

## **Guidance on Good Practice Related to Extortion and Solicitation**

I recently wrote about the White Paper, “*Resisting Extortion and Solicitation in International Transactions*” (RESIST). It is a practical tool to help companies train employees to respond appropriately to a variety of solicitations. In addition to the 22 scenarios which discuss solicitation of bribes, in the context of project implementation and in day-to-day project operations, RESIST provides an Annex entitled “Guidance on Generic Good Practice Related to Extortion and Solicitation.” The Annex is designed to provide an overview of generic responses to demands for these types of payments, as well as addressing major aspects of these individual risks.

The Annex sets out, for the compliance practitioner, a spectrum of practical actions to avoid or combat solicitation or extortion scenarios. The information is intended as practical suggestions, but the information is 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.

The Annex guidance is broken into two general areas. (1) Demand Prevention and (2) Demand Response. The suggestions are as follows:

### ***I. Demand Prevention - How to reduce the probability of the demand being made in the first place***

#### *General company anti-corruption policies*

- Implement and enforce a zero tolerance anti-bribery policy.
- Establish a no-bribe and zero tolerance reputation by publicizing anti-corruption policies efforts and the related anti-corruption program.
- The company policies should be publicly available.
- Set up clear company directives including a whistleblowing policy.
- Provide training to operational and field personnel on relevant regulations and competition laws. Emphasize the criminal and reputational risks for the company and employees.
- Require high risk employees to sign a code of conduct statement no less than annually.
- 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*

- Whenever feasible for your operations, implement a zero-tolerance policy against facilitation payments.

- If this is not possible, then 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.
- 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.

*Policies for Company Representatives Who May be Exposed to Corruption Risks*

- Train and discuss anti-corruption policies with relevant personnel before the start of a project.
- Consider incentives to report bribery demands.
- Consolidate disbursement mechanisms for high risk personnel.
- 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.

*Dealing with Specific Risk*

- Establish a zero tolerance policy against payment or receipt of kickbacks from private business partners.
- Have a clear policy addressing conflicts of interest.
- Have a clear policy addressing gifts, entertainment and hospitality.
- Have a clear policy addressing political donations and charitable contributions.

*Due Diligence and Management of Intermediaries and Agents*

- Perform due diligence on agents, consultants and others involved in dealings with government agencies or business partners.
- Have clear guidelines governing selection of intermediaries.
- Ensure internal authorizations are obtained by appropriate corporate officials 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 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.

*Implement Additional Control Procedures*

- When beginning operations in a country, ensure that your company has sufficient knowledge of relevant laws, rules and procedures.
- 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 programs.
- Challenge illegitimate claims by public officials after seeking professional advice.

*Support Transparency of the Procurement Process with Foreign Governmental Officials*

- Engage in a dialogue with the appropriate foreign governmental officials to improve procedures in the procurement process and increase transparency.

*Additional Precautions on the Procurement Process Involving Foreign Governmental Tenders*

- Include assessment of corruption risk as standard procedure when selecting proposal opportunity.
- Assess corruption risks at the project level before engaging in bidding process.
- When bidding for large contracts, favor 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.

*Initiation of Collective Action to Improve 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 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.

## ***II. Demand Response - How to react if such a 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.

### *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.
- 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 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 the Relevant Parties*

- 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.
- Report (directly or anonymously) to the appropriate level of the organization allegedly represented by the person demanding the bribe.
- 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*

- 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.

*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.

This list is not designed to be exhaustive. Each situation may demand unique responses. Nevertheless, the above list is an excellent road map by which the compliance practitioner can evaluate several aspects of a company’s compliance program. We recommend it to you.

The full document may be downloaded at

<http://www.iccwbo.org/policy/anticorruption/index.html?id=37568>.

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