Anti-corruption Handbook: Implementing the PACI Principles for Countering Bribery

A Manager’s Guide for Developing Anti-corruption Programmes
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The Anti-corruption Handbook contains supplemental information for companies that subscribe to the Partnering Against Corruption Principles for Countering Bribery ("the PACI Principles"). It provides practical guidance and is a reference manual for developing and maintaining corporate Programmes to implement the commitment to countering Bribery.

This Handbook was developed by a multinational task force of signatory companies of the World Economic Forum Partnering Against Corruption Initiative (PACI), working with Transparency International. Implementation practices described here are intended to provide companies of all sizes with general guidance, rather than prescriptions, for developing their own policy statements and Programmes to combat Bribery and other forms of corruption in international business.

The Handbook identifies useful implementation practices found at multinational companies. Specific practices and recommendations do not necessarily reflect the views of its individual members on particular topics. Information contained in the Handbook is illustrative only and not intended as legal advice nor to impose any new or additional legal requirements or obligations on signatory companies, nor is it expected that any enterprise will fulfill all of these guidelines. Questions about legal or other obligations under national anti-corruption or other laws should be directed to appropriate counsel.

The PACI Task Force wishes to explicitly thank all those whose contributions made successful completion of this guidance document possible.
International companies that sign on to the PACI Principles have taken an important step in joining the global campaign against public corruption. The challenge ahead is to transform this aspirational commitment into concrete action. This Handbook is designed to help compliance managers and their colleagues put the PACI Principles into practice.

Global Context

There is no longer serious debate over the harm caused by corruption. Numerous studies by the World Bank and others have shown that corrupt payments made to foreign government officials to secure an unfair business or regulatory advantage are deeply corrosive. They undermine fair competition, distort economic investments and deprive governments of resources needed to promote growth and development.

A Commitment and Challenge

The PACI Principles reflect a commitment for change through anti-corruption standards and practices. They provide a framework for individual companies to develop and implement more effective compliance Programmes, thereby strengthening industry-wide practice and contributing to the goals of good governance and economic development. A corollary objective is to secure a level economic playing field for the increasing number of companies that refuse to pay bribes.

The PACI Principles recognize that an effective compliance Programme must have both substantive and procedural components. Signatory companies commit not only to a zero tolerance policy on Bribery but also to developing and maintaining a comprehensive system of internal procedures and controls. In practical terms, this means having an overall strategy for identifying priority corruption risks, educating relevant personnel, implementing operational procedures, and monitoring and auditing for compliance. As in other compliance areas, even the most sophisticated and well-intentioned companies will find this to be a complex and challenging undertaking.

Using the Handbook

The PACI Principles establish an essential Programme baseline, but leave many practical details to individual companies. The Handbook is designed to help compliance managers fill this information gap.

The Handbook facilitates implementation efforts in two ways. First, it offers supplemental guidance and clarification on the meaning of particular PACI standards. Second, the Handbook identifies common implementation practices and suggests a useful planning model for analysing these and other Programme options.

For ease of reference, the Handbook tracks the structure of the PACI Principles. Section 2 defines the basic anti-corruption commitment – that is, to an effective Anti-Bribery Programme and implementation Programme. This is followed in Section 3 by general Programme guidelines that emphasize the need for reasonable detail, tailored practices and employee involvement. Section 4 then defines what it means to have an effective Programme, in general terms and as applied to political contributions and other specific high-risk activities. Finally, Section 5 describes core operational practices, such as high-level leadership, policy development, training, enforcement, auditing and oversight.

Practical Considerations

The Handbook is intended for use by enterprises of all sizes in building new anti-corruption Programmes and refining existing ones. While some signatory companies may wish to construct new Programmes from the ground up, for many, benchmarking and strengthening of current practice will be both desirable and appropriate. Experience has shown that for companies with solid existing Programmes, targeted incremental refinements can dramatically improve effectiveness.

The PACI Principles are calibrated to produce Programmes that are also reasonable, cost effective and pragmatic. This Handbook identifies practices found to be effective in achieving a stated Programme objective. Singling out a particular
practice does not mean that it is right for all companies, only that the practice has worked elsewhere and deserves consideration on this basis. Information provided in the Handbook is predicated on the belief that “no one size fits all” and that implementation practices can and should be tailored to reflect individual corporate circumstances. Programme design must be results oriented, focused on what makes a particular system effective for a particular enterprise.

**Getting Started**

Whether a signatory company is building a new Programme or refining an existing one, a formal structured approach for assessment and planning is strongly recommended.

The Handbook offers two practical tools for organizing and conducting planning reviews. The first tool is a procedure, described in Section 3, that can be used to develop work plans, identify priority corruption risks and assess implementation needs and options. This is supplemented by a resource inventory, in Section 6, with links to anti-corruption websites that can be used to monitor evolving legal standards and industry practice.

Additional practical information about matters discussed in this Handbook, the implementation process and evolving industry practice can be obtained by contacting the World Economic Forum Partnering Against Corruption Initiative (PACI) at pac@weforum.org, tel.: +41 (0)22 869 1212.
2 The PACI Principles

Section 2 describes the essential PACI commitment, providing signatory companies with a baseline for Programme development and benchmarking activities.

### The PACI Principles

The enterprise shall prohibit Bribery in any form.

Bribery (“Bribery”) is the offering, promising or giving, as well as demanding or accepting, of any undue advantage, whether directly or indirectly, to or from:

- A public official
- A political candidate, party or party official
- Any private sector employee (including a person who directs or works for a private sector enterprise in any capacity)

in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business.

The enterprise shall commit to the continuation or implementation of an effective Programme to counter Bribery.

An effective Programme is the entirety of an enterprise’s anti-bribery efforts, specifically including its code of ethics, policies and procedures, administrative processes, training, guidance and oversight. This commitment is to develop and administer an internal compliance Programme that effectively makes an enterprise’s anti-corruption policy an integral part of daily practice.

### Discussion

The PACI Principles, which take their name from the two “principles” in this section, reflect the same comprehensive approach to corruption found in the Transparency International guidelines from which they derive.3 This approach combines a rigorous anti-corruption policy with detailed guidelines for developing and implementing effective compliance Programmes.

### Policy

The first listed Principle commits signatory companies to prohibit “Bribery in any form”. Bribery is defined to include commercial bribes as well as corrupt payments to government officials or political parties and candidates. The prohibition applies whether improper payments are made directly or through an intermediary, and whether a bribe is actually paid or only offered or promised.

The definition of Bribery in this section should be used to develop, or benchmark, enterprise-specific standards of conduct. Section 4 provides more detailed guidance on applying the principle to the enterprise’s activities and developing conforming policy statements and practices.

### An Effective Programme

The second listed Principle commits signatory companies “to develop and administer an internal compliance Programme that effectively makes an enterprise’s anti-corruption policy an integral part of daily practice”.

A compliance Programme is much more than a policy statement with which an enterprise intends to comply. As explained in Section 2, an enterprise’s Programme is “the entirety of [it’s] anti-Bribery efforts, specifically including its code of ethics, policies and procedures, administrative processes, training, guidance and oversight”. To be effective, a Programme must address the full range of issues and practices normally associated with compliance, from risk assessment, training and operational procedures through investigation, response action
and oversight. High-level commitment, a good organizational structure and active engagement across the organization also are important.

The PACI Principles recognize that signatory companies may have substantial experience complying with legal regimes, including anti-corruption laws, developed over many years. Programmes to implement the PACI commitment should build on this experience and resource base. Implementation guidelines in Section 5, together with additional guidance in this Handbook, can be used to benchmark and refine existing practice.
3 Development of a Programme for Countering Bribery

Guidelines in this section provide a general framework for the more detailed directives that follow in Sections 4 and 5 of the PACI Principles.

The PACI Principles

3.1 An enterprise should develop a Programme that clearly and in reasonable detail articulates values, policies and procedures to be used to prevent Bribery from occurring in all activities under its effective control.

3.2 The Programme should be tailored to reflect an enterprise’s particular business circumstances and corporate culture, taking into account such factors as size, nature of the business, potential risks and locations of operation.

3.3 The Programme should be consistent with all laws relevant to countering Bribery in all the jurisdictions in which the enterprise operates.

3.4 The enterprise should involve employees in the implementation of the Programme.

3.5 The enterprise should ensure that it is informed of all matters material to the effective development and implementation of the Programme, including emerging industry practices, through appropriate monitoring activities and communications with relevant interested parties.

Discussion

These five listed guidelines reflect standard compliance practice.

Articulation of the “Programme”

Section 3.1 provides that an enterprise “should develop a Programme that clearly and in reasonable detail articulates values, policies and procedures to be used to prevent Bribery from occurring in all activities under its effective control.” The essential requirement is that a Programme describes substantive standards and the practices used to implement them in enough detail so that they can be understood by enterprise personnel and others subject to the policy. Practices described in Section 4.1 (for policy formulation) and elsewhere in the Handbook can be used to satisfy this guideline.

Tailoring to Circumstances

Section 3.2 emphasizes the importance of tailoring Programme practices “to reflect an enterprise’s particular business circumstances and culture”. This directive reflects the adage that “no one size fits all” in compliance. It recognizes that practices employed in some Programmes may not always be appropriate to others, at least without adjustment. However, it also suggests a corollary responsibility to identify and implement practices that do fit an enterprise’s unique circumstances.

Consistency with Law

Section 3.3 requires that a Programme “be consistent with all laws relevant to countering Bribery in all jurisdictions in which the enterprise operates.” This statement recognizes that compliance Programmes must be developed in accordance with applicable national laws and also that an enterprise operating in several countries may be subject to multiple and potentially different anti-corruption laws and standards. Applicable laws should be identified and analysed for specific requirements as part of the “risk assessment” process described in this section.

Employee Involvement

Section 3.4 encourages signatory companies to “involve employees in the implementation of the Programme.” It reflects expert opinion that compliance is most effective in organizations that find meaningful ways to engage corporate personnel. Harnessing their cooperation, motivation and practical experience is an important key to effective implementation. Opportunities for employee involvement are identified throughout the Handbook.
Monitoring for Emerging Practices

This final guideline requires monitoring for emerging developments in compliance practice. Regular "benchmarking" to measure current efforts and identify compliance innovations is a common and essential feature in successful Programmes. It is typically conducted through a variety of mechanisms, both formal and informal, including interactions with industry counterparts, seminars and other educational activities, and consultation with compliance experts. As explained in Section 5.8 of the Handbook, periodic Programme reviews can be used to regularize and coordinate this monitoring.

Implementation

Programme development should begin with a focused review of enterprise risk and existing compliance practice and resources. This is an essential starting point whether planning is for an entirely new Programme or benchmarking an existing one. The three-step process described here can also be adapted for use in Section 5.8 Programme reviews.

Step 1: Establishing Work Plans

The first step in compliance planning is a basic "work plan" for the implementation process itself. This will help to assure that everyone on the implementation team understands the task ahead and how it will be accomplished.

Work plans can be more or less formal. The important point is that they address core planning issues. These include:

- Programme scope. Planning should be guided by a clear and reasonably detailed statement of corporate objectives. The implementation team must understand that good compliance requires developing Programme structure and processes, not just crafting substantive legal rules.
- Planning elements. Core planning activities should be identified, with particular attention to risk assessment and Programme evaluation.
- Work assignments. Work plans should establish clear lines of responsibility for conducting risk assessments, Programme evaluations and other planning activities. They also can be used to see that necessary guidance and adequate resources are made available.
- Coordination. Effective compliance requires coordination across business lines and service departments. Work plans can highlight this issue and direct that individuals responsible for risk assessment and other preparatory activities reach out to other stakeholders in the organization.
- Timing. Work plans should establish a firm schedule for completing assignments. Fixed deadlines help to keep the process focused and moving forward.

Step 2: Conducting Risk Assessments

The second planning step is a review to identify company-specific corruption risks. Such reviews, commonly referred to as "risk assessments", are a standard compliance practice and also a PACI requirement. Assessments provide an individualized compliance profile that can be used to focus Programme activities and resources.

Assessment Guidelines

Risk assessment is a complex process, made more so when there are multiple lines of business or complicated business structures. Personnel responsible for conducting assessments need to have clear and consistent guidance on such practical issues as what questions to ask, for which business activities, and how frequently.

Compliance managers are encouraged to develop written guidelines for the assessment process. Relevant operational parameters include:

- Scope of review. Corruption risk should be targeted on an enterprise-wide basis, taking into account business profile, geographic location, nexus with government, use of agents and other third parties, prior history, and other specific risk indicators. Assessments typically are conducted by line of business. Potential risks should be assessed across the full range of enterprise activities, including in connection with controlled affiliates.
- Relationship to general assessment process. Assessments should be corruption specific – that is, focused on the types of risk addressed by zero tolerance policies on Bribery. Corruption-specific assessment will produce better information and organizational focus for the planning process.
Once a good baseline has been established, periodic updating may be handled through an enterprise’s general risk assessment process.

- **Conduct of assessments.** Risk assessments may be conducted internally or using outside experts. In either case, assessment should be guided by standards and procedures applicable on an enterprise-wide basis. It will also be important to involve business personnel with line experience. For many areas, their input may be the single best source of real-world information about practical risks.

