TRANSPARENCY INTERNATIONAL NORWAY

PROTECT YOUR BUSINESS!

Anti-corruption handbook for the Norwegian business sector

Transparency International is the global civil society organisation leading the fight against corruption. Through approximately 100 chapters worldwide and an international secretariat in Berlin, Transparency International raises awareness of the damaging effects of corruption and works with partners in governments, business and civil society to develop and implement effective measures to tackle it.

Transparency International's Norwegian chapter was established in 1999 and has its office in Oslo.

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Copyright: 2014, Transparency International Norway
ISBN: 978-82-93348-06-1
Graphic design: Nano Design
Illustration: Cathrine Finnema
Print: PJ Trykk
Published in the first edition: 9 December 2009
Published in the second edition: 16 December 2014

Editor: Arvid Halvorsen

The updating of the handbook is financially supported by Finansmarkedsfondet and Innovasjon Norge.

The handbook is available in Norwegian and English language editions, which also can be downloaded from Transparency International Norway's website: www.transparency.no.

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Preface

This handbook was originally published in December 2009. It has been a great success, the demand for it has been considerable, and it has been actively used in many businesses. We have now chosen to update the handbook, five years after its first publication.

TI's basic recommendation for businesses, the "Business Principles for Countering Bribery", was updated in 2013. The corruption provisions in the Norwegian Penal Code have been in force more than ten years, court decisions have been made in more than 30 cases, and these provide useful information on the interpretation of the law and legal practice. Another background for the update has been the entering into force of the UK Bribery Act in 2011; a law that is important for many Norwegian companies.

The handbook will be recognisable for previous readers. We have changed the order of the subjects somewhat and also some of the headlines, but the handbook contains largely the same type of information and level of detail as the original edition. This time we have chosen to emphasise some themes more than previously, including: Expectations to companies, whistleblowing, risk assessment and management, lobbying and trading in influence, and hidden economic interests.

The recommendations in the handbook are mostly based on experience, and there has been considerable exchange of experience with TI's international secretariat, TI Norway's members and other resource persons. Many persons have participated in the updating. We acknowledge their valuable contributions at the end of the handbook.

Two recent surveys conducted by TI Norway are relevant as a backdrop for the updated handbook.

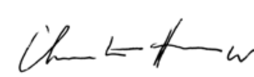
The survey "Transparency in corporate reporting – assessing large companies on the Oslo Stock Exchange (2013)" shows that although there is some progress since a similar survey in 2009, many big companies have a large improvement potential when it comes to disclosure of anti-corruption programmes. This result possibly also says something about lack of existence of and content in such programmes.

"Company Survey 2014 - slowly but surely ahead" examines knowledge about and attitudes to corruption, and the presence of anti-corruption measures in 600 companies. The survey was identical to a survey conducted in 2009. The main impression is that much is still lacking and that improvements are very modest, although there is a marginal change in the right direction.

The purpose of the handbook is still the same: To help Norwegian companies to develop, implement and operate adequate and effective anti-corruption programmes. Results from the two aforementioned studies show that this is still needed.

Oslo, December 2014

Guro Slettemark
Secretary general,
Transparency International
Norge



Christian Hambro
Chairman of the board,
Transparency International
Norge

1. INTRODUCTION

1.1 Why this handbook?

Transparency International (TI) cooperates with the private sector to help companies raise standards of practice in combating corruption. With this aim, TI has created tools to help companies develop risk-based and effective anti-corruption programmes tailored to their business. "Business Principles for Countering Bribery" is central in this, and constitutes the main basis for the recommendations in this handbook.

The purpose of the handbook:
The aim of this handbook is mainly to advise Norwegian *companies on how to establish, implement, operate, maintain and further improve effective rules, procedures and other measures* to reduce the risk of involvement in corruption at home and abroad. Furthermore, the purpose is:

- to help Norwegian companies *understand why corruption* is damaging to business, and the rationale for companies to have anti-corruption policies and practices,
- to make companies aware of *how Norwegian and international laws address corruption*,
- to encourage management to raise awareness among all employees about the fact that corrupt activities, in addition to being against company rules, also are criminal offences for which managers and staff could incur *personal liability and make the company criminally liable,* that could result in imprisonment, fines, compensation for damages, debarment from business activities such as bid competitions, and
- to increase the understanding and standard of *how to deal with issues* such as facilitation payments, gifts, hospitality, and interaction with business partners.

1.2 Who is this handbook for and how to use it?

The handbook is primarily intended for Norwegian companies. It is particularly relevant for *those responsible for leading the development and implementation of a company's anti-corruption programme*.

Parts of the handbook will be useful for *the board of directors*, because the board is responsible for ensuring that the company has adequate measures against corruption and has a satisfactory compliance system.

Parts of the handbook will be useful for the *senior management*, in understanding the facets of corruption, legal requirements and expectations to companies, business risks, possible consequences, why an anti-corruption programme is necessary, how to develop such a programme, and because "the tone at the top" is essential for programme implementation.

If a company does not have its own anti-corruption programme, the *employees* can use the handbook's recommendations directly as guidance for their own behaviour, and for how to respond when faced with attempts of corrupt practices. This information is mainly found in Chapters 5 and 6.

The handbook may also be useful for Norwegian public sector entities and other organisations, both in respect of their own anti-corruption efforts and in understanding the challenges and expectations that companies are faced with.

2. Corruption and consequences

2.1 What is corruption?

Corruption includes a wide variety of activities, all with the aim to obtain illicit benefits. When a public or private sector position is abused for personal benefit, this may involve bribery, nepotism, favouritism or other forms of corruption. The most common form of corruption is bribery. It is important to be aware that bribery is not only about money, but may occur in many different forms and disguises.

For the purpose of this handbook, corruption is defined in the same way as in the Norwegian Penal Code (§276a):

> **To request, receive or accept an offer of an improper advantage in connection with a position, office or assignment or to give or offer someone an improper advantage in connection with a position, office or assignment**

Public sector and private sector corruption. These are often two sides of the same issue. In public-private business relationships, public sector officials normally act as the demand side of bribery and private companies are usually the supply side. Norwegian law and the laws of many other countries address corruption both between private companies and between the private and public sectors.

Corruption and other economic crimes. Corruption often occurs together with other economic crimes such as fraud, embezzlement, theft, money laundering, competition crime, tax evasion, accounting manipulations, and insider trading.

2.2 How is corruption damaging?

The consequence of corruption for society, companies and employees and other involved persons are very extensive and serious.

> ***Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.***
> **– Preamble, Council of Europe Criminal Law Convention on Corruption**

Damages to societies. Corruption may cause a score of socio-economic, political and social problems. Corruption disturbs and hampers trade and investments, and contributes to capital flight. It destroys market mechanisms and leads to more expensive and lower quality goods and services. Corruption is also a major cause of poverty and human rights violations. There are also indications of corruption being a source for financing of terrorism.

Damages to companies. Corruption results in bidding uncertainty, wasted bid expenses, increased project costs, financial loss, lost project opportunities, extortion and black-mail, criminal prosecutions, fines, black-listing/debarment and loss of reputation. Corruption leads to competitive bribery instead of fair competition based on price, delivery time and quality. Corruption leads to less confidence in the company, and the company will appear less attractive to stakeholders such as investors, business partners and job seekers.

Damages to employees and other involved persons. For employees who are involved in corruption, it may lead to termination of employment, criminal prosecution, fines and/or imprisonment. Leaders and owners of companies may also lose the right to exercise professions or to engage in business. For employees who are not directly involved, corruption will cause reduced motivation and job satisfaction, and that they start looking for employment elsewhere.

2.3 Which countries, business sectors and institutions are most exposed?

The extent of corruption is unknown, but large. For example, in the EU Anti-Corruption Report (February 2014) it is estimated that corruption is costing the EU economy EUR 120 billion per year, just a little less than the annual budget of the European Union, and equivalent to 5 % of the EU countries' GNP.

Many corruption forms are difficult to penetrate. It is particularly demanding to uncover cross-border corruption.

TI regularly surveys and analyses situations and trends in a large number of countries and publishes the results in reports and indexes that can be found on TI's web-pages. These can be used free of charge by companies as basis for assessing corruption risk connected with different countries, business sectors and institutions.

Corruption Perceptions Index. The CPI, popularly called TI's corruption index, ranks countries according to the perceived level of corruption in the public sector. It is composed of surveys among business people and assessments by country analysts. The perceptions gathered make the CPI a helpful contributor to the understanding of different levels of corruption from one country to another.

Global Corruption Barometer. The GCB is the only worldwide survey on views of and experiences with corruption. As an opinion poll among the general public, it provides an indicator of how corruption is affecting individuals on a national level and how efforts to curb corruption around the world are viewed on the ground. The GCB includes a variety of corruption-related questions, including which institutions are seen as most corrupt and how respondents rate their governments in the fight against corruption. It also provides an insight into people's experiences with bribery, gathering information on how frequently citizens are asked to pay bribes when they are in contact with public services.

Bribe Payers Index. The BPI measures cross-border business corruption through active business bribery

in foreign markets. The BPI ranks leading exporting and foreign investment countries according to the degree their companies are perceived to be paying bribes abroad. The BPI also ranks business segments and sectors according to where it is most probable that bribes are offered, accepted or demanded. The BPI concludes that corruption is most likely to occur when the authorities and not the market distributes resources, when public officials are under-paid, when procedures are opaque or very bureaucratic, and when the probability of corrupt activity being uncovered and punished is low.

National Integrity System. The NIS-analyses measure vulnerability and corruption risk in important institutions in society. NIS- studies have been completed for a large number of countries, including Norway. The NIS-reports point out strengths and weaknesses in the different institutions and recommend improvement measures. Thus, the reports contain useful background information for companies when analysing corruption risks connected with different institutions that the companies will be in contact with.

The corruption provisions in the Norwegian Penal Code have been in effect since 2003. Some conclusions from the 34 cases that have been completed and closed by the prosecutors and the courts in the period 2003-2013 are:

- Corruption in Norway appears mainly to be a domestic problem – only four of the cases involve foreign companies and persons. It is questionable whether this gives a true picture when it comes to international corruption.
- 60 % of the cases involve public officials.
- 80 % of the cases include businesses.
- Many business sectors are represented. There are most cases from the petroleum industry and civil construction.

2.4 What arguments are used to justify corruption?

Thousands of Norwegian firms operate internationally. Their behaviour in foreign countries has to be just as ethical as at home. However, some business people seem to justify bribery with the culturally relativistic argument, suggesting that corruption is part of the culture in some countries, a cultural phenomenon as unique in character as local art, music and other forms of expression. Some companies claim that they pay attention to the cultural dimension of facilitation payments, gifts and hospitality, referring to the need to respect local customs. However, culture must not be used as an excuse for violating ethical business practice. Bad practice must never be confused with or justified by cultural differences.

Why are some companies willing to offer bribes? Some misunderstood justifications, or rather rationalisations, used to defend corruption are:

- *The need for being competitive* – if any one bidder believes that one of the competitors is paying a bribe, this can be seen as a justification to do the same.

- *The need to develop or secure the business* – some contracts are so large that they can ensure a successful future for the winning bidder. Conversely, failure to win such a contract can result in large losses for the company and the owners, and possibly mass lay-offs. This can be translated into a "valid reason" to pay bribes.

- *Limiting income losses* – if for example a spare part for a plant which is shut down is held up in customs, or if a drilling rig is idle while awaiting an authority approval, someone may be tempted to offer a bribe to speed up the bureaucracy. Someone will choose bribery as an inexpensive solution to avoid a large loss of income, and take a risk in spite of it being illegal.

- *A good investment* – disregarding all ethical considerations, some see bribery as an excellent investment. They believe that paying for the award of a contract is much more cost-effective than marketing and competitive bidding.

- *The aim justifies the means* – to achieve results for the company is so important that limits are being stretched, loopholes are being looked for, and the intention of the code of ethics is being compromised.

2.5 Why should companies combat corruption?

It is common opinion that corruption is unethical. Both businesses and authorities define anti-corruption as a part of corporate social responsibility, and many companies have included anti-corruption in their values. It is in the interest of companies to counter corruption because it can lead to severe legal penalties and other serious consequences. Therefore, it is becoming more common that companies analyse their business, both domestically and internationally, to identify key corruption risks, and implement preventive measures.

Corruption risk may lead to many different serious consequences for companies:

Legal prosecution risk. Corruption constitutes a significant legal risk, both for companies and individuals: The risk of incurring criminal and civil liability for the company's own acts, and also liability for business partners acting on behalf of the company. This includes prosecution in Norway for corruption offences committed in other countries. For companies having business outside Norway, there is an additional risk of prosecution under other countries' laws.

Cost risk. A company's cost of involvement in corruption cases may be substantial in terms of fines, disgorgement, and compensation for damages. In the worst instance, a corruption case may threaten the very existence of a company.

Risk of debarment from bid competitions. If a company is involved in a corruption case, this may result in lost business opportunities. The company may be black-listed and excluded from the opportunity to participate in bid competitions. Debarment may happen already at the pre-qualification stage, when a customer establishes the bidders list. For public procurement, such debarment is prescribed in regulations. It is becoming increasingly more common to practice this also among customers in the private business sector.

Financing risk. The risk of not being able to raise finance and attract investors is real. Companies found to be involved in corruption may be debarred from receiving loans from national and international finance institutions, including multilateral development banks. Loan agreements with export credit and export finance institutions may lapse if the guarantee recipient and/or exporter have acted corruptly. Responsible investors will choose not to invest in shares, and possibly withdraw their investment from companies that become involved in corruption. Some responsible investors also consider corruption risk and the adequacy of the companies' anti-corruption efforts as a basis for their investment choices.

Reputation risk. Reputation damage affects share prices and future business opportunities. Companies with a reputation for unethical practices are increasingly considered to be undesirable business partners. They lose customers and find it more difficult to attract good staff. Coupled with growing expectations of accountability by authorities and society at large, this increases pressure on companies to live up to ethical business practices, and increases reputation risk and consequences.

Companies which are ethical and compliant may choose not to have business in, or to withdraw from, countries where corruption is serious and widespread. This does not solve the problem, as other companies with lower standards could take over the business. Companies with high standards should rather see themselves as part of the solution by acting as role models, using their influence with authorities, suppliers and business partners, initiate collaboration with other actors, and support civil society organisations. By helping societies to function properly, companies are actually helping themselves.

3. International law and Norwegian law

3.1 Anti-corruption conventions

There are a number of international conventions dealing with corruption in the public and private sectors and in the political life. A common feature of conventions is that they require the signatory states, through their national legislation, to launch a comprehensive and concerted attack on corruption. Signatory states are required to criminalise corrupt acts, step up enforcement, increase legal and judicial cooperation with other states, and strengthen preventive measures.

Norway has ratified and implemented the following anti-corruption conventions:

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) - is a common framework for establishing equal competitive conditions for companies in all convention countries.

- The Council of Europe Criminal Law Convention on Corruption (1999) - encompasses active and passive corruption in both the private and the public sector.

- The Council of Europe Civil Law Convention on Corruption (1999) - deals with the civil law aspects of corruption. Its measures include enabling persons who have suffered damage as a result of corruption to claim compensation.

- The UN Convention against Corruption (2003) – is the first global convention to deal with preventive measures, criminalisation, international cooperation, and asset recovery. This is the most important convention because it is most fundamental and extensive.

3.2 Provisions against corruption in the Norwegian Penal Code

Before the amendments in 2003, corruption was not a prominent issue in the Norwegian Penal Code. The word “corruption” was not used anywhere in the Code. There were provisions dealing with bribery of public officials in Norway and abroad, but the provisions used terms such as “threats”, “consideration” and “offers of advantages”. Corruption not involving public officials was mainly dealt with in the general provisions on fraud.

In 2003, the Penal Code was significantly strengthened on the subject of corruption, by the implementation of the Council of Europe Criminal Convention on Corruption, and by the addition of three new provisions on corruption. Today, Norway’s corruption legislation is among the strictest in the world.

The Penal Code has three sections on corruption, covering:

- corruption
- gross corruption
- trading in influence

Both the person who offers an improper advantage (active corruption) and the person who accepts it (passive corruption) may be prosecuted for corruption under the Penal Code. The Code criminalises:

- corruption involving *Norwegian public officials and private actors*
- corruption involving *foreign public officials and private actors*
- *complicity* in corruption

The provisions apply to Norwegian companies and citizens, but also to foreign companies and citizens residing in Norway, for corruption committed in Norway and abroad, regardless of whether the act is a criminal offence in the other country.

It is not necessary for the prosecutors to prove that an improper advantage actually has been transferred. It is sufficient that an improper advantage has been offered, solicited, or accepted in connection with a position, office, or assignment. It is neither a requirement that the receiver of a bribe actually has carried out what he or she was paid or encouraged to do.

Also cases where the giver does not intend to influence the recipient and does not expect anything in return, can be covered by corruption provisions of the Penal Code. However, the penal provisions primarily aim at targeting the cases where the giver has intended to influence the recipient.

The Penal Code also applies to bribes paid indirectly through agents, consultants or other intermediaries. For instance a payment, fee, or commission will be at risk of being an improper advantage if, for example, the payment for the services is disproportionally large, or if the services are non-existent.

Corruption
The penalties are fines or imprisonment of up to three years.

Any person who
a) for himself or other persons requests or receives an improper advantage or accepts an offer thereof in connection with a position, office or assignment, or
b) gives or offers any person an improper advantage in connection with a position, office or assignment shall be liable to a penalty for corruption.
– Norway’s Penal Code, § 276 a

Gross corruption
The penalty for gross corruption is imprisonment of up to 10 years. Debarment of the right to exercise a profession or to carry out business may also be included in the sentence.

In deciding whether the corruption is gross, importance shall be attached to, inter alia, whether the act has been committed by or in relation to a public official or any other person in breach of the special confidence placed in him as by virtue of his executive position, office or assignment, whether it has resulted in a considerable economic advantage, whether there was a risk of considerable damage of an economic or other nature, or whether false accounting information has been recorded, or false accounting documents or false annual accounts have been prepared.
– Norway’s Penal Code, § 276 b

Trading in influence
The Penal Code provision on trading in influence covers corrupt acts between two persons for influencing a third person. The penalties are fines or imprisonment of up to three years.

Any person who
a) for himself or other persons, requests or receives an improper advantage or accepts an offer thereof in return for influencing the conduct of any position, office or assignment, or
b) gives or offers any person an improper advantage in return for influencing the conduct of a position, office or assignment shall be liable to a penalty for trading in influence.
- Norway’s Penal Code, § 276 c

This provision deals with the case where a person gives or offers an intermediary an improper advantage in return for exercising influence on a decision-maker, without the decision-maker receiving any advantage. A central point in the assessment of the legality of the behaviour is the extent to which the intermediary has been open about his activities, relationships and intentions. The first provision (letter a) pertains to passive trading in influence, i.e. the intermediary’s demand, receipt or acceptance an offer of an improper advantage. The second provision (letter b) pertains to active trading in influence, i.e. cases where a person gives or offers an intermediary an improper advantage. The third person, who as a decision-maker

was the target for the influencing, does not obtain any benefit and is not exposed to punishment.

