

# FOREWORD

Corruption threatens business and society in all countries. A large part of it is perpetuated by private companies in their quest to capture business at all costs. During the bidding process, majority of companies bidding for tenders from government tend to offer bribes to influence decision making and often regard it as essential for business acquisition. The public Expenditure survey conducted by Transparency International Uganda (TIU) in the utilization of primary education funds in Northern Uganda (2010), revealed that some construction companies view bribery as essential for being awarded the tenders for construction of classrooms and teachers houses. This however, affects the quality of work and increases the cost of doing business. Companies that are implicated in corruption scandals, lose their reputation and credibility, their brands destroyed, ultimately losing out on business that cost them a fortune.

TIU as a dynamic organization and in collaboration with TI Norway, have put in place the User Guide **“protecting business against corruption in Uganda”** the User Guide is being popularized among stakeholders, to achieve this, TIU with the support from United Nations Office on Drug and Crime (UNODC) in 2012 earmarked 12 key Action for Business Ethics (ABE) steering committee members who are committed to ensure that private sector is free of corruption, among the duties of the committee; is to mobilize and support private sector associations to implement anti corruption policies, encourage service users' to participation in planning and corruption free service delivery at all levels in the private sector, participate in the mobilization process and organizing the trainings and dialogues.

Transparency International Uganda further recognizes the support of UNODC, Transparency International Norway and all persons who contributed towards the success of the second edition of the hand book namely; ABE steering committee that include among others Kampala City Traders Association (KACITA)Uganda, Federation of Uganda Employers, Uganda National Building and Civil Engineering Contractors (UNABCEC); Uganda National Farmers Federation, Private Sector Foundation of Uganda (PSFU), Enterprise Uganda; Uganda Manufacturers Association, Southern and Eastern African Trade Information and Negotiations Institute (SEATINI); Uganda Small Scale Association, African Challenge Foundation and Institute of Corporate Governance Uganda to their efforts towards the popularization of the hand book.

TIU also recognizes and acknowledges the contribution of the team that customized and produced the 1st Edition. This has led to the production of the second edition of the hand book. The new Edition shall continue guiding the private companies to start and implement anti corruption programs. I hope that Uganda businesses will find it useful as a practical guide in developing and improving their anti corruption programs. We encourage more companies to adopt and implement the anti corruption programs.

Finally, I would like to thank the board members, management and staff of TIU for their input and continuous support.

**Peter Wandera**  
**Executive Director**  
**Transparency International Uganda**

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# 1. INTRODUCTION

The National Development Plan 2010/11-2014/15 favors a private sector-led economy. Micro, small and medium enterprises (MSMEs) sit at the heart of economic development in Uganda accounting for at least 80% of the entire private sector and contributing 75% to the gross domestic product (GNP)<sup>1</sup>. International business enterprises account for less than 20% of the private sector. MSMEs employ approximately 2.5 million people which make them the key drivers of job creation, innovation and expansion in Uganda.

Micro enterprises are businesses that employ up to four people mainly family members with annual sales turnover of about Ugx 12 million; Small enterprises are businesses that employ 5 to 10 people with an annual sale turn over of about Ugx 360 million while Medium enterprises are businesses that employ 51 to 100 people with annual sales turnover of Ugx 360 to 30 billion.

Private businesses face the challenge of corruption and some of them acknowledge payment of bribes as an essential business acquisition cost. Corruption in public and private sector remains the subject of concern for Transparency International Uganda and other anti corruption activists. Corruption pervades all sections of society; it increases the cost of doing business by at least 10%; leads to loss of business opportunities and; damages company brands, staff morale and government relations. The private sector is part of the problem and can hence be part of the solution (for example, by sharing responsibility for finding ways to effectively fight corruption). Companies with anti corruption programmes

and ethical guidelines in place suffer fewer incidents of corruption and are less likely to lose business opportunities than companies without such programmes<sup>2</sup>

## 1.2 Background to the Handbook

In 2010, Transparency International Uganda and Transparency International Norway carried out two training workshops for business practitioners in Kampala and Gulu, during which an Anti Corruption Handbook for the Norwegian Business Sector was presented and discussed. The handbook was highly appreciated by participants who requested for its customisation to suit the Ugandan business environment. With support from Transparency International Norway, a technical committee of key stakeholders in government and private sector was constituted to work with a consultant through the process of customising this Handbook for the Ugandan business sector.

## 1.3 Mapping anti corruption work done by private sector organizations in Uganda.

There is increasing appreciation within the business association community in Uganda about the importance of doing business ethically. Below is a mapping of some steps taken already by private sector associations and these can serve as building blocks for developing anti corruption programmes for companies/business enterprises.

### 1.3.1 Private Sector Foundation Uganda

Private Sector Foundation of Uganda (PSFU) is the apex private sector umbrella body with

<sup>1</sup> Uganda Bureau of Statistics, Report

<sup>2</sup> PricewaterhouseCoopers, Economic Crime: People, culture and Controls: The Fourth Biennial Global Economic Crime Survey (London: PricewaterhouseCoopers, 2007)

157 business associations, corporate bodies and the major public sector agencies that support private sector growth. In 2008 the organisation launched a campaign to sensitize its membership about the need for ethical codes of conduct and this was underpinned by training for some of its members. In the same year the organisation carried out her maiden Business Association of the Year Award and codes of conduct were integrated into the assessment criteria.

### **1.3.2 Federation of Uganda Employers**

Federation of Uganda Employers (FUE) exists to create an enabling environment for business to prosper. It is the shared vision of the organisation that eradication of unethical practices in enterprises is one of the ways through which organizations will prosper. In 2009, FUE produced a *"Handbook for Employers to Fight Corruption in Doing Business"*. The Handbook is aimed at enhancing sensitization of employers about the problem of corruption and to solicit their commitment to fight it in doing business

### **1.3.3 Uganda Manufacturers Association**

Uganda Manufacturer' Association (UMA) is the premium association of manufacturers and industrialists in Uganda, representing broad industrial and commercial sectors in the country's economy. Having felt that corruption is one of the significant factors that impact negatively on business competitiveness, the organisation carried out a study to solicit views of their members on corruption and how it affects them. The findings would guide the development of an anti corruption programme aimed at safeguarding manufacturers and industrialists from corruption.

### **1.3.4 Institute of Corporate Governance of Uganda**

Institute of Corporate Governance of Uganda (ICGU) was established to address

deficits of corporate governance, corporate integrity and ethical business practices that is increasingly becoming detrimental to private sector growth.

### **1.3.5 KACITA Uganda**

KaCITA Uganda brings together individuals and companies that do business in Uganda. The organisation has put in place the mechanism to recognise companies that trade in quality products as opposed to their counterfeits that trade in counterfeit goods. This mechanism is KACITA Quality Awards which aims to name and recognise businesses that deal in quality goods which in time is expected to serve as a disincentive to businesses dealing in counterfeit products..

### **1.3.6 Uganda National Association of Building and Civil Engineering Contractors**

The Uganda National Association of Building and Civil Engineering Contractors (UNABCEC) have acknowledged that their members are affected and infected with corruption. The association has developed an ethical code of conduct for its members to protect their image and jobs. UNABCEC Organised East African Regional Workshop on social standards and transparency.

## **1.4 Mapping anti corruption work done so far by public institutions in Uganda**

### **1.4.1 Ministry of Trade, Industry and Cooperatives**

The ministry of Trade, Industry and Cooperatives is running a Quality Infrastructure and Standards Programme (QUISP) whose objective is to promote the use of quality infrastructure and standards so as to improve the competitiveness of Uganda's products, processes and service delivery systems in domestic, regional and international markets. It has drafted policies that are before cabinet as the National standards and quality

policy, National sanitary and phyto- sanitary policy and Accreditation policy Protecting Businesses in Uganda against Corruption - User's Guide

### 1.4.2 Uganda Investment Authority

Uganda Investment Authority (UIA) has established a one stop centre Every investor's first point of contact for business registration with the Uganda Registration Services Bureau is available at the UIA. The other line agencies with officials based at the UIA include; Uganda Revenue Authority (URA) for tax advice and registration issues, Directorate of Citizenship and Immigration Control for work permits and residency advice, and the Lands Department.

### 1.4.3 Public Procurement and Disposal of Public Assets Authority (PPDA)

A code of ethics is incorporated in national bidding documents and it is signed by the public officials committing not to demand or accept bribes and bidders committing not to pay bribes. Section 49 of the Public Procurement and Disposal of Public Assets Act 2003, states that, "all procurements and disposal shall be carried out in accordance with the codes of ethics that may be specified from time to time by the Authority". A register of providers has been established to among others, increase visibility for private businesses and enable private companies to show case their skills and experience.

### 1.5 Purpose of this Handbook

Transparency International Uganda (TI-U) and Transparency International Norway (TI-N) have been working jointly over the last couple of years to build the capacity of the private sector in Uganda to protect their businesses from corruption. This handbook intended to help companies and businesses initiate and entrench ethical practices in doing business.

Handbook has been designed to meet the following specific purposes:

- To help Ugandan companies understand why corruption is detrimental to business, and the rationale for companies to have anti-corruption policies and practices,
- To make companies aware of how Ugandan and international laws address corruption,
- To encourage management to raise awareness amongst all employees that corrupt activities, in addition
- To being against company rules, may also constitute criminal offences for which managers and staff could
- Incur personal liability and make the company criminally liable, that could result in imprisonment, fines and compensation for damages,
- To increase the understanding and standard of how to deal with issues such as facilitation payments, gifts, hospitality and interaction with business partners, and
- To advise Ugandan companies on how to establish effective rules, procedures and other measures to reduce the risk of involvement in corruption at home and abroad.

### 1.6 Who is the handbook for and how to use it?

The Handbook is primarily intended for private companies and businesses in Ugandan. It is relevant for:

1. Owners and shareholders of business enterprises, who can use the Handbook's recommendations directly to appreciate the advantages of doing business ethically. This information is found in Chapters 5 and 6.
2. Owners and shareholders of business enterprises, to understand the forms of corruption, its negative effects, business

risks and possible consequences. The book explains why an anti-corruption programme is needed and how to develop it. This information is found in Chapters 2 to 4.

3. Managers and staff who are responsible for leading the development and implementation of a company's anti-corruption programme. The handbook provides concrete and practical advice for development of anti corruption programme, its content, and how to implement it. This information is found in Chapters 4 to 7.
4. The Handbook may also be useful for government ministries, departments and agencies (MDAs) both in respect of their own anti-corruption efforts and in understanding the challenges and expectations which business enterprises are faced with.
5. Furthermore, large parts of the Handbook may be useful to general public, civil society, academia and media among others.

## 2. CORRUPTION AND CONSEQUENCES

### 2.1 What is corruption?

The definition of corruption varies from country to country however Transparency International defines corruption as abuse of entrusted power for personal gain. In Uganda, following the enactment of Anti Corruption Act 2009, the definition of corruption has been broadened to cover acts of corruption in both public and private sector. According to the Act; Corruption involves abuse of a public or private sector position for private benefit and manifests itself in offenses like solicitation or acceptance, offering or granting of a bribe, fraudulent acquisition of property, corruption between principal and agent, illicit enrichment, diversion of public funds, influence peddling, conflict of interest, favouritism and sectarianism. The common forms of corruption in business include bribery, influence peddling, tax invasion, embezzlement, abuse of company property, trading in counterfeit goods, shoddy work, favouritism among others which may influence award of a tender or registration of a company; to evade taxes; or obtain clearance for substandard goods.

The Inspectorate of Government Act 2002, defines corruptions as: means the abuse of public office for private gain and includes but is not limited to embezzlement, bribery, nepotism, influence peddling, theft of public funds or assets, fraud, forgery, causing financial or property loss and false accounting in public affairs.

### 2.2 Types of Corruption

The following are some of the types of corruption in Uganda:

#### 2.2.1 Grand corruption

Grand or big scale corruption includes the most dangerous and covert types of

corruption where external interests illegally abuse the highest levels of a political system to achieve private ends. It involves senior public officials demanding or obtaining bribes or kickbacks to ensure that government contracts are awarded to particular companies. It is often called *corruption by greed*. It also includes bypassing bureaucratic and/or political hurdles to achieve business results. This form of corruption is illegal under the Anti Corruption Act 2009. Grand corruption is usually common in public procurement as well as oil and gas industry. Private companies look to government as the source of "big deals" and these deals are dispensed through public procurement. Examples of grand corruption cases in Uganda in recent years include purchase of junk helicopters, CHOGM, *Temangalo* land sale to National Social Security Fund and road construction among others.

#### 2.2.2 Petty/Small corruption

Petty or small corruption is the use of public office or position for private benefit in the course of delivering a public service. This type of corruption is often called facilitation payments. Facilitation payments are usually smaller amounts of money paid to lower level government officials such as policemen, Kampala Capital City Authority law enforcement officers or health workers; to accelerate or facilitate a decision to which the person paying often has legal claim but which may be unduly delayed or withheld pending payment. In doing business, petty corruption takes the form of bribes for customs clearance, connection to national electricity grid, access to a doctor in a public health centre/referral hospital, police bond etc. When the public official demands for the bribe, the act turns into an offense called extortion and it is

punishable under the Anti Corruption Act 2009. The direct victim of this is the citizen. Companies or businesses are often reluctant to report this type of corruption but it is expensive for ordinary Ugandans.