- **Frequency.** Assessment to determine the scope and nature of anti-corruption risk should be ongoing. The nature of an enterprise’s legal obligations and ways that specific organizational activities interact with those obligations can change over time. Periodic reviews help to prevent and detect Bribery and to make adjustments to changing business activities. Changes that can require adjustment include new lines of business and geographic expansion.

**Coverage Requirements**

Risk assessment guidelines should identify specific areas for inquiry. These include:

- **Business profile.** Although corruption can occur in any context, some types of activity carry greater inherent risk than others. Corporate risk assessments should provide a general profile of business activities, with particular attention to perceived areas of higher risk.

- **Geographic location.** As with types of business activity, corruption risk can vary significantly by country and region. The Corruption Perceptions Index (CPI) published by Transparency International identifies perceived levels of corruption risk by country. This data, combined with information from line personnel and other business sources, should be used to identify high-risk markets.

- **Government nexus.** The greater the requirement for government contacts, the greater the inherent risk; hence, the need to access the full range of government nexus points. Risk factors unique to particular activities should be highlighted.

- **Operational factors.** Assessments should identify high-risk operating units (such as sales and marketing for procurement activities), operational structures (use of agents, affiliates, joint ventures) and control practices (for example, consultant approvals). This information can be used to target training and other implementation activities.

- **Applicable laws and policies.** Cross-border business activities may be subject to multiple anti-corruption laws, as well as voluntary corporate ethics rules. The assessment process can be used to identify applicable laws and policies, by line of business.

**Red Flags**

Suspicious practices and circumstances that may indicate corruption risk should be identified for Programme use. These are commonly referred to as “red flags”.

Red flags are an essential tool for risk assessment and other Programme activities, including due diligence review. As the name suggests, they are cautionary indicators signalling the need for heightened scrutiny. Common red flags include high-risk geographic areas or industry sectors, unusual government ties (e.g. through family connections), lack of relevant business expertise or experience, non-standard compensation terms and suspicious payment circumstances. These and other general indicators are most effective when adapted to particular real-world situations.

**Step 3: Preparing Programme Evaluations**

The third and final preparatory step is a “Programme evaluation” to determine whether identified risks are being effectively managed.

Evaluations should be prepared by the individual or team with operational responsibility for Programme implementation. A formal process is generally recommended for the initial anti-corruption evaluation because of the scope and complexity of issues that will need to be addressed. Planning should take advantage of existing resources and engage relevant stakeholders. Both improve the quality of analysis and help to build consensus and Programme support.
Programme evaluations provide a baseline assessment of existing compliance capabilities and a roadmap for refinements and future implementation. The resulting work product can be used as a reference document for planners and also to educate enterprise leadership about Programme objectives, means and needs.

Evaluation typically is a four-step process. The steps involve:

• Inventorying existing resources. An inventory of existing resources should be prepared, describing current compliance practice and identifying relevant personnel and other resources. For many companies, key Programme elements may already be in place that can be adapted for anti-corruption use.

• Assessing strengths and weaknesses. Inventoried resources can then be measured against the corporate risk profile. This review should identify current Programme strengths and weaknesses.

• Identifying needs and response options. The next step in the process is to identify areas for improvement. These can be divided into necessary and optional Programme refinements. A menu of possible response options can be developed based on practices found in this Handbook and from other sources.

• Devising an appropriate implementation plan. The final step is to develop a plan for implementing refinements. Implementation planning should address the same operational issues noted earlier for preliminary work plans (e.g. scope, assignments, coordination and timing), as well as the communications strategy for “rolling out” the new or modified anti-corruption Programme.

As has been noted, implementation activities need to be tailored to an enterprise’s unique circumstances and there will be considerable latitude in choosing among available options. A good Programme evaluation will help to ensure judgments are made on a well informed, consistent and coordinated basis.
Section 4 of the PACI Principles establishes guidelines for an enterprise’s anti-Bribery policy and standards of conduct. This is the substantive Programme component.

The PACI Principles

In developing its Programme for countering Bribery, an enterprise should identify and assess specific areas that pose the greatest risks from corruption.

The Programme should reflect emerging practice, with particular attention to the industry sector and types and locations of business activity most susceptible to corruption and Bribery.

Discussion

Following this preamble, Section 4 explains what it means for an enterprise to “prohibit Bribery in any form”. Standards are set out in five subsections, beginning with a general statement of the policy (Section 4.1) followed by applications of the policy to political contributions (Section 4.2), charitable contributions and sponsorships (Section 4.3), facilitation payments (Section 4.4) and gifts, hospitality and expenses (Section 4.5).

The preamble contains two general directives, applicable to all five subsections. The first is that an enterprise “identify and assess specific areas that pose the greatest risks from corruption.” Risk assessment procedures described in the preceding section may be used for this purpose, including cradle-to-grave reviews for identifying priority risks by line of business.

The second directive is that an enterprise “reflect emerging practice” in its Programme. This requires monitoring of industry compliance practice, with particular attention to sectors in which an enterprise is active and the “types and locations of business activity most susceptible to corruption and Bribery.” For example, evidence that a competitor has been confronted by corruption demands in a particular market should draw attention to an enterprise’s own standards and protective measures for the same or similar business activities.
This first section provides additional guidance on the meaning and scope of the PACI commitment to “prohibit Bribery in any form”.

### The PACI Principles

All Programmes should at a minimum cover the following areas:

4.1.1 The enterprise should prohibit Bribery in all business transactions that are carried out either directly or through third parties, specifically including subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or any other intermediary under its effective control.

4.1.2 The enterprise should prohibit Bribery in any form, including on any contract payment or portion of a contract payment, or by any means or channels to provide improper benefits to customers, agents, contractors, suppliers or employees thereof.

4.1.3 The Programme should provide guidance on the meaning and scope of this prohibition, with particular attention to areas of high risk to a company in its business sector.

### Discussion

The PACI Principles require a clear statement, reinforced by procedures and controls, that an enterprise will not tolerate Bribery in any of its business dealings, whether carried out directly or through a third party. All third-party transactions are covered by this rule, including those conducted through subsidiaries, joint ventures, agents or other intermediaries, such as consortium partners or nominated subcontractors. Guidelines for applying the Bribery prohibition to these relationships are detailed in Section 5.2.

The definition of Bribery in Section 2 of the PACI Principles should be used to guide corporate policy. With one notable exception, the definition reflects coverage terms found in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and most national laws modelled on the Convention. The exception is for commercial Bribery, which is not addressed by the OECD Convention. Most large enterprises, however, already include prohibitions on commercial Bribery in their business ethics rules. Companies in some jurisdictions are also subject to general corporate, securities or other laws that prohibit or require proper recording or disclosure of commercial Bribery.

Bribery should be prohibited regardless of the form it takes or the channels used to make or offer a payment. Financial payments are most common, but a prohibited inducement can come in any form. Common examples include expensive gifts, improper travel reimbursements and job or business opportunities for an official’s family members, friends or associates.

While some applications of the Bribery prohibition will be obvious, many others are more subtle. Section 4.1.3 accordingly directs that a signatory company include in its Programme “guidance on the meaning and scope of this prohibition, with particular attention to areas of high risk”.

### Implementation

Signatory companies are expected to reflect their anti-Bribery commitments in a formal policy statement and Programme guidelines. This has three operational aspects: (i) identifying priority corruption risks; (ii) formulating an appropriate policy response; and (iii) developing written Programme materials. Guidelines for each follow in this section, and additional practical information (including sample documents) can be found on websites listed in Section 6 of the Handbook.

### Step 1: Risk Assessment

Policy development should begin with a review to identify “specific areas that pose the greatest risks from corruption”. This is the same “risk assessment” process described in Section 3. An initial baseline assessment should be conducted, with periodic updating to reflect changes in business or other risk factors.
Step 2: Policy Formulation

Once priority risks have been identified, a Programme policy statement and guidelines can be formulated. Among the issues that will need to be considered are Programme scope, consistency with law and operational practices.

Programme Scope

An enterprise’s anti-corruption policy should clearly identify all conduct prohibited by the policy. Policy statements should explain, for example, that the prohibition applies to all business transactions and to Bribery in any form, as detailed in Section 4.1. They should also confirm the Programme’s enterprise-wide scope and its applicability to transactions carried out through agents and other business partners.

Policy guidelines should reflect the definition of Bribery found in Section 2 of the PACI Principles. It is not enough, however, merely to restate this technical definition or others like it found in applicable anti-corruption statutes. An enterprise should also explain in more concrete terms what the prohibition means and how it applies to business activities.

Many companies will find it useful for planning and training purposes to define the Bribery prohibition through its component parts, each of which must be present to constitute Bribery. One common formulation breaks down the policy into the following five elements:

- A person covered by the policy. An enterprise’s anti-corruption rules apply to everyone in the organization, subject to pre-existing agreements such as collective bargaining agreements, and in all activities under its effective control.

- Gives something of value. Bribery is not limited to cash payments, but can involve giving or offering anything of value. Restrictions apply whether a bribe is actually given or only offered or promised, and also to demands for and acceptance of a bribe by enterprise personnel.

- To a covered official or other person. All business-related bribes are prohibited, whether they involve public officials or private individuals. This includes any direct benefit to such persons, as well as any benefit to others made at their request or for their benefit (such as a directed political or charitable contribution).

- Directly or indirectly. Bribery restrictions apply whether a bribe is made directly by enterprise personnel or through another person. Such other persons include agents, advisers and intermediaries, as well as business partners, contractors and suppliers.

- To secure an improper business advantage. Bribery may not be used to obtain, retain or direct business or to secure any improper business advantage. This includes regulatory benefits (such as licensing or approvals), as well as obtaining or retaining business.

This formulation and others like it provide a practical framework for understanding and applying the Bribery prohibition. Policy statements also can be used to define key coverage terms, such as “public official” and “business advantage”, and to distinguish permitted activities (such as legitimate business promotion).

Consistency with Law

The PACI Principles set a floor for an enterprise’s anti-corruption policy and standards of conduct. This guidance should be considered in conjunction with relevant national laws and regulations. Anti-corruption laws based on the OECD Convention establish comparable prohibitions, but may differ in some areas. Not all laws, for example, address political contributions or exempt so-called “facilitation” payments.

Programme standards should be consistent with laws relevant to countering Bribery in the jurisdictions in which an enterprise does business. Where such laws are less restrictive than the PACI Principles, guidelines established by the Principles should be followed unless doing so would contravene applicable law. For instance, Programme standards should prohibit political payments made as a subterfuge for Bribery even though this may not be explicitly addressed by a particular national law.

Anti-corruption laws applicable to enterprise activities should be identified as part of the risk assessment process. Material differences should be noted and appropriate procedures devised to calibrate Programme implementation for different
operations. Signatory companies may find, for example, that operations conducted through some subsidiaries or joint ventures but not others are in jurisdictions that recognize a facilitation payments exception. Specific differences need not be enumerated in general policy documents. It will be important, however, to alert responsible personnel to possible differences and circumstances that may warrant further legal inquiry.

Guidance on Meaning and Scope

An enterprise's Programme should provide practical guidance on the meaning and scope of the Bribery prohibition, with particular attention to areas of high risk. This directive is codified in Section 4.1.3.

The ultimate test of an effective Programme is compliance with the zero tolerance policy. This can only happen if personnel subject to the policy understand what the policy covers and requires. Education starts with a good policy statement, reinforced through training and other communications practices, with appropriate tailoring for different employee functions and groups. Policy statements are discussed below in the implementation section, and training and employee advice channels in Sections 5.4 and 5.5 of the Handbook.

Bright-line Standards Option

Programme standards should take into account difficulties that can occur in applying the Bribery prohibition to specific transactions or circumstances. Coverage rules establish criteria that line personnel may not always fully understand or be able to apply—such as whether benefits offered or conveyed are “undue” or business advantage sought is “improper”. There are two common approaches to this problem. One is to establish “bright-line” tests that may be over-inclusive but easily understood and applied. Rules prohibiting political or charitable contributions, or requiring prior management approval, are a frequent example. The alternative approach is a rule that more closely tracks legal and ethical prohibitions and relies on line personnel and compliance managers to identify and avoid proscribed conduct. Programmes that permit “reasonable” gifts, contributions or facilitation payments reflect this practice.

Both approaches are acceptable, and often found for different areas in the same Programme. For standards development, the critical difference is in the detail required for explanatory materials and related training. Nuanced rules place a much heavier premium on specifics. Personnel and agents subject to the Bribery prohibition need to be given enough information to “red flag” suspicious circumstances and to know when and how to seek expert guidance. Bribery red-flagging is addressed at greater length in the Handbook discussion on training practices in Section 5.4.

Step 3: Materials Development

The third step in standards development is to prepare Programme materials that memorialize and communicate the anti-Bribery policy. Primary documents may include Codes of Conduct, policy statements, practitioner handbooks and protective contract provisions.

Codes of Conduct

The corporate Code of Conduct is the central compliance document in most Programmes, providing a capsule summary of an enterprise's legal and ethics priorities. Codes should be updated to reflect the new policy.

