

RESIST

Resisting Extortion and Solicitation in International Transactions

A company tool for employee training

Jointly developed by



International Chamber of Commerce

The world business organization



**TRANSPARENCY
INTERNATIONAL**

the global coalition against corruption



United Nations Global Compact



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The advice contained in RESIST reflects the views of the
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Introduction

The RESIST Tool

Purpose

Increasingly, companies are implementing robust compliance programmes aimed at preventing bribery and corruption in business transactions. New anti-corruption laws, growing enforcement and the rise of corporate responsibility are making a compelling case for enterprises to counter corruption¹.

Nevertheless, many companies report that they continue to face demands for bribes in the conduct of their business and that these demands sometimes constitute extortion. Bribe solicitation and extortion therefore remain daily challenges for business and they have received minimal attention in the current legal framework against corruption. Leading international anti-bribery instruments, such as the Organization of Economic Cooperation and Development (OECD) Anti-Bribery Convention, do not address this problem.

But times are changing. Several explicit provisions in international legal instruments such as the 2005 United Nations Convention against Corruption (UNCAC) prohibit “passive” corruption, extortion or solicitation in either the public or the private sector². Recent OECD guidance³ recommends that companies implement measures to address major risk areas, including solicitation and extortion. It also emphasizes the need to provide companies, in particular small and medium enterprises (SMEs), with general advice and support on resisting extortion and solicitation.

This is where RESIST (**Resisting Extortion and Solicitation in International Transactions**) can help. Based on real-life scenarios, RESIST is designed as a training tool to provide practical guidance for company employees on how to prevent and/or respond to an inappropriate demand by a client, business partner or public authority in the

most efficient and ethical way, recognizing that such a demand may be accompanied by a threat. RESIST is intended primarily as a training tool to raise employee awareness on the risk of solicitation, including through frank discussion, and to propose practical ethical responses to dilemmas.

Content

The companies that participated in the design process of RESIST identified a total of 22 scenarios and responses that illustrate a range of solicitation scenarios, but these are not exhaustive or applicable to all situations.

Based on the project life cycle, RESIST scenarios are organized in two sections representing the pre-sales and bidding stage as well as the post-award project implementation stage. Scenarios 1 to 7 (first published in 2009) deal with solicitation in the procurement process. Scenarios 8 to 22 examine solicitation in the context of project implementation and day-to-day operations.

Each of the 22 scenarios addresses two basic questions in a concrete and specific manner:

- How can the enterprise prevent the demand from being made in the first place?
- How should the enterprise react if the demand is made?

In addition, the Annex includes a series of good practice recommendations that can apply to most situations. Users of the RESIST tool should study these generic recommendations before reviewing the individual scenarios. Responses to the dilemmas presented comprise either individual company responses or collective action.

Competing bidders intending to cooperate in resisting solicitation should first seek legal advice to ensure that such cooperation does not violate applicable antitrust or procurement laws.

¹ “Clean Business is Good Business – The Business Case against Corruption”, jointly developed by the UN Global Compact, Transparency International, the International Chamber of Commerce and the World Economic Forum Partnering Against Corruption Initiative: http://www.unglobalcompact.org/docs/news_events/8.1/clean_business_is_good_business.pdf

² See also at regional level, the Council of Europe Civil Law and Criminal Law Conventions, the Council of the European Union (EU) protocols to the convention on the protection of the European Community's financial interests and the Council of the EU Framework Decision on combating corruption in the private sector.

³ See: OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (adopted on 26 November 2009 with amendments on 18 February 2010). http://www.oecd.org/document/41/0,3343,en_2649_34487_44697385_1_1_1_1,00.html

Audience

This tool will be of interest to all companies that may be exposed to solicitation risks in conducting international business. Solicitation is often a key problem for SMEs, which are generally more vulnerable to solicitation than larger companies and have fewer resources to face such situations. Although the responses provided can apply to all companies, implementation may differ according to company size, industry sector, place of operation and the specific circumstances of the bribe solicitation.

Within companies, this tool is mainly directed to those responsible for ethics, compliance and integrity training and to individual employees involved in sales, marketing and operations. The scenarios aim to make company employees more aware of potential solicitation and extortion risks and provide the opportunity for an open discussion on how to best address solicitation dilemmas in an effective and practical way.

Partner Organizations

RESIST is a joint project led by four major international organizations involved in the fight against corruption:

- International Chamber of Commerce (ICC)
- Transparency International (TI)
- United Nations Global Compact (UNGC)
- World Economic Forum Partnering Against Corruption Initiative (PACI)

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Feedback

We encourage readers and users to provide feedback on the RESIST scenarios. Your comments will help expand and enrich the RESIST tool and contribute to the further development of good practices in preventing and responding to bribe solicitation.

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Scenario 1

In a bidding round, the terms of reference (including technical specifications) are biased to favour one supplier or to exclude potential competitors.

Description

Your company is preparing to submit a bid for the supply of telecommunications equipment to a state-owned company. You are an experienced supplier of such equipment and know that several of your competitors are planning to submit bids as well. While studying the tender documents, you notice that they include specifications that only the equipment of one of your less-experienced competitors meets. You are surprised because these specifications have no impact on performance of the equipment; in fact, your technical experts consider these specifications outdated and that your equipment, outperforms any equipment meeting the required specifications. Some days later, you are approached by a person who suggests that the tender documents could be changed in your favour in exchange for a payment.

Demand prevention: How to reduce the probability of the demand being made?

- Engage in a dialogue with the procurement agency to improve procedures in the following areas:
 - Get agreement from the procurement agency on the appointment of an independent consultant (individual, company or international organization such as the World Bank) to supervise the entire bidding process
 - Request a pre-qualification round to exclude bidders lacking technical and financial delivery capacity (either through their own organization or through relevant contractors)
 - Request a meeting with the procurement agency to better explain technical aspects of your product or services
 - Suggest publishing the terms of reference widely
 - Should the procurement agency rely on a technical expert, request that the procurement agency disclose links and business dealings of this expert with any of the bidders
- Check and, if applicable, challenge (legally and/or publicly) the qualifications of the members of the body defining the terms of reference
- Check if there are any specific relations between the company whose equipment fits the specifications and the procurement agency (or its directors or officers)

- Have the terms of reference reviewed by a qualified third party (such as an expert, civil society or employers' organization)
- Engage with the procurement agency to discuss the results of the review of the terms of reference and explain your technical specifications
- Suggest to other companies bidding with you to collectively address the procurement agency
- Challenge the terms of reference publicly and/or by reference to local laws or applicable procurement rules
- Approach the industry association or trade association that provides technical specifications for your industry to ensure that guidance for specifications is generic enough to allow all companies to bid and that the specifications are up to standard

Response to a bribery demand: How to react if the demand is made?

- Reject the demand
- Keep a detailed record of the circumstances of the bribe demand made
- Inform a relevant representative of your client that you have been approached with such a suggestion and report the demander

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 2

Intermediary offers company to win bidding upon payment of loser's fee during pre-bidding or bidding stage.

Description

Companies A and B have been pre-qualified by a ministry to bid for the supply of an infrastructure project. An intermediary allegedly close to the ministry approaches both bidders with the following proposal: should company A win the project, it would contribute to a "loser's fee" payable to the intermediary; if company B accepts to lose, it would receive adequate compensation for the bid preparation.

- Refuse payment on the grounds that such loser's fee violates the business principles of your company and may violate applicable laws, more specifically, competition laws in your country and/or the host country of investment and procurement regulations in the host country, e.g. bid-rigging
- Solicited company should inform the other company of its refusal to accept the bid-rigging scheme

Demand prevention: How to reduce the probability of the demand being made?

- Review likelihood that intermediaries will attempt to become involved in the contract negotiations
- Engage in a dialogue with the procurement agency to improve procedures in the following area: agree with procurement agency that no intermediaries can be added to the process after bid submission
- Be aware that a donation or a subcontract requested by the intermediary from company A could be a channel for the payment of a loser's fee to company B.

Response to a bribery demand: How to react if the demand is made?

- Solicited employees should immediately stop discussions with the intermediary on the grounds that the loser's fee falls outside the scope of the bidding process, thus could derail it
- Request from the intermediary a proposal in writing to test the legitimacy of the demand
- Report to the ministry about the demand made by the intermediary who claims to act on behalf of the ministry
- Refuse to engage intermediaries that have not been selected prior to bid submission
- Challenge the merits of the loser's fee that could increase the contract price to the detriment of the government budget or negatively impact the profitability of the project to the detriment of the company's interests
- Explain to the intermediary/procurement agency that the proposed scheme could expose all the parties (individual or company) to a prosecution risk not only in the country where the deal occurs but also in countries that ratified the OECD or related UN Conventions fighting corruption or money laundering

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 3

Bribe solicitation for confidential information during pre-bidding or bidding stage.

Description

You are running an overseas field office for a multinational company and still need a big deal to reach the annual sales target. You are preparing the bid for a big contract that you are eager to win. A consultant who is close to the customer approaches you and offers to reveal the evaluation criteria and provide you with information on bids already submitted by some of your competitors against the payment of a fee.

Demand prevention: How to reduce the probability of the demand being made?

