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TRANSPARENCY INTERNATIONAL
the global coalition against corruption

BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

A MULTI-STAKEHOLDER INITIATIVE LED BY TRANSPARENCY INTERNATIONAL

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Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

Third edition

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TABLE OF CONTENTS

FOREWORD 2

STAKEHOLDER DEVELOPMENT 3

1. INTRODUCTION 4

2. THE BUSINESS PRINCIPLES 5

3. DEVELOPMENT OF A PROGRAMME FOR COUNTERING BRIBERY 6

4. RISK ASSESSMENT 7

5. SCOPE OF THE PROGRAMME 7
- 5.1 Conflicts of interest 7
- 5.2 Bribes 7
- 5.3 Political contributions 7
- 5.4 Charitable contributions and sponsorships 8
- 5.5 Facilitation payments 8
- 5.6 Gifts, hospitality and expenses 8

6. PROGRAMME IMPLEMENTATION REQUIREMENTS 8
- 6.1 Organisation and responsibilities 8
- 6.2 Business relationships 8
- 6.3 Human resources 10
- 6.4 Training 10
- 6.5 Raising concerns and seeking guidance 10
- 6.6 Communication and reporting 11
- 6.7 Internal controls and record keeping 11
- 6.8 Monitoring and review 11
- 6.9 Cooperation with authorities 11
- 6.10 Independent assurance 12

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FOREWORD

More than ever, the risks from bribery are a major concern for enterprises, whether they are confronted with demands for bribes, faced with competitors acting corruptly or undermined by employees violating their codes of conduct.

Since the *Business Principles for Countering Bribery* were first published in 2003, the environment has changed considerably. The advent of stricter domestic and foreign bribery laws and increasing enforcement, the imposition of record fines and the threat of criminal penalties for company directors and employees have been sending shock waves through the business community. Furthermore, pressures are mounting from socially responsible investment funds and indices, which are applying anti-bribery criteria to their screening procedures.

As regulators and stakeholders become less tolerant of lapses, responsible companies increasingly understand that they must undertake continuous efforts to ensure that they identify and mitigate the risks of bribery effectively.

To assist companies in the design and implementation of effective anti-bribery policies, Transparency International (TI) and Social Accountability International joined forces to launch the *Business Principles for Countering Bribery* in 2003. The development of the Business Principles was achieved through a multi-stakeholder process with the cooperation of a Steering Committee drawn from business, academia, trade unions and other non-governmental bodies. Although its composition has changed over the years, the Steering Committee has remained closely involved in efforts to disseminate and maintain the Business Principles.

The Business Principles have become a major platform for TI's private sector activities. They have also influenced a wide range of anti-bribery standards and initiatives. In the past decade, the Business Principles have been translated into more than 10 languages and used extensively by the Transparency International network in its work with the business community. They have also informed a number of Transparency International's key research tools.

This third edition reflects recent developments in anti-bribery practice and incorporates changes to the original text based on the experience gained since an earlier revision in 2009 and feedback from a public consultation in recent months. The Steering Committee has contributed its valuable knowledge and expertise to this process.

Consultations, field-testing and workshops have enriched the Business Principles and the supporting suite of tools over the years. There is more understanding today than ever before of what constitutes an effective anti-bribery programme, but bribery and corruption remain a major challenge. Transparency International believes that integrity is good for business and we hope that the Business Principles will continue to be a reference for enterprises as they strive to develop stronger and more effective anti-bribery programmes, resulting in a higher and more uniform standard of practice worldwide.

Cobus de Swardt,

Managing Director, Transparency International
October 2013

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STAKEHOLDER DEVELOPMENT

This third edition of the *Business Principles for Countering Bribery* was produced by Transparency International with the input and guidance of a multi-stakeholder Steering Committee. The contents of the Business Principles reflect the views of the Steering Committee and not necessarily those of its individual members on particular topics.

The first edition of the *Business Principles for Countering Bribery*, published in 2003, was drafted with the original members of the Steering Committee and subjected to field tests and a public consultation. In 2009, the Business Principles underwent minor updates. This is the third edition of the *Business Principles for Countering Bribery*. Changes were formulated taking into account input from the Steering Committee and comments received during a public consultation.

