

Model Anti-Corruption Policy

Elements of an Anti-Corruption Policy

Each company should create an anti-corruption policy which is appropriate to its size, organization, complexity, risk profile and business relationships, and which is compliant with local laws and laws with international reach. The model provisions below are intended as an example and starting point for creating policies that are appropriate for your company, and should not be adopted as written. As such, the commentary preceding the model provisions both explains why each section of the policy is important and notes some of the key considerations a company should evaluate before finalizing a policy that will reflect your company's unique needs.

1. Model Introduction

An effective anti-corruption policy should be clear and concise, yet address all key issues. As indicated by your company's particular risks, additional and/or more detailed guidance in the form of procedures, controls, handbooks, training and/or tools will be necessary in order to ensure compliance with the policy. Those covered by the policy should be made aware up-front that such additional resources exist and where to find them. Your policy should be drafted with those additional resources in mind and ideally should embed direct links to those resources.

This document sets out the Company's Policy on Anti-Corruption (AC Policy). It must be read in conjunction with other company documents, such as [the Code of Conduct, personnel policies, anti-corruption procedures] and other related documents which the Company may adopt from time to time.

1.1. Model "Purpose" Clause

A policy's main purpose is to provide a roadmap for compliance, and is a starting point for any anti-corruption program. Complementary procedures, controls, communications and training that are consistent with the policy are also necessary to drive compliance and create and support an ethical, compliant culture.

The purpose of this policy is to provide clear guidance for compliance with all applicable anti-bribery and anti-corruption laws and to encourage and provide guidance for reporting of any suspected violations.

1.2. Model "Who is covered by this Policy?" Clause

It is important that anyone working for or with a company be required to comply with its anti-corruption policy – and understand he/she must do so. The parties listed below may not be exhaustive for all companies; your policy should include a full set of employees and third parties and define them for purposes of the remainder of the policy. Depending upon the size and/or the complexity of the organization and the depth and breadth of its engagement with third parties, a company may decide to create two policies, one covering "Employees" and another covering "Third Parties" (perhaps included within a Supplier Code of Conduct). In any case, the company must consider how to get the policy to all covered parties upon their employment or engagement with the company, whether via the web or intranet, or both.

This policy applies to all individuals working at all levels of the Company, including directors, officers, managers, employees (whether temporary or permanent), interns (collective, Employees); and to any third

party (Third Party) working on the Company's behalf. Third Party includes all relevant suppliers, contractors, business partners and relevant customers.

2. Model Anti-Bribery & Anti-Corruption Provisions

2.1 Bribery and Corruption Defined

The core principle set forth in any anti-corruption policy is a definition of bribery and corruption which clearly identifies what conduct is prohibited in plain language (rather than merely quoting local or international law). This definition should also be put into context with other key legal and ethical requirements related to fraud and conflict of interest, which may also be covered by other company policies or local laws. The model definition below, which reflects international legal principles and is consistent with many local statutes, should be reviewed in light of local laws. This definition should be addressed and explained in anti-corruption training, ideally through use of scenarios or hypotheticals that demonstrate real-life risks and examples.

Bribery is offering, giving, promising, soliciting, or accepting anything of value (financial or non-financial) to a government official or any other person, directly or indirectly through a third party, to improperly influence that person in the performance of a duty or to obtain or retain business or any undue business advantage. Corruption is the abuse of entrusted power for personal gain. Bribery and fraud are considered corrupt practices. All Employees and Third Parties are prohibited from engaging in any acts of bribery or corruption, either directly or through a third party.

2.2 Facilitating Payments and Kickbacks

Clearly identifying what facilitation payments are is critical to ensuring employee and third party compliance with your policy – because in a number of countries they are common and accepted practices which are permissible under local law. In those countries, it is important to reinforce the prohibition of facilitating payments, regardless of local custom, and explain that local laws and customs are not the only laws that apply. It may be advisable, as in the model provision below, to include a way to report requests for facilitating payments.

