

Appendix 1: Elements of a comprehensive anti-bribery culture and control program

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Certain elements of a corruption and bribery control environment remain consistent across the guidelines and reports explored in Regnan’s research. The common elements can be summarised as follows:

Ethical culture: The tone from the top	<ul style="list-style-type: none"> • Visible and active CEO/board support and leadership including clear public integrity statement • Formal CEO/board approval of policies and programme • Participation in collective anti-corruption initiatives and multi-stakeholder processes, e.g. UN Global Compact, EITI, PACI etc.
Oversight mechanisms	<ul style="list-style-type: none"> • Non-executive committee with a corruption and bribery remit • Active board oversight, e.g. regular reports on implementation and compliance, standing item on board agenda, training/guidance • Dedicated ethics/C&B committee or senior manager appointed for implementation • Anti-corruption incorporated in the performance based component of executive remuneration
Risk assessment	<ul style="list-style-type: none"> • Regular risk assessments conducted and used to design and improve policies and procedures • Results and process reviewed by senior management, reported to the board and publicly disclosed • Corruption and bribery risks addressed in formal risk management systems
Detailed policies and procedures	<ul style="list-style-type: none"> • Clear, accessible and publicly disclosed zero-tolerance policy on bribery and corruption including prohibiting facilitation payments • Policy provides scenarios/examples and is mandatory for all employees, contractors and business partners • Policies and procedures cover facilitation payments, gifts and entertainment, political and charitable contributions, due diligence, human resources/rights, conflicts of interest, record keeping requirements, laws and regulations, investigation and generic sanctions
Effective implementation	<ul style="list-style-type: none"> • Training and guidance provided regularly to employees, contractors and business partners with delivery methods appropriate for each target audience, taking cultural and language issues into account • Training results assessed, tracked and communicated publicly • Active communication and integration in business processes, e.g. anti-corruption campaigns, departmental meetings, appraisal, employee participation in programme formation and implementation, compliance support mechanisms
Managing business relationships	<ul style="list-style-type: none"> • Policies and procedures cover managing B&C risk with contractors, business partners, agents, intermediaries and acquisitions • Policy and procedure for due diligence to be carried out before entering into a business relationship and repeated periodically • Process include research, investigation, assessment and monitoring with features containing contractual requirements to observe anti-corruption programme with break clause; monitoring including right to audit; and regular renewal of contracts
Identification of issues	<ul style="list-style-type: none"> • Externally operated whistleblowing system in place with a formal policy underlying the system which allows employees, contractors and business partners to report breaches of ethical standards and company policies confidentially without fear of retaliation • System of internal controls including separation of duties for transactions, checks and balances over accounting and record keeping
Investigation and response	<ul style="list-style-type: none"> • Procedure for dealing with incidents covering roles, responsibilities, documentation, management and board reporting, remedial action (sanctions, suspension of contracts and disciplinary action), internal and external communication • Incorporation of lessons learnt by conducting root-cause analysis and implement improvements
Monitoring and review	<ul style="list-style-type: none"> • Monitoring and review procedures; periodic internal audits and external verification and assurance • Procedure to incorporate employee views e.g. employee surveys, use and outcome of whistle-blowing reports & advice channels • Monitoring and review results incorporated into programme design for continuous improvement
Reporting	<ul style="list-style-type: none"> • Public reporting on anti-corruption programmes detailing commitment and policy, implementation and monitoring • Transparent organisational structures, i.e. published lists of subsidiaries, affiliates, joint ventures and other related entities • Public reporting of individual financial accounts for each country of operations detailing revenue flows