### 2.2.3 Public sector and private sector corruption

These are often two sides of the same issue. In public-private business relationships, public sector officials normally act as the *demand side* of bribery and private companies are usually the *supply side*. Several large corruption cases in Uganda in recent years have involved bribes paid by private sector companies to municipal sector employees.

### 2.2.4 Private-to-Private Corruption

Private-to-Private bribery is also an offence under the Anti Corruption Act 2009. This form of corruption occurs, for example, when an employee of one company accepts the advantage granted to him/her by a person from another company or member of the public without informing the corporate bodies or persons. An example is person who wants to become an agent for MTN Uganda or Nile Breweries, bribes the Marketing Manager to influence his decision to grant him a franchise/charter. As a consequence the corrupted executive's or manager's freedom of judgement is abdicated in return for money (or other considerations).

## 2.3 Corruption versus other economic crimes

The Anti Corruption Act 2009 classifies economic crimes such as fraud, embezzlement, theft, money laundering, conflict of interest and tax evasion, as forms of corruption that are bound to be prosecuted in the Anti Corruption Division of the High Court.

## 2.3.0 Forms of Corruption that Common to Private Sector

Corruption manifests itself in a number of forms which include among others the following:

### 2.3.1 Bribery

Bribery is defined as the promise; offer or giving of any benefit that improperly affects the actions or decisions of a public official. A bribe may be given to a public servant (direct), or to another person or entity (indirect). A bribe may consist of money, inside information, gifts, entertainment, sexual or other favours, a job, company shares, etc<sup>3</sup>.

### 2.3.2 Favouritism

This is when a particular company or business is favoured not because it has offered the best business proposition, but because of its political, social, ethnic, friendly or blood relationship with a contracting officer. Favoritism is also the same as cronyism and nepotism; and all the three serve to give undue advantage a company of business person who does not necessarily merit it. As a result the goods or services supplied by a favoured company are likely to be inferior.

### 2.3.3 Influence Peddling

Participating in a decision in which one has an interest or where one is in position to influence the matter directly in the course of one's official duties for private gain.

### 2.3.4 Embezzlement

Theft of resources by persons entrusted with authority and control over these valuable resources.

### 2.3.5 Conflict of Interest

Conflict of interest is a situation in which a person has a private or personal interest sufficient to appear to influence the objectivity

<sup>3</sup> Inspectorate of Government, Third National Integrity Survey 2008

of his or her official duties as, say, a public official, an employee of a company, or a professional. Public servants and key officials in leading companies have opened up businesses in their line of duty and hence giving all businesses to themselves at the expense of private sector growth. Other examples include civil servants who have opened clandestine printing companies, stationery businesses, cleaning companies and consultancy firms among others to take all the business in their offices. This certainly compromises objectivity in supervision and quality of goods or services delivered.

## 2.4 Presenting the Problem of Corruption to Business in Uganda

Corruption damages and undermines business growth and efficiency, for example; payment of bribes kills motivation for innovation, creativity and competition for business opportunities. Corruption limits access to the market for entrepreneurs who want to do business ethically and this deters enterprising individuals from becoming major players in the economy. Simply put, when it is easier to win a tender through bribery as opposed to merit, entrepreneurs stop thinking and turn to the easier ways of winning business – by bribing. As a consequence the public suffers because of poor quality and high priced goods and services. Most Ugandan businesses have not been able to compete at international level this is partly because corruption has undermined their capacity to thrive in the highly competitive international market.

The consequences of corruption are more pronounced on MSMEs which have low efficiency levels. Some of them cannot win business on merit thereby leaving them with one option of using bribery to win tenders. The sections below illustrate some of the damage caused by corruption.

Although the Anti Corruption Act and the

Anti Corruption Division of the High Court have been in place since 2009, underpinned by a comprehensive legal and institutional framework to fight corruption, not many inroads have been made against private sector corruption. The challenge is that it is covert and the parties that participate in it derive personal benefits that deter them from reporting. However, there is greater likelihood to date that wrong doing will be detected and punished.

### 2.4.1 Damage to companies and employees

The consequences for companies and for individuals involved in corruption, whether directly or indirectly, are serious and damaging:

1. *Damages companies:* Corruption causes uncertainty in tendering process; wasted tender expenses especially for unsuccessful bidders as well as increased project costs for the successful bidder as a result of bribe payment. Other damages include financial loss, lost project opportunities, extortion and blackmail, criminal prosecutions, fines, blacklisting/debarment, and/or loss of reputation. Corruption leads to competitive bribery instead of fair competition based on price, delivery time and quality.
2. *Declining profitability:* The bribes paid to win a tender increase the cost of doing business leading to decline in profitability. The damage is more severe on small and medium enterprises (SMEs) which often feel cornered to bribe to acquire a business opportunity.
3. *Damages individuals:* Under the Anti Corruption Act 2009, the consequences of corruption can even come down to personal level. Corrupt public or private officers may lose their loyalty to the organisation, damage personal reputation

and in the worst case scenario; this can lead to, termination of employment, criminal prosecution, fines and/or imprisonment.

4. *Loss of business:* A number of private entrepreneurs interviewed in Uganda in the process of developing this handbook testify to having lost subsequent government contracts as a result of declining to pay bribes; or sharing with public officials a percentage of the total contract sum and other forms of collusion.
5. *Kills entrepreneurial innovation and creativity.* When it transpires that companies are able to beat competition through bribery, they lose the incentive to innovation and creativity. In other words, corruption thwarts the development of brilliant ideas making entrepreneurs less willing to venture into better ways of doing things. The perception of some private business practitioners in Uganda is that winning government contracts is NOT based on quality or technical ability but on connections and bribery.

“Corruption erodes pillars of business success. It means cutting corners and shirking honest competition rather than producing real, competitive value for clients. It means compromising corporate and individual integrity, deterring and demotivating the brightest and most innovative entrepreneurs”

*N.R. Narayana Murthy – Chairperson  
Infosys Technologies Ltd*

### 2.4.2 Damage to societies

The fact that Uganda is consistently ranked among the most corrupt countries in the world has damaged the image of the country and its citizens. Corruption has the potential to render social service delivery dysfunctional, leading to a number of economic, political and social problems. Poor health service delivery, poor road infrastructure and substandard universal

primary education service among others, are largely attributed to corruption. This can result in a population not supporting its leaders (loss of political legitimacy and public trust) and disrespect for the rule of law. Corruption fosters human rights abuse, has the potential to provoke civil unrest and ultimately cause civil war. As corruption increases, regimes become more secretive, and basic social and economic rights are threatened. This undermines private sector growth and progress.

Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.

*Preamble, Council of Europe Criminal Law Convention on Corruption*

### 2.4.3 Cross-border damage

Perception has it that, companies from abroad have to pay bribe to get things done in offices like Registrar of Companies, Lands and Licensing among others. This increases the cost of doing business in Uganda and is a disincentive to foreign investment. Cross-border corruption is detrimental to all markets and countries, but is particularly devastating for developing countries. Specifically some of the effects of cross-border corruption include:

1. Development projects which are unnecessary, unproductive, unreliable, of inferior quality, dangerous and over-priced. This can lead to loss of life, poverty and serious social and economic damage.
2. Raising the cost of goods and public services in developing countries, increases national debt, and leads to a lowering of standards through purchasing of goods and services that are of low quality, inadequate, inappropriate and unnecessary.

### 3. Interference with and hampers trade and investments in the countries affected.

In cases of cross-border grand corruption enables the ruling class in developing countries to acquire substantial wealth. World Bank estimates the wealth which corrupt African leaders have stashed away in European banks stand at hundreds of billions of US dollars. Laundering money across borders conceals the proceeds of corruption; the money is siphoned into tax havens or invested in industrialised countries. Individuals involved in corruption escape law enforcement efforts by leaving the country where the investigations or prosecutions are taking place or where a court judgement has been passed.

#### 2.4.4 Increase in Poverty

Social and economic development, stability and security are adversely affected by corruption. Grand corruption (corruption due to greed) is a cause of poverty, rather than a result of it. With grand corruption, huge sums of public funds are siphoned by senior politicians and top civil servants at the expense of service delivery.

Where corruption exists, private sector growth is incapacitated and job creation undermined, resulting in high unemployment rates. However, small corruption (corruption due to need) that people encounter in the course of their everyday lives is often caused by poverty. Poverty further increases the levels of public apathy where corrupt officials are gratified and praised for being "clever".

Bribing companies are actively undermining the best efforts of governments in developing nations to improve governance, and thereby driving the vicious cycle of poverty.

*Huguette Labelle, Transparency International's Chairperson*

## 2.5 Yardsticks used to Measure Extent of Corruption in Countries

Corruption occurs in all markets and in all business sectors. Transparency International regularly surveys and analyses corruption trends in a large number of countries and industries and publishes results in reports and indexes as follows:

### 2.5.1 East African Bribery Index (EABI)

The EABI measures bribery levels in the private and public sectors in East Africa region. The 2011 edition shows that apart from Rwanda where bribery is perceived to be minimal, corruption is still an impediment to service delivery in Uganda. The survey interacted with 2,733 people in Uganda of which 60.4% were urban-based.

Out of all the interactions with respondents, bribes were expected or demanded in 33.9% of the dealings. The Uganda Police, followed by Uganda Revenue Authority and Ministry of Lands in successive order are ranked in the top three positions as institutions that are perceived to have the highest prevalence of bribery.

### 2.5.2 Uganda National Integrity Survey 2008

The Inspectorate of Government carried out the third National Integrity Survey (NIS) in 2008 to investigate the prevalence and incidences of corruption and administrative injustice in public service. The survey lists factors that account for occurrence of corruption; it gauges the trends in prevalence of corruption; identifies challenges facing the Anti-Corruption strategy implementation, and devises remedies to mitigate it.

The survey established that the most prevalent form of corruption across the whole country is bribery (66%) and this was largely attributed to greed (69.4%). Findings further indicated

that the demand for and payment of bribes are no longer secrets.

The most prevalent form of corruption as reported by 20% of Public Institutions respondents is bribery; while 19% rated embezzlement of public funds as the second most prevalent form of corruption.

The services for which Private Enterprises respondents reported to have paid bribe for were: Tax payment (36.8%); judicial services (22.4%); and securing contracts (11.3%). Demanding for a bribe was reported by 58% of the Private Enterprises respondents as not a serious offence; and 42% reported payment of bribes as an acceptable way of life. This shows a high level of moral decadence that requires a carefully worked out strategy to address.

The main impediments to Private sector investment in Uganda were investigated. These included: high taxes as reported by 59.4% of Private Enterprises respondents; high electricity tariffs (39.9%); and corrupt officials/ payment of bribes (36.2%). Although the first two are structural issues which may not be mitigated in the short run, the major concern of this report is the high level of bribery.

### **2.5.3 Uganda Manufacturers Association Survey**

A survey was carried out by Uganda Manufacturers' Association (UMA) in 2009<sup>4</sup> to solicit views of manufacturers regarding corruption and how it affects them, indicated that majority of respondents (92%) feel that corruption is an impediment to business competitiveness. The respondents feel that in many cases only companies that are able to pay bribe can get business from government and such companies are "big" in terms of size and levels of capitalization. This is detrimental

for business growth as the market is tilted in favour of big companies thus undermining competition and marginalizing smaller companies / businesses. Corruption is further sited in clearing of goods where importers can only have their merchandise cleared quickly if they part with a bribe and failure to do so means avoidable delays by the importer in delivery of goods to waiting customers.

Majority of manufacturers interviewed (72%) agreed that the private sector plays a significant role in perpetuation of corruption. This role is played in a number of ways including payment of bribes, evasion of taxes, participating in illicit businesses and production of substandard goods among others.

An overwhelming number of manufacturers in Uganda (98% of respondents) believe that ethical business practices should be promoted as a way to combat corruption. Only 2% felt that it is not necessary to promote ethical business practices but were in agreement with the argument that lack of business ethics can lead to lack of competitiveness.

All the manufacturers surveyed (100%) believe in having a code of ethics to which all manufacturers subscribe. All respondents feel that it is important for manufacturers to be associated with business integrity, ethics and all other anti corruption values. Majority of industrialists surveyed 74% believe that corruption has made difficult to achieve business goals. As such they expressed willingness to join the fight against corruption by signing up to the code of ethics with an overwhelming percentage of 98% of the respondents interviewed. The survey also found that "large companies, which are able to pay bribes, get contracts from the Government, marginalising the smaller ones."

<sup>4</sup> CORRUPTION: A Study by UMA on Manufacturers Views on Corruption and How it Affects Them; Uganda Manufacturers' Association/ACT-USAID; 2009.

### 2.5.4 Corruption Perceptions Index (CPI)

The CPI ranks countries according to the perceived level of corruption. It is a composite survey of business people and assessments by country analysts. The perceptions gathered make the CPI a helpful contributor to the understanding of different levels of corruption from one country to another.

Uganda has been consistently ranked among countries that are perceived to be most corrupt in the world. The country has been scoring below three points on a scale of 1-10 where 1 is for the most corrupt while 10 is for the least corrupt countries. Companies which are ethical and compliant may choose not to have business in Uganda, or to withdraw from it on grounds that corruption is serious and widespread.