This provision covers trading in influence both in the private and the public sectors. Lobbying activity is one form of trading in influence that in many cases are legal, but may in certain cases be considered improper and illegal, for instance if the lobbyist is not transparent about representing somebody else.

Improper advantage
A key issue in the Penal Code is which actions, contributions or services may constitute "an improper advantage" and hence incur liability for corruption.

An "advantage", according to the preparatory works leading up to the 2003 amendment of the Penal Code, is "everything that the passive party finds in his/her interest or can derive benefit from". This broad definition covers:

- *economic advantages*, such as money in cash or in bank accounts, cars, free travels, entertainment and shares in a company

- *non-economic advantages* with no direct material value, e.g. the passive party is awarded an honour, is promised a future holiday or a contract, is admitted to an association with restricted membership, receives sexual services, or his/her child is accepted by a private school

A number of factors will count in the assessment, on a case-by-case basis, of the impropriety of the advantage. These may include:

- the purpose of the advantage (i.e. the element of influence)
- the position (public official, top executive, etc.) of the giver (active briber) and of the receiver (passive briber)
- the value and nature of the advantage
- whether or not the principals of the giver and the receiver are aware of the advantage offered and received
- whether or not there has been a breach of internal rules (code of ethics, etc.) or a contract

The impropriety criteria often cause doubt in corruption cases. What matters is whether a specific action, assessed in the context that it has occurred, is lawful or improper to the extent that it is illegal. The requirement of impropriety is a legal standard that demands a clearly blameworthy condition. A general answers to what is covered by the corruption provisions cannot be established. In the preparatory work to the 2003 amendment of the Penal Code, it is pointed out that the evaluation shall depend on the perceptions in the society in view of the basic values behind the provision.

Facilitation payments
The practice of making or requesting facilitation payments, i.e. payment for a service to which one is already entitled or has a legal right to without extra payment, is a form of corruption covered by the Penal Code, even though it does not specifically mention the term "facilitation payment". If a facilitation payment constitutes or intends to create an improper advantage, then criminal liability may apply. In the preparatory work for the 2003 amendment of the Penal Code, it is stated that facilitation payments for services that an individual has an entitlement to will not always constitute an improper advantage under the Penal Code. As examples, it is mentioned that if a person feels compelled to pay a foreign public official a small amount for the return of his/ her passport, or to be allowed to leave the country, this will not be punishable.

Extortion
The business community at times points out that payments that might be categorised as corruption actually are payments made in response to extortion in situations with threats to life and health, or risk of significant economic loss. Whether payments under such circumstances are illegal, must be assessed in each case. The Penal Code provisions on *necessity* or *self-defence* may apply, and an act that in another context would be illegal, may be legal.

No person may be punished for any act that he has committed in order to save someone's person or property from an otherwise unavoidable danger when the circumstances justified him in regarding this danger as particularly significant in relation to the damage that might be caused by this act.
– Norway's Penal Code, § 47 (necessity)

Necessity may apply in an emergency situation where an action, which under other circumstances is a criminal offense, is made to save persons or goods. Thus, cases where the action is carried out to gain an advantage are not applicable. Self-defence may apply in an emergency situation where there is an illegal attack. In self-defense situations, the averting/defensive action will always have to be directed towards the attacker.

No person may be punished for an act committed in self-defense. It is a case of self-defense when an otherwise criminal act is committed for the prevention of or in defense against an unlawful attack if the act does not exceed what appeared to be necessary for that purpose, and it must not be considered absolutely unfitting to inflict so great an evil as is intended by the act in view of the dangerousness of the attack, the guilt of the assailant, or the legal right assailed.
– Norway's Penal Code, § 48 (self-defense)

An assessment of alternative actions must be made for both provisions. For necessity situations, it is required that the danger could not be averted by other means than by the necessity action. For self-defense situations, it must be assessed whether the attacked person had an escape option and whether the action was necessary. In addition, a proportionality assessment of the rescue action or the averting/defensive action must be made.

Corporate liability
The Penal Code also covers criminal liability for legal entities. A wide range of legal entities may be held liable and sanctioned, such as a company, society or other association, one-man enterprise, foundation, estate or public enterprise. This of course also includes state-owned enterprises and foreign companies established in Norway.

A Norwegian company can be prosecuted for acts committed by a foreign subsidiary provided that the subsidiary, and anyone employed by the subsidiary or acting on behalf of the subsidiary, also has acted on behalf of the company.

The penalty for legal entities has a complementary function to the personal criminal liability, and is a "can-option". The penalties for legal entities are fines. Debarment of the right to carry out business may also be included in the sentence.

When a penal provision is contravened by a person who has acted on behalf of an enterprise, the enterprise may be liable to a penalty. This applies even if no individual person may be punished for the contravention.
– Norway's Penal Code, § 48 a

According to the Penal Code's § 48b letter c, the decision of punishment, and the size and form of punishment, will depend on "whether the enterprise through guidelines, instructions, training, controls, or other measures could have prevented the violation."

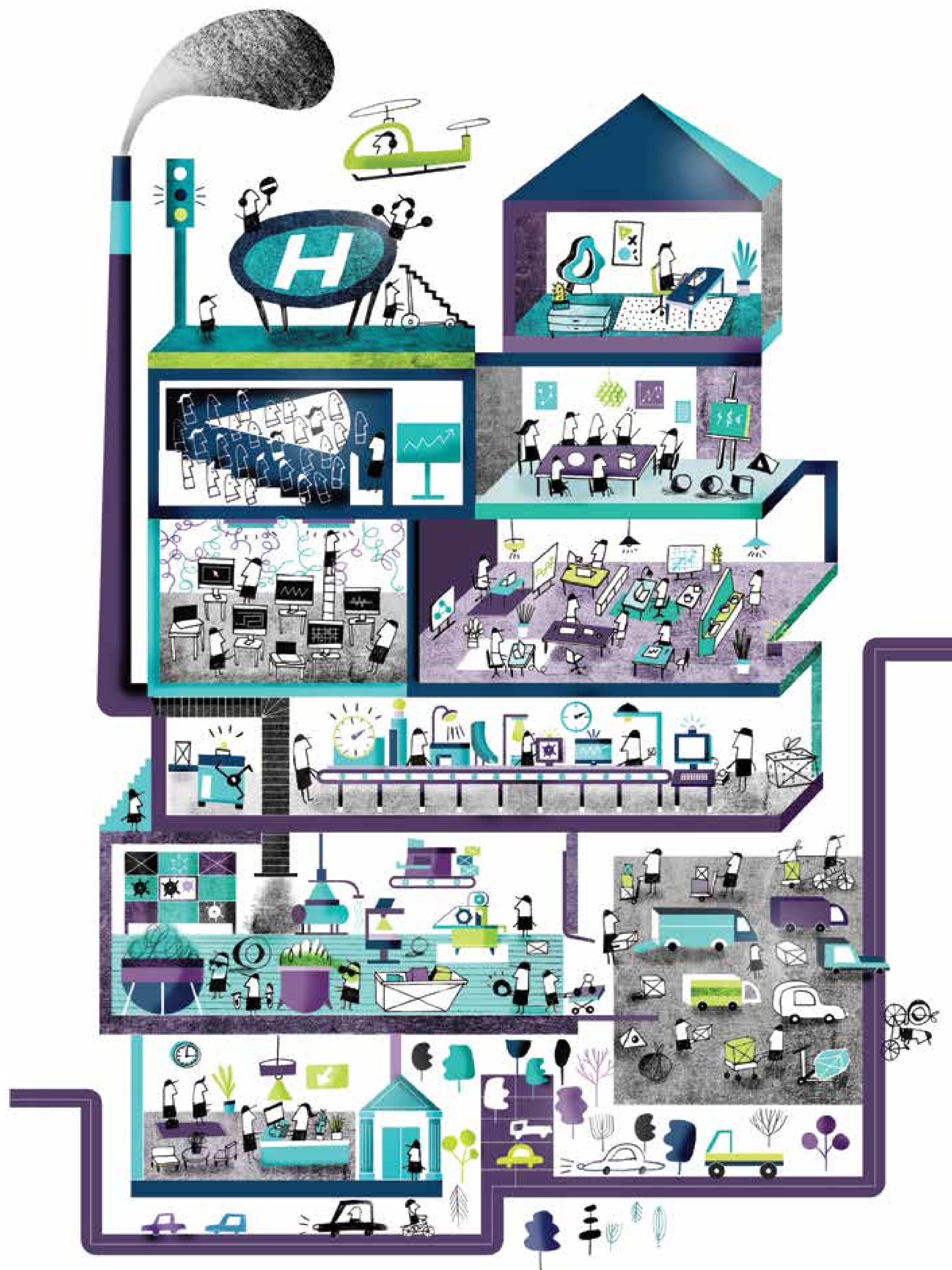
Trond Eirik Schea, director of Økokrim – about corporate liability and preventive measures:

… although the prevention factor is only one of several factors to consider when evaluating whether enterprises should be imposed responsibility, it is not probable to find cases where the offense could not be prevented, but where responsibility is imposed anyway. Furthermore, some elements can be extracted from the judiciary's practicing of the preventive element, which in my view gives some guidance because they can be said to be equally relevant in cases concerning corruption, etc. committed by a person acting on behalf of a large enterprise, as in other types of cases. These elements can briefly be described as follows:

- *Organisation, training, monitoring and control adapted to the enterprise's corruption risk*
- *Good general instructions and guidelines*
- *Corruption explicitly included in ethical guidelines (or similar)*
- *Appropriate routines for handling of corruption issues*
- *Compliance with instructions, guidelines, etc.*
- *Mapping and identification of specific risk factors*
- *Regular monitoring of specific questions about how operations that involve risk are carried out*
- *Managers who are instilled their responsibilities, both in following the rules and for notification of deviations*
- *Regular enforcement and updating of routines, etc.*

Every case must be evaluated individually, but normally it would according to my assessment be extraordinary to impose corporate penalty if it is the court's opinion that all these elements have been firmly in place.

Extract from the book: "Rettssikker radikaler – Festskrift til Ståle Eskeland – 70 år" by Alf Petter Høgberg (editor), Trond Eirik Schea (editor), Runar Torgersen (editor), and others.



3.3 Norwegian corruption law enforcement

Økokrim (the National Authority for Investigation and Prosecution of Economic and Environmental Crime) and the local police districts are responsible for investigating and prosecuting corruption offences. Økokrim has a particular responsibility for investigating and prosecuting cases that are substantial, complex and/or of a fundamental nature, and for cases that have connections to other countries. Økokrim has a special anti-corruption team and a hot-line ("tipstelefon").

During the first five years after the corruption provisions in the Norwegian Penal Code came into force (July 2003), only six cases were processed. By 2014, the number of corruption cases processed by the courts and cases with accepted fines had increased to 34. These cases provide a background for some observations about the enforcement of the corruption provisions in the Penal Code during the first ten years:

- 60 % of the cases involve public officials. This has been pointed out by the courts as an aggravating element for the sentencing decision.
- 60% of the cases are convictions for "gross corruption" (§ 276b). Nevertheless, in a majority of these cases the sentence has been less than three years imprisonment, which is the upper sentencing limit for "corruption" (§ 276a).
- 80 % of the cases include businesses. Many of these cases are in principle relevant for considering corporate penalty. However, this does not seem to have been an issue in most of the cases.

TI Norway regularly publishes the report "Corruption Sentences in Norway" which provides a useful overview and descriptions of the cases. The report is available on the TI Norway website.

As more cases are tried before the court and case-law develops, it becomes easier for companies to assess how the courts interpret the limits of criminal responsibility, what constitutes an improper advantage and an element of influence, and how aggravating and mitigating circumstances are emphasised, including what impact the companies' preventive measures against corruption may have on the sentencing.

3.4 Provisions for freedom of expression and whistleblowing in Norwegian law

The Norwegian Constitution's § 100 deals with the protection of freedom of expression, being one of several fundamental human rights. When this provision was revised in 2004, the need for strengthening employees' freedom of expression was underlined. The provision on freedom of expression provides a right to notify the media, control authorities and the public, and does not restrict employees' opportunities to speak out about unacceptable conditions at the workplace.

The provisions on the right to report unacceptable conditions in a company (including corruption) are given in the Working Environment Act's § 2-4. This act came into force in 2007. The employer is obliged to establish procedures for internal whistleblowing and otherwise facilitate internal whistleblowing, if the conditions in the company call for it (§ 3-6). Risk of corruption should be one condition that justifies the establishing of an internal whistleblowing facility.

Any form of reprisal or retaliation against the whistleblower is prohibited. The whistleblower is protected against unfair dismissal caused by the whistleblowing, and may demand compensation from the employer for breach of the provision that protects the whistleblower.

It is the Norwegian Labour Inspection Authority's responsibility to judge whether the conditions in a company are such that a whistleblowing facility is required, to check that the company has written procedures for whistleblowing, and to oversee compliance with the statutory provisions on whistleblowing.

Whistleblowers who comply with the company's procedures for whistleblowing are acting loyally and in accordance with the company's interest. The employee's method of whistleblowing shall be justifiable. This condition is controversial and it is claimed that it causes uncertainty and lack of protection for whistleblowers. The requirement for justifiable whistleblowing means that the employee always has the right to whistleblow in accordance with the procedures at the workplace, as well as to regulatory authorities or other public authorities. It is justifiable to notify the safety deputy and union representatives. The whistleblower determines what there is to whistleblow about and to whom (internally or externally). The employer has the burden of proof that the whistleblower has violated the requirement of justifiable whistleblowing.

3.5 Other relevant Norwegian laws

In addition to the Penal Code and the Working Environment Act, there are several other Norwegian laws (and related regulations) that are relevant for combating corruption. The most important ones are:

- Act relating to compensation in certain circumstances (skadeserstatningsloven)
- Public Procurement Act (lov om offentlige anskaffelser)
- Public Administration Act (forvaltningsloven)
- EEA Competition Act (EØS-konkurranseloven)
- Money Laundering Act (hvitvaskingsloven)
- Personal Data Act (personopplysningsloven)
- Limited Liability Companies Act (aksjeloven)
- Securities Trading Act (verdipapirhandelloven)
- Accounting Act (regnskapsloven)
- Book-keeping Act (bokføringsloven)
- Political Parties Act (partiloven)
- Civil Service Act (tjenestemannsloven)
- Heath Personell Act (helsepersonelloven)

3.6 Other countries' laws

Norwegian companies doing business abroad must respect the laws in each country of operation. They are advised to base their anti-corruption standards on the most stringent corruption legislation that they are exposed to, and to apply this standard in all countries. Using the Norwegian legal standard is a good start, but companies should also seek local legal advice to be aware of what applies in other countries.

Some countries, among them Norway, have laws that criminalise corruption committed abroad and allow for the prosecution of both its own and other countries' citizens and companies in such cases. Two foreign laws also having this feature, and that are important for many Norwegian companies to be aware of and to comply with, are USA's Foreign Corrupt Practices Act and the UK Bribery Act.

3.7 The US Foreign Corrupt Practices Act

In the Foreign Corrupt Practices Act (FCPA, 1977), the anti-bribery provisions are described as follows:

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

The FCPA has three primary provisions:
- anti-bribery provisions
- accounting requirements
- internal control requirements

The definition of "US person or company" is:
- residents in the US, and US citiens wherever located
- entities organised under US law
- issuer of securities in the US
- employees, officers, directors and agents of US issuers and entities
- any person and any company that is present in the US

The FCPA can therefore apply to Norwegian companies and employees in many instances:
- Norwegian companies listed at a US stock exchange
- US subsidiaries of Norwegian companies
- Norwegian subsidiaries of US companies
- Norwegian companies having business activities in the US
- Norwegian companies transacting through the US
- US employees of Norwegian companies
- Norwegian nationals while in the US

There are five elements which must be in place to constitute a violation of the FCPA:

Who – The FCPA applies to *any* individual, firm, officer, director, employee or agent of a company and any stock-holder acting on behalf of a company. Individuals and companies may also be penalised if they order, authorise or assist someone else in violating the anti-bribery provisions or if they conspire to violate those provisions.

Intent – The person making or authorising the payment must have a corrupt intent and the payment must be intended to induce the recipient to misuse his official position to wrongfully direct business to or retain business for the payer or any other person. The FCPA does not require that a corrupt act *succeeds* in its purpose.

Payment – The FCPA prohibits *paying, offering, promising to pay* (or authorising to pay or offer) money or anything of value.

Recipient – The prohibition extends only to corrupt payments to *foreign public officials, foreign political parties or foreign political party representatives, candidate* for foreign political office or any other person if it is known that the payments or parts of it will reach or be offered to a person in one of these categories. A "foreign official" includes any employee of a wholly or partly publicly owned company, any officer or employee of a foreign government, a public international organisation or any department or agency thereof, or any person acting in an official capacity.

Business Purpose – The FCPA prohibits payments made in order to assist the company in *obtaining or retaining business projects* for or with, or *directing business projects* to, any person. The Department of Justice interprets "obtaining or retaining business projects" broadly, such that the term encompasses more than the mere award or renewal of a contract.

While small facilitation payments are permitted under the FCPA, two risk areas should be considered. Firstly, the FCPA requires companies to account for these payments accurately. Secondly, the payments may violate the laws of the country in which they are made or in the home country of the company or its parent company, outside the USA.

Guidelines
In 2012, the US Department of Justice (DoJ) and the US Securities and Exchange Commission (SEC) issued guidelines for the FCPA, "A Resource Guide to the U.S. Foreign Corrupt Practices Act", which can be found on the internet.

The guidelines are not binding, but are a detailed presentation of the authorities' opinion of how the law should be complied with and enforced. The following subjects and interpretations are described in the guidelines:
- what constitutes an advantage, for example the limit for gifts and hospitality
- who are included in the term ”foreign public official” and ”entities”
- marketing expenses and activities that will not be prosecuted
- charitable contributions which fall outside the definition of an advantage

- examples of content in good compliance programmes and routines for internal control
- extraterritorial reach – jurisdiction over non-US physical and legal persons
- group responsibilities (parent-daughter issues), and responsibilities in merger and acquisition situations

Furthermore, the guidelines contain information on how the authorities (SEC and DoJ) are enforcing the law:
- prosecutions (fines, sanctions)
- remedial actions, such as adequate compliance measures
- the importance of self-reporting and cooperation
- the need for monitoring and control
- plea bargain – which usually results in penalty reduction
- the possibility of settlement in the form of deferred prosecution (Deferred Prosecution Agreement, DPA), or an agreement about non-prosecution (Non-Prosecution Agreement, NPA)

In case of a settlement agreement for deferred prosecution (DPA) charges are brought, but the case is placed in abeyance pending the terms of the settlement agreement being fulfilled within a period of time; typically three years. The terms of the agreement will be individually tailored, but will normally include payment of fines and possibly confiscation, establishing / updating / better adaption of the compliance programme and its implementation. Additionally, in some cases a "compliance monitor" is appointed, who on behalf of the authorities monitors that the agreed measures are sufficiently implemented in the company.