Formulations that describe corporate policy in clear, non-technical terms are most effective. Where Code format and style permit, it can also be useful to include a statement explaining why zero tolerance on Bribery is an enterprise priority. Because this may be the only policy statement some personnel ever see, it is important to explain in basic terms the range of conduct covered by the Bribery prohibition and how to obtain additional information and compliance advice.

Policy Statements

The Code of Conduct is only a starting point for compliance materials and not enough, by itself, to satisfy the requirement that a Programme “clearly and in reasonable detail” articulate corporate values, policies and procedures for preventing Bribery. Enterprises also need to develop and distribute to relevant personnel more detailed guidance, commonly referred to as “policy statements”. These statements provide an opportunity for more expansive discussion of anti-Bribery standards and procedures, including sector-specific applications.

Policy statements vary from company to company, with some only a few pages in length and others much more comprehensive. More substantial policy
statements will be appropriate for most companies, given the nature and scope of corruption risks in individual sectors.

**Practitioner Guides**

Practitioner guides (manuals or handbooks) are a third common type of document, used as a counselling aid for lawyers and others responsible for providing compliance advice. They contain more detailed "expert" guidance on applying anti-Bribery rules to particular circumstances.

Practitioner guides can be a useful and also cost effective management tool, especially where business considerations militate against bright-line compliance rules. If compliance training is working, it should trigger periodic inquiries from personnel in the field about the anti-bribery policy's applicability in specific cases. A good practitioner guide will help to increase consistent application.

**Contract Protections**

Anti-Bribery contract clauses are another common compliance tool. They are used for a variety of purposes in contracts with employees and business partners.

The PACI requirement, in Section 5.2, is that contracts with business partners acknowledge anti-Bribery commitments and secure a right of termination for non-compliance. Contract clauses also can be used to:

a) “Warrant” (i.e. contractually promise) compliance
b) Establish appropriate monitoring and oversight procedures
c) Mandate notice of violations and cooperation in investigations
d) Impose roll-down requirements (e.g. for agents, subcontractors)
4.2 Political Contributions

Section 4 of the PACI Principles establishes guidelines for an enterprise’s anti-bribery policy and standards of conduct. This is the substantive Programme component.

The PACI Principles

4.2.1 The enterprise, its employees or intermediaries should not make direct or indirect contributions to political parties, party officials, candidates, organizations or individuals engaged in politics, as a subterfuge for Bribery.

4.2.2 All political contributions should be transparent and made only in accordance with applicable law.

4.2.3 The Programme should include controls and procedures to ensure that improper political contributions are not made.

Discussion

The PACI Principles recognize that political contributions may be made for legitimate purposes, but require that an enterprise adopt reasonable measures to prevent circumvention of the Bribery prohibition. Contributions must be transparent, made in accordance with applicable law and monitored through appropriate controls and procedures.

These conditions apply to political contributions made directly or indirectly by an enterprise, its employees or intermediaries. Contributions covered by the rule include those made to political parties, party officials, candidates or organizations, or any other individuals engaged in politics. The term “contribution” is not defined, but is generally understood to mean contributions of cash or in-kind support for a political party, cause or candidacy.

Implementation

Bribery through political contributions is a particular risk depending upon the nature and location of an enterprise’s activities. Guidelines in this section can be used to establish new control measures or to strengthen existing ones.

Contributions Policy

A threshold question for signatory companies is whether to establish a bright-line prohibition against some or all political contributions. This policy determination should take into account business, administrative and legal considerations. Bright-line prohibitions can be easier to administer, and also safer, but may not always be a practical option. On the other hand, campaign finance laws in some countries may already prohibit or sharply restrict contributions by businesses.

An enterprise that prohibits some or all political contributions activity should make this known in its Code of Conduct. Programmes that permit legitimate contributions activity will need to develop reasonably detailed guidelines that implement controls for anti-circumvention, transparency and compliance with law mandated by Section 4.2. These are described in greater detail below.

Programme guidelines should define covered activities. They should explain, for example, that contributions may be in-kind as well as financial and that Programme controls apply whether a political contribution is made directly or through an agent or other independent person or entity. Guidelines should also identify applicable restrictions and control procedures, such as contribution limits (maximum contributions are often set by local law), management approval procedures (common above certain de minimis thresholds) and record keeping and reporting requirements.

Transparency and Consistency with Law

Section 4.2.2 requires that political contributions be transparent and made only in accordance with applicable law.

Transparency requires accurate record keeping. Corporate political contributions should be fairly and accurately identified in enterprise accounts. Contributions should never be made from secret or other offline accounts, or made indirectly through corporate personnel, agents or other persons.
prohibition on indirect contributions should include enterprise reimbursement of political contributions made by individuals (this is an express prohibition in many countries that restrict corporate political contributions). The form of and channels used to make a contribution should be scrutinized for suspicious circumstances.¹³

An enterprise’s commitment to limiting political contributions to those “consistent with applicable law” should be supported by appropriate controls for confirming that the laws of relevant jurisdictions are identified and followed. This can be a challenge for companies with an international presence. Rules governing corporate contributions vary from one country to the next, and sometimes even within a country. While some laws prohibit corporate contributions entirely, others merely limit contribution levels or impose public disclosure or reporting requirements. Compliance is further complicated by the intricacies of many laws. Important distinctions may be made, for example, based on an entity’s status (whether domestic or foreign) or for different kinds of contribution activity.

Controls and Procedures

The directive that a Programme “include controls and procedures to ensure that improper political contributions are not made” may be satisfied through training, due diligence, record keeping and oversight practices.

A number of measures can be employed to manage political contributions activity. Prior-approval procedures are common, and these are sometimes combined with a more or less formal committee structure to review and authorize political contributions. Programmes also may establish selective restrictions by country (e.g. where prohibited) or for particularly complex or sensitive contribution categories. Enterprises with significant contributions activity typically designate a political contributions expert from the legal department or compliance office to field inquiries and help with other compliance activities.

In addition to these management and oversight tools, targeted policy guidance can be developed for an enterprise’s government relations personnel, as well as advisers and political consultants. Contract measures described in Section 5.2 of the Handbook can also be adapted for contribution control purposes.
4.3 Charitable Contributions and Sponsorships

Charitable contributions and sponsorships are another potential corruption channel, subject to comparable controls for preventing Bribery.

The PACI Principles

4.3.1 The enterprise should ensure that charitable contributions and sponsorships are not used as a subterfuge for Bribery.

4.3.2 All charitable contributions and sponsorships should be transparent and made in accordance with applicable law.

4.3.3 The Programme should include controls and procedures to ensure that improper charitable contributions and sponsorships are not made.

Discussion

As with political contributions, the PACI Principles recognize that charitable contributions and sponsorships may be made for legitimate business purposes but must be monitored to prevent circumvention of the Bribery prohibition. Section 4.3 requires that contributions and sponsorships be transparent, made only in accordance with applicable law and subject to appropriate controls and procedures.

Charitable contributions are payments made for the benefit of society, for charitable, educational, social welfare and similar purposes. The payments are made without demand or expectation of business return. This category of activity includes participation in social investment programmes, which can involve important and valuable contributions to social and economic development but also heightened corruption risk.

Sponsorship is a transaction where the enterprise makes a payment, in cash or in kind, to associate its name with an activity or other organization. In consideration for the sponsorship fee, the enterprise receives rights and benefits such as the use of the sponsored organization’s name, advertising credits in events and publications, use of facilities and opportunities to promote its name, products and services. Sponsorship is a business transaction and part of promotion and advertising.

Policy Guidelines

Practices described in the preceding section for political contributions also apply to charitable contributions and sponsorship activity. Programmes should have specific guidelines and procedures for preventing circumvention of the Bribery prohibition. These should be reflected in policy documents and effectively communicated to relevant personnel through training and other means.

Transparency and Consistency with Law

Charitable contributions and sponsorships should be transparent and in accordance with applicable law. Payments should be fairly and accurately recorded in corporate accounts. As with political contributions, reputational risk can be a good practical measure. Activities that might embarrass the enterprise if publicly disclosed warrant particular scrutiny.

Controls and Procedures

An enterprise should have reasonable controls for preventing improper charitable contributions and sponsorships. These typically address due diligence, management approval, monitoring and documentation.

• Due diligence. Reasonable inquiry should be made to determine that charitable organizations and recipients of sponsorship are not conduits for Bribery. Standard due diligence procedures can be employed to verify a recipient organization’s bona fides and confirm its ability to perform the activity for which a donation or sponsorship is given.
• Approval procedures. Sponsorship is a routine business transaction and, as such, should be approved and administered within the normal purchasing process. Designated levels of approval for charitable contributions should be established, with appropriate reporting and oversight.

• Monitoring and documentation. Procedures should provide for monitoring and tracking of charitable contributions and sponsorship payments to be sure they are applied to the intended purpose. Findings should be recorded and reviewed periodically by management to confirm that payments fall within the policy and guidelines.
4.4 Facilitation Payments

Charitable contributions and sponsorships are another potential corruption channel, subject to comparable controls for preventing Bribery.

The PACI Principles

4.4.1 Recognizing that facilitation payments are prohibited under the anti-bribery laws of most countries, enterprises which have not yet eliminated them entirely should support their identification and elimination by (a) explaining in their Programme that facilitation payments are generally illegal in the foreign country concerned; (b) emphasizing in their Programme that they are of limited nature and scope and must be appropriately accounted for; and (c) including in their Programme appropriate controls and procedures for monitoring and oversight of facilitation payments by the enterprise and its employees.

Facilitation payments: These are small payments made to secure or expedite the performance of routine action to which the enterprise is entitled.

Discussion

The PACI Principles establish as an aspirational goal the eventual elimination of facilitation payments, but also recognize that for the immediate future such payments may be allowed under some Programmes. To prevent abuse, signatory companies that continue to permit facilitation payments must clearly describe this exception’s limited scope and establish effective control procedures.

Implementation

In the first instance, the making of facilitation payments will be a question of law for an enterprise depending upon the specific anti-corruption statutes governing its business activity. Some but not all laws established pursuant to the OECD Convention exempt facilitation payments from general prohibitions. Activities subject to restrictive laws should comport with those laws.

Where facilitation payments are exempt from applicable statutes dealing with Bribery of foreign government officials, an enterprise may make facilitation payments.

Local Law Prohibition

Section 4.4.1(a) directs enterprises to “explain” in their Programme that facilitation payments are generally illegal in the foreign country concerned. This explanation should be conveyed through policy documents, training and other appropriate means.

Programmes should recognize the difficult practical issues that can be raised by facilitation payment demands. Local law prohibitions notwithstanding, facilitation demands by minor public officials are common in many parts of the world. Many such demands are routine and can be managed through restrictive Programme standards. In some instances, however, refusal to respond to an extortionate demand may carry significant business consequences or even raise threats to life and health.

Signatory companies are encouraged to develop an oversight process for handling non-routine facilitation demands. This responsibility is often assigned to a senior compliance expert, but may also be managed through a compliance committee. In either case, the process can be used to identify common facilitation demands and formulate appropriate policy responses.

Guidance on Exception Limits

Section 4.4.1(b) requires an enterprise to explain in its Programme that facilitation payments “are of limited scope and must be appropriately accounted for”.

Programme guidance on facilitation payments should reflect applicable legal standards. Under most anti-corruption laws (and all those in conformance with the OECD Convention), payments exempted from liability must be modest and can only be made to facilitate routine governmental actions to which an enterprise is already entitled. The facilitation provision in the US Foreign Corrupt Practices Act is illustrative. It limits exempt facilitation to “routine government action”, defined narrowly to mean:

“only an action which is ordinarily and commonly performed by a foreign official in (i) obtaining
permits, licenses, or other official documents to qualify a person to do business in a foreign country; (ii) processing governmental papers, such as visas and work orders; (iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country; (iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or (v) actions of a similar nature."

Enterprise employees and agents must understand that facilitation payments can only be made to secure certain qualifying routine actions and not whenever payments will "facilitate" a desired objective.

Controls and Procedures

Section 4.4.1(c) directs that an enterprise include in its Programme “appropriate controls and procedures for monitoring and oversight of facilitation payments by the enterprise and its employees”.

Control procedures typically address the following areas:

• Identification and assessment. Facilitation issues should be analysed as part of the risk assessment process. Timelines can be used to identify common payment demand points and to develop appropriate policy responses.

• Employee training and guidance. Corporate policy should be communicated to employees, with particular attention to high-risk activities. Programme materials and training can be used to identify government actions considered “routine” and eligible for facilitation. Personnel should also know when and how to obtain compliance guidance.

• Approval procedures. Prior-approval requirements may be considered above de minimus levels. Authorization also may be considered on a category basis, for certain business activities and regions.

• Record keeping and reporting. Procedures should be established for internal reporting of facilitation demands and accounting when payments are made. These should take into account relevant legal considerations.

• Monitoring and oversight. Reported facilitation demands and payments should be reviewed for consistency with enterprise policy. At-risk personnel should also be queried periodically to confirm knowledge of and conformance with applicable standards and procedures.
This final section establishes guidelines for preventing improper gift, hospitality and expense practices.

The PACI Principles

4.5.1 The enterprise should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could improperly affect, or might be perceived to improperly affect, the outcome of a procurement or other business transaction and are not reasonable and bona fide expenditures.

