risks to an organization posed by parties outside the organization. Third-party due diligence is the investigative process by which a third party is reviewed to determine any potential concerns involving legal, financial or reputational risks. Due diligence is a disciplined activity that includes reviewing, monitoring and managing communication over the entire vendor engagement life cycle (NAVEX Global, 2017b, p. 2).

Third party risk management consists of two parts: risk assessment and risk mitigation.

In the policy on third party risk management organizations usually define the risk scale, the lists of corruption risk indicators/red flags, the correlation between the results of risk assessment and approval of entering into a business relationship with a third party, the revision of risk category, and measures for risk mitigation.

General international standards and guidelines contain recommendations on third party risk management.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

Several special guidelines on due diligence may be considered for designing and implementing the policy on risk management.

- WEF, 2013. Good Practice Guidelines on Conducting Third Party Due Diligence. Available at: <http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf>
- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-paries-ENGLISH-2010.pdf>

Organizations can also find useful information in the guidance published by NAVEX Global.

- NAVEX Global, 2017b. Definitive Guide to Third Party Risk Management. Available at: <https://www.navexglobal.com/en-gb/node/1881/thank-you?RCAssetNumber=1880&token=f9aGtcgkry_b_avbdoLihKdDr7hBWSLc3NzVQLEkzDc>

3.4.2. Risk assessment

As a rule, organizations conduct corruption risk assessment before entering into a business relationship with a third party and periodically revise the risk category.

Risk scale

An organization may select a three-tier risk scale (low, medium and high risk) or a more detailed scale. Some organizations may choose to design and apply a numerical system to the risk indicators to make the assessment more systematic. Other organizations may employ a risk matrix looking at the likelihood or potential impact of risk, or decide to prioritize risk indicators which must always take precedence in deciding the risk category of a third party. Whatever method is used, it is important that organizations use objectivity and judgement as core principles in the implementation of the risk assessment process (WEF, 2013, p. 9-10).

Risk indicators/red flags

International standards and guidance define the key risk groups and risk indicators/red flags that organizations may use to assess the risk of corruption.

Geographic location

The following countries may be considered as high-risk jurisdictions:

- A country perceived to be a high-risk country for corruption (Transparency International's Corruption Perceptions Index)

- Transparency International's Corruption Perceptions Index. Available at: <https://www.transparency.org/cpi2018>

- A country has strategic deficiencies in anti-money laundering/countering the financing of terrorism measures (FATF lists of high-risk and other monitored jurisdictions, Basel AML Index)

- FATF lists of high-risk and other monitored jurisdictions <http://www.fatf-gafi.org/countries/#high-risk>
- Basel AML Index <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf>

- A jurisdiction known to have high levels of bank secrecy and presenting a high risk for facilitating illicit financial flows (WEF, 2013, p.9)

- The Tax Justice Network's Financial Secrecy Index. Available at: <https://www.financialsecrecyindex.com/>

- A jurisdiction that encourages or requires organizations to hire local agents to transact business for the government (WEF, 2013, p. 9)

The French Anti-Corruption Agency recommends to consider the list of countries subject to financial and international sanctions published by economy and finance ministries, and OECD monitoring reports on implementation of the Convention on Combating Bribery of Foreign Officials in International Business Transactions in the signatory countries (Agence Française anticorruption, 2017, p. 21).

Industry

The following industries may be considered as high-risk industries:

- The industry with which the third party conducts business transactions is perceived to present a high risk for corruption (WEF, 2013, p. 9)

Industries which may be considered as high risk industries can be found in:

Transparency International Bribes Payers Index Report 2011. Available at: <https://www.transparency.org/research/bpi/overview>

- The third party belongs to an industry with a history of anti-corruption enforcement scrutiny in a country of incorporation (WEF, 2013, p. 9)

Background and identity of the third party

- Initial Internet searches and use of news services have revealed glaring problems related to the third party's reputation for integrity

- The third party, or any of its senior officials, has previously been subject to regulatory action or legal proceedings as a result of alleged breaches of anti-corruption laws
- The third party, or any of its senior officials, appears on a denied parties/persons list in consequence of national or international sanctions or as a result of past misconduct
- The third party has little or no experience in the relevant industry sector and/or is unknown to the organization (WEF, 2013, p. 9)

Connection with government officials, authorities or state-owned enterprises

- The third party, in the course of doing work for your organization, will have frequent interaction with government officials (including customs officials), governmental agencies or government-controlled entities
- The third party is wholly or partly (directly or indirectly) owned by a government official/entity or has direct or indirect links with government officials/entities
- The third party has previously worked for government, or is closely connected with the political elite (WEF, 2013, p. 9)

Compensation structure of the proposed arrangement

- The third party's compensation is to be based on performance (i.e. success fees, bonus fees and other contingency fees)
- The third party requires payment by unusual means (e.g. deviating from standard practice, to multiple accounts, with upfront payments, split into small amounts, in cash or similar, in a country or currency that is different from that of the third party's domicile or the country where the work will be performed)
- The third party's compensation is to take the form of a political or charitable contribution (WEF, 2013, p. 9)

Additional factors related to the scope of the services to be rendered

- The third party's role is to enhance the organization's chances of winning commercial and/or government contracts
- The third party requests discretionary authority to handle local matters alone (WEF, 2013, p. 9)

Selection of the third party

- The third party was recommended by a customer
- The retention of this specific third party was encouraged or required by a government official (WEF, 2013, p. 9)

The ICC recommends to consider the following examples of "red flags":

- A reference check reveals the Third party's flawed background or reputation, or the flawed background or reputation of an individual or enterprise represented by the Third party
- The Third party is suggested by a public official, particularly one with discretionary authority over the business at issue
- The Third party objects to representations regarding compliance with anti-corruption laws or other applicable laws
- The Third party has a close personal or family relationship, or business relationship, with a public official or relative of an official
- The Third party does not reside or have a significant business presence in the country where the customer or project is located
- Due diligence reveals that the Third party is a shell company or has some other non-transparent corporate structure (e.g. a trust without information about the economic beneficiary)
- The only qualification the Third party brings to the venture is influence over public officials, or the Third party claims that he can help secure a contract because he knows the right people
- The need for the Third party arises just before or after a contract is to be awarded
- The Third party requires that his or her identity or, if the Third party is an enterprise, the identity of the enterprise's owners, principals or employees, not be disclosed
- The Third party's commission or fee seems disproportionate in relation to the services to be rendered
- The Third party requires payment of a commission, or a significant portion thereof, before or immediately upon the award of a contract
- The Third party requests an increase in an agreed commission in order for the Third party to "take care" of some people or cut some red tape
- The Third party requests unusual contract terms or payment arrangements that raise local law issues, payments in cash, advance payments, payment in another country's currency, payment to an individual or entity that is not the contracting individual/entity, payment to a numbered bank account or a bank account not held by the contracting individual/entity, or payment into a country that is not the contracting individual/entity's country of registration or the country where the services are performed

Source: ICC, 2010, p.p. 5-6

Checklist 9. Mitigating third party bribery risks

Source: OECD, 2016, p. 19

In the author's opinion, organizations should consider that no one list of indicators/red flags is comprehensive and foresees all possible scenarios of corruption. It can be useful to update the list on a regular basis considering new reports of international organizations and other relevant stakeholders on corruption risks, schemes and typologies, benchmarking reports, and organization's own experience in preventing corruption.

Revision of risk category

An organization can revise the risk category based on new data obtained in a framework of on-going due diligence.