- *Facilitating payments are a type of bribe. They are usually defined as payments made to expedite or facilitate the performance of a public official for a non-discretionary, routine governmental action.*
- *Kickbacks are the sellers' return of part of an item's purchase price to a buyer or buyer's representative to induce a purchase or improperly influence future purchases.*
- *Facilitating payments and kickbacks, whether legal or not in a country, are prohibited under this Policy. Employees must notify the [Compliance Officer or other appropriate individual] when identifying a facilitation payment request*

2.3 Government Officials Defined

Bribery of government officials is a significant corruption risk, and without clear definitions of “government officials,” Employees and Third Parties may not understand what conduct with what parties they need to avoid – or how to structure interactions with government officials in permissible ways. The model definition of Bribery and Corruption in section 2.1 above does not distinguish between commercial and public sector bribery, as both are prohibited under most local laws and laws with international reach. Under the United States Foreign Corrupt Practices Act (FCPA), “government official” has been very broadly construed. This model provision seeks to identify a wide variety of individuals who may present heightened risk, but this may not be an exhaustive list under local or international law and should be reviewed with both in mind. Employees and Third Parties should be trained to understand the extra-territorial effect of the FCPA, and if your company has substantial government business or involvement with public tenders, your Employees and Third Parties involved with the public sector should have a higher level of training on this definition

and these issues.

All interactions with government officials must comply with this Policy, the Company's Code of Conduct and with all applicable laws, rules, and regulations. All such interactions must adhere to the Company's commitment to act in compliance with the highest ethical standards and to conduct business honestly and legally, and Employees and Third Parties should not create the appearance of impropriety regardless of whether there was any improper intent.

A government official may include anyone, regardless of rank or title, who is:

- *An officer or employee of any local, provincial or national government, including government agencies (for example, members of parliament, police officers, firefighters, members of the military, tax authorities, customs inspectors, food and drug agency regulators, etc.);*
- *A director, officer, representative, agent or employee of any government-owned or controlled business or company;*
- *Any person with the responsibility to allocate or influence expenditures of government funds, including persons serving in unpaid, honorary or advisory positions;*
- *An officer or employee of a public international organization (for example, the United Nations, International Olympic Committee, International Red Cross, World Bank, etc.);*
- *Any person acting in an official capacity or on behalf of any government or public international organization (for example, an official advisor to a government);*
- *Any officer or employee of a political party;*
- *Any candidate for political office; and*
- *A close relative (for example, parent, sibling, spouse or child) of any of the above.*

2.4 Gifts, Hospitality, Travel & Entertainment

In many countries, gifts and entertainment play an important and customary role in business. However, when given or received inappropriately, gifts and other hospitality may violate the law, especially those to/from government officials. Both clearly defining impermissible gifts and outlining procedures by which gifts, travel or hospitality can be given or received is critical to reducing corruption risks. Before drafting a gifts, travel and entertainment policy, a company should evaluate local laws and customs, but should take care not to adopt practices that, while permissible locally, may appear unreasonable or improper in light of the nature, value or frequency of the gifts or entertainment. If gifts, travel or entertainment are to be permitted at all, you should consider whether there will financial limits or limits upon the frequency of gifts, travel or entertainment (such as the number of dinners or sporting events that might be provided); another consideration is whether you wish to separate gifts and local entertainment from travel into separate policies. You should then evaluate whether you wish to institute a pre-approval or exceptions process for all gifts, travel and entertainment or only those involving government officials. Additional considerations include who the approver(s) should be and what information should be provided, and in what form, to facilitate review of the expenditure/exception. As a supplement to any policy, limits, approval processes and record-keeping requirements must be articulated in procedures which should be publicized so that Employees and Third Parties can easily participate and comply.

Gifts, hospitality, travel, and entertainment may not be used to influence any person or to obtain or retain an improper business advantage for the Company.

Employees and Third Parties must not offer, give, promise, solicit, or accept any gift, hospitality, or any other thing of value to any person:

- Which could be regarded as illegal or improper, or which violates the recipient's policies; or
- Which was intended to improperly affect or influence the outcome of a business transaction; or
- Which could be regarded as affecting a business transaction

Any gift, hospitality or other expense which exceeds \$___ for any individual or event or that exceeds \$ ___ for any individual or event in the aggregate in any given calendar year must be preapproved by the [Compliance Officer or other appropriate representative] prior to payment.

2.4.1 Government Officials; Pre-approval Required

If a company determines it is legally permissible to provide gifts, travel and hospitality to government officials – and it is permissible for government officials to receive gifts under their own policies – a written pre-approval process is a best practice. When creating such an approval process, you should consider whether, as set forth in the model provision below, approvals should extend beyond the business group to the Compliance Officer/anti-corruption leader to reduce the risk that business managers alone are responsible for deciding upon such expenditure.

Written pre-approval by the Company's [Compliance Officer or other appropriate representative] is required in every instance when gifts, hospitality, travel, or entertainment is to be offered or extended to a government official.

Pre-approval should be requested and obtained before extending any gift or invitation to a government official.

