

PRACTICAL TOOL



Overview of Anti-Corruption Compliance Standards and Guidelines

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Introduction

Designing and implementing an anti-corruption compliance programme is challenging, especially for SMEs. In many countries domestic laws and regulations define in very general terms, or do not define at all, formal requirements to anti-corruption compliance. International standards and guidelines developed by various stakeholders are called upon to compensate the lack of legal regulations and to support the implementation of anti-corruption compliance.

There are a significant number of standards and guidelines on anti-corruption compliance developed by intergovernmental organizations, non-governmental organizations, chambers of commerce, and business associations. Some of the existing guidelines provide organizations with general descriptions of an anti-corruption compliance programme and/or an anti-corruption compliance management system. Other guidelines cover one or several elements of compliance programmes. There are specific detailed guidelines on particular elements of an anti-corruption compliance programme, e.g. third party due diligence. Some elements of an anti-corruption compliance programme are not very well developed or just mentioned in compliance standards and guidelines. It is very challenging for organizations to navigate through numerous standards and guidelines developed in various periods of time by various stakeholders.

The proposed 'Overview' is a practical tool that should simplify the use of existing standards and guidelines for designing, implementing and evaluating anti-corruption compliance programmes. The Overview considers the principles, standards and recommendations from major international organizations and bodies, including the UNODC, the World Bank, the OECD, the ICC, and the ISO.

Besides standards and guidelines on anti-corruption compliance, relevant provisions from the FATF's anti-money laundering/countering financing of terrorism standards and guidelines on identification of third parties, beneficial owners, politically exposed persons (PEPs), risk assessment, and suspicious transactions were taken into account.

The Overview sometimes refers to guidelines and benchmarking reports published by internationally recognized private consultants. It is important to consider that these documents are not of the same importance as documents of international organizations. At the same time, recommendations of private consultants can fill in particular gaps or provide readers with additional clarifications.

The Overview also refers to domestic laws, standards and guidelines of several jurisdictions whose anti-corruption legislation has extra-territorial reach.

The Overview provides readers with the following types of data contained in colored boxes:

International standards and guidelines published by intergovernmental organizations, public-private initiatives, non-governmental organizations, chambers of commerce, and international business associations (Internet links or excerpts from the texts) – in blue boxes.

Guidelines and benchmarking reports published by internationally recognized law firms and consultants (Internet links or excerpts from the texts) – in grey boxes.

Domestic guidelines from selected jurisdictions (Internet links or excerpts from the texts) – in green boxes.

Useful Internet links in light red boxes

Each paragraph provides readers with a list of standards and guidelines with hyperlinks relevant for a corresponding part of an anti-corruption compliance programme. All paragraphs contain descriptions of and quotations from standards and guidelines, and in some places brief comments from the author.

The Overview can be helpful first of all for SMEs, as many of them have limited human and financial resources necessary to analyze and implement numerous legal sources. However, it can be used by all types of organizations, and by Collective Action initiatives to support designing, implementing, evaluating, and benchmarking anti-corruption compliance programmes.

The Overview does not establish any legal obligation for organizations, nor does it intend to set new standards or replace standards or guidelines developed by international organizations or other stakeholders.

Part I. General Overview

In the last decades, anti-corruption compliance emerged as a growing field in the general framework of compliance. Organizations have been implementing anti-corruption compliance management systems to do business in accordance with high ethical standards, and prevent involvement into corruption offences. In some jurisdictions an effective anti-corruption compliance programme benefits to avoid corporate liability or reduce fines.

To design and implement an effective anti-corruption compliance programme, organizations consider ethical principles and values, applicable laws and regulations, existing risks, and available resources.

International standards and guidelines published by various stakeholders summarize best practices in anti-corruption compliance. These standards and guidelines describe the general framework of an anti-corruption compliance programme, contain a lot of useful practical information, and should be taken into consideration.

Domestic standards and guidelines adopted in the countries whose anti-corruption legislations have extra-territorial reach, are also important sources, even for organizations that are not subjects to these legislations.

There are several possible classifications of anti-corruption compliance standards and guidelines based on different criteria.

International and domestic standards and guidelines differ in geographical application. Comprehensive international standards and guidelines are addressed to organizations in any country. There are a few regional standards. Domestic standards and guidelines are addressed to organizations which are subjects to particular domestic legislation. As a rule, governmental agencies and/or business associations adopt standards and guidelines to support the implementation of domestic anti-corruption laws in the business sector.

Standards and guidelines adopted by various stakeholders. We can identify standards and guidelines adopted by intergovernmental organizations, international bodies and public-private initiatives, non-governmental organizations, chambers of commerce, business associations, and private companies, e.g. law firms and consultants. In the Overview we analyze 17 standards and guidelines adopted by intergovernmental organizations and bodies, four guidelines published by NGOs, eight guidelines developed by international business associations, and four guidelines published by a private company.

General and topic-specific standards and guidelines differ in reference to the scope of regulation. General standards and guidelines contain provisions on the anti-corruption compliance programme as a whole. Specific standards and guidelines refer to one or several

elements of anti-corruption compliance programmes. In the Overview we analyze 12 general and 21 specific international standards and guidelines.

General and sector-specific standards and guidelines. As a rule, international and domestic standards and guidelines are addressed to all types of organizations. The exception is the Wolfsberg Group's Guidance for financial institutions.

Specific standards and guidelines for SMEs. There are only three guidelines that take into account the specificities of SMEs. The UNODC's Guide analyzes challenges and opportunities for SMEs at the end of each chapter (UNODC, 2013). The OECD Guidance for African companies identified the specific challenges confronted by SMEs in implementing an anti-bribery policy, and related compliance measures and insights on ways to overcome some of those obstacles (OECD, 2016). The ICC published a special Guide for SMEs on anti-corruption third party due diligence (ICC, 2015).

Template 1 includes international standards and guidelines analyzed in this Overview.

Standards and guidelines developed by intergovernmental organizations, bodies and public-private initiatives		
Organization	Standard/guideline	General/ Special
UNODC	An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide	General
UN Global Compact	Reporting Guidance on the 10th Principle Against Corruption	Special
	Resisting Extortion and Solicitation in International Transactions, A Company Tool for Employee Training	Special
	A Guide for Anti-Corruption Risk Assessment	Special
OECD	Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions	Special
	Principles for Integrity in Public Procurement	Special
	Good Practice Guidance on Internal Controls, Ethics and Compliance	General
	Anti-Corruption Ethics and Compliance Handbook for Business (joint Guidance with UNODC and World Bank)	General
	Anti-Bribery Policy and Compliance Guidance for	General,

	African Companies	regional
OSCE	Handbook on Combating Corruption	General
World Bank Group	Integrity Compliance Guidelines	General
FATF	International Standards on Combating Money Laundering, the Financing of Terrorism and Proliferation (the FATF Recommendations)	General
	A Reference Guide and Information Note on the Use of the FATF Recommendations to support the fight against Corruption	Special
	Guidance: Politically Exposed Persons	Special
	Guidance on Transparency and Beneficial Ownership	Special
G20	High-Level Principles on Beneficial Ownership Transparency	Special
APEC	APEC Anti-Corruption Code of Conduct for Business	Special
Standards and guidelines developed by international non-governmental organizations		
Organization	Standard/guideline	General/ Special
ISO	Standard 37001 Anti-Bribery Management Systems - Requirements with Guidance for Use General	General
Transparency International	Business Principles for Countering Bribery	General
World Economic Forum	Global Principles for Countering Corruption	General
	Good Practice Guidelines on Conducting Third Party Due Diligence	Special
Standards and guidelines developed by international business associations		
Organization	Standard/guideline	General/ Special
ICC	Guidelines on Whistleblowing	Special
	Guidelines on Agents, Intermediaries and Other Third Parties	Special

	Rules on Combating Corruption	General
	Anti-Corruption Clause	Special
	Guidelines on Gifts and Hospitality	Special
	Anti-Corruption Third Party Due Diligence: a Guide for Small and Medium Size Entities	Special
	Guidelines on Conflicts of Interest in Enterprises	Special
Wolfsberg Group	Anti-Bribery and Corruption (ABC) Compliance Programme Guidance	General

Template 2 presents guidelines published by international consultants.

Guidelines developed by international consultants		
Organization	Guideline	General/ Special
NAVEX Global	Definitive Guide to Policy and Procedure Management	Special
	Definitive Guide to Third Party Risk Management	Special
	Definitive Guide to Ethics and Compliance Training	Special
	Definitive Guide to Compliance Programme Assessment	Special

Template 3 includes European Union guidelines and selected domestic guidelines.

