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PREVENTING AND COMBATING
CORRUPTION

GUIDANCE FOR SWISS SMES

Transparency International Switzerland («Transparency Switzerland») is the Swiss chapter of Transparency International, the world's leading non-governmental organisation dedicated to fighting corruption. Transparency Switzerland is committed to preventing and combating corruption and money laundering in Switzerland and in Swiss companies' business relationships with actors in other countries. Transparency Switzerland engages in awareness-raising and advocacy work, produces reports and develops tools, encourages exchange among specific interest groups, works together with other institutions and takes stances on current events.

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Contents

| | |
|--|-----------|
| Corruption? Not in my business! | 1 |
| Overview: four effective anti-corruption steps | 2 |
| Why fight corruption? Using benefits and preventing damage! | 4 |
| Corruption, causes and criminal liability | 7 |
| What is corruption? | 7 |
| Causes of corruption | 7 |
| The corruption triangle | 8 |
| Legal regime | 9 |
| Step by step: preventing and fighting corruption | 13 |
| Step 1 – The decision | 14 |
| Step 2 – Risk assessment | 15 |
| Step 3 – Measures | 18 |
| Step 4 – Implementation | 25 |
| Appendix | 28 |
| In practice: Anti-corruption measures in company documents | 28 |
| Corruption offences under the Swiss Criminal Code | 30 |
| Further information | 32 |



Corruption? Not in my business!

Many business owners, board members and directors do not consider fighting corruption and addressing the risks as a high priority. They are convinced that they 'know their people'. They also tend to believe that staff would report any irregularities to them directly.

However, in reality, corruption is very difficult to identify and expose. The number of unreported cases is high and there is often little appreciation of the true extent of the problem. It is therefore essential and beneficial to businesses of any size, whether they operate within Switzerland or abroad, to tackle the issue of corruption. Having an effective anti-bribery management system in place does not just provide a protective shield, it also contributes to the success of the company by enhancing its competitiveness. A corruption-free environment is an absolute prerequisite for building and maintaining a good reputation and making the business more attractive to employees, customers and business partners.

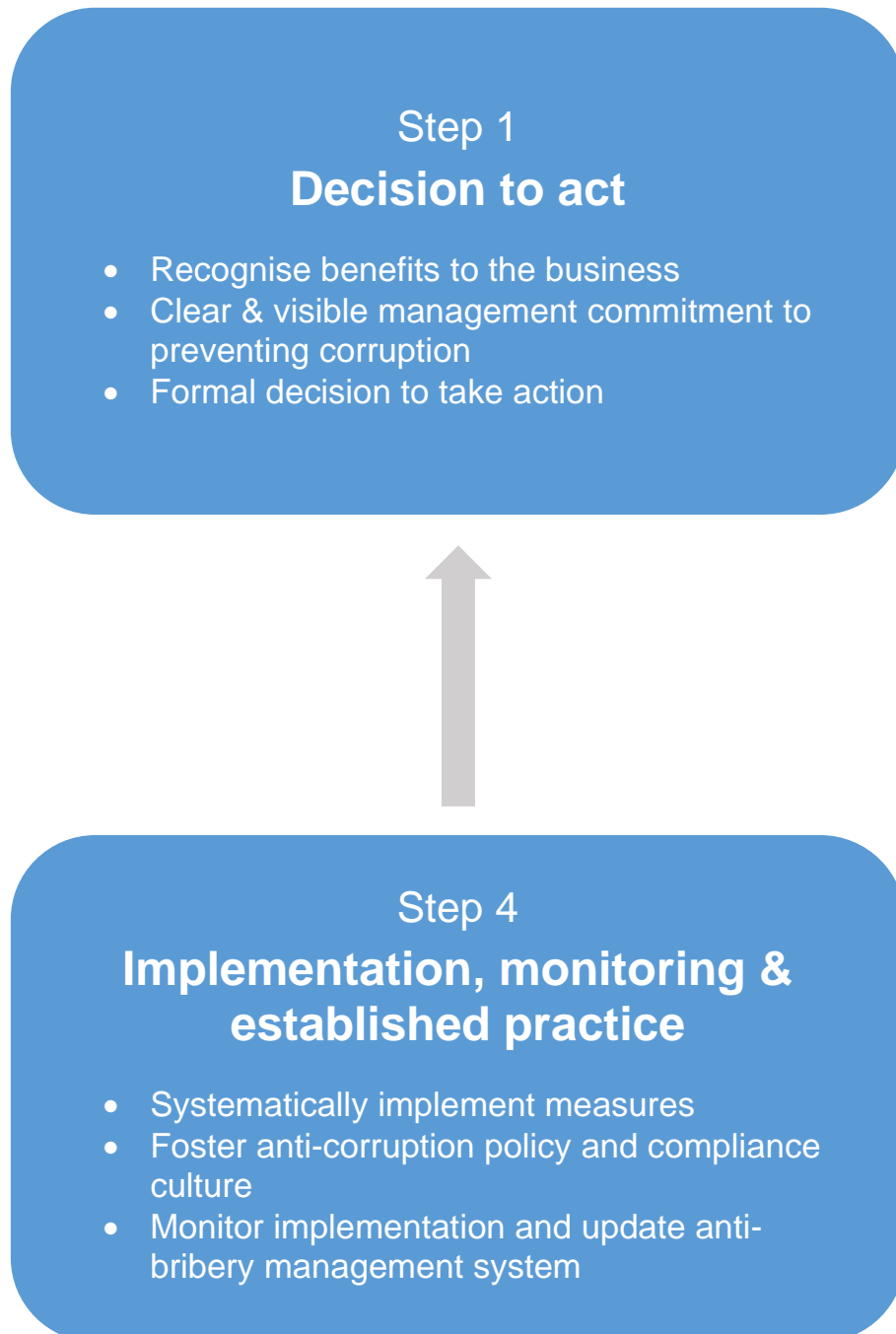
So how can corruption be prevented in practice? This brochure provides answers and guidance for Swiss small and medium sized enterprises (SMEs). The measures can be implemented effectively and sustainably in day-to-day operations within a reasonable time span and without incurring significant costs. The guide is based on the 'Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition' published by Transparency International (TI) and best practices defined by TI Switzerland and other national TI chapters in consultation with businesses. This guide also gives due consideration to current recommendations and standards laid down by international organisations and, in particular, 'ISO-standard for Anti-bribery management systems' which can lead to certification.

Alongside this guidance, TI Switzerland has also produced a "self-evaluation checklist" for SMEs. SMEs can use the checklist to make an initial assessment of their level of exposure to corruption risks, identify areas where they are exposed, and determine where action is most needed.

The two topic-specific guides "Gifts and Invitations" and "Dealing with Whistleblowing" are also tailored to the prevention of corruption by SMEs. These guides and the "self-evaluation checklist" can be ordered from Transparency Switzerland and are also available for download at www.transparency.ch.

Overview:

Four effective anti-corruption steps




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Step 2

Risk assessment

- Identify areas posing a risk to the business
- Assess level of exposure to corruption
- Categorise risks

Step 3

Measures

- Set up anti-bribery management system
- Take measures appropriate to the business and level of risk, e.g. code of conduct, due diligence, whistleblower system
- Set binding measures in writing

Why fight corruption?

Using benefits and preventing damage!

Preventing corruption benefits business:

Ensures good reputation, provides legal protection and boosts productivity

Competitive advantage – Businesses that have sound corporate governance, comply with the law and have specific anti-corruption measures in place have better access to lucrative markets and improve their chances of receiving orders from large companies or the public sector.

Greater productivity – Transparency, clear rules and a zero tolerance approach to corruption are key to making effective business decisions and allocating resources.

Good reputation and attractiveness – Companies recognised for their integrity attract business, funding and talent. This enhances the reputation and appeal of the business and, where applicable, facilitates succession planning.

Autonomy in managing the business – Large companies are increasingly extending their own anti-corruption rules to their suppliers and service providers or requiring equivalent standards. SMEs that do not have an anti-bribery management system – ideally aligned with international standards – reduce their prospects of securing work. Moreover, SMEs may have anti-corruption measures imposed on them by others over which they have no control, which may require significant expense and effort.

Employees' identification with the business and performance – Employees are much more likely to identify with a business culture based on integrity and zero tolerance for abuse of power, corruption and nepotism. As a result, they are also more satisfied. Greater satisfaction improves staff retention, lowers the rate of absenteeism, increases motivation, boosts performance, and results in greater productivity.

Retaining control and not becoming a target – Robust anti-corruption measures create clear rules and transparent business processes. This enables managers, rather than corrupt individuals, to retain control and means that SMEs are less likely to become a target for corruption and blackmail.

