



BUSINESS ANTI-CORRUPTION AGENDA OF THE REPUBLIC OF MOLDOVA

2017–2018

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THE ANALYTICAL REPORT THE FIGHT AGAINST CORRUPTION:

What Can Business Do?



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GLOSSARY

Corruption

The abuse of entrusted power, either in the public or in the private sector, for personal or group gain.

Transparency International

Requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

The Council of Europe

It is considered to be an offence any deliberate act committed within economic, financial or commercial activity, through the following forms:

- a) promising, offering or giving, directly or indirectly, an undue benefit to any person who manages a private sector entity or who works for such an entity, in any position, for self or for somebody else, with the aim to do something or refrain from doing something, in breach of his/her duties;
- b) any person who manages a private sector entity or who works for such an entity, in any position, requesting or accepting, directly or indirectly, an undue benefit, for self or for somebody else, with the aim to do something or refrain from doing something, in breach of his/her duties.

United Nations

Bribe

Offering, promising, giving, accepting or requesting an advantage as in incentive for an action that is illegal or is in breach of trust.

Transparency International

Offering, promising, giving, or accepting any pecuniary advantages or of other type to or through: - a public official, at the national, local or international level; - a political party, a party member or a candidate; and - director, officer, employee or agent of a private undertaking – with the aim to obtain or keep a business or another undue advantage.

International Chamber of Commerce

The situation when a person intends to deliberately provide, promise or give any pecuniary advantage or other undue advantages, directly or through intermediaries, to a foreign public official, for that public official or for a third party, so that the public official refrains from doing something relating to his/her duties, to obtain or to keep the businesses or other undue advantages in doing international business.

Organisation for Economic Co-operation and Development (OECD)



Conflicts of interests

A situation when the private interests of a person or of his/her close relatives, friends or business partners differ from the ones of the undertaking or organisation he/she works for.

International Chamber of Commerce

Compliance

It is a broad concept which, in business context, refers to observing different national and international laws, regulations, rules and standards relating to a series of key areas, including anti-corruption.

Anti-corruption compliance

Compliance with anti-corruption rules through transposing in practice the international anti-corruption standards and principles, as well as the national anti-corruption legislation.

Risk of corruption

Any process or scenario where the appropriateness of corruption may emerge.

Corporate Governance

A set of standards of conduct, policies and procedures, by which a company is administered/directed and controlled, safeguarding the effectiveness of company activities and protecting the interests of owners, as well as the interests of other stakeholders.



GLOSSARY AIM OF BUSINESS ANTI-CORRUPTION AGENDA AND OF THE ANALYTICAL REPORT

Corruption has a severe impact on the private sector of Moldova. Although the private sector is frequently perceived as a participant in corruption deeds, most enterprises are first and foremost victims of corruption. Combating corruption is yet a difficult task, especially for small and medium-sized companies with limited resources. Despite this fact, the private sector engagement to fight corruption is the key to success. Companies have compelling reasons to make a clear commitment towards integrity and become part of the solution to tackle this scourge.

IDIS “Viitorul”, jointly with the National Business Agenda, in partnership with the Chamber of Commerce and Industry and with the CIPE (the Center for International Private Enterprise) support, considered and built up solutions to combat corruption in the Republic of Moldova and to adopt Standards of Corporate Governance.

A Survey was conducted in April – June 2017 (it can be found at www.viitorul.org or www.anb.viitorul.org), engaging 511 small and medium-sized companies. Also, three focus-groups were organised in the Northern, Central and Southern Regions of the country involving 70 companies, as well as nine in-depth interviews with nine economic operators to radiograph the current situation, the trends in terms of corruption and its impact on the Moldovan business environment. The Survey outcomes and the views expressed by economic operators, pointing out high level of corruption, were made public during a conference conducted on 28 June 2017. Doing business is hindered by corrupt practices, which reduce the private sector competitiveness, leading to the development of political entrepreneurs or of economic operators that are able to adapt to these “rules of the game”, lowering the quality of products and services and economic investments.

Nonetheless, the world experience shows that even in such difficult situations, businesses may find ways to hamper the deeply rooted practices of corruption. The private sector is an essential part of the solution and may bring in an extremely valuable contribution to eradicate this phenomenon.

In this context, IDIS “Viitorul”, in partnership with the Chamber of Commerce and Industry, organised five round tables engaging more than 100 business people in Edinet (on 13 September), Balti (on 14 September), Soroca (on 15 September), Cahul (on 21 September), and Ceadir-Lunga (on 22 September) where they discussed both the Survey outcomes and the business solutions to combat corruption. The issue of a functional One-stop Shop as a solution to mitigate corruption was also tackled during the public debates conducted on 16 August 2017.

The “Business Anti-corruption Agenda of Moldova for 2017 – 2018” phrased five major risks of corruption, as well as the solutions suggested by entrepreneurs for public authorities, legal and regulatory framework aiming to combat corruption. Likewise, “Business Anti-corruption Agenda” contains the commitment undertaken by businesses to develop and implement Standards of Corporate Governance, Anticorruption Compliance, including ISO 37001:2016.

The Analytical Report comprises a summary of the aforementioned Survey, of focus-groups and meetings with entrepreneurs, having stated the risks of corruption for the business.

One of the main aims of the Report is to make available working anti-corruption tools for small and medium-sized Moldovan firms, such as integrity standards, corporate governance and anti-corruption compliance procedures.

Such tools are relatively less known to small and medium businesses in Moldova. By enforcing voluntary compliance solutions and anti-corruption procedures we may become an example of efficiency in curbing corruption.

Both the Business Anti-corruption Agenda of Moldova for 2017 – 2018 and the Analytical Report have been developed by IDIS “Viitorul” under the Project “Advocating for a Business-Led Anti-Corruption Agenda”, with the support provided by the Center for International Private Enterprise (CIPE), the USA.



I. NBA: Business Anti-corruption Agenda of the Republic of Moldova

2017–2018

I.

**Risk of
corruption**
Direct contact with public officials
Priority
Mitigating direct contact with public officials

According to the Survey conducted by IDIS “Viitorul”, 69.2% of entrepreneurs have stated that corruption practices and bribery are widely spread in the Moldovan business. The business community is discontent by the fact that it is forced to knock at the doors of so many public official offices of various public entities to get their authorisations and endless

certificates. They also mention that the more the private sector interacts directly with public officials, the more it is possible that corruption situations would occur. Consequently, one of the important measures to prevent corruption would be to limit direct interactions of economic operators with public employees/officials.

Solution | 1
Efficient implementation of the One-Stop-Shop principle in rendering public services

The One-Stop-Shop represents a mechanism for making the entrepreneurial activity more efficient. At present, the One-Stop-Shop concept exists in the legislation only (Law No.161/2011, GD No.778/2013, etc.), while business people are facing the same corruption issues, wasting time and money to obtain authorisations/permits. In the given context, it is

imperative to establish functional “One-Stop-Shops” where economic operators could go and get all the services under the public authority/institution competence, as well as the services of other public entities they would apply for if lacking such a system. One-Stop-Shops should minimise corruption by excluding direct contacts with public officials.

Solution | 2
Implementing and developing e-Governance tools in the entrepreneur-public entity relations

e-Governance applies electronic means for the interaction of administration, citizens and business environment in the process of public service rendering. According to the Survey conducted by IDIS “Viitorul”, the implementation of e-Governance would eliminate the economic operator’s need to travel from the regions to Chisinau and reduce significantly their direct contacts with

bureaucrats, which would diminish dramatically corruption. A relevant example to this end is the “Electronic Signature”, which cut down the number of visits paid by companies to the Tax Inspectorate.

The steps necessary to be undertaken to implement e-Governance solutions in the relations with the business would be as follows:



- digitising the process of application for public services;
- implementing “e-One-Stop-Shop” to submit applications for public services;
- full employment of the e-Governance infrastructure in place (the already available electronic platforms and government services) by public authorities;
- electronic exchange of documents among public authorities/institutions (including with the local level);

- interoperability of public registers and state and departmental electronic databases, etc.

To this end, it is relevant to enhance the measures and actions covered by the Strategy of the Public Administration Reform for 2016-2020, the Action Plan for 2016-2018 envisaged to implement the Strategy and the Action Plan for Public Service Upgrading Reform for 2017-2021.

II.

Risk of corruption

Excessive Red Tape

Priority

Cutting the Red Tape associated with public services rendered to businesses

Excessive Red Tape entails corruption in public administration. Actually, corruption is actually the effect as *bureaucracy* is the cause of corruption. The Survey conducted by IDIS “Viitorul” reveals the statement made by business people: “perhaps, corruption is not so spread out as bureaucracy is”. Nowadays, the relations of entrepreneurs with public administration is described, in general, by cumbersome procedures, burdensome circulation of documents, long periods for addressing the requests submitted by economic operators. Any public service implies lots of records, documents, certificates, receipts, standard applications, authorisations and attachments, ob-

viously filled in, signed, endorsed and stamped by many people. Today bureaucracy is perceived as a corrupt form generated by administration, which rather than carrying out its duties with due diligence uses the formalistic administrative system for its own gain. Ultimately, the solution to uproot corruption is to cut down the red tape. In other words, through curbing bureaucracy and streamlining the procedures for business environment the activity of public administration would become more efficient (from the perspective of costs and response time), transparency and integrity in service rendering would increase, raising also the satisfaction of public service customers.

Solution | 1

Excluding redundant regulations and implementing clear procedures in the activity of public authorities

According to the aforementioned Survey, the regulatory acts that govern the entrepreneurial activity contain many unclear provisions; some of them are ambiguous, while others clash with other regulatory acts. In such situations, legal provisions become interpretable and are enforced at the discretion of subjects empowered to apply those provisions in practice. Businessmen would

like the public authorities to have clear and sufficient regulations and procedures, as well as the bodies empowered with control functions. The regulations and procedures have become “excessively bureaucratic” when they are unjustified and hamper the efficient operation of authorities/institutions, are too burdensome and expensive for the business environment, augment the efforts



required to obtain the expected outputs, and, by default, increase administrative costs incurred by economic operators to comply with the regulatory acts in force.

Regulations shall focus on business processes. In a narrow meaning, a business process may be defined as a series of interconnected activities (operations, procedures, and actions), where certain (financial, material, human, information) resources are being used, with the aim to attain a certain output/outcome intended for the end-user. The business process outcome is its most important component. Without achieving an outcome (with

the features required by the customer), the activity makes no sense. That is why the regulatory acts shall avoid setting formal and difficult provisions and procedures for businesses, and refrain from creating barriers to entrepreneurial activity. Fairly the opposite, the normative regulations shall be of such nature that the public services rendered by public authorities/institutions are focused towards business processes, having streamlined the procedures towards developing own business, setting new partnerships, identifying new markets, but not dedicating their time only to meet myriads of formalities required by the regulatory acts.

Solution | 2

Establishing a professional and politically neutral public service

Business people unanimously stated that politicisation of administration and appointment to the office by political criteria led to the degradation of human factor quality, public officials' incompetence, their poor education/training, lack of awareness about laws/legislation. The only solution would be to employ professionals only and cease the practice of appointing people according to their party membership, family relationships, affinity, etc. This desideratum could materialise through increased transparency in the process of recruiting, career promotion and

exercising job duties, as well as by implementing a staff assessment system based on criteria pursuing competence, effectiveness and conduct. It is true that enhancing the level of competence of public officials implies revising the human resources motivation policies in public administration, including the perspective of career opportunities and performance-based remuneration. Setting a salary system that would both attract and retain competent people is one of the objectives pursued by the on-going central public administration reform.

Solution | 3

Revising the system of chargeable services rendered by public entities

Although after having amended the legislation, the number of services rendered to businesses against payment was reduced, this phenomenon persists and affects the business environment. For instance, today we conclude that out of 214 authorisation/approval documents issued for entrepreneurial activity, included in the list of approval documents (Law No.160/2011), 61 authorisation documents are issued against payment (28.5% of the total). It is worth mentioning that the Parliament reviewed

the draft law No.192/2017 amending 84 regulatory acts. Hence, a wide process aimed at revising and optimising the whole range of licences and authorisation/approval documents for carrying out entrepreneurial activity has been launched. According to the Author's opinion, following the implementation of this draft law, the overall number of authorisation/approval documents for entrepreneurial activity start-up and unrolling in all areas (including the related ones) for 2017 is envisaged to go down



to circa 180 (permits, certificates and licences). Although the draft law was passed by the Parliament, the law has not been published yet to become effective. Hence, we are not aware if the new legal framework reduced any of the chargeable services as well.

In their general understanding, chargeable services do not underpin business development; they serve as an additional source of proceeds for the authority/institution budget. As a rule, the fees collected from the rendered services generate corruption, multiple abuses and waste of resources by the business environment in its relation with the bureaucratic apparatus. Such services are frequently qualified by the business as low-quality, unprofessional and rendered at inappropriate fees. Most services rendered by state entities are in fact additional state charges, which

are not covered by the Tax Code. In fact, the services against payment evolved in a form of “unofficial” additional taxation of businesses.

We would advise that any chargeable service in place or newly introduced to be considered in the light of its impact on business environment. Also, it would be advisable to set a clause in the legislation that prohibits chargeable services to be rendered by public authorities. All chargeable services shall be provided exclusively by state and private enterprises. Compulsory payments shall be treated exclusively as fees and shall be embedded into the Tax Code of the Republic of Moldova. The control and oversight bodies shall be able to collect only those fees, which are stipulated by the Tax Code. In this way, the administrative pressure imposed on business environment would be loosened as well.

III.

Risk of corruption

Developing and adopting regulatory acts with formal business consultation or without it.