An agreement on non-prosecution (NPA) is purely a private law agreement between the company and the authorities (SEC and/or DoJ). In such an agreement, the authorities reserves the right to pursue the case at a later date, but awaits the implementation of a number of agreed measures from the company's side.

The guidelines contain the authorities' opinion of what constitutes an effective compliance programme.

The following elements can be mentioned:
- management engagement and commitment
- implementation of guideline and procedures
- risk-based approach
- effective communication throughout the company, including training of employees
- incentives and internal discipline
- continuous improvement through controls and audits
- risk assessments in connection with business relations
- risk assessments in connection with mergers and acquisitions

3.8 The UK Bribery Act

The United Kingdom's UK Bribery Act (UKBA, 2011) is more wide-sweeping than similar laws in other countries, as it also criminalises bribery within the private sector and facilitation payments, which for example is not the case for the FCPA.

Through the UKBA it became a criminal offense to fail in preventing bribery. This is a strict objective rule that affects companies, employees, subsidiaries, affiliates, other third parties and all others acting on behalf of the company, when a corruption case is uncovered and sufficient measures to prevent and to disclose it have not been implemented. Companies' defense against this criminal liability is to have an anti-corruption program that satisfies the requirement of adequate procedures for combating corruption ("adequate procedures defense"). This provision is so far unique in the fight against corruption, but it is expected that more countries will use it as a model for revised legislation against corruption.

UKBA imposes an obligation to implement preventive measures against corruption, and has provisions that ban:
- active corruption – to offer, give, promise an advantage to another person
- passive corruption – to receive, accept, solicit an advantage from another person
- bribing a foreign public official

Conditions for the application of UKBA are:

Who – UKBA applies to all individuals who are UK citizens and companies that are registered in the UK. It also applies to all companies carrying out its business or parts of its business in the UK. UKBA applies generally to all activities occuring on UK territory.

Intention – As for the FCPA, the person offering or receiving the bribe must have the intent to influence or to be influenced to perform his/her work in a fraudulent manner, but it is not a condition that the purpose actually is achieved.

Responsibility for preventive measures – A company that wholly or partly carries out business in the UK is criminally liable when a person associated with the business bribes someone. This provision applies to any person acting for or on behalf of the company. The bribe must have had the intent to secure or retain business projects for the company or to secure or retain a benefit in the execution of the business activity. The company's only defense is sufficient anti-corruption procedures.

Anti-corruption procedures – British judicial authorities have issued guidelines for what is considered to be an adequate anti-corruption and compliance programme to avoid criminal liability, "The Bribery Act 2010 – Guidance", which can be found on the internet.
The guidelines contain six main principles:

- proportional, clear and practical guidelines and procedures that take into account the concrete corruption risk, the nature and complexity of the business, and that are effectively implemented, enforced, and complied with
- commitment and engagement by the management, the board, and the owners/shareholders
- regular assessments of the business' exposure towards internal and external risk factors
- due diligence-procedures that are proportional and risk-based in view of who is acting for or on behalf of the company

- Communication and training – the anti-corruption procedures should be absorbed and understood at all levels
- continuous control, review, and possibly improvement of the procedures

Enforcement
The British authorities introduced in 2013 the possibility of an agreement on deferred prosecution (Deferred Prosecution Agreement, DPA) in British criminal law. The amendment applies retroactively so that actions performed before the change in the law came into force can be covered by a future DPA.

DPA is structurally similar to the equivalent arrangement in the US. One important difference is that a British DPA is subject the court jurisdiction. This means that if negotiations about a DPA are commenced, the prosecutors must try the case before a judge who will decide whether the conditions for a DPA exist.

Individuals are not allowed to enter into an agreement for deferred prosecution; only companies, partnerships and associations/organizations.

"The DPA Code of Practice" was published in February 2014, and can be found on the internet. The guidelines contain conditions for a DPA being available, as well as procedural rules.

4. Expectations to the business community on anti-corruption

Authorities, investors, business relations, employees, organisations and the general public constitute companies' stakeholders. These have expectations to companies about practicing transparency and having corruption-free operations. This implies that companies have measures to prevent corruption, i.e. anti-corruption programmes, and that they are transparent about these and other matters related to corruption.

4.1 Transparency

Transparency is essential for the prevention and detection of corruption. Companies that publish information of importance for combating corruption show that they take the corruption challenge seriously and that they wish to be a part of the solution rather than a part of the problem.

TI's secretariat and several of TI's country chapters have carried out studies that shed light on companies' transparency for information of importance to combat corruption. TI Norway conducted such a study in 2013 (Transparency in Corporate reporting – assessing large companies on the Oslo Stock Exchange) which included the 50 largest companies with significant international activities. The study shows that the companies generally have potential for improvement.

Transparency of the company's anti-corruption program. One third of the companies reported about most of the elements that belong in a good anti-corruption program on their web-sites or in their annual reports. One fourth of the companies showed little or no information about attitudes towards or measures against corruption. The results show some improvements compared to a similar study in 2009.

Transparency of organisational information (subsidiaries and ownership interests). Two-thirds of the companies informed about all their material ownership interests. Only one company reported nothing about this. The result of the study in this area would have been considerably weaker if the criterion had been all ownership interests, and not just material interests, as required by the Accounting Act.

Transparency of financial information on a country-by-country basis. Only three companies reported to some extent about this. One half of the largest Norwegian listed companies with international operations reported nothing about this. Amendments to the Accounting Act and the Securities Trading Act on country-by-country reporting by companies in the extractive industries, entered into force in 2014. Currently, such reporting is voluntary for other business sectors, but it is expected that the legal requirement over time will be expanded to cover more business sectors.

The recommendations from the study are shown in Sub-chapter 9.2 - Transparency and reporting.

4.2 Norwegian authorities' expectations

Norwegian authorities have clear expectations that the business community shall be compliant with the corruption provisions of the Penal Code, that companies have measures to prevent corruption, and that they practice a high degree of transparency in matters of significance to counter corruption.

The government

- ***expects companies to actively combat corruption by means of whistle-blowing or notification schemes, internal guidelines and information efforts***
- ***expects companies to show the maximum possible degree of transparency in connection with financial flows***

White paper to parliament no. 10 (2008-2009) – Corporate social responsibility in a global economy

The government's support to businesses for combating corruption is coordinated by the Ministry of Foreign Foreign Affairs (MFA). White paper no. 10 (2008-2009) to the parliament – "Corporate social responsibility in a global economy" was issued in 2009, describing the government's expectations of businesses, including anti-corruption. In the continuation of this white paper, a number of activities and initiatives have been launched. Information about this can be found on MFA's website.

The State Ownership Report 2013 (extract from the preface)

"In both 2013 and 2014 we have seen cases of companies in which the State has an ownership interest being linked to corruption. Corruption is illegal, and corruption cases are very serious for the companies involved, regardless of whether the State is a shareholder or not. Corruption must be taken seriously everywhere where Norwegian companies operate. This requires continuous work, including establishing and developing guidelines, training and culture building. The board and the management of the companies play an essential role in this regard. The Ministry of Trade, Industry and Fisheries will through its ownership dialogue with companies continue to monitor the companies' anti-corruption efforts."

Monica Mæland, Minister of Trade and Industri

In recent years there has been considerable attention on state ownership and how it should be managed. This has led to a clarification of the government's requirements and expectations to companies with state ownership, also within anti-corruption. This also gives guidelines for the government's expectations to the private sector.

White paper no. 27 (2013-2014) – "A diverse and value creating ownership" was issued in June 2014. Here, the government specifies several concrete expectations of state-owned companies' work against corruption, and their transparency in financial transactions.

The government expects that:

- ***Companies have policies, systems, and measures to prevent corruption and to deal with possible offenses or cases of doubt that may be uncovered in this field.***
- ***The companies conduct diligent and thorough evaluations of issues related to corruption for their business. If such assessments indicate that there is reasonable doubt whether circumstances can be regarded as corruption, it is expected that companies do not engage in such.***

White paper to parliament no. 27 (2013-2014) – A diverse and value creating ownership

As a member of the OECD, Norway is committed to promote the OECD Guidelines for Multinational Enterprises towards Norwegian companies operating abroad. The voluntary principles and standards include recommendations on what multinational companies should do to counter corruption. The guidelines include a complaint mechanism and a so-called "national contact point" to handle complaints. The Norwegian contact point is established by the MFA, and consists of representatives of ministries, trade unions and business organisations.

4.3 Investors' expectations

Investors are owners or creditors who provide risk capital to companies with expectations of financial returns. More and more investors adopt a responsible investment practice with clear expectations to the companies' risk management, business ethics and social responsibility. A central part of this is zero tolerance for corruption and comprehensive anti-corruption work. These expectations imply:

Board of directors' responsibility. The company must have zero tolerance for corruption, and have a publicly available and board-approved description of what such a requirement means to the company. The description should include key corruption risk issues that are relevant to the business. The board must ensure that the company's anti-corruption program is appropriate, and that an emergency preparedness for handling serious incidents has been established in the organisation.

Implementation and compliance. The zero tolerance requirement must be operationalised by establishing necessary policies and guidelines which are integrated into the company's business processes. The anti-corruption programme must be suitable to prevent and detect corruption incidents, based on the company's risk profile, and must include guidelines for handling of incidents.

Reporting and communication. The zero tolerance requirement must be communicated clearly from the board via the top management to the organisation. "The tone from the top" is crucial for the result of anti-corruption efforts. Compliance should be reported from the business units up to the board. Transparency should be practiced in the company's external reporting on the anti-corrruption programme, ownership interests, and financial key figures in a country-by-country format. Incidents must be reported to the compliance-function, the audit committee, the board, and to the authorities in accordance with guidelines. In the case of serious incidents, the board should also establish dialogue with key stakeholders such as customers and owners.

"KLP is Norway's largest life insurance company, and is a major responsible investor and owner in companies. We are not indifferent to how our returns are created. Ethics and social responsibility are parts of our basic values. KLP continuously monitors all its investments. If corruption is suspected, a company comes into the spotlight, and the case is followed up. In cases where there is unacceptable risk that KLP as an owner may contribute to systematic or gross corruption, the company will be excluded from KLP's investments. KLP practices full transparency about exclusions, and the company's name and the reasons for exclusion will be publicly available."
Sverre Thornes, CEO of KLP

4.4 Business associates' expectations

Companies expect their business associates (partners, agents, suppliers, customers, etc.) to operate corruption-free. The reason is that companies run the risk of being criminally and civilly complicit in business associates' corrupt activities. There is also a reputational risk involved when having business relationships with corrupt companies and individuals.

Adequate handling of corruption risks in business relationships implies having a good anti-corruption programme that prescribes both mapping and managing such risks, as described in Chapter 6. Many different measures are appropriate, but it is always a good start before a business relationship is entered into, to make it absolutely clear what requirements and expectations for anti-corruption that the company has on behalf of the new business associate. It is also becoming increasingly more common to concretise these requirements and expectations in the contracts with the business associates.

4.5 Employees' expectations

Companies expect their employees to be loyal and motivated. In return, employees should expect that the employer demonstrates social responsibility, has a clear position against corruption, and looks after and protects the employees' interests when acting on behalf of the company.

The company and the employees have common interests in most areas and in most situations, but when there is a corruption incident, conflicting interests may arise. When corruption is committed to develop or to keep the company's business, the consequences for the company and an employee will be dramatically different. The company may get a corporate penalty in the form of a fine, which may have modest impact on the company's finances, while the employee may receive a prison sentence and have a ruined professional career. The company will be motivated to attach as most guilt as possible to the employee who contributed to the corrupt act, while the employee will seek to push blame on the company and its management on the basis that he/she had acted on instructions from management, that management was informed, or that the company had inadequate policies and training.

When an employee is appointed to a position, it is the company's responsibility to have chosen an employee who is qualified, and if necessary provide additional training. An employee should therefore expect that the company provides anti-corruption training to an extent that is suitable for the corruption risks associated with the position.

Employee organisations should look after their members' interests by demanding from companies that they have adequate anti-corruption programmes and appropriate training of employees.

4.6 Civil society's expectations

Civil society organisations expect that companies operate corruption-free, regardless of which country they do business with or operate in. TI Norway has as one of its main tasks to influence and contribute to a corruption-free Norwegian business community. To ensure a development in that direction, TI Norway expects that all companies with corruption risks (i.e. the absolute majority) develop and implement adequate anti-corruption programmes that are tailored to the company's size, business area and risk situation.

The general public in Norway has largely had the perception that corruption is something that takes place abroad. Norway scores well on TI's corruption index (CPI), is usually among the 5-10 best countries, but is most of the time ranked behind the other Nordic countries. Many serious corruption cases have come up in Norway after the corruption provisions of the Penal Code came into force in 2003, and this has made people realise that Norway is not corruption-free. Yet, it is an expectation among the Norwegian people that Norway belongs in a high position at the positive end of the corruption index.

5. Corruption forms and corruption risks

The company's anti-corruption programme should describe, specify requirements for, and give advice about the handling of corruption forms and corruption risks that are relevant to the company. The advice in this chapter, including the extracts from the "Business Principles for Countering Bribery", and the "Business Principles for Countering Bribery – SME Edition" can be used as basis for how this is treated in the company's own anti-corruption programme.

5.1 Bribery

Stringent ban

Norwegian law forbids all forms of corruption, including bribery which constitutes or intends to create an improper advantage. The company programme must reflect the ban, and insist that paying or receiving bribes, directly or indirectly, whether for personal gain or for the benefit of the company's business, will not be tolerated and will result in disciplinary action, reporting to police authorities, criminal legal action and/or civil legal action against the individuals involved.

> ***The enterprise should prohibit all forms of bribery whether they take place directly or through third parties.***
> ***The enterprise should also prohibit its employees from soliciting, arranging or accepting bribes intended for the employee's benefit or that of the employee's family, friends, associates or acquaintances.***
> **– The Business Principles for Countering Bribery**

In an increasing number of countries (for example in USA, UK and Norway), anti-corruption legislation reach beyond the country's border, i.e. felonies committed abroad may be prosecuted in the company's and the individual's home country and/or in a third country, in addition to the country where the corruption took place. Hence, it is necessary to be consistent and to apply a programme based on the highest standard of any anti-corruption legislation that the company is subject to. To base it on Norwegian law is a good starting point.

Some countries have stricter rules against bribery of public officials than for bribery within the private sector. In countries where there is no major difference in the legal provisions for private-private and private-public bribery, the prosecutors and the courts usually regard bribery involving public official more seriously, and the penalties are usually more severe. Under the legislation of some countries, employees of companies wholly and partly owned by the government are regarded by the law as being public officials.

Knowing the risk

Employees, and others acting on behalf of the company, need to be made aware of the risks associated with bribery and other forms of corruption, and of the possible consequences for the company and the individuals. There is always a risk of an employee receiving a bribe for private gain. There is also a risk of employees using bribery to further develop, or to secure, the company's business.

> ***A bribe may take many guises other than money. It can be paid directly or as a part of a "commission" in a contract, but it can also be disguised as a gift, a benefit, a favour or a donation. Bribes may also be paid without your knowledge by agents or third parties working on behalf of your business or company. Fundamental to countering bribery is understanding and recognising the various guises in which a bribe may come, and having in place processes for dealing with these.***
> **– The Business Principles for Countering Bribery – SME Edition**

Bribes are often demanded to avoid harm or a disadvantage, rather than to gain an advantage. This could be a payment for a service or an action which the person or the company already is entitled to, payment for avoidance of a harmful action, or for payment for a service already rendered.

An important objective of the company anti-corruption programme is to train the employees in recognising and avoiding corruption risks and corruption schemes.

Types of bribes

Many Norwegian companies need a better understanding of the kinds of demands or offers of bribes they are likely to encounter and from whom. They may not be well prepared to respond adequately to such initiatives.

Examples of payments and activities used in bribery:

- **monetary gifts – cash or equivalent (like shares)**
- **a personal return-favour in the form of work on the recipient's property, or materials delivered to the person's house**
- **gifts with conditions attached**
- **free use of another company's apartment or car**
- **return commissions (kickbacks)**
- **promise of additional business**
- **gifts that influences a situation where a bid is to be submitted, negotiations are to be started, or a contract is to be signed**
- **expensive travel, accommodation and events with very little or no professional content**
- **expenses for a person and/or a family member covered by someone else than the person's employer**
- **hospitality or entertainment intended to influence negotiations or a purchase.**
- **sexual favours**
- **cash payment without receipts or documentation**
- **covering of expenses other than normal accommodation costs via the hotel bill**
- **loan from a supplier, properly supported by a loan agreement, but the loan is never paid back**
- **suggestion or demand from a public official to pay for carrying out an act, or for not carrying out an act**

Bribes may come in many forms and disguises. It is not possible to describe exhaustively all possible types of bribes in this handbook, nor in a company's anti-corruption programme.

Joint actions

It may be difficult for a company on its own to have knowledge about and the ability to employ the most effective measures against bribery and other forms of corruption. Therefore, it may be useful to join organisations that are working with these issues. This gives access to networks and opens for exchange of experiences with other companies. Examples of such international initiatives are UN Global Compact (UNGC), the World Economic Forum's Partnership against Corruption Initiative (WEF-PACI), and Business for Social Responsibility's (BSR) Maritime Anti-Corruption Network. Some Norwegian business associations (for example the Confederation of Norwegian Enterprise, NHO) have anti-corruption on the agenda. Companies are recommended to engage in this work, and to influence their branch organisations to start joint anti-corruption work for the benefit of the members.

It can be useful for companies individually to seek cooperation with other companies in some countries, for example when it comes to challenges within facilitation payments, or for example when pressure is exerted by public officials on companies to pay political contributions, charitable contributions, and community contributions.

5.2 Facilitation payments

Not different from "real" bribes
Traditionally, a bribe has been regarded as being a payment made to someone to act in a way in which he or she should not (for example, by awarding a contract to the active briber, or releasing him/her from a legal obligation), whereas a facilitation payment has been regarded as being a payment made to a person to do something which he should already be doing (for example, issuing a visa or clearing goods through customs), or for undertaking such tasks more quickly.

