



# Anticorruption in the Supply Chain

Advice and recommendations for reducing corruption risks



«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 foundation of society.»

(From Council of Europe Criminal Law Convention on Corruption.)

## Background

Corruption can lead to major economic and reputational consequences for companies involved. Investments in preventive work will make companies less vulnerable to such consequences. Companies that are heavily involved in procurement activities have recently made strong efforts with such activities within their own organisation. Now such companies increasingly will focus their attention on anticorruption measures taken by suppliers acknowledging *the responsibility they may have for unethical activities in the supply chain*.

**The purpose** of this document is to motivate and assist suppliers in the development of relevant tools and steering systems to succeed in mitigating corruption risks.

- It is important that Norwegian companies have an understanding of why corruption is damaging for business activities and why companies need to have guidelines and working methods countering corruption.
- Transparency International Norway (TI Norway) has, in cooperation with the Confederation of Norwegian Enterprise (NHO) and Statoil, initiated a project which shall contribute to the strengthening of anticorruption work among suppliers.
- The first step was the workshop «How to counter corruption in the supply chain» arranged in Stavanger in the autumn of 2012. There were 43 participants, mainly representing companies with interests in this issue. Statoil and the Kongsberg Group presented their systems and experience in the field, and there were group discussions about the establishment and implementation of codes of conduct.
- The conclusion was to start the development of guidelines recommending activities which can be useful for the supply chain. For this purpose, a working group was established, and the later content of this document reflects the results of this work.
- This document is largely based on TI Norway's anticorruption handbook for the Norwegian business sector «Protect your business». This handbook is more comprehensive

and supplementary, and can be of major support for suppliers, and others, in the further work of establishing and implementing ethics codes of conduct and anticorruption programs.

## Buyer and supplier

- Most businesses act both as buyers and suppliers, however one area usually dominates. In companies making major investments, or supplying valuable equipment to large customers, procurement is much in focus. For others, supplying installations and equipment will represent the most important business activities.
- Such suppliers have a comprehensive network of sub-suppliers. This can be small and specialized companies, with their own sub-suppliers. Most suppliers are therefore also acting as buyers. The buyers must be extra aware towards suppliers with small organisations and limited resources and should consider involving them in their own training programs.
- To simplify, the terms *buyer and supplier* will hereafter be used.

## Legislation

- The work against corruption has for a long time been a key issue for international institutions, and there are a number of conventions on this issue – e.g. from UN, OECD and Council of Europe. Countries ratifying these conventions have an obligation to introduce them in their national legislation and implement them in an efficient way.
- As a consequence, corruption provisions in national laws have increasingly become stricter, not least the Norwegian Penal Code from 2003. Corruption is here defined as *to request or receive, give or offer an improper advantage in connection with a position, office or assignment*. The law is differing between ordinary and serious corruption, with imprisonment up to 3 and 10 years, respectively.
- Of importance, also for companies outside the US and UK, are the US Foreign Corrupt Practices Act (1977) and the UK Bribery Act (2010). These laws are, as the Norwegian Penal Code, extraterritorial. They may apply for criminal acts all over the world independently of the nationality of involved companies or persons.
- The UK Bribery Act is of special interest as it is relatively new and is illustrating the development towards a total prohibition of corruption. The UK Bribery Act introduces an offence of corporate failure not to prevent bribery. The defence for a company against the liability is to prove that it had «adequate procedures» in place to prevent bribery.
- The most common form of corruption is bribery, but these terms are often used in the same meaning. TI's Business Principles for Countering Bribery define bribery as *the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust*.
- The consequences of breaches of anticorruption legislation

can be very severe, resulting in high fines, asset confiscation and prison sentencing. Not least can a company's reputation and business future be dramatically weakened. Suppliers may be blacklisted and excluded as bidder.

- Also employees involved in illegal corruption can be punished by fines, confiscation and prison sentence.
- Corruption is increasingly subject to criminal investigation, and a number of corruption sentences have been passed the last years.