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1. INTRODUCTION

The *Business Principles for Countering Bribery* were originally developed through an extensive multi-stakeholder process involving companies, non-governmental organisations and trade unions, as a tool to assist enterprises to develop effective approaches to countering bribery in all aspects of their activities.

Enterprises should develop and implement an anti-bribery programme as an expression of broader ethical values and corporate responsibility. But an anti-bribery programme must focus on effectively countering the risk of bribery. Risk exposure may vary among different industries and specific companies, but no enterprise can be certain that it will be free of risk. Not only does an effective anti-bribery programme help mitigate this risk, it also strengthens reputation, builds the respect of employees, raises credibility with key stakeholders and supports an enterprise's commitment to honest and responsible behaviour.

The Business Principles aim to provide a framework that can assist enterprises in developing, benchmarking or strengthening their anti-bribery programmes. The Business Principles reflect a high, yet achievable standard of anti-bribery practice. They apply to the bribery of public officials as well as private-to-private transactions.

The Business Principles were originally published in 2003 and underwent a first revision in 2009. The 2013 revision is part of a periodic review process carried out with the input of the Steering Committee to ensure that the Business Principles remain current in light of changing anti-bribery laws and evolving corporate practice.

The primary focus on bribery is maintained in this edition, but the Business Principles now include clauses and revised language on topics such as risk assessment, conflicts of interest, cooperation with authorities, facilitation payments, lobbyists and communication and reporting, to reflect the importance of these matters in up-to-date anti-bribery practice and to achieve closer alignment with other leading codes and legal instruments such as the United Nations Convention Against Corruption.

BRIBERY

The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.

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2. THE BUSINESS PRINCIPLES

- The enterprise shall prohibit bribery in any form whether direct or indirect.

- The enterprise shall commit to implementing a Programme to counter bribery. The Programme shall represent the enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

These Business Principles are based on a Board commitment to fundamental values of integrity, transparency and accountability.

Enterprises should aim to create and maintain a trust-based and inclusive internal culture of individual accountability in which bribery is not tolerated.

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3. DEVELOPMENT OF A PROGRAMME FOR COUNTERING BRIBERY

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

3.2 The enterprise should design and improve its Programme based on continuing risk assessment.

3.3 The Programme should be consistent with all laws relevant to countering bribery in each of the jurisdictions in which the enterprise transacts its business.

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

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

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4. RISK ASSESSMENT

4.1 The Programme should be tailored to reflect the enterprise's particular business risks, circumstances and culture, taking into account inherent risks such as locations of the business, the business sector and organisational risks such as size of the enterprise and use of channels such as intermediaries.

4.2 The enterprise should assign responsibilities for oversight and implementation of risk assessment.

5. SCOPE OF THE PROGRAMME

The Programme should address the most prevalent risks of bribery relevant to the enterprise, but at a minimum should cover the following areas.

5.1 Conflicts of interest

5.1.1 The enterprise should establish policies and procedures to identify, monitor and manage conflicts of interest which may give rise to a risk of bribery – actual, potential or perceived. These policies and procedures should apply to directors, officers, employees and contracted parties such as agents, lobbyists and other intermediaries.

5.2 Bribes

5.2.1 The enterprise should prohibit all forms of bribery whether they take place directly or through third parties.

5.2.2 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.

5.3 Political contributions

5.3.1 The enterprise, its employees, agents, lobbyists or other intermediaries should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining unfair advantage in business transactions.

5.3.2 The enterprise should publicly disclose all its political contributions.

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5.4 Charitable contributions and sponsorships

5.4.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery.

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

5.5 Facilitation payments

5.5.1 Recognising that facilitation payments[1] are bribes, the enterprise should prohibit them.

5.6 Gifts, hospitality and expenses

5.6.1 The enterprise should develop a policy and procedures to ensure that all gifts, hospitality and expenses are bona fide. The enterprise should prohibit the offer, giving or receipt of gifts, hospitality or expenses whenever they could influence or reasonably be perceived to influence improperly the outcome of business transactions.

6. PROGRAMME IMPLEMENTATION REQUIREMENTS

The following section sets out the requirements that enterprises should meet at a minimum when implementing the Programme.

6.1 Organisation and responsibilities

6.1.1 The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's Programme.

6.1.2 The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.

6.2 Business relationships

6.2.1 General

The content of the following General section applies to all business entities.

