

ANTI-BRIBERY CODE OF CONDUCT FOR THE BUSINESS COMMUNITY

Code of Conduct And Guidelines For Fighting
Corruption For The Business Community In
Albania

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ANTI-BRIBERY CODE OF CONDUCT FOR THE BUSINESS COMMUNITY

CODE OF CONDUCT AND GUIDELINES FOR FIGHTING CORRUPTION IN THE BUSINESS COMMUNITY IN ALBANIA



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ANTI-BRIBERY CODE OF CONDUCT FOR THE BUSINESS COMMUNITY

CODE OF CONDUCT AND GUIDELINES FOR FIGHTING CORRUPTION IN THE BUSINESS COMMUNITY IN ALBANIA

LIST OF ACRONYMS

OSCE – Organization for Security and Co-operation in Europe

WB – World Bank

OECD – Organisation for Economic Co-operation and Development

UNODOC - United Nations Office on Drugs and Crime

UNDP – United Nations Development Programme

SELDI - Southeast European Leadership for Development and Integrity

IDRA - Institute for Development Research and Alternatives

CoC – Code of Conduct

B2B – Business to business

B2PO – Business to public officials

SME – Small Medium Enterprises

UNCAC – United Nations Convention against Corruption

NCAC – National Coordinator against Corruption

CSL – Civil Service Law

INDEX

ANTI-BRIBERY CODE OF CONDUCT FOR THE BUSINESS COMMUNITY	3
LIST OF ACRONYMS.....	3
INDEX	4
INTRODUCTION.....	7
THE GOAL OF THE ANTI-CORRUPTION CODE OF CONDUCT	9
BUILDING THE ANTI-CORRUPTION CODE OF CONDUCT.....	10
ANTI-CORRUPTION CODE OF CONDUCT FOR THE ALBANIAN BUSINESS COMMUNITY	13
STANDARD CODE OF CONDUCT	13
GUIDELINES FOR FIGHTING CORRUPTION FOR THE BUSINESS COMMUNITY IN ALBANIA	21
GENERAL REMARKS	21
RISK ASSESSMENT.....	22
CALCULATING THE COSTS OF CORRUPTION IN ONE’S BUSINESS	25
16 PRINCIPLES FOR AN ANTI-CORRUPTION CODE OF CONDUCT.....	25
SUCCESS FACTORS.....	29
<i>Recommendations to businesses</i>	<i>29</i>
<i>Recommendations to the Business Community.....</i>	<i>30</i>
<i>Recommendations from the Business Community.....</i>	<i>30</i>
PRINCIPLE 1: ON ENSURING BUSINESS COMMITMENT	32
IN PRACTICE.....	32
LEGAL PROVISIONS	32
In Your Business.....	33
LEAD BY EXAMPLE	33
PRINCIPLE 2: ENSURING FULL APPLICATION	35
IN PRACTICE.....	35
IN YOUR BUSINESS	35
LEAD BY EXAMPLE	35
PRINCIPLE 3: ENSURING FULL UNDERSTANDING.....	36
IN PRACTICE.....	36
In Your Business.....	36
LEAD BY EXAMPLE	36
PRINCIPLE 4: ON EFFECTIVE PREVENTION MEASURES	37
IN PRACTICE.....	37
LEGAL PROVISIONS	37
In Your Business.....	38
LEAD BY EXAMPLE	38
PRINCIPLE 5: ON ENSURING EFFECTIVE DISCIPLINARY ACTIONS	39
IN PRACTICE.....	39

LEGAL PROVISIONS	39
In Your Business.....	40
LEAD BY EXAMPLE	40
PRINCIPLE 6: ON ENSURING EFFECTIVE REGULATION OF FACILITATION PAYMENTS	41
IN PRACTICE	41
LEGAL PROVISIONS	41
In Your Business.....	41
LEAD BY EXAMPLE	41
PRINCIPLE 7: ON ENSURING EFFECTIVE REGULATION OF CHARITABLE CONTRIBUTIONS AND SPONSORSHIPS	43
IN PRACTICE	43
LEGAL PROVISIONS	43
In Your Business.....	44
LEAD BY EXAMPLE	44
PRINCIPLE 8: ON ENSURING EFFECTIVE REGULATION OF GIFTS, HOSPITALITY AND EXPENSES	45
IN PRACTICE	45
LEGAL PROVISIONS	45
In Your Business.....	45
LEAD BY EXAMPLE	46
PRINCIPLE 9: ON ENSURING EFFECTIVE REGULATION OF POLITICAL CONTRIBUTIONS.....	47
IN PRACTICE	47
LEGAL PROVISIONS	47
In Your Business.....	47
LEAD BY EXAMPLE	48
PRINCIPLE 10: ON ENSURING EFFECTIVE PREVENTION OF CONFLICTS OF INTEREST.....	49
IN PRACTICE	49
LEGAL PROVISIONS	49
In Your Business.....	49
LEAD BY EXAMPLE	50
PRINCIPLE 11: ON ENSURING FULL APPLICATION TO BUSINESS PARTNERS AND INTERMEDIARIES	51
IN PRACTICE	51
LEGAL PROVISIONS	51
In Your Business.....	52
LEAD BY EXAMPLE	52
PRINCIPLE 12: ON ENSURING EFFECTIVE MONITORING OF FINANCIAL FLOWS.....	53
IN PRACTICE	53
LEGAL PROVISIONS	53
In Your Business.....	54
LEAD BY EXAMPLE	54
PRINCIPLE 13: ON ENSURING EMPLOYEES INTEGRITY	55

IN PRACTICE	55
LEGAL PROVISIONS	55
In Your Business.....	55
LEAD BY EXAMPLE	56
PRINCIPLE 14: ON ENSURING INTERNAL/EXTERNAL AUDITS.....	57
IN PRACTICE	57
LEGAL PROVISIONS	57
In Your Business.....	57
LEAD BY EXAMPLE	58
PRINCIPLE 15: ON ENSURING REPORTING VIOLATIONS.....	59
IN PRACTICE	59
LEGAL PROVISIONS	59
In Your Business.....	59
LEAD BY EXAMPLE	60
PRINCIPLE 16: ON ENSURING EFFECTIVE COMMUNICATION	61
IN PRACTICE	61
IN YOUR BUSINESS	61
LEAD BY EXAMPLE	61
REFERENCES	62
FOOTNOTES.....	64

INTRODUCTION

Corruption is, in broad terms, as any act of giving or taking something in order to receive a favourable treatment in return.

In Albania, corruption and bribery represent one of the main obstacles within the business sector (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013) and affect economic performances. “Corruption and other forms of crime are a great hindrance to private enterprise and have a negative effect on private investment. A significant percentage of businesses pay bribes to public officials repeatedly over the course of the year.” (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013)

In order to develop effective anti-corruption measures, such as specific business codes of conduct, at national level, it is necessary to understand the Albanian context related to these issues. Even though corruption may be difficult to quantify, some surveys conducted by the World Bank (WB & IFC, 2013), UNODOC (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013), SELDI (SELDI, 2014), OSCE & IDRA (OSCE & IDRA, 2015) help to highlight how much corruption affects the business sector in Albania.

These studies provide a number of useful insights on the business climate in Albania with a focus on corruption:

On the perception of corruption



- Corruption is considered the second most relevant obstacle for business activities (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013);
- According to surveys carried out by UNODOC (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013), over eight out of ten companies (85.1 per cent of respondents) maintained direct informal contact with a public official or civil servant (in the year prior to the research);
- Accommodation and transportation is one of the business sectors more affected by corruption as well as those where it is more common to interact with public officials, including, police officers, customs officers, tax/revenues officers and municipal or provincial officers. (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013)
- Even though the level of corruption awareness is high in the Albanian scenario, bribery often is considered a tool for getting things done or receiving better treatment. (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013)

On general trust and interaction with the public sector



- Relating to other conventional crimes, the rates of crimes such as fraud by outsiders and bribery are higher, yet the reporting rates of fraud by outsiders and bribery are far below those of the former. This gap implies a lack of trust in authorities and in business anti-corruption measures. (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013)
- Business representatives declare that in almost 1 out of 4 cases of interactions with public officials (thinking about all interactions within a year) bribe payment is involved. (OSCE & IDRA, 2015)
- Business-to-business (B2B) bribery is also considered a way that allows gaining an unfair advantage over rival businesses. (UNODOC, Business, Corruption and Crime in Albania: the impact of bribery and other crime on private enterprises , 2013)

Although about 2 in 3 businesses surveyed say that “Bribery and Corruption” are an inevitable cost of doing businesses in Albania (OSCE & IDRA, 2015), there is a growing understanding of both B2B and business to public officials (B2PO) corruption and of its costs. In fact, the majority of businesses in Albania (86%) would “prefer a system where public officials never accepted presents/bribes and never did any favours.” (OSCE & IDRA, 2015)

Moreover, during the last years in Albania, there have been some important developments with relevance to anticorruption:

- In 2006, Albania complied with the United Nations Convention against Corruption (UNCAC) (UNODOC, 2006);
- In November 2013, a National Coordinator against Corruption (NCAC) has been established in order to manage public and independent institutions, both at national and local level in monitoring and reporting vis a vis the anti-corruption policy;
- In March 2014, “corruption” has been included in the scope of the amendments of the law “For the Prevention and Fight Against Organized Crime through preventive measures against property” or better known as “Anti-Mafia” law (The Republic of Albania, 2004);
- In February 2014, The new Civil Service Law (CSL) became effective;
- In September 2014, the new law on the right to information has been adopted. (SELDI, 2014)

Besides the direct, legal consequences of the criminal act of corruption, engaging in corruption practices is increasingly understood as a risk for a business's reputation and standing within the national and international business community. Therefore, a business designing, implementing and complying with comprehensive internal policies and practices on anti-corruption is effectively engaging in a medium to long-term development plan, which will ultimately pay back in terms of financial sustainability and reputation.

Self-regulatory mechanisms and compliance system seems to be still lagging behind in Albania, and the more so among micro- and small businesses. Moreover, the mobilisation and representation capacity of many business organisations seems still limited.

An Anti-Corruption Code of Conduct is therefore to be interpreted as an opportunity for businesses to entrust their development strategy in a more sustainable and ethical perspective. This will ultimately free revenue loss from corruption, safeguard them from corruption pressure, increase their reputation and standing, increase their appeal to business partners and consumers; in a word, becoming leaders in the future Albanian business community.

THE GOAL OF THE ANTI-CORRUPTION CODE OF CONDUCT

Every day, businesses are facing new and unprecedented challenges, which often intervene in contexts, which are not adaptive and up to those very challenges. Within a global business community constantly and rapidly evolving, a business has to adapt to remain at the top and be a competitive player in international and local markets.

Complying with fair competition practices and endorsing high ethical standards are more and more key driving principles for any business. Committing to the Anti-Corruption Code of Conduct contributes to keeping a business in line with global best practices and represents the base line of a business understanding of the values and culture it wants to endorse and maintain.

An Anti-Corruption Code of Conduct is:



a business-specific tool to anticipate and prevent corruption.

A Code of Conduct is a document designed by a business to anticipate and prevent certain specific types of behaviours, which may endanger the business reputation and its capacity to grow. There are no formal models or standards for a Code of Conduct. However, a successful Code of Conduct needs to highlight clearly the principles and values endorsed by a business whilst describing the behaviours all actors connected to that business should comply.



a guideline to ensure compliance and adequacy of internal and external practices to the business's anti-corruption commitment.

A Code of Conduct on Anti-Corruption is not a compulsory law or regulation but it is essential to both protect the employees while at the same time protecting the reputation of the business itself. Therefore, it is not a stand-alone document. Its purpose is to explain – in simple and concrete terms – a business's requirements about existing laws and the documents according to which a business is managed. Accordingly, the Code of Conduct does not replace existing legal provisions, nor does it expand or

restrict their scope but it ensures a business full compliance to the ethical principles and laws concerning anti-corruption. Whilst providing a broad range of guidance concerning standards, integrity and the conduct required from a business's ownership, management and employees, the Code of Conduct cannot address all possible situations. Therefore, a Code of Conduct is not a substitute for personal responsibility, but is intended to serve as a guideline for a business to carry out its ordinary and extraordinary actions in full respect of the ethical principles and laws concerning anti-corruption.

This document provides both a general framework for business to develop an Anti-Corruption Code of Conduct and guidance to stimulate a business on identifying what should be included in its own Code or formally added to its existing standards.

BUILDING THE ANTI-CORRUPTION CODE OF CONDUCT

The Anti-Corruption Code of Conduct and its guidelines extensively draw from international best-practices and reference documents, with the aim of tailoring such instances to the Albanian needs and context.

In-depth interviews were conducted with stakeholders from both the business community and the public sectors in order to set international guiding principles within the Albanian context.