Priority

Strengthening transparency of decision-making

Despite clear and detailed provisions (Law No.239/2008, GD No.967/2016, Law No.797/1996, etc.) and the overall endeavours undertaken in the area of decision-making transparency, currently both public authorities and stakeholders fail to meet in full and with due diligence their tasks stemming from the implementation of open administration principles. Public authorities do not always organise public consultations with subjects that would be affected by regulatory acts, do not notify them about the regulatory act initiative in place. Sometimes they inform the public at very short notice so that it does not have enough time to get prepared, to articulate proposals and recommendations. Pretty often, public authorities conduct formal/superficial consultations. During such consultations, participants who expressed their point of view have no feedback from the organisers.

The stakeholders' proposals and recommendations are not found in any summary document. Fairly often, the text of an initiative, which was previously consulted with stakeholders, is dramatically amended afterwards, thus, having distorted the agreed upon concept. There are cases when the draft regulatory act is not thoroughly discussed with industry professionals and with potential beneficiaries, being formally tackled with a certain group of people selected on obscure criterion basis. Most of the time, the proposals of stakeholders are ignored without any justification of their rejection. Hence, those who submitted proposals are not aware whether their proposals were accepted or not, and if not, for what reasons. This fact discourages activism and participation of interested actors in the process of public consultations conducted by public authorities.



Solution | 1

Setting binding rule to continuously update and consult with the business community about considering draft regulatory acts that may affect it.

Stakeholders shall be kept informed about the regulatory act initiatives under consideration that may affect them and about the possibility to intervene with proposals and recommendations for improvement. As for the regulatory acts that govern the entrepreneurial activity, public authorities shall compulsorily inform and consult with Business Associations, Employers' Associations and other stakeholders. It is essential that the business com-

munity is involved more directly in decision-making regarding the public policies which may have an impact on it. At the same time, when organising some debates, dialogues and public consultation it does not mean to "collect" opinions, views and suggestions only; it should be a constructive, participatory and dynamic process, which generates efficiency, and the opinions expressed by the consulted parties should be taken into account.

Solution | 2

Inserting the rules by which a draft regulatory act that might affect the business shall not be reviewed by the public authority if that draft has not been consulted with the business.

No regulatory act should be considered and adopted if the representatives of regulatory act recipients did not have the chance to express their opinion. In the business case, this mechanism would guarantee that all regulatory act initiatives would go through all public consultation stages

and procedures, avoiding the adoption of regulations that would damage the interest of business community. Here we would mention also the need to comply with the provisions that require regulatory impact analysis of drafts relating to entrepreneurial activity.

IV.

Risk of corruption

Public procurement assigned as per political interest and membership

Priority

Making public procurement transparent

According to the aforementioned Survey, the public procurement process is extremely politicised/corrupt; only those politically affiliated may win public tenders/auctions and conclude "generous" contracts with the public sector.

Multiple studies and monitoring reports stated that public procurement area is vulnerable to various arrangement and fraud schemes relating to public procurement contracts, realised by the contracting authority through corruption or conflict of interests.

The most often used fraud schemes for public procurement are as follows:

- The favoured companies use initial low prices as they know there would be additional acts for the so-called contingent works. These additional acts unlawfully increase manifold the contract initial value;
- Fragmentation of procurement – contrary to the legal framework, some contracting authorities practice procurement of goods, services and works in small quantities to avoid using



competitive methods and additional approvals. Hence, they “reduce the risk” of assigning the contract to an economic operator other than the “preferred” one;

- Excluding the qualified economic operators from competition by limiting their access to information, shrinking the deadline for the submission of bids, applying certain unjustified pre-qualification procedures, avoiding to properly publish the call for proposals, maximising the procurement procedure complexity, the scope of work, etc.;
- Setting the auction (scope of work) criteria depending on the features of a specific firm;

- Disclosing the information on the competitors’ bids to the firm to be favoured;
- Applying arrangements on the acceptance of works even if the latter have serious flaws;
- Imposing sub-contractors, sub-entrepreneurs and suppliers to a firm that lawfully won a contract.

On the basis that public procurement means spending public money, while the works carried out, services rendered and goods purchased are of public interest, it shall be required to ensure maximum transparency of public procurement procedures and outcomes.

Solution | 1

Implementing the electronic procurement system

Over the past years, the process of public procurement digitisation was started, aimed at increasing transparency, effectiveness and credibility of public procurement process in the Republic of Moldova. As a first step, the information system “State Register of Public Procurement” (IS SRPP) was launched in 2012. With the help of this platform it is intended to switch from paper-based to electronic procurement process, while citizens would be able to trace online all public procurement stages, as well as how the public money is being spent.

A Memorandum was signed by the Ministry of Finance, Public Procurement Agency, e-Government Center, several business associations, NGOs, and companies from the IT sector in 2016, which should offer trading platforms for e-public procurement. This project envisages to develop e-procurements in the Republic of Moldova as a tool for procurement procedure transparency and, directly, for managing public funds. The e-procurement system will use a centralised

database to be managed by the Public Procurement Agency, while the connection and interconnection among participants would be secured through private companies that would be willing to render platform services. As a result, tender participants as well as the wide public would be able to get full information not only about the tender winners, but also about other participants, about the bill of quantities purchased, the value of signed contracts, and other information. The whole public procurement process would be conducted on-line, while the tender participants would use electronic signatures only. Likewise, the system would be interoperable with the e-Government services available in Moldova.

To this end, we insist upon implementing the electronic procurement system for all public procurement, with the explicit setting in the regulatory acts of the obligation to use such online platforms for unrolling public procurement in electronic format by all contracting authorities.



Solution | 2

Open data on public procurement contracts and monitoring their enforcement

Fraud factors may emerge at all procurement stages, but the most frequent are referred to the failure of economic operators to fulfil the contract requirements, to the submission and settlement of invoices for goods/services/works that were never delivered or were shipped at prices other than the ones agreed in the contract, etc. We witness lack of transparency in the post-procurement control, which favours corruption.

It would be advisable to publish the procurement contracts on the web portals, so that the general public could have the possibility to monitor the contract enforcement. Publication of all procurement contracts on the website is an approach used by many countries, being a binding requirement for the contracting authorities (for example: Slovakia).

Also, publication of data on monitoring the contract execution on the website should be required. This is a practice widely used in the countries with an increased level of procurement transparency. In other words, according to the Open Contracting Data Standard (OCDS), which is recognised as good practice at the international level, besides procurement, open data shall apply also to contracting stage and contract

execution. We also consider appropriate to publish bills and tax invoices on the website showing the amount paid to an economic operator pursuant to the public procurement contract. In this way it is possible to check the actual price paid for the service rendered, work carried out and commodity delivered.

At present, according to point 34 of the Regulation on the Activity of the Working Group (WG) for Procurement, approved by GD No.667 of 27.05.2016, the WG would ensure monitoring the execution of public procurement contracts, having prepared quarterly/half-yearly and yearly reports. The corresponding reports that would mandatorily comprise data on the stage of contractual obligation execution, the reasons of non-execution, complaints submitted and the applied sanctions, mentions on the quality of contract execution, etc., would be posted on the web page of the contracting authority; if such web page is not available, then on the web page of the central authority to which it is subordinated or on the web page of the secondary-tier local public authority. We insist on posting such reports on the website to grant citizens access to information on executing public procurement contracts.

V.

**Risk of
corruption**

State controls focus only on economic operators' sanctioning

Priority

Switching from punitive to informative control

According to the aforementioned Survey, the business stage most vulnerable to corruption is during the control exercised by empowered state institutions (45.4%). The relations between the state institutions and the private companies are not viewed as between subjects with equal rights, even if the general purpose of both parties is to enhance the country wellbeing. Frequently, contrary to the principle of presumption of inno-

cence, business is regarded as an offender. Consequently, the current system of state controls is focused mainly on punitive measures, applying sanctions under any pretext. This fact has been corroborated by business people, who clearly stated in the aforementioned Survey that "when a controlling body representative comes in, he/she has to write something; even if everything is OK, he/she needs to write something". Last but



not least, this system causes abuses exercised by public institutions and inappropriate decisions taken by public officials. In other words, an ambiguous legislation enables sometimes specific “interested” interpretations from the side of

authorities invested with control functions relative to the private business environment. This approach is inappropriate, as the State is supposed to serve the companies and citizens, not vice versa.

Solution | 1

Inserting a rule in the regulatory acts according to which the first control visit paid by public authorities is an informative one, granting the economic operator sufficient time to remedy the revealed issues.

The business considers that this mechanism shall be operated as follows:

- the planned control at an economic operator shall be consultative at the beginning, without ending with sanctions or restrictive measures (similar provisions apply now to economic operators during their first three years of activity – Article 4(10) of Law No.131/2012 on State Control over Entrepreneurial Activity);
- the Inspector shall carry out an overview of the economic operator performance and point out the identified non-compliances, if any;
- the Inspector shall prepare a list of actions and measures, as per the requirements of regulatory acts, to be carried out by the economic operator to address the revealed non-compliances;
- the Inspector, jointly with the economic operator, shall set up the deadline for addressing the non-compliances, having prepared and signed a protocol to this end;
- after the deadline expiry the control body shall verify the fulfillment of agreed actions and measures;

- if the economic operator failed to address the revealed non-compliances, he/she shall be sanctioned as per the law.

It is worth mentioning that these provisions shall apply both to controlling bodies, which are guided by the provisions of Law No.131/2012, and to controlling bodies that are exempted from the rules of the aforementioned Law, the Tax and Customs Authorities, in particular.

We believe that these measures would lead to matching the rights of economic operators and of public institutions, cut the number of abuses committed by public institutions, protect the business environment against abusive actions exercised by public officials and reduce substantially the number of erroneous actions undertaken by public institutions.

It is well-known the fact that any regulatory act shall not be imposed by force, as in such case its use would not last. On the other hand, a rule that is explained first, then it is acknowledged and learned by the ones it is intended for, has a longer term of use.



What has Business got to do?

Priority

1

Develop and implement business compliance programmes and standards.

It is necessary that business also takes the commitment and responsibility to set and observe rules of compliance, integrity, business ethics and transparency.

Compliance is a broad concept, which in the business context refers to observing national and international laws, regulations, rules and standards in a number of key areas, anti-corruption inclusive. Compliance aims at ensuring that each employee and each manager has a legal and worthy of imitation conduct.

Anti-corruption compliance means observing the anti-corruption rules by translating international anti-corruption standards and principles, as well as national laws into local practice.

There is no one-size-fits-all solution or sample for designing a compliance programme as it requires to be based on specific business risks, size, etc. Nonetheless, each compliance programme shall comprise in some way the following factors to prevent, detect and address the breaches:

- *risk assessment;*
- *standards of conduct / policies and procedures;*
- *compliance oversight / control, commitment and resources;*

- *education and professional training;*
- *monitoring and auditing;*
- *reporting and investigation;*
- *enforcement, discipline and incentives;*
- *response, prevention and improvement.*

The practice of designing and implementing anti-corruption programmes and tools in the private sector has not become customary for the Moldovan entrepreneurs. The Survey outcomes show that 80.8% of companies failed to design an action programme embedding special anti-corruption rules and procedures. Despite this fact, 64.2% of entrepreneurs consider that having an anti-corruption programme/plan in place would be useful for the private sector. Also, entrepreneurs are not familiar with and do not implement tools and procedures to prevent and fight corruption. The Survey outcomes show that 76.5% of companies have got no procedures in place to prevent and sanction bribery, while 66.1% of economic operators do not have procedures to prevent conflicts of interests. The Survey reveals that 52.8% of companies do not have a Business Code/ in-house Handbook of Ethics for their employees. Moreover, companies do not apply audit rules, which would be sufficient to facilitate prevention and reveal corruption.



Solution | 1

Designing and implementing Corporate Governance and Anti-corruption Compliance Standards by Business Associations and by Chambers of Commerce and Industry, as well transposing the Anti-bribery Management Systems ISO 37001.

Corporate Governance plays a separate role amongst the standards of conduct, policies and procedures, and it is implemented by companies all over the world. Corporate Governance represents a comprehensive set of processes, practices, policies, regulatory framework with impact on managing, directing and controlling a firm. Corporate Governance is the system by which a company is administered and controlled. In more concise terms, Corporate Governance may be defined as a code of economic, financial and moral conduct of a firm. The Corporate Governance Code shall contain principles and particular situations (from the national and international practice) to be followed by the involved people of the society (members of the executive body, board, of oversight bodies, etc.) in their mutual relationships.

Setting strong Corporate Governance within companies is an essential way to tackle corruption, being an efficient tool against this scourge. In terms of routine transactions, it becomes more difficult to offer bribes and hide such deeds. As for the decision-making level, Corporate Governance injects transparency and accountability; therefore, it is clear how decisions are taken and why.

It is important to know that the Corporate Governance principles do not apply exclusively to large companies. The Corporate Governance values and best practices apply to a variety of types of associations, including SMEs, having tailored the values depending on the ownership type and on risks relating to association activities.

The national legal framework contains few references and regulations relating to Corporate Governance for SMEs.

Nonetheless, the National Integrity and Anti-corruption Strategy for 2017–2020 tries to boost designing and implementing Codes of Corporate Governance. To this end, we shall mention Action No.9 under Priority VII.3. “Business

Ethics” of the Action Plan aimed to implement the National Integrity and Anti-corruption Strategy, which foresees designing and promoting sample Business Ethics and Corporate Governance Codes for business associations with the aim to safeguard proper exercising of economic activities, prevent conflicts of interests and encourage the use of best business practices by undertakings, both in their mutual relationships and in their relations with the State. Furthermore, Action No.10 focuses on identifying legal incentives to promote the implementation of Business Ethics and Corporate Governance Codes to prevent corruption and ensure employees’ integrity.

Usually, companies around the world include rules on banning all forms of corruption in their Code of Corporate Governance to demonstrate their commitment in combating corruption.

In the given context, Business Associations and Chambers of Commerce and Industry shall play the front-line role in designing and implementing sample Corporate Governance Code. They shall give the tone and impetus to subsequent designing and implementing of such codes by all their members.