- Establish effective, clearly communicated policies for employees involved in the bidding process:
 - Identify and openly address incentives to pay bribes, especially towards the end of the year
 - Train employees on standard bidding procedures and rules of interaction with agents and other intermediaries
 - Consider incentives to report bribery demands
- Perform due diligence on agents, consultants and other intermediaries involved in bids:
 - Awareness of “red flags”, as these parties are often used to pay bribes to extortionists
 - Eliminate any intermediaries that are non-essential to the bid, ask to prove need
- Maximize opportunities for detection by employing additional control procedures to detect bribes:
 - Reviews of heightened risk payments to agents/consultants/advisers used in the bidding process
 - Implement regular, independent internal monitoring function that reports to a senior executive on heightened risk payments to agents/consultants or to financial institutions outside of the project location
- Avoid putting financial information in your bid until the last minute to avoid leaks

Response to a bribery demand: How to react if the demand is made?

- Refuse payment
- Ask consultant to put request in writing
- Record meeting, keep minutes and report to management
- Disclose to contracting party that you have been approached with information and that there might be a leak in the process
- Disclose to competitors that you have been approached with confidential information and suggest jointly approaching procurement agency with an NGO for increased scrutiny of the bidding process, which will limit the value of the confidential information
- Industry initiatives: expose known extortionists for future reference
- Regulators: in regulated industries, alert authorities of bribery demands

Scenario 4

“Kickback” scenario: Your sales representative is offered hidden compensation by the customer or by an intermediary.

Description

Your company is bidding for a large foreign government contract where one or several intermediaries are involved. One of the intermediaries approaches one of your employees and suggests entering into a contract to support the employee in the bid preparation and states that the intermediary can arrange to win the bid against payment of an extra commission. The intermediary offers your employee a portion of this commission as a hidden compensation (“kickback”) if your employee accepts such an arrangement and secures from the company the approval for this extra commission.

Demand prevention: How to reduce the probability of the demand being made?

- Always operate as a team consisting of at least two employees who must comply with strict reporting directives and control mechanisms
- Set up clear company directives including a whistle-blowing policy and related (severe) sanctions for non-compliance
- Set up specific guidelines dedicated to negotiations that expressly address the kickback issue with the obligation to immediately report any solicitation to management
- Emphasize in training sessions the criminal and reputation risks not only for the company but also for the exposed employees themselves
- Send regular reminder communications to the exposed employees
- Include expressly the kickback case in consultants’ contracts as an event of immediate termination for material breach, and reserve legal actions
- Provide competitive remuneration for staff exposed to such offers
- Check market rates for commission of intermediaries
- Require employees to sign a code of conduct statement regularly
- Try to establish an integrity pact that clearly states that company staff does not accept hidden compensation
- Include in terms of contract/bid that sales representatives accepting a kickback will be sanctioned and that your company does not condone the practice

Response to a bribery demand: How to react if the demand is made?

- Immediately report to management or the appropriate officer assigned with matters involving the code of conduct (e.g. compliance officer)
- Start an internal investigation by an independent party (i.e. corporate internal audit, compliance officer), in particular, perform audits on earlier transactions with the soliciting person(s)
- Review bid terms with final terms and analyse whether the solicitation has negatively reflected on the evaluation of your company
- Protect the exposed employee if he or she reported the incident (otherwise sanction), i.e.:
 - Transfer the exposed employee
 - Appoint another company employee to accompany the exposed employee in the negotiations until the transfer is effective (this only applies if the employee operates on his or her own and not in a team)
- Record the incident and inform the customer at the appropriate level.
- Terminate any business relationship with the intermediary.

Note: During discussions, it was noted that the most difficult aspect is for a company to detect fraud by its own employees. The answers under point two were made under the assumption that the employee has reported the incident.

Scenario 5

A host country may impose or imposes a partnership with a designated local company that may present high corruption risks.

Description

In a call for tender, your company may be asked or is asked to contract with a designated local company (such as a co-contractor, sub-contractor or consultant) as a pre-condition to bid. The designated company might not or does not have the necessary qualifications to perform the task.

Demand prevention: How to reduce the probability of the demand being made?

- Encourage local professional and business associations to engage with the government to enact laws and rules favouring freedom of contracting
- Seek the leverage of international financial institutions to enhance the freedom of contracting
- Engage in a dialogue with the procurement agency to improve procedures in the following areas: allow for freedom of sub-contracting for bids, i.e. pre-selection of eligible local companies should be made on the basis of objective financial, legal and technical criteria, including capacity to deal adequately with health, safety, environment and human rights requirements; in such a pre-qualification process, compliance to generally accepted corporate social responsibility should be considered
- As a deterrent to prevent an imposed partnership, select (after due diligence), prior to an upcoming bidding process, a local company with good reputation and sign with it a joint bidding agreement with anti-corruption provisions

Responses to a demand: How to react if the demand is made?

- Resist the request from the government or governmental entities using financial and technical arguments highlighting the inability of the imposed local company to meet the requirements of the project and the standards of your company or those shared with other venture partners
- Negotiate with the government or governmental entity and propose to substitute the imposed company with another local company of your choice with a good reputation and higher financial and technical records
- Discuss this pre-condition with other bidders and civil society organizations and jointly approach the government to remove this requirement and allow for open selection of local contractors
- If a local company is effectively imposed on your company and if, in your judgement, such company appears to be acceptable, insert adequate safeguard provisions in the contract with the imposed local company (including termination clauses); such contract should include a detailed description of the scope of work and market price remuneration, proportional to the services to be rendered

Scenario 6

Client demands a last-minute “closure fee” to close a deal that is now too late to lose.

Description

Your company is bidding for a large government contract. After two or three years of costly negotiations, your company is eventually awarded the contract. But just before the contract is being signed, you get solicited for a bribe by a member of the purchase committee. How can your company overcome this situation in a legally acceptable way without losing the contract?

Demand prevention: How to reduce the probability of the demand being made?

- Elaborate a strict framework to support the negotiations: submit a detailed offer including terms and conditions and/or propose (if relevant) a draft contract, that both includes anti-bribery clauses and termination for default in case of bribery
- Define the scope of negotiation: make sure that the negotiation team has a clear mandate; inform the customer that the team is empowered with a specific limited mandate for negotiation, which excludes any request out of the scope of the call for tender terms
- During negotiations, including at closing time, identify decision-makers (technical, budgetary, etc.) within the procurement organization to determine where the solicitation could come from
- At bidding stage, consider involving main actors in fighting corruption such as banks and export credit agencies that might have a good knowledge of customer/decisions-makers and their practices

Responses to a bribery demand: How to react if the demand is made?

- Immediately inform your management and define an appropriate strategy (e.g. changing the negotiation team)
- Go back to the soliciting person with at least one witness (management, adviser, bank representative) with the following position:
 - Reaffirm your willingness to sign the contract and ignore the solicitation
 - In case the solicitation is reiterated:
 - o First, inform the person that the request is not acceptable
 - o Second, threaten to back off from the bid with public communication of the reasons for doing so, or actually back off from the bid
 - o Set a deadline for signature based on the terms and conditions previously agreed
- Go to customer that established the purchase committee to check the bid and inform him or her that the company has the impression that they are being subjected to a solicitation; ask the customer to inquire and suggest repeating the bid if necessary
- If sufficient evidence is available, address the national anti-corruption body/agency/ombudsman
- Go public and expose the situation; be prepared to back off the project

Scenario 7

A company complaining about an unfair procurement process is threatened with a spurious criminal prosecution that will lead to a heavy fine.

Description

Company A knows that its competitor Company B has won the public bid because Company B bribed the public official in charge of the bidding process. Company A makes a report to the police. Company B reacts with threats of phoney accusations against Company A that would result in unjustified criminal proceedings against Company A unless it withdraws the report.

Demand prevention: How to reduce the probability of the demand being made?

- Instead of making a report on its own, Company A could approach other competitors that also lost the tender as a result of the bribe payments by Company B to the public official and make the report together; Company A thus reduces the probability of the demand being made as Company B would have to issue the threat against all of the companies involved, which is rather unlikely (subject to antitrust laws or with the help of local counsels)
- Instead of making a report to the police, Company A could address the public official's superior or the competent fraud investigation unit in the public official's department and thus make it obvious that any allegations by Company B would only be acts of revenge and thus deter Company B from making threats in the first place
- Company A could also inform the press and the public that it has evidence of bribe payments by Company B to the public official in question. This would also reduce the likelihood of the demand by Company B being made in the first place

Response to a bribery demand: How to react if the demand is made?

- Explain to Company B that hard evidence has already been submitted and that even if the accusation would be revoked the case would very likely go ahead anyway as the proceedings have now been started
- Threaten to (and then do) inform the perpetrator's supervisor, superior or compliance officer or, as a last resort, the chief executive of Company B, and likewise the superior of the public official
- If the tender in relation to which the threat is made is financed by a multinational corporation or other foreign institution/donor, contact the compliance department of the donor institution
- Inquire whether criminal proceedings can be brought forward against the competitor in the competitor's home jurisdiction
- Inform the public about the threats made by Company B and thus increase the negative consequences for the extortionist (Company B)

Scenario 8

A local government agency demands a fee for technical approval of equipment.

Description

Your company is running a relatively new operation in a remote territory. You have received an unannounced visit from the local government official whose agency is responsible for technical approval of equipment that you have been waiting for. The official makes it clear that the approval of the goods will not be given unless you pay a “fee” in cash directly to the official.

