

The Handbook of Business Principles of Integrity for Small and Medium Enterprise

Printed by the Agency Against Corruption (ACC), Ministry of Justice

This handbook was originally edited and printed by the Small and Medium Enterprise Administration, Ministry of Economic Affairs. The Administration authorized the Agency Against Corruption, Ministry of Justice the unrestricted use of any content herein on September 28, 2010 as per Chung-Chi-Cheng-Ti-09901700330 letter, and approved the ACC to have the contents translated into English on October 13, 2011.

Preface

With the influence of globalization, the subprime mortgage crisis of US has become a financial crisis of world. This demonstrates that enterprise's ignorance of business integrity and ethics has seriously affected the national economy and the impact is no less than the corruption of public officials. The corruption of enterprise is no longer a confined problem. It has become an international phenomenon of society and economy. Illicit acquisition of personal wealth will damage the democratic institutions, the national economy and the rule of law. So the prevention and eradication of corruption requires support and participation from public sector, individuals and organizations.

Since the resources of small and medium enterprises (SMEs) are limited, the entrepreneurs often invest the resources to make profits, and ignore the importance of proper law. In order to promote their awareness of laws and regulations and maintain a fair and reasonable competitive environment and operational competitiveness for SMEs, the "Handbook of Business principles of integrity for Small and Medium Enterprise" was accordingly edited and published. Through this handbook, it is expected that the ideas of integrity will be fully promoted and implement.

This handbook is prepared from the perspective of SMEs, reminding the risk of breaching business integrity and the preventive measures thereof in the hope that they begin to emphasize the profound meaning of sustainable management represented by business integrity. As a result, the last chapter of this handbook stresses the fact that enterprises' social responsibility and business ethics are actually two sides of the same coin. Enterprises in their operations should be concerned about the needs of all stakeholders, responsible for customers, shareholder, employees and even the general public. SMEs are encouraged to fulfill their social responsibility and obtain consumers' agreement so as ensure their sustainable management.

Finally, the publishing of this handbook is not only under the guidance of the supervising authority but also attributed to the contribution of expertise and devotion from the editorial board members, namely Attorneys Yu-Hui Sun and Kuo-Chen Juan of Lee, Tsai & Partners Attorneys-at-Law, the Agency Against Corruption of the Ministry of Justice, the Department of Civil Service Ethics of the Ministry of Economic Affairs, Chairperson Ke-Hua Ting of the Taiwan Corporate Governance Association, Director Jung-Hsien Chang of the Economic Daily, Attorney Chung-Chieh Wei of Chuangtech International Law Firm and Deputy Section Chief Tzu-Ting Chieh of the National Association of Small and Medium Enterprises.

Careful review and editing on the part of the Youth Career Development Association Headquarters led to the completion of the final version. I hereby express my deepest gratitude to all of them. However, it is inevitable to have minor errors in this handbook so any feedback from readers for future improvement is most welcomed and appreciated.

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August 2010

Forward

“Corruption” is defined by Transparency International (TI, note 1) as “the abuse of entrusted power for private gain.” Therefore, “Corruption” covers any behavior of by which one person abuses the power to obtain improper benefits. Its range includes government departments, private sector and non-profit sector. According to TI’s report in 2009, the enterprises of Taiwan whose anti-corruption and transparency in business got only "one star" same as Belgium, China, Japan, Russia. It reflects a considerable gap between advanced countries on the anti-corruption, transparency and operation. To help SMEs understand the importance of anti-corruption, and improve the competitiveness of SMEs, we widely disseminate “Handbook of Business Principles of Integrity for Small and Medium Enterprise” to SMEs, thus contributing to the public sector and private sector anti-corruption partnership.

What is integrity? The context of integrity includes: 1. Subjective mentality of good intention and sincerity; 2. Objective conduct of honesty; 3. Fair and reasonable result in terms of benefits. In short, “integrity” implies honesty and keeping promises. Honesty not only means not telling lies, also includes not use improper practices to mislead others, not conceal information which must be disclosed.

What are the benefits for the enterprises which operate in good faith and adhere to anti-corruption act?

1. Integrity is good for business

Integrity is something you can take with you wherever you go. Once it becomes an integral part of you, it will follow you no matter what the current economic cycle is, and no one can easily take it away from you. When an enterprise emphasizes integrity and ethics, the most direct beneficiary is the enterprise itself. As the western saying goes, “Good ethics is good business.” *The Far Eastern Economic Review* also points out that investing in ethics is profitable in the long run given that good ethics makes good business and good ethics brings good profits. The 2009 Global Corruption Barometer (GCB) published by Transparency International indicated that more than half of the interviewees were willing to pay more for products made by enterprises emphasizing integrity and ethics. Therefore, investing in integrity will bring good rewards.

According to a survey by the Ethics Resource Center, a US non-governmental organization, nearly 80% of employees think that the enterprises’ continuous emphases on integrity and ethics and persistence of doing the right thing are crucial to their willingness to commit themselves to their jobs. Furthermore, working in an

environment that emphasizes the importance of integrity and ethics is good to the employees' mental health and helps build trust which in turn reduces costs and increases productivity.

2. Corruption erodes the life of enterprise

The 2009 Global Corruption Report (GCR) published by Transparency International, entitled "Corruption and the Private Sector," pointed out that enterprises worldwide have lost billions of US dollars due to corrupt practices in the past two years. The cost further extends to low staff morale and loss of trust from customers as well as business partners. Corruption increases at least 10% of enterprise cost since corrupt enterprises have to incur large amount of political expenses associated with conspired corrupt acts such as lobbying and paying bribes. This not only undermines corporate governance mechanism, but also transfers the cost to consumers, leading to citizens being overcharged and huge global economic resources being wasted.

Over the past decade, several infamous enterprise fraud cases have caused losses in the tens of billions dollars (New Taiwan Dollar, NT\$). In the Rebar Group scandal alone, its losses were as high as NT\$73.16 billion. In other cases, such as Tong Lung Metal Industry Co., Procomp Informatics Ltd., Taiwan Pineapple Corporation, Kuang San Group (Tai Yu Products Corporation and Taichung Commercial Bank), and Chung Hsing Bank, obtained illegal profit of more than NT\$43.47 billion by false financial statements, irregular trading, market manipulation, insider trading, conducting unlawful related-party transaction, money laundering, setting up fictitious companies. In other words, these enterprise corruption cases alone have cost the society more than NT\$116.6 billion losses, far more than the total value of public sector corruption cases uncovered during the same period (approximately NT\$ 33.3 billion).

3. The corporate responsibility trend

Enterprises are born and grow in society. If there is no high quality society, there can not be high quality enterprise. If an enterprise wants to be recognized and respected in society, it has to fulfill its society responsibility and operate with integrity and honesty. In 1999, the United Nations proposed a Global Compact (UNGC) to make human rights, labor, environment, and anti-corruption the common international standards of enterprise' implementation of Corporate Social Responsibility (CSR). It advocates Enterprises should play an active corporate citizenship and creates a business environment of integrity and fairness. Currently, over 5,300 enterprises in more than 130 countries signed UNGC. Asia-Pacific Economic Cooperation (APEC) has incorporated "promote corporate social responsibility" and "combat corruption" as the two main issues that have to be dealt amid globalization. It has also drafted "Code of Conduct for Business", and encourages the private and public sector to build

partnerships to improve management mechanisms and combat corruption. Other international organizations, such as International Chamber of Commerce (ICC), Organization of Economic Co-operation and Development (OECD), World Economic Forum (WEF), World Bank (WB), World Trade Organization (WTO) and Transparency International (TI) also advocate honest operating and commercial operating rules. Social responsibility has clearly become an international trend for enterprise around the world.

In the face of fierce business competition arising from globalization, an enterprise striving for sustainable success should avoid any unethical practices which might lead to great costs associated with legal liabilities and damages to its reputation. Enterprises should integrate the values of integrity and ethics into their corporate strategic management. “Integrity” provides a worthy advantage given that external advantages of an enterprise are easily duplicated while internal integrity offers irreplaceable value, which is virtually the foundation of an enterprise’s sustainable development.

The standards governing practices comprise ethical, moral and legal aspects. This handbook focuses on the legal aspect and utilizes Q&A to explain profound theories in simple language, helping the comprehension of relevant issues by small and medium enterprises. The purpose is to help small and medium enterprises to fully uphold the principle of integrity when pursuing their maximum business profits.

Chapter One introduces the criminal offences of bribery possibly being committed by both the public authority and small and medium enterprises, and also gives a brief outline of the “Integrity and Ethics Directions for Public Officials.”

Chapter Two explains the possible criminal offences that directors, supervisors or employees of small and medium enterprises may commit in breach of integrity, including the offence of criminal conversion, the offence of breach of trust and the offence of insider trade. Moreover, this Chapter also explains the criminal and administrative liabilities in the event that an enterprise violates the Government Procurement Act in its participation in government construction or service tender.

Chapter Three explains in details the civil liabilities arising from the breach of integrity by directors, supervisors or employees of small and medium enterprises, including the right of small and medium enterprises to discharge or terminate labor contract with a person in breach of integrity and claim for related civil damages. This Chapter also touches upon the issue of a small and medium enterprise’s joint and several liabilities for the damage to a third party with the person in breach of integrity.

Chapter Four focuses on how to prevent directors, supervisors or employees engaging in conduct in breach of integrity. The idea of “Prevention is better than cure” can help eliminate possible conducts against integrity, including the development of business principles of integrity and ethics by small and medium enterprises, the enhancement of legal education and promotion of business principles of integrity and ethics, and the establishment of internal control and monitoring system as well as employee performance assessment and audit system.

Chapter Five draws attention to the social responsibility of small and medium enterprises and list examples of the social responsibility of small and medium enterprises, such as their social responsibility toward public bodies in respect of their compliance to the law, their responsibility toward shareholders in terms of making profits, their responsibility toward employees with respect to enterprises’ sustainable development, their responsibility of integrity toward products and services sold to consumers, and their responsibility of integrity in conducting business transactions with customers.

The contact methods of the public ethics units are detailed in the appendix to provide channels for small and medium enterprises to report unethical or corrupt practice so as to fulfill their social responsibility. In addition, the small and medium enterprise assistance and guidance system of the Ministry of Economic Affairs are also provided in the appendix, which includes contents and contacts of finance, management, information management, mutual assistance and collaboration, quality upgrading, start-up and incubation, marketing in domestic and overseas markets, research and development, occupational safety, production technology and pollution prevention, to help small and medium enterprises achieve the win-win situation, i.e. combating corruption and sustainable development.

Note:

1. Transparency International (TI) is a global non-governmental organization leading the fight against corruption. It devotes itself to the establishment of a powerful anti-corruption global alliance with the participation of civil society, business and government. Through its international secretariat in Berlin, Germany and more than 90 chapters worldwide, TI works at both national and international levels to reduce the supply and demand of bribes and corruption. TI also cooperates with partners in private sectors which is the key to the realization of its mission.

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“Conduct business with integrity and honesty” by small and medium enterprises

Chapter 1
Criminal Liabilities of the Offence of
Corruption and the Offence of Bribery

Q1: What are the punishments for the offence of corruption and the offence of bribery?

Explanation

The offence of bribery is also referred to as the offence of corruption and its punishments are stipulated in Chapter Four of the Crime of Malfeasance of the Criminal Code and the Anti-Corruption Statute. Since the Anti-Corruption Statute is a special law of Chapter Four of the Crime of Malfeasance of the Criminal Code, it has priority in legal application when the same act of offence is under consideration based on the legal principle that special laws take precedence over general laws. The following are the respective explanations for different types of offences of bribery:

I. Receive or accept bribes without violating official duties (simple offence of accepting bribes)

The public official, who corruptly demands, solicits, receives, accepts or agrees to receive or accept bribes or other unjust enrichment in return for being influenced in the performance of official acts, shall be sentenced to imprisonment of not less than seven years, in addition thereto, may be fined not more than NT\$ 60 million. (Subparagraph 3 of Paragraph 1 of Article 5 of Anti-Corruption Statute)

The term “official act” means any act that a public official should or may perform within his or her scope of duty which does not violate his or her official duty. The term “demand” means requesting and urging the other party to make a payment, and once the request is made, the offence of corruption is established regardless whether the other party has committed to making such payment. The term “solicit” means that an agreement for payment has been made with the briber but the payment has not yet been made. The term “bribe” means illegal payment, being money or properties of value which can be calculated on monetary basis. The term “other unjust enrichment” refers to any consideration of tangible or intangible value, other than bribes, capable for satisfying people’s needs or desires, such as release of a debt, influencing to obtain employment position and entertainment.

Case study example

Hsiao-Ming intends to apply for land transfer registration and his application meets all legal requirements, which should be duly approved. However, Hsiao-Hua, the public official in charge of land transfer, tells Hsiao-Ming, “If you pay me some money, then I can complete the land transfer registration earlier than normally required.” The act of Hsiao-Hua to request bribes in the above example constitutes the simple offence of accepting bribes.

In addition, as per the precedent set in the Supreme Court 84-Nien-Tai-Shang-Tzu-Ti-1, the offence of accepting bribes for the performance of an official act should be deemed established if there is fair consideration relationship between the received money or properties of value and the official acts, also including any sort of payment in disguise, such as gifts. To determine whether there is fair consideration relationship depends on objective considerations like contents of the official act in question, relationship between the giver and receiver, types of bribes, values and the time when the gift is given. The simple claim that the transfer of property of value is a gift or political donation in nature does not automatically suggest irrelevance with the official act so there is no consideration relationship.

II. Receive or accept bribes in violation of official duties (aggravated offence of accepting bribes)

The public official, who corruptly demands, solicits, receives, accepts or agrees to receive or accept any bribe or other unjust enrichment in return for being induced to execute or fail to execute any act in violation of the official duties of such official or the commissioned duties of such person commissioned to undertake specific public affairs duties, shall be sentenced to imprisonment of not less than ten years up to a maximum of life imprisonment, and in addition thereto, may be fined not more than NT\$ 100 million. (Subparagraph 5 of Paragraph 1 of Article 4 of Anti-Corruption Statute) The term “violation of his or her duty” means that a public official performs an act which should not be performed, or fails to perform an official act which he or she is obliged to perform within his or her scope of duty.

Case study example

Hsiao-Ming intends to apply for land transfer registration and his application does not comply with the legal requirements, which should be disapproved. Hsiao-Hua, the public official in charge of land transfer, told Hsiao-Ming, “Your application does not meet the legal requirements. However, if you pay me some money, then I will complete the land transfer registration for you.” The act of Hsiao-Hua requesting bribes in the above example constitutes the aggregated offence of accepting bribes.

III. The offence of offering bribes in violation of official duties

The public official who tenders a bribe or other unjust enrichment, promises to give anything of value or gives anything of value to a person subject to this law in return for that person performing or omitting to perform any act in the course of their official duties shall be sentenced to imprisonment of

between one to seven years, in addition thereto, a fine maybe imposed of not more than NT\$ 3 million. (Paragraph 1 of Article 11 of Anti-Corruption Statute)

The public official who commits those acts listed in the preceding paragraph with the recipient being a public officials of a foreign country, Mainland China, Hong Kong or Macao in return for that person performing or omitting to perform any act in the course of their official duties shall be sentenced to imprisonment of not more than five years and in addition a fine of less than NT\$ 1 million. (Paragraph 2 of Article 11 of Anti-Corruption Statute)

The criminal punishment is not only imposed upon public officials, but also those who have bribed public officials causing them to violate their official duties are also subject to criminal punishment.

Case study example

Hsiao-Ming offers to bribe public official Hsiao-Hua, requesting Hsiao-Hua to complete his land transfer registration which is not legally supposed to be done. The act of Hsiao-Ming to offer bribes in the above example constitutes the aggregated offence of offering bribes.

Reference laws

1. Article 2 of Anti-Corruption Statute: Any public official who commits any the corrupt acts defined in this statute shall be punished in accordance with the provisions of this statute.
2. Subparagraph 5 of Paragraph 1 of Article 4 of Anti-Corruption Statute: Any person subject to this statute who commits any of the following acts shall be sentenced to imprisonment of not less than ten years up to a maximum of life imprisonment, and in addition thereto, may be fined not more than NT\$ 100 million: 5.corruptly demands, solicits, receives, accepts or agrees to receive or accept any bribe or other unjust enrichment in return for being induced to execute or fail to execute any act in violation of the official duties of such official or the commissioned duties of such person commissioned to undertake specific public affairs duties.
3. Subparagraph 3 of Paragraph 1 of Article 5 of Anti-Corruption Statute: Any person subject to this statute or their accomplices who commits any of the following acts shall be sentenced to imprisonment of not less than seven years, in addition thereto, may be fined not more than NT\$ 60 million: 3.corruptly demands, solicits, receives, accepts or agrees to receive or accept bribes or

other unjust enrichment in return for being influenced in the performance of official acts.

4. Paragraph 1&2 of Article 11 of Anti-Corruption Statute: Any person who tenders a bribe or other unjust enrichment, promises to give anything of value or gives anything of value to a person subject to this law in return for that person performing or omitting to perform any act in the course of their official duties shall be sentenced to imprisonment of between one to seven years, in addition thereto, a fine maybe imposed of not more than NT\$ 3 million. Any person who commits those acts listed in the preceding paragraph with the recipient being a public officials of a foreign country, Mainland China, Hong Kong or Macao in return for that person performing or omitting to perform any act in the course of their official duties shall be sentenced to imprisonment of not more than five years and in addition a fine of less than NT \$1 million.

Q2: Is a person capable of committing the corrupt act only limited to public officials only? Does it constitute an offence if a person from an enterprise bribes a public official?

Explanation

I. A person who is capable of committing the offence of bribery is not only limited to public officials.

The criminal punishments for “the offence of accepting bribes without violating one’s official duties” and “the offence of accepting bribes in violation of one’s official duties” are clearly stated in Q1. If a person of a small and medium enterprise is not a public official but, for example, acts as an accomplice in collusion with a public official by committing the above offences, the act of that person also constitute an offence.

- (1) The criminal punishments for “the offence of accepting bribes without violating one’s official duties” and “the crime of accepting bribes in violation of one’s official duties” are clearly stated in Q1. A person who commits the corrupt act can be anyone, regardless being a public official or not, because Paragraph 3 of Article 11 of the Anti-Corruption Statute stipulates that any person who is not a public official (such as a person of an enterprise), offers, promises to give, or delivers any bribe or other unjust enrichment to a public official in return for the official’s violation of his or her official duty is subject to the same criminal punishment.

Case study example

A-Tung, the responsible person of a company, intends to apply for land transfer registration for the company, but the application fails to meet the legal requirements so it should be duly declined. However, Hsiao-Hua, the public official in charge of land transfer, told A-Tung, “Your application does not meet the legal requirements. However, if you pay me some money, then I will complete the land transfer registration for you.” In the above example, not only does the act of Hsiao-Hua to request bribes constitute the aggregated offence of accepting bribes, but the act of A-Tung to pay bribes also constitutes the crime of offering bribes.