We should mention here the first international standard on anti-corruption management systems, which aims to help organisations fight against this risk in their activities at all global value chain levels – ISO 37001. This standard is designed to be implemented in all organisations, in all sectors and for any type of bribery risk they encounter. This standard requirements enable the organisations to implement anti-bribery framework and apply in practice efficient policies and processes against corruption.

Here it is worth mentioning that the National Integrity and Anti-corruption Strategy for 2017–2020 makes reference to ISO 37001. Action 12 under Priority VII.3. “Business Ethics” of the Strategy Action Plan, foresees disseminating international standards for corruption prevention



in the private sector amongst business community (ISO 37001:2016 “Anti-bribery Management Systems. Implementation Requirements and Recommendations”).

In the given context, it would be desirable that Business Associations and Chambers of Commerce and Industry purchase and implement ISO 37001:2016.

Solution | 2

Provide training to members of Business Associations and of Chambers of Commerce and Industry on Corporate Governance and Anti-corruption Compliance Standards, as well as assist the members in standard designing and implementation.

After taking, designing and implementing Corporate Governance and Anti-corruption Compliance Standards, including ISO 37001:2016, Business Associations and Cham-

bers of Commerce and Industry will have the role to provide training to their members and assist them in designing and implementing such standards.

Priority | 2

Developing a joint protective system in the private sector.

Business feels unprotected against corruption. Entrepreneurs, even if they work in compliance with the law and have “fair” attitude towards the public sector, hesitate to report corruption. As per the conducted Survey, 79.3% of economic operators did not complain about corruption cases they encountered. Out of those who lodged a complaint to have the corruption case addressed, in 63.3% of the cases the issue was not resolved. Among the main causes of not complaining/reporting the cases of corruption, the entrepreneurs mentioned: lack of trust in law enforcement bodies (46.7%),

fear that the company would suffer (35%), fear of reprisal (12.5%). All these results confirm the inefficiency of law enforcement bodies and of practices used by the public sector, through many tools and leverages, to “punish” the private sector that violates “the Rules of the Game”.

Small companies shall associate and act jointly against bureaucrats’ abuses. The fight against corruption shall be carried out through associations, not individually. By the means of association small companies become as strong against corruption as the large ones.



Solution | 1

Strengthening the role of Business Associations and of Chambers of Commerce and Industry as whistleblowers of corruption and report corruption to competence bodies.

A whistleblower is an individual who voluntarily and in good faith exposes (reports) corruption deeds, corruption-related acts, corrupt conduct, etc.

At the outset, it is important a company to have an effective internal system to report non-compliant conducts, comprising clear rules to this end. In many cases, depending on the situation details, an economic operator would be required to notify the competent law enforcement bodies about corruption or other unlawful actions that came to his/her knowledge. It could be the case of requesting bribes by a public official. However, as the Survey outcomes show, entrepreneurs do hesitate to notify the competent bodies because of the fear of reprisal and the lack of trust in law enforcement bodies. Although the Integrity Law No.82/2017 and the Framework Regulation on Whistleblowers (GD No.707/2013) contain certain guarantees

for whistleblowers, those rules cover mainly the public informants, while the private subjects are provided with some general guarantees. In most cases, the whistleblowers remain exposed to the threat of being persecuted, dismissed or even attacked physically and morally by the person they reported about. In other cases, whistleblowers may encounter no consideration of their signal or no ultimate punishment of those they reported about.

In this difficult context, we believe it is important to enhance the role of Business Associations and of Chambers of Commerce and Industry as whistleblowers of corruption and reporting it to competent bodies. They should, from the one side, establish with their members efficient and confidential channels for reporting and, from the other side, establish reporting channels with the competent law enforcement authorities.

Solution | 2

Business Associations and Chambers of Commerce and Industry shall provide legal assistance to their members in case of corruption they encounter in practice.

The profile associations and other associative forms are not seen by business as genuine centres and information and support sources in terms of combating corruption. Most Moldovan companies (71.4%) do not make use of any associative form to get information and support on preventing, combating and reporting corrupt practices in doing business. In 9.6% of the cases entrepreneurs turn to Chambers of Commerce and Industry of the country, in 6.5% of the cases they resort to Business Associations and 6.3% recourse to NGOs.

This state of affairs shall be changed. Business Associations and Chambers of Commerce and

Industry have the possibility to employ a lawyer or an attorney at law to provide legal assistance to their members. This could be baseline assistance and consultation or legal support in courts. Various remuneration forms could be identified to this end, settled, in full or in part, by the profile association or Chamber of Commerce and Industry and by the member (smaller proportion). Everybody shall acknowledge the importance of such support for the economic operator in combating corruption, as only through joint actions it is possible to be successful and prove the “corrupt” ones that such conduct would not be tolerated any more.



Solution | 3

Setting anti-corruption coalitions at the industry, sector, region and national level.

In fact, there is no business collective anti-corruption initiative in the Republic of Moldova. Drawing on the Survey outcomes, 86.7% of companies are not members of associations, which programme comprises the fight against corruption as a priority. At the same time, 81.4% of entrepreneurs failed to adhere to any collective anti-corruption initiatives.

A collective action enables pooling together the efforts in a collective fight against corruption, with the involvement of various groups of interest, collaboration and building an alliance against corruption, so that the issue of corruption could

be tackled and addressed from several standpoints.

Business Associations are those units that pursue mutual benefits, i.e. meeting the individual and corporate interests of association members. These profile associations may impel anti-corruption initiatives launched by SMEs, by triggering collective or sectoral anti-corruption initiatives, having involved their members in this process. Hence, the undertakings engaged in combating corruption would not be helpless, but would act together to establish an integrity movement leading to a clean and honest business environment.



II. Summary of Survey, focus-groups and meetings held with entrepreneurs to identify the risks of corruption

The Survey, focus-groups and meetings conducted with entrepreneurs conclusively established that corruption entailed major risks for businesses. The main findings can be summarised as follows:

- 1 *There is corruption in place, but I am not involved.* The level of corruption as it is perceived by business people is very high in the Republic of Moldova. More than 70% of respondents say it is a wide-spread phenomenon; while more than 60% of respondents mention that issues could be easier addressed informally than formally. Nonetheless, when being asked how they solve their problems, 72% of respondents asserted they had never encountered corruption. We tried to find out where such a discrepancy came from. During the discussions we received a simple answer: "you have to understand us, we need to continue working with them". In other words, even when they are ordered to pay certain amounts, including the situations when they are right, in most cases the economic operators prefer to pay and not to talk about that.
- 2 *Direct contact with public officials favours the occurrence of corruption.* The business community mentions that the more the private sector interacts directly with public officials the more likely it is exposed to corruption. According to the business community, "the one who has the seal/stamp shall take the decisions". In many situations economic operators are directly facing corruption related issues. According to the Survey, the most vulnerable to corruption are the following business phases: during the inspections/controls/audits carried out by the empowered institutions (45.4%); in the process of requesting and getting licences, authorisations and permits (27.4%); during customs related control/declaration processes (22.9%).
- 3 *Excessive bureaucracy is the one that entails corruption.* During the meetings with business people, the latter asserted that "perhaps, corruption is not so spread out as bureaucracy is". The business community is discontent that it has to knock at the doors of so many public official offices from different public entities to get their approvals/authorisations, going through cumbersome and undue procedures. Businesses waste precious time, making a great deal of efforts to reach the public authorities, and all these attempts lead implicitly to the increase of administrative costs incurred by economic operators to comply with the regulatory acts in force. Bureaucracy is caused also by public officials' incompetence, their poor education/training, lack of awareness about laws/legislation. Many public officials are promoted to public authorities and public control bodies based on criteria other than professionalism. Likewise, the business community believes that corruption and abuses occur due to numerous services rendered by public authorities against payment. Such services are often qualified by businesses as redundant/useless, undue, unqualified, unprofessional and provided at inappropriate charges.
- 4 *Corruption is caused by poor quality regulatory acts, which provisions have not been consulted with the business community.* The regulatory acts governing the entrepreneurial activity contain many unclear provisions. Sometimes, the provisions are confusing or may clash with other regulatory acts. In such situations the legal provisions become interpretable and are enforced at the discretion of subjects empowered to apply those provisions in practice. Such state of affairs stems from the failure to comply with the requirements of transparency while passing the regulatory acts and from the lack or poor approach in the process of consulting the initiatives regulating the entrepreneurial activity with the business community. Therefore, the laws are far from being perfect, and they hinder the business activity.
- 5 *"Public procurement: everything in this area is done as per the belonging to political parties or by*



interests". The procurement contracts are assigned through "schemes", built up via corruption acts, conflicts of interests or via the interference of politics. Businessmen are outraged at the fact that the undertakings under the umbrella of the ruling party win all public auctions, and this fact helps them achieve greater economic growth and development. Businesses with no "political cover" just cease to bid. In this way, unfairness, favouritism, injustice and interference of politics erode the business environment and competitiveness.

6 *"In fact, we are the enemy of all public bodies"*. When state inspections/controls are carried out the business is seen as an offender. The current control system is focused mainly on punitive measures, punishing the economic operators under any pretext. According to business people, "when a controlling body representative comes in, he/she has to write something; even if everything is OK, he/she needs to write something".

7 *The public official are bad, however, we are not better*. When they are required to shape public officials' integrity picture, business people see more positive than negative features. Hence, 32.1% of respondents believe that the integrity level is good, while 26.8% think it is low. Concurrently, entrepreneurs are more critical when it comes to self-description. Hence, in more cases, business people see themselves as having low/negative integrity features (29.5%) than positive (24.5%). These are the grassroots of business people vulnerability and their unwillingness to oppose corruption. In a large majority of cases they believe they are guilty for the failure to comply with the legal requirements. Excessive bureaucracy, inappropriate legal rules, which are impossible to enforce, frequent amendments of the legislation are the main pillars that augment the economic operators' vulnerability and make them easy victims of corrupt officials.

8 *In 1/3 of the cases business people are the initiators of corrupt practices*. Some economic operators confessed that in 35% of the cases they were initiators of corrupt practices, while the officials did not show any sign of soliciting bribes. Such situations emerge because this is "the way to go", i.e. this is a unanimously accepted practice and nobody could go against these "rules". This is the only way of solving the issue rapidly and easily. "I need to pay even when I am right because I need to continue working with them". "Friendly" relations are established

through "voluntary" payments, and this might help you in the future. In this way business people assign their employees to two categories: those who can solve problems and those who cannot. By "solving problems" is to be understood expediting the problem resolution through informal ways. Companies have people who, unlike others, are able to "solve problems". As a rule, such people are the most valuable employees. Pretty often, economic operations are seeking for people who can "solve problems". Namely, this status of people who are able to solve problems determines the behavioural culture to become the initiator of informal payments.

9 *As for the abuses of officials, in 80% of the cases the business people prefer to be silent*. According to the Survey, 20% of entrepreneurs, when they are forced to pay, they preclude and turn to certain institutions. However, this is a view on how the business environment should act rather than its real actions. Based on the discussions held with the focus-groups we realized that the number of cases when business people object/oppose corrupt acts is much smaller. The main reasons of not turning to the relevant bodies is the lack of trust in law enforcement bodies, trust concerns that their case would be addressed and the company/whistleblower's fear of reprisal.

10 *Corruption is a lucrative business*. Half of those who opposed/objected corruption and opted to follow legal ways of problem resolution regret they took that decision. "I was abusively penalized by the Tax Service; I sue them and the proceedings lasted for two years. In fact, I won the case, but at what cost?! I have wasted money and time. Next time I would not follow this approach". This is another case: "I did not want to pay at the Customs; it was abusive; I fought with them, but for whose sake?! They retained my vehicle in customs for three days; I wish I would have paid 100 Euro and get rid of them". Low corruption costs and the huge waste of time and money in case of going through formal ways determine 80-90% of business people to "solve the problem" informally. While those who decide to fight corruption regret it later in 50% of the cases.

11 *Corruption destroys the companies that work legally*. A significant issue for the companies that work in compliance with the law is the unfair competition exercised by companies working absolutely unlawfully, being under the cover of corrupt officials. "Several former employees opened



clandestine workshops within garages and make furniture; they pay no taxes and, obviously, sell their furniture cheaper than my company, which works legally; I turned to Police to stop them, but the answer was “they also need to eat”. If nothing is done, in two years from now I would be forced to close down my factory”. Hence, an economic operator who pays taxes worth millions of MDL each month is destroyed by several “clandestine firms”, which are protected by corrupt officials. Another issue is the legislative absurdity to penalise the legally working companies more drastically relative to economic activities carried out with no legal documents. “I have a transportation company; I work legally, I have got all the required licenses and documents. If I am caught transporting passengers without tickets the imposed fine amounts to tens of thousands of MDL. But if I work with no documents and transport passengers with no tickets, the fine is ten times less. What is the reason to work legally?” Corrupt officials and imperfect legislation stimulate the underground economy and destroy the legal one.

- 12** *Being familiar with the legislation provisions and the combative spirit are the basic ingredients to fight corruption.* Even if the majority of economic operators prefer to “solve” their daily problems informally, there is a small group of economic operators who fought corruption, have succeeded and are willing to continue it. Their secret stems from several essential elements. First of all, they need to work legally otherwise there is no reason to fight corruption if you have personal integrity problems. Second of all, they need to be knowledgeable and aware of the fact they are right, as “public officials feel when an economic operator “is floating” and has vague idea of what should be done, and add pressure on him/her to pay”. During a meeting, a legal consulting firm claimed that “in 80% of the abuse cases the officials have had no ground as the economic operator infringed nothing, but the latter was not confident; therefore, public officials felt it and solicited bribes for no offences”. Nonetheless,

even if the economic operator was right in that particular case, he/she would prefer to pay because he/she knew their activity was carried out with some deviations and was afraid of being subject to other inspections. When in his/her activity an economic operator infringes the law, he/she would prefer to pay rather than to fight. Third at all, when someone works absolutely legally and knows the status of affairs, the combative spirit is helpful. “Usually, public officials consider the case “perspective” to see if they are “entitled” to get something or not, and, if not, they give up”. As a rule, when public officials see that an economic operator is right and is prepared to fight, they give up. Why should they bother themselves in such extraordinary cases when there are other 95% of economic operators who are ready to pay? All those who stated they would continue fighting corruption had three distinct features: worked legally, were familiar with the legislation and had combative spirit.