Risk assessment and approval of entering into a business relationship

The system of approval of entering into a business relationship with a third party should be connected with the results of risk assessments.

The WEF Guidelines recommend:

- For low-risk third parties, it is appropriate for the management of the business unit to be responsible for approving the business relationship.
- For medium- to high-risk third parties, there should be a minimum of two business units involved in the approval process:

  the management of the business unit, and

  another level of management which has nothing to gain from the selection of the third party (e.g. the compliance or legal department) (WEF, 2013, p. 13).

3.4.3. Risk mitigation

If an organization decided to enter into a business relationship with medium-risk or high-risk third parties, appropriate mitigation measures can be defined.

According to the WEF Guidelines, organizations can apply contract protections and monitoring measures to mitigate the risks.

Contract protections

Organizations may request to include the following provisions, representations and warranties in their contractual agreements with third parties:

- A written agreement by the third party to comply with the organization's anti-corruption policies and programmes (or other materially equivalent policies and programmes) and/or with applicable laws and regulation
- A written confirmation that the third party has read the organization's Supplier Code of Conduct and agrees to satisfy its requirements
- A "right to audit" provision, providing access to the third party's relevant records
- A provision obligating the third party to maintain accurate books and records, and an effective system of internal controls
- A contractual right of termination in case of breach of anti-corruption laws
- Provisions limiting the third party's ability to act on behalf of the company and/or to have interactions with government officials
- A contractual obligation by the third party to report on services rendered

Monitoring measures

Organizations may consider undertaking the following monitoring activities to supervise the conduct of their third parties on an ongoing basis:

- A periodic renewal or update of the risk assessment and due diligence processes
- Recurring Internet and database searches to identify new red flags

- Implementing a post-approval assurance programme, including training activities and periodic and/or risk-based audits of the third party
- A request for the third party to submit an annual certification of compliance with applicable anti-corruption laws
- A periodic review of the third party's payment requests and payments
- Tracking unusual or excessive expenses by the third party

Source: WEF, 2013, p. 14

An organization can use an anti-corruption clause to mitigate the risks (See: 3.2. Anti-Corruption Clause).

According to the ICC, an organization might consider including the following anti-corruption provisions, representations, warranties, and covenants in contracts with Third parties:

- The Third party is not a public official, and does not have any official status. The Third party will notify the enterprise of any changes to these representations
- The Third party does not have any relationship with a current official or any immediate relative or close associate of an official who would be in a position to influence a decision in favor of the enterprise, and the Third party will notify the enterprise of any changes to this representation
- The Third party will comply with all applicable anti-corruption and anti-money laundering laws
- The Third party is not and has not been the subject of a criminal investigation and has not been convicted under the laws of the relevant countries for facts related to bribery, corruption, money laundering or for violations of laws or regulations in force governing business enterprises
- The Third party will comply with the enterprise's codes and Guidelines, in particular, the enterprise's rules on gifts and hospitality or has its own code or Guidelines with equivalent standards and will comply therewith
- The Third party represents that no payments, offers, or promises to public officials or other third party beneficiaries have been, or will be made, directly or indirectly, for an improper purpose
- The Third party agrees to comply with enterprise Guidelines and limits for reimbursement of expenses
- The enterprise has the right to suspend or terminate the contract immediately upon unilateral good faith concern that there has been a violation of any applicable anti-corruption law or provision of the agreement without paying any compensation to the Third party, and the Third party agrees to indemnify the enterprise for expenses related to violations of the anti-corruption laws;
- The Third party agrees to a clearly defined scope of work that limits the Third party's ability to act on the enterprise's behalf
- The Third party agrees to regularly report on its activities on the enterprise's behalf, and to provide detailed invoices and detailed supporting documentation for its expenditures
- The Third party agrees to provide audit rights to the enterprise related to activities undertaken on the enterprise's behalf in the previous three years

- The Third party agrees to submit the retention of subcontractors or other persons or entities designated to perform similar services to the enterprise for prior approval, if the subcontracted activity is of a 'high risk' nature
- The Third party is prohibited from assigning the contract or the compensation to be paid
- The Third party agrees to payment provisions that include the safeguards identified in chapter XI
- The Third party is required to update the information supplied during the due diligence review
- The Third party is required to maintain accurate books and records and appropriate internal controls; and
- The Third party is required to cooperate with any investigation into alleged breaches of the compliance provisions, including the requirement to provide access to documents and personnel.

Enterprises facing higher risks in connection with Third parties may wish to consider the following additional safeguards:

- Require the Third party to submit certain actions to the enterprise for prior approval (e.g., interactions with public officials)
- Include provisions that limit the Third party's ability to act on the enterprise's behalf in relation to government contracts; and
- Require, as appropriate, provisions for transparency of the relationship to local authorities

Source: ICC, 2010, p.p. 6-7

3.4.4. Use of IT-solutions for risk management

According to the WEF Guidelines, technology can help make a traditionally paper-based process more efficient. Several compliance software programmes providing for direct data input, work-flow management and red-flag alerts are now available on the market (WEF, 2013, p. 10).

3.4.5. Reports relevant for benchmarking third party risk management

· NAVEX Global, 2017e. Ethics & Compliance Third Party Risk Management Benchmark Report. Available at: <https://www.navexglobal.com/en-us/resources/benchmarking-reports/2017-ethics-compliance-third-party-risk-management-benchmark-report?RCAssetNumber=2760>

3.5. Mergers and acquisitions

3.5.1. Standards and guidelines on mergers and acquisitions

The most of international standards and guidance do not pay special attention to mergers and acquisitions. Particular recommendations can be found in the Wolfsberg Group's guidance.

- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>

Organizations can also consider recommendations of the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission.

Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

Source: Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 62

3.5.2. Reports relevant for benchmarking mergers and acquisitions

Kroll and Ethisphere Institute, 2017. Anti-Bribery & Corruption Benchmarking Report – 2017. Available at: <https://www.kroll.com/en-us/abc-report-confirmation>

3.6. Staff recruitment, promotion, and performance evaluation

3.6.1. Standards and guidelines on staff recruitment, promotion, and performance evaluation

As underlined in international guidelines, staff recruitment as well as promotion, training, and performance evaluation should reflect an organization's commitment to the anti-corruption compliance programme (APEC, 2007, p. 5).

There are several general international standards and guidelines that contain recommendations on staff recruitment, promotion, and performance evaluation.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- World Bank Group, 2010. Integrity Compliance Guidelines Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>
- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>

- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>

3.6.2. Staff recruitment

International standards and guidelines recommend considering ethical norms in the recruitment process, conducting due diligence of applicants and employees, and applying preventive anti-corruption measures by hiring former public officials.

The World Bank Group's Guidelines recommend organizations to conduct due diligence of employees, and apply restricting arrangements with former public officials. Restrictions should be imposed on the employment of, or other remunerative arrangements with, public officials, and with entities and persons associated or related to them, after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure or those functions over which they were or continue to be able to exercise material influence. (World Bank Group, 2010, p. 2).

In order to prevent offers of employment or other work experience from being used improperly, the Wolfsberg Group recommends financial institutions to consider the following:

- A consistent recruitment process
- Merit-based hiring procedures designed to ensure that candidates are qualified/eligible and do not receive special treatment based upon relationships with a Public Official, or an employee of a customer or potential customer. Messaging about these procedures should be provided to appropriate employees
- Heightened scrutiny (including additional approvals) for candidates referred by a Public Official or an employee of a customer or potential customer, particularly if the FI is (or soon will be) engaged with the employer of the referring person on business opportunities or legal/regulatory matters
- Monitoring or testing procedures (e.g. review of communications regarding referred candidates described above)
- The effectiveness of governance and supervisory control of hiring Programmes

Source: Wolfsberg Group, 2017, p. 12

The ICC Rules provide guidance regarding hiring former public officials. If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Where applicable, restrictions imposed by national legislation shall be observed (ICC, 2011, p. 9).

