TRANSPARENCY INTERNATIONAL UK
fighting corruption worldwide

CHARITABLE DONATIONS, COMMUNITY INVESTMENTS AND SPONSORSHIPS

ANTI-BRIBERY GUIDANCE
CHAPTER 11

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at **www.antibriberyguidance.org**.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit **http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/**

QUICK READ

Charitable donations, community investments and sponsorships can all be used as bribes. They can be made to support the pet cause of a public official with decision-making power over contracts or regulations that affect the company. They can be used to channel funds to front organisations controlled by a bribery recipient. They also present opportunities for employees to make inflated donations or sponsorship fees and receive money back from the recipients as kickbacks. Bribery can be difficult to detect due to the absence of benchmarks or 'market rates' in many instances.

Charitable donations, community investments and sponsorships differ in their form and purpose. Donations and community investments are given without expectation of a tangible business return, although the fact that community investments are often tied to specific contracts, providing support to project-affected communities, results in a heightened bribery risk. Sponsorships, on the other hand, are a marketing expense. In anti-bribery practice, though, they are often dealt with together as many of the controls are the same.

Key elements

- Have a strategy for making donations and sponsorships and ensure that all proposals fit within the strategy and meet established criteria.
- Conduct due diligence on all proposed recipients to check whether they are affiliated with public officials or existing or potential customers, among other anti-bribery red flags.
- Implement controls, including approval thresholds and counter-signatures, to counter the risk of kickbacks. Monitor payments and check that procedures are being followed.
- Be transparent about your donations and sponsorship strategy, procedures and, where possible, payments.

BEST PRACTICE

- **Set strategy and criteria:** Set a strategy and specify criteria for making donations, community investments and sponsorships. Ad hoc proposals that fall outside the strategy and do not meet the criteria should be reviewed by a senior manager. Require a clear business case and set specific objectives for all sponsorship payments.

- **Manage conflicts of interest:** Notify employees and relevant third parties of the company's conflicts of interest policy and provide guidance on avoiding and managing conflicts arising from contributions and sponsorships.

- **Avoid current bids and pending decisions:** Donations and sponsorships should not be made where they could influence a current bid or where a decision is being sought from a public official, such as approval of a licence or resolution of an issue such as a tax dispute or investigation.

- **Conduct due diligence:** Conduct risk-based due diligence on all recipient organisations. Check for red flags such as past integrity issues, a pre-existing or potential business relationship with the company or an affiliation with a public official. Assess the legitimacy, capability and financial viability of the recipient organisation. This will include a review of annual reports and financial statements and, for higher risk transactions, checks on the recipient's anti-bribery programme. Check that proposed community investment schemes are transparent and open to public consultation.

- **Set approval thresholds:** Designate levels of approval for donations and sponsorships of different values and/or risk levels, and require counter-signatures. Limit approvals where possible to a small number of functions, such as community affairs, corporate affairs or a marketing communications unit. Sponsorships are commercial transactions and best approved and paid within the normal purchasing process.

- **Obtain compliance sign-off:** Obtain compliance approval for donations and sponsorships above a threshold or where a red flag is detected.

- **Plan for emergencies:** Sometimes an urgent decision may be needed, such as a grant to a disaster appeal. There should be a procedure for fast-track approval with appointed signatories according to a value threshold, as well as subsequent review by management and, for high value donations, by the board.

- **Provide guidance and training:** Provide guidance to employees on the criteria and process for making donations and sponsorships, including the approvals needed, and provide tailored training to those responsible for managing them.

- **Benchmark payments:** To counter the risk of kickbacks, benchmark the value of transactions against similar donations, sponsorship payments and fees. For transactions above a threshold, involve more than one employee in negotiations.

- **Keep a register:** Document donations and sponsorships according to their size, nature and level of risk. This register will be used to determine the necessary approvals, as well as the nature and extent of relationship management, monitoring and post-completion review and reporting.

- **Monitor and review:** Monitor payments to make sure that they have been used for their intended purpose and the objectives have been met. Require the recipient to report back on progress and delivery. Conduct checks to ensure all donations comply with the policy and criteria and that procedures are being followed. Make reports to senior management and the board on donations and sponsorships, including how anti-bribery and corruption controls have been applied.