> ***Facilitation payments are small unofficial payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement. Recognising that facilitation payments are bribes, the enterprise should prohibit them.***
> **– The Business Principles for Countering Bribery**

Although facilitation payments usually are smaller than "real bribes" in terms of value, they are in principle the same. The traditional distinction made between bribes and facilitation payments is on most occasions academic, as many countries have criminalised the payment and receipt of both forms. In Norway, no distinction is made between bribes and facilitation payments; facilitation payments are considered as bribes and are illegal when such payments constitute or intend to create an improper advantage.

The US Foreign Corrupt Practices Act (FCPA) is one rare example of facilitation payments being explicitly excluded from a statutory definition of bribery. However, this concerns small payments, and the FCPA has strict accounting requirements which also apply to facilitation payments. Furthermore, the exception may not apply if the facilitation payment results in an inappropriate advantage, for example priority in the bureaucracy ahead of others, or if regulations are violated. The UK Bribery Act (UKBA) criminalises 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.***
> **– The Business Principles for Countering Bribery**
> **– SME Edition**

By Norwegian economic standards, facilitation payments are in many countries usually small amounts of money. They are usually paid to low rank public officials with low salaries. It is often the case that the public officials in the first line are not the biggest crooks, but they are manipulated and exploited by their superiors. In some countries, facilitation payments are organised in a system, are institutionalised, and end up with the top leaders of the country.

Resorting to facilitation payments supports a practise which is more expensive for local business and individuals, who are also exposed to it. Consequently, it underpins and increases poverty. Defending facilitation payments is defending double standards where one set of values applies in Norway, while other standards apply in other countries.

From a business point of view, facilitation payments can create more problems than they solve. In theory they buy time, but in practice they can actually cause delays by giving public officials an incentive to create obstacles so they can be paid off for removing them. Facilitation payments can therefore actually slow down services, impeding both efficiency and the overall legitimacy of public institutions. Also, it is a fact that facilitation payments encourage more and larger demands at the next opportunity. A lenient practice towards facilitation payments therefore results in aggravation of the problem.

It is no excuse that the practice is common and tolerated in a country, or that the recipient is a low level public official. These payments are still bribes and they contribute towards corroding the fabric of law, good governance and democracy in many countries.

Good practice
In the past there were strong diverging views between companies about whether company policy should tolerate facilitation payments. Now there appears to be a growing and general distaste for them, and more companies are banning them entirely.

A good practice for dealing with small corruption incidents tends to set a company's standards for the handling of larger cases. Good practice and TIs recommendation is to never condone facilitation payments, and always try to avoid and eliminate them. Payments should only be acceptable in exceptional circumstances, i.e. when a demand for payment is associated with expressed or perceived threat to life or health, the demand is clearly extortion rather than a facilitation payment, and payment is made as an act of necessity or self-defence.

Companies that are exposed to facilitation payments, but choose not to ban them entirely, must address how to deal with them in their anti-corruption programmes, such as:

- analyse the risk of occurrence of facilitation payments, including the risk of extortion
- assess the legality and the risk of legal prosecution
- plan how to eliminate facilitation payments
- decide how demands for facilitation payments should be reported to the police or other authorities
- make any payments in full transparency
- ask for receipts for all sorts of payments
- keep correct books and records of any payments
- never disguise facilitation payments as something else
- report internally
- process and analyse incidents internally
- make plans for avoiding situations with risk of payment demands
- design responses for handling of future demands

5.3 Gifts, hospitality and expenses

Neither Norwegian law nor other laws give answers to what monetary limits are legal for gifts, hospitality and expenses. The reason is that the legal standard "improper advantage" in the laws not only refers to value, but also to many other circumstances. Hence, it can be difficult for a company to be concrete in the guidelines for the employees about what is acceptable and what is not. In Norway, there have been court judgements that can offer some guidance.

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

It should be noted that in many countries public officials are governed by stricter rules relating to gifts, hospitality and expense coverage than private companies, both in the legislation and by company rules. Also, employees of wholly and partly-owned state companies are by the laws of many countries regarded as public officials.

Some companies have zero tolerance for gifts, hospitality and expense coverage, some have amount limits, while others do not specify limits but have descriptive requirements for what is acceptable or unacceptable. Some companies have zero tolerance for certain situations and certain business contexts (for example Christmas gifts and Christmas events, proximity to a contract award).

Companies are recommended to have rules and guidelines for gifts, hospitality and expense coverage. If value limits are used, these should be chosen with care, because an amount of money or a physical present may have different values for recipients in different countries. If gifts are acceptable, it makes it easier for employees to deal with the issue if value limits are specified, but such limits often disregard other important circumstances such as frequency and context (for example contract bidding and award). The company's anti-corruption programme should give

guidance on values and circumstances that are acceptable and unacceptable, and should specify the approval process if limits are exceeded, and in cases of doubt.

Many of the same principles and advice apply both to gifts, hospitality and expense coverage.

Gifts
A gift is something of value given ostensibly as a mark of friendship or appreciation. Gifts are professedly given without expectation of consideration or value in return, but may be perceived as a bribe by others than the giver and the receiver. Gifts have no role in the business process other than marking and enhancing relations or promoting the giver's company by for example giving a gift with the company's logo.

> ***Think about the value, appropriateness and frequency of the gifts. At what point does a gift start to create an obligation and influence judgement?***
> **– The Business Principles for Countering Bribery – SME Edition**

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

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

- Gifts should be offered and received in a transparent manner and should never place the recipient under any obligation. Gifts should not be used to gain a business advantage, nor be perceived to do so.

- The same principles and practices should apply to both giving and receiving gifts.

- The same principles should apply to management and other employees. If differences are necessary and acceptable, then the rules should be transparent. Non-transparent practices may undermine the rules and the entire anti-corruption programme.

- The same gift policy should apply in all countries and markets.

- Gifts should never be offered or received in situations of contract bidding, evaluation or awards. Gifts after contract award should also be considered with care, as they can be seen as deferred kickbacks, or connected with approval of change-orders or new contracts.

- Gifts of value given to a business associate should be properly recorded in the books and records, and should not be hidden in the accounts as something else.

- Gifts of value received in a business context are the property of the company. The receiver acts in the capacity of being a representative of the company and not as a private person. Gifts of value shall be reported to the superior. The company must decide how to deal with the gift.

- If it is inappropriate to refuse the gift, it may be returned later to the giver with an explanation, or given to a charity organisation with the giver being informed.

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

The simplest solution could be to have a very restrictive gift policy, and to inform all business relations about this. It could be a general ban, with very few and clear examples and rules describing the exceptional cases when gifts are permitted.

Hospitality
Hospitality includes entertaining, meals, receptions, tickets to entertainment, social or sports events, with such activities being given or received to initiate or develop relationships between business people. The distinction between hospitality and gifts can blur, especially if the person who provides the hospitality does not attend and act as a host.

Corporate hospitality can have different purposes and interpretations. Within reasonable expenditure, corporate hospitality is acceptable as a means of imparting information to a client about the host company, cementing an existing relationship, or providing an opportunity for new relationships to be formed. Corporate hospitality is unacceptable where the aim is that the receiver of the hospitality is influenced to make a business decision in favour of the host company in return for an enjoyable occasion.

The Norwegian High Court's decision in the "Ruter case" (September 2014) is important for assessing the lower limit of corruption when it comes to hospitality towards customers. From the ruling in this case, it can be assumed that a business dinner with normal relation-building, and when there is no element of influence, can be considered as legal. The High Court points out that dialogue between customers and suppliers is important, and that a customer event that is relevant for the employee's position, which is not a lasting relationship, and which has the character of ordinary customer relations, will normally not be a criminal offence.

Corporate hospitality is seldom black or white.
The following advice may be useful:

- Business context – lunching or dining a client is unlikely to raise eyebrows unless it is frequent or lavish. However, any hospitality provided/accepted with a business associate must be connected to the business between the parties and should be associated with a real business agenda, i.e. not an agenda created to justify the hospitality. The business agenda should be the main purpose and content.

- Presence of partners/spouses – once spouses are invited, the argument that the event is purely business-related is less convincing. Inevitably, suspicion arises that the event is more of a gift and an improper advantage.

- Presence of hosts – hospitality with absent host is to be considered as a gift, and possibly an improper advantage. Free use of the donor's ski chalet is one example.

- Proximity to a relevant commercial event – there is a difference between corporate hospitality which purely aims to enhance an ongoing business relationship, and one which is large scale, and specifically related to an imminent commercial event such as the award of a contract.

- Other than "work-session meals", hospitality should not be provided or received in situations of contract bidding, evaluation or awards. Hospitality after contract awards should also be considered with care, as it can be seen as a deferred kickback or connected with approval of change-orders or new contracts.

- Hospitality provided to a business associate should be properly recorded in the books and records, and should not be hidden in the accounts as something else.

- Hospitality should be offered and received in a transparent manner, should not place the other party under any obligations, and should not be undertaken if it may be perceived to be used to gain a business advantage.

- Hospitality should be modest. Expensive hospitality may create a perception of a need for a return favour. The provision of free accommodation, weekend hospitality, use of company cars, or benefits conferred on the recipient's spouse/partner, are usually not acceptable.

- Modest hospitality with representatives of several companies participating reduces the risk of the event being perceived as improper.

- If different principles and practices for management and other employees are necessary and acceptable, then the rules should be transparent. Non-transparent practices may undermine the rules and the entire anti-corruption programme.

The simplest solution could be that the participants' employers each pay for their own employees. Then there will be no reason to raise questions about the event being improper.

Expenses
Expenses are the provision or reimbursement by a company of travel and other related expenses incurred by a prospective business associate, such reimbursement not being part of a contractual agreement.

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

Some companies do not accept expenses for their own employees being paid by others, nor do they provide expense payments for employees of other companies or for government representatives. If the company allows payments of expenses for others than its own employees, or expense coverage by others for its own employees, the following advice may be helpful:

- Any expense coverage for employees or representatives of a business associate should be specified in the contract with the business associate or in a separate written agreement.
- Any expense coverage should be approved by the superior of the giver and the receiver.
- Expenses paid or reimbursed should be modest, based on receipts, be relevant, be transparent and properly documented in the books and records.
- Any expense coverage provided or accepted must be connected to the business between the parties and should be associated with a real business agenda.
- Presence of partners/spouses – once spouses are included, the argument that the costs are purely business-related is less convincing. Inevitably, suspicion arises that the expense coverage is more of a gift and possibly an improper advantage.
- Proximity to a relevant commercial event – there is a difference between expense coverage which purely aims to enhance an ongoing business relationship, and one which is larger in scale and specifically related to an imminent commercial event such as the award of a contract.
- Expense coverage should not be provided or received in situations of contract bidding, evaluation or awards. Expense coverage after contract awards should also be considered with care, as it can be seen as a deferred kickback or connected with approval of change-orders or new contracts.
- Any expense coverage should be modest. It should not create a perception of a need for a return favour.

The simplest solution is that all companies and organisations pay the expenses for their own employees and representatives, in accordance with the respective internal rules. Then there will be no reason to raise questions about the arrangement being improper.

5.4 Political contributions

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

> ***The enterprise, its employees, agents, lobbyists or other intermediaries should not make direct or indirect contributions to political parties, organisations or individuals engaged in politics, as a way of obtaining advantage in business transactions. The enterprise should publicly disclose all its political contributions.***
> **– The Business Principles for Countering Bribery**

Political contributions could be direct support at national or local level, to a governing party or a party in opposition, to candidates or persons holding office, or indirect support through organisations or associations that financially support political parties or politicians.

A political contribution is not the same as bribery, but is clearly a risk area. A contribution given in full transparency and which cannot be perceived to influence or to create an improper advantage is not a problem. A contribution made, or perceived to be made, for the purpose of influencing a decision in favour of a company or an individual, can be regarded as bribery. A contribution should not be made if there could be a suspected connection to the company obtaining licences, concessions, permits or contracts from the government.

Many companies practise a total ban against contributions to political parties. In Norway, political party financing is regulated by the Party Law. Anonymous contributions, contributions from foreign donors, and contributions from legal entities controlled by the government or another public authority, are illegal. Contributions are reported to a central register.

5.5 Charitable contributions

Charitable contributions are payments made for the benefit of society and for humanitarian purposes. The payments are made without demand for or expectation of a business return. A charitable contribution is not the same as bribery, but is a risk area. A contribution made, or perceived to be made, for the purpose of influencing a decision in favour of a company may be regarded as bribery.

> ***The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery.***
> ***The enterprise should publicly disclose all its charitable contributions and sponsorships.***
> **– The Business Principles for Countering Bribery**

When payments are made to proper charity organisations, this raises few questions. However, charitable contributions may be considered as corruption if given to charity organisations that in reality are fronts for decision-makers in government or business or individuals connected to them. It could also be a problem if the representative of the charitable organisation holds other positions (i.e. public office or with business partner) that have other relationships with the company and its business.

> ***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.***
> **– The Business Principles for Countering Bribery – SME Edition**

5.6 Sponsorships

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

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

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

5.7 Voluntary community contributions

A voluntary community contribution can be given in the form of money, goods/services, or a combination. Usually the objective is to contribute to sustainable development, to benefit both the local community and the company. Examples of areas where community contributions often are used include education, health services, environmental protection, and development of local suppliers. Recipients of companies' voluntary community contributions are usually local authorities, ideal organisations and business branch-organisations.

There is corruption risk associated with such community contributions. The purpose of the contributions is to benefit the local society, and perhaps local business development. This is not problematic, but may be corruption if it also enriches individuals and causes improper advantages. Here, the balancing act can be difficult. For example, the popularity of a local politician will increase, and this may lead to personal benefits, if he manages to negotiate a valuable community contribution agreement with a company. At the same time, the politician may be a decision-maker for authority approvals that the company depends on. Another example is that the community contribution is for development of local suppliers, which can create large economic values for the owners of supply companies that are included in the project. Public officials, or persons having close relationships with public officials, may be among the owners of the supply companies. Engagement in such projects needs to be considered carefully in each particular case.

When voluntary community contributions are given, it is important for the company to assure itself that payments are made to the projects, and are not channeled to individuals and cause improper advantages. Various precautions are relevant, similarly to the recommendations for other business relationships and transactions (ref. Chapter 6), for example integrity due diligence, anti-corruption provisions in contracts, and auditing. It should also be considered whether it is necessary for the company to take responsibility for the execution of the project, to place persons in key positions in the project organisation and/or to participate in the governing body for the project, with access to information and with the possibility to influence. Written agreements should be used to define clear conditions and limitations for the company's contribution. Measures to prevent that the company gets involved in corruption through the community contribution, should be chosen based on risk assessment in each case.

For political contributions, charitable contributions, sponsorships and voluntary community contributions, the company programme should require that:

- **decisions are approved at a high management level**
- **decisions are documented**
- **payments are made to organisations, not to individuals**
- **the contributions are covered by written agreements and receipts**
- **adequate efforts are made to ensure that there are no personal conflicts of interest on the part of the payer or the receiver**
- **contributions that can be perceived to influence the receiver and can be perceived to be or to create an improper advantage, are to be avoided**
- **it is assured that payments are not used for private purposes**
- **the employees are informed about political contributions, charitable contributions, voluntary community contributions and sponsorships**
- **the company communicates its political contributions, charitable contributions, voluntary community contributions and sponsorships externally on its website and/or in its annual report**

5.8 Trading in influence

Lobbying is a legal activity and an important part of democratic processes. Lobbyists can assist individuals, organisations, and companies to communicate their views to authorities and influence processes in the society. Similarly, it may be legal to engage a mediator to influence decision-makers in private businesses. Such processes may also give decision-makers access to valuable information that contribute to good decisions.

There is also illegal lobbying, that is called illegal trading in influence. The provision on illegal trading in influence is found in the Penal Code's § 276c, and it expands the scope of corruption. Illegal trading in influence exists when a person who claims to be able to influence a decision-maker, exploit this opportunity to demand or receive advantages in return for exercising such influence, and when the advantage is improper. Just as for other types of corruption, it is the concept of improper advantage that is central in the assessment of liability to punishment. This entails that the boundaries are not clearly defined, and it may be difficult to navigate in the gray area. Important factors in assessing whether the influence is legal or illegal is whether the lobbyist is open about representing someone else, who is being influenced, and the value of the advantage.

Examples of illegal trading in influence:

- **A communication advisor with background as a politician claims to be able to use his network to influence relevant decision-makers, and accepts a paid mission to exert influence. The communication advisor does not inform about his paid mission or his client during the execution of the work. In this case, the communication advisor and his client will be liable under the Norwegian Penal Code § 276c (trading in influence).**
- **A Norwegian company engages a consultant in connection with a major contract abroad. The consultant has family ties with a central decision-maker. The company enters into an agreement that involves a success fee equivalent to 5% of the contract value, to be paid if the consultant succeeds in influencing the decision in the company's favour. If the consultant bribes the decision maker, then the consultant, the company and the decision maker will be liable under the Norwegian Penal Code § 276a (corruption) or § 276b (gross corruption). If the decision maker is not bribed, nor is knowledgeable about the relationship between the consultant and the company, then the consultant and the company will be liable under the Penal Code § 276c (trading in influence).**

5.9 Conflicts of interest and impartiality

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

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

Conflicts of interest occur when an employee takes part in company activities and decisions that may benefit his/her own, family members', or friends' private interests outside the company. This may be through financial interest in or part-time work with a competitor, supplier, customer or other business associates. The most common conflict of interest situations occur in connection with purchasing, contracting, sales, business development and recruitment. Benefits obtained through conflicts of interest are improper and may be in breach of corruption provisions in the Norwegian Penal Code.

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

The company anti-corruption programme should address what constitutes conflicts of interest and describe how to handle potential and actual conflict of interest situations.

Key elements should be:

- risk assessment of potential situations
- dealing with potential situations up-front
- transparency
- decisions on impartiality to be taken by others than the person involved
- exit from the affected activities within the company
- exit from the conflicting outside interests
- documentation of the handling of cases

It may be appropriate to demand impartiality statements from employees in particularly exposed job tasks, for example that those who work with a procurement process have to declare themselves impartial with respect to all companies on the bidders list.

6. Business relations, ownership interests and transactions

The company's anti-corruption programme should describe, specify requirements for, and give advice about the handling of corruption risk in connection with business relations, ownership interests, and transactions. The advice in this chapter, including the extracts from the "Business Principles for Countering Bribery", and the "Business Principles for Countering Bribery – SME Edition" can be used as basis for how this is treated in the company's own anti-corruption programme.

6.1 Why be concerned about business relations?

A company can be liable for complicity in corrupt activities of others, with whom it has a business relationship. Being associated with businesses or individuals who are or have been involved in corruption also entails a reputational risk.