### The buyers' ethical requirements

- Since companies as buyers are running a considerable risk if they are involved in corruption, their own ethical requirements are often stricter than in the laws applying for them. They want to be on the safe side, in front of the legal development and to operate on a high ethical level. Suppliers must take this into consideration both when it comes to their own ethical requirements and those put forward to the sub-suppliers.
- During the last years, buyers have increasingly put much emphasis on the establishment of ethics codes of conduct and their implementation in own organisation through education, training and awareness making among employees.
- Buyers are also getting more concerned about the responsibility they may have for unethical activities by suppliers and sub-suppliers. If there is a breach of a corruption law by a supplier, may be far down in the supply chain, *the buyer may suffer a loss of reputation and, under certain circumstances, have a penal liability.* Actions by the supply chain represent consequently a major risk, and the buyer naturally wants to minimize this risk.
- This is often reflected in the ethics code of conduct of buyers. Some examples:

«Suppliers and partners are expected to adhere to ethical standards which are consistent with Statoil's ethical requirements».

*(Statoil's Code of Conduct and Supplier Declaration)*

«Suppliers and their agents shall prohibit any and all forms of corruption, extortion and embezzlement. Monitoring and enforcement procedures shall be implemented to ensure conformance.»

*(The Kongsberg Group's Supplier Conduct Principles)*

«The Suppliers shall comply with applicable laws and regulations concerning bribery, corruption, fraud and any other prohibited business practices. The Suppliers shall not offer, promise or give any undue advantage, favour or incentive to any public official, international organisation or any other third party.»

*(Telenors' Supplier Conduct Principles)*

- As many companies now have anticorruption measures established in their own organisation, suppliers must be prepared for increased attention towards their own efforts in this field. While companies so far have mostly asked for

others to accept their own ethical requirements through declarations and/or contractual provisions, an increased interest for the suppliers' own anticorruption programs must be expected. This will relate to policies, codes of conduct, steering systems, education and awareness making among employees and sub-suppliers, as well as increased follow-up during implementation through inspections and audits.

- Major suppliers have to a large extent already much of this in place, while medium sized and small suppliers often still have a way to go. Also such suppliers should now evaluate their risks and on such basis strengthen anticorruption work in their own business.

### The procurement process

- This procurement process consists of several steps: procurement strategy, pre-qualification, invitation to bid, bid evaluation, awarding of contract, contract administration.
- At an early stage, a buyer should consider if the supplier represents a corruption risk. In this connection there may be carried out an *integrity due diligence investigation*, which will reveal history, rumours etc. A due diligence investigation may lead to a request for, and check of, the suppliers' ethics code of conduct. If such codes do not exist, there may be a requirement for them to be established. If they exist, but are not satisfying the requirements of the buyer, a gap analysis may be made and an *improvement plan* established. The implementation of the plan may regularly be followed up in supplier meetings. Several buyers regard such meetings as a step in the continuous improvement of ethical standards.
- Suppliers lacking, or having unsatisfactory, ethics code of conduct, run the risk of being excluded as a supplier. Most buyers have as policy to encourage suppliers not meeting their requirements rather to improve than being punished. The fact that a company does not have satisfactory internal guidelines and procedures, may not by itself exclude the





company as a supplier. Instead the supplier may be included on the bidders' list against the commitment to establish *satisfactory codes of conduct* within a certain time limit. If this time limit is not met, the supplier may be excluded from the list even if other requirements are met.

- Small suppliers may lack sufficient competence and resources to establish own codes of conduct. The buyer should then ensure that the supplier is using the buyers' codes and education systems, not least in areas with high corruption risk.
- A supplier passing prequalification with a satisfactory code of conduct, must also prove to have *an effective anticorruption program involving their own employees and sub-suppliers*. Also this may be followed up by the buyer through requests for improvements, inspections and audits.
- After award of contract, major suppliers will often use a «Supply Chain Management System» for follow-up of suppliers and their sub-suppliers, including ethics, anticorruption and corporate social responsibility. The extent and frequencies of monitoring activities will depend upon a risk analysis related to the specific supplier (and their sub-suppliers).
- A supplier being awarded a contract in spite of lacking or having an incomplete code of conduct and anticorruption program may represent a risk for the buyer. The supplier must expect an especially tight follow-up until the improvement target is reached. The buyers will through the whole process use *a risk based approach*. Therefore, «life will be easier» for suppliers who have their ethics in place from the beginning.
- *Annex 1* includes chapter 6.5 of TI Norway's anticorruption handbook, addressing contractors and suppliers including examples of risk areas and reasons for a due diligence investigation.