Demand prevention: How to reduce the probability of the demand being made?

- Inform your management in advance that logistical and other company support for obtaining the approval will be necessary
- Include in contracts the maximum amount of lead time to allow permits to be issued
- Implement a company policy and guidelines prohibiting bribery, including how to reject demands for facilitation payments whenever possible, and communicate these to employees
- Establish and implement systems allowing employees to report demands for bribes and/or facilitation payments
- Provide anti-corruption training, which includes definition of extortion and facilitation payments and what to do when they are demanded
- Establish good relations with relevant government bodies, licensing agencies and local and traditional authorities where you operate
- Discuss with authorities the problems that employees face with payment demands from local officials and ways to prevent such situations from occurring
- Work with local commercial associations to document and publish the official procedures, time and fees involved for technical approval of the equipment
- Prohibit payment of non-documented expenses not compliant with laws or contractual provisions and establish guidelines requiring that all expenses are documented to include at least the amount, date and identities of persons making and receiving payment

Response to bribery demand: How to react if the demand is made?

- Refuse to pay
- Immediately report the incident to management and obtain authority to take appropriate action
- Inform the official that making the payment as requested is prohibited by your company and explain that the demand is illegal and could also lead to the termination of the employee making the payment
- Take the name of the person and state that all fees must be paid directly to the government office in return for an official receipt that includes all payment details, including the identity of officials receiving payment
- If it is logistically impossible to make direct payment to a government office, request that the official provide a receipt on government letterhead
- Make use of existing relationships to identify a more senior person in the licensing body whom you can approach instead, in order to explain the dilemma
- Seek the assistance of other companies and trade organizations, including contractors, and of other officials within the licensing body with whom the pre-existing relationships exist
- Explain to the relevant parties within the licensing body that the project/operation is in jeopardy and will fail if the demand is maintained
- Take proactive and cooperative action with relevant authorities and business groups (e.g. chambers of commerce and other importers and industry organizations, the relevant embassy) aimed at stopping future demands for such payments

Scenario 9

Newly-hired employees cannot obtain work permits unless an employment surcharge is paid.

Description

Your company has started hiring personnel for the fulfillment of various tasks for a project that was recently awarded to you. The recruitment process is almost complete and local and foreign candidates have been pre-selected. You must obtain work permits from the local authorities for all (local and foreign) candidates. Local officials have requested you pay an unofficial “surcharge” for each work permit. A delay in hiring your employees would have a significant adverse effect on the project timeline.

Demand prevention: How to reduce the probability of the demand being made?

- Implement a company policy and guidelines prohibiting bribery, including how to reject demands for facilitation payments whenever possible, and communicate these to employees
- Insert provisions in your bid and in your contract requiring the application of your code of ethics during all the phases of the contract
- Establish an internal HR process that explicitly forbids any undue payment to obtain work permits
- Brief the manager in charge of the hiring of the risks of undue solicitation to obtain work permits
- Become familiar with local labour and immigration laws and practices during the pre-bidding phase
- Implement a company policy prohibiting any cash payment not explicitly agreed at the appropriate management level, and requiring documentation of any such approved payment
- Obtain written permission to hire local and foreign employees from the relevant authorities during the bidding process, include a relevant provision in the project contract and provide the relevant local authorities with a copy of this permission when applying for work permits
- Negotiate into the contract that the local customer will provide you with reasonable assistance in obtaining the candidates' work permits
- Apply for all work permits in one or more large blocks to make it harder for officials to turn them down
- Ensure that each permit application is completed properly and is accompanied by all required documentation
- If the candidates come from foreign countries, request that the relevant embassies facilitate the process by interfacing with local authorities

- Engage in a wider discussion on the procedures for hiring foreign workers; work with the local authorities (ministry of labour, local business association, etc.) in preparing an official guide on the process and costs of obtaining work permits and ensure this information is publicly available and displayed in the relevant offices

Response to bribery demand: How to react if the demand is made?

- Refuse to pay, explaining that your company does not allow payment of such “surcharges” to obtain permits unless expressly required by law or written official procedures, and then only in return for official receipts from the local authority for payments made to the bank account of the authority, never to an individual
- Notify the authority's senior management or supervising body of the surcharges demanded
- Alert the customer, explaining that these demands may jeopardize the continuation of the project unless the customer intervenes to assist in stopping them
- Engage with the project's other stakeholders to gather support for your efforts to stop the payment demands:
 - Approach local unions for support in hiring local employees and obtaining work permits legitimately
 - Approach local business associations/ chambers of commerce/ICC national committees to get support in obtaining the work permit legitimately
 - Discuss with other companies operating in the country the legal requirements and practices and seek advice on how they have responded to similar demands
 - Consult other companies involved in the project to ensure a common position on refusing to pay the bribes demanded

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 10

A local police officer requests a payment to allow an expatriate worker to cross an internal border within a country.

Description

Your company operates in a country that previously required expatriates to obtain permission to travel from one province to another, but this regulation has been abolished by the central government. As you travel from the province where your company's office is located to an operating site in a different province, you are stopped by a local police officer who asks to see your ID documents and permits. The officer informs you that he/she has to withhold your passport, claiming that there is a "special" stamp missing and that you do not have the necessary authorization for internal travel. The officer, however, offers to "solve the problem" and let you go in return for a small cash payment.

Demand prevention: How to reduce the probability of the demand being made?

- If you do not already have one, establish a company policy and guidelines for prohibiting bribery, including dealing with the risk of extortion and demands for facilitation payments
- Obtain local legal advice on the legal status of facilitation payments locally. Clearly state that your company will not make facilitation payments
- Analyse the risk of occurrence of facilitation payment demands in a given country, make plans to reduce the risk and design responses, discuss with personnel in which situations such payments are most likely to occur and identify alternative ways of resolving the issue
- Communicate to all employees the company's anti-corruption policy and guidelines, ensuring especially that those employees who may be exposed to such situations are familiar with them
- Use every opportunity to announce externally in the country of operation that the company will not accede to demands for facilitation payments and implement your policies consistently with this stance
- Provide anti-corruption training that specifically covers extortion and facilitation payments, appropriate responses to demands (i.e. dilemma training) – this could include the levels of risk in different countries and for different administrative processes
- Establish and implement systems encouraging employees to report demands for facilitation payments
- Establish an advisory function employees can call upon when faced with such situations (e.g. designated contact persons within the business unit such as local managers, security officers or legal counsel), preferably someone who is a country national and has the necessary authority to enforce the policy

- Engage a local security or emergency assistance firm, or a local legal firm for assistance in such situations and instruct them to comply with your policies
- Ensure that your employees have all documents necessary to travel within the country and that they are valid
- Establish good relations with relevant government agencies, local and national authorities in areas of operation and discuss with relevant officials the problems that employees can face (e.g. demands for facilitation payments) and ways to prevent such situations from occurring

Response to bribery demand: How to react if the demand is made?

- If you are sure that your documents are valid and there is no need for a "permit", you should explain this to the officer who is requesting the payment
- You should make clear to the officer that small payments of this kind are against company policy and are illegal (if this is the case, which it almost always will be in most countries)
- Record the name of the officer requesting the payment and ask to see his/her official identification
- If the official insists on payment, call the company's advisory function for assistance or, if possible, your manager, explaining that you must obtain a receipt signed by the official, and record the details of any payment made, including the official's identity, for company records
- If the payment is unavoidable without perceived risk to life or limb, negotiate it to a minimum amount, make the payment, get the receipt indicating the amount of the fee, the reason for the fee, the name of the officer who requested it, and his or her position, preferably signed by the officer
- Immediately report the payment to your manager; the payment should be justified to your manager, who should sign the incident report and the documentation of payment
- Ensure that the payment is recorded in the company's accounting system in the correct amount, with a clear explanation of its purpose
- Report the incident externally to relevant authorities, such as that country's ministry of the interior, your home country's local embassy, etc.
- Analyse the incident in the organization, devise plans to reduce the risk of reoccurrence, and design responses to future demands

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 11

An employee of the state electricity company demands cash for connection to the grid.

Description

Your company is about to receive the equipment necessary for connecting a project site to the electrical grid when an employee of the state electricity company approaches your project manager explaining to him/her that the connection to the grid will be delayed for days or weekly, if not indefinitely, for some obscure reason. An immediate cash payment to the employee would, of course, accelerate the connection and therefore facilitate the timely completion of your project.

- If the demand persists, explain that any payment must be recorded in your company files, including the name and other identifying details of the employee making the demand
- Report such demands to the employee's superiors in the electricity company and work with them to ensure that future demands for illegitimate payments will not occur
- Consider working with your own power generators in the meantime, if feasible

Demand prevention: How to reduce the probability of the demand being made?

- Have specific discussions with the customer during the bidding stage to identify the exact process for completion of the project, to include the steps necessary to connect to the electricity grid; also, ensure alignment with the customer on how to react if demands for illegitimate payments are received
- Identify in advance and ensure compliance with all official requirements for connecting to the electricity grid
- Identify in advance time requirements for connecting to the grid, taking delays into account
- Clarify in the contract with the customer which party is responsible for grid connection and the consequences of delays on the time schedule
- Implement a company policy prohibiting any type of bribery, including whenever possible facilitation payments
- Ensure employees clearly understand which types of payments are not permitted and ensure easy means of reporting illicit payments
- Make employees aware of the consequences of such violations

Response to bribery demand: How to react if the demand is made?