For developing recruitment procedures organizations can consider:
ISO, 2016, p.p. 12-13, 29

The French Anti-Corruption Agency's Guidelines recommend making sure that compliance with ethical practices is incorporated into the recruitment and appointment process for all of

the organization's employees, especially, management personnel (Agence Française anticorruption, 2017, p. 7).

3.6.3. Promotion, and performance evaluation

According to the UNODC Guide, incentives for ethical and compliance-driven behavior should be integrated into these human resources policies and performance evaluation processes (annual reviews, feedback sessions, or periodical assessments) (UNODC, 2013, p. 75).

Incentive schemes should exclusively apply to evaluations based on objective criteria which are comparable and measure performance regarding the anti-corruption programme, such as:

- Participation and performance in compliance trainings
- Level of active support and development of the company's anti-corruption programme
- Compliance-related approvals
- Knowledge of the company's values and norms (e.g. Code of Conduct)
- Willingness to question or reject dubious conduct or proposals

Evaluations that seek to measure criteria such as personal values, impressions or perceptions should be avoided since these relate to personal character and mindset. The evaluation of these kinds of criteria is necessarily subjective and susceptible to unfairness and arbitrariness.
Source: UNODC, 2013, p. 75

The French Anti-Corruption Agency's Guidelines recommend considering compliance when setting annual objectives and conducting performance reviews. Managers' initiatives to promote the prevention and detection of corruption by their teams should be highlighted (Agence Française anticorruption, 2017, p. 7).

A Resource Guide to the U.S. Foreign Corrupt Practices Act underlines the role of positive incentives which can drive compliant behavior. It provides organizations with examples of good practices such as making adherence to compliance a significant metric for management's bonuses so that compliance becomes an integral part of management's everyday concern (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p.p. 59-60).

The ICC Rules recommend conducting a regular evaluation of key personnel in areas subject to high corruption risk, and also considering the rotation of such personnel (ICC, 2011, p. 9).

3.7. Conflict of interest

3.7.1. Standards and guidelines on conflict of interest

A conflict of interest exists if an individual in a company has professional, personal or private interests that diverge from the interests that the individual is expected to have when representing the company: in short, the individual interest conflicts with the company interest (UNODC, 2013, p. 49).

The UNODC Guide and the ICC Rules on Combating Corruption contain recommendations on conflict of interest.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

There are also special guidelines on conflict interest published by the ICC.

- ICC, 2018. Guidelines on Conflicts of Interest in Enterprises. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2018/08/icc-conflicts-of-interest-guidelines-july-2018.pdf>

The French Anti-Corruption Agency recommends to address conflict of interest in the Code of Conduct (Agence Française anticorruption, 2017, p. 8).

3.7.2. Policy on conflict of interest

Conflict of interest is not a corruption offence but can pose a risk of corruption. According to international standards and guidance, it is important for organizations to have clear policies and procedures to identify and address conflicts of interest (TI, 2013, p. 7; ICC, 2011, p. 9).

The ICC Guidelines recommended key elements to be included in a policy:

- Objective: first, the prevention of conflict of interest, and if nevertheless they do arise, dealing with them, disclosing them and finally mitigating the risks of them arising;
- Scope: applicable and binding for all directors, officers, managers, employees, agents and representatives (associates) of the enterprise;
- Definitions
- Provisions (ICC, 2018, p.p. 1-2)

For developing policy on conflict of interest organizations can consider:
Checklist on the conflict of interest. (UNODC, 2013, p. 53)

3.7.3. Identification of conflict of interest

According to the UNODC Guide, the typical sources of conflict of interest are:

- Gifts, benefits and hospitality
- Outside appointments
- Parallel internal positions
- Financial investments
- Employment of relatives
- Engagement of public officials (UNODC, 2013, p.p. 49-50)

The ICC Guidelines provides organizations with types of conflicts of interest with examples (ICC, 2018, p.p. 7-8)

The Guide recommends several methods of identification of conflict of interest:

- Disclosure of possible conflicts of interest by all employees, relevant business partners, or only by selected representatives
- Disclosure of assets by senior managers or Board members
- Due diligence

According to the ICC Guidelines, an organization can foresee the disclosure of conflict of interest:

- for job applicants and newly hired or appointed staff members immediately during the hiring or appointment process
- for members of senior management at least annually update
- for all staff members immediately when essential circumstances changed (ICC, 2018, p.p. 1-2)

Depending on their own risk tolerance, organizations may also consider requiring the disclosure of assets of the family members of employees who are subject to the rule of asset disclosure (UNODC, 2013, p. 51).

The information presented in an assets declaration can be compared with data from various available databases.

The ICC Rules on Combating Corruption pay special attention to the hiring of former public officials. If their contemplated activity or employment relates directly to the functions held or supervised during their tenure, former public officials shall not be hired or engaged in any capacity before a reasonable period has elapsed after their leaving their office. Restrictions for the employment of former public officials imposed by national legislation shall be observed (ICC, 2011, p.9).

3.7.4. Addressing conflict of interest

The UNODC Guide describes several options to address conflict of interest. The simplest way to address a potential conflict of interest is to avoid the situations that may cause it. Another option would be to remove the employee facing the conflict of interest from the particular situation. Finally, a contract that is being negotiated by an employee exposed to a conflict of interest could be assessed by an internal or external third party to demonstrate that the

negotiated contract terms are what would be expected by an arbitrary third party and that the company has not been prejudiced by the contract (UNODC, 2013, p.p. 51-52).

The ICC Guidelines contain several scenarios illustrating conflict of interest situations (ICC, 2018, p.p. 14-20). These scenarios can be useful for developing policies and conducting trainings for staff members.

3.8. Gifts and hospitality

3.8.1. Standards and guidelines on gifts and hospitality

The policy on gifts and hospitality should prevent the use of gifts and hospitality as a first step towards establishing corrupt relationships.

General international standards and guidelines contain recommendations on gifts and hospitality.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>
- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>

The detailed recommendations can be found in special ICC guidance.

- ICC, 2014. Guidelines on Gifts and Hospitality. Available at: <https://www.icc-austria.org/fxdata/iccws/prod/media/files/ICC%20Guidelines%20on%20Gifts&Hospitality.pdf>

3.8.2. Policy on gifts and hospitality

In general, giving gifts or providing hospitality are legitimate expenditures and common business practices for building relationships or to express appreciation. Similarly, an organization may cover travel and entertainment expenses in order to demonstrate a company's capabilities by attending a conference or visiting a production location.

International guidelines recommend prohibiting the offer or receipt of gifts, hospitality or expenses whenever such arrangements would be in violation of applicable domestic law (APEC, 2007, p. 4).

Where gifts and hospitality are not illegal, an organization may choose to give gifts and hospitality or to adopt a complete ban on the provision of gifts and hospitality (OECD, 2016, p. 12).

If gifts and hospitality are not prohibited in an organization it is important to develop an effective policy and guidelines, and mitigate the risk of disguising bribe as a gift or hospitality. It can be considered that the risk of gifts, hospitality, travel and entertainment expenses does not stem from the expenditure itself but from situational factors and disproportionality.