### Establishment of codes of conduct

- All suppliers, independent of business and size, must ensure to have *satisfactory codes of conduct*, which the board, management, employees and consultants shall follow. A code of conduct includes normally a number of ethical and legal topics, with the fight against corruption as a key issue. The code of conduct should be anchored in the company's vision/values/policy.
- The extent and main elements of a code of conduct may vary with the company's relevant businesses and products. *Zero tolerance of corruption* is a basic element of such codes.
- *Improper advantage* is a key term in the legal definition of corruption. This is a vague term, and a sound judgement is often needed in order to decide if an action shall be perceived as corruption. Emphasis is made on e.g. the purpose of an action, the positions of the persons involved, the value of what have been offered or received, and if an action also represents a breach of a company's internal rules. How this term shall be understood in different connections will need a closer explanation, which the code of conduct and awareness making shall contribute to.

- *Annex 2* includes a typical table of content of codes of conduct, with the corruption provisions *emphasized*. There is also referred to codes of conduct and other relevant documents applying for some major buyers.
- Suppliers are recommended to study their customers' codes of conduct and evaluate if their own code of conduct is in accordance with those. Suppliers should also evaluate if their sub-suppliers have satisfactory codes of conduct.
- In the establishment or revision of codes of conduct, it is important to engage *own organisation*. This will make it easier to achieve the necessary adaption to own business, understanding and acceptance of the codes. A broadly based working group from different parts of the organisation (procurement, human resources, legal, finance, audit etc.) may be a good starting point.
- The responsibility for updating and the follow-up of a company's codes of conduct should be clearly defined. Some larger companies have separate units for such work. Others prefer to include such responsibility with existing units.
- It is of great importance that the top management and managers on other levels are *showing commitment from the top*, stressing the importance of the codes of conduct to be known and respected by all employees.

### Implementation of an anticorruption program

Too often companies are establishing codes of conduct without following up with a program for implementation. It is obvious that the code of conduct must be made known in the organisation, but in addition it is necessary with education, training and awareness making.

- *TI's Business Principles for Countering Bribery*:
  - By adopting an anti-bribery program, you are also taking steps to *protect your business and your people*.
  - The enterprise should analyse which specific areas pose the greatest risks from bribery and design and implement its program accordingly.
  - The enterprise should develop the program *in consultation* with employees, trade unions and other representative bodies.
- A *risk analysis* should investigate which parts of the organisation being most exposed for corruption risks (Procurement? Marketing? Subsidiaries?), and in which way (facilitation payments? hospitality? use of agents?). Special attention should be given to «kickbacks», which is the most common form of corruption between suppliers and the buyer's individual employees. Another risk area is the «speeding up» of the process for obtaining approvals/permissions. In chapter 5.1 in TI Norway's anticorruption handbook there are further examples.
- *Commitment from the top* is not least important when codes of conduct shall be implemented. The anticorruption program should, as the codes of conduct, be anchored in the company's values and involve the whole organisation during its

development. The decision to establish such program should be taken by the Board. The Board should also approve the main content of the program, and the managing director should approve the whole program.

- The top management must express, write and act in accordance with the program and not create any doubt about it being taken seriously and given high priority.
- This is a prerequisite for the engagement of the employees in the program and for achieving the necessary *awareness*. This requires good communication and an active involvement through *educational activities*, such as workshops and discussions which train the employees in making the right judgements and decisions when difficult *ethical dilemmas* occur. It will be an advantage to include sub-suppliers in such educational activities.
- An anticorruption program should be followed up by *controls* and documentation within own organisation and of sub-suppliers.
- For the program to be effective, employees must be able to report concerns and violations. Appropriate *whistle-blowing mechanisms* should be established.
- Important elements of an anticorruption program are included in *annex 3*, and further details are available in TI Norway's anticorruption handbook.