However, withdrawing does not solve the problem. Companies which are devoted to ethical business practices should not quit but see themselves as part of the solution and they would do so by acting as a role models; using their spheres of influence with authorities; suppliers and business partners; initiate collaboration with other actors and support civil society organisations. By helping societies to function properly, companies are actually helping themselves.

### 2.5.5 Global Corruption Barometer (GCB)

The GCB is the only worldwide survey on views and experiences of corruption. It is an opinion poll of the general public which provides an indicator of how corruption is affecting individuals on a national level and how efforts to curb it around the world are viewed on the ground.

The GCB includes a variety of corruption-related questions including which institutions are seen as most corrupt and how respondents rate their governments in the fight against corruption. It also provides an insight into

people's experiences with bribery, gathering information on how frequently citizens are asked to pay bribes to access public services.

### 2.5.6 Bribe Payers Index (BPI) 2011

The 2011 bribe payers index ranks the likelihood of companies from 28 leading economies to win business abroad by paying bribes. It measures cross-border business corruption through active business bribery in foreign markets. Companies from Netherlands, Switzerland and Belgium among others, are perceived to be less likely to pay bribes abroad while companies from China, Russia and Mexico are more likely to pay bribes abroad.

The index indicates clearly that foreign bribery by companies is common. Companies from the wealthiest countries generally rank in the best performers, but still pay bribes, particularly in developing countries. Companies from the emerging economies like India, China and Russia are ranked among the worst.

The BPI shows that all industries and sectors are affected. Sectors where bribes are most likely to be offered and accepted, or extorted, include:

- Public works contracts and civil construction generally
- Arms and defence industry
- Power (including petroleum and energy)
- Telecoms

Bribes are also very likely to occur in banking, finance and agriculture.

### 2.5.7 Other Surveys

The 2006 World Bank-IFC survey indicates that close to half of the firms questioned expect to give a gift to secure a government contract. Companies further report the gift value to amount to approximately more than 5% of the contract value.

"Business competitiveness and corruption cannot flourish in the same environment. You cannot compete by simply buying your way into the market,"

*Gideon Badagawa – Executive Director,  
Private Sector Foundation of Uganda*

## 2.6 Why are Some Companies Willing to Offer Bribes?

Some of the arguments or justifications used by businesses to defend corruption are:

- *The band wagon argument:* A company bidding for business may pay bribe if it believes that one of the competitors is paying a bribe too.
- *Easy profitability argument:* Some business proprietors in Uganda believe that dodging taxes is one of the avenues to make business profitable. So, it becomes common practice to bribe officials of Uganda Revenue Authority to pay less tax.
- *The need to develop or secure business argument:* Failure to win business contracts result in large losses. Businessmen use this as a "valid reason" to pay bribes in order to get the business. This however only brings short-term happiness but results in long term pain.
- *The good investment argument:* Disregarding all ethical considerations, some businessmen see bribery as an excellent investment. They believe that paying for the award of a contract is much more cost-effective than marketing and competitive bidding. However bribery of any form contravenes the Anti Corruption Act 2009 where both the giver and taker of it, are liable for punishment.
- *Culture argument* - Some of the companies seem to justify bribery with the culturally relativistic argument, suggesting that corruption is part of the culture of

Uganda as it is in many other developing countries, a cultural phenomenon as unique in character as local art, music and other forms of expression. Some companies claim that they pay attention to the cultural dimension of facilitation payments, appreciation payments, gifts and hospitality, referring to the need to respect "our customs". However, culture must not be used as an excuse for violating ethical business practices. Bad practice must never be confused with or justified by cultural values.

## 2.7 Why Should Companies Fight Corruption?

Corruption breeds dishonesty and unethical behavior in doing business. Companies must combat corruption because it is an offence and can result in severe penalties that can also come down to personal level. The private sector is part of the corruption problem but it is also part of the solution. The other justifications for companies to fight corruption are as follows:

### 2.7.1 Corporate attitudes and beliefs

Uganda Manufacturers Association carried out a survey titled: *Manufacturers' Views on Corruption and how it affects them, 2009*. Majority of respondents in the survey (92%) said that corruption negatively impacts their business competitiveness making it difficult for their companies to grow. A similar survey of 390 executives worldwide carried out by PricewaterhouseCoopers (PwC) titled: - *Confronting Corruption, 2008*; revealed that 57% of respondents said their companies always considered the risk of corruption when making significant business decisions. , Almost 45% of the respondents said they had decided not to enter a specific market or to pursue a particular opportunity because of corruption risk. 42% said their competitors paid bribes. 39% said their company had lost a bid because of corrupt officials.

Another survey by the consultancy firm, Control Risks and the UK law firm Simmons & Simmons (*International Business Attitudes to Corruption - Survey 2006*) showed that almost half of all companies believed that they had failed to win new business because a competitor had been willing to pay a bribe. Companies in the construction, oil and gas, and mining sectors seemed the most likely to lose business to corrupt competitors. Two main factors are at play: 1) The high value of projects such as those involving extraction of oil and or building of a hydro electricity generation dams among others, increases the temptations of bribery, and 2) the companies in these business sectors very often rely on a license or approval from a government office for their projects and they may sometimes be involved in direct negotiations with government officials who have extensive discretionary power.

### **2.7.2 There are Fewer Places to Hide**

Internet has increased the level of public awareness and this limits the ability of corporations to hide information. It is becoming difficult to keep secrets about every aspect of a publicly quoted company's business. The interest to protect businesses against corruption is increasing. There is increasing pressure from organisations like Institute of Corporate Governance of Uganda, Enterprise Uganda and Private Sector Foundation of Uganda among others, to build capacity of MSMEs to do business ethically. These forces are persuading companies to realise that corruption in business is a bitter pill and the number of places to hide is decreasing quickly.

### **2.7.3 Reputation Risk**

Reputation damage affects share prices and future business opportunities. Companies with a reputation for unethical practices are increasingly considered to be undesirable business partners. Public Procurement and Disposal of Public Assets Authority (PPDA)

had blacklisted number of companies for unethical business practices including delivery of substandard work, and failure to deliver on time among other contractual violations. Such companies ultimately lose customers and find it more difficult to attract good staff. Highprofile corporate scandals of recent years have raised company awareness. Coupled with growing expectations of accountability from authorities and society at large, this adds pressure on companies to live up to ethical business practices.

### **2.7.4 Financing Risk**

The risk of not being able to raise finance and attract investors is real. Companies found to be involved in corruption may be debarred from receiving loans from national and international finance institutions, including multilateral development banks. Loan agreements with export credit and export finance institutions may lapse if the guarantee recipient and/or exporter have acted corruptly, in violation of the law. On the contrary, it is easier for a reputable company to access credit facilities from financial institutions to steer the company forward.

### **2.7.5 Legal Risk**

Corruption constitutes a significant legal risk, both for companies and individuals: The risk of incurring civil liability, criminal liability, contract termination and liability for business partners acting on behalf of the company. The risk of prosecution in Uganda is real. The Anti Corruption Court is recording a conviction rate of over 80% while the Commercial Court is also tightening its noose against practices of corporate fraud and other unethical practices.

### **2.7.6 Cost of Bribes**

Paying bribes is a costly affair. The earlier mentioned survey conducted by Control Risks and Simmons & Simmons (*International Business Attitudes to Corruption - Survey*

2006) shows how much corruption might increase the cost of international projects. A quarter of the respondents said that it was up to 5%. However, 10 % said that corruption could amount to up to half of the total project costs, and 7 % said it could be even higher. The companies estimating maximum corruption at more than a quarter of the total project cost were most likely to come from the construction (29%), defence industry (25%) and finance (18%) sectors.

### **2.7.7 Deterrent to International Investment**

Companies are reluctant to make attractive investments in countries like Uganda where the level of corruption is perceived to be high. This is because it is less costly not to make an investment than to pull out of an ongoing project. A number of international companies have pulled out of Uganda but this is usually

not announced publicly. Corrupt practices penalise companies that play fair and seek to win contracts through the quality and price of their products and services. Corruption tilts the playing field and creates unfair advantages for those willing to engage in unethical or illegal behaviour, although often in the short term perspective and at a high risk.

### **2.7.8 Increasing Awareness**

Low levels of awareness of corruption legislation in society and in the business community will most certainly imply an inefficient impact of such legislation. To serve as a deterrent to corrupt activity, the level of awareness of the legal provisions must be high and scepticism about their effectiveness low. Corruption can be prosecuted after the fact, but first and foremost, what is required is prevention.

## 3. DEVELOPING ANTI-CORRUPTION PROGRAMME

### 3.1 Why Ugandan Businesses Need an Anti Corruption Programme

Businesses suffer negative consequences in the long run because of engaging in bribery and other forms of corruption. Businesses cannot be sustained on corruption and should consider developing an anti corruption programme.

#### 3.2.1 What is Needed?

As a starting point, business directors and owners must have unwavering commitment to fight and eradicate corruption wherever and whenever they come face-to-face with it. The Public Procurement and Disposal of Public Assets Authority, has so far deregistered ten construction companies on grounds of unethical business practices. Business cannot be sustained with corruption. Unfortunately, very few Ugandan companies have standards, policies and guidelines that address various aspects of corruption and corporate governance.

In the survey conducted by Uganda Manufacturers Association, 70% of the respondents indicated that they had failed to achieve their business goals because of corruption.

It is not enough to trust employees to exercise their judgement on what is acceptable or unacceptable and what is legal or illegal. Employees should be guided by standard principles that are listed in the anti corruption programme. An anti-corruption programme helps to create a common platform for making decisions on behalf of the company, thereby reducing the risk of corrupt decisions. With no guidance from a programme it can be difficult to draw a line and declare that something is unacceptable.

*Some of the reasons why employees need to be guided by the Anti Corruption Programme*

are:

- People's knowledge and judgement of what is acceptable varies widely; obviously different people will have different views, but an individual's view can also change radically due to circumstances – actually being offered a gift can alter previously held views.
- There will always be a risk that an individual goes too far and commits corruption – how is he or she to be disciplined when there are no rules which he or she has failed to follow?
- Joint venture partners, agents, contractors, suppliers and other parties need to know that the company has a programme and which rules are governing the company.

#### 3.3.1 Purpose of an Anti Corruption Programme

The purpose of an anti-corruption programme is to counteract corrupt practices which may be committed:

- deliberately for personal or corporate gain,
- reluctantly in the belief that they are necessary to remain competitive,
- erroneously under the assumption that they are normal business behaviour and not criminal offences, and
- accidentally through a lack of awareness and understanding

by:

- providing rules, guidelines and training,
- increasing the understanding of corruption, and helping managers and staff to identify potential corrupt practices in time to prevent crimes from being committed and hence preventing individual and corporate

liability.

A good anti-corruption programme helps to:

- increase investor trust and the company's market value,
- limit business disruption and the distraction of management focus caused by non-compliance issues,
- protect and enhance the company's reputation, brand image and operational effectiveness,
- increase employee and investor confidence in the company's stability and performance, minimise the risk of litigation
- prevent prosecution of the company and its employees,
- support the company's ability to attract and retain talent,
- hold employees and everyone acting on behalf of the company accountable to ethical standards of business conduct, and reduce expenses and losses.
- Increase the lifespan of the company/business

### 3.4 The Business Principles for Countering Bribery and Related Tools

The Business Principles for Countering Bribery (BPCB) was developed as a multi-stakeholder initiative led by Transparency International (TI). It was published initially in 2003 and was updated in 2009. Its purpose is to raise the standards of business practice in counteracting bribery.

#### THE BUSINESS PRINCIPLES ARE:

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

The enterprise shall commit to implementing a Programme to counter bribery

The BPCB specifically addresses bribery, which is the most common form of corruption in business. The BPCB document is a tool for helping companies to develop comprehensive anti-bribery programmes. Very few companies in Uganda have a no-bribes policy. Transparency International Uganda encourages companies to use this Handbook as starting points for:

- Developing company programmes
- Benchmarking and upgrading existing ones
- Implementing programmes
- Monitoring programme performance

This Handbook cannot be "adopted" as it is only a framework and starting point for companies wishing to develop their own tailor-made programmes. In developing the anti corruption programme, companies must take account of the specific nature of their activities and relevant corruption risks. The emphasis that a company places on different elements in its programme should be based on its own needs and vulnerabilities.

Enterprises should implement anti-bribery programmes both as an expression of core values of integrity and responsibility, but also to counter the risk of bribery. Risk will vary across industries and specific companies, but no enterprise can be sure that it will be free of risk.

*The Business Principles for Countering Bribery*

#### 3.4.1 BPCB – SME Edition

Transparency International has published (2008) a special edition of the Business Principles for Countering Bribery (BPCB) for small and medium-sized enterprises (SME). More than 95% of the world's business is carried out by SMEs, and they are just as vulnerable to the risks of corruption as large companies.

In Uganda, micro, small and medium-sized enterprises (MSMEs) account for 90% of the entire private sector. Micro enterprises are mostly family businesses employing only up to five people and do not have structured levels of governance.