It is worth mentioning that in order to ensure integrity and honesty, just and fairness and lawful administration and increase people’s trust and support for the government, the Executive Yuan referenced to the codes of conduct of public servants of the US, Japan and Singapore as well as the anti-corruption part of the “National Integrity Building Action Plan” declared by the Executive Yuan, and subsequently enacted the “Integrity and Ethics Directions for Public Officials” (hereinafter referred to as “the Directions”) in 2008. Its amendment was promulgated on 30 July 2010. The Directions require the compliance of all public officials of the Executive Yuan and its subordinate ministries (agencies). Moreover, the central government (including the Office of the President and all the subordinate ministries and agencies of the Five Yuans) and the local governments (agencies) have either adopted the Directions or enacted even more strict standards since 1 August 2008. The Directions require public officials to comply with the following requirements:

1. Public official shall comply with the law in their performance of official duties to safeguard public interests and avoid conflict of interest. (Point 3 of the Directions)
2. In the event that a public official receives a gift, attends social gathering or becomes a target of lobbying, he or she shall comply with specific restrictions and follow the handling procedures in case of lobbying. Public officials are not allowed to enter any inappropriate place. (Points 4 to 11 of the Directions)
3. The government ethics unit shall strictly follow the signing, reporting and registration procedures after accepting cases concerning gift-receiving, social gathering, entreating, lobbying or any other matter related to integrity and ethics. (Point 12 of the Directions)
4. Public officials are not allowed to take part-time jobs unless otherwise provided by the law. (Point 13 of the Directions)
5. Public officials shall comply with the standards, restrictions and procedures governing the hourly remuneration or payment for work in their

- participation of events like speeches. (Point 14 of the Directions)
6. The head of government authority shall follow the procedures in the event that he or she receives a gift, attends social gathering or becomes a target of lobbying. (Point 15 of the Directions)
 7. Public officials shall properly manage personal finance and the supervisor shall strictly implement audits on subordinates' ethics. (Point 16 of the Directions)
 8. The authorities (agencies) shall assign specific personnel to undertake integrity and ethics consultation service, and clearly define the meanings of "the higher level of government ethics units" and "higher authority". (Point 17 of the Directions)
 9. In the event that an authority (agency) does not have any government ethics unit, the related matter shall be processed by the personnel who is concurrently in charge of ethic affairs or appointed by the head of the authority (agency). (Point 18 of the Directions)
 10. A public official who breaches the Directions will be punished in accordance with the relevant regulations. If the breach involves criminal liability, the public official will be transferred to the judicial institution which is in charge. (Point 19 of the Directions)
 11. The authorities (agencies) may impose stricter regulations in respect of the standards set out in the Directions and any other matter related to integrity and ethics. (Point 20 of the Directions)
 12. The central and local authorities, other than the Executive Yuan, may apply the standards set out in the Directions. (Point 21 of the Directions)

II. The offence of offering bribes by personnel of small and medium enterprise to public officials in violation of official duties

It is clear from the case study 3 under Q1 that a person from small and medium enterprise offers, promises to give, or delivers any bribe or other unjust enrichment to a public official in return for the official's breach of his or her official duty is subject to imprisonment not less than one year but not more than seven years, and may be imposed upon a concurrent fine not more than NT\$3 million. In addition, any person offers, promises to give, or delivers any bribe or other unjust enrichment to a public official of a foreign country, Mainland China, Hong Kong or Macao to violate the official's duty in respect of cross-border trade, investment or other business activities will face a prison term not exceeding five years or a fine less than NT \$1 million.

Case study example

A technology company intends to invest in Mainland China and needs to secure

a business permit issued by the authority in Shenzhen, Guangdong Province. The application fails to meet the legal requirements and should be accordingly declined. However, A-Tung, the responsible person of the company, bribes the local official to successfully obtain the permit. The act of A-Tung to deliver bribes constitutes the offence of offering bribes.

Reference laws

1. Article 2 of Anti-Corruption Statute: Any public official who commits any the corrupt acts defined in this statute shall be punished in accordance with the provisions of this statute.
2. Article 3 of Anti-Corruption Statute: Any person acting as an accomplice in collusion with any person subject to this statute in the commission of any of the acts prohibited by this statute shall be punished accordance with the provisions of this statute.
3. Paragraph 3 of Article 11 of Anti-Corruption Statute: The preceding two paragraphs (1 and 2) and applicable to all persons, regardless of whether they are government officials or those commissioned to handle public affairs or not, and the punishment shall be the same as indicated in the preceding two paragraphs.

References

1. Attachment 1: The “Integrity and Ethics Directions for Public Officials” (The amendment was promulgated and took effect on 30 July 2010)

Q3 : What acts constitute the offence of offering bribes?

Explanation

According to the explanation of the “offence of offering bribes” under Q1, the necessary requirement for such offence to be established depends on whether the public official violates his or her official duty. Any offering, promise to give or delivery of consideration of value to a public official will not constitute the offence of offering bribes if the public official in question performs his or her official act. There are three major types of acts which constitute the offence of offering bribes:

I. Offer bribes or other unjust enrichment

To take staff of small and medium enterprise as an example, if a staff of small and medium enterprise expresses his or her willingness to give bribes or other unjust enrichment in return for a public official to conduct his or her official act in violation of the official’s public duty in to benefit the staff or enterprise, the offence of offering bribes is thus established. The expression of intention by a staff of small and medium enterprise to give bribes for any specific request, regardless being explicit or implicit, constitutes the act prohibited by law disregarding whether the public official who is offered the bribes accepts such request.

Case study example

Hsiao-Tung is the responsible person of a company, knowing that he does not have the permit or document of approval to undertake waste clearance as required by the law. He drove a truck which was loaded with construction waste of his own company, such as waste bricks and mud, and later dumped the waste in an empty land owned by Hsiao-Chen without Hsiao-Chen’s permission. Afterwards, Hsiao-Chen reported to the police. When the police undertook investigation into Hsiao-Tung, he said, “I have NT\$150,000 with me. This money can be used as food allowance for the police station at year end. Just drop this case.” Hsiao-Tung offers bribes to ask A-No not to file charges against him. Although A-No turns down the offer, the act of Hsiao-Tung still constitutes the offence of offering bribes.

II. Promise to give bribes or other unjust enrichment

Both a staff of a small and medium enterprise and a public official agree the delivery of bribes or other unjust enrichment in anticipation that the public official will perform an official act in violation of the official’s duty. The illegal agreement, regardless initiated by the staff of the small and medium enterprise or the public official, constitutes the act in question.

Case study example

In the preceding example, if both A-No and Hsiao-Tung agree that Hsiao-Tung delivers NT\$150,000 to A-No, then A-No will not file charges against Hsiao-Tung. By agreeing to pay the bribes, Hsiao-Tung commits the offence of promising to give bribes.

III. Deliver bribes or other unjust enrichment

This means a staff of a small and medium enterprise directly or indirectly has a public official to receive bribes or other illegal benefits.

Case study example

A-Ming lobbied A-Hua, expecting A-Hua to act in violation of his official duty, but did not mention the offering of bribes. After A-Hua promised to help and performed the anticipated act, A-Ming went to A-Hua's residence and delivered a property of considerable value. After accepting the property, A-Hua felt uncomfortable about this so he reported to the government ethics unit about his acceptance of the property. A-Ming lobbied A-Hua, making A-Hua act in violation of his official duty. A-Hua not only promised to do it but also informed A-Ming after the requested act is completed. The fact that A-Ming gave A-Hua a property of considerable value shows that both parties had had a tacit understanding when A-Ming lobbied A-Hua. The act of A-Ming to bribe A-Hua completed at this stage. The later delivery of bribes by A-Ming constitutes the offence of delivering bribes. A-Hua's reporting to the ethics unit of his office the day after he had accepted the bribes should be deemed as his confession of the offence of accepting bribes. [Ministry of Justice (87) Fa-Chien-Chueh-Tzu-Ti 019486]

Reference laws

1. Paragraph 1 of Article 11 of Anti-Corruption Statute: Any person who tenders a bribe or other unjust enrichment, promises to give anything of value or gives anything of value to a person subject to this law in return for that person performing or omitting to perform any act in the course of their official duties shall be sentenced to imprisonment of between one to seven years, in addition thereto, a fine maybe imposed of not more than NT\$ 3 million.

Chapter 2
Possible Criminal Liabilities of Enterprises’
Directors, Supervisors and Employees in Breach
of Integrity

Q1: Is a director, supervisor or employee of a small and medium enterprise who, by taking advantage of his or her work, takes the enterprise's property subject to criminal punishment?

Explanation

If a director, supervisor or employees of a small and medium enterprise who, by taking advantage of his or her work, takes or possesses a property of an enterprise with the intention for his/her or a third party's unlawful ownership converts any possessed property owned by others, his or her act constitutes the offence of criminal conversion according to Paragraph 1 of Article 335 of the Criminal Code. Anyone who commits the offence of criminal conversion shall be sentenced to imprisonment not more than five years, detention, or, in lieu thereof or in addition thereto, a fine not more than NT\$1,000. The precondition for the establishment of the offence of criminal conversion is one's possession of a property owned by others. If one does not possess a property owned by others, the act rather constitutes the offence of larceny.

The act of criminal conversion of any work-related thing in one's possession constitutes the offence of work-related criminal conversion according to Paragraph 2 of Article 336 of the Criminal Code. An offender shall be sentenced to imprisonment not less than six months but not more than five years, or, in addition thereto, a fine not more than NT\$3,000. The reason behind the possession of a work-related property should be caused by the work.

Case study example 1

The responsible person of a company, A-Tung, pays salaries to his employees. Although he had paid the January and February withholding tax in full to the tax authority, he failed to make payment of the withholding tax to the tax authority between March and December as required by the above regulations, and, instead, he converted the money to pay for the company's other expenses. A-Tung was later investigated and indicted by the prosecutor. The court ruled that the withholding tax paid on behalf of his employees belonged to the government and he not only failed to pay the tax to the tax authority but also used the amount to pay for the company's other expenses. The court deemed A-Tung's act was no different from the act required under the offence of criminal conversion. A-Tung's failure to pay the withholding tax for consecutive months was construed as a repeated offender so he was sentenced to an aggregated prison term of one year and six months.

Case study example 2

A-Cheng worked as an outsourced fee-collector for a cable TV company. A-Cheng collected more than NT\$1 million subscription fees from the cable

company's customers and converted the money. The court ruled that A-Cheng's act constituted the offence of work-related criminal conversion. (Taiwan Shihlin District Court 93-Yi-Tzu-Ti-742)

Case study example 3

A-Hsiang worked as a warehouse keeper to control 10,000 bags of flours for a privately owned company. Before the flours were shipped out, A-Cheng had stolen the flours from the bags by sticking a thick hollow iron needle into the bags without being noticed by others. He stole one-eighth kilograms of flours from each bag with the total amount of more than 1,200 kilograms which were subsequently shipped out and sold. A-Hsiang's act constituted the offence of work-related criminal conversion. (No. 21 of the criminal category of the first legal seminar of Taiwan High Court and its branches in 1968)

Reference laws

1. Paragraph 1 of Article 335 of Criminal Code: A person who has custody of a thing belonging to another and who misappropriates it with intent illegal to obtain possession for himself or for a third person shall be punished with imprisonment for not more than five years or detention; in lieu thereof, or in addition thereto, a fine of not more than NT\$ 1,000.
2. Paragraph 2 of Article 336 of Criminal Code: A person who commits an offence specified in paragraph 1 of the preceding article with respect to a thing of which he has custody because of his occupation shall be punished with imprisonment for not less than six months and not more than five years; in addition thereto, a fine not more than NT\$ 3,000 may be imposed.

Q2: Is a director, supervisor or employee of a small and medium enterprise who, by taking advantage of his or her work, asks for kickbacks from other companies subject to criminal punishment?

Explanation

A director, supervisor or employee of a medium and small enterprises who, by taking advantage of his or her work, asks for kickbacks from other companies is actually managing an affair of another person with the intention to benefit his, her or a third party's own interest or to cause harm to the principal. The breach of the duty resulting in the harm to properties or other interests of the principal should constitute the offence of breach of trust in accordance with Paragraph 1 of Article 342 of the Criminal Code. An offender shall be sentenced to imprisonment not more than five years, detention, or, in lieu thereof or in addition thereto, a fine not more than NT\$1,000.

Case study example 1

A-Hsin worked as the Chief Secretary of a junior college in Kaohsiung area. During his term in the college, he asked kickbacks from furniture companies, plastic companies and instrument companies by taking advantage of his work, with the total amount of kickbacks near NT\$6 million. The court ruled that A-Hsin was entrusted by the college's board of directors to manage the college's affairs but he, instead, caused harm to the college. The court therefore ruled that A-Hsin's act constituted the offence of breach of trust. (Taiwan High Court Kaohsiung Branch Court 91-Shang-Yi-Tzu-Ti-93)

Case study example 2

A-Ming was employed by Company A as a manager, responsible for the company's procurement and awarding project contracts. A-Ming reached an agreement in private with supplier Company B in Company A's procurement contract wherein Company A procured 1,000 pair of pens worth NT\$400,000 which is NT\$200 higher than the market price per pair. A-Ming then collected NT\$100 kickbacks per pair of pens. Company B later delivered the pens and paid NT\$100,000 to A-Ming at the place designated by A-Ming after it had received the contract payment from Company A. The court ruled that A-Ming's act harmed Company A, resulting in Company A's loss so A-Ming had committed the offence of breach of trust. (Supreme Court 82-Tai-Shang-Tzu-Ti-4958)

Case study example 3

A-Chu worked as a procurement staff in Company C, responsible for procurement affairs. However, A-Chu continuously purchased capacitors from D electronic company, asking for 3% kickbacks for her own illegal interest, and

collected the kickbacks by ways of postal money orders and bank tele-transfers. The total kickbacks received amounted to NT\$500,000. The court ruled that A-Chu's act caused harm to Company C so she was convicted of the offence of breach of trust. (Taiwan Taoyung District Court 88-Su-Tzu-Ti-1382)

Case study example 4

A-Hsin was the chairperson of a company. In order to benefit himself, he asked innocent accounting staff A-Hsia to transfer the company's money to an account of an investment company of which his wife, A-Mei, was the chairperson as well as A-Mei's personal bank account in the names of suspense payments and long-term investments. The funds were mainly used for paying back the investment company's debts to the bank or at A-Mei's personal disposition. The act of A-Hsin was in breach of his duty as the company's chairperson to represent the company and conduct company affairs according to the law as well as the company's articles of incorporation and resolutions adopted by the shareholders' meetings. His breach of duty resulted in the company's loss of properties so the court ruled that A-Hsin committed the offence of breach of trust. (Taiwan Taipei District Court 98-Yi-Tzu-Ti-2963)

Reference laws

1. Paragraph 1 of Article 342 of Criminal Code: A person who manages the affairs of another with intent to procure an illegal benefit for himself or for a third person or to harm the interests of his principal and who acts contrary to his duties and thereby causes loss to the property or other interest of such principal shall be punished with imprisonment for not more than five years or detention; in lieu thereof, or in addition thereto, a fine of not more than NT\$ 1,000 may be imposed.

Q3: Is it against the law if a directors, supervisor or employee of a small and medium enterprise who has known important information because of his or her work engages in related-party transaction or insider trade?

Explanation

I. Related-party transaction

According to the Statement of Financial Accounting Standards No. 6, a party is related to an entity if one party can exercise control or significant influence over the operations or financing policies of the other party. Entities under common ownership or control are also deemed related parties.

The following are normally deemed related parties:

- (1) An invested company as defined by way of the equity method.
- (2) An investor as defined by the equity method.
- (3) A company's chairperson or general manager is the same as the chairman or general manager of another company, or is the spouse or relative within second degree relationship of another company.
- (4) A foundation which receives donations from a company which is worth more than one third of its total fund.
- (5) A company's director, supervisor, general manager, vice general manager, senior manager and heads of units directly under supervision of the general manager.
- (6) Spouse of the company's director, supervisor and general manager.
- (7) Relative of the company's chairperson or general manager within second degree relationship.

When determining whether a person is a related party, not only does legal formality need to be considered, but the substantial relationship also needs to be taken into account. Statement of Financial Accounting Standards No. 6 requires that if there are significant transactions between an enterprise and its related parties during the reporting period, the enterprise should disclose the following information in the notes to the financial statements:

1. the names of the related parties; 2. the nature of the relationship(s) involved; 3. the following significant transactions between the enterprise and its related parties, including price, payment period; 4. other related information which helps to understand the impact of related party transactions on the financial statements.

If a public company fails to disclose the "related party transaction" in the notes to the financial statements in violation of the "disclosure of related

party transaction”, it violates the requirement that a public company shall establish financial and operational internal control systems and Article 14-1 of the Securities and Exchange Act. The company is subject to the fines as set out in Articles 178 and 179 of the Securities and Exchange Act and liable for damages in civil litigation. In addition to the afore-mentioned legal implications, a public company will incur penalty payments, change of trading method and suspension of trade by the stock exchange or Gre Tai Securities Market.

II. Insider trade

According to the Securities and Exchange Act, “insider trade” refers to a company’s director, supervisor or managerial officer who has known any information that will have a material impact on the price of the securities of the issuing company purchases or sells shares or any type of equity securities of the company listed in an exchange or an over-the-counter market prior to the public disclosure of such information or within 12 hours after the public disclosure. As per the definition given by the Financial Supervisory Committee, Executive Yuan, the so called managerial officer means a person (1) who holds an office equivalent to general manager; (2) who holds an office equivalent to vice general manager; (3) who holds an office equivalent to senior manager; (4) who is a supervisor of the finance department; (5) who is a supervisor of the accounting department; (6) who has the right to manage company affairs and sign on behalf of the company. According to the Republic of China GreTai Securities Market 92-Cheng-Gre-Chiao-Tzu-Ti-07274 promulgated on 2 April 2003, “any person who has learned the information by reason of occupational relationship” has very broad application, not limited to the traditional professionals such as lawyers, accountants and management consultants. It applies to any person who has known any information that will have a material impact on the price of the securities of the issuing company and purchases or sells shares of the company. (Taiwan Taipei District Court 94-Chu-Tzu-Ti-1 Judgment, i.e. the Bald Eagle case). In this type of insider trade, the company’s director, supervisor, managerial officer or employee who has violated the law should subject to the following liabilities:

(1) Civil liabilities:

An offender is liable to the trading counterpart who undertook the opposite-side trade in good faith on the day of the violation for damages in the amount of the difference between the purchase or sale price and the average closing price of ten business days after the date of the public

disclosure. The court may, upon the request of the counterpart in good faith, treble the damages if it deems the violation is of a severe nature. The court may reduce the damages where the violation is deemed minor.

(2) Criminal liabilities:

An offender shall be sentenced to imprisonment not less than three year but not more than ten years, or, in addition thereto, a fine not less than NT\$10 million but not more than NT\$200 million. Any person who has benefited from the commission of the offense for more than NT\$100 million is liable for imprisonment more than seven years or, in addition thereto, a fined not less than NT\$25million but not more than NT\$500 million.

Case study example

The responsible person of Ting Chien Technology Company, Lao-Wang, and his wife, A-Chu, took advantage of the revise-down of Ting Chien’s financial forecast. They sold a large quantity of the company’s shares prior to the disclosure of the revised financial forecast in the name of conducting other investments in order to reduce their loss. The court ruled that Lao-Wang and A-Chu were both guilty. (Supreme Court 94-Tai-Shang-Tzu-Ti-1433 Judgment).

Reference laws

1. Article 157-1 of the Securities and Exchange Act: “The following persons, who have known any information that will have a material impact on the price of the securities of the issuing company, shall not purchase or sell shares or any type of equity securities of the company listed in an exchange or an over-the-counter market prior to the public disclosure of such information or within 12 hours after the public disclosure:
 - (1) A director, supervisor, managerial officer of the company, and a natural person designated as a representative to exercise powers pursuant to Paragraph 1 of Article 27 of the Company Act.
 - (2) Any shareholder holding more than ten percent of the shares of the company.
 - (3) Any person who has learned the information by reason of occupational or controlling relationship.
 - (4) Any person who ceases to be qualified under the preceding three subparagraphs for less than 6 months.
 - (5) Any person who has learned the information from any of the persons in the four preceding subparagraphs.

A person in violation of the preceding paragraph shall be held liable to the trading

counterpart who undertook the opposite-side trade in good faith on the day of the violation for damages in the amount of the difference between the purchase or sale price and the average closing price of ten business days after the date of the public disclosure. The court may, upon the request of the counterpart in good faith, treble the damages if it deems the violation is of a severe nature. The court may reduce the damages where the violation is deemed minor.

The person referred to in subparagraph 5 of paragraph 1 shall be held jointly and severally liable with any person listed in subparagraphs 1 to 4 of paragraph 1 who provided the information. Nonetheless, any person listed in subparagraphs 1 to 4 of paragraph 1 who provided the information had reasonable cause to believe the information had already been publicly disclosed shall not be liable for damages.

