



BUSINESS CONFEDERATION OF MACEDONIA



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DEVELOPING AN ANTI-CORRUPTION CHARTER OF BUSINESS

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Private sector anti-corruption strategies are linked closely to corporate social responsibility (CSR) practices focusing on internal measures that are implemented by the individual company. Internal codes of conduct and compliance programmes alone are in many cases not helpful for individual companies, as they usually lack either the resources or the market power to stand by their zero-tolerance policies. In particular, they risk being driven out of their market by competitors that do not adhere to such standards. One way to support those companies that do not have the power to tackle the problem alone is collective action – through promoting and implementing a sector or country level code of anti-corruption business behavior.

Key international anti-corruption instruments and tools aimed at the business sector

The key international instruments and tools aimed at the business sector have been developed by Transparency International (TI), the Organization for Economic Cooperation and Development (OECD), the International Standardization Organization (ISO) and the United Nations (UN).

The Transparency International Business Principles for Countering Bribery were developed through an extensive multi-stakeholder process involving companies, non-governmental organizations and trade unions as a tool to assist enterprises to develop effective approaches to countering bribery in all of their activities. They represent a good practice model for corporate anti-bribery policies and programs, and apply both to bribery of public officials and to private-to-private transactions. The purpose of the Business Principles is to provide practical anti-bribery guidelines for all enterprises.

The OECD Guidelines for Multinational Enterprises, as a most elaborate and comprehensive set of principles, i.e. code of conduct for responsible business, also include guidance on combating bribery. The possibility of recourse to national contact points in the event of infringements make the Guidelines considerably more authoritative than most of other instruments. The national contact points provide mediation in cases of violations and conflict between business and stakeholders.

The ISO 26000 is guidance for organizations on the practices and processes they need to consider in order to operate in a socially responsible manner. Fair operating practices, including anti-corruption, constitute one of the seven core subjects defined in the standard. It is not a management system standard, so it is not intended or appropriate for certification purposes, but can still guide companies in their efforts to create a system based on integrity and fair treatment of all stakeholders.

The UN Global Compact establishes ten principles derived from key international instruments in the areas of human rights, labor standards, environment and anticorruption, to which participants – mostly companies – voluntarily commit. The Tenth principle commits companies not only to avoid bribery, extortion and other forms of corruption, but also to develop policies and concrete programs to address corruption.

The United Nations Convention against Corruption as a first global legally binding instrument in this field, which covers public and private, domestic and international corruption, in its Article 12 specifically refers to the private sector. It requires States to involve the private sector in corruption prevention measures, to enhance accounting and auditing standards in the private sector and to provide penalties for failure to comply with such measures. Such measures include, for instance, the development of standards and procedures intended to secure the integrity of companies, including codes of conduct promoting ethical business standards and the use of good commercial practices by contractual parties.

Based on key international anti-corruption instruments and tools, companies should consider the following three elements when fighting corruption:

- Internal anti-corruption measures
- External anti-corruption measures: Relationship Towards Other Entrepreneurs
- Implementation of the Charter

Need for business led anti-corruption charter and roles of various stakeholders

The introduction of a code of conduct, prohibiting all forms of corruption is one of the main tools applied internally by companies in order to prevent and sanction corruption. Unlike large companies whose high profile makes them a target to greater public scrutiny, often compelling them to introduce company-level ethical standards, smaller businesses, may not have sufficient resources and access to expertise to develop their unique systems in this field, or may not have power to impose such standards on public authorities and other market participants. These problems could be overcome by the promotion of industry or country-level anti-corruption code of conduct, instead of relying on approaches developed by individual companies. This ensures that companies will not face competitive disadvantages

when they refrain from corruption. Furthermore, by having a whole sector complying with certain standards, the societal impact and the effect on the business environment will be much greater.

Business associations that bring together companies of a geographical region or business sector can support the anti-corruption initiatives launched by those enterprises and complement them. One of the most important ways that such associations can support companies is by acting as a coordinator of collective action, platform for reaching agreements, making commitments to ethical standards, monitoring adherence and carrying out other joint actions to prevent corrupt practices. Furthermore, business associations can also assist companies by gathering information on reported instances of corruption, and establishing a grievance mechanism. The establishment of help-desks, giving advice to companies on specific cases or situations, is another option.

Civil society organizations (CSOs) can also assist companies to combat corruption by conducting research, publishing information, educating businesses and raising awareness. The usefulness of non-governmental organizations (NGOs) in this respect usually depends on the strength of the respective NGO, and the level of credibility it enjoys in the business community. Media as another segment of civil society can play an important role when it comes to increasing the risk of getting caught for those engaged in corruption. It can also help with raising awareness and promoting good business practices.

