



# ANTI-CORRUPTION & BRIBERY: CONDUCTING EFFECTIVE RISK ASSESSMENTS

*The fight against Corruption has intensified over recent years. Governments globally are introducing stricter laws to combat Bribery in business transactions. Enforcement is on the rise, with criminal penalties for wrongdoing.*

“Corruption” involves the dishonest behavior of persons in charge or the misuse of entrusted power for private gain. Corruption includes but is not limited to acts of Bribery, fraudulent transactions, diversion of funds and various forms of improper business practices that adversely impact the Banks reputation and breaks the public’s trust.

“Bribery” is one of the main tools of Corruption and may occur in order to illegally obtain, retain or direct business or to secure any

other improper advantage in the conduct of business.

Increasing globalization, legal complexities, and the potential for serious financial and reputational harm have made the risk of Bribery and Corruption, top corporate issues; hence the need for a sound enterprise-wide anti-Bribery and Corruption program. The U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act are examples of leading laws each with far-reaching international implications. This trend is

followed by anti-Bribery and Corruption legislations in countries like China, Hong Kong, India, etc.; all those are forging the global standards. Private and public sector organizations are increasing awareness of Bribery and Corruption exposures and fighting back through international accords, regional conventions, best practice guides, and information on perceptions and instances of Bribery and Corruption.

This extraterritorial reach of anti-

Corruption laws also means that organizations doing business in multiple jurisdictions can be prosecuted for acts of Bribery committed anywhere in the world and the consequences are severe: financial, legal and reputation.

In light of this environment of increased scrutiny by regulatory and law enforcement, organizations are devoting more and more resources to establishing policies and processes aimed at fighting Corruption within their own businesses and when dealing with counterparties, clients and otherwise.

Under the global framework that shaped the international standards, the interrelationship between Corruption and money laundering has long been recognized and confirmed. Corruption is among the most significant contributors to proceeds of crime that become available for laundering. Corrupt payments are often:

- Placed into the banking system,
- Layered through intermediaries, and
- Integrated through hidden investments, property assets and by opening accounts in countries that have a weak regulatory regime and beneficial ownership trail.

One of the best-known examples was the case of Ferdinand Marcos, former president of the Philippines, who was able to hide his corrupt payments of approximately \$10 billion by acquiring property assets in offshore entities through a network of foreign corporate vehicles, trusts and private companies. Marcos was of course

assisted in structuring these assets by professional gatekeepers including lawyers and accountants.

Corruption and money laundering are synergetic – not only do they tend to occur together, but also the presence of one tends to reinforce the other – and Corruption may hamper the effectiveness of AML measures in a number of ways.

All the above led to the development and implementation of organizational anti-Bribery and Corruption programs with well-defined components, including:

- Tone at the top/ governance support ,
- Risk assessment (including third-party due diligence),
- Policies and procedures,
- Communication and awareness sessions,
- Monitoring and independent auditing,
- Reports and investigations,
- Enforcement and sanctions, and
- Reviews and updates

The level of scrutiny necessary for an organization to reach reasonable confidence that it is engaged in a normal, legitimate business transaction varies with Corruption risk: the higher the risk, the broader and deeper due diligence should be.

Main Anti-Bribery and Corruption controls are as follow:

- Corporate ethics and anti-Bribery and Corruption policies, including gift rules.
- Provisions for compliance with anti-Bribery regulations included in contracts with third parties.
- Anti-fraud and anti-Corruption training provided to employees.

- A whistleblower program matching international standards.
- Requiring employees to record events where they had contacts with government officials, political parties/officials, or political candidates and their families.
- Political contributions approved by the board of directors.
- Monitoring key risk indicators.

The list below shows a selection of key risk indicators/red flags that an organization may use to assess the risk of Corruption.

### **GEOGRAPHY AND INDUSTRY**

Some countries or jurisdictions where organizations operate in cash-based economies have a higher incidence of Bribery and Corruption. The local regulatory environment also impacts risks. Similarly, certain industries are more susceptible to Bribery and Corruption. It also is important to consider the respective industries of business partners and third-party relationships.

#### *High-risk factors:*

- A country perceived to be a high-risk country for Corruption.
- A jurisdiction known to have high levels of bank secrecy and presenting a high risk for facilitating illicit financial flows.
- The industry with which business transactions is perceived to present a high risk for Corruption.
- An industry with a history of anti-Corruption enforcement scrutiny.

### **THIRD-PARTY/VENDOR MANAGEMENT**

Relationships with vendors,

agents, contract employees, consultants, and other intermediaries can be exploited by Bribery schemes and often are at the heart of Corruption. Third parties that engage in Bribery and Corruption expose the organization to compliance, financial, and reputational risks.