- 13** *Businesses do not implement standards, programmes, internal procedures aimed to help them fight corruption.* According to the Survey, the practice of developing and implementing anti-corruption programmes and tools in the private sector is not usual for the Moldovan entrepreneurs. Companies are lacking procedures by which to prevent and penalise bribery; they failed to develop internal Business Ethics Code/Handbook for their employees; they do not apply audit rules that are sufficient to prevent and detect corruption deeds. Standards of Corporate Governance and Anti-corruption Compliance, including ISO 37001:2016 are the most efficient tools for companies to combat corruption.
- 14** *It is pretty difficult for any company to stand alone when attempting to fight corruption individually.* Small and medium-sized companies shall associate and act in solidarity against public officials’ abuses. Corruption shall be fought in association, not individually. By the means of association, small companies become as strong in fighting corruption as the large firms.



III. Anticorruption and integrity principles and standards in the private sector

1

Business compliance and anti-corruption compliance

The term “**Compliance**” is widely used in international practices of doing business. The Explanatory Dictionary of the Romanian Language contains one of the definitions for “compliance”, by which we understand “consent, obedience, submission, compliant conduct”. In more concise terms, “**Compliance**” = **Conformity**.

Compliance means that each employee and each manager behave lawfully and exemplarily. Employees, regardless of their position, shall be confident that right action and compliance with the rules represent an advantage both for the company and for each individual.

However, compliance with laws is only a first step, as compliance exceeds what law imposes. Compliance configures *the ethical culture of a firm*, which is a set of shared attitudes, values, objectives and practices that encourage ethical conduct in attaining the goals of a firm. Building an efficient culture does not rely solely on prohibition and punishment; it implies commitment of company leadership and employees to have ethical conduct in exercising their job duties, even when nobody exercises control over them.

Anti-corruption compliance means designing and implementing anti-corruption policies and procedures by companies to mitigate the risks of corruption.

For the purpose of international tools and documents, corruption refers to the one that engages public officials and to business corruption that occurs via inappropriate transactions among firms. As a rule, corruption is perceived in the Republic of Moldova only as a phenomenon inherent to the public sector. However, corruption is inherent also to the private sector, which ultimately is the most affected by this scourge.

According to the Survey conducted by IDIS “Viitorul”¹, **69.2%** of entrepreneurs stated that corruption and bribing practices are widely spread within the Moldovan business. The Survey outcomes reveal that **47.9%** of entrepreneurs consider that corruption hinders significantly and very significantly doing business in the Republic of Moldova, while **20.4%** consider that corruption obstructs doing business in the country.

3.1. INTERNATIONAL AND NATIONAL ANTI-CORRUPTION FRAMEWORK

Corruption, defined, in general, as the abuse of entrusted power for private gain, does not have one-size-fits-all definition and is continuously articulated differently by various global and regional tools. Below we listed the basic international and national anti-corruption tools.

¹ Fighting Corruption in Moldova: What Can Business Do? <http://www.viitorul.org/files/library/Raport%20Coruptie%20Biz%20rom.pdf>



International Tools and Principles

1. UN Convention against Corruption (UNCAC), 2003²
2. UN Convention against Transnational Organised Crime (UNTOC), 2004³
3. Council of Europe Civil Law Convention on Corruption, 1999⁴
4. Council of Europe Criminal Law Convention on Corruption, 1999⁵
5. Council of Europe Committee of Ministers Resolution (99) 5: Agreement establishing the Group of States against Corruption “GRECO”⁶
6. Council of Europe Committee of Ministers Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption⁷
7. Council of Europe Committee of Ministers Recommendation CM/Rec (2014)7 on the Protection of Whistleblowers⁸
8. OECD Anti-Bribery Convention, known also as Convention on combating bribery of foreign public officials in international business transactions, 1997⁹
9. OECD Recommendation of the Council for further combating bribery of foreign public officials in international business transactions, 2009¹⁰
10. OECD Guide of best practices on internal control, ethics and compliance, 2010¹¹
11. OECD Corporate Governance Principles, 2004¹²
12. Inter-American Convention against corruption, 1996¹³
13. African Union Convention on prevention and fighting corruption, 2003¹⁴
14. World Bank Group Guidelines on integrity¹⁵
15. Partnership Against Corruption – Principle for Combating Corruption, Partnership Against Corruption Initiative (PACI), World Economic Forum, 2009¹⁶
16. Corporate Principles to Fight Corruption, Transparency International, 2013¹⁷
17. The 10th Principle against corruption, United Nations Global Compact, 2004¹⁸

² https://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf

³ <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

⁴ available at: <http://cj.md/uploads/ETS-174-Convent-civila-privind-coruptia-si-Raport-Explicativ.pdf>

⁵ available at: http://cna.md/public/files/legislatie/conventia_penala_privind_coruptia_.pdf

⁶ <http://www.coe.int/en/web/greco/home>

⁷ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680534ea6

⁸ available at: [http://old.mmps.gov.md/file/2014/Rec_CoE_Eng_\(2014\)7_Protectia_avertizori_integrit.pdf](http://old.mmps.gov.md/file/2014/Rec_CoE_Eng_(2014)7_Protectia_avertizori_integrit.pdf)

⁹ <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/12/06/combating-bribery.pdf>

¹⁰ <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/05/07/oecd-recommendation.pdf>

¹¹ <https://www.oecd.org/daf/anti-bribery/44884389.pdf>

¹² <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>

¹³ <https://www.congress.gov/105/cdoc/tdoc39/CDOC-105tdoc39.pdf>

¹⁴ https://au.int/sites/default/files/treaties/7786-file-african_union_convention_preventing_combating_corruption.pdf

¹⁵ <http://www.worldbank.org/en/about/unit/integrity-vice-presidency/sanctions-compliance>

¹⁶ http://www.weforum.org/docs/WEF_PACI_Principles_2009.pdf

¹⁷ http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery

¹⁸ https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf



18. International Chamber of Commerce (ICC) Rules on Combating Corruption, 2011¹⁹
19. ICC Rules of Conduct to Combat Extortion and Bribery in International Business Transactions, 2005²⁰
20. ICC Whistle-blowing Guidelines, 2005²¹
21. ICC Guidelines on Agents, Intermediaries and other Third Parties, 2010²²
22. Council Framework-decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector²³

National Laws with extra-territorial applicability

- The USA Foreign Corrupt Practice Act (FCPA), 1977²⁴;
- The Canadian Corruption of Foreign Public Officials Act (CFPOA), 1998²⁵;
- The UK Bribery Act, 2010²⁶;
- Brazil's Clean Company Act, 2014²⁷.

National Legislation

- Constitution of the Republic of Moldova, 1994²⁸
- Criminal Code No.985 of 18.04.2002²⁹
- Code of Criminal Procedure No.122 of 14.03.2003³⁰
- The Integrity Law No.82 of 25.05.2017³¹
- National Integrity and Anti-corruption Strategy for 2017–2020, approved by Parliament Decision No.56 of 30.03.2017³²

¹⁹ <https://iccwbo.org/publication/icc-rules-on-combating-corruption/>

²⁰ <https://iccwbo.org/publication/icc-rules-of-conduct-and-recommendations-to-combat-extortion-and-bribery-2005-edition/>

²¹ <https://cdn.iccwbo.org/content/uploads/sites/3/2008/06/ICC-Whistleblowing-Guidelines.pdf>

²² <https://cdn.iccwbo.org/content/uploads/sites/3/2017/02/ICC-Guidelines-on-Agents-and-Third-paries-ENGLISH-2010.pdf>

²³ <http://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32003F0568&from=RO>

²⁴ <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>

²⁵ <http://laws-lois.justice.gc.ca/PDF/C-45.2.pdf>

²⁶ http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf

²⁷ https://www.cov.com/files/upload/E-Alert_Attachment_Brazilian_Clean_Companies_Act_Original.pdf

²⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=363979>

²⁹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=331268>

³⁰ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350171>

³¹ <http://lex.justice.md/md/370852/>

³² <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=370789>



It is worth pointing out that the need to develop and strengthen the national integrity system and combat corruption derives from the commitments the Moldovan Government undertook towards its international partners and, in particular, towards the EU. To this end, we should mention the provisions of the *Association Agreement be-*

tween the European Union and the Republic of Moldova, ratified by the Parliament (Law No.112 of 2.07.2014³²). This Agreement represents an opportunity for the private sector as well, which has to keep its integrity and comply with the rules against corruption in order to accede to the EU markets, which are stronger and fairer/cleaner.

3.2. PROHIBITED PRACTICES

Although there is no one-size-fits-all definition of bribery, national legislations and international acts pointed the main features of this prohibited practice. Based on the meaning of those definitions, **bribery** implies in the case of a Business Association offering some sort of benefits to a public official or to another Business Association to obtain an advantage, which otherwise it would not have obtained.

Bribery and conflict of interests may be found as the most important practices in business transactions which can be considered as corrupt.

Bribery does not involve and is not limited to offering money; it can take the form of benefits and favours. Among the non-monetary forms of bribery we should note: trips and accommodations that have no direct relation with business activities; providing excessive gifts and advertisement; employing a relative of a governmental official; making a charitable contribution, etc.

Another issue that needs to be tackled to reduce the risk of corruption is the **conflict of interests**. A conflict de in-

terests, as it is defined by the New York Stock Exchange Corporate Governance Guide, “emerges when an individual’s private interest seems to or interferes with the corporate interests as a whole. A conflict situation may occur when an employee, an official or a director takes measures or has interests that could make it difficult to objectively and efficiently carry out job duties within the company”.

In fact, a conflict of interests represents a competition between two interests of the same person from the perspective of two roles he/she has to play. Examples of conflicts of interests: a company employee has a job in another company or gets compensation from a supplier, client or a competitor; a company employee uses the company information and assets for private gain; doing business with a company owned by close relatives; an employee is closely linked with a public official, etc.

Each company should have clear policies that prohibit conflicts of interests and impose full disclosure of any potential or perceived conflict of interests, so that their risk of corruption could be managed.

³² <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353829>



2

Advantages of observing anti-corruption compliance rules for SMEs

In many countries, Moldova inclusive, the fight against corruption seems to be an impossible battle, especially for medium-sized companies with limited resources. Everybody acknowledges that corruption suppresses competition and innovation, hampers doing business, economic growth, reduces competitiveness in the private sector, leading to the development of entrepreneurs that can tailor their activity to meet these “dirty rules of the game”. In many cases, anti-corruption rules and regulations may be imperfect, ambiguous, interpretable or unevenly enforced, government measures to fight corruption remain insufficient or ineffective, the judiciary and law enforcement bodies are inefficient, and, as a result, bribes are widely accepted and used in daily activities.

In the current globalized world, where international connections can easily cross the borders and continents, compliance with anti-corruption rules provides a vital competitive advantage. Ethical and honest companies are more attractive for potential investors and have the opportunity to establish long-term relationships with their business partners. It is increasingly expected that companies would ensure not just the integrity of their own operations, but also the integrity of their suppliers, distributors and economic operators wherever they might be located.

Nowadays, there is a trend evidenced in many developed countries to adopt strict anti-corruption laws and require all private associations, SMEs inclusive, to comply with them. Along with the USA, Canada and Great

Britain, we could mention Germany, Brazil, China, etc. Compliance with high standards could be challenging for the firms, but it is also a great opportunity. Clear commitment of integrity and compliance with anti-corruption rules are strong tools to attract new business partners.

*Firms can **gain** so much when they comply with anti-corruption rules and, concurrently, they **lose** very much when they fail to prevent corruption.*

Business shall understand that it needs to comply with anti-corruption policies and to implement internal anti-corruption programmes, which is an advantage it may gain without corruption and when acting with integrity.

According to the aforementioned Survey conducted by IDIS, the interviewed entrepreneurs see more benefits for themselves if business environment is clean and healthy. Hence, **18.8%** of respondents consider they would generate more proceeds / would develop to a greater extent, **14.1%** believe they would have the opportunity to work honestly, **7.6%** are confident they would be able to pay salaries on time and grant salary increase, **7%** count on loyal competition only in this way, **6.8%** expect that taxes would be fair and differentiated, other **6.8%** consider that legislation would be complied with, **6.1%** presuppose there would be less control exercised, **5.9%** hope that red tape would vanish, and **5.3%** are confident that public procurement would be transparent, etc.

Advantages of complying with and enforcing anti-corruption policies and programmes

1. Business relations with large firms, with those with foreign capital or with joint ventures from the Republic of Moldova.
2. Business expansion beyond the country boundaries, the EU inclusive.
3. Establishing business partnerships with multinational corporations.
4. Avoiding criminal sanctions based on national laws with wide applicability.
5. Deriving advantage from favourable loans with low interest provided by international organizations.
6. Gaining the possibility to participate in public procurement procedures in the EU.
7. Reducing the business-related expenses.
8. Attracting and retaining employees with high moral principles.
9. Attracting clients and customers that are guided by ethical rules.