2.4.2. Gifts that are never allowed:

Some gifts or other expenditures are clearly suspect, especially those which are not able to be tracked through record-keeping, those given to intermediaries, and those which clearly are and appear inappropriate, if not illegal. It is important to identify these categories to Employees and Third Parties, so that they don't engage in these unorthodox types of payments.

- *Cash or the equivalent (e.g., gift cards or vouchers)*
- *Gifts, travel or hospitality costs to family members of government officials*
- *Gifts that violate local customs, rules or regulations governing the conduct of the government official, or that would reflect badly on the Company.*

2.5. Model "Charitable and Political Contributions" Provision

While donations to charitable organizations ordinarily are regarded as good corporate citizenship, those made to organizations in which public officials play a role raise concerns under the FCPA, the U.K. Bribery Act and many other anti-bribery laws. Key considerations when drafting a charitable donations policy and related due diligence include how to ensure the donations are to be made only to legitimate charities and how to identify whether government officials are involved in the charity. It is a best practice that companies not offer or make charitable donations unless preapproved by an appropriate company decision-maker and after due diligence has been performed, as set forth in the below model provision.

Political parties and candidates are public officials for purposes of the FCPA and many other anti-bribery laws. Companies should ensure that no political contributions are offered or made on behalf of the company unless they have undergone an approval process to ensure that they are not being made to influence a decision that could affect the company. To simplify matters, and reflecting best practices, the model provision below simply prohibits political contributions.

The Company prohibits the use of company funds for political contributions.

From time to time, the Company may make charitable donations in the form of in-kind services, knowledge, time, or direct financial contributions. Charitable contributions are acceptable, provided:

- *The request for a donation is made in writing and sufficiently describes the charitable purpose of the donation, any business reason for the donation, and all details about the recipient;*
- *The donation is legal and ethical under local laws and practices;*
- *Proper due diligence is performed to ensure that the recipient is a bona fide charitable organization and the recipient has no connection to a government official who is in a position to act or take a decision in favor of the Company;*
- *The donation will not be misused in exchange for a business benefit or advantage;*
- *It is approved in writing by the [Compliance Officer or other appropriate representative] in advance;*
- *It is accurately recorded in the Company's books and records.*

2.6. Model “Working with Third Parties” Provision

Many businesses use third parties as part of their global value chains. While third parties can be necessary and beneficial in a number of circumstances, they carry potentially significant corruption related risks as well. Under the FCPA, the U.K. Bribery Act and many other countries' anti-bribery laws, a company can be held responsible for the corrupt acts of third parties acting on its behalf or for its benefit. Because of these risks, companies must put in place policies and procedures to ensure they engage in corruption-focused, Third Party due diligence before engaging any business partner. Further, it is important for Employees and Third Parties to understand these risks, in particular that “willful blindness” will not inoculate the company for liability of agents' actions. The model provision below highlights each of these issues.

As noted above, because anti-bribery laws prohibit “indirect” as well as direct offers and payments, the Company and you may be held liable for the conduct of Third Parties such as the Company's agents and business partners when we know or reasonably should have known of the unlawful conduct. Turning a “blind eye” or ignoring “red flags” that something may be wrong does not exonerate you or the Company from liability.

Authorizing a Third Party to do something that you cannot do directly is a violation of this Policy.

2.6.1. Due Diligence & Contract Requirements

Anti-corruption due diligence, performed within legal limits, is critical to reducing corruption risks due to third party actions. Risk ranking a company's third parties can allow a company to optimize resource allocation by focusing scrutiny where risks are highest. Requiring third parties to enter into contracts with the company that contain standard anti-corruption representations and warranties – and require compliance with the anti-corruption policy and reporting of suspected violations – is another best practice. The model provision below makes Employees and Third Parties aware of the company's due diligence program and makes approved due diligence a prerequisite to Third Party contract approval; it also assumes the company's contracts contain specific anti-corruption representations and warranties and are approved by the company's Compliance Officer or other appropriate representative.

As you draft your company's due diligence and contracting provision, you should consider whether the approval of all contracts by the company's Compliance Officer is feasible or whether, particularly in larger companies, another approval process, along with supporting procedures would be equally effective and more efficient. What is important is that the company provides for a process for approval(s) that ensures a review independent of its business units of any unusual due diligence result or contract exception.

Another key consideration is whether your company's form contracts contain anti-corruption provisions and/or whether you are more often required to sign other companies' form contracts, which may or may not contain similar provisions; in the latter scenario, you may consider how you might encourage those other companies to include your draft anti-corruption provision into their contract.