As mentioned in the ICC Guidelines, there is no uniform standard but rather each jurisdiction has its own rules, regulations and enforcement methods with regard to gifts and hospitality (ICC, 2014, p.2).

According to the ICC Rules, procedures covering the offer or receipt of gifts and hospitality should ensure that such arrangements (a) comply with national law and applicable international instruments; (b) are limited to reasonable and bona fide expenditures; (c) do not improperly affect, or might be perceived as improperly affecting, the recipient's independence of judgement towards the giver; (d) are not contrary to the known provisions of the recipient's code of conduct; and (e) are neither offered or received too frequently nor at an inappropriate time (ICC, 2011, p. 8).

The ICC Guidelines recommend recording gifts and hospitality fairly and accurately, and considering the culture and the standard of living in the country or region where the advantage is given or received (ICC, 2014, p. 3).

No gifts or hospitality should be provided nor received in the form of cash or cash equivalent, such as vouchers, pre-paid cards or free services of the organization (ICC, 2014, p. 3).

Guidance may be established as a positive-list setting clear and transparent boundaries, for instance regarding:

- Types of gifts, hospitalities, travel modes or entertainment types that are acceptable;
- Limits of monetary value;
- Reimbursement from the counterpart;
- Characteristics of the counterpart;
- Nature of the business relationship; and
- Occasion

Source: UNODC, 2013, p. 44.

The presence of one or more of the following risk factors can affect the appropriateness of a gift or business hospitality:

- The recipient is a Public Official and therefore subject to more stringent rules relating to the receipt or provision of gifts and hospitality (e.g. transparency letters, lower thresholds or restrictions)

- The recipient is: 1) a customer in his/her individual capacity (e.g. private wealth customer); 2) an employee of a wholesale customer with attendant duties owed to that customer (e.g. a CFO); 3) a relative or close associate of a wholesale customer employee or 4) both a customer in his/her individual capacity and an employee of a wholesale customer
- For a recipient associated with wholesale customers, the recipient's employer is not aware of any high value gifts or hospitality and/or the provision of less common benefits such as the extension of an invitation to the recipient's guests/family members
- The value (event specific or in the aggregate) and/or frequency of gifts and hospitality could at a minimum create the appearance of being lavish or excessive in relation to the recipient(s)
- Proximity of the gifts and hospitality to an award of business or other action by the recipient that may benefit or appear to benefit the FI (e.g. recent or pending business activity)

Source: Wolfsberg Group, 2017, p. 11.

For developing policy on gifts and hospitality organizations can consider:
Clause A.15 (ISO, 2016, p.p. 39-41)
Checklist 4. Rules on gifts and hospitality (OECD, 2016, p. 13)

The UK Ministry of Justice's Guidance provides organizations with description of case study on hospitality and promotional expenditure.

Case study 4 – Principle 1 and 5. Hospitality and promotional expenditure.
Source: UK Ministry of Justice, 2011, p. 36

An organization should make clear that rules on gifts and hospitality extend to any persons acting on behalf of the organization (OECD, 2016, p. 12).

An organization should also include provisions on gifts and hospitality receiving in the policy. A Policy could foresee that the giving or receiving of a gift or hospitality, the value of which exceeds nominal value, needs to be reported and that, if the value exceeds a certain defined level, it needs to be approved by a manager or a designated officer (ICC, 2014, p. 4).

The communication of the policy to business associates and other stakeholders may allow avoiding uncomfortable situations.

3.9. Charitable donations and sponsorship

3.9.1. Standards and guidelines on charitable donations and sponsorship

The aim of a policy on charitable donations and sponsorship is to prevent offering or providing donations and sponsorship which is, or could be perceived as, corruption.

General international standards and guidelines contain recommendations on charitable donations and sponsorship.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- World Bank Group, 2010. Integrity Compliance Guidelines. Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

3.9.2. Policy on charitable donations and sponsorship

According to international standards and guidelines, organizations should implement relevant policies and procedures to prevent the misuse of charitable donations and similar benefits for purposes of corruption and bribery (ISO, 2016).

Charitable contributions and sponsorships should be transparent and in accordance with the applicable law (ICC, 2011, p. 8).

The policy on charitable donations and sponsorship can regulate the procedure of the selection of donations recipients, forms of donations, follow-up measures, and public disclosure of donations.

The World Bank Group recommended public disclosure of all charitable contributions and sponsorships unless secrecy or confidentiality is legally required (World Bank Group, 2010, p. 2).

Organizations may develop the following risk mitigation activities:

- Understand the counterpart's own provisions regarding charitable contributions and sponsorships;
- Ensure appropriate timing of charitable contributions and sponsorships (i.e. not during a tendering process);
- Define strategies and objectives for charitable contributions and sponsorships (e.g. what kind of activities should be supported);
- Assess employees and business partners with respect to their relation with charitable organizations or sponsored parties (e.g. to identify conflicts of interest);
- Establish approval procedures (e.g. four-eyes principle to approve sponsorships);
- Maintain accurate books and records;
- Conduct regular reviews of charitable contributions and sponsorships;

- Disclose charitable contributions and sponsorships to enable public scrutiny (unless secrecy or confidentiality is legally required).

Source: UNODC, 2013, p. 46.

For developing policy on charitable donations organizations can consider:
Checklist 5. Avoiding bribes disguised as charitable donations (OECD, 2016, p. 14)

The UK Ministry of Justice's Guidance provides organizations with description of case study on community benefits and charitable donations.

Case study 8 – Principle 1, 4 and 6. Community benefits and charitable donations.
Source: UK Ministry of Justice, 2011, p. 40

3.10. Political contributions

3.10.1. Standards and guidelines on political contributions

General international standards and guidelines contain recommendations on political contributions.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- World Bank Group, 2010. Integrity Compliance Guidelines. Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>

3.10.2. Policy on political contributions

An organization may decide to contribute or not to political parties or organizations. An organization can declare in an anti-corruption compliance programme and in other relevant programmes and policies that it does not contribute to any political party or organization. All political contributions should be transparent and made only in accordance with applicable

law (APEC, 2007, p. 4; ICC, 2011, p. 8). An organization should consider legal restrictions for political contributions existing in some countries, especially for foreign organizations.

If an organization does not exclude a possibility to contribute to political parties and/or organizations, relevant policies and procedures should be included in an anti-corruption compliance programme.

The policy on political contributions can regulate the decision making procedure, forms of contributions, follow-up measures, and public disclosure of donations.

Organizations may develop the following risk mitigation activities:

- Ensure appropriate timing of political contribution (e.g. not during a major political decision-making process);
- Set thresholds for political contributions;
- Maintain accurate books and records;
- Assess employees and business partners with respect to their relation with political parties, officials, candidates, politically exposed persons (to identify conflict of interest);
- Establish approval procedures (e.g. four-eyes principle to approve contributions);
- Conduct regular reviews of political contributions; and
- Disclose political contributions to enable public scrutiny (unless secrecy or confidentiality is legally required)

Source: UNODC, 2013, p. 45.

The World Bank Group also recommended public disclosure of political contributions if such disclosure is not prohibited by law (World Bank Group, 2010, p. 2).

For developing policy on political contributions organizations can consider:
Clause A.15 (ISO, 2016, p.p. 40-41)
Checklist 6. Avoiding bribe disguised as political donations (OECD, 2016, p. 15)

3.11. Reporting misconduct and hot lines

3.11.1. Standards and guidelines on reporting misconduct and hot lines

General international standards and guidelines contain recommendations on reporting misconduct and hot lines.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>

Good practices on resisting extortion and solicitation can be found in the tool developed by UN Global Compact, ICC, WEF, and TI.