Ethical culture - The tone from the top

- The right tone at the top on anti-corruption vigilance is the first step. A corporate culture driven from the top in which it is clearly understood by all employees that there is a zero tolerance policy towards bribery and corruption is fundamental to an effective anti-corruption programme.
- Demonstration by the leadership about the culture which it expects and the consequences of breaching the provisions of the programme, will make it clear to employees:
 - the seriousness that the company attaches to countering corruption;
 - the company's expectations of its employees;
 - the company's support for employees in carrying out the anti-corruption programme and in standing up to corrupt demands, even in cases where business might be lost.
- Leadership means not only communicating a clear message but also acting with integrity and leading by example. This includes speaking at employee and external events and communicating through internal and external channels. External communications can include an integrity statement from the CEO/MD and/or the chair of the board in corporate reporting. A public statement enhances a company's reputation, reinforces the internal policies and systems among employees and business partners and can help to deter corruption.
- Many companies that have been investigated and prosecuted for bribery have had in place tick-box systems, but the systems were not supported by a culture and tone from the top or values embedded in the company.
- Where appropriate, the company should participate in collective anti-corruption initiatives and multi-stakeholder processes at the sectoral level to promote anti-corruption, e.g. UN Global Compact, EITI, PACI etc. Via such participation the company can learn from peers and potentially handle corruption risks more effectively. It also allows companies to create collective action and minimum standards, thereby encouraging a level playing field.

Oversight mechanisms

- The board of directors is ultimately responsible for establishing a culture within the company in which bribery is never acceptable, and for ensuring that there is effective design and implementation of a programme to counter bribery and corruption. Transparency International's Business Principles are purposely based on board commitment to fundamental values of integrity, transparency and accountability. The board's responsibilities will include approving and monitoring the company's ethical values, monitoring management control and evaluating senior management.
- It is imperative that the Board can attest that risk and controls are being managed effectively. Consequently oversight arrangements need to be established involving a non-executive committee with a compliance remit – this may be the audit committee, the risk committee, or a specific compliance committee. The Board should devote appropriate time to anti-bribery compliance issues and to monitoring the effectiveness of the organisation's anti-bribery programmes and controls.
- Best practice calls for board members undergoing training themselves to ensure they have appropriate knowledge of the anti-bribery legislation and its implications, and to set the tone from the top. Understanding of risk tolerances and how risk management affects daily decisions should be consistent from the board down to line-level managers. The greater the potential exposure, the more active the board of directors needs to be.
- Countering corruption should accordingly be a standing item on the board agenda and the board should receive regular reviews on the implementation of the programme, reports on any incidents or allegations of bribery and actions taken to correct deficiencies. The board should also assess the competence, judgement and attitudes to integrity of the CEO and senior management.
- The board further denotes importance of the anti-corruption programme by way of committing adequate qualified resources to its development. While the board have oversight of the anti-corruption programme, a senior manager ought to be appointed to take organisational responsibility for implementation. This individual is often designated as the chief compliance/ethics officer.
- As anti-corruption efforts require coordinated action, a management committee or internal stakeholder group can ensure that necessary communication takes place, and that sufficient support for effectiveness of the program exists throughout the company.
- Assignment of responsibilities should be accompanied by setting objectives and performance standards for implementation of the anti-corruption programme. Remuneration linkage in the form of 'malus' provisions for breaches is preferred over including within variable pay targets as the latter effectively incentivises staff for behavior that should be a minimum expectation. In this way, compensation systems are designed so that executive management are paid not just for performance, but for performance with integrity.

Risk assessment

- A risk assessment process gives the company a systematic view of where corruption and bribery risks lie and as a result it can design detailed policies and procedures accordingly. Risk assessment undoubtedly works best if integrated into the overall corporate planning cycle as the information gathered through assessments will be useful for commercial as well as compliance reasons. By incorporating risk assessment into overall strategic considerations, the anti-corruption programme is embedded further in the commercial practices and structure of the organisation.
- A risk assessment will generally examine a variety of factors all of which can radically alter the company's risk profile. These factors include:
 - location of company operations;
 - applicable laws;
 - local business conditions and customs;
 - business practices, e.g. gifts, hospitality and entertainment activities employed;
 - dependence on critical licences;
 - operational functions of the business e.g., marketing and sales;
 - processes e.g., time pressures, contract variations;
 - employees, e.g. untrained or large numbers of new hires;
 - the form and nature of third party relationships; and
 - the extent of interaction with foreign public officials.
- Best practice calls for the company to utilise cross-functional teams to evaluate and rank the risks. The company will hence examine ways and means to minimise the risks by providing appropriate counter measures. A comprehensive corruption risk assessment may persuade a company to avoid certain markets or partners altogether because the possibilities of becoming involved in corruption are judged too high. But it can also equip a company to be prepared to respond to internal and external challenges, particularly in an environment where cultural and business practices are unfamiliar, knowing that it has identified key risks and can design processes to manage the corruption risks.
- Risk assessments need to be repeated regularly to reflect changing circumstances. The results of the risk assessment and any concerns identified should be reviewed by senior management with reports made to the board. Best practice finally encourage companies to disclose publicly its risk assessment process, including the results of any stakeholder consultations, to describe the significant risks identified as well as the actions being taken to mitigate the risks.