> ***The enterprise should avoid dealing with business entities known or reasonably suspected to be paying or receiving bribes.***
> ***The enterprise should perform reasonable and proportionate monitoring of its significant business relationships. This may include the right of inspection of books and records.***
> ***The enterprise should have the right of termination in the event that associated business entities engage in bribery or act in a manner inconsistent with the enterprise's Programme.***
> **– The Business Principles for Countering Bribery**

Through Norwegian and international anti-corruption legislation, guidance from authorities and recommendations from various organisations, there is a clear expectations to companies that they have an active approach to corruption risks related to their ownership interests and business relations.

Anti-corruption provisions in contracts with business relations are gradually becoming more widespread. It is recommended that this is implemented consistently as part of the company's anti-corruption programme. Such contractual clauses can have different content, but important elements will be to define what is considered as corruption, the expectations to the business associate's anti-corruption measures, what are sufficient prerequisites to terminate a contract, the carrying out of the termination, and other circumstances, including for example compensation.

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

6.2 Integrity due diligence

Due diligence is fact-finding and analyses of risk elements that a company carries out to acquire a sufficient basis for decision-making in different contexts. Due diligence can be used in many areas. Legal or financial due diligence will not necessarily be able to uncover corruption risk. Due diligence focusing on corruption, reputation, integrity, ethics and social responsibility is often called integrity due diligence.

Integrity due diligence is used for risk assessment connected to business relations and business transactions. Through a risk-based approach, a company should in each case decide whether an integrity due diligence should be done before it initiates a business relationship or carries through a business transaction, and should also decide upon the scope of such a possible integrity due diligence. The same applies in case of significant changes in the business relationship. Some companies make integrity due diligence mandatory in some instances, for example relating to partners in joint ventures or agents.

Integrity due diligence needs to be done in advance of the business relationship being established and needs to be followed up throughout the contract period. The purpose is to reduce the risk of being involved in the prior, ongoing, or future acts of corruption through the business cooperation. Proper use of integrity due diligence can contribute to long-term value creation through reducing the risk of wrong investments and unwanted partnerships.

Integrity due diligence is not just about reducing risk, but also about living the values, and about social responsibility. Choosing business partners or investment objects that reflect and represent good values and ethical behavior, contributes to strengthen the part of the business community that creates value through a positive development of the society.

The scope of integrity due diligence must be adjusted to the risk, and the companies should have guidelines with criteria for in which cases and to what extent it should be carried out. Integrity due diligence should preferably be performed in collaboration with the company that is the object of the integrity due diligence, but can also be done without this company's knowledge. Integrity due diligence can be carried out by the company's own organisation or by external providers.

Integrity due diligence should also be used in conjunction with authority requirements for local content in procurement of goods and services. Such requirements may be presented in connection with authorities' awards of permits, licenses or concessions. There may be requirements for or expectations of local suppliers being used, and in some instances also specific suppliers.
In such situations it is important that not only the local management, but also the corporate management is invoved in the evaluations and the decisions.

The integrity due diligence process should involve the following steps:

- assessment of risk, decision to do integrity due diligence, and choice of scope
- data collection
- analysis
- decisions
- handling of risk going forward

Assessment of risk, decision to do integrity due diligence, and choice of scope
Initially, risk is assessed on the basis of criteria such as:

Type of partner / transaction / relationship. Contracts with agents and intermediaries imply, for example, higher exposure than contracts with suppliers of goods.
Geographical circumstances. Countries in the worst end of TI's corruption index (CPI) imply large risk.
Industry sector. Some industry sectors are known to have greater corruption challenges than others, for example, the defense industry, the oil and gas industry and civil construction.
Past experiences. This may, for example, be knowledge about the partner's business practices.
Contract value and duration. Contracts with large value and long duration often imply larger potential for corruption than smaller and shorter contracts.
Settlement model. Contracts with settlement via tax havens and contracts with success fees are examples of business arrangements which imply high risk.

For many companies, it may be useful to employ a simplified risk matrix to get an indication of necessary extent and scope of the integrity due diligence, based on defined risk categories.

Here is an example for types of business relationship and geography (TI's corruption index):

Type of partner		Geographical issues		
		Low risk TI CPI score (100-70)	**Medium risk** TI CPI score (69-50)	**High risk** TI CPI score (49-0)
Low risk	Suppliers of goods (limited volume)			
Medium risk	Contractors Suppliers of services Suppliers of goods (moderate to large volume)			
High risk	Agents Partners in joint ventures			

Based on identified risk category, it may be decided to carry out an integrity due diligence, and then an appropriate scope is selected. In this phase, it should be assesses to which extent relevant information is available and from what sources, who shall conduct the various surveys, as well as how extensive they should be.

Data collection
Based on the selected scope and programme for the integrity due diligence, information is collected from various relevant sources. The methods may include the use of internal and external questionnaires, internet-, media-, and database-searches, and also interviews and reference checks.

The scope of the integrity due diligence may have the purpose to:

- map ownership structure
- map different persons' roles in the company's board and top management, their significant economic interests, and potential conflicts of interests
- map associated companies
- identify relationships with authorities
- identify relevant events and incidents involving the company or associated persons (including legal processes)
- map the company's and associated persons' reputation and achieved results
- checks against different debarment lists
- map the company's efforts within anti-corruption, social responsibility and business integrity

There are many methods that can be used when carrying out an integrity due diligence. There should be connection and integration between the company's other control routines and procedures, and what is being used for integrity due diligence.

Here are examples of methods that can be used for different risk categories:

Risk categories and examples of methods			
Very low risk	**Low risk**	**Medium risk**	**High risk**
• no integrity due diligence	• internal questionnaire to those in the company "owning" the relationship • external questionnaire to the company subject to integrity due diligence	• internal questionnaire to those in the company "owning" the relationship • external questionnaire to the company subject to integrity due diligence • databases with company information • compliance databases, sanction lists, lists of politically exposed persons, etc. • internet og media searches	• internal questionnaire to those in the company "owning" the relationship • external questionnaire to the company subject to integrity due diligence • databases with company information • compliance databases, sanction lists, lists of politically exposed persons, etc. • internet og media searches • interviews • local investigations • audits • background checks

The company can easily do a lot of the information gathering itself, but in some cases it may be appropriate to use external providers to have more detailed research carried out. Tools and databases that can be used in the data collection are available from different firms and organisations. Regardless of the data gathering method, it must be ensured that the information is handled appropriately.

Gathering and treating personal information

The Personal Data Act must be respected when integrity due diligence includes the collection and processing of information on individuals. The law requires a valid data processing basis, documentation of and compliance with information security, and internal controls including systems that safeguard confidentiality, integrity, and availability.

Good procedures must be prepared for processing of personal data, and must be implemented in the organisation. Personal data should only be available to authorized personnel who have received training. What constitutes necessary personal information shall be documented, and only such information can be collected and stored. The information must be correct, shall not be used for anything else than the original purpose, shall not be stored longer than necessary, and shall be deleted when the purpose of the information processing is fulfilled. An agreement with a consulting company that processes personal data on behalf of the company (data processor agreement), must be in writing and must contain provisions to ensure that the requirements of the Personal Data Act are complied with.

Those gathering personal data are obliged to inform the registered person about what information is collected, and for what purpose. There are certain exemptions from the obligation to inform in § 23, which opens for postponing the informing until the survey is finished.

Within the Personal Data Act's areas of applicability, a license from the Norwegian Data Protection Authority is required for processing sensitive personal data. Such data include among other things "information about a person having been suspected, charged or convicted of a criminal offense." Application for a license can be submitted by using a form available on the Norwegian Data Protection Authority's website.

Analysis

The purpose of the analysis is to extract relevant information for the decision-making process and to ensure sufficient knowledge for a correct decision. In the evaluation, it is crucial to consider the reliability of the information source and the validity of the information. In other words, it must be decided to what extent to emphasise and trust the information. If it is discovered that more information is needed, or that there is conflicting information, then further investigations may be necessary.

The result of the analysis should be a document that summarises the survey and the findings. The document can serve as a decisions basis, archive documentation of the integrity due diligence process, and as a basis for continued risk management.

In addition to specific findings about possible acts of corruption, information that causes concern (warning lights/red flags) may also surface. Some examples of this are:

- a public official (or a family member) owns company shares, has other interests in the company or is the main beneficial owner
- someone on the board of directors, in management or a key employee has an interest in another company that may be a competitor
- the company declines to disclose the identity of the owners
- the company appears on a list of those debarred from bid competitions
- there are close associations with politicians
- there are close associations with competitors
- there are close associations with criminals

Decisions

Indication of risk revealed in the analysis does not necessarily mean that the business relationship should not be established or should be terminated. An acceptable conclusion may be reached by gathering more information or through dialogue with the company.

Three alternative decisions can be taken based on the analysis of information from the integrity due diligence:

- not to establish, or to terminate the relationship
- establish or continue a relationship, with the company's normal measures for risk management
- establish or continue a relationship, with special risk mitigating measures

Handling of risk going forward

It is necessary to deal with risk factors identified in the integrity due diligence. If acceptable clarification of information that causes concern (warning lights/red flags) cannot be found, there can still be a sufficient basis for entering into a contract, or to proceed with the cooperation. In that case, there may be a significant element of risk remaining, and the company needs a plan for close monitoring and risk mitigation.

For contracts with low risk, this may include limited measures, such as:

- inclusion of risk mitigation standard provisions in the contract
- ordinary invoice controls

For contracts with high risk, there is need for special risk mitigation measures, such as:

- contractual provisions specifying requirements for the business associate's anti-corruption work
- contractual provisions enabling contract termination in the case of corruption incidents
- regular audits and monitoring
- anti-corruption training
- integrity due diligence repeated at later stages

Types of business relations, ownership interests and transactions that are most relevant for integrity due diligence are described in the following sub-chapters.

6.3 Subsidiaries, partly-owned companies, joint ventures and other ownership interests

Companies' reputations may suffer if their partners in joint ventures, consortia and jointly-owned companies are known for lapses of integrity. It is becoming more common for companies to do an integrity due diligence before entering into such relationships.

The enterprise should implement its Programme in all business entities over which it has effective control.
Where the enterprise does not have effective control it should use its influence to encourage an equivalent Programme in business entities in which it has a significant investment or with which it has significant business relationships. Whether or not it has effective control over a business entity, the enterprise should undertake properly documented, reasonable and proportionate anti-bribery due diligence of business entities when entering into a relationship including mergers, acquisitions and significant investments.
– The Business Principles for Countering Bribery

A business relationship with a corrupt partner may damage more than the company's reputation. If the partner has majority ownership, effective control and/or operating responsibility of the joint business, the company may inherit a relationship with a corrupt agent and risk complicity. The company could risk complicity in corruption if it is knowledgeable, or should have known about, corrupt acts. Anti-corruption clauses in shareholder agreements and joint venture and consortia agreements are important. Rights to information and voting rules that allow vetoing of suspect and possibly corrupt business arrangements are also important.

The owning company's programme should be implemented without limitations in subsidiaries and in partly-owned companies and joint ventures/consortia where it has effective control through majority ownership, voting rules and/or operating responsibility.

> ***Where the enterprise is unable to ensure that a joint venture or consortium has a Programme consistent with its own, it should have a plan for taking appropriate action if bribery occurs or is reasonably thought to have occurred. This can include: requiring correction of deficiencies in the implementation of the joint venture's or consortium's Programme, the application of sanctions or exiting from the arrangement.***
> **– The Business Principles for Countering Bribery**

For minority-owned companies and joint ventures/consortia in which the company does not have effective control, the company should use its influence to have these entities adopt programmes of acceptable standards. The board members of partly-owned entities need to be observant about corruption risks. Anti-corruption performance should be included in the follow-up of the entities. The company should exit such entities if their anti-corruption programmes or performance are found to be unacceptable and cannot be sufficiently influenced.

Integrity due diligence should be conducted on prospective partner companies if these are unfamiliar to the company. Integrity due diligence should also be carried out on partners that are known from previous business relationships and on partners in existing contractual relationships if new information or suspicions come up and makes this necessary.

6.4 Agents, lobbyists and other intermediaries

It is common practice for companies to use agents and other intermediaries when operating in foreign markets. They are contracted to act on the companies' behalf to assist with sales, business development, government relations and various other tasks. Knowing local business conditions and traditions could be of vital importance to secure a contract. In most instances, companies use agents for legitimate reasons. In some countries the law prescribes the use of local agents.

Lobbyists, communication advisors and other intermediaries are used by companies as advisors in dialogue with decision-makers, particularly within the public sector. Such activities also occur within the private sector. Lobbying is basically a legal activity, but it can under some circumstances and in some connections be illegal, and it is then called illegal trading in influence.

> ***The enterprise should not channel improper payments through agents, lobbyists or other intermediaries.***
> ***The enterprise should undertake properly documented due diligence before appointing agents, lobbyists and other intermediaries.***
> ***All agreements with agents, lobbyists or other intermediaries should require prior approval of management.***
> ***Compensation paid to agents, lobbyists and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered.***
> ***Agents, lobbyists and other intermediaries should agree contractually to comply with the enterprise's Programme and be provided with appropriate advice and documentation explaining the obligation.***
> ***The enterprise should contractually require its agents, lobbyists and other intermediaries to keep proper books and records available for inspection by the enterprise, auditors or investigating authorities.***
> **– The Business Principles for Countering Bribery**

The management of agents, lobbyists and other intermediaries is a particularly sensitive issue because of the risk of bribery being committed on the company's behalf. Agents have long been seen as the type of business relations associated with a high risk of corruption. The agent represents the company, but may consider bribery and other unacceptable instruments as a normal business practice, and may not be familiar with the company's anti-corruption programme.

> ***When working with third parties, it is no good committing not to pay or receive bribes, if they are doing it on your behalf.***
> **– The Business Principles for Countering Bribery**
> **– SME Edition**

Companies that turn a blind eye to the corrupt acts committed by an agent on their behalf, or that deliberately use an agent to cover up or "outsource" bribery, may be held liable for corruption. Accepted fines and convictions of well-known companies are evidence of this. Even if bribery by agents is unwanted by or unknown to the company, it is still the company's responsibility to control its agents to ensure that bribery is not committed on its behalf. The Norwegian Penal Code prohibits bribery and illegal trading in influence through agents, lobbyists and other intermediaries. A company may be liable for bribery committed by the agent, even when denying to have any knowledge of corrupt payments or methods that the agent has used.

Recommended actions for controlling agents are:

- risk based integrity due diligence before engaging an agent
- always written contracts
- concrete contract description of the work tasks, execution methods, and objectives
- specific and reasonable budgets and compensation for the tasks
- anti-corruption conditions in the contract
- accounting and book-keeping requirements
- audit rights
- contract provision for termination in case of suspected corrupt behaviour
- signed commitment to comply with the company's anti-corruption programme
- anti-corruption training of the agent
- close monitoring of the agent

A number of warning lights may appear before or during integrity due diligence of an agent, including:

- corruption concerns have been raised in the past about the agent
- a customer suggests or requires that a bid or contract negotiations are arranged via a specific agent
- the agent does not reside in the same country as the customer or the project
- the agent has little or no experience of the company's line of business or the type of work that he is to be engaged for
- the agent is closely related through family members or friends with decision-makers, government officials, politicians, competitors or criminals

When the agent is about to be engaged, or during the execution of the work, new warning lights may appear:

- the agent asks for compensation that is not proportional to the amount of work
- high success fee is demanded for obtaining the business objectives
- the agent asks for payments in advance, to be made to another person, or to another country, such as a tax haven
- the agent requires additional payment to "take care of some people", "get the business secured", or "make necessary arrangements"

Further information on the scope for integrity due diligence and red flags for agents and other intermediaries can be obtained from TRACE International (www.traceinternational.org). TRACE is an organisation that specialises in anti-bribery due diligence and compliance training for international commercial intermediaries (sales agents and representatives, consultants, distributors, suppliers, etc.).

6.5 Contractors and suppliers

Most companies have in their anti-corruption work concentrated on their own organisation, and some have established good attitudes and routines among their own employees. However, companies in the role as customers and purchasers (hereinafter purchasers) are increasingly held accountable for what their contractors and suppliers (hereinafter suppliers) do. Particularly companies with considerable purchasing activities direct their attention to the suppliers' preventive measures against corruption, in recognition of the responsibility that the company may get for unethical and illegal actions in the supply chain. If a supplier violates the corruption legislation, perhaps several levels down in the supply chain, the purchaser could suffer a loss of reputation and possibly have criminal liability.

The enterprise should conduct its procurement practices in a fair and transparent manner.
The enterprise should assess the risk of bribery in its contractors and suppliers and conduct regular monitoring.
The enterprise should communicate its anti-bribery Programme to contractors and suppliers and work in partnership with major contractors and suppliers to help them develop their anti-bribery practices.
– The Business Principles for Countering Bribery

Because companies in the role as purchasers are exposed to significant risk if they are involved in corruption, their ethical guidelines are often stricter than the laws that they must comply with. They want to be on the safe side, be ahead of the legal developments, and operate at a high level of ethics. Suppliers must comply with this, both with regard to their own employees and their sub-suppliers.

Suppliers must be prepared that purchasers want to mitigate corruption risk in several ways:

- anti-corruption as a criterion in the bidding process, for example that the existence of an adequate anti-corruption programme is a condition for prequalification
- contractual provisions against corruption, and termination of the cooperation in case of violation
- monitoring of the supplier through control routines, audits and inspections
- inclusion of suppliers in the purchaser's training programme

It is strongly recommended that the suppliers themselves take responsibility for having adequate ethical guidelines and effective anti-corruption programmes targeting their own employees and sub-suppliers. If this is not in place, or is inadequate, then suppliers can risk being excluded from the procurement process at an early stage. Alternatively, the supplier may through an improvement plan be required to establish ethical guidelines and a programme within a certain deadline. Until such a plan is completed, the supplier represents a risk to the purchaser, and must expect close follow-up. Therefore, "life will be easier" for suppliers that have the ethics and systems in place.

This focus on the supply chain is of course related to the risk of corruption that opens up at different stages in the procurement process. The temptation to influence the award of a contract can be large, and this poses requirements for ethical tidiness both to the supplier's employees and to those responsible for procurement in the purchaser's organisation. Here are some examples of improper ways to influence this process:

- the supplier gives a well-paid job to a relative of the responsible purchaser
- the supplier engages as a sub-supplier, without a proper business reason, a private company controlled by the responsible purchaser or by his or her friends or relatives
- the supplier undertakes work at the private home of the responsible purchaser free of charge, or at an extremely low price
- the supplier pays vacation travels for the responsible purchaser

Of the 34 cases processed under the corruption provisions in the Norwegian Penal Code in the period 2003-2013, more than half of them have to do with personal kickbacks in purchaser/supplier relationships.