- Refuse to pay
- Explain your company's legal concerns/obligations and programme commitment to fight corruption
- Develop an action plan to deal with the project demands for connecting to the power grid
- Report the demand to the supervisor of the person making the demand

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 12

Long-awaited essential equipment is stuck in customs for clearance and only the payment of a “special” fee can secure its prompt release.

Description

You are the local manager of your company's operation in a foreign country. For weeks, the shipment of critical technical equipment has been delayed by red tape at headquarters. When the equipment finally arrives in the country, your personnel are told by a customs officer that the paperwork is “incomplete”. This will prevent the release of the equipment until the problem has been solved. The customs official indicates that a resolution could take several weeks. He/she adds, however, that the problem can be solved quickly through an expeditor's fee or cash payment of \$200, which would ensure customs clearance of the equipment in one business day.

Demand prevention: How to reduce the probability of the demand being made?

- Communicate to employees the company's anti-corruption policy that includes extortion and facilitation payments and provide training on how to avoid and deal with demands, especially the employees who may be more exposed to such situations
- Establish and implement systems available to employees to report and seek advice for demands for small payments
- Order goods early – avoid time pressures on delivery
- Have an adequate supply of parts and consumables that must be imported. Perform due diligence on customs procedures at various points of entry to the country (i.e. seaports, roads, airports), determine which ones pose the highest and the lowest corruption risks, and find out the time required to clear goods; set out primary and alternative import routes accordingly
- Switch to an alternative import route and point of entry if obstructions are experienced at the primary point of entry
- Research official customs procedures and familiarize necessary personnel with the procedures; clarify unclear parts of the procedures with the central customs authorities
- Take steps to make the official customs procedures widely available in the country to counteract ignorance and opaqueness, e.g. with the help of business associations, in cooperation with customs authorities or other government departments

Response to bribery demand: How to react if the demand is made?

- Quality check your customs clearance paperwork to ensure full compliance with procedures
- Verify whether customs procedures provide for any official expedited services
- If so, verify size of fees for such services – never pay for any such services without an invoice and/or receipt
- Ensure that any payment made is recorded in the company's accounting system in the correct amount, together with the invoice/receipt and an explanation of the purpose of the payment
- If the customs procedures do not provide for expedited services or are not clear on the size of fees for such services and an invoice or a receipt is not provided:
 - Make it clear to the customs officer that payment to public officials for a service to which one is already entitled is against company policy and is illegal
 - Refuse to pay facilitation payments to expedite customs clearance of goods
 - Demand reasons why the goods are stuck and do so on a daily basis
 - Demand that measures be taken to mitigate such reasons
 - Make it clear that normal customs procedures shall be followed
 - Do not reveal that you are under time pressure
 - Ask for the name and position of the customs officer and request to meet his/her superior
- If the customs clearance delays have impacts on the company's business relationships inform business partners of the situation and of the potential consequences explore if and how to approach the customs authority jointly
- Request a meeting with the central customs authority or relevant ministry to request that actions be taken
- Explore whether other companies face similar problems and jointly address the customs authority
- Report the incident internally in the company; analyse the case, develop a plan to reduce the risk of reoccurrence and design responses for future demands

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 13

Perishable goods are held up in customs and will only be released if a cash payment is made.

Description

Your company's goods, some of which are perishable or have limited shelf life, have been stuck in customs for a prolonged period awaiting clearance. A customs official has informed you that the only way to prevent further delay is to provide him/her with a cash payment. Your company's legal counsel has informed you that expediting payments are illegal in this country.

Demand prevention: How to reduce the probability of the demand being made?

- See Scenario 12
- Consider purchasing goods locally to the extent practicable
- Try to understand what might cause backlogs in customs clearance – if potential delays are a result of it being a traditionally busy part of the week, month or year, then try, to the extent possible, to schedule the shipment of your company's goods during periods when the customs office experiences less volume
- Build your company's reputation for refusing to pay facilitation payments as a matter of corporate policy

Response to bribery demand: How to react if the demand is made?

- Refuse to pay any bribe or facilitation payment to expedite customs clearance
- Report the demand to the company's legal counsel promptly
- When meeting with the customs official to discuss the delay, request to be accompanied by a lawyer or police officer to reduce the probability of being asked to make a bribe
- State the company's anti-corruption policy and its commitment to following the law
- Explain that making a payment that is against the law exposes not only the employee and the company but also the customs official to potential criminal prosecution and other sanctions
- Consider informing the customs official's supervisor of the solicitation
- Explain the nature of the goods, the demand in the country and the negative consequences of loss of all goods due to their perishable nature
- Make public the loss of perishable goods due to delay in customs and bribe demands

Scenario 14

A tax inspector asks for a “kickback” in exchange for granting a discharge or accepting a settlement in a tax dispute.

Description

Following a tax audit, your company has received a reassessment notice in a foreign country where your subsidiary or branch operates. There are solid arguments in favour of challenging the proposed tax adjustment. The issue is under discussion with the tax authorities. The tax auditor proposes a discharge or a settlement in return for the payment of a “kickback”.

Demand prevention: How to reduce the probability of the demand being made?

- Establish a policy addressing bribery and extortion risks, including the proper handling of demands for kickbacks
- Secure your tax position in the country with the help of your tax department or a reputable local tax adviser by:
 - Being fully compliant with local tax regulations
 - Avoiding tax schemes that could be considered dubious or not compliant with local standards
 - Developing a good working relationship with the tax authorities
- Ensure that the local tax adviser you work with has a sound reputation and does not have an inappropriately close relationship (i.e. conflict of interest) with the tax authorities
- While the tax audit is ongoing:
 - Try to agree with the tax auditors on a method of operation that will provide a paper trail of the audit (i.e. written questions and answers)
 - Make sure that your local tax adviser attends, together with the company's representative, all meetings with the tax auditors
 - Try to identify the tax auditors' supervisor

Response to bribery demand: How to react if the demand is made?

- Alert your management and your tax department immediately
- Refuse to pay and:
 - Point out the fact that you have solid arguments to challenge the tax adjustment and that you are prepared to appeal before the appropriate court should this be needed
 - Inform the tax auditor that no additional tax payment is allowed by the company unless it is expressly authorized by management at headquarters (and/or by the tax director) and only if an official receipt from the tax authorities is to be issued
 - In the event of a settlement, request that an official written position be issued by the tax authorities
- Alert the tax auditor's supervisor
- Bring the kickback request to the attention of the trade department of your embassy

Scenario 15

A union leader demands payment to an employee welfare fund before allowing his/her members to unload a ship.

Description

A union sets up a picket line on the docks. Its leader demands recognition of the union as the sole bargaining representative for all workers employed by the project and a \$1 million contribution to the union's welfare fund. The union leader and two members of his/her family are the welfare fund's trustees.

Demand prevention: How to reduce the probability of the demand being made?

- Establish a policy addressing bribery and extortion risks, including the proper handling of charitable contributions, with disbursement mechanisms, limits for expenses and approval levels
- Provide anti-corruption training to local management
- Provide labour law/relations training to local management
- Issue instructions to your local management team that site recognition of unions and collective bargaining with local unions are subject to corporate monitoring and supervision
- Decide which unions are to be recognized as parties to collective bargaining, and establish agreements
- Agree "rules of interaction" (for non-collective bargaining issues) with local union chapters, including integrity issues, conflict resolution and complaints mechanisms (to company head office and union head office)
- Develop and maintain good working relations with unions represented at the site

Response to bribery demand: How to react if the demand is made?

- Refuse payment on grounds of company policy, anti-corruption provisions in laws, OECD Anti-Corruption Convention and UNGC 10th Principle (if appropriate)
- Disclose demands and responses to corporate management, local government, union head office and ILO (where appropriate)
- Explore possibility of ILO disclosure/proceedings/sanction
- Consider legal actions against the union
- Investigate and provide a full report to company management and, where appropriate, other bodies as indicated above
- To solve the conflict, suggest the establishment of a transparent agreement for a welfare fund under the auspices of neutral third parties so the issue is decoupled from shipments and not under the direct influence of the union leader; negotiate the contribution to an amount that is acceptable to the company

Scenario 16

A client asks your company to arrange and pay for a check-up at a prestigious hospital while on a visit to your home office.

Description

In the course of the performance of a contract, you have arranged a training session in the company's home country for the benefit of designated customer representatives. Prior to the trip, the head of delegation asks for a check-up in a prestigious hospital during his/her stay.

Demand prevention: How to reduce the probability of the demand being made?

- Define a clear company policy for gifts, hospitality and personal expenses such as pre-approval and control mechanisms
- Clearly state publicly this policy on your company website or any other appropriate means for internal and external purposes
- Train your personnel on how to implement this policy
- Provide in the contract detailed provisions describing eligible expenses according to their nature and amount and consistent with the company's gift and hospitality policy

Response to bribery demand: How to react if the demand is made?

- State your gift and hospitality policy and show that you are not allowed to give in to this request
- Explain that this practice may violate international conventions (such as OECD and UNCAC) and applicable laws
- If appropriate, offer logistical support to arrange the visit, but without paying for any expenses
- Ask for a formal written request by a superior, which should be enough to put an end to the solicitation process

Scenario 17

A government official requests free product samples for private use.