Preventing loss and damage to the business:

Endangerment of the business, financial loss, severe penalties

Existential threat – Just one incidence of corruption could endanger the business, e.g. due to heavy fines, claims for damages, or the loss of permits and licences.

Culture of lawlessness – Corruption poisons corporate culture by undermining company loyalty and employees' sense of right and wrong. This creates a breeding ground for further offences, potentially resulting in a criminal conviction for the company.

Reputational damage – All incidences of corruption damage a company's reputation and undermine the confidence of customers, employees and investors, especially if a criminal investigation or conviction ensues.

Financial loss – Corruption causes substantial losses: payment of bribes, inefficient procedures and loss of profits, compensation payments, legal costs and lawyers' fees. Moreover, any conviction will carry high costs (in Switzerland up to CHF 5 million in fines and unlimited compensation).

Blacklisting – Public bodies and large organisations are increasingly blacklisting companies associated with corruption and systematically excluding them from procedures to award contracts.

Mismanagement of resources; decreased productivity – Business decisions affected by corruption will always be flawed, resulting in the mismanagement of funds, human resources and tangible assets. In addition, processes affected by corruption are inefficient, constrain innovation and penalise employees who do the right thing.

A wrong does not make a right – Contracts resulting from corrupt dealings are void and unenforceable. Businesses run the risk of commitments not being met, money not being paid, goods or services not being supplied and having to buy replacement goods or services at inflated prices. Moreover, the perpetrators could continue to blackmail the business for years to come.



Corruption, causes and criminal liability

What is corruption?

Corruption is the abuse of entrusted power for private gain. Power is wielded by a person who enjoys autonomy, has resources and can make decisions regarding others. Anyone who abuses their position to obtain an undue advantage is therefore deemed to be corrupt. However, the other party is also engaging in corrupt practice: anyone who offers or merely promises an undue advantage is also deemed to be corrupt.

Causes of corruption

Corruption is caused by a number of factors. The following three factors, taken individually or in combination, are particularly pertinent (see the “corruption triangle” on the following page):

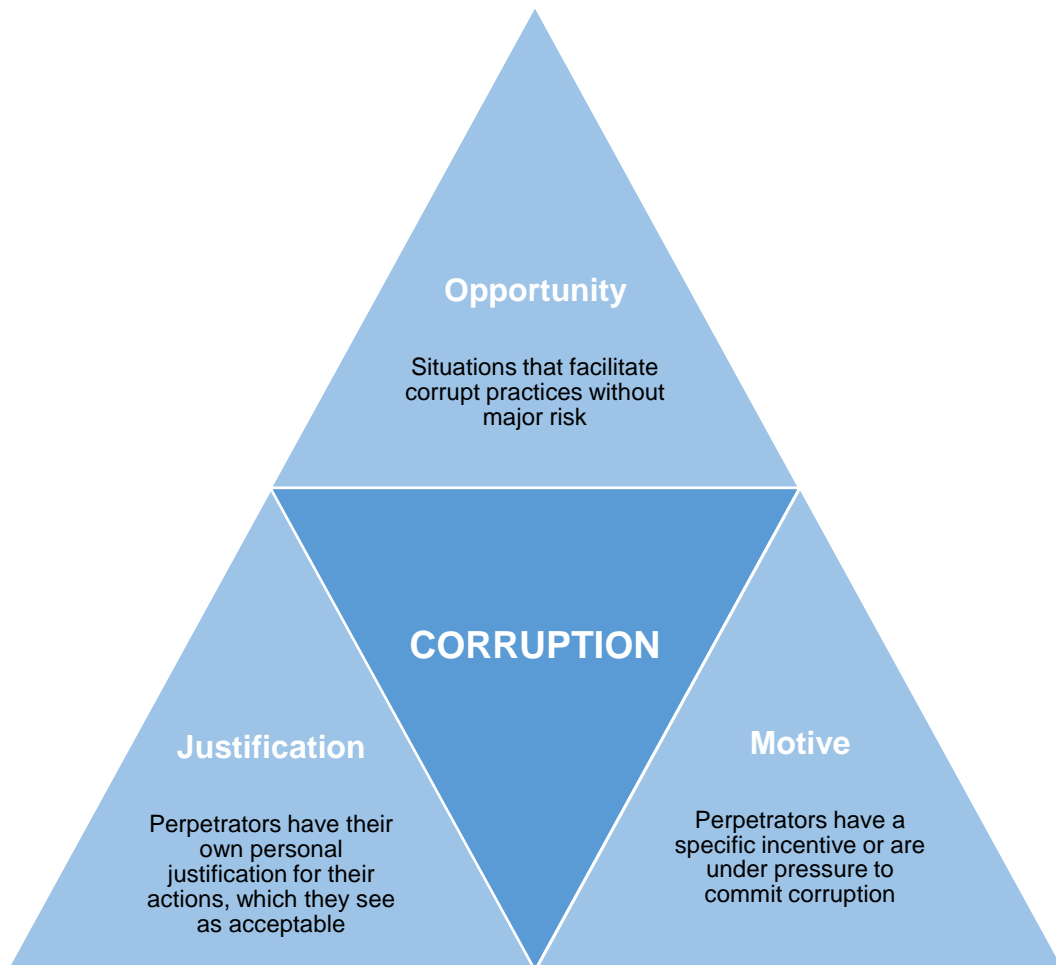
Opportunity – For corruption to be committed, an opportunity needs to present itself. There will be ample opportunity, for example, in businesses that do not have transparent processes, have a strong power culture and silo mentality, or operate an inadequate internal control system (risk management, compliance and financial control). Opportunities will also arise in organisations where individual employees or positions exercise too much power, or enjoy considerable or excessive autonomy or freedom of action.

Motive – Anyone engaging in corruption has particular motives for doing so. Personal enrichment is not always the main motive. Other relevant motives include excessive pressure, for example to achieve overly ambitious targets, personal financial problems and perverse incentives, such as large performance-related bonuses or promotions solely based on sales.

Perpetrators may also be motivated by job dissatisfaction or even vindictive feelings against their employer.

Justification – Anyone committing corruption will have their own personal justification for their actions. It is easy for employees to rationalise corruption offences: “everyone else is doing it too”, “I’m doing it for the company” or “it’s not hurting anyone”. The less employees know about corruption risks and the less aware they are of what is permitted and what is not and the damage their actions cause, the easier it is for them to commit the offence and justify their conduct.

The corruption triangle



Info: Corruption triangle and its relevance to SMEs' day-to-day operations

Where all three factors are present for a business or its employees, there is a very high risk of corruption. However, businesses that can eliminate, or effectively contain, just one factor will significantly reduce their risk of exposure to corruption.

The company's management has a decisive influence on all three factors. It also has ultimate responsibility for ensuring that the company complies with the law.

Accordingly, the causes of corruption do not just indicate how corruption may occur, but also how it can effectively be prevented. In establishing clear values, standards of conduct and binding rules, managers provide guidance and raise awareness of what is lawful and unlawful, which makes it impossible for employees to make excuses and justify their actions. Companies can also put less pressure on staff and avoid perverse incentives by setting realistic targets. Providing information, ensuring transparency, establishing structured procedures and controls and acting in response to incidents send out an important message and are crucial to eliminating risks.

Legal regime

Corruption is now substantially prohibited under criminal law. Individuals, companies and other entities (associations, confederations) are liable to prosecution. The main offences include the following:

Bribery – Where a party gives, offers or merely promises an undue advantage to another in return for a consideration. Both the briber and bribee are deemed to have committed an offence and are liable to prosecution. The parties involved may be public officials or just private individuals (bribery of private individuals). Bribery carries the penalties of a fine or a prison sentence not exceeding five years (bribery of public officials) or three years (bribery of private individuals).

Practical example – An employee responsible for procurement makes an arrangement for the seller to secretly repay part of the purchase price officially payable by the company in the form of a kickback. Unbeknown to the company, the kickback is added to the purchase price.

Both the employee and the seller have committed the offence of bribery of private individuals and are liable to prosecution.

Possible measures: providing targeted training to employees working in procurement/sales; reviewing market terms at regular intervals; no procurement unless a number of bids are submitted; implement the second-pair-of-eyes principle for transactions above a certain value.

Granting and acceptance of undue advantages – It is prohibited to give or merely to offer undue advantages to public officials, even if there is no direct, specific consideration. It is sufficient that the advantage conferred is intended to influence the recipient in the exercise of their official activity.

This is typically achieved by means of grooming and sweeteners. The offender may, for example, offer the public official gifts, trips or regularly invites them to expensive dinners. The intention is to make the official favourably disposed towards any future projects and take action to further these.

Granting and acceptance of undue advantages carries the penalty of a prison sentence not exceeding three years or a fine.

