



Department of Policy and Business Practices

Major changes brought by the 2005 revision of the ICC Rules of Conduct and Recommendations to Combat Extortion and Bribery

The ICC Rules of Conduct to Combat Extortion and Bribery were first published in 1977. They were revised substantially in 1996 and slightly edited in 1999. The ICC Anti-Corruption Commission considered that developments in the fight against corruption during the past five years (UN Convention against Corruption, Global Compact 10th Principle, Transparency International Business Principles, wave of corporate scandals, anti-money laundering regulations) had been sufficiently great to require a new revision of the Rules. This document presents some of the major changes resulting from the 2005 revision of the Rules following their adoption by the ICC Executive Board last June.

Major changes

Rules of conduct

- ? Definition of bribery and extortion. The new Rules provide an expanded definition of *bribery and extortion*, which clearly covers bribery and extortion in connection with regulatory permits, taxation, customs, judicial and legislative proceedings.
- ? Agents and other intermediaries. The principles governing the use of agents and other intermediaries have been reviewed and strengthened. A new article was added to address increasing concerns about bribe payments by other intermediaries, including joint-venture partners and outsourcing arrangements. The new Rules also make it clear that a parent company's anti-bribery policy should apply to all controlled subsidiaries, foreign or domestic.
- ? Facilitation payments. For the first time, the new ICC Rules call for the elimination of facilitation payments. It should be noted that during the revision of the Rules in 1996, more time was spent debating the facilitation payments exception than any other subject. This time, there was a consensus among the Commission that the Rules should go one step further and clearly prohibit facilitation payments. Exceptions can be applied after appropriate managerial review, but they should be limited and provisional.
- ? Political and charitable donations. The previous edition of the Rules already covered political contributions, but did not cover several other potentially sensitive expenditures, such as charitable contributions, sponsorships and gifts. The new provisions require that enterprises take appropriate steps to ensure that political and charitable donations are not being used as a subterfuge for bribery and are in accordance with applicable law. A new article governing the use of gifts and hospitality expenses was added.

- ? Whistleblowing. The 2005 Rules ask companies to establish confidential channels to seek advice, raise concerns or report violations without having to fear retaliation. This issue was already taken up in the ICC handbook *Fighting Corruption: A Corporate Practices Manual*.
- ? Taxation. A new provision requires that enterprises comply with provisions in national tax laws and regulations prohibiting tax deductions for foreign bribe payments.
- ? Responsibilities of enterprises. In the wake of recent corporate governance and accounting scandals, widespread concerns have been raised regarding the effectiveness and public credibility of corporate compliance policies. While bribery did not figure prominently in these scandals, the reforms that have been proposed are also relevant to corporate anti-bribery policies. Against this background, the revised Rules recommend the publication of corporate anti-bribery policies and some form of internal verification of compliance, for example by the audit committee of the board of directors.

Recommendations to governments and international organizations

- ? International Conventions. The new text explains that further work will be needed to ensure that the OECD and UN Conventions are effectively implemented and enforced. In particular, ICC will encourage governments to promptly ratify the new UN Convention against Corruption and ensure that an effective follow-up monitoring program is established. The Commission on Anti-Corruption will continue to work with the OECD and UN on pending issues, including “private sector bribery” and “bribe solicitation by foreign public officials”.
- ? Coordination of Conventions. ICC is pleased to note that a number of anti-corruption initiatives have been taken in recent years. However, from a business standpoint, this proliferation of anti-corruption instruments also raises issues of inconsistent rules, overlapping enforcement and the lack of common definitions. The new text highlights ICC priorities with regards to the coordination of the various international and regional conventions.
- ? International Organizations. The revised Recommendations emphasize the responsibility of international financial institutions, such as the World Bank and regional development banks, in strengthening procedures to prevent bribery on projects they finance.
- ? National Governments. The Anti-Corruption Commission has developed new recommendations in the fields of “public procurement”, “export credit agencies” and “official development assistance”.

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