- UN Global Compact, ICC, WEF, TI, 2011. Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training. Available at: <https://www.transparency.org/whatwedo/publication/resist_resisting_extortion_and_solicitation_in_international_transactions>

The ICC provided organizations with guidance on whistleblowing.

- ICC, 2008. Guidelines on Whistleblowing. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2008/06/ICC-Whistleblowing-Guidelines.pdf>

3.11.2. Reporting misconduct

The policy on reporting misconduct should promote the culture of whistleblowing and establish reporting channels. According to the ICC Guidelines, the whistleblowing system should aim to receive and entertain, in full confidentiality, all reasonable requests for advice and guidance on business conduct matters and ethical concerns raised by the employees of the enterprise and of its subsidiaries or affiliates (the group), but also, to any extent possible, by any of the group's agents, suppliers and customers (ICC, 2008, p. 5).

In the U.S., the effectiveness of the reporting mechanism is an important part of the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2019, p.p. 5-6). An effective compliance programme should include a mechanism for an organization's employees and others to report suspected or actual misconduct or violations of the company's policies on a confidential basis and without fear of retaliation (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 61).

The French Anti-Corruption Agency recommends that the internal whistleblowing system specify the following:

- the role of the whistleblower's superior, who should be able to guide and advise employees, unless the superior is the perpetrator of the non-compliant behaviour;
- the person assigned the function of receiving whistleblowers' reports within the organization: the employer may outsource this function or assign it to a person within the organization;
- the measures taken to ensure whistleblowers' anonymity, the confidentiality of the disclosures and the persons named in them, even when investigation and processing of disclosures require communication to third parties. If one or more persons are named, the organization must be very vigilant when gathering evidence or documents, especially when the persons named in the whistleblower's disclosure can destroy compromising data or documents;

- the procedures for whistleblowers to provide any information or documents to back up their reports;
- procedures for communicating with the whistleblower;
- provisions for notifying the whistleblower immediately of receipt of the disclosure and the time needed to examine its admissibility. For this purpose, it should be stated that the acknowledgement of receipt does not mean the disclosure is admissible;
- the measures taken to notify the whistleblower of the end of the proceedings and, where appropriate, the persons targeted by the proceedings;
- if no action is taken, the provisions taken to destroy items on file that may be used to identify the whistleblower and the persons named in the disclosure within two months of the end of the investigation;
- if automated processing of disclosures is used, with the authorization of the French Data Protection Authority (CNIL);
- where appropriate, the policy on processing anonymous reports: the processing requirements specified should be appropriate for the complexity of investigations involving anonymous whistleblowers. Furthermore, when possible, investigators should communicate with the anonymous whistleblower.

Source: Agence Française anticorruption, 2017, p. 10

The ISO Standard 37001 contains requirement for procedures of raising concerns (ISO, 2016, p.p. 17-18).

Reporting channels can include but not be limited to:

- Personal report to superior
- Personal report to anti-corruption compliance officer
- Personal report to ombudsman
- Hot lines (UNODC, 2013, p. 82)

Staff members should have a right to report any misconduct directly to anti-corruption compliance officer or ombudsman without preliminary reporting to the superiors.

Organizations should maintain, to the fullest extent possible and at all times, the confidentiality of the data revealed through whistleblowing, and the identity of the whistleblower, subject to overriding legal requirements, and should protect such data with the most appropriate means (ICC, 2008, p. 6).

General international standards and guidelines recommend allowing anonymous reporting (ISO, 2016, p. 17). However, organizations should consider whether anonymous reporting is legally permissible (Wolfsberg Group, 2017, p.6). In deciding to opt for an anonymous whistleblowing system, an organization may take into account its cultural environment, as well as issues relating to the protection of privacy and the risk of unfair reporting (ICC, 2008, p.6).

An organization can receive two types of reports:

- Reports on attempted, suspected or actual corruption offences (criminal or administrative)
- Reports on other violations of the organization's anti-corruption compliance programme

The following actions depend on the type of report.

The reporting of violations may be a sensitive subject due to cultural, legal and political reasons (e.g. reporting persons may be perceived as traitors or informants). The social perception of reporting persons should be taken into account when companies seek to design reporting measures. Reporting channels should fit the specific organizational culture as well as the external social context of the organization.

Organizations may need to invest different degrees of effort to develop a positive image of the reporting of violations among its employees. In this respect, reporting should be included as a discussion subject in training courses and communication.

Organizations should ensure that the information provided by reporting persons is handled with a fast and structured follow-up procedure and that any further course of action undertaken is communicated to the reporting person. If individuals feel that reporting does not lead to any action, they may be discouraged from doing so in future cases or they may go outside the company to report (UNODC, 2013, p. 83).

A whistleblower, whose report is not considered bona fide, should forthwith be told so and such report should be disregarded. If there is abuse of the process, disciplinary action can be envisaged (ICC, 2008, p. 6).

3.11.3. Reporting bribery solicitation and other urgent reporting

As mentioned in international guidelines, bribe solicitation can put staff members in a very difficult position. The policy on reporting misconduct should provide guidance on what to do when confronted with bribe demands by public officials (OECD, 2016, p. 16).

Staff members should have the right and opportunity to report immediately any case of bribe solicitation to the anti-corruption compliance officer or another designated person in case of compliance officer's absence. It is important to establish a clear procedure to react on such reports.

An organization can consider an opportunity to inform the law enforcement authorities immediately, especially in case of risk to life or personal safety of a staff member, or other serious negative consequences.

Responses to a bribery demand: How to react if the demand is made?
Source: UN Global Compact, ICC, WEF, TI, 2011, p.p. 48-49

The French Anti-Corruption Agency's Guidelines underlines that in cases of serious and present danger or risk of irreversible harm, the disclosure of matters mentioned in Article 6 of the Act of 9 December 2016 may be submitted directly to the judicial or administrative authorities, or to professional bodies. It may also be made public (Agence Française anticorruption, 2017, p. 13).

3.11.4. Hot lines

Hot line may be:

- Phone number
- E-mail address
- Intranet
- Webpage

An organization may use an external service provider to manage the hot line.

The OECD Guidance recommends promoting the whistleblowing hotline via the organization's website, intranet, office circulars and other means of communication with employees (OECD, 2016, p. 21).

Case Studies 16 – 18 on whistleblowing hotlines
Source: OECD/UNODC/World Bank, 2013, p.p. 62-66

3.11.5. Reports relevant for benchmarking reporting misconduct and hotlines

- Ethics & Compliance Initiative (ECI), 2016. Global Business Ethics Survey. Measuring Risks and Promoting Workplace Integrity. Available at: <https://higherlogicdownload.s3.amazonaws.com/THEECOA/11f760b1-56e0-43c6-85da-03df2ce2b5ac/UploadedImages/research/GBESFinal.pdf>
- NAVEX Global, 2015. Hotline Benchmark Report. Available at: <http://www.navexglobal.com/en-us/resources/whitepapers/2015-Ethics-and-Compliance-Hotline-Benchmark-Rep>
- NAVEX Global, 2017e. EMEA & APAC Whistleblowing Hotline & Incident Management Benchmark Report. Available at: <https://www.navexglobal.com/en-us/resources/benchmarking-reports/2017-emea-apac-whistleblowing-hotline-incident-management-benchmark?RCAssetNumber=2292>

3.12. Internal investigations and addressing violations

3.12.1. Standards and guidelines on internal investigations and addressing violations

General international standards and guidelines contain recommendations on internal Investigations and addressing violations.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2010. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.

- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>

3.12.2. Internal investigations

When an organization receives information from internal or external sources about the violation of an anti-corruption compliance programme or anti-corruption laws, it may decide to disclose this information immediately to law enforcement authorities or to carry out an internal investigation.

The organization should consider provisions of criminal law and other applicable laws establishing legal obligation to report particular corruption offences to law enforcement authorities.

The internal investigation should be based on sound legal principles (UNODC, 2013, p. 81).

For developing policy on internal investigations and follow-up actions organizations can consider:
ISO, 2016, p.p. 18, 42-43

3.12.3. Addressing violations

When violations of the organization's anti-corruption compliance programme are reported or detected, it is crucial to address these violations in order to demonstrate the organization's commitment to zero-tolerance of corruption and reduce negative consequences. The organization should establish appropriate disciplinary procedures to address violations at all levels (OECD, 2010, p. 4).

According to the UNODC Guide, a disciplinary policy should include:

- A catalogue of sanctions
- Guidelines on procedures and responsibilities
- An opportunity to appeal (UNODC, 2013, p. 86)

Catalogue and application of sanctions

According to international guidelines, organizations should apply appropriate sanctions for violations of the anti-corruption compliance programme (APEC, 2007, p.5).

It should be mentioned that the catalogue of sanctions shall comply with applicable business, civil, human rights, and labor laws and regulations.

Sanctions for employees may include monetary fines, decreases in remuneration, nonpromotion, and the transfer to a lower position. Sanctions may also include the termination of the employment contract in appropriate circumstances (APEC, 2007, p.5).

Organizations should avoid delaying the termination of employment for high performing staff or senior management. It is also suggested that organizations avoid the option of

asking an employee to resign instead of terminating the employment, as this might send a weak signal as to the rigor of disciplinary actions (UNODC, 2013, p. 89).

Sanctions for business partners may include the termination of the relationship, the exclusion from business opportunities (e.g. debarment) or the assignment of an unfavorable commercial and operational condition (e.g. higher due diligence requirements).

Organizations may also consider, on a case-by-case basis, making a public announcement of a sanction in order to send a strong signal to stakeholders and deter potential wrongdoers. Severe violations by employees should be communicated across the company, ensuring that all relevant departments are aware of the violation. (UNODC, 2013, p. 89).

Procedures and responsibilities

For defining procedures and responsibilities organizations can consider:
Guidelines on procedures and responsibilities (UNODC, 2013, p.p. 87-88)

Opportunity to appeal

The opportunity to appeal disciplinary decisions is an important right which should be provided to employees or business partners. Organizations may also consider setting out criteria to provide for opportunities to mitigate sanctions (e.g. for the provision of additional undetected information) (UNODC, 2013, p. 88).

3.12.4. Duress payments

Organizations should have a special policy for duress payments in the pressing situations where an employee cannot avoid paying a bribe or facilitation payment. Such payments should not be considered as misconduct.

Checklist 3. Addressing duress payments
Source: OECD, 2016, p. 12

Does FCPA Apply to Cases of Extortion or Duress?
Source: Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 27

3.13. Cooperation with authorities

3.13.1. Standards and guidelines on cooperation with authorities

General international standards and guidelines contain recommendations on cooperation with authorities.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at:

<https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>

- TI, 2013. Business Principles for Countering Bribery. Available at: <https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery>

The UK and U.S. laws and guidelines pay serious attention to various forms of cooperation with authorities.

- The Director of the Serious Fraud Office and The Director of Public Prosecutions, 2011. Bribery Act 2010: Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions. Available at: <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/bribery-act-guidance/>
- Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012. A Resource Guide to the U.S. Foreign Corrupt Practices Act. p.p. 54-56. Available at: <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>
- The U.S. Department of Justice, 2019. Justice Manual. 9-47.120 – FCPA Corporate Enforcement Policy. Available at: <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977>

In the U.S., while the conduct underlying any FCPA investigation is obviously a fundamental and threshold consideration in deciding what, if any, action to take, both the DOJ and SEC place a high premium on self-reporting, along with cooperation and remedial efforts, in determining the appropriate resolution of FCPA matters (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 54).

3.13.2. Self-reporting to the authorities

An organization should consider provisions of criminal law and other applicable laws establishing the legal obligation to report particular criminal offences to law enforcement authorities. In all such cases, an organization shall immediately submit report and cooperate with authorized authorities.

In all other cases, an organization can decide to disclose relevant information and evidence of actual or possible violations to authorities before allegations have been raised against the organization or one of its representatives. An organization can consider that in some jurisdiction voluntary disclosure may allow to reduce monetary fines.

The disclosure may relate not only to internal information, but also to information regarding business partners (UNODC, 2013, p. 91).

In the UK, the SFO encourages corporate self-reporting, but offers no guarantee that a prosecution will not follow any such report (The Director of the Serious Fraud Office and The Director of Public Prosecutions, 2011, p. 5). However, in the Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions, a genuinely proactive approach involving self-reporting and remedial action is mentioned as one factors

tending against prosecution (The Director of the Serious Fraud Office and The Director of Public Prosecutions, 2011, p. 7).

Under U.S. DOJ's Principles of Federal Prosecution of Business Organizations, federal prosecutors consider a company's cooperation in determining how to resolve a corporate criminal case. Specifically, prosecutors consider whether the company made a voluntary and timely disclosure as well as the company's willingness to provide relevant information and evidence and identify relevant actors inside and outside the company, including senior executives (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 54).

According to the FCPA Corporate Enforcement Policy, if a criminal resolution is warranted for a company that has voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated, the Fraud Section of the DOJ:

- will accord, or recommend to a sentencing court, a 50% reduction off the low end of the U.S. Sentencing Guidelines fine range, except in the case of a criminal recidivist; and
- generally will not require appointment of a monitor if a company has, at the time of resolution, implemented an effective compliance programme (The U.S. Department of Justice, 2019, p. 1).

3.13.3. Providing documents and information by the request

In general, an organization shall provide documents and information by the request of law enforcement authority in accordance with applicable laws and regulations.

In the author's opinion, before providing requested information and documents organization may check the following points:

- The authority has right to request these particular information and documents in accordance with applicable domestic laws and regulations
- The form of the request, including motivation and the communication channel used for request comply with applicable domestic laws and regulations
- The official signed the request is authorized to sign such categories of requests

3.13.4. Cooperation during the investigation

An organization should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions (TI, 2013, p. 11).
An organization can support the investigation process of authorities by disclosing additional relevant information or by providing investigative resources (UNODC, 2013, p. 91).

An organization can undertake remedial measures such as:

- Voluntary restoration of damages or loss caused by the offence
- Recovery of ill-gotten gains (e.g. proceeds of the corrupt act)
- Other voluntary restraints (e.g. abstention from bidding for public contracts)
- Acceptance of an external compliance monitor
- Corrective organizational actions (e.g. removal or other disciplinary measures against responsible employees)

Source: UNODC, 2013, p. 92.

In the U.S. prosecutors may consider a company's remedial actions, including efforts to improve an existing compliance programme or appropriate disciplining of wrongdoers (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 54).