Government has an indispensable responsibility to create a trustworthy business environment and a public sector marked with integrity. In business environment surveys, companies have indicated that non-transparent laws and regulations, the inefficiency of courts, and a lack of transparency in public procurement and government spending, are the main factors that make corruption possible and create obstacles to the success of their business. Frequently mentioned public sector tools to prevent and control corruption include an effective legal and regulatory framework and social policies, enhanced transparency and accountability, and the elimination of government barriers that foster rent seeking. Article 9 of the United Nations Convention against Corruption requires states to take measures to establish appropriate systems of public procurement, based on principles of fair competition and transparency.

Another common problem is the fact that in many cases companies, especially SMEs, are not fully aware of the legal framework for dealing directly or indirectly with corruption. SMEs frequently face difficulties in accessing information on relevant legislation and in tracking amendments and changes of laws and regulations that are frequent in a country that is rapidly harmonizing its laws and regulations with the EU acquis. Simple and accessible legal guides dealing with relevant issues that affect SMEs can also be made available. Furthermore, special consulting services should be provided to small businesses concerning anticorruption law, and ways to report

cases of corruption, to initiate legal proceedings, and to claim damages. The cooperation between the private sector and national authorities in general is of utmost importance, also in terms of reporting acts of corruption to national investigating and prosecuting authorities.

Bearing in mind that the business case is one of the most important elements of any anti-corruption strategy for businesses, some kinds of imposed compliance standards might work quite well with smaller companies if their **supply chain partners**—in many cases their main customers—demand adherence to these standards as a condition for doing business with them. Including a special clause in business contracts, allowing for the ending of the contractual relationship in cases where the company or its senior management was found guilty of corruption, is another option. Furthermore, larger companies need to monitor their own employees, in particular in their dealings with contractors. Direct assistance can also be provided to companies subcontractors, by inviting their staff to attend ethics trainings for the employees in large enterprises. In addition to requiring certain forms of ethical conduct, larger companies can also assist smaller companies in their individual corruption-related problems by utilizing their greater bargaining power and making themselves heard by the government.

DRAFT ANTI-CORRUPTION CHARTER OF MACEDONIAN BUSINESSES

Preamble

Corruption, as abuse of entrusted power for private gain involving public officials or people in the private sector, can take many forms, such as bribery (soliciting, offering or accepting a bribe), conflict of interest, fraud, money laundering, embezzlement, concealment and obstruction of justice, and trading in influence.

Not only that corruption undermines an organization's effectiveness and ethical reputation, making it liable to criminal prosecution, but also is a problem affecting society. Corruption can result in the violation of human rights, the erosion of political processes, impoverishment of societies and environmental damage. It can also distort competition, distribution of wealth and undermine economic growth.

The Anti-corruption charter is based on the internationally acclaimed instruments and tools of ethical business conduct, including the Transparency International Business Principles for Countering Bribery, the OECD Guidelines for Multinational Enterprises, ISO 26000, and the UN Global Compact. The charter also takes in consideration the Macedonian context of doing business, including relevant aspects of CSR practice.

I. Internal anti-corruption measures

1. Internal Anti-Corruption Programme

An enterprise should develop a Programme that clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent corruption from occurring in all activities under its effective control.

The Programme should be tailored to reflect an enterprise's particular business circumstances and culture, taking into account potential risk factors such as size, business sector, nature of the business and geographical location. The enterprise should identify and assess the risks of corruption and develop policies and practices addressing the individual circumstances of an enterprise. Such individual circumstances and corruption risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's Programme is adapted and continues to be effective.

The Programme should be consistent with all laws relevant to anti-corruption in all the jurisdictions in which the enterprise transacts its business.

The enterprise should develop the Programme in consultation with employees, trade unions or other employee representative bodies.

The enterprise should ensure that it is informed of all internal and external matters relevant to the effective development and implementation of the Programme, and, in particular, emerging best practices including engagement with relevant interested parties.

The enterprise should enhance the transparency of its activities in the fight against corruption. Measures could include making public anti-corruption commitments, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by the enterprise in order to honour these commitments.

2. Rules of Conduct

2.1 Bribes

The enterprise should prohibit all forms of bribery whether they take place directly or through third parties. It should not offer, promise or give undue advantage to public officials or the employees of business partners.

The enterprise should also prohibit its employees from soliciting, arranging or accepting bribes intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances. Likewise, enterprises should not request, agree to or accept undue advantage from public officials or the employees of business partners.

2.2 Public Procurement

The enterprise should take part in public procurement on the basis of transparency, competition and objective criteria in decision-making, that effectively prevent

corruption, as public procurement is widely seen as an area that provides fertile ground for corruption.