Practical example – Each year, a building contractor sends two crates of expensive wine and a greetings card to the buildings authority for his commune. The greetings card assures staff of his 'continued friendship'. However, this year, contrary to previous practice, the new office manager instructs his staff to return the gift.

The business runs the risk of being prosecuted for granting an undue advantage. There is a clear link between the expensive gift and the exercise of public office by the authority. It makes little difference that the office declines the gift: it is an offence merely to offer the gift.

Possible measures: laying down binding internal rules clarifying the extent to which gifts and hospitality are lawful (threshold values); defining who is responsible for making decisions regarding such gifts; requiring line managers to be consulted in borderline cases.

Facilitation payments – Payments of money, gifts or other benefits in order to facilitate or expedite actions performed by an official to which the public are fundamentally entitled, such as granting a business licence, clearing goods through customs or issuing an entry visa.

Facilitation payments are also prohibited under criminal law, even if they are customary in certain countries or regions and appear to be (supposedly) unavoidable in certain situations or regions.

Practical example – An IT company is setting up a subsidiary abroad. It just needs to be entered in the local commercial register with the entry officially stamped. To expedite the process, the project manager offers the officer responsible USD 500 'for special services rendered'.

This constitutes the offence of offering a bribe to a public official.

Possible measures: laying down internal rules of conduct and having a zero tolerance policy regarding informal, unlawful payments, irrespective of the amount; requiring employees to report and document such incidents (e.g. if a civil servant requests a facilitation payment); taking disciplinary action under employment law in respect of breaches.

Nepotism – A misuse of power or position to favour a relative or friend, resulting in personal gain or causing detriment to another. This type of behaviour can rapidly slide into illegality. Even if a particular incidence does not constitute an offence, nepotism is still a corrupt and damaging practice that should not be tolerated. Nepotism gives rise to conflicts of interest, creates an unhealthy corporate culture, produces bad business decisions and distorts competition.

It is therefore essential for businesses to ensure that their anti-bribery management systems also cover nepotism (see the example in the “case study” box).

Corporate criminal liability – Companies may also be prosecuted for corruption offences. This is the case if, in a case of corruption, they cannot prove that they have taken all necessary and reasonable organisational measures to prevent acts of corruption ('organisational deficiencies').

Companies may be held liable not only for the mis-

conduct of their employees, but also for the actions of third parties, including agents or sales partners. For example, companies may be convicted of an offence if they have failed to minimise the risk of business partners engaging in corrupt practices (e.g. due diligence in selecting partners, taking action in suspicious circumstances, regular monitoring of invoice payments, etc.).

However, businesses can avoid criminal liability by establishing an anti-bribery management system, which involves assessing their exposure to corruption risks, taking concrete measures and monitoring implementation.

Practical example – The person responsible for procurement at an SME usually buys raw materials from her brother's company, because she can place the order quickly and easily by phone. She does not solicit offers from competitors who may be able to supply better quality goods at lower cost.

There is an inherent conflict here between the employee's professional and personal interests, which is detrimental to the company. The employee's conduct also constitutes a breach of her legal duty to act in the employer's best interests. If she receives specific benefits in return for giving preference to her brother, she would also be committing the offence of bribery of private individuals.

Possible measures: sensitising employees to the problem, laying down internal guidelines on dealing with conflicts of interest (obligation to disclose conflicts, consulting line managers, requirement to document the conflict); implementing the second-pair-of-eyes principle for purchases; obtain multiple bids exceeding a certain threshold or contract value.

Info: When does an 'advantage' fall into the category of corruption?

Under Swiss criminal law, an undue advantage is anything that improves the situation of the recipient or another person (e.g. family members). In addition to payments of money, the advantage may also comprise other benefits (e.g. free services, invitations and gifts; promotions, special treatment and privileges for the person concerned or family members).

Such advantages are only lawful if they are expressly permitted under contract, or the advantage conferred is of nominal value or of a social or customary nature (small promotional gifts, courtesy gifts, hospitality that is reasonable, etc.).

Case study – Many of the key markets of a medium-sized machinery manufacturer are in parts of the world susceptible to corruption. The company regularly works with external agents. Nobody notices that one employee is colluding with certain agents to engage in various corrupt practices.

In Switzerland, the company is ordered to pay a fine and tens of millions of Swiss francs in compensation for serious organisational failings in preventing corruption.

Possible measures: setting up a robust anti-bribery management system including detailed rules of conduct, due diligence and monitoring procedures, especially in relation to business partners; a clear statement from the management condemning corrupt practices and calling for a change of culture and the adoption of a zero-tolerance policy; providing training to all staff, raising awareness at all hierarchical levels and among agents, intermediaries, etc.

Practical example – A medium-sized biotech company does business with an agent based in Asia who, without the SME's knowledge, uses his commission, which is paid in US dollars, to bribe local officials.

The US authorities could become involved and may investigate the Swiss SME solely on the basis that the business is transacted in US dollars. Arrest warrants may be issued and criminal proceedings instigated in the US, potentially resulting in hefty fines and prison sentences. This may also result in significant restrictions on business travel for the SME's managers.

Possible measures: strictly enforcing internal anti-corruption guidelines, especially in respect of agents; raising awareness and providing training in foreign anti-corruption legislation to staff who may be exposed.

Foreign law – Swiss businesses and their employees may be caught by laws of other countries even if they do not operate in these countries. US and UK anti-corruption legislation, in particular, is very broad in scope: the US Foreign Corrupt Practices Act applies to Swiss companies with only tenuous links to the US, such as using a US-American server or making or receiving payments in US dollars. Under the UK Bribery Act 2010, foreign companies may be liable, for example, for offences against the UK Bribery Act committed by agents or distributors anywhere in the world.



Step by step: preventing and fighting corruption

Now it is time to get down to business: every SME can quickly and efficiently establish a customised, effective anti-bribery management system in four simple steps:

Decision-making – The directors of the company make a clear and explicit commitment to taking corruption seriously and taking specific action to address it.

Risk assessment – Corruption risks to which the company is exposed are identified and categorised, e.g. as low, medium or high.

Measures – based on the risk assessment, appropriate preventative measures are defined for medium and high risks.

Implementation – The measures are put in place and systematically implemented. Setting the tone at the top is essential here, i.e. executives and senior managers must clearly lead by example. It is also important to review the entire anti-bribery management system at regular intervals to ensure that it is effective and up to date (audit cycle).

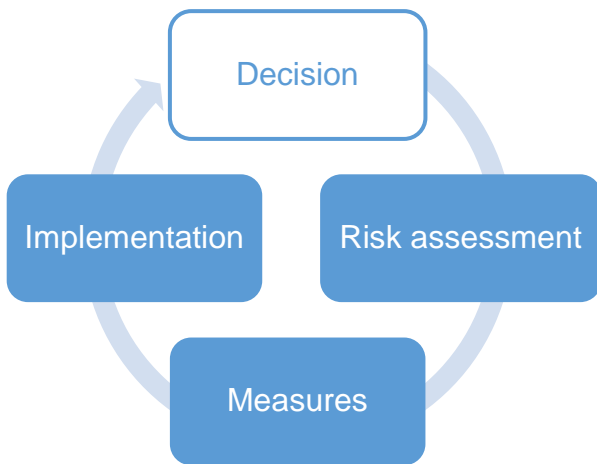
Depending on the risks to which they are exposed, their main markets and the resources available, it may also be beneficial for SMEs to obtain ISO certification. ISO 37001 (Anti-bribery management systems) explains how anti-bribery management systems help

SMEs adopt an integrated approach to combating corruption and the relevant requirements. The key procedures and measures set out in ISO 37001 are broadly consistent with this guide, although it also covers other procedures and measures specific to certain areas.

Info: Anti-corruption measures, compliance and good governance

Preventing corruption is an essential part of good governance and compliance. Nowadays, all businesses need to engage with this issue intensively. Experience shows that it is possible to integrate anti-bribery management systems efficiently and effectively into pre-existing internal compliance management systems that have relevant structures, processes, rules and objectives.

Step 1 – The decision



The whole process starts by the directors making a strategic decision to address corruption risks and prevention proactively. This step is done quickly but is not a mere formality. The following actions are crucial:

Clear and visible management decision – There needs to be an explicit, written decision by the top-management to act now. This decision must also be recognised - i.e. communicated - within the company. This sends out important internal signals and sets the tone and direction for the next steps.