European Union guidelines and domestic guidelines from selected jurisdictions	
Country	Guideline
European Union	Guidelines on Non-Financial Reporting (methodology for reporting non-financial information)
France	Guidelines to Help Private and Public Sector Entities Prevent and Detect Corruption, Influence Peddling, Extortion by Public Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism
United Kingdom	Guidance about Procedures which Relevant Commercial Organisations Can Put into Place to

	Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010)
United States	A Resource Guide to the U.S. Foreign Corrupt Practices Act
	Evaluation of Corporate Compliance Programs

According to our study, the following components of anti-corruption compliance are most developed in international and domestic standards and guidelines: risk assessment, third party due diligence and risk management, gifts and hospitality, charitable donations and sponsorship, political contributions, and reporting misconduct.

The Code of Conduct is a cornerstone for an effective anti-corruption compliance programme. The Code defines main ethical principles and corporate values, and positions of shareholders and senior managers regarding anti-corruption to be implemented in corporate policies. Surprisingly, international standards and guidelines do not pay attention to the Code of Conduct. At the domestic level, the most meaningful recommendations can be found in the recently published French Guidelines (Agence Française anticorruption, 2017, p.p. 8-9).

Many standards and guidelines just mention the importance of conflict of interest disclosure but do not provide recommendations on the prevention and management of conflicts of interest. For a long time, the UNODC Guide was a rare exception (UNODC, 2013, p.p. 49-53). The ICC Guidelines on Conflicts of Interest in Enterprises were published in 2018 and filled this gap.

The anti-corruption compliance requirements for mergers and acquisitions are presented only in the Wolfsberg Group's Guidance for financial institutions (Wolfsberg Group, 2017, p.p. 9-10) and in A Resource Guide to the U.S. Foreign Corrupt Practices Act (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 62). However, general recommendations regarding due diligence and risk management are also applicable to mergers and acquisitions.

International standards and guidelines demonstrate a different understanding of the correlation between third party due diligence and risk management. According to the ISO Standard 37001, where the organization's bribery risk assessment has assessed a more than low bribery risk in relation to: b) planned or on-going relationships with specific categories of business associates, the organization shall assess the nature and extent of the bribery risk in relation to specific transactions, projects, activities, business associates and personnel falling within those categories. This assessment shall include any due diligence necessary to obtain sufficient information to assess the bribery risk (ISO Standard 37001, p. 15). According to the WEF Guidelines, third party risk assessment and risk mitigation are parts of the due diligence process (WEF, 2013, p. 7). The OECD Guidance uses the term "risk-based due diligence" (OECD, 2010, p. 3).

In the author's opinion, the definitions proposed by NAVEX Global may be considered to identify the scope of due diligence and risk management. According to NAVEX Global, 'third-party risk management is the process of assessing and controlling reputational, financial and

legal risks to an organization posed by parties outside the organization. Third-party due diligence is the investigative process by which a third party is reviewed to determine any potential concerns involving legal, financial or reputational risks. Due diligence is disciplined activity that includes reviewing, monitoring and managing communication over the entire vendor engagement life cycle' (NAVEX Global, 2017b, p. 2).

In any way, there is no doubt that due diligence and risk management are closely connected as due diligence creates an informative base for risk assessment and mitigation.

Benchmarking reports are useful instruments for designing, implementing and evaluating anti-corruption compliance programmes. They summarize best practices.

The idea of benchmarking was developed and pioneered by Xerox Corporation in the late 1970s (Elmuti and Kathawala, 1997, p. 229).

There are two most comprehensive definitions of the benchmarking. According to Kelessidis, 'Benchmarking is as the process of improving performance by continuously identifying, understanding, and adapting outstanding practices and processes found inside and outside an organization' (Kelessidis, 2000, p.2). According to Stapenhurst, benchmarking is 'a method of measuring and improving our organizational performance by comparing ourselves with the best' (Stapenhurst, 2009, p. 6).

There are a number of studies on compliance benchmarks in general or anti-corruption compliance benchmarks mostly conducted by international consultants and law firms providing professional services in compliance. Kroll and NAVEX Global have been conducting benchmarking studies and publishing reports on a regular basis.

There are two interesting general studies:

- Anti-Bribery & Corruption Benchmarking Report - 2017 (Kroll and Ethisphere Institute)
- Compliance Essentials (The multi-stakeholder study conducted by the Konstanz Institute on Corporate Governance in 2017)

Many other studies are focused on several components of anti-corruption compliance. The key topics of the benchmarking studies are:

- Place of compliance in the corporate structure (EY, 2014)
- Leadership, tone at the top (Kroll and Ethisphere Institute, 2016; PwC, 2016)
- Third parties due diligence (Kroll and Ethisphere Institute, 2016)
- Risk management (PwC, 2017)
- Oversight and responsibility (PwC, 2016)
- Training and communication (NAVEX Global, 2017c)
- Hotlines & Whistleblowing (NAVEX Global, 2015, 2017a)
- Monitoring and evaluation (KPMG, 2015)

Part II. Standards, Guidelines and Benchmarking Reports on Main Components of an Anti-Corruption Compliance Programme

1. Developing an Anti-Corruption Compliance Programme

1.1. Standards and guidelines on developing an anti-corruption compliance programme

An anti-corruption compliance programme consists of policies and procedures that address the risk of corruption (UNODC, 2013, p. 25).

There are several general international standards and guidelines containing recommendations on developing an anti-corruption or anti-bribery compliance programme, and describing key steps and processes. The UNODC Guide pays special attention to challenges and opportunities for small and medium-sized enterprises (SMEs).

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf
- OECD, 2010. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>
- OECD/UNODC/World Bank, 2013. Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ISO, 2016. Standard 37001 Anti-bribery management systems – Requirements with guidance for use
- World Bank Group, 2010. Integrity Compliance Guidelines Available at: http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>

- TI, 2013. Business Principles for Countering Bribery. Available at: https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery
- WEF, 2016. The World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at: http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf

According to general international standards and guidelines, an organization should conduct assessment of corruption risks (UNODC, 2013, p. 8; OECD, 2010, p.2; WEF, 2016, p. 8), define applicable laws (UNODC, 2013, p. 25; APEC, 2007, p. 4), and principles and values of an organization (UNODC, 2013, p. 20; APEC, 2007, p. 4) for developing an anti-corruption compliance programme. As mentioned in several guidance, to be effective, such a programme should be interconnected with the organization's overall ethics and compliance framework (UNODC, 2013, p. 18; OECD, 2010, p. 2).

The detailed recommendations on risk assessment can be found in the special UN Global Compact Guide.

- UN Global Compact, 2013. A Guide for Anti-Corruption Risk Assessment Available at: https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf

An organization can also find useful information on policy and procedure management in the Guide published by NAVEX Global.

- NAVEX Global, 2017a. Definitive Guide to Policy and Procedure Management. Available at: https://www.navexglobal.com/en-gb/node/1841/thank-you?RCAssetNumber=152&token=ouCYsUs93skM6lOmCD5mjVqoYUh_R2kCG0q8t3EGxXQ

An organization should consider applicable domestic standards and guidelines. Several examples are in the box below.

- Agence Française anticorruption, 2017. Guidelines to Help Private and Public Sector Entities Prevent and Detect Corruption, Influence Peddling, Extortion by Public Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism. Available at: https://www.economie.gouv.fr/files/files/directions_services/afa/French_Anticorruption_Agency_Guidelines.pdf
- UK Ministry of Justice, 2011. Guidance about Procedures which Relevant Commercial Organisations Can Put into Place to Prevent Persons Associated with Them from Bribing (Section 9 of the Bribery Act 2010). Available at: <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>
- Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012. A Resource Guide to the U.S. Foreign Corrupt Practices Act. Available at: <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>

- Criminal Division of the U.S. Department of Justice, 2019. Evaluation of Corporate Compliance Programs. Available at: <<https://www.justice.gov/criminal-fraud/page/file/937501/download>>

1.2. Risk assessment

The assessment of corruption risks (risk assessment) is the foundation for designing and implementing an anti-corruption compliance programme. Some guidance, e.g. the French Anti-Corruption Agency's Guidelines, use the similar term 'risk mapping' instead of the 'risk assessment'.

According to the U.S. Department of Justice and the U.S. Securities and Exchange Commission, one-size-fits-all compliance programmes are generally ill-conceived and ineffective (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 58).

The aims of the risk assessment are to identify and assess the risks of corruption, to identify persons and/or structural subdivisions facing these risks, and to define and implement in an anti-corruption compliance programme appropriate mitigation measures.