### 3.4.2 Other Transparency International Tools

Other TI tools related to the Business Principles for Countering Bribery (BPCB) that aim at supporting companies in their task of designing and implementing anti-bribery programmes, include:

- **The BPCB Guidance Document:** A comprehensive guide giving background to the BPCB and practical information for those wishing to implement the BPCB or review their own anti-bribery processes.
- **The Six Step Implementation Process:** A how-to guide for companies that are in the early stages of designing and implementing an anti-bribery programme.
- **The Self-Evaluation Tool:** A tool that enables companies to appraise the strength, completeness and effectiveness of their antibribery programmes, against the framework of the BPCB.

A separate tool called “**Integrity Pact**” has been developed by TI specifically for public construction and infrastructure projects. The Pact acts as a contract and provides guidance for project owners, funders, construction contractors and consulting engineering firms. TI Uganda is engaging with National Water and Sewerage Corporation to apply the integrity pact on one of the major projects.

All of the TI tools can be downloaded free of charge from [www.transparency.org](http://www.transparency.org). They save companies time and money once they have the will to develop an anti-corruption programme.

### 3.4.3 Other initiatives

Transparency International cooperates with two global initiatives which Norwegian companies may consider joining to obtain advice and help, access to networks, and to demonstrate their commitment to combating corruption:

- UN Global Compact – with its principle no. 10 on fighting corruption
- Partnering Against Corruption Initiative (PACI) – by the World Economic Forum

### 3.5 What is Anti-Corruption Programme?

The Programme is the whole of an enterprise’s anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

*The Business Principles for Countering Bribery*

The Programme should be tailored to reflect an enterprise’s particular business circumstances and culture, taking into account such potential risk factors as size, business sector, nature of the business and locations of operation.

*The Business Principles for Countering Bribery*

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

*The Business Principles for Countering Bribery*

An effective anti-corruption programme should:

1. Focus on the most important risks:
  - Conduct a risk assessment to identify high-risk areas.
  - Adapt processes based on the nature and source of the risks.
2. Create an environment with the right tone and structure:
  - Install a compliance “tone at the top”.
  - Adopt zero tolerance policies.
  - Embed compliance into human resources processes (training, hiring, performance evaluation, promotion and disciplinary action).
3. Include control activities to minimise the risk of non-compliance:
  - Adopt control procedures, protocols and monitoring programmes for high corruption risk areas.
4. Have processes and systems supporting compliance:
  - Ensure effective reporting to key corporate governing bodies.
  - Embed compliance into IT systems.
5. Communicate and enforce:
  - Conduct mandatory training for all levels of personnel.
  - Install discipline and incentives.
6. Stay current and relevant:
  - Address changes in regulations, financial and operational policies and procedures.
  - Address changes necessary to cater for new markets and business segments.

### 3.6 What Does Anti Corruption Programme Involve?

Anti-corruption programmes involve written commitments represented in company mission, vision or value statements. Such statements are explained further in company codes of conduct (or codes of ethics) and address the following audiences:

- The Board of Directors
- The management team
- Employees
- Regulators and public authorities
- Business relations
- The general public

#### 3.6.1 Company values

Company values should cover a commitment to counter corruption. This should be made clear in the description of what the value includes and what it means. This can be inserted in a Code of Conduct. Additionally, the value statements and explanation of the content should be shown on the company's public website.

#### 3.6.2 Code of conduct

A **code of conduct** is a set of rules outlining the responsibilities of or proper practices for an individual, party or organization. It sets legal compliance and ethical requirements for the board, management, employees and consultants working in the company or business. A code of conduct usually contains a variety of ethical and legal issues, with anti-corruption as a significant element. The code should never, under any circumstances, be set aside to permit special actions by executives (the Enron Board in USA, for example, twice waived the corporate code of conduct with a formal vote and with time this contributed to its collapse).

The code is most effective and visible if it is placed high in the hierarchy of the company's governing documents, at the level below the company's by-laws. The "owner" of the code should be the owner of the business or boss. Companies should show their codes of conduct on their public websites.

The code of conduct should set the company's ethical standards on the safe side of any laws that the company is subject to. It should apply universally for the entire company. It should not be adjusted to specific ministries, government departments, cultures or countries. It should guide the board, management and staff on what to do if they are faced with a corruption situation.

The code of conduct should be reviewed regularly, for example every three years, and should be improved as required.

### **3.6.3 Rules and guidelines**

Company values and the code of conduct must be accompanied by the adoption of management systems and implementation measures designed to help management and employees honour the compliance requirements in their day-to-day operations. This is intended to ensure understanding, embedding and follow-up of the policies and standards.

If the code of conduct is not sufficiently detailed and specific on the various anti-corruption issues, it needs to be supplemented with written rules and guidelines building on the code, but going into more detail and being more prescriptive and practical for the employees. Recommended content for rules and guidelines is described in Chapters 5 and 6.

### **3.6.4 Written rules and guidelines are not enough**

Business owners, managers and other employees will meet situations and face dilemmas which are unfamiliar, and where they need to use judgement. Rules and guidelines are helpful in preparing for such situations.

However, it is also necessary to develop and implement complementary activities such as communication, training, whistle-blowing mechanisms and control measures tailored to ensure understanding, embedding and follow-up of the rules and guidelines. These and other elements, which are also part of a company's anticorruption programme, are described in Chapter 7.

## 4. SCOPE OF THE PROGRAMME: CORUPTION ISSUES

The anti corruption programme encompasses a number of issues as listed as below:

### 4.1 Bribery

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

*The Business Principles for Countering Bribery*

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

The enterprise should also prohibit its employees from soliciting, arranging or accepting bribes intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances.

*The Business Principles for Countering Bribery*

#### 4.1.1 Stringent ban

The Anti Corruption Act 2009 of Uganda widens the scope of corruption beyond bribery to include:

1. Solicitation and/or acceptance of a bribe
2. The offering of a bribe.
3. Diversion of property including money
4. Private sector corruption.

The company programme must reflect the ban, and insist that paying or receiving bribes, directly or indirectly, whether for personal gain or for the benefit of the company's business, will not be tolerated and will result in disciplinary action, reporting to police authorities, criminal legal action and/or civil legal action against the individuals involved.

#### 4.1.2 Knowing the risk

Employees, and others acting on behalf of the company, need to be made aware of the risks associated with bribery and other forms of corruption. The possible consequences for the company and the individuals should also be stated. The risk depends on a number of factors including the nature of the company's business, the job responsibilities of the individuals, etc.

A bribe may take many guises other than money. It can be paid directly or as a part of a "commission" in a contract, but it can also be disguised as a gift, a benefit, a favour or a donation. Bribes may also be paid without your knowledge by agents or third parties working on behalf of your business or company.

*The Business Principles for Countering Bribery - SME Edition*

Fundamental to countering bribery is understanding and recognising the various guises in which a bribe may come, and having in place processes for dealing with these.

*The Business Principles for Countering Bribery, SME Edition*

There is always a risk of an employee receiving a bribe for private gain. However, experience shows that companies run the greatest risk of an employee paying a bribe on behalf of the company to enhance the company's business (code named Business Acquisition Cost). Also, it is most common that such bribery is designed, suggested and demanded by the receiving party.

Businesses proactively offer bribes to gain or in anticipation of, a business advantage. Sometimes bribes are given to prevent harm

or a disadvantage rather than to gain an advantage. A case in point is a bribe given to a traffic police officer for overloading cargo on a truck in order to prevent prosecution. It is important company employees to be trained in recognising and avoiding corruption risks and corruption schemes.

#### 4.1.3 Consistent application

It is undesirable and less possible for a company to operate with different anti-corruption standards in different countries. Countries around the world are upgrading and reinforcing them with more forms of corruption illegal and increasing the penalties. Some countries have stricter rules for public officials (i.e. for gifts, hospitality and expenses) than what is common in the private sector. Under the legislation of some countries, employees of fully and partly government-owned companies are regarded by the law as being public officials.

#### 4.1.4 Types of bribes

It is important for businesses/companies to have an understanding of the kinds of bribe demands they are likely to encounter and from whom they may be demanded. International companies may not be well prepared to respond adequately to demands for bribes. Requests for and expectations of hospitality, gifts and similar favours are among the most difficult areas. Many companies have a blind spot when it comes to hospitality and gifts because they may have a respectable and common appearance, especially in business circles.

Bribes may come in many forms and disguises. It is not possible to describe exhaustively in this Handbook, nor in a company programme, all possible types of bribes.

Examples of payments and activities used in bribery:

- Money gifts - cash or cash equivalent (like shares).
- Efficiency payments/costs
- Contributions in the form of work on the recipient's property or materials delivered to one's house.
- Hefty contributions for weddings, funerals etc
- Gifts with conditions attached.
- Free use of another company's apartment or car.
- Return commissions (kickbacks).
- Promise of additional business.
- Gifts that can have an influence on a situation where you are about to make an offer or enter into negotiations.
- Expensive travel, accommodation and events with very little/no professional content.
- Expenses covered for you and/or a family member by someone other than your employer.
- Hospitality, entertainment or events provided in order to influence a negotiation or a purchase.
- Sexual favours.
- A cash payment without statements and documentation.
- The covering of expenses other than normal accommodation costs via the hotel bill.
- Payment of personal expenses, like travel expenses.
- Loans from suppliers, properly supported by loan agreements, but never repaid.

#### 4.2 Facilitation Payments

Facilitation payments are small payments made by companies or businesspersons to

“get things done”. In time these turn out to be harmful as they are funnelled up through the system and help nurture and sustain corrupt governments or bureaucracies.

Recognising that facilitation payments are bribes, the enterprise should work to identify and eliminate them.

Facilitation payments: Also called “facilitating”, “speed” or “grease” payments, these are small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

*The Business Principles for Countering Bribery*

### Not different from “real” bribes

Facilitation payments are just another form of bribery and, as such, are illegal in nearly all countries. They may be small amounts demanded by providers of services to secure or “facilitate” services to which you are entitled, such as connecting a telephone or obtaining a visa, or they may be amounts that are offered to customs, immigration and other officials to “speed up” the granting of services and permits. They are unfortunately so common in many countries that they are seen as “normal” or “unavoidable”, but as they are illegal, they should and can be avoided.

*The Business Principles for Countering Bribery - SME Edition*

Traditionally a bribe has been regarded as being a payment made to someone to act in a way in which he or she should not (for example, by awarding a contract to the active briber, or releasing him or her from a legal obligation). On the other hand, a facilitation payment has been regarded as being a payment made to a person to do something which he should

already be doing (for example, issuing a visa or clearing goods through customs) or for undertaking such tasks more quickly.

Facilitation payments are one form of bribery. In the Anti Corruption Act 2009, no distinction is made between bribes and facilitation payments.

Transparency International – its Board of Directors, its National Chapters, its Individual Members, its Advisory Council and its representatives to other organisations, reiterate its opposition to the use of “facilitation payments”. TI is opposed to such payments and calls on companies to cease making such payments immediately. The organisation encourages all of its chapters to join the campaign for revisions in international agreements, treaties and conventions that permit “facilitation payments”. It will also advocate, where appropriate, for revisions of national and international laws.

*Extract from “Resolution on facilitation payments”, adopted by the Transparency International Annual Membership Meeting, 28 October 2007*

Facilitation payments have come under intense scrutiny in recent years, in international business circles. Facilitation payments in many countries are usually small sums that are usually paid to lower rank public officials with low salaries.

Resorting to facilitation payments supports a practise which is more expensive for local business and individuals who also are exposed to it, and it therefore underpins poverty.

From a business point of view, facilitation payments can create more problems than they solve. In theory they buy time, but in practice they can actually cause delays by giving officials an incentive to create obstacles so they can be paid off for removing them. Facilitation

payments can therefore actually slow down service, impeding both efficiency and the overall legitimacy of public institutions. Also, it remains a fact that facilitation payments encourage more and larger demands at the next opportunity, and a lenient practice towards facilitation payments therefore results in an aggravation of the problem.

#### 4.2.1 Emerging good practice

There appears to be a growing and general distaste for facilitation payments. A good practice for dealing with small corruption incidents tends to set a company's standards for the handling of larger cases. Good practice is to never condone facilitation payments, and always try to avoid and eliminate them. Demand for facilitation payments/bribes by a public official becomes extortion and must be reported at once to police or Inspectorate of Government.

Legally, facilitation payments/bribes are outlawed in Uganda under the Anti Corruption Act, 2009.

Companies that are exposed to facilitation payments, but choose not to ban them entirely, must address how to deal with them in their anti-corruption programme by taking the following twelve steps:

1. Analyse the risk of occurrence, including the risk of extortion.
2. Assess the legality and the risk of legal prosecution.
3. Plan how to eliminate them.
4. Decide how demands should be reported to the police or other authorities.
5. Make any payments in full transparency.
6. Ask for receipts for all sorts of payments.
7. Keep correct books and records of any payments.

8. Never disguise facilitation payments as something else.
9. Report internally.
10. Process and analyse incidents internally.
11. Make plans for avoiding situations with risk of payment demands.
12. Design responses for handling future demands.

#### 4.3 Political Contributions

Political contributions include any contribution, made in cash or in kind, to support a political cause. Contributions in kind can include gifts of property or services, campaign finance, advertising or promotional activities endorsing a political party, the purchase of tickets to fundraising events and contributions to research organisations with close associations with a political party. The release of employees to undertake political campaigning or to stand for office could also be included in the definition.

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

The enterprise should publicly disclose all its political contributions.