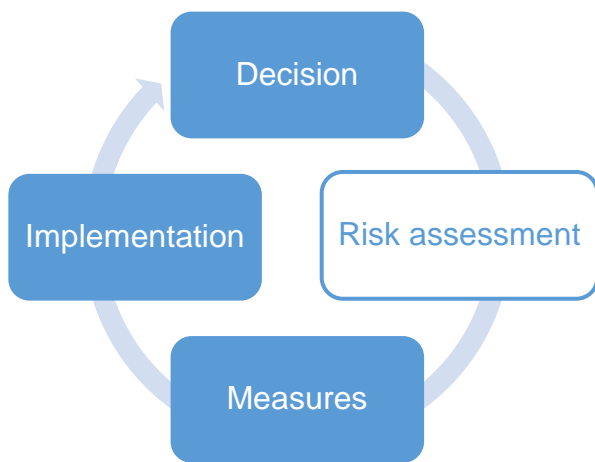
Responsibility for implementation – A management member (preferably a senior manager) should be responsible for overseeing the project. Any employees with risk management, legal and/or compliance expertise must be included in the project management team. Employees who are familiar with the company's processes and have close ties to key markets and business partners (customers, suppliers, agents) should also be involved. This will ensure that the measures taken are high quality, workable and broadly accepted within the company.

Practical example – An SME providing ICT services throughout Switzerland frequently submits bids for public sector contracts. A trade journal recently reported on a corruption scandal concerning a competitor. The SME has never been implicated in corruption, so the managing director never paid attention to this issue.

Given the high number of contracts and competitive pressures within the ICT sector, ICT companies are at greater risk of corruption, particularly in relation to invitations to tender. It is therefore essential to implement internal measures to address these risks.

Possible measures: making a formal management decision to address corruption risks within the company and wider business context; passing a formal resolution at a management meeting to take a strict zero tolerance approach to corruption; launching a project to set up an anti-bribery management system.

Step 2 – Risk assessment



The next step is to evaluate the risks. The risk assessment may be used as a basis for taking specific measures, as indicated below. In conducting the risk assessment, the company should focus on its actual and individual exposure to corruption.

Management can obtain a reliable initial overview of crucial risk factors by having a full and frank discussion with individuals performing key functions (sales, marketing, purchasing, compliance). Step 2 can be broken down into the following stages:

Identifying, assessing and categorising risks

As part of the risk assessment, SMEs must identify, assess and categorise corruption risks, e.g. as low, medium or high. This is important because it helps SMEs prioritise risks at a later stage (e.g. identifying the five main risks) and determine what measures should be taken.

In identifying and assessing corruption risks, it is essential for SMEs to look critically at themselves, their business and the industry in which they operate (see box 'Risk assessment checklist'). To help them identify risks, SMEs should also look at the following specific areas:

- business processes, transactions, projects, activities;
- relationships with/ties to specific business partners (e.g. major customers, key suppliers, agents) and public bodies;
- employees in certain roles, e.g. senior management and management roles.

Factors to be considered when evaluating specific low, medium or high risks include:

- causes, controllability and predictability;
- possible scenarios;
- likelihood of the risk occurring and impact.

Any procedures for evaluating and monitoring risks that are already in place should also be assessed: are the procedures appropriate for reducing specific corruption risks?

There are now well-established best practices and certifiable ISO standards (e.g. ISO 31000 – Risk management), which can help SMEs manage their risks. These have also proved useful to companies in assessing corruption risks.

Info: High risk of corruption – what now?

Preventing corruption is an essential part of good governance and compliance. Nowadays, all businesses need to engage with this issue intensively. Experience shows that it is possible to integrate anti-bribery management systems efficiently and effectively into pre-existing internal compliance management systems that have relevant structures, processes, rules and objectives.

Reviewing risks on a regular basis

Risk assessments should be carried out on an on-going basis, especially as the risks to which SMEs are exposed can change rapidly. It is therefore essential to review the current risk assessment on a regular basis and/or conduct a fresh risk assessment. SMEs exposed to a relatively high degree of risk should carry out a review at least once a year.

Common risks to which SMEs are exposed

In assessing corruption risks, SMEs need to focus specifically on the following issues and risks:

Exposed areas of business – Certain areas, including sales, contract tenders, procurement and marketing, may, by their very nature, involve greater exposure to corruption. In general, accounting units or staff that deal with the authorities are also potentially exposed to risk.

Business partners – They often pose the greatest corruption risk. All SMEs should have a detailed knowledge of their key customers, main suppliers, main distributors, agents, etc. They need to ensure,

for example, that any goods or services are supplied on market terms and at market rates. SMEs operating in areas where high levels of commission are usually paid, substantial discounts are applied, or fees frequently charged for poor services or services that were not supplied, are also exposed to high levels of risk.

Risk-prone regions, markets and sectors – SMEs engaging in operations abroad need to develop an increased awareness of the risk of corruption: two thirds of countries are rated as being at high or very high risk of corruption. In the defence, pharmaceutical and IT sectors, for example, multiple risk factors may converge: big budgets and large contracts, non-transparent pricing, dependence on specialists and intermediaries, close relationships with the authorities, and markets in regions where corruption is particularly prevalent.

Nepotism – This is a particular risk for SMEs and circumscribed markets (e.g. personal relationships and family ties within businesses and with business partners). Such relationships can result in serious conflicts of interest, shortcomings in compliance and, in general, failure to foster a culture of integrity, which makes businesses more susceptible to corrupt practices.

Info: Risk assessment questions

In conducting risk assessments, SMEs need to look at their business and industry from an impartial viewpoint and ask themselves some basic questions, e.g.:

- Have we or our competitors been affected by incidents of corruption in the past? If so, what were the circumstances and which lines of business, markets, etc. were affected?
- Have we committed any breaches of the law or have there been any serious breaches of internal rules in any other respects?
- Do we have a clear grasp of Swiss and foreign anti-corruption rules and regulations? Are we aware of local practices?
- Is our business especially dependent on any external stakeholders or partners (e.g. public bodies, agents)?
- Are there any particularly risky areas or markets in which the SME operates?
- Are there any areas involving complex business transactions? Have these transactions been fully documented? Do we check these transactions to ensure that they are reasonable and can be traced?

A list of questions for SMEs is available in TI Switzerland's *Checkliste zur Selbstevaluation für KMU* (SME checklist for self-evaluation, only available in German and French). This helps SMEs quickly and easily identify areas where they are exposed to the risk of corruption and the level of exposure.

Relationship management – Swiss SMEs often have strong regional ties. As a result, they may have close and often informal connections with local authorities, public officials, business partners and associations, which may involve sponsorships, donations, invitations and gifts. Sponsorships, donations, invitations and gifts may arise in the normal course of business. But without clear guidelines, such practices carry the risk of an offence being committed.

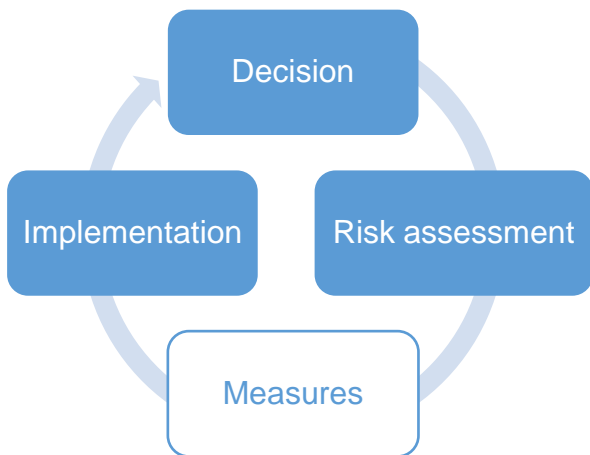
Practical example – An SME that has strong local roots and also operates internationally is exposed to particular risks.

Risks associated with operating abroad and employees' conduct. The SME sells 30% of its products to customers based in south-eastern Europe, where a number of countries are identified as having a high level of corruption risk in Transparency International's Corruption Perceptions Index. The employees in charge of international business are aware of the risks and familiar with local conditions and key partners. In line with internal guidelines, they meticulously verify all business transacted directly and consistently implement a system of double checking. The managing director therefore considers it unlikely that incidents of corruption could arise. If an incident were to occur, the company could potentially incur substantial loss and damage (it is exposed to financial, legal and reputational risks in a key market). The overall risk is identified as 'medium'.

Risks associated with agents: The SME sometimes uses agents in less well-known markets where the risks of corruption are high. Its agency agreements merely include a disclaimer regarding 'all forms of corruption'. There are no specific guidelines and the SME cannot afford to carry out on-site inspections. The risk of corruption is identified as 'high'.

Risks associated with relationship management: Every year, the Board of Directors and management team entertain major clients at the 'Swiss Indoors' VIP lounge, followed by dinner in a high-end restaurant. Representatives from the local authority sometimes attend these events as well. This could easily be perceived as bribery or even cross the line into criminality. The risk of corruption is identified as 'medium'.