## Summary

- Corruption threatens society and must be prevented. Companies and individuals involved in corruption are exposed to strict penalties, loss of reputation and an uncertain future. Corruption is ethically unacceptable, and many buyers have stricter ethical requirements for themselves and business partners than demanded by law.
- Companies can be responsible for corrupt activities in the supply chain and will strongly emphasize that suppliers and sub-suppliers have codes of conduct and anticorruption programs reducing the risk for such activities.
- Therefore all suppliers, large and small and in all businesses, must ensure that they have satisfactory codes of conduct and effective anticorruption programs.
- This document will hopefully motivate and assist suppliers in developing and implementing tools and steering systems required for this purpose.

## TI's Business Principles for Countering Bribery:

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

## UK Bribery Act:

A relevant commercial organisation («C») is guilty of an offence under this section if a person associated with C bribes another person intending

- to obtain or retain business for C, or
- to obtain or retain an advantage in the conduct of business for C.

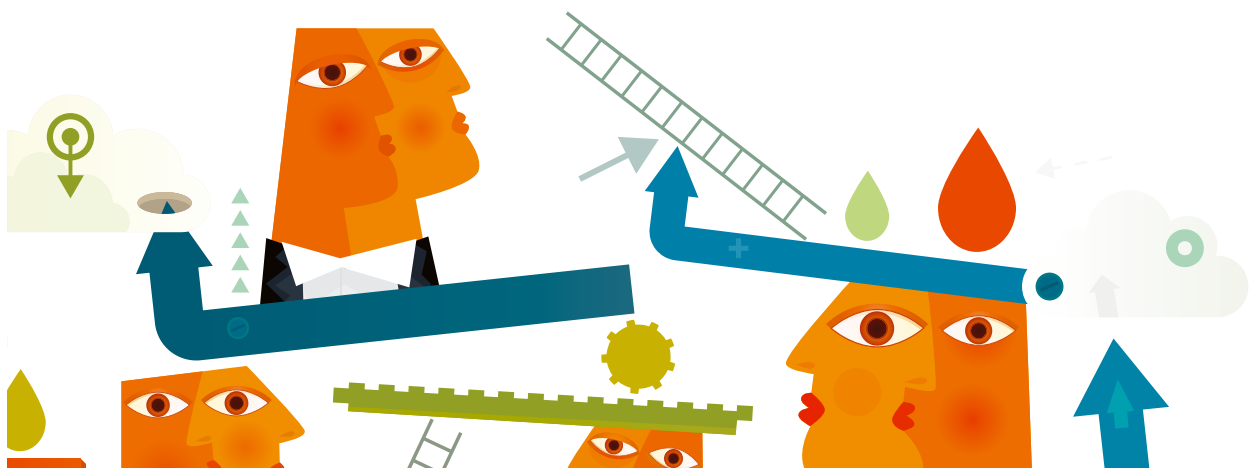
But it is a defence for C to prove that C had in place **adequate procedures** designed to prevent persons associated with C from undertaking such conduct.

## UK Bribery Act Guidance Document:

The six principles for bribery prevention:

1. Proportionate procedures
2. Top-level commitment
3. Risk assessment
4. Due diligence
5. Communication (including training)
6. Monitoring and review

A short version of Anticorruption in the Supply Chain is available from TI Norway and NHO.



# Annexes

## Annex 1 - Chapter 6.5 in TI Norway's anticorruption handbook for the Norwegian Business sector

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

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

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

- The Business Principles for Countering Bribery

In their role as customers, companies are to an increasing extent being held responsible for the conduct of their contractors and suppliers (hereinafter referred to as "suppliers"), both in the eyes of the public and by law enforcement agencies..