Description

A minister (or other high-ranking government official) asks your company to provide free product samples for his/her son's 16th birthday party. Your company feels pressure to comply with the request to maintain its good relationship with the official.

Demand prevention: How to reduce the probability of the demand being made?

- Implement a clearly articulated company anti-corruption policy on gifts that restricts the value and frequency of gifts to government officials
- Promote awareness of this policy by posting it on your company's internal and external websites
- Train your personnel on the policy, especially those who may interact with government officials

Response to bribery demand: How to react if the demand is made?

- Politely explain that your company policy prevents you from being able to satisfy this request
- Explain that providing these products for the official's personal benefit may constitute a bribe, or have the appearance of being a bribe, under the law
- Explain that providing free product samples as a gift exposes the employee and the company to potential criminal prosecution and other sanctions
- Consider putting this answer in writing in the form of a letter to the official
- Promptly report the request to your company's legal counsel

Scenario 18

A government representative requests sponsorship for an activity linked to the private interests of high-level government officials.

Description

In executing a construction contract for a ministry in a developing country, your company is asked to sponsor an activity closely linked to the private interests of individuals associated with the ministry. Your company is made to understand that its response to this demand will impact its future business in the country. This is a common scenario in this country where companies are often approached by organizations or governmental bodies requesting sponsorship for activities as a means of overcoming budget limitations.

Demand prevention: How to reduce the probability of the demand being made?

- If you do not have one, establish a company policy and guidelines for handling bribery and extortion risks, including risk associated with sponsorships and political contributions
- Use every opportunity to communicate the company policy externally
- Develop internal guidelines for sponsorships with transparent criteria, i.e. indicating that your company only sponsors projects that directly benefit communities around your company's projects and that are linked to your company's overall corporate social responsibility/sustainability strategy
- Establish a sponsorship board or similar function within your company to analyse every sponsorship proposal according to internal criteria established in the sponsorship guidelines; ensure that decisions about sponsorships are documented
- When projects are sponsored, maintain necessary control and influence to avoid any misuse of the funds (e.g. through a reputable, independent third party)
- Ensure that sponsorship payments are made to organizations and not to individuals, that the sponsorships are covered by written agreements and receipts, and that no conflicts of interest are involved
- Remain aware that sponsorships and political contributions that benefit public officials directly or indirectly, materially or immaterially, are likely to be regarded as bribery by law enforcement agencies

- Communicate to government agencies how the company operates and what its vision, values and strategies are; inform these agencies of your company's corporate social responsibility programmes to avoid misunderstandings
- Establish a sponsorship budget and a prioritized list of potential sponsorship areas or projects
- Identify credible local stakeholders with whom to develop alternative sponsorship activities in compliance with company guidelines
- Publicize internally and externally the sponsorships in which the company engages

Response to bribery demand: How to react if the demand is made?

- Refuse to sponsor the activity
- The refusal should be decided by the sponsorship board or a similar function within the company and the rationale duly recorded, thereby reducing the exposure of the employees dealing with the customer
- Clearly explain the reasons for refusal, which should be communicated and explained to the government agencies or officers making the demand and, if possible, involving other authorities that are relevant to the activities to be sponsored
- Explore eligible sponsorship at the time of refusal to show goodwill while resisting the solicitation

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 19

A financial services intermediary demands incentives over and above the regulated commissions and fees for referral of clients to financial product providers.

Description

A client consults an intermediary in the financial services industry for advice. The intermediary approaches a financial services provider and offers to advise his/her client to do business with that specific provider in exchange for an additional commission or fee that will not be disclosed to the client. The intermediary makes it clear that this additional commission or fee will secure the business with the financial services provider.

Demand prevention: How to reduce the probability of the demand being made?

- Adopt clear corporate policies and codes, including a code of ethics, which include clear provisions on:
 - How to identify and manage conflicts of interest
 - Which gifts and incentives may be received or given
 - The company's approach to combating financial crime in general, and specifically corrupt practices
 - A "zero-tolerance" policy in the implementation of its policies and codes
- Communicate your company's policies and codes to all levels of management, staff and intermediaries as well as other stakeholders:
 - All directors, employees, contracted workers and contracted intermediaries
 - Suppliers, vendors and business partners of the company
 - All customers
 - Ideally, post the policies and codes on your corporate website to demonstrate your position to the public and competitors
- Engage at the industry level with other stakeholders to address undesired behaviour:
 - Get regulatory bodies and representative bodies of intermediaries involved in the relevant industry to discuss problem areas
 - Approach law enforcement agencies to intervene if the situation does not change
 - Consider the establishment of new structures aimed specifically at addressing corrupt practices in the industry, such as an integrity initiative
 - Involve civil society groups when relevant

- Engage at the industry level to stimulate a discussion on the relevant issues and the threat to the integrity of the industry as a whole
- Formulate the position of the financial services industry on corruption and communicate it clearly to:
 - The public at large to create an understanding of the industry position
 - All intermediaries and intermediary bodies
 - Existing and potential clients
 - Regulatory bodies and law enforcement

Response to a bribery demand: How to react if the demand is made?

- Determine whether meeting the demand would constitute a violation of the company's codes or policies
- Determine whether meeting the demand constitutes behaviour that would violate relevant legislation, regulations, industry codes or standards
- Refuse any demand for compensation that could be considered a breach of the company's code, policy or standards, regulations, statutes and/or relevant legislation, or industry codes or standards
- Clearly indicate to the person making the demand that it is in breach of the expressed position of the company and the industry
- Report any unlawful demand to law enforcement agencies and regulatory bodies without delay
- Disclose the demand to the appropriate management level within your company
- Disclose to any appropriate industry body where there are agreed reporting procedures
- Adopt disciplinary measures against any employee involved in facilitating the demand
- Inform any clients to whom an intermediary has made an illicit demand for bribes, if feasible
- Name and shame where a criminal conviction was obtained

Scenario 20

A supplier offers a bribe to a contract manager to overlook “out of spec” or inferior goods or services.

Description

A supplier makes a delivery of 10,000 widgets. Upon inspection of the goods, a contract manager on the customer side notes that the quality of the fasteners on the widgets does not meet contract specifications. The fasteners could cause a malfunction of the widgets and create a potential safety hazard to users. The contract manager phones his/her contact at the supplier and explains the discrepancy. The supplier's employee offers the contract manager money to ignore the issue and pass the goods on, indicating in the paperwork that the goods are in conformity with the contract.

Demand prevention: How to reduce the probability of the demand being made?

- Perform due diligence on suppliers, customers and intermediaries involved in bids
- Identify “red flags”, e.g. reputation for corruption, family relationship with government officials, no registered office, refusal to reveal owners
- Gather information from relevant embassies, chambers of commerce and trade associations, national anti-corruption bodies, other companies, government agencies and other sources
- Establish clear rules and procedures for acceptance of goods and incorporate these into the contract:
- Goods must strictly conform with contract specifications, and deviations may be accepted only through a written confirmation from customer employees
- Acceptance of goods requires sign-off from more than one customer employee
- Contract managers must maintain professional relationship with supplier employees, avoiding excessive familiarity
- Train relevant employees on rules and procedures for acceptance of goods, emphasizing the risk to the company of accepting nonconforming goods
- Ensure that suppliers are aware of the customer's rules for acceptance of goods

Response to bribery demand: How to react if the demand is made?

Customer:

- Refuse the corrupt payment on the grounds that such a payment violates the business principles of the company, may violate applicable laws and could lead to the dismissal and criminal prosecution of the employees concerned

- Make a record of the relevant interaction
- Reject the goods as not conforming to the contract
- Immediately report the offer of a bribe to customer management or the appropriate officer responsible for matters involving the code of conduct
- Report the offer to the appropriate level in the supplier's organization, indicating that the goods have been refused and that the bribe offer may lead to termination of the contract
- Follow up on corrective actions taken by the supplier
- Investigate the entire engagement as well as past deals with the same supplier and determine whether nonconforming goods from this supplier were previously accepted
- Review relevant documents and interview contract managers and customers who have dealt with previous deliveries from this supplier
- Include legal, operational and risk management specialists
- Determine whether the non-conformity of goods was inadvertent or deliberate – if deliberate, terminate the contract
- Develop a strategy to promptly assess possible legal, operational and reputational risks and remedies
- Conduct an independent audit to assess any actual risks to product or consumer health and safety that may result
- Ensure that product recall and other contingency plans are up-to-date

Supplier:

- Accept return of the goods, and remanufacture the goods in conformance with the contract
- Investigate, perhaps in conjunction with customer, both the attempted bribe and the non-conformity of the goods
- Discipline all employees involved in the bribery offer, including termination of employment
- Notify customer of corrective action taken
- At the conclusion of the matter, document and apply lessons learned (e.g. make relevant changes to operations, review processes, etc.)
- Retrain relevant employees on policies against corruption, any process changes and possible sanctions for non-compliance

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Scenario 21

A customer representative demands a fee that was not previously agreed as a condition to a contract change.

Description

Your company has signed a contract with a customer to carry out a project. During project implementation, your company asks for a legitimate change to the contract to secure a justified market rate increase in your price, as a result of a necessary change in the scope of work. The representative of the customer informs you that the contract modification will not be signed unless your company makes a payment to the said representative.