Step 3 – Measures



The task now is to take appropriate measures to counter the identified corruption risks. The following principles are important here:

Risk-based measures appropriate to the SME – The measures must be based on an individual risk assessment and will depend on the SME's level of exposure to corruption. The SME must also ensure that measures are proportionate, suitable and feasible in practice.

Setting objectives – In addition to defining measures, specific objectives must be set (e.g. a specified reduction in incidents, target number of training courses/employees who have completed

training, allocation of resources to preventing corruption, etc.). The SME must also plan how to achieve the objectives.

Binding measures set out in writing – All measures should be recorded in writing and stated to be binding. The same applies to the procedures for dealing with breaches (internal investigations, possible involvement of the authorities) and the consequences for employees who breach the rules (disciplinary action up to and including dismissal).

Setting out the measures in writing creates clarity, indicates that they are binding, and clearly communicates and raises awareness of the company's values. By contrast, companies that do not record their measures in writing run the risk of failing to take appropriate action in the event of employee breaches or rendering themselves liable to prosecution for organisational failings.

Anti-corruption measures can either be included in several documents covering different issues or areas (e.g. purchasing or sales guidelines) or in a single document (e.g. code of conduct, anti-corruption policy). The advantage of a comprehensive code of conduct is that the guidance is contained in a clear and concise format that conveys to employees exactly what is expected of them. Issuing a code of conduct is also a convenient way to communicate the company's policy to third parties.

Info: Focusing on staff accountability

It is impossible for written guidelines to cover all situations staff may encounter in day-to-day operations. It is therefore essential to provide additional resources to help staff make the 'right' decisions in unclear or borderline situations.

The most important guidance for staff is the certainty that a zero tolerance policy regarding corruption will be enforced in all circumstances. It must also be clear that the company culture cultivated is one in which errors are openly disclosed and staff communicate with one another openly. It is also essential to inform staff that they will not be disadvantaged if they turn down business that carries a high risk of corruption, which the SME has not previously considered, even if the transaction is highly lucrative or the employee was instructed to do the deal by a line manager.

The following *checklist* may also be of assistance: am I acting in line with the company's culture, values and principles – and my own? Could my actions have any adverse effects? Am I willing to be accountable for my actions (e.g. to my family, friends and the general public)? How would external parties view my actions and what would happen if the incident came to public attention (e.g. criticism in the press, social media furore)?

Key measures

The actions set out below appropriately and effectively address the corruption risks to which most SMEs are exposed to a greater or lesser degree. The actions include the following anti-corruption measures:

1. Perform due diligence checks in areas involving risk
2. Systematically involve business partners
3. Manage conflicts of interest
4. Set up a whistleblower system
5. Provide documentation
6. Adhere to the second-pair-of-eyes principle and the separation of duties
7. Lay down rules regarding gifts and invitations
8. Define the policy regarding sponsorships and donations
9. Lay down rules on the payment of travel expenses
10. Appoint an anti-corruption officer

Template provisions that may be included, for example, in codes of conduct are set out in the Appendix.

The 10 measures in detail

1. Perform due diligence checks in areas involving risk

Due diligence checks are carried out in advance to clarify possible corruption risks that could emanate from business partners, employees in key functions, projects and business processes.

Through due diligence, the company obtains in-depth information or carries out additional background checks before making a business decision (e.g. signing a contract, recruiting employees). Due diligence ensures that SMEs have sufficient information to assess the actual risk of corruption associated with a given business process, project or business partner and to take appropriate measures to minimise risk where necessary.

SMEs should perform anti-corruption due diligence on a regular basis in the high-risk areas identified

during the risk assessment process ('Risk assessment' section). In areas identified as high risk, it is essential for SMEs to perform due diligence systematically and without exception, e.g. with respect to all new business relationships and transactions.

2. Systematically involve business partners

SMEs whose business partners engage in questionable practices may suffer adverse consequences and even render themselves liable to prosecution. Business partners must therefore be systematically included in SMEs' anti-bribery management systems.

For many SMEs, the main risk of corruption stems from business partners (see 'Risk assessment' section). SMEs that do not prevent corrupt practices, because they have failed to perform due diligence in relation to agents or their due diligence was inadequate, also run the risk of being prosecuted themselves. SMEs can also fall victim to suppliers' corrupt practices or suffer reputational damage from a prominent corruption scandal involving a business partner.

It is now standard practice for big companies to lay down anti-corruption rules and rules of conduct for business partners. SMEs are therefore also advised to adopt e.g. codes of conduct for service providers that include anti-corruption provisions. If a partner has been identified as posing an increased risk of corruption, SMEs must also ensure that the partner has anti-corruption measures in place, that it implements the measures in practice and/or is in a position to do so. Where there is a high risk of corruption, SMEs must, as a minimum, include an anti-corruption clause in their agreements requiring business partners to comply strictly with the law, report any irregularities systematically, and ensure internal compliance with the anti-corruption requirements.

SMEs' internal processes must also pay particular attention to business partners that operate in areas or perform functions exposed to a high risk of corruption (e.g. agents and intermediaries). It is essential, for example, to ensure that partners' activities, accounts and payment flows are scrutinised to iden-

tify covert corrupt practices (e.g. excessive commission and bonuses, rebates, retrocessions or advances that are subsequently remitted/written off).

Practical example – An SME uses an agent to procure raw materials from Central Africa. The agent has no anti-corruption measures in place. The SME's procurement officer becomes aware of this situation following a due diligence check performed as part of the regular risk assessment process.

A high level of risk is identified (business partner, market, region).

Possible measures: suspend the business relationship; perform a due diligence check in relation to the agent (involving a local confidential mediator); seek a commitment from the agent that it will adopt anti-corruption measures and ensure/monitor implementation.

where appropriate, the person concerned must refrain from decision-making.

Practical example – An SME operating in the field of civil engineering is looking for a new cement supplier. The CEO concludes that a company belonging to a long-standing, close friend of her family has objectively submitted the best bid.

If the CEO awards the contract to the company, there is a risk that e.g. employees or competitors could perceive this as a problematic conflict of interest or cronyism.

Possible measures: disclosing the conflict of interest; the CEO abstains from voting on the award; documenting the process; ensuring that the SME's code of conduct explicitly addresses conflicts of interest and provides appropriate guidance (including guidelines for managers).

3. Manage conflicts of interest

Conflicts of interest may give rise to problematic corruption scenarios. SMEs that issue binding rules and adopt a consistent approach to conflicts of interest will avoid flawed decisions because personal interests were involved.

A conflict of interest is deemed to exist where personal interests or relationships prevent or could prevent staff from properly discharging their duties. Conflicts of interest involve a risk that business decisions are not made in the company's best interests but determined by personal relationships and driven by self-interest. Such decisions are problematic because they are unlikely to be the best commercial option, undermine corporate culture and may render the company liable to prosecution for corruption.

It is therefore essential to define binding rules and procedures for the whole company, explaining how staff at all levels, including managers, should deal with conflicts of interest. A consistent approach must be taken to addressing any conflict of interest, ensuring complete transparency. Employees must consult line managers or other members of staff and,

4. Set up a whistleblower system

Whistleblowing means reporting or disclosing irregularities or instances of non-compliance. A whistleblower system enables employees (and, where applicable, third parties) to report abuses.

Whistleblowers play a key role in preventing and combating corruption: in the majority of cases, corruption is only discovered through tip-offs from employees or third parties. It is therefore in SMEs' business interests to promote a strong speak-up culture, i.e. a working environment where employees are explicitly encouraged to report errors or concerns. Companies cannot address and rectify problems unless they have been identified. Representative surveys of Swiss companies with whistleblower systems show that over 50% of reports are useful and relevant. In contrast, less than 5% of reports make false claims.

All companies, including SMEs, must therefore set up a whistleblower system as part of their anti-bribery management system. Establishing an effective whistleblower system requires very little effort or cost, even in smaller companies. In many cases, it

will be sufficient to establish clear, confidential reporting procedures and appoint a trusted, independent person or body to act as the reporting office (see Info box below and Transparency Switzerland's topic-specific guide 'Dealing with whistleblowing').

It is essential for SMEs to ensure and demonstrate in practice that staff who report suspicious incidents in good faith will not suffer any disadvantages and that there will be zero tolerance for any form of retaliation, e.g. dismissal or bullying. SMEs must also make it clear internally that strict disciplinary action will be taken against anyone who threatens or penalises whistleblowers.

Practical example – The managing director of a small company treats the business as one big family where staff have no secrets and bring problems directly to the boss. Nevertheless, he thinks it would make sense to set up a whistleblower system provided it is feasible to do this with minimal resources.

