



International Chamber of Commerce

*The world business organization*

## ICC Rules of Conduct to Combat Extortion and Bribery in International Business Transactions

(1996 edition)

### Part I: ICC Recommendations to Governments and International Organizations on Extortion and Bribery

#### Recommendations for international cooperation

Basic criminal statutes of virtually all countries clearly prohibit extortion and bribery. In the interest of developing consistent standards of criminal legislation in this field, each government should review its statutes to ensure that they effectively prohibit, in conformity with its jurisdictional and other basic legal principles, all aspects of both the giving and the taking of bribes including promises and solicitation of bribes. Where no such legislation exists, the governments concerned should introduce it; in those countries where extortion and bribery are already clearly prohibited, the relevant legislation should be perfected.

Each government should take concrete and meaningful steps to enforce vigorously its legislation in this area. The ICC also notes with approval that the OECD has urged governments to re-examine their legislation against extortion and bribery; action relating to the tax deductibility of bribes is of particular urgency. The WTO should involve itself with these issues to support the OECD in the implementation of its Recommendations.

#### National Measures

In order to deal with the problem of extortion and bribery, governments should, in conformity with their jurisdictional and other basic legal principles, take the following measures, if they have not already done so.

#### Preventive measures

**Disclosure procedures** For the sake of transparency, procedures should be established providing for periodic reports to an authorised government body of measures taken to supervise government officials involved directly or indirectly in commercial transactions. Such reports should be open to public scrutiny.

For enterprises engaged in transactions with any government or with any enterprise owned or controlled by government, disclosure procedures should provide for access, upon specific request, by the appropriate government authorities to information as to agents dealing directly with public bodies or officials in connection with any particular transaction, and as to the payments to which such agents are entitled. Governments should ensure the confidentiality of any such information received from enterprises and safeguard the trade secrets incorporated therein.

Economic regulations when laying down any economic regulations or legislation, governments should, as far as possible, minimise the use of systems under which the carrying out of business requires the issuance of individual authorisations, permits, etc. Experience shows that such systems offer scope for extortion and bribery. This is because decisions involving the issue of permits or authorisations are frequently taken in ways which make it almost impossible to ensure effective control and supervision. Where individual permits and authorisations remain in place, governments should take appropriate measures to prevent their abuse.

**International Chamber of Commerce**

38 Cours Albert 1er, 75008 Paris, France

Tel +33 (0)1 49 53 28 28 Fax +33 (0)1 49 53 29 42

E-mail [icc@iccwbo.org](mailto:icc@iccwbo.org) Website [www.iccwbo.org](http://www.iccwbo.org)

Transactions with governments and international organisations Such transactions should be subject to special safeguards to minimise the opportunities for their being influenced by extortion and bribery. The system for awarding government contracts might include disclosure, to an appropriate government entity independent of the one directly concerned in the transaction, as well as increased public disclosure, whenever feasible, of the criteria and conclusions upon which the award is based. The ICC supports the growing practice of making government contracts dependent on undertakings to refrain from bribery, and recommends that such contracts should include appropriate provisions to ensure compliance with international, national or enterprise codes against extortion and bribery.

Political contributions Undisclosed political contributions can be a source of abuse. Governments should regulate the conditions under which political contributions can be made. Where payments by enterprises to political parties, political committees or individual politicians are permitted by the applicable legislation, governments should enact legislation which ensures that such payments are publicly recorded by the payors and accounted for by the recipients.

Enforcement measures Governments, in conformity with their jurisdictional and other basic legal principles, should ensure:

- i. that adequate mechanisms exist for surveillance and investigation, and
- ii. that those who offer, demand, solicit or receive bribes in violation of their laws are subject to prosecution with appropriate penalties.

Governments should periodically publish statistical or other information in respect of such prosecutions.

Auditing Governments, if they have not already done so, should enact appropriate legislation providing for auditing by independent professional auditors of the accounts of economically significant enterprises.

### **International Cooperation and Judicial Assistance Implementation of the OECD Recommendation**

The ICC believes that the May 1994 OECD Recommendation on Bribery in International Business Transactions is essentially sound and that it provides a useful framework for government action. All governments, including non-OECD governments, should promptly take action to implement the steps set forth in the Recommendation.

#### **Cooperation in law enforcement**

Governments should agree, under appropriate provisions for confidentiality, and in conformity with the May 1994 OECD Recommendation, to exchange through law enforcement agencies relevant and material information for the purpose of criminal investigation and prosecution of cases of extortion and bribery. They should also continue to cooperate bilaterally on matters involving extortion and bribery, on the basis of treaties providing for assistance in judicial and penal prosecution matters.