- **Keep accurate books and records:** Record payments and in-kind contributions or sponsorships accurately in the books and records. The records will be needed for internal audit and in the event of a bribery investigation (and will be required by tax authorities as there will be varying treatments for donations and sponsorships).

- **Report publicly:** Publish the policy, criteria and procedures for contributions and sponsorships and disclose those made on a regular basis. This allows stakeholders to check that the company is behaving honestly and to question or raise any concerns.

GUIDANCE

Charitable contributions, community investments and sponsorships are risk areas as they are convenient routes for channelling bribes. There is also a risk that employees with decision-making power over contributions and sponsorships receive kickbacks from recipients. For an example of where donations and sponsorships have been used as bribes, see the VimpelCom case study.

11.1 Definitions

Companies should be clear about what constitutes a charitable contribution, community investment or sponsorship, as they will each have unique characteristics and be subject to different laws and tax treatments. The terms community or social investment are often used interchangeably to describe a range of activities, including charitable contributions, employee fundraising and volunteering, secondments of people to charities and social enterprises, community sponsorships and donations by company foundations.

Sponsorships are a commercial activity. They can have a social purpose, such as supporting a local sports team, but the bulk of sponsorships are used to promote a company's reputation, brands, products and services. For anti-bribery purposes, sponsorship is commonly grouped with community contributions because the controls are similar. Sponsorships are often used as platforms for corporate hospitality and this brings its own risks. See the guidance on hospitality, gifts and expenses in Chapter 8.

11.2 Bribery risks

Inflated payments to hide bribes or kickbacks: It can be difficult to benchmark charitable donations to establish what a reasonable payment should be. This creates room for employees to inflate payments, resulting in "slush funds" that can be used to pay bribes or be paid back as kickbacks. While some sponsorship items will have a standard value (for example sponsoring a football shirt), others may not (for example sponsoring a major global sports tournament). The related promotional and marketing activities such as rights for media, ticket sales and hospitality can also be routes for channelling funds.

Use of 'front' organisations: Donations or sponsorships may be directed to a "front" organisation set up as a route for channelling bribes. Unlike commercial contracts where the choice of suppliers is governed by specifications and other criteria, there is often flexibility in choosing a recipient for donations and sponsorships and the selection process can be manipulated. For instance, an official responsible for a contract decision may create a trust, charity or event for the specific purpose of receiving bribes in the form of donations or sponsorship.

Involvement of a potential client or public official: A sponsorship or donation may be made to an organisation with the aim of benefiting or influencing a decision maker on a contract or other matter of importance to the company. The benefit can be that the decision maker has an interest in or a family association with the recipient organisation or the recipient body or it is a favoured cause such as a sports club. For an example of donations used in this way, see the Schering Plow case study.

11.3 Policies and procedures

Policies and procedures should be established for charitable contributions, sponsorships and related activities. While these procedures will differ for each type of activity, there will also be many common elements.

- Strategies and criteria for review and selection should be established and made public whenever possible. These will be anti-bribery controls to prevent ad hoc proposals being made that fall outside the strategy, do not meet the relevant criteria and where the real purpose is to influence a decision maker.
- Ad hoc transactions should be prohibited unless they receive senior management approval.
- Due diligence should be carried out on recipients on a risk basis and financial controls implemented.
- Larger contributions and sponsorships should be monitored for performance against projected outcomes and checks made that funds have reached the intended destination and have been spent properly.

11.4 High risk forms of donations and sponsorships

11.4.1 Expert sponsorships

Expert sponsorship is where an expert is sponsored to attend a convention, conference, education or other event and is paid fees and travel expenses. It has been prevalent in the pharmaceutical sector and is often associated with other corruption, including healthcare fraud. What is required from the attendee at the event is often minimal and the fees and expenses inflated. The expert benefits from travel and money and the company benefits from the expert's endorsement or influence in the marketing or prescription of their products.

For an example of where expert sponsorships have gone wrong, see the Warner Chilcott case study.

Controls for expert sponsorships

- **Make the business case:** Avoid expert sponsorships. If this is not possible, ensure there is a clear business case that is properly reviewed before approval.

- **Require counter signatures:** Require counter signatures for all approvals of expert sponsorships.

- **Calculate appropriate fees:** Calculate fees and expenses using an established matrix and review them again after the fact.

- **Check IDs:** Conduct checks to verify that recipients of fees and expenses are the approved persons.