The phrase "information that will have a material impact on the price of the securities" in paragraph 1 shall mean information related to the finances or businesses of the company, or the supply and demand of such securities on the market and open market purchase that has material impact on the price of the securities or on the decision-making of reasonably prudent investors. Its scope and means of public disclosure shall be determined by the competent authority.

The provisions of paragraph 3 of Article 22-2 shall apply to subparagraphs 1 and 2 of paragraph 1 of this Article; the same shall apply with respect to those who have disqualified from the status for a period of less than six months. The provisions of paragraph 4 of Article 20 shall apply to the trading counterpart referred to in paragraph 2 of this Article.

2. Article 171 of the Securities and Exchange Act: "Any person who has committed any of the following offenses shall be sentenced to imprisonment not less than three year but not more than ten years, or, in addition thereto, a fine not less than NT\$10 million but not more than NT\$200 million:

(1) A person who has violated the provisions of paragraph 1 or paragraph 2 of Article 20, paragraph 1 or paragraph 2 of Article 155, or paragraph 1 or 2 of Article 157-1.

(2) A director, supervisor, managerial officer or employee of an issuer under this Act who directly or indirectly causes the company to conduct transactions to its disadvantage not in the normal course of operation causes substantial damage to the company.

(3) A director, supervisor, or managerial officer of an issuer under this Act, with intent to benefit himself/herself or a third person, acts in violation of his/her duties or converts company assets.

A person who has benefited from the commission of an offense under the preceding paragraph for more than NT\$100 million shall be sentenced to imprisonment more than seven years, or, in addition thereto, a fine not less than NT\$25million but not more than NT\$500 million.

Any person who commits an offense under paragraph 1 or 2, subsequently surrenders himself/herself voluntarily and hands over the illegal benefits, if any, in full shall be subject to the reduction or exemption of sentence. In the event that another principal offender or an accomplice is apprehended as a result, the sentence shall be exempted.

A person who commits an offense under paragraph 1 or 2 and confesses during the prosecutorial investigation voluntarily hands over the illegal benefits, if any, in full. The offender shall be subject to the reduction of sentence. In the event that another principal offender or an accomplice is apprehended as a result, his/her sentence shall be reduced by one-half.

A person who has benefited from the commission of an offense under subparagraph 1 or 2 with the amount exceeding the maximum criminal fine, the fine may be increased within the scope of the benefit gained. In the event that the stability of the securities market is harmed, sentence for the offender shall be aggregated by one-half.

Any property or property interest obtained from the commission of an offence under paragraph 1 or paragraph 2 by an offender shall be returned to the victim, the third party or served as damages, and the remaining shall be confiscated subject to the requirement that the property or property interest is owned by the offender. If the property or property interest cannot be confiscated in part or as a whole, the value thereof shall be indemnified either by demanding a payment from the offender or by offsetting such value with the property of the offender.

Q4: When small and medium enterprises participate in government procurement projects, what acts constitute the breach of trust and will incur criminal or administrative penalties?

Explanation

I. What are contract assignment and subcontracting?

Is it possible to undertake contract assignment or subcontracting in government procurements? The primary principle of the Government Procurement Act is “prohibiting contract assignment but allowing subcontracting.” The term “contract assignment” referred to in paragraph 2 of Article 65 of the Government Procurement Act means an arrangement under which a contractor makes another supplier perform all or the major part of the contract for it. The term “major part” means a part which is specified as a major part in the tender documentation or shall be fulfilled by the winning tenderer itself specified in the tender documentation (Article 87 of the Enforcement Rules of the Government Procurement Act). Thus, whether a contract can be assigned to others depends on the specification of the tender documentation. In practice, the tender documentation normally does not specify “major part” or “part shall be fulfilled by the winning tenderer itself” which often is the cause of disputes. In addition, Paragraph 1 of Article 65 spells out that the contractor shall perform the contract for construction work or services by itself and may not assign the contract to others. The only restriction on assignment of a contract for property is when “a contract for property is not readily available and required to be supplied through certain performance process.” If tenderers are capable of providing existing products which meet the specifications of the tender documentation, the entity has no ground to turn down the products unless the procurement for property requires the performance of the tenderer. In this case, contract assignment will be restricted or prohibited. The term “subcontracting” is defined as an arrangement which does not constitute an assignment but according to which another supplier performs a part of the contract for the contractor as set out in Paragraph 1 of Article 67 of the Government Procurement Act.

According to Paragraphs 1 and 2 of Article 66, “In the event that a contractor is in breach of the requirement by assigning a contract to another supplier, the entity may terminate the contract, rescind the contract, or forfeit the contractor’s guarantee bond, and, in addition thereto, claim for damages.” “The assignee and the contractor shall jointly and severally liable for the performance and damages. The above shall also apply to the cases of re-assignments.” In other words, if the “assignee” or “re-assignee” is discovered, it will incur joint and several liabilities for not only damages but

also performance, which is a very severe punishment. Furthermore, Subparagraph 11 of Paragraph 1 of Article 101 of the Government Procurement Act stipulates that a breaching supplier will be listed as an unfit supplier and accordingly published on the Government Procurement Gazette.

The Government Procurement Act allows subcontracting unless the tender documentation specifies the requirement for filing to the entity. Otherwise, a successful tenderer who subcontracts part of the contract to other suppliers does not need the entity's approval.

Case Study Example 1 (Contract assignment against the law)

The legal representative of Kai Te Hao Construction Co., Ltd., A-Hsin, had participated in tendering of a city government road widening construction work and was awarded the contract with NT\$97.87 million below the government estimate. Kai Te Hao Construction Co., Ltd. signed a construction work contract with the city government, but later A-Hsin signed an assignment contract with the legal representative of Kao Te Chu Construction Co., Ltd. which is not qualified to undertake the construction work. The scope of the work in the assignment contract is identical to the contract signed between Kai Te Hao Construction Co., Ltd. and the city government. Kai Te Hao Construction Co., Ltd. reported the commencement of the construction work but it is actually Kao Te Chu Construction Co., Ltd. undertook the construction. Nevertheless, the lack of construction competence on the part of Kao Te Chu Construction Co., Ltd. results in the delayed work progress and construction defects so the construction installment payment cannot be obtained as scheduled. Kai Te Hao Construction Co., Ltd. fails to help resolve the situation and refuses to advance the construction payment, leading to rising discontent of Kao Te Chu Construction Co., Ltd. as well as its subcontractors. Subsequently, the case is exposed. The investigation unit submits to the city government and the Government Procurement Commission, Executive Yuan in writing the above circumstances for investigation and punishment. The city government concludes that Kao Te Chu Construction Co., Ltd. breaches the requirement not to assign the contract to others and requests the Government Procurement Commission, Executive Yuan to publish the breach on the Government Procurement Gazette and impose one-year prohibition against its participation in government tendering.

Case Study Example 2 (Contract assignment against the law)

In the above case, A-Hsin signs a “subcontracting” agreement with the legal representative of Kao Te Chu Construction Co., Ltd which is not qualified to undertake the construction work. In the event that the subsequent lack of

construction competence of Kao Te Chu Construction Co., Ltd. causes the delayed work progress and construction defects, the construction installment payment cannot be paid as scheduled. This is thus in breach of the non-subcontracting requirement of government procurements.

II. What are bid rigging and procurement fraud?

The term “bid rigging” is classified into four categories according to Article 87 of the Government Procurement Act. For example, A-Cheng is responsible for display advertisement space. His company requires him to find three suppliers and compare their respective prices. However, A-Cheng has concluded a deal with Company A which he is familiar with. Company A then colludes with other two companies to offer price quotes which are higher than that offered by company A. Company A is accordingly selected to perform the work. Not surprisingly, if the other two companies need company A to collude with them to offer price quotes in the future, company A will be willing to do it. In addition, Company A may set up bogus companies for the specific purpose of “accompanying the bid.” Paragraph 4 of Article 87 of the Government Procurement Act stipulates, “A person who causes the supplier not to tender or not to proceed with price competition by means of contract, agreement or other forms of meeting of minds, with the intent to adversely affect the price of award or to gain illegal benefits, shall be punished with imprisonment not less than six months but not more than five years, or, in addition thereto, a fine not more than NT\$1 million.”

According to Article 88 of the Government Procurement Act, procurement fraud is defined as “A personnel of a supplier who is entrusted by an entity to conduct planning, design, review, monitoring, project management, or procurement but imposes unlawful restrictions or review on the technologies, technical methodology, materials, equipment, or specifications with the intent to gain personal illegal benefits and thereby obtains benefits, shall be sentenced to imprisonment not less than one year but not more than seven years, or, in addition thereto, a fine not more than NT\$3 million.” However, “bid rigging” and “procurement fraud” are sometimes tied together so the issue of “lapping of legal provisions” arises. Article 55 of the Criminal Code provides that where an act constitutes several offenses, only the most severe punishment shall be imposed. In other words, the offender should be subject to the punishment set out in Article 88 (fraud procurement) of the Government Procurement Act.

Case study example

China Construction Company has close business relationship with Ching Nien company, Chuang Yeh company and Cheng Hsin company with over 40~50% of cross shareholdings. They are in fact related companies. China Construction Company becomes aware that a government entity has set strict restrictions on technical qualifications of a renovation engineering bid for the entity's building, and believes that it can participate in the bid with the other three companies with China Construction Company winning the bid under collusion. The bidding contract is at last awarded to China Construction Company, whose act constitutes the offence of bid rigging. In addition, if the government entity sets several restrictions on technical qualifications in the tender documentation which leads to competent and able suppliers unable to participate in the bid, this condition is qualified as unjust restriction, which is likely to be construed as procurement fraud.

III. The following acts have breached the principle of integrity and are subject to punishments when small and medium enterprises participate in government procurements:

(1) Criminal punishment:

1. Use violence or threat to coerce a bidding supplier to act contrary to its real intention (Article 87 of the Government Procurement Act)

(1) A person who commits violence or threat, administers drugs, or applies hypnosis with the intent to cause a supplier not to tender or to tender contrary to its real intention, or cause the winning tenderer to forego the award or to assign or subcontract after award shall be punished with imprisonment not less than one year but not more than seven years, or, in addition thereto, a fine not more than NT\$3 million. If any death results from the offense, the offender shall be sentenced to life imprisonment or imprisonment not less than seven years; if serious bodily injury is resulted therefrom, the offender shall be sentenced to imprisonment not less than three years but not more than ten years, or, in addition thereto, a fine not more than NT\$3 million. (Paragraphs 1 and 2 of Article 87 of the Government Procurement Act)

(2) A person who commits fraud or uses any other illegal means to make the supplier unable to tender or cause the opening of tenders to have an incorrect result shall be sentenced to imprisonment not more than five years, or, in addition thereto,

a fine not more than NT\$1 million. (Paragraph 3 of Article 87 of the Government Procurement Act)

(3) A person who causes the supplier not to tender or not to proceed with price competition by means of contract, agreement or other forms of meeting of minds, with the intent to adversely affect the price of award or to gain illegal benefits, shall be sentenced to imprisonment not less than six months but not more than five years, or, in addition thereto, a fine not more than NT\$1 million. (Paragraph 4 of Article 87 of the Government Procurement Act)

(4) A person who borrows or assumes any other's name or certificate to tender, with the intent to adversely affect the result of procurement or to gain illegal benefits, shall be sentenced to imprisonment not more than three years, or, in addition thereto, a fine not more than NT\$1 million. The foregoing shall also apply to the cases of a person who allows any other person to borrow or assume his name of certificate to tender. (Paragraph 5 of Article 87 of the Government Procurement Act)

2. Entrusted procurement personnel intends to gain illegal personal benefits (Article 88 of the Government Procurement Act)

A personnel of a supplier who is entrusted by an entity to conduct planning, design, review, monitoring, project management, or procurement but imposes unlawful restrictions or review on the technologies, technical methodology, materials, equipment, or specifications with the intent to gain illegal personal benefits and thereby obtains benefits, shall be sentenced to imprisonment not less than one year but not more than seven years, or, in addition thereto, a fine not more than NT\$3 million. In addition, the foregoing personnel who imposes unlawful restrictions or review on the qualifications of suppliers or sub-suppliers with the intent to gain personal illegal benefits and thereby obtains benefits, shall be subject to the same punishment. (Article 88 of the Government Procurement Act)

3. Entrusted procurement personnel discloses confidential information (Article 89 of the Government Procurement Act)

The personnel of a supplier who is entrusted by an entity to conduct planning, design, project management, or procurement but discloses

or delivers confidential documents, drawings, information, things, or any other data related to the procurement with the intent to gain illegal personal benefits and thereby obtains benefits, shall be sentenced to imprisonment not more than five years, detention, or, in lieu thereof or in addition thereto, a fine not more than NT\$ 1 million.

4. Coerce procurement personnel to make procurement decision contrary to his/her own intention (Article 90 of the Government Procurement Act)

A person who commits violence or threat with the intent to cause the personnel of an entity who is engaged in planning, design, handling, or supervision of a procurement, or the personnel of a supplier who is entrusted by an entity either to provide services of planning, design, or project management of a procurement or to conduct its procurement, not to decide on matters with respect to the procurement or to decide on such matters contrary to his/her own mind, shall be sentenced to imprisonment not less than one year but not more than seven years, or, in addition thereto, a fine not more than NT\$3 million. If death results from the offense, the offender shall be sentenced to life imprisonment or imprisonment not less than seven years or, in addition thereto, a fine not more than NT\$3 million; if serious bodily injury results therefrom, the offender shall be sentenced to imprisonment not less than three years but not more than ten years, or, in addition thereto, a fine not more than NT\$3 million.

5. Coerce procurement personnel to disclose confidential information (Article 91 of the Government Procurement Act)

A person who commits violence or threat with the intent to cause the personnel of an entity who is engaged in planning, design, handling, or supervision of a procurement, or the personnel of a supplier who is entrusted by an entity either to provide services of planning, design, or project management of a procurement or to conduct its procurement, to disclose or deliver the confidential documents, drawings, information, things, or any other data related to the procurement, shall be sentenced to imprisonment not more than five years, or, in addition thereto, a fine not more than NT\$1 million. If death results from the offense, the offender shall be sentenced to life imprisonment or imprisonment not less than seven years or, in

addition thereto, a fine not more than NT\$3 million; if serious bodily injury results therefrom, the offender shall be sentenced to imprisonment not less than three years but not more than ten years, or, in addition thereto, a fine not more than NT\$3 million.

6. Supplier should be fined if its agent is in breach of this Act (Article 92 of the Government Procurement Act)

Where a representative, agent, employee, or any other staff of a supplier who, in performing his/her duty, commits an offense specified in this Act, the wrongdoer shall be subject to the punishment prescribed in the relevant Articles; in addition thereto, the supplier shall also be subject to the fine prescribed therein.

(2) Administrative punishment:

According to Articles 101 to 103 of the Government Procurement Act, Where a government procuring entity finds that a supplier has any of the following circumstances, the entity shall notify the small and medium enterprise of the facts and reasons related thereto, and indicate with a note in the notification that it will be published on the Government Procurement Gazette if the supplier does not file a protest.

In the event that a government entity has notified the small and medium enterprise which does not file a protest or complaint within the prescribed time or the complaint filed is not accepted, the administrative punishments include that (1) the government entity shall immediately publish the name of the small and medium enterprise and the relevant circumstance on the Government Procurement Gazette; and (2) the small and medium enterprise is prohibited from participating in government bidding, being awarded with bidding contract or becoming a sub-contractor within specific periods of time.

The circumstances arising from the breach of good faith include:

1. where the supplier allows any other person to borrow its name or certificate to participate in a tender;
2. where the supplier borrows or assumes any other's name or certificate or uses forged documents or documents with unauthorized alteration to tendering, contracting, or performing a contract;
3. where the supplier has substantially reduced the work or materials without obtaining a prior approval;
4. where the supplier forges or alters without authorization documents

- related to tendering, contracting, or contract performance;
5. where the supplier participates in tendering during the period when its business operation has been suspended by a disciplinary action;
 6. where the supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance;
 7. where the supplier refuses to execute a contract without due cause after award;
 8. where an inspection indicates any serious non-conformity with the contractual requirements;
 9. where the supplier does not fulfill its obligation of guarantee after inspection and acceptance;
 10. where the time-limit for contract performance is seriously delayed due to causes attributable to the supplier;
 11. where the supplier is in breach of the requirement of Article 65 or the contract requirement by assigning a contract to others;
 12. where a contract is rescinded or terminated for causes attributable to the supplier;
 13. where the supplier is under the procedure of bankruptcy; or
 14. where the supplier seriously discriminates against women, indigenous people, or personnel of disadvantaged groups.

The periods for the suspension of a supplier's right to participate in tendering are (1) three years from the next day of the date of publication on the Government Procurement Gazette if the supplier breaches integrity as set out in the above Subparagraphs 1 to 5 or breaches the above Subparagraph 6 and, in addition thereto, is sentenced to imprisonment; 2) one year from the next day of the date of publication on the Government Procurement Gazette if the supplier breaches integrity as set out in the above Subparagraphs 7 to 14 or breaches the above Subparagraph 6 and, in addition thereto, is sentenced to detention, fine or probation.

Chapter 3

Civil liabilities of Company's Directors, Supervisors and Employees in Breach of Integrity

Q1: Is a small and medium enterprise entitled to discharge its directors, supervisors or employees who are in breach of integrity?

I. Discharge of directors, supervisors:

Explanation

Small and medium enterprises are entitled to discharge their directors, supervisors or employees who breach integrity. The explanations are as follows:

1. Discharge of directors, supervisors:

According to Article 199 of the Company Act, a director or supervisor of small and medium enterprise may be discharged for breach of integrity at any time by a resolution adopted at a shareholders' meeting and the discharged director or supervisor cannot file a claim against the enterprise for any loss suffered by him/her as a result of such discharge. In addition, if a director or supervisor has, in the course of performing his/her duty, committed any act resulting in material damages to the enterprise or in serious violation of the applicable laws or important articles of the company bylaws, but not discharged by a resolution of the shareholders' meeting, the shareholders with more than 3% of the total number of the enterprise's shares may institute a lawsuit in the court for a judgment in respect of such matter within 30 days after that shareholders' meeting." (Article 200 of the Company Act)

Case study example

The director of a clothing company, Hsiao-Wang, recommends a shop for his company's new business branch in the meeting of the board of directors, but fails to disclose he owns the recommended shop. Hsiao-Wang urges the board of directors to adopt the lease agreement of the shop and successfully achieves his objective. However, the location of the shop is poor and the rent is three times the market value. In this case, the company may discharge Hsiao-Wang as the company's director on the ground of his breach of integrity.

II. Termination of labor contract with employees:

According to Article 12 of the labor Standards Act, if a worker's breach of integrity arises from that: (1) a worker misrepresents any fact at the time of signing of a labor contract in a manner which might mislead his or her employer and cause the employer to sustain damage therefrom; (2) a worker commits a violent act against or grossly insults the employer, his or her family member or agent of the employer, or a fellow worker; (3) a worker has been sentenced to detention in a final and conclusive judgment, and is not granted probation or permitted to convert Imprisonment into fine; (4) a worker is in serious breach of the labor contract or in serious violation of work rules; (5) a worker deliberately damages or sabotages any machinery, tool, raw materials, product or other

property of the employer or deliberately discloses any technical or confidential information of the employer thereby causing damage to the employer; (6) a worker is, without good cause, absent from work for three consecutive days, or for the total of six days within a given month, the small and medium enterprise may terminate the labor contract within 30 days from it becomes aware of the situation (the above item 3 is not subject to the 30-day time limitation) and the worker cannot claim from the small and medium enterprise either additional wages for the advance notice period or severance payment.

Case study example

Hsiao-Pang works as a packager at Yummy Food Company. He cannot resist the attractive monetary inducement from his company's competitor, Delicious Food Company, so he agrees to steal the menu and exclusive formula of his company's most popular product "Juicy and Yummy Soup Dumpling." Its sales are higher than the same product offered by Delicious Food Company. Hsiao-Pang subsequently discloses the menu and formula to Delicious Food Company. In this case, Yummy Food Company may terminate its employment relationship with Hsiao-Pang without prior notice within 30 days after it becomes aware of the situation.