4.5.2 The Programme should include controls and procedures, including thresholds and reporting procedures, to ensure that the enterprise's policies relating to gifts, hospitality and expenses are followed.

Discussion

The PACI Principles recognize that gifts, hospitality and payment of expenses are necessary and reasonable business activities and also that custom and practice vary across societies. Guidelines in this section are intended to prevent using gifts and hospitality or expense payments as a subterfuge for Bribery. The terms “gift”, “hospitality” and “expenses” are not defined, but are intended to have their ordinary meaning. A “gift” is anything of value (goods or services as well as money) given as a mark of friendship or appreciation. “Hospitality” is generally understood to mean entertaining, meals, tickets to events and other similar activities associated with business development and relationship building. “Expenses” refers to reimbursement of travel and similar expenses incurred by a prospective client, customer or business partner.

Guidance

Programmes should identify covered activities and provide enterprise personnel with reasonably detailed guidance on restrictions, approval procedures and reporting requirements.

Oversight

An enterprise should have reasonable controls and procedures for preventing Bribery. Specific reference is made in Section 4.5.2 to threshold and reporting requirements common to many Programmes. These generally set levels for gifts, hospitality and expense payments above which reporting is required. Control procedures can also be used to establish prior-approval requirements above a certain level.

Implementation

Corporate ethics Programmes typically include policies on giving and acceptance of gifts, hospitality and expense reimbursement. At most signatory companies, these general policies will satisfy PACI Bribery concerns or can easily be modified to do so.

Standards

Programme policies can be flexible in recognizing and accommodating local customs and cultural differences, but should set out clear standards of conduct and guidelines for preventing improper conduct. Policies should apply to all business relationships and transactions.
Section 5 of the PACI Principles describes the minimum requirements when implementing the Programme.

The PACI Principles

The following sets out the requirements that an enterprise should meet, at a minimum, when implementing the Programme.

Discussion

Section 5 identifies the structural and procedural requirements “that an enterprise should meet, at a minimum, when implementing the Programme.” They give operational meaning to the PACI principle that an enterprise match its commitment with an effective Programme of internal procedures and controls.

Programme requirements are addressed in eight separate categories. The first category, in Section 5.1, emphasizes the importance of high-level leadership and a good organizational structure for compliance. This is followed in Section 5.2 by guidelines for applying Programme requirements to affiliates, joint ventures, agents and other business partners. Section 5.3 discusses screening, evaluation and other Human Resources practices necessary to an open compliance environment.

Three additional categories address training (Section 5.4), advice and reporting channels (Section 5.5) and other communications (Section 5.6). The final two categories deal with internal control and audit practices (Section 5.7) and management oversight (Section 5.8).

These eight categories, when implemented, will constitute the basis of an effective Programme.
5.1 Organization and Responsibilities

This initial implementation category addresses minimum Programme requirements for leadership and organizational structure.

### The PACI Principles

5.1.1 The Board of Directors (or equivalent body) is responsible for overseeing the development and implementation of an effective Programme.

5.1.2 The Programme should be based on the PACI Principles and the Board (or equivalent body) should provide leadership, resources and active support for management's implementation of the Programme.

5.1.3 The Board (or equivalent body) should ensure that the Programme is reviewed for effectiveness and, when shortcomings are identified, that appropriate corrective action is taken.

5.1.4 The Chief Executive Officer (or executive board) is responsible for seeing that the Programme is carried out consistently with clear lines of authority.

5.1.5 Authority for implementation of the Programme should be assigned to senior management with direct line reporting to the Chief Executive Officer or comparable authority.

5.1.6 The Board of Directors (or equivalent body), Chief Executive Officer (or executive board) and senior management should demonstrate visible and active commitment to the implementation of the PACI Principles.

### Discussion

Section 5.1 places ultimate responsibility for an enterprise’s Programme on its board of directors, or “equivalent body” for enterprises with a different governance structure. As in other areas of corporate governance, the responsibility is one of general direction and oversight. Directors are expected to be knowledgeable about the anti-corruption Programme, to provide “leadership, resources and active support for management’s implementation of the Programme” and to ensure that the Programme is reviewed periodically for effectiveness.

Operational responsibility rests with an enterprise’s chief executive officer (CEO), or executive board for organizations with this management structure. The responsibility is to see “that the Programme is carried out consistently with clear lines of authority”. Having “clear lines of authority” means a reasonable and effective management structure for compliance activities. Programme responsibility may be redelegated, but only to high-level managers with a direct reporting line to the CEO or executive board.

In addition to these oversight responsibilities, an enterprise’s board, CEO and senior management are expected to demonstrate “visible and active commitment” to implementation of the PACI Principles. Practices that demonstrate such leadership are identified in the discussion that follows.

### Implementation

The board and senior management are responsible for creating and maintaining an environment that actively promotes compliance with the commitment. This has both leadership and organizational components.

#### Step 1: High-level Leadership

Implementation should begin with a strong and unambiguous statement of commitment from an enterprise’s senior leadership. The board and senior management must make clear to everyone in the organization that they are serious about the Programme and have made it a high priority. If an enterprise’s leaders do not appear to take compliance seriously, neither will its employees.
Commitment Statements

Communication of the leadership commitment begins with an enterprise's policy statement and other formal written documents. As explained in Section 4.1, Codes of Conduct and policy statements set basic enterprise policy and compliance expectations. With the appropriate wording and tone, they can also be used to communicate high-level engagement and seriousness of purpose.

Commitment statements should reflect good communication practice. Programme documents are most effective when they (a) convey organizational commitment in simple, understandable language (rather than technical legal formulations); (b) emphasize that compliance is an organizational priority; and (c) make clear that the policy applies to everyone within the organization (one company, one set of rules).

Where feasible, communications should combine a directive to follow corporate policy with positive reasons for doing so. It can be especially helpful to explain the larger social and economic issues at stake. Line personnel are being asked to forego practices that may be common elsewhere and still considered necessary by some. Understanding the reasons for this approach can help to minimize resistance.

Demonstrating Commitment

Policy documents are a necessary starting point, but only part of what should be a broader leadership effort. As in other areas important to an enterprise, careful planning is needed to inform the relevant stakeholders about Programme goals and expectations. Primary stakeholder groups include an enterprise's directors, management, business personnel and support groups (e.g. audit, legal, human resources). The planning process in Section 3 can be used to shape the Programme message for these discrete groups and to devise effective communication strategies.

In addition to facilitating initial Programme “roll-out”, the planning process can be used to identify leadership tools for periodically refreshing the commitment message. Many companies include a personal statement from the CEO or other senior business manager when Code or other Programme materials are circulated. Other common communication tools include periodic reminders from senior management to key personnel, statements at management meetings, newsletters and training directives.

Matching Words and Actions

Enterprise leaders can reinforce the compliance message through staffing and other resource allocation decisions, attention to Programme details, participation in planning and implementation activities and other similar actions.

Educating Enterprise Leaders

Programme guidance provided to directors and senior management can be another important marker.

Leadership education is implicit in the PACI guideline that the board “oversee” development and implementation of an effective Programme and the chief executive officer see that an effective Programme is carried out. Basic knowledge of the particular information and reporting systems employed by the enterprise is a predicate requirement for concluding that the system is adequate. Just as important is the opportunity to send the message that Programme requirements, including education and training, apply to everyone in the organization as appropriate.

An enterprise’s commitment to leadership education does not mean that directors and senior managers must participate in routine training activities. Content can be tailored to supervisory and oversight responsibilities and communicated via pre-existing channels. For directors, necessary information may be provided through additions to standard “Board Book” materials and periodic Programme briefings as required. As an example of the latter, many companies that manage compliance through an audit or other specialized committee supplement this with an annual briefing for the entire Board. This may also be part of a larger, more comprehensive compliance and ethics report to the board or its committees.

Step 2: Organizational Structure

High-level leadership should be matched by an appropriate organizational structure for compliance activities with clear lines of authority.

Many enterprises find it helpful to formalize Programme functions and responsibilities in a written policy document. Organizational plans may restate an enterprise’s policy commitment, assign Programme responsibilities and list minimum implementation requirements.
5.2 Business Relationships

Section 5.2 establishes guidelines for applying Programme requirements to different kinds of business relationships. Details vary depending on the extent of control and nature of the relationship.

The PACI Principles

The enterprise should apply its Programme in its dealings with subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has business relationships.

Discussion

Business activities are conducted through a variety of legal structures, including controlled subsidiaries, joint ventures, consortiums and teaming agreements. Programme requirements have been extended to these relationships because of the potential for corruption, especially in high-risk markets.

5.2.1 Subsidiaries

This first section addresses Programme coverage for branch offices, wholly-owned subsidiaries and other controlled entities.

The PACI Principles

5.2.1.1 The Programme should be designed and implemented on an enterprise-wide basis, applicable in all material respects to controlled subsidiary entities.

5.2.1.2 The enterprise should undertake measures to see that the conduct of subsidiary entities is consistent with the International Business Principles.

Discussion

Programmes should be designed and implemented on an enterprise-wide basis, applicable in all material respects to controlled subsidiaries. A controlled subsidiary is any entity in which the parent company has a majority equity interest or otherwise exercises effective control over operations. Full Programme coverage should also extend to controlled branch offices.

Implementation

Programme coverage for controlled subsidiaries and branch offices should be at the same level, and with the same basic standards and requirements, as at the parent company. In operational terms, this means providing for comparable employee training, reporting channels, oversight and other Programme activities. Practice can be tailored to reflect local needs and circumstances, provided that implementation is otherwise consistent with Programme requirements in “all material respects”.

Programme requirements in all material respects to the activities of branch offices, wholly-owned subsidiaries and other controlled entities. More limited guidelines, detailed in separate sections, are established for joint ventures, agents, suppliers and contractors.
Programme planning and evaluation, including risk assessment, should be managed on an enterprise-wide basis. Coverage for controlled subsidiaries and branch offices should be explicit, with clearly defined lines of responsibility, reporting and accountability. In most cases, it will be appropriate to extend Programme coverage and requirements directly to controlled subsidiaries. Where this is not feasible, an enterprise should work with the subsidiary to develop and implement a comparable Programme of its own.

Section 5.2.1.2 directs companies to “undertake measures to see that the conduct of subsidiary entities is consistent with the PACI Principles.” As appropriate to the corporate structure, if subsidiaries operate independently and have their own compliance functions, periodic assurance from a subsidiary’s senior business manager that Programme requirements are being followed might be required. Such assurances may be in the form of an annual certification that reports on enforcement experience, overall Programme effectiveness and future implementation planning. Annual certification is discussed in Section 5.8. Coordination also can be addressed through enterprise-wide compliance committees and appointment of subordinate compliance managers.

### 5.2.2 Joint Ventures

Section 5.2.2 identifies Programme requirements for business conducted through non-controlled entities, including joint ventures, minority-controlled subsidiaries, consortium partners, teaming agreements and nominated subcontractors.

**The PACI Principles**

5.2.2.1 Due diligence should be conducted before entering into a joint venture, and on an ongoing basis as circumstances warrant. The Programme should provide guidance for conducting due diligence.

5.2.2.2 The enterprise should undertake appropriate measures, including contract protections, to ensure that the conduct of joint ventures is consistent with the PACI Principles.

**Discussion**

Joint ventures and other legal structures for sharing business risk are common. It is important to understand the challenges they pose for Programme implementation. Joint venture partners, especially local companies in high-risk countries, have been a common avenue for corruption. The PACI Principles recognize that an enterprise’s ability to control third-party activities may be limited. At the same time, they require a reasonable and good faith effort to prevent conduct that could not be taken directly by the enterprise.

Section 5.2.2 establishes two basic requirements. The first is that an enterprise undertake reasonable due diligence to confirm the suitability of a potential business partner. Many companies already include a corruption screen in their normal pre-venture reviews, and for those not currently covered, the additional administrative burden should be modest. The second Programme commitment is to undertake “appropriate” measures to ensure that conduct by the venture is consistent with the PACI Principles. The foremost of such measures include prophylactic contract provisions.

The diligence “due” before entering into a joint venture, and on an ongoing basis as warranted, will depend on specific risks and circumstances. This is a flexible standard, requiring companies to use their good faith judgment to determine the appropriate level and frequency of review for a particular business relationship or project. Similar considerations govern judgments about the specific measures deemed “appropriate” to ensure that venture conduct remains consistent with the PACI anti-corruption commitment.
Implementation

This section describes general industry practices for extending Programme requirements to activities conducted through joint ventures and other similar business structures.

Planning and Guidelines

Even more than in other business contexts, effective compliance for joint ventures requires careful advance planning and clear guidelines for personnel with implementation responsibility.

Initial planning and guidelines development can be conducted as part of the general planning process described in Section 3 of the Handbook. Joint venture activities should be evaluated for corruption risk and also for the quality and effectiveness of anti-corruption procedures and controls. Resulting action plans can be used to develop general guidelines for applying Programme requirements to joint venture activities.

Due Diligence

Section 5.2.2.1 mandates due diligence review for all joint ventures, as warranted, before entering into the relationship and “on an ongoing basis as circumstances warrant”.