Before entering into a relationship with a Third Party, the [responsible Employee] must first conduct a reasonable investigation into the Third Party's background, reputation, and business capabilities. This investigation is called due diligence and should be documented by using the policies and procedures developed for this purpose.

All Third Parties engaged by the Company to provide services require a valid and approved contract. No contract with a Third Party should be concluded until the due diligence has been completed and the [Compliance Officer or other appropriate representative] has deemed it satisfactory and approved it.

All contracts must contain anti-corruption representations and warranties consistent with this policy and the Third Party has formally accepted and agreed to comply with the Company's anti-corruption Policy.

3. Model "Reporting and Anti-Retaliation" Provision

Employees are the first line of defense against corruption, and encouraging them to report suspected violations is an important purpose of any anti-corruption policy. Both Employees and Third Parties have been proven to be more likely to make reports where it is clear that doing so will not negatively impact their employment/relationship with the company, which is why anti-retaliation is an important part of any anti-corruption policy. Another consideration is whether you will allow and/or provide a mechanism for anonymous reports (as set forth in the model provision below) to further encourage reporting – if anonymous reports are permitted under local law or culturally appropriate in your country. Those making reports also want to know that they will be taken seriously, which is why the model provision affirms that all reports will be investigated (ideally according to a standard investigations protocol).

It is the responsibility of Employees and Third Parties to prevent, detect, and report bribery and corruption.

You must notify the [Compliance Officer or other appropriate representative] without delay if you believe or suspect that a violation of any bribery or corruption laws or this Policy has occurred or will occur in the future. If you are unsure whether an act constitutes bribery or corruption, or if you have other questions or concerns, you must raise your concerns with the [Compliance Officer or other appropriate representative].

Alternatively, if you wish to report such matters anonymously, you may submit a description of the concern or complaint to the attention of the [Compliance Officer or other appropriate representative], by mail to: [address] or by e-mail to:[add email address].

The Company will not tolerate any form of discrimination, harassment or retaliation against any person who raises a concern in good faith or refused to participate in conduct that would violate law or this Policy. All reports will be investigated and appropriately addressed. The Company will attempt to keep its discussions with any person reporting a violation or concern confidential to the extent reasonably possible.

4. Model "Training and Communication" Provision

Employee training on core anti-corruption principles – and the anti-corruption risks they are most likely to face – is one of the most effective ways to ensure internal compliance with the policy. It is equally important that the anti-corruption training, whether as a stand-alone training, or a part of broader compliance training, addresses key company procedures to mitigate and escalate issues. The best training includes scenarios or real cases of corruption to help identify how controls can work to avoid corruption and where controls may fail and why – and what the Employee should do in a similar situation. Ideally the training will include some form of knowledge testing and will record participation, at larger companies via some workflow tool.

Employees should be trained upon employment and then regularly, as set forth in the model provision below. Considerations about whether also to invest in and institute Third Party training include: the corruption risks presented by the company's Third Parties, the company's ability to leverage employee training materials, the extent to which key Third Parties may have their own anti-corruption training programs.

The Company will provide training to all Employees on a regular basis to assist them in understanding and complying with this Policy and to inform them of changes to the Policy. Employees must participate in and complete the offered training when required to do so.

5. Model “Risk Assessment” Provision

A company's policies should address its actual risks. A company-wide periodic risk assessment can reveal vulnerabilities that are not apparent at the line of business level or as a result of known issues, and can help a company to focus its anti-corruption efforts and resources where they will have the most impact. This is especially true with regard to areas where risk grading makes the most difference, such as with Third Party due diligence and for companies with substantial interactions with government officials. Including reference to the risk assessment in the model provision below lays a stake in the ground to require those managing the anti-corruption program to continually evaluate risk and maintain appropriate records.

The Company will undertake a high level, Company-wide bribery and other financial crime risk assessment regularly and if specific circumstances require, such as a material change to the Company's geographic or business coverage.

The results of the analyses/interviews found during the risk assessment will be documented and retained for record keeping purposes.

6. Model “Consequences of Failure to Comply” Provision

Articulating a range of the sanctions which may be applicable to violations of the policy puts Employees and Third Parties on notice and ideally acts as a deterrent to future violations. In countries where local law has explicit anti-corruption sanctions, it may be a good practice to reflect a more detailed set of sanctions and/or disciplinary actions to ensure consistency in the application of future corrective actions. The model provision below is basic and high-level.

Failure to comply with any provision of this Policy is a serious violation, and may result in disciplinary action, up to and including termination, as well as civil or criminal charges.