This document was finally validated through focus group interviews carried out with Albanian businesses, representatives from both Albanian business associations and foreign businesses association in Albania and stakeholders from the public administration.

Ultimately, this document aims to provide the Albanian Business Community with a reference tool and a companion allowing businesses to address anti-corruption practices in line with global reference principles.

The reader can deepen the contents of this document by accessing directly to the main reference tools used in drafting this document. Each document is accessible online by scanning the QR Code with a smartphone QR Code reader app.

Business Principles for Countering Bribery. SME edition by Transparency International (2008)



This Business Principles for Countering Bribery – SME edition is intended to be an anti-corruption reference instrument specifically addressed to small and medium enterprises that have to implement their anti-corruption policies. It can be used as a guide to overcome the obstacles faced by SMEs in order to respect the international requirements.

OECD Guidelines for Multinational Enterprises by OECD (2011)



The OECD Guidelines for Multinational Enterprises are one of the most relevant reference tools at the international level. Through the application of these recommendations, governments provide a non-binding reference tool for multinational enterprises, in order to provide them with responsible principles of business conduct.

ICC Rules on Combating Corruption by International Chamber of Commerce (2011)



The ICC Rules on Combating Corruption have been drafted to assist companies to comply with the international anti-corruption framework. They can be used by enterprises as the basis for self-regulation to prevent corruption and additionally to avoid any attempts at extortion or solicitation of bribes.

ICC Anticorruption clause by International Chamber of Commerce (2012)



The ICC anticorruption clause has been prepared with the aim of assisting companies in fighting B2B corruption. It can be included in any commercial contract between parties, whereby each party undertakes to comply with applicable anti-corruption rules. The clause has been included in the guidelines with the consent of the ICC.

Anti-Corruption Ethics and Compliance Handbook for Business by OECD – UNODC – World Bank (2013)



The Anti-Corruption Ethics and Compliance Handbook for Business is a manual elaborated by OECD, UNODC and World Bank in 2013, whose purpose is to implement tools to fight internationally against corruption within the private business sector. It is intended to be a non-binding guide for companies that are looking for practical instruments, in order to prevent and discourage inappropriate behaviours. Therefore, its first part helps to identify the international scenario on business corruption; the second one explains how to assess risks within the business sector; the last one provides guidance instruments to elaborate an effective anti-corruption code, based on a comparative analysis of the main relevant practices operated by companies.

Business Principles for Countering Bribery by Transparency International (2013)



The Business Principles for Countering Bribery, elaborated by Transparency International in 2013, aims at providing a reference tool for companies that have to improve their anti-corruption policies, according to new international practices. The first version was published in 2003; its review focuses on the need of risk assessment prior to the development of effective measures to counter bribery.

OECD Guidelines on Corporate Governance of State-Owned Enterprises by OECD (2015)



The OECD Guidelines on Corporate Governance of State-Owned Enterprises were elaborated for the first time in 2005, and updated in 2015. They are intended to be a reference tool for governments, whose duty is to allow State-Owned Enterprises to perform in an efficient manner, according to both accountability and transparency international standards. The purpose of these recommendations is to regulate both passive governments' ownership and excessive state intervention.

User's guide to Measuring Corruption and Anti-Corruption by UNDP (2015)



The User's guide to Measuring Corruption and Anti-Corruption aims at presenting the existing tools on the impact assessment of corruption policies and programmes, in order to measure the effects of anti-corruption actions. It is addressed to practitioners, so to provide them with reference indicators and models to counter bribery and corruption.

Booklet for Business Ethics by Foreign Investors Association of Albania (2016)



The Booklet for Business Ethics is a manual elaborated by Foreign Investors Association of Albania, which aims at helping companies to build an effective code of ethics in the Albanian context, focused on anti-corruption practices. These guidelines have been implemented based on existing codes of conduct of business operating in Albania and on key elements provided by international organizations that operate in the business ethics sector.

ANTI-CORRUPTION CODE OF CONDUCT FOR THE ALBANIAN BUSINESS COMMUNITY

STANDARD CODE OF CONDUCT

PREAMBLE

The OSCE presence in Albania, considering its aim of enhancing a fair, transparent and honest business environment in Albania;

Conscious of the importance of enforcing and promoting a sound international business environment through the fight against bribery and corruption;

Emphasising that corruption represents one of the main obstacles to the economic development and a threat for the market environment;

Recognising the negative effects of corruption on the development of business community, companies and on the employees;

Recognising that the fight against corruption is achievable only through the commitment and synergy of both the private and the public sector as well as of the international community;

Taking into account all international and local laws regulating business conduct and anti-corruption prevention measures;

Has elaborated the following Anti-Corruption Code of Conduct for the Albanian Business Community:

Article 1

Business commitment

1. The company shall have a zero tolerance approach to bribery and corruption, whether with public officials or with private actors, and, additionally, the company commits to uphold all laws and promote best practices relevant to countering bribery and corruption in the Albanian business environment.

2. The shareholders/sole shareholder, the members of the board, the managing Director and senior management of the company are committed to applying the fundamental values of integrity, transparency and accountability with the aim of

upholding good commercial practices among businesses and in the contractual relations of businesses with the State.

3. No business objective is more important than the company's compliance with the law and the practices of proper commercial conduct. Such commitment enhances the company's reputation. Hence, in achieving business objectives, the company always adopts, adheres and promotes the highest standards of business integrity and ethics, and ensures that the actions of each and every directors, officers, and employees complies with all applicable laws and regulations in the Republic of Albania and international standards.

4. No Company director, officer/manager and employee have the power to require any action or inaction that would make this Code of Conduct or its provisions ineffective. This Code of Conduct is not subject to waivers or exceptions because of unfair competitive practices in the Albanian market or commercial necessities, industry customs or other exigencies.

5. It is the duty of every employee, irrespective of their position, to distribute and make available this Code of Conduct to other employees and their teams. Any employee who infringes this Code of Conduct or authorizes or, by negligent behaviour, allows another employee under his supervision to violate it is subject to disciplinary action, in accordance with company's rules and procedures on human resources.

Article 2

Scope of application

1. This Code of Conduct applies to all Shareholders, directors, officers/managers and employees of the Company and all of its subsidiaries.

2. This Code of Conduct shall apply to all business transactions that the company is part of

whether concluded by the company itself or third parties/intermediaries. It applies to the Company's business transactions with third parties in both the public and private sectors, including the Company's vendors, suppliers, representatives, contractors, subcontractors and agents.

Article 3

Understanding corruption terminology

1. For the purposes of this Code of Conduct, with the aim of creating a common understanding of the terms used in it, the following definitions shall apply:

- 1.1. **Corruption** means the abuse of entrusted power for private gain.
- 1.2. **Bribery** is the offering, promising, giving, authorizing or accepting of any undue pecuniary or other advantage by or for (a) a public official at international, national or local level; (b) a political party, party official or candidate to political office; and (c) a director, officer or employee of an Enterprise, whether these practices are engaged in directly or indirectly, including through Third Parties, or for anyone else in order to obtain or retain a business or other improper advantage. Bribery often includes (i) kicking back a portion of a contract payment to public or party officials or to employees of the other contracting party, their close relatives, friends or Business Partners or (ii) using intermediaries such as agents, subcontractors, consultants or other Third Parties, to channel payments to public or party officials, or to employees of the other contracting party, their relatives, friends or Business Partners.
- 1.3. **Active corruption in the private sector** means the direct or indirect promise, offer, or giving to a person, who exercises a management function in a commercial company or who works in any other position in the private sector, of any irregular benefit for himself or a third person, in order to act or in order to fail to act, contrary to his duty.
- 1.4. **Passive corruption in the private sector** means direct or indirect soliciting or taking of any irregular benefit or of any such promise, for himself or a third person, or accepting an offer or a promise that follows from the irregular benefit, of the person that exercises a management function or works, with whatever position in the private sector, with the purpose to act or not to act contrary to his duty.
- 1.5. **Active corruption of public officials** means the direct or indirect proposal, offer, or giving, to a person, who exercises public functions, of any irregular benefit for himself or a third person in

order to act or not act, that is related to his duty.

- 1.6. **Passive corruption by public officials** means soliciting or taking, directly or indirectly, by a person who exercises public functions, of any irregular benefit or of any such promise for himself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in the exercise of his duty.
- 1.7. **Facilitation payments**, also called 'facilitating', 'speed' or 'grease' payments, are small payments made to secure or expedite the performance of a routine action to which the company is entitled.
- 1.8. **Conflict of interest** is a situation of conflict between the employees' duty and the private interests of that employee, in which he has direct or indirect private interests that influence, have the potential to influence, or are perceived to influence the performance, in an incorrect way of his responsibilities and duties.
- 1.9. **A perceived conflict of interest situation** is a situation in which the private interests of the employee seem, on their face or by their form, as if they have influenced, influence or might influence the performance of his/her duties and responsibilities in an incorrect way, but, in fact, the influence has not occurred, is not occurring or cannot occur.
- 1.10. **A potential to influence conflict of interest situation** is a situation in which the private interests of the employee might in the future cause an actual or a perceived conflict of interest to appear, if the employee were to be included in certain duties or responsibilities.
- 1.11. **Related person** is any person who has a personal or financial relationship with the employees of the company, or any person who in case it engages in activities with the company it could reasonably be expected to affect the employee's judgment contrary to the interests of the company. The following persons are presumed to be related persons: (a) spouse, or/and parents, brother or sister of his spouse (b) child, parent, brother, sister, grandchild or a spouse of any of the foregoing (c) a relative of direct vertical lineage and horizontal lineage to the second level of kinship, adopter and adoptee, a spouse's relative to the first level of kinship; and (d) an individual having the same home as the employee.
- 1.12. **Lobbying** includes all activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of national

and local institutions, irrespective of the channel or medium of communication used.

- 1.13. **Public official** means every person who performs duties and exercises public functions.
- 1.14. **Whistle-blower** means a person employed or that has requested employment or has previously worked with the company, who due to reasonable belief or circumstances indicating existence of corruption within the company in good faith reports to the authorized person or High Inspectorate of Declaration and Audit of Assets and Conflicts of Interests (“HIDAACI”) any suspected acts of corruption in line with law 60/2016 “On whistle blowing and protection of whistle-blowers”
- 1.15. **Anti-corruption risk assessment** encompasses the variety of mechanisms that the company uses to estimate the likelihood of particular forms of corruption within the company and in external interactions, and the effect such corruption might have.
- 1.16. **Kickbacks** are defined as a return of a portion of a monetary sum received, especially as a result of coercion or a secret agreement. **Kickbacks** are bribes fulfilled after a contract has been awarded. They take place in purchasing, contracting, or other departments responsible for decisions to award contracts. The supplier provides the bribe by kicking part of the contract fee back to the buyer (or buyer’s employee), either directly or through an intermediary.
- 1.17. **Charitable contribution or donation** means offering of funds or other physical assets through a contract or any other agreement to support the achievement of the goals of a non-governmental organisation.
- 1.18. **Sponsorship** means offering of financial and material support to social and public activities.
- 1.19. **Political contribution** means (A) any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose; (B) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and (C) includes the provision of personal services for any political purpose.
- 1.20. **Third party representative** includes any subsidiary, joint venture, agent, representative, consultant, lobbyists, brokers, marketing agencies, law firms contractors, suppliers or any other intermediary under the effective control of the company

Article 4

Measures for combating corruption

1. This code of conduct is a reflection of the company’s commitment and programme in preventing corruption and bribery from occurring in all activities under its effective control.
2. The company’s programme in preventing corruption includes the following rules and procedures:
 - 2.1. Organizational framework – the organizational framework of the company has clear roles and responsibilities attributed to each function and are based on the principle of segregation and separation of functions.
 - 2.2. Operating procedures – the company has in place operating procedures that regulate the activities carried out by each structure of the company.
 - 2.3. Management control and auditing rules and procedures.
 - 2.4. Rules and procedures on human resources (including recruitment, training and disciplinary measures).
 - 2.5. Rules and procedures on procurement.
 - 2.6. Rules and procedures on prevention of conflict of interests.
 - 2.7. Rules and procedures on risk management.
 - 2.8. Rules and procedures on internal and external communication.
 - 2.9. Rules and procedures on hospitality and expenses.
 - 2.10. Rules and procedures on conducting due diligence on business partners, agents and intermediaries.
3. The company is committed to update its measures in combating bribery and corruption based on continuing risk assessment. The company undertakes corruption risk assessment in compliance with international best practices and in consultation with employees, trade unions or other employee representative bodies and other relevant stakeholders. To this aim, in accordance with the rules and procedures on risk management, [responsible officer] is responsible for oversight and implementation of corruption risk assessment.
4. The managing director is responsible for supervising that the Programme is implemented effectively, and it reports to the Board of Directors/Supervisory Board/Shareholders’ Meeting every 6 months on the effectiveness of the programme.
5. All Directors and officers/managers of the company and any employee in a position to influence business results have a duty to certify every year, in writing, that (a) they have reviewed the code of conduct, (b) have complied with the company’s programme in preventing corruption and bribery, and (c) have communicated to the [designated corporate

officer responsible for integrity compliance matters] any information they may have relating to a possible violation of the Programme by other company employees or business partners and intermediaries.