Sales of goods and services of significant value mostly happen through competitive bidding, and are covered by purchase orders or contracts. There are incentives for bribery in such sales, both in the bidding phase and afterwards in case of change orders and when the supplier is positioning himself for further contracts.

There is a risk of bribery both in the relationship between the company and the supplier and between the supplier and his sub-suppliers. Examples of innovate ways, which are created by the supplier or inspired by the responsible buyer in the customer's organisation, are:

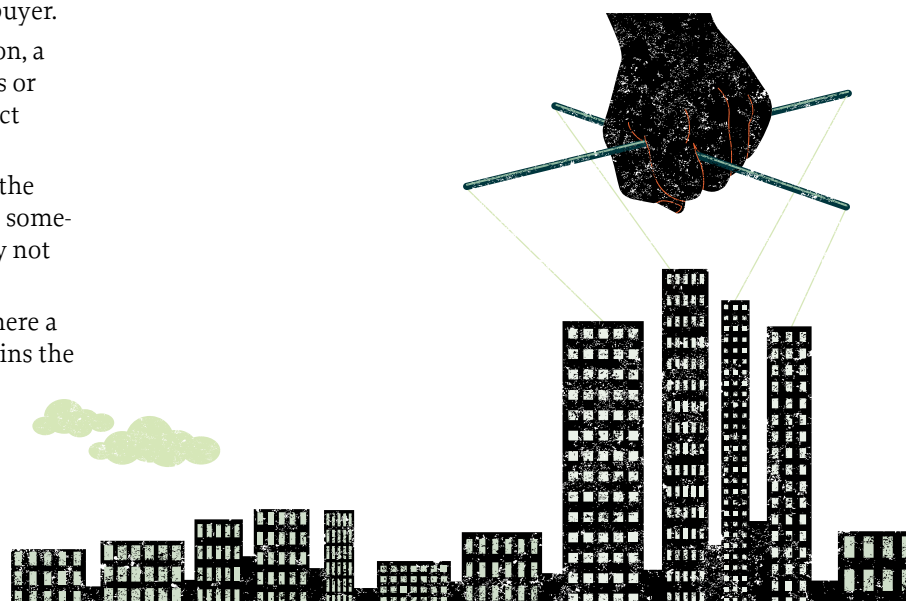
- The supplier gives a well-paid job to a relative of the buyer.
- The supplier engages, without a proper business reason, a private company controlled by the buyer or by friends or relatives of the buyer, as a sub-contractor on the project when awarded.
- The supplier undertakes work at the private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

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

- The supplier is unfamiliar to the company.
- Information that gives reason for concern is available.
- The country of operation scores low on TI's Corruption Perceptions Index (CPI).
- The home country of the supplier scores low on TI's Corruption Perceptions Index (CPI) and Bribe Payers Index (BPI).
- The contract has a high value.
- Extensive use of sub-suppliers is planned.
- The supplier needs to obtain authority permits and approvals.

As a customer in a competitive environment, a company is in a powerful position to demand that its suppliers have acceptable anti-corruption programmes and performance. Many companies in different industries have implemented systems for having suppliers commit to ethical and legal conduct on the subjects of corruption, human rights and labour standards. Ways in which to address corruption risk with suppliers are to:

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



## KEY RECOMMENDATIONS IN THE PROCUREMENT OF GOODS AND SERVICES FROM SUPPLIERS

### **Procurement procedures**

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

### **Transparency**

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

### **Prevention of misconduct, compliance and monitoring**

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

### **Accountability and control**

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

## Annex 2 – Typical content of ethics codes of conduct

- **Introduction**
  - Vision and values
  - Management commitment
- **Respect**
  - Mutual respect
  - Company culture
  - Openness
- **Protection of property and assets**
  - Material and immaterial values
- **Corruption – bribery and improper advantage**
  - Definition
  - Bribery
  - Facilitation payments
  - Gifts
  - Hospitality
  - Expenses
  - Political contributions
  - Charitable contributions and sponsorships
- **Conflicts of interest**
  - No personal interest before business interest
  - How to avoid such conflicts
- **Confidential information**
  - Includes all information except general business knowledge and work experience
  - No limitation in time
- **Insider information**
  - Affecting the price of securities
  - Penal liability
- **Equality and diversity**
  - No discrimination
- **Other conduct**
  - Intoxicants, purchase of sexual services
- **Business partners**
  - Suppliers, subsidiaries, intermediaries, consultants, customers
  - Live up to similar ethical requirements
- **Follow-up and responsibility**
  - Everyone has the responsibility to respect the requirements
  - Reporting and whistle-blowing

The corruption issues and conflicts of interest are covered in more detail in Chapter 5 «Scope of program: Corruption issues» of TI Norway's anticorruption handbook.

### **Some examples:**

**Statoil's Ethics Code of Conduct and Supplier Declaration** – [www.statoil.com](http://www.statoil.com)

**The Kongsberg Group's Code of Ethics and Supplier Conduct Principles** – [www.kongsberg.com](http://www.kongsberg.com)

**Telenor's Supplier Conduct Principles** – [www.telenor.com](http://www.telenor.com)

**Norsk Hydro's Code of Conduct and Social Responsibility Principles** – [www.hydro.com](http://www.hydro.com)

### Annex 3 - Implementation of an anticorruption program

- **Commitment from the top**
  - Anchored in and action from board and top management.
  - Organisation and distribution of responsibilities.
- **Mapping practices and risks**
  - Practice and corruption risks in the organisation.
  - Which parts of the organisation are most exposed to corruption, and in what way?
- **Involvement of the organisation**
  - How to administrate the program – staff unit? Reporting.
  - Establishment of action plans, budget and time schedule.
  - Plans to be presented for different parts of the organisation – feed-back, adjustments.
  - Final approval and establishment of program.
- **Training programs**
  - Necessary with a good communication and education/training plan.
  - The whole organisation to be involved, but adapted to different units depending on challenges and risks.
  - Discussions of examples and dilemmas.
  - A continuous work.
  - Should include business partners, especially sub-suppliers.
- **Internal controls and auditing**
  - Fundamental for being able to prevent and detect corruption.
- **Whistle-blowing mechanisms**
  - Systems and routines.
  - Encouragement and protection.
- **Investigating incidents**
  - Internal investigation.
  - If illegal, report to the police.
- **Accountability and consequences**
  - Implementation of and compliance with the program a responsibility of the entire organisation.
  - The anticorruption measures to be blended into the normal course of business.
  - Breaches of the program's mandatory requirements: disciplinary actions and sanctions.
- **Information and communication**
  - Internal communication.
  - External communication.
  - Annual reporting.
  - Reporting on practices.
- **Program review and adjustment**
  - Periodically reports describing experiences with the program.
  - System for collecting incidents, dilemmas and suggestions for further development of the program.
  - External review of the program and how it works.

This extract is based on chapter 7 of TI Norway's anticorruption handbook, "Program implementation", which gives more comprehensive guidance.

Reference is made also to TI's Business Principles for Countering Bribery, especially the TI Six Step Process, giving practical advice for establishment and implementation of programs. Additionally, TI has issued Business Principles for Countering Bribery – SME Edition, especially tailored for small and medium enterprise.

This material is available on [www.transparency.org](http://www.transparency.org)

#### Other documents of interest, available on the companies' home pages:

**Statoil's** Anticorruption compliance program and e-learning program on ethics and anticorruption.

**The Kongsberg Group's** Guidelines for raising concerns..

The **Hydro** Integrity program handbook on corruption and human rights.

**NHO's** Guidance on gifts, hospitality and expenses «...crossing the line?».

#### Also:

Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers (UN Global Compact – [www.unglobalcompact.org](http://www.unglobalcompact.org)).

UK Bribery Act 2010, inklusiv Guidance Document ([www.legislation.gov.uk/ukpga/2010/23/contents](http://www.legislation.gov.uk/ukpga/2010/23/contents)).



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