Given that the company only has 15 employees, it would be very difficult for anyone dealing with whistleblower information internally to ensure independence and confidentiality.

Possible measures: appoint a person or body not involved in operations, e.g. a member of the Board of Directors (BoD), to act as the reporting authority; set up a separate telephone number and email address which only the BoD member can access.

5. Provide documentation

Through careful recording and archiving, SMEs can ensure that formal internal records of relevant transactions are kept and that transparency is maintained. This means that operations can subsequently be traced and verified as necessary.

Corruption nearly always takes place covertly, which means that non-transparent, informal business dealings lend themselves to corrupt practices. Adopting a consistent documentation policy can therefore significantly reduce the risk of corruption and improve the chances of detecting irregularities. It is also important to keep careful records of transactions, so that if criminal proceedings are initiated, the company can demonstrate that it took reasonable steps to prevent corruption.

SMEs must therefore ensure that all relevant business operations and decisions are recorded systematically, at least in areas that the company has identified as presenting an increased risk of corruption. Employees must be given appropriate instructions. Line managers or the internal authority responsible for monitoring must take action if information (e.g. supporting documents) is missing or incomplete.

Info: Whistleblowing – Core criteria for the Reporting Office

A whistleblower system mainly requires clearly defined reporting procedures and a reporting office. This reporting office ...

- must maintain *confidentiality and protect whistleblowers* from reprisals and, where possible, ensure *anonymity*;
- must be as *independent* as possible, i.e. be outside the chain of command and should ideally report directly to the company's strategic body;
- must have the necessary *human and financial resources* and *investigative powers* to follow up on reports;
- should ideally be available to *internal and external whistleblowers* (e.g. customers, business partners);
- may be *internal* (e.g. legal department) or *external* (e.g. a specialist service provider, law firm or professional body).

Practical example – An SME's delivery of machinery parts to Central America is blocked under local import controls because a specific local charge appears not to have been paid. The Swiss SME intends to pay the shortfall in cash to the local consul. However, the company's internal anti-corruption provisions prohibit cash payments to foreign recipients.

As well as constituting a breach of internal guidelines, making a cash payment to the local consul involves an increased risk of corruption and is potentially a criminal offence (bribery of a public official).

Possible measures: fully document the correspondence with the foreign authorities; consult the line manager or internal compliance officer on how to proceed; only pay in cash to the consulate against receipt (invoice and payment confirmation); transparent, traceable internal accounts records evidencing the payment.

6. Adhere to the second-pair-of-eyes principle and the separation of duties

The second-pair-of-eyes principle ensures that specific business transactions (for example the conclusion of contracts) are always approved by more than one individual within the company. The separation of duties ensures that individual business operations are kept separate both in organisational and personnel terms.

The more power and decision-making authority individuals have, the greater the risk of abuses and therefore the risk of corruption. Company transactions that are particularly susceptible to corruption include authorising and processing (large) payments, verifying invoices, tendering and awarding major contracts.

SMEs should therefore ensure, as a minimum, that high-risk transactions are always monitored and authorised by more than one person. For transactions that are exposed to a high level of risk, for example large orders, SMEs are also advised, where possible, to separate the various processes (e.g. entering into the agreement, fulfilling the order or reporting)

in organisational terms, so that a range of departments or functions are involved.

7. Lay down rules on gifts and invitations

Binding and clear rules on how to deal with gifts and invitations protect against criminal liability and the appearance of precarious dependencies.

Gifts and invitations are harmless if they are small promotional gifts or appropriate, common social tokens of gratitude (e.g. a bouquet of flowers for the guest speaker). However, the line to corruption can quickly be reached or even crossed, especially when dealing with authorities and public officials. Things get tricky as soon as the value of gifts and invitations is no longer trivial or increases in frequency. Even proximity to contract negotiations or the awarding of a contract can quickly become relevant under corruption law.

Companies must therefore ensure that employees do not accept or offer gifts or invitations that could compromise the integrity and decision-making ability of the giver or recipient. The relevant principles on how employees should deal with gifts and invitations should therefore be set out in writing and be binding for everyone. It has proven to be a good idea for companies to set thresholds for permissible gifts and invitations (own and received) (see the examples in the appendix and the guide " Gifts and Invitations " from Transparency Switzerland for detailed information on this topic). In addition, special constellations specific to the company or sector must be regulated (e.g. prohibition of gifts during an ongoing bidding process, handling of gifts that cannot be returned or, for example, cannot be refused abroad due to customary practice).

8. Define the policy regarding sponsorships and donations

Adopting a clear policy on sponsorships and donations can protect SMEs against corruption-relevant constellations and criminal liability and regularises relations with beneficiaries.

Sponsorship, for example, is an arrangement where a company supports an event or organisation by providing money, goods or services for a consideration (e.g. an advertising presence). By contrast, donations are made in the absence of any formal consideration.

Although donations and sponsorships are not in themselves problematic, they may entail a risk of corruption in certain situations. This may arise in particular if undue consideration is agreed (bribery) or if, for example, a benefit provided to a public official is tied to preferential treatment in future (the offence of granting an advantage). In any event, donations and sponsorships must not compromise the integrity of either partner or be perceived as a smokescreen for a potential corruption offence.

In the same way as for gifts and hospitality, SMEs need to define clear principles and responsibilities regarding donations and sponsorships. Donations must be clearly and systematically documented and mentioned accordingly in the accounts.

The precise terms of any sponsorships, the services and/or benefits to be provided by the company and the consideration received must also be agreed in writing with the partner. Depending on the circumstances, the level of sensitivity and any potential appearance of corruption, donations (in particular political donations) and sponsorship payments should be disclosed (e.g. in the annual report or on the website).

If the integrity is jeopardised by a donation or sponsorship commitment or if a sensitive corruption constellation should even arise as a result, the commitment should be completely renounced (see the example on the right).

9. Lay down rules on the payment of travel expenses

In relation to particular situations, projects or sectors, the issue may arise as to whether the company should or is permitted to pay a business partner's travel expenses. Laying down clear rules helps prevent corruption from being committed and creates clarity regarding the SME's relations with suppliers and customers.

The issue of travel expenses may arise, for example, where business trips are required for specific transactions (inspecting a site) or for training purposes. Business trips raise the risk of corruption, as they often bring personal benefits to the person taking the trip. As a result, particular caution should be exercised with regard to paying travel expenses. In addition, companies are not permitted to pay travel expenses for public officials.

Any travel expenses payable by the company or within the sector should be agreed in advance in writing with the beneficiary and clearly defined. SMEs should also lay down internal rules specifying when and to what extent travel expenses are payable and who is responsible for making the relevant decisions. On no account should SMEs offer or agree to pay the expenses of accompanying guests or, for example, cover any additional days of leisure time or personal spending money.

Practical example – A construction company is trying to secure a major contract from the local authority. It is also thinking about sponsoring the local handball club, which would be a substantial sponsorship. An employee points out that the club chairman also heads the public works department at the local authority.

The dual roles and the fact that the sponsorship and award decision are happening around the same time could give rise to a presumption of 'grooming' or even bribery, which would be a criminal offence.

Possible measures: abandon the sponsorship; state explicitly in the company's internal code of conduct that sponsorship may not result in undue influence or situations of dependency, or give the impression of such; ban sponsorships that either directly or indirectly benefit members of awarding authorities.

10. Appoint an anti-corruption officer

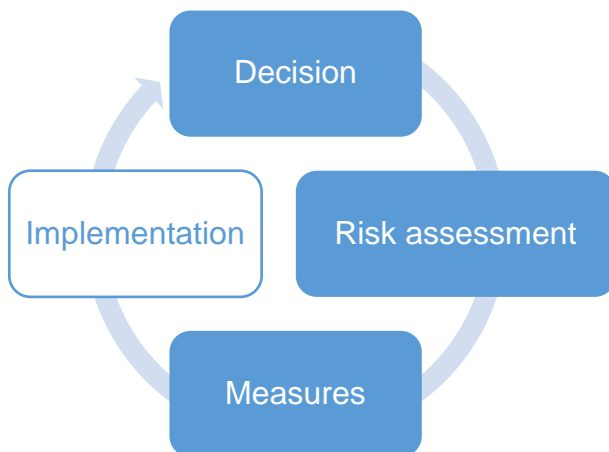
The company should appoint an anti-corruption officer who is responsible for dealing with queries, providing information on preventing corruption and setting up the company's anti-bribery management system.

All SMEs exposed to increased corruption risks must ensure that their managers and staff know who to contact internally if they need information or help with a corruption issue. It is therefore essential for SMEs to appoint a specific internal anti-corruption officer, depending on their particular structure and level of exposure to risk. Where feasible and appropriate, the anti-corruption officer should ideally be senior executive or upper management. In all circumstances, the anti-corruption officer should have direct access to senior management in order to discuss corruption issues. If the SME has already appointed a compliance officer or specialist, it would make sense for the same person to perform anti-corruption duties.