For anti-corruption purposes, the essential due diligence requirement is to “know one’s partner”. In operational terms, this means making appropriate inquiries to determine whether a potential business partner is honest, ethical and can reasonably be expected to abide by its contract commitment to refrain from Bribery. Primary areas of inquiry include a potential partner’s business qualifications (e.g. whether expertise and experience match business objectives), its ethics reputation and record (e.g. whether there is evidence of past corruption) and its personnel and their relationships (e.g. the nature and extent of governmental ties).

An ethics questionnaire or other standard documents may be used to focus due diligence reviews, and can be helpful and appropriate for a potential business partner to supply this information at the outset. Information provided by a potential partner may be assessed independently and compared with data from other sources. Additional information sources include an enterprise’s own government (especially consular officials), public records (often, although not always, available in the partner’s home country), general publications (accessible through web searches) and specialized investigative firms.

The diligence due for a particular relationship or project will depend on specific circumstances and associated corruption risk. In general, investigation should be more thorough where corruption risk is high and can be more limited where perceived risk is low. Monitoring for corruption risk is an ongoing obligation. For joint ventures with a high level of associated risk, the ability to have periodic reviews should be considered. Whether or not periodic reviews are scheduled, an enterprise should monitor for red flags and promptly investigate suspicious circumstances.

Management Approvals

Management approvals are an important means of controlling risk. Most companies already require high-level approval before entering into substantial joint venture or other third-party business relationships. Corruption factors should be an explicit factor in this analysis, incorporating information developed through project-specific due diligence and risk assessment reviews.

Contract Protections

Prophylactic contract provisions are another important Programme tool. They are one of several “appropriate measures” an enterprise is expected to “undertake [...] to ensure that the conduct of joint ventures is consistent with the PACI Principles.”

Many companies find it advantageous to devise standard contract language for use on an enterprise-wide basis. Such provisions are added to the inventory of general representations, warranties and protections available for joint venture agreements.

These typically include a representation/warranty to comply with law and remedies should include suspension/termination at the option of the innocent party.
Documentation

Implementation activities should be fully documented.

5.2.3 Agents, Advisers and Other Intermediaries

Section 5.2.3 addresses Programme requirements for business conducted through an agent, adviser or other intermediary.

The PACI Principles

5.2.3.1 The enterprise should undertake due diligence before appointing an agent, adviser or other intermediary, and on an ongoing basis as circumstances warrant.

5.2.3.2 The Programme should provide guidance for conducting due diligence, entering into contractual relationships and supervising the conduct of an agent, adviser or other intermediary.

5.2.3.3 Due diligence review and other material aspects of the relationship with the agent, adviser or other intermediary should be documented.

5.2.3.4 All agreements with agents, advisers and other intermediaries should require prior approval of senior management.

5.2.3.5 The agent, adviser or other intermediary should contractually agree in writing to comply with the enterprise’s Programme and should be provided with materials explaining this obligation.

5.2.3.6 Provision should be included in all contracts with agents, advisers and other intermediaries relating to access to records, cooperation in investigations and similar matters pertaining to the contract.

5.2.3.7 Compensation paid to agents, advisers and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered and should be paid through bona fide channels.

5.2.3.8 The enterprise should monitor the conduct of its agents, advisers and other intermediaries and should have a contractual right of termination in case of conduct inconsistent with the Programme.

5.2.3.8.1 All agreements with agents, advisers and other intermediaries should require prior approval of senior management.

5.2.3.8.2 The agent, adviser or other intermediary should contractually agree in writing to comply with the enterprise’s Programme and should be provided with materials explaining this obligation.

5.2.3.8.3 Provision should be included in all contracts with agents, advisers and other intermediaries relating to access to records, cooperation in investigations and similar matters pertaining to the contract.

5.2.3.8.4 Compensation paid to agents, advisers and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered and should be paid through bona fide channels.

5.2.3.8.5 The enterprise should monitor the conduct of its agents, advisers and other intermediaries and should have a contractual right of termination in case of conduct inconsistent with the Programme.
Discussion

Agents, advisers and other intermediaries are another source of potential corruption risk for signatory companies. The PACI Principles recognize the valuable contribution of these relationships in many areas of business, but require measures to prevent Bribery.

As in joint venture relationships, an enterprise’s primary responsibility is to undertake reasonable due diligence to confirm the suitability of a prospective agent, adviser or other intermediary as the circumstances warrant. Many companies already include a corruption screen in their normal review practices in such cases, and for most it should be possible to address additional PACI directives through incremental adjustments to existing practice.

As elsewhere, the diligence due before entering into an agent relationship, and on an ongoing basis, will depend on specific risks and circumstances. This flexible standard requires an enterprise to exercise its good faith judgment to determine the appropriate level and frequency of review for a particular business relationship.

Section 5.2.3 enumerates six specific Programme requirements in addition to conducting reasonable due diligence. Each is discussed in the implementation section below. Briefly, they direct that an enterprise provide its employees with guidance for conducting due diligence, entering into contractual relationships and supervising an agent’s conduct.

Requirements in this section apply to all business relationships with agents, advisers and other similar intermediaries. These coverage terms are not defined, but are generally understood to mean a person or entity authorized to act for or on behalf of, or to otherwise represent, an enterprise in furtherance of its business interests. For ease of reference, the discussion that follows uses the term “agent” to mean advisers and other intermediaries as well.

Implementation

PACI standards for agent relationships are more detailed than in other areas because of the heightened corruption risk. Some suggested practices are summarized below.

Planning and Guidelines

Signatory companies should establish specific guidelines and procedures for applying Programme requirements to relationships with agents. This is implicit in the directive in Section 5.2.3.2 that an enterprise “provide guidance” for conducting due diligence, entering into contractual relationships and supervising an agent’s conduct.

Guidelines should explain when and how the Programme applies to the appointment and supervision of an agent, identify personnel responsible for implementation and describe relevant anti-corruption standards and procedures. The latter should include practices enumerated in this section. Guidelines for applying the Programme to agent relationships can be developed as part of the Section 3 planning process.

Due Diligence

The diligence due for a particular agent relationship will depend on specific circumstances and associated corruption risk. As a general matter, inquiry should be more thorough where corruption risk is high and can be more limited where perceived risk is low. As with joint ventures, high-risk relationships may warrant periodic review to confirm an agent’s continuing suitability to represent the enterprise.

Practices described in the preceding section for joint ventures also apply to due diligence review for agent relationships. The operative requirement is to determine whether a prospective agent is honest, ethical and reasonably likely to abide by its contract commitment to refrain from Bribery. Priority areas for review include a prospective agent’s business expertise and experience, reputation and ethics record, and possible relationships with government or enterprise customers that could heighten corruption risk. Threshold judgments should also be made about the need for an agent.
Ethics questionnaires or other standard documentation may be used to focus due diligence review. Information supplied by a prospective agent should be assessed independently and compared with data from other sources. Inquiry for most relationships should include a reasonable search for public information about a prospective agent (e.g. through media reports, official public records). In addition, reputational inquiry in the local business community and through official sources (e.g. one's own consular officials) will often be appropriate. For significant relationships in high-risk markets, specialized investigative services should be considered.

Management Approval

Section 5.2.3.2 directs that all agency relationships receive “prior approval of senior management”. A formal approval process is recommended, with clear lines of responsibility and guidelines for documentation and oversight.

Contract Protections

Standard provisions for use on an enterprise-wide basis are generally recommended. Most importantly, a warranty by the agent that they will act consistent with law should be included in agent contracts. Consideration to a breach resulting in suspension/termination may be considered.14

Compensation

Section 5.2.3.2.5 establishes three basic guidelines for compensation of agents. An agent should only be compensated for “legitimate” services; fees and commissions should be reasonable in relation to the services provided; and payment should be through bona fide channels. The restriction on compensation to “legitimate services” is intended to reinforce the basic PACI prohibition on Bribery. An enterprise may not retain an agent to engage in prohibited conduct – for example, to secure “an improper advantage” in governmental or commercial procurement.

The directive that compensation for an agent’s services be “appropriate and justifiable remuneration” addresses the problem of excessive payments used to finance Bribery. What is appropriate and justifiable will depend on the specific services procured, unique agent characteristics (e.g. quality of service, reputation) and relevant market conditions. Where feasible, compensation terms should be benchmarked against arrangements for similar services within the enterprise and at other similarly situated companies.

The requirement that payments to agents only be made through bona fide channels is a standard accounting control. Programme guidelines should require that compensation arrangements be open and transparent, made through reputable financial channels and properly recorded in enterprise records. Requests for unusual payment arrangements should be treated as a red flag, triggering heightened scrutiny and other measures to prevent Bribery.

Monitoring

Provision should be made for monitoring agents. Practices described in Section 5.7 can be used to develop agent-specific procedures and controls.
5.2.4 Contractors, Subcontractors and Suppliers

Section 5.2.4 establishes Programme guidelines for enterprise relationships with contractors, subcontractors and suppliers.

The PACI Principles

5.2.4.1 The enterprise should conduct its procurement practices in a fair and transparent manner.

5.2.4.2 The enterprise should undertake due diligence, as appropriate, in evaluating contractors, subcontractors and suppliers to ensure that they have effective anti-bribery policies.

5.2.4.3 The enterprise should make known its anti-bribery policies to contractors, subcontractors and suppliers. It should monitor their conduct and should have a contractual right of termination in case of conduct inconsistent with the Programme.

Discussion

This final category of business relationships addresses potential corruption risk from enterprise dealings with contractors, subcontractors and suppliers. The guidelines differ in two respects from those for other types of relationships. Section 5.2.4 draws attention to an enterprise’s own procurement practices, and its application of other Programme requirements is more limited. Both differences reflect a presumption that business dealings are on an “arm’s length” basis with independent entities.

The coverage terms “contractor”, “subcontractor” and “supplier” are not defined in the PACI Principles, but are meant to have their normal and customary meaning. For ease of reference, the Handbook uses the term “contractor/supplier” to mean any non-controlled person or entity that provides goods or services to an enterprise under contract. A “subcontractor” is a person or entity that provides goods or services to a contractor/supplier.

The threshold requirement for contractor/supplier relationships is that an enterprise conduct its own procurement in a “fair and transparent manner”. Fairness and transparency relate to the process rather than any particular award procedure. Procurement may be on a competitive bid or sole source basis, at an enterprise’s discretion, so long as the process is reasonable under the circumstances and subject to appropriate oversight.

The PACI intention is to prevent corruption by enterprise personnel in dealings with contractors and suppliers as a subterfuge in dealings with third parties.

Section 5.2.4.2 further requires that an enterprise determine whether prospective contractors/suppliers have effective anti-bribery policies of their own. As with other business relationships, signatory companies are expected to make reasonable inquiry to confirm that a contractor/supplier can be relied upon to comply with the zero tolerance policy in enterprise-related business activities. The standard of inquiry is a flexible one, intended to encourage review appropriate to the particular relationship and circumstances.

A signatory company is expected to make known its policy to contractors/suppliers, establish appropriate contract protections and monitor contractor/supplier conduct for consistency. As with other types of relationships, implementation should be tailored to reflect the level and type of corruption risk specific to a particular relationship or transaction.

Implementation

Practices described earlier for joint venture and agent relationships can be modified for use with contractors/suppliers.
Fair and Transparent Procurement

The Section 5.2.4.1 requirement that procurement be conducted in a fair and transparent manner reflects standard industry practice and can be satisfied at most signatory companies through existing procedures and controls.

Although not expressly required by the PACI Principles, signatory companies are encouraged to develop formal written procurement guidelines that can be used by responsible personnel and evaluated periodically for effectiveness. Guidelines typically address procurement eligibility, award procedures, management approval requirements, documentation and oversight. Written guidelines can be supplemented with targeted training and through other implementation practices described in the Handbook.

Due Diligence

Section 5.2.4.2 mandates “due diligence, as appropriate, in evaluating contractors, subcontractors and suppliers to ensure that they have effective anti-Bribery policies.”

As with other types of business relationships, the essential due diligence requirement is to know with whom one is doing business. This requires, at a minimum, ascertaining whether a prospective contractor/supplier has an effective anti-corruption policy.

The phrase “as appropriate” is intended to convey flexibility in applying the due diligence requirement to diverse business relationships. Enterprises are expected to use their good faith judgment to determine the appropriate level and frequency of due diligence review. Often, informal discussions with responsible compliance managers together with protective contract measures may suffice. Where perceived corruption risk is high, however, more extensive inquiry may be necessary.

Monitoring for corruption risk is an ongoing obligation. As in other contexts, periodic reviews should be considered for contractor/supplier relationships with a high level of associated risk. Whether or not periodic reviews are scheduled, an enterprise should monitor for red flags and promptly investigate suspicious circumstances.

Notice

Section 5.2.4.3 directs that an enterprise “make known its anti-Bribery policies to contractors, subcontractors and suppliers.”

Notice is most certain and effective when conveyed through an appropriate contract provision. Sample text described earlier for joint venture and agent relationships can be modified for use with contractors/suppliers. Where a formal contract provision is not feasible, notice of the enterprise’s anti-corruption policy and Programme requirements should be conveyed in writing to a responsible senior official of the contractor/supplier and documented in enterprise records.

Whether notice is communicated through a formal contract provision or management letter, the enterprise should make clear its commitment to its anti-bribery policy and its expectation that the contractor/supplier and its employees and agents will act consistently with the policy.