Reference laws

1. Article 199 of the Company Act: "A director may be discharged at any time by a resolution adopted at a shareholders' meeting provided, however, that if a director is discharged during the term of his/her office as a director without good cause shown, the said director may make a claim against the company for any and all damages sustained by him/her as a result of such discharge.
A resolution required for discharging a director under the preceding Paragraph may be adopted only by a majority of the shareholders present who represent two-thirds or more of the total number of its outstanding shares by the company. For a company whose shares are issued to the public, if the total number of shares represented by the shareholders present at a shareholders' meeting is less than the quorum set forth in the preceding Paragraph, the resolution required for discharging a director may be adopted by two-thirds (2/3) of the total votes of the shareholders present at the shareholders' meeting attended by the shareholders representing a majority of the total number of outstanding shares issued by the company.
Where higher requirements of the quorum of a shareholders' meeting and the number of votes are specified in the Articles of Incorporation of a company, such higher requirements shall prevail."

2. Article 200 of the Company Act: “In case a director has, in the course of performing his/her duty, committed any act resulting in material damages to the company or in serious violation of applicable laws and/or regulations, but not discharged by a resolution of the shareholders' meeting, the shareholder(s) holding 3% or more of the total number of the company's outstanding shares may institute a lawsuit in the court for a judgment in respect of such matter within 30 days after that shareholders' meeting.”
3. Article 227 of the Company Act: “The provisions set out in Articles 196 to 200, Article 208-1, Article 214 and Article 215 hereof shall apply mutatis mutandis, to supervisors. Nonetheless, the request to be submitted to supervisors under Article 214 hereof shall be submitted to the board of director instead.”
4. Article 12 of the labor Standards Act: ”In any of the following situations, any employer may terminate a labor contract without advance notice:
 1. Where a worker misrepresents any fact at the time of signing of a labor contract in a manner which might mislead his employer and cause the employer to sustain damage therefrom;
 2. Where a worker commits a violent act against or grossly insults the employer, his or her family member or agent of the employer, or a fellow worker;
 3. Where a worker has been sentenced to detention in a final and conclusive judgment, and is not granted probation or permitted to convert Imprisonment into Fine;
 4. Where a worker is in serious breach of the labor contract or in serious violation of work rules;
 5. Where a worker deliberately damages or sabotages any machinery, tool, raw materials, product or other property of the employer or deliberately discloses any technical or confidential information of the employer thereby causing damage to the employer; or
 6. Where a worker is, without good cause, absent from work for three consecutive days, or for the total of six days within a given month.
In the event that an employer intends to terminate a labor contract pursuant to Subparagraphs 1 and 2, Subparagraphs 4 to 6 of the preceding Paragraph, he or she shall do so within thirty days from the date he or she becomes aware of the particular situation.”
5. Article 18 of the labor Standards Act: ”In either of the following situations, a worker shall not claim from the employer either additional wages for the advance notice period or severance payment:
 1. A labor contract is terminated pursuant to Article 12 or 15; or

2. Where the worker terminates his service upon expiration of a fixed-term contract.”

Q2: Can a small and medium enterprise claim for compensations from its director, supervisor or employer in breach of integrity?

Explanation

A small and medium enterprise can make claim for compensations from its director, supervisor or employer in breach of integrity as explained below:

1. Claim for compensations from directors and supervisors

According to both the Company Act and the Civil Code, a director or supervisor of a small and medium enterprise fails to exercise the due care of a good administrator in conducting the business of the enterprise causing injury to the enterprise, acts negligently in conducting affairs mandated by the enterprise, or exceeds his or her authority causing injury to the enterprise, the director or supervisor shall be liable for the loss suffered by the enterprise (Paragraph 1 of Article 23 of the Company Act and Article 535 of the Civil Code). Furthermore, Article 216 of the Civil Code provides that compensation is to compensate for small and medium enterprise for the injury that it actually suffers and the interest that it loses.

Injury suffered is a direct damage which means injury to existing properties has already occurred, which results in reduced values of the properties. The innocent party can make a claim for compensation for the loss. For example, if a director or supervisor of small and medium enterprise breaches integrity which results in the enterprise's liabilities for loss suffered by a third party, the loss is a direct damage.

The loss of interest is also called passive interest, meaning the loss of interest which is expected to happen according to a plan, equipment or special circumstance. In other words, the interest is supposed to be gained if not because of the occurrence of the injury. For example, the expected sales revenue is lost due to the breach of integrity by a director or supervisor of small and medium enterprise.

2. Claim for compensations from employees

According to the labor contract or the employment relationship in the Civil Code, small and medium enterprise is entitled to compensation from an employee who is at fault in certain circumstances, such as the employee's breach of integrity. As the above, compensation is for both the loss actually suffered and the loss of interest by the small and medium enterprise.

Case study example

(Reference is made to Taiwan High Court 99-Shang-Yi-Tzu-Ti-4 case)

Mei Mei Company is in the wholesale and retailing business of imported cosmetics. Its business models include importing foreign products and then re-selling them to its customers directly or introducing foreign suppliers to domestic customers for commissions. A-Cheng is a director of Mei Mei while A-Chu and A-Hsin are the company's accounting and marketing staff respectively. When A-Cheng is the director of Mei Mei, he sets up another company, Li Li Company, and acts as the chairperson of the company. Li Li is in the same industry as Mei Mei, i.e. wholesale and retailing business of imported cosmetics.

A-Cheng colludes with A-Chu and A-Hsin, requesting them to tell Mi Mi Company, a customer of Mei Mei, that Mei Mei encounters financial difficulties and introduces Li Li to Mi Mi. Li Li then takes over Mei Mei's business with Mi Mi.

Li Li's hostile competition to steal Mei Mei's customer leads to the loss of interest by Mei Mei. Moreover, A-Cheng is Mei Mei's director but violates the non-competition obligation and fails to exercise the due care of a good administrator in conducting the company's business. As a result, Mei Mei Company may claim compensation from A-Cheng as per Paragraph 1 of Article 23 of the Company Act.

In addition, A-Chu and A-Cheng fail to perform their services honestly under the labor contract which leads to Mei Mei's loss. Mei Mei Company is thus entitled to claim compensation from A-Chu and A-Cheng for their non-performance according to the labor contract or Article 489 of the Civil Code.

Reference laws

1. Paragraph 4 of Article 192 of the Company Act: "Unless otherwise provided for in this Act, the relations between the company and its directors shall be governed by the provisions of the Civil Code pertaining to the mandate."
2. Paragraph 2 of Article 216 of the Company Act: "The relation between the company and its supervisors shall be subject to the provisions governing the mandate as stipulated in the Civil Code."
3. Paragraph 1 of Article 23 of the Company Act: "The responsible person of a company shall have the loyalty and shall exercise the due care of a good administrator in conducting the company's business; and if he or she has acted

contrary to this provision, he or she shall be liable for the loss suffered by the company.”

4. Article 8 of the Company Act: “The term "responsible persons" of a company as used in this Act denotes shareholders conducting the business or representing the company in case of an unlimited company or unlimited company with limited liability shareholders; directors of the company in case of a limited company or a company limited by shares.

The managerial officer or liquidator of a company, the promoter, supervisor, inspector, reorganizer or reorganization supervisor of a company limited by shares acting within the scope of their duties, are also responsible persons of a company.”

5. Article 544 of Civil Code: The mandatory shall be liable to the principal for any injury resulting from his negligence in the execution of the affairs commissioned or from such acts as are beyond his authority.

6. Article 489 of Civil Code: Even though the duration of the hire of services has been agreed upon, either party may, in the event of any serious occurrence, terminate the contract before the end of such duration.

If the occurrence as specified in the preceding paragraph be due to the negligence of one of the parties, the other party may demand for the injury from him.

Q3: Is a small and medium enterprise liable, jointly and severally, for the damage to a third party caused by a director, supervisor or employee of the enterprise who is in breach of integrity?

Explanation

I. Director or supervisor in breach of integrity:

According to Paragraph 2 of Article 23 of the Company Act, if a director or supervisor of a company has, in the course of conducting the company business, violates any provision of the applicable laws and thus causes damage to any other person, he or she shall be liable, jointly and severally, for the damage to such other person. This includes the situation where a director or supervisor breaches integrity and causes harm to a third party.

In addition, the reference provision in the above Q2 also applies. According to Paragraph 1 of Article 23 of the Company Act, a small and medium enterprise can claim compensations from the director or supervisor if the enterprise is not at fault and has paid the damage in full to the injured third party.

Case study example

Iron Bastion Company has been granted a patent for its invention “brick wall structure” by the Intellectual Property Office, Ministry of Economic Affairs. A-Hua, the responsible person of A Company, applied the same structure as “brick wall structure” to a construction work. The assessment concluded that the brick wall used by Company A was the same as the patent of Iron Bastion Company. Iron Bastion Company has requested Company A to cease the manufacturing, selling and applying the construction method for several times but Company A chose to ignore. Iron Bastion Company can claim damages not only from the responsible person A Hua as per the Patent Law, but also claim joint and several liabilities from Company A as per Paragraph 2 of Article 23. (Intellectual Property Court 98-Min-Chuan-Su-Tzu-Ti-31)

II. Employee in breach of integrity:

Article 188 of the Civil Code stipulates that a small and medium enterprise shall be jointly and severally liable for any injury because its employee has wrongfully violates the rights of a third party in the performance of the employee’s duty. However, the small and medium enterprise is not liable for the injury if it has exercised reasonable care in the selection of the employee, and in the supervision of the performance of the employee’s duty, or if the injury would have occurred notwithstanding the exercise of such reasonable care.

In addition, a small and medium enterprise which has paid damages to an injured third party may claim for reimbursement against the employee who committed the wrongful act.

Case study example

A-Tsung was employed by a construction company as a crane operator. One day A-Tsung was operating a crane and lost his attention due to his hangover from last night, accidentally hurting a passerby, A-Mei. A-Mei suffered broken bones in several places. In addition, A-Tsung's supervisor smelled alcohol but did not proceed with any questioning before A-Tsung started his work for the day. Therefore, A-Mei not only can seek damages from A-Tsung but also can claim joint and several liabilities from the construction company. The company lost the defense of the exercise of reasonable care because the injury caused by A-Tsung's lack of attention could have been prevented if the company had exercised reasonable care in the supervision of A-Tsung.

Reference laws

1. Paragraph 2 of Article 23 of the Company Act: "If the responsible person of a company has, in the course of conducting the business operations, violated any provision of the applicable laws and/or regulations and thus caused damage to any other person, he/she shall be liable, jointly and severally, for the damage to such other person."
2. Article 188 of Civil Code: The employer shall be jointly liable to make compensation for any injury which the employee has wrongfully caused to the rights of another in the performance of his duties. However, the employer is not liable for the injury if he has exercised reasonable care in the selection of the employee, and in the supervision of the performance of his duties, or if the injury would have been occasioned notwithstanding the exercise of such reasonable care.

If compensation cannot be obtained according to the provision of the preceding paragraph, the court may, on the application of the injured person, take the financial conditions of the employer and the injured person into consideration, and order the employer to compensate for a part or the whole of the injury.

The employer who has made compensation as specified in the preceding paragraph may claim for reimbursement against the employee committed the wrongful act.

Chapter 4

How to prevent directors, supervisors or employees' from breaching Integrity

**Q1: Can enterprises develop their own internal principles of integrity and ethics?
What would be the contents?**

Explanation

I. Small and medium enterprises should develop their own principles of integrity and ethics

As Transparency International (Note 1) and Social Accountability International have devoted themselves to the promotion of its Business Principles for Countering Bribery designed for small, medium and large enterprises, an enterprise should develop its own principles governing integrity and ethics for the purpose of creating a fair environment based on which business competitiveness will be sustained.

By way of the principles of integrity and ethics, an enterprise can prohibit any form of bribery, either direct or indirect, and adopt appropriate measures to fully implement the principles. Since the principles are created based on the fundamental values like integrity, transparency and responsibility, an enterprise is able to create an internal culture which is based on trust and zero-tolerance of bribery.

- (1) Aim of the principles: The aims of the principles are to help enterprises by providing a structure of good business practices and to suggest risk management for anti-bribery.”
- (2) The principles can help achieve:
 1. Eliminate any conduct of bribery;
 2. Allow enterprises to declare their commitment to anti-bribery; and
 3. Have enterprises make positive contribution to the honest, transparent and responsible business practice standards in any circumstance.

II. Contents of the principles of integrity and ethics

- (1) The principles should at least include:
 1. Enterprises will carry out their business fairly, honestly and openly. (Example: transparent payment terms, clear records)
 2. Enterprises will not make bribes, nor will enterprises condone the offering of bribes on our behalf, so as to gain a business advantage. (Example: no bribes to be paid by agents)
 3. Enterprises will not accept bribes, nor will enterprises agree to them being accepted on our behalf in order to influence business.

(Example: careful management of commission payments)

4. Enterprises will avoid doing business with others who do not accept Enterprises their values and who may harm their reputation. (Example: careful selection of business partners)
5. Enterprises will set out our processes for avoiding direct or indirect bribery, and keeping to and supporting their values. (Example: a process for dealing with gifts and entertainment)
6. Enterprises will keep clear and updated records. (Example: records of decisions on giving donations or how a demand for a bribe or conflict of interest was handled)
7. Enterprises will make sure that everyone in their businesses and their business partners know their principles. (Example: good communication and training; no excuse for not knowing)
8. Enterprises will regularly review and update their program and processes as needed. (Example: learn from experience and networking with others)
9. Enterprises will keep to these principles even when it becomes difficult. (Example: not paying facilitation payments)

(2) Guidance for the principles:

1. Enterprises should design and make a set of principles of integrity and ethics which correspond to their scales, sales departments, potential risks as well as places where activities take place. These principles should clearly state the values, policies and processes which are put into place by enterprises to effectively counter bribery in all activities.
2. Enterprises' principles of integrity and ethics should comply with the laws governing anti-bribery and integrity in their respective places of business, particularly the laws related to certain business practices.
3. Enterprises should engage and negotiate with their employees, labor union and members from other representative bodies during the process of designing and making their own principles of integrity and ethics.
4. Enterprises should engage in communication with interested parties to ensure effective development of the principles of integrity and ethics.

(3) The anti-bribery program of the principles:

In developing the principles of integrity and ethics, fundamental to countering bribery is understanding and recognizing the various guises in

which a bribe may come, and having in place processes for dealing with each. Consider how each form of bribery may impact the business and prioritize accordingly. The program at least should include the following:

1. Bribes:
 - (1) Enterprises should forbid providing, donating or accepting any form of bribes, including setting aside any percentage of contract price as kickbacks, or providing any unlawful benefits for customers, agents, contractors, suppliers or government officials through any other way or channel.
 - (2) Enterprises should also forbid their employee from arranging or receiving any bribes or kickbacks from customers, agents, contractors, suppliers or government officials for the benefit of the employee him/herself, the employee's family, friend, colleague or acquaintance.

2. Political contributions:
 - (1) Enterprises, their employees or agents should not directly or indirectly make a political contribution to a political party or an organization participating in political activities so as to gain a business advantage.
 - (2) Enterprises should publicly disclose all of their political contributions.

3. Charitable donations:
 - (1) Enterprises should ensure that their charitable donations and sponsorships are not bribes in disguise.
 - (2) Enterprises should publicly disclose all of their charitable donations and sponsorships.

4. Facilitation Payment (or "grease payments"): enterprises should recognize that facilitation payments are just another form of bribery and they should devote themselves to recognizing this and eliminating this type of payments.

5. Gifts, hospitality and expenses:

Enterprises should prohibit providing or receiving any gifts, hospitality or expenses as long as the above will affect the results of business dealings and the actual expenses exceed the reasonable expenses.

Note:

1. Social Accountability International (SAI) is a non-governmental and non-profit organization established in 1997. It has devoted itself to the development and promotion of voluntary standards with independent verification and public reports to improve work places and communities around the world. In order to implement this social responsibility system, SAI adopts a channel based on internationalization and common consensus to actively cooperate with enterprises, employees, labor unions, investors with the sense of social responsibilities and non-governmental organizations.

Reference

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| <ol style="list-style-type: none">1. Attachment 2: Business Principles for Countering Bribery – Small Business Edition (P.2-10~2-12, P.2-16) |
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Q2: How to strengthen legal education and promote the principles of integrity and ethics?

Explanation

Small and medium enterprises should strengthen their legal education and promote the principles of integrity and ethics by the following means:

I. Organization and responsibility

- (1) The responsible person should make policies based on the principles of integrity and ethics, and provide guidance, resources and active supports for the management in its implementation of the principles of integrity and ethics.
- (2) The responsible person should ensure that the internal division of work is clear and everyone is performing his or her own duty when the principles of integrity and ethics are implemented.
- (3) The responsible person and the senior management should clearly manifest their strong commitment to the implementation of the principles of integrity and ethics.

II. Business relationship

Enterprises should apply the principles of integrity and ethics to their agents, contractors and any third party organizations which they have business dealings with.

(1) Agent

1. Enterprises should not make unjust payment through their agents.
2. Enterprises should carefully examine candidates' qualifications when selecting their agents.
3. Enterprises should pay their agents appropriate remunerations for their lawful services.
4. Enterprises should record all of their dealings with their agents.
5. Agents should agree to comply with the principles of integrity and ethics by way of contract.
6. Enterprises should supervise conducts of their agents and be entitled to terminate the agency after acknowledging their agents having paid bribes.

(2) Contractor and supplier

1. Enterprises should conduct procurements in a fair and open way.
2. Enterprises should carefully examine candidates' qualifications

when evaluating their important future contractors and suppliers to make sure that these contractors and suppliers have put effective anti-bribery policies into place.

3. Enterprises should promote anti-bribery policies to their contractors and suppliers. Enterprises should supervise conducts of their contractors and suppliers and be entitled to terminate the business relationships after acknowledging its contractors and suppliers having paid bribes.
4. Enterprises should avoid engaging in business dealings with any contractor or supplier who has paid bribes.

(3) Human resources

1. The recruitment, promotion, training, work performance evaluation of enterprises should all reflect their commitment to the implementation of anti-bribery.
2. Enterprises should negotiate with all employees in their human resources policies and implementation of the principles of integrity and ethics.
3. Enterprises should make it clear that no employee will be demoted, penalized or unfavorably treated for losing business due to not paying bribes.
4. Enterprises should adequately discipline any employee who breaches the principles of integrity and ethics.

(4) Trainings

1. Enterprises' management personnel, employees and agents should all receive the specific trainings related to these principles.
2. If necessary, enterprises' contractors and suppliers should also receive the trainings related to these principles.
3. Enterprises should provide relevant courses or written materials to allow contractors and suppliers to understand the importance of the principles of integrity and ethics, and urge their employees, agents, contractors and suppliers to strictly comply with them.
4. Enterprises should encourage employees to learn the relevant legal knowledge of acting with integrity, and clearly understand the consequences of breaching the law and integrity.

(5) Raising concerns and seeking guidance

1. In order to maximize the effectiveness of the principles of integrity and ethics, enterprises must rely on employees and others to report conducts which breach these principles. To achieve this,

enterprises should provide safe and accessible channel for employees and others to raise concerns about bribery and report violation without fear of reprisal.

2. Enterprises' employees and other personnel should be able to utilize the above channel to seek guidance or offer suggestions of improving the principles of integrity and ethics. To support this process, enterprises should communicate these principles to their employees and other personnel, and provide guidance.

III. Communication

- (1) Enterprises should undertake effective internal and external communication of these principles.
- (2) Enterprises should disclose their adopted anti-bribery management system if so requested.
- (3) Enterprises should open to communications concerning these principles from interested parties.

Reference

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| 1. Attachment 2: Business Principles for Countering Bribery – Small Business Edition (P.2-12~2-15) |
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Q3: How to set up an internal audit and monitoring system?