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Cases of political contributions could be direct support to a national or local level, to a governing party or a party in opposition, to candidates or persons holding office, or it may be indirect support made through organisations or associations which financially support political parties and/or politicians.

A political contribution is not the same as bribery, but is clearly a risk area. A contribution made, or perceived to be made, for the purpose of influencing a future decision in favour of a company or an individual is regarded as bribery. A contribution should not be made if a connection to the company obtaining licences, concessions, permits or contracts from the government is suspected.

Many companies impose an outright ban on any contributions to political parties.

For political contributions, charitable contributions and sponsorship, the company programme should

require that:

- Decisions are approved at a high management level.
- Decisions are documented.
- Payments are made to organisations, not to individuals.
- The arrangements are covered by written agreements and receipts.
- Adequate efforts are made to ensure that there are no personal conflicts of interest on the part of the payer or the receiver, and that payments are not used for private gain.
- The employees are informed about political contributions, charitable contributions and sponsorships.
- The company communicates its political contributions, charitable contributions and sponsorships externally on its website and/or in its annual report.

#### 4.4 Charitable Contributions

A charitable contribution may be a gift to a charitable or philanthropic organisation, or a

social investment in a community where the company has or is developing business.

Charitable contributions are payments made for the benefit of society, for charitable, educational, social welfare and similar causes – the payments are made without demand or expectation of a business return.

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A charitable contribution is not the same as bribery, but is a risk area. A contribution made, or perceived to be made, for the purpose of influencing a decision in favour of a company may be regarded as bribery.

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

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

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Be careful who the charity officials are. If anyone is related to someone to whom you are currently marketing, then it would be wiser not to make the donation.

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To the extent that payments are made to bona fide charities, this raises few problems. The concern is that in some cases charities are in reality fronts for decision-makers in government or business or individuals connected to them. Also, the representative of the charitable organisation may hold other positions (i.e. public office or business partner) that have other relationships with the company and its business.

## 4.5 Sponsorship

Sponsorship is a transaction where the enterprise makes a payment, in cash or in kind, to associate its name with an activity or organisation and receives in consideration for the sponsorship fee, rights and benefits such as the use of the sponsored organisation's name, advertising credits in the media, events and publications, the use of facilities and opportunities to promote its name, products and services. It is a business transaction and part of promotion and advertising.

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Sponsorship is not the same as bribery, but is a risk area. Corruption may be connected with a sponsorship if there are conflicts of interest on the part of the payer or the receiver. It is even more risky if the conflict of interest is not publicly declared.

There may be return favours from sponsorships. If these are granted to one or a few selected individuals and without transparency, they may be considered as improper advantages. Return favours such as event tickets for business relations are not usually a problem if there is openness about them, if the values are small and if tax regulations are respected.

## 4.6 Gifts, Hospitality and Expenses

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

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Companies use a variety of terms and concepts to provide guidance to employees about those instances where gifts, hospitality and expense

coverage are not allowed, for example, if they:

1. are excessive in value
2. exceed normal business customs
3. are an inducement to create or maintain business
4. violate the law
5. are offered without transparency
6. are recorded in the accounts as something else
7. have an appearance of impropriety
8. are damaging to the reputation of the company

Some companies have zero tolerance policy for gifts, hospitality and expense coverage. Other companies have value limits, while others do not specify limits but have descriptive requirements for what is acceptable and unacceptable.

The path from a Christmas gift to an outright bribe might become a "slippery slope". At the top end of the slippery slope, and at stages along it, are gifts and corporate hospitality, with escalating values and frequencies.

Companies are advised to establish detailed rules and guidelines for gifts, hospitality and expense coverage. If value limits are used, this should be done with care, as fixed values may be considered to be proper or improper depending on the circumstances.

Public officials are governed by stricter rules relating to gifts, hospitality and expense coverage than private enterprises both in legislation and internal rules. Gifts above a certain monetary value must be declared.

Gifts, hospitality and expense coverage may be taxable for the receiver and may need to be reported to the tax authorities by the giver.

### 4.6.1 Gifts

Gifts are money, goods, services or loans given ostensibly as a mark of friendship or appreciation. They are professedly given without expectation of consideration or value in return. Gifts may be used to express a common purpose and the hope of future business success and prosperity. Gifts have no role in the business process other than marking and enhancing relations or promoting the giver's enterprise by incorporating a logo or message on a promotional item such as a calendar.

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Think about the value, appropriateness and frequency of the gifts. At what point does a gift start to create an obligation and influence judgement?

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Whereas the trend in Western Europe is that gifts are playing a decreasing role in a business context, in Uganda gifts are still considered important in others and are also embedded in the country's culture to the extent that it is considered rude to refuse a gift. The challenge however, is the strings that the giver attaches to the gifts.

The line between acceptable business practice and bribery is fuzzy. Indeed, it is difficult to be conclusive on a general basis about which instances of offering/receiving a gift are illegal, unethical or acceptable. However, the following thumb rules may help:

1. Gifts should be modest in terms of value and frequency, and the circumstances should be appropriate. The safest practice is to use gifts of little commercial value, such as the company's promotional articles.

2. Gifts should be offered and received in a transparent manner and should never place the recipient under any obligation. Gifts should not be used to gain a business advantage, nor be perceived to do so.
3. The same principles and practices should apply to both giving and receiving gifts.
4. The same principles should apply to management and other employees. If differences are necessary and acceptable, then the rules should be transparent. Non-transparent practices may undermine the rules and the entire anti-corruption programme.
5. The same gift policy should apply in all countries and markets.
6. Gifts should never be offered or received in situations of contract bidding, evaluation or awards. Gifts after contract award should also be considered with care, as they can be seen as deferred kickbacks, or connected with approval of change-orders or new contracts.
7. Gifts of value given to a business associate should be properly recorded in the books and records, and should not be hidden in the accounts as something else.

Also remember:

1. Gifts of value received in a business context are the property of the company. The receiver acts in the capacity of being a representative of the company and not as a private person. Gifts of value should be reported to the superior. The company should decide how to deal with the gift.
2. If it is inappropriate to refuse the gift, it may be returned later to the giver with an explanation, or given to charity with the giver being informed.

3. Giving gifts of value to persons who are bound by strict rules on this subject, or receiving gifts which are outside the limits of your own company's policy, will lead to awkward situations. It would therefore be useful to exchange information about gift policies with business associates up-front.

Finally:

If gifts are acceptable, it makes it easier for employees to deal with the issue if value limits are specified, but such limits often disregard other important circumstances such as frequency and context (i.e. contract bidding and awards). The company anti-corruption programme should describe the value, circumstances and kind of gifts that are acceptable, and should specify the approval process if limits are exceeded, and in cases of doubt.

#### 4.6.2 Hospitality

Hospitality includes entertaining, meals, receptions, tickets to entertainment, social or sports events, participation in sporting events, such activities being given or received to initiate or develop relationships between business people. The distinction between hospitality and gifts can blur, especially where the giver of the hospitality does not attend and act as a host.

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Corporate hospitality (or entertainment) can have different purposes and interpretations. There is a thin line between marketing skills and corporate hospitality. A day at the golf course can be a valuable opportunity to cement a working relationship. However, bribery can simply be dressed up as corporate hospitality, to satisfy the letter, but not the spirit of ethical guidelines.

Within reasonable expenditure, corporate hospitality is acceptable as a means of:

1. Imparting information to a client about the host company.
2. Cementing existing relationships.
3. Providing an opportunity for new relationships to be formed.

Corporate hospitality is unacceptable where the aim is for the receiver of the hospitality to decide to favour the host company in return for an enjoyable occasion.

Corporate hospitality is seldom black or white. However, the following factors and advice may be useful:

1. Business context – lunching or dining a prospective client is unlikely to raise eyebrows unless it is frequent or lavish. However, any hospitality provided/accepted with a business associate must be connected to the business between the parties and should be associated with a real business agenda, i.e. not an agenda created to justify the hospitality. The business agenda should be the main purpose and content.
2. Presence of partners/spouses – once spouses are invited, the argument that the event is purely business-related is less convincing. Inevitably suspicion arises that the event is more of a gift and an improper advantage.
3. Presence of hosts – hospitality with absent hosts is to be considered as a gift, and possibly an improper advantage. Free use of the donor's mansion, villa or ski chalet is one example.
4. Proximity to a relevant commercial event – there is a difference between corporate hospitality which purely aims to enhance an ongoing business relationship, and one which is larger in scale and specifically related to an imminent commercial event such as the award of a contract.

5. Other than for “work-session meals”, hospitality should not be provided or received in situations of contract bidding, evaluation or awards. Hospitality after contract awards should also be considered with care, as it can be seen as a deferred kickback or connected with approval of change-orders or new contracts.
6. Hospitality provided to a business associate should be properly recorded in the books and records, and should not be hidden in the accounts as something else.

### Furthermore:

1. Hospitality should be offered and received in a transparent manner, should not place the other party under any obligations, and should not be undertaken if it may be perceived to be used to gain a business advantage.
2. Hospitality should be modest. Expensive hospitality may create a perception of a need for a return favour. The provision of free accommodation, weekend hospitality, use of company cars, benefits conferred on the recipient's spouse/partner are usually not acceptable.
3. Modest hospitality with representatives of several companies participating reduces the risk of the event being perceived as improper.
4. If different principles and practices for management and other employees are necessary and acceptable, then the rules should be transparent. Non-transparent practices may undermine the rules and the entire anti-corruption programme.

Finally:

Having value limits makes it easier for employees to deal with the issue, but such limits often disregard other important circumstances such as frequency and context (i.e. contract

bidding and awards). The company anti-corruption programme should describe the value, circumstances and kind of hospitality that are acceptable and unacceptable, and should specify the approval process if limits are exceeded, and in cases of doubt.

### Expenses

Expenses are the provision or reimbursement by an enterprise of travel and other related expenses incurred by a prospective client, customer or business partner, such reimbursement not being part of a contractual agreement. Typically, these are costs of activities such as travel to view a manufacturing plant or a benchmark installation.

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Typical recipients of expense coverage are customers, central and local government employees, politicians, journalists, trade union representatives, investors and finance market analysts.

Some companies do not accept expenses for their own employees being paid by others, nor do they provide expense payments for employees of other companies or government representatives.

Good practice on expense reimbursement is to require each company or organisation to cover the expenses of their own employees and representatives. If the company allows expenses for others than its own employees, or expense coverage by others for its own employees, the following advice may be helpful:

1. Any expense coverage for employees or representatives of a business associate should be specified in the contract with the business associate or in a separate written agreement.

2. Any such expense reimbursement should be approved by the superior of those receiving the reimbursement.
3. Reimbursed expenses should be modest, based on receipts, be relevant, be transparent and properly documented in the books and records.

**Furthermore:**

1. Any expense coverage provided or accepted must be connected to the business between the parties and should be associated with a real business agenda. The business agenda should be the main purpose and content.
2. Presence of partners/spouses – once spouses are included, the argument that the costs are purely businessrelated is less convincing. Inevitably suspicion arises that the expense coverage is more of a gift and possibly an improper advantage.
3. Proximity to a relevant commercial event – there is a difference between expense coverage which purely aims to enhance an ongoing business relationship, and one which is larger in scale and specifically related to an imminent commercial event such as the award of a contract.
4. Any expense coverage should be modest. It should not create a perception of a need for a return favour.
5. Expense coverage should not be provided or received in situations of contract bidding, evaluation or awards. Expense coverage after contract awards should also be considered with care, as it can be seen as a deferred kickback or connected with approval of change-orders or new contracts.

**Finally:**

Having value limits makes it easier for employees to deal with the issue, but such limits

often disregard other important circumstances such as frequency and context (i.e. contract bidding and awards). The company anti-corruption programme should describe the value, circumstances and kind of expenses (class of travel, level of accommodation costs, number of persons, duration, etc.) that are acceptable for any expense coverage, and should also specify the approval process.

**4.7 Conflicts of Interest**

A conflict of interest is when a personal interest or relationship is put before the business interest. Conflicts of interest can bend judgement and lead to actions which are not honest and open. These can sometimes lead to a situation where individuals act against their better judgement and give or accept a benefit which may damage your business. The way to deal with this is to have rules on how to manage situations where a conflict might happen. Even without malpractice, conflicts of interest may be seen as corrupt activities. This can be just as damaging as actual malpractice.

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Most cases of corruption involve individuals yielding to temptation and taking undue advantage of a conflict that already exists between professional and private interests.

Conflicts of interest exist when an employee takes part in company activities and decisions that may benefit his/her own or his/her family members' or friends' private interests outside the company. The most common conflict of interest situations occur in connection with purchasing, contracting, sales, business development and recruitment. Benefits obtained through conflicts of interest are improper and may be in breach of corruption provisions in the Norwegian Penal Code and other laws. The programme for countering

corruption should address whatever constitutes conflicts of interest and how to handle potential and actual conflict of interest situations.

Key elements should be:

1. Dealing with potential situations up-front
2. Transparency
3. Decisions to be taken by others than the person involved
4. Exit from the affected activities within the company
5. Exit from the conflicting outside interests
6. Documentation of the handling of cases

#### **4.8 Tax Havens**

Tax havens, or offshore financial centres, are jurisdictions that offer low tax or no tax, and often also privacy and non-transparency about the ownership of companies, and may therefore be an important attraction for customers.