Article 5

Zero tolerance policy against corruption

1. Corruption in the public and private sectors are criminal offences and punishable by imprisonment in accordance with Albanian Criminal Code. The Company has a zero tolerance policy toward bribery and corrupt conduct in any form.
2. The company does not allow any improper inducements involving Public Officials, customers, suppliers, and all other counterparties.
3. Shareholders, directors, officers/managers, employees, and third party agents/intermediaries with the power to represent the Company are strictly prohibited from, either directly or indirectly through a third party, giving, offering, promising, or authorizing any improper or unlawful financial or other advantage, or anything of value, to a Public Official or any other individual or organization, with the intent to exert improper influence over the recipient, induce the recipient to violate his or her duties, secure an improper advantage for the company, or improperly reward the recipient for past conduct.
4. The Company also prohibits requesting, soliciting, agreeing to receive, or accepting a bribe, kickback, influence payment, or any other improper or unlawful inducement, benefit or advantage.
5. These prohibitions are to be interpreted in the broadest possible sense.

Article 6

Facilitation payments

1. The company has a strong stance against any form of corruption. The company is aware that refusing to make a facilitation payment may lead to commercial delays, for example, in the granting governmental permits/licences/authorisations, and that there may be loss of income to the company attributable to this strong stance against any form of corruption. Irrespective of these facts, the company, its employees and third party agents/intermediaries with the power to represent the Company will not make facilitation payments, even though it might be in the short term in the best interest of the company.
2. If employees and third party agents/intermediaries with the power to represent the Company are requested, directly or indirectly, to make a facilitation payment, or they might perceive that they are in a situation where it is highly likely to do so, they should report the situation to their direct manager without delay.
3. The managers will then ensure that the managing director is informed in writing no later than three days from the date the report was received. The

managing director cooperates with business organisations and relevant state authorities to solve the issue in compliance with applicable legislation.

Article 7

Charitable contributions and sponsorships

1. Charitable contributions/donations and sponsorships to government entities or public officials, or to those parties affiliated with them, can be made only as a bona fide charity and in cases where the public official does not exercise any supervisory authority over the company or the company is not part of any administrative procedure where the public official is involved. Charitable contributions/donations and sponsorships cannot be made as part of an exchange of favours with a Public Official.
2. The company makes charitable contributions and sponsorship in accordance with the Albanian legislation in force and they should be transparent regarding the identity of the recipient, the amount received as a sponsorship, and the purpose for which it is intended.
3. If a public official has requested a donation to a specific charity or non-profit organization, even if these organisations are well-known, it may be considered a bribe if the donation improperly influences or it might be perceived to improperly influence any act or decision of that official. In cases where a Public Official has promised any benefit or issued any threat in connection with a donation request, then the company shall deny the request.
4. The company records, in accordance with national and international accounting standards, any contribution and sponsorship made to the government entities and public officials. Additionally, the company discloses on its website all charitable contributions and sponsorships.

Article 8

Gifts, hospitality and expenses

1. In some cases, a gift or gesture of respect or gratitude may be an appropriate way for business people to display respect for each other. However, in accordance with the rules and procedures on hospitality and expenses gifts should be symbolic, small and reasonably priced. The company does not use gifts or favours to influence business decisions. Employees and third party agents/intermediaries with the power to represent the Company are prohibited to give or receive a gift, meal, entertainment, or other hospitality benefit with the intent to improperly influence a Public Official or any other party doing business with the company.
2. In no case hospitality or expenses are allowed whenever such arrangements could improperly affect, or might be perceived to improperly affect, the outcome of procurement or other business

transaction and are not reasonable and bona fide expenditures.

Article 9

Political contributions

1. Political contributions, direct or indirect, on behalf of the company, may be made only with the authorization of the Managing Director/Board of Directors/Supervisory Board/Shareholders' Meeting. These restrictions apply not only to cash contributions, but also to contributions in kind or services.
2. In any case, the amount that the company may give to an electoral subject may not be larger than the amount provided by the relevant legislation.ⁱ Furthermore, the company is prohibited to make political contributions if (a) has received public funds, public contracts or concessions in the last 2 years, exceeding the amount provided by applicable legislationⁱⁱ (b) has been a partner with public funds in different projects and (c) has monetary obligations towards the State Budget or any public institution.
3. All donations must be accurately recorded in the Company's books and records.

Article 10

Conflicts of interest

1. A situation of conflict of interest results when personal interests of employees' or related parties either influence, have the potential to influence, or are perceived to influence their decision making at the Company. The Company is committed to conducting business in a manner that ensures the business judgment and decision making of directors, managers/officers, employees and third party agents/intermediaries with the power to represent the Company is not influenced by undue personal interests.
2. In accordance with the Company's rules and procedures on prevention of conflict of interests, directors, officers and employees should not become involved in any activity which would conflict or interfere with the performance of their duties to the Company.
3. The following cases are indicative of cases where a conflict of interest may arise. A conflict may arise, for example, when directors, managers/officers, employees and third party agents/intermediaries with the power to represent the Company or a related person:
 - 3.1. Has an interest in the business performance and financial wellbeing of a supplier, customer or competitor;
 - 3.2. Enters into a contract or takes any other business decision motivated by a personal interest, irrespective of whether it is a financial or non-financial interest;
 - 3.3. Receives, directly or indirectly with the intermediation of third parties, of financial

benefit, including the creation of a future financial resource, from a supplier, customer or competitor;

- 3.4. seeks or to accepts, directly or indirectly, gifts, favours, promises or preferential treatment, from suppliers, customers, competitors or public officials given because of his position which are not in accordance with the company's policies;
- 3.5. Uses Company assets or his/her position for private purposes.
4. Employees/managers/directors have a duty to prevent and to withdraw, as soon as possible, from any situation where a conflict of interest might exist. To this aim, employees have a personal responsibility to:
 - 4.1. be alert to any actual or potential conflict of interest;
 - 4.2. take steps to avoid such conflict;
 - 4.3. disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
 - 4.4. comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

Article 11

Business partners and intermediaries

1. This code of conduct and the rules and procedures implementing it are applicable to all third parties and business entities over which the company has effective control.
2. The Company, in accordance with its rules and procedures on conducting due diligence on business partners, agents and intermediaries, undertakes anti-bribery due diligence of business entities. Such procedure is mandatory when entering into a substantial relationship including mergers, acquisitions and significant investments. Records of each due diligence check must be kept for a period of at least five (5) years
3. The company does not enter into business relationships with business entities known or reasonably suspected to be paying or receiving bribes. The company shall promote the use and enforcement of anti-corruption codes of conduct with all business partners and other third parties.
4. The company performs reasonable and proportionate monitoring of its significant business relationships. When it is proportionate and if contractual agreed the company might inspect the books and records of its business partners and subsidiaries.
5. The company does not channel improper payments through third parties. In accordance with the Civil Code, third parties are remunerated in accordance with normal business practices in Albania, or, if a business practice for a service does not exist,

intermediaries are entitled to an appropriate and justifiable remuneration for legitimate services rendered.

6. In accordance with the anti-corruption risk assessment agents and other third parties receive specific training on the company's anti-corruption programme tailored to relevant needs and circumstances of the agents and other third parties..

7. The company conducts procurement procedures in a fair and transparent manner, with the aim of promoting efficiency and effectiveness, and ensuring a better use of funds and reduce procedural costs.

8. Any contract with a third party or with a business entity over which the company has effective control shall include an anti-corruption clause. A model clause is provided under Appendix A of this Code of Conduct.

Article 12

Internal controls and recordkeeping

1. In accordance with our rules and procedures and national and international accounting standards, the company has a high standard in maintaining the integrity, accuracy and reliability of the company's books, records and financial statements.

2. The objective of financial statements is to provide information about the financial position, financial performance, and cash flows of the company that is useful to a wide range of users in making economic decisions. To meet that objective, the financial statements provide information about the company's: (a) assets (b) liabilities (c) equity (d) income and expenses, including gains and losses (e) contributions by and distributions to owners (in their capacity as owners) and (f) cash flows. That information, along with other information in the notes, assists in maintaining a high level of transparency, integrity and reliability of financial documents.

3. In accordance with relevant tax and accounting laws and regulations, the company records all payments in corporate books, records, and accounts in a timely manner and in reasonable detail. False, misleading, incomplete, inaccurate, or artificial entries in the books and records of the company are strictly prohibited.

4. Any contract with business partners and other third parties accurately reflect the price and other financial terms of the parties' agreement. Hence, business records shall accurately reflect all financial terms of the transactions. Any transaction that is recorded with false, misleading, incomplete, inaccurate or artificial entries in the books and records shall be a cause for disciplinary procedures, in accordance with applicable legislation.

5. It is mandatory for all payment above 150.000ⁱⁱⁱ ALL to be made through official bank transfer. In any case, the company shall make best efforts to make any payment through official bank transfer. In case a bank

transfer is not possible, the company properly documents the transaction in its accounting books.

6. Violation of these laws and regulations can result in Company and personal employee liability.

Article 13

Employees' integrity

1. The company believes that it is paramount for the implementation of this Code of Conduct recruiting employees that adhere to the values and principles of the company. To this aim, the company preserves the integrity of employees by applying the following principles:

1.1. The company appoints an employee to a managerial position only if the integrity of that employee has been verified.

1.2. Where a new employee is to be appointed, the managing director/human resources department shall comply with the rules and procedures on human resources (recruitment procedure, pre-employment vetting and appropriate background checks).

1.3. Additional attention it is paid by the managing director and human resources on anti-corruption training provided to employees who may be exposed to corrupt pressures, particularly if they interact with public officials.

1.4. The company shall not employ or enter into any other remunerative agreement with public officials after their resignation or retirement or with any entities and persons related to them. Such prohibition is applicable in cases when: (a) the public official held a function that supervised/controlled/licensed the activities of the company; (b) the public official is employed/contracted for activities relating directly to the functions held or supervised by him during his tenure and (c) the public official is employed/contracted for activities or public functions that he/she is able to exercise material influence.

Article 14

Auditing

1. The company is committed to conducting internal and external audits to ensure compliance with the anti-corruption laws and additionally, to bring to light any transactions which contravene this code of conduct or applicable accounting rules. Findings of internal and external audits can be used for initiating disciplinary actions against employees and for improving the anti-corruption programme of the company.

2. The Audit Committee/the managing director/the Board/the external auditing company has the right to make an independent assessment of the adequacy of the company's programme in preventing corruption and bribery and disclose its findings in the Annual

Report to shareholders. Such report is made public on the company's website.

Article 15

Raising concerns and seeking guidance

1. The Company is committed in providing guidance and advice to all its employees irrespective of their function, and, where appropriate, business partners, on complying with the company's anti-corruption programme, including when they need urgent advice on difficult situations. To this aim, any questions regarding the application of this code should be addressed to the [Legal or Compliance Department or in case no legal or compliance department exist, to the Managing Director].
2. Any person, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as any person that is aware alleged corrupt actions or practices, and is willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds is encouraged to report such activities to [responsible unit on whistle-blowers within the organisation] by e-mail [xxx] or phone [xxx] or to the HIDAACI.
3. All reports of non-compliance with the code of conduct will be reviewed as a priority. The report should contain at least the following information: (a) contact details of the whistle-blower (b) a description of the facts and circumstances, accompanied by relevant evidences, to the extent possible (c) a referral to the criminal code provision, to the extent possible, of the alleged act or corruption practice (d) in case of external whistle-blowers, the causes and circumstances for using the external whistle-blowers mechanism.. Once a matter has been investigated, it is reviewed by the [responsible company organ such as compliance, legal or audit department]. If infringements are found a formal disciplinary action against the employee, in accordance with the rules and procedures on human resources, shall be initiated.
4. In accordance with law on whistle-blowers and international best practices the company prohibits any retaliation or threatened retaliatory action against any employee who reports a possible violation of law, regulation or the Company's Code of Conduct. The employee is protected from any retaliatory action including: (a) dismissal from his position (b) suspension from performance of one or more duties (c) transferral (d) reduction of salary and any other financial benefit (e) loss of status and privileges (f) loss of the right to promotions (g) loss of the right to participate in training (h) negative performance reviews and any other retaliatory action. Additionally, any employee who discourages or prevents another either from making such a report or seeking the help

or assistance he or she needs to report the matter will be subject to disciplinary action.