Key recommendations in the procurement of goods and services from suppliers

Procurement procedures
- **have robust procedures that are consistent with the law, regulations and company rules**
- **ensure compliance with procedures through information, training and internal audits**

Transparency
- **provide an adequate degree of transparency in the entire procurement process**
- **promote fair and equitable treatment of potential suppliers**
- **ensure that the scope of work or product, invitation to tender and model contract are not designed to fit one particular bidder**

Good management
- **ensure that resources are used as intended**
- **ensure that procurement personnel meet high professional standards and have high integrity**
- **ensure that procurement personnel have received adequate anti-corruption training**

Prevention of misconduct, compliance and monitoring
- **put mechanisms in place to prevent risks to integrity in procurement, including conflict of interest and impartiality issues**
- **carry out integrity due diligence before entering into relationships with suppliers, if judged as necessary based on risk assessment**
- **cooperate closely with existing suppliers to maintain high standards of integrity**
- **use competitive bidding as a rule rather than an exception, and at least as required by laws and regulations**
- **provide specific mechanisms for the monitoring of procurement and the detection and sanctioning of misconduct**

Accountability and control
- **establish a clear chain of responsibility together with effective control mechanisms**
- **install checks and balances and division of work responsibilities so that more than one person handles bidding, awards and change orders**
- **install checks and balances and division of work responsibilities so that more than one person controls invoices against contracts and actual deliveries**
- **handle complaints from suppliers in a fair and timely manner**

Integrity due dilgence is a particularly important part of the purchasers' preventive measures. A decision to do an integrity due diligence, and about the scope of it, should be based on risk assessment. There may be several reasons to make such an investigation early in the procurement process, preferably in the prequalification phase. Examples of this are:

- the supplier is unfamiliar to the company
- available information gives reason for concern
- the country of operation, or the home country of the supplier, scores low on TI's corruption index (CPI)
- the contract has high value and long duration
- extensive use of sub-suppliers is planned
- the supplier needs to obtain authority permits and approvals

If integrity due diligence reveals that a supplier is convicted for or suspected of corruption, it must be evaluated whether or not this supplier should be included on the bidders list. It is an obvious choice for private companies to use similar criteria for debarment as included in the public procurement regulations (ref. Chapter 6.6 Customers / public administrations as customers). When a purchaser shall decide upon a possible rejection of a supplier in a bid competition, or conversely, if the supplier should be allowed to participate in spite of an earlier corruption case, this should be based on how the supplier has dealt with the case, what has been done of internal improvements and corrections (self-cleaning) to prevent recurrence, and how much time has passed since the corruption incident.

One of purchasers' biggest challenges is to assess and decide how far down in the supply chain to follow up corruption risk. The easiest solution is to let the closest level of suppliers be responsible for the next level. However, is it possible to rely on the closest level of suppliers dealing with this properly? And what about the further levels in the chain? There is reason to believe that this will be a major future challenge for companies with large procurement activities. In recent years, several companies have extended their internal anti-corruption efforts by applying the same requirements to their direct suppliers. Corruption risk further down in the supply chain is more unknown to most companies, but it is very real and must be mitigated through measures throughout the entire chain.

For more information, reference is made to the guide "Anti-corruption measures in the supply chain", published by TI Norway in cooperation with the Norwegian Association of Enterprise (NHO).

6.6 Customers

A supplier may be held accountable for a customer bribing a third party if he is actively involved and benefits from it and if the goods and services, or the payment for these, are connected with the corrupt act. Suppliers may suffer reputation damage by being closely associated with corrupt customers. A company should do integrity due diligence of customers based on risk assessment.

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

Public administrations as customers
Many companies have sales to public administrations as the dominant part of their business. The Norwegian government and the municipalities purchase a wide range of goods and services. Public procurement in Norway amounts to approximately NOK 400 billion (2013), which is about 15% of the GDP.

Corruption can occur in the encounter between public administration purchasers, who manage large values on behalf of the citizens and the community, and companies that are competing for supplies to public sector customers.

The Public Procurement Act and the related regulation set requirements for an orderly procurement process. The procurement shall be based on competition and shall be executed in a manner which safeguards predictability, transparency and verifiability. Objective and non-discriminatory criteria shall be used when awarding contracts. Transparency and competition are important measures to prevent corruption in public procurement processes. Corruption occurs when practices deviate from rules and procedures. This causes losses for the public administration, the citizens, and the serious suppliers.

During preparation for and execution of a procurement process, customers need contact with potential suppliers. It is then important that the information provided by the customer is the same for all, so that it does not cause discrimination and favouring some of the potential suppliers. Marketing, sales promotion, and customer relation activities must be within the framework of public procurement rules. These do not prevent companies from having contact with public administration customers to present their products or solutions, but the public administration purchasers shall ensure that potential suppliers have equal opportunities for such contact.

Through the procurement policy, public administration purchasers will influence suppliers to be socially responsible with respect to the environment, human rights, wages, working conditions, ethics, and anti-corruption. Contractual conditions may be used for obliging suppliers to take care of this in their own operations and in the supply chain.

All public procurement above a certain value shall be announced on the DOFFIN database, and procurement above another value must in addition be announced throughout the EEA area. Competing offers shall also be obtained for procurement below the threshold value. Traditionally, a number of municipalities and counties have focused on economic development and job creation in their own area and have chosen local suppliers, without announcement and competition, to achieve this. Such a form of local business development policy is illegal.

In many cases, former public employees have moved over to private suppliers, thus resulting in the supplier having inside knowledge about the customer. This can constitute an improper competitive advantage. Suppliers with key personnel who have previously been employed by public customers, should have internal procedures that prevent misuse of such inside knowledge and networks. The government has issued guidelines for quarantine in case of transfer to positions outside the state administration.

If companies experience or suspect violations of procurement rules, whether it is in the use of competition form, announcement for bids, or choice of supplier, they can complain to the Complaints Committee for Public Procurement (KOFA), which will decide whether a purchase is valid, and which can also give advice. Suppliers can through KOFA's website also stay informed about how various issues have been evaluated.

The Norwegian public procurement rules are based on EU requirements and standards. It is stated in the regulation on public procurement that for tender announcements over the EEA threshold values "*suppliers who the customer knows is legally convicted for participation in a criminal organisation or for corruption, fraud, or money laundering, and where public interests does not make it necessary to enter into a contract with the supplier,* ***shall*** *be debarred from the competition*". Furthermore, it is stated in the same provision for procurement both below and above the EEA threshold values that a supplier **may** be dismissed from competition if *"in his profession he has been guilty of serious neglect of professional and ethical standards in the business"*. This may for example include a suspicion about corruption.

Internal improvements and corrections (self-cleaning) after a corruption event is a significant factor when evaluating the possible lifting of a debarment, according to EU directive 2014/24EU on public procurement. This directive is expected to be implemented in Norwegian legislation in January 2016. According to the directive, the evaluation shall emphasise on:

- the supplier has proven that he has paid, or has committed to pay, compensation for the damage
- the supplier has assisted in the clarification of the facts and circumstances of the case by active cooperation with the police and the prosecutors
- the supplier has undertaken concrete technical, organisational and human resource measures suited to prevent further offenses

According to the directive, the national state shall decide upon a maximum period of debarment.

For more information about recommended measures against corruption in the municipal sector, reference is made to TI Norway's publication "Protect the municipality! - anti-corruption handbook".

6.7 Mergers and acquisitions

Corruption cases often surface during mergers and acquisitions. Many such cases are connected with the use of agents and other intermediaries. The consequences can be considerable for the companies and individuals involved.

When a company plans to acquire another company or an asset, it is necessary to carry out due diligence of legal and financial matters concerning the acquisition object. Additionally, an integrity due diligence is needed. The purpose is to obtain as complete information as possible about the acquisition object concerning corruption, reputation, integrity, ethics, and social responsibility. Elements of risk discovered may discourage the purchase or necessitate further negotiations about the price, specific conditions in the acquisition contract, or other actions. It is always important in such an integrity due diligence process to ascertain that the business to be acquired has complied with the corruption legislation, to avoid the risk of inheriting responsibility for criminal acts and associated legal penalties, loss of income, costs, and reputation damages.

In the case of a merger, it is appropriate to conduct due diligence on the companies involved, to reduce risks for the owners and for the organisation of the new company going forward.

Integrity due diligence for mergers and acquisitions should be conducted thoroughly with adequate time, resources and competence being devoted to it.

6.8 Hidden economic interests

Hidden ownership
To avoid association with corruption, it is important to know who owns a company that might become a party to future agreements. It is, for example, particularly important to clarify any suspicion of the potential business partner being wholly or partly owned by a government official. In that case, it will also be important to find out whether the business partner in one way or another may have been favoured by the authorities, for example to have been awarded a concession, or has been given an approval which normally is difficult to obtain. A company can become an accomplice in corruption, if this is included in the cooperation.

The G20 has declared that shedding light on corporate ownership is a priority. Today anonymous companies, secrecy jurisdictions and opaque corporate ownership structures represent the primary methods used by those who are corrupt or evading tax to shift their funds and mask their identity. G20 governments must collect and publish the identity of the real, living people who ultimately own and control companies and other legal entities to make it easier to track the origin of corrupt or illicit fund. You as the G20 leaders should take a bold step to unmask the corrupt by pledging to do this in Brisbane.
Extract from an open letter to the G20 leaders prior to the meeting in Brisbane, Australia, 15-16 November 2014. Signed by Transparency International and others.

Hidden ownership is allowed in many countries. Also, in countries where hidden ownership is not allowed, it can be hard to find out who the real or beneficial owner actually is, because in some countries only transparency about the ownership in the first instance is mandatory. This can be a straw person or a straw company. There may be systems with a whole range of straw persons and straw companies. Such arrangements are often created to hide the real owner. The motivation for hidden ownership can be corruption, illegal tax evasion and other economic crimes.

To show the intention of an honest and open cooperation, the new potential business partner should disclose who its real owners are, i.e. those who are recipients of the values created by the business, and who controls it. If this is not disclosed, and an integrity due diligence is unable to identify who the real owner is, a difficult choice remains. Should the business relationship be avoided, or should it be entered into with the risk that it entails? In the latter case, a lot of emphasis must be placed on planning and implementing risk mitigation measures.

Tax havens

Tax haven is the popular term for a place that is also commonly called offshore financial center or secrecy jurisdiction. Characteristics of these are low or no taxes, lack of transparency regarding the ownership of companies, and secrecy about all aspects of bank accounts. This makes them attractive for some customers. There is increasing pressure from many countries on tax havens to provide more transparency. Norway has negotiated agreements with many tax havens about access to information for tax purposes.

> ***The combination of weak institutions and tax havens give corrupt politicians and destructive entrepreneurs good opportunities to conceal the resource income they arrogate to themselves.***
> **Report from the Government Commission on capital flight from poor countries.**
> **NOU 2009:19**

Although the use of tax havens in many cases is legal, the use of them supports their existence and their availability for corrupt activities and other crimes. Companies are therefore recommended to avoid using, withdraw from, or at least seriously limit the use of tax havens. Companies should also influence their business associates not to use tax havens in joint business activities.

When a business associate wants to enter into a contract via a company registered in a tax haven or to have settlement paid to a bank account in a tax haven, this should be thoroughly evaluated before entering into a cooperation.

Transfer pricing

Transfer pricing is the price setting for transactions between companies that wholly or partly have the same owners, and which may be registered in different places. One of these may be a tax haven.

It is a recognised principle that taxation of value creation should take place in the country where the value is created, so internal group pricing should normally be at market price. If the internal price used for exporting a commodity is artificially low, the motivation for this could be to avoid or reduce tax. Many countries have laws and regulations that restrict artificially low pricing, while in some countries prices are negotiated with the authorities. It could be that the authorities do not know that an artificially low price is being used, and that this is not illegal. Nevertheless, this can be an unethical practice and in reality theft of assets belonging to the community and the citizens.

Companies operating with artificially low internal prices achieved through kickbacks to public officials, are engaged in corrupt activity. Other companies that have business relationships with such companies, and when the cooperation is connected with or benefits from this activity, run a risk of being complicit in corruption.

Capital flight

Many developing countries have enormous capital flight, and often to tax havens. The motivation is to move capital to safe places, to hide income from criminal activity, and to avoid tax. Capital flight is often associated with large-scale theft committed by persons at high levels in regimes that are not perceived as legitimate by large parts of the population. Companies that cooperate with regimes stealing from their own population are not necessarily doing something illegal, but it is difficult to justify such activity from an ethical perspective.

Most countries have laws that restrict export of capital. When this still takes place on a large scale, and is also being carried out by companies and their owners, it is likely that there is bribery involved. Companies that have business cooperation with other companies where the cooperation benefits from such activities, run the risk of being complicit in corruption.

7. Developing an anti-corruption programme

7.1 "Business Principles for Countering Bribery" and other tools

The Business Principles for Countering Bribery (BPCB) is developed as a multi-stakeholder initiative led by Transparency International (TI). Its purpose is to raise the standards of business practice in combating corruption. Extracts from the BPCB are copied to in text-boxes in this handbook.

TI Norway encourages companies to use the BPCB and this handbook as starting points for:

- developing company anti-corruption programmes
- benchmarking and upgrading existing programmes
- implementing programmes
- operation and maintenance of the programmes

The BPCB or this handbook cannot be adopted as a company's anti-corruption programme, as they are only frameworks and starting points for companies wishing to develop or improve their own tailor-made programmes. In developing or amending their programmes, companies must take account of the specific nature of their activities and relevant corruption risks. The emphasis that a company places on different elements in its programme should be based on its own needs, risks and vulnerabilities.

The business principles:

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

The BPCB focuses on bribery, which is the most common form of corruption. The recommendations in this handbook, mainly based on the BPCB, are also relevant for countering and avoiding other forms of corruption.

The Business Principles aim to provide a framework that can assist enterprises in developing, benchmarking or strengthening their anti-bribery programmes. The Business Principles reflect a high, yet achievable standard of anti-bribery practice.
– The Business Principles for Countering Bribery

BPCB – Small and medium size enterprise edition
TI has published a special edition of the BPCB for small and medium-size enterprises (SME). More than 95% of the world's business is carried out by SMEs, and they are just as vulnerable to the risks of corruption as large companies. The SME Edition is based on the same values and principles as the BPCB. It provides practical guidance for developing anti-corruption programmes that suit the size and structure of SMEs. Larger companies can use the SME Edition to encourage SMEs in their supply chain to implement anti-corruption policies and practices. Extracts from the SME Edition are copied in text-boxes in this handbook.

Other TI tools
TI's tools related to the BPCB that aim at supporting companies in their task of designing and implementing anti-corruption programmes are placed together as "Business Integrity Toolkit" on TIs webpages. The central tools are:

- "The Anti-Bribery Checklist" helps companies to carry out a high level assessment of their anti-corruption approach, before a thorough and systematic job to develop an anti-corruption programme is started.

- "The Six Step Implementation Process" is a step-by-step guide for companies who are in the process of designing and implementing anti-corruption programmes.

- "The Self-Evaluation Tool" can be used by companies to appraise the adequacy and quality of their anti-corruption measures.

- "The Assurance Framework for Corporate Anti-bribery Programmes" gives a framework and guidance for voluntary independent assurance that will strengthen and improve the programme and also increase its credibility.

Other initiatives
TI cooperates with two global initiatives which Norwegian companies may join to obtain advice and help, access to networks, and to demonstrate their commitment to combating corruption:

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

7.2 Why is a company anti-corruption programme necessary?

Some companies argue that they can trust their employees to exercise their judgement on what is acceptable/unacceptable and what is legal/illegal, and that a programme for countering corruption is unnecessary. This is ill-conceived for several reasons:

- People's knowledge and judgement of what is acceptable varies widely. Obviously different people will have different views, but an individual's view can also change radically due to circumstances – actually being offered a gift can alter previously held views.

- There will always be a risk that an individual goes too far and commits corruption – how is that person to be disciplined if no rules are violated?

- Joint venture partners, agents, contractors, suppliers and other parties need to know that the company has a programme and which rules are governing for the company.

- Laws and case-law opens for no penalty or reduced penalty if the company's preventive measures have been adequate.

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

An anti-corruption programme helps to create a common platform for making decisions on behalf of the company, thereby reducing the risk of corrupt decisions. With no guidance from a programme it can be difficult to draw a line and declare that something is unacceptable.

Tackling the problem of corruption can only be effective by focusing on both sides of the corruption equation, i.e. the supply side and the demand side. Only then can anti-corruption initiatives be effective and sustainable. Companies usually represent the supply side. The role that companies can play in countering corruption is therefore essential.

Many Norwegian companies have standards, policies and guidelines that address various aspects of corporate governance. However, too few companies have such documents that deal with corruption specifically and comprehensively. With more actors in business implementing anti-corruption programmes, good practice is reinforced. The ultimate goal is to achieve a fair, level playing field in which companies in all sectors can operate in an honest and transparent manner.

A well-implemented, high quality programme for countering corruption engenders a strong ethical culture and communicates behavioural expectations in key risk areas. It also protects the company against the adverse consequences of corrupt acts by employees. The risk to the company of being convicted of corruption and penalised with fines will be considerably reduced or disappear if the company has implemented a good anti-corruption programme that is well documented.

In brief, the purpose of an anti-corruption programme is to counteract corrupt practises that may be committed:

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

by:

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

A good anti-corruption programme helps to:

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

However, it is important to note that;

- The programme only needs to cover risk areas and elements that are relevant to the company, based on a risk assessment.
- It is better to get started with an incomplete programme that deals with the most serious risks, and to amend it over time, than not to have any programme at all.

Prevention of corruption and other economic crimes is as important as disclosure, prosecution, and penalty. It serves a company well to have good systems to avoid being involved in such crimes. In case of a corruption incident, an adequate and well implemented anti-corruption programme could lead to acquittance or a reduced penalty for the company.
Trond Eirik Schea, Director of Økokrim

Surveys among companies

In 2014, TI Norway carried out a business community survey that examined awareness of and attitudes towards corruption, and the existence of anti-corruption measures. The survey addressed the top managers of 600 Norwegian companies. It was identical to a survey conducted in 2009. The results in 2014 are very similar to the 2009 results, with some improvement on certain points. However, the main conclusion is that there is a great need for improvement when it comes to the business managers' awareness of and attitudes towards corruption, and in the companies' efforts to counter corruption. The report from the survey can be found on TI Norway's website.

Company survey 2014 – Slowly but surely ahead

- **29 % of the managers have the opinion that corruption risk is a relevant issue for the company**
- **70 % of the companies have a code of ethics**
- **45 % have systematic measures to avoid and to counter corruption**
- **38 % of the companies have routines for internal whistleblowing**
- **34 % reply that corruption risk is an issue when new business opportunities and new business relations are considered**

7.3 What is an anti-corruption programme?

An effective anti-corruption programme encompasses a number of functions and measures.