Explanation

I. Suggestions according to the “Business Principles for Countering Bribery – Small Business Edition” :

Anti-bribery strategy can only be effective by way of implementation. Enterprises have to consider what kind of procedures can best effectively control the principles of integrity and ethics and accordingly set up monitoring and balancing mechanisms. Any enterprise regardless its size must have internal monitoring and controls, such as, an additional signature required for processing checks, control of expenses, cancellation of orders and so on. The following are some points to take into consideration:

- (1) Financial controls (including internal accounting controls) are essential. When these controls are correctly implemented, irregularities will be picked up. For example, enterprises should file and retain essential documents for inspections and enterprises should not have secret accounts.
- (2) If contract terms are well monitored, any lack of transparency in payments or practice will be highlighted;
- (3) Good management will immediately identify irregularities with gifts, entertainment and expenses;
- (4) If employee relations and company policies are well maintained, they will encourage transparency and compliance to the relevant requirements associated with integrity;
- (5) Senior officials of enterprises set the “tone at the top” to create positive culture of the organization;
- (6) Enterprises should set up regular review mechanisms and other monitoring procedures to facilitate the continuous improvement of the principles of integrity and ethics. For example, include the principles of integrity and ethics as an agenda point on the board of directors meetings or other meetings to regularly review the principles. Senior management of enterprises should monitor the implementation of the principles of integrity and ethics, establish whether the principles are appropriate, sufficient and effective, and undertake adequate improvement of the principles of integrity and ethics.
- (7) Accurate written records should be kept and available for inspection. For example, enterprises put into place internal control systems, particularly the retention of accounting documents and vouchers, supporting regular reviews to ensure the full implementation of the

anti-bribery policies.

- (8) Internal monitoring and controls can be fully effective only when all relevant procedures are followed.

II. Requirements under the United Nations Convention Against Corruption:

The United Nations Convention against Corruption requires that each state party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

- (1) Although Taiwan is not a state party to the Convention, the requirements mandated in Article 12 of the Convention are worth the attention of the government in its making of legislations. Furthermore, small and medium enterprises, before the government puts into place the related regulations, need to take initiative to self-regulate in respect of the following:

1. Promote cooperation between law enforcement agencies and relevant private entities;
2. Promote the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
3. Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
4. Prevent the misuse of management procedures which are used to regulate private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;
5. Prevent conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

6. Ensure that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.
- (2) In order to prevent corruption, both the Taiwanese government and small and medium enterprises shall take such measures as may be necessary, in accordance with the domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:
1. The establishment of off-the-books accounts;
 2. The making of off-the-books or inadequately identified transactions;
 3. The recording of non-existent expenditure;
 4. The entry of liabilities with incorrect identification of their objects;
 5. The use of false documents; and
 6. The intentional destruction of bookkeeping documents earlier than foreseen by the law.

Reference

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| 1. Attachment 2: Business Principles for Countering Bribery – Small Business Edition (P.2-15) |
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Q4: How to set up employee performance assessment and audit system?

Explanation

According to the “Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations” published by the International Chamber of Commerce, the suggestions made to the employee performance assessment and audit system are as follows:

1. The establishment of employee performance assessment system:

(1) Declaration made to employees

It needs to be ensured that no employee should be penalized for losing business due to not paying bribes. At the same time, the principles of integrity and ethics should provide punishments for any employee who breaches the principles of integrity and ethics. To emphasize the principles’ effective and compulsory nature, it is important to make this clearly known to all employees that the principles of integrity and ethics are the enterprise’s policies. If there is a human resources department inside an enterprise, the head of the department should actively participate in the making of the principles.

(2) Trainings for employees

Trainings are held to ensure all employees, including newly recruited employees, suppliers, contractors and other business partners, to understand and recognize the details of the principles of integrity and ethics. These principles should clearly stipulate that enterprise policies are made for maximizing the enterprise’s interest, not individual interest.

(3) How to implement

It is necessary to ensure that all employees understand the reason why the principles of integrity and ethics are needed and the risks in the absence of these principles. Every employee should recognize his or her responsibility for the implementation of the principles. Regardless the structure of an enterprise, every employee should fully understand the principles. The principles of integrity and ethics can be written in a more concise and easier manner to allow every employee to understand. Any new recruit or family member working for the family business should read the document of the principles of integrity and ethics and understand the importance of the principles to the enterprise.

It is important to ensure every person in the enterprise knows the recording methods and reporting procedures for giving and receiving things of value, the person to report to and the person to seek advice in case of conflict of interests. How to deal with the above issues depends on the scale of the enterprise. If there are only a few employees, an

education training program might be sufficient. Otherwise, the trainings have to be organized for separate groups. In such trainings of the principles of integrity and ethics, it is advised to have employees to sign for their attendance and record the names of the attendees. Records should also be retained if a new recruit understands the principles of integrity and ethics. The most important part is that an enterprise has to clearly state the principles of integrity and ethics are the enterprise's anti-bribery rules and the standards of its daily business activities. In addition, enterprises have to make it clearly known that what disciplines will be received if employees are in breach of the principles of integrity and ethics. If an enterprise has many employees, the participation of the human resources department manager in discussions concerning the principles of integrity and ethics and the compliance with domestic labor laws and regulations need to be ensured. For example, many countries require that enterprise policies similar to the principles of integrity and ethics have to be translated into local languages before they become effective. Equally important, employees must understand they will not be penalized for losing business due to not paying bribes.

2. The establishment of the audit system:

An audit system can be established according to the following methods:

- (1) All financial transactions should be adequately and fairly recorded in accounting documents for review by the board of directors, supervisors, relevant agents or auditors.
- (2) No "off-the-books accounts" or secret account should exist, and no improper or unjust documents related to any transaction should be released.
- (3) Enterprises should adopt all necessary measures to set up an independent mechanism, regardless internal or external audits, to uncover any transaction in violation of the principles of integrity and ethics, and subsequently take proper corrective actions.
- (4) Enterprises should comply with the tax and other related laws of the country, including prohibiting the deduction of bribes in any form from taxable incomes, and honestly pay taxes.

Reference

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| 1. Attachment 2: Business Principles for Countering Bribery – Small Business Edition
(P.2-27~2-28) |
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Chapter 5

Social Responsibility of Small and Medium Enterprises

Q1: How to fulfill the legal compliance responsibility to public authorities?

Explanation

The legal compliance responsibility of small and medium enterprises toward public authorities can be fulfilled by following the “Business Principles for Countering Bribery” below. The “Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations” published by the International Chamber of Commerce points out that the success of an enterprise’s principles will depend on the “tone at the top”: a clear message from the chief executive that bribery and extortion are prohibited and that an effective compliance program will be implemented. The effective implementation can be completed by the following means:

I. Prohibition of bribery and extortion:

Enterprises should prohibit bribery and extortion at all times and in any form, whether direct or indirect, including through agents and other intermediaries:

- (1) Bribery is the offering, promising to give, giving or accepting of any undue pecuniary or other advantage to or by the following person or entity in order to obtain or retain a business or other improper advantage, such as in connection with regulatory permits, taxation, customs, judicial and legislative proceedings.
 1. A public official, at national, local or international level;
 2. A political party, party official or candidate; and
 3. A director, officer, employee or agent of a private enterprise.

- (2) Extortion or solicitation is the demanding of a bribe, whether or not coupled with a threat if the demand is refused.

- (3) Enterprises should not commit the following conduct:
 1. To kick back any portion of a contract payment to government officials or to employees of the other contracting party; or
 2. To utilize intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government officials, or to employees of the other contracting party, their relatives, friends or business associates.

II. Agents and other Intermediaries

Enterprises should make their anti-corruption policy known to all agents and other intermediaries, and make it clear that they expect all activities carried out on their behalf to comply with their policies. Particularly, enterprises

should take measures within their power to ensure that:

- (1) any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by such agent;
- (2) no part of any such payment is passed on by the agent as a bribe or otherwise in contravention of the principles of integrity and ethics;
- (3) agents agree explicitly not to pay bribes. Enterprises should include in their contracts provisions to terminate agreements with agents if a bribe is paid, except for agreements with agents performing routine administrative or clerical tasks; and
- (4) they maintain a record of the names, terms of employment and payments to all agents who are retained by them in connection with transactions with public bodies, state or private enterprises. This record should be available for inspection by auditors and by appropriate, duly authorized governmental authorities under conditions of confidentiality.

The above provisions should be applied to all agents or other intermediaries used by the enterprise to obtain orders and permits, including sales representatives, customs agents, lawyers and consultants.

III. Joint ventures and outsourcing agreements

Enterprises should take measures within their power to ensure that anti-bribery provisions consistent with the principles of integrity and ethics are accepted by joint-venture partners as applicable to the joint venture and by parties to outsourcing agreements.

IV. Political and charitable contributions and sponsorships

- (1) Enterprises should only make contributions to political parties, party officials and candidates in accordance with applicable laws, and all requirements for public disclosure should be fully complied with. The amount and timing of political contributions should be reviewed to ensure that they are not used as a disguise for bribery.
- (2) Enterprises should take measures within their power to ensure that their charitable contributions and sponsorships are not used as a disguise for bribery. Charitable contributions and sponsorships should be transparent and in accordance with applicable law.
- (3) Enterprises should establish reasonable controls and procedures to ensure that improper political and charitable contributions are not made. Special care should be exercised in reviewing contributions to organizations in which prominent political figures, or their relatives, friends and business associates are involved.

V. Gifts, hospitality and expenses

Enterprises should establish procedures governing the offer or receipt of gifts, hospitality or expenses in order to ensure that such arrangements comply with the following conditions:

- (1) They are only limited to reasonable and bona fide expenditures; and
- (2) They do not improperly affect, or might be deemed to improperly affect, the outcome of procurement or other business transaction.

VI. Facilitation payments (or “grease payments”, Note 1)

- (1) Enterprises should not make facilitation payments. In the event that an enterprise determines, after appropriate managerial review, that facilitation payments cannot be eliminated entirely, it should establish controls and procedures to ensure that their use is limited to small payments to low-level officials for routine actions to which the enterprise is entitled.
- (2) The need for the continued use of facilitation payments should be reviewed periodically with the objective of eliminating them as soon as possible.

VII. Responsibility

A responsible person of an enterprise should take the following measures:

- (1) Take reasonable steps to ensure the compliance with the principles of integrity and ethics, including:
 1. To make resources available and support management in implementing the enterprise policies reflecting the principles of integrity and ethics;
 2. To establish and maintain proper systems of control and reporting procedures, including independent audits.
- (2) Sanction violations and take appropriate corrective action; and
- (3) Make appropriate public disclosure of the enforcement of its anti-corruption policies or rules.

Note:

1. Facilitation payments: also called facilitating payments, quick access payments or grease payments, meaning a small amount of payment made by enterprises to secure or facilitate services in their routine business activities.

Reference

1. Attachment 2: Business Principles for Countering Bribery – Small Business Edition (P.2-11 ~ 2-13)
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Q2: How to fulfill the profit-making responsibility to shareholders?

Explanation

Small and medium enterprises fulfill their responsibility to create wealth in two aspects, i.e. responsibility to internal shareholders and responsibility to the society in its creation of wealth as illustrated below:

I. Shareholders:

An enterprise upholding the principle of integrity should treat its shareholders with consideration and loyalty, and sincerely commit to optimize the enterprise's interest. Thus, an enterprise has the responsibility to:

- (1) apply professional and diligent management in order to secure a fair, sustainable and competitive return on shareholders' investment;
- (2) disclose relevant information to shareholders subject to legal requirements and competitive constraints;
- (3) conserve, protect, and increase the owners/investors' assets; and
- (4) respect shareholders' requests, suggestions, complaints, and formal resolutions.

II. Social responsibility to generate wealth for shareholders

According to the "Caux Round Table Principles for Business" (Note 1), in order to balance corporate interest and social expectation to attain sustainable and shared prosperity, an enterprise, in addition to maximize shareholders' wealth, should fulfill the following obligations:

- (1) A responsible enterprise should recognize that it contributes to the society by creating wealth and employment and providing consumers with products and services.
- (2) A responsible enterprise must maintain its own economic health and viability not only to its shareholders but also other stakeholders;
- (3) A responsible enterprise emphasizes its customers, suppliers, competitors and broader community interests, and treats them with honest and fair actions.

Note :

1. The Caux Round Table (CRT) is an international network of principled business leaders working to promote a moral capitalism to achieve the balance between corporate interest and social expectations so as to ensure sustainable and shared prosperity.

Q3: How to fulfill the responsibility to employees to build an enterprise of sustainable development?

Explanation

The obligation of small and medium enterprises to their employees to achieve sustainable development can be viewed from two aspects, i.e. taking care of employees' interest and the enterprise's sustainable development to provide sustainable employment opportunities for them:

I. Employees:

Enterprises upholding the principle of integrity respect the dignity of every employee and take employee interests seriously. Therefore, enterprises have the responsibilities to:

- (1) provide jobs and compensation that improve workers' living conditions, such as not under-reporting employee salaries and enrolling employees in labor and health insurance programs in pursuit with the applicable laws;
- (2) provide working conditions that respect each employee's health and dignity, such as establishing employee welfare measures and providing safe working environments;
- (3) increase working conditions of welfare for employees as citizens, family members and able and caring individuals, such as providing comfortable and safe working environments and encouraging employees to undertake proper leisure activities;
- (4) be honest in communications with employees and open in sharing information without violating the laws;
- (5) listen to employees and honestly deal with employee complaints and issues, such as setting up employee complaint channels and assigning specific persons to respond and handle employee issues;
- (6) avoid discriminatory practices and guarantee equal treatment, opportunity and payment in areas such as gender, age, race, and religion;
- (7) promote the employment of people with different skills and abilities in places of work where they can be genuinely useful;
- (8) encourage and assist all employees in developing relevant skills and knowledge;
- (9) be sensitive to the impacts of unemployment problems, and work with governments, employee groups, other agencies in addressing the dislocations.
- (10) ensure all administrative remedies and incentives are furthered to create long-term wealth as well as sound risk management and prevent

exposures to excessive risk;

- (11) avoid illegal hiring or abuse of child labor.

II. Enterprise's sustainable development

For the purpose of facilitating an enterprise's sustainable development, the "Caux Round Table Principles for Business" has provided the following principles as references:

- (1) Facilitating economic, social and environmental development
 1. A responsible enterprise should recognize that no enterprise is able to sustain prosperity in a society where economic development is stagnated or lagged behind;
 2. Thus, a responsible enterprise should make contributions to the economic, social and environmental development of a community where it operates to maintain the required business capital, i.e. finance, society, environment and other forms of goodwill.

A responsible enterprise should effectively and prudently use resources, engage in free and fair competition and emphasize upon innovation in technology and business practices to strengthen the society.
- (2) Respect for laws and spirits thereof
 1. A responsible enterprise should recognize that some business practices, although legal, may still have adverse consequences.
 2. Therefore, a responsible enterprise upholds the spirit and purpose behind the letter of law and provisions of laws. It requires its business practices to go beyond the lowest requirement set out by the applicable laws.
 3. A responsible enterprise should operate its business in a truthful, honest and transparent manner, and commits to its promises.
- (3) Respect for rules and custom
 1. A responsible enterprise should respect the local culture and tradition of a community where it operates to uphold the fundamental principle of fairness and equality; and
 2. A responsible enterprise should respect the laws of all countries and international laws by engaging in fair and competitive transaction regardless where it operates.
- (4) Support for responsible globalization
 1. A responsible enterprise, being a global participant, should support

open and fair multilateral trade systems.

2. A responsible enterprise should cooperate in efforts to relax those domestic measures that unreasonably hinder global commerce.

(5) Respect for environment

1. A responsible enterprise should protect and, where possible, improve the environment, and prevent the wasteful use of natural resources.
2. A responsible enterprise should ensure to adopt the best environmental measures without impacting on the needs of following generations.

(6) Avoidance of illicit operations

1. A responsible enterprise should not participate in or condone bribery, money laundering, or other corrupt practices
2. A responsible enterprise should not participate or support in arms or other materials used for terrorist activities, drug traffic or other organized crime.
3. A responsible enterprise should actively support the reduction and prevention of this type of illegal activities.

Q4: How to fulfill the responsibility of integrity to products and services sold to consumers?

Explanation

An enterprise operating on the principle of integrity should treat all of its consumers with respect and dignity. Therefore, an enterprise has to:

- I. provide its customers with the highest quality products and services consistent with their requirements;
- II. treat its customers fairly in all aspects of its business transactions, including a high level of service and remedies for their dissatisfaction;
- III. ensure that the health and safety of its customers are well protected;
- IV. protect consumers from the negative impact of environment caused by products or services offered;
- V. respect for human rights, dignity and culture in respect of products offered, services, sales and advertising; and
- VI. hear and accept consumers' complaints and deals with them properly.

Q5: How to fulfill the responsibility to conduct transactions with customers with integrity?

Explanation

This is one of the most important parts of the principles of integrity and ethics, and possibly the most difficult to implement as it involves other enterprises which are less within control, i.e. agents, contractors, suppliers and customers.

Therefore, to conduct a transaction with integrity can be achieved by the following ways:

I. The principles of integrity and ethics:

- (1) First of all make sure that those with whom the enterprise has a business relationship are informed of the enterprise's principles of integrity and ethics. Ask if they have similar principles in place and get a copy from them;
- (2) Business partners should understand that the enterprise's principles of integrity and ethics also apply to them when doing business with the enterprise and acting on behalf of the enterprise;
- (3) Expressly specify the principles of integrity and ethics in the terms of contracts and agreements, which should also allow for immediate termination if business partners pay or accept bribes; and
- (4) If the enterprise enters into a joint venture, make sure the principles of integrity and ethics form part of the business relationship.

II. Entering into business relationships

An enterprise has a responsibility when selecting its business partners by taking reasonable steps to check that they are legitimate organizations working to good business practices and whether they have their own principles of integrity and ethics. Most importantly, it must be central for an enterprise to consider the following two points before entering into a business relationship:

- (1) Business will be conducted in a fair and transparent manner; and
- (2) Bribes will be not be paid, offered or accepted. Therefore, before entering into a business relationship, it is important to make sure that an enterprise should:

1. carry out a simple due diligence process when selecting business partners to establish if there are any "red flags". This is a sensible precaution from a business perspective as much as from an ethical stance. Since a business partner gives or accepts bribes, or gives or accepts bribes on an enterprise's behalf, the enterprise will lose credibility of its commitment to not giving and accepting bribes.

2. check the organization's structure and ownership;
3. check the country, place of registration and place of payment;
4. look at its financial position;
5. ask around about its reputation;
6. speak to other business partners their opinions about the organization;
7. check if it has principles of integrity and ethics;
8. ensure that payment terms are transparent;
9. record your due diligence review in writing. Review the relationship from time to time to see if anything has changed.
10. ensure its principles of integrity and ethics are complied with by its business partners, such as agents, suppliers or contractors, and Check that they are legitimate and do not have a record of paying bribes;
11. review commission payments to check that they are in proportion to the services provided to your enterprises. Make sure that agents clearly understand the principles of integrity and ethics and agree to contractually abide by them;
12. keep clear records of all your decisions to help protect your enterprise, such as instructions on commissions agreed and not to pay bribes.
13. make sure contractual terms require that third parties keep to the enterprise's principles of integrity and ethics, and contracts give the right to terminate the agreement if bribes are paid or accepted by agents or intermediaries.

Reference

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| 1. Attachment 2: Business Principles for Countering Bribery – Small Business Edition (P.2-27~2-29) |
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Appendices

Appendix 1: Contact Government Ethic Units

Small and medium enterprises can contact the following government ethics agencies to offer suggestions or make reports.