In several instances the use of tax havens is legitimate, and in some business areas, the president of Uganda has used tax havens, free land giveaways and cash bail outs

among others to attract and sustain investors. However, these acts are construed as a form of patronage from the person of the president which raised questions about the cost and sustainability of business surviving on human life of the president. Can such businesses be guaranteed survival? Tax havens are also used for transactions and safe deposits by corrupt individuals and regimes.

Suspicious contractual arrangements and financial transaction channelled through tax havens upon request from a business associate should trigger a "red flag" and should be carefully considered before deciding on a contractual commitment.

"Facilitators of corruption" should trigger another "red flag". These may be professional intermediaries from many fields, such as bankers, lawyers and auditors who assist by establishing shell companies and bank accounts in offshore jurisdictions and thereby enable transactions that may be illegal. The use of legitimate intermediaries may assist in concealing illegal transactions by creating an impression of trust.

## 5. SCOPE OF THE PROGRAMME: BUSINESS RELATIONS

### 5.1 Why be Concerned about Business Relations?

A company may be held liable for complicity in the corrupt activities of other parties with whom they have business relations.

Many small and medium-sized companies in particular, do not require commitments regarding ethical conduct from their business associates. This may reflect a lack of awareness of the issue, the perception that corruption is not a material risk for their business or a reluctance to discuss the issue with business associates.

Larger companies like Unilever, Coca Cola or MTN, may have provisions that prohibit the use of agents, suppliers and business partners to carry out activities that the company is itself prohibited to engage in. They also bind subsidiary companies and entities in which they have effective control to comply with the same principles as their own, and some companies also encourage minority-owned entities to adopt and comply with similar principles.

First of all make sure that those with whom your company has a business relationship are informed of your antibribery programme. Ask if they have an anti-corruption programme in place and get a copy. Business partners should understand that your anti-bribery programme also applies to them when doing business with you and on your behalf. Reflect your programme in the terms of your contracts and agreements, which should also allow for immediate termination if business partners pay or accept bribes.

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Agents, contractors and other business relations represent large risks and hence

companies should on a risk assessment basis consider conducting due diligence before engaging with them, i.e. taking all necessary precautions to ensure that they are forming a business relationship with reputable and qualified partners and representatives.

"An agent who corruptly gives or agrees to give or offers any gratification to any person as an inducement or reward for doing or omitting to do or for having done or omitted to do any act in relation to the business or affairs of his or her employer or for showing favour or disfavor to any person in relation to the business or affairs of his or her principal; commits an offence"

*Anti Corruption Act, 2009 - Section 3(d)*

### 5.2 Due Diligence

Anti-corruption due diligence (often called integrity due diligence) can be described as the investigations and evaluations that a company undertakes of business associates to reasonably ensure itself that through the business relationship, it is not becoming involved in past, present and future corrupt activities.

It is most critical to carry out due diligence investigations of unfamiliar business associates before entering into contractual relationships with them, but it can also be relevant at later stages if new information warrants this.

For many companies it is impractical to conduct due diligence on all business associates. They should have guidelines with criteria for when to do it and how to prioritise. At least they should decide on a case - to - case basis when to conduct a due diligence and how thorough it should be.

A due diligence may be carried out with the cooperation of the company subject to the due diligence investigation, or without

its knowledge. It may be performed by the company's own personnel or by a consultancy firm by undertaking information searches in open sources such as the Internet. It may also in critical and difficult cases be necessary to contract specialised consultancy firms that are able to investigate more in depth.

During the course of the due diligence, "red flags" may come up. Some of these may be:

1. A public official (or a family member) owns company shares, has other interests in the company or is the real beneficial owner.
2. Someone on the board of directors, in management or a key employee has an interest in another company that may be a competitor.
3. The company declines to disclose the identity of the owners.
4. The company declines to clarify owners', directors' or key employees' economic interests that are believed to constitute a conflict of interest.
5. The company appears on a list of those debarred from bidding on contracts.
6. Investigations uncover close associations with politicians, competitors or criminals.
7. The company has a bad reputation for other reasons than those listed above.

Initial "red flags" should not necessarily cause an end to the relationship with the business associate. Issues may be resolved to become acceptable by gathering more information or through negotiations. If all "red flags" are not completely resolved, but sufficiently to go ahead with the relationship, then there is a residual element of risk involved, and the company should have a risk mitigation plan and should monitor the relationship closely.

The most common business relationships that are appropriate for considering corruption risk and due diligence are covered in the

following sub-sections.

### 5.3 Subsidiaries, Minority Ownerships, Joint Ventures and Consortia

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

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The enterprise should conduct due diligence before entering into a joint venture or consortium. The enterprise should ensure that joint ventures and consortia over which it maintains effective control have Programmes consistent with its own.

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

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Companies' reputations may suffer if their partners in joint ventures, consortia and jointly-owned companies are known for lapses of integrity and business ethics. A company should engage in a due diligence investigation before entering such relationships.

A business relationship with a corrupt partner may damage the company's reputation. If the partner has majority ownership, effective control and/or operating responsibility, the company may inherit a relationship with a corrupt agent and risk complicity. Anti-corruption language in shareholder agreements and joint venture and consortia agreements, rights to information, and voting

rules that allow for vetoing corrupt business arrangements are important.

For minority-owned companies and joint ventures/consortia in which the company does not have effective control, the company should use its influence to have these entities adopt programmes of acceptable standards. The company should exit such entities if their programmes or performance are found to be unacceptable and cannot be sufficiently influenced.

In partly-owned companies and joint ventures/consortia under its effective control, the company may be faced with requests for having an anti-corruption programme by minority partners that have a strong focus on anticorruption.

Due diligence should be conducted on prospective partner companies (and their owners and key personnel) if these are unfamiliar to the company. Due diligence should also be carried out on partners that are known from previous business relationships and on partners in existing contractual relationships if new information or suspicions become available and makes this necessary.

#### 5.4 Agents

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

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

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

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

The enterprise should monitor the conduct of its agents and other intermediaries and should have a right of

termination in the event that they pay bribes or act in a manner inconsistent with the enterprise's Programme.

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Agents are contracted to act on the companies' behalf to assist with sales, business development, government relations and various other tasks. In most instances, companies use agents for legitimate reasons. In some countries the law prescribes the use of local agents.

The management of agents, consultants and other commercial intermediaries is a particularly sensitive issue because of the risk of bribery occurring on the company's behalf. In fact, agents have long been seen as the group of business relations associated with a high risk of corruption. The agent represents the company, but may consider bribery to get things done quickly to earn credit from his client as being efficient. The agent may even be familiar with the company's anti-corruption programme but simply choose to ignore it.

Companies that turn a blind eye to the corrupt acts committed by an agent on their behalf or that deliberately use an agent to cover-up or "outsource" bribery may be held liable for corruption under the Anti Corruption Act, 2009. The Act prohibits bribes/facilitation payments being made through agents and other intermediaries.

Recommended actions for controlling agents are:

1. Due diligence before engaging the agent.
2. Always use a written contract.
3. Concrete contract description of the work tasks and the wanted achievements.

4. Specific and reasonable budget lines for the tasks.
5. Anti-corruption language in the contract.
6. Audit rights.
7. Contract language for termination in case of suspected corrupt behaviour.
8. Signed commitment to comply with the company's anti-corruption programme.
9. Anti-corruption training of the agent.
10. Close monitoring of the agent.

During the conduct of due diligence of an agent, a number of "red flags" may appear, including: Corruption concerns have been raised in the past concerning the agent.

1. The agent does not reside in the same country as the customer or the project.
2. The agent has little or no experience of the company's line of business or the type of work that he is to be engaged for.
3. The agent is closely related through family members or friends with decision-makers, government officials, politicians, competitors or criminals.
4. The customer suggests or requires that a bid or contract negotiations are arranged via a specific agent.
5. The compensation requested is not proportional to the work.
6. High success fee is demanded for obtaining the business objectives.
7. The agent asks for payments in advance, to be made to another person, and/or to another country, such as a tax haven.
8. The agent requires additional funds to "take care of some people", "get the business", or "make the necessary arrangements".

Further information on the scope for due diligence and "red flags" for agents and other intermediaries can be obtained from TRACE

International ([www.traceinternational.org](http://www.traceinternational.org)). TRACE is an organisation that specialises in anti-bribery due diligence reviews and compliance training for international commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.).

### 5.5 Contractors and Suppliers

Companies are being held responsible for the conduct of their contractors and suppliers, both in the eyes of the public and by law enforcement agencies.

The enterprise should conduct its procurement practices in a fair and transparent manner. Avoid dealing with contractors and suppliers known or reasonably suspected to be paying bribes. Undertake due diligence, as appropriate, in evaluating prospective contractors and suppliers to ensure that they have effective anti-bribery programmes.

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

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

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Sales of goods and services of significant value mostly happen through competitive bidding, and are covered by purchase orders or contracts. There is a risk of bribery both in the relationship between the company and the supplier and between the supplier and his sub-suppliers. Examples of innovate ways, which are created by the supplier or inspired by the responsible buyer in the customer's organisation, are:

1. The supplier gives a well-paid job to a relative of the buyer.
2. The supplier engages, without a proper business reason, a private company controlled by the buyer or by friends or relatives of the buyer, as a sub-contractor on the project when awarded.
3. The supplier undertakes work at the private home of the buyer, and issues heavily discounted invoices for this; sometimes the invoices are issued but never paid, or simply not issued.
4. The supplier invites the buyer to a company event where a raffle is held – the result is fiddled so that the buyer wins the top prize.

These examples illustrate the vital importance of robust procurement and contracting procedures and of conducting due diligence on suppliers. Some reasons for choosing to perform a due diligence will be that:

1. The supplier is unfamiliar to the company.
2. Information that gives reason for concern is available.
3. The country of operation scores low on TI's Corruption Perceptions Index (CPI). Uganda has been scoring on average 2.7 on the index
4. The home country of the supplier scores low (below 3) on TI's Corruption Perceptions Index (CPI) and Bribe Payers Index (BPI).
5. The contract has a high value.
6. Extensive use of sub-suppliers is planned.
7. The supplier needs to obtain authority permits and approvals.

As a customer in a competitive environment, a company is in a powerful position to demand that its suppliers have acceptable anti-corruption programmes and performance. Ways in which to address corruption risk with suppliers are to:

1. Use anti-corruption as a bid evaluation criterion.
2. Have contractual language and termination possibility in case of corrupt conduct.
3. Have the supplier sign on to the company's programme or a separate anti-corruption commitment.
4. Require and provide anti-corruption training.
5. Follow up the supplier through audits and inspections.
6. Have adequate internal controls in the procurement process

**Key recommendations in the procurement of goods and services from suppliers**

*Procurement procedures*

- Have robust procedures that are consistent with the law, regulations and company rules.
- Ensure compliance with procedures through information, training and internal audits.

*Transparency*

- Provide adequate degree of transparency in the entire procurement process.
- Promote fair and equitable treatment of potential suppliers.
- Ensure that the scope of work or product, invitation to tender and model contract are not designed to fit one particular bidder.

*Good management*

- Ensure that funds are used in accordance with the intended purpose.
- Ensure that procurement personnel meet high professional standards of knowledge, skills and integrity.

*Prevention of misconduct, compliance and monitoring*

- Put mechanisms in place to prevent risks to integrity in procurement.
- Carry out due diligence before entering into relationships with suppliers.
- Co-operate closely with existing suppliers to maintain high standards of integrity.
- Use competitive bidding as a rule rather than an exception, and at least as required by laws and regulations.
- Provide specific mechanisms for the monitoring of procurement and the detection and sanctioning of misconduct.

*Accountability and control*

- Establish a clear chain of responsibility with effective control mechanisms.
- Install checks and balances so that more than one person handles bidding, awards and change orders.
- Install checks and balances so that more than one person controls invoices against contracts and actual deliveries.
- Handle complaints from suppliers in a fair and timely manner.

**5.6 Customers**

A supplier may be held accountable for a customer bribing a third party if he is actively involved and benefits from it and if the goods and services, or the payment for these, are connected with the corrupt act.

Suppliers may suffer reputation damage by being closely associated with corrupt customers. A company may want to carry out due diligence on potential customers with

doubtful reputations, and may not wish to do business with such customers.

In its role as a supplier, the company may be requested by customers to provide documentation on its anticorruption programme, and may be followed up on this.

It should also be noted that Norway's anti-money laundering law has requirements for checking customers.

**5.7 Mergers and Acquisitions**

When a company plans to acquire another company or an asset, it is necessary to carry out integrity due diligence investigation of legal and financial matters concerning the acquisition object, its organisation and its owners. The purpose of a due diligence investigation is to obtain full information about the purchase object and to discover whether there are legal or financial problems that may discourage the purchase or necessitate further negotiations on the purchase price or specific conditions in the acquisition contract. It is always important in such a due diligence process to ascertain that the business to be acquired has complied with relevant laws and regulations, including applicable corruption laws, to avoid inheriting responsibility for criminal acts and associated costs.

In the case of a merger, it will be appropriate to conduct due diligence on all the companies involved to reduce risks for the owners and for the organisation of the new company going forward. Corruption cases often surface during mergers and acquisitions, and many such cases are connected with the use of agents and other intermediaries. The consequences are considerable for the companies and individuals involved.