#### **Role of international financial institutions**

International financial institutions, e.g., the World Bank, the European Bank for Reconstruction and Development, should aim to make a significant contribution to the reduction of extortion and bribery in international business transactions. They should take all reasonable steps to ensure that corrupt practices do not occur in connection with projects which they are financing. Similarly, in negotiating cooperation agreements with non-member countries, whether countries with economies in transition or developing nations, the governing or coordinating bodies of the European Union, NAFTA, ASEAN and other regional institutions, should seek to satisfy themselves that appropriate legislation and administrative machinery to combat extortion and bribery exists in the countries concerned.

## Part II: Rules of Conduct to Combat Extortion and Bribery

### Introduction

- These Rules of Conduct are intended as a method of self-regulation by international business, and they should also be supported by governments. Their voluntary acceptance by business enterprises will not only promote high standards of integrity in business transactions, whether between enterprises and public bodies or between enterprises themselves, but will also form a valuable defensive protection to those enterprises which are subjected to attempts at extortion.

These Rules of Conduct are of a general nature constituting what is considered good commercial practice in the matters to which they relate but are without direct legal effect. They do not derogate from applicable local laws, and since national legal systems are by no means uniform, they must be read *mutatis mutandis* subject to such systems.

The business community objects to all forms of extortion and bribery. It is recognised, however, that under current conditions in some parts of the world, an effective programme against extortion and bribery may have to be implemented in stages. The highest priority should be directed to ending large-scale extortion and bribery involving politicians and senior officials. These represent the greatest threat to democratic institutions and cause the gravest economic distortions. Small payments to low-level officials to expedite routine approvals are not condoned. However, they represent a lesser problem. When extortion and bribery at the top levels is curbed, government leaders can be expected to take steps to clean up petty corruption.

### Basic principle

- All enterprises should conform to the relevant laws and regulations of the countries in which they are established and in which they operate, and should observe both the letter and the spirit of these Rules of Conduct.

For the purposes of these Rules of Conduct, the term "enterprise" refers to any person or entity engaged in business, whether or not organised for profit, including any entity controlled by a State or a territorial subdivision thereof; it includes, where the context so indicates, a parent or a subsidiary.

### Basic Rules

#### Article 1 : Extortion

- No one may, directly or indirectly, demand or accept a bribe.

#### Article 2 : Bribery and "Kickbacks"

a.No enterprise may, directly or indirectly, offer or give a bribe and any demands for such a bribe must be rejected.

b.Enterprises should not (i) kick back any portion of a contract payment to employees of the other contracting party, or (ii) utilise other techniques, such as subcontracts, purchase orders or consulting agreements, to channel payments to government officials, to employees of the other contracting party, their relatives or business associates.

### **Article 3 : Agents**

- Enterprises should take measures reasonably within their power to ensure:

a) that any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered by such agent;

b) that no part of any such payment is passed on by the agent as a bribe or otherwise in contravention of these Rules of Conduct; and

c) that they maintain a record of the names and terms of employment of all agents who are retained by them in connection with transactions with public bodies or State enterprises. This record should be available for inspection by auditors and, upon specific request, by appropriate, duly-authorised governmental authorities under conditions of confidentiality.

### **Article 4 : Financial Recording and Auditing**

a) All financial transactions must be properly and fairly recorded in appropriate books of account available for inspection by boards of directors, if applicable, or a corresponding body, as well as auditors.

b) There must be no "off the books" or secret accounts, nor may any documents be issued which do not properly and fairly record the transactions to which they relate.

c) Enterprises should take all necessary measures to establish independent systems of auditing in order to bring to light any transactions which contravene the present Rules of Conduct. Appropriate corrective action must then be taken.

### **Article 5 : Responsibilities of Enterprises**

- The board of directors or other body with ultimate responsibility for the enterprise should:

a) take reasonable steps, including the establishment and maintenance of proper systems of control aimed at preventing any payments being made by or on behalf of the enterprise which contravene these Rules of Conduct;

b) periodically review compliance with these Rules of Conduct and establish procedures for obtaining appropriate reports for the purposes of such review; and

c) take appropriate action against any director or employee contravening these Rules of Conduct.

### **Article 6 : Political Contributions**

- Contributions to political parties or committees or to individual politicians may only be made in accordance with the applicable law, and all requirements for public disclosure of such contributions shall be fully complied with. All such contributions must be reported to senior corporate management.

### **Article 7 : Company Codes**

- These Rules of Conduct being of a general nature, enterprises should, where appropriate, draw up their own codes consistent with the ICC Rules and apply them to the particular

circumstances in which their business is carried out. Such codes may usefully include examples and should enjoin employees or agents who find themselves subjected to any form of extortion or bribery immediately to report the same to senior corporate management. Companies should develop clear policies, guidelines, and training programmes for implementing and enforcing the provisions of their codes.