2.3 Funding of Political Parties and Political Contributions

The enterprise, its employees or agents should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining advantage in business transactions, nor make illegal contributions to candidates for public office, political parties or other political organisations.

The enterprise should publicly disclose all its political contributions, simultaneously complying with public disclosure requirements and reporting it to senior management.

2.4 Facilitation payments¹

The enterprise should work to identify and eliminate facilitation payments recognising that they constitute bribery.

2.5 Gifts and hospitality

The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever they could affect or be perceived to affect the outcome of business transactions and are not reasonable and bona fide.

2.6 Charitable Donations and Sponsorship

The enterprise should ensure that charitable contributions and sponsorships are not used to conceal bribery.

The enterprise should publicly disclose all its charitable contributions and sponsorships.

2.7 Conflict of Interests

The enterprise should counter possible or actual conflict of interests within its business. It should not employ persons for their conduct in their previous employment or position in a public authority, with a business partner or other business entity, or with the intention of deliberately harming the interests of the previous employer.

2.8 Lobbying activities

The enterprise should set clear rules on lobbying activities and should execute lobbying on ethical and correct principles. It should keep records of lobbying meetings with politicians, elected representatives, government officials and political

¹ Also called 'speed' payments, these are small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

party representatives. The records at minimum should include a list of lobbying meetings with time, name of the person, venue and content of such meetings. The records should be kept by the internal audit department, if it exists within the enterprise structure, and should disclose such records if requested.²

3. Human resource anti-corruption management

The enterprise should reflect its commitment to the anti-corruption Programme in human resource practices including recruitment, promotion, training, performance evaluation, remuneration and recognition. The enterprise should make compliance with the Programme mandatory for employees and apply appropriate sanctions for violations of its Programme.

The human resources policies and practices relevant to the Programme should be developed and undertaken in consultation with employees, trade unions or other employee representative bodies as appropriate.

The enterprise should promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or anti-corruption measures through appropriate dissemination of such policies, programmes or measures.

The enterprise should support and train directors, managers, employees and representatives in their efforts to eradicate corruption, and provide incentives for ethical behavior while sanctioning corrupt conduct and enforcing disciplinary procedures. Where appropriate, contractors and suppliers should also receive training on the Programme. Companies that face financial and time constraints to develop appropriate training materials and conduct regular training should seek cooperation in this field with business associations, chambers of commerce or NGOs.

The enterprise should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to engage in corruption even if such refusal may result in the enterprise losing business.

4. Internal Control, Documentation and Audit

The enterprise should establish and maintain an effective system of internal controls to counter corruption, comprising financial and organizational checks and balances over the enterprise's accounting and record keeping practices and other business processes related to the Programme.

The enterprise should maintain available for inspection accurate books and records that properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.

² Such rules are part of some codes of conduct of Slovak companies, such as the code of Železničná spoločnosť Slovensko Inc. (Railway association Slovakia) (Nechala – Remišová – Csanyi, 2006).

The enterprise should subject the internal control systems, in particular the accounting and record keeping practices, to regular review and audit to provide assurance on their design, implementation and effectiveness.

II. External anti-corruption measures: Relationship Towards Other Entrepreneurs

1. Business Relations

The enterprise should work to oppose corruption by encouraging others with which it has operating relationships to adopt similar anti-corruption practices.

2. Subsidiaries and other entities

The enterprise should implement its Programme in all business entities over which it has effective control and use its influence to encourage an equivalent Programme in other business entities in which it has a significant investment or with which it has significant business relationships.

3. Joint Ventures and Consortia

The enterprise should conduct due diligence before entering into a joint venture or consortium.

The enterprise should ensure that joint ventures and consortia over which it maintains effective control have Programmes consistent with its own.

Where an enterprise does not have effective control of a joint venture or consortium it should make known its Programme to the other entities in the venture and encourage them to adopt a Programme for the venture that is consistent with its own.

The enterprise should monitor the Programmes and performance of joint ventures and consortia; in the case of policies and practices that are inconsistent with its own Programme, the enterprise should take appropriate action. This can include: requiring correction of deficiencies in the implementation of the Programme; application of sanctions; or termination of its participation in the joint venture or consortium.

Where the enterprise is unable to ensure that a joint venture or consortium has a 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.

4. Agents and Other Intermediaries

The enterprise should not channel improper payments through agents or other intermediaries. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and

suppliers and joint venture partners for channeling undue advantages to public officials, or to employees of their business partners or to their relatives or business associates.

The enterprise should undertake properly documented due diligence before appointing agents and other intermediaries.

All agreements with agents and other intermediaries should require prior approval of management.

Compensation paid to agents and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered.

Enterprises should ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents.

Where relevant, enterprises should keep a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.