Monitoring

Section 5.2.4.3 contains two additional requirements, one relating to contract monitoring and the second to relief when non-compliance occurs.

Monitoring practices described elsewhere in the Handbook can be tailored for use in contractor/supplier relationships. These relate to planning, employee guidelines, management approvals, documentation and reporting, and management oversight.

Contract relief, including a right of termination in the event of non-compliance, can be addressed through standard contract provisions, using the same guidelines and sample text described earlier for joint venture and agency relationships. Although not expressly required for contractor/supplier agreements, compliance managers may consider including modified versions of the warranty and cooperation provisions.
5.3 Human Resources

Section 5.3 establishes guidelines for a signatory company's Human Resources (HR) practices, including protections for employees who refuse to pay bribes and sanctions for Programme violations.

The PACI Principles

5.3.1 The enterprise's commitment to the Programme should be reflected in its Human Resources practices.

5.3.2 The enterprise should make clear that compliance with the Programme is mandatory and that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business.

5.3.3 The enterprise should apply appropriate sanctions for violation of the Programme, up to and including termination in appropriate circumstances.

Discussion

The effectiveness of an enterprise's Programme depends to a substantial degree on the understanding, commitment and performance of its employees. HR practices are a primary tool for shaping this compliance environment.

The PACI Principles recognize that HR practices vary from company to company and that no one set of practices will be appropriate to all companies. The directive to reflect Programme commitment in an enterprise's HR practices is accordingly quite general. Signatory companies are expected to exercise good faith judgment in deciding how best to meet this stated objective. Representative practices are offered for consideration in the implementation section below.

Two exceptions to this flexible standard should be noted. Section 5.3.2 requires an enterprise to make clear that compliance with the Programme is mandatory for all personnel and that a refusal to pay a bribe will not trigger adverse action if it results in lost business. Section 5.3.3 further provides that appropriate sanctions be established and applied for violations of the Programme, up to and including termination of employment. Both provisions are designed to demonstrate the seriousness of an enterprise's commitment to the zero tolerance policy.

Implementation

This section describes general industry practices that can be used to shape the HR component of an enterprise's Programme.

Screening of New Hires

Programmes typically include a basic screening procedure to confirm that personnel in high risk positions are honest, ethical and can be trusted to follow an enterprise's legal and ethics rules.

Care should be taken to comply with applicable privacy or other employment law protections. These considerations are not unique to corruption screening, and as in other areas are best managed in coordination with employment law experts.

Conditions of Employment

Enterprise personnel should understand that compliance with Programme requirements is an organizational priority and condition of employment. This message should be communicated to new hires as part of the induction process and reiterated periodically.

All personnel should be on notice that “compliance with the Programme is mandatory” (Section 5.3.2) and that non-compliance is subject to serious sanction, up to and including termination of employment (Section 5.3.3). Communication is most effective when in writing, and in some jurisdictions formal notice may also be a precondition for taking disciplinary employment action.
Enterprise expectations can be communicated through Code certifications and, where formal employment contracts are negotiated, through express contractual provisions. In both cases, good communication practices should be followed. Code and contract documents serve educational as well as legal purposes, and accordingly should be written in non-technical terms easily understood by the intended audience.

A growing number of companies require new hires to review the corporate Code of Conduct and sign a certification statement upon induction. Such statements typically confirm that a new employee has received and reviewed the Code, and are made part of the employee’s permanent record. Most Code certifications are general, covering a wide range of legal and business ethics rules including but not limited to Bribery prohibitions. Corruption-specific certifications may also be considered for sensitive positions. In addition to certifying receipt and review of Code or other enterprise policy documents, certifications can be used to put employees on notice that non-compliance may result in termination of employment.

**Training**

New employees should receive information about the enterprise’s Programme as part of their induction training. Appropriate continuing training should be provided thereafter. This topic is covered in Section 5.4 of the Handbook.

**Communications**

Secure and accessible channels should be established for seeking implementation guidance, reporting suspicious circumstances and suggesting Programme improvements. These practices are addressed in Section 5.5 of the Handbook.

**Performance and Evaluation**

As has been noted, Section 5.3.2 requires an enterprise to make clear that compliance with the Programme is mandatory for all personnel and that employees will not be penalized if refusal to pay a bribe results in lost business.

A common employee concern is that a decline in business, for whatever reason, may lead to adverse personnel action, potentially including reduced compensation, demotion or even loss of employment. When an employee’s productivity declines, it can be very difficult to determine the exact reason. The PACI commitment is to a good faith effort to isolate and protect employees from those losses.

Good faith can be demonstrated through specific HR practices. These include:

a) A clear and unequivocal statement of enterprise policy

b) Periodic supplemental directives (reminders) to management personnel

c) Heightened oversight of the evaluation process

Reminders should be provided regularly, as part of general Programme training for managers and in conjunction with annual employee evaluations.

**Discipline**

Guidelines should also be developed to ensure that appropriate disciplinary action is taken when violations occur, consistent with the Section 5.3.3 directive.

This Programme element has three aspects. First, discipline must be “appropriate” to the circumstances. While the form of sanction may vary, and may not always warrant termination of employment, judgments should reflect the Programme objective of deterring future violations as well as punishing the offending conduct. Second, disciplinary action should be applied consistently. This means imposing similar sanctions for similar misconduct. Third, accountability should extend to all aspects of the Programme.
5.4 Training

Section 5.4 addresses the training component of an enterprise’s Programme.

The PACI Principles

5.4.1 Managers, employees and agents should receive specific training on the Programme, tailored to relevant needs and circumstances.

5.4.2 Where appropriate, contractors and suppliers should receive training on the Programme.

5.4.3 Training activities should be assessed periodically for effectiveness.

Discussion

Training is a primary tool for communicating Programme standards and procedures to enterprise personnel.

The PACI Principles require “specific training on the Programme” for managers, employees and agents. Specific training means targeted education that promotes an understanding of the anti-corruption commitment and all relevant rules and procedures. Signatory companies have flexibility in deciding on the most effective combination of training and other communication tools.

Training content and methods should be tailored to employee responsibilities. All personnel, including agents, should receive basic information about the Programme and enterprise expectations, including prompt reporting of concerns or suspicious circumstances. This information typically is communicated through an enterprise’s business Code and as part of general employee training. Personnel engaged in marketing and other high-risk activities generally need more detailed guidance, which may be provided through written policy statements, training and related educational tools. Business managers should also receive specific training, geared to their respective Programme responsibilities.

One common response has been to develop more formal processes for planning and implementing training activities. Planning typically is part of an annual review, with compliance and business managers working together to identify training needs by business and job function. Reviews can be used to evaluate training methods and materials, establish minimum training requirements, assign training responsibilities and assess effectiveness. Reliance on computer software to schedule and monitor training for individual employees is common.

Implementation

Practices described in this section reflect recent compliance innovations that can be used to strengthen an enterprise’s existing training capabilities.

Planning

Training can be a difficult compliance challenge even for the most experienced enterprises. The compliance message must reach different audiences within an organization, often with varying degrees of sophistication, experience and education. For many signatory companies, language and culture will be a further complicating factor. Decisions also need to be made about training content, tailoring for different groups, methods and frequency.

One common response has been to develop more formal processes for planning and implementing training activities. Planning typically is part of an annual review, with compliance and business managers working together to identify training needs by business and job function. Reviews can be used to evaluate training methods and materials, establish minimum training requirements, assign training responsibilities and assess effectiveness. Reliance on computer software to schedule and monitor training for individual employees is common.
Training Content

Although all enterprise personnel are expected to receive “specific training on the Programme”, details will vary and should be “tailored to relevant needs and circumstances”.

All personnel should receive basic information about the Programme, including an explanation of the policy and what it covers, and guidance on when and how to obtain compliance advice or report concerns (reporting channels are addressed in Section 5.5). This is also an opportunity to emphasize the affirmative obligation of all personnel to promptly report suspicious circumstances. As has been noted, basic Programme information can be provided through an enterprise’s business Code and general employee training.

Personnel engaged in high-risk activities, such as marketing and procurement, should receive more detailed guidance. Managers and other employees in these categories need not be experts on the policy, but they should know enough to avoid obvious violations and to red flag other conduct that may be problematic. They should understand, for example, the different forms Bribery can take and that the policy applies whether a payment is made directly or through an agent or business partner. Depending on an employee’s particular responsibilities, guidance on political or charitable contributions, facilitation payments or other specific practices may also be appropriate.

Specialized guidance is provided through anti-Bribery guidelines and targeted training. Policy statements and other Programme materials used for this purpose are discussed in Section 4.1, and training methods are addressed below. Training content and methods should match job responsibilities. As an example, training for marketing personnel should focus on common sales and procurement risks, while the comparable training for a manager would emphasize oversight responsibilities. More advanced training should also be considered for personnel in the legal department or compliance office responsible for answering employee inquiries and investigating reported concerns.

Trainers

Training should be conducted by qualified personnel with appropriate knowledge of the subject and effective communications skills. Expertise can be developed within the enterprise or provided through an outside expert, and many Programmes do both.

The planning process can be used to match trainers with training activities. Code and other basic employee training is often provided by generalists in an enterprise’s HR department or ethics office, while more specialized functions may require support from the legal department or an outside expert. Examples of the latter include skills training (especially for trainers and managers), materials development and other technical support.

Whether training is for basic awareness or specialized functions, an enterprise’s compliance manager should work with the trainers to shape the training message and substantive details. Coordination may be informal or, as in some companies, achieved through targeted Programme training for trainers.

Methods

An enterprise should use training methods best suited to its needs and circumstances. Although in-person training is usually most effective, this may not always be a practical option. Common alternatives include instructional videos and computerized training modules, and these are often mixed with in-person training where possible.

Programmes typically have some form of “blended training” that combines several training methods. A common practice is to use written Programme materials and general Code training for basic awareness, online training for more in-depth knowledge, and in-person sessions or seminars on more technical matters for select job functions. Online training can be a useful adjunct for specialized training, especially for companies with a large and geographically dispersed workforce.

Where feasible, training content should be tailored to reflect an enterprise’s actual business and risk profile. Training is much more effective when
presented in concrete terms that relate to an employee's responsibilities and experience. Use of case scenarios is common, and these can be especially helpful when drawn from actual industry practice.

**Frequency**

New employees should receive basic information about the enterprise's Programme as part of their induction training, and on a continuing basis thereafter. Specialized training for personnel in high-risk areas similarly should be provided upon commencement of those responsibilities, with periodic updating. Frequency should reflect the nature and degree of risk. Updating on an annual or biennial basis is common.

**Certifications**

Training certifications are a standard compliance feature, used to acknowledge receipt of Code or other Programme materials. They can also be used to confirm participation in training sessions, adherence to Programme requirements and knowledge of reporting obligations and channels.

The most basic and common formulation is an acknowledgment that an enterprise's Code has been received and reviewed. Many Programmes also ask personnel to confirm that they understand compliance rules and have followed them, and are not aware of violations by others. Although less common, certifications can also be used to document training. Certifications may be renewed periodically, and usually are maintained in an employee's personnel file.

**Documentation**

Certification procedures and other less formal means can be used to record employee participation in training sessions, seminars and other educational activities. Many Programmes now collect this information in a computerized format so that it can be easily aggregated for reporting and assessment. Documentation of planning and other implementation activities will facilitate required periodic training assessments.
5.5 Raising Concerns and Seeking Guidance

This fifth Programme category emphasizes the importance of a compliance environment that encourages prompt raising of concerns and reporting of suspicious circumstances.

**The PACI Principles**

5.5.1 The Programme should encourage employees and others to raise concerns and report suspicious circumstances to responsible enterprise officials as early as possible.

5.5.2 To this end, the enterprise should provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances ("whistle-blowing") in confidence and without risk of reprisal.

5.5.3 These channels should also be available for employees and others to seek advice or suggest improvements to the Programme. As part of this process, the enterprise should provide guidance to employees and others on applying the Programme’s rules and requirements to individual cases.

**Discussion**

Compliance Programmes are most effective in organizations that encourage employees and others to seek expert advice when questions arise and to report suspected wrongdoing promptly for investigation and response. To this end, an enterprise is expected to supplement traditional communication channels with a secure channel for raising Bribery concerns.

Prompt reporting is encouraged through an open compliance environment. Enterprise personnel, agents and business partners must be persuaded that reporting is an organizational priority, and they must have confidence that good faith inquiries and reporting will be taken seriously and not lead to retaliation. This is a basic leadership responsibility and challenge, to be achieved through practices described in Section 5.1 and elsewhere in the Handbook.

The Programme requirement is that “secure and accessible” channels be provided for raising compliance concerns and reporting suspicious circumstances (commonly referred to as “whistle-blowing”). A “secure” channel is one through which communication can be made in confidence and without risk of reprisal. Neither anonymity nor outsourcing is required, but in their absence other measures to secure the reporting channel may be necessary. An “accessible” channel is one that is easy to use, in a compatible language, and widely publicized within the enterprise. Telephone hotlines are a common Programme option.

