TRANSPARENCY INTERNATIONAL UK
fighting corruption worldwide

CONFLICTS OF INTEREST

ANTI-BRIBERY GUIDANCE CHAPTER 9

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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Editor: Peter van Veen
Editorial staff: Alice Shone, Rory Donaldson
Content author: Peter Wilkinson
Project manager: Rory Donaldson
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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

Conflicts of interest arise when the various interests, duties or commitments that a person may have; family, friends, work, voluntary work or political interests, come into conflict (or are very likely to). These conflicts do not necessarily involve improper or corrupt behaviour, although they can lead to it.

An employee who is a director or shareholder of another organisation could compromise his or her duty to the company for example. An employee awarding a contract to a company in which he or she has a financial interest or has some other connection with, such as a relative or friend, would be another example of conflict of interest.

Key elements

- **Register:** Maintain an up-to-date register of conflicts of interest. Employees should declare any conflicts of interest or the likelihood of a future conflict in the register. A statement regarding declaration of conflicts of interest of directors and board members could be included in an annual statement.

- **Recruitment:** Screen potential board members and key employees for conflicts of interest.

- **Mitigate:** Require employees recuse themselves whenever there is a potential or perceived conflict of interest if it cannot be resolved.

BEST PRACTICE

- **Define:** Define conflict of interest and identify examples supporting the definition.
- **Scope and assess risks:** Research and identify where there might be particular concerns for the company related to conflict of interest. For instance, if the company's work structure means employees may have work patterns with extended days off, then there could be a risk that they have secondary employment or their own commercial activities.
- **Design procedures and controls:** Based on assessment of risks, design and implement a policy and procedure for managing actual, perceived and potential conflicts of interest. Include the policy in the Code of Conduct and expand on this in the employee handbook or equivalent guide.
- **Directors:** Identify actual and potential conflicts interest relating to directors and submit a list for board or shareholder approval.
- **Register:** Maintain an up-to-date register of conflicts of interest. Employees should declare any conflicts of interest or the likelihood of a future conflict in the register. A statement regarding declaration of conflicts of interest of directors and board members could be included in an annual statement.
- **Recruitment:** Screen potential board members and key employees for conflicts of interest.
- **Contract:** Require employees and relevant third parties to disclose any conflicts of interest before recruitment or appointment and then following appointment to advise the company of any changes.
- **Communicate and train:** Include conflict of interest in the code of conduct and the employee handbook. Cover the topic in training. Help employees identify conflicts and know what to do when one occurs.
- **Jobs:** Avoid placing employees in jobs where there is risk of conflict of interest. Provide clear policies regarding second jobs or private commercial ventures.
- **Mitigate:** Require employees recuse themselves whenever there is a potential or perceived conflict of interest if it cannot be resolved.
- **Channels:** Encourage employees to seek advice or raise concerns with their line management or the compliance / ethics officer.
- **Monitor:** Check that the procedures are working and improve them in the light of any incidents.

GUIDANCE

9.1 Defining conflict of interest

Conflicts of interest arise when the various interests, duties or commitments that a person may have; family, friends, work, voluntary work or political interests, come into conflict (or are very likely to). They are common given the number of interests people inevitably have, and they do not necessarily involve improper or corrupt behaviour, although they can lead to such behaviour.

9.2 Risks from conflicts of interest

A conflict of interest creates corruption risk when an employee or contracted third party breaches the duty due to the company by acting in regard to another interest and does not advise the company of this. This improper behaviour, if serious enough, could expose the person to extortion demands or be the first step to criminal behaviour including bribery. Even where there is no improper behaviour from a conflict of interest, the public perception might be otherwise. It is best practice for the company to be transparent about its policies and operations to avoid risk of public suspicion of conflicts of interest. Generally, weak identification and management of conflicts of interest will undermine the company's reputation for integrity.

Examples of conflicts of interest and corruption risks

- An employee awarding a contract to a company in which he or she has a financial interest or a connection such as a relative or friend.
- An employee being a director, shareholder or consultant of another organisation that could compromise his or her duty to the company.
- Employees running their own companies or involved in external activities such as political or community organisations.
- Secondary employment: Part-time employment with or consultancy to another company. Even if this is contractually allowed it can be a significant source of conflict.
- An employee recruiting a relative or friend or recruiting individuals in order to secure a business advantage. See the JPMorgan case study as an example of where such practices have led to issues.
- Insider trading - corporate 'insiders' buy or sell their company's stock on the basis of information that is not available publicly.
- An employee planning to take up a position with another organisation and acting in its favour in breach of duty to his existing employer.

9.3 Mitigating risks

The company should identify where risks for conflicts of interest could lie and implement a policy and procedure to manage potential and actual conflicts of interest. This will include a process for maintaining an up-to-date register and adopting preventive measures related to recruitment and procurement. Employees and relevant third parties should be required to disclose any conflicts of interest before recruitment or appointment and then following appointment to advise the company of any changes. Staff should receive training on understanding and identifying conflicts of interest, and knowing what to do when they arise. Employees should also be encouraged to discuss potential conflicts of interest with their management.

CHAPTER APPENDIX

9.4.1 Case study: JPMorgan - Jobs for princelings were bribes

JPMorgan agreed in November 2016 to pay U.S. $264 million to settle a U.S. probe into its practice of hiring well-connected Chinese 'princelings' to win business. 'Princelings' are the children of high-ranking Communist party officials, but the term is often applied more generally to the sons and daughters of China's elite.

Andrew Ceresney, director of the SEC's enforcement division said: 'JPMorgan engaged in a systematic bribery scheme by hiring children of government officials and other favoured referrals who were typically unqualified for the positions. JPMorgan employees knew the firm was potentially violating the FCPA yet persisted with the improper hiring programme because the business rewards and new deals were deemed too lucrative.'

'The so-called Sons and Daughters Program was nothing more than bribery by another name,' said assistant attorney-general Leslie Caldwell. 'Awarding prestigious employment opportunities to unqualified individuals in order to influence government officials is corruption, plain and simple.'

Beginning in 2006, the bank's princelings initiative defied an internal prohibition on such hiring, according to the DoJ agreement. JPMorgan bankers created spreadsheets to track the hiring of Chinese officials' relatives, 'which has an almost linear relationship' with new business in China, according to a 2009 email cited in the agreement.

www.antibriberyguidance.org