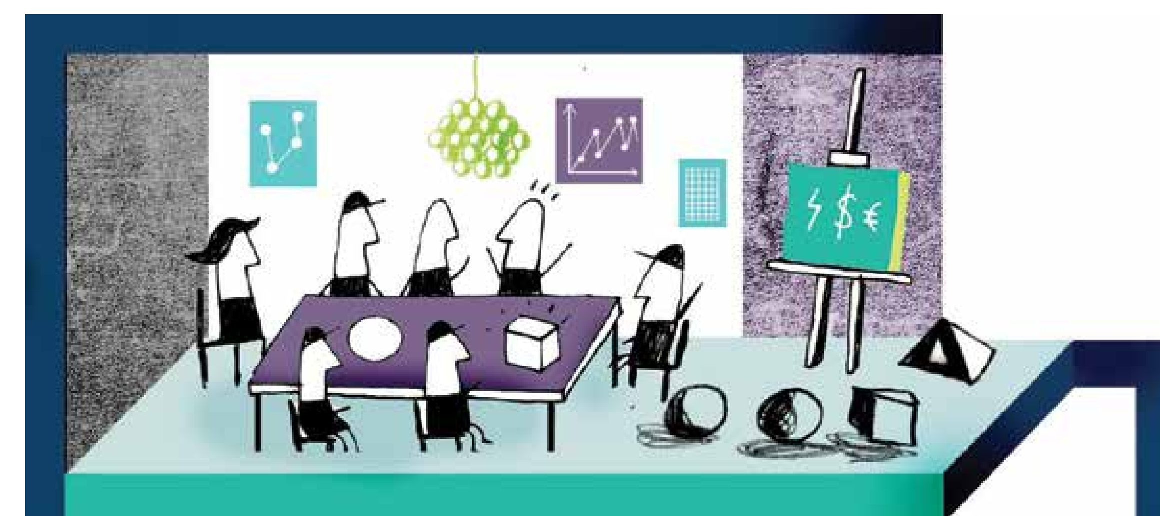
The enterprise should develop a Programme that clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control.
The Programme should be consistent with all laws relevant to countering bribery in each of the jurisdictions in which the enterprise transacts its business.
- The Business Principles for Countering Bribery

The anti-corruption programme should focus on the most important risks (ref. chapters 5 and 6):

- identify high-risk areas
- adapt routines to the nature and source of the risks
- describe relevant forms of corruption, risk situations, and mitigating measures
- describe corruption risks with business relations, ownership, and acquisitions and mitigating measures

The anti-corruption programme should create an environment with the right tone and structure:

- ensure the right "tone at the top"
- grow a compliance culture
- adopt zero tolerance policies
- embed compliance into human resources policies (training, hiring, performance evaluation, promotion and disciplinary action)



The anti-corruption programme should include control activities to minimise the risk of non-compliance:

- adopt control procedures and monitoring programmes for high corruption risk areas

The anti-corruption programme should include processes and systems supporting compliance:

- integrate anti-corruption in the company's regular business processes
- ensure effective reporting to key corporate governing bodies
- embed compliance into IT systems

The anti-corruption programme should raise awareness, and ensure compliance and enforcement:

- conduct mandatory training for personnel at all levels
- install disciplinary measures and incentives
- install reporting requirements and motivating elements that underpin compliance
- practise mandatory training for risk exposed agents, contractors and suppliers
- introduce anti-corruption provisions in contracts with business relations

The anti-corruption programme should stay current and relevant:

- address changes in regulations, financial and operational policies and procedures, and implement these
- implement changes necessary to cater for new markets and business segments
- implement improvements in the anti-corruption programme based on programme operation experience

7.4 Commitment from the top

Creating a transparent and honest company culture that forms the basis for a good ethical practice may be challenging. It needs to be value-based, rule-based, and compliance-based. It also requires an effective communication strategy. And last, but not least, it requires strong ethical leadership by the board of directors and the top management.

> ***The Board of Directors or equivalent body should demonstrate visible and active commitment to the implementation of the enterprise's Programme. The Chief Executive Officer is responsible for ensuring that the Programme is carried out consistently with clear lines of authority.***
> **- The Business Principles for Countering Bribery**

In many instances it is the companies' top managers who are convicted of corruption. Hence, it is absolutely necessary that the board of directors engages itself in the anti-corruption work in a committing and visible manner. The decision to implement an anti-corruption programme must come from the board of directors. The board should approve the outline and main content of the programme.

The CEO should approve the entirety of the programme. The top managers need to speak, write and act in ways that support the programme and leave no doubt about the seriousness and priority of it. Visible and clear commitment to the programme from the top management is needed continuously during programme preparation, roll-out and follow-up. The engagement from top management is crucial for the development of strong attitudes and positions against corruption among leaders at lower levels and all other employees.

Companies with chief ethics officers need to ensure that these have genuine influence, with direct access to the CEO and the board. They need to have a seat at the table, just like the corporate lawyers, when key transactions are discussed. They should not be reporting via others, such as the legal department, the human resources department or the health, safety and environment department, but be recognised as important independent contributors.

7.5 Organisation of the anti-corruption work

How the anti-corruption work should be organised must be decided based on the company's needs and distinctiveness. The existing organisation, divisions of responsibilities, and especially the size of the company need to be considered. The description in this sub-chapter suits large companies. Simplifications can be made for smaller companies.

> ***Depending upon the size of your business, you could appoint one person or a group of people to administer the anti-bribery programme.***
> **- The Business Principles for Countering Bribery**
> **- SME Edition**

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

It is important that a staff unit which is independent of the business line organisation and which reports to the CEO, is appointed to administer the programme. This unit should be responsible for programme preparation and roll-out, and could also have a role in following it up in the operating phase.

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

The plans for the programme and its intended content should be presented to the various organisation units in the company and to the trade unions at the work places. Comments and suggestions should be invited. Information about programme development should be communicated through the company's internal website or printed bulletins. Special emphasis should be placed on cooperation with organisation units believed to have valuable input to the programme, such as the legal, internal audit, and procurement departments. A review should be made of any relevant cases known and previously recorded, such as through whistleblowing.

It could also be useful to meet companies that have implemented anti-corruption programmes, to draw on their experiences. Cooperation with trade unions, business oganisations and civil society organisations, such as TI Norway and TI's network of 100 national chapters around the world, is encouraged. In many parts of the world, business is partnering with civil society to prevent corrupt practices, strengthen public institutions and foster an anti-corruption culture in society.

7.6 Mapping of practices and risks

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

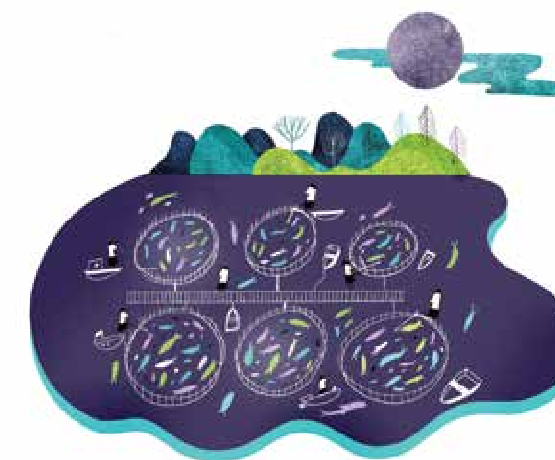
Risk analysis should be a tool that the company uses continuously, both on an overall basis and for individual processes. Risk assessments should be done regularly, and both the process and the result should be documented.

> ***The enterprise should design and improve its Programme based on continuing risk assessment. The Programme should be tailored to reflect the enterprise's particular business risks, circumstances and culture, taking into account inherent risks such as locations of the business, the business sector and organisational risks such as size of the enterprise and use of channels such as intermediaries. The enterprise should assign responsibilities for oversight and implementation of risk assessment.***
> **- The Business Principles for Countering Bribery**

Overall risk evaluation
It is essential to map and understand the company's activities and processes before doing a corruption risk assessment. In combination with knowledge about how corruption occurs it is then possible to identify how, and to which extent, the company is exposed to corruption risk.

To carry out an overall risk assessment, it would be appropriate to involve resources from different areas and functions in the company. Relevant methods can be use of work-groups, interviews, questionnaires and external research.

Mapping and evaluation of areas with high risk
One part of this process is to map the current practices in the different parts of the organisation on such issues as facilitation payments, gifts, hospitality, expenses, the use of agents and the control of these, etc. This can be done, for example, through interviews, by using questionnaires, review of contracts, books and records analyses, and audits. This mapping can be used as basis for design of the anti-corruption programme, planning of training activities, and the follow-up of programme implementation. The figure on the next page shows an example of a questionnaire with some relevant questions. It can easily be expanded to include more of the topics covered in this handbook.



Questionnaire for corruption issues

Organisation unit: ______________________ Manager: ______________________

Statement	Totally agree 1	2	3	Totally disagree 4	Not relevant	Don't know
Legislation and company requirements						
My unit is sufficiently familiar with relevant corruption legislation						
My unit is very familiar with the company's code of ethics						
Corruption forms and risks						
My unit is exposed to corruption risk						
I am sure that my unit is not involved in bribery						
I am sure that facilitation payments are not made by my unit						
Gifts given or accepted in my unit only have limited or symbolic value						
Hospitality in my unit will never be perceived to influence decisions						
Business relations and transactions						
My unit is using risk based integrity due diligence of business relations						
My unit is using anti-corruption provisions in contracts						
I am sure that agents engaged by my unit are not paying bribes						
In my unit, anti-corruption is an issue in prequalifications for bid competitions						
Organisation and leadership						
My unit understands that corruption is unacceptable and will have consequences						
My unit is familiar with the possibility of whistleblowing						
In my unit, there are no conflicts of interest that could influence the company						

Processes and areas with high risk should be subject to thorough mapping and evaluation. Examples are:

- business development
- use of agents and market representatives
- procurement
- import and export
- government relations
- handling of charitable donations, voluntary community contributions, sponsorships, and political contributions
- peripheric parts of the organisation and non-core businesses
- activities in countries with high corruption risk

Checks should particularly be made to ensure that relationships with agents and other risk-exposed business associates are covered by written agreements, that these have anti-corruption content, and that the terms and conditions do not cause concern.

TI's anti-corruption research and analyses on corruption (ref. Sub-chapter 2.3) can be used by companies for evaluation of corruption risks in relevant countries, business segments, and in relation to public institutions. The risks related to the anti-corruption legislation in the various countries of operation, and legislation that is enforced world-wide, should also be assessed. The US Foreign Corrupt Practices Act and the UK Bribery Act are such laws that are important for many Norwegian companies.

Corruption risk analyses sometimes persuade a company to avoid certain markets or partners altogether because the possibilities of becoming involved in corruption are judged to be too high. At other times such risk analyses help the company to secure business ethically, precisely because it is equipped to know the key risks and how to handle them, even when operating in countries where the culture and business practices are unfamiliar.

7.7 Management systems and guidelines

Companies' anti-corruption programmes typically include written commitments embedded in company mission, vision or value statements. Such statements are elaborated further in the companies' codes of ethics and address diverse audiences:

- the board of directors
- management
- employees
- regulators and public authorities
- business relations
- the general public

Values

In addition to values related to the company business objectives, one of the company values should include a commitment to counter corruption. It should be made clear in the description what the value includes and what it means. The value statements and explanation of the content should be shown on the company's public website.

Code of ethics

The code of ethics is, together with the company values, the foundation in a company's anti-corruption programme and sets legal compliance and ethical requirements for the board, management, employees and consultants working in the company. A code of ethics usually contains a variety of ethical and legal issues, with anti-corruption as a central element.

The code of ethics is most effective and visible if it is placed high in the hierarchy of the company's governing documents, for example at the level below the company's by-laws. Companies should show their codes of ethics on their public website.

The code of ethics should set the company's ethical standards on the safe side of any laws that the company is subject to. It should apply universally for the entire company and not be adjusted to specific cultures or countries.

The code of ethics should be reviewed regularly, for example every second or third year, and should be improved as required.

Written rules and guidelines

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

A code of ethics is usually not sufficiently detailed and specific on the various anti-corruption issues, and must then be supplemented with written rules and guidelines building on the code of ethics, but going into more detail and being more prescriptive and practical for the employees.

Written policies and standards constitute the core of the company's anti-corruption programme. They should cover all necessary corruption form and situations, and all types of business relationships, ownerships and transactions that are relevant for the company, based on risk mapping and evaluation.

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

Many companies already have quality systems and various management systems. It could be effective to incorporate the anti-corruption programme, including written rules and guidelines, into this. Then it will be important to ensure that the anti-corruption measures do not become unclear or invisible.

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

7.8 Whistleblowing mechanisms

Anti-corruption programmes will be of limited value if employees do not know where to turn if there is a corruption problem. If the company does not have a whistleblowing facility, it needs to establish one as a part of its programme. If the company already has such a facility, then it may have to revitalise and adjust it in connection with launching the anti-corruption programme.

> *To be effective, the programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the enterprise should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations (whistleblowing) in confidence and without risk of reprisal.*
> *These or other channels should be available for employees to seek advice on the application of the Programme.*
> **– The Business Principles for Countering Bribery.**

Apart from the provisions of the Working Environment Act (ref. Sub-chapter 3.4), there are several reasons why employees should be able to report undesirable or unacceptable conditions. Employees have a right to participate in the development of the workplace that justifies the possibility to whistleblow. Employees should be able to whistleblow about failures, deviations, hazards or deficiencies in the company's procedures or internal control system. Employers should also expect, and make it clear that they expect, that employees whistleblow about unacceptable conditions, on the basis of the non-statutory duty of loyalty in employment relationships.

According to the Working Environment Act, all employers have a duty to facilitate internal whistleblowing, if conditions in the company call for it. Companies exposed to corruption risk should therefore have an internal whistleblowing facility. Establishing a whistleblowing channel also sends the signal to employees that the company is serious about freedom of expression.
The company's internal whistleblowing channel must be designed so that it does not restrict the employees' freedom of expression in relation to the Norwegian Constitution's § 100 or the Working Environment Act's § 2-4.

The company's whistleblowing procedures should clarify the employer's expectations of what types of cases whistleblowing should be used for, how it should be done, and describe the processing of whistleblowing cases. Because most whistleblowing cases are reported to the nearest manager, there is a need for training of all managers in the company so that they have sufficient competence to deal with whistleblowing cases and whistleblowers in a proper way.

There should be an opportunity of anonymous whistleblowing. The practical solution can be a confidential telephone-service or intranet/ internet sites where employees and can air concerns, convey information, or raise issues. It is important that the whistleblowing channel is managed by an independent staff unit that reports to the CEO, the owner, or the board. It is recommended that the company's whistleblowing channel is made available not only for employees, but also for business associates and the general public. If there is opportunity to whistleblow electronically, for example by e-mail, it is important to remember that formal legal protection and privacy protection must be safeguarded for those involved.

As mentioned in Sub-chapter 3.4, there is uncertainty regarding the interpretation and application of the Working Environment Act's provision of justifiable whistleblowing, and thereby whether whistleblowers are adequately protected. This may be a reason why only one of the 34 corruption cases that have been processed under the corruption provisions of the Norwegian Penal Code in the period 2003 - 2013, has surfaced by through internal whistleblowing.

It should be a genuine concern for the company that the whistleblowing facility works as intended, and that the threshold for whistleblowing is low. The company should encourage whistleblowing and have written procedures and practices that create confidence in whistleblowers being protected, and that they will not be exposed to negative reactions or sanctions.

7.9 Accountability and consequences

Even though an independent staff unit is given the task of preparing, launching and administering the programme, it should be made clear that it is the responsibility of the entire organisation and every employee to implement the programme and to comply with it. The programme must therefore be integrated in the organisation, and become a part of the company culture. The programme is most likely to be successful if the anti-corruption measures are intimately blended into the normal course of the business, i.e. into the annual business plans and budgets, project approval criteria, investment decisions, project execution plans, procurement procedures, human resources policies and procedures, reporting, etc.

> *Human resources practices including recruitment, promotion, training, performance evaluation, remuneration and recognition should reflect the enterprise's commitment to the Programme.*
> *The enterprise should make it clear that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes, even if such refusal may result in the enterprise losing business.*
> *The enterprise should make compliance with the Programme mandatory for employees and apply appropriate sanctions for violations of its Programme.*
> **– The Business Principles for Countering Bribery**

A good anti-corruption programme is a "programme with teeth", meaning that the consequences of programme violations must be very clear and serious. Lack of efforts in programme implementation and active avoidance of compulsory training should also be reacted upon.

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

> *Everyone in your business and all your employees should understand that they each have a responsibility to make sure that the Programme is followed and works.*
> **– The Business Principles for Countering Bribery - SME Edition**

Anti-corruption clauses may be used in employment contracts, and compliance with the company's code of ethics and policies could be a specific obligation in the contract. Performance in programme implementation and compliance should be included in appraisal dialogues between managers and employees, and in the evaluation of employees for salary raises and promotion.

8. Implementation of the anti-corruption programme

Too often, companies establish ethical guidelines with provisions against corruption without this being a part of a complete anti-corruption program which also includes plans and measures for implementation internally and externally, and monitoring. Management must also take initiatives to get these other parts of the programme in place.

8.1 Programme roll-out

When the anti-corruption programme has been developed, it must be launched and implemented (programme roll-out) in the organisation. Several parts of the organisation must be involved to achieve a successful roll-out, including management and the communications department, in addition to the organisation unit that is given the task of following up the anti-corruption programme in the implementation and operational phases. Managers at several levels should be chosen by virtue of their responsibilities, their personal qualities, and the trust and credibility they enjoy in the organisation, and be given special roles as leaders and ambassadors of the programme roll-out.

The roll-out should be implemented as a project, with regard to organisation, budgets, action plans and progress monitoring.

The roll-out could be easier if the anti-corruption programme is included in existing processes within the company. However, it must then be ensured that the anti-corruption measures do not become too fragmented, unclear, and invisible.

Communication of the anti-corruption programme is a central part of the roll-out. Companies should prepare an overall plan for communication. In the roll-out phase, the employees must be made aware of new requirements being in force, and how they can get more information. They should be informed via the company intranet and possibly through printed information material. Furthermore, it is recommended that one person or organisation unit is designated to answer questions in the roll-out phase.

Different methods can be used to strengthen implementation, for example that managers at various levels confirm in writing that they have received the programme material and commit to implement it. The CEO and senior management should ask the various business units to report the status of implementation and compliance with the programme periodically, and in connection with important decisions.

The company's top management has a particular responsibility to ensure that the anti-corruption programme receives adequate attention and is respected. Top management must show their support for the programme in relevant fora, for example through statements published on the company intranet and by attending meetings with the employees in connection with the roll-out process.

8.2 Training

The launch of the anti-corruption programme must be accompanied by thorough plans for training. Anti-corruption training should be directed towards the entire organisation, but must be adapted to different organisation units and positions based on the identified challenges and risks that they are facing. The content and scope of the training program will vary with company size, type of business, and degree of risk.