Demand prevention: how to reduce the probability of the demand being made?

- Be aware that, once you have signed the contract, you are committed to complete the project on time and within the agreed price; therefore, your company is highly vulnerable if the contract does not include safeguards addressing the risk of bribe solicitation
- Perform due diligence on the past record of the customer with respect to incidents of bribery ("know your customer")
- Develop relations with external parties who may help while you carry out the due diligence process as well as during contract implementation (e.g. local embassy, business associations, etc.)
- Re-evaluate the likelihood of demands for bribes at each stage of the project
- Develop an overall action plan, including security issues, to deal with the possibility of retaliation against company staff, contractors and company assets in the event of a refusal to pay bribes wherever your company operates
- Consider collective action among competitors and customers through integrity undertakings promoting ethical behaviour; first, ensure that such undertakings do not violate applicable antitrust or procurement laws
- Your company's bid for the project must take into account the fees and costs related to expert advice (legal, technical, administrative, etc.) necessary to mitigate the corruption risk in the contract terms and conditions and for a rigorous follow-up until project completion
- Negotiate the following terms in your contract:
 - A contractual provision that:
 - o Prohibits hidden and/or illicit payments
 - o Allows the party exposed to undue solicitation from the other party to suspend or terminate the contract due to material breach or willful misconduct by the soliciting party and to be indemnified for the consequences of the solicitation
 - A change of contract or variation order clause (e.g. clauses related to modification, suspension, interruption, cancellation or termination or the contract, force majeure and act of God, etc.), including clauses related to the financial aspects of the contract
 - Rigorous technical and financial terms and conditions (payment schedule and delays, currency of payment and bank account, strict conditions relating to the date of entry into force of the contract, etc.), including provisions addressing the payment of extra costs in case of an unusual or unforeseen change in the conditions of the contract to avoid the possibility of extortion
 - A dispute resolution clause (specify a well-known arbitration centre and a place of arbitration outside the country of execution of the project if the courts of this country are not deemed reliable)
 - A clause designating an independent technical expert to facilitate the resolution of any disagreement among the parties
- Build the financial aspects of the offer/contract on a cash neutral basis so you may stop the project at any time without incurring major financial losses
- Check the possibility of an insurance programme (through an export credit agency, multilateral bank or commercial bank) covering any risk (damages and/or retaliation) triggered by your refusal to pay bribes
- Include terms in your contract providing that all payments will be done exclusively through bank wire transfers between corporate accounts of the parties to the contract, therefore excluding cash payments to the bank account of physical persons
- Identify company assets, receivables and/or employees in the country of the project that may be exposed to retaliation due to a refusal to pay bribes
- If the pressure to pay a bribe becomes too strong, assess the consequences of terminating the project

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Response to bribery demand: How to react if the demand is made?

- Refuse to pay
- Use all available channels to inform the head office or your parent company as well as your compliance officer, supervisor or other relevant manager
- Examine the legal, technical and financial consequences of your refusal to pay the bribe
- Analyse how the local authorities may react and how the legal authorities of the country where your company is based may be of assistance
- In circumstances where financing is extended or insured by the World Bank, other multilateral development banks and/or other bilateral agencies, immediately seek the support of these institutions in resisting the solicitation
- In cooperation with authorities (e.g. police or other relevant authority) collect evidence wherever feasible to prove the solicitation
- In accordance with the contract terms and conditions as recommended above, demand contractual remedies such as a notice to the customer of the suspension, cancellation or termination of the contract, claims for compensation, indemnity, etc.
- Give thorough consideration to the criminal implications of such solicitation by the customer representative
- Anticipate and manage the reputational impact deriving from the rejection of such solicitation (e.g. possible reprisal through media coverage)
- Approach local business associations and/or your embassy to expose the situation and obtain support; if appropriate, seek additional support from relevant NGOs that may help expose the problem of solicitation
- Contact your ECA and/or insurance broker and check whether solicitation qualifies as a breach of contract triggering insurance policy coverage

Scenario 22

For a fee, a “businessperson” offers to help reinstate client progress payments that were stopped for no apparent reason.

Description

Your company has obtained a contract for the supply of telecommunication equipment to a government-owned company. The contract also covers engineering and installation services over a period of 18 months. Progress payments are due at the end of each month based on the work performed and the equipment supplied in the previous month. An amount of 10% is retained on each payment and shall be paid together with the last payment after acceptance of the work and the equipment.

The work has advanced according to schedule and the progress payments have been made with little or no delay for the first 11 months. However, the payment due for the 12th month is made with two months' delay and no other monthly payment has been made since. Given that you cannot easily demobilize and remobilize your staff, you have completed the work and supplied all the equipment while claiming the late payments without success. At the acceptance inspection, you are provided with a long list of deficiencies and asked to provide a large number of documents for review, although tests run by your experts show that the equipment is performing according to the contractual specifications or better.

At a reception organized by the ministry of communications, you are introduced to a businessperson who hints that he/she can facilitate acceptance of the work and equipment and prompt payment for a commission of 10% of the outstanding amounts.

Demand prevention: How to reduce the probability of the demand being made?

- Implement a company policy and guidelines prohibiting bribery, including how to reject offers to facilitate government relations through bribes
- Obtain a letter of credit to cover payments or provide for an escrow account where sums to cover payments are deposited or for a down payment at the beginning of the contract to serve as a guarantee for outstanding payments
- Provide for dissuasive interest on outstanding payments and possibly for a discount for prompt payment
- Provide for intermediary work acceptance at defined stages of the contract to avoid a long list of deficiencies at the end of the contract
- Provide for an accelerated neutral arbitration procedure to establish delivery of services and supply of goods in conformity with the contract

- State in contracts that contractual disputes will be submitted to international arbitration on neutral ground
- Provide for the right to terminate the contract and charge demobilization costs if payments are outstanding for more than a certain time or if outstanding payments exceed a certain amount - also, ensure that work cannot be completed by a third party unless demobilization costs and all amounts outstanding are paid
- If services are rendered or products supplied to a government, provide for direct payment by the private beneficiaries of the service or for payment by them in an escrow account
- Try to ensure that payments are specifically included in the national budget
- Obtain surrender of its diplomatic and jurisdictional immunities from the government
- Provide contractually for disputes to be submitted to the jurisdiction of the International Centre for the Settlement of International Disputes if the host country and the country of the investor are parties to the ICSID Convention
- Apply for guarantee by the Multilateral Investment Guarantee Agency (MIGA) if the host country and the country of the investor are MIGA members, or by a similar national organization of the country of the investor
- Enter into a public-private partnership with the government to give the government a stake in the results of the operations
- Never accept any unsolicited assistance

Response to bribery demand: How to react if the demand is made?

- Say no to the person making the bribery solicitation and have no further contact
- Expose that person to the government and query the reason for his/her approach
- Appoint a local representative to follow up the payment procedure and, if possible, circumvent the customer employee blocking payment
- Suspend the work in case of outstanding payments – cash in amounts in escrow – use right of offset with guarantee payment if any
- Take the case to arbitration
- Ask (informally) the International Monetary Fund to review the case and/or to include the review in a project audit
- Request the assistance of the government of the investor's country

The specific recommendations of this scenario should be read together with the overall recommendations of the Annex to RESIST.

Annex: Guidance on Generic Good Practice Related to Extortion and Solicitation

*The **22 RESIST scenarios** highlight a wide variety of corruption risks often encountered in many types of commercial dealings with public officials and commercial partners.*

Many scenarios call for common responses that are applicable to most solicitation situations. While the answers are partially repeated in the individual scenarios, this annex provides an overview of generic responses to demands for these types of payments, as well as addressing major aspects of these individual risks.

The suggested actions below are intended as a broad, but not exhaustive, spectrum of practical actions to avoid or combat solicitation or extortion scenarios. Not all of them will be relevant in each situation, nor will all of them be feasible depending on the size of companies and their resources. Further, these are intended as practical suggestions, but are not intended as alternatives for sound ethical management judgment and common sense, based on appropriate professional legal, accounting, tax and other specialized advice when addressing a specific situation, in particular the advice necessary to understand and comply with national laws and regulations.

Demand prevention: How to reduce the probability of the demand being made?