Confidential reporting is matched by a policy to provide channels for seeking compliance advice and suggesting improvements to the Programme. For many companies, the practical benefit from a good advisory channel will be many times greater than for the reporting hotline. An enterprise’s employees and agents are its compliance front line. If training has been effective, frequent questions should arise about the zero tolerance policy’s applicability to particular situations and personnel should have practical suggestions for Programme refinements.

Companies should make advice and reporting channels available to “employees and others”. Reference to “others” is meant to include agents and business partners who may engage in activities subject to Programme standards and requirements. In both cases, prospective advice about the meaning and scope of applicable Bribery prohibitions can help to avoid confusion and prevent violations of law or corporate policy. Agents and business partners can also be a valuable source of information for risk assessment and other pro-active compliance activities.
Implementation

PACI requirements may be satisfied through hotline and other common practices for building and maintaining an open compliance environment.

Encouraging Prompt Reporting

The enterprise commitment to an open compliance environment can be conveyed through targeted leadership communications (Section 5.1), training (Section 5.4), performance evaluations and other HR practices (Section 5.3) and mandatory contract provisions (see, for example, Section 5.2).

Basic information about confidential reporting channels and other protections should be included in Code and other Programme materials. These materials can also be used to remind personnel of their obligation to raise compliance concerns promptly with a supervisor or through other designated channels.

Reporting Channels

Programmes typically provide multiple channels for raising compliance concerns and reporting suspicious circumstances.

It is traditional and most common for personnel to report compliance concerns to a responsible supervisor. This channel is often supplemented by a separate contact point in the legal department or compliance office for expert advice. Additional mechanisms that permit more confidential reporting include hotlines, suggestion boxes, employee exit interviews, e-mails and other means for promoting information exchange.

For many companies, some form of hotline service will be the easiest and most effective way to satisfy the PACI confidentiality directive. Companies that already maintain a general hotline for raising legal and ethics concerns may adapt these for Programme use. For others, information about hotline options and evolving industry practice can be obtained from a variety of sources, including service vendors.

Hotline services raise a number of practical issues for Programme planning:

- Operation. Hotline services can be operated internally or through an independent service provider. Independent services are easier to administer and may instil greater confidence in potential “whistle-blowers”, but they can also be more expensive and may not be practical in some regions. Enterprise-run hotlines are a reasonable Programme option, provided suitable measures are taken to preserve confidentiality and employee confidence.

- Anonymity. A second question is whether to allow employees and business partners to raise concerns on an anonymous basis. Anonymity makes it easier and more likely for people to use the system, but also harder for compliance officials to evaluate and follow up on reported concerns. Hotlines often balance these considerations by offering anonymity but also encouraging individuals making reports to identify themselves on a confidential basis.

- Accessibility. A third planning consideration relates to hotline accessibility. Decisions will need to be made about hours of operation (“24/7” vendor answering service is ideal, but can be difficult to replicate in enterprise-run hotlines) and language compatibility (translation needs should be identified).

In addition to providing for a confidential reporting channel, Programmes should have a protocol for processing and investigating compliance inquiries and reports. Protocols typically address record keeping requirements, confidentiality protections, responsibility for investigations and reporting (usually to the audit committee). They are also used to preserve attorney-client and other legal privileges, and to ensure appropriate follow up with the original reporting source (i.e. whistle-blower).

Compliance Advice

Enterprise personnel should be encouraged to seek compliance guidance per the enterprise’s policies, which may include a contact point in the legal department or compliance office and, in some Programmes, access to a hotline or other confidential mechanism for raising sensitive questions. These various channels should be identified in Programme materials and through training and other communications tools.
Section 5.6 contains general guidelines for the communications component of an enterprise's Programme. These supplement more specific directives found elsewhere in the PACI Principles.

The PACI Principles

5.6.1 The enterprise should establish effective mechanisms for internal communication of the Programme.

5.6.2 The enterprise should publicly disclose its policy for countering Bribery.

5.6.3 The enterprise should be open to receiving communications from relevant interested parties with respect to its policy for countering Bribery.

Discussion

An enterprise should have “effective mechanisms” for internal communication of its anti-corruption Programme. This is a non-specific directive, intended to ensure that reasonable means are employed to communicate relevant Programme information to employees, agents and business partners. Such means include written Programme materials, employee training, protective contract provisions and other similar measures.

Enterprises are encouraged to publicly disclose their commitment to the policy. Many companies will have already aligned themselves publicly with the PACI Principles, through the PACI signatory process. This identification can be reinforced through other standard communication practices. Such public communications advance Programme objectives in several ways. They supplement the internal compliance message to an enterprise's employees and business partners, and put potential bribers on notice that corruption will not be tolerated.

An enterprise’s anti-bribery commitment can be publicized in a number of different ways, depending on the target audience. These include statements, annual reports or other communications to shareholders and other stakeholders, commitment statements on an enterprise’s website and in its Code of Conduct and other Programme materials, and directives and protections in contracts with suppliers, agents and other business partners.

In addition to publicly disclosing the commitment to zero tolerance on Bribery, signatory companies should “be open to receiving communications from relevant interested parties with respect to its Policy for countering Bribery”. This is an application of the general directive in Section 3.5 to keep abreast of evolving developments in compliance practice. Public and private organizations can be a valuable source of information about corruption risk and evolving compliance practice.

Implementation

Procedures described elsewhere in the Anti-corruption Handbook can be used to implement the section 5.6 communication directive.

Internal communication practices are addressed, respectively, in the Handbook guidance on leadership, HR practices, training and confidential reporting channels. Practices for communicating Programme requirements and expectations to business partners are described in Section 5.2. External communication directives may be satisfied through established corporate public relations channels and practices.
Section 5.7 identifies guidelines for an enterprise’s accounting and audit practices. These should be used to test and confirm compliance with the Programme.

**The PACI Principles**

| **5.7.1** | The enterprise should maintain accurate books and records, which properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts. |
| **5.7.2** | The enterprise should establish and maintain an effective system of internal controls, comprising financial and organizational checks and balances over the enterprise’s accounting and record keeping practices and other business processes related to the Programme. |
| **5.7.3** | The enterprise should establish feedback mechanisms and other internal processes designed to support the continuous improvement of the Programme. |
| **5.7.4** | The enterprise should subject the internal control systems, in particular the accounting and record keeping practices, to regular audits to verify compliance with the Programme. |

**Discussion**

Requirements in this section target the loose accounting practices commonly associated with Bribery. They require an enterprise to maintain fair and accurate financial accounts, subject to effective internal controls, periodic verification audits and an internal process for continual improvement of the system. For most signatory companies, this essentially restates applicable law and financial practice.

The baseline accounting requirement is that an enterprise maintain accurate books and records. This standard reflects established financial accounting rules that mandate accurate documentation, in fair and reasonable detail, of all transactions and other dispositions of assets. The express prohibition of “off-the-books accounts” acknowledges the historical use of such accounts to disguise corrupt payments.

Accounting requirements are to be supported by an effective system of internal controls, defined in Section 5.7.2 to include both financial controls and organizational checks and balances. The PACI expectation is that the enterprise have internal controls sufficient to provide a prudent manager with reasonable assurance that the Programme is effective and operating as intended. This is a flexible standard, meant to provide high-level but not absolute assurance. It is understood that internal controls cannot prevent or detect all conduct inconsistent with the Programme.

The directive in Section 5.7.3 to establish feedback mechanisms and other internal processes for identifying opportunities for improvement is a corollary to the “reasonable assurance” measure for internal controls. What is reasonable will change over time, as improvements strengthen a Programme.

The final guideline in this section requires that an enterprise subject its internal control system to periodic compliance audits. Once again, this reflects established practice at most, if not all, signatory companies.

**Implementation**

An enterprise’s general accounting, control and audit procedures may be used to satisfy PACI requirements. Planning should focus on necessary adjustments to reflect corruption risks and related Programme activities.

**Fair and Accurate Records**

The directive to maintain fair and accurate records should be considered in relation to specific national laws and regulations governing an enterprise’s business activity. Although basic requirements will be
similar in most jurisdictions, especially those with anti-corruption laws based on the OECD Convention, there may be differences in some details.\(^{16}\)

As a general matter, a signatory company may satisfy the PACI requirement through application of Generally Accepted Accounting Principles or other comparable financial accounting standards. An enterprise’s books, records and accounts should correctly record the financial facts of a transaction and other information that may be necessary to direct a reviewer’s attention to possible illegality or impropriety. Books should be maintained on a current basis, with transactions recorded chronologically and supported by appropriate documentation. Care should be taken to establish a comprehensive filing system that creates an audit trail by transaction from origin to completion.

Historically, off-the-books “slush funds” have been a common source for Bribery payments. These are accounts financed by commissions and other receipts not recorded in an enterprise’s official books. The PACI standard requires that an enterprise establish an express and absolute rule against maintaining or using such accounts. Internal and independent auditing of accounts is a necessary precaution to reduce this risk.

Enterprise policy should also address so-called “special purpose entities”, which have been another common funding source for corrupt payments. Use of such entities is strictly regulated by the securities laws in many countries.

The PACI requirement applies to all transactions and other asset dispositions. In addition, enterprise records should reflect steps taken to implement the compliance Programme (such as records for employee training, due diligence review of agents and other business partners and compliance reporting to senior management). These additional records are essential to the Programme audit process, described below, as well as to the periodic senior management reviews required by Section 5.8.

**Effective Internal Controls**

The requirement that records be maintained in a fair and accurate manner is to be enforced through reasonable internal controls. Internal control refers generally to the steps taken by an enterprise to ensure that accounting and other directives are being followed. This is a large topic, about which useful practical information is available from various public and private sector sources. Signatory companies are encouraged to work with their external auditors and other experts to identify and implement relevant anti-corruption control practices.

The PACI expectation is that an enterprise will have reasonable controls for testing and confirming compliance with all significant Programme elements. This is reflected in the directive in Section 5.7.2 that “an effective system of internal controls” be established and maintained not only for financial matters but also for “other business processes related to the Programme.” Such other processes include, among others, employee and agent screening, anti-corruption training, compliance certifications, communications channels for advice and reporting and various management approval requirements.

An “effective” control system is one that provides reasonable assurance that Programme requirements have been properly designed and implemented and are being followed. As in other compliance contexts, reasonableness depends on an enterprise’s particular risk profile and other circumstances, including size.

Companies that already have a substantial system of internal controls may use these to satisfy the PACI directive. However, existing control systems typically require some adjustment to reflect corruption-specific risks and Programme activities. Additional controls are often needed for unique Programme activities (such as agent due diligence or charitable contribution controls) or to highlight corruption-specific accounting risks (such as slush funds or disguised payments).

**Continuous Improvement**

The directive in Section 5.7.3 to “establish feedback mechanisms and other internal processes designed to support the continuous improvement of the Programme” reflects standard accounting practice. Although an enterprise is only expected to have a
system of internal controls that provides reasonable assurance to a prudent manager, what is reasonable will change over time and with experience. Programmes accordingly are expected to have an appropriate process for identifying shortcomings and making improvements.

Continuous improvement applies to the full range of Programme activities, again including but not limited to accounting and record keeping practices. Audit reviews are a primary source of information for the continuous improvement process, supplemented by hotlines and other channels used for Programme communications.

**Periodic Auditing**

The final point requirement in this section is that an enterprise subject its internal controls to regular audits to verify Programme compliance. Section 5.7.4 does not specify a particular audit procedure, and a comprehensive review of audit practices is beyond the scope of this Handbook. The PACI expectation is that an enterprise will adapt its existing audit practices to address Programme concerns.

Although no particular audit procedure is required by the PACI Principles, there are some general practices that could be considered.

- **Formal planning.** Auditing is most effective when conducted pursuant to a formal written plan. Plans are used to establish audit priorities, standards and timing for reviews.

- **Audit responsibilities.** Reviews normally are managed through an enterprise’s audit department, in coordination with independent auditors. Compliance managers also have an important role, working with auditors to develop corruption-specific guidelines and to respond to problems.

- **Scope of review.** Auditing should address all relevant Programme requirements. Accounting and record keeping practices are a primary audit focus, but reviews should also test compliance with screening, training, management approval and “other business processes related to the Programme”.

- **Auditor profile.** Audit reviews should be conducted by personnel with experience in the areas being audited and who are independent from the activities being reviewed. Care should be taken to ensure that they have requisite skills, training and judgment to make reasonable assessments.

- **Methods.** Audit information can be gathered through a variety of methods. In addition to financial records review, these may include (a) site visits; (b) interviews with responsible personnel in management, operations and the compliance area; (c) questionnaires to a cross-section of enterprise personnel; (d) review of Programme documentation (such as agent screening reports); and (e) trend analyses to identify deviations from expectations or past practice. In appropriate circumstances, information may also be gathered from an enterprise’s agents and business partners.

- **Spot audits.** Spot auditing is common in the government procurement area, where some large government contractors routinely target home-country transactions on a random basis for comprehensive review – i.e. unravelling the transaction to test financial records. This can also be an effective practice for high-risk international procurements.

- **Documentation and reporting.** Audit activities should be properly documented, with respect both to the process and findings. Serious problems should be reported promptly to senior management and the audit committee, with corrective actions taken or recommended. Senior management and the board should also receive regular status reports on Programme implementation, including follow-up monitoring for corrective actions.
Oversight is an essential part of the leadership commitment described in Section 5.1. An enterprise's board and senior management are charged with launching the Programme; they then have a continuing responsibility to monitor implementation, evaluate Programme effectiveness periodically and see that necessary improvements are made.