## 6. HOW ANTICORRUPTION PROGRAMME IS IMPLEMENTED

### 6.1 Commitment from the Top

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

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

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

*The Business Principles for Countering Bribery*

Creating a culture of ethical business practices may be challenging in a country where a number of micro, small and medium enterprises use bribery and other illicit practices to win business. The best companies are the ones that have an ethos of "this is how we do things around here" instilled throughout. This type of honest and frank culture does not happen overnight. It requires both a value-based culture and a rule-based compliance culture. It also requires an effective communication strategy. And last, but not least, it requires strong ethical leadership by the top management.

By adopting an anti-bribery programme, you are also taking steps to protect your business and your people.

*The Business Principles for Countering Bribery - SME Edition*

Top managers or bosses need to demonstrate at all times – not just in the midst of a scandal or directly thereafter – that doing the right thing is both a choice and a necessity. The decision to implement an anti-corruption programme needs to come from leadership / directors of the business who share liability. Where the board exists, it should approve the outline and main content of the programme. The President/CEO should approve the entirety of the programme.

Business owner or top managers need to speak, write and act in ways that support the anti corruption programme. This will leave no doubt about the seriousness and priority of it. Visible and clear commitment from the top management is needed continuously and through out.

Bigger companies with chief ethics officers need to ensure that they have genuine influence. They should have direct access to top bosses. They should not be reporting via others, such as the legal department or the human resources department, but be recognised as performing a vital and independent senior management role. The programme should include all relevant scope elements and should preferably be implemented in one go.

However, if there are timing and resource constraints, the company may decide on a phased approach. This is better than not getting started at all. Transparency International has developed a six-step guide for preparing and implementing anti-bribery programmes. The six steps are as follows:

**Step 1:** Decide on a No-Bribes policy and on implementing an anti corruption programme

**Step 2:** Plan the implementation

**Step 3:** Develop content of the anti corruption programme

**Step 4:** Implement the anti corruption programme

**Step 5:** Monitor implementation of the programme with a view of improving it

**Step 6:** Evaluate the programme to assess its impact and receive feedback.

*Details of these can be downloaded free of charge from the website: [www.transparency.org](http://www.transparency.org).*

## 6.2 Mapping Practices and Risks

The enterprise should analyse which specific areas pose the greatest risks from bribery and design and implement its Programme accordingly.

*The Business Principles for Countering Bribery*

The enterprise should perform a regular assessment to determine the risk of bribery to its operations by reference to the countries in which it operates, its business sectors, and its business practices. This will provide the basis for development of its programme and for tracking and measuring performance and improvements.

*The Business Principles for Countering Bribery - Guidance Document*

Before developing the anti-corruption programme, or before upgrading and improving an existing one, the company should assess the practices and the corruption risks in the organisation, with its business relationships and in the countries and markets where it has business or plans to have business. The programme should then be designed to focus on the greatest risks.

A range of alternative methods may be used. The most important thing is that the company chooses the methodology which seems

most suited to its situation and in the best possible way provides guidance on what the programme needs to address and focus on.

Do a mapping of the current practices in the different parts of the organisation on such issues as facilitation payments, gifts, hospitality, expenses, extent of use of agents and control of these, etc. This can be done, for example, through interviews or by use of a questionnaire. Make sure that relationships with agents and other critical business associates are covered by written agreements. These agreements should have anti-corruption content, and whether the terms and conditions give cause for concern.

Furthermore, assessments should be carried out to see which parts of the organisation are most exposed to corruption risks and in which forms. These could, for example, be the procurement department, the business development department and subsidiaries abroad.

TI's anti-corruption research publications may be consulted for evaluation of corruption risks in the countries and business segments in which the company is doing business. These can be downloaded from [www.transparency.org](http://www.transparency.org):

- The Corruption Perceptions Index (CPI)
- The Bribe Payers Index (BPI)
- The Global Corruption Barometer (GCB)
- The Global Corruption Report (2009 edition focus on private sector)
- National Integrity Surveys (NIS)

The risks related to the anti-corruption legislation in the various countries of operation should also be assessed. Corruption risk analyses help a company to avoid certain markets or partners altogether because the possibilities of becoming involved in corruption are judged to be too high. At other times such risk analyses help the company to secure business ethically

precisely because it is equipped to know the key risks and how to handle them, even when operating in a challenging environment where culture and business practices are unfamiliar.

### 6.3 Organisational Involvement

The enterprise should develop the programme in consultation with employees, trade unions and other representative bodies.

*The Business Principles for Countering Bribery*

Depending upon the size of your business, you could appoint one person or a group of people to administer the anti-bribery programme.

*The Business Principles for Countering Bribery - SME Edition*

Even if the rules, guidelines and other parts of the programme are developed with outside help, it is essential that the company's own organisation is deeply involved to ensure the necessary depth of ownership and commitment.

It is important that the officer or staff unit appointed to administer the programme is independent of the business line organisation and must report to the President/CEO. This unit should be responsible for preparing the programme and launching it, and it could also have a role in following it up.

It is recommended that programme preparation and implementation is run as a project, with respect to how the work is organised, budgets, action plans and progress follow-up.

The plans for the programme and its intended content should be presented to the various organisational units in the company and to the trade unions at the work places. Comments and suggestions should be invited.

Information about programme development should be communicated through the

company's internal website or printed bulletins. Special emphasis should be placed on cooperation with organisational units that are believed to have valuable input to the programme, such as the legal, internal audit, and procurement departments. A review should be made of any relevant cases recorded through whistle-blowing.

It could also be useful to meet companies that have implemented anti-corruption programmes, to draw on their experiences. Cooperation with institutions like Private Sector Foundation of Uganda; Institute of Corporate Governance of Uganda; Enterprise Uganda, trade unions, and civil society organisations, such as Transparency International Uganda and its network of national chapters, is encouraged. In many parts of the world, business is partnering with civil society to prevent corrupt practices, strengthen public institutions and foster an anticorruption culture in society.

### 6.4 Written Policies and Standards

Written policies and standards constitute the core of the company's programme for countering corruption. They should cover all necessary corruption issues (ref. Chapter 5) and all types of business relationships (ref. Chapter 6) that are relevant for the company, based on the results of the mapping of risks and practices.

These written policies and standards should contain distinctions of what are acceptable and unacceptable practices. It should state clear requirements for handling issues, and they could also contain guidelines and advice. The content should be sufficiently detailed, concrete and without ambiguities so that it is practical and easy to use by employees and others who are required to comply with them. Distinction between mandatory rules and work procedures versus recommendations and advice should be made as clear as possible.

It should be clear who has the authority to approve any deviations from the policies and standards (if not in breach of the law) and who should decide in cases of doubt. Furthermore, there should be a system for documenting and filing such cases.

## 6.5 Training Programmes

Directors, managers, employees and agents should receive appropriate training on the Programme. Where appropriate, contractors and suppliers should receive training on the Programme.

*The Business Principles for Countering Bribery*

At the launch of the anti-corruption programme, a substantial information and training effort is required. This should include the entire organisation. It should be dimensioned and focused differently for various units depending on challenges and risks based on an evaluation of which organisational units and positions are most exposed and how.

The training should cover all elements in the programme. It should include discussions of cases and dilemmas. Use of concrete examples experienced by the organisation and dilemmas which are relevant for the business is most effective. The training may be achieved through meetings, workshops and team-building events, and may be in the form of a web-based training programme, or a combination. Dilemma training through group work or plenary discussions contributes to building a good company culture. It creates engagement, common understanding and calibration of the ethical standards in the organisation.

Managers and organisation units most exposed to corruption risk should receive thorough training. Seminars and case workshops with both internal and external speakers and facilitators may be used for

this purpose. Personnel in high risk positions should be given "in-person" training and should be tested or examined after training completion.

Records should be kept to keep track of who has received the training. Follow-up training should be tailored to cater for organisation changes, new employees, new countries of business and new products and services. Anti-corruption training should not be treated as a "one-off" event; it needs to be a continuous effort. It is recommended that anti-corruption training is repeated every two years. Based on an evaluation of criticality, training should also be provided to agents, consultants, contractors and suppliers.

## 6.6 Internal Controls and Auditing

It's no good having a programme unless it is supported by controls and records. These are the checks and balances which will support your programme and show that it is working.

*The Business Principles for Countering Bribery - SME Edition*

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

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

*The Business Principles for Countering Bribery*

A robust financial control system is fundamental for being able to prevent and detect corruption.

Necessary elements are:

- Detailed and accurate accounting practices
- Traceable payments
- No off-the-books accounts
- Monitoring of contract terms
- Good documentation and filing practices

Auditing of programme implementation and performance need to be included in the audit plans of the internal audit function. Organisation units and themes to be audited should be determined based on a risk evaluation.

The company should have a system for internal reporting of the programme implementation process and performance. A periodical self-assessment reporting system may be used.

## 6.7 Whistle-blowing Mechanisms

To be effective, the programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the enterprise should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations ("whistle-blowing") in confidence and without risk of reprisal.

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

*The Business Principles for Countering Bribery.*

Anti-corruption programmes may be of limited value if employees, clients and members of the public do not know where to turn if there is a concern. Over the last few years there has been an increase in the number of companies that have introduced whistle-blowing mechanisms that employees can use for that purpose.

The Whistleblowers' Protection Act 2010 provides for procedures by which individuals in the public and private sector may in public interest disclose information that relate to irregular, illegal or corrupt practises. In the case of anti corruption programme, whistle-blowing is a bottom-up mechanism that supplements the top-down commitment to counter corporate corruption.

According to Whistleblowers' Protection Act 2010 section 6 (1-3) provides that a disclosure of impropriety can be made orally or in writing. The disclosure must contain among others: full name, address and occupation of the whistleblower, nature on impropriety and time and place where it is alleged to have taken place. Company management must offer adequate protection to those who wish to come forward to report deviations from ethical and legal corporate standards. This can be done, for example, via confidential telephone services or intranet and internet sites through which employees and business partners can address concerns or pass information.

To make such services effective, genuine concerns must be listened to and acted upon in a timely manner by responsible key personnel. The legitimate use of whistle-blowing mechanisms must not provoke retaliation in the form of stalled promotions or cancelled bonus payments.

It is recommended that companies have the whistle-blowing channel available not only for employees, but also accessible for business associates and for the general public.

A company having a channel for questions and concerns may have to revitalise and adjust it in connection with launching the programme for countering corruption. If the company does not have such a channel, it needs to establish one as a part of its programme.

It is important that:

1. The channel is managed by an independent staff unit, which reports to the President/CEO.
2. There is opportunity to report anonymously.
3. The cases are handled confidentially with adequate protection and fair handling of the person reporting and the person reported on.
4. The cases are investigated and brought to conclusion, including debriefing of the individuals involved.
5. There is a system in place for proper documentation and filing of the concerns raised, the processing and the conclusions.

### **Encourage and protect**

The most important concern is that management and the Board of Directors ensure that whistle-blowers are protected and encouraged. When an employee observes misconduct, then she or he should be encouraged to report it. As a matter of fact, companies are legally bound to enable and encourage employees to use their right to notify.

### **In foreign bribery cases**

It can be difficult to gain information about foreign bribery cases. In many parts of the world, businesses are becoming more proactive in asking their respective home and host governments to assist their efforts to create anti-corruption mechanisms to root out systemic corruption.

## **6.8 Investigating Incidents**

A corruption case may come to the surface in many ways, such as through:

*Reactive:*

1. Government investigation
2. Government subpoena
3. The press

4. A competitor
5. A supplier
6. A customer
7. Management self-reporting
8. Whistle-blower
9. ix. Disgruntled employee

*Proactive:*

1. Self-assessment and certification
2. Compliance reviews
3. Due diligence
4. Internal and external audits
5. During evaluation and upgrading of the anti-corruption programme

*An investigation will often include the following elements:*

1. Interviews with employees and third parties
2. Review of contracts and payments
3. Review of bids and evaluations
4. Prioritised review of accounts
5. Analysis of financial data
6. Review of e-mails and hard-copy files

When a concern is raised through the whistle-blowing channel, it is the organisation unit that manages the channel that in the first instance is responsible for deciding how to deal with it.

If the case needs to be investigated, the organisation unit that is responsible for the channel may carry this out, a special team may be established for the purpose, or the task may be outsourced, for example to a law firm.

It is important that the person who reported the matter and the persons investigated are given the necessary confidentiality and legal advice.

Communication with the President/CEO and the Board of Directors is essential. If an illegal act is suspected, the case must be reported to the police.

## 6.9 Accountability and Consequences

Everyone in your business or all your employees should understand that they each have a responsibility to make sure that the Anti-corruption Programme is followed and works.

*The Business Principles for Countering Bribery - SME Edition*

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

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

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

*The Business Principles for Countering Bribery*

Even though an independent staff unit is given the task of preparing, launching and administering the programme, it should be made clear that it is the responsibility of the entire organisation and every employee to implement the programme and to comply with it. The programme must therefore be mainstreamed and internalised throughout the organisation.

The programme is most likely to be successful if the anti-corruption measures are intimately blended into the normal course of the

business, i.e. into the annual business plans and budgets, project approval criteria, investment decisions, project execution plans, procurement procedures, human resources policies and procedures, reporting, etc.