Detailed policies and procedures

- Having identified the relevant areas of risk, the company will define the need for and develop detailed policies that address the potential areas of corruption. Making a publicly disclosed formal commitment to zero toleration of corruption is an important first step in this regard, and this commitment is often embedded in a company's code of conduct, but the company can also choose to adopt a separate corruption and bribery policy. It is recommended that the policy have board level approval and reflect the core values the organisation seeks to operate by.
- The policy/code should aid employees and business partners in understanding how the company defines corruption or bribery and what constitutes an infraction, provide the context for detailed rules and procedures and give guidance on dilemmas that managers and employees confront, e.g. with the support of scenarios. It is important that the policy/code of conduct applies to and is binding for all employees and material indirect labour (e.g. contractors) in all company divisions, including all entities over which the company has effective control, as well as all agents and other intermediaries.
- The overall code or policy are to be supported by policies and procedures which give more detailed statements designed to give management and employees specific guidance to ensure the aspirations of the code of conduct are related directly to the operational business. The policies and procedures will be designed to mitigate the risks identified by the risk assessment. There will typically be a number of policies and procedures relevant to anti-corruption, including:
 - Facilitation payments – see panel to the right
 - Gifts, hospitality and entertaining – thresholds, reporting etc.
 - Political donations and lobbying activities – possible ban, review, approval, records, public reporting etc.
 - Sponsorships and charitable contributions – due diligence, approval, records, public reporting etc.
 - Human resources – due diligence in recruitment, mandatory compliance, appraisal etc.
 - Laws and regulations – register of anti-corruption laws and regular monitoring of legal changes
 - Record keeping requirements – checks and balances, separation of duties for transactions etc.
 - Use of agents and other intermediaries
 - Joint ventures or similar relationships
 - Mergers and acquisitions
 - Conflicts of interest
 - Investigation and sanction procedures.
- Policies and procedures need to be comprehensible, clear, accessible, and available in the native language of employees. The anti-corruption framework should also be fully documented, kept up-to-date, and enable roles and responsibilities to be defined.

Focus on facilitation payments:

Facilitation payments are one of the most problematic areas for companies related to countering bribery as demands for such payments, often associated with extortion, remain widespread and present a range of issues that are not easy to resolve.

Regnan, in concordance with Transparency International and the OECD, defines facilitation payments as bribes but recognises that companies cannot eliminate such payments overnight. Companies need to develop procedures and training and gain commitment from employees to deal with this difficult issue and, where possible, especially in larger companies, to use their influence and reputation to counter payments in markets where demands for such payments are rife.

The company's armoury against paying facilitation payments will be a clear public policy prohibiting facilitation payments, an implemented plan to identify where payments are made and then to eliminate them through communication, training, controls, monitoring and documentation.