- 1 The Moldovan economy is small; therefore, all the people would know you are corrupt. This fact would prevent you from attracting new business partners within the country, in particular, large companies, those with foreign capital or joint ventures, which are already guided in their activity by in-house anti-corruption policies and programmes.
- 2 When a company is lacking internal anti-corruption rules, it would not be able to do business outside the country, on other markets where there are high business integrity and ethics standards in place. From the other side, implementing anti-corruption programmes would bring reputation dividends to the company, enabling it to expand its business beyond the country borders, reaching the EU market, in particular.
- 3 Multinational corporations would seek/search for those business partners in the Republic of Moldova that implement anti-corruption policies and programmes across the entity. Each important corporation has its own rules and procedures in terms of criteria for selecting foreign business partners; however, they all share several basic features. At least, responsible foreign business partners would conduct thorough analysis of your business, which usually includes collecting data on the type of ownership and affiliations of your company. Deviation history (in particular, for public officials), the finance status and audits the company was subject to, including verification if it has such elements like a code of conduct and anti-corruption policies. At the same time, multinational corporations would require your company to abide by their Code of Conduct and specify certain anti-corruption provisions (and combating money laundering) in the contracts. Consequently, companies that are transparent and have compliance programmes and anti-corruption rules in place have greater chances to establish sustainable and trustworthy business partnerships with multinational corporations.
- 4 The available compliance programmes and demonstrating commitment to comply with anti-corruption rules would help the companies avoid criminal sanctions/being held liable on the basis of national laws with wide applicability, such as the USA Foreign Corrupt Practice Act (FCPA), 1977, Canadian Corruption of Foreign Public Officials Act (CFPOA), 1998; the UK Bribery Act, 2010, etc.
FCPA, for instance, shall apply not only to Ameri-

can companies and nationals, but also to any company, foreign companies inclusive, that holds securities listed at an USA stock exchange. The FCPA coverage may be expanded even more over transactions carried out abroad following the recent judgment adopted in the USA. Hence, FCPA qualifies as offence for “any public official, director, employee or agent” if he/she “uses emails or any other interstate commerce means or tool” to furtherance corrupt offer, promise or payment to a foreign public official. In 2013, in the case *Securities and Exchange Commission (SEC) v. Straub*, a judge decided that an alleged bribery scheme devised by three directors of a Hungarian telecommunication company was in the USA jurisdiction, as many emails concerning the scheme, sent by a single “defendant”, went through a server located in the USA. The consequences of that case were not limited to emails, while the FCPA procedures may apply also on suspect global banking transactions, which cross the USA financial institutions.

Moreover, as per FCPA, for instance, a company may be held liable for the payment made to a third party, such as a local agent, supplier, distributor or other business partner, being aware that such payment would go directly or indirectly, in full or in part, to a foreign public official. The Act stipulates also that “conscious disregard”, “deliberate ignorance”, and “wilful blindness” should not serve as an excuse: if a company uses a third party to bribe local public officials, this company shall be held liable.

Similarly, based on the UK Bribery Act, a company “is pledged guilty for an offence is a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that company”. Hence, besides the fact that it penalises offering and accepting bribes, as well as bribing foreign public officials, this Act expands criminal liability over business organisations that fail to prevent bribery committed on their behalf. To avoid such situations and eventual criminal sanctions, companies shall “exercise diligence and take all necessary precautions to make sure they established business relationship with partners and representatives with reputation and qualification”. At the same time, the Bribery Act enables protecting the association against accusations to be held liable for bribery committed through its third party agents, if this association can “prove that it has in



place appropriate procedures designed to prevent the people associated with it from undertaking such conduct”. Hence, business organisations are waived from criminal liability if they have appropriate procedures in place designed to prevent the offering or taking bribes.

5 International organisations provide advantageous loans with low interest, but they would not grant such loans to corrupt companies. Those firms that have anti-corruption policies enjoy easier access to loans and have better image in the eyes of potential creditors and investors.

6 Some countries, the EU inclusive, have set for the companies wishing to participate in public procurement procedures the following requirement: to implement international integrity and anti-corruption standards.

7 The company involvement in the fight against corruption would lead to reduced business expenses. According to certain studies, the overall value of bribes paid by business people in 2015 amounted to MDL 381 million³⁴. This money, paid year-by-year, would have contributed to the private sector development, its upgrading, having ensured high quality products/services, etc.

8 Attracting and retaining the employees with high moral principles, who would like to work and have high labour productivity only in honest and service-minded companies.

9 Competitive advantage is gained, becoming the preferable choice of clients and customers who are guided by ethical rules. An honest client or customer would always give preference to honest companies.

³⁴ Sociological Study “Corruption in the Republic of Moldova: perceptions versus personal experiences of households and business people”, Transparency International Moldova, 2015.



IV. Anti-corruption Tools and Procedures in the Private Sector

1

Planning and implementing compliance programmes

By just adopting regulations and holding liable business associations for corruption deeds it is not possible to address the issue of corruption in the private sector.

*It is necessary that **business commits itself** to establish and observe compliance rules, integrity rules, business ethics rules and transparency.*

There is no one-size-fits-all solution and model for designing a compliance programme since it needs to be based on factors such as company's unique business risks, size, etc. For smaller companies, a direct replication of elaborate – and often expensive – compliance systems of large corporations is not feasible or necessary. However, every robust compliance programme should incorporate the following elements in order to prevent, detect, and effectively remediate the violations³⁵:

- *Risk assessment;*
- *Standards of conduct / policies and procedures;*
- *Compliance oversight / control, commitment and resources;*
- *Education and training / professional training;*
- *Monitoring and auditing;*
- *Reporting and investigation;*
- *Enforcement, discipline and incentives;*
- *Response, prevention and improvement.*

4.1. RISK ASSESSMENT AND MANAGEMENT

To design a robust compliance programme, a company shall firstly understand the risks associated with its operations and with the environment.

Corruption risk assessment is a diagnostic tool aimed to identify the deficiencies and weaknesses of a system, which could represent opportunities for corruption. Risk

assessment is focused more on potential corruption rather than on corruption perception, existence or expansion. In its core, a risk assessment tends to involve a certain degree of evaluation of the probability that corruption would occur and / or the impact it might have if it would be in place. **Risk management** considers what *could/should be done* in relation to these corruption risks.

³⁵ Anti-Corruption Compliance: A Guide for Mid-Sized Companies in Emerging Markets, CIPE, 2014, www.cipe.org



Guidelines for corruption risk assessment and risk management

1. Identify the main functional areas of the organisation (for instance, procurement, distribution, sales).
2. Identify the risks for each functional area and evaluate the extent of such risks.
3. Identify significant risks and evaluate the probability that such risks would occur.
4. Identify responses to risk areas.
5. Select the best response.
6. Develop risk management measures.
7. Formalise and document a risk management plan.
8. Implement the risk management plan.
9. Review and evaluate the risk management plan and how it has been implemented.

Corruption risk assessment should be done periodically. Although there is no rule on what “periodically” should mean, international best practices recommend such risk assessment to be carried out annually or bi-annually. Based on the obtained results, it is advisable to update the risk matrix and the risk management plan, which is also called the risk mitigation action plan.

The OECD Principles of Corporate Governance specify that reviewing and guiding the association risk policies is one of the key functions of the Board of Directors. The top level management body (the Board of Directors) should require the executive body of the association, the heads of subdivisions of the company to carry out and report regularly the anti-corruption risk assessments and compliance.

4.2. STANDARDS OF CONDUCT/ POLICIES AND PROCEDURES

According to the Survey conducted by IDIS “Viitorul” in 2017, the practice of designing and implementing anti-corruption programmes, tools and procedures in the private sector is not customary for the Moldovan entrepreneurs. The Survey outcomes show that **80.8%** of companies failed to design an action programme containing special anti-corruption rules and procedures. Also, the Survey shows that **76.5%** of companies do not have procedures by which they could prevent and sanction bribery, while **66.1%** of economic operators have no procedures in place to prevent conflicts of interests.

Policies and procedures help a company bring clarity and consistency to the expectations of its officers and employees.

POLICY AND PROCEDURES

In general terms, **policies** can be defined as *principles, rules and guidelines* articulated or adopted by an entity to attain its long-term goals. The policies are phrased to tackle the guiding principles in different areas and directions of company activities, such as anti-corruption, bribery or confidentiality. **Procedures**, from the other side, are *specific methods used to express the policies in action during the daily operations* of the organisation. *Procedures* translate principles in steps and actions necessary to implement specific policies, including the appointment of people responsible for each particular action.

Policy and procedures are meant to help everybody acknowledge how they are supposed to act as per precisely defined rules about evaluation, accountability and discipline.

The Corporate Governance Code or the Code of Conduct of a company is the basic documents for all policies and procedures.



4.2.1. Corporate Governance

Among the standards of conduct, policies and procedures, a particular role belongs to *Corporate Governance*, which is implemented by companies around the world. Corporate Governance is a range of *processes, practices, policies, regulatory framework* with impact on managing, directing and controlling a company.

International standards incorporate a focus on Corporate Governance. According to OECD Principles, Corporate Governance specifies the allocation of rights and responsibilities among different categories of people involved in the company, such as: the Board of Directors, directors, shareholders and other categories (employees, partners, creditors, local authorities etc.), and sets the rules and procedures of decision-making related to company activity. Corporate Governance plays an important role in protecting the interests of owners, other stakeholders, as the activities and processes within the company are made transparent and efficient, the risks that investors are not able to anticipate and/or are not willing to accept are mitigated, risks that may shrink the association investment attractiveness.

In more concise terms, *Corporate Governance* may be defined as a *Code of economic, financial and moral conduct of a company*. The Corporate Governance Code shall contain principles and particular situations (from the national and international practice) to be followed by the involved people (members of the Executive Body, Board of Directors, oversight bodies, shareholders, other stakeholders) of the association in their mutual relations.

At the same time, Corporate Governance is a key element to improve economic efficiency and growth, as well as to enhance investors' confidence. Strategic investors will assess compliance with Corporate Governance rules as part of their measures to protect the rights of shareholders and against risks of compliance with the generally accepted rules in a specific country. Potential investors will pay frequently for shares of a well-governed company. The increase of investors' trust in Moldovan companies would lead to enhanced competitiveness of companies and national economy integration in the world market.

It is important people to be aware that Corporate Governance principles do not apply exclusively to large companies. ***The Corporate Governance values and best practices apply to a variety of types of associations,***

*Establishing strong Corporate Governance within companies represents an essential way of tackling the issue of corruption. **Good Corporate Governance** is not only a tool that enhances efficiency, improves access to capital and ensures sustainability; it is also an **efficient tool against corruption**. In terms of daily transactions, bribe becomes more difficult to give and to hide. As for the decision-making level, Corporate Governance injects transparency and accountability; therefore, it is clear how decisions are taken and why.*

including SMEs. Most likely, the principles need to be tailored, taking into account the types of ownership and the risks associated with the entity activity.

Nonetheless, regardless of the size of a company or its specific governance structure, the highest management body and the Director General shall convey a clear message that corrupt practices are not allowed in the company, proving this by their own professional conduct and, likewise, introducing and supporting measures aimed at preventing bribery and other forms of corruption.

4.2.2. Code of Conduct

The Code of Conduct represents a set of values, ethics and integrity standards in everything that a company does, which guide the daily actions of employees and decisions taken by the leadership. The Code of Conduct defines the way for a company to do fair business.

It should be devised on the basis of an in-depth risk assessment and with wide company inputs, to be edited in simple language and approved by the Board of Directors (of by the highest management body). It is the ultimate expression of company values and its "tone from the top". Although the Codes of Conduct should mirror the unique culture of each company and, therefore, they should not look alike, they shall comprise the same basic principles in complying with the legislation and carrying out business with integrity.

A good Code of Conduct should define comprehensively the company general rules and values, being concurrently flexible to formulate the follow-up policies and procedures. Each Code is a blend of precise principles



and rules that match the culture of a particular company. The principles may apply individually in areas that are difficult to define in specific terms for each case, such as conflicts of interests. The precise rules are suitable for clearer areas of conduct, such as zero tolerance for bribery.

It is important to ensure proper dissemination/communication of the Code of Conduct across the company, for instance, by the fact that it is easily available in the company network and distributed to all employees in hard copies. Employees shall certify periodically in written that they have read and understood the Code of Conduct. Likewise, it is essential to say that the Code of Conduct applies equally to all company staff: from the chairperson of the Board of Directors and Executive Director to the less important employee of the company. The Code provisions should also be expanded to cover the third parties that carry out activities in the company interest and name.

A Code of Conduct shall³⁶:

- state a company's core values and principles that should guide decisions;
- specify methods for addressing specific issues that are in line with corporate values;
- describe how employees can seek guidance in ethically unclear or demanding situations;
- detail how to report breaches of the Code;
- provide a set of incentives and sanctions that ensure compliance;
- be clear about the objectives that the Code is intended to accomplish;
- seek support and input for the Code from employees at all levels of the company;
- reflect relevant laws and regulations;
- write in a simple and clear manner, avoiding legal jargon and passive voice;
- make reference to real-life situations (particularly next to definitions of what is forbidden);
- include practical examples;

- include resources for further information and guidance;
- make it user-friendly, otherwise it will not be used.

For a Code to be effective, companies shall ensure and commit to that³⁷:

- Senior officials support the Code and lead by example;
- Staff are involved in all stages of Code development and implementation;
- Support mechanisms are in place to encourage the use of the Code;
- Compliance with the Code may be taken into account in relation to career progression and promotion;
- Compliance with the Code is monitored regularly through appropriate verification means;
- Code of conduct (and general corruption-awareness) training is regular and comprehensive;
- The organization continually promotes its ethical culture (the Code is an important but not the only tool);
- The Code is enforced through disciplinary action when necessary;
- The Code is regularly reviewed for currency, relevance and accessibility;
- The Code is devised with a style and structure that meets the particular needs of their organisation;
- The Code becomes an integral aspect for influencing decisions, actions and attitudes in the workplace.

The Code of Conduct is considered to be one of the useful tools to fight corruption in the private sector.