- **Verify the agenda:** Check beforehand that the event contains a full programme of legitimate business related activities.

- **Include anti-bribery clauses in contracts:** In contracts with sponsored speakers, include a requirement to comply with the company's anti-bribery policy and a termination clause providing for fees to be clawed back in case of a breach.

- **Review:** Require the recipient and the responsible employee to report back to the company on the sponsorship, supported by documentation from the event.

- **Report:** Publish the company's sponsorship policy and procedure.

11.4.2 Community investments

As part of its bid for a contract, a company may commit to funding the construction of a public facility or similar benefit. The value of these community investments can be very high, and in some countries they are required by governments. This direct link to a contract and high financial and often political value makes them high risk. An EU Procurement Directive for contracting authorities sets out provisions for community investments, defined as 'special conditions relating to the performance of a contract [which] may, in particular, concern social and environmental considerations', and provides rules such as transparency, non-discrimination to the bidder and objective scoring of bids to counter risk.[1]

For an example of where community investments have gone wrong, see the Imelda Marcos case study.

Risks of community investments

- The recipient organisation has been set up or is controlled by an official or relative of an official.
- The size or value of the benefit unfairly influences the decision to award a contract.
- The facility is unnecessary and does not meet the needs of the community; e.g. a "vanity" project by a public official.
- The benefit is for a community in the political constituency of the elected official negotiating the contract.
- The contract payments are siphoned off by the official.
- A lack of consultation and transparency means the investment is perceived by the public as improper, misdirected or unnecessary.

Controls for community investments

- Verifying that the proposed project has a valid business rationale.
- Checking whether environmental or community adverse impact or loss will result from the contract.
- Ensuring a transparent process, including a public planning review.
- Conducting due diligence on the body to which the funds are to be paid to check whether any public officials are involved and that the funds are not likely to be misdirected.

11.4.3 Company foundations

[1] Article 26, T*he Consolidated Directive*

If your company has a foundation or trust, it is probably an independent entity. However, it is likely be linked to the company in some way. For example, it may share the company name, the company may the sole or principal funder, company executives may sit on the foundation's board, or the foundation's strategy may be influenced by company's business sector. As a result, the public may see the charity as an arm of the company, creating a reputational risk.

Controls for company foundations

- **Ensure independence:** Ensure the foundation operates independently of the company and this is communicated publicly.
- **Apply anti-bribery standards:** Ensure the foundation operates to a desired anti-bribery standard.
- **Implement controls:** Implement controls to ensure that the foundation could not be used (or seen to be used) as a conduit for bribery or undue influence on behalf of the company.

11.4.4 In-kind benefits

Instead of financial support, a company may provide in-kind benefits such as the use of company facilities or resources. While this may be reasonable in some cases, it can also create risks of bribery and undue influence, whether real or perceived. These are demonstrated in the real-life examples below.

Examples of in-kind benefits and risks

Use of company accommodation: A senior tax inspector was visiting the region where the head office of a global Indian company was located. He was the main official contact for the company. He asked the company if it would accommodate him and his family in one of its staff bungalows over the weekend as he was taking a holiday in the region. Due to the risks of negative perceptions of bribery and/or undue influence and potential reputational damage, the company declined to assist.

Use of company aircraft: A US company bidding for a critical and very large technological contract in a regulated UK sector provided the regulator with travel on the company jet to see their system operating in the US. The jet was taking company executives to the facility to meet the regulator and he joined them for the flight. He accepted on the grounds that they were going anyway and it would save public funds. The trip attracted substantial public and parliamentary criticism that the company was receiving improper access and influence. The regulator was reprimanded by the government after a review to decide whether he should resign from office.

Free parking: British Airports Authority, which then owned Heathrow and six other UK airports, gave 475 MPs, 78 MEPs and 284 members of the House of Lords passes worth £1,300 each every year for free parking at BAA airports. BAA was lobbying for expansion of airports at the time and a White Paper was being prepared on the subject. BAA stopped the practice in 2004 in response to pressure from shareholders.