1. Agency against Corruption, Ministry of Justice (<http://www.aac.moj.gov.tw/mp289.html>) is the central government ethics agency. Reports will be transferred to the subordinate ethics units.
 - (1) Direct anti-corruption line: “Direct Corruption Reporting Line (02)2316-7586.”
 - (2) Address: 2F, 5-8F., No.318, Songjiang Rd., Zhongshan Dist., Taipei City 10468, (Taipei City Government Department of Rapid Transit System Chieh-5 Joint Development Building)
 - (3) Tel: (02)2567-5586

2. Department of Civil Service Ethics, Ministry of Economic Affairs (<http://www.moea.gov.tw/Mns/doge/home/Home.aspx>) is a government ethics unit under the Ministry of Economic Affairs responsible for ethical issues related to the Ministry of Economic Affairs.
 - (1) Direct anti-corruption line: (02)2322-2508
 - (2) Address: 15 Fuzhou St., Taipei, 10015, Taiwan, R.O.C.

3. Civil Service Ethics Office of Small and Medium Enterprise Administration, Ministry of Economic Affairs (<http://www.moeasmea.gov.tw/ct.asp?xItem=732&CtNode=235&mp=1>) is a government ethics unit under the Small and Medium Enterprise Administration responsible for ethical issues related to small and medium enterprises.
 - (1) Direct anti-corruption line: (02)2366-2294
 - (2) Address: 3rd Fl. No. 95, Sec.2, Roosevelt Rd., Taipei 10646, Taiwan, R.O.C.

Appendix 2: The Guidance System for Small and Medium Enterprises of the Ministry of Economic Affairs

Overview of the Guidance System for Small and Medium Enterprises of the Ministry of Economic Affairs

1. Finance guidance system

Objectives	<p>(1) Assist small and medium enterprises in obtaining finance guidance resources information.</p> <p>(2) Assist small and medium enterprises in strengthening their financial and accounting systems and fully implementing internal controls.</p> <p>(3) Assist small and medium enterprises in strengthening their accounting systems to enhance their abilities to secure loans so as to help them obtain operational funds.</p> <p>(4) Assist small and medium enterprises in securing capitals.</p> <p>(5) Assist small and medium enterprises in self-managing cash flows.</p> <p>(6) Assist coordination between small and medium enterprises and financial institutions in credit/debt issues so as to facilitate enterprises' normal operations.</p>
Contents of guidance	Financial diagnosis, accounting system, investment assistance, project loan, internal control system, intellectual property financing, finance guarantee, financial planning, financial management training and certification.
Organizer	Small and Medium Enterprise Administration Tel: (02)2368-0816 #247
Website	http://www.moeasmea.gov.tw

2. Management guidance system

Objectives	<p>(1) Facilitate healthy development of small and medium enterprises and provide management guidance for small and medium enterprises.</p> <p>(2) Provide guidance for small and medium enterprises to promote their business efficiency and effective use of human resources.</p> <p>(3) Promote the future industrial competitiveness of small and medium enterprises.</p>
Contents of guidance	<p>(1) Management diagnosis for small and medium enterprises.</p> <p>(2) Package plant export, promotion.</p>

	<p>(3) Provide guidance with respect to the application of intellectual properties and management.</p> <p>(4) Strengthen business matches and technology exchanges.</p> <p>(5) Assist small and medium enterprises in participating in government procurement.</p>
Organizer	<p>Small and Medium Enterprise Administration</p> <p>Tel: (02)2368-0816 #226</p>
Website	<p>http://www.moea-management.org.tw</p>

3. Information management guidance system

Objectives	<p>(1) Assist small and medium enterprises in establishing modern management environment and e-business to increase their business competitiveness.</p> <p>(2) Assist small and medium enterprises in taking advantage of computer and other related information technologies to collect management information to create sound information management system so as to promote business management quality and operation efficiency.</p>
Contents of guidance	<p>(1) Provide consultation services for small and medium enterprises to adopt information and computer technologies.</p> <p>(2) Provide individual guidance with respect to information technology adoption based on industry clusters in individual industries.</p> <p>(3) Promote the application of internet database and e-commerce as per industry clusters in individual industries.</p> <p>(4) Provide e-enterprise talent cultivation program for small and medium enterprises.</p> <p>(5) Undertake regular e-business seminars and promotional activities, such as presentations of successful business cases.</p>
Organizer	<p>Small and Medium Enterprise Administration</p> <p>Tel: (02)2368-0816 #338</p>
Website	<p>http://eservice.moeasmea.gov.tw</p>

4. Mutual assistance and collaboration guidance system

Objectives	<p>(1) Build business cooperation environment, expand business exchanges and create cooperation opportunities.</p> <p>(2) Integrate respective resources of enterprises to strengthen the joint competitiveness and develop business opportunities.</p>
Contents of	<p>Mutual assistance and collaboration means to put enterprises which</p>

guidance	have the intention to engage in mutual assistance into small groups to build consensus on the common objective. Substantial and specific common objectives are formulated substantial followed by the development of clear mutual assistance and collaboration plans through group operation and brainstorms so as to undertake joint development, introduction of new technology, joint manufacturing, cooperation in marketing and co-transportation to jointly create new products and new businesses.
Organizer	Small and Medium Enterprise Administration Tel: (02)2368-0816#221

5. Quality upgrading guidance system

Objectives	Encourage small and medium enterprises to build excellent-quality management environment and upgrade product and service quality of small and medium enterprises.
Contents of guidance	<p>(1) Promote quality guidance for upstream and downstream industry clusters to enhance quality management capabilities of small and medium enterprises.</p> <p>(2) Promote guidance for small and medium enterprises in respect of their substantial cooperation in supply chain with large enterprises and value upgrading so as to facilitate the transformation and upgrading of small and medium enterprises, enabling them to secure business and technology upgrading opportunities to increase their market values.</p> <p>(1) Promote the quality upgrading of textile industry and machine tool and accessory industry, test and certify international standards and provide guidance with respect to the green supply chains, and assist enterprises in conforming TS 16949, ISO14001, QC 080000 standards etc. in view of helping them attain the status of international suppliers.</p> <p>(2) Cultivate management talent in excellent quality to enhance management performances of small and medium enterprises.</p> <p>(3) Fully implement the quality management system governing small and medium enterprises to assist them create sound quality management environment.</p> <p>(4) Undertake regular exchange activities, such as quality management promotion activities and successful case presentations.</p>
Organizer	Small and Medium Enterprise Administration

	Tel: (02)2368-0816 #326
Website	http://smeq.moeasmea.gov.tw

6. Star-up and incubation guidance system

Objectives	Create excellent incubation environment for small and medium enterprises to facilitate sound incubation and development of new small and medium enterprises so as to build solid foundation of Taiwan's economic development.
Contents of guidance	<p>(1) Entrepreneurial guidance: establish Business Start-up Consulting Center to provide entrepreneurial consultation services. Set up entrepreneurial knowledge database to provide information for startup enterprises. Set up entrepreneurial and innovation schools. Establish entrepreneur dream fulfillment workshop to provide in-depth guidance for start-up small and medium enterprises. Hold SMEs Innovation Awards.</p> <p>(2) Incubation guidance: encourage public or private institutions to set up incubation centers; construct professional incubation guidance network; cultivate incubation talent; further strengthen incubation development environment; undertake joint incubation promotion campaign.</p> <p>(3) Administrative support: integrate enterprise start-up guidance resources of all bureaus and departments to jointly promote and implement incubation guidance policies.</p>
Organizer	Small and Medium Enterprise Administration Tel: (02)2368-0816 #257
Website	http://sme.moeasmea.gov.tw

7. Marketing (overseas) guidance system

Objectives	Formulate market promotional strategies, promotional strategies for strategic industries, substantial measures, implementation issues and implementation methods in order to increase the international competitiveness of Taiwan's enterprises and industries and continuously assist enterprises in expanding overseas markets to maintain the steady growth of foreign trade.
Contents of guidance	<p>(1) Assist enterprises in eliminating trade barriers</p> <p>(2) Seek trade opportunities with full efforts.</p> <p>(3) Conduct Taipei international exhibits and facilitate invitation of international buyers.</p> <p>(4) Assist enterprises in conducting internet marketing.</p> <p>(5) Provide guidance with respect to brand development and</p>

	promotion of international image of industries. (6) Strength the cultivation of international marketing talent.
Organizer	Bureau of Foreign Trade Tel: (02)2397-7179
Website	http://www.trade.gov.tw/

8. Marketing (domestic) guidance system

Objectives	By way of the preliminary interviews and diagnoses, management bottlenecks of enterprises are identified; substantial marketing plans meeting the needs and future development trends are formulated; assist in eliminating marketing barriers and promoting marketing competitiveness to improve organization composition and build solid foundation for sustainable development.
Recipient of guidance	Wholesalers and retailers which are legally registered and issued with business registration certificates.(business registration certificates have been abolished)
Contents of guidance	(1) Human resources management, product management, retailer management, promotion management, customer service management, physical distribution management (2) Provide guidance for franchisors
Organizer	Department of Commerce Tel: (02)2321-2200 #754
Website	http://gcis.nat.gov.tw/welcome.jsp

9. Research and development guidance system

Objectives	Expand and increase the prevalence rate of research and development by enterprises in traditional industries by ways of encouraging them to engage in research and development as main business operation and providing subsidies for research and development efforts so as to further help enterprises in traditional industries upgrade their self-initiated research and development capabilities to enhance their competitiveness.
Recipient of guidance	The targets of guidance should be private enterprises in traditional industries. Traditional industries mean all manufacturing and service industries other than the new strategic industries provided under Article 8 of the Statute for Upgrading Industry. (Statute for Upgrading Industry has been abolished)
Contents of guidance	In terms of new product development, a guidance recipient should own a technology which exceeds the general technology standard in the same domestic industry.
Organizer	Industrial Development Bureau Tel: (02)2754-1255 #2435

Website	http://www.citd.moeaidb.gov.tw/
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10. Industrial safety guidance system

Objectives	Assist industries in resolving safety and hygiene issues, improving operational environments, promoting information technology, enhancing factory operation safety as well as safety and hygiene compositions thereof to increase output efficiency and labors' willingness to work.
Contents of guidance	(1) Basic technical guidance for improving work environment. (2) Provide guidance with respect to the promotion of industry zone emergency management system. (3) Provide technical guidance with respect to industrial safety and hygiene management. (4) Provide technical guidance with respect to risk management. (5) Participate in expos, hold guidance achievement presentations as well as technology seminars, and utilize internet and publications to promote concepts of safety and hygiene or technologies.
Organizer	Industrial Development Bureau Tel: (02)2754-1255 #2726
Website	http://www.moeaidb.gov.tw

11. Production technology guidance system

Objectives	Integrate domestic resources from juristic persons which engage in current technology R&D and management, technology service providers and academic institutions to assist enterprises in areas of identification of key technologies in need, application evaluations, operational management and strategic planning. Senior experts offer immediate and short-term in-depth diagnosis assistance and guidance to help enterprises improve their organization composition to increase their overall competitiveness.
Recipient of guidance	The recipients of guidance should be private enterprises in traditional industries. Traditional industries mean all manufacturing and service industries as well as the culture and creative industry governed by the Ministry of Economic Affairs other than the new strategic industries provided under Article 8 of the Statute for Upgrading Industry.(Statute for Upgrading Industry has been abolished)
Contents of guidance	Assist in resolving problems currently faced or issues requiring assistance in areas of manufacturing process improvement, product development and business management which are all within the

	scope of diagnosis guidance, such as product innovation, R&D design, manufacturing assembly, physical distribution, brand marketing and so on.
Organizer	Industrial Development Bureau Tel: (02)2754-1255 #2433
Website	http://www.moeaidb.gov.tw

12. Pollution prevention guidance system

Objectives	Assist industries in promoting hygiene manufacturing, upgrading industrial environmental protection technology standards, enhancing operation and maintenance efficiency of pollution prevention equipment, developing green technology and creating an industrial environment where resources are perpetually recycled and sustained.
Contents of guidance	<ol style="list-style-type: none"> (1) Provide guidance with respect to the promotion of Industrial hygiene manufacturing and environmental protection technology database. (2) Promote and provide guidance with respect to hygiene manufacturing and environmental protection technology. (3) Provide guidance with respect to the promotion of international environmental protection standards. (4) Provide guidance and engage in promotion of enterprises' social responsibility. (5) Assist R&D and upgrading of recycled technologies. (6) Promote industrial resource recycling to increase green competitiveness of industries. (7) Assist the overall industrial marketing and expand the market of recycled products.
Organizer	Industrial Development Bureau Tel: (02)2754-1255 #2727
Website	http://proj.moeaidb.gov.tw/eta/

13. One-stop Service Center

Objectives	Small and Medium Enterprise Administration establishes the "One-stop Service Center" to help small and medium enterprises survive the fierce competitive environment and offer factual and effective services.
Contents of guidance	<ol style="list-style-type: none"> (1) Handle complaints and requests for assistance from small and medium enterprises. (2) Provide coordination services concerning finance and resolving financial difficulties for small and medium enterprises. (3) Provide small and medium enterprises with guidance information from the government in relation to finance, business

	management, technology and R&D, industrial safety, quality upgrading and mutual assistance and collaboration.
Service window	Tel: (02)2368-0816#343-348 Toll free number: 0800-056-476 Fax: (02)2367-1164 Email: solution@moeasmea.gov.tw Address: 3rd Fl. No. 95, Sec.2, Roosevelt Rd., Taipei

Attachments

References

Attachment 1: Ethics Guidelines for Civil Servants Executive Yuan Republic of China

1. The Executive Yuan (hereinafter referred as “the Yuan”) has established these Guidelines to ensure that civil servants in its employ carry out their duties with integrity, fairness and unselfish motive in accordance with laws and regulations and, thereby, to maintain the Government's good reputation.
2. For the purposes of these Guidelines, the following definitions shall apply:
 - (a) **Civil servants** means personnel whose conditions of employment are governed by the Civil Service Act.
 - (b) **Having vested interests in civil servants' official duties** means any of the following relationships of individuals, juridical persons, groups or other parties with the Yuan, including its subordinate agencies:
 - (1) having business dealings with the Yuan, carrying out projects under the Yuan's supervision or being subsidized by the Yuan;
 - (2) seeking to gain, or having gained, a contractual relationship with the Yuan in connection with executing projects, supplying goods or providing other services;
 - (3) being likely to benefit from or be adversely affected by the Yuan's business decisions and by the implementation or non- implementation of such decisions.
 - (c) **Standard limit on normal courtesy gratuities** means a maximum of NT\$3,000 in gratuities that a civil servant may accept on a single occasion, and a maximum of NT\$10,000 per year from the same source, in the course of non-official dealings.
 - (d) **Ceremonial protocol in the conduct of official duties** means activities that, in accordance with common courtesy, customary protocol or local customs, must be conducted either domestically or abroad in the course of meeting with or receiving foreign dignitaries or in order to carry forward government business or facilitate discussions.
 - (e) **Entreaties or lobbying** means communications/contacts with civil servants which involve substantive aspects of the Yuan's or its subordinate agencies' business decisions or the implementation or non-implementation of such

decisions, and which have the potential of causing such decisions and the implementation or non-implementation of them to violate laws or be otherwise improper, thus adversely impacting the legitimate powers and duties of the government agencies in question.

3. Civil servants shall perform their duties in accordance with the law and in an impartial manner that serves the public interest. They shall not take advantage of their official powers, procedures or opportunities to seek illegitimate gain for themselves or others.
4. Civil servants shall not demand, solicit or accept financial/material gratuities from parties that have vested interests in the civil servants' official duties. Gratuities may be accepted, however, under any of the following conditions where it is an unsolicited occurrence and will not influence the receiver's exercise of official powers or performance of official duties:
 - (a) The gratuity is given and received within the context of ceremonial protocol in the conduct of official duties.
 - (b) The gratuity is given by a government superior as a reward, as assistance in time of hardship, or as an expression of consolation.
 - (c) The market value of the gratuity, from a single party, does not exceed NT\$500, or, if given collectively by more than one party, does not exceed NT\$1,000.
 - (d) In instances where the gratuity is given in connection with wedding engagements, weddings, giving birth, moving to a new residence, taking up a new position, being promoted or transferred, retiring, resigning from or otherwise leaving one's professional position; or in connection with the injury, illness or death of the recipient or the recipient's spouse or immediate relative; and where the market value of the gratuity does not exceed the normal range customarily given under such circumstances.
5. Civil servants shall deal with gratuities in accordance with the following procedures.
 - (a) Except under the circumstances cited in the preceding paragraph, gratuities offered or given to civil servants by parties that have vested interests in the civil servants' official duties shall be refused or returned, and such occurrences shall be reported in writing by the civil servants to their

supervisors and to their agencies' ethics offices. If they are unable to return such gratuities, they shall turn them over to their agencies' ethics offices for disposition within three days of receipt thereof.

- (b) Except in the case of gratuities given by relatives or close friends, in instances where the market value of gratuities given to civil servants by those who have no vested interest in their performance of official duties exceeds the standard limit on normal courtesy gratuities, recipients of such gratuities shall, within three days of receipt thereof, report such occurrences in writing to their supervisors and, when deemed necessary, to their agencies' ethics offices.

Government ethics offices shall propose in writing appropriate methods of disposing of the aforesaid improper gratuities in consideration of their nature and market value, such as by retaining them after paying for them, making them public property or donating them to charitable organizations. Upon approval of such methods by the agencies' responsible officials, the gratuities shall be disposed of accordingly.

- 6. Civil servants shall be deemed to have received financial or material gratuities under any of the following circumstances:
 - (a) The recipients of such gratuities are the civil servants' spouses or immediate blood relatives, or members of the civil servants' collectively supported households.
 - (b) The recipients of such gratuities are third persons who later transfer them to civil servants or persons with whom they have the foresaid relationships.
- 7. Civil servants are prohibited from taking part in dinner parties or other entertainment activities at the invitation of those who have vested interests in their official duties. Exceptions to this prohibition include the following circumstances:
 - (a) Civil servants are obligated to do so as a matter of ceremonial protocol in the conduct of official duties.
 - (b) Such activities are held in conjunction with traditional festivals and are open to participation of the public at large.
 - (c) Participation in such activities is arranged by one's superior as a reward or expression of consolation.
 - (d) Such activities are arranged in connection with wedding engagements,

weddings, giving birth, moving to a new residence, taking up a new position, being promoted or transferred, retiring, resigning from or otherwise leaving one's professional position, and their market values do not exceed the standard limit on normal courtesy gratuities.

Further, civil servants shall avoid accepting invitations to take part in social activities which, although not involving the hosts' vested interests in the civil servants' official duties, nevertheless are clearly inappropriate in consideration of the latter's official positions and responsibilities.

8. Civil servants shall not go to inappropriate places except as required by the conduct of necessary official business with their supervisors' approval, or when required for other legitimate reasons. Civil servants shall not engage in improper contacts with parties that have vested interests in their official duties.
9. While on official study tours, inspection tours or business trips, or while participating in conferences in an official capacity, civil servants shall not accept invitations to take part in dinner parties or other entertainment activities provided by related organizations; but they may accept simple meals, accommodations or transportation when deemed necessary in the course of carrying out their official duties,
10. Civil servants are permitted to take part in activities described in Subparagraphs 1 and 2, Paragraph 1 of Article 7 of these Guidelines only after submitting written proposals to, and receiving the approval of, their supervisors, and after notifying their ethics offices of their plans.
11. When encountering entreaties or lobbying, civil servants shall report such occurrences within three days to their supervisors and inform their ethics offices of them.
12. Upon receiving notification of civil servants' acceptance of gratuities such as monetary or material gifts, meals or other entertainment, or of instances of entreaties or lobbying, ethics offices of the Yuan's subordinate agencies shall file formal records of such occurrences.
13. Unless otherwise stipulated by laws and regulations, civil servants shall not concurrently engage in part-time work in either the public or private sector.
14. Remuneration received by civil servants for taking part in gatherings in capacities such as speakers, symposium panelists, seminar presenters or expert appraisers/judges shall not exceed NT\$5,000 per hour.

Remuneration accepted by civil servants for preparing manuscripts in connection with the aforementioned activities shall not exceed NT\$2,000 per 1,000 Chinese characters.

Civil servants are permitted to take part in events such as those mentioned in Paragraph 1 of this article organized by parties that have vested interests in their official duties, or upon the request of such parties, only after submitting written proposals to, and receiving the approval of, their supervisors, and after their ethics offices have been informed and have filed appropriate records.