Article 16

Communication and training

1. All company employees are responsible to carefully read and understand this code of conduct. Managers/officer must also ensure that, within their respective areas of responsibility, this Code is distributed and employees have read and understood it.
2. Employees working in department/sector identified as having a high risk of exposure to bribery and corruption practices shall attend the company's anti-bribery and corruption training. Departments/sectors of the company with a corruption high risk are identified based on a continuing risk assessment as provided on article 4 (3) of this code of conduct.
2. In case of general questions about this Code or our rules and procedure, contact {} at {}

Appendix A: Anti-corruption model clause in contracting third parties¹

Paragraph 1

Each Party hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

Paragraph 2

The Parties agree that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with and that they will take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with the company's code of conduct on anti-corruption, which is hereby incorporated by reference into the Contract, as if written out in the Contract in full.

Paragraph 3

If a Party, as a result of the exercise of a contractually-provided audit right, if any, of the other Party's accounting books and financial records, or otherwise, brings evidence that the latter Party has been

1

*ICC Anti-corruption Clause, © International Chamber of Commerce (ICC), 2012,
<http://www.iccwbo.org/Advocacy-Codes-and-Rules/Areas-of-work/Corporate-Responsibility-and-Anti-corruption/Business-Ethics-Documents/ICC-Anti-corruption-Clause/>*

engaging in material or several repeated breaches of the provisions of company's code of conduct on anti-corruption, it will notify the latter Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If the latter Party fails to take the necessary remedial action, or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organization. If no remedial action is taken or, as the case may be, the defence is not effectively invoked, the first Party may, at its discretion, either suspend the Contract or terminate it, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law.

Paragraph 4

Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with company's code of conduct on anti-corruption.

GUIDELINES FOR FIGHTING CORRUPTION FOR THE BUSINESS COMMUNITY IN ALBANIA

GENERAL REMARKS

Fair competition practices do not leave room for bribes, informality as well as corruption. Unambiguous, clearly stated and transparent principles and procedures improve a business's relations and communication both within its structure and with all external stakeholders (i.e. customers, suppliers, investors, and public administration).

Strict compliance with such principles and procedure will push ultimately the risk of corruption and the burden of corruption pressure out of a business's ordinary and extraordinary operations, reducing operational costs and increasing its standing and reputation.

What an Anti-Corruption Code of Conduct is not:

a standard, 'one-size fits all' document

Every business should elaborate its own

a binding regulation

It is one's choice to adopt it

a short-term practice and achievement

It provides the milestones to draw up a mid- to long-term strategic plan that will ultimately enhance the business performance.

"Setting the tone" from the top is indispensable if a business wants to effectively implement the Code of Conduct. A widespread implementation will contribute, in turn, to increase the country stability and investment predictability promoting a globally attractive business community based on strong ethical standards and complaint with international regulation on economic activities.

Given the current context, businesses practices and the high-level corruption pressure, introducing a Code of Conduct might represent a (short-term) cost for a business, but the benefits to be gained in the mid- and long-term are enormous.

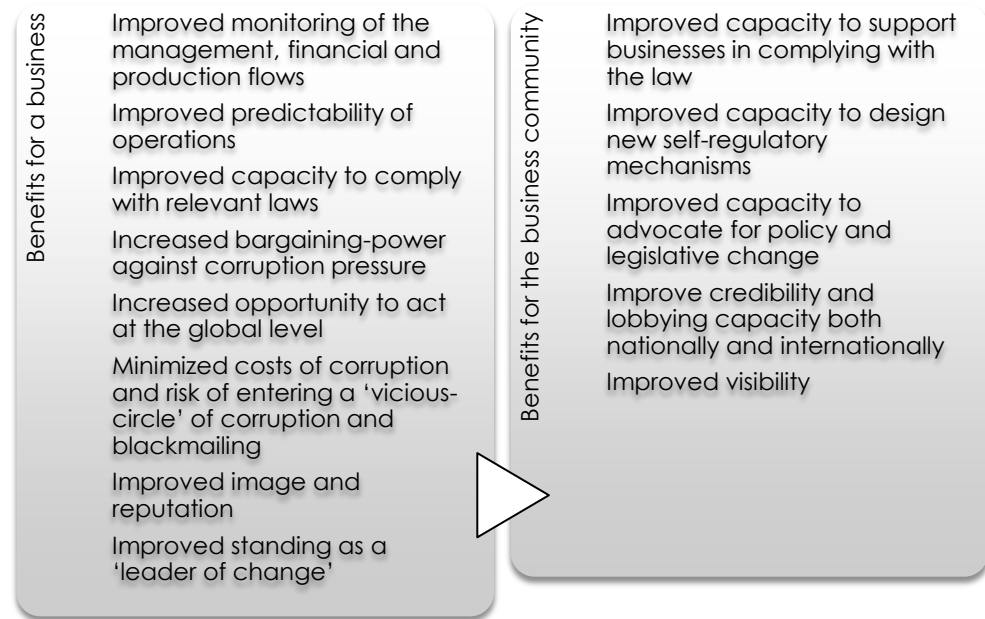


FIGURE 1- MINIMIZED COSTS OF CORRUPTION AND RISKS OF ENTERING AN ANTI-CORRUPTION CODE OF CONDUCT

RISK ASSESSMENT

A key factor when elaborating an Anti-Corruption Code of Conduct, within the private sector, is to take into consideration all the possible risks that may occur in the business's activities, so to implement effective measures and policies to counter bribery and corruption. Each business differs from others in terms of size, location, typology, organisational structure, available resources etc. Therefore, an anti-bribery document should consider the business's own risks and implement a specific risk-assessment process (Transparency International, 2013)). Although a standard reference model to evaluate the risk exposure does not exist, the "Anti-Corruption Ethics and Compliance Handbook for Business", (OECD, UNODOC, & WB, 2013), provides a six-step approach to establish an effective risk assessment.

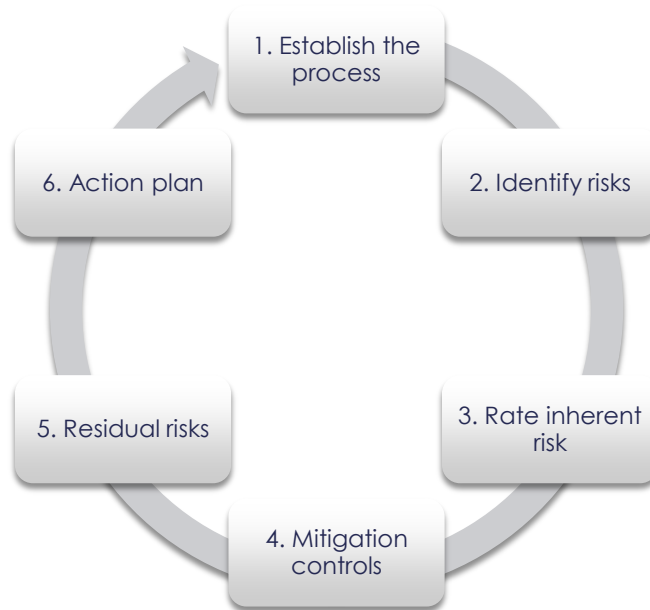


FIGURE 2- SIX-STEP APPROACH TO ESTABLISH AN EFFECTIVE RISK ASSESSMENT

According to the latter, a company should:

1. Establish the process

When a business commits to a risk-assessment, it is recommended to organize a focus group with the business's key stakeholders in order to promote their risk awareness. This activity allows stakeholders to consider risks exposure through a detailed analysis. It should take into consideration some key elements:

- Demonstrating ownership's commitment – identifying the owner(s) of anti-corruption policy (e.g. legal department, risk management, ethics and compliance);
- Ensuring stakeholders' commitment – engaging the key/main relevant stakeholders;
- Identifying the time-frame and indirect costs – identifying how much time is to be invested and which would be the indirect costs;
- Identifying the necessary data and documents to assess risks – identifying the typology of data to be collected and the most appropriate assessment methodology;
- Identifying resources (i.e. internal and external) – identifying the possible resources needed to implement the assessment;
- Building a reference framework for assessment and management of corruption risk processes.

2. Identify the risks

This step is intended to gather data on corruption risks factors, through stakeholders' engagement, by many possible ways:

- Desktop research;
- Internal reports;
- External documents;
- Interviews;
- Surveys;

- Workshops;
- Brainstorming sessions.

3. **Rate the inherent risk**

The goal of this step is to rate corruption risks in a logical scheme, which combine:

- potential impact;
- probability of occurrence.

The assessment of inherent corruption risk derives from the combination, through a simple qualitative or quantitative scale, of these two aspects. This activity allows the enterprise to elaborate a clear scheme to prioritise the responses to corruption risks.

4. **Identify and rate mitigating controls**

The enterprise's team should establish mitigating control process to each risk and scheme prior identified. It should distinguish:

- scheme-specific controls from general controls;
- preventative from detective controls.

They can be rated through a qualitative or quantitative scale. In order to obtain information on relevant mitigating controls it may be useful to ask the stakeholders, via interviews or surveys.

5. **Calculate the residual risk**

The residual risk is the possibility for a risk to reoccur, even though a specific mitigating control process has already been implemented. Therefore, it is important to consider a residual risk assessment even if the existing mitigating controls are effective. It can be rated through a qualitative or quantitative scale.

6. **Develop an action plan**

Once the inherent risks end the residual ones have been identified, as well as mitigating controls, the enterprise should elaborate a specific action plan, which has the objective to respond in an efficient manner to the company's needs.

An enterprise should also examine the opportunity to design and implement appropriate tools to document the results of their risk assessment (OECD, UNODOC, & WB, 2013), such as:

- Risks registers (i.e. databases in which all risks and mitigation controls elements are presented);
- Heat maps, which classify risks with different background colours that represent specific level of risks.

It is important to consider that a risk assessment is ultimately a tool allowing businesses to understand how effective their anti-corruption programmes are, and which type of effects they have on risks. Moreover, a risk assessment has not to be intended as a static process; it needs to be implemented and revised periodically. Indeed, effective measures and programmes to fight corruption and bribery in the business sector are the result of refreshed risk assessments.

CALCULATING THE COSTS OF CORRUPTION IN ONE'S BUSINESS

Corruption is a multi-factorial phenomenon that affects the operating activity of businesses. It is necessary to be aware of its costs, especially in the long-term (Hameed, 2014). Many businesses argue that in some cases it can facilitate the existing inefficient bureaucracy (i.e. by informal payments). Although the risks/costs of such behaviours are costlier on the long-term. In the 2015 Anti-Bribery Business Survey Report, a specific set of questions investigated the costs of corruption. "Respondents were asked to estimate what would be cost of all informal payments, as a percentage of total sales that companies similar to those of respondents pay to public officials". "The average percentage of informal payment on total annual sales, for all firms is about 5%. A similarity is noticed while looking at the results of World Bank's BEEPS V survey, for Albania, where up to 52.7% of business claimed not to ever have to make informal payments 'to get things done', right on point with this survey's 52% on the same matter" (OSCE & IDRA, 2015, p. Par. 7.3).

Negative effects of corruption in businesses are difficult to calculate, due to their informal development through hidden channels. It is common to find indexes or indicators (UNDP, 2015), which are intended to measure the level/degree of corruption through the stakeholders' perception (i.e. TI Corruption Perception Index, TI Global Corruption Barometer, TI Bribe Payers Surveys etc.), but it is more difficult to find a standard model or mechanism for measuring the real costs and impacts of corruption. Yet each business should be aware of them, even though they are not so simple to identify in terms of monetary value.

More importantly, businesses should take in consideration that allowing corruption practices affects either the external environment or the internal one. Indeed, some of most relevant costs that may occur can be:

- displacement of financial resources from the formal economy, which underwrites the establishment of an unreliable market environment;
- loss of reputation, which pushes away "ethical-oriented" investors.

16 PRINCIPLES FOR AN ANTI-CORRUPTION CODE OF CONDUCT

In order to elaborate a standard Code of Conduct for the Albanian Business Community on Anti-Corruption, it has been necessary to analyse the structure of several Codes of Conduct, which represent the reference models at the international level. Specifically, the Anti-Corruption Ethics and Compliance Handbook for Business (OECD, UNODOC, & WB, 2013) compares the main relevant Anti-Bribery Business Guidance Instruments and presents their leading principles. The analysis has identified 16 key business principles, which embody the core structure of the suggested standard Code of Conduct for Albanian Business Community. They are presented below:

1

ENSURING BUSINESS COMMITMENT

The business commits to countering bribery and corruption, in full respect of laws and standards of integrity and ethics.

2

ENSURING FULL APPLICATION

The CoC applies to all managers, employees and to any individual or entity acting with the business, for any business activity.

3

ENSURING FULL UNDERSTANDING

In order to create a common understanding of terms used in the CoC, all the main definitions are presented.