General company anti-corruption policies

- Implement and enforce a zero-tolerance anti-bribery policy based on applicable laws and ethical values
- Establish a no-bribe and zero-tolerance reputation by publicizing anti-corruption policies efforts and the related anti-corruption programme
- Ideally, policies should be publicly available, but they should at least be available to all employees, business partners, relevant government agencies, charities, labour unions and other relevant stakeholders
- Set up clear company directives including a whistleblowing policy and related effective sanctions for non-compliance
- Provide training to operational and field personnel on relevant regulations and competition laws, the consequences of bribery and anti-competitive deals for the company and the involved

employees, how to respond to such demands (i.e. alert process, compliance department) and to whom to report such demands

- Emphasize in training sessions the criminal and reputation risk not only for the company but also for the exposed employees themselves
- Send regular reminder communications to exposed employees
- Provide competitive remuneration for your company staff at risk to reduce incentives to solicit and/or accept kickbacks
- Require high risk employees to sign a code of conduct statement regularly
- Introduce anti-corruption clauses and audit rights in contracts with business partners, e.g. suppliers and sub-contractors, agents and consultants
- Ensure that employees understand they should not refuse payment if faced with threats of violence

Policies on facilitation payments

- Facilitation payments are small-value payments made to low-level officials to secure or expedite the performance of routine or necessary actions to which the payer has legal or other entitlement
- This is a widespread form of bribery, despite being illegal in almost every country
- Whenever feasible for your operations, implement a zero-tolerance policy against facilitation payments
- Otherwise, implement a policy that rejects facilitation payments whenever possible, permitting only payments that are clearly unavoidable, requiring clear documentation of any such payment and having as an ultimate goal the elimination of such payments
- Clearly identify the limit of a facilitation payment, e.g. maximum US\$ 100 made on a one-off basis or only occasionally to the recipient
- Make demanding facilitation payments more difficult, e.g. having employees advise officials demanding payments that they must record and escalate within the company the payment and the relevant details, including the official's name
- Ensure that employees can quickly contact managers or other designated persons when faced with payment demands
- Work with other companies and international organizations towards eliminating facilitation payments, e.g. agreeing with competitors in a market that all of them will refuse to make such payments

Policies for company representatives who may be exposed to these risks

- Train and discuss anti-corruption policies with relevant personnel before the start of a project:
 - Identify and openly address incentives to pay bribes
 - Introduce “excuse pages” that explain why the usual answers and justifications that bribes need to be paid are not valid
 - Perform background checks on personnel involved in transactions and/or projects, including potential conflicts of interest, while respecting applicable employment and data privacy laws and other legal considerations
 - Provide training to at-risk personnel on the consequences of bribery (legal, financial, reputational, etc.)
 - Prepare employee guidance on how to respond to bribery demands (i.e. whistleblower hotlines, compliance training and consultation) that incorporates cultural, industry and function specific advice
- Consider incentives to report bribery demands
 - Before, during and after projects and/or transactions, prohibit or strictly regulate gifts, entertainment, hospitality, sponsorship and political and/or charitable contributions activity through policy, guidance, training and a formal approval process
 - o Establish thresholds appropriate to the local environment
 - o Zero-tolerance policy for parties directly or indirectly involved in the bid process
- Consolidate disbursement mechanisms for personnel involved in projects and/or transactions
 - Avoid petty cash funds that would enable staff to respond positively to any solicitation
 - Avoid cash payments whenever possible, using instead checks or electronic transfers
 - Consolidate bank accounts
 - Conduct a risk management review to approve the opening of project-based accounts
 - Be clear with your employees about categories of expenses for which claims for reimbursement will be approved or rejected or for which a prior application should be made, to avoid the risk of a fait accompli and exposure for the company and its management
- Whenever feasible, replace face-to-face:
 - Payment of invoices, customs duties, fees, taxes, etc., with electronic transfers directly to official bank accounts of government agencies, service providers or business partners
 - Communication required for official approvals with electronic communication and documents

- Whenever possible, operate as a team consisting of at least two employees who must comply with strict reporting directives and control mechanisms
- When meeting with other parties, request to be accompanied by a lawyer, other professional adviser or another third party to reduce the probability of being asked for a bribe
- Be on alert for inappropriate schemes; consult experts familiar with international transactions (financial, tax and legal) where concerns exist
- Set up an action plan, in particular security measures, that can be relied upon to anticipate and manage the retaliation risk against people and assets of your company as the result of the rejection of a solicitation or extortion attempt
 - the protection of the exposed staff is of paramount importance

Dealing with specific risks

- Establish a zero-tolerance policy against payment or receipt of kickbacks from private business partners
 - Treat bribery of public officials or business partners the same
 - Ensure that business partners are aware of the kickback policy
- Have a clear policy addressing conflicts of interest:
 - Require all employees to state any economic or other personal interests they might have directly or indirectly in any project or transaction or in any third party having any business, financial or regulatory dealings with your company
 - Ensure whenever possible that employees with potentially significant conflicts of interest are not involved in such projects or transactions
 - If it is not possible to isolate employees from such projects or transactions, ensure that their roles are completely transparent and that they obtain no undue gains
 - Ensure that transactions and projects are transparent and planned and executed according to clear, objective standards and procedures, e.g. if your company funds a research and development project at a university, ensure that the criteria for funding are clear and objective
 - Whenever feasible, ensure that more than one person makes key decisions, e.g. a committee or several persons must agree to a supplier or business partner or to an investment (R&D or other funding decision)
- Have a clear policy addressing gifts, entertainment and hospitality:
 - Balance the need for reasonable, business related gifts and hospitality with the risk that these could be perceived as bribes, e.g. taking into account local customs and laws

- Provide guidelines clearly explaining what is business related and what types of gifts and hospitality are permitted, e.g. travel expenses, dining, entertainment and lodging
- Ensure that guidelines state permitted cost thresholds or give clear examples of permitted cost levels
- Ensure that employees can quickly obtain guidance when arranging gifts or hospitality
- Have a clear policy addressing political and/or charitable contributions and sponsorship
 - Clearly describe what types of contributions/ sponsorships at which levels are permissible, and clearly identify permissible recipients
 - Balance the benefits of legitimate contributions/ sponsorships with the risks of donations being perceived as bribes, e.g. taking into account local customs and laws
 - Establish a group implementing the contribution/sponsorship policy, with transparent and well documented procedures
 - If payments are made to unions or other employee groups, ensure that amounts, payment procedures and dates, and all relevant persons are identified, and ensure payments are made directly into bank accounts of the organizations in question
- Have a clear policy and clear guidelines on obtaining payment of outstanding receivables to avoid kickback demands
- Publicizing company anti-corruption materials, e.g. policies and guidelines, is encouraged, because this sends a strong message to employees, business partners and other stakeholders about a company's firm stand against corruption

Due diligence and management of agents and other intermediaries

- Perform due diligence on agents, consultants and other intermediaries (including their owners and managers) involved in dealings with government agencies or business partners:
 - Identify "red flags" since these parties are often used to pay bribes to public officials, extortionists, e.g. family relationship with public officials, no registered office, refusal to reveal owners⁴
 - Eliminate any intermediaries that are non-essential to the project or transaction
 - Implement risk management/compliance approval for payments to intermediaries
 - Ensure the level of proposed compensation for the intermediary is commensurate with the nature and scope of services and whether the services are legitimate ones; document this compensation

- Include in contracts that compensation should be paid electronically into a corporate account in a bank located in the country of the intermediary's operations – never pay cash
- Have clear guidelines governing selection of intermediaries, e.g. who has the authority to hire, criteria for selection, use of standard contracts – the need for an intermediary must be justified
- Ensure internal authorizations are obtained by appropriate corporate officials (at least one of the two approvers must have no personal sale incentives) prior to engaging a consultant or agent and making any fee payments
- Enter into written agreements with intermediaries that include description of services provided, anti-corruption undertakings, maximum commission, termination and legal compliance clauses, including prohibition against payments to public officials and the right to audit intermediaries' accounts
- Ensure, if necessary, that all payments made by intermediaries are approved and/or co-signed by the company, and that company employees or representatives (e.g. lawyers) attend meetings between agent and public officials
- In large companies, establish and review each year lists of approved intermediaries

Implementation of additional control Procedures

- Before beginning operations in a country, ensure that your company has sufficient knowledge of relevant rules and procedures involving:
 - Legal requirements for obtaining necessary approvals and permits
 - Processes for obtaining permits and licenses required for conducting business in a country, including:
 - o Health, workplace and product safety and environment
 - o Employment permits
 - o Passport, immigration, border controls
 - o Customs duties, procedures and payment rules, such as official rules for expedited service for higher fees
 - o Time-frames for processing applications
 - Tax regulations, including procedures for tax payment to official agency accounts
 - Before negotiating contracts, dealing with government agencies or beginning operations, obtain professional advice on:
 - o Relevant laws
 - o Accounting rules and procedures
 - Linking up to utilities and infrastructure, e.g. electrical and telecommunications networks, water, roads, ports, including the timeframe

⁴ For more examples, refer to "Business against Corruption – Case Stories and Examples, Integrity Due Diligence", UN Global Compact, 2006: http://www.unglobalcompact.org/docs/issues_doc/7.7/case_stories/BAC_2B.4.pdf

- Plan for project delays caused by your refusal to pay bribes
- Ensure that your company complies with all relevant regulations and official requirements for operations in a country
- Identify relevant key public officials and make them acquainted with your company and its anti-corruption policy and programmes
- Challenge illegitimate claims by public officials after seeking professional advice
 - Attend negotiations and other meetings only when accompanied by professional advisers
 - Challenge illegitimate claims in courts when necessary
- Review payments involving heightened risk:
 - To bank accounts with financial institutions outside the project location, to tax havens or to countries maintaining banking secrecy
 - Require a bank certificate confirming the identity of the owner of the bank account to be credited
- Ensure contracts clearly state rules and procedures for contract amendments, including who pays costs incurred by one party as a result of the other party's request for an amendment, who approves, notice period, criteria for agreement
- Implement contract clauses and procedures to ensure payment of your invoices:
 - Letters of credit
 - Early payment incentives, penalties for late payment
- Elevate concerns about and evidence of solicitation of bribes
 - Internally in your company to senior management
 - To relevant public officials
 - o Supervising those soliciting bribes
 - o Higher in the government, as required
 - The embassy of the country where your company is headquartered
 - Other stakeholders, including other companies, non-governmental organizations (NGOs) or the media as appropriate
 - o In particular, contact companies that also are involved in anti-corruption activities, e.g. through local ICC or UN Global Compact networks, or local chapters of Transparency International
- Use anti-corruption technology to increase monitoring effectiveness
 - o Employ computer-assisted techniques to identify higher risk transactions