*High-risk factors:*

- Suspicious interviews with employees, agents, and contractors.
- Close personal or familial relationships between employees and vendors.
- Third party recommended by a customer.
- Initial Internet searches revealed obvious problems related to the third party's reputation for integrity.
- The third party, or any of its senior officials, has previously been subject to regulatory action or legal proceedings as a result of alleged breaches of anti-Corruption laws.
- The third party, or any of its senior officials, appears on a black list in consequence of national or international sanctions or as a result of past misconduct.
- The third party has little or no experience in the relevant industry sector and/or is unknown to the organization.
- The third party appears to lack sufficient capability or staff qualifications to provide the services or goods for which it is being engaged.
- The third party wants to work without a contract (or with a vague contract).
- The third party is hesitant to make anti-Corruption compliance certifications in an agreement.
- The total amount to be paid for

goods and services appears to be unreasonably high or above the customary or arms-length amount.

- Unusual upfront or excessive payments have been requested by the third party.
- Indirect or unusual payment or billing procedures are being requested.

**GOVERNMENT RELATIONS**

In certain countries, significant interactions with government agencies may pose higher risk or compliance costs.

*High-risk factors:*

- Frequent government permit granting.
- Close personal relationships between employees and government personnel.
- A historical record of government fines or penalties.
- Use of agents or third parties to develop business relationships in foreign countries.
- Inappropriate payments to government agencies.
- Use of middlemen or consultants to facilitate fast track processing with government agencies or to get business.
- The third party is wholly or partly (directly or indirectly) owned by a government official/entity or has direct or indirect links with government officials/entities.
- The third party has previously worked for government, or is closely connected with the political elite.
- The third party's role is to enhance the organization's chances of winning commercial and/or government contracts.
- The third party requests discretionary authority to handle local matters alone.

- The retention of this specific third party was encouraged or required by a government official.

**HIRING/EMPLOYMENT**

The hiring process, including candidate background checks, is an important consideration for potential Bribery and Corruption.

*High-risk factors:*

- Hiring employees with a history of wrongdoing.
- Phantom employees: confirm existence of employees in the country/location.

**GIFTS, ENTERTAINMENT, AND POLITICAL CONTRIBUTIONS**

Travel, entertainment, and gifts given or received by the organization or the organization's employees can be methods of Bribery.

*High-risk factors:*

- Excessive travel and entertainment expenses, especially for entertaining government officials.
  - Frequent or excessive entertainment and gifts provided to customers, suppliers, or government officials.
  - Frequent or excessive charitable and political donations.
  - Events sponsored for public servants including travel, expense reimbursement, or entertainment (taking advantage of the function directly or indirectly).
  - Inappropriate acceptance of gifts, money, or entertainment expense payments in return for preferential treatment to providers bidding for goods and services.
  - Inadequate or vague gift/hospitality/entertainment policies and/or guidelines.
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**PROCUREMENT**

Procurement of high-value goods and services can be a common area for Corruption.

*High-risk factors:*

- The existence of fictitious suppliers.
- Making a high-value purchase with a unique or exclusive supplier.
- Purchasing goods inconsistent with business needs, including overpaying for services and products.
- Duplicate payments.

**FINANCE**

Most Bribery involves disbursement of cash and the recording of that disbursement in the financial records.

*High-risk factors:*

- Payments of cash to facilitate deals and transactions.
- Lack of supporting documentation for cash transactions and expense reports.
- Lack of appropriate segregation of duties for control of cash,

non-routine payments, or other transactions.

- No policy/practice of mandatory staff uninterrupted vacation

**UPPER MANAGEMENT**

Upper management has a detrimental impact on the risk of Bribery or Corruption.

*High-risk factors:*

- Complacency by management or the board toward Bribery and Corruption risk.
- Excessive attention to specific investigations by the management, who may be involved.
- Lack of a clear anti-Bribery and Corruption policy.
- Lack of an objective process to investigate suspected cases of Bribery or Corruption

Considering the above risk factors, the compliance health check should be conducted to the extent reasonably appropriate in view of the size and complexity of an organization. The best way to mitigate such risks is to develop and maintain a robust en-

terprise wide Anti-Bribery and Corruption program.

In conclusion, Bribery and Corruption put businesses and governments at risk worldwide and affect organizations, private individuals, and officials. Bribery and Corruption are found in private and public sector transactions and in dealings between the two. While having a complete set of laws and corporate policies that match international standards are compelling; bottom line is the seriousness of application and implementation. Compliance role is critical in both the formation of rules and their proper implementation. There is enough room for advancement in this part of the world where we operate. Our role in expanding the scope of application of best international standards is by no means immaterial.



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Mr. Jebeyli is the Group Head for legal and compliance, covering all Group Audi entities. He is a General Manager, member of the Group Executive Committee, Chairman of the Compliance Officers Committee of the Association of Banks in Lebanon and President of Compliance Officers Committee at the World Union of Arab Bankers.

**MENA FCCG**

The MENA Financial Crime Compliance Group (MENA FCCG) is a voluntary body that seeks to bring collective action in the fight against money laundering and terrorist finance in the region. The group comprises 13 banks representing nine MENA coun-

tries, including; Bahrain, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia and the UAE. The Group, is presided over by Wissam H. Fattouh, Secretary General for the Union of Arab Banks while Waheed Rathore, EVP Group Compliance – Abu Dhabi Commercial Bank is the current Deputy Chair.