Source: Wise Counsel or Dark Arts? Principles and Guidance for Responsible Corporate Political Engagement, Transparency International UK

CASE STUDIES

11.5.1 Donations and sponsorships as bribes: VimpelCom

In 2016, telecommunications provider VimpelCom Ltd entered a global settlement with the Securities and Exchange Commission, the US Department of Justice and Dutch regulators that required it to pay more than US$795 million to resolve violations of the Foreign Corrupt Practices Act (FCPA). From 2006 to at least 2012, VimpelCom offered and paid bribes to a government official in Uzbekistan in connection with its Uzbek operations. During the course of the bribery scheme, VimpelCom made (or caused to be made) at least US$114 million in improper payments in order to obtain and retain business that generated more than $2.5 billion in revenues for VimpelCom[2]

The payments in some instances were made under the guise of legitimate charitable contributions or sponsorships. These included making ostensibly charitable payments to improperly influence a local partner (Local Partner A) who was an Uzbek government official and also a close relative of a high-ranking Uzbek government official. Representatives of Local Partner A directed VimpelCom to make at least US$502,000 in payments to charities directly affiliated with him.

From 2009 and through 2013, VimpelCom's local subsidiary, Unitel LLC (‘Unitel’), paid approximately US$38 million in sponsorships and charitable contributions in Uzbekistan. Despite the presence of red flags, these transactions were not vetted to ensure that they were not improperly benefitting government officials. Further, Unitel had insufficient internal accounting controls and maintained inaccurate books and records regarding its charitable contributions.

11.5.2 Use of front organisations: Imelda Marcos

Using charitable contributions to solicit bribes was a favourite method of Imelda Marcos when she was first lady of the Philippines. In the 1980s, she told a Canadian businessman who wanted to win a large construction contract in the Philippines that it would help his chances if he donated money for the construction of a new hospital in the country. He agreed - until she asked him to send the money to a charity she controlled. Suspecting this was actually a request for a bribe, he refused, and focused all his efforts on winning the contract legitimately. Although it took much longer, and cost more than originally budgeted, he eventually won the contract.

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[2] See http://www.sec.gov/litigation/complaints/2016/comp-pr2016-34.pdf

11.5.3 Involvement of a potential client or public official: Schering-Plough

In 2004, the former US pharmaceutical company Schering-Plough was charged by the US Securities and Exchange Commission (SEC) in relation to its operations in Poland. Schering-Plough settled the case without admitting or denying the allegations.[3]

According to the SEC complaint, between February 1999 and March 2002, Schering-Plough Poland paid US$75,860 to the Chudow Castle Foundation, a charitable organisation whose founder and president was also the director of the Silesian Health Fund, a regional government health authority. Although these payments were donations to a bona fide charity, they were allegedly intended to induce the official to allocate health fund resources for the purchase of Schering-Plough's products by hospitals and other entities. The oncology unit manager who made the payments reportedly did not view them as charitable, but as 'dues' to secure assistance from the Director.

The case revealed several issues with the company's procedures, as well as a deliberate effort to circumvent existing controls. Employees at that time were not required to determine prior to making charitable donations whether government officials were affiliated with proposed recipients (although in any case the official's involvement was known). Some of the payments were structured so that they were at or below the oncology unit manager's approval limit, apparently for the purpose of concealing the nature of the payments. Moreover, the oncology unit manager provided false medical justifications for most of the payments on the documents that he submitted to the company's finance department. All of the payments to the Foundation were classified in the company's books and records as donations.

11.5.4 Expert sponsorships: Warner Chilcott

In October 2015, the US Justice Department announced that pharmaceutical company Warner Chilcott had agreed to plead guilty to felony in relation to a health care fraud scheme and pay US$125 million to resolve criminal liability and False Claims Act allegations. It was alleged that Warner Chilcott employees, at the direction of company management, provided payments, meals and other remuneration associated with so-called 'Medical Education Events' which included dinners, lunches and receptions.

These events, which were often held at expensive restaurants, often contained minimal or no educational component and were instead used to pay prescribing physicians in an attempt to gain a 'competitive advantage' over other companies. Warner Chilcott also enlisted high-prescribing physicians as 'speakers' for the company. These so-called 'speakers' often did not actually speak about any clinical or scientific topics and, instead, the payments were primarily intended to induce them to prescribe the company's products. In fact, 'speakers' who were not prescribing at a high volume were told they would not be sponsored to attend subsequent events unless their prescription volumes increased.

[3] See: https://www.sec.gov/litigation/complaints/comp18740.pdf

www.antibriberyguidance.org