³⁶ Assessment report on the conformity of the Moldovan national anti-corruption system to major international standards related to corruption and integrity in private sector, UNDP, 2016, available at: http://www.md.undp.org/content/moldova/ro/home/library/effective_governance/raport-de-evaluare-coruptie-privat.html

³⁷ A sample Code of Conduct for SMEs, UNDP, 2016, available at: [https://anticoruptie.md/media/Model%20de%20Cod%20de%20Conduit%C4%83%20pentru%20\(1\).pdf](https://anticoruptie.md/media/Model%20de%20Cod%20de%20Conduit%C4%83%20pentru%20(1).pdf)



This Cod comprises a set of principles for carrying out activities in a fair, transparent way, having observed the legislation and taking ethical decisions in any circumstances. Compliance with the anti-corruption principles of this Code ensured by the company and its whole staff would lead to preventing bribery and corruption.

As a rule, companies around the world include rules for prohibiting all forms of corruption in their Code of Conduct to demonstrate their commitment in combating corruption.

These rules may refer to the following³⁸:

A Employment/Recruiting;

Specific attention should be paid to the employment process generated by a relation with a client or by a business partnership.

To this end:

- Labour contracts should include anti-bribery and anti-corruption clauses. Special attention should be paid to labour contracts for functions with high exposure to bribery and/or corruption; such contracts should include specific anti-bribery and anti-corruption clauses.

Note: According to the Survey conducted by IDIS “Viitorul”, **67.1%** of entrepreneurs do not include anti-bribery and anti-corruption clauses, disciplinary procedures and other sanctions for breaching those clauses, into labour contracts with their employees as well as benefits for their observance.

- Jobs should be created to respond to the company objective needs rather than to the needs of relatives, friends or upon the request of a public official.
- No candidate recommended by a public official should be employed unless he/she has gone through an impartial employment process, and similar criteria have been applied as to other candidates for the same position.

- Special attention should be paid to the actions through which a public official may try to influence the hiring process, who asked a company staff member to provide support in finding a job for a relative, a friend, for him/herself, anticipating resignation from the (public) position held.

B Sponsorships.

Sponsorship should be provided in a transparent manner, avoiding conflicts of interests and making sure the funds and assets are used as intended.

To this end:

- The Company Management and employees should get acquainted with the provisions of regulatory acts on philanthropy and sponsorship and of any related regulations.
- In setting its sponsorship policies, the company shall: (a) keep an independent standing on public issues that are the object of sponsorship; (b) avoid the favours generated through sponsorship; (c) monitor the funds allocated for sponsoring; (d) ask the beneficiary to provide a project management plan on sponsorship; (e) avoid supporting products or services during the sponsorship campaigns; (f) avoid conflicts of interests in promoting sponsoring.
- No sponsorship shall be provided in anticipating, in recognition or in exchange of getting a commercial gain.
- Sponsorships shall be preceded by “due diligence” process, thoroughly conducted and documented, on risks relating to public activity and history of potential beneficiaries.
- The company web page should host data on expenses incurred at the account of sponsorship funds.

Note: According to the Survey conducted by IDIS “Viitorul”, only **11.2%** of companies make public the data relating to expenses incurred for sponsorships.

³⁸ Anti-corruption Principles of Amcham Romania, available at: https://www.amcham.ro/UserFiles/articleFiles/Principiile%20anticoruptie%20ale%20AmCham%20Romania_03041134.pdf



C Partners and contractors (suppliers, consultants)

Anti-bribery and anti-corruption provisions should be expressly included in the contracts concluded with business partners, aimed to prevent bribes and corruption, as well as to mitigate and limit such conduct.

- Those contractual provisions may refer to bribe, blackmail, fraud, cartel-type activity, influence peddling, money laundering, as well as any similar activity of criminal nature.

Note: According to the Survey conducted by IDIS “Vii-torul”, in their relations with business partners, 72.6% of entrepreneurs do not include anti-corruption provisions and eventual consequences for breaching those provisions in the concluded contracts.

- Firms shall notify the other contractual party any obligations regarding anti-corruption and provide expressly, for implementation purpose, disciplinary actions and sanctions for the infringements of company regulations that comprise anti-bribery and anti-corruption measures.

Note: According to the Survey conducted by IDIS “Vii-torul”, 72% of companies do not notify their own anti-corruption policies to potential business partners and do not evaluate if the latter have efficient anti-corruption programmes in place.

- Firms shall assess their exposure to bribe and corruption risks stemming from their rapports with associated persons and apply the corresponding “due diligence” procedures with the aim to mitigate bribe- and corruption-related risks.
- Payments or other remunerations for contractual services shall be expressly stated in the contract and be proportionate with the services rendered. Payments shall be thoroughly monitored to avoid their use for bribe and/or corruption activities.

D Business trips, gifts and other expenses

Throughout their rapports with public officials, companies shall comply with such principles as integrity, transactions/expenses accuracy, accountability, transparency and compliance with the regulations in force, avoiding any conflicts of interests.

To this end:

- Firms shall refrain to offer valuable assets to public officials with the aim to obtain or gain preferential treatments; by no means shall a gift pursue the goal to affect impartiality or correctness of a public official.
- Gifts should have a low/symbolic value without creating any appearance of being inappropriate or unlawful.
- Firms shall not provide honoraria to public officials; trip expenses can be refunded if they were incurred for a lawful business purpose, and shall be paid directly to the hotel/air company or to other service providers; meals shall have reasonable costs. Money or their equivalent, such as gift cards, shall not be offered to or accepted by firms.

E Political financing

Whenever engaging in financing activities of political nature, companies shall comply with the provisions of the relevant legal framework, which provides a set of rules aimed to ensure transparency, avoid conflicts of interests and guarantees that the constitutional purposes of the political process are attained.

To this end:

- Company Management and employees shall comply with the provisions of national regulatory acts on financing political party activities and electoral campaigns, as well as any other related regulations.
- Firms should implement in-house policies on financing political activities, which may include such provisions as: annual thresholds for donations to political parties, prohibiting any donations made by firms that have outstanding debts to the State Budget, as well as donation transparency.
- Financing political activities, in general, should mirror the company interests rather than the political affiliation of its administrators, officers and employees;
- No political financing shall be provided in anticipation, recognition or in exchange of receiving a commercial gain;
- Political financing shall be preceded by a “due diligence” report, which is thoroughly conducted and documented over the risks on public activity and history of political parties and candidates.
- The company web page should display data on expenses incurred for political activities out of company funds.



Note: According to the Survey conducted by IDIS “Vii-torul”, only **6.5 %** of companies publish data referring to the expenses incurred as political inputs.

F Facilitation payments

The facilitation payments are those made with the aim to ensure or to expedite the performance of a routine activity or a necessary action (e.g. payments for visa processing, customs procedures, authorisations, licences, post services, controls, phone services, water supply or electricity supply, merchandise uploading and unloading or healthcare services).

To this end:

- Firms should prohibit the use of facilitation payments and notify on such prohibition through ethical and compliance programmes.
- Firms should ensure enhanced control over all payments and expenses and keep appropriate records on advances or payments of special character, as well as on any other unusual transactions.

G Management of tender process (public procurement)

Specific anti-bribery and anti-corruption policies should have regard to public procurement as this area is greatly exposed to corruption risks due to high values involved, the number of contracts, as well as due to discretionary power of appreciation inherent to such processes.

To this end:

- Firms should observe the provision that prohibit deliberate offering, promising or providing an undue material benefit or any other favours, directly or indirectly, to a public official, so that such official does something or refrains from doing something related to his/her job duties, with the aim to get undue benefits or gains.
- Firms should have strict sanction procedures, disciplinary procedures and other sanctions for breaching bribery- and corruption-related provisions.
- Firms should promote transparency in activities related to making available relevant information associated with public procurement procedures.

Note: According to the Survey conducted by IDIS “Vii-torul”, only **8.4 %** of companies publish data on public-private partnerships and only **10.4%** of companies publish data on participation in public procurement.

H Failure to prevent bribery-related acts committed by an associated person.

Firms may be held liable for the failure to prevent bribe-related acts committed by any of their associated people. Firms may be held liable even if they were not involved directly or were not aware of bribery, without condemning the associated person for bribe.

According to the UK Bribery Act, a Moldovan subsidiary of a UK company or any company registered in the Republic of Moldova, which is doing a business, in whole or in part, (including a commercial or vocational activity) anywhere in the United Kingdom, may be sanctioned for the failure to prevent any bribery act committed by an associated person with the respective Moldovan entity.

For the purpose of the aforementioned Act, the associated person could be a company employee, an agent or a subsidiary, as well as a distributor, intermediary, partner, and, in general, any entity carrying out an activity for or on behalf of the company in question.

Moldovan firms may be held liable under the aforementioned Act to the extent they demonstrably do business in the United Kingdom, a requirement that could be considered to be fulfilled by having a regional or national operating office, by carrying out business activities such as sales or other types of business.

Firms can be sanctioned regardless of the place where bribing occurred (including the territory of the Republic of Moldova), while the legal procedures for sanctioning this offence would be unrolled in the United Kingdom.

Firms sentenced for committing this offence could be required to pay fines in unlimited amount, being also subject to seizure of benefits gained from bribery and eliminated from assigning procurement contracts throughout the EU territory.

The only admissible defence for such offence would be to prove that the company implemented “appropriate procedures” aimed to prevent committing bribery-related offences by their associated persons.



The Corporate Governance Code and the Code of Conduct in the Republic of Moldova

The national legal framework comprises few references and regulations relating to Corporate Governance and the Code of Conduct within SMEs.

The Integrity Law, Article 39 (2) comprises a general rule according to which Ethics Codes are adopted at the level of professional business associations, being taking over and elaborated at the level of business organisation in compliance with the provisions of the Moldovan legislation and with the principles of international business, covered by international business ethics codes.

References to Corporate Governance Code and Business Ethics Code for business associations could be found in the *National Integrity and Anti-corruption Strategy for 2017–2020*. Hence, Action No.9 under Priority VII.3. “Business Ethics” of the Strategy Action Plan, foresees designing and promoting sample Business Ethics and Corporate Governance Codes for business associations with the aim to ensure fair exercising of economic activities, prevent conflicts of interests and encourage applying the best business practices by undertakings, both in their mutual relations and in their relations with the State. Moreover, Action No.10 is oriented towards identifying legal incentives to promote the implementation of Business Ethics and Corporate Governance Codes to prevent corruption and ensure employees’ integrity.

Nowadays, in the Republic of Moldova Business Codes of Conduct are available only at large companies with foreign capital, joint ventures, as well as at some large domestic companies, mainly at those that have also business relations abroad.

The Survey outcomes conducted by IDIS “Viitorul” reveal that **52.8%** of companies do not have an internal Business Ethics Code/Handbook for their employees, while **41.5%** of companies have such Codes/Handbooks in place.

These answers provided by economic operators shall be viewed critically as during direct interviews or focus-group discussions they were not able to disclose any information about the availability/non-availability of such Codes, as well as on Code contents. In the case when Codes are available, an obvious question may surface about their quality and the level of enforcement of their provisions. Here, certainly, endeavours should be focused on Code improvement and on designing new Codes of Conduct based on international standards and best practices. As reference may serve the Codes of Conduct of large companies with foreign capital, joint ventures, which carry out business activity in the Republic of Moldova (e.g. Orange, Moldcell, etc.).

4.3. COMPLIANCE OVERSIGHT (CONTROL), COMMITMENT AND RESOURCES

The Board of Directors or an equivalent top management body is responsible for approving an appropriate compliance structure within the firm.

*The company executive body, with the approval of the Board of Directors, shall select and appoint an **Ethics and Compliance Officer** or a person with high qualification in the company, holding another position, but having similar functions.*

The approval of a suitable person would be, obviously, the task of an Audit Committee or of an Ethics Committee (if any) of the Board of Directors. This person should

have comprehensive knowledge about the company, as well as an **impeccable reputation of an honest person, who deserves trust**. To make the compliance function complete and efficient, the Board of Directors shall allocate also appropriate *financial and human resources* to this end as part of a wider business plan of the company, and provide sufficient time and attention to Compliance Programme oversight.

Depending on the association size, *the Ethics and Compliance Officer may work alone or be the head of a whole division*, with dedicated staff holding different positions, such as managing a warning system against corruption, furnishing compliance advice, providing trainings, investigations and reporting.



*In terms of reporting structure, the best practice would be the Ethics and Compliance Officer to **report directly to the Board of Directors** to ensure its independency relative to the executive body of the association.*

In cases where the Ethics and Compliance Officer reports to Director General, in terms of reporting, it is essential to have at least access to the Board of Directors, where there should be a primary contact person with the Ethics and Compliance Officer. Regular reporting, which, preferable, should be done not less than four times per year, should comprise presenting and discussing the objectives of the company Compliance Programme, emphasising the essential developments

related to the implementation of different compliance policies and tackling the cases of deviation. Besides regular reporting, the Ethics and Compliance Officer should have also the possibility to discuss important issues with the Board of Directors any time.

Compliance is not the exclusive responsibility of the Ethics and Compliance Officer. Ultimately, the company Management and the Board of Directors are responsible for ensuring full compliance with the legislation and with its in-house rules. The Management shall have the duty to ensure compliance with the policies and procedures, and that compliance controls are implemented accordingly. Efficient compliance shall look like a partnership between the Ethics and Compliance Officer and the company Management.

Compliance function in SMEs

*National and international anti-corruption laws shall equally apply to all undertakings regardless of their size. **There is no special exemption for smaller undertakings.***

Nonetheless, it is generally acknowledged that the measures for mitigating the risk of corruption developed by a company should be proportionate with its size and exposure to risks (risks to which it could be exposed). In other words, *to a great extent, the Compliance Programme scope depends on the company size and its business risks.*

Multinational corporations have compliance units, which frequently employ hundreds of people from around the world. It is unlikely that small companies

would be able to establish a whole unit devoted to ethics and compliance. In such companies it is possible to have only a *person responsible for compliance*. Fairly often, such companies do not have enough resources to employ a professional responsible directly with business compliance and ethics. This fact is not unusual as there are other ways through which small and mid-sized companies may structure their compliance programme with their own needs to make them efficient.