15. As the rules of these Guidelines concerning notification of ethics offices and reporting to supervisors apply to the head officials of government agencies, head officials shall directly notify ethics offices of their plans.
16. Civil servants shall avoid involvement in private financial loaning/borrowing operations, forming or participating in private credit associations, or acting as financial guarantors or guarantors of others' conduct. In the event civil servants find it necessary to engage in such activities, they shall inform their agencies' ethics offices.

Agency heads and section supervisors shall endeavor to strengthen mechanisms for assessing the ethical integrity of their subordinates and take timely action to address instances of abnormal financial or living conditions.

17. The ethics office of each agency shall appoint a specialist responsible for explaining these Guidelines and how they apply to specific cases, as well as for providing other ethics-related consultative services. If points of doubt arise in the course of providing such services, ethics offices may refer the issues in question to higher-level ethics organizations for disposition.

In the preceding paragraph, "higher-level ethics organization" refers to the ethics office of the next-higher division of government that exercises direct administrative authority over the referring agency. If an agency is not under the administrative authority of a higher-level division of government, then its ethics office shall exercise the powers stipulated by these Guidelines with respect to higher-level ethics organizations.

In the preceding paragraph, agency that is "not under the administrative authority of a higher-level division of government" is a Cabinet-level department of government under the Executive Yuan.

18. In the case of agencies that have not yet established an ethics office, the affairs

that these Guidelines specify as the responsibility of ethics offices shall be handled by personnel in other positions who double as ethics specialists, or by a person appointed by the head of the agency.

19. Civil servants who are found to have violated these Guidelines shall be disciplined in accordance with pertinent regulations. Cases in which civil servants are believed to have committed criminal acts shall be referred to the courts.
20. Each agency, in accordance with its particular needs, is authorized to set ethical standards and rules stricter than those outlined in these Guidelines.
21. Central government and local government agencies not under the authority of the Yuan may utilize the rules outlined in these Guidelines as they deem appropriate.

Attachment 2: Business Principles for Countering Bribery Small and Medium Enterprise (SME) Edition

Business Principles for Countering Bribery Small and Medium Enterprise (SME) Edition

June 2006

Edited and translated by the Agency against Corruption, Ministry of Justice

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Forward

Transparency International is delighted to introduce this version of the Business Principles for Countering Bribery for use by small and medium enterprises (SMEs).

Much of the world's business is carried out by small and medium enterprises, especially in emerging economies. This edition recognizes that SMEs in many societies are frequently confronted with the problem of bribery. As smaller companies with limited resources SMEs face challenges in resisting and countering such pressures. Also, there are growing requirements made by large international companies for their suppliers to show evidence they have appropriate anti-bribery policies and systems in place.

This edition aims to set out in a clear and direct manner the process by which smaller businesses can develop an anti-bribery program relevant to their size and resources. Countering bribery is good business practice. It can help build reputation, especially with customers, and it can reduce risks. By building strong anti-bribery cultures SMEs can successfully challenge and resist bribery.

Transparency International and the Steering Committee which oversaw the development of the Business Principles hope that businesses of all sizes will find the SME Edition to be of value, both for SMEs to counter bribery and for large businesses seeking to encourage good anti-bribery practices in their suppliers.

Jermyn Brooks
Director, Private Sector Program
Transparency International

A Word from The Business Principles steering committee

The Business Principles for Countering Bribery were developed by a Steering Committee of leading companies and organizations under the Chairmanship of Transparency International and are supported by a TI Guidance Document, which remains the sole responsibility of TI. Both documents were drafted with larger, mainly public companies primarily in mind, but the support of smaller and medium-sized enterprises, which account for much of business world-wide, will clearly be crucial to success in the global fight against corruption.

We, the members of the Steering Committee, therefore welcome the initiative of TI to produce an edition of the Business Principles and an accompanying guidance document aimed primarily at the managers and owners of SMEs who will be looking for a maximum of practical effect with a minimum of bureaucracy. We commend this new publication accordingly and hope that it will prove of practical use both to businesses which have yet to introduce anti-bribery program of their own, and to larger companies which are seeking to encourage the commitment of supply chain and other business partners.

The Business Principles Steering Committee members:

Corporate members:

- BP p.l.c.
- F&C Asset Management p.l.c.
- General Electric
- HSBC
- Norsk Hydro ASA
- Organizacion Corona SA
- PricewaterhouseCoopers
- Rio Tinto p.l.c.
- SAP
- SGS
- Royal Dutch Shell
- Sika AG
- Tata Sons Ltd

Others:

- AccountAbility
- The Conference Board
- European Bank for Reconstruction and Development

- International Federation of Inspection Agencies
- International Federation of Consulting Engineers
- Social Accountability International
- Transparency International

Introduction - The Business Case

You are reading this because something has made you think about bribery and how it can damage your business.

Corruption is defined as the misuse of power by someone to whom it has been entrusted, for their own private gain. The most common form of corruption is bribery, which is defined as the giving or receiving of money, a gift or other advantage as an inducement to do something that is dishonest, illegal or a breach of trust in the course of doing business.

Transparency International (TI) introduced the Business Principles for Countering Bribery in 2002, primarily for large companies. Since then, the Business Principles have become recognized as a leading anti-bribery standard and a model for anti-bribery programs. An edition of the Business Principles more relevant to small and medium sized businesses (SMEs) has now been developed, together with guidelines which give practical advice to help those organizations with fewer resources of time, money and people, through the process of developing an anti-bribery strategy to suit their size and structure.

An SME may be as small as a sole trader or a partnership of three or four people. It may be a family business or a private limited company with a number of employees, perhaps as many as five hundred. Unlike a large company, an SME may not have a Board of Directors, a Human Resources Department or the resources of time and money to appoint a committee to oversee the introduction of “Business Principles.”

These “Business Principles” are the values by which business can be conducted with integrity. The Guidance Document is written for you as an owner or manager of an SME wishing to develop an anti-bribery strategy to introduce these principles into your business, whether small or medium in size. Each stage of the process is outlined and explained by highlighting what you need to think about. The Guidance Document will give you help on how to develop an anti-bribery Program which will be appropriate for you. The guidance is written to cover the many situations where bribery can occur, so if you find one which is not relevant to your business, for example, giving political donations, then move on to the next one. The advice is there for businesses to which it is relevant. It is also good to understand these issues as they may become relevant to you as your business grows.

Bribery may be so much a part of a business culture in some places, that dealing with it can seem an overwhelming challenge, and no one business, especially a small one,

can fight it alone. But by adopting an anti-bribery Program, and by cooperating with other SMEs, business partners, authorities and trade organizations, as well as civil society to fight bribery, you have the opportunity to make a real difference by helping to create a culture of zero tolerance towards bribery.

There are clear advantages to having an anti-bribery Program, and also risks to not having one. These will already be understood by you, but as an aid to your planning and discussion with your business colleagues, the benefits and risks are listed on the following page.

Benefits

- A reputation as a business that trades ethically increases your chances of selection as a supplier to large multinationals in their supply chain, and better access to international markets.
- A record of integrity will enhance your opportunities to acquire government business.
- With a good anti-bribery Program in place, your business and your associates will be better protected against legal penalties, loss of licenses and blacklisting.
- If you are considering selling your business, a good reputation will be more attractive for acquisition.
- A business with ethical standards is a good place to work and will encourage good working relationships and morale.
- Your business will be more attractive to financial organizations.
- You, and not some bribe payer or bribe receiver, will be in control of your business decisions. Your organization will save money which might otherwise be squandered on bribes, gifts and inducements.

Risks

- Bribery is illegal in most countries, and therefore a criminal offence which carries severe financial penalties and even the risk of imprisonment for responsible directors and managers.
- Even if the country in which you operate or to which you sell, does not have anti-bribery laws, you may be selling into other countries which can enforce penalties for corruption.
- There are a number of global initiatives working to eliminate bribery. The United Nations Convention against Corruption, UNCAC, which came into force in 2005, is the first global convention covering all forms of corruption and will grow increasingly important as it becomes law and is enforced. The Organization for Economic Cooperation and Development (OECD) fights bribery in international business through its Anti-Bribery Convention. It has been incorporated into the

laws of 37 countries which have signed up to the Convention and allegations of bribery can be reported to the relevant embassies. As it states: “Corruption is no longer business as usual.”

- If you are hoping to do business with the supply chains of large companies, they will want to know if you have an anti-bribery Program in place, because multinational companies are subject to particular laws and disclosure requirements which extend to their suppliers. Many large companies now have due diligence review processes, and if you have no anti-bribery Program, your business is less likely to be selected, either that, or you may have to sign up to their programs.
- A conviction for bribery can mean loss of export licenses, not to mention large fines.
- Bribery will taint a business and bring the inevitable loss of reputation and even blacklisting with particular organizations. Banks, auditors and lawyers must report any unexplained or irregular accounting under laws passed to counter money laundering and terrorism.
- Business decisions influenced by bribery are not based on business sense and will probably lead to poor results. The money paid out in bribes is a loss to the organization, and once started down the path of bribery, it will be more difficult to go back.

Business Principles for Countering bribery – SME EDITON

The “Business Principles for Countering Bribery (Business Principles)” were developed by a group of private sector interests, non-governmental organizations and trade unions as a tool to assist companies to develop effective approaches to countering bribery in all of their activities.

This version is a simplification of the processes written to help smaller organizations with fewer resources, through clarification of the issues and practical examples. The values held by the “Business Principles” are unchanged.

1. The Business Principles

These are the business values by which you will do business. An example of how you can record your commitment to these Principles is attached at Annex 1.

Your business commits to:

- Conducting its business fairly, honestly and transparently;
- Not making or offering bribes, whether directly or indirectly, to gain business advantages;
- Not accepting bribes, whether directly or indirectly, to give business advantages;
- Developing a Program to implement and support these Principles.

2. Aims

The aims of these Business Principles are to help you to ensure you use good business practices, to protect your reputation and to suggest ways to minimize the risk from bribery.

To achieve these Aims, your business should:

- Agree the values and practices by which your business operates;
- Look at your business and decide where the risks are;
- Agree as a business, the practices by which you can counter the risk from bribery;
- Outline the processes by which your business will do this.

3. How to develop a program for countering bribery

These are the practical steps you can take to decide how your business will keep to the Business Principles and achieve the Aims. Examples of where you can gather information are: embassies, trade organizations, and local TI National Chapters.

Assess your Risk

Check if the countries in which you do business are at high risk from bribery http://www.transparency.org/policy_research/surveys_indices/cpi.

- Evaluate the sectors in which your company trades, on their exposure to bribery.
- Review your contracts with agents and other business partners, and check that the payment terms and commissions are clear and appropriate for the services given.
- Determine what checks need to be made to assess the integrity of your suppliers, partners and customers.
- If you are working in a supply chain, understand what your customers expect you to do to counter bribery.
- Understand the laws and regulations which affect the business where you are operating; bribery is illegal in most countries.

Agree an anti-bribery Program

Based on your risk assessment, your business can now develop a Program for countering bribery and make sure that your business always acts honestly and openly.

4. Key bribery issues

These are the main issues which may directly affect your business and which you need to assess and prioritize.

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

Gifts and Entertainment

An expensive gift or the offer of lavish entertainment may be perceived as bribes under local laws, and can all be used as bribes, more subtle than cash, but made with the deliberate intention of improperly gaining a business advantage and perhaps preparing the way for more extensive bribery. On the other hand, reasonable gifts and entertainment offered openly in the normal course of business to promote good relations and mark special occasions are not bribes. So it is important that everyone understands the difference. To protect your business and the people working with you, agree on when gifts and entertainment may be given and accepted and what records need to be kept. Make sure your business partners know your rules.

An example of Rules on Gifts and Entertainment can be found at Annex 2.

Conflicts of Interest

A conflict of interest is when a personal interest or relationships is put before the business interests. Conflicts of interests can warp judgment and lead to actions which are not honest and open. These can sometimes lead to a situation where individuals act against their better judgment 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.

Charitable Contributions and Sponsorships

Bribes may be disguised as charitable contributions or sponsorships. Make sure that money paid to a charity is not dependent on, nor made to win, a business deal. Always give the money to the organization and not an individual.

Sponsorship is where the business makes a payment, in cash or in kind, so as to be able to link its name to a popular event, for example a sports activity, or a well-known person, such as a singer. The benefit to the business is association of its name with the well-known and famous, but the sponsorship should bring real, measurable benefits to the business such as more publicity and a stronger brand. Make sure sponsorships are made for the benefit of the business and not used as cover for bribery.

“Facilitation Payments”

“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. Having a clear plan on how to ensure against making “facilitation payments” will help you and your colleagues to deal with the problem.

Political Contributions

Bribes may be disguised as political contributions. If your business wants to

make a contribution to a political party, it is important that this decision is made openly. If you have a Board of Directors, it should be recorded as a resolution. If you are a small business, it can be written into notes of your management meeting.

Make sure everyone in the organization knows that the decision to make a political contribution on behalf of the business must be made with the agreement of the business, and should never be a decision made by one person without full agreement of the management. Be sensitive to timing. If you are in negotiation for a government contract or a license, such as planning permission, or you have a sensitive issue which the government is reviewing, contributions to the government or local party may be seen as a bribe. Never give a contribution directly to an individual.

5. Implementation requirements

To put your Program in place, you should take the following actions, depending upon the size and structure of your business.

Organization and responsibilities

Agree a Program with your business colleagues or employees, to ensure the “Business Principles” are followed. Depending upon the size of your business, you could appoint one person or group of people to administer the anti-bribery Program.

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

Everyone in your business should be encouraged to contribute to the discussion and agree to keep to the Program.

Business Relationships

When working with third parties, it is no good committing not to pay or receive bribes, if they are doing it on your behalf.

Your business should ensure that its Program is followed in dealings with business partners such as agents, suppliers and contractors. Check that they are legitimate and do not have a record of paying bribes.

Commission payments should be reviewed to check that they are in proportion to the services provided to your business. Make sure that the agent clearly

understands your Business Principles, and agrees contractually to abide by them.

Keep clear records of all your decisions e.g. on commissions agreed and instructions given not to pay bribes. This will all help to protect your business.

Make sure your contractual terms require that third parties keep to your “Business Principles” and that your contracts give you the right to terminate the agreement if bribes are paid or accepted by your agents or intermediaries.

Employees

Make sure that no-one in your business will be penalized for losing business through not paying or accepting a bribe. Equally, it should be part of your Program that anyone in the organization found paying a bribe or receiving a bribe will be disciplined. To make it effective and enforceable, your people need to know that this is your policy. If you have a Human Resources manager, he or she will need to be closely involved.

Training

Make sure that all the elements of your Program are discussed and agreed by everyone in your organization, and those who join you later. They should also be understood and agreed by your suppliers, contractors and other business partners. Make clear in your rules that decisions must put the best interests of the business before personal interest or gain.

6. Raising concerns and seeking guidance

This is an essential element in countering bribery. Your reputation will come you're your business values. Decide how best your business can deal with questions and reports and how to learn from the experiences and make improvements to your Program.

Agree with the people in your organization, and where possible with your business partners, the best way in which concerns about bribery can be reported without fear of reprisal, and where advice can be found on how to handle incidents, before they become a problem.

7. Communication

It's no good having “Business Principles” and a Program if no-one knows about them. Your business should make sure that the Program is made known to everyone I your organization, business partners and customers. This will have the positive effect of enhancing your business reputation as a business which acts

with integrity to counter bribery, and also help to protect you and your colleagues if incidents of bribery arise.

8. Internal controls and monitoring

It's no good having a Program unless it is supported by controls and records. These are the checks and balances which will support your Program and show that it is working. Although your business will not have the same disclosure and audit requirements as public companies, even the best run business can have problems, and good records are evidence of good anti-bribery practice if questions arise. Advertise your Program on your website if you have one. Keep notes of meetings where decisions are taken.

Keeping accurate books and records which show all your financial dealings, is essential. You should make sure that there are no off-the-books accounts. Remember that laws on money laundering require accountants and lawyers to report anything which is not open and which looks irregular. Having accurate records will help to protect your business if there is ever a need to explain a transaction.

You need strong internal controls, capable of exposing irregularities. Such controls will only work if they are well integrated into your processes and followed by everyone in the business. Those administering the controls need to be properly trained.

Check from time to time that your processes are working, by carrying out a review. Do this regularly and keep records of what you do to sort out anything which is not working.

Review your Program and discuss it regularly with everyone in the organization, and with auditors as appropriate. Keep records of these discussion and any actions taken as a result. Make improvements to your Program as you learn from experience.

Annex 1 – Suggested principles for SMEs

1. We will carry out our business fairly, honestly and openly.
(Example: transparent payment terms, clear records)
2. We will not make bribes, nor will we condone the offering of bribes on our behalf, so as to gain a business advantage.
(Example: no bribes to be paid by agents)
3. We will not accept bribes, nor will we agree to them being accepted on our behalf in order to influence business.
(Example: careful management of commission payments)
4. We will avoid doing business with others who do not accept our values and who may harm our reputation.
(Example: careful selection of business partners)
5. We will set out our processes for avoiding direct or indirect bribery, and keeping to and supporting our values.
(Example: a process for dealing with gifts and entertainment)
6. We will keep clear and updated records.
(Example: records of decisions on giving donations or how a demand for a bribe or conflict of interest was handled)
7. We will make sure that everyone in our business and our business partners know our Principles.
(Example: good communication and training; no excuse for not knowing)
8. We will regularly review and update our Program and processes as needed.
(Example: learn from experience and networking with others)
9. We will keep to these Principles even when it becomes difficult.
(Example: not paying “facilitation payments”)

Annex 2 - Suggested Rules on Gifts and Entertainment

Business commitment:

Our business has committed to not giving or receiving bribes. As gifts and entertainment could sometimes disguise bribes, or be misinterpreted as bribes, we have set out these rules which clearly define what we consider to be genuine and acceptable and what is not.

GIFTS

We may accept gifts of small items of limited value. We may not accept valuable items.¹

Although we may accept a gift now and then, we may not accept gifts which are given regularly or often.

Our business rule is that gifts we give must be of moderate value, legal under local law, and agreed by management.²

Valuable items received as gifts will be returned, or disposed of as agreed by management.³

ENTERTAINMENT

We may give and accept reasonable, hosted entertainment which is in the legitimate interests of the business.

We will not give or accept lavish or frequent entertainment, or entertainment which is not hosted.⁴

¹ There are usually laws or regulations on what government officials may accept. It will help you to discuss and decide what gifts to offer customers, rather than to leave it to one individual. Remember your customers may also have a gifts policy.

² Sometimes it would be rude to refuse a gift, e.g. at a public event. It helps to have thought about this in advance and to have guidance prepared. In such cases the gift could be accepted, but returned later with a letter of explanation. Alternatively, its value might be donated to charity. The giver should be told what you have done and why, to avoid gifts of value being presented on other occasions.

³ Where no-one from the business offering the event attends to host guests, e.g. at a sporting event, this is then a gift, not entertainment, and falls under the rules on gifts. There ought to be an element of business involved, e.g. promoting good relations or following a business meeting. Lavish entertainment goes beyond what is appropriate, e.g. weekend accommodation at expensive hotels, and including spouses. It is fine to do this, but each business should pay its own travel and accommodation expenses.

⁴ Sometimes it would be rude to refuse a gift, e.g. at a public event. It helps to have thought about this in advance and to have

guidance prepared. In such cases the gift could be accepted, but returned later with a letter of explanation. Alternatively, its value might be donated to charity. The giver should be told what you have done and why, to avoid gifts of value being presented on other occasions.

**Business Principles for Countering Bribery Small and
Medium Enterprise (SME) Edition - Guidance
Document**

Implementing the “business principles for countering bribery SME edition”

This document explains in more detail the various elements of the Business Principles and how to develop your Program. It is best to try to agree and implement the Program in one go, but if you can't manage that, suggested Steps are shown to help you complete it in stages.