Support transparency of procurement processes with authorities

- Engage in a dialogue with agencies to improve procedures in the following areas:
 - Encourage adoption of best practice procurement guidelines (World Bank/OECD)
 - Make the procurement process transparent, including the publication of terms of reference
 - Work with other stakeholders (e.g. civil society organizations) to influence procurement agency to adopt best practices
 - Favour the establishment of an Integrity Pact (a tool developed by TI to fight corruption in public contracting)⁵, or a similar type of agreement, between the local public authority and the various competitors, in order that all participating officials and bidding companies commit to not soliciting, offering, giving or accepting bribes or other undue benefits
 - Secure agreement from the procurement agency on the appointment of an independent (i.e. no conflict of interest) third party (e.g. competent individual, company or NGO, or international organization such as the World Bank) to supervise the entire bidding process
 - Request a pre-qualification round to exclude bidders lacking technical and financial delivery capacity (either through their own organization or relevant contractors)
 - Suggest that all bidders should as a pre-qualification requirement have implemented anti-corruption policies and related programmes
 - Agree with the procurement agency that no intermediaries can be added to the process after bid submission

Additional precautions in the procurement process involving state tenders

- Include assessment of corruption risk as standard procedure when selecting proposal opportunities
- Assess corruption risks at the project level before engaging in the bidding process
- When bidding for large contracts, favour projects that are financed by multilateral financial institutions (e.g. World Bank) and that have a clear anti-corruption policy
- Standardize review of bids by non-project team members, including senior operational personnel, risk management and finance specialists
- Maximize opportunities for detection by employing additional control procedures to detect bribes
- Segregate disbursement activities related to the bid from bid approval processes

⁵ See http://www.transparency.org/global_priorities/public_contracting/integrity_pacts

- Ensure that the bidding approval process does not fall under the sole responsibility of the sales team involved in the bid if the size of your organization allows it
- Carry out formal vendor review and approval process
- Use open bids for subcontracting activities whenever and wherever possible
- Hold regular market reviews of marketing fees per country
 - To agents/consultants/advisers used in the bidding process
 - To bank accounts with financial institutions outside the project location, to tax havens or to countries maintaining banking secrecy
- Require a bank certificate confirming the identity of the owner of the bank account to be credited
- Train and discuss anti-corruption policies with personnel involved in the procurement process before the start of the project
- Implement a regular, independent internal monitoring function that reports to a senior executive on:
 - High risk payments to agents/consultants or to financial institutions outside of the project location
 - Regular, timely and detailed review of bidding process documentation
- Seek relevant information from major enterprises, embassies, export credit agencies, banks or trade associations about the business practices in that country
- Consult country profiles on online tools such as www.business-against-corruption.com
- Assess levels of enforcement of existing anti-corruption policies and laws
- Monitor the living standards of the members of the body defining the terms of reference/ procurement agency

Initiation of collective action to improve overall business integrity

- Encourage local professional and business associations and NGOs to engage with the government to enact laws and rules for transparent projects and transactions
- Seek the leverage of international financial institutions to enhance the quality and predictability of public procurement

Legal and financial precautions

- State in contracts that contractual disputes will be submitted to international arbitration on neutral ground
- Provide contractually for disputes to be submitted to the jurisdiction of the International Centre for the Settlement of International Disputes if the host country and the country of the investor are parties to the ICSID Convention
- Apply for guarantees by the Multilateral Investment Guarantee Agency (MIGA) if the host country and the country of the investor are MIGA members, or by a similar national organization of the country of the investor

Responses to a bribery demand: How to react if the demand is made?

Immediate response

- Take time to think about the situation, do not act alone, and stick to your mandate
- Answer that the solicitation (direct or indirect) is to be made in writing and needs to be reported to your management
- Refuse payment on the grounds that any solicitation violates the business principles of your company and may violate applicable laws such as those covering accounting and/or anti-corruption in your country and/or the host country, and money laundering, and could lead to the dismissal and criminal prosecution not only of the employees concerned but also of the soliciting party

Report internally

- Immediately report to management or the appropriate officer assigned with matters involving the code of conduct (e.g. compliance officer) and define an appropriate strategy (e.g. changing the negotiation team)
- Record the incident and make an internal assessment to define corrective actions

Investigate

- Investigate the deal and the intermediary, as well as past deals with the same counterparties (customer, authorities, etc.) and/or intermediary in same country or even other countries
- Include legal, operational and risk management specialists
- Retain investigation results for both legal implications and future risk assessments

Discuss with relevant persons

- Go back to the soliciting person or his/her superior with at least one witness (management, adviser, bank representative) with the following position:
 - Reaffirm your willingness to do business, perform the project or transaction, carry out the activity and ignore the solicitation
 - In case the solicitation is reiterated:
 - o First, inform the person that the request is not acceptable
 - o Threaten to refuse to participate further with public communication of the reasons for doing so
 - o Stop further participation
- Report (directly or anonymously) to the appropriate level of the organization allegedly represented by the person demanding the bribe
 - Assess whether the demand is part of systemic corruption or simply the action of a rogue employee
 - o Rogue employees – expose to superiors
 - o Systemic corruption – report to organization (directly or anonymously) and superiors
- Explain to the persons making the solicitation that the proposed scheme could expose all the parties (individual and company) to a prosecution risk not only in the country where the deal occurs but also in OECD countries under regulations fighting corruption or money laundering
- Convene meetings of all parties and discuss potential challenges to successful dealings such as requests for bribes, without disclosing too many details this should serve as a deterrent to the guilty party

If suspicions are substantiated, disclose externally

If your suspicions are substantiated, disclose externally to:

- Government – use various governmental agencies to report corrupt organizations
- Embassy or consulate representing your home country to seek guidance and support
- Financing institutions, if any export credit financing or coverage is proposed
- Competitors, if they are subject to a regulatory environment similar to yours
- Industry trade association in the host country to report on a “no name” basis and in a collective manner such solicitation to relevant authorities
- Industry initiatives:
 - Leverage industry initiatives to communicate bribery demands
 - Expose known extortionists

- Regulators:
 - In regulated industries, alert the regulators of bribery demands that may stem from officials of a state-owned company
- Media/NGOs: Leverage public scrutiny of bidding process

Withdraw

- Withdraw from the project or transaction and disclose the reasons for the withdrawal to the public, to international organizations and/or selected officials of the country organizing the tender

Jointly developed by



International Chamber of Commerce

The world business organization

International Chamber of Commerce (ICC)

ICC speaks with authority on behalf of enterprises from all sectors around the world. In 2005, it issued a revised version of its Rules and Recommendations to Combat Extortion and Bribery, published in 1977. The ICC Commission on Corporate Responsibility and Anti-corruption brings together experts from a wide range of business sectors and national backgrounds. It conveys messages relating to business in society, promotes self-regulation by enterprises in controlling extortion and bribery and provides business input into international initiatives to fight corruption. For more information, visit www.iccwbo.org or contact viviane.schiavi@iccwbo.org.



Transparency International (TI)

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it. In 2002, it worked with a multistakeholder and international steering committee of companies, business associations, academics, union representatives and civil society organizations to publish an anti-corruption code entitled Business Principles for Countering Bribery. This code formed the basis for the PACI Principles, developed with the World Economic Forum. Since then, insights gained from workshops held around the world have led to the development of a suite of tools to support companies in developing and implementing anti-corruption policies, monitoring their effectiveness and publicly reporting their results. For more information, visit www.transparency.org or contact businessprinciples@transparency.org.



United Nations Global Compact

United Nations Global Compact (GC)

In 2004, a 10th Principle was added to the United Nations Global Compact, a multistakeholder initiative, sending a strong signal that the private sector shares responsibility for eliminating corruption. The principle states: "Businesses should work against corruption in all its forms, including extortion and bribery." The adoption of the 10th Principle commits the almost 4,000 Global Compact participants not only to avoid bribery, extortion and other forms of corruption, but also to develop policies and concrete programmes to address it. The United Nations Global Compact is a voluntary initiative with a mandatory requirement for business participants to disclose, on an annual basis, performance changes in the issue areas. For more information, visit www.unglobalcompact.org or contact makingwa@un.org.



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World Economic Forum Partnering Against Corruption Initiative (PACI)

PACI is a platform for companies to commit themselves to develop, implement and monitor their anti-corruption programmes through peer network meetings and provision of private sector-driven support tools. Driven by the private sector, the initiative helps to consolidate industry efforts in fighting corruption and shape the evolving regulatory framework. PACI was initiated by World Economic Forum member company CEOs in Davos in 2004. Since then, the PACI Principles for Countering Bribery have been developed, and the nature of the initiative has become multi-industry and multinational. The Principles have received CEO commitment from more than 150 companies, representing an annual turnover of more than US\$ 800 billion. For more information, visit www.weforum.org/paci or contact paci@weforum.org.