In the case of smaller undertakings there could be no need to have a compliance unit, while the position of ethics and compliance could be exercised, part-time, by a staff member employed in another position (for instance, in the legal, financial area, human resources, security or project management), who, when necessary, may rely on the knowledge and experience of other company professionals or on external experts.

4.4. EDUCATION AND TRAINING/PROFESSIONAL TRAINING

Regular *education and training* are crucial elements of any compliance programme. At the same time, they represent an important means of communication of applicable laws, as well as of company ethics standards and compliance policies to Company Management, staff and the Board of Directors. The

information presented during trainings shall be accessible for the audience and practical for fulfilling the daily routine tasks. At the same time, besides a general training session applicable to all employees, there should be tailored modules to focus on individual work responsibilities.



All employees should benefit from basic training on key compliance aspects (for instance, prevention of harassment, workplace safety, workplace security rules), including *training on anti-corruption* (such as conflict of interests, gift policy and the Code of Ethics). For the Board of Directors, top and medium level managers, as well as for employees who have direct contact with public officials, additional training shall be provided on anti-corruption issues. Also, special attention shall be paid to professional training of the Ethics and Compliance Officer, as he/she is responsible, along with the company Management, for ensuring the observance of compliance programmes.

The best practices recommend conducting, at least, *annual trainings* on ethics and compliance; however, the staff education and training shall not be limited to those training sessions only. Staff training and professional education is a *continuous process*. Training seminars could

be organised to this end, while other less costly methods could be identified for SMEs, including the support of profile associations or of NGOs.

Likewise, it is important to mention that both professional education and training play a key role in the process of company risk assessment. Common issues that evolve from questions asked by the staff and from the discussions held during those sessions offer valuable information about eventually vulnerable segments.

Note: According to the Survey conducted by IDIS “Vii-torul”, **83.4%** of companies did not conduct any training course on combating corruption for employees or managers. Moreover, only **29.9%** of companies are interested to attend free-of-charge courses, seminars and conferences on combating corruption.

4.5. MONITORING AND AUDITING

Monitoring and auditing are essential parts of the governance process and, in the context of ethics and compliance programme; they seek to ensure that the programme is implemented indeed.

The company Management shall supervise the efficiency and implementation of the Compliance and Ethics Programme. Monitoring and auditing carried out to detect breaches can ensure observance of the company ethics and compliance programme.

Monitoring is a continuous and permanent evaluation of the internal control system performance quality over time, with the purpose to continuously improve it. As a rule, it consists of regular processes used to identify warning signals, which may require more detailed evaluation. Monitoring starts often with employee interviews, conducted normally in an informal environment, such as at lunch, during a coffee-break, to encourage open discussion on risks they encounter in their daily activities and find out if they consider that the policies and procedures in place are effective. Other useful methods would be periodical questioning or conducting focus-groups with the company staff.

Auditing represents a form of monitoring focused on areas identified as high risk areas following the risk evaluation and monitoring. Auditing grants independent assurance of compliance, being oriented towards detecting, analysing, correcting and remedying specific compliance issues. The audit could be conducted by independent parties in two ways: internal audit or external audit. An internal audit, conducted by a specialised unit of the firm, is considered independent not from the organization, but from the process subject to verification by this specialised unit. External audit is conducted by independent professionals from outside the company. The audit is most often associated with finances, but any process, compliance inclusive, may be subject to audit to identify its strengths and weaknesses.

It is worth remembering that an efficient Compliance Programme implies constant improvement. As the business environment is subject to continuous change, compliance risks and challenges evolve as well and require adjustments. Consequently, the implementation process and the Compliance Programme impact should be periodically evaluated. In practical terms, improvement is done through periodical evaluation of ethics and compliance programmes, devising a plan to eliminate any identified shortcomings.



Note: According to the Survey conducted by IDIS “Viitorul”, in **59.5%** of companies the audit rules are not sufficient to facilitate prevention and revealing corruption. In terms of monitoring the anti-corruption programmes within undertakings, the Survey shows that this obligation shall be fulfilled primarily by the company Management (**39.5%**), by an external audit and certification company (**11.2%**), by an employers’ association (**10.2%**), or by an industry business association (**8%**).

4.6. REPORTING AND INVESTIGATION

One of the most important functions fulfilled by an Ethics and Compliance Officer is to establish a system at the company level, which would enable the employees to ask specific questions regarding compliance, to share their concerns and report the infringements in a confidential manner. It is essential this system to be compatible with the national legislation, in particular, with the laws on data confidentiality.

Reporting System

Reporting the errors detected within an organisation by one of its employees is known as “whistle-blowing” – a term that means “warning” or “reporting”.

Internal warning is an important source for detecting a real or a potential unethical conduct.

In many countries, reporting a non-compliant conduct may have a negative connotation as “traitor/informer/spy”. It is important that the company points out that warning on any breach of company policy, including corruption indications, is, in fact, an act of loyalty towards the company and support of its values. *Employees shall feel safe* to talk openly, and this desideratum could be achieved only if they are not fear of reprisal. This state of affairs is absolutely crucial.

However, in most cases, the whistleblowers remain exposed to the threat of being persecuted, fired or attacked physically and psychically by the person they reported about. In other cases, the whistleblowers may face full disregard of the warning they submitted³⁹. As per the legal doctrine, the whistleblower that disclosed unlawful facts and was ostracized or persecuted may claim compensation for damages from the employer.

The need of having protection mechanisms in place for whistleblowers is foreseen in a series of international conventions and regulatory acts, such as Article 9 of the Council of Europe Civil Law Convention on

Corruption, which reads as follows “Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities”. This clause applies to all employees both from the private and the public sectors. Other international documents containing provisions on “whistleblowers” include the UN Convention against Corruption, Article 33 and the Council of Europe Criminal Law Convention against corruption, Article 22, which foresee adopting by states of appropriate measures to provide protection of people who report in public interest.

An efficient reporting system should comprise the following elements:

- A** Different channels of reporting. These channels may involve a Supervisor, a Legal Adviser, Company Management or an association Attorney at Law. If the breach involved the employee’s Supervisor it is important to have other ways of reporting.

As per the provisions of international tools and best practices, people who report an unlawful act shall have cumulatively at their disposal three communication channels through which they could report real or eventual illicit acts, as well as to submit evidence about the illegal act. Such channels are:

- *Intra-institutional* – involves the entity subdivisions where the informer works, such as: direct superior,

³⁹ http://www.alianta.md/other_dox/Avertizori-WB_0.pdf



head of general division, internal security subdivision, head of the authority.

- *Inter-institutional* – involves an entity enabled or invested with power to receive and review warning reports and apply protection to whistleblowers.
- *Public warnings* – involves reporting by informer of certain illicit acts to Media or to NGOs.

Efficient operation of reporting channels for integrity warnings have the role to report the issues occurring within the company, before they could get broadened. Hence, the image threats could be prevented, as well as scandals, which affect the company trustworthy relative to its partners, investors and clients or which may attract serious sanctions.

B *Anonymous Hot-Line.* The system of a company hot-line shall be proportionate to its size and resources. In large undertakings the hot-line management is outsourced to specialised firms. However, this approach could be expensive. Smaller companies may establish other ways of anonymous reporting, such as placing a “box” in a readily accessible location within the company premises. The Ethics and Compliance Officer should check the info periodically, document it and take measures where appropriate.

C *The process of analysing the reported information.* The reported issues are reviewed, and further steps are determined. In this case, it is important to establish an efficient process of in-house investigation.

D *Real guarantee of confidentiality.* Employees who report about breaches shall enjoy confidentiality, so that they have no fear of reprisal for sincerity/openness/disclosure.

E *Rapid and effective response to reprisal, discrimination and harassment.* Even in the case when great endeavours have been made to keep the anonymity of the employee who reported breaches, he/she could be suspected by the person (people) whose conduct was reported. If suspicion is transformed into aggressive conduct, the company shall rapidly suppress/stop such conducts.

Investigations

The Ethics and Compliance Officer shall decide first if the reported information justifies full investigation (i.e. if there are sufficient reasons to commence an investigation) or if the issue is minor and could be addressed in other ways. Should an investigation be necessary, the Ethics and Compliance Officer shall decide who would carry out it, i.e. Legal Adviser, compliance division staff, Human Resources Unit, Company Management, etc. Certain complex issues may justify bringing in an external expert to do the investigation.

Following the reporting of a breach, investigation is carried out to establish all case circumstances.

If an investigation is unrolled and is headed by the Ethics and Compliance Officer, first of all, it is necessary to consult with the Legal Adviser or with a human resource expert to make sure that the investigation would be carried out in compliance with laws, company policies and would not affect evidence, which might be necessary for a successful criminal investigation. It would be required to determine what documents are subject to verification; company assets, such as employees’ computers or offices to be accessed; also, it is necessary to determine what company employees should be interviewed, including the one who reported (if it was not anonymous), all relevant witnesses, as well as the person or people subject to investigation. As per the best practices, the defendant is interviewed in the presence of another person, who would act as an objective observer and would prepare detailed Minutes of the interview. The accused person should always have the chance to present his/her arguments and explain his/her vision on the subject-matter, as there could be attenuating circumstances.

The fundamental goal of an investigation is to determine “who, what, when, where, why and how” and to determine the liability for the breach. It could be the case that certain provisional measures should be taken, such as sending the investigated person on paid-leave to await for the investigation outcomes and restricting his/her access to company computers and documents. At the same time, it is necessary to consider the possible reasons of the person who reported: was it a consequence



of any previous events or an attempt to manipulate the process.

Most companies set time-limits for investigation, e.g. 30 days from the day of reporting the information, which should ensure the investigation timeliness. Once the investigation is completed, the Ethics and Compliance Officer shall always document the findings in written in a clear and real manner. *The Report shall state facts only, comprise no presupposes or opinions and be limited to the person subject to investigation only.* This Report may be prepared by a company lawyer to confer the document the legal privilege of confidentiality. The outcomes shall be communicated back to the Legal Adviser, Management and to other people, as appropriate (Human Resources Unit, members of the Board of Directors). The person who initially reported a breach shall be also no-

tified, as well as of the person accused of committing a breach (despite the fact that the Investigation Report, as a rule, is not made available to them).

When the investigation is completed, recommendations on the next steps are to be articulated. Besides the mitigation of any damage, the next steps should comprise corrective actions for all identified issues. At the end, the investigation files shall be stored, even when the alleged breaches have not been proved.

If following the investigation it was discovered non-compliant conduct, the Ethics and Compliance Officer is required to report it internally, and the Board of Directors and the Legal Adviser shall decide, depending on the situation details and the country legislation, if it is the case to notify the competent law enforcement bodies.

4.7. IMPLEMENTATION (ENSURING RULE ENFORCEMENT), DISCIPLINE AND INCENTIVES

The whole range of disciplinary measures and possible consequences shall be clearly written in the association policies and procedures.

Punishments may vary from verbal or written reprimand, temporary suspension from the job position and financial sanctions, to dismissal.

It is difficult to generalise in terms of appropriate punishment for a certain breach, but having clear policies in place to determine the severity of breaches may help identify the corresponding answer. In case of more severe breaches, the Ethics and Compliance Officer shall work together with the internal or external Legal Adviser and with Human Resources Unit to ensure that appropriate actions are imposed.

There are two key points that shall be emphasized in terms of discipline and aspects regarding non-compliance with laws and rules:

- a) It is necessary to ensure that the punishment matches the gravity of the deed. Minor breaches should be addressed primarily via verbal warnings done by company Leadership. However, if non-compliant conduct persists, the disciplinary sanctions should be more serious. From the other side, the serious infringements such as massive fraud or bribery, may justify immediate dismissal.
- b) It is necessary to apply disciplinary measures properly and consistently. The same standard should apply to all company staff, with no special treatment, regardless their rank or position.

Using Incentives

An important part to ensure that disciplinary actions are indeed the ultimate solution is the use of **incentives**, which encourage the whole company staff to conduct as per the ethical rules and to follow the company policies and procedures.

Stimulation/Motivation determines conduct in all spheres of life. There are many ways through which simple incentives may change many things in terms of compliance.

Examples of incentives: praising ethical conduct; rewarding the Compliance Programme improvements; including ethics and compliance objectives in the annual performance evaluation process; celebrating the Day of Compliance; using financial incentives.



4.8. RESPONSE, PREVENTION AND IMPROVEMENT

Once the breach was discovered and investigated and the guilty people were sanctioned accordingly, such endeavours should be continued to **prevent recurrence of such situations**.

*The goal is to ensure permanent improvement: it is important to address not only the immediate issue, but to **eliminate also the causes conducting to the occurrence of the issues**.*

Appropriate response actions and preventive measures would vary depending on the types of breaches that occurred. These could include implementing new control mechanisms, adding audit criteria or amending and expanding the training programmes on compliance and observance of business ethics. The Ethics and Compliance Officer shall be flexible and adjust the programme to make it more efficient.

2

Anti-bribery Management System ISO 37001

Many organisations have invested time and funds to devise internal systems and processes in order to prevent corruption. **ISO 37001:2016** “*Anti-bribery Management Systems. Implementation Requirements and Recommendations*”, is designed to support and boost these endeavours.

ISO 37001 is the first international standard for Anti-bribery Management Systems that aims to help organisations fight against this risk in their activities, at all levels of the world value chains.

ISO 37001 foresees the requirements to setting, implementing, maintaining, revising and improving the anti-bribe management system. This standard is designed to be implemented in all types of organisations, for any sector type and for any bribing risk type they may encounter. The requirements of this standard enable the organisations to implement anti-bribe framework and apply efficient policies and processes against corruption. ISO 37001 can be implemented as an independent system or can be embedded into a global management system.