3.13.5. Cooperation after settlement or court decision

An organization can cooperate with authorities after a settlement or a court decision. An organization can consider that in some jurisdictions such cooperation may allow:

- Rehabilitating convicted companies by publicly announcing improved behavior (e.g. the implementation of a significantly improvement anti-corruption programme)
- Obtaining a reduction of an already applied debarment sanction (UNODC, 2013, p. 92)

3.14. Communication and training

3.14.1. Standards and guidelines on communication and training

International standards and guidelines underline an important role of communication and training for the prevention of corruption (UNODC, 2013, p. 69; OECD, 2010, p.3).

In the UK, communication (including training) is one of the six principles, which organizations should put in place to prevent bribery (UK Ministry of Justice, 2011, p.p. 29-30).

In the U.S., the quality of policies and procedures on training and communication for relevant employees and third parties is one of the significant questions by the evaluation of corporate compliance programs (Criminal Division of the U.S. Department of Justice, 2019, p.p. 4-5).

General international standards and guidelines contain recommendations on training and communication.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use.
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>

- WEF, 2016. the World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at: <http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf>

3.14.2. Communication

According to the OECD Guidance, senior management should regularly communicate the policy and reiterate the principles in internal meetings with staff as well as in external meetings, such as those with clients and business partners. It is also essential that the management reaffirms its support for employees who have confronted bribe solicitation, refused to engage in business on such grounds, and reported the incident to management (OECD, 2016, p. 8).

According to the UNODC Guide, organizations should publically report on their anti-corruption efforts. The Guide provides organizations with detailed recommendations on such reporting. The status and performance of an anti-corruption compliance programme can be communicated to employees, business partners and other stakeholders (UNODC, 2013, p. 18-19).

For developing the reporting system organizations can consider:
UN Global Compact – Transparency International, 2009. Reporting Guidance on the 10th Principle Against Corruption. Available at: <https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf>

In addition to regular activities, communication and training can also be linked to special occasions or major events, such as:

- The recipient is a Public Official and therefore subject to more stringent rules relating to the receipt or provision of gifts and hospitality (e.g. transparency letters, lower thresholds or restrictions)
- Updates on internal policies or external legal regulations
- Organizational changes (e.g. a new Chief Compliance Officer)
- New internal guidelines or supporting tools
- Annual meetings of shareholders
- Seasonal events, e.g. special newsletter or training on gifts during the winter season
- National or international anti-corruption events, e.g. International Anti-Corruption Day (9 December)
- Joining a voluntary initiative, such as the United Nations Global Compact, World Economic Forum Partnering Against Corruption Initiative (PACI), Extractive Industries Transparency Initiative (EITI), Construction Sector Transparency Initiative (CoST)
- News about anti-corruption initiatives of civil society organizations and business partners
- Publication of the company's sustainability or corporate citizenship report

Source: UNODC, 2013, p. 70.

Organizations, which are subjects of the EU law and EU Member States' laws, should consider the disclosure requirements for non-financial information apply to certain large companies with more than 500 employees.

·EU, 2017. Communication from the Commission No. 2017/C215/01 of July 5, 2017 "Guidelines on non-financial (methodology for reporting non-financial information)". Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017XC0705%2801%29>

3.14.3. Training

General international standards and guidelines underline an important role of providing appropriate training to personnel (UNODC, 2013, p. 69; ISO, 2016, p. 13).

Training can be also provided for contractors, suppliers (UNODC, 2013, p. 69; APEC, 2007, p.6), and other relevant third parties (WEF, 2016, p. 9).

The NAVEX Global Guide identified 5 objectives an organization can achieve with trainings:

- Create a culture of ethics and respect
- Prevent misconduct
- Establish a legal defense in the event of a misstep
- Manage reputation
- Avoid litigation (NAVEX Global, 2017c, p. 1).

Trainings should be provided on a regular basis. In addition to regular activities, communication and training can also be linked to special occasions or major events.

Organizations can consider occasions and events mentioned in:
UNODC, 2013, p. 70

Organizations can combine standardized trainings with tailored trainings to selected employees and business associates (UNODC, 2013, p. 71; Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 59).

3.14.4. Content of trainings

International standards and guidelines contain particular recommendations regarding the content of trainings.

For developing content of trainings organizations can consider:
ISO, 2016, p.p. 13, 31-32

The training programmes should include the study of the Code of Conduct, the anti-corruption compliance programme, applicable laws and regulations, anti-corruption tools and IT-solutions (if applicable).

Case Study 14: A multinational electronics company undertakes in-person training
Source: OECD/UNODC/World Bank, 2013, p.p. 56-57

The programmes can also include schemes and typologies of corruption offences, case studies, real-world examples, and recommendations how to recognize, prevent, avoid, and report corruption offences.

The training programmes shall be updated on a regular basis to reflect changes and amendments of anti-corruption compliance programme, and applicable laws and regulations.

The OECD Guidance recommends using role-based bribery dilemmas and case studies and refers to the tool developed by the UN Global Compact, ICC, WEF, and TI (OECD, 2016, p. 17). The tool contains descriptions of 22 scenarios involving bribery dilemmas and suggests ways to respond to the solicitation.

- UN Global Compact, ICC, WEF, TI, 2011. Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training. Available at: <https://www.transparency.org/whatwedo/publication/resist_resisting_extortion_and_solicitation_in_international_transactions>

The French Anti-Corruption Agency's Guidelines contain detailed recommendations on the corruption risk training (Agence Française anticorruption, 2017, p.p. 30-32)

Various common media channels can be useful for the self-study (UNODC, 2013, p. 71).

3.14.5. Reports relevant for benchmarking training

NAVEX Global, 2018. Ethics & Compliance Training Benchmark Report. Available at: <https://www.navexglobal.com/en-us/resources/benchmarking-reports/2018-ethics-compliance-training-benchmark-report?RCAssetNumber=3668>

4. Monitoring, Review and Evaluation of an Anti-Corruption Compliance Programme

4.1. Standards and guidelines on monitoring, review and evaluation of an anti-corruption compliance programme

Various standards and guidelines recommend monitoring (ISO, 2016; TI, 2013), assessing (NAVEX Global, 2017d; Agence Française anticorruption, 2017), reviewing (UNODC, 2013; ISO, 2016; TI, 2013; Criminal Division of the U.S. Department of Justice and the Enforcement

Division of the U.S. Securities and Exchange Commission, 2012) and evaluating (UNODC, 2013; ISO, 2016) an anti-corruption compliance programme.

According to the UNODC Guide, a review is an in-depth study, conducted at a discrete point in the life cycle of a programme. An evaluation is the analysis of the results of the review. In contrast to reviews, evaluations have clear criteria against which the results are evaluated in order to identify a potential need for modifications and improvements (UNODC, 2013, p. 96).

The ISO Standard 37001 defines monitoring as determining the status of a system, a process or an activity (ISO, 2016, p. 4).

International standards and guidelines do not provide any definition of assessment. Considering the content of organizations' obligations we can assume that the term "assessment" has been used with the same meaning as the term "review".

General international standards and guidelines contain recommendations on monitoring, review and evaluation.

- OECD/UNODC/World Bank, 2013 Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>
- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- ISO, 2016. Standard 37001 Anti-bribery management systems - Requirements with guidance for use
- TI, 2013. Business Principles for Countering Bribery. <https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery>

An organization can also find useful information in the Guide published by NAVEX Global.