The anti-corruption officer is also responsible for the internal anti-bribery management system. He/she should review the risk assessment process, relevant measures and implementation on a regular basis to ensure that these are up-to-date and effective, and make changes where necessary (more on this at the end of the following chapter, "Cyclical approach and review").

The anti-corruption officer is also typically responsible for providing advice and assistance to managers, divisions and staff and reporting regularly to the Board of Directors and senior management.

Step 4 – Implementation



The final step involves the concrete implementation of the measures, including monitoring. This step is vital: unless the measures are implemented and monitored, steps 1 to 3 will not be put into practice or have any long-lasting effect. Step 4 comprises the following key components:

Setting the tone from the top – Promoting ethical business practices is not just about issuing staff guidelines and information sheets and holding events, but above all about the management demonstrating such practices to all staff in day-to-day operations. The Board of Directors and management are mainly responsible for setting an example with regard to the anti-bribery management system: senior managers must make a clear and consistent commitment to complying with the anti-corruption measures and actively support implementation. Incidents of corruption are less common in SMEs where management takes a clear, proactive stance on corruption. As a result, international standards also provide that senior management should have primary responsibility for and

play a key role in implementing the anti-bribery management system.

Providing information and training and raising awareness – It is also essential to ensure that staff are aware of the anti-bribery management system and, in particular, have read and understood the relevant rules of conduct. To achieve this aim, staff need to know exactly what is expected of them, for example in line with the company's core values and culture (see also the info box "focusing on staff accountability" on page 18).

Companies can help staff get up to speed by providing introductory and regular training courses on its code of conduct and other anti-corruption requirements. It is also important to involve managers directly (e.g. by holding regular workshops covering the issues). Staff should be required to attend training courses, for example, every one to three years, depending on the role they perform and their level of exposure to corruption. Attendance must be systematically documented. Evidence of attendance (e.g. in personnel records and annual compliance reports) increases the level of commitment among staff, provides a sound basis for sanctions and disciplinary action in the event of breaches, and demonstrates that the company has performed due diligence, for example if a criminal investigation were initiated.

Communication and trust – Ensuring broad-based acceptance throughout the company is key to successfully implementing the measures. It is vital to convey consistently that the measures signal trust and not a lack of trust and are intended to assist staff in their day-to-day work. Staff need to be empowered to address risks responsibly, autonomously and appropriately (see also the info box "focusing on staff accountability" on page 18).

Info: 'It's not what you say, but how you say it'

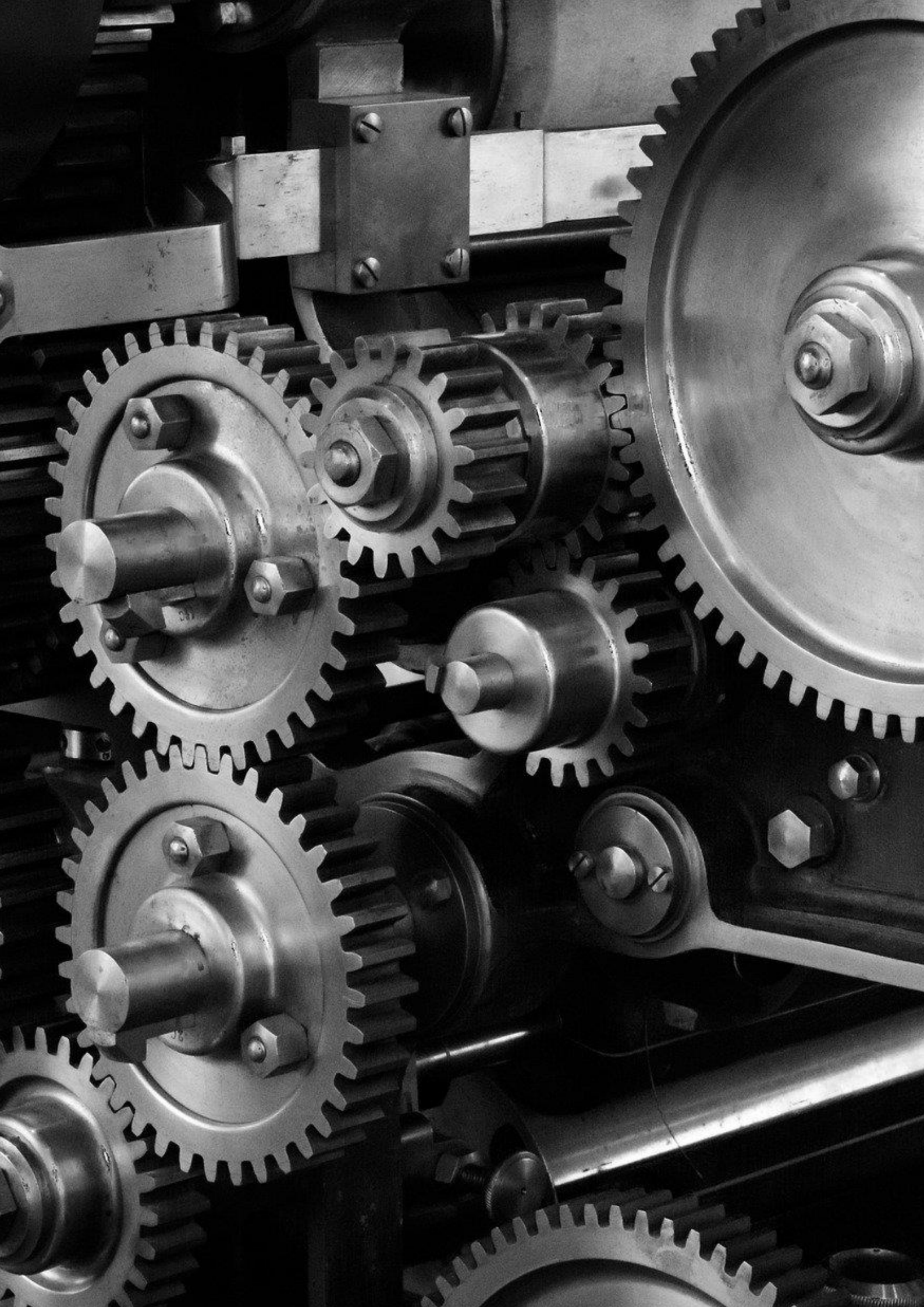
It is not enough to implement an anti-bribery management system merely by defining rules of conduct and appropriate sanctions. In communicating the rules, e.g. in management communications or training courses, it is essential to keep the tone positive. This applies above all to the introduction of measures, but also in the context of management communication or training. The key message should be "these measures will help us improve and make us stronger" rather than "you're not allowed to do this".

The aim is to make all employees aware that the anti-bribery management system delivers added value for the company and themselves, so that they actively support the measures. To achieve this goal, SMEs should involve as many employees as possible in its anti-corruption measures (e.g. risk assessment).

Ultimately, corruption can only be prevented if there is an environment of trust and openness. Staff need to know that if they make a mistake, something seems strange or they are unsure, they can contact their line manager or another person within the company at any time without risking reprisals (e.g. through the whistleblower system).

Monitoring and dealing with incidents – It is crucial to implement and monitor measures systematically (monitoring measures in substantive terms as well as monitoring costs and finances). SMEs must also respond to specific incidents and concerns. SMEs must specify the action that will be taken and the sanctions that will be imposed in the event of a breach and ensure that staff are informed. In the event of a breach, sanctions must be imposed clearly and systematically. Any problems that arise must be addressed proactively and discussed openly with everyone affected across the entire company, e.g. by briefing staff or providing training sessions. When discussing problems, steps must be taken to protect the privacy of the individuals involved.

Cyclical approach and review – Preventing corruption effectively requires a cyclical approach. The initial implementation of anti-corruption measures is just the start. The anti-bribery management system should not be left to wither; all steps should be reviewed regularly to ensure that they are up to date and are being deployed effectively in day-to-day operations. SMEs should specify in advance how frequently reviews must be undertaken and who is responsible (e.g. the internal anti-corruption officer). Senior managers must always be involved in the review process. Finally, as part of the cycle, the anti-bribery management system must be audited by independent experts at regular intervals (internal/external audit, certification/re-certification).



Appendix

In practice:

Anti-corruption measures in company documents

Internal anti-corruption measures must be clearly defined and recorded in writing to ensure that they are effective in practice. The following examples from corporate practice show how such measures can be formulated in concrete terms (e.g. in codes of conduct, guidelines, organisational and procedural rules).