Agents and other intermediaries should contractually agree to comply with the enterprise's Programme and be provided with appropriate advice and documentation explaining the obligation.

The enterprise should contractually require its agents and other intermediaries to keep proper books and records available for inspection by the enterprise, auditors or investigating authorities.

The relationship should be documented.

The enterprise should monitor the conduct of its agents and other intermediaries and should have a right of termination in the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

5. Contractors and Suppliers

The enterprise should conduct its procurement practices in a fair and transparent manner.

The enterprise should avoid dealing with contractors and suppliers known or reasonably suspected to be engaged in corruption. It should undertake due diligence, as appropriate, in evaluating prospective contractors and suppliers to ensure that they have effective anti-corruption Programmes.

The enterprise should make known its anti-corruption policies to contractors and suppliers.

The enterprise should monitor significant contractors and suppliers as part of its regular review of relationships with them and have a right of termination in the event that they engage in corruption or act in a manner inconsistent with the enterprise's Programme.

III. Implementation of the Charter

1. Incorporation of the Anti-corruption Programme in Governance Functions

The enterprise should ensure that its leadership sets an example for anti-corruption and provides commitment, encouragement and oversight for implementation of the anti-corruption policies.

The Board of directors or equivalent body should commit to the anti-corruption policy and Programme based on the Business Principles and provide leadership, resources and active support for management's implementation of the Programme.

The Chief executive officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.

The Board of directors or equivalent body, Chief executive officer and senior management should demonstrate visible and active commitment to the implementation of the enterprise's Programme.

The enterprise should make compliance with the Programme mandatory for directors and apply appropriate sanctions for violations of its Programme.

2. Communication and Promotion of the Anti-Corruption Charter

The enterprise should establish effective internal and external communication of the Programme.

The enterprise should publicly disclose information about its Programme, including management systems employed to ensure its implementation.

The enterprise should be open to receiving communications from relevant interested parties with respect to the Programme.

3. Reporting of Corruption Concerns and Attempts

To be effective, the Programme should rely on employees, partners, representatives and suppliers to raise concerns and violations of the organizations policies and unethical and unfair treatment as early as possible, as well as seek advice on the application of the Programme. To this end, the enterprise should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations in confidence and without fear of reprisal.

In this regard, companies should develop tools to detect, and thus help deter corrupt conduct, such as appropriate reporting mechanism, for example, a telephone hotline that allows reports to be made anonymously.

Companies that have a small number of employees and where a relatively high degree of informality exists should seek to ensure anonymity through cooperation in this field with established grievance mechanisms of business associations, chambers of commerce or NGOs.

The enterprise should bring violations of the criminal law to the attention of appropriate law enforcement authorities.

4. Monitoring And Review

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

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 enterprise's Annual report to shareholders.

5. Access to information – information openness³

Information about an enterprise's anti-corruption efforts

The enterprise should publish its intentions to behave transparently and fight against bribery and corruption, thereby creating new opportunities to increase the value of a company brand and attract new business partners or customers. On the one hand, this disclosure of information about an enterprise's anti-corruption strategy generates pressure on it to actually and appropriately implement the anti-corruption policy. On the other hand, if a company fails to honor the proclaimed policy, it could undermine its reputation.

Voluntary publishing of information

The enterprise should publish information on its shareholders, annual reports and a clear statement of its activities. In case of donations or sponsorships the enterprise should publish their recipients, thereby improves credibility highlighting efforts to behave honestly and openly.

³ Based on "Introducing anti-corruption policies in companies: theory and practice from Slovakia", Slavomíra Šatníková, Transparency International Slovakia, 2012.

6. External Verification And Assurance

The Board or equivalent body should consider whether to commission external verification or assurance of anti-corruption policies and systems to provide enhanced internal and external assurance of the Programme's effectiveness.

Where such external verification or assurance is conducted, the Board or equivalent body should consider publicly disclosing that an external review has taken place, together with the related verification or assurance opinion.

7. Partnering against Corruption, Funding Anti-corruption NGOs

The enterprise should explore the possibilities of utilizing collective approaches in its anti-corruption efforts by engaging in anti-corruption partnership initiatives on a global, national or sectoral level. Membership in such initiatives provide the enterprise with an opportunity to commit publicly to anti-corruption principles which sends a good signal to market and current and potential partners and clients.⁴ What is more important, this participation increases the impact and efficiency of individual action. Such engagement in anti-corruption partnerships could involve joining efforts with anti-corruption NGOs in the country and funding of their activities.⁵

⁴ Based on UNGC, 2006.

⁵ Based on "Introducing anti-corruption policies in companies: theory and practice from Slovakia", Slavomíra Šatníková, Transparency International Slovakia, 2012.