Different methods may be used to strengthen implementation, such as written confirmation by managers that the programme material has been received together with a commitment to implement, annual self-evaluation on the status of implementation, and annual assurance letters or certificates where managers sign a statement about compliance with the programme.

Communication by management and human resource policies should make it clear that the use of bribery for private gain or to obtain business goals is unacceptable and will result in disciplinary actions. Breaches of the programme's mandatory requirements should lead to sanctions such as a warning or reprimand in writing, demotion and a transfer to a different position or dismissal, depending on the seriousness of the violation.

Furthermore, the company is responsible for reporting incidents which could be illegal to the police.

Companies should consider carrying out integrity background checks on applicants for critical and exposed job positions. Anti-corruption wording may be used in employment contracts or compliance with the company's code and policies can be a specific obligation in the contract. Performance in programme implementation and compliance should be included in appraisal dialogues between managers and employees, and in the evaluation of employees for salary raises and promotion. Bonus incentive schemes for programme implementation and good performance may be used.

## 6.10 Information and Communication

It is no good having business principles and a programme if no-one knows about them.

*The Business Principles for Countering Bribery - SME Edition*

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

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

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

*The Business Principles for Countering Bribery*

Simply communicating the programme and the company rules prohibiting corrupt activity can have a very direct preventive effect – quite a few offences are due to a sheer lack of awareness or ignorance.

### Internal communication

During preparation of the programme, during its launch and subsequently, information about programme plans, content and requirements should be communicated regularly to all employees.

One organisational unit should be responsible for receiving and processing comments to and suggestions for the programme, both from internal and external sources, and provide information and advice upon request.

The President/CEO should report regularly on the operational effectiveness of the programme to the Board.

Internal communication measures in the organisation include:

- Websites – intranet
- Training of employees
- Management training events
- Workshops
- Team-building events
- Management team meetings
- Ethical helpline
- E-mails to employees
- Information from legal counsel, compliance officer, ethical officer

### External communication

Unfortunately, many companies do not have policies or programmes dealing explicitly with corruption, and many that do are disinclined to publish them. This could reflect a lack of awareness of the issue, reluctance to discuss the issue publicly, the misconception that it increases risks, concern about the downside in case of an incident, or the perception that corruption is not a material risk for their business.

However, the written parts of the programme, particularly the policies, requirements, procedures and guidelines, should be available on the company's public websites and should actively be made available to all business partners and also to government institutions that the company has relationships with.

### Annual reporting

Companies are recommended to use the Global Reporting Initiative (GRI) standard for annual reporting. GRI is a widely accepted standard for reporting social and ethical issues, including aspects related to corruption.

Their reporting framework is developed through a consensus-seeking, multi-stakeholder process.

The company should report on the preparation, implementation progress, content and performance of the anti-corruption programme in its annual report and/or sustainability/Corporate Social Responsibility report/website.

Companies are recommended to be transparent about payments made to governments in the form of taxes and other dues, and to report such payments on a country-by-country basis in their annual reports and on their public websites.

### Reporting on practices

Companies should also report good and bad practices and any incidents experienced. Reports on company performance against anti-corruption commitments are highly desirable.

Companies may feel reluctant, still, to report corrupt business practice and see little “upside” in reporting corruption. It is a matter of time before companies do this out of necessity. Today companies are at ease with reporting on these matters. With the increased availability of standards and guidance that facilitates anticorruption reporting, it will become easier and more common for companies to undertake such reporting.

Companies should consider reporting key information from their whistle-blowing channel, such as:

- Number of cases reported
- Number of cases investigated
- Number of unsubstantiated cases
- Number of cases resulting in sanctions

## 6.11 Programme Review and Adjustment

Senior management of the enterprise should monitor the Programme and periodically review the Programme’s suitability, adequacy and effectiveness and implement improvements as appropriate.

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

The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the annual report to the shareholders.

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

*The Business Principles for Countering Bribery*

The organisational unit responsible for the launch and follow-up of the programme should periodically produce reports that describe experiences with the programme. There should also be a system for collecting incidents, dilemmas and suggestions for further development of the programme.

In order to obtain a thorough insight into the quality of the programme and how it is functioning in the organisation, the company should at regular intervals establish a team that carries out an internal review. The TI Self-Evaluation Tool (SET) is recommended for this purpose. It can be downloaded free of charge from [www.transparency.org](http://www.transparency.org).

In addition, it is recommended that the company at intervals contracts a consultancy

firm to carry out an external review of the programme and how it works.

The results and recommendations from all sources of information on programme performance and effectiveness should be reported to the President/CEO and the Board of Directors.

The information gathered should be used to adjust and improve the programme.

## 7. UGANDAN LAWS AND INTERNATIONAL LAWS

### 7.1 Ugandan Anti- corruption Law Enforcement

The major anti-corruption laws in Uganda now in line with UN and AU Conventions against corruption which Uganda ratified. Uganda boasts of a comprehensive legal and institutional framework to fight corruption. Some of the laws include:

1. Anti Corruption Act 2009
2. Penal Code Act;
3. Inspectorate of Government Act 2002
4. Leadership Code Act 2002
5. Access to Information Act 2003
6. Public Procurement and Disposal of Public Assets Act 2003
7. Whistleblowers Act 2010
8. The Audit Act 2009
9. The Public Finance and Accountability Act
10. The Budget Act
11. The Electronic Transactions Act 2010
12. The Regulation of Interception of Communications Act 2010.
13. The Computer misuse Act.

There are other laws that government is in the process of enacting to augment the existing legal framework. These include:

- The Qui Tam Bill
- The Anti-money laundering Bill
- The Witness Protection Bill

### 7.2 Anti Corruption Act 2009

Anti Corruption Act 2009 broadens the definition of corruption and provides for all Acts including solicitation or acceptance, offering or granting of a bribe, fraudulent acquisition of property, corruption between

principal and agent. It also criminalizes private sector corruption. New offences like illicit enrichment, diversion of public funds, influence peddling, conflict of interest, sectarianism are created in line with provisions of UN and AU Conventions.

According to the Act, a person commits the offence of corruption if he or she does any of the following acts -

1. the solicitation or acceptance, directly or indirectly, by a public official, on any goods of monetary value, or benefits such as a gift, favour, promise, advantage, or other form of gratification for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.
2. the offering or granting, directly or indirectly, to a public official, of any goods of monetary value, or other benefit, such as gift, favour, promise or advantage of any other form of gratification for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions
3. the diversion or use by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, which that official has received by virtue of his or her position for purposes of administration, custody or for other reasons
4. the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for

himself or herself or for any other person, for him or her to act, or refrain from acting, in breach of his or her duties

5. the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration of the undue advantage, whether the undue advantage is for himself or herself or for any other person, as well as the request, receipt or the acceptance of the offer or the promise of the advantage, in consideration of that influence, whether or not the supposed influence leads to the intended result.
6. the fraudulent acquisition, use or concealment of property derived from any of the acts referred to in this section
7. the participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this section;
8. any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself for a third party; or
9. Neglect of duty.

### **7.3 The Whistleblower's Protection Act 2010**

This is a new legislation providing for procedures by which individuals in the public and private sector may in public interest disclose information that relate to irregular, illegal or corrupt practises. It provides for protection against victimization of persons who

make disclosures. To qualify for protection, the disclosures must be of impropriety (corruption, criminal and other unlawful acts, maladministration and miscarriage of justice). Additionally, the disclosures must be made in good faith. Whistleblowers are therefore protected against victimization and court action and the state is obligated to provide them with protection.

### **7.4 Public Procurement and Disposal of Public Assets Act 2003**

This is the legislation that governs the acquisition of goods, services and works from third parties (private sector). The law sets out in sections 44 -55 principles in accordance with which all procurement and disposals must be conducted. They include, inter alia, non-discrimination, transparency, accountability and fairness, competition, confidentiality, economy, efficiency and general value for money, ethics and public accessibility.

The law also creates the Public Procurement and Disposal of Public Assets Authority with the responsibilities of ensuring the above principles, harmonizing the procurement and disposal policies, systems and practises of the central government, local governments and statutory bodies, setting standards for the public procurement and disposal systems in Uganda and monitoring compliance of procuring and disposing entities.

### **7.5 Institutions that Fight Corruption**

There is an elaborate institutional framework in Uganda to combat corruption. This is anchored in the wide policy framework of the National Anti-corruption strategy (NACS). The key sectors involved include; the Accountability Sector, the Justice, Law and Order Sector and the Inter-Agency Forum. Specific institutions include;

1. Parliament
2. Inspectorate of Government

3. Directorate for Ethics and Integrity
4. Office of the Auditor General
5. Public Procurement and Disposal of Public Assets Authority
6. The Uganda Police (CID - Anti-corruption Unit)
7. Directorate for Public Prosecutions
8. Ministry of Finance (Budget Monitoring Unit)
9. Accountant General
10. Ministry of Local Government (Inspectorate)
11. Ministry of Public Service (Inspectorate)
12. Ministry of Educations and Sports (Inspectorate)
13. Judiciary (Anti-corruption court)
14. Judicial Service Commission
15. Public Service Commission
16. Other Service Commissions
17. Medicine Monitoring Unit (Office of the President)

Investigations are conducted by the Inspectorate of Government and the Police while prosecutions are handled by the DPP and the Inspectorate of Government. Corruption cases are adjudicated specifically in the Anticorruption Division of the high court but commercial disputes are handled in the commercial division. Disciplinary interventions are carried out by the respective service commissions.

Since its establishment in 2009, the Anti Corruption Court has handled a number of high profile cases most of them involving public officials. The first case involving private companies came in 2011 where a former vice president was jointly charged with a car supplier company over a deal which involved supply of 240 executive BMW cars for the Commonwealth Heads of Government

Meeting (CHOGM) hosted in Kampala in 2008.

However, Uganda needs to strengthen and implement measures on protection of witnesses, participation of civil society, criminal prosecution and sanctions, seizures and confiscation of property and financial records, and the payment of compensation, and enactment of important pieces of anti-corruption legislation still pending.

## 7.6 Anti-corruption Conventions

Uganda has ratified the UN Convention against corruption and the AU Convention on preventing and combating corruption and related offences.

International conventions are agreements between states that are negotiated and signed by governments, ratified by parliaments and come into force when a sufficient number of states have ratified them. The statement of purpose of the UN Convention against corruption is;

1. Promote and strengthen measures to prevent and combat corruption more efficiently and effectively.
2. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption including asset recovery.
3. To promote integrity, accountability and proper management of public affairs and public property.

On the other hand, the AU Convention as its key objective envisages the prevention, detection, punishment and eradication of corruption. It also promotes the fostering of transparency of accountability in public governance. The Convention criminalizes the specific acts of corruption namely; bribery, abuse and neglect of office/functions, diversion and

mismangement of public resources, influence peddling, illicit enrichment and laundering proceeds of corruption. It also emphasizes cooperation between or among states in policies and measures towards the ends of combating corruption and related offences. Uganda signed the AU Convention on 12th December 2003 and ratified on 29th October 2004.

Whereas the Conventions are important they lack effective monitoring mechanisms for ensuring compliance by signatory states, and many countries lag behind in implementing conventions which they have ratified.

### 7.6.1 Are Anti Corruption Conventions Useful to Ugandans?

Anti-corruption conventions are useful because:

- The conventions set standards for international cooperation, which, in turn has a unifying effect on national corruption laws.
- The conventions respect the differences and specificities of diverse legal traditions and cultures, while at the same time promoting a common language and helping to remove some of the barriers against effective international collaboration.
- Exporters and investors benefit from the purpose of the conventions to reduce corruption in the international marketplace.
- The conventions are key instruments for holding governments, companies and civil society accountable to international anti-corruption standards.

### 7.6.2 Other Countries' Laws

Companies doing business abroad must respect the laws in each country of operation. They are advised to base their anti-corruption standards on the most stringent corruption legislation that they are exposed to and to apply

them in all countries. Using legal standards of the country of origin of the company is a good start, but companies should also secure local legal advice to enable them to be observant of the differences in what is illegal and what the penalties are in other countries.

Uganda does not have laws that criminalise corruption committed abroad and allow for the prosecution of its own and other countries' citizens and companies in such cases. However some countries like Norway, USA and others do have such laws and a case in point is the USA's Foreign Corrupt Practices Act.

The new UK Bribery Act 2010 prohibits bribery, or attempted bribery including business kickbacks, corrupt commissions, and other forms of of illicit business payments to secure business or government contracts. The Act also prohibits payments made to obtain a business advantage, such as expediting goods through customs, attempting to receive a more favourable tax treatment and influencing legislation.

### 7.7 The US Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act (FCPA) was created in 1977 as a result of 400 US companies admitting to making questionable or illegal payments to foreign government officials, politicians and political parties.

The FCPA describes the anti-bribery provisions as follows:

*"It is a crime for any US person or company to directly or indirectly pay or promise anything of value to any foreign official to obtain or retain an improper advantage."*

The FCPA has three primary provisions:

- Accounting requirement: Make and keep books, records and accounts, which are reasonable in detail and accurately reflect transactions and the disposition of assets.

- **Anti-bribery provisions:** It is a crime to directly or indirectly pay or promise anything of value to any foreign official to obtain or retain any improper advantage.
- **Internal control requirements:** Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded appropriately and in accordance with rules and regulations.