The Anti-bribery Management System specifies requirements regarding the following aspects:

- Adopting policies and procedures to combat corruption;
- Demonstrating ownership and commitment by the company Management;
- Providing staff training and education in the spirit of combating corruption;
- Designating a person or establishing a unit responsible for managing anti-bribe policies and supervising compliance with those policies;
- Performing periodical assessment of risks that emerged due to bribe acceptance and allocate the resources necessary to carry out comprehensive expertise of projects and business partners (clients, contractors, subcontractors, suppliers, consultants, co-business partners, agents, etc.);
- Carrying out verifications and monitoring the employees to prevent bribery;
- Verifying gifts, hospitality, donations and similar benefits to make sure those are not used for corruption purposes;
- Requiring anti-bribe commitment from the associated business partners;
- Offering possibilities to follow confidential reporting procedures (disclosing corruption deeds);
- Investigating the possible or already actual actions of bribe acceptance;
- Implementing financial, commercial or contractual control means, as well as in the area of procurement, to reduce the risk of bribery;
- Initiating procedures for reporting, monitoring, investigating, as well as for auditing;



- Taking corrective actions and ensuring continuous improvement, etc.

Organisations may opt for *certification in compliance with ISO 37001* by an accredited third party to attest that their anti-corruption management system meets the standard criteria. Although certification (or compliance) with ISO 37001 does not guarantee the absence of corruption within an organisation, the standard just enables finding out if the measures in place are appropriate to prevent corruption.

Benefits of the Anti-bribery Management System ISO 37001

ISO 37001 certification would enable the organisation to:

- Reduce the risks of bribing through the implementation of financial controls at the incipient stages;
- Continuously improve anti-corruption practices;
- Obtain competitive advantage;

- Ensure business partners and clients that you are committed to promote anti-corruption processes;
- Attract new business opportunities;
- Prevent, detect and address the risks of bribing;
- Increase international recognition;
- Promote confidence/trust;
- Reduce costs;
- Prevent conflicts of interests;
- Promote anti-bribery culture.

Here it is necessary to mention that the National Integrity and Anti-corruption Strategy for 2017–2020 makes reference to ISO 37001. Thus, Action 12 under Priority VII.3. “Business Ethics” of the Strategy Action Plan, foresees dissemination among business community of international standards to prevent corruption in the private sector (ISO 37001:2016 “Anti-bribery Management Systems. Implementation Requirements and Recommendations”) and of the sample Business Ethics and Corporate Governance Codes.

V. Developing a Joint Protective System in the Private Sector

1

Collective action – setting Alliances against Corruption

Having widespread and deeply rooted corruption in place, which affects the society in general, the individual activities of business associations seem to be insufficient to produce significant ethical changes and to enhance business process transparency. This is exactly the case when “a collective action” as a method becomes crucially important.

A collective action enables pooling together endeavours in a collective fight against corruption, with the involvement of different groups of interests, collaboration and building alliance against corruption, so that the issue could be tackled and resolved from several standpoints.

According to the Survey conducted by IDIS “Viitorul”, **81.4%** of businesses do not embark on collective or sectoral anti-corruption initiatives. Also, **86.7%** of companies are not members of associations that have the task to fight against corruption included in their programme or as a priority. Based on the Survey outcomes, one may conclude that most Moldovan companies (**71.4%**) do

not make use of any associative form to get information and assistance to prevent, combat and report business corrupt practices. In **9.6%** of the cases entrepreneurs turn to Chambers of Commerce and Industry of the country, in **6.5%** of the cases they resort to Business Associations and **6.3%** recourse to NGOs.

Consequently we have to mention that when lacking collective or sectoral anti-corruption initiatives, entrepreneurs neither embark nor become part of such processes. At the same time, it is worth saying that profile associations and other associative units do not represent for businesses genuine centres and sources of information and assistance in terms of combating corruption.

Small companies shall get associated and act jointly to oppose public officials' abuses. The fight shall be carried out through associations, not separately. By the means of association, small companies become as strong against corruption as the large entities.

Collective action advantages:

- A collective action describes diverse methods to combat corruption. It is about acting collectively and creating alliances against corruption. A collective action requires cooperation of participants from the political world, business community and society in general;
- The ultimate goal is to create appropriate and fair market conditions for all participants and to eliminate corruption temptations for all those who are interested;
- A collective action contributes to setting loyal competition requirements within a corrupt environment;
- A collective action promotes innovation, as the Offeror is selected exclusively on the basis of price, quality and capacity to innovate;
- A collective action may, if necessary, cover the legislation gaps or replace the local inappropriate legislation.



Specific methods of collective action

A Covenants of Integrity

Covenants of Integrity may safeguard that public sector contracts are assigned without corruption. This is meant to guarantee transparency of public sector contract assignment process and exclude bribery in assigning those contracts. Following an invitation to tender from a public sector entity, business associations sign legally-binding contracts and commit themselves to conduct with integrity from the beginning of the bidding process till the end of fulfilling the contract subject-matter. If the contract is infringed sanctions are imposed, including the elimination of the association from other invitations to tender. An independent observer monitors the process of contract assignment and compliance with the Covenants of Integrity. The latter ensure that the Offeror is selected based on fair criteria and serves all interested parties as means to protection the contract subject-matter integrity.

B Codes of Conduct at the sector level

Firms belonging to the same sector shall unite and develop a *Code of Ethics* or a *Code of Conduct*. These may take a variety of forms, from principle-based provisions to legally-binding agreements. In the latter case, companies that breach the Anti-corruption Code are sanctioned. Nonetheless, the principle-based Codes have an

increased level of effectiveness as public commitment to anti-corruption and transparency exercise pressure on participant companies not to breach the Agreement. Support without compromise of the superior leadership within the association concerned is essential for the success of the initiative. In the economic sectors represented mainly by SMEs, the adoption of Codes of Conduct for the whole sector, with the wide involvement of economic operators, would represent a useful and efficient tool to promote anti-corruption integrity and commitment in the corresponding sector of the economy.

C Long-term Initiatives

The long-term initiatives are especially efficient in states that are considered to be prone to corruption, as such initiatives open the way towards creating an anti-corruption culture. Anti-corruption collaboration among the Government, the private sector and society contributes to awareness raising of politicians and of general public. Acknowledging that bribery and corrupt conduct may damage the whole economy of a state brings long-term benefits for all stakeholders. Long-term initiatives set fundamental conditions that would enable Covenants of Integrity and Covenants of Compliance specific for a sector to be implemented and gain general acceptance. Their success contributes to setting a corruption-free world and helps channel financial investments and other resources towards the intended target.

2

Role of Business Associations, Chambers of Commerce and Industry, NGOs and of large companies in boosting anti-corruption initiatives

Role of business associations

As per the Law on public associations⁴⁰, a *public association* is a voluntary, independent, self-governing formation, arising as a result of free and conscious will of citizens, joined together on the basis of common professional and other interests of their members for mutual realization of economic, social and cultural rights;

it is not intended to produce financial gain. There are republican, local and international public associations established on the territory of the Republic of Moldova. Business associations are those entities that pursue mutual benefit, i.e. satisfying the particular and corporate interests of their members.

⁴⁰ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=325424>



*These profile associations may boost anti-corruption initiatives launched by SMEs, **by triggering collective or sectoral anti-corruption initiatives**, with the involvement of their members in this process.*

Hence, the undertakings engaged in the fight against corruption would not be helpless any more, but would act together to create a movement of integrity, which would lead to a clean and honest business environment.

The ways how Business Associations may support the SMEs in fighting corruption are as follows⁴¹:

- Organizing and facilitating collective action and providing opportunities for networking and information exchange. The Associations may act as contact points and as coordinators of collective activities;

- Helping SMEs reach collective agreements such as anti-corruption standards, ethical business principles and codes of conduct. They may serve as platforms for discussions to reach collective agreements and assume commitments to comply with ethical rules, including collective agreements on establishing and complying with the Code of Conduct, and to carry out other collective actions aimed at preventing corrupt practices;
- Setting up help desks and complaint boards for members. The associations may provide assistance to SMEs by collecting information on the reported corruption deeds and set up a board to collect the complaints, undertake appropriate measures, including the possibility to apply, notify the corresponding body, etc.;
- Forming confederations of business associations to have a stronger influence (lobbying for change) at higher levels of authority.

The Role of Chambers of Commerce and Industry

Based on the provisions of the Law on Chamber of Commerce and Industry⁴² and on the Charter of the Chamber of Commerce and Industry of the Republic of Moldova⁴³, the *Chamber* is a union of legal entities, a non-governmental, apolitical, non-commercial, autonomous and independent entity that represents the overall interests of Moldovan entrepreneurs, being a unique entity of such type. As per the aforementioned Law, along the entrepreneurs that are members of the

Chamber on a mandatory basis, there could be *members on a voluntary basis, such as micro-, small and mid-sized enterprises of the Republic of Moldova*.

Like business associations, Chambers of Commerce and Industry, through similar activities, may represent for business genuine centres and sources of information, assistance and training in terms of combating corruption.

The Role of NGOs

Non-governmental organisations are one of the most active parts engaged in fight against corruption. The NGOs always brought their input in developing the legislative and institutional framework for good governance and combating corruption and, by working in coalition, managed to develop and improve public policies in this area.

The NGOs support provided to SMEs in fighting corruption may be summarized as follows:

- Offering expert opinion, conducting studies and research, collecting and disseminating data in the area of corruption, monitoring the implementation of anti-corruption principles, rules, policies, and standards;

⁴¹ UNDP Report, 2016, http://www.md.undp.org/content/moldova/ro/home/library/effective_governance/raport-de-evaluare-coruptie-privat.html

⁴² <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311662>

⁴³ http://chamber.md/wp-content/uploads/2017/02/statut_CCI_aug2014.pdf



- Carrying out anti-corruption awareness-raising campaigns;
- Organising and conducting joint debates, seminars, round-tables, conferences, symposiums and other similar activities tackling the anti-corruption topic;
- Disclosing the corrupt practices of public officials and of business associations staff;
- Publishing information on good practices of companies in implementing anti-corruption policies and procedures, organizing contests and awards for ethical business practices;
- Using Media means to ensure coverage of collective actions;
- Organising trainings in the area of integrity, ethics and anti-corruption measures for SMEs;
- Setting up whistle-blower hotlines as channel for reporting corruption deeds;
- Providing advice and free-of-charge legal assistance to whistleblowers, to witnesses or victims of corruption;
- Notifying the law enforcement and judicial bodies on corruption deeds that became known;
- Establishing and/or participating in anti-corruption coalitions with other organisations with similar goals and objectives;
- Setting relations and contacts with institutions, organisations, associations, clubs and foundations from the country and abroad with identical or similar profile to exchange anti-corruption experience and joint activities to fight corruption;
- Offering a dialogue platform to be used for working together with public authorities with the aim to combat corruption.

The Role of Large Multinational Companies

Many *multinational undertakings* play a proactive role in supporting anti-corruption initiatives and in promoting high standards of business conduct for SMEs.

In this aspect, examples of methods and measures to consider are as follows⁴⁴:

- Developing a system for promoting business ethics and anti-corruption standards across supply chains, involving the introduction of a system of incentives and sanctions;
- Engaging supply chain partners in the conclusion of anti-corruption;
- Evaluating and monitoring the extent to which business partners (agents, suppliers, etc.) comply with ethical rules;
- Seeking alliances with multinational companies in order to make use of their influence and bargaining power to support SMEs in their fight against corruption;
- Convening regular round tables with supply chain partners with the objective of exchanging experiences, discussing problems and assessing possibilities for joint action;
- Launching anti-corruption initiatives within selected industries and firm clusters;
- Forming specific stakeholder alliances (e.g. with banks, information communication technology (ICT) providers and large companies) to encourage a certain group or sector of smaller firms to fight corruption through special incentives;
- Involving ICT service providers (telecommunications and IT companies) and gaining their support for specific anti-corruption initiatives (specifically in the areas of training and awareness-raising);

⁴⁴ UNDP Report, 2016, http://www.md.undp.org/content/moldova/ro/home/library/effective_governance/raport-de-evaluable-coruptie-privat.html



- Exploring possibilities of engaging financial institutions in helping SMEs fight against corruption (e.g. by facilitating access to credit to reward good business practice or to enable entrepreneurs to take legal action);
- Strengthening business coalitions by articulating particular requirements for SMEs;
- Initiating negotiations to adapt the existing Codes of Conduct to the needs of smaller businesses, etc.

Implementing the Business Anti-corruption Agenda of the Republic of Moldova 2017 – 2018

This analysis is a first step in setting and implementing compliance tools for SMEs. IDIS “Viitorul” aims to take forward the partnership with Business Associations and with the Chamber of Commerce and Industry to become real support for the private sector in the Republic of Moldova .

Further, we should keep track on the implementation of Business Anti-corruption Agenda of the Republic of Moldova 2017 – 2018 by public authorities and monitor the progress attained on each recommendation. To this end, we would make use of the tools provided by the legislation on transparency of decision-making and decision adoption by engaging in public consultations and monitoring the process until the adoption and promulgation of legislative amendments and addenda.

IDIS “Viitorul” is a research, education and public outreach entity that works in a series of areas related to: economic analysis, governance, political research, strategic planning and management of knowledge. IDIS is also a common platform that brings together young intellectuals who are concerned with the success of transition towards a market economy and open society in the Republic of Moldova.

The Institute for Development and Social Initiatives (IDIS) “Viitorul” is the successor in title of Foundation “Viitorul” and keeps, in broad terms, the Foundation traditions, objectives and action principles to include: forming democratic institutions and developing a spirit of true accountability among politicians, public officials and citizens of our country, strengthening the civil society and critical spirit, promoting the freedoms and values of an open, upgraded and pro-European society.