4

ENSURING EFFECTIVE PREVENTION MEASURES

In order to counter corruption and bribery, the business establishes prevention measures and commits to updating them periodically.

5

ENSURING EFFECTIVE DISCIPLINARY ACTIONS

The business prohibits any form of corruption and bribery. Improper behaviours, interpreted in the broadest possible sense, are to be punished.

6

ENSURING EFFECTIVE REGULATION OF FACILITATION PAYMENTS

The business prohibits any form of bribery, including facilitation payments and encourages all employees, encountering a demand for facilitation payment, to report it to their direct manager.

7

ENSURING EFFECTIVE REGULATION OF CHARITABLE CONTRIBUTIONS AND SPONSORSHIPS

Any form of charitable contributions and sponsorships has to be transparent and in accordance to Albanian legislation. If they are made improperly, they will be

considered bribes.

8

ENSURING EFFECTIVE REGULATION OF RECEIVING/GIVING GIFTS

Gifts, hospitality and expenses do not have to influence business decisions, even though in some limited cases it could be appropriate to provide them in order to display respect and gratitude.

9

ENSURING EFFECTIVE REGULATION OF POLITICAL CONTRIBUTIONS

All political contributions have to be authorized by the board (or equivalent) and, in any case, they have to be in accordance with the Electoral Code.

10

ENSURING EFFECTIVE PREVENTION OF CONFLICTS OF INTEREST

Each decision has not to be influenced by any kind of personal interest.

11

ENSURING FULL APPLICATION TO BUSINESS PARTNERS

The CoC is applicable to all entities acting with the business. The latter has to avoid dealing with entities, suspected to receiving or paying bribes.

12

ENSURING EFFECTIVE MONITORING OF FINANCIAL FLOWS

Books, records and financial statements have to be maintained in a reasonable manner, in order to ensure a high level of integrity, transparency and reliability.

13

ENSURING EMPLOYEES INTEGRITY

The business has to recruit employees who adhere to its values and aims.

14

ENSURING INTERNAL/EXTERNAL AUDITS

The business has to conduct internal and external audits, in order to comply with anti-corruption laws and highlighting lack of transparency.

15

ENSURING REPORTING VIOLATION

The business has to provide guidance and advice to all directors, employees, officers on complying with its CoC. They are encouraged to report any difficult situation and the business will not tolerate threats against any employees who reports a violation of law.

16

ENSURING EFFECTIVE COMMUNICATION

All the employees are responsible to read and understand the present CoC.

SUCCESS FACTORS

The successful implementation of the Anti-Corruption Code of Conduct relies on the application and respect of all the principles above. Its widespread adoption, implementation and promotion are necessarily to reach the result of a joint effort of the business community as a whole.

The following paragraphs offer a brief set of suggestions for single businesses and for the business community in order to enhance the role of the Anti-Corruption Code of Conduct in promoting a stronger business environment in Albania.

RECOMMENDATIONS TO BUSINESSES

The fight against corruption and compliance with legal requirements and international standards of fair competition start from the effort of every single business. In order to ensure the effectiveness of the Code of Conduct implementation in a business, it is suggested that:

- The commitment from ownership is ensured by setting out business values (e.g. conducting business according to fairness, transparency and honesty) in order to counter bribery and corruption;
- The employees are engaged actively in the anti-corruption programme;
- The process has to be “lead by example”. Indeed, countering bribery and corruption is a process “set from the top”: a business leader/manager has to be active in order to protect properly his/her business and employees and to ensure the implementation of the Code of Conduct. Its aim and the ethical values it embodies are to be leader’s priorities;
- The business has to commit to full-transparency, making available relevant documents drafted through professional expertise (eg. lawyers, auditors);
- The business encourages its employees and anyone encountering a difficult situation to report it as soon as possible to the relevant department/contact person (depending on the business size). More importantly, it has to protect “whistle-blowers”, by specific protection measures also according to the law in force;
- A business stimulates the establishment of a virtuous community, able to reinforce reciprocally its members in face of peer and external (i.e. State-driven) corruption pressure. It has to promote a fair and transparent environment;
- A business endorses its Code of Conduct publicly (e.g. by raising media attention), as well as promoting “informal”, public monitoring on its application;
- A business uses its code of conduct as positive “public relations” practice towards business partners, investors, the insurance and banking systems, as well as to its clients and the public. The adoption of the code of conduct, as well as the establishment of business ethical values, attracts ethical oriented investors, whose trust is enforced due to the good reputation of the business.

RECOMMENDATIONS TO THE BUSINESS COMMUNITY

The successful implementation of a Code of Conduct requires synergic efforts of all key stakeholders operating within the Albanian Business Community. Therefore, not only single businesses but also their associations, the chamber of commerce, foreign businesses (and their associations) as well as the public administration, should commit to its adoption, implementation and promotion. It is suggested that:

- Business organisations actively commit to the promotion and adoption of the Code of Conduct by adopting an organisation-specific Code of Conduct. Moreover, although each business organisation might develop its own promotion strategies, it is suggested to consider the adoption of a Code of Conduct as a membership clause;
- Business organisations should be able to assist and support members in drafting specific Codes of Conduct;
- Business community should promote training for members based on a “leading by example” principle, where “ethical champions” can demonstrate through their experience the mid- to long-term benefits of adopting a Code of Conduct;
- Business community should increase the perception of support and protection to “whistle-blowers”;
- Business community should engage the media to enhance public awareness and consumers’ monitoring;
- Foreign investors, donors and the public sector^{iv} should elaborate possible strategies to include the adoption of a Code of Conduct as a “preferable” condition for businesses to access their services (e.g. “ISO clause”).

RECOMMENDATIONS FROM THE BUSINESS COMMUNITY

The following recommendations represent the key finding (as summarised by BiznesAlbania) of 10 regional meetings organised with approximately 200 stakeholders including: business associations, chambers of commerce, and private enterprises. The regional meetings were organised by BiznesAlbania under the mandate of the OSCE PiA and were held in the following regions between the 4th of October and the 11th of November 2016: Vlora, Lezhe, Fier, Berati, Kukesi, Gjirokastra, Korce, Durres, Elbasan and Tirana.

Acknowledging that the Anti-Corruption Code represent an edifying tool (rather than a mandatory regulation), stakeholders participating to the regional meetings (i.e. regional consultative forums) stress the importance of the Code as an awareness-raising measure for companies and their employees, with a specific focus on small and micro-companies with limited organizational structures. The following insights were formulated as key-points for the wide-spread dissemination and acceptance of the Code:

1. Partnership-working - The implementation of the Code should not fall exclusively to individual companies. To this end, the following measures are brought forward:

- a. Adoption of the Code as a conditional measure for statute approval by the National Centre of Business;
 - b. Empowering executive directors to ask for the establishment of internal audits (especially in large companies) on the Code implementation;
 - c. Awareness-raising activity (within each company) among employees and foreign partners.
2. (Peer-)Training and Leading 'by example' - The business community in general should promote trainings for members where "ethical champions" can demonstrate through their experience of benefits of adopting a Code of Conduct. Participants like Vodafone, Antea Cement, Green Recycling, Hygea Hospital Tirana, and Shega Trans could show how their Code work in practice;
 3. Media and consumers' monitoring - The business community should engage the media to enhance public awareness and consumers' monitoring;
 4. Involving foreign investors - Foreign investors should elaborate possible strategies to include the adoption of a Code of Conduct as a "preferable" condition for businesses to access their services;
 5. Strengthening business associations and chambers of commerce role
 - Business associations and chambers of commerce should provide support and defend the interest of the business community and its transparency within the private sector and in relation to third subjects (i.e. foreign investors and the public sector):
 - a. Business organisations should commit to the promotion and adoption of the Code of Conduct. Although each business organisation might develop its own promotion strategies, it is suggested to consider the adoption of a Code of Conduct as a membership clause;
 - b. Business organisations should be able to assist and support members in drafting specific Codes of Conduct.

PRINCIPLE 1: ON ENSURING BUSINESS COMMITMENT²

Principle 1

The business commits to countering bribery and corruption, in full respect of laws and standards of integrity and ethics.



IN PRACTICE

In order to comply with Principle 1 of the present CoC, a business has to:

- Set its business values, e.g. transparency, fairness and honesty;
- Operate according to its values, e.g. by implementing transparent payments and records;
- Prevent bribery by the implementation of an 'Anti-Corruption programme' to support its values, e.g. by renewing and updating constantly anti-bribery Code of Conduct and prevention measures;
- Not make or offer any kind of bribes, e.g. agents have not to pay bribes;
- Establish disciplinary actions for employees who violate the principle, e.g. dismissal.

LEGAL PROVISIONS



Corruption in the private sector is foreseen as a criminal offence by the criminal code.^v Article 164/a punishes with a prison term of three months up to two years and a fine from 200,000 to one million Lek any direct or indirect promise, offer, or giving to a person, who exercises a management function in a commercial company or who works in any other position in the private sector of any irregular benefit for himself or a third person, in order to act or in order to fail to act, contrary to his duty.

Whereas article 164/b punishes with an imprisonment term of six months up to three years and a fine from 300,000 to three million Lek, any direct or indirect soliciting or taking of any irregular benefit of the person that exercises a management function or works, with whatever position in the private sector, with the purpose to act to not to act contrary to his duty.

A criminal offence can be committed by natural persons (individuals) and legal entities (companies, NGOs and other legal entities). Legal entities have criminal responsibility for criminal offences committed: (a) on its behalf and for its benefit, by its organs and representatives; (b) on its behalf and for its benefit, by a person that is under the authority of a person in charge of directing, managing and representing the legal entity; (c) on its behalf and for its benefit, due to lack of control and supervision by the person in charge of directing, managing and representing the legal entity^{vi}.

An anti-bribery code of conduct for Albanian companies can be used as a tool to protect Albanian companies from criminal prosecution by showing

² The images used in this chapter are designed by Freepick and distributed by Flaticon

that the company has in place appropriate procedures to prevent its officials and other associated persons from undertaking corrupt practices.

Furthermore, corrupt practices adversely affect the abilities of companies to compete in public procurement contracts. The law provides that an offer can be dismissed when (a) the tenderer or candidate gives, or promises to give, directly or indirectly, to any current officer a gratuity in any form, an employment or any other good or service of value, as an inducement with respect to an act or decision of, or procedure followed by, the contracting authority in connection with the awarding procedure b) the tenderer or candidate is in circumstances of conflict of interest.^{vii}

Additionally, the law provides a general exclusion of companies convicted of corruption practices from procurement practices. Specifically the law stipulates that any candidate or tenderer, convicted by final judgment of corruption, fraud, money laundering or participation in criminal organizations, is excluded from participation in awarding procedures.

The commitment of the company to implement a code of conduct on anti-bribery needs to be adopted by the highest decision making body of the company in accordance with the law No. 9901 'On Entrepreneurs and Companies' (as amended).



In Your Business

In order to comply with Principle 1 of the present CoC, a business manager should ask him/herself the following questions:

- Is my business upholding all laws and relevant practices in order to counter bribery and corruption?
- Has my business implemented an Anti-Corruption Programme?
- Are the shareholders and the members of the board, as well as the employees, committed to respecting business policies?
- In my business, do all the shareholders, the members of the board, as well as employees, have to sign a written declaration of compliance to CoC principles?
- Are the shareholders and the members of the board, as well as the employees, establishing an active support and commitment to the implementation of the CoC?
- In my business, have clear disciplinary actions been established for those violating the CoC?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: The Trans Adriatic Pipeline (TAP) AG is a company established to plan, develop and build the TAP natural gas pipeline transporting natural gas from the Caspian region to Europe. TAP's length in the Albanian territory is approximately 215

kilometres on shore and 37 kilometres offshore. TAP employs approximately 80 oil and gas specialists from many countries and more than 200 experts from contracted service companies. TAP has adopted an elaborate code of conduct called "Living our values" that covers, inter alia, a section on prohibiting bribery and corruption. By adopting and implementing this Code of Conduct TAP makes a public commitment to act ethically, and in compliance with applicable legislation. TAP has acknowledged that corruption undermines the economic development of countries and distorts free competition and at the same time, it ruins the reputation and integrity of companies by exposing both individuals and companies to legal and reputational risk. TAP is against all forms of corruption and it has undertaken to make active efforts to ensure that corruption does not occur in any part of its business.

To support its code of conduct, TAP has adopted an Anti-Bribery and Corruption policy. (Trans Adriatic Pipeline)

PRINCIPLE 2: ON ENSURING FULL APPLICATION

Principle 2

The present CoC applies to all officers, employees and to any individual or entity acting with the business, for any business activity.