6.2.1.1 The enterprise should implement its Programme in all business entities over which it has effective control.

[1] Facilitation payments: Also called "facilitating", "speed" or "grease" 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.

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6.2.1.2 Where the enterprise does not have effective control it should use its influence to encourage an equivalent Programme in business entities in which it has a significant investment or with which it has significant business relationships.

6.2.1.3 Whether or not it has effective control over a business entity, the enterprise should undertake properly documented, reasonable and proportionate anti-bribery due diligence of business entities when entering into a relationship including mergers, acquisitions and significant investments.

6.2.1.4 The enterprise should avoid dealing with business entities known or reasonably suspected to be paying or receiving bribes.

6.2.1.5 The enterprise should perform reasonable and proportionate monitoring of its significant business relationships. This may include the right of inspection of books and records.

6.2.1.6 The enterprise should document relevant aspects of the implementation of its Programme or equivalent by associated business entities.

6.2.1.7 In the event that policies and practices of associated business entities are in conflict with the principles of its own Programme the enterprise should take appropriate action. This can include requiring correction of deficiencies in the implementation of the entity's Programme and the application of sanctions.

6.2.1.8 The enterprise should have a right of termination in the event that associated business entities engage in bribery or act in a manner inconsistent with the enterprise's Programme.

6.2.2 Joint ventures and consortia

6.2.2.1 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 for taking appropriate action if bribery occurs or is reasonably thought to have occurred. This can include: requiring correction of deficiencies in the implementation of the joint venture's or consortium's Programme, the application of sanctions or exiting from the arrangement.

6.2.3 Agents, lobbyists and other intermediaries

6.2.3.1 The enterprise should not channel improper payments through agents, lobbyists or other intermediaries.

6.2.3.2 The enterprise should undertake properly documented due diligence before appointing agents, lobbyists or other intermediaries.

6.2.3.3 All agreements with agents, lobbyists or other intermediaries should require prior approval of management.

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

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

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

6.2.4 Contractors and suppliers

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

6.2.4.2 The enterprise should take steps to identify its contractors and suppliers.

6.2.4.3 The enterprise should assess the risk of bribery in its contractors and suppliers and conduct regular monitoring.

6.2.4.4 The enterprise should communicate its anti-bribery Programme to contractors and suppliers and work in partnership with major contractors and suppliers to help them develop their anti-bribery practices.

6.3 Human resources

6.3.1 Human resources practices including recruitment, promotion, training, performance evaluation, remuneration and recognition should reflect the enterprise's commitment to the Programme.

6.3.2 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.

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

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

6.4 Training

6.4.1 Directors, managers, employees and agents should receive appropriate training on the Programme.

6.4.2 Where appropriate, contractors and suppliers should receive training on the Programme.

6.5 Raising concerns and seeking guidance

6.5.1 To be effective, the Programme should rely on employees and others to raise concerns and violations as early as possible. 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 ("whistleblowing") in confidence and without risk of reprisal.

6.5.2 These or other channels should be available for employees to seek advice on the application of the Programme.

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6.6 Communication and reporting

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

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

6.6.3 The enterprise should be open to receiving communications from and engaging with stakeholders with respect to the Programme.

6.6.4 The enterprise should consider additional public disclosure on payments to governments on a country-by-country basis.

6.6.5 In the spirit of greater organisational transparency and accountability to stakeholders, the enterprise should consider disclosing its material holdings of subsidiaries, affiliates, joint ventures and other related entities.

6.7 Internal controls and record keeping

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

6.7.2 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.

6.7.3 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.

6.8 Monitoring and review

6.8.1 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.

6.8.2 Senior management should periodically report the results of the Programme reviews to the Audit Committee, Board or equivalent body.

6.8.3 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.

6.9 Cooperation with authorities

6.9.1 The enterprise should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions.

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6.10 Independent assurance

6.10.1 Where appropriate, the enterprise should undergo voluntary independent assurance on the design, implementation and/or effectiveness of the Programme.

6.10.2 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.

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APPRECIATION

Transparency International wishes to express its appreciation to the current and past members of the Steering Committee, who have provided financial and in-kind support to the Business Principles initiative. We also wish to acknowledge the valuable contributions of past chairs, Laurence Cockcroft and Jermyn Brooks, as well as Peter Wilkinson for his expert input.

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