The risk assessment can be conducted by an organization's personnel or external consultants (UNODC, 2013, p. 11). For larger enterprises, a good strategy is also to have operating unit/regional location ownership of the anti-corruption risk assessment (OECD/UNODC/World Bank, 2013, p.14).

Risk assessment process

The risk assessment process is described in details in:

OECD/UNODC/World Bank, 2013, p.p. 10-15

UN Global Compact, 2013

The French Anti-Corruption Agency's Guidelines provides organizations with a six-step method of risk mapping (Agence Française anticorruption, 2017, p.p. 15-18)

According to general international standards and guidelines, the following key groups of risks should be considered in the process of risk assessment:

Geographical risks (UNODC, 2013, p. 10). An organization can consider the higher risks of corruption existing in countries and territories with significant deficiencies in national anti-corruption and AML/CFT systems. An organization can face the higher corruption risks by doing business or having business associates in such countries. The reports and indexes published by intergovernmental and non-governmental organizations can be helpful for an assessment of geographical risks.

- Transparency International's Corruption Perceptions Index <<https://www.transparency.org/cpi2018>>
- FATF lists of high-risk and other monitored jurisdictions <<http://www.fatf-gafi.org/countries/#high-risk>>
- Basel AML Index <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf>

Industry specific risks (UNODC, 2013, p. 10). An organization can consider the higher risks of corruption existing in particular industries. The industry specific risks can vary depending on the country. National risk assessment reports and criminal statistics can be used for an assessment of industry specific risks.

Industries which may be considered as high risk industries can be found in:

Transparency International Bribes Payers Index Report 2011
<<https://www.transparency.org/research/bpi/overview>>

Risks in specific processes. There are specific processes that are vulnerable to corruption, such as procurement, sales, import and export of goods, government interaction, political support, security protocols, social programmes, charitable contributions and sponsorship (UN Global Compact, 2013, p.p. 24-26).

Risks related to the business model of an organization. The use of intermediaries and subcontractors, and participation in big business projects as one of the subcontractor can increase corruption risks (UNODC, 2013, p. 10).

Risks related to organizational structure. Organizations with a decentralized structure may have lower control over the operations of their branches and subsidiaries (UNODC, 2013, p.10).

Risks related to the personnel of an organization. Staff members which fall within the definition of family members or close associates of PEPs may be considered for the purposes of risk mitigation.

Risks related to the organizational culture and to an incentive system of an organization. The strong competitiveness between staff members, low levels of trust, low integrity, and system of bonuses for the financial achievements can create corruption risks (UNODC, 2013, p. 10).

Commonly encountered risks

Source: UK Ministry of Justice, 2011, p. 26

Organizations can consider:

Checklist 8. Getting started with bribery risk assessment

Source: OECD, 2016, p. 18

Risk scale

The risk scale may include several levels of risks. It should consider the impact of occurrence and the probability of occurrence.

The impact of occurrence means all legal (applicable criminal, administrative and civil law should be considered), financial, commercial, and reputational consequences.

The probability of occurrence means the likelihood that a corruption-related risk will actually occur in a foreseeable timeframe.

A simple qualitative scale could be used to classify each set of controls that mitigate a risk or scheme as either (i) effective/low risk, partially effective/medium risk or ineffective/high risk, or (ii) very effective/very low risk, effective/low risk, partially effective/medium risk, somewhat effective/high risk and ineffective/ very high risk, or a quantitative scale with numerical-value scores applied to each scheme could be used (OECD/UNODC/World Bank, 2013, p.11).

See samples of risks assessment matrix and other related documents:

UN Global Compact, 2013, p.p. 51-72

Documentation of results

The results of risk assessment can be documented in detailed spreadsheets, database templates or heat maps.

See samples of risk register and heat map:

OECD/UNODC/World Bank, 2013, p.p.13-14

According to the ISO standard, the organization shall retain documented information that demonstrates that the bribery risk assessment has been conducted and used to design or improve the anti-bribery management system (ISO 37001, p.7).

The French Anti-Corruption Agency's Guidelines underlines that the risk mapping should take the form of a structured written document which must be ready for immediate submission to officials from the French Anti-Corruption Agency (Agence Française anticorruption, 2017, p. 14).

According to the UNODC Guidance, organizations should publicly report on their risk assessment activities. However, this reporting does not include the actual results of the risk assessment, but rather a description of the risk assessment process (UNODC, 2013, p.p. 13-14).

Review the risk assessment

The international standards and guidelines recommend to review the risk assessment:

- on a regular basis, e.g. annually (OECD/UNODC/World Bank, 2013, p.14; WEF, 2016, p. 8)
- in the event of a significant change to the structure and activities of the organization (OECD/UNODC/World Bank, 2013, p.14; ISO 37001)

In the author's opinion, it is also important to review the risk assessment in the event of adopting new anti-corruption or other relevant laws, applicable to the organization.

1.3. Identifying applicable laws

Identifying applicable laws is an important step in designing an anti-corruption compliance programme (APEC, 2007, p. 4; TI, 2013, p. 6).

The UNODC recommended organizations to conduct comprehensive research on the different laws and regulations of the countries in which they operate (UNODC, 2013, p. 25).

The Legal Library of United Nations Convention against Corruption contains anti-corruption laws and jurisprudence from over 180 jurisdictions worldwide.

<<http://www.track.unodc.org/LegalLibrary/Pages/default.aspx>>

It is important to consider laws and regulations which have extraterritorial application.

The Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 2016. Text in French available at:

<https://www.cjoint.com/doc/16_12/FLknuHuFltM_loisapin2.pdf>

UK Bribery Act of 2010. Available at:

<<http://www.legislation.gov.uk/ukpga/2010/23/contents>>

U.S. Foreign Corrupt Practices Act of 1977, PL 95-213, Title 1; 91 Stat 1494, Dec 19, 1977. Available at: <<https://www.gpo.gov/fdsys/pkg/STATUTE-91/pdf/STATUTE-91-Pg1494.pdf>>

1.4. Defining principles and values

Defining the main principles and values of an organization is another prerequisite for developing the code of conduct and the anti-corruption compliance programme (TI, 2013, p. 6).

International standards and guidelines promote “zero tolerance” of all forms of corruption (UNODC, 2013, p. 20). It is important to underline that facilitation payments are prohibited under the United Nations Convention against Corruption (UNCAC) and under domestic laws in many jurisdictions, and are considered “small bribes” (UNODC, 2013, p. 39; OECD, 2016, p. 12; WEF, 2016, p. 8). According to the UN Global Compact, facilitation payments are typically small payments made to secure or expedite the performance of a routine or

necessary action to which the payer is entitled, legally or otherwise (UN Global Compact, 2013, p. 12). The UNODC Guide recommends organizations to apply the prohibition of facilitation payments even in countries where facilitation payments are not illegal (UNODC, 2013, p. 40).

However, organizations should consider pressing situations where an employee cannot avoid paying a bribe or a facilitation payment. This can include situations where an employee's health, security or freedom is put at risk. An organization may qualify payments in dangerous situations as duress payments and develop a special policy regarding such payments (UNODC, 2013, p. 40; OECD, 2016, p. 12). When developing such policies, organizations should consider applicable domestic laws as they may have stricter requirements.

Does FCPA Apply to Cases of Extortion or Duress?

Source: Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 27

According to the UNODC, the “tone from the top” should reflect irrevocable support and appraisal of the company's fundamental values, such as integrity, transparency and accountability (UNODC, 2013, p. 20).

The World Bank Group underlined the role of individual responsibility (World Bank Group, 2010, p. 2).

An organization may include other principles and values taking into consideration priorities of shareholders, historical and cultural traditions of countries where the code of conduct and an anti-corruption compliance programme should be applied.

The ICC Rules recommend including the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators, but also against the way the targets have been met and specifically against the compliance with the Enterprise's anti-corruption policy (ICC, 2011, p. 11).

The UK Ministry of Justice's Guidance recommends organizations to consider six principles by developing procedures to prevent bribery: proportionate procedure, top-level commitment, risk assessment, due diligence, communication (including training), and monitoring and review. The Guidance provides organizations with descriptions of relevant procedures, and a series of case studies (UK Ministry of Justice, 2011, p.p. 20-43).

1.5. Assessment of available resources

The organization should realistically assess the human, physical and financial resources available for the maintenance of an anti-corruption compliance programme.