IN PRACTICE

In order to comply with Principle 2 of the present CoC, a business has to:

- Distribute to all the shareholders, the members of the board, as well as employees the business CoC, e.g. by giving them a copy, by good communication and training sessions;
- Distribute to all external partners business CoC, e.g. by giving them a copy, by good communication;
- Ensure that business employees and partners are willing to comply with CoC principles, e.g. by making them sign a compliance declaration, by asking to partners if they have their own CoC and asking for a copy;
- Avoid doing business with partners who do not respect the principles of the CoC, e.g. careful selection of counterparties.



IN YOUR BUSINESS

In order to assess the compliance with Principle 2 of the present CoC, a business manager should ask him/herself the following questions:

- Do all the shareholders, the members of the board, as well as employees comply with the CoC principles?
- Have all the shareholders, the members of the board, as well as employees been informed about business principles?
- In my business, have training sessions been organised?
- In my business, have the partners been carefully selected?
- Have the counterparties, as well as subsidiaries, been informed of the business principles?
- Do the counterparties, as well as subsidiaries, have to sign a declaration of compliance with the CoC values?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Verbund is an Austrian electricity company operating in Albania through Energji Ashta sh.p.k. Energji Ashta has built and operates through a concession contract Ashta HPP which has the potential to produce more than 50 MGW of electricity. Verbund has a compliance management system in place, which is composed of, inter alia, anti-corruption guidelines. The entire Verbund Group is integrated within the Verbund Compliance Organisation. The fair business practices and anticorruption guidelines are applicable throughout the Group, including subsidiaries and commercial partners. (Verbund, 2017)

PRINCIPLE 3: ON ENSURING FULL UNDERSTANDING

Principle 3

In order to create a common understanding of terms used in the CoC, all the main definitions are presented.



IN PRACTICE

In order to comply with Principle 3 of the present CoC, a business has to:

- Provide to all the shareholders, the members of the board, as well as employees, a clear and complete list of definitions of terms used in the CoC, e.g. by giving them a copy, by good communication, and/or training sessions;
- Ensure that all the shareholders, the members of the board, as well as employees know the meaning of terms used in the CoC, e.g. by organising periodically training and assessment sessions;
- Ensure that all external counterparties are aware of the CoC terminology, e.g. by providing them definitions of the main relevant terms used in the CoC.



In Your Business

In order to comply with Principle 3 of the present CoC, a business manager should ask him/herself the following questions:

- Have all the shareholders, the members of the board, as well as employees received the definitions of terms used in the CoC?
- Do all the shareholders, the members of the board, as well as employees understand the terms used in the CoC?
- In my business, have training/ assessment sessions been organised?
- Do all the external counterparts understand the CoC terminology?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: AGNA Group is one of the largest distribution and real estate companies in Albania. AGNA Group has established a **Leadership Academy**, one of the first employee professional training and development initiatives in Albania and the Balkans. The Academy helps employees grow professionally by understanding and adopting best practices in doing business and by cultivating a leadership culture. The Academy has permanent training staff and as well as visiting professors with teaching experience from the region and the EU. Each training module is designed to have a direct application in improving the business practices. (AGNA GROUP)

PRINCIPLE 4: ON EFFECTIVE PREVENTION MEASURES

Principle 4

In order to counter corruption and bribery, the business establishes prevention measures and commits to updating them periodically.



IN PRACTICE

In order to comply with Principle 4 of the present CoC, a business has to:

- Establish a prevention programme on anti-corruption, e.g. by learning from experience and collaborating with others;
- Establish an organisational framework focused on anti-corruption fight, e.g. by attributing a specific role and responsibility to each individual of business team;
- Regulate business activities on anti-corruption, e.g. by implementing operating specific procedures and rules for each working section;
- Update constantly anti-corruption measures, e.g. by conducting a periodical risk-assessment.



LEGAL PROVISIONS

Some minimum prevention measures are already provided by the current legislation in force. Article 13 of the law no. 9901 “On entrepreneurs and companies” has provided a general prohibition of persons who have been convicted of crimes committed in the course of their duties to the company to carry out the functions of legal representatives, members of the Board of Directors or the Supervisory Board, and of representatives of shareholders at the General Meeting.

Additionally, the law on entrepreneurs^{viii} and companies has detailed rules on conflicts of interests and the right of authorized persons to represent or to supervise the company to enter into contracts or into other relationship with the company. An important requirement of the law is the obligation to disclose in the annual accounts transactions between the company and its representatives and supervisors. Such disclosure should include the terms of the transaction and the nature and scope of the interests of the people involved.

The managing director, in cases of limited liability companies, and the board of directors, in cases of public limited companies, is in charge of ensuring the implementation of anti-corruption prevention measures.^{ix}

To ensure effective prevention measures, disciplinary measures should be foreseen in the employment contract and the collective employment contract. The Labour Code^x provides that a disciplinary procedure should guarantee the right to be heard, the right to be defended, and the right to submit facts and evidences within a reasonable time.



In Your Business

In order to comply with Principle 4 of the present CoC, a business manager should ask him/herself the following questions:

- In my business, who should be involved in the establishment of prevention measures?
- Do I have to involve external individual/entity in order to implement my business anti-corruption measures?
- In my business, are roles and responsibilities clearly defined?
- In my business, are rules and operating procedures clearly defined?
- In my business, has a risk-assessment been implemented?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Vodafone, one of the world's leading telecommunication groups, has elaborated a successful anti-corruption programme in order to meet the high standards presented in its CoC. Vodafone anti-bribery programme focuses on its employees' commitment. In order to prevent corruption, the business has developed new e-Learning courses: employees have to apply Code principles to real life scenarios to ensure their understanding of it and of their role within the company (VODAFONE).

PRINCIPLE 5: ON ENSURING EFFECTIVE DISCIPLINARY ACTIONS

Principle 5

The business prohibits any form of corruption and bribery. Improper behaviours, interpreted in the broadest possible sense, are to be punished.



IN PRACTICE

In order to comply with Principle 5 of the present CoC, a business has to:

- Establish disciplinary actions towards anyone violating CoC principles, e.g. dismissal;
- Introduce ad hoc disciplinary actions in managers and employees' contracts;
- Ensure that all the shareholders, the member of the board, as well as employees, are aware of the business zero tolerance policy against corruption, e.g. by informing them of disciplinary actions;
- Ensure that all the counterparties are aware of business zero tolerance against corruption, e.g. by distributing a complete document concerning these issues;
- Discourage improper behaviours, e.g. by periodical controls of business transactions.



LEGAL PROVISIONS

Any form of corruption and bribery is a criminal offence. The Criminal Code foresees the following criminal offences on corruption:

- Active corruption in the private sector^{xi}
- Passive corruption in the private sector^{xii}
- Active corruption of persons exercising public functions^{xiii}
- Active corruption of foreign public officials^{xiv}
- Active corruption of the high state official and of the local elected/representatives^{xv}
- Passive corruption by public officials^{xvi}
- Passive corruption by foreign public officials^{xvii}
- Passive corruption by High State Officials or local elected officials^{xviii}
- Active corruption of the witness, expert or interpreter^{xix}
- Active corruption of the judge, prosecutor and of other justice official^{xx}
- Active corruption of a judge or another official of international tribunals^{xxi}
- Active corruption of a local or international arbitrator^{xxii}
- Active corruption of members of foreign judicial juries^{xxiii}
- Passive corruption of judges, prosecutors and other justice official^{xxiv}
- Passive corruption of a judge or another official of international tribunals^{xxv}
- Passive corruption of a local or international arbitrator^{xxvi}
- Passive corruption of members of foreign judicial juries^{xxvii}



In Your Business

In order to comply with Principle 5 of the present CoC, a business manager should ask him/herself the following questions:

- In my business, are improper behaviours clearly defined?
- In my business, have disciplinary actions been implemented?
- Are all the shareholders, the members of the board, as well as employees aware of disciplinary actions?
- Are all external counterparties aware of disciplinary actions?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: United Parcel Service (UPS) is one of the world's largest shipping, logistic and supply chain management company. UPS operates in Albania through an authorized services contractor. To facilitate the management of worldwide operations, UPS has adopted a Code of Business Conduct. The Code and the UPS Policy Book are the main tools to transmit the company's responsibilities to all internal and external stakeholders. The Code provides that employees and representatives of UPS (including the Albanian authorised services contractor) who violates legal or ethical responsibilities can be subject to disciplinary measures, include termination of employment. (UPS, 2011)

PRINCIPLE 6: ON ENSURING EFFECTIVE REGULATION OF FACILITATION PAYMENTS

Principle 6

The business prohibits any form of bribery, including facilitation payments and encourages all employees, encountering a demand for facilitation payment, to report it to their manager.



IN PRACTICE

In order to comply with Principle 6 of the present CoC, a business has to:

- Refuse any kind of illicit payment, e.g. by providing/requiring always a receipt;
- Raise the awareness of all the shareholders, the members of the board, as well as employees of the long-term risks of facilitation payments, e.g. by organising training sessions;
- Allow the employees, involved in a facilitation payment situation, to report it, e.g. by ensuring that their direct manager stands by them to help them;
- Establish protecting measures for “whistle-blowers”, e.g. by ensuring maximum confidentiality.



LEGAL PROVISIONS

Even facilitation payments, that are small payments made to secure or expedite the performance of a routine action, fall with the ambit of Article 244 of the Criminal Code. Hence, even a 50 Euros facilitation payment can be punished with a prison term of 6 months up to three years and a fine from 300,000 to one million Lek.



In Your Business

In order to comply with Principle 6 of the present CoC, a business manager should ask him/herself the following questions:

- In my business, are shareholders, the members of the board, as well as employees aware of long-term risks of facilitation payments?
- In my business, is there a disciplinary action for punishing facilitation payments?
- In my business, is there a reference person to report demands of facilitation payments?
- In my business, are there protecting measures to avoid any form of retaliation, discrimination or penalisation?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Shell is one of the largest oil companies in the world. It operates in Albania since 2012 through Shell Upstream Albania. Facilitation payments might be perceived as common practice in Albania, even though unlawful. Shell has provided

in its code of conduct that there are no differences between bribes and facilitation payments, both equally prohibited. (SHELL, 2006)

PRINCIPLE 7: ON ENSURING EFFECTIVE REGULATION OF CHARITABLE CONTRIBUTIONS AND SPONSORSHIPS

Principle 7

Any form of charitable contributions and sponsorships has to be transparent and in accordance to Albanian legislation. If they are made improperly, they will be considered bribes.



IN PRACTICE

In order to comply with Principle 7 of the present CoC, a business has to:

- Be aware that charitable contributions are to be made under the Albanian laws, e.g. by identifying the official charity channels;
- Avoid to make donations to someone with whom, the business itself is engaged in a business relation e.g. by making sure that money are always given to an organization, not to an individual;
- Be transparent, e.g. by the establishment of a sponsorship agreement and clear record documents.



LEGAL PROVISIONS

Grants are defined as an offering of funds and material assets through a contract or agreement, following a competitive procedure, with the aim of achieving the goals of the nongovernmental organisation, in accordance with its aim and scope of activities as defined in the statute and articles of incorporation.^{xxviii}

Charitable contributions or donations are defined as offering of financial and material support through a contract or an agreement to support the achievement of the goals of a nongovernmental organisation.^{xxix}

In ensuring an effective regulation of charitable contributions and sponsorships it should be taken into consideration that nongovernmental organisation can have as sources of income from dues, when there are such, grants and donations offered by private and public subjects, local or foreign, as well as income from economic activity and the assets owned by the nongovernmental organisation.^{xxx}

Nongovernmental organisations acquire income from the sources recognised by this law and incur expenses only to realize the purpose and object of activity for which they were created, as well as to manage and maintain their property.

Only social and public activities may be sponsored. Additionally, these activities need to be undertaken by public entities, institutions, associations and other organisations recognised by law.^{xxxi}

Every sponsorship needs to be regulated by a contract entered into by the sponsor and the beneficiary. Any sponsorship, in cash or in kind, shall be documented in accordance with the relevant tax and banking legislation in force.^{xxxii}



In Your Business

In order to comply with Principle 7 of the present CoC, a business manager should ask him/herself the following questions:

- Are all the shareholders, the members of the board, as well as employees aware of the risks of doing charitable contributions and sponsorships outside legal provisions?
- In my business, are all the shareholders, the members of the board, as well as employees aware of the Albanian legislation in force?
- In my business, have transparent documents (related both to charitable contributions and sponsorships, such as written disclosure statements, sponsorship agreements etc.) clearly been disclosed?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: GlaxoSmithKline (GSK) is a global health care company operating in Albania since 2004. GSK has over 100.000 employees and operates in more than 100 countries. Under these conditions a code of conduct is a necessity for the company aiming to define the expectations as a community united by values. As part of their code, they have rules on grants and donations. The code specifies that GSK supports legitimate and worthy causes in the communities in which it operates. To this aim, GSK has approved a policy and special operating procedures (SOP) on grants and donations. The policy provides that proposals for grants are reviewed by a Grants and Donations Committee after they have been endorsed by a Medical Information Unit.