> ***Directors, managers, employees and agents should receive appropriate training on the Programme. Where appropriate, contractors and suppliers should receive training on the Programme.***
> **- The Business Principles for Countering Bribery**

The training should cover all parts of the anti-corruption programme, and should emphasise what the requirements mean in practice for the employees. It is useful to have concrete examples experienced by the organisation, media stories and the court cases that are familiar, and dilemmas that are relevant to the company. Dilemma training through group work and plenary discussions support the building of a good corporate culture.

It creates commitment and mutual understanding, and contributes to the ethical standards being complied with in the organisation. Training should be tailored to the individual target groups and can take the form of meetings, workshops, seminars and team-building events, online training, or a combination of these. Anti-corruption training can also be included as a permanent element in other existing training programs.

Managers and employees in exposed positions must be thoroughly trained. Seminars and case workshops with both internal and external speakers and facilitators can be used. Furthermore, management teams can have follow-up and discussions of the anti-corruption program as a regular agenda point in their management meetings. For employees in high risk positions, online training is not sufficient - these should receive personal training. This includes employees who are particularly exposed to corruption risk, for example in high-risk countries and employees with high financial result expectations. Use of tests and examinations after completion of training may be appropriate for such organisation units and positions.

What training activities have been carried out, who has received training, and what the content of the training was, should be recorded by filing of participant lists and the training materials used. Subsequent training should account for new regulatory requirements, organisational changes, employees having moved into other positions, new employees, new countries, and new products and services. Anti-corruption training should not be a one-off event, but a continuous work. The frequency of anti-corruption training will depend on the corruption risk of the individual position or organisation unit. As a general rule, anti-corruption training should be repeated every second year. The training must be mandatory.

Training should also be given to agents, consultants, suppliers and other business associates if the risk situation calls for it. This will be particularly relevant in high risk countries (based on TI's corruption index) and where these business associates have contact with government officials on behalf of the company, for example in connection with applications and permits.

8.3 Information and communication

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

During the preparation, implementation, and subsequent follow-up of the programme, information about programme plans, content and requirements should be communicated regularly to all employees.

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

Internal communication measures in the organisation, especially prepared for the anti-corruption programme can include:

- e-learning programme
- ethics helpline
- workshops
- e-mails to employees from the CEO
- information from the legal counsel, compliance officer, ethics officer

The company's normal information channels, meeting structures, and training activities should to the largest possible extent be used to inform and have dialogue about the anti-corruption programme, for example:

- websites / intranet
- management training
- training programmes for employees
- management team meetings
- team-building events

It is no good having business principles and a programme if no-one knows about them.
– The Business Principles for Countering Bribery – SME Edition

9. Operation and maintenance of the anti-corruption programme

9.1 Follow-up

Regular follow-up of status and progress by management is crucial for ensuring effective implementation and execution of the planned anti-corruption activities, such as risk analyses, new governing documents and training. It is a fact that what is being measured and followed up, gets implemented.

Management should seek to combine monitoring of the ongoing anti-corruption activities with other existing business processes, to the extent that it is practical.

A risk assessment is a natural starting point for defining and prioritising anti-corruption activities. The risk mapping can be coordinated and implemented as part of an overall risk review in the company. It is important to go properly in-depth on the subject of corruption in order to be sufficiently specific and relevant. Identified activities arising out of a risk assessment should be integrated into the business plans for the upcoming planning period. Integration of anti-corruption activities in other business processes will contribute to an efficient process and ensure relevance.

It is important that the subject of corruption periodically is put on the agenda for management meetings at different levels, to contribute to a low threshold for bringing up issues and cases.

The CEO should regularly report to the board how the program works in practice. It is the management's responsibility to regularly follow up that the planned activities actually are implemented. This can be done through monthly, quarterly or semi-annual follow-up meetings that management normally has with departments and business units. Focus should be on following up the implementation of agreed measures. Furthermore, significant internal and external changes (such as new laws) need to be reviewed and evaluated to see if the measures are still relevant. It is also natural to report any corruption attempts, incidents and "near misses", including how such cases have been handled, with the aim to assess whether further measures and improvements to the programme should be implemented.

In addition to this continuous monitoring, it may also be appropriate that managers, for example, on an annual basis sign a declaration on behalf of their respective organisation units where they account for:

- the status of implementing anti-corruption activities this year, including training activities carried out, what measures remain to be implemented, when planned activities will be completed, and
- that there has been no occurrence of corruption-related events in the organisation unit, or alternatively, what has happened and how was it handled.

For such reporting it would be natural with a "bottom-up" process where managers report on the anti-corruption work up through the management levels to the CEO. This reporting could be the basis for a corresponding report from the CEO to the board.

9.2 Transparency and reporting

Some companies do not have policies or programmes dealing explicitly with corruption, and many that do avoid publishing them. This could reflect a lack of awareness, reluctance to discuss the issue publicly, the misconception that it increases risk, concern about added consequences in case of an incident, or the perception that corruption is not a material risk for the company.

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

> *The enterprise should publicly disclose information about its Programme, including management systems employed, to ensure its implementation.*
> *The enterprise should be open to receiving communication from relevant interested parties with respect to the Programme.*
> **- The Business Principles for Countering Bribery**

Annual report and web-pages
Companies should report on the preparation, progress of implementation, content, performance, maintenance, and results of the anti-corruption programme in its annual report or its sustainability/CSR report and on its external website. In addition, it should report on other issues which are important to counter corruption.

TI Norway's survey, "Transparency in corporate reporting - assessing large companies on the Oslo Stock Exchange (2013)", which included the 50 largest companies with significant international activities, concluded as follows:

- A transparent and informative corporate website, available in at least one international language, should be the standard communication tool for all Norwegian companies with international operations.
- Companies should publish detailed information on their anti-corruption programmes.
- Companies should publish complete lists of their subsidiaries, associated companies, joint ventures and other ownership interests.
- Companies should publish financial information for each country of operations.
- Shipping companies, which do not have countries of operations like land-based businesses, should report financial information for countries of harbour calls.

The Accounting Act contains requirements for annual reports of large companies to include social responsibility issues, including anti-corruption, and requirements of companies with business in extraction of natural resources to report payments to governments and other financial key figures on a country-by-country basis. TI Norway recommends that all Norwegian companies with international activities implement this type of reporting on a voluntary basis.

The GRI standard (Global Reporting Initiative) can be used for annual reporting. GRI is a widely accepted standard for reporting social and ethical issues, including aspects related to corruption.

The UN Global Compact and Transparency International have jointly issued guidelines for company reporting on corruption related issues.

In the conviction that it helps their reputation, attracts investors, attracts talented employees, and is beneficial for their share prices, many companies choose to report social responsibility (including anti-corruption) performance to rating agencies and to be listed in indexes such as the Dow Jones Sustainability Index and FTSE 4Good.

Reporting on practices
Companies should report on practices, measures, improvements and any corruption cases, "near misses", and "serious incidents", similar to the established practice within health, safety and environment. Reporting on incidents and on company performance on anti-corruption commitments are not yet common. While there was a time when reporting on health, safety and environmental performance was perceived to be difficult, companies are today more at ease with reporting on these matters.

Companies should report information from whistleblowing, such as the number of:

- cases reported
- cases investigated
- unsubstantiated cases
- cases having resulted in sanctions
- cases having led to improvement measures

9.3 Internal control and auditing

An effective and suitable internal control must be in place to ensure that the anti-corruption program works as intended. Preventive and disclosing controls are effective measures for combating corruption. A further strength is to have an internal audit function that carries out independent controls aimed at implementation and compliance.

> *It's no good having a programme unless it is supported by controls and records. These are the checks and balances which will support your programme and show that it is working.*
> **- The Business Principles for Countering Bribery - SME Edition**

Which functions that are best suited to follow up that the anti-corruption programme works satisfactorily will depend on company size, organisation, the type of business, and possibly other factors. Top management and the board are responsible for the necessary organisation, resources, and systems being in place for adequate internal control.

> *The enterprise should maintain available for inspection accurate books and records that properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.*
> *The enterprise should subject the internal control systems, in particular the accounting and record keeping practices, to regular review and audit to provide assurance on their design, implementation and effectiveness.*
> **- The Business Principles for Countering Bribery**

"The three lines of defense" is an internationally recognised model for assignment of roles and responsibilities for risk management and internal control.

Source: European Confederation of Institutes of Internal Auditing (ECIIA)

The first line of defense includes the daily operation. This is the foundation of the company's internal control, and is crucial for risk mitigation being carried out and working as desired. In the first line it is important to have established appropriate procedures, and systems for notification of management (second line of defense) or the internal audit (third line of defense).

In the second line of defense are different staff functions. These functions must evaluate the needs and implement measures to prevent and detect possible corruption attempts. It is primarily the managers in an organisation that have the best opportunity to circumvent established systems and controls. The controller- and compliance-functions therefore need to carry out periodic corruption controls as a part of their monitoring activities.

Internal audit is the third line of defense. An independent internal audit will through a risk-based approach provide the board and the top management with information on how effective the anti-corruption programme is working and is complied with. Typically, this will be systematic random checks based on concrete experiences and similar risk factors. The internal audit function is well suited for conducting corruption controls and for recommending improvements.

9.4 Treatment of whistleblowing cases and whistleblowers

Strictly speaking, the Working Environment Act's provisions on whistleblowing do not require that the received whistleblowing cases are processed. If nothing happens with the case that an employee has reported about, or the measures taken are clearly inadequate, the employee may be justified to whistleblow to others, also outside the company. Lack of processing and follow-up of whistleblowing cases will be perceived as a signal of the management's inability or lack of will to clean up the undesirable conditions. Unsatisfactory treatment of whistleblowing cases will be a negative signal from the management to the employees, may create a poor climate of cooperation, and contribute to frustration and unrest. It could also motivate the whistleblower to go to the media or others who he or she believes can do something about the case, in the belief that this will force management to act.

It is important that whistleblowers are protected and whistleblowing is encouraged. When an employee observes misconduct or an undesirable situation, which also could be illegal, then he or she should feel confident that from the company's point of view it is desirable to report it.

In the processing of whistleblowing cases and the handling of whistleblowers, it is important that:

- the cases are treated confidentially
- both the whistleblower and the person reported on are treated fairly
- both the whistleblower and the person reported on are given adequate protection, in accordance with the law
- the cases are investigated and brought to conclusion, including debriefing of the individuals involved
- there is a system in place for proper documentation and filing of whistleblowing cases, the processing of them, and the conclusions

It may be difficult to deal with cases involving corruption abroad. If a Norwegian company or an employee is experiencing corruption in a country, and for example suffers considerable damages or losses due to bribes being paid by a competitor, or if a foreign public official requests a bribe, this should be reported to the local Norwegian embassy or to Økokrim.

A whistleblower can choose to notify misconduct or undesirable situations to authorities in Norway and abroad. One body which it is possible to use is Norway's national contact point for the OECD Guidelines for Multinational Enterprises, which receives and processes alleged violation of the guidelines (ref. Sub-chapter 4.2).

Several countries have their own public whistleblowing arrangements that can also be used by employees of Norwegian companies that operate abroad. The Securities and Exchange Commission (SEC) in the US has, for example, a whistleblowing facility that makes the whistleblower entitled to a bounty if he or she contributes to uncover economic crimes.

9.5 Examination of incidents

Of the 34 criminal cases with final court decisions based on the corruption provisions of the Norwegian Penal Code in the period 2003-2013, the most frequent cause of disclosure of cases appear to be the companies' internal controls, followed by investigative journalism.

Private investigations
If a case is to be investigated, this can be done within the company, or the work can be outsourced to an independent firm. Several firms offer their services in this area, and have established multi-disciplinary teams for such tasks. The number of external private investigations has increased strongly through the later years.

The following questions are essential for the investigation:
- what shall be investigated?
- in what way shall it be investigated?
- In which sequence shall it be investigated?
- who shall investigate?

The term "investigation" is not unequivocal, but is characterized by being a study and analysis with the purpose to clarify facts and analyse causes, and conclude whether there has been a system-failure, or possibly mistakes committed by one or more individuals.
An investigation task also often includes proposals for actions. Investigation and other fact-based research is especially carried out when it is necessary to get an overview of what has actually happened, so that the company has the best possible basis for making its decisions.

There are no binding procedural rules for private investigations. In recent years there has been an increasing focus on the legal protection issues that investigations raise. The main general guiding norm for execution of investigations is the non-statutory prudence principle. In addition, there is a principle of caution which is applicable to the entire investigative process; in shaping of the mandate, in the execution of the investigation, and in the conclusion from the investigating team. Human rights principles are important prerequisites in this context. In particular, the principles of right to privacy, requirement of fair trial, presumption of innocence, and protection against self-incrimination, must be respected.

Protection of privacy is often highlighted in the criticism of investigations. However, in the execution of the investigation, the rights of those affected must be weighed against the company's need to have the case clarified. The investigators must therefore make sure that they concentrate on what is relevant to the matters that are being investigated, and apart from this avoid infringing on individual privacy. Generally, considerations of legal protection and privacy protection will be more central, if the investigation has more of the character of a legal inquiry with the purpose to clarify responsibilities, including responsibilities for criminal offenses.

The Norwegian Bar Association (Advokatforeningen) has issued guidelines to its members (2011) for private investigations, with particular focus on safeguarding the fundamental legal rights of those affected by an investigation process. The guidelines recommend that if the investigators' task is to gather information, make assessments and to conclude, then those affected by the investigation should be given the right to assistance from a lawyer or other representative of his or her choice. Necessary expenses for legal assistance should be covered by the company when this is justified.

Those who undertake an investigation mission must collectively have the necessary competence to carry out the investigation. What expertise is needed will depend on the individual mission, but often there will be a need for accounting skills, computer skills, expertise in tactical information gathering (including interviews), legal expertise, and experience in carrying out studies and analyses. The mandate for the investigation should be clearly and precisely formulated, and any changes should be made in writing. There is often a time squeeze to have investigations completed. However, it is important that adequate time is allocated to allow a proper execution. Descriptions of the investigation to be performed needs to be prepared, including guidelines and time schedules for the work, covering the information gathering and processing and the rights of the affected parties, to ensure predictability and to clarify expectations. It should also be clear what rules the investigators will apply for evidence assessment and burden of proof.

Information gathering in a corruption case investigation will often consist of interviews with employees and third parties, review of documents (contracts, bids, and evaluations), examinations of accounts and payments (cash flows) and review of e-mail accounts and other electronically stored information. Information obtained in a private investigation is often used in subsequent processes. This entails requirements for information security and verification. In addition, the gathering and processing of data containing personal information must comply with the Personal Data Act, which imposes procedural requirements and specifies the right of affected persons to be informed and to view the information.

In cases being investigated, communication between the investigators and the CEO and board is important. If criminal offenses are suspected, notifying the police should be considered at an early stage, when a fairly clear picture of the facts has been established. It should also be evaluated during the investigation whether the police should be notified, to clarify whether investigation steps should be left to the police. The company may get a reduced sentence (in the case of corporate sanctions being applicable) if the case is reported to the police at an early stage.

The enterprise should cooperate appropriately with relevant authorities in connection with bribery and corruption investigations and prosecutions.
– The Business Principles for Countering Bribery

As the main rule, companies are recommended to notify the police. In this way the company shows that it has zero tolerance for corruption. It may also be appropriate for the further investigation that the company cooperates with the police so that the private investigation does not compromise the police's investigation, and because the police have access to investigative methods and have criminal procedural rights and measures that private investigators do not have.

9.6 Programme review and adjustment

With frequent changes in external conditions and internal changes that most companies often undergo, it is important that the anti-corruption programme is seen as part of a continuous improvement process.

> *The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness and implement improvements as appropriate. Senior management should periodically report the results of the Programme reviews to the Audit Committee, the Board or equivalent body. The Audit Committee, the Board or equivalent body should make an independent assessment of the adequacy of the Programme and disclose its findings in the Annual Report to the shareholders.*
> **– The Business Principles for Countering Bribery**

In addition to the regular monitoring, which results in specific measures being identified, implemented and followed up, it is normal that management also initiates formal evaluations of the programme. The purpose will normally be to evaluate the suitability of the programme (content and design) and the compliance (efficiency) with the programme.

To evaluate the suitability of the programme, those who shall perform the evaluation must establish clear criteria that the programme shall be measured against. There are various standards and best practices that may be relevant to use. TI has a tool for self-assessment (Self-Evaluation Tool) and an "Assurance Framework" which describes a methodology for an external review. Both of these can be found on the TI website. The large auditing and consulting companies also have self-defined best practices that they can measure companies' programmers against.

If an evaluation of program structure is not desired, the evaluation can be limited to the actual compliance with the programme. This requires that the programme is sufficiently documented so that concrete tests can be made to verify that the activities are carried out as intended.

> *Where appropriate, the enterprise should undergo voluntary independent assurance on the design, implementation and/or effectiveness of the Programme. Where such independent assurance is conducted, the enterprise should consider publicly disclosing that an external review has taken place, together with the related assurance opinion.*
> **– The Business Principles for Countering Bribery**

The need for independence in the evaluation will determine whether it can be performed internally or whether external resources should be used. In some cases, the board will ask for an independent review of the programme. The internal audit function is a suitable body for independent evaluations, if the use of external advisors is not desired. When using external advisors, the company can take advantage of established best practice and experiences that advisors have gathered from other missions. However, it is important that the external advisors understand the company's business well, so that the evaluation and recommendations are appropriate and are proportionate to the risk situation and the company's needs.

Results and recommendations of such evaluations are used to improve the company's anti-corruption programme.

Acknowledgements

TI Norway particularly wants to thank Finansmarkedsfondet and Innovasjon Norge for their financial support which made it possible to update the handbook. For this updated edition of the handbook, it was decided to also involve TI Norway's members and other stakeholders and resource persons. The engagement continued through three phases with particpation as shown below.

Participation in the workshop 5 March 2014 (except for TI Norway associated personnel) – Developing proposals for updating the handbook:

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Parts of sub-chapter 5.8 Trading in influence and sub-chapter 6.4 Agents, lobbyists and other intermediaries are based on the article "Communication-consulting and corruption" by the lawyers Caterina Håland Gaeta and dr. juris Bjørn Stordrange, published in Dagens Næringsliv 3 July 2014.

TI Norway has processed, adjusted, and implemented received drafts and comments into the handbook. The handbook is in its entirety a TI Norway publication. Specific parts of the content are not linked to contributing persons, companies or organisations.

TI Norway thanks the persons who have contributed, and also their employers. The contributions have been valuable for the maintenance and the further development of the handbook, so that it can continue to be a useful tool for Norwegian companies in their fight against corruption.

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