Effective implementation

- While many codes look good on paper, they can become living documents only if they are deeply embedded in the daily routine of a company. Embedding the anti-corruption framework has its foundation in communication to and training of the code conduct, the company's core values and its supporting policies to key stakeholders including employees, suppliers, contractors, clients and other business partners, such as intermediaries, agents and consultants. Effective and regular communication helps to ensure that the anti-corruption policy and how the employee should act remain high on each person's agenda.
- The communication is effective if it leaves little doubt of the importance the company places on preventing bribery, and how the company will respond to a violation of its policy. All parties acting on behalf of a company, moreover, should understand that they, as well as the company, are liable for their actions.
- Training is utilised to help employees and other stakeholders understand how bribery and corruption can arise and to identify situations when they and the business may be at risk. Best practise is to develop and deliver training in various forms regarding anti-corruption goals, policies, procedures and controls, including role-specific programs tailored to reflect realistic dilemmas staff may face with desired outcomes and content. It is important to apply delivery methods appropriate for each target audience, taking cultural and language issues into account; using role play can be an effective learning tool. Training results should be assessed, tracked and communicated publicly.
- Internal communication of the anti-corruption framework should also take other forms, such as anti-corruption campaigns, management communications, departmental meetings, publications in local languages, business conduct guidelines, internet or intranet resources.
- The anti-corruption framework will succeed only if it has the support and commitment of employees. This can be achieved by:
 - employee participation in forming the initial framework and its continuing improvement, e.g. implementation of an internal stakeholder committee, where employees can engage in free and open discussion of framework and potential or likely risks of abuse or non-conformance;
 - creating a culture in which dilemmas can be raised and discussed, e.g. provision of an appropriate decision support mechanism, such as a compliance helpline which may be incorporated with whistleblowing facilities as described next;
 - rewarding people who go above and beyond the code, e.g. appraisal and remuneration based on integrity performance; and
 - ensuring that employees are confident that even if they lose business because they comply with company policies, e.g. refusing to pay bribes although such refusal may result in the company for example losing a tender process, they will be supported by their supervisors and will not suffer adverse consequences.

Managing business relationships

- Many bribes are paid indirectly, via business partners or intermediaries, with or without the commissioning company's consent and knowledge. Consequently a policy and procedure for due diligence to be carried out before entering into a business relationship and for it to be repeated periodically is essential. Anti-corruption due diligence imply actively taking measures including research, investigation, assessment and monitoring to ensure that it is associated with companies and personnel that will behave in a manner consistent with the company's anti-corruption programme.
- As a company may have many business relationships it will have to apply a procedure to decide the scope and depth of due diligence for each. This could range from required in-depth due diligence on all business partners in countries prone to corruption to selective due diligence assessed on the significance of a supplier to the continuity of business. The process will check on capabilities of the business partner, the adequacy of its anti-corruption programme and whether there are any known concerns or 'red flags' such as the presence on its board of a government official or a history of past bribery. In terms of mergers and acquisitions, a through due diligence will identify broad risk areas, allow management to assess their tolerance for the risks, and if necessary build decisive remedial action into a post-deal integration plan.
- The company should have consistent, detailed policies and procedures for managing all its contractors, business partners, agents and other intermediaries. The process for appointing and managing business partners should be underpinned by documentation and monitoring throughout the life of the relationship. The key processes are:
 - Business case;
 - Competitive selection;
 - Due diligence;
 - Identification and mitigation of 'red flags';
 - Agreement of appropriate and justifiable compensation;
 - Approval by senior management of appointments;
 - Contractual requirement to observe the company's anti-corruption programme with a break clause if breached;
 - Monitoring throughout the relationship including right to audit; and
 - Renewal of the contract at regular intervals with further due diligence
- In terms of joint ventures and consortia, companies should ensure that joint ventures over which it maintains effective control have anti-corruption programmes consistent with its own. Where a company does not have effective control, it should make known its anti-corruption programme to the other entities in the venture and encourage them to adopt a programme for the venture that is consistent with its own. In the case of inconsistencies, the company should take appropriate action, e.g. requiring correction of deficiencies in implementation; application of sanctions; or termination of its participation in the joint venture. Where a company is unable to ensure that a joint venture has an anti-corruption programme consistent with its own, it should have a plan to exit from the arrangement if corruption occurs or is reasonably thought to have occurred.