PRINCIPLE 8: ON ENSURING EFFECTIVE REGULATION OF GIFTS, HOSPITALITY AND EXPENSES

Principle 8

Gifts, hospitality and expenses do not have to influence business decisions, even though in some limited cases it could be appropriate to provide them in order to display respect and gratitude.



IN PRACTICE

In order to comply with Principle 8 of the present CoC, a business has to:

- Avoid any behaviour that could influence business decisions, e.g. by refusing to give/receive gifts or favours during commercial negotiations;
- Avoid to accept/give valuable items;
- Avoid to accept/give gifts regularly;
- Monitor what is offered and accepted.



LEGAL PROVISIONS

It is prohibited for an official to seek or to accept, directly or indirectly, gifts, favours, promises or preferential treatment, given because of his position.^{xxxiii}

The same prohibition is made in article 10 of the law no 9131, dated 08.09.2003 "On the rules of ethics in the public administration" that states "A public administration employee shall not solicit nor accept, gifts, favours, invitations, or any other benefit, or avoiding possible losses, and any promises made, for himself, his/her family, his/her relatives, persons or organizations that has a relationship, that influence or appear to influence the performance of his duties, or that are or it appears to be a remuneration for performing official duties."

Detailed rules on the activities of public officials and gifts and hospitality are regulated by Council of Ministers decision no. 714, dated 22.10.2004.



In Your Business

In order to comply with Principle 8 of the present CoC, a business manager should ask him/herself the following questions:

- At what point does a gift/favor influence business decisions?
- Why is a gift/favor offered?
- Who will benefit from a gift/favor?
- Which kind of gift can be considered appropriate?
- In my business, is there a consistent policy about giving/accepting gifts/favors?
- Do all the shareholders, the members of the board, as well as the employees know the business rules on this issue?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Pricewaterhouse Coopers Albania shpk (PwC) is a tax and auditing services Company; member firm of PwC Global Network of firms. Being a service based firm integrity and professionalism are paramount to the success of their business model. Hence, PwC has approved and implements a code of conduct, which aims to demonstrate the integrity of the firm by never engaging in bribery or corrupt practices. The Code has a very stringent gifts policy. Payments in kind, including gifts, can be a bribe, therefore the code suggests its employees being particularly careful when dealing with public sector clients. (PwC, 2012)

PRINCIPLE 9: ON ENSURING EFFECTIVE REGULATION OF POLITICAL CONTRIBUTIONS

Principle 9

All political contributions have to be authorised by the board (or equivalent) and, in any case, they have to be in accordance with the Electoral Code.



IN PRACTICE

In order to comply with Principle 9 of the present CoC, a business has to:

- Ensure transparency, e.g. by providing clear reporting materials and by publishing accounts;
- Avoid to make contributions to political parties that are negotiating with a government on issues affecting the business;
- Avoid making political contributions directly to an individual.



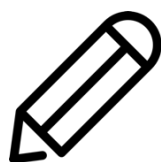
LEGAL PROVISIONS

Political parties cannot receive political contributions contrary to the applicable legislation. Article 17 of the law 8580, dated 17.02.2000 "On political parties" provides that: Financial and material resources of political parties consist of membership fees, public funds, including financial assistance to the extent provided in the state budget as approved by the Parliament, non-public funds, which consist on financial donations, donations in kind, services, sponsorship, different loans or guarantees, as well as any other financial transaction.

Additionally, the Electoral Code limits political contribution for the purposes of their electoral campaigns only from domestic natural or legal persons^{xxxiv}.

The amount that each natural or legal person may give to an electoral subject may not be larger than ALL 1 million or the equivalent value in kind or services.^{xxxv}

Donation of funds by a legal person or any of its shareholders is prohibited if one of the following conditions applies: a) has received public funds, public contracts or concessions in the last 2 years, exceeding ALL 10 million; b) exercises media activity; c) has been a partner with public funds in different projects; ç) has monetary obligations towards the State Budget or any public institution. This obligation is not applicable if the shareholder owns these shares as a result of a public offer.^{xxxvi}



In Your Business

In order to comply with Principle 9 of the present CoC, a business manager should ask him/herself the following questions:

- Does my business support any political party?
- Does my business support any electoral campaign?
- Why is my business interested in supporting a political party/electoral campaign?
- Are all the shareholders, the members of the board, as well as employees, aware of what the Electoral Code requires?

- Should my business implement a specific policy in order to record donations?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Raiffeisen Bank sh.a. is one of the banks licensed to perform banking activities by the Bank of Albania. Raiffeisen Bank sha. is part of Raiffeisen Bank International, a leading Austrian based bank in Central and Eastern Europe. In its Code of Conduct Raiffeisen Bank has regulated political contributions. According to the Code, contributions may be decided only by the Managing Board and only if they comply with the following conditions: (a) contributions do not infringe any legal norm; (b) contributions are within customary norms in Albania and (c) contributions are not apt to have any improper impact. In any case, contributions need to be transparent and in consultation with Raiffeisen Group's Compliance department. (RAIFFEISEN, 2017)

PRINCIPLE 10: ON ENSURING EFFECTIVE PREVENTION OF CONFLICTS OF INTEREST

Principle 10

Each decision has not to be influenced by any kind of personal interest.



IN PRACTICE

In order to comply with Principle 10 of the present CoC, a business has to:

- Arise awareness of officers and employees on how a conflict of interest can occur, e.g. by organising training sessions on possible conflict scenarios;
- Ensure that any selection process is transparent, e.g. by disclosing clear documents;
- Set out possible solutions to avoid conflict situation, e.g. by providing a complete guide on how to handle these situations.



LEGAL PROVISIONS

As stated supra, the law on entrepreneurs^{xxxvii} and companies has detailed rules on conflicts of interests and the right of authorized persons to represent or to supervise the company to enter into contracts or into other relationship with the company. An important requirement of the law is the obligation to disclose in the annual accounts transactions between the company and its representatives and supervisors. Such disclosure should include the terms of the transaction and the nature and scope of the interests of the persons involved.



In Your Business

In order to comply with Principle 10 of the present CoC, a business manager should ask him/herself the following questions:

- Are all the shareholders, the members of the board, as well as employees, aware of the possible conflicts of interest that can arise within the business?
- Has my business clearly defined when a conflict of interest can occur?
- Do all the shareholders, the members of the board, as well as employees, know how to avoid and handle possible conflicts of interest?
- Does my business organise training session to raise the awareness of all shareholders, members of the board, as well as employees?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Telekom Albania is part of Deutsche Telekom an international Technology and Communications Company, operating in Albania since 2015. As part of their compliance policies, Telekom Albania has in place, inter alia, a Code of Conduct, a code of ethics for senior financial managers and a policy on avoiding conflicts of interest and fighting corruption. The policy regulates conflict of interests resulting from secondary employment, private investments and private use of company property. (TELEKOM)

PRINCIPLE 11: ON ENSURING FULL APPLICATION TO BUSINESS PARTNERS AND INTERMEDIARIES

Principle 11

The present CoC is applicable to all entities acting with the business. The business has to avoid dealing with entities, suspected to receiving or paying bribes.



IN PRACTICE

In order to comply with Principle 11 of the present CoC, a business has to:

- Make sure that all the counterparties/entities acting with the business are informed of business anti-corruption programme, e.g. by providing them with the anti-bribery code;
- Ask the business partners and intermediaries if they have their own code-conduct and try to obtain a copy;
- Ensure that the Code of Conduct is part of a possible agreement/relationship.



LEGAL PROVISIONS

Business entities over which the company has effective control are deemed to exist where one company is accustomed to act in accordance with the directions or instructions of another company (control group).^{xxxviii}.

A difference should be made between business entities over which the company has effective control and agents/intermediaries. Article 950 of the Civil Code provides that an agency relationship exists when one party permanently undertakes, upon a remuneration, to enter into the contracts for the account of the person, within a specified territory.

On the fair and equitable remuneration of agents/intermediaries, article 953 of Civil Code provides that: In lieu of any agreement between the parties regarding this issue, the commercial agent is entitled to the remuneration that the commercial agents, designated for the contract making up the scope of his agency contract, normally benefit at the location where he is carrying out his activity. Where such a customary practice is missing, the commercial agent shall be entitled to a reasonable remuneration, taking account of the entire aspects of the contract. Considered to be a remuneration of the agent shall be the entire elements of the payment that he is benefiting and that is depending on the number or worth of the commercial transactions. In lieu of such customs, the commercial agent shall be entitled to a reasonable remuneration, taking account of all the elements pertaining to the transaction.



In Your Business

In order to comply with Principle 11 of the present CoC, a business manager should ask him/herself the following questions:

- What type of counterparties is my business dealing with?
- Are all the counterparties/business partners/intermediaries aware of business anti-bribery CoC?
- Does my business have proper procedures to monitor its business relationships?
- Does my business provide all the counterparties/business partners/intermediaries with copies of the Code of Conduct?
- Does my business provide all the counterparties/business partners/intermediaries with training session to arise their awareness on the programme?
- Do my counterparties/business partners/intermediaries adopt their own code of conduct?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Vodafone aims to behave to the highest standards of integrity and at the same time it requires its suppliers to comply with Vodafone's supplier policies and requirements. Additionally, as provided in its code of ethical purchasing Vodafone can monitor its suppliers and report on the implementation and adherence to the Code using a risk based approach. (Vodafone policies for third parties).

PRINCIPLE 12: ON ENSURING EFFECTIVE MONITORING OF FINANCIAL FLOWS

Principle 12

Books, records and financial statements have to be maintained in a reasonable manner, in order to ensure a high level of integrity, transparency and reliability.



IN PRACTICE

In order to comply with Principle 12 of the present CoC, a business has to:

- Ensure financial controls, e.g. by establishing internal accounting controls;
- Identify irregularities, e.g. ensuring a good management through accurate written records;
- Avoid violations of laws and regulation, e.g. by training sessions to all the employees on the monitoring of financial flows;
- Identify lack of transparency in payments, e.g. by monitoring contract terms.



LEGAL PROVISIONS

The general rules and principles for preparing the national accounting standards and accounting statements are regulated by law no 9228, dated 24 April 2004 "On the accounting and budget", as amended ("law on accounting").

According to the law on accounting all economic and non-economic entities (e.g. NGOs) established in Albania, including credit and financial institutions and their subsidiaries, irrespective of their legal form, are required to keep accounts in accordance with the principles and methods set by the National Accounting Council. Micro-enterprises are explicitly excluded.

Accounting records are written in Albanian in paper or electronic form with the applicable currency being ALL. They must be justified by supporting documentation, which will be preserved along with the accounting records for 10 years after the closure of the financial year.

Entities which do not exceed a turnover and/or total value of assets of ALL 10 million at the year end and have less than 10 employees are defined as micro enterprises, and can keep their accounting and prepare their financial statements pursuant to the criteria defined by the National Accounting Council and approved by the Council of Ministers.

All entities must adopt an accounting system in compliance with the accounting plans issued and approved by the Council of Ministers. In addition, there are two other accounting plans (a) Accounting Plan for Banks which covers commercial banks, and (b) Public Accounting Plan which covers central and local governmental institutions.

The fiscal year consists of 12 consecutive months and commences with the calendar year. Accounting records must be kept and maintained in Albanian Lek (ALL) and in the Albanian language. Transactions in foreign currencies are allowed to be carried out through special accounts in the respective currencies. However, once a month and at the end of the fiscal

year, foreign currency amounts must be converted into Albanian Lek. All accounting books, source documents and financial reports must be retained for a period of 10 years. Normally, accounting books and records can also be maintained by third parties, with the exception of the cases specified by law.

Law No. 9228 dated 29 April 2004 on Accounting and Financial Statements introduced accounting standards for the first time. This Law sets out the concept of national and international accounting standards, which serve as the basis for selecting the treatment or accounting methods applicable when preparing or presenting financial statements.

Standards issued by the International Accounting Standards Board are translated into Albanian under the responsibility of the National Accounting Council and they are published in the website of the Council.



In Your Business


In order to comply with Principle 12 of the present CoC, a business manager should ask him/herself the following questions:

- In my business, have proper financial controls been established?
- In my business, have proper monitoring controls of contract terms been implemented?
- Do all the shareholders, the members of the board, as well as the employees, know how to record properly financial statements?
- In my business, has a specific monitoring department been established?
- In my business, have a specific training session been organised?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:

 **EXAMPLE:** SNAM (Società Nazionale Metanodotti), one of the leader companies in the construction and integrated management of natural gas infrastructure, has elaborated a successful monitoring structure which includes the Snam's Internal Audit Department. It independently reviews and examines the internal control system to ensure that the requirements of this Anti-Corruption Procedure are met. A specific training is organised for the Internal Audit personnel focusing on the Anti-Corruption Laws, on the account-keeping and the internal control system. (SNAM, 2013)

PRINCIPLE 13: ON ENSURING EMPLOYEES INTEGRITY

Principle 13

The business has to recruit employees who adhere to its values and aims.