In the U.S., in assessing whether a company has reasonable internal controls, the Department of Justice and the Securities and Exchange Commission typically considers whether the company devoted adequate staffing and resources to the compliance programme given the size, structure, and risk profile of the business (Criminal Division of

the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 58).

1.6. Defining the design of an anti-corruption compliance programme

Anti-corruption compliance function may be a separate function or a part of the general compliance function. Respectively, an organization can draft anti-corruption compliance documents or include anti-corruption compliance provisions in general compliance documents.

1.7. Drafting internal documents

The main anti-corruption documents in an organization are a code of conduct and an anti-corruption compliance programme.

An anti-corruption compliance programme should be adopted as an internal legal document and establish legal obligations for personnel. It is important to consider company law, labor law, and other laws defining requirements for internal legal documents and procedures in a country in which an anti-corruption compliance programme should be applied.

Anti-corruption and other provisions necessary for implementing a code of conduct and an anti-corruption compliance programme can be included in organization's internal documents.

1.8. Communicating an anti-corruption compliance programme

The proper communication of a code of conduct and an anti-corruption compliance programme to all relevant stakeholders, including personnel, business associates, governmental authorities and civil society is of significant importance for effective implementation.

A Resource Guide to the U.S. Foreign Corrupt Practices Act underlines that a compliance programme should be available in the local language so that employees in foreign subsidiaries can access and understand it (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 57).

The code of conduct and anti-corruption policies should be easily accessible on the organization's website and intranet or other means used to communicate to employees and external parties (OECD, 2016, p. 8).

1.9. Reports relevant for benchmarking an anti-corruption compliance programme

- Control Risk Report, 2017. International Business Attitudes to Compliance. Available at: <<https://www.controlrisks.com/our-thinking/insights/reports/international-business-attitudes-to-compliance>>
- Deloitte, 2015. Compliance in Motion. A Closer Look at the Corporate Sector. Available at: <<https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/risk/deloitte-nl-risk-compliance-in-motion-a-closer-look-at-the-corporate-sector.pdf>>

- Konstanz Institute on Corporate Governance, 2017. Compliance Essentials (In German). Available at: <https://deutschland.taylorwessing.com/documents/get/1154/compliance-studie-von-kicg-und-taylor-wessing.pdf/show_on_screen>
- Kroll and Ethisphere Institute, 2017. Anti-Bribery & Corruption Benchmarking Report – 2017. Available at: <<https://www.kroll.com/en-us/abc-report-confirmation>>
- NAVEX Global, 2018. EMEA & APAC Culture and Compliance Benchmark Report. Available at: <http://trust.navexglobal.com/rs/852-MYR-807/images/NAVEX-Global-2018-Culture-Compliance-Report.pdf?_ga=2.175834022.586507620.1526565005-1856680563.1492775907>
- PwC, 2016. State of Compliance Study. Laying a strategic foundation for strong compliance risk management. Available at: <<https://www.pwc.com/us/en/risk-assurance/state-of-compliance-study/assets/state-of-compliance-study-2016.pdf>>

2. Code of Conduct

There are few provisions on the Code of Conduct in general international guidelines.

- OECD/UNODC/World Bank, 2013. Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>>

According to the French Anti-Corruption Agency, the anti-corruption code of conduct testifies to the top management's decision at the highest level to commit the organization to prevent and detect corruption (Agence Française anticorruption, 2017, p. 6).

The French Anti-Corruption Agency's Guidelines provides organizations with detailed recommendations on the contents, scope, form, and dissemination of the Anti-Corruption Code of Conduct. The Guidelines also recommend incorporating the Code of Conduct into the employment regulations and updating it periodically.

Anti-Corruption Code of Conduct

Source: Agence Française anticorruption, 2017, p.p. 8-9

Organizations can consider recommendations, presented in A Resource Guide to the U.S. Foreign Corrupt Practices Act. According to the Guide, a company's code of conduct is often the foundation upon which an effective compliance programme is built. As DOJ has repeatedly noted in its charging documents, the most effective codes are clear, concise, and accessible to all employees and to those conducting business on the company's behalf. Indeed, it would be difficult to effectively implement a compliance programme if it was not available in the local language so that employees in foreign subsidiaries can access and understand it. When assessing a compliance programme, the DOJ and SEC will review whether the company has taken steps to make certain that the code of conduct remains current and effective and whether a company has periodically reviewed and updated its code (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p.p. 57-58).

Case Study 2: A medium-sized company encourages compliance with its policy of prohibition of bribery by using local business input to update and strengthen its Code of Conduct

Source: OECD/UNODC/World Bank, 2013, p.p. 20-21

3. Anti-Corruption Compliance Programme

3.1. Anti-corruption compliance management system

3.1.1. Standards and guidelines on an anti-corruption compliance management system

An anti-corruption compliance management system can be stand-alone or integrated part of a compliance management system in an organization.

General international standards and guidelines contain recommendations on establishing and maintaining an anti-corruption (anti-bribery) management system.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf
- OECD, 2010. Good Practice Guidance on Internal Controls, Ethics and Compliance. Available at: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. <http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use
- APEC, 2007. APEC Anti-Corruption Code of Conduct for Business. Available at: <https://www.apec.org/Publications/2013/01/Implementing-the-APEC-Anti-Corruption-Code-of-Conduct-for-Business>
- WEF, 2016. the World Economic Forum Partnering Against Corruption Initiative (PACI) Global Principles for Countering Corruption. Available at: http://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf

Financial institutions can consider the Wolfsberg Group's Guidance.

- Wolfsberg Group, 2017. Anti-Bribery and Corruption (ABC) Compliance Programme Guidance. Available at: <http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Group-ABC-Guidance-June-2017.pdf>

3.1.2. Tone from the top and tone from the middle

International standards and guidelines mention the tone from the top as a key factor for the implementation of an effective anti-corruption compliance programme. The governing body and senior management should set the tone and demonstrate ownership of an anti-

corruption compliance programme (UNODC, 2013, p.p. 19-20; OECD, 2010, p. 2; APEC, 2007, p. 4).

Senior management needs to make it clear that corruption is prohibited at all times and in any form, whether small or large, direct or indirect, active or passive. Support and commitment from senior management must not be seen as a one-off activity at the time of the launching of an anti-corruption programme. It is rather an ongoing demonstration of the company's norms and values (UNODC, 2013, p. 20).

Top-level commitment is one of the six principles defined in the UK Ministry of Justice Guidance. The Guidance provides organizations with description of relevant procedures.

Principle 2. Top-level commitment.

Source: UK Ministry of Justice, 2011, p.p. 23-24

Middle management should also promote business integrity and zero tolerance of corruption, and play an important role in delivering the key messages of the company's training and communication (UNODC, 2013, p. 69; OECD, 2016, p. 8).

The commitment of the management to the anti-corruption compliance programme should be visible and properly documented.

Checklist 1. How management can demonstrate leadership and commitment to the company's anti-bribery policy.

Source: OECD, 2016, p. 9

3.1.3. Shareholders

Shareholders may be involved in the implementation of an anti-corruption compliance programme especially if governing body was not established (e.g. in SMEs).

According to the APEC Anti-Corruption Code of Conduct, the findings of independent assessment of the adequacy of the anti-corruption compliance programme should be disclosed in the Annual Report to shareholders (APEC, 2007, P. 6).

3.1.4. Governing body

Governing body is a board of directors or the equivalent body of an organization. It should be considered that not all organizations have governing bodies.

The functions of a governing body are described in:

UNODC, 2013, p.p. 29-32

ISO 37001, 2016, p.p. 8, 20

If an organization does not have a governing body, the top management should take the responsibility for an anti-corruption compliance programme.

In the author's opinion, it is important to mention that anti-corruption activities of a governing body (e.g. discussion on the anti-corruption compliance programme's monitoring report at the governing body's meeting) should be properly documented. In case of investigation, these documents can be used as serious evidence of real implementation of an anti-corruption compliance programme.

3.1.5. Top management

The UNODC Guide defines the role of top management in implementing an effective anti-corruption compliance programme.

According to the UNODC, the senior management should:

ensure commitment throughout the company

establish responsibilities

provide sufficient resources

define scope and extent of the programme

put support and commitment into action

Source: UNODC, 2013, p.p. 20-21

The ISO Standard 37001 provides organizations with the detailed list of top management functions with respect to the anti-bribery management system.