Identification of issues

- To identify issues, companies need to establish multiple pathways for receiving tips about suspected or observed corrupt activity and actively monitor high risk activities and relationships. Best practice guidelines for countering bribery and corruption require strong internal controls and provision of a whistleblowing system.
- A whistleblowing system involves establishing facilities whereby individuals can report any suspicions of corrupt behaviour confidentially and, if they wish, anonymously. The facility must however conform to local laws, and in this respect it is important to note that some jurisdictions do not allow for anonymity. But in all cases the system must be confidential and provide security for employees that names will not be revealed beyond the function managing the whistleblowing system.
- Management must refrain from discriminatory or disciplinary action against employees who make bona fide reports through whistleblowing facilities and provide adequate protection so that employees are secure in reporting corruption concerns without fear of personal repercussions.
- The system needs to be robust to instil employee confidence. In this respect, it is important that the facility is managed by an independent staff unit, which reports directly to senior management or the board. The most rigorous approach is however the option of an externally managed whistle-blowing facility as this has the potential to provide greater employee confidence. Companies with international operations must ensure that the facility is available to all of the company's operations, including in appropriate languages and time zones. Best practice makes the facilities available not only to employees, but also to business partners and/or the general public.
- The whistleblowing system should also establish how matters are to be addressed, including their escalation to senior levels, avoidance of actual and perceived conflicts of interest, and follow-up and investigation processes. Reports should be given periodically to senior management and the board on the issues raised, the actions taken and the time taken to resolve issues. There should be a system in place for proper documentation and filing of the concerns raised, their handling and the outcomes.
- An effective whistleblowing system, that employees are not afraid to use, is a crucial management tool that can make the company both aware of individual issues and give insight to potential improvements of the anti-corruption programme. Employees should know that it is their duty not just to resist demands but to report any concern. The company must ensure that employees are not afraid to report wrongdoing or suspected violations. Whistleblowing facilities can also be used as advice channels to provide guidance on the anti-corruption programme in general or a specific issue or dilemma faced by an employee.
- Companies should also establish and maintain an effective system of internal controls to counter bribery and corruption, comprising financial and organisational checks and balances over the company's accounting and recordkeeping practices. Checks and balances are essential tools to prevent and detect corruption because they separate the power to make decisions from the power to verify the execution of such decisions. Internal checks should ensure that there is appropriate separation of duties for financial transactions. Spot checks of the internal accounting control process to identify potential 'red flags' that can indicate issues include procedures to ensure that there are no 'off-the-books' accounts, inadequately defined transactions or false entries.

Investigation and response

- Transparency International reports that companies with anti-corruption programmes and ethical guidelines are found to suffer up to 50 per cent fewer incidents of corruption. Nevertheless no company is immune to the threat of an incident of corruption. Such incidents can present significant adverse consequences for a company and preparations should be made so that such incidents are handled well, impacts are mitigated and that lessons are learned and measures applied to improve the programme. The essential steps in an investigation and response process is described in the figure to the right.
- The company should have a response plan which clearly details who will be responsible for the investigation in the case of an incident of alleged or discovered bribery or corruption. It is advisable to devise procedures setting out how to deal with the incident, such as:
 - Procedures, roles, rights and responsibilities for investigations;
 - Documentation requirements;
 - Reporting of findings to the leadership and keeping any parties involved aware of developments (especially those being investigated and the whistleblower)
 - Remedial steps or sanctions taken against relevant employees;
 - Appropriate disclosure to relevant authorities;
 - Suspension of contracts or payments to any third parties involved;
 - Internal and external communication.
- It is important to have devised a dedicated corporate team for investigation led by a specialist function such as legal, internal audit or security. In the case of serious incidents the corporate affairs and communications functions will need to be involved. Communication with the CEO/MD and the board is essential.
- Companies need to ensure they have appropriate disciplinary procedures and processes in place and that these are always followed correctly. Employees themselves need to understand how the disciplinary process works.