Step 1

Agree your principles

This first Step is making a firm commitment to counter bribery by setting out your business values to:

- Conduct business fairly, honestly and transparently;
- Not make or offer, bribes, whether directly or indirectly, to gain business advantages;
- Not accept bribes, whether directly or indirectly to give businesses advantages;
- Develop a Program to implement and support these Principles.

It is important that your Board, if you have one, partner, manager or owner, depending upon your size and structure, are firmly behind this commitment and are seen to be active in its implementation, as this involvement will set the business culture which comes from the top. By adopting an anti-bribery Program, you are also taking steps to protect your business and your people.

The decision to take this first Step needs to be recorded. How this is done will depend upon your size and structure. If you have a Board of Directors, the proposal should be presented to the Board and agreed by resolution. If your business is very small, just have a discussion with your colleagues or partners and come to a general agreement to have an anti-bribery Program.

The important point here is that the decision to adopt an anti-bribery Program is recorded in writing. The importance of records is that they show your intentions, what you wanted to do and why. If ever you need to, you then have the means to protect your business against charges of bribery. As a small organization you do not have to publish reports like large companies, so just keep a book or file in which you have recorded your decisions. An example of how you might make a commitment to anti-bribery in a written code is set out in Annex 1.

Set the business aims

The Aims of the Business Principles are to set a framework for how you will do

business honestly and counter bribery by good business practices and risk management.

Your business first needs to look at its own situation through a quick assessment of risk. At this stage set out what your business needs to think about.

- Look at where you do business. What are the laws in your home country and in the countries where you do business? Information on countries is available from embassies, trade organizations, local TI National Chapters and the “TI Corruption Perceptions Index” shows the perception of the level of corruption in most countries. Are you operating in or planning to operate in countries seen as highly corrupt?
- Some industries are particularly vulnerable to bribery either because of the nature of their product or services, or where they mostly operate. Think about the oil industry, pharmaceuticals and construction industries for example. What kind of bribery schemes might you be exposed to? Evaluate the industries with which you do business and assess the risk to your business.
- Third parties such as distributors, and agents, may be vulnerable to bribery. Spot check the terms of your most important contracts and see if all the payments can be justified or if they involve complex or strange terms of payment. Look particularly at commission percentages, and check if they are appropriate for the services given. What exactly does a “management fee” cover, what benefit does the “management” bring you? It may be something very helpful, but think about what you expect to receive for that fee and make sure it is written into your agreement so that it is open and transparent. A commission of 5% may be justifiable, but what about 15%? Has the commission payment been introduced late in negotiations? If percentage costs are being added to the overall price, do you know what they are for and to whom they are being paid, i.e. an organization or an individual? Who owns the account into which the fee is to be paid? Contract prices have been known to be increased to provide a kickback to an individual.
- If you have employees, they may be at risk from the practices of business partners who are unethical. Look at your business partners, i.e. suppliers, distributors, and customers, and assess if your relationships and agreements with them are open and transparent. What do you know about them? Are there any ways in which they operate or arrangements with them which are questionable or difficult to understand? For example, are the tendering processes or the payment terms open and clear? Look especially at anyone acting on your behalf. Have you checked their authenticity? Are they legitimate businesses? Were any background checks carried out on their reputations, both for commercial

expertise and integrity? Do they have an office? Are payments being made offshore? This may seem daunting if you are a very small organization, but you can get help from embassies, trade organizations, TI chapters, and the internet is a rich source of information.

- Has your business has been affected by bribery?
- Look at your internal processes such as purchasing and contract terms on payment. Are you sure that there are adequate checks and balances and are they being recorded?

This information will highlight areas which need to be strengthened and help you to work out where you need to develop processes to help your business keep to your Program. As with your commitment to the Program, record your decided Aims in writing.

Step 2

Develop your program

In the first step you will have agreed to have an anti-bribery Program and decided upon your Aims and where you need to strengthen your processes or put new ones in place. A Program for countering bribery will also add to your reputation and will give your business an advantage with large companies looking for suppliers. It will also help you to minimize risks to your business, such as legal penalties and fines. You now need to put your Program into effect. Agree what to do to minimize the risk from bribery for your business. This will give you the scope of your Program. You will need to spend some time on this step. Start with the following two actions:

Decide who should be involved

This will depend upon the size of your organization. If you have a Board, it might appoint someone to be responsible for implementing your Program.

If you are a smaller organization with just a few people, it may be better for everyone to discuss and agree together how to run your Program.

It is important that leadership comes from the top, but everyone should take responsibility.

Think about who else you may need to involve, depending upon how and where you operate. Some examples are trade unions, lawyers or auditors. You may also wish to include some of your key business partners.

However you organize it, it is essential that everyone in the organization takes

responsibility for your anti-bribery Program as a core part of the business.

As an SME you may have limited resources but it is important that you spend some time to understand the existing laws on bribery. If for example you do business with governments or local government, there will be particular requirements. Most countries have anti-bribery laws, variously enforced. Countries which have signed up to the Organization for Economic Co-operation and Development (OECD) Anti-Bribery Convention, will have laws to counter bribery, and small businesses can report any attempted bribery by a business from an OECD nation to their embassies. US companies are subject to the Foreign Corrupt Practices Act and the Sarbanes-Oxley Act which deal with bribery of government officials and reporting requirements, and will want to make sure that their suppliers are not a weak link in their supply chain.

Decide the scope of your program

Fundamental to countering bribery is understanding and recognizing the various guises in which a bribe may come, and having in place processes for dealing with each. Consider how each form of bribery may impact your business and prioritize accordingly.

Bribes

In its simplest form, a bribe is an illegal transaction, where someone is abusing their position for personal benefit. It is usually a sum of money, but can be a benefit, given or received in order to gain an advantage. Benefits can be hospitality, gifts or a favor. Inducements may not even take the form of a direct bribe, but an indirect approach. They can influence judgment and place employees in a compromised position.

Gifts

Gift giving is an accepted practice in most countries but it can be open to abuse and may be used as part of a process of preparing for larger bribery, so it is important that you think about what you want your business to do about gifts. It is sensible to control both the giving and accepting of gifts so that there is a consistency in your approach. For example, you should be particularly careful when considering the giving of gifts during the entire commercial negotiations, from bid invitations to award of the business. Always be careful at any time of giving gifts to anyone with the power to award or influence business. Be aware that governments generally have strict rules on accepting gifts.

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

be fine, but what if the pen is gold or the gift is a pearl necklace valued at US \$1,000?

Thinking through your approach and being open about what you have decided is appropriate in gift giving and accepting for your business, is a way of making sure that you are protected from misunderstanding and exposure. It will also help your employees in dealing with such situations where they are offered gifts. For example, you may decide that an occasional gift at an appropriate occasion of up to e.g. US \$25 may be accepted, so make sure that everyone in your business and your business partners know your rules.

Set out what to do if someone in your business is offered more valuable or frequent presents. If refusal of the gift would cause offence, for example if it was presented at a public occasion, then give guidance on what to do, such as accepting it but recording the receipt of the gift, and perhaps giving it to a charity. Always politely inform the giver what you have done and why, otherwise you may be faced with the same situation at the next meeting. Perhaps you would prefer to play safe and not allow any gifts whatever their value.

Equally, you should think about gift giving. You may decide to give gifts only of items such as paperweights or pens which carry your business logo. There may be times when a more expensive gift may be more appropriate to the occasion. Whatever you decide make it clear, devise a system of approving and recording gifts, and ensure that everyone understands what to do.

An example of Rules on Gifts and Entertainment can be found in Appendix 1 to the Anti-Bribery Principles.

Hospitality and Entertainment

Entertainment can sometimes become a gift. Entertainment is always hosted by the organization giving it, gifts are not. If a business partner invites you to a dinner or to a social event which their company is hosting for business purposes or simply to further good relations, that is entertainment and acceptable providing it is not lavish. A meal in a local restaurant once in a while is fine. Dinner with expensive food and an overnight stay with spouses at a five star hotel is lavish.

Tickets to a gala event for you to use as you wish, without being hosted, are a gift. It may be fine to accept them, but you need to review them under your company's gift policy, i.e. do they exceed the value of gifts which you have agreed can be accepted? If your rules give a limit of US \$30 and the tickets are worth US \$200, then it needs to be discussed with your organization. If there is a good reason, the tickets may still be

accepted, i.e. if the person has been particularly helpful to the customer and the tickets are to show appreciation, but that decision needs to be discussed, agreed and recorded within the business.

Entertainment and gifts, if regularly accepted, can compromise and put you in a position where you are no longer free to use good judgment. Imagine having to tell a supplier that their standards are slipping or that you no longer want to buy from them, when you have just accepted from them tickets to a concert, which are very difficult to obtain. Again, you should decide on what is right for your business and how it should be approved. It is always prudent to make a record and, if appropriate to your size and structure, have someone in authority monitor what is being offered and accepted. Be aware that when offering hospitality, governments have strict rules, and your customers may also have their own policy on accepting entertainment. It may be fine to accept but just think about it first, why is it being offered, who will it benefit, will it incur obligations, is it in line with your agreed rules?

Business Travel Expenses for Customers

There may be occasions when your business wants to invite customers to a particular business event or to visit a factory or see an installation of a system. Equally, you may be invited by a customer. In both cases it is better that each meet their own travel expenses, unless there is a contractual agreement such as to give training on a product, where the travel costs are part of the agreement. If you feel it important to pay for customer travel, set down some simple guidelines such as the number of guests, class of travel, level of accommodation costs and length of time. If your customers want to bring their spouses, they should meet that cost personally. If your customer suggests that a weekend visit is added to the business trip, it is fine to help arrange it, but the customer should pay for their own expenses. As an example, if there is a strong business purpose, it may be fine to fly two or three of your customer's employees to your offices for a two day meeting, with reasonable entertainment such as dinner, included. To fly ten employees at your company's cost, first class for a two day meeting with a weekend at a five star hotel and a visit to a top sporting event would be excessive and open to question, particularly if it became public knowledge.

“Facilitation Payments”

“Facilitation payments”, sometimes known as “grease” payments are generally illegal. These are 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. Equally, they can be inducements that are offered by business people to customs, immigration and other officials to jump the queue or speed up the granting of services and permits. Either way they should not be offered or paid. The

difference between a facilitation payment and paying for a faster service such as first class mail services is that a legitimate service will be advertised at a set tariff which is the same for everyone, be paid for transparently to an organization or department and a receipt provided. The ‘facilitation payment’ will be given to an individual and hidden. No receipts will be given. Occasionally such payments are demanded under threat of physical violence. If this happens, it is important that your people understand that if they are threatened with harm, they should pay and leave, without fear of recrimination. If “facilitation payments” are demanded or paid under duress, then record them and let your manager know. Look at what happened, for example where and what were the circumstances, and use the experience to see what plans you can make to reduce the risk of it happening again.

Favors

As a small business, you will probably know and be well known by your business associates, and good relationships will be a valuable part of your business life. For the most part giving or accepting a favor will be a straightforward expression of good will. Just keep in the back of your mind that favors incur obligations which in turn may put people into situations where their judgment is impaired and they may not act in the best interests of the business. Such favors may not always be straightforward, and could conceal dubious motives. Examples might be sponsoring a visit (not connected to business) to your country by writing a letter of invitation to allow a foreign national to obtain a visa. Another might be allowing the use of your address for delivery of an item, or agreeing to payment in a country other than where the supplier does businesses or where the transaction took place. Think through if there is any likelihood of risk before acting on a favor, and if unsure, take advice. For example, writing a letter of invitation to help someone get a visa to visit your country, could make you their sponsor and liable for whatever they do whilst in your country.

Contract Payment Terms

This seems very obvious, but you should be able to give clear commercial justification to all the payment terms in your agreements. The better everyone in your organization understands the business policy on payment terms, the less likely you are to encounter ambiguous agreements. Commission fees should be balanced by measurable business value. Services supplied to your business by third parties should be clearly recorded and the terms understood. Payments need to be made in accordance with relevant tax laws. Payments should be made in the countries where the business takes place, and not offshore. They should be by check or bank transfer and not in cash. It is sensible to ensure that the financial terms are agreed, recorded and understood by the relevant people in your business. You need to set out who they are. Make sure your contract terms allow for immediate termination of the agreement

if the other party pays or accepts bribes in connection with your business. Remember that auditors are obliged to report anything suspicious which might indicate money laundering.

Political Contributions

Businesses may see the giving of donations to a political party as a way of contributing to the democracy of their country. Donations might be to party funds, or to help support an election campaign. They may be made to national parties or local initiatives. Such donations are governed by laws in some countries. If your business wants to make a contribution to a political party, check first what the local law requires, for example, there may be an upper limit. The granting of paid leave of absence to an employee (in addition to holiday allowance) to support a political group, perhaps in an election, may be regarded as a political contribution made by the business. If you decide to make a contribution, record it in writing and ensure the accounting is transparent. It is a good idea, if you have one, to publish it in your annual report and accounts (this may apply more to larger companies), if not, just keep a record in your books. If you do not want to make such contributions, record that decision in writing too.

You should not make contributions to a political party whilst in negotiations with a government over business, licenses, or any matter which affects your company. Never give a contribution directly to an individual.

Charitable Donations

Bribes may even be disguised as donations to charity. If your business wants to make a donation, you should set out some simple guidelines to follow. A genuine charity will generally be registered under the local country's laws. 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. Check if you can to find out to whom the money will go and for what purpose. Be wary if you are asked to give a donation to a particular charity as part of a business agreement. If you are engaged in a business bid and a customer has a connection with the charity or sponsored organization, then you should not promise or make a donation or sponsorship until the contract decision has been made. Money should always be given to a charitable organization and not to an individual. You might want to set an approval process for donations so there are counterchecks for any payments made.

Sponsorship

A business sponsors an organization such as a sporting club, when it pays for the right to use the name of that club for its business purposes. For example a business making

sports equipment could benefit from linking its name to the stars in that particular sport. In this case money may well be paid to an individual, but make sure there is an agreement in place which outlines what your business is paying in fees and what you expect to receive in return, for example your business name on posters at an event, the sports star wearing your business logo at an agreed number of events. Putting it in writing and keeping clear records will keep the arrangement transparent.

Conflicts of Interest

A conflict arises where personal interest is put before that of the business. An example might be when one of your business team has a cousin who runs a decorating business and who will give you a good price to do some work on the office. Providing the personal interest is declared, the selection process is transparent, and the business side is handled by someone other than the family member, no conflict arises. Your business should set out clearly how it wants to handle conflicts of interest and potential situations so as to avoid conflicts before they take place.

Step 3

Implementation

You have now set your anti-bribery Program. You have reviewed your situation and assessed the various areas of risk to your business. This exercise will have exposed any areas where you need to tighten up your processes or introduce new ones. Depending upon how you have decided to develop your Program in Step 2, now is the time to set that in motion. Whatever organization you have decided upon, it is very important that direction is seen to come from the top, i.e. the Chairman of the Board, the General Manager or simply the Boss. It is key to the success of the Program that everyone is involved and individually responsible and it is not a case of “do as I say”.

In adopting your Program, you are undertaking to do business with integrity. This also impacts on others in your business orbit, i.e. employees, suppliers, contractors, and customers. It is no good agreeing not to pay or receive a bribe if your suppliers are doing it for you. It is therefore essential that everyone involved is aware of your the Principles and Program.

Employees or those working in the Business

Make sure everyone understands why you are doing this and the risks involved in not having an anti-bribery Program. Everyone should understand that they have an individual responsibility to implement it. Whatever the structure of your organization, every employee or person working in the business needs to be aware of and understand the Program. The anti-bribery Program can be set out in a simple, easy to understand document given to each of your people. When hiring someone or asking a

family member to do some work for you, make sure they have read the document and understand why it is important for your business.

Ensure that everyone in the business understands your processes for reporting and recording gifts and knows who to talk to and where to get advice about potential conflict of interest. How you approach this will depend upon the size of your organization. If you have only a few people, this may be done in one training session, otherwise hold discussion in small groups. It is a good idea to open a register and to have everyone sign it as having attended training or a session which explained about your Program. Those new to the business should also be recorded as having understood that your business has an anti-bribery Program. Above all, make it clear that this is the framework for your business in countering bribery from now on, and that your Program is now a day to day way of doing business. Make clear what the disciplinary consequences of violating the Program will be. If you are a company with employees, make sure your Human Resources manager is involved in the discussions to make sure local employment laws are followed. For example, many countries require company policies, such as the anti-bribery Program to be translated into the local language before they can be made enforceable.

It is equally important that your people know they will not be penalized if they walk away from a business opportunity where it is dependent upon bribery.

Business Relationships

This is one of the most important parts of your Program and possibly the most difficult to implement as it involves other organizations and is less within your control, i.e. agents, contractors, suppliers and customers.

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

Entering into Business Relationships

Your business has a responsibility when selecting its business partners to take reasonable steps to check that they are legitimate organizations working to good

business practices and that they have their own anti-bribery Programs.

Most importantly, it must be central to your business relationship that:

- Business will be conducted in a fair and transparent manner;
- Bribes will be not be paid, offered or accepted.

Before entering in a business relationship:

- Carry out a simple due diligence process when selecting your business partners to establish if there are any red flags. This is a sensible precaution from a business perspective as much as from an ethical stance;
- Check the organization's structure and ownership;
- Check the country or registration and place of payments;
- Look at its financial position;
- Ask around about its reputation;
- Speak to other business partners;
- Check if it has an anti-bribery policy;
- Ensure that payment terms are transparent;
- Record your due diligence review in writing. Review the relationship from time to time to see if anything has changed.

Step 4

Raising concerns and seeking guidance

How you decide to deal with concerns and the giving of guidance will depend on your size and organization. To help you, here are some points for consideration:

- Your Program should be seen as an “evolutionary process”, i.e. one which is continually developing. Open discussion is important to its success and should be encouraged as essential to this development through the experience gained from reviewing concerns and deciding on their handling;
- People need to feel able to discuss issues without fear of reprisal;
- Business partners may also have issues to raise;
- This is the point at which problems can be identified and dealt with early, providing they are recognized in time;
- Confidentiality will probably be important when considering how to handle reports of incidents of bribery and discussion on conflicts of interest. Think about how you will handle this. Reputations are at stake and some reports may be based on a misunderstanding. Always find out the facts before taking action.

Communication

Implementing your anti-bribery Program is very positive for your business, so make sure it is well communicated. In addition to the initial communication to employees and business partners, make sure to keep it current with people new to your business

and your business partners. Post your anti-bribery Program on your website if you have one.

Internal controls and monitoring

Anti-bribery strategies are only as effective as those who implement them. Your business should consider what processes will best control your Program and what checks and balances are needed to monitor them. A business of any size needs certain internal controls such as having more than one signature on the checks, controlling expenses and signing off orders. Some points to take into consideration are:

- Financial controls (including internal accounting controls) are essential and when correctly implemented will pick up irregularities. Transparency and accuracy, including filing and retention of essential documents, are key;
- Contract terms, if well monitored, will highlight lack of transparency in payments or practice;
- Good management will identify irregularities with gifts, entertainment and expenses;
- Employee relations and company policies if well maintained will encourage openness and compliance;
- Example from the top sets the culture of the organization;
- Regular review of the Program is essential, perhaps have it as an agenda point on your Board or business meeting agenda;
- Accurate written records should be kept and available for inspection;
- Controls only work if processes are followed.

Conclusion

These guidelines are intended to help you implement your anti-bribery Program which addresses your structure, business and risks. The suggestions made are to help you focus on the issues so that you may decide how best your business can address them.

The key to developing an effective Program for countering bribery lies in:

- Recognizing the benefits to your business;
- Identifying the risks;
- Agreeing a process to lower the risks, e.g. by having rules on gifts and entertainment;
- Communicating your Program to your business partners;
- Keeping clear, accurate records, not only financial, but also of your decision to adopt your Program and all your processes for countering bribery;
- Giving practical training on your Program,
- Dealing effectively with incidents and concerns raised,

- Encouraging open discussion on issues arising,
- Continually reviewing your Program for effectiveness.

Memo

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