IN PRACTICE

In order to comply with Principle 13 of the present CoC, a business has to:

- Preserve the integrity of employees, e.g. by providing appropriate compliance training;
- Ensure that everyone understands the purpose of the CoC and his/her responsibility to implement it, e.g. by providing employees with an understanding document;
- Inform employees on disciplinary consequences of violating the CoC, e.g. by organising training sessions.



LEGAL PROVISIONS

Employment contracts and relationships are regulated by the Labour Code of the Republic of Albania.

The Labour Code provides specific rules on (a) the conclusion, amendment and termination of employment contracts, including flexibility of hiring through part-time and fixed-term contracts, grounds and notification rules for dismissal, priority rules for dismissal and severance pay (b) working hours, premiums for overtime work, absences, holidays and paid annual leave and the minimum wage (c) employment conditions and discipline (d) the compensation and contractual liabilities of the parties to an employment contract (e) special protection for some categories of employees (f) Procedure for collective redundancy of employees.

One of the main goals of the Albanian employment legislation is to create a minimum level of protection for employees. As a result, the Labor Code, as well as the other relevant Albanian legislation, contains numerous mandatory rules and regulations by which an employer hiring employees in Albania must abide and comply with.

Disciplinary measures should be foreseen in the employment contract and the collective employment contract. The Labour Code^{xxxix} provides that a disciplinary procedure should guarantee the right to be heard, the right to be defended, and the right to submit facts and evidences within a reasonable time.



In Your Business

In order to comply with Principle 13 of the present CoC, a business manager should ask him/herself the following questions:

- Are all the shareholders, the members of the board, as well as employees, aware of the importance of anti-bribery CoC?

- Does my business provide all the shareholders, the members of the board, as well as employees, with training session to arise their awareness of business ethical values?
- In my business, has "integrity" clearly been defined?
- Are all the shareholders, the members of the board, as well as employees, aware of disciplinary consequences of violating the CoC?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: ING is a financial institution offering banking services to customers in more than 40 countries. Taking into consideration the highly regulated market that it operates, ING has various compliance tools, including a compliance risk management charter, anti-bribery principles, a whistleblower policy and a recruitment code of conduct for external applications. As part of the recruitment code of conduct, ING, for specific positions, with the consent of the applicant, undertakes background checks. Background checks evaluate the morality and the integrity of the applicant in relation to the position that they have applied. (ING, 2015)

PRINCIPLE 14: ON ENSURING INTERNAL/EXTERNAL AUDITS

Principle 14

The business has to conduct internal and external audits, in order to comply with anti-corruption laws and highlighting lack of transparency.



IN PRACTICE

In order to comply with Principle 14 of the present CoC, a business has to:

- Establish an Auditing Committee or commit external auditing by professionals;
- Allow the latter to make an independent assessment of the adequacy of the anti-bribery CoC.



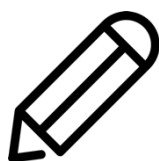
LEGAL PROVISIONS

Auditing is regulated by law no 10091, dated 05.03.2009 “On legal auditing, organization of the Professions of Auditors and Authorized Accountants” (as amended) (“law on audit”).

The law on audit requires that financial statements of those entities meeting certain criteria have to be audited by a registered auditor. Mandatory financial statements annual audit is required for (a) all commercial companies which apply international financial reporting standards, regardless of their legal form (b) all joint-stock companies which apply national accounting standards; (c) all limited liability companies which apply NAS when at least two of the following conditions are met: (i) The total assets at the end of the respective financial period are equal to or higher than ALL 40 million, (ii) The total turnover of the economic activity for the financial period is equal to or higher than ALL 30 million (iii) The average number of employees is at least 30 during the financial period.^{xi}

As provided by the law on companies, shareholders with a participation interest of at least 5% or as specified in the bylaws of the company as well as any creditors with an outstanding exposure of at least 5% of the share capital may require a special investigation, including a financial statements audit of the company.^{xii}

The Audit Law provides that an audit should be carried out in compliance with International Standards on Auditing, according to which an auditor should issue an independent opinion on whether the financial statements of a company present fairly, in all material respects, its financial position and the results of operations and changes in cash flows in compliance with NAS or IFRS.^{xiii}



In Your Business

In order to comply with Principle 14 of the present CoC, a business manager should ask him/herself the following questions:


- In my business, are internal and external audits being established?

- In my business, have the internal and external auditors been granted the right to make an independent assessment on the business adequacy to anti-corruption laws?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:

 **EXAMPLE:** Coca-Cola Bottling Shqipëria Sh.p.k. is part of the Coca Cola Company operating in the Albanian market since 1994. Coca Cola Company has formed a complex system to conduct business in a fair, ethical and legal manner, comprised of a Code of Conduct, an Anti-Bribery Policy and an anti corruption compliance programme. Part of their anti-corruption programme are periodic audits of relevant Company operating units that assist the Company to be in compliance with Applicable Corruption Laws and the internal anti-corruption programme. (COCA-COLA)

PRINCIPLE 15: ON ENSURING REPORTING VIOLATIONS

Principle 15

The business has to provide guidance and advice to all directors, employees, officers on complying with its CoC. They are encouraged to report any difficult situation and the business will not tolerate threats against any employees who reports a violation of law.



IN PRACTICE

In order to comply with Principle 15 of the present CoC, a business has to:

- Provide guidance and advice to all directors, employees, officers, e.g. by the establishment of a specific reference department/contact person;
- Encourage directors, employees, officers to report violation of law;
- Request detailed account, supporting evidence in case of violation of law;
- Protect any employee reporting a violation of law from retaliation, discrimination or penalisation, e.g. by ensuring maximum confidentiality.



LEGAL PROVISIONS

Albania has adopted a modern legislation on whistleblowers. However, it should be noted that, for companies, the whistleblower legislation shall be effective starting on 1 July 2017.^{xliii}

Any person, who becomes aware of any act or practice of alleged corruption at work or relating to his work activity at the organization, has the right to signal this fact to the responsible unit within the organization or to HIDAACI, as appropriate.^{xliv}

Whistleblowing is done by any means of communication, in writing or verbally and documented in writing by the responsible unit or HIDAACI.^{xlv}

A whistle-blower may choose to remain anonymous and a report is accepted, if and justified reasons for anonymity are clearly stated and the report has sufficient data to investigate the alleged action or corruption practice.

Each public authority, having more than 80 employees, and each private entity, having more than 100 employees, shall create a responsible unit, which records, investigates and examines internal reports under this law.^{xlvi}



In Your Business

In order to comply with Principle 15 of the present CoC, a business manager should ask him/herself the following questions:

- In my business, has a training session been organised in order to provide guidance and advice to all directors and employees?
- Are all the directors and the employees allowed to report difficult situations?
- In my business, have protecting measures for "whistle-blowers" been established?

- In my business, have legal provisions on “whistle-blowers” been clearly explained to all stakeholders?
- In my business, is confidentiality ensured?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: The Securities and Exchange Commission is the regulatory body in charge of regulating US securities market. The securities laws (Security Act of 1933 and Securities Exchange Act of 1934) and SEC’s rules and regulations prohibit fraud, manipulation and insider trading in security based agreements.

The Securities and Exchange Act of 1934 has a section on protecting whistleblowers from any unlawful retaliation from employees. Additionally, the law foresees that SEC has the right to pay an award to whistleblowers who voluntarily provided original information in an aggregate amount equal to not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

SEC has awarded to whistleblowers more than \$100 million for providing valuable information for securities law violations.

The law provides that the confidentiality of whistleblowers is protected by SEC. (SEC)

PRINCIPLE 16: ON ENSURING EFFECTIVE COMMUNICATION

Principle 16

All the employees are responsible to read and understand the present CoC.



IN PRACTICE

In order to comply with Principle 16 of the present CoC, a business has to:

- Distribute the present CoC;
- Ensure the compliance (of all the shareholders, the members of the board, the counterparties, as well as the employees) with the CoC;
- Ensure the presence of a specific department/contact person in case of questions.



IN YOUR BUSINESS

In order to comply with Principle 16 of the present CoC, a business manager should ask him/herself the following questions:

- In my business, has the present CoC been distributed among all the shareholders, the directors and the employees?
- In my business, has a specific compliance assessment been established?
- In my business, has a contact person/ reference department been established in case of questions about the CoC?



LEAD BY EXAMPLE

What would be your first actions on this principle? Use the space below to sketch down your preliminary ideas:



EXAMPLE: Antea Cement sh.a., part of the Titan Group, is a cement production company situated in Borizane, approximately 50 kilometres from Tirana. Antea Cement is one of the leading companies in Albania promoting ethical business practices. The company recognises the challenges of the environment it operates and to this aim, has approved and implements various self-regulatory measures, including a code of conduct. The Code of Conduct prohibits any form of corruption and bribery. Moreover, the company organizes Code of Conduct trainings to enforce anti-corruption measures. (ANTEA)

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FOOTNOTES

- i Article 89 of the Electoral Code provides that the amount that each natural or legal person may give to an electoral subject may not be larger than ALL 1 million or the equivalent value in kind or services.
- ii Article 89 of the of the Electoral Code provides that such amount should not be higher than 10 million Lek
- iii Article 59 of law no. 9920 “On tax procedures on the Republic of Albania”
- iv Article 46 (2) of the law 9463, dated 20.11.2006 “On public procurement” (as amended)
- v Article 164/a - Active corruption in the private sector and Article 164/b - Passive corruption in the private sector.
- vi Article 3 of the law no 9754, dated 14.06.2007 “On the criminal responsibility of legal entities”
- vii Article 26 of the law no. 9643 dated 20 November 2006 “On public procurement” (as amended)
- viii Article 13 of the law no. 9901 “On entrepreneurs and companies”
- ix Article 95 (3) of the law no. 9901 “On entrepreneurs and companies” and Article 154 of the law no. 9901 “On entrepreneurs and companies”
- x Article 37 of the Labour Code
- xi Article 164/a of Criminal Code
- xii Article 164/b of Criminal Code
- xiii Article 244 of Criminal Code
- xiv Article 244/a of Criminal Code
- xv Article 245 of Criminal Code
- xvi Article 259 of Criminal Code
- xvii Article 259/a of Criminal Code
- xviii Article 260 of Criminal Code
- xix Article 312 of Criminal Code
- xx Article 319 of Criminal Code
- xxi Article 319/a of Criminal Code
- xxii Article 319/b of Criminal Code
- xxiii Article 319/c of Criminal Code
- xxiv Article 319/ç of Criminal Code
- xxv Article 319/d of Criminal Code
- xxvi Article 319/dh of Criminal Code
- xxvii Article 319/e of Criminal Code
- xxviii Article 2(7) of the law 8788, dated 07.05.2001 “On nongovernmental organisations” (as amended)
- xxix Article 2(8) of the law 8788, dated 07.05.2001 “On nongovernmental organisations” (as amended)
- xxx Article 35 of the law 8788, dated 07.05.2001 “On nongovernmental organisations” (as amended)
- xxxi Article 2 of the law no. 7892 “On sponsorships” (as amended)
- xxxii Article 4 of the law law no. 7892 “On sponsorships” (as amended)
- xxxiii Article 23 of the law no. 9367 dated 7.4.2005 “On the prevention of conflicts of interest in the exercise of public functions” (as amended)
- xxxiv Article 89 (1) of the Electoral Code
- xxxv Article 89 (2) of the Electoral Code
- xxxvi Article 89 (3) of the Electoral Code
- xxxvii Article 13 of the law no. 9901 “On entrepreneurs and companies”
- xxxviii Article 207 of the law no. 9901 “On entrepreneurs and companies”
- xxxix Article 37 of the Labour Code
- xl Article 41 of the law no 10091, dated 05.03.2009 “On legal auditing, organization of the Professions of Auditors and Authorized Accountants” (as amended)
- xli Article 84, 91, 139 and 150 of law no 9901 “On entrepreneurs and companies” (as amended)
- xlii Article 37 of the law no 10091, dated 05.03.2009 “On legal auditing, organization of the Professions of Auditors and Authorized Accountants” (as amended)
- xliiii Article 25 of the law no 60/2016 “On whistle blowing and protection of whistle-blowers”
- xliv Article 5 of the law no 60/2016 “On whistleblowing and protection of whistle-blowers”
- xlv Article 7 of the law no 60/2016 “On whistle blowing and protection of whistle-blowers”
- xlvi Article 10 of the law no 60/2016 “On whistle blowing and protection of whistle-blowers”