Monitoring and review

- In countering bribery and corruption, the company operates within a dynamic environment. The company's business will change; it may make acquisitions or mergers, acquire new employees and new business partners. The external environment changes too with new regulations, new risks and changes in markets and existing business partners.
- Monitoring and review processes ensure that strengths and weaknesses are identified and that the anti-corruption programme is continuously improved to remain effective and up-to-date in addressing changing risks. Having a continuous review process ensures the programme remains effective and valid and allow necessary improvements to be made. As such the company leadership and board should oversee the results of reviews. Regular reporting with specific recommendations should be made to the board which should then ensure the recommended changes are implemented as judged appropriate. The monitoring and review should apply to all anti-corruption activities within the company and its controlled entities, intermediaries and other business relationships. It is essential to incorporate lessons learned from identified issues and violations of the anti-corruption programme. Monitoring should also cover other aspects of the anti-corruption framework, such as the coverage of personnel who have completed anti-corruption training, the gifts and entertainment provided by the company, or performance in large-scale tenders.
- Auditing of the programme provides assurance that controls are functioning effectively. An example is an internal audit function with a specific mandate to test anti-corruption controls and the implementation of related policies. Best practice also calls for an external audit mandate that add further assurance to the process. Undertaking external independent monitoring and verification of compliance with own or external codes and commitments strengthen the company's corporate integrity and allow for both maximum effectiveness and public credibility.
- In addition, employee suggestions and regular employee surveys, internal benchmarking and external benchmarking against best practice of peer companies as well as reports on use of whistleblowing channels and hotlines can provide information useful to monitor and improve the programme. It is most effective if the results of assessments and other identified improvements form part of a continuing process and are shared broadly across the company. It is essential that concrete remedial actions are identified and reviewed by the leadership and that necessary changes are implemented and communicated.

Reporting

Full and transparent disclosure of anti-corruption programmes underscores a commitment to countering corruption and enhances ethical conduct among management, employees, partners, agents and other relevant parties throughout the value chain. Public reporting serves not only to reassure stakeholders that the company is operating properly but can also act as a deterrent to those intending to bribe or solicit bribes. Best practice on public reporting of anti-corruption programmes can be summarised in the matrix of reporting elements recommended by Transparency International and UN Global Compact in their reporting guidance on the 10th principle against corruption:

Control element	Basic reporting elements	Desired reporting elements	
Commitment and policy	Publicly stated commitment to work against corruption in all its forms, including bribery and extortion	Publicly stated formal policy of zero-tolerance of corruption Statement of support for international and regional legal frameworks, such as the UN Convention against Corruption	
	Commitment to be in compliance with all relevant laws, including anti-corruption laws	Carrying out risk assessment of potential areas of corruption Detailed policies for high-risk areas of corruption Policy on anti-corruption regarding business partners	
	Implementation	Translation of the anti-corruption commitment into actions	Actions taken to encourage business partners to implement anti-corruption commitments
		Support by the organisation's leadership for anti-corruption	Management responsibility and accountability for implementation of the anti-corruption commitment or policy
Communication and training on the anti-corruption commitment for all employees		Human Resources procedures supporting the anti-corruption commitment or policy Communications (whistleblowing) channels and follow-up mechanisms for reporting concerns or seeking advice	
Monitoring	Monitoring and improvement processes	Internal checks and balances to ensure consistency with the anti-corruption commitment	
		Internal accounting and auditing procedures related to anticorruption Participation in voluntary anti-corruption initiatives	
		Leadership review of monitoring and improvement results Dealing with incidents Public legal cases regarding corruption	
		Use of independent external assurance of anti-corruption programmes	

However reporting on anti-corruption programmes is only one part of three dimensions of transparency in terms of corporate reporting that Transparency international advocates. The other two dimensions are transparent organisational structures and country-by country disclosure on revenue flows. Transparent organisational structures serve to ensure that contracts and financial flows are easily traceable, while country-by-country disclosure allows local citizens and civil society organisations to monitor companies' business relations, transfers and value sharing practices, as well as the money transfers to governments in the form of taxation and licensing. While acknowledged as best practice, TI reports that multinationals have a long way to go to improve transparency.