- NAVEX Global, 2017d. Definitive Guide to Compliance Programme Assessment. Available at: <https://www.navexglobal.com/en-gb/node/2113/thank-you?RCAssetNumber=2080&token=UZ6h0thNzXfE0oGQ0Z1XMzJSn_OStmNhMt01uZOdcoQ>

4.2. Rational for monitoring, review and evaluation

The implementation of an anti-corruption programme should be regarded as a continuous learning and improvement process. Periodic reviews and evaluations keep policies and procedures up-to-date and relevant for employees and business partners. Furthermore, reviews and evaluations help to identify shortcomings, weaknesses or opportunities to optimize and simplify the overall anti-corruption programme.

The rationale for conducting periodic reviews and evaluations is to determine whether anti-corruption policies or procedures require modification. Modification may be required due to

changes in the business environment or lessons learned from internal operations (UNODC, 2013, p. 96).

In the author's opinion, modification may be required due:

- New legal requirements
- Implementing new organizational structures and/or processes
- Implementing new technologies
- New requirements from social environment and stakeholders
- Starting business in new markets
- Starting new business operations
- Reports on new schemes or typologies of corruption offences
- Feedback from internal and external parties
- Benchmarking against compliance standards or peer organizations
- Gaps in an anti-corruption compliance programme identified by auditors, internal or external investigators

The U.S. Department of Justice and the U.S. Securities and Exchange Commission evaluate whether companies regularly review and improve their compliance programs and not allow them to become stale (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 62).

4.3. Conducting monitoring, review and evaluation

The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate (TI, 2013, p. 11).

For conducting review and evaluation organizations can consider:
ISO, 2016, p.p. 18 - 21

To define sources of information for a comprehensive review of an anti-corruption compliance programme organizations can consider:
UNODC, 2013, p.p. 97 - 98

The French Anti-Corruption Agency's Guidelines contain detailed recommendations on the internal monitoring and assessment system (Agence Française anticorruption, 2017, p.p. 33-35)

The UNODC Guide provides organizations with evaluation criteria. A comprehensive evaluation may be accomplished by assessing the following three major criteria:

- Effectiveness refers to the extent to which the anti-corruption policies and procedures have contributed to the programmes specific objectives, for instance the minimization of risks of facilitation payments

- Efficiency refers to minimizing the costs of the anti-corruption programme, while ensuring the benefits of the anti-corruption policies and procedures, including lower legal, commercial and reputational risks
- Sustainability refers to the extent to which the anti-corruption policies and procedures and their related results help to minimize the risk of corruption in the long run

Source: UNODC, 2013, p.p. 98-99.

Case Study 22: UK-based international company monitors implementation of a group compliance programme
Source: OECD/UNODC/World Bank, 2013, p.p. 74 - 76

The senior management should periodically report the results of the Programme reviews to the Audit Committee, Board or equivalent body. The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the Annual Report to shareholders (TI, 2013, p. 11).

4.4. External verification and assurance

Where appropriate, the enterprise should undergo voluntary independent assurance on the design, implementation and/or effectiveness of the Programme. Where such independent assurance is conducted, the enterprise should consider publicly disclosing that an external review has taken place, together with the related assurance opinion (TI, 2013, p. 12).

4.5. Benchmarking

Organizations can use reports included in the Overview to benchmark anti-corruption compliance programmes and policies.

4.6. Reports relevant for benchmarking monitoring, review and evaluation processes

Control Risk Report, 2017. International Business Attitudes to Compliance. Available at: <https://www.controlrisks.com/our-thinking/insights/reports/international-business-attitudes-to-compliance>

5. Participation in Collective Action Initiatives

According to the World Bank Institute, anti-corruption Collective Action is a collaborative and sustained process of cooperation amongst stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors (World Bank Institute, 2008, p. 4).

Several general international standards and guidelines pay special attention to the role of Collective Action initiatives, and call up organizations to join forces against corruption.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- World Bank Group, 2010. Integrity Compliance Guidelines Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>
- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

The World Bank Group underlined that Collective Action initiatives can support implementation of anti-corruption compliance. According to the World Bank Group Guidelines, where appropriate - especially for SMEs and other entities without well-established Programs, and for those larger corporate entities with established Programs, trade associations and similar organizations acting on a voluntary basis - endeavor to engage with business organizations, industry groups, professional associations and civil society organizations to encourage and assist other entities to develop programs aimed at preventing misconduct (World Bank Group, 2010, p.4).

The UNODC Guide mentioned that organizations, especially SMEs, may face the risk of being bypassed by other competitors that do not adhere to the same anti-corruption standards, or face corruption-related solicitations and extortions from the public sector. One way for organizations to address these risks is to engage in Collective Action activities with other partners that may face the same challenges (UNODC, 2013, p. 104).

According to the OECD Guidance, organizations can undertake the following initiatives to tackle corruption: identify stakeholders, issue declarations, sign an integrity pact, develop an industry anti-bribery policy/code of conduct, undertake longer term measures (OECD, 2016, p.p. 22-23).

Comprehensive information about Collective Action against corruption can be found on: <https://www.collective-action.com/>

Bibliography

Standards and Guidelines adopted by international intergovernmental organizations and bodies

UNODC

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>

UN Global Compact

- UN Global Compact – Transparency International, 2009. Reporting Guidance on the 10th Principle Against Corruption. Available at: <https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf>

- UN Global Compact, ICC, WEF, TI, 2011. Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training. Available at: <https://www.transparency.org/whatwedo/publication/resist_resisting_extortion_and_solicitation_in_international_transactions>
- UN Global Compact, 2013. A Guide for Anti-Corruption Risk Assessment. Available at: <https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf>

OECD

- OECD, 2009a. Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. Available at: <www.oecd.org/daf/anti-bribery/44176910.pdf>
- OECD, 2009b. Principles for Integrity in Public Procurement. [pdf] OECD. Available at: <www.oecd.org/gov/ethics/48994520.pdf>
- OECD, 2010. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>

- OECD/UNODC/World Bank, 2013 Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>

OSCE

- OSCE, 2016. Handbook on Combating Corruption. Available at: <https://www.osce.org/secretariat/232761?download=true>

World Bank Group

- World Bank Group, 2010. Integrity Compliance Guidelines Available at: <http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf>

FATF

- FATF, 2012. International Standards on Combating Money Laundering, the Financing of Terrorism and Proliferation (the FATF Recommendations). [pdf] FATF. Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf>
- FATF, 2012a. A Reference Guide and Information Note on the Use of the FATF Recommendations to support the fight against Corruption. Available at: <www.fatf-gafi.org/media/fatf/documents/reports/Corruption%20Reference%20Guide%20and%20Information%20Note%202012.pdf>
- FATF, 2013. Guidance: Politically Exposed Persons. Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>
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G20

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List of Abbreviations

AML	Anti-Money Laundering
APEC	Asia-Pacific Economic Cooperation
APG	Asia/Pacific Group on Money Laundering
CFATF	Caribbean Financial Action Task Force
EAG	Eurasian Group on Combating Money Laundering and Financing of Terrorism
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FCPA	US Foreign Corrupt Practices Act
FIU	Financial Intelligence Unit
FSRBs	FATF-style regional bodies
GABAC	Task Force on Money Laundering in Central Africa
GAFILAT	Financial Action Task Force of Latin America
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
IBA	International Bar Association
ICC	International Chamber of Commerce
ISO	International Organization for Standardization
MENAFATF	Middle East and North Africa Financial Action Task Force
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
OSCE	Organization for Security and Co-operation in Europe
OECD	Organisation for Economic Co-operation and Development
PEPs	Politically Exposed Persons
SFO	UK Serious Fraud Office
SMEs	Small and Medium-Sized Enterprises

UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

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