Section 5.8 places primary responsibility for monitoring and evaluation on an enterprise's senior management. As used here, monitoring refers to ongoing supervision and oversight of Programme operations. Evaluation is a separate process, requiring periodic assessment of "the Programme’s suitability, adequacy and effectiveness". A "suitable" Programme is one that is tailored to an enterprise's particular needs and circumstances; an "adequate" Programme has sufficient resources and coverage; and an "effective" Programme is one in which the no bribes objective is being achieved in practice.

Frequency is not specified, but annual evaluations are generally recommended. Programme reviews can be coordinated with implementation planning and audit procedures described elsewhere in the Handbook. Once they are reported to the enterprise board (or equivalent body), the board has a further responsibility to "receive and evaluate" these reports.

This final implementation category addresses the responsibility of an enterprise's senior leadership to monitor the Programme and periodically review it for effectiveness.

### The PACI Principles

5.8.1 Senior management of the enterprise should monitor the Programme and periodically review the Programme’s suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report the result of the Programme review to the board, audit committee or equivalent body.

5.8.2 The board, audit committee or equivalent body should receive and evaluate periodically an assessment of the adequacy of the Programme.

### Discussion

Oversight is an essential part of the leadership commitment described in Section 5.1. An enterprise's board and senior management are charged with launching the Programme; they then have a continuing responsibility to monitor implementation, evaluate Programme effectiveness periodically and see that necessary improvements are made.

In most cases, as with an enterprise's internal control and audit practices, existing procedures for high-level oversight may be adapted to satisfy Programme monitoring and evaluation requirements.

### Implementation

In most cases, as with an enterprise's internal control and audit practices, existing procedures for high-level oversight may be adapted to satisfy Programme monitoring and evaluation requirements.

### General Considerations

Monitoring and evaluation should be centrally organized and managed under the direction of senior enterprise officials responsible for overall implementation.

The PACI Principles do not prescribe particular procedures for Programme monitoring and evaluation. However, there is an expectation that practice at signatory companies will reflect recent corporate governance innovations. High-level oversight has been a priority focus in recent years, resulting in requirements for corporate boards and senior management that are more formal and more stringent. These rules establish a regulatory baseline for public companies and can be a useful source of practical information for others.

In general, the litmus test for an oversight process is whether it provides enterprise leadership with sufficient information to confirm that an anti-corruption Programme has been properly designed and implemented and is being followed. The information required, and associated monitoring and evaluation practices, will depend on such factors as an enterprise's compliance history, size, organizational structure, culture and corruption risk profile.
Monitoring

Section 5.8 monitoring may be satisfied through any reasonable oversight procedure.

Monitoring by senior management serves two important purposes. First, it should confirm that basic Programme requirements are being followed. Second, it should communicate high-level commitment to the Programme, demonstrating that senior management is engaged. Audit reviews are a primary tool for monitoring Programme implementation and may be supplemented by compliance questionnaires, certifications, reports and other less formal means for gathering information. As in other areas, established enterprise practices should be adjusted to highlight Programme priorities.

The monitoring by senior management required in Section 5.8 is focused on such questions as whether employee and agent screening is being conducted, effective training is being provided and management approval requirements are being followed. Monitoring for compliance in particular business transactions is a separate operational responsibility, addressed elsewhere in the Handbook.

Employee use of communication channels for seeking compliance advice can be an especially good indicator of overall Programme effectiveness. As explained in the Handbook section on training, the focus for most personnel is on red flagging potential concerns. If the system is working, an enterprise’s experts should be receiving periodic inquiries.

Periodic Evaluation

Programme evaluation is closely related to monitoring, but with a different focus. In addition to confirming compliance with established standards and procedures, reviews must be able to identify shortcomings in the Programme and opportunities for improvement. Section 5.8 contemplates the same basic process for “continuous improvement” described earlier for auditing. In an area that has seen so much change in recent years, benchmarking to identify innovative compliance practices will also be important.

No specific procedure is mandated for senior management evaluations, but there is an expectation that an enterprise will develop a substantial oversight process appropriate to its circumstances. Because of the range and complexity of issues presented, a formal process for periodic evaluations is generally recommended.

Although formal Programme evaluation may be new to many signatory companies, most will be able to draw on relevant experience from other areas.

- Programme planning. Planning and evaluation procedures described in Section 3 can be adapted for Section 5.8 Programme reviews.
- Programme audits. Connection can also be drawn to the Programme auditing process described in Section 5.7. Although Section 5.8 reviews have broader scope, they cover much of the same ground.
- Related laws. Oversight practices developed pursuant to statutory or regulatory requirements can also be adapted for Programme use. Examples from US law include “executive certifications” for securities filings, “management reviews” of financial controls and Programme assessments under the US Sentencing Guidelines.\textsuperscript{17}

Sections 5.8 reviews should be coordinated with an enterprise’s annual planning process for training and other Programme activities. Many Programmes require senior business managers to certify compliance by their units. “Roll-down” certifications to subordinate managers are also common, and can be an effective oversight tool when supported by reasonable inquiry and documentation. A more structured alternative (and best practice) is to key business unit compliance reviews to an annual planning process that looks retrospectively at the past year’s experience and prospectively at training and other needs.
Board Oversight

Programme evaluations by an enterprise’s senior management should be reported to and reviewed by the board. Reporting typically is through an enterprise’s audit committee or other board oversight committee, with periodic status updates to the entire board.

Review by the board is less detailed than what is expected of senior management, in keeping with the board’s more general oversight responsibility in Section 5.1.1. As in other oversight contexts, board oversight should focus on the adequacy and reliability of the evaluation process (in scope, detail and frequency) and on senior management findings, including recommended changes. Board review should also confirm that necessary improvements are being made.
Further tools for implementing the PACI Principles are in development as part of the World Economic Forum’s ongoing anti-corruption initiative. These will offer additional practical direction on risk assessment, due diligence and other core implementation activities. Available materials will be highlighted on the PACI website (www.weforum.org/paci).

There are many useful websites for monitoring anti-corruption developments and related industry practice. A representative list follows, through which links to additional resources can be found.

**World Economic Forum - PACI**  
(www.weforum.org/paci)  
The PACI home page contains all PACI tools and documents available and a listing of all PACI signatory companies.

**Transparency International - Resource Inventory**  
(www.transparency.org)  
Transparency International maintains a comprehensive inventory of corruption materials, including international conventions, corruption surveys, country studies, implementation resources and links to other websites.

**OECD - Anti-Bribery Convention**  
(http://www.oecd.org/department/0,2688,en_2649_34859_1_1_1_1_1,00.html)  
The OECD anti-corruption page offers detailed information about the OECD Anti-Bribery Convention and individual national laws adopted under the Convention, including the status of local enforcement efforts.

**World Bank - Corruption**  
(www.worldbank.org/corruption)  
World Bank anti-corruption efforts are described here, including relevant procurement policies and enforcement practices. Firms debarred for corruption reasons are listed, and there are also links to IBRD, IFC and other bank entities.

**United Nations - Corruption**  
(www.unodc.org/corruption.html)  
This site provides background information about various UN initiatives, including the Global Programme against Corruption, which assists UN Member States in their efforts to curb corruption; the Crime and Justice Information Network and UN Convention against Corruption. Furthermore, the website of the UN Global Compact – and in particular the Global Compact 10th Principle on anti-corruption – provides invaluable information for companies engaging on the issue (www.unglobalcompact.org).

**U4 Anti-corruption Resource Centre**  
(www.u4.no)  
This useful anti-corruption site offers selected literature, implementation tools and an annotated listing of public and private sector anti-corruption organizations and institutions. The Centre is maintained by the six member countries of the Utstein Group.

**International Chamber of Commerce - Anti-corruption Commission**  
(http://www.iccwbo.org/policy/anticorruption)  
The ICC anti-corruption page describes Chamber efforts in this area, including development of an anti-corruption Code of Conduct and related implementation tools.

**Trace International**  
(www.traceinternational.org)  
Trace is a non-profit membership association that specializes in anti-Bribery due diligence and compliance training for international commercial intermediaries.
As used here, “policy statement” refers to the baseline. Assessment guidelines should include a cautionary directive to combating corruption, see A. Boeckmann, “Taking a Corporate Stand against Corruption”, World Energy at 94, 2003.

Corporate programmes are referred to in some countries as “implementation” programmes and in others as “compliance” programmes. These terms are used interchangeably in the Handbook to mean a systematic process for an enterprise to develop its personnel with the goal that they understand and comply with applicable laws and ethics standards. The terms “enterprise” and “company” are also used interchangeably. Both are non-technical terms intended to include all business organizations, whether structured as corporations, partnerships or in some other form. As in the PACI Principles, capitalization of “Bribery” and “Programme” incorporates by reference the expansive definitions found in Section 2.

The PACI Principles build on general industry guidelines developed in 2002 by Transparency International and a coalition of private sector interests, non-governmental organizations and trade unions. Transparency International’s “Business Principles for Countering Bribery” can be found on the organization’s website, together with additional guidance on corruption risks and Programme development practices.

Anti-corruption websites maintained by governmental and private sector organizations can also be a useful source of information about continuing developments. Links to primary websites are provided in Appendix A.

A good planning process will be especially important for the PACI Principles, given their broad scope and complexity. Procedures in this section address preliminary work plans, risk assessment and Programme evaluation. All these are common industry practices.

The PACI requirement, in Section 4, directs that in developing its compliance Programme, “an enterprise should identify and assess specific areas that pose the greatest risks from corruption.” Risk assessment is also a common feature in ISO standards and other general industry guidelines, and in 2004 was made a formal requirement for companies subject to US Sentencing Guidelines criteria for evaluating corporate compliance programmes. Programme criteria are enumerated in chapter 8 of the Sentencing Guidelines, which can be found on the US Sentencing Commission website (http://ussc.gov). Risk assessment is addressed in §8B2.1(c).

It is important at this preliminary stage to have as complete a picture of potential risks as possible. Including joint venture and other third-party activities in the risk assessment phase will not preclude subsequent tailoring of response options, consistent with guidelines in Section 5.2 for applying Programme requirements to different types of business relationships.

Assessment guidelines should include a cautionary directive to consider corruption risk in all markets, not just those with high CPI ratings. Corruption can occur anywhere, and this should be reflected in the risk assessment and resulting Programme coverage.

Detailed information about the OECD Convention and individual national laws adopted under the Convention is available on the OECD website, at http://www.oecd.org.

As used here, “policy statement” refers to the baseline Programme document used to describe an enterprise’s zero tolerance commitment. Policy statements, Codes of Conduct and other standard Programme documents are discussed later in this section.

Comptent intent is implicit in this formulation. It is treated as a distinct legal element under some laws, including the US FCPA.

As used here, the term “bright-line” test refers to the common practice of establishing business rules that clearly distinguish (i.e. draw a bright line) between permitted and prohibited conduct. For clarity and also administrative convenience, such rules are often more restrictive than required by law. An enterprise may, for example, decide to bar all political contributions, not just those prohibited by law, in order to avoid having to make fine distinctions and deal with the associated legal and reputational risks when mistakes are made.

A good practical test, often emphasized in Programme standards and training, is to ask whether particular contributions activity would be embarrassing to the enterprise were it to become public.

Standard provisions should address four basic areas: (1) Notice. Language that communicates the enterprise’s commitment to a zero tolerance policy on Bribery and the expectation that conduct by the agent will be consistent with the PACI Principles should be included in agent contracts. Additional information about the enterprise’s Programme should be provided to all agents; (2) Representations and warranties. Many companies require agents to “warrant” that they understand the anti-corruption policy, will not engage in inconsistent behaviour and will establish appropriate anti-corruption controls of their own; (3) Cooperation. Contracts should establish minimum cooperation requirements, including guaranteed access to records and personnel, prompt reporting of possible violations and cooperation in the investigation of alleged violations or suspicious circumstances; and (4) Remedies. Contracts should include a provision expressly authorizing remedial action for Programme violations. Such provisions typically identify serious corruption as a material breach of contract, subject to remedial action up to and including termination. Actionable breach should be defined to include non-compliance with Programme-related contract provisions.

Although requirements in this section restate general law and practice, effective implementation may in some cases require heightened attention to corruption-specific risks and safeguards. As an example, additional controls may be necessary to confirm that off-the-books accounts are not being used to facilitate corrupt payments.

Article 8 of the OECD Convention provides in relevant part that measures be taken “to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents […] for the purpose of bribing foreign public officials or of hiding such bribery.” Specific applications of this directive, however, may differ by jurisdiction.

Executive certifications, also referred to as “Section 302” certifications, require regular written confirmation by an enterprise’s chief executive and financial officers that internal controls for accounting and other compliance requirements are in place and have been assessed for effectiveness. “Section 404” management reviews, which have a narrower financial focus, also require regular and comprehensive control assessments. In addition, recent changes to the US Sentencing Guidelines emphasize the importance of regular risk assessment and updating of compliance practice. These oversight mechanisms, and others of a similar nature outside the US, offer a baseline for Section 5.6 reviews.
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