Commitment to a culture of integrity and good corporate governance (approach to integrity and corruption)

"We conduct our business fairly, honestly and transparently. Integrity is our greatest asset. We do not act in any way that could compromise our integrity or the integrity of our business partners. We condemn and have zero tolerance for bribery and corruption in all its forms – both within our company and in relation to our business partners. We do not do business with people or companies that do not share our values and anti-corruption standards or do not meet our standards."

Conflicts of interest and nepotism

"All employees, members of senior management and members of the Board of Directors undertake to avoid any conflict between their personal interests and the interests of the company as far as possible. If this is not possible, they must disclose the conflict of interest to their line manager or to the relevant body (Board of Directors/senior management) without delay. Members of the Board of Directors or senior management must refrain from decision-making or withdraw from any transaction involving a conflict of interest. In the case of employees, line managers must determine what measures are appropriate. The nature and relevance of the conflict of interest and the measures taken must be documented."

"We do not tolerate nepotism. As a general rule, all vacancies must be advertised, a structured and transparent procedure must be followed in selecting and promoting staff, and staff must be selected solely on the basis of professional qualifications and personal skills. If, in the context of recruitment or an award of contract, it is apparent that the person making the decision is related to or a friend of the supplier or person selected, the person concerned may only make the decision in consultation with their line manager. In all circumstances, reasons for the decision must be provided and any vested interests involved documented."

Gifts and hospitality

"Gifts and hospitality may unduly influence or at least be perceived to have an undue influence on decision-making processes. We never offer or accept gifts or hospitality that is excessive."

"We do not offer (or accept) gifts or hospitality that fall outside the scope of reasonable business entertainment or are prohibited under applicable law. Any gifts or hospitality that we offer or accept may not exceed CHF 150 in value. Any exceptions must be approved by senior management and the reasons for granting the exception must be recorded in writing. On no account should we offer gifts or hospitality in return for business benefits or other advantages."

Travel expenses

"If possible, we should avoid paying third-party travel expenses, although we may be required to cover travel expenses for the purposes of certain transactions, for example for project acceptance purposes. Any travel expenses covered and the period in which they are paid must always be reasonable, i.e. no personal or entertainment expenses. We should not under any circumstances promise to pay unreasonable expenses, as this may unduly influence or at least be perceived as having an undue influence on the recipient. All travel expenses paid must be documented and approved in advance by a line manager."

Donations and sponsorships

"We may not enter into sponsorships, make donations, give to charity or agree memberships in order to gain an undue business advantage or achieve any other improper purpose. We must always comply with the anti-corruption legislation applying in Switzerland (and in other countries) and, in particular, legal provisions governing bribery and the granting and acceptance of advantages."

"We may not under any circumstances make donations to political parties, organisations or individuals with a view to influencing a current or prospective business transaction or to gaining any other undue business advantage."

Breaches

"As part of our regular performance appraisals, staff are assessed for compliance with this code of conduct and our corporate policies, including our policy on business integrity. We do not tolerate breaches of any kind and will take disciplinary action, up to and including dismissal, against anyone who fails to comply with the law, this code of conduct, business guidelines or our corporate policies. We do not accept ignorance of these rules as a defence for non-compliance."

"The company reserves the right to inform the relevant authorities of any breach that potentially constitutes a criminal offence."

Corruption offences under the Swiss Criminal Code

Title Seven: Corporate Criminal Liability

Article 102

Liability under the criminal law

¹ If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour is attributed to the undertaking. In such cases, the undertaking shall be liable to a fine not exceeding 5 million francs.

² If the offence committed falls under Articles 260^{ter}, 260^{quinquies}, 305^{bis}, 322^{ter}, 322^{quinquies}, 322^{septies} paragraph 1 or 322^{octies}, the undertaking is penalised irrespective of the criminal liability of any natural persons, provided the undertaking has failed to take all the reasonable organisational measures that are required in order to prevent such an offence.

³ The court assesses the fine in particular in accordance with the seriousness of the offence, the seriousness of the organisational inadequacies and of the loss or damage caused, and based on the economic ability of the undertaking to pay the fine.

⁴ Undertakings within the meaning of this title are:

- a. any legal entity under private law;
- b. any legal entity under public law with exception of local authorities;
- c. companies;
- d. sole proprietorships.

Title Nineteen: Bribery

Art. 322^{ter}

1. Bribery of Swiss public officials / Bribery

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces an undue advantage, or offers, promises or gives such an advantage to a third party in order to cause the public official to carry out or to fail to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion,

shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.

Art. 322^{quater}

Acceptance of bribes

Any person who as a member of a judicial or other authority, as a public official, officially-appointed expert, translator or interpreter, or as an arbitrator demands, secures the promise of or accepts an undue advantage for that person or for a third party in order that he carries out or fails to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion,

shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.

Art. 322^{quinquies}

Granting an advantage

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator or a member of the armed forces an undue advantage for that person or for a third party in order that the person carries out his official duties,

shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

Acceptance of an advantage

Art. 322^{sexies}

Any person who as a member of a judicial or other authority, as a public official, officially-appointed expert, translator or interpreter, or as an arbitrator, demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that he carries out his official duties,

shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

2. Bribery of foreign public officials

Art. 322^{septies}

Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces who is acting for a foreign state or international organisation an undue advantage, or gives such an advantage to a third party, in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion,

any person who as a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces of a foreign state or of an international organisation demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that he carries out or fails to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion,

shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.

3. Bribery of private individuals / Bribery

Art. 322^{octies}

¹ Any person who offers, promises or gives an employee, partner, agent or any other auxiliary of a third party in the private sector an undue advantage for that person or a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion,

shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

² In minor cases, the offence is only prosecuted on complaint.

Accepting bribes

Art. 322^{novies}

¹ Any person who as an employee, partner, agent or any other auxiliary of a third party in the private sector demands, secures the promise of, or accepts an undue advantage for himself or for a third party in order that the person carries out or fails to carry out an act in connection with his official activities which is contrary to his duties or dependent on his discretion,

shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

² In minor cases, the offence is only prosecuted on complaint.

4. General provisions

Art. 322^{decies}

¹ The following are not undue advantages:

- a. advantages permitted under public employment law or contractually approved by a third party;
- b. negligible advantages that are common social practice.

² Private individuals who fulfil official duties are subject to the same provisions as public officials.

Further information

- Transparency Switzerland, *Korruptionsprävention und -bekämpfung in KMU: Checkliste zur Selbstevaluation* (self-evaluation checklist for SMEs, de and fr), www.transparency.ch (> News & Publikationen > Ratgeber & Leitfäden)
- Transparency Switzerland, *Korruptionsprävention und -bekämpfung in KMU: Geschenke und Einladungen* (gifts and invitations, de and fr), www.transparency.ch (> News & Publikationen > Ratgeber & Leitfäden).
- Transparency Switzerland, *Korruptionsprävention und -bekämpfung in KMU: Umgang mit Whistleblowing* (how to manage whistleblowing, de and fr), www.transparency.ch (> News & Publikationen > Ratgeber & Leitfäden).
- Transparency Schweiz, *Korruption in der Schweiz. Einführung in die Rechtsgrundlagen und Risikobereiche*, www.transparency.ch (> Publikationen)
- Transparency Switzerland / Swiss Olympic, *Korruptionsbekämpfung und Prävention im Sport. Ratgeber für Schweizer Sportverbände* (Preventing corruption in sport. Guidance for Swiss sports associations, de only) www.transparency.ch (> News & Publikationen > Ratgeber & Leitfäden)
- Transparency International, *Business Principles for Countering Bribery: Small and Medium Enterprise (SME) Edition*, www.transparency.org (> Library > Publications > Filter [Year: 2008; Priority: Business integrity])
- Transparency Germany, *Führungsgrundsätze für kleine und mittlere Unternehmen zur Bekämpfung von Korruption* (Anti-bribery and corruption management policy for SMEs, de only), www.transparency.de (> Publikationen)
- International Chamber of Commerce (ICC), various anti-corruption guidelines and recommendations for businesses, www.iccwbo.org
- International Organization for Standardization (ISO), *ISO 31000 – Risk Management*, www.iso.org (> Standards)
- International Organization for Standardization (ISO), *ISO 37001 – Anti-bribery management systems*, www.iso.org (> Standards)
- International Organization for Standardization (ISO), *ISO 37002 – Whistleblowing management systems – Guidelines*, www.iso.org (> Standards)
- State Secretariat for Economic Affairs (SECO), *Preventing corruption – Information for Swiss businesses operating abroad*, www.seco.admin.ch https://www.seco.admin.ch/seco/en/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/broschueren/korruption_vermeiden.html

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