ISO, 2016, p.p. 8-9

The French Anti-Corruption Agency recommends that top management's commitment to a corruption prevention and detection policy be based on four pillars:

adopting a zero-tolerance policy for corruption risk

mainstreaming anti-corruption measures in policies and procedures

governance of the corruption prevention and detection programme

communication policy

Source: Agence Française anticorruption, 2017, p.p. 6-7

3.1.6. Anti-corruption compliance function

Depending on the size and structure of an organization anti-corruption compliance function may be exercised by:

- Anti-corruption compliance officer
- Anti-corruption compliance unit/department

- Compliance unit/department
- Other unit/department

The Wolfsberg Group recommended financial institutions to have an independent unit with the requisite expertise and authority. This unit should be part of a control function such as Compliance, Legal or Risk (Wolfsberg Group, 2017, p. 4).

In small organizations anti-corruption compliance function may be exercised on a part-time base.

3.1.7. Anti-corruption compliance officer

Anti-corruption compliance officers should have appropriate education and experience. Considering applicable laws and the organizational ethical framework an organization may define special requirements for the anti-corruption compliance officer's position. These requirements may include but not be limited to a particular degree, the absence of criminal records, business reputation, professional certification, and relevant work experience.

In the U.S., experience and qualification of compliance personnel is one of the questions by the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2019, p. 11).

To define functions of an anti-corruption compliance officer, organizations can consider ISO standard 37001.

Anti-bribery compliance function

Source: ISO 37001, 2016, p.p. 10, 27-28

According to the French Anti-Corruption Agency's Guidelines, a compliance officer should be responsible for overseeing the deployment, implementation, evaluation and updating of the anti-corruption compliance programme, in close collaboration with the organization's stakeholders (Agence Française anticorruption, 2017, p. 7). This officer oversees the elaboration of the risk map, by supporting the organization's audit of business lines, functions and processes, its identification of the corruption risks incurred and its implementation of the appropriate prevention measures (Agence Française anticorruption, 2017, p. 15).

In the process of due diligence a compliance officer should provide expertise and advice to the line managers. This officer should also provide line managers with support in the highest-risk cases (Agence Française anticorruption, 2017, p. 20).

Anti-corruption compliance officer should report directly to the CEO or comparable authority. He/she should have right to report, if necessary, to the governing body or to a specially delegated committee of the governing body (WEF, 2016, p. 8).

In the U.S., direct reporting lines to anyone on the board of directors and/or audit committee is one of the questions by the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2019, p. 11).

Summarizing the provisions of international and domestic standards and guidelines, it may be recommended to define in an anti-corruption compliance programme formal requirements to, and main functions, powers and responsibilities of an anti-corruption compliance officer.

3.1.8. Business partners (business associates)

International standards and guidelines use different terminology to define partners with whom an organization has various types of business relationships.

The UNODC Guide uses the term “business partner” which covers entities over which an organization has effective control, as well as partners over which an organization does not have effective control. All the business partners are divided in five main categories: subsidiaries, affiliates, joint ventures, agents and intermediaries, contractors and suppliers (UNODC, 2013, p. 54).

The ISO Standard 37001 uses the terms “controlled organization”, “business associate” and “third party”. According to the Standard, an organization has control over another organization if it directly or indirectly controls the management of the organization (ISO 37001, 2016, p. 16). Business associate means external party with whom the organization has, or plans to establish, some form of business relationship (ibid., p. 5). Third party means person or body that is independent of the organization. All third parties are business associates but not all business associates are third parties (ibid., p. 6).

Many guidelines use the term “third party” that includes various types of partners over which an organization does not have effective control (OECD, 2010; OECD, 2016; WEF, 2013; APEC, 2007; ICC, 2010; ICC, 2015).

In this and following chapters of the Overview we use the widely spread term “third party” to define all possible business partners (business associates) over which an organization does not have effective control, and the term “entities over which an organization has control”.

3.1.8.1. Entities over which an organization has control

The anti-corruption compliance management system in an organization and in entities over which an organization exercises control should be based on the principles and values common to all of them.

OECD mentioned as a good practice that ethics and compliance programmes or measures designed to prevent and detect foreign bribery are applicable to all entities over which a company has effective control, including subsidiaries (OECD, 2010, p. 3). According to Transparency International (TI), an organization should implement its programme in all business entities over which it has effective control (TI, 2013, p. 8).

Organizations can consider UNODC recommendations regarding subsidiaries

Source: UNODC, 2013, p. 55

3.1.8.2. Third parties

The WEF Guidelines contain the following not exhaustive list of third parties:

- Joint venture partner
- Consortium partner
- Agent
- Adviser and other intermediary (e.g. legal, tax, financial adviser or consultant, lobbyist)
- Contractor and sub-contractor
- Supplier/vendor
- Service provider
- Distributor
- Customer (WEF, 2013, p.8)

Some international guidelines mention other categories: brokers (APEC, 2007, p. 4), resellers, and franchisees (ICC, 2011, p. 6).

Organizations can consider UNODC recommendations regarding affiliates, joint ventures agents, intermediaries, contractors, and suppliers

Source: UNODC, 2013, p.p. 55-57

In an anti-corruption compliance programme organizations can use the general term “third parties” instead of developing an exhaustive list of all possible categories. If necessary, an organization can mention the categories of third parties that are most common for its type of business but keep this list open for other categories.

3.1.9. Reports relevant for benchmarking an anti-corruption compliance management system

The reports below present the outcomes of general studies on anti-corruption compliance in organizations and can be helpful for benchmarking an anti-corruption compliance management system.

- EY, 2014. Compliance-Studie Aktuelle Trends, Herausforderungen und Benchmarks (in German). Available at: <[http://www.ey.com/Publication/vwLUAssets/Broschuere_-_EY_Compliance_Studie_2014/\\$FILE/EY%20Compliance%20Studie_2014_05.pdf](http://www.ey.com/Publication/vwLUAssets/Broschuere_-_EY_Compliance_Studie_2014/$FILE/EY%20Compliance%20Studie_2014_05.pdf)>
- PwC, 2016. State of Compliance Study. Laying a strategic foundation for strong compliance risk management. Available at: <<https://www.pwc.com/us/en/risk-assurance/state-of-compliance-study/assets/state-of-compliance-study-2016.pdf>>
- PwC, 2017. State Risk in Review. Available at: <<https://www.pwc.com/us/en/risk-assurance/rir2017/pwc-2017-risk-in-review-study.pdf>>
- Thomson Reuters 2018. Costs of Compliance 2018. Available at: <<https://risk.thomsonreuters.com/en/resources/special-report/cost-compliance-2018.html>>

3.2. Anti-corruption clause

3.2.1. Standards and guidelines on the anti-corruption clause

An anti-corruption clause is a useful tool to mitigate third parties risks.

There are particular provisions on anti-corruption clauses in general ICC guidance.

- ICC, 2011. Rules on Combating Corruption. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>

The detailed recommendations can be found in special ICC guidance.

- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-parties-ENGLISH-2010.pdf>
- ICC, 2012. Anti-Corruption Clause. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2012/10/ICC-Anti-corruption-Clause.pdf>

According to the ICC Rules, an organization should include in its contracts with business partners a provision allowing it to suspend or terminate the relationship, if it has a unilateral good faith concern that a Business Partner has acted in violation of applicable anti-corruption law (ICC, 2011, p. 7).

According to the French Anti-Corruption Agency's Guidelines, contracts deemed to be risky might include anti-corruption clauses. Such clauses make it possible to terminate the contract in the event of a lapse of integrity (Agence Française anticorruption, 2017, p. 24).

3.2.2. Content of the anti-corruption clause

The ICC anti-corruption clause refers to the ICC Rules on Combating Corruption of 2011. Three options are possible: either a short text with the technique of incorporation by reference of Part I of the ICC Rules on Combating Corruption 2011 (Option I) or the incorporation of the full text of the same Part I of the ICC Rules on Combating Corruption 2011 in their contract (Option II), or a reference to a corporate compliance programme, as described in Article 10 of the ICC Rules on Combating Corruption (Option III) (ICC, 2012, p. 2).

ICC Guidelines on Agents, Intermediaries and Other Third Parties provide organizations with anti-corruption provisions, representations, warranties, and covenants which can be included in contracts with Third parties:

- The Third party is not a public official, and does not have any official status. The Third party will notify the enterprise of any changes to these representations;
- The Third party does not have any relationship with a current official or any immediate relative or close associate of an official who would be in a position to influence a decision in favour of the enterprise, and the Third party will notify the enterprise of any changes to this representation;

- The Third party will comply with all applicable anti-corruption and anti-money laundering laws;
- The Third party is not and has not been the subject of a criminal investigation and has not been convicted under the laws of the relevant countries for facts related to bribery, corruption, money laundering or for violations of laws or regulations in force governing business enterprises;
- The Third party will comply with the enterprise's codes and Guidelines, in particular, the enterprise's rules on gifts and hospitality or has its own code or Guidelines with equivalent standards and will comply therewith;
- The Third party represents that no payments, offers, or promises to public officials or other third party beneficiaries have been, or will be made, directly or indirectly, for an improper purpose;
- The Third party agrees to comply with enterprise Guidelines and limits for reimbursement of expenses;
- The enterprise has the right to suspend or terminate the contract immediately upon unilateral good faith concern that there has been a violation of any applicable anti-corruption law or provision of the agreement without paying any compensation to the Third party, and the Third party agrees to indemnify the enterprise for expenses related to violations of the anti-corruption laws;
- The Third party agrees to a clearly defined scope of work that limits the Third party's ability to act on the enterprise's behalf;
- The Third party agrees to regularly report on its activities on the enterprise's behalf, and to provide detailed invoices and detailed supporting documentation for its expenditures;
- The Third party agrees to provide audit rights to the enterprise related to activities undertaken on the enterprise's behalf in the previous three years;
- The Third party agrees to submit the retention of subcontractors or other persons or entities designated to perform similar services to the enterprise for prior approval, if the subcontracted activity is of a 'high risk' nature, as defined in chapter IV above;
- The Third party is prohibited from assigning the contract or the compensation to be paid;
- The Third party agrees to payment provisions that include the safeguards identified in chapter XI below.
- The Third party is required to update the information supplied during the due diligence review;
- The Third party is required to maintain accurate books and records and appropriate internal controls; and
- The Third party is required to cooperate with any investigation into alleged breaches of the compliance provisions, including the requirement to provide access to documents and personnel.
- Enterprises facing higher risks in connection with Third parties may wish to consider the following additional safeguards:
 - Require the Third party to submit certain actions to the enterprise for prior approval (e.g., interactions with public officials);
 - Include provisions that limit the Third party's ability to act on the enterprise's behalf in relation to government contracts; and
 - Require, as appropriate, provisions for transparency of the relationship to local authorities.

- Source: ICC, 2010, p.p. 6-7

3.3. Third party due diligence

3.3.1. Standards and guidelines on third party due diligence

According to the ICC, due diligence is a term used to describe background investigation conducted on a third party which an organization is considering contracting with. It is a process of examining the background of a potential business partner in an effort to assess and mitigate risks of corruption (ICC, 2015, p. 6).

General international standards and guidelines on anti-corruption compliance underline that organizations should carry out third party due diligence before entering into business relationship and on an on-going basis (UNODC, 2013, p. 57; OECD, 2010, p.3; ISO, 2016, p.15).

According to the French Anti-Corruption Agency, if organizations fail to conduct due diligence with regard to the integrity of the third parties that they deal with, they may find themselves more or less directly implicated in corruption (Agence Française anticorruption, 2017, p. 19).

In the UK, the application of due diligence procedures is one of the six principles, which organizations should put in place to prevent bribery (UK Ministry of Justice, 2011, p.p. 27-28).

In the U.S., the third party management including due diligence is an important part of the evaluation of corporate compliance programmes (Criminal Division of the U.S. Department of Justice, 2019, p.p. 6-8).

General international standards and guidelines contain recommendations on conducting third party due diligence.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf p.p. 57-59
- ISO, 2016. Standard 37001 Anti-Bribery Management Systems – Requirements with Guidance for Use. p.p. 15-16, 32-34
- OECD/UNODC/World Bank, 2013 Anti-Corruption Ethics and Compliance Handbook for Business. Available at: <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>

There are also three special international guidelines on third party due diligence.

- WEF, 2013. Good Practice Guidelines on Conducting Third Party Due Diligence. Available at: http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf

- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-paries-ENGLISH-2010.pdf>>
- ICC, 2015. Anti-Corruption Third Party Due Diligence: a Guide for Small and Medium Size Entities. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2015/07/ICC-Anti-corruption-Third-Party-Due-Diligence-A-Guide-for-Small-and-Medium-sized-Enterprises.pdf>>

Organizations can also find useful information in the Guide and Benchmark Report published by NAVEX Global.

- NAVEX Global, 2017b. Definitive Guide to Third Party Risk Management. Available at: <https://www.navexglobal.com/en-gb/node/1881/thank-you?RCAssetNumber=1880&token=f9aGtcgkry_b_avbdoLihKdDr7hBWSLc3NzVOLEkzD>
- NAVEX Global, 2017f. Ethics & Compliance Third Party Risk Management Benchmark Report. Available at: <<https://www.navexglobal.com/en-us/resources/benchmarking-reports/2017-ethics-compliance-third-party-risk-management-benchmark-report?RCAssetNumber=2760>>

For the identification of third parties, representatives of third parties, beneficial owners of third parties, third parties who are public officials, public officials' family members or close associates, and their sources of wealth and funds FATF standards and guidance, and G20 Principles can be helpful.

- FATF, 2012. International standards on combating money laundering, the financing of terrorism and proliferation (the FATF Recommendations). [pdf] FATF. Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf>
- FATF, 2013. Guidance: Politically Exposed Persons. Available at: <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>>
- FATF, 2014. Guidance on transparency and beneficial ownership. Available at: <<http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>>
- G20, 2014. High-Level Principles on Beneficial Ownership Transparency. Available at: <https://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf>

3.3.2. Due diligence function in an organization

According to international guidelines, the due diligence function can be partially exercised by business units, and partially by an anti-corruption compliance officer.

Business units can collect data in the framework of standard initial due diligence and on-going due diligence. The search in special compliance databases, and conducting enhanced initial due diligence will likely required input from anti-corruption compliance officer (WEF, 2013, p. 11).

The French Guidelines mentioned three levels of due diligence participants within organizations:

- line managers, who conduct due diligence and are accountable for it, should gather the information and documents concerning the third parties that they are or will be dealing with. These managers should submit their preliminary findings. These findings may constitute the final decision in low-risk cases;
- the compliance officer (or any other designated manager) should provide expertise and advice to the line managers. This officer should provide line managers with support in the highest-risk cases;
- top management should make the final decision in the highest-risk cases notified by the line managers.

Source: Agence Française anticorruption, 2017, p. 20

According to the WEF Guidelines, an organization may use an external service provider to carry out or to assist in carrying out due diligence, especially of high-risk third parties (WEF, 2013, p.11, p.13). The use of an external consultant is also foreseen in domestic guidance (Agence Française anticorruption, 2017, p.20; UK Ministry of Justice, 2011, p. 27). It should be mentioned that an organization may be requested by domestic authorities to explain the rationale of outsourcing and the mechanism of assessment the effectiveness of outsourced compliance functions (Criminal Division of the U.S. Department of Justice, 2019, p. 12).

3.3.3. Collecting and analyzing data

An organization can collect and analyze third party data necessary to:

- Identify a third party, representative of a third party, shareholders, and beneficial owners of a third party
- Identify the geographic location
- Identify business areas
- Identify contacts with public officials and/or authorities
- Determine conflicts of interest of personnel from a third party
- Find out whether there is any history of unethical business practices, corruption or other criminal activity
- Evaluate the business reputation
- Identify sources of wealth and funds
- Evaluate the financial statement
- Evaluate an anti-corruption compliance programme

Factors which organization may find useful to evaluate

Source: ISO 37001, 2016, Annex A, p.p. 32-33

Source: OECD, 2016, Checklist 9. Mitigating third party bribery risk, p. 19

Source: UNODC, 2013, p. 58

Sources of data

An organization can use data, provided by a third party, data from organization's units/departments, data from publications in the Internet and media, available official sources of data, and commercial databases.

Data, provided by a third party. An organization can develop questionnaires to conduct face-to-face or virtual interviews with the third party's managers and staff members.

Standard questionnaires can be helpful to structure the interview:

Sample external due diligence questionnaire

Source: WEF, 2013, Appendix B, p.p. 32-42

Anti-Corruption Questionnaire to send to Third Party

Source: ICC, 2015, Annex B, p.p. 32-39

An organization can foresee visiting the office of a third party to verify whether management and staff members are located at the declared address,

Data from organization's units/departments. An organization can use data from internal units/departments.

Enterprises can collect information from the Sponsoring Department by:

Requiring the Sponsoring Department to complete an application form. Often, the employee proposing the engagement of a Third party has an interest in the hiring of the candidate Third party or the success of the deal. Because such interests have the potential to obscure the risks posed by a particular Third party, this employee alone should not be allowed to make the final decision on the engagement of the candidate Third party. Thus, a first step in the process should be to require the Sponsoring Department to submit written information regarding the candidate Third party. Such information can be provided in a form that sets forth the business need for employing a Third party, the business justification for the proposed compensation, an evaluation of the commercial and technical competence of the candidate Third party (e.g. his knowledge of the enterprise's products and services), specific information regarding the candidate Third party's reputation for integrity, details on how the candidate Third party was identified, whether any other Third parties were considered, and why the candidate Third party was proposed. The form can also contain a confirmation by the employee that, to the best of his or her knowledge, the candidate Third party is qualified and suitable for engagement. The form can also provide information on the services that the candidate Third party shall provide; the main terms of the contractual arrangement to be entered into with the candidate Third party; a description of the amount of the proposed compensation payments; and an assessment of why the proposed compensation is reasonable and appropriate in relation to the services to be performed.

Source: ICC, 2010, p. 4

Data from publications in the Internet and media. An organization can use data from the Internet and media (ISO 37001, 2016, Annex A, p.33). In the author's opinion, it should be considered that those data are not always correct and should be verified.

Official sources of data. In the author's opinion, the following official sources of data can be useful for conducting due diligence:

- Registers of companies/organizations
- Registers of beneficial owners
- Registers of lost and stolen passports
- Registers of disqualified persons
- Registers of real estate
- Registers of vehicles, air planes, helicopters, and yachts
- Databases of court decisions
- Criminal and administrative records
- Databases of tax authorities
- Debarment lists of organizations that are restricted or prohibited from contracting with public or government entities kept by national or local governments or multilateral institutions

The availability of mentioned above and other official databases depends on domestic laws and regulations.

Commercial databases. As a rule, the use of commercial databases is entirely at the discretion of the organization.

3.3.4. Initial due diligence

The aim of initial due diligence is the creation of a base for taking decisions regarding entering/not entering into a business relationship, for the identification of a potential conflict of interest, for conducting risk assessment, and for defining risk mitigation measures if necessary.

How to conduct Due Diligence?

Source: ICC, 2015, p.p. 14-21

Case Study 10: Company K conducts due diligence on its third parties

Source: OECD/UNODC/World Bank, 2013, p.p. 43-45

Due Diligence Content

Source: Agence Française anticorruption, 2017, p.p. 21-23

Sample Third-Party Due Diligence Process Map

Source: NAVEX Global, 2017b, p. 11

3.3.4.1. Standard due diligence

Standard due diligence can include the following procedures:

- Identification of a third party, representative of a third party, and beneficial owner of a third party
- Identification of third parties who are public officials, public officials' family members or close associates
- Collecting and analyzing data available from the legitimate sources
- Identification of indicators (red flags) which require an enhanced due diligence
- Preparing a report for the following decision regarding conducting an enhanced due diligence if necessary, entering/not entering into a business relationship, assessment of corruption risks and defining risk mitigation measures if necessary

Identification of a third party, and a representative of a third party. An organization can define in an anti-corruption compliance programme the lists of documents acceptable in accordance with domestic laws and regulations for identification of domestic and foreign natural persons, and legal entities.

An organization may include an opportunity of electronic identification if such form of identification is allowed in domestic laws and regulations.

Identification of beneficial owners. The following sources of data can be used for the identification of beneficial owners:

- Information provided by a third party
- Registers of companies/organizations
- Registers of beneficial owners available in some jurisdictions

An organization may take reasonable measures allowed in the applicable national laws to verify the beneficial ownership of third parties.

FATF Guidance can be helpful for identification of beneficial owners

Source: FATF, 2014

Identification of public officials, their family members and close associates. An organization can take reasonable measures to identify third parties who are public officials, public officials' family members or close associates, or have other direct or indirect links with public officials.

It can be useful to check definitions of the public official in applicable laws considering that definitions may vary significantly.

In the author's opinion, the following sources of data can be used for the identification of public officials, their family members and close associates:

- Information provided by a third party
- Information from the Internet, including information from the websites of public agencies, public enterprises and other relevant authorities
- Information from commercial databases

FATF Guidance can be helpful for identification of public officials

Source: FATF, 2013, Chapter V, p.p. 13-19

Indicators (red flags) which require an enhanced due diligence. Domestic guidelines underline the importance of risk-based due diligence (Agence Française anticorruption, 2017, p.19; UK Ministry of Justice, 2011, p. 27; Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 60).

An organization can conduct enhanced due diligence when a third party has a link/links to high-risk jurisdictions and/or industries, public authorities, public officials, their family members and close associates, when a third party was involved in unethical business practices, corruption or other criminal activity, or when other high-risk indicators were identified.

The value of a contract can be also considered when making a decision regarding conducting an enhanced due diligence.

The following countries can be considered as high-risk jurisdictions:

- A country perceived to be a high-risk country for corruption
- Transparency International's Corruption Perceptions Index. Available at: <<https://www.transparency.org/cpi2018>>
- A country has strategic deficiencies in anti-money laundering/countering the financing of terrorism measures
- FATF lists of high-risk and other monitored jurisdictions <<http://www.fatf-gafi.org/countries/#high-risk>>
- Basel AML Index <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf>
- Industries which may be considered as high risk industries can be found in: Transparency International Bribes Payers Index Report 2011 <<https://www.transparency.org/research/bpi/overview>>

ICC Guidelines foresee additional criteria of high risk third parties.

These categories of high risk Third parties, and any others identified by the enterprise, can be subjected to a thorough due diligence review prior to retention:

Any Third party that will be engaged to deal directly with a public official on behalf of the enterprise where that official has discretionary authority over some matter impacting or involving the enterprise, and, in particular, such Third parties that are located or doing business in a country with high levels of bribery;

Any Third party engaged to interact with public officials that is compensated on the basis of their success in securing a contract, permit or increased business; Similarly, the enterprise will also try to identify the circumstances in which Third parties are the most exposed to private-to-private bribery.

Any Third party that is engaged to seek information that is not publicly available;

Any Third party that may be, or may have been, a public official or an enterprise in which a public official holds an economic interest (e.g., as an owner, shareholder, employee, or director);

Any Third party who is or may be a relative or close associate of a present or former official, or a Third party that has a relative of a present or former official as an owner, shareholder, employee, director; and

Any Third party that is owned or controlled by or closely linked to a government agency.

Source: ICC, 2010

Organizations can also consider the Wolfsberg Group Guidance for financial institutions.

Appendix A. Examples of Corruption Red Flags

There are many red flags which may warrant enhanced due diligence or review. These red flags may be identified during various business activities discussed in this Guidance, including Intermediary engagement, acquisition or investment in a Target company, general business activity, gifts and entertainment, charitable contributions, among others. The following is a non-exhaustive selection:

- Little to no relevant experience regarding the services to be provided
- Flawed background or reputation (including, for example, prior corruption or a negative reputation for integrity)
- Recent senior Public Official of the same government department or business responsible for the award of the contract or matter at issue or who worked in a procurement or decision-making position
- Transaction or Intermediary suggested by a Public Official, particularly one connected to the business or matter at issue
- Close business, personal or family relationship with a Public Official who has discretionary authority over the business or transaction at issue
- Party to a transaction or contract makes unreasonable/unsupported objections to ABC due diligence or representations or warranties being included in the agreement

- Party does not reside or have a significant business presence in the country where the service is to be provided
- Use of a shell company or some other non-transparent corporate structure
- Requires payment of a commission, or a significant portion thereof, before or immediately upon award of the contract
- Requests for unusual contract terms
- Requests for payment in cash, advance payments, payment to an individual or entity that is not the contracting individual/entity, or payment into a country that is not the contracting individual/entity's principal place of business or the country where the services are performed
- Anticipates payments that cannot plausibly be commercially justified vis-à-vis the role undertaken
- Adjustment of remuneration demand during the course of the engagement, particularly in close proximity to the award of business
- Vague or unsupported book keeping
- Heavy reliance on cash

Source: Wolfsberg Group, 2017, p. 16

The WEF Guidelines provide organizations with the red flag checklist.

WEF, 2013, p.p. 44-46. Appendix C: Red Flag Checklist

3.3.4.2. Enhanced due diligence

Enhanced due diligence may include collecting and analyzing data on:

- Business reputation
- Financial statement
- Sources of wealth and funds
- An anti-corruption compliance programme and other anti-corruption efforts, e.g. participation in Collective Action
- The whole chain of suppliers or subcontractors involved in the business project

How to conduct Due Diligence?

Source: ICC, 2015. p.p. 14-21

If a third party is a public official, a public official's family member and close associate, an organization as a rule should take reasonable measures to identify sources of wealth and funds of.

The following sources of data can be used for identification of sources of wealth and funds:

- Information provided by a third party
- Information from the declarations of incomes and assets, if publicly available on the websites of public agencies, public enterprises and other relevant authorities
- Registers of companies/organizations

- Registers of beneficial owners
- Information from commercial databases

FATF Guidance can be helpful for identification of sources of wealth and funds

Source: FATF, 2013, Chapter V

3.3.5. Ongoing due diligence

Ongoing due diligence (monitoring) shall be conducted periodically and in cases of receiving new information regarding third party's suspicious activities. An organization can define in an anti-corruption compliance programme how often due diligence has to be conducted (e.g. every year or every six months).

The aim of the on-going due diligence is the creation of a base for taking decisions regarding the continuation/non-continuation of a business relationship, for the revision of the risk category, and for defining risk mitigation measures if necessary.

Depending on the level of risk exposure, the company will decide upon the relevant approach to monitoring the business partner, which may consist of one of the following approaches:

Self-assessment: Companies may require that business partners provide information on the status of their anti-corruption programme through a self-assessment form;

Own investigations: Companies may conduct their own analysis to assess the extent and level of the quality and scope of a partner's anti-corruption programme, either based on research and background information or through direct engagement with the partner; and

Independent evaluation/assessment: Companies may decide to obtain or require some form of an independent evaluation or assessment from trusted third parties (e.g. accountant, independent expert) that assess the extent and level of quality and scope of the partner's anti-corruption programme.

Source: UNODC, 2013, p. 59

Conducting on-going due diligence includes the following procedures:

- Periodical updating identification data
- Periodical updating and evaluating available data to find illicit activities linked to corruption
- Preparing report for the following assessment of corruption risks and defining risk mitigation measures if necessary

3.3.6. Identification of suspicious transactions

An organization should consider that even well-established third party due diligence and staff recruiting processes not always allow to identify persons involved in corruption relationship.

Careful analysis of payment schemes and transactions can form a second line of defense. A Resource Guide to the U.S. Foreign Corrupt Practices Act recommends considering payment terms and how those payment terms compare to typical terms in that industry and country, as well as the timing of the third party's introduction to the business. Moreover, organizations may want to confirm and document that the third party is actually performing the work for which it is being paid and that its compensation is commensurate with the work being provided (Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012, p. 60).

The French Anti-Corruption Agency recommends the financial staff alert the compliance officer or any other designated person when unusual payment procedures are requested (e.g. cash payments, or a change in the location of a bank account to a non-cooperative jurisdiction) (Agence Française anticorruption, 2017, p. 24).

Organizations can find useful information on identification of suspicious transactions in FATF guidance and reports.

FATF, 2011. Report on Laundering the Proceeds of Corruption. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf>

FATF, 2012b. Specific Risk Factors in Laundering the Proceeds of Corruption. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Specific%20Risk%20Factors%20in%20the%20Laundering%20of%20Proceeds%20of%20Corruption.pdf>

3.3.7. Organizing and archiving documents

An organization can adopt standard forms of documents to collect data of third parties. The period of records-keeping should be defined considering the applicable laws if any.

3.3.8. Use of IT-solutions for conducting due diligence

As mentioned in several guidelines, the use of modern technologies and IT-solutions can increase the effectiveness of third party due diligence and risk mitigation significantly (WEF, 2013, p. 10; NAVEX Global, 2017b, p.p. 18-20).

The following due diligence processes can be fully or partially automated:

- Checking against watch lists, data bases and other resources

- Certification of acceptance of policies
- Organizing and archiving documents

3.3.9. Reports relevant for benchmarking third party due diligence

Kroll and Ethisphere Institute, 2017. Anti-Bribery & Corruption Benchmarking Report - 2017. Available at: <<https://www.kroll.com/en-us/abc-report-confirmation>>

3.4. Third party risk management

3.4.1. Standards and guidelines on third party risk management

Many international standards and guidelines do not differentiate third party due diligence and risk management or do not pay attention to this question. According to the WEF Guidelines, third party risk assessment and risk mitigation are steps of the due diligence process (WEF, 2013, p. 7). The OECD Guidance underline an importance of the “risk-based due diligence” (OECD, 2010, p. 3).

To clarify the difference, NAVEX Global's definitions can be used as an additional source. According to NAVEX Global, third-party risk management is the process of assessing and controlling reputational, financial and legal risks to an organization posed by parties outside the organization. Third-party due diligence is the investigative process by which a third party is reviewed to determine any potential concerns involving legal, financial or reputational risks. Due diligence is a disciplined activity that includes reviewing, monitoring and managing communication over the entire vendor engagement life cycle (NAVEX Global, 2017b, p. 2).

Third party risk management consists of two parts: risk assessment and risk mitigation.

In the policy on third party risk management organizations usually define the risk scale, the lists of corruption risk indicators/red flags, the correlation between the results of risk assessment and approval of entering into a business relationship with a third party, the revision of risk category, and measures for risk mitigation.

General international standards and guidelines contain recommendations on third party risk management.

- UNODC, 2013. An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf>
- OECD, 2016. Anti-Bribery Policy and Compliance Guidance for African Companies. Available at: <<http://www.oecd.org/corruption/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>>
- ICC, 2011. Rules on Combating Corruption. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>>

Several special guidelines on due diligence may be considered for designing and implementing the policy on risk management.

- WEF, 2013. Good Practice Guidelines on Conducting Third Party Due Diligence. Available at: http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf
- ICC, 2010. Guidelines on Agents, Intermediaries and Other Third Parties. Available at: <https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-parties-ENGLISH-2010.pdf>

Organizations can also find useful information in the guidance published by NAVEX Global.

- NAVEX Global, 2017b. Definitive Guide to Third Party Risk Management. Available at: https://www.navexglobal.com/en-gb/node/1881/thank-you?RCAssetNumber=1880&token=f9aGtcgkry_b_avbdoLihKdDr7hBWSLc3NzVOLEkzD

3.4.2. Risk assessment

As a rule, organizations conduct corruption risk assessment before entering into a business relationship with a third party and periodically revise the risk category.

Risk scale

An organization may select a three-tier risk scale (low, medium and high risk) or a more detailed scale. Some organizations may choose to design and apply a numerical system to the risk indicators to make the assessment more systematic. Other organizations may employ a risk matrix looking at the likelihood or potential impact of risk, or decide to prioritize risk indicators which must always take precedence in deciding the risk category of a third party. Whatever method is used, it is important that organizations use objectivity and judgement as core principles in the implementation of the risk assessment process (WEF, 2013, p. 9-10).

Risk indicators/red flags

International standards and guidance define the key risk groups and risk indicators/red flags that organizations may use to assess the risk of corruption.

Geographic location

The following countries may be considered as high-risk jurisdictions:

- A country perceived to be a high-risk country for corruption (Transparency International's Corruption Perceptions Index)
- Transparency International's Corruption Perceptions Index. Available at: <https://www.transparency.org/cpi2018>

- A country has strategic deficiencies in anti-money laundering/countering the financing of terrorism measures (FATF lists of high-risk and other monitored jurisdictions, Basel AML Index)

- FATF lists of high-risk and other monitored jurisdictions <<http://www.fatf-gafi.org/countries/#high-risk>>
- Basel AML Index <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf>

- A jurisdiction known to have high levels of bank secrecy and presenting a high risk for facilitating illicit financial flows (WEF, 2013, p.9)

- The Tax Justice Network's Financial Secrecy Index. Available at: <<https://www.financialsecrecyindex.com/>>

- A jurisdiction that encourages or requires organizations to hire local agents to transact business for the government (WEF, 2013, p. 9)

The French Anti-Corruption Agency recommends to consider the list of countries subject to financial and international sanctions published by economy and finance ministries, and OECD monitoring reports on implementation of the Convention on Combating Bribery of Foreign Officials in International Business Transactions in the signatory countries (Agence Française anticorruption, 2017, p. 21).

Industry

The following industries may be considered as high-risk industries:

- The industry with which the third party conducts business transactions is perceived to present a high risk for corruption (WEF, 2013, p. 9)

Industries which may be considered as high risk industries can be found in:

Transparency International Bribes Payers Index Report 2011. Available at:

<<https://www.transparency.org/research/bpi/overview>>

- The third party belongs to an industry with a history of anti-corruption enforcement scrutiny in a country of incorporation (WEF, 2013, p. 9)

Background and identity of the third party

- Initial Internet searches and use of news services have revealed